

8-2013

A RAWLSIAN INSTRUMENT FOR THE EVALUATION OF JUSTICE IN EDUCATIONAL POLICY DOCUMENTS

Ronald Thompson

Clemson University, rpthomp@clemson.edu

Follow this and additional works at: https://tigerprints.clemson.edu/all_dissertations



Part of the [Education Commons](#)

Recommended Citation

Thompson, Ronald, "A RAWLSIAN INSTRUMENT FOR THE EVALUATION OF JUSTICE IN EDUCATIONAL POLICY DOCUMENTS" (2013). *All Dissertations*. 1131.

https://tigerprints.clemson.edu/all_dissertations/1131

This Dissertation is brought to you for free and open access by the Dissertations at TigerPrints. It has been accepted for inclusion in All Dissertations by an authorized administrator of TigerPrints. For more information, please contact kokeefe@clemson.edu.

A RAWLSIAN INSTRUMENT FOR THE EVALUATION OF JUSTICE IN
EDUCATIONAL POLICY DOCUMENTS

A Thesis
Presented to
the Graduate School of
Clemson University

In Partial Fulfillment
for the Requirements for the Degree
Doctor of Philosophy
Educational Leadership

by
Ronald P. Thompson
August 2013

Accepted by:
Dr. Curtis Brewer, Committee Chair
Dr. James Satterfield
Dr. Dolores (Dee) Stegelin
Dr. Leslie Gonsales

ABSTRACT

This study proposes a tool which that can be used by researchers and/or policy makers to measure the intrinsic justice of educational policy documents using the political philosophy of John Rawls. The proposed tool was directly derived from Rawls's two basic principles of justice as fairness that he defines and expands upon throughout his writings. These two principles have been divided into three arenas of justice for publicly funded education: justice in the democratic processes, justice in the allocation of resources, and justice in the goals of schools. Via a series of 14 rubrics to measure the active levers that work in the policy, the relevant texts is judged on a 5-point scale ranging from *Highly Just* to *Highly Unjust*. The new tool is proved upon Title I of the Elementary and Secondary Education Act (ESEA) in its most recent 2001 form (better known as No Child Left Behind). The tool proved to be effective in drawing out the individual strands of Rawlsian liberal justice. In the test case of Title I, the proposed tool found Title one to be *Unjust* for its undermining of the fair value of the citizen's voice; *Just* for its active material support for the least advantaged students, and mixed on the justice of end goals. It is concluded that this tool can prove useful to researchers, policy makers and teachers of educational leadership to identify issues of educational justice.

DEDICATION

To my father-in-law, the late John G. Smith,
Clemson Class of 1950, whose generous financial support
made possible my enrollment in Clemson.

To my spouse, Jeanne,
whose unwavering support and sacrifice over the past 26 years,
as well as her unwavering belief that I could complete this process,
has made possible the career in social service
upon which this document is predicated.

ACKNOWLEDGEMENTS

This project is ultimately a philosophical treatise, as such it is the sum of all the many people who have impacted my life and thought over the past 50 years. Certainly my parents provided a home that fostered a sense of intellectual curiosity where the word “why” was the normal response to statements of fact, and the corollary belief that I was capable of finding the answer on my own. To this foundation I am forever in debt. I am certainly also a product of what might be called the pinnacle of U.S. liberal public education, at a time when public schools encouraged both exploration and specialization in their students. Allowed to try entire courses as varied as welding to Shakespeare and robust extra-curricular such as forensics and debate, I was allowed to find where my passions and skills lay. Through the legacy of my home and school, I entered the adult world the same self-directed person that I am to this day.

I owe a debt to all those formal and informal teachers I have had in the years since that have pointed the way. Informal teachers such as Mr. Gray at the Palmer House who taught me more about leadership than I learned in any classroom and Candy Porter-Wilson who taught me how to meet the needs of the youngest most vulnerable children from her position at the Drug and Alcohol Commission. In my formal education none were more influential than those who taught the ideas of the great ethical philosophers, Dr. Gunter Salter, and Dr. Holley Ulbrich. These two professors gave me the words to express the ideas contained in this dissertation.

At Clemson my dissertation committee represents a large portion of my course work, and therefore the most influential in my transition from practitioner to scholar. Drs.

Dee Stegelin, James Satterfield and Leslie Gonzalez all played an important part in this process. My committee chair, Dr. Curtis Brewer, in particular had the misfortune of bearing the brunt of my “push back.” I know full well he, at times, began to think I rejected everything he had to say; however, in the end, I hope he came to realize I listened to and incorporated most of his suggestions into this document. His assistance proved invaluable to this end product.

This process would simply not have been possible without the generous financial assistance of my in-laws, Johnny and Nell Rose Smith. I only regret that Johnny was not able to see me graduate. Also critical to this document was Joan Russell who had no idea what she was getting into when she agreed to edit this dissertation, although she had edited my work in graduate school 25 years ago. And finally, I want to thank my wife, Jeanne, and my kids, Melody and Austin, for their sacrifices so that I could have a 23-year career in the helping profession that serves as the foundation for everything written here.

TABLE OF CONTENTS

	Page
TITLE PAGE	i
ABSTRACT.....	ii
DEDICATION	iii
ACKNOWLEDGEMENTS	iv
LIST OF TABLES	viii
LIST OF FIGURES	x
CHAPTER 1	1
Introduction.....	1
Purpose of Chapter One	1
Structure of the Chapter	2
My Position.....	2
Explication	3
Purpose of the Study	9
Research Questions.....	10
Research Plan.....	10
Conclusion	11
CHAPTER 2	12
Introduction.....	12
Structure of this Chapter	12
The Use of Rawls in this Study.....	13
Foundational Concepts in Rawlsian Philosophy.....	15
Rawls’s Theory of Justice.....	30
Conclusion to the Use of Rawls.....	54
Education and Justice.....	54

Table of Contents (continued)

	Page
Rawlsian Responses to Alternative Views of Justice	74
Conclusions on the Review of Literature.....	86
CHAPTER 3	87
Methodology.....	87
Methods.....	95
Project Methods	101
My Proposed Tool to Measure Justice in Educational Policy	107
CHAPTER 4	126
Structure of this Chapter	126
Analysis.....	127
Conclusion of Lever Analysis.....	206
CHAPTER 5	207
Structure of this Chapter	207
Title I Discussion	207
Implications.....	213
Tool Development Discussion and Conclusions	216
APPENDICES	226
Appendix A: A Rawlsian Instrument for the Evaluation of Justice in Educational Policy Documents.....	227
Appendix B: Excerpt from A Rawlsian Justic Critique of Past Educational Movements in the United States.....	249
REFERENCES	255

LIST OF TABLES

Table	Page
1: Sex-Race-Income Matrix	67
2: Criteria Rating Scale	110
3: Democratic Education System Rating Scale	111
4: Equality of the Person Rating Scale	112
5: Overlapping Consensus Rating Scale	113
6: Limitation of Bureaucratic Reach Rating Scale	114
7: Early Childhood Preventive Measures Rating Scale	115
8: Ongoing Assistance for Students Rating Scale.....	116
9: Compensation for Low Social Capital Rating Scale	117
10: Financial Adequacy Rating Scale	118
11: Compensatory Social Capital Rating Scale	120
12: Valuation of non-Monetary Life Goals Rating Scale	121
13: Differentiated Instruction Rating Scale	122
14: Equal Social Political Opportunity Focus Rating Scale	123
15: Criteria Rating Scale	127
16: Democratic Educational System Rating Scale.....	129
17: Overlapping Consensus Rating Scale	137
18: Equality of the Person Rating Scale	140
19: Limitation of Bureaucratic Reach Rating Scale	147

List of Tables (continued)

Table	Page
20: Ongoing Assistance for Least Advantaged Students Rating Scale.....	154
21: Financial Adequacy Rating Scale	160
22: Early Childhood Measures Rating Scale	165
23: Compensation for Low Social Capital Rating Scale	171
24: Differential School Resources Rating Scale	176
25: Liberal Educational Goals Rating Scale	180
26: Social Capital Development Rating Scale	186
27: Differentiated Instruction and Testing Rating Scale.....	192
28: Adequate Educational System Rating Scale	197
29: Fair Civic Opportunity Curriculum Rating Scale	204
30: Basic Liberties	209
31: The Difference Principle.....	211
32: Fair Equality of Opportunity.....	212

LIST OF FIGURES

Figure	Page
1: Arenas and Levers: Proposed Version.....	109
2: Arenas and Levers: Revised Version.....	208

CHAPTER 1

Introduction

In this dissertation I seek to offer up an instrument that can be used to judge the underlying justice of educational policy. In order to do this I demonstrate how basic philosophical positions inform the debate about the justice of publicly funded education, and I present common ways in which educational justice is currently defined. To underpin a proposed evaluation of educational justice, I present the works of John Rawls as an alternative to the two primary conceptions of educational justice. I also propose an initial effort at creating an instrument to evaluate federal and state laws and federal and state Department of Education rules based on the philosophy of Rawls and the methods of John Tharp.

Purpose of Chapter One

In this chapter I lay forth the reasoning behind the choice of this topic for my dissertation. I have chosen to take a very high level approach to educational theory, avoiding almost entirely the actual practices in schools. I have done so in order to clear away the clutter, the *what's*, that seem to fill up the conversation about schools, and focus as much as possible on the *why's*. This is part of what Dunn (2012) calls *problem structuring* (p. 67). To meet that end, it was important to clear away the related or secondary issues. In this case I wished to focus on a root question, “Why do we have publicly funded schools?” However, that question demanded a more basic question, “What are the justice demands of education in a democracy?” To get to that goal I latched on to the creation of a measurement instrument to evaluate the justice of the policy

documents that currently govern publicly funded schools. This chapter lays out the case for such an instrument and summarizes how I hope to create one.

Structure of the Chapter

This chapter has two primary components, the first being the explicated justification for this research in light of the larger frame of educational thought in the United States. I present two streams of thought on educational policy and how they are at loggerheads over the most basic meaning of education in the United States. Then I present the philosophy of John Rawls, as applied to education in this dissertation, as a possible bridge between the two, after which I present the practicalities of this research proposal.

My Position

I do not suggest I come to this subject as a table rasa, but rather bring with me an entire lifetime of position to the topic. This position is both personal and professional. When I write of justice for those who are born into circumstances less than ideal, I speak from the position of knowing that I had been “written off” by the educational system. In 1967 my parents were explicitly told that children with my level of learning disability rarely learned to read and that they should not expect me to finish high school. Only by my good fortune was I born into a home of parents who had both the commitment and resources to provide me with the opportunity to achieve beyond what was so earnestly predicted. Then a generation later, after the world of IDEA was in place I, as a parent, had to use all my resources and commitment to assure that my learning disabled child could succeed in the public schools. Had it not been for the social capital afforded to me

and my daughter, a life of struggles and poverty might well have been our lot. So, when I write of justice with passion and sometimes with a snarl, it is because I know for every child who, like me or my daughter, there are many who do not have those resources.

I have no doubt that this foundation is what led me to a career in reaching out to those who have not been afforded the advantages I was blessed in having. From my college days doing volunteer work in inner-city Chicago, to my years working with adjudicated teenagers to my dozen years doing early- intervention educational social work I have seen up close and personal how educational opportunity is not handed out in anything like an equitable manner. While children with learning disabilities at least have the procedural justice of IDEA, there is no such procedural parallel for children of poverty. I have witnessed the everyday injustices committed on the children of poverty and have aggressively advocated for those children in my care. And, too often, I have found that once outside my protection the same children are again subjected to the same injustices that I fought to remedy. So, though I will attempt to be dispassionate, objective and scholarly in this dissertation, there is no possible way I can pretend to be neutral.

Explication

There is no clear consensus in the United States about what constitutes justice in the implementation of our publicly funded K-12 educational system and, by extension, there is no consensus on the ultimate purpose of publicly funded schools in this country. This disunity is particularly acute in the conflict between educational policy makers who have legislated an economic utilitarian vision for publicly funded schools and a social equality vision for all education promoted primarily by the community of educational

academics. I propose that until there can be a common goal for education, the educational system will continue the ongoing conflict between those who govern the schools and those who prepare teachers and administrators who operate the schools, as it has for the past dozen years. This discontent has resulted in a virtual stalemate in the progress of real school reform in the United States.

The position of the Academic Community

Dating back to the 1930's the social reconstructivist wing of educational progressivism has sought to redefine the country via education. Stanly (1992) traces the reconstructivist movement from this beginning into the modern philosophy of critical pedagogy that my studies have found to be the dominate ideology in educational research and discourse¹, though over the decades there have been philosophical additions that shifted the progressive education from modernist to postmodernist in epistemology. Additionally, the influence of the Frankfort School, Freudian theory, Habermas and Foucault all worked to create the modern critical theory approach to progressive education (Jenkins, 2000; Morrison, 1989; Weiler, 2006). What is important is that to this day it retains the core vision of social reform as the prime goal, and measure and equity has become the prime measure of justice in schools (Evans, 2008). To this day there is a still a vocal refrain that indeed there is no possibility of a just educational system in the U.S. while capitalism remains the system of economics (Bowles & Gintis, 2013).

To many educational theorists the primary measure of school justice is the equality of results of marginalized groups (Ladson-Billings, 1995). The passage of No

¹ Though I looked diligently for any research into the dominance of any particular philosophy, I could find none, so I must rely on my anecdotal evidence in judging from my own dissertation research.

Child Left Behind Act (NCLB) in 2001 was a travesty in many ways to these educators (Hayes, 2008). Some contend that NCLB by its structure reaffirms basic inequities and marginalizes groups (Welsh, 2010). Others contend that the testing system forces schools with low income students to crowd out important content in order to focus on the tests, thus ultimately providing an inferior educational experience for poor children and for children of color (Rothstein et al., 2008), and others simply oppose the positivist conception of learning embodied in standardized tests.

Faced with the onslaught reform driven by the vision described above of an economic goal for education (Matusov, 2011), the academy has published a continuous stream of books and articles attacking NCLB (Hursh, 2007). Yet, the criticism from academia has had no real effect, as it appears to be that both political parties have embraced this approach to education.

The Position of the Political Community

In 1983 the Reagan administration published “A Nation at Risk.” The opening sentences staked out the basic position, “Our Nation is at risk. Our once unchallenged preeminence in commerce, industry, science, and technological innovation is being overtaken by competitors throughout the world” (Gardner, 1983, p. 6). The philosophical position was clear in the pages that followed. The schools’ primary function was to ensure that the United States remained the dominant economic nation in the world. This was not a new proposition; the economic function of schools had been argued for over a hundred years (Spring, 2001, p. 253). This view held that investment in schools lead to better workers and thus economic growth. Related to this was the idea that social

efficiency would naturally sort children into their “natural” place in society based on abilities which for much of the 20th century meant selection based on ethnic background and/or social class (Spring, 2001, p. 281). Engle (2000) cites a number of theorists and concludes that since the 1950’s the United States government primarily sees education as an economic investment. Rizvi & Lingard (2000) notes that “Educational policy is now often conceptualized as a central plank of national economic planning - the skills of a nation’s people being an important factor in attracting peripatetic capital to a specific place”(p.423-424). It is significant this statement was made not just about the U.S., but about the western world. While academics such as Lipman (2004) agree that U.S. education policy is indeed about economic competitiveness, she suggest that this process has the side effect of further widening the inequities between rich and poor, and between whites and minorities. Indeed this continues today with the 2012 Democrat National Platform making four different references to education as “investment” with clear economic ends (Democratic National Committee, 2012).

The move toward an economic utilitarian basis for U.S. education was begun in the 1994 reauthorization of The Elementary and Secondary Education Act (ESEA) entitled “The Goals 2000 Act” (Lipman, 2004; Vinovskis, 2009) which repeatedly referred to “internationally competitive content and student performance standards” (U.S. House of Representatives, 1994). Seven years later saw the overwhelmingly bi-partisan Congressional support that led to passage of the 2001 reauthorizing of ESEA better known as No Child Left Behind (NCLB) which extended the prior act and added tough new accountability measures (Hayes, 2008). NCLB has been characterized as representing

final and official shift toward market oriented educational policy (Hursh, 2007). The image of President Bush and Ted Kennedy jointly smiling with the passage of the law is strong in my memory as how the two parties can indeed act jointly to enact the will of the people. Cross (2004) writes of the open connections between these educational reforms and the business community and how they were seen as mutually supportive. Both acts set the agenda for the public schools firmly on a path towards a fixed goal of student performance as measured by international competition and markets (Hursh, 2007). It is significant that there continues to be bi-partisan support for NCLB (Vinovskis, 2009) and that President Obama's effort at school reform called Race to the Top was included as part of the economic stimulus package.

All of this to say that the dominant philosophic basis for education today is market driven need for economic competition, thus educational justice in education is primarily communitarian and economic in nature. While there are many educators who oppose NCLB on procedural or practical grounds, the critical theorists oppose it on basic philosophical grounds, as they believe the act takes the U.S. educational system in the wrong direction (Hayes, 2008).

While an important segment of the overall educational community in the U.S. believes that educational equity is paramount, the dominant policy discourse does not seem to even hear their voices. This is problematic in my estimation because the community of scholars is a vital component in any successful educational reform effort, and yet they seem to be talking past one another rather than to each other.

Rizi & Lingard (2010) describe how the geopolitical events of the 1980's along with the rise of critical theory undermined interests in rationalistic policy evaluation from both the right and left. Thus even the evaluation of policy has diverged into the two camps. In this dissertation I will present a case that there is indeed a problem with the defining justice in education as how it impacts economic competitiveness, but I will propose that the case for intergroup equality as the measure of justice is equally inappropriate as a comprehensive model of educational policy justice. While both have valid justice concerns, I contend that a larger, more comprehensive vision is necessary. The values of liberalism have been called the "American Creed" (Stark, 2011, p. 78), for it is the commitment to the values of individual human rights and opportunity that unify the two major political parties. It is with this in mind that I propose an evaluation that measures educational justice based on Enlightenment liberalism as articulated by John Rawls.

Rawls presents a comprehensive vision of justice that, while not written for educational policy, is readily applicable to educational policy. Though Rawls's economic policies are justly called redistributionist in nature, which on its face runs counter to the ideology of the political class who support NCLB (Hursh, 2007), the redistributionist aspects of Rawlsian justice to education is the one thing this study found to be fully supported in NCLB. Thus, the jump to Rawlsian model of justice might not be as difficult as it seems for the political class. On the other hand, Rawlsian justice may present a different rationale for equality than put forth by the critical theorists, yet the bar for justice presented in this tool is indeed the equitable treatment of all.

Both the utilitarian position and the critical theory position can be justly called comprehensive doctrines (in Rawls's words) or "secular-religions" in common parlance (Engel, 2000, p. 18; Rawls, 2005, p. 376). What Rawls proposed and what I propose here does not require either group to give up its core beliefs, but rather to agree to a unifying, but limited, agreement on the imperatives of a fair and democratic society (Freeman, 2007, pp. 367-368). Since both those who promote an economic, utilitarian approach and an equality based critical theory approach are teleological in their views of justice, I propose both groups could superimpose most of their outcome goals on a Rawlsian procedural approach represented in this proposed tool. Within the Rawlsian pluralistic framework both of these groups (and other comprehensive doctrines not listed) could continue to "proselytize" for their point of view while agreeing on the way forward. Would both groups have to give some? Yes, but would not the value of the ends justify their joint effort, focusing energy from a war against one another to a joint goal, and be better than the stalemate of the status quo?

Purpose of the Study

The purpose of this study is to investigate the viability of using a policy evaluation instrument to measure the underlying justice of U.S. educational policy. The political moral philosophy of John Rawls shall not only provide both the general conception of justice used in this project, but will also be the basis for the delineation and relative valuation of specific demands for justice in educational policy. In order to test the practicality and usefulness of the proposed instrument, I will evaluate Title I of

Elementary and Secondary School Act of 2001 (ESEA) better known as No Child Left Behind (NCLB) which is the reauthorizing of Elementary and Secondary Education Act.

The next phase of this process is intended to refine the proposed evaluation rubrics and determine the suitability of the policy evaluation instrument as a whole. Once all necessary adjustments to the evaluation and the rubrics are complete, I will employ the final instrument to make evaluations of Title I of ESEA/NCLB. Through this process I hope to be able to provide a usable and informative tool for future educational policy evaluations.

Research Questions

Research Question # 1: What constitutes a just educational policy?

Research Question # 2: Does the proposed instrument provide a useful measure of policy justice?

Research Question # 3: Is Title I of ESEA/NCLB intrinsically just?

Research Plan

I have chosen to analyze Title I, the 2001 reauthorizing of the Elementary and Secondary Education Act (ESEA), also known as No Child Left Behind (NCLB).

In chapter 3, there is the first rendering of the policy evaluation tool. It consists of the three major components of Rawlsian educational justice as presented in Chapter 2 as arenas, each of which have four action levers of active ethical impact. Each of the levers has levels of effectiveness spelled out for the user to provide for consistent evaluation. For each policy document analyzed, all twelve levers will be assessed and a narrative summary will be presented.

The first half of this document (approximately 40K words) was coded and analyzed using the initial version of the levers. After revisions to the levers based on their usefulness in teasing out the justice issues, the entire document was recoded and relevant sections were separated for a second cycle of coding which is recorded in chapter 4. During the second cycle Title I was analyzed on each rubric, and the rubrics were analyzed for their usefulness.

Chapter 4 discusses the three arenas of Rawlsian justice. The results from the 14 lever assessments are discussed and conclusions about the justice of Title I are made. In addition the use and usefulness of the tool is discussed in reference to the research question.

Conclusion

The intent for this dissertation is explicitly to create a tool with which to measure the justice of educational policy. However, I have a larger underlying goal. Because I see no hope for successful educational reform as long as the key players are in such conflict, I would hope the end of this line of research can eventually help provide a potential philosophical beginning point by which a path to a more unified vision of the mission of publicly funded schools can be found.

CHAPTER 2

Introduction

This chapter provides an overview of John Rawls's theory of justice upon which the entire project is based. His seminal 1971 book was referred to by his philosophy students as "The Green Monster" because of its size, the color of the first edition, and the difficulty of the contents (Pogge, 2007). In this study Rawlsian justice will be asked to address the serious concerns about the justice, or lack thereof, in the U.S. educational system. Though I present a case for the measurement of injustice as defined in terms of educational inequity, I propose that inequity is only an indicator of possible injustice, not injustice itself. Rawls provides a far more expansive definition of justice, one that goes beyond what should not be, to a vision of what education should be. Rawlsian justice provides a clear purpose of education within a pluralistic society. To Rawls education is a means to the end: a society made of self-respecting individuals who are socially and politically empowered. This, he believed, was the path to maintaining a healthy democratic society. This study is ultimately about showing how his vision of social justice is both relevant and applicable to 21st century educational policy.

Structure of this Chapter

This chapter has three sections. In the first I present a synthesis and summary of Rawls's work in a way that brings to the fore its relevance for this study in educational justice. In the second part I present the two primary ways educational justice is conceptualized: equity and adequacy. Specifically I look at the perspective that differences between groups in schools indicate a lack of educational justice as compared

with the perspective that educational justice is measured by the need to provide for the high achievers to better the community at large. I conclude this chapter by looking closely at three current approaches to measuring justice in education, utilitarianism, libertarianism and critical theory, as inadequate alternatives to Rawlsian liberalism.

The Use of Rawls in this Study

In this dissertation, I offer the work of John Rawls as a proposed justice benchmark by which to measure educational policy in the United States. “John Rawls’s *A Theory of Justice* (1971) is one of the one of the most influential books in moral and political philosophy published within the last one hundred years” (Graham, 2007, p. vii).

Rawls’s *A Theory of Justice* began a dramatic Revival in political philosophy. The book sold four hundred thousand copies in English alone and translated into twenty–eight languages has become a staple in North American and European universities and an inspiration to many in Latin America, China and Japan. It stimulated distinguished philosophers, economists, jurists and political scientists to contribute to political theory and has drawn many young people into these fields to join the debates it began. (Pogge, 2007, p. 1)

John Rawls has been described as “the most significant moral philosopher of our age” (Partridge, 2004, p. 43) and “the leading political philosopher of the 20th century” (Putnam, 2005, p. 114). When he published *A Theory of Justice* in 1971 he broke from the period’s focus on language and formal logic and brought back the larger concerns of how to determine right and wrong (Costa, 2011, p. 17; Audard, 2005, p. 157). His work has provided inspiration and justification for both the right and the left, as well as

condemnation from both (Graham, 2007, p. 8). Upon his death he was lauded by philosophers and economists from both the left and the right for his monumental contributions to philosophy, economics and political theory (Anderson, 2003).

This is not to suggest that he has been well received in all places. Audard (2005), the Chair of the Forum for European Philosophy, wrote speaking of Rawls's popularity in the Anglophile world, "But the situation is very different in Europe, and to appreciate and understand it is worthwhile to consider the case of France where his influence is certainly growing, but a vehement resistance, due to the particular intellectual and political history of the land of Foucault, Althusser has also been found" (p. 157). This rejection has been based primarily because "Critical theorists, for their part, contend that a theory which refuses at once to come to grips with social reality and to destabilize common-sense intuitions condemns itself to impotent normativeism or to ideological apology" (Audard, 2005, p. 157). However, despite these criticisms, I propose to prove that Rawls does indeed provide a realistic and workable theoretical framework for this study.

At this early point, I must make a qualification in my description of Rawls's theory that when I deviate from Rawls's own writings to those writing about Rawls's writings I shall strive to make that change clear. Though both Freeman and Pogge studied under Rawls himself (Freeman, 2007; Pogge, 2007), the conclusions in their writing about Rawls are not the same, and those writers who never knew the man such as Graham, Costa, Lehning and others, come to still different conclusions. This is not unexpected (Howell & Prevenier, 2001). Thus, I must make a caveat as I write of considering a "Rawlsian Philosophy". I am speaking of an education-specific construct that I have

created by selecting some writings to emphasize or to de-emphasize, for such a construct is necessary for a first order evaluation of educational policy (Guttek, 1974).

I must note, as a matter of clarification, that although Rawls writes at length about economic policy, I am not presenting Rawlsian philosophy as a model for economics, but rather, as a benchmark for measuring U.S. educational policy. This distinction will guide my choice of topics to address and how completely they are handled. In this chapter I will first explain the basic concepts Rawls first published in his 1971 book *A Theory of Justice* and his subsequent clarifications of these concepts in his later writings. I shall do so in order to argue for the usefulness of his conception of justice as a benchmark for publicly funded education in the U.S.

Rawls's focus on what were desirable ends was neither overly generalized nor aimed at individuals, but rather on social institutions (Freeman, 2007; Pogge, 2007). On the opening page of *A Theory of Justice*, Rawls states, "Justice is the first virtue of social institutions, as truth is of systems of thought" (Rawls, 1999a, p.3), thus setting forth, from the beginning of his work, that his theory is about two things: justice and basic social institutions. This study is about justice, and public education is obviously a public institution.

Foundational Concepts in Rawlsian Philosophy

"Rawls's theory, with its vast scope and intricacies, cannot be simplified without distortion," said Rawls's student and colleague Thomas Pogge (2007, p. x) in the preface to his book summarizing Rawlsian philosophy. I am not attempting a full review of Rawls's philosophy, but rather a targeted review of his work as it applies to an evaluation

of educational policy in order to argue to for its usefulness in the evaluation of how justice may operate through educational policy. This will require some background, not at once obviously related to my inquiry, but necessary to set the stage.

I believe it useful to review the primary influences on Rawls's thinking before delving into his theory of justice. Kant, Locke and Rousseau were the most profound influences on Rawls's writing (Freeman, 2007; Lehning, 2006) and it is through these writers he both attempts to reconcile these philosophers to the world in which he lived and by which he develops his own vision of liberalism and justice for the modern world (Freeman, 2007; Graham, 2007; Pogge 2007).

Philosophical Influences

Rawls and Kant.

At least as far as his writings and lectures went, Rawls discussed Kant more than any other person (Freeman, 2007; Pogge, 2007). Pogge (2007) said that Rawls's conception of justice had a distinctly Kantian "character" (p. 188) because Rawls both directly devoted §40 of *A Theory of Justice* to explaining Kant as inspiration and because Rawls credits Kant for the basic concept that "moral principles are the product of rational choice" (Rawls, 1999a, p. 221). Audard (2007) also credits Rawls's rejection of the utilitarian idea of group justice over individual justice by saying, "This is a view of justice obviously inspired by Kant as Rawls recognizes. The priority of justice is formulated by Kant in *Perpetual Peace* in 1795" (Audard, 2007, p. 43).

Rawls is often seen very much the Kantian and to be a believer in a strict categorical imperative; however, this is not quite true (Freeman, 2007, p. 21). Although

his emphasis, like Kant, is on the respect of persons, Rawls did not make the argument that respect of the person is a categorical imperative solely based upon reason derived from natural law (in an a priori sense). He believed the need for the respect of the person to be born out of practical reason that mutual respect leads to a more stable and civil society (Rawls, 1999a, p. 297). This is not to suggest that Rawls rejected the concept of a categorical imperative, for in *A Theory of Justice* he devotes all of §40 to making his own interpretation of Kant's categorical imperative as it relates to human morality, autonomy, and liberty.

Pogge (2007) however, suggests Rawls specifically attempted to distance himself from Kant's view of liberalism, as he perceived Kant's vision to be too comprehensive in nature. This was because Rawls desired that his theory be more inclusive in a pluralistic society (p. 144).

This brings up a point that must be made and fully understood when looking at the work of Rawls: one errs when failing to recognize that although the words of a deceased writer might now seem to exist in a permanent state of "now", they were in fact written over a period of time and in that time the writer's views may have changed in response to events, but the reader remains fixed at the point of publication. Freeman (2007) points out how "Kant had little influence on Rawls's initial drafts of *A Theory of Justice* in the 1950's and 1960's" (p.22), and throughout his book reviewing Rawls's philosophy, he notes differences between the 1971 version of *A Theory of Justice* and the 1990 version of *A Theory of Justice*. Pogge (2007) suggests that throughout his career Rawls "continually rethought and reformulated the relationship between his theory and

Kant's" (p. 188). This continual adjustment to both the world and specifically to criticisms by other philosophers (Rawls, 2005, p. 373) help to position Rawls in a stream of thought that began with Kant, but ended neither with the death of Kant nor that of Rawls.

Kantian constructivism.

With an understanding of Rawls's Kantian foundation, a discussion of Kantian constructivism is in order to understand how the foundation of reason and a person-centered morality is developed. Kantian constructivism is generally understood to refer to the premise that morality is constructed based on reason, as opposed to supernatural revelation (Galvin, 2011). A succinct explanation of Rawls's view on Kantian constructivism is:

The central role that Kant assigns to such a procedure in his moral theory, Rawls asserts, reflects Kant's view that the substance of morality is fixed neither by an independently existing order of values nor by special features of human psychology. Rather, that substance is best understood as constructed by free and equal people under fair conditions. (Kaufman, 2006, p. 2)

This focus on social morality being constructed by free and equal people is not an end for Rawls but the beginning and justification of his vision on political liberalism (Rawls, 2005, p. 89). This is the key to understanding Rawls's vision of liberalism. Though considered a moral philosopher by many (Galvin, 2011), Rawls presents the moral philosophy only as an antecedent to his justification for constructivist political liberalism (Rawls, 2005, p. 89).

Rawls and Locke.

When considering a historical review of U.S. public policy of any sort John Locke's concept of social contract must be considered, as it was significant in the development of the ideologies that led to the American Revolution (as well as the French) (Freeman, 2007).

Given that Rawls sees an important connection between moral philosophy and political theory, it is important to note how Rawls developed these connections and the implications within. Rawls believed that political liberalism was a response to the destruction caused by the wars of religion in Europe. He very specifically cites the question, "How is society even possible between those of different faiths?" (Rawls, 2005, p. xxiv). In Rawls's view liberalism as a distinct movement can be seen to begin with John Locke. Though Locke is most often equated with liberalism as an economic theory, Freeman (2007) suggests that Rawls was drawn to Locke as a model primarily because of his conviction that all men are born free and equal (p.43). Rawls also draws on Locke for his support of the use of a constitutional democracy as the best way to support both political liberalism and justice (Rawls, 2005, p. 405).

Rawls defended Locke's concept of social contract with a primacy of individual rights over the use of contract theory by utilitarian philosophers such as Hume and Bentham. Rawls believed they wrongly justified prioritizing collective good over individual rights (Rawls, 1999a, pp. 28-29). Rawls defended Locke's vision of the social contract again when he linked his concept of justice as fairness as a background to the Lockean idea of social contract (Rawls, 1999a, pp. 96-97). However, Rawls ultimately

passed over Locke's social contract in favor of Rousseau's because Locke's stipulated a specific form of government which is something Rawls wanted to avoid (Rawls, 2003, p.16).

Rawls and Rousseau.

Though Locke's conception of the social contract was important to Rawls, some authors suggest that Rousseau's version was just as, or more, important than that of Locke (Freeman, 2007; Audard, 2007). Audard (2007) proposes that it was Rousseau's *The Social Contract* of 1762 that most influenced Rawls's theoretical development in this area. "As Rousseau said it is the freedom of the parties in the contract that gives legitimacy to its result and to their decisions because 'if you take away the freedom of the will, you strip a man's actions of all moral significance' [Social Contract, I, 5]" (Audard, 2007, p. 49). In both Rousseau's and Kant's version of the social contract there is a core similarity:

The idea of a social contract, therefore, brings together two dimensions of justice: prudent rationality as we cannot agree to harmful or unjust laws, and ethical rationality as the process of legitimation rests on its universality. It could be universalized to all human beings and it is respectful of each as an end in herself. The contract seeks to establish what fully rational people would agree to, each being concerned to get her due and not being affected by prejudices or her distorting powers of passion. (Audard, 2007, p. 51)

The contract theory was not an end. For Rawls did not just accept its historical use; rather, he uses the term to tie his concept of "original position" to the historical use

of social contract theory (Rawls, 1999a, p. 14). As we will see later, this concept was adopted fully by Rawls in his vision of the original position.

In addition to the social contract theory, Freeman describes three important features of Rawls's philosophy that were impacted by Rousseau (Freeman, 2007, p. 19). First was Rousseau's concept of the natural goodness of man. After his experiences as an infantryman in the Pacific in World War II, Rawls abandoned the Christian doctrine of original sin. He came to believe that only a philosophy based on the hopefulness of human goodness would stave off cynicism and subsequent injustice (Freeman, 2007, p. 11).

The second Rousseauian concept was that "equal rights of political participation were central to individual freedom" (Freeman, 2007, p 19). In this he went beyond Locke, though he did not go as far as Rousseau in calling for direct democracy as he believed it impractical in the modern world. The third Rousseauian concept was built on the second in that it called civic participation a duty and that consensus decisions be made based on justice rather than for self-interest. The entirety of §54 of *A Theory of Justice* is entitled "The Status of Majority Rule". In this section he, on one hand, states that he believes majority rule is the best way to achieve justice, while at the same time stating clearly that the majority must be constrained by a constitution that clearly protects the rights of all, including minorities (Rawls, 1999a, p. 313).

Rawls can be seen very much to be in the tradition of thinkers beginning with Kant who came to be known as liberals. Adopting the Kantian focus on the intrinsic worth of the individual and Locke's vision that a society committed to the individual

rights of all could survive even if it was filled with people with different core beliefs, Rawls came to the conclusion that the collective good is best served by focusing on the individual. Add to this Rousseau's vision of a citizenry that engaged one another in mutual respect to enact a mutually advantageous governmental system and one can already see the outlines of Rawls's theory of justice.

Rawlsian Political Liberalism

From the foundations laid by the philosophers of the Enlightenment, Rawls went on to create his own version of political liberalism. It is from this historical base that I, via Rawls's writing, propose an entire epistemology from which I first shall propose a basic epistemology and then extrapolate that epistemology to the mechanics of an evaluative instrument.

Rawlsian Political Constructivism.

Rawls (1999c) extrapolated Kant's conception of moral constructivism to the political with the foundation that extended constructivist vision of autonomous personhood to that of a cooperative society (p. 306). Political constructivism is the rational application of Kantian moral constructivism to a society. Rawls proposed a rational society should be based on the following four features:

1. The content of constructive political justice is created by reasonable people (or their representatives) to regulate the basic structure of society.
2. The production of constructive political justice is done based primarily on practical considerations in the form of a constitutional government.

3. Political constructions are based on a system of fair cooperation between individuals and generations that flows from the moral sense of justice and what is good.
4. Political constructions must flow from reasonable conceptions, judgments, persons, grounds and institutions; however, this does not equate to “truth” as to allow for a consensus among people who have different conceptions of truth. (Rawls, 2005, pp. 93-94)

Tangent to this is that Rawls’s conception of political liberalism is of one that focuses on the individual’s autonomous freedom to self-govern within a system of mutually agreed upon rules that protect the freedom of all. In this he privileges the liberalism of personal autonomy over the liberalism of economic or property-based autonomy. This brand of liberalism has been branded “high liberalism” and follows from Kant to Humbolt to J. S. Mill. While the property-based liberalism can be called “classical liberalism” and follows the writing primarily of utilitarianism economic writers such as Hume and Adam Smith (Freeman, 2007, p. 45), Rawls privileges certain liberties over others and firmly rejects the utilitarianism of classical liberalism when he writes of the “basic liberties.” I will discuss this in some detail later in this chapter as I first position the role of education in those liberties and then in chapter 3 when I frame the proposed instrument that both clearly evaluates educational justice and the larger framework of basic liberties.

Rawlsian liberalism in a pluralistic society.

This last point is central to Rawls's idea of a just and pluralistic society. His conception of political liberalism is one that can operate successfully in a society with a number of reasonable religious or philosophical systems. Rawls called these systems *comprehensive doctrines*. Though political liberalism was conceived to allow different Christian denominations to live together in peace and harmony, Rawls (2005) is clear to spell out that these comprehensive doctrines can be both religious and non-religious doctrines (p. 375).

Rawls defines comprehensive doctrines as one that includes conceptions of what is of value in life and give life its meaning. Metaphysical decisions regarding the nature of reality and epistemological doctrines regarding the possibility and conditions of human knowledge are also comprehensive doctrines, are all religions. (Freeman, 2007, p.332)

For instance, he believed that Habermas, in his writing, had created a new comprehensive doctrine as a political theory (Rawls, 2005, p. 376); Rawls made clear that in his view of political liberalism, political theory should not establish a new comprehensive doctrine, but rather incorporate the many comprehensive doctrines of the society. He spells out his "political liberalism as a political conception of justice by three features":

- a. It applies in the first instance to the basic structures of society (assumed in the case of justice as fairness to be a democratic society). This structure consists

of the main political, economic, and social institutions, and how they fit together as one unified system of social cooperation.

- b. It can be formulated independently of any particular comprehensive doctrine, religious, philosophical, or moral. While we suppose that it may be derived from, or supported by, or otherwise related to one or more comprehensive doctrines (indeed, we hope it can be thus related to many such doctrines), it is not presented as depending upon, or presupposing, any such view.
- c. Its fundamental ideas – such ideas in political liberalism as those of political society as a fair system of social cooperation, of citizens as reasonable and rational, and free and equal – all belong to the category of the political and are familiar from the public political culture of a democratic society and its traditions. (Rawls, 2005, p. 376)

It should be noted, however, that Rawls does not give a *carte blanche* to all comprehensive doctrines to be treated equally, for he specifies that to be included in a just society, the comprehensive doctrine must be “reasonable” (Nussbaum, 2011) and to be reasonable a comprehensive doctrine must respect the individual. He defines a reasonable comprehensive doctrine as:

Reasonable comprehensive doctrines do not reject the essentials of a constitutional democratic polity. Moreover reasonable persons are characterized in two ways: First they stand ready to offer fair terms of social cooperation between equals, and they abide by these terms if others do also, even should it be to her advantage not to; second, reasonable persons recognize and accept the

consequence of the burdens of judgment, which leads to the idea of reasonable toleration in a democratic society. (Rawls, 1999b, p. 177)

In specific Rawls's concept of overlapping consensus proposes that the only justification to impinge on any comprehensive doctrines is if a doctrine seeks to limit the liberty of any citizen, including both the believer and the non-believer in that comprehensive doctrine (Rawls, 1999a, p. 188).

Rawlsian Liberalism in a Stable Society.

Another key to Rawls's vision of liberalism is the concept of "a well ordered society" (Rawls, 1999a, p. 397). Rawls envisions that justice is only possible when the basic institutions are stable. Again citing the opening pages of *A Theory of Justice*, Rawls (1999a) posits a society built on both binding rules and social agreement on core liberal values. "Let us assume, to fix ideas, that a society is a more or less self-sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who for the most part act in accordance to them" (p. 4). Thus, Rawls does not glorify anarchy but rather a system whereby all (or most) persons in a society give up some of their autonomy so as to build a society based on social cooperation. He sees that stability supports justice and "a society regulated by a public sense of justice is inherently stable" (Rawls, 1999a, p. 436).

This social cooperation must be understood in light of three things: (a) social cooperation is not the same as social coordination driven by some central authority; rather it is the acceptance of an agreed-upon set of social behavioral norms. (b) Social cooperation assumes "fair terms of cooperation". This means that no one person or

individual benefits disproportionality from the group cooperation. This concept is both horizontal (all people at a given time) as well as vertical (persons of different generations). (c) Social cooperation assumes that the individual members can see how their cooperation is beneficial (Rawls, 2005, p. 16).

Rawls goes on to point out that this social cooperation is beneficial both to the individual and to the society at large. This is not to be taken to mean that this stability is at the expense of coercive behaviors by government; on the contrary, the stability is created via a mutual commitment to the respect of all individuals (Freeman, 2007, p. 244). Rawls calls this mutual recognition of respect as good for both self and others the reciprocity principle (Rawls, 2005, pp. 16, 50). Though this well might be surmised to be a concept supporting the social contract, Rawls makes no such linkage; rather, he simply presents that a stable society promotes a just society through community consensus and expectation. Audard (2007) suggests that this clarification in *Political Liberalism* (which was among his last works) was a tacit acknowledgment by Rawls that Kant's ideal was too simplistic (p. 195).

Rawlsian Liberalism and Reasoning.

This conception that social stability depends on a society that is already committed to the basic principles of mutual respect and justice bears directly on the questions concerning the role of education in a democratic society. For a just society, Rawls posits a community of adults who are autonomous citizens that possess fundamental reasoning skills.

Now all ways of reasoning – whether individual, associational or political – must acknowledge certain common elements: the concept of judgment, principles of inference, and rules of evidence, and much else, otherwise they would not be ways of reasoning but perhaps rhetoric or means of persuasion. We are concerned with reason, not simply with discourse. A way of reasoning then must incorporate the fundamental concepts and principles of reason, and include standards of correctness and criteria of justification. A capacity to master these ideas is part of common human reason. (Rawls, 2005, p. 220)

This simple but profound concept is that societal institutions must somehow work to emphasize the growth and development of reasoning skills

Rawls (2005) divides these reasoning skills into two parts: non-public reasoning and public reasoning (pp. 212-254). Non-public reasoning includes the ability to access and understand the core governing documents (Rawls, 2005, pp. 222-223) as well as the ability to determine if current laws or policies are indeed just (Rawls, 2005, p. 222). Non-public reasoning also encompasses many associational forms of reasoning, such as used in churches or private organizations. Though not private in any sense, they are not part of the public political dialogue, yet they are very important for they form the background culture. Rawls then takes this a step further when he posits the importance of public reasoning skills: the ability to understand an argument and make a thoughtful reply. He contends that the ability for citizens to engage in deliberative democracy as they freely discuss justice and the common good (Freeman, 2007, p. 403) is important, specifically saying that “A belief in the importance of public deliberation is vital for a reasonable

constitutional regime” (Rawls, 1999b, p. 51). This deliberation does not occur on a blank canvas; to achieve the consensus envisioned by Rawlsian political liberalism in a real and imperfect society, social institutions are necessary as a mechanism to build a consensus in expectations (Costa, 2004).

If we are going to consider the use of Rawls as guiding a new rubric to assess the justice of U.S. educational policy in a historical review, it seems logical that schools should provide a thorough grounding in applying reasoning skills to civil society, the constitution and the legal process. Beyond that, the schools in such a society would be obligated to provide grounding in verbal and deliberative skills. Though these are not reasoning skills in and of themselves, they are necessary for the adult citizens to participate in the communal deliberative life envisioned by Rawls.

From the review presented above it is clear that we can understand publicly funded schools as a community enterprise. As such, in a Rawlsian conception, the operation and administration of publicly funded schools in a just society must both model liberal democratic processes and set the stage for a liberal democratic community. Therefore in chapter 3 when I propose an evaluative instrument for educational policy, the voices of all in the constituent community must be heard and respected, both internal and external as a required element of Rawlsian democratic liberalism.

The question remains: how shall an evaluation instrument assess what constitutes a just society? It is one thing to blithely say that I advocate a just society, but there are many conceptions of what constitutes a just society, and this entire project would be meaningless if Rawls did not present a coherent vision of a just society or if I failed to

present how his vision can be applicable to educational policy. This I shall attempt to do in the next section.

Rawls's Theory of Justice

“Justice is the first virtue of social institutions, as truth is of systems of thought.”
(Rawls, 1999a, p. 3)

To build a just society one must have a clear idea of what constitutes justice; Rawls's writings present a comprehensive vision as to what he believed to constitute justice. The heart and soul of Rawls's theory is justice, and that justice is a matter of fairness to the individual, to each and every individual in a society. “For Rawls, it is justice and equal respect for persons that overrides other legitimate values” (Audard, 2007, p. 25). Rawls (1999) concludes *A Theory of Justice* unapologetically stating:

These remarks bring us back to the common sense conviction, which we noted at the outset, that justice is the first virtue of social institutions (§1). I have tried to set forth a theory that enables us to understand and to assess these feelings about the primacy of justice. Justice as fairness is the outcome; it articulates these opinions and supports their general tendency (p. 513).

“Justice as Fairness” is not only the title of the opening chapter of *A Theory of Justice* but also the title of an entire book, *Justice as Fairness: A Restatement* (2003). However, that is not saying justice is fairness, but rather pointing out that justice is an example of fairness, in particular, fairness of social institutions to the individual (Rawls, 2003, p.3). This is important in that it focuses attention back to the basic civic institutions, of which education is a significant part. In his opening remarks on his view

of justice, Rawls (2003) begins with a direct assault on the utilitarian vision of collective justice:

Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by the greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. (p.3)

As previously noted, Rawls envisioned a philosophy that focused on the operation of the basic social institutions and how they should be arranged to provide the most just system possible. In doing so, he posited the above two basic principles of *A Theory of Justice*; however at the time (1971), he noted these principles were provisional in his thinking. The caveat of the principles being provisional was still present in the 1990 revision of that book. It was not until after his death that a more complete version of the two basic principles were published in book form, along with a footnote regarding the reformulation being a response to criticism of the original.²

The two principles of justice (as noted above) are as follows:

- a. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.

² This is important to repeat because while Rawls's writing is being quoted "chapter and verse" for this examination of educational policy, his thoughts were always in flux and he never intended his words to be holy writ. I emphasize this because, even before I began this project I knew there were things in his writing that not only could I not defend, I wouldn't try.

- b. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society (Rawls, 2005, p. 6).

The First Principle

This first principle can be broken down into two basic parts: (a) everybody has the same basic liberties, and (b) all of these basic liberties are not of equal value (Freeman, 2007, p 45). This falls in line with the earlier note about high liberalism v. classical liberalism. Rawls lays out a list of what he considers the most basic of liberties in both *A Theory of Justice* (Rawls, 1999a, p.54) and *Political Liberalism* (Rawls, 2005, p.334-40). For brevity sake, I will use Pogge's (2007) summary:

- *The political liberties*: freedom of thought and of political speech, freedom of the press, freedom of assembly, and the right to vote and hold office.
- *Liberty of conscience and freedom of association*, which between them cover freedom of religion.
- *Freedom and integrity of the person*, which are incompatible with slavery and serfdom and which also include freedom from psychological oppression, physical injury and abuse, as well as freedom of movement and the right to hold property (not including rights to inheritance, right to hold property in means of production and production of natural resources; Rawls, 2003, p. 114).

- *The rights covered by the rule of law*: protection from arbitrary arrest and seizure, habeas corpus, the right to a speedy trial, due process and unified procedures conducted according to publicized rules. (pp. 82-83)

These basic rights/liberties can be taken as being narrowly defined, like some approach the constitution in a strict interpretation, or they can be taken as generalizable rights/liberties as is done with a loose interpretation of the constitution. Though Rawls never specifically says which one he intends, Pogge (2007) believes he meant the latter (pp. 84-86). It should be noted that this list (or scheme) is not particularly unique as it is strikingly similar to the U.N. Declaration on Human Rights (Graham, 2007, p.51). What is important to understand is that these rights are inalienable, in that they can never be taken away, sold or even given away. So there is no right to give up these basic liberties for any reason (Freeman, 2007, p 51). Not only does this mean one cannot sell oneself as a indentured servant, one cannot agree to employment that infringes on any of these basic rights. However, one liberty can be infringed on to ensure another liberty in order to maintain the “fully adequate scheme of equal basic rights and liberties” (Rawls, 2005, p. 5). This is important to note because when using the evaluative instrument I propose for educational justice, there will be some values that will take lexical priority over others.

The Political Liberties.

Rawls (1999a) devotes §36 of *A Theory of Justice* to explicate his vision of political liberties as being both substantive and procedural. It is interesting that he doesn't even make an effort to expound on most of these liberties by simply stating, “We may take for granted that a democratic regime presupposed freedom of speech and assembly,

and liberty of thought and conscience” (p.197). Like in so many points, he later came back to expound on these basic rights in later works. Though the nuances of his discussion go beyond the scope of this study, his discussion of the freedom of speech in *Political Liberalism* is noteworthy in that his arguments are explained not in universal terms but in U.S. case law (Rawls, 2005, pp. 340-362). This brings up both a weakness and strength of Rawls. He is very clearly focused on the application of his theory in the United States or countries very much like it. While he is justly criticized for this by those with a global vision (Costa, 2005; Naticchia, 1998), in this study I do not believe this is an impediment in my work to create a working evaluative tool for use on educational policy in the United States. I do, however, put significant limitations of the policy evaluation interment outside of the U.S.

Rawls (1999a) contends that political liberties are guaranteed by means of procedural justice. Importantly, the heart of that procedural justice is established by a written constitution as the manifestation of government’s basis structure (pp. 195-196). He believed that justice is not possible without a scheme of clearly defined basic rules by which the entire system of society operates in a predictable manner that treats all similar cases in similar ways (Rawls, 1999a, pp. 47-50).

He deflects the charge of having an overly rosy picture of democracy’s ability to protect the liberties of all by freely acknowledging that there will be injustices within a just scheme (Rawls, 1999a, p. 52). He also recognized that in a just scheme there will be conflict of opinion as how best to achieve justice (Rawls, 1999a, pp. 196 & 314) and that to come to a consensus is a messy business when he said, “Essentially the fault lies in the

fact that the democratic political process is, at best, regulated rivalry” (Rawls, 1999a, p.199). He further brings up that even if the principle of equal representation for all is achieved, a highly motivated minority might well override the feelings of the majority (Rawls, 1999a , p. 202). To all these concerns Rawls returns to the conception of a society with a shared sense of justice, constrained by a constitution that enumerates highly specific rights that cannot be impinged upon even by a majority. So in the give and take of the democratic process there may well be bad policy, but policy that creates serious injustice will be avoided (Rawls, 1999a, § 37). This is why the proposed instrument measuring educational policy for justice will need a provision ensuring the procedural justice for all.

A more serious concern about the ability for the long term maintenance of justice in a constitutional government is that “the fair value of political liberty” has a tendency to erode over time. Rawls (1999a) saw this process due in large part to the problematic tendency for political power and wealth to concentrate (pp. 198-199). His answer to this is two-fold. On one hand he avoids the question entirely by saying that he is not proposing a political system, so he need not give an answer (Rawls, 1999a, p. 199; Rawls, 2005, p. 357), and an only slightly more engaged answer of limits on campaign spending/public financing of political campaigns (Rawls, 1999a, §37; Rawls, 2005, pp. 357-363). On this lack of clarity in how liberties will be fully maintained Rawls has taken significant criticism by the likes of Habermas, Pogge and others (Audard, 2007). This brings up the important point that Rawls believed that even the basic liberties, in this case the freedom of political speech, can be suppressed in order to guarantee the overall

“scheme of basic liberties” (i.e. the list from the beginning of this section). In this case his prioritization of equal and fair value of political participation is central to the scheme of liberties; this justifies his call to limit political candidates’ spending (Rawls, 1999a, p. 201; Freeman, 2007, pp. 52-53).

It was noted before, and I do so once again, that in considering a Rawlsian evaluation of educational policy, it must include a serious look at whether the policy supports or inhibits the fair value of the citizen’s voice, especially when compared to the structural power of the bureaucratic system. The question will need to be asked: Is the policy fundamentally democratic in nature and execution?

The Liberties of Personhood.

This heading includes those non-political liberties that constitute an individual’s personal, civic and economic life: freedom of religion, conscience, assembly, movement and property, as well as freedom from personal harm or oppression. Indirectly, Rawls also includes privacy and family life (Freeman, 2007, p 210) in these basic liberties of the person. Of these, some are more relevant for this study than others, particularly those dealing with religion, family and property.

Religious liberties.

Rawls puts forth the conception of a pluralistic society that is unified by a commitment to political liberalism; he calls this *overlapping consensus*. For Rawls, religion encompasses more than the strict definition of a formal organized and named religious group; for him it included general philosophical and moral beliefs as well (Freeman, 2007, p. 47). So in practice, this liberty includes all comprehensive doctrines

as well as more narrow ideas that cross into the domain of chosen lifestyle. Freedom of religion does not equate to freedom from religion. Rawls (2005) at once recognizes the potential threats of religious contention while at the same time recognizing the fact that religion (and secular comprehensive doctrines) is part of society (pp. 147-149). His concept of overlapping consensus, based on acknowledged differences with a framework of agreement on liberal democracy, is his solution (Rawls, 2005, pp. 150-158).

Like the above limitations on freedom of speech in political advertising, so too the freedom of religions (and other comprehensive doctrines) is constrained in some cases. In *Justice as Fairness*, Rawls (2003) gives the example that a church might excommunicate members for heresy, but they cannot burn them at the stake (p. 11). Later he goes on to point out that freedom of association would bar a church from retaliation for a member leaving as much as it bars the state from retaliating for someone joining a church (Rawls, 2003, p. 164).

Though Audard (2007) thinks that the growth of religious strife in the years since Rawls penned the essays that became the book *Political Liberalism* have made the concept obsolete (p. 226), I would beg to differ. I would propose quite the opposite that civil engagements between those with different comprehensive doctrines and lifestyles are more important than ever, and for this task the schools are uniquely suited. The schools have a unique role to play in developing within young people the communicative and civic skills that are prerequisites for the kind of inter-communal discourse that Rawls envisions.

In addition to the communicative skills, Rawls (1999c) wrote that citizens must have a mutual knowledge of one another's comprehensive doctrines to understand the complexity of the society and to strengthen the commitment to democratic institutions (p. 592).

Made aware of this commitment, government officials and citizens are more willing to honor the duty of civility, and their following the ideal of public reason helps foster the kind of society that ideal exemplifies. These benefits of the mutual knowledge of citizens' recognizing one another's reasonable comprehensive doctrines bring out a positive ground for introducing such doctrines, which is not merely a defensive ground, as if their intrusion into public discussion were inevitable in any case. (Rawls, 1999c, p. 593)

With this idea in mind, the assessment I propose for educational policy must include a look into whether policy promotes the diffusion of knowledge and respect for (though not belief in) the different comprehensive doctrines that make up society.

Liberties of family life.

"Now I shall assume that basic structure of a well ordered society includes the family in some form, and therefore that children are at first subject to the legitimate authority of their parents" (Rawls, 1999a, p. 405). Though distribution of material and emotional resources is inherently uneven and arguably unjust (Freeman, 2007, p. 97), Rawls (1999c) put forth the concept that the family is one of the basic structures (p.595) and envisions that this will not change (Rawls, 1999c, p. 587; Freeman, 2007, p. 98). He does very specifically note in a democratic society that the form of the family is not of

interest to the state unless it is clearly shown to harm the raising or education of children (Rawls, 1999c, p. 587).

Rawls (1999c) prescribes a very limited role of the government within the realm of child rearing. While proscribing things such as abuse, he spells out that there is no obligation for the parents to teach the children any political principles, a matter he also covers under religious freedom (p. 598). Moreover, within the home, children are not afforded the same political rights as an adult would have outside, i.e. three children can't "out vote" the parents. (Rawls, 2003, p.165)

However, despite clear limits on societal interest in parenting, he makes it clear that the basic principles of justice still apply among the adult members and that there is a societal obligation to ensure gender equality even within homes (Rawls, 2003, p.11). This is particularly important when dealing with matters such as divorce and child support that have historically placed a disproportionately heavy burden on women and children (Rawls, 2003, p. 166; Rawls, 1999c, pp. 598-601)

I have included this discussion on familial liberties for two reasons. One is to foreground the later discussion of Rawls's view of society's role in reducing inequity between children from rich and poor homes, in part via publicly funded schools. It also has a direct impact on evaluation of educational policies that might propose to subvert or supplant parental authority with that of educational professionals.

Liberties of property.

To Rawls, the right to own and control property is a basic liberty and a basic social institution that was a prerequisite for both justice and personal fulfillment (Freeman, 2007; Pogge, 2007, Audard, 2007). He explained in *Political Liberalism*:

For example among the basic liberties of the person is the right to hold and to have the exclusive use of personal property. The role of the liberty is to allow a sufficient material basis for a sense of personal independence and self-respect, both which are essential for the development and exercise of the moral powers. (Rawls, 2005, p. 298)

This was not to suggest the laissez-faire economic libertarianism. He advocates a theory first advocated by economist James Edward Meade in 1964 called *property owning democracy* (Pogge, p. 133). This he prefers over the more commonly discussed democratic socialism, though he believes both meet the criteria he sets forth for a just society. However, at the outset of Rawls's "Remarks about Economic Systems" (Rawls, 1999a, §42) he makes it clear that his theory is about justice and morality, not about economics. And although he speaks of economic systems, he does so in very general terms. He believed that the choice of one or the other would vary from country to country based on conditions and traditions (Rawls, 1999a, p. xv). On the other hand he states clearly that laissez-fair capitalism, welfare-state capitalism and state socialism with command economy all fail to meet his definition of justice. (Rawls, 2003, pp. 137-138)

He describes a property owning democracy as one with a functioning, but regulated, market economy where individuals are largely free to acquire wealth over their

lifetime. However, such created wealth cannot be passed down to the next generation so that each new generation can begin on a level playing field. This concept of each generation essentially starting with no capital wealth is part of a larger concept of *free equality of opportunity* which will be discussed at length later and is central to this educational policy analysis. This along with a consumption tax is one of the primary ways that Rawls proposes to maintain equal value of political liberties (Rawls, 1999a, pp. 242-247).

The aspect of Rawls's theory regarding a property owning democracy most relevant to educational policy is the fact that the public good demands a system of laws that enforce public financing projects for the common good though requiring citizens to give up their property for the common good: i.e. taxation (Rawls, 1999a, p. 236; Rawls, 1999c, p.127). Taxation for the purpose of common education of children is essential to the preservation of a just society (Rawls, 2003, p. 157; Pogge, 2007, p. 180). In my proposal of an evaluative instrument for educational justice, one component will need to deal with adequate financing to carry out the educational program envisioned.

The Second Principle

For the purposes of creating a tool to measure the justice of educational policy documents, the first principle is often background; however, it merits examination as part of the evaluative tool. This part of just policy deals mostly with structures inhabited by adults; the second principle has more application directly to the children in the educational process. In its final rendition the second principle reads:

Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society. (Rawls, 2005, p. 6)

One thing that stands out immediately is that Rawls (1999a) explicitly allows for the fact that different people have different talents and motivations and these different talents and motivations lead to differences in social status and income (§12). The societal obligation is to provide educational resources necessary for each individual to reach his potential. Thus, he reasons, that all people with the same talents and motivation can achieve the same (Rawls, 1999a, p.63). This is very different than saying that schools have the obligation to provide all children with equal success in life. Rawls clearly accepts that economic and social inequalities will exist even in a just society. This is a revised conception of distributive justice, that societal wealth is justly, but not evenly, distributed in a cooperative manner (Freeman, 2007, p. 87). It is no surprise that those from the Marxian tradition would respond very negatively to a proposition that it is possible to do so in a market economy (Rawls, 2007, pp. 356-357; Miller, 1974) and that Rawls allows for inequalities under the *difference principle*.

The *Difference Principle*.

The *difference principle* is a critical concept of Rawlsian theory that applies directly to education. In the evaluative instrument I propose in chapter 3, it is fully 1/3 of the measurement tool, thus I am obligated to discuss this principle. Though Rawls most directly addresses this principle in economic terms, its application as a measure of social

justice goes to the heart of using Rawls as a foundation for educational justice. This is the second part of the second principle: “they (social institutions) are to be to the greatest benefit of the least advantaged members of society” (Rawls, 2005, p. 6). The principle can be most easily understood as an application of the Pareto efficiency (Audard, 2007, p. 148). Vilfredo Pareto’s concept of a moving state of affairs to which at least one person is better off and no one is worse off (Pareto principle) and the point which the most benefit is accrued with harm to none is called the Pareto optimum and has been widely used in welfare economics (Rawls, 1999a, p. 58; The Concise Oxford Dictionary of Politics, 2009). Rawls (1999a) took this idea and applied it in an active formulation in which he suggests that not only can this principle be used with economics, but also with social institutions as a whole (p.61). It is with this in mind he proposed that social and economic inequalities be arranged to the greatest benefit of the least advantaged members of society. Rawls (1999a) explained his concept of the efficiency *difference principle*:

Thus we can say an arrangement of right and duties in the basic structure is efficient only if it is impossible to change the rules to redefine the scheme of rights and duties, so as to raise the expectations of any representative man (at least one) without at the same time lowering the expectations of some (at least one) other representative man.” (p.61)

In this rendition of the Pareto optimum Rawls expands the conception from strictly one of economic concern, such as the justice of merging two companies, to include the operation of the most basic institutions, such as education. Such institutions could be as broad as methods of voting to environmental regulations to criminal

sentencing guidelines. School reform efforts would most certainly need to adhere to this model.

Though Rawls's *difference principle* is the subject of a great deal of writing in economics, that part is only indirectly related to this study and thus I will not go into the intricacies of that usage. However, the overarching issue is that public policy, including educational policy, has a goal of Pareto optimality in that inequities may exist so long as those inequalities continue to benefit those least well off. So in a Rawlsian justice model, policies are to be arranged to the disproportionate benefit of the least well off. This is important in the design of a measurement of justice for educational policy; however, it must be noted that this principle is subordinate to the principle of *fair equality of opportunity* (Freeman, 2007, p. 92).

Fair Equality of Opportunity.

I propose that Rawls has an expansive view of government's role in education. His concept of *fair equality of opportunity* (FEO) is promising for an evaluation of justice in educational policy. It is important to also note that his call for *fair equality of opportunity* is tied to the preceding phrase "positions and offices" which clearly sets a social and political priority (over economic) in the quest for equality of opportunity (Rawls, 1999a, §16). This is likely because Rawls (2003) privileges a person's self-respect in regard to their occupation and personal fulfillment over income (§17.3). This simple concept of self-respect and personal fulfillment over earning power will have significant ramifications when we consider the goals of public educational policy in Chapter 3.

Rawls believed the best way to understand his concept of FEO was to contrast it with what he called *formal equality of opportunity* as is currently practiced in the U.S. In *formal equality of opportunity* the laws provide legal access to all jobs based on ability, but there is no obligation to ensure natural talents are allowed to develop into ability (Rawls, 1999a, pp. 62-63; Rawls, 2003, §13.2). Rawls decries the fact that in *formal equality of opportunity*, the cumulative effect of unrealized natural talents over time leads to social injustices that erode equality of liberty. In contrast to this passive approach to ensuring fairness of opportunity, Rawlsian justice calls for an active societal effort to ensure all citizens have full opportunity to develop their natural talents which brings the discussion directly to that of the role of schools (Rawls, 1999c, p. 166).

FEO and schools.

Rawls is very clear that it is a basic societal obligation that each and every child is provided all the support and resources he seeks in the effort to develop his maximum potential (Freeman, 2007, p. 94). Rawls does not miss the point that it is not just a school's academic curriculum and funding that separates the rich from the poor, but it is an entire social/cultural milieu. "Chances to acquire cultural knowledge and skills should not depend upon one's class position, and so the school system, whether public or private, should be designed to even out class barriers" (Rawls, 1999a, p. 63). Rawls goes on to specify that in funding education the end is not maximum production (i.e. achievement) but maximum personal value and social life. Thus there is no justification in denying educational opportunity just because it does not show economic value (Rawls, 1999a, p 92). Freeman (2007, p. 93) writes that Rawls envisioned a society where there

was disproportional spending on those from impoverished backgrounds and/or of low talent; however, Rawls does note that there is reasonable concern about overly prioritizing resources for maximizing the least talented for their personal fulfillment over investing in the potential of the most talented in order to adhere to the basic principle of benefiting the least advantaged (Rawls, 2003, p. 163n). I don't think this footnote in *Justice as Fairness* indicates a retreat on prioritizing the individual over the group, but I think it is his acknowledgement of the difficulty in knowing where to draw the line in resource allocation (Freeman, 2007, p.95).

In this consideration of resource allocation, Rawls's phrase "the school system whether public or private" (Rawls, 1999a, p. 63) should not be missed. In this quote he shows he is indifferent as to whether this mandate is carried out by public or private purveyors. Thus, the reader will notice that I entirely avoid the current controversies of charter schools and privatization.

FEO and the home.

This brings the discussion back to the issue of families. Rawls (1999a) pointed out that the entire structure of society built on families will create some inequity (pp. 64 & 265) and although some have concluded that the only way to level this playing field is to eliminate the entire institution of family (Freeman, 2007, p. 97), Rawls does not do so. Though Rawls acknowledges the utilitarian appeal of this call, he rejects it on both the grounds that it would not only be psychologically devastating to children but also that it would be an abrogation of the freedom of association (Rawls, 1999a, p.64; Freeman, 2007, p. 97).

Rawls was aware that home environments have significant positive and negative impacts on children, particularly young children. Related to that is the idea that different cultural groups value education differently and this in turn may well impact how willing a young person is to forgo the independence of a career and stay in advanced training. In more well-to-do families, education tends to be far more important, as it is in some cultural groups (Freeman, 2007, p. 97-98; Pogge, 2007, p. 123). It is due to these types of “extra-curricular” inequities that Rawlsian educational justice expands far beyond the 3-R’s and into the area of cultural knowledge.

If citizens of a well ordered society are to recognize one another as free and equal, basic institutions must educate them to the conception of themselves as well as publicly exhibit and encourage this ideal of political justice. . . . Acquaintances with and participation in that public culture is one way citizens learn to conceive of themselves as free and equal . . . (Rawls, 2003, p. 56)

What is of primary importance in my creation of an evaluative instrument for educational policy based on FEO is the public obligation to ensure that all the assets are available to prepare every child with the values and skills necessary to take his meaningful place in society.

FEO and outcomes.

One other important concept of justice that must be noted when considering Rawlsian philosophy as a benchmark for publicly funded educational systems is that he makes it clear that even when the FEO principle is perfectly executed, it does not equate to equal educational outcomes or to equal economic success (Freeman, 2007, p. 93). He

acknowledges the arbitrary way that talents, circumstance and even luck are given out in nature's lottery. Rawls (1999a) does not try to eliminate this natural injustice, but rather seeks to create systems to mitigate its effect (p.88). He clearly recognizes both the limits of individual abilities and in motivation; therefore there will inevitably be a division in earning power as related to the overall value to society (Rawls, 1992, pp. 62-63). To further mitigate this natural inequity Rawls proposes the *difference principle*, which I discussed in previously.

Rawls predicates this financial inequity on the assumption that basic needs and health care are ensured (Rawls, 2003, §51) to all. As always, he frames the question 'what are primary goods' to show how it impacts the person as a social and political being:

While the list of primary goods rest in part on the general facts and requirements of social life, it does so only together with a political conception of the person as free and equal, endowed with the moral powers and capable of being a fully cooperating member of society. This normative conception is necessary to identify the appropriate list of primary goods. (Rawls, 2003, p. 58)

Because of this, not only will there be financial inequality, but that inequality might be perpetuated over generations even in a society with FEO (Freeman, 2007, p. 97-98). For this approach Rawls had received significant criticism from both libertarians like Nozick and utilitarians such as Sandel (Pogge, 2007, pp. 182-183); however, since he privileges individual freedom over particular outcomes, he presents those remaining inequities as unfortunate, but not unjust (Rawls, 2003, § 21).

Now one might wonder how Rawls presents a view of justice that is so economically inequitable, but it is important to focus on one important concept: the goal of Rawls's conception of justice is not economic ends but equal political personhood and self-respect. Further he sees even equal political personhood as a means to the "most important primary good that is self-respect" (Rawls, 1999a, p.386). To Rawls, self-respect has three primary components: (a) a person's sense of self-value and his conviction that one's own plan for a meaningful life can be carried through, (b) a confidence in one's own abilities to carry through with that plan, (c) a belief that others give esteem to one's deeds (Rawls, 1999a, p. 386). Rawls calls upon the Aristotelian principle of best use to explain that it is only by the development of one's talents to their fullest that a person can achieve full personal satisfaction; however, that implies also that those with the most talent will require the most effort to train and perfect those talents. It is via this Aristotelian justice that those who have the most invested in their talents should justly receive the most reward (Rawls, 1999a, pp. 375-377). This provides the rational basis for inequitable distribution (in addition to the traditional efficiency argument).

To make this all happen in a just manner he presents the concept of the difference principle that ensures that each generation begins their adult life with equality of opportunity as well as equality of financial resources and that over the course of their lives the least well off shall have more than in any other practical scheme (to be explicated in the next section).

As applied to educational policy, the FEO concept sets a significant task for publicly funded schools that makes social and cultural equality a higher priority than even academic parity, because all citizens are expected to be social and political but not all citizens are expected to be engineers or academics. The priority for every student must be centered on not simply maximizing the student's cognitive potential but maximizing his autonomy and appreciation for the worth of his own achievements. In the evaluative instrument, this value must be included.

FEO and group justice.

Rawls's vision for justice for the individual rejects group identity as a means for justice and focuses on the individual (Rawls, 2003, p. 59n; Freeman, 2007, p. 91). He explicitly rejects any group identity other than one of financial need:

Note here that in the simplest forms of the difference principle the individuals who belong to the least advantaged group are not identifiable apart from, or independently of, their income and wealth. The least advantaged are never identifiable as men or women, say, or as white or blacks, or Indians or British. They are not individuals identified by natural or other features (race, gender, nationality, and the like) that enable us to compare their situation under all the various schemes of social cooperation it is feasible to consider. (Rawls, 2003, p. 59n)

Rawls's approach, as seen earlier, comes from the liberal tradition founded in Locke, rather than the more recent concepts of social justice that emphasize the primacy of the individual. Curren (2006) describes the first key element of liberalism as "a

principle of respect for free and equal citizenship, generally associated with the idea the individuals are bearers of rights and are the sole proper objects of fundamental moral concern (ethical individualism),” (p. 457) primarily from the critical theory tradition founded in Hegel and Marx (Crotty, 1998, p. 112). Rawlsian justice is primarily about creating fairness in the social contract and well-ordered society governed by rules followed by the populace. This is contrasted with the critical theory social justice that is primarily about how the use of power among groups is used to oppress one another (Carspecken, 1996, p. 4) or as Boyd (2011) perceives it to be about primacy of group identity and the asymmetrical power between groups.

Rawls does not give special attention to issues of race or gender despite their significant place in debates about justice. The reason for this is that those are just two of a pantheon of ways by which justice could be denied (Pogge, 2007, p. 124).

Rather, the worst off under any scheme of cooperation are simply the individuals who are worst off under that particular scheme. They may not be those worst off in another. Even supposing, for example, that it turns out, as commonsense *Justice as Fairness* political sociology might suggest, that the least advantaged, identified by income and wealth, include many individuals born into the least-favored social class of origin, and many of the least (naturally) endowed are those who experience more bad luck and misfortune (§16). Nevertheless, those attributes do not define the least advantaged. Rather, it happens that there may be a tendency for such features to characterize many who belong to that group. (Rawls, 2003, p. 59n)

This is not to suggest that he did not recognize that there are historic biases, but he expects in a FEO society that those biases will diminish. It is interesting that two of his personal friends, Pogge and Freeman, independently wrote biographies of him. Both state clearly (in nearly identical words) that Rawls did support affirmative action type programs as long as they were temporary; yet, neither cited any reference for their assertions (Pogge, 2007, p. 121; Freeman, 2007, p. 91). I can only conjecture that this was a topic they had all discussed.

The Veil of Ignorance.

Of all of the concepts that Rawls presents, the one that shows up in the books of philosophy that I have encountered the most is the concept of the veil of ignorance, or as Rawls calls it *the original position*. He saw this “thought experiment” to be directly in the tradition of Kant, Locke & Rousseau as they presented their social contract ideas (Rawls, 1999a, p. 10; Freeman, 2007, p. 142), and in turn, I might find assistance in creating a mental framework for conceptualizing a tool for educational policy evaluation.

This concept set forth in §3 of *A Theory of Justice* is at once a simple mental exercise and, at the same time, meant to be a genuine abstraction of the social contract theory. Via the use of the original position, members of a society can help determine how best to allocate the resources and to ensure rights and liberty as well as to provide the foundations for self-respect (Rawls, 1999a, p. 54; Audard, 2005, p. 123).

Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like. I

shall even assume that the parties do not know their conceptions of the good or the special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that none is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principle to favor his particular condition, the principle of justice is the result of a fair agreement or bargain. (Rawls, 1999a, p. 11)

In this little exercise Rawls (1999a) is attempting to get at a vision of justice that is fair to all, and he supposes rational people will generally come up with the same type of scheme (pp. 12-13). This goes to the heart of the concept of a social contract that benefits all concerned (Pogge, 2007, pp. 62-63). This being said, Rawls also agrees that different answers could be generated based on different assumptions about how best to achieve that Pareto optimum which will provide the best outcome for all (Lehning, 2006, pp. 32-33). This exercise allows a construct on which the reader might place all the parts of Rawlsian philosophy mentioned previously so as to produce a unified whole.

In this dissertation proposal, I propose by use of a rubric to assist the user of the instrument to step behind that veil of ignorance in judging the justice of the policies being considered. I shall seek to do this by providing a format that is designed to limit the subjectivity in what is clearly a highly value laden field by narrowing the context of the questions addressed in much the same way Rawls proposes.

Conclusion to the Use of Rawls

Rawls's writings have been shown to provide a strong theoretical foundation that fits neatly into the philosophical needs of this study on the justice of the policies that govern public education in the United States. Despite the resistance to Rawls's philosophical approach in Europe, his work is well contextualized in the United States (Audard, 2005) and provides a comprehensive theoretical underpinning for my project. Although the first principle of his theory, that of basic liberties, plays in the adult world and provides the background for the parts that directly impact children in schools, the second principle cuts right to the core purpose of public schools in just society. No utilitarian argument for efficiency or professionalization, at the expense of citizen access to the levers of power in their schools, can be justified. With this Kantian deontological approach foundation, the evaluative instrument I will propose will by nature appear to be full of just "demands" in the actual policy wording as opposed to the policy intents.

Education and Justice

The perennial question of 'what is justice' is ubiquitous. While this study will take a smaller piece of this question, I feel it is important to first address how others have attempted to answer the larger question. It is a good question that will be addressed later in this project; however, at this point, it is important to give a more complete analysis to consider what others have conceived of as justice in education. By definition this is an entire field of study and I do not pretend to address any of these ideas to the extent I addressed Rawls; however, the principle concepts will be recognized. In the literature on educational policy studies there are two philosophical approaches to the consideration of

the justice of a publicly funded education system: justice defined as intragroup equity and justice the quality or adequacy of preparing young people for work (Coombs, 1994, p. 598).

This big question is related to two fundamental questions of justice: what is justice and to whom is the justice applied? Previously, I established that justice for this project is defined by Rawls's principle of fairness, and in particular educational justice defined by his term *fair equality of opportunity*. Regarding who is the target of educational justice has not been made clear yet. Coombs (1994) presented that theorists have proposed two basic approaches: justice for individual students, or justice to the collective society as a whole. Either of these approaches could be further deconstructed to focus on the justice achieved for specific subsets of students or subsets of society. And to further complicate the issue individuals and groups have different interests and self-perceived needs (Bull, 2008). Thus, what seems at first blush to be a simple question of either/or becomes fragmented into many possibilities that must be resolved to produce a measuring tool for educational justice.

In this review of the literature I will be focusing on two conceptions of educational justice underpinned by two very different visions of justice.³ One group focuses on the relative status between groups as the primary focus of justice in education. The other is not concerned about the internal workings of education so long as the net

³ Oddly I have found an incongruity in the surface epistemologies of the how these two visions on justice is defined and how they are commonly critiqued. The positivistic method of determining injustice by mathematical comparisons between groups is largely critiqued by constructivists and the constructivist conception of the most good for the most people is critiqued by positivists. This runs counter to the texts on policy analysis where the positivists advocate using constructivism and eschew statistical analysis (Fischer, 2003; Stone, 2002), while the mainstream texts on policy analysis promote a positivist view and rely primarily on numerical data (Dunn, 2012; Weimer & Vining, 2011) .

result is good for the society as a whole; in particular, the good result of an educational system is measured by economic success.

Therefore, in exploring the literature on educational justice I will first take a look at the current state of justice in education from both the position of unequal educational outcomes for subgroups and consider the positions of those who promote a sense of justice that focus only on net “good” to society.

Justice as Equity: The Need for Equality between Groups

Today, education is perhaps the most important function of state and local governments. . . . Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms (Brown v. Board of Education, 1954).

Chief Justice Warren could not have been clearer that justice demands that education be provided to all children on “equal terms”. What does it mean to be equal? Equality can be explained simply in mathematical terms; equality is two things being the same. If we were measuring for the even consistency of a batch of concrete, one could sample from anywhere in the tub and come out with roughly the same number of rocks per pound no matter where you draw your sample. Statistical educational equality is just that simple. If you sample groups of students from any school in the nation, a perfectly equal system

would yield the same set of skills no matter how those skills are measured. But children are not concrete, and the nation's schools and children are not a single bucket of concrete. However, this simple methodology is the basis for the U.S. Department of Education's measure of educational equality (Aud, Hussar, Kena, & Roth, 2012). "Behavioral scientists use statistics to explain the results of research studies and to provide empirical evidence to support or refute theories" (Hinkle, Wiersma, & Jurs, 2003, p. 2), and this will be the prime measure of inequality in this section.

I recognize that some will object to this simple numerically based answer. Espinoza (2007) contends that although equity and equality are most often used interchangeably, he believes when addressed through a critical theorist's lens, equity and equality should not be seen as the same. And Stone (2002), writing of the use of numerical data, states, "If numbers are thus artifacts of political life, and if they are in themselves metaphors, symbols and stories, are they 'real' in any sense? Numbers are always descriptors of the world, and as descriptors they are no more real than the visions of poems or paintings" (Stone, 2002, p.163). However, for this project I shall not be taking this type of constructivist approach⁴; I shall be using numbers as real things, with their value and reliability measured by stated statistical methods.

Thus I will begin by presenting three areas in which there are evident patterns of inequities of educational outcomes currently in the U.S.: income/class, race, and sex.

⁴ One should not confuse Kantian constructivism which is limited to the construction of morals with the larger type of constructivism in postmodernism/post-empiricism (Kaufman, 2006)

Inequality Based on Income.

There is an endemic problem with poverty in the United States. This problem has direct and massive impacts on educational outcomes. Thus, in any review of the literature on educational outcome, equality must delve into some issues of poverty, class and education. However since “most Americans are, in fact, relatively blind to class, having faith in the upward mobility implicit in a supposedly classless society” (Sacks, 2007, p. 289), it is important to discuss both poverty as a variable issue in children’s lives and class as a more stable one.

Census figures on poverty rates are derived on an annual basis, meaning it represents total income over a full year including periods of unemployment. However, in a discussion of poverty, it needs to be noted that the poor show a more problematic pattern of employment that might hide “spells” of poverty in a family group that is not listed in this overall poverty rate (Card & Blank, 2008). Though relatively few children live in poverty their entire lives as poverty tends to come in “spells” of months or a few years where the family moves into poverty and out of poverty (Card & Blank, 2008), the timing of that poverty spell and its duration have lasting impacts on the children, and the impact on young children is the most significant (Chaikind & Decision, 1985; Mistry, et al., 2010). The impact of childhood poverty on preschool aged children has been found to be related to both reduced verbal skills and measured IQ for children that persist into later childhood (Hart & Risley, 1992; Hart & Risley, 2003). New research in brain development reveals a biological component to this phenomenon. A recent neural science study has found “SES accounts for individual variation in the size of discrete brain

regions that are critical for language, memory and social emotional processing” (Noble, Houston, Kan, & Sowell, 2012, p. 524). “The research literature on poverty and child development is saturated with studies that document the native effects of poverty on children. The overwhelming consensus is that poverty is a consistent risk factor across multiple domains of development” (Hardaway & McLoyd, 2009). Rawls (1999b) was referring to this group when he wrote of the “least fortunate” (p. 83), and he firmly believed that the state has an obligation to organize social institutions (like schools) to most benefit this least fortunate group. Another way of discussing the long term poor is via the concept of class.

The tangible result of this and a testament to the failure of current policy to address these developmental issues impacted by poverty can be seen in a clear disparity in performance outcomes based on poverty. On the 2011 National Assessment for Educational Progress (NAEP) in reading, 62% of children eligible for free lunch scored at or above the basic level, 74% of children eligible for reduced lunch scored basic or above, while 86% of those on paid lunch scored the same level. This pattern is true for both 4th grade and 12th grades, though all scores fall by the final year of testing (National Center for Education Statistics, 2011). This pattern of progressively lower levels of achievement as the income level declines holds true for all the domains tested by the NAEP. The NAEP also recorded parental education level, particularly that of the child’s mother, showing a strong correspondence with the student scores. Only 59% of children with neither parent a high school graduate made the basic level, while 89% of children with both parents completing college met that standard.

This would lend support to the social capital theory of student achievement and leads to a strong case for social justice to demand, as Rawls would suggest, disproportionate investment in these least advantaged children in order to achieve *fair equality of opportunity*. The social capital theory contends that social class is about social standing, for children that means the social standing of their parents. Income, particularly in times of recession may come and go, but status is tied to past educational achievement at amassed wealth (even relative middle class wealth) which leads to what Hanifan first called cultural capital in 1916. By social capital he referred to informally learned ways of interaction that make up a community (Anderson, 2003; Rodríguez-Sedano, Aguilera, & Costa-Paris, 2009). Bourdieu blended this concept with a Marxian approach to present cultural capital in a darker, oppressive form. Bourdieu made the leap to link cultural capital with Marx's concept of material capital so as to make a Marxian vision where nearly all interaction and achievement can be seen as human capital (Aguilar & Sen, 2009). For Bourdieu it was not an either/or question, monetary capital or social capital, but rather he suggested that all capital is fungible, i.e. converted from one form to another. Thus monetary capital and social capital are interchangeable (Allen, 2011; Portes, 2000). For Bourdieu it was natural that that fungible capital was used to maintain hegemony over the rest of society, because, "for Marx, human history is the history of class struggle" (Allen, 2011, p. 53).

In this conceptualization, children from privileged families learn the unwritten rules of accessing the leveler of power that translates into a structure that passes from one generation to the next. Sacks brings this concept to the grass roots level when he points

out that the well-educated parents in the U.S. possess the foundational knowledge that their children's educational experiences translate to better colleges and better jobs, which is not something readily apparent to low income parents. He further points out that these same parents know how to press the schools to do what benefits their own children, pointing out that even if the low income parents know what their children need, they lack the knowledge as to how to get it (Sacks, 2007).

Though the Marxian interpretation focuses social capital as a tool of oppression, others maintain not only that social capital can be benign, but it is essential to communitarian action and societal cohesion (Rodríguez-Sedano et al., 2009). I found the most reasonable approach that of the middle-ground position taken by Johnson (2006), when she presented an understanding of both the clear fact that the cultural capital of well-educated parents led to advantages for their children that lead to an unintended side effect of putting children of the poor at a relative disadvantage. This position would seem to be consistent with Rawls's acknowledgement that familial background has inherent inequality (Rawls, 1999a, p. 265).

In considering the justice of educational policy the looming and pervasive inequality in the schools themselves must be considered (Hochschild & Scovronick, 2003; Darling-Hammond, 2010). This is not a new phenomenon; issues of school funding inequity have been in discussion since Cubberly (1934) wrote of them before World War II (p. 734). School success on the NAEP varies both regionally and based on population density (National Center for Education Statistics, 2011). Many authors have documented unequal distribution of educational resources that negatively impact children's progress

(Kozol, 1991; Darling-Hammond, 2010). It must be noted that courts are addressing these inequalities (Verstegen et. al., 2006; Hochschild & Scovronick, 2003). Like the problem itself, the legal fight to change the inequalities goes back a century (Cubberly, 1934, p. 732). Kozel's influence books (1991; 2005; 2006) on school inequities were predated by Wise in the seminal work *Rich Schools, Poor Schools* (1967), by two and a half decades, but covered the same issues (if less colorfully).

Thus, a very strong case can be made for the fact that there is a long term pattern of inequality based on parental income in the educational system of the U.S. This inequality manifests itself in significantly different educational results for children of different income groups.

Inequity and Race.

Chief Justice Earl Warren's declaration in the *Brown v. Board of Education* opinion (above) was written about race, but more specifically about the necessity of educational equality between those of European decent and those of African descent. Today, however, the discussion of race includes far more than the simplistic construct of black verses white. Educational racial equity is now much more complex. The 2011 NAEP allows for six distinct racial choices: white, black, Hispanic, Asian American, Indian/Alaska Native, Native Hawaiian/Other Pacific Islander and two or more races. Issues of unjust treatment are raised not just for those groups with disproportionately low achievement, but also for those in those groups perceived as achieving above the norm such as Jewish and Asian students (Diebels & Czopp, 2011; Marcus, 2007; Spring, 1997); however, general issues of racially motivated behaviors are beyond the scope of

this study and the focus will be on groups with statistically significant underachievement. This section is particularly concerned with aggregate differences in performance, particularly of those groupings identified by the Center for Educational Statistics.

It is not difficult to present a case that there is a massive disparity between the academic performance of African-American children and European-Americans, and that disparity has been persistent (Aud & Hannes, 2010; Darling-Hammond, 2010).

In 2009, the average reading score of Black 4th grade students was less than that of White 4th grade students by 26 points: this gap was not measurably different than the gap in 2007, but it was smaller than the gaps in all other assessment years prior to 2007. The reading achievement gap between Hispanic and White 4th grade students in 2009 (-26 points) was not measurably different from the gaps in 2007 or 1992. Scores of White, Black and Hispanic 8th-grade students have all increased from 1992, yet neither the 2009 reading achievement gap between Black and White 8th grade students (-24 points) was measurably different from the corresponding gaps in 2007 and 1992. (Aud et al., 2011, p. 44)

The prior discussion of the detrimental impact of poverty on childhood inequity shows the nexus between the above report and the fact that in 2011 the poverty rate among African-American and Latino children was 27.6% and 25.3% (respectively) while the poverty rate among white children was 10.9% (DeNavas-Walt et al., 2012, p. 13). The issue of race can be seen independently, or more powerfully, as a multiplier when combined with the issue of income. Continuing to use the 2011 NAEP 8th grade reading scores, 53% of African-Americans who received free lunches scored at or above the basic

level; however, of those children not in the program, i.e. higher income, 72% were at that level. Similarly, for Hispanic children the rates were 57% to 75% and for Native American children the span rises to 50% to 76% (National Center for Education Statistics, 2011). As a consequence, those considering the issue of justice in education would be well served to keep in mind the intersection of race and poverty.

High School graduation has been expected for public education for nearly a century in the U.S. (Spring, 2001). However, universal high school graduation has never been achieved, and until well past mid-century high school graduation was not seriously considered necessary for minority children (Spring, 2001). Illustrative of the disinterests in minority education, even among respected educators, Cubberley's 1934 history of public education in the U.S. gives just a page and a half to "negro education" and none at all to Latino education (Cubberley, 1934). It is axiomatic that equity in educational outcomes is difficult in a societal milieu with such massive and patterned disparities in income. As a result, the high school graduation rate is an important measure of the success in both reflecting the performance of the overall educational system over the past generation of students, and for predicting the future prospects of equity in the educational system for the next generation, or lack thereof.

Measuring this outcome is difficult since, for instance, the "official dropout rate" is modified heavily in ways that hides the actual success of students in school (Swanson, 2008). A new measure, comparing the students who finish 8th grade to the diplomas granted paints a more realistic and grim picture for the U.S. school's success with African-American children (Stillwell et al., 2011). There was a 24.5% decline in the

students (of all races) who began high school compared to those who finished (compared to the official 4.2% dropout rate). For white students the decline was 18%, the decline for African-American students was 36.5%, for Latinos it was 34.1%, and for Asian/Pacific Islanders it was 8.2%. It might be fair to say that a system that loses even the 25% has a serious problem in completing its assigned mission; however, the pattern of racial disparity leading to more than a third of minorities who fail to complete the course of studies indicates systemic inequity problems (Stillwell et al., 2011). This suggests that the Rawlsian concept to every young person starting their adult life with a fair equal opportunity to choose their life path based on their own desires and abilities is far from a reality in the U.S. today. Further, the 18% non-completion rate for whites suggests a systemic problem that is exacerbated by the racial patterns of poverty and low performance.

It would be difficult to square this level of systematic pattern of unequal performance with the ideals proposed by Rawls. Though he does not ever claim to promote equal outcomes among all people (Rawls, 1999a, p64), because there are so many factors, he calls it a “natural lottery”. Rawls’s vision of justice is deontological not teleological (Audard, 2007, p. 21), thus his focus would be the circumstances that led to the unequal results between racial groups, not the results themselves⁵.

⁵ Though Rawls never wrote about affirmative action, it should be noted that his protégé, Freeman, did write that Rawls said in unrecorded lectures that preferential treatment to remedy past injustices might be permissible on a temporary basis (Freeman, 2007, p. 90-91)

Inequity and Sex.

Sex and biological sex differences in behavior and learning continue to be a point of debate in the academic community. Some researcher believe that girls have specific abilities that make them more prone to academic success in both language and arithmetic (Wei et al., 2012), while others cite boys' special superiority (Ganley & Vasilyeva, 2011), and others still say there is no overall biological advantage to girls or boys, even while acknowledging girls have a pattern of significantly outperforming boys (Calvin et al., 2010). The answer to why girls outperform boys has been proposed to lie not in cognitive functioning, but in behavioral and emotional functioning (Hicks et al., 2008; Legewie & DiPrete, 2012).

Though the reasons are under debate, the results are consistent across the industrialized world: there is a meaningful sex gap in education (Legewie & DiPrete, 2012). Returning to the NAEP reading, boys progressively lose ground to girls moving from a 6 point gap in the percentage of boys at basic level in 4th grade to an 11 point gap at 12th grade (National Center for Education Statistics, 2011). It might be argued by some that this difference is not significant; however, if viewed as a multiplier with income and race, the sex difference takes on a much more serious tone.

Table 1 was generated using the 2011 NAEP reading data set. The cumulative effect of race, income and sex leaves low income African-American males less than half as likely to score at the basic level that European-American, middle income females. Even when race is entirely removed, 45% of low income African-American males score basic, while 78% of middle-income females of the same race do so, a 32-point gap. This

highly significant gap is consistent for other racial groups as well. German researchers have theorized that boys lag behind due to behavior control issues and that those issues are magnified in low income homes (Legewie & DiPrete, 2012).

Table 1: Sex-Race-Income Matrix

Sex	Race	Paid	Reduced	Free
Male	White	86%	75%	68%
	A/A	67%	59%	45%
	Latino	70%	66%	53%
Female	White	93%	84%	79%
	A/A	78%	71%	60%
	Latino	79%	75%	61%

These differences in educational attainment by sex have not been confined to the K-12 arena. Female attainment is now greater than male attainment at each education level. For example, in 1980, the percentages of males and females who had completed at least high school or equivalency were not measurably different for males (85 percent) and females (86 percent), but in 2011, the percentage of females (91 percent) was higher than the percentage of males (87 percent) by 4 percentage points. That same year 21% of females had attained at least a bachelor's degree, 3 points lower than the percentage of males (24 percent); however, in 2011 36% of females held bachelor's degrees, while only 28% of males (Aud et al., 2012). The U.S. Department of Education predicts this trend in post-secondary education will continue at least until 2020, and the gap between men and women will widen (Hussar & Bailey, 2012).

The patterns of inequality act to highlight the current problems of fair distribution of opportunity. Like race, sex difference should be seen as a multiplier of underlying issues of poverty. Rawlsian justice would demand that this pattern lead to extra vigilance

to low-income boys in general and low income African-American boys in particular. At the same time it should be a warning about the potential injustice using race or sex as the determinate of resource allocation.

Conclusion about Equity as a Measure of Justice.

When considering the concept of educational justice, the use of statistical data is a useful tool in uncovering injustice via group-to-group comparisons. Using Rawls's lottery analogy, one could say that a pattern of lottery winners favoring (or disfavoring) a particular group would indicate the lottery procedures are unjustly rigged, so would a pattern's academic success; thus, the corrective action would be fixing the procedures not the results. From a Rawlsian standpoint it helps the policy maker identify where interventions are necessary in order to strive toward that goal of *fair equality of opportunity*. This short introduction, for instance, would indicate that Rawlsian justice would require that significant resources should be invested in interventions or to what has heretofore been treated as the beginnings of state educational obligations, i.e. preschool.

Additionally, Rawlsian justice would also focus more resources on both compensating for a lack of social capital and in developing the cultural, social, and political competencies of those children coming from segments of society that historically have not had adequate access. I have not specifically addressed children with disabilities because the same principle of providing disproportionate resources to achieve *fair equality of opportunity* would apply. Finally, there would certainly need to be patterns in resource distributions that reflect the patterns of inequality which would

disproportionately favor certain racial/ethnic groups; however, this is not the same as providing resources because children are of a certain group.

In conclusion, though differential results based on groups are useful in seeing problematic patterns of inputs, it is not a sufficiently comprehensive vision of justice. Under a Rawlsian conception of justice, there could be perfect equity in results in an unjust education system. The choice here is not between whether or not to use inequality between groups as an indicator of injustice, but whether or not to use equality between groups as the measure of justice.

Justice as Adequacy: The Needs of Society for Education

No doubt it is true the good is the same for the individual as for the state; but still the good of the state is manifestly a greater and more perfect object to ascertain and to secure. To produce the good of only a single individual is better than nothing; but to affect the good of a nation or a state is a nobler and more divine achievement. (Aristotle, trans. 1947, p. 331)

Aristotelian ethics revolved around the cultivation of virtue as a productive member of the state. Justice in this sense is how well the individual helps the collective good. The conception of equity never enters into his conception of justice; it is not only assumed there is a highly stratified class system, but that the lower classes were to be servile to labor for the needs of those with more capacity. Education is focused on helping each individual to fill his role in society in the most complete manner possible (Aristotle, trans. 1947).

This utilitarian vision of the individual as a means to the end of the good of the state may not be so explicitly stated by modern writers, but the underlying belief that the good of the many is paramount remains. The highly influential Committee for Economic Development (CED) that represents the leaders from the largest U.S. corporations and universities⁶ has produced a series of reports that detail solutions to problems in U.S. education. In each the justification is the communal good, particularly communal economic good (CED Research and Policy Committee, 2001; CED Research and Policy Committee, 2002; CED Research and Policy Committee, 2006). Typical of this is the justification for preschool education as an investment for future economic growth (CED Research and Policy Committee, 2006). This reflects a view of economic utilitarianism.

Utilitarianism is traced back to Jeremy Bentham in the early 17th century. He firmly rejected the notion of natural human rights as put forth by Locke. Instead he proposed that right is determined by what will bring the most happiness (Sandel, 2009). John Stewart Mill (1879) built on Bentham's ideas and said:

The creed which accepts as the foundation of morals, Utility or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and absence of pain; by unhappiness, pain and the privation of pleasure. (p. 9)

⁶ 2012 CED leadership include: President, Roger Ferguson, Jr., President and CEO of TIAA-CREF; Paul Allaire, Chairman (Retired), Xerox Corp.; Derek Bock, President Emeritus Harvard University; Lee Bollinger, President Columbia University; Carl Camden, President & CEO, Kelly Services Inc.; John DeGioia, President, Georgetown University; Mark Green, CEO, FICO; T. Allen, McArtor, Executive Vice-President, Wells Fargo; Chairman, Airbus of North America; Edward Rust, Chairman & CEO, State Farm Insurance Companies; John Sexoton, President, New York University; James Thompson, President & CEO, RAND Corp. (retired); Fredrick Smith, Chairman & CEO, FedEx Corp. (list not inclusive)

He went on to explain that utilitarian justice is entirely conceived in terms of good for the whole. Claims of individual rights are of secondary consideration to the collective good (Mill, 1879, pp. 56-57). Mill's writing focused on the goal of general happiness; however, over time other theorists clarified that utilitarianism has developed to economic consequentialism (Weimer & Vining, 2011, p. 135) ; "Economic utilitarianism replaces happiness as the central concept by the extent to which individuals get what they choose (or would choose, if they had a choice). It is thus able to develop a precise and sophisticated theory based on real and hypothetical choices and to allocate monetary values to outcomes; it generates such political and administrative applications as cost-benefit analysis" (McLean & McMillian, 2012, ¶ 3). In modern policy usage utilitarianism is expressed as cost benefit analysis (Weimer & Vining, 2011), which drives much of modern public policy analysis (Dunn, 2012).

With this belief in the long term good to justify short term expense and a concern for the large scale economic wellbeing of the society, one can see how the CED was able in 2006 to make a strongly worded recommendation that the Federal Government greatly expand federal funding of preschools. They write that "investing in the education of America's youngest learners has emerged as one of the most promising ways to help strengthen the future economic growth and fiscal position of our states and nation" (CED Research and Policy Committee, 2006, p.1). The report goes on to cite the same kinds of things that were mentioned earlier in this literature review about the negative cognitive effects of poverty on young children. Thus it is in the best interest of all to spend a great

deal of money now even though the payoff won't be for thirty or forty years in the future in a wealthy society for all.

This approach is not new in U.S. education. By 1918, “the goal of education was to serve society as efficiently as possible. Led by such as Thorndike who advocated the nation move to a ‘new education based on utility’ . . .” (Ravitch, 2000, p. 89). Thorndike and his colleagues, many in the progressive movement, presented a vision of educational justice that prepared each child to the maximum of their inherited ability and believed that ability should be determined early so that the children could be taught in homogenous ability groups (Ravitch, 2000). This concept was seen as efficient for society, a linkage from the schools to the workplace. In 1918, the NEA recommended that as part of the new junior high schools, children should be “divided into differentiated curricula based on vocations” with specific programs for those who should continue in academic studies (Ravitch, 2000, p. 125). The belief was that social justice was served by not wasting money and effort on those who were unlikely to profit from academic schooling, and industry would benefit from a technical workforce (Cremin, 1961, pp. 188-190; Ravitch, 2000, pp. 100-101). Cubberly (1934) wrote, “The vocational high school is the most effective agency so far devised for the training of that 70 percent of all our children who cannot or will not continue in the regular courses of high school” (p. 647). Accompanying this quote was a graph showing the industrial production for “trained” verses untrained.

The utilitarian linkage from schools to industry is a long one in philosophy as well as in methods. This approach is not unique to the U.S. The German system of educational

linkage to industry begins with their secondary school track separation at age 10 and has been called “the sorting machine” (Schneider & Tieben, 2011). The CED specifically cited the success of the German program when calling for a similar, though less rigid, system for the U.S. (CED, 1998).

Though specific methodologies of education are outside the scope of this project, it is useful to know that the method mentioned above of grouping children homogeneously by ability is still part of the educational milieu. Advocates of this method cite two meta-analyses that suggested ability grouping helps the students with highest ability since when they are grouped together they achieve greater success than when in groups with students of varied ability (Kulic & Kulic, 1982; C. Mills & Durden, 1992). The utilitarian view would be that those high achievers have the most to give back to society, thus justifying increased outcome stratification. Sacks gave a detailed qualitative description of how even at a community dominated by self-professed progressives like Berkley, California, this method is the prevalent and preferred method of ensuring the society benefits from a separate program for those showing the most potential, just as Cubberley had said in 1934 (G. Ladson-Billings, 2006a; C. Mills & Durden, 1992).

It is important when concluding a look at modern utilitarianism as a measure of justice for education to make one final note. Leading utilitarian voices such as Harvard’s Peter Singer posit that human beings have no intrinsic value as humans, “The fact that being a human being, in the sense of a member of the species *Homo sapiens*, is not relevant to the wrongness of killing it; it is, rather characteristics like rationality, autonomy and self-consciousness that make a difference. Infants lack these

characteristics. Killing them therefore cannot be equated with killing normal humans” (Singer, 2000, p 168). From this beginning it is not a far jump to questions of the justice of investing public moneys into educating those children whose disabilities are severe enough as to limit their cognitive function and the investment in a broad education for those who are not likely to benefit from it (Rochester, 2002, p. 44). No matter how forcefully advocated, modern utilitarianism simply cannot be trusted to provide justice for children when the end measure is based on societal return on investment.

Rawlsian Responses to Alternative Views of Justice

Having established in the previous section that justice can be seen as equity of outcomes or as outcomes that benefit the collective society, I shall first take a look at and make a Rawlsian response to the most common philosophical positions applied to these two views of justice. Among the most severe critics of Rawls were influential philosophers of the late 20th century, utilitarians represented by Sandel, libertarians represented by Nozick and critical theorists represented by Habermas.

Utilitarianism

“For the most part, Rawls discusses utilitarianism as the main alternative to justice and fairness” (Freeman, 2007, p. 146) is how Rawls’s protégé and biographer states it. However, at the same time Pogge (1991) points out that while Rawls rejected utilitarianism as a foundational philosophy of ethics, Rawls supported the utility of efficiency in the practice of practical application (p. 40). This distinction is significant as it is the difference between motive and method.

Sandel provided a book length utilitarian rebuttal to *A Theory of Justice*, in which he succinctly spells out the heart of the conflict between Rawls and utilitarianism and lays some of the groundwork for my later contrast with critical theory.

Although Rawls argues first against utilitarian conceptions, his overall project is more ambitious, for justice as fairness stands not only against utilitarianism, but against all teleological theories as such. As a second-order, meta-ethical claim, the priority of right means that of the ‘two concepts of ethics’, the right is derived independently from the good, rather than the other way around. (Sandel, 1982, p. 18)

Sandel (1982) objects to the lack of underlying purpose of a social good in Rawls’s approach (and all deontological approaches). The lack of a communal good fundamentally undermines the concept on community itself which, he believes, must be made up of people with “shared self-understandings” (p. 173). Sandel (1996) specifically cited Rawls’s statement, “there is not political obligation strictly speaking, for citizens generally” as evidence that liberalism abandons the communal good in its focus on individual rights (p. 14).

Liberalism, and Rawls in specific, utterly disregards what is good for society in the quest to retain individual rights. Utilitarian justice, he contends, is based on a communal agreement of what is good and desirable, then communally acts upon that communal sense, and by acting by a communal sense of what is good justice shall be attained (Sandel, 2009, pp. 260-263). In evidence against such a proposition, one need

not look further than No Child Left Behind. In his acceptance speech for the nomination for his party, George W. Bush stated:

Too many American children are segregated into schools without standards, shuffled from grade-to-grade because of their age, regardless of their knowledge. This is discrimination, pure and simple -- the soft bigotry of low expectations. And our nation should treat it like other forms of discrimination. We should end it. (Bush, 2000)

From this very laudable beginning came a policy proposal called *No Child Left Behind*. In a democracy the size of the United States, the passage of this bill with overwhelming majorities, 381-41 in the House and 87-10 in the Senate (Karen, 2008), is the nearest practical way to prove Sandel's communal agreement. Yet, the consensus opinion a decade later is that schools are less just than ever (Darling-Hammond, 2010; Ravitch, 2010). Good motives, it seems, do not necessarily lead to justice. When considering the good of society in educational policy, the conception of group good becomes hostage to new ideas, like Thorndike's sorting by tested IQ or by choosing policy not on the basis of fairness to the individual but on the economic good of the whole, as is done by the CED. Though it might fit a conception of Rawlsian justice to promote early educational intervention based on economics now, should such programs be discontinued if they do not work out as beneficial to economic growth as planned? And what if the community consensus does not seek justice for each individual citizen? Certainly it is not hard to look very far into history (or in current events) to see how the group consensus can easily utterly disregard the rights of selected individuals or minority populations.

In the end, I contend that utilitarianism does not provide a sufficiently stable foundation on which to build public policy because, first, utilitarians base their good on assumed ends to justify their means and this is not a legitimate assumption; second, in the real world, community consensus does not reflect or even want to reflect all the communities' constituent parts. Rawlsian liberalism, with its deontological commitment to individual rights first, is a more stable foundation as it relies neither on current popular sentiment nor on hopeful projections of long term good.

Libertarianism

The second cited critic of Rawls's conception of justice is Robert Nozick who offers a libertarian alternative. Nozick draws, like Rawls, on the work of John Locke. However, Nozick founds his libertarian political philosophy on Locke's conception of man in the state of nature. He uses Locke's term *protective associations* as the foundation for the state and builds the case that a just state is simply a *protective association* that holds local monopoly on the use of force (Nozick, 1974, pp. 12- 17). He plainly states, "The minimal state is the most extensive state that can be justified. Any state more extensive violates people's rights" (Nozick, 1974, p. 149). He concedes that this minimal state is functionally closely related to anarchy which at many points in his book he seems to indicate can operate within the minimal state.

Given the fact that Nozick's seminal work came out just three years after *A Theory of Justice*, it might not be surprising that he devoted an entire chapter to countering Rawls. Nozick fundamentally rejects the concept Rawls puts forth that the state is obligated to provide educational compensations to the least advantaged in a quest

for *fair equality of opportunity*. Nozick says, “This line of argument can succeed in blocking the introduction of a person’s autonomous choices and actions (and their results) only by attributing everything noteworthy about the person to certain external factors” (Nozick, 1974, p. 214). He goes on to say that by such an approach of compensation Rawls’s ultimate goal of individual dignity and self-respect is undermined.

Nozick gives an entirely different reason for rejecting Rawls’s call for providing disproportionate educational resources to the needed based on funding. Wouldn’t it be better if the person with less opportunity had an equal opportunity? If one so could equip him without violating anyone else’s entitlements (the magic wand) should one do so? Wouldn’t it be fairer? If it would be fairer, can such fairness justify overriding some people’s entitlements in order to acquire the resources to boost those having poorer opportunities into a more equal complete position? (Nozick, 1974, p. 236)

Strikingly, after building this argument that communal action is antithetical to justice and liberty, in the last chapter he appears to reverse course, at least at the local level. “A nation or protective agency may not compel redistribution between one community and another, yet a community such as a kibbutz may redistribute within itself (or give to another community or to outside individuals).” (Nozick, 1974, p. 321)

Hayek (2011) is not quite so opposed to taxation for schools, but quotes and agrees with Freeman (2007) that vouchers in most cases are better than the public school system (Hayek, 2011, pp. 503-504). He states unequivocally that a fully privately run system with the government only providing funds is preferable. In such a scheme, the

parents, not the state, is free to determine the goals and methods of education.

Interestingly, in his discussion of disproportionate funding, it is the high achieving students that he discusses as possibly deserving additional funding. Not a word is written about compensatory education for the disadvantaged. In the end, he rejects all variations in funding as unjust (Hayek, 2011).

In considering a philosophical foundation on which to measure educational justice, I find libertarianism wanting. An argument might be mounted regarding the moral justice of libertarianism based on what I find is a morally unacceptable disregard for the previously discussed patterns of inequality. However, it is not necessary for this study because there is a *prima facie* case that it is impossible to use a philosophy that rejects the entire concept of either state or federal government having a substantive role in education to measure state or federal educational policy.

Critical Theory

In my review of the literature the overwhelming majority of current research and writing on justice and education comes from the tradition of critical theory. Current literature presents this epistemological approach as the primary means of critique and analysis of educational practice. As such it is important that I address why I am approaching this project in Rawlsian liberal terms rather than critical terms. However, addressing critical theory is not a simple matter. As Bernstein (1995) states:

Critical Theory is not a theory of society, or a wholly homogenous school of thinkers or a method. Critical theory, rather, is a tradition of social thought that, in part at least, takes its cue from its opposition to the wrongs and ills of modern

society on the one hand, and the forms of theorizing that simply go along with or seek to legitimize those societies on the other hand”. (p. 11).

The term critical theory was coined by Max Horkeimer in a 1947 article which was primarily an attack on what he believed to be the falsity of objectivity in the scientific method, and in specific, he attacked the Cartesian dichotomy of separating the object and the observer (Bernstein, 1995; Thomassen, 2010). Additionally, as a member of the Frankfort School, Horkeimer combined this constructivist ontology with Marxian conceptions of economics, materialism and class domination. Horkeimer said “the [critical] theory never aims simply at an increase in knowledge as such. Its goal is man’s emancipation from slavery” (Thomassen, 2010, p. 20). The essential difference between traditional Marxism and critical theory, however, is not just that the proletariat is replaced by other groups, but that identity formation of the new sorts of groups does not require direct action (i.e. revolution); rather, the new group identity requires action in the political arena (Bernstein, 1995p. 20).

Other German philosophers, chief among them Jürgen Habermas built on the foundation laid by Horkeimer to continue to develop the critical theory. Habermas extended and clarified, adding the constructivist ideas of Freud to understand how people are driven by meanings that are hidden from every day view (Thomassen, 2010, p. 25). Of particular challenge was to update Marx’s vision of the inevitability of a proletariat uprising in a world of growing affluence for the working class. Habermas wrote how wealth and consumerism can lead to what he called alienated leisure, and even a welfare state itself can be a dehumanizing force as it exercises control (Edgar, 2005, p. 6-8).

Thus critical theory focuses on unmasking hidden structures and meanings that lead to oppressions in the tradition of Marx and Freud (Thomassen, 2010, pp. 27-28).

Thus, modern critical theory has many faces and focuses; however, two core beliefs have defined the philosophy from the outset: a constructivist epistemology and the duty to uncover and oppose hidden oppression (Carspecken, 1996).

Earlier I addressed the issues of inequalities based on race and on sex. Therefore, I will, based on Rawls, specifically address my concerns about the appropriateness of critical theory for this project based on critical race theory and critical feminist theory. Critical Race Theory.

The first precept of critical race theory is “Critical race theory recognizes that racism is endemic to American life” (Dixson & Rousseau, 2005, p. 9). This is not presented as a possibility, but as an indisputable fact. Constructivist, critical race theorists legitimize such unequivocal “fact” statements based on their constructed reality based on finding hidden agendas visible only to critical theorists (McKnight & Chandler, 2012). This core belief justifies critical race theorist Gloria Ladson-Billing to use her position as President of the AERA, to proclaim that there is not just an achievement gap, but an education debt owed by European-Americans to be paid to African and Latino Americas (Ladson-Billings, 2006b). In her address to the AERA, she makes a case that race and race alone drives achievement and never considers other factors. The justice, or even factual truth, of suggesting, as she does, that African-American children cannot succeed because “racism is normal not aberrant in American society” (Ladson-Billings, 2006b) is simply not considered in her address. Thus, in her vision of critical theory justice the

white population, including the children in schools today, owes what she specifies as economic, sociopolitical and moral debt to every child of color, no matter their particular circumstances (Ladson-Billings, 2006b).

Schouten (2012) strenuously objects to the whole notion that there is a moral debt owed for education as suggested by Ladson-Billings. Rather she counters with a very Rawlsian answer that there is a moral obligation to those who are disadvantaged. She acknowledges that the disproportionate number of low performing African-Americans is certainly rooted in historical bias and that disproportionate resources are required to remedy the statistical inequity, a position consistent with the Rawlsian liberal position. However, the assistance should not be geared to groups based on past injustices, but to individuals based on current need. She wrote, “They therefore have a claim to be benefited, as they are themselves victims of an injustice; the injustice of being badly off (Schouten, 2012, p. 240).

It is important to note, when critiquing the appropriateness of critical race theory that current statistical data builds a significant case that poverty, not race, may well be the driving factor in school success. This runs counter to the critical race theory and “treats race as a defining principle rather than a variable within research” (Leonardo, 2012, p. 430). When class is addressed by critical race theory, it is often in the context of Bourdieu’s Marxian tradition rather than income, i.e. those who qualify for free lunches.

Nowhere is CRT’s relationship with class analysis more clear than its uptake of Bourdieu’s concept of cultural capital. It is one of the most frequently used and critiqued class-oriented concepts in the CRT literature on education. There are

several species of the appropriation. First, in an endorsement of Bourdieu's concept, cultural capital is used to explain school biases against more or less essentialist cultures of color, their family value systems and priorities. Consistent with Bourdieu's ideas about class stratification but applied to race, CRT scholars indict the White standards of learning in schools, from the English forms that are recognized to the behaviors that are punished or rewarded and the historical contributions that are valorized or omitted. (Leonardo, 2012, p. 438)

I find it significant that in the current U.S. DOE figures, African-Americans comprise the exact same percentage in the U.S. undergraduate colleges and universities (15%) as they do in K-12 and nearly the same rate for graduate education (14%) (Aud et al., 2012). The data indicates a more complicated situation with Latino students as the 2011 DOE report (Aud et al., 2011) notes that the dropout rate for immigrant Latinos is over three times that of native born Latinos and further notes that the Asian immigrants also have the same disproportionate dropout rate. This would indicate that the issue may well be surrounding the process of immigration rather than race. Even still the Hispanic college undergraduate population is 14% of the total.

I have presented this line of argumentation about critical race theory to highlight the underlying problem with the use of critical theory as a guide to assessing justice in policy. The *carte blanche* critical theorists appear to give themselves to assign negative motives to others leads to a systemic acceptance to a forgone conclusion of injustice. This can lead to conclusions in research that show little but the prior beliefs of the researcher projected onto the canvas of the subject. Typical for the articles I read for this

project was a new peer reviewed article on how young African-American college men worked out race in predominantly white colleges (Wilkins, 2012). Throughout, the researcher made motive claims with no evident connection to the subject's statements. When her subjects made statements that did not conform to the tenants of critical race theory, the author again assigned negative motive. Thus successful behaviors by the subjects were negatively labeled and the author condemned her subjects as being oppressors themselves. The conclusion is brazen in its condemnation of the subjects' refusal of specific agendas the author believes are required based on race; "But more, by dismissing both black women and, often, black organizations, as immoderate spaces, black men abandon their collective responsibility to fight racial inequality, focusing instead on individual strategies of mobility and leaving the work of fighting racism up to women" (Wilkins, 2012, p. 57). My readings in preparation for this project indicate that this type of approach is not an anomaly, but common practice.

This is not to suggest that the profound achievement gap is not important (as addressed earlier), nor does it suggest that there are not differences in life circumstance for children that are correlated with race. What this does suggest is that there is little diagnostic purpose in using critical race theory as the core tool to measure educational justice as the possibility of an alternate conclusion is simply foreclosed.

Critical Feminist Theory.

Critical race theory is closely related to critical feminist theory in philosophy and methods with sex being substituted for race when presenting oppression in schools (Hannan, 1995; Okin, 1994). The intersection of race and feminist theory is common

such as in the Wilkins article above, yet it shows a willingness to choose interpretations of the subjects' statements to prioritize the researcher's agenda. It becomes apparent that critical feminists choose ideology over objective statistical measures on inequality, which they do use when convenient to support their beliefs. Despite Table 1 and the fact long term trends shown previously that females are the dominant class in education, critical feminists continue to search for evidence that girls are disadvantaged in education and to seek programs to promote girls' performance (Bianco et al., 2011; Kafer, 2011; U.S. Department of Education, 2010). Overall the critical feminist response is to downplay this significant and growing achievement gap (Froses-Gremain, 2006) and, at least in certain segments of the critical feminist community, there is resentment at the idea of addressing the growing male achievement gap (M. Mills & Keddie, 2010; Zyngier, 2009).

Conclusion.

Rawls (1996b) stated that it is unjust for a current generation, by use of their liberties, to create hardships on future generations (pp. 251-253). Likewise, I would suggest that it is unjust to burden the rising generation with penalties for prior generations' behavior (Ladson-Billings to the contrary). Historical injustices to, or by, others who happen to share some particular characteristic is not a reason to skew resource availability or the application of *fair equality of opportunity* of the current generation of students. Rawls calls for disproportionate resources for those children who are the least advantaged. Table 1 would indicate that those children in need will likely be disproportionately racial minorities and male, but this is not the same thing as saying

males and racial minorities automatically get disproportionate resources. This distinction is important when considering the justice of policy.

Conclusions on the Review of Literature

Rawlsian liberalism is clearly focused on the individual child, not society as a whole or certain sub-groups within society. Justice is not fairness to groups of people, but rather fairness to each and every individual based on actual present need (Rawls, 2001, p. 59n).

Thus I conclude that in constructing a tool to measure the justice in educational policy, utilitarianism, libertarianism and critical theory present significant problems as well as fundamental epistemological problems to my ability to create a tool by which to measure the justice of educational policy that could be broadly used and accepted. Having presented both Rawlsian liberalism and the leading competing approaches, I conclude that Rawlsian liberalism is the best choice to underpin this project.

CHAPTER 3

Methodology

This study proposes to present a tool to measure educational policy documents for their intrinsic justice. The achievement of this end requires a method for identifying the factors involved, clarifying the goals to be measured, and developing a systematic way of determining whether the evaluated policies do indeed meet the established standard of justice. Policy analysis is the broad term given for the field that covers these tasks (Radin, 2000).

Policy Analysis Defined

Policy analysis is the process of multi-disciplinary inquiry aimed at the creation, critical assessment and communication of policy-relevant information. As a problem solving discipline, it draws on the social science methods, theory and substantive findings to solve practical problems (Dunn, 2012).

Radin (2000) gives a total of thirteen different definitions to the term policy analysis to illustrate the point that not only does the term mean different things to different people, but the term has changed in meaning over the past 40 years. Still other authors give different definitions (Alexander, 2013; Bardach, 2012; McCall, 1994). Negel was quoted as listing the three common elements of policy analysis: causes, effects and effects of policy alternatives (McCall, 1994).

I have made this point of multiple definitions to highlight the imprecise nature of the field as well as the flexibility in applying the title of policy analysis. Policy analysis has been going on as far back as history records, though the modern concept of policy

analysis is relatively short. It is important to note for this study that the first formal civilian use of policy analysis in the United States was done as part of Johnson's war on poverty. Via the Office of Economic Opportunity, policy analysis was brought to bear, from the beginning, on issues of poverty and equity (Radin, 2000). This should not be surprising given the fundamentally value laden process that policy analysis is (Dunn, 2012). Alexander (2013) states plainly that "policy problems are those conditions that you do not like and you think can be changed, should be changed and should be changed using the resources of the collective" (p. 6).

Policy analysis is inherently an interdisciplinary field (Dunn, 2012; McCall, 1994). "To investigate problems of efficiency and fairness, policy analysis draws on normative economics, and decisions analysis, as well as ethics and other branches of social and political philosophy all of which are about what ought to be" (Dunn, 2012, p. 4). Thus it follows that this project, though conducted by an educational researcher, has already, by necessity, encompassed more than just simple educational theory, but has looked more broadly in moral theory and the meaning of justice.

Having established what policy analysis is, I must add that there is another version of policy analysis that is so different that, if it did not have the same name, it would be hard to recognize it as the same field. This type of analysis begins with an epistemological position of post-empiricism or post-modernism that stands in fundamental opposition to the positivist approach of traditional policy analysts (Fischer, 2003, pp. 11-14). Post-empiricism, Fischer (2003) argues, shifts the discussion away "from proof to discourse" (p. 130), and the practice of policy analysis turns from science

to craft, meaning that the policy analyst no longer seeks to assess the quality and use of data based on the scientific method, but “applies standards derived from his own experiences, but also reflect the norms of his teachers and colleges” (Fischer, 2003, pp. 133-134).

Despite the difference in basic epistemologies, there is a remarkable consensus between both these approaches that policy analysis is more a craft or art than a science (Bardach, 2012; Dunn, 2012; Fischer, 2003; Patton & Sawicki, 1986; Radin, 2000). “Policy analysis is methodologically eclectic; its practitioners free to choose among a wide range of scientific methods, qualitative as well as quantitative, as long as these yield reliable knowledge” (Dunn, 2012, p.3).

The Purpose of Policy Analysis

The intention of all policy analysis is to impact future policy. Dunn (2012) said policy analysis is “a problem solving discipline” in that the goal is to “solve practical problems” (p. 2). This future orientation does not just have to be for specific future policies but for creation of new ways of looking at policy. However, this does not just mean predicting outcomes. Patton & Sawicki (1986) give three reasons that policy analysis is conducted: (a) to project outcomes or future states of one or more proposals, (b) to describe past policies and their outcomes, (c) to clarify the problem for policy makers, (d) to guide policy maker’s view of a problem or solution. (pp. 24-25).

The policy cycle has seven distinct phases: (a) Agenda setting, (b) Policy formation, (c) Policy Adoption, (d) Policy Implementation, (e) Policy Assessment, (f) Policy Succession, (g) Policy termination, and policy analysts work at many, and

sometimes all, phases in what is called the policy cycle (Dunn, 2012, pp. 42-43). This process can be visualized as a circle with feedback loops based on impacts and assessments often carried out by the policy analyst. In this process, there are five types of policy questions that policy analysis can answer: (a) Policy problems: what is the real problem, (b) Expected policy outcomes: what can one expect the policy to do (c) Preferred policies: which of several policy options is best (d) Observed policy outcomes: what was the impact of the policy (e) policy performance: how effective was the policy at solving the problem (Dunn, 2012, pp. 5-6). Dunn (2012) goes on to say that the five domains are interdependent and transformed by the chosen policy analytic method. These methods he lists as (a) Problem structuring, (b) Forecasting, (c) Prescription, (d) Monitoring, (e) Evaluation (p. 5). Using these descriptors, this project shall use the evaluation method to address both observed policy outcomes and policy performance.

Another way of addressing what policy analysts do is to consider the tasks that policy analysts are asked to do. "Today's policy analysts help in planning, budgeting, program evaluation, program design, program management, public relations and other functions" (Bardach, 2012, p. xv). In doing these tasks the analyst might perform in three different roles: (a) "Objective technicians hold analytic integrity as their fundamental value. They see their analytical skills as the source of their legitimacy" (Weimer & Vining, 2011, p. 41). (b) "The client's advocate places primary emphasis on his or her responsibility to the client. They believe they derive their legitimacy as participants in the formation of public policy from their clients, who hold elected or appointed office or who represent policies interests" (Weimer & Vining, 2011, p. 42). (c) "Issue advocates believe

that analysis should be an instrument for making progress toward their conceptions of the good society” (Weimer & Vining, 2011, p. 43).

What is consistent in these views of the purpose of policy analysis is that the policy analyst is not the policy maker, but rather someone who provides information to the policy maker. Radin (2000) likens policy analysts to the traditional court advisors to kings and other potentates. Thus, in approaching a policy analysis project, I must consider the end user not academics, as in basic science, but policy makers.

There are alternative approaches to policy analysis however; Stone (2002) offers a view that focuses on the community or the polis rather than on economic efficiency and cost-benefit-analysis, while Fischer (2003) and Glynos et al. (2009) write in the Habermasian tradition of the power of languages and discourse. While Stone agrees in the primacy of efficiency as the hallmark of policy analysis, her vision is of efficiency as the best way to increase human potential, rather than the movement of material goods (Stone, 2002, p. 400). She devotes an entire chapter (pp. 60-85) to her vision of efficiency which, in effect, challenges market efficiency as a goal of public policy as presented by Weimer & Vining (2011). To Stone, “policy analysis is political” (Stone, 2002, p. 378), and the purpose of policy analysis is not “punching in various considerations and accepting the result”, but rather advocacy of a predetermined outcome based on personal values (Stone, 2002, p. 385).

Fischer (2003) presents a much more focused and systematic philosophical treatise on critical policy analysis based on the discursive and deliberative democracy theories of Habermas and Foucault. Discursive policy analysis, according to Fischer, is

an alternative to what he calls “mainstream policy analysis” (Fischer, 2003, p. 121).

Though Habermas is inexorably linked to the development of critical theory, it would be a mistake to link it too closely to the kinds of critical theory described earlier (critical race theory and critical feminist theory), because Habermas built on Foucault’s work to create a whole new brand of critical theory based on discourse as the key to understanding social interaction (Bernstein, 1995, p. 11; Fischer, 2003, pp. 37-38).

“Whereas critical theory seeks to account for the way that subjective knowers come to construct their worlds, Foucault emphasized the subjects themselves to be the creation of prevailing discursive practices. Rather than focusing on people making discursive statements, he emphasizes how discourses make people” (Fischer, 2003, p. 38).

With this different viewpoint, discursive policy analysis contrasts to “mainstream” policy analysis by focusing only on the policy analyst role of advocate. The end of discursive policy analysis “. . . means that the ultimate aim of such research (discursive policy analysis) is not to produce objective facts or causal explanations, but to articulate well-founded interpretations of policymaking that presume the judgments and values of the researcher involved” (Glynos et al., 2009, p. 23). This choice of limited function does not invalidate the discursive approach, but rather it becomes a specific type of policy analysis with a pointed political point of view and an action oriented focus.

Values and Policy Analysis

All four of the “mainstream” policy analysts texts I reviewed (Bardach, 2012; Dunn, 2012; Patton & Sawicki, 1986; Weimer & Vining, 2011), as well as the education specific policy analysis text (Alexander, 2013), give some consideration to values in their

writing; however, the thrust of the books are all quantitative and utilitarian in nature. Cost-benefit-analysis is presented as the stock and trade of the public policy analyst. The value of market efficiency, if not directly stated as superior, is presented as the default position. This does not suggest that this is inherently wrong, but rather that dealing with markets, taxes and other tangible things is the sea in which the field swims. The educational policy book largely replaces money with statistical performance data.

Patton and Sawicki (1986) devote six pages specifically to ethical analysis (more than any other). In this section they discuss both deontological approaches and utilitarian approaches to policy analysis and suggests that a policy analyst needs to develop a moral point of view from which to operate; however, the authors relate this not to the policy analysis itself, but in the analyst's interaction with the client.

A Rawlsian vision of the goal of social welfare policy is presented as an alternative in several books (Dunn, 2012; Weimer & Vining, 2011). Interestingly, in both these texts, when writing of social values in policy analysis, Rawls is contrasted with Pareto, rather than as embracing and extending Pareto, which Rawls himself does (Rawls, 1999b, p. 58). It appears that policy analysts focus on Pareto when discussing the operating of the economy and on Rawls when addressing redistribution of wealth. Weimer & Vining (2011) are particularly harsh in their appraisal that Rawls's "extreme redistribution" would reduce incentives and cite studies that suggest that given the veil of ignorance scenario, people are not as altruistic as Rawls suggests (pp. 135-136).

Dunn (2012) is unique among the four texts as he gives a few sentences in passing to critical theory referencing Habermas and Dallmayr (p. 314). This might well be due

both to the focus on efficiency and to the more pessimistic view of human behavior shown in experiments that indicate that people may desire equity, but are unlikely to give it freely (Weimer & Vining, 2011, p. 137). Dunn (2012) also specifically addresses three normative theories of ethics that would foreground policy analysis: “deontological, teleological and practical” (p. 318). He correctly describes deontological as being Kantian (and Rawlsian) liberalism while the teleological approach is described as being utilitarianism; however, his description of practical normative ethics is rather short and vague, appearing to be some sort of generic pragmatism. As a whole, the “mainstream” texts do not seem to take social justice or values as an inherent priority. I propose the reason for this can be found in the Weimer & Vining (2011) chapter on ethics. They do not address social ethics but the ethics of being employed to do policy analysis. The example is given of a policy analyst for the Congressional Budget Office, who over a career will work for both Democrat and Republican administrations. They discuss the issue of values conflict between analyst and client (p. 46) but do not suggest one set of values over another is required for their methodology.

It should not be a surprise that this stands in stark contrast to the critical theory texts on policy analysis (Fischer, 2003; Weiss & Duncan, 1974), or in Stone’s *Polis* model (2002) where the values of the analyst are front and center. Fischer, in particular, makes no attempt to present a value free methodology to be used by differing political groups. He spells out the critical theory belief that there is no such thing as value-free methodology (Fischer, 2003) and expounds the discursive model with a fundamentalist’s certainty of rightness that excludes all other possibilities.

Radin (2000) traces the use of policy analysis over the past 40 years and makes it clear that policy analysis has been used by those with many different political goals, each to their own end. While there are policy analysts, like at the CBO, that genuinely see themselves as values neutral arbiters of numbers (Congressional Budget Office, 2012), it is the norm that the explicit values of both the policy analyst and the one commissioning the analysis are actively part of the process (Weimer & Vining, 2011, p. 49).

Methods

Having reviewed the literature regarding the philosophy of John Rawls, surveyed the case that there is a serious question as to the justice of the U.S. school system, and having presented an overview to the topic of policy analysis, I will in this chapter lay out a plan by which I will propose to evaluate educational policy. First, I will select from the choices of policy analysis made earlier based on my goals for the project. In this I will discuss my subjectivity and the process by which I choose methods and goals. Second, I will look at policy analysis as a means of measuring justice and look at other models which might provide example and guidance in this project. Finally, I will present a case for my choice of model and lay out my proposed tool for measurement of justice in U.S. educational policy.

Why This Policy Analysis Project?

This project is about justice, justice in education. Dunn (2012) spells out that while one of the normal key components of policy analysis is to identify and structure problems, it can equally be used to address issues. He explains that issues are broader in that they “also reflect competing views of the nature of the problems themselves” (p. 71).

As there is wide agreement in many quarters that something is wrong with the U.S. educational system, the challenge for this project is not the identification of a problem, but in the nature of the problem. Dunn also explains that analysis of both problems and issues is the analysis of systems that have many parts, but the whole of the system is larger and more important than the individual pieces. In this case, the overarching conception of justice is not seen as a single domain, but a series of domains as outlined by Rawls, each with importance, but none to be equated with the totality of justice.

I might therefore propose this is an issue analysis, but it is not enough to say it is about the issue of educational justice, there must be a framework for why I am doing this and for whom I am working. Weimer and Vining (2011) write that academic research is not policy analysis because it fails the basic definition of policy analysis that “policy analysis is client-oriented advice relevant to public discussions and informed social values” (p. 24). In their estimation academic research is “often irrelevant to informational needs of decision makers” (p.26) and thus is a related field to policy analysis, but is not policy analysis. Having said that, these authors then come back and write that policy analysis can be conducted by issue advocates who self-select their clients based on a shared commitment to an issue and a belief that “analysis should be an instrument for the good of society” (p. 43).

This project, being a doctoral dissertation, is unquestionably an academic exercise; however, in order to project the concept of legitimate policy analysis, I will move forward under the implicit belief that it is being done with a specific, if not defined, set of clients. I could use Stone’s conception of working for the *polis*, in that the

overarching vision of Rawlsian political liberalism as justice as fairness brings forth a societal Pareto optimum, or the greatest good possible for the community at large.

However, I will suppose my client is not the community writ at large, but those forgotten, low income children whom I served both in inner-city Chicago and in the foothills of the Appalachian Mountains.

The role of issue advocate is peripheral to “mainstream” policy analysis (Dunn, 2012; Weimer & Vining, 2011), while it is central to writers such as Stone (2002) and Fischer (2003). For this qualitative study I have chosen to position myself as an open advocate of educational justice. The subjectivity of this position of justice advocate is moderated as I use a deontological approach to the concept of justice, as opposed to the teleological approach. In this justice will be defined with the sharp edge of Rawlsian moral judgment based strictly on documents of written policy.

My Subjectivity

In contrast to my claim of limited subjectivity in choosing a deontological approach, I recognize that the choice of a deontology in general and Rawls in particular is itself a choice and reflective of a specific epistemology and ontology. It is these basic questions of the nature of truth and reality that defines who we are and by which we structure answers to questions like justice.

The thinkers of the Enlightenment have always resonated with me as guiding the way to both individual and societal answers. Like many of the enlightenment thinkers I was steeped in Christian religious teaching, but in rejecting dogmatic theology came to seek a way to reconcile the metaphysics of natural theology with natural philosophy. In

this, Kant provided the way forward. In *Critique of Pure Reason* I found I was not alone in my search to find truth through rational means, while at the same time acknowledging the limits of reason. This position is called critical philosophy (Shell, 1980, p. 37).

Cartesian dualism between mind and body, between the concrete physical reality and the ethereal consciousness, was a mainstay of western thought since Plato; however, though it has fallen into disfavor in recent decades, there are still those who hold that it possesses a unique power to explain the nature of reality (Dilley, 2004). I agree with Dilly (2004) that the abandonment of the idea of an independent consciousness means the abandonment of free will, moral responsibility and independent liberty to loss of autonomy that determinism implies.

Kant as Foundation

Kant used the, then new, Copernican model of why the sun seems to move and change to analogize why humans do not share a unified perception of reality. We on earth have a distorted view of the sun's reality because we have a constantly moving point of view from earth; similarly all people have a distorted reality of all things as each person has a different point of view (Shell, 1980, pp. 40-41). While he proposed that each person constructs an internal view of what reality appears to be, there is, in fact, a solid reality that is not created by, nor impacted by, the construction of the viewer, i.e. the sun itself was not changed by Copernicus. Learning and science is a matter of using empirical data and using reason to synthesize an approximation of truth (Dudley & Engelhard, 2011, pp. 24-26). By a merging of Cartesian dualism and Kantian critical philosophy, I

found a strong ontology and the beginnings of an epistemology by which I could evaluate various philosophies and philosophers.

Kant also appealed to me for his commitment to a rational morality that implied both a path to personal meaning and a call to duty. As a former minister, I see Kant's clear assertion that morality is determined by motive, not effect, and the obligation to act in a way that treats people as the ends not the means (Kant, 2009; Shell, 1980) exactly coincided with my interpretation of the teaching of Jesus that in brotherly love to others is the highest morality (Luke 10:25-37). Kant also presents a world marked by the selfishness of humans and their struggle for happiness, but not necessarily the achievement of such, because a headlong commitment to happiness would inevitably lead to violations of others; thus duty to the right supersedes personal desires (Guyer, 2011). Again, in this Kant resonated with my conclusions about the reality of the world around me. This call to duty to suppress self for the greater good had been a mantra as both a minister and a social worker. Whether this stems from the foundational Christian doctrine of original sin, or from the equally foundational evolutionary biological law of self-preservation or even from my experience as both a social worker and bureaucratic functionary, I am firmly convinced that people are, by nature, self-serving. For unlike Rousseau and a long line of thinkers since, I do not believe that society corrupts humans, but rather humans corrupt society; societal improvement will not yield better people but rather better people will yield a better society.

Why Rawls?

Yet, Kant alone did not yield a fully functioning epistemology, largely because he was still a product of his time, is overly rigid, and simply did not provide sufficient guidance for the modern world. Locke was a good addition to my developing philosophical approach with his call to both a personal submission of desires to reason and larger iconoclastic resistance to encroachments on personal autonomy (Schouls, 1992, pp. 208-215).

Thus, when looking for a modern philosophical model I was really looking for a modern version of Enlightenment liberalism. I found that model in the writings of John Rawls. Though I have some concerns about the practicality of some of his economic proposals, and I understand, but disagree with, his belief in the innate goodness of humans (Freeman, 2007, p. 8), I found his work to be the best modern representation of the liberal ideals of the Enlightenment as I embrace them. In the end it is Rawls deontological approach that seems more practical than any of the teleological approaches. All teleological approaches base the justice of their proposed policies on the assumption that success will justify their methods, while the deontological approach judges the justice of methods themselves, regardless of the hoped for good in the outcome. I firmly believe the old saying that the path to tyranny is paved by good intentions, for no one can accurately predict the good or evil ends of any proposed policy.

Project Methods

Policy Evaluation

Earlier Dunn's (2012) five types of policy questions were presented (pp. 5-6). In this project I will seek to answer two of these questions: (a) expected policy outcomes: what can one expect the policy to do, and (b) policy performance: how effective was the policy at solving the problem. In the first question, the expected policy outcome is posited to be justice. In some cases it will be narrowly defined as clearly educational justice, but in others it will be more broadly defined as how the policy promotes or retards general justice goals. In the second question, the problem being addressed is the current inequities in the educational system as they were presented in chapter two.

From Dunn's (2012) list of five uses of policy analysis (p.53), I will be conducting a policy evaluation. Vedung (1997) defines policy evaluation as "careful retrospective assessment of the merit, worth and value of administration, output and outcome of government interventions, which is intended to play a role in future practical action situations" (Vedung, 1997). Policy evaluation is most readily identified in that it is conducted post-ante, or after the policy has been in place. Though Alexander (2013) presents policy evaluation as simply the last step in reviewing the effectiveness of a policy that is already in place (p. 37), Dunn (2012) and Radin (2000) both posit that policy evaluation can be approached as a complete type of policy analysis on its own.

Dunn (2011) writes that, above all, policy evaluation asks the question of values. He gives four characteristics that distinguish policy evaluation from other policy analysis methods. (a) Values focus; policy evaluation is different than simple monitoring in that it

asks if the policy is desirable, is appropriate and good, (b) Fact-value interdependence. Though the values are of primary importance, there must be facts to support the values, (c) Present and past orientation. Claims of societal value must be made both retrospectively based on past performance (*ex post*) and projected to future performance (*ex ante*), (d) Value duality. The values used should be both ends and means; they must be good in and of themselves and they should promote good results (p. 321).

In this study these four characteristics are to be seen throughout. First, justice is a core value, and justice is central to this study. Second, the study will be seeking specific facts, documentary evidence from the actual legislation and bureaucratic regulation to make the evaluation. Third, this study will be looking at how the assessed policies have impacted justice in the past and how they can be expected to impact justice in the future. Fourth, just laws and administrative rules are an end unto themselves, while at the same time, how these laws and rules impact everyday children in their classrooms is equally of value.

Policy Evaluations and Justice.

Policy evaluations on specific issues of equity are common. The Office of Planning, Evaluation and Policy Development, U.S. Department of Education releases studies on an ongoing basis on equity in particular programs (Heuer & Stullich, 2011; Tanenbaum et al., 2012). The website for this office states:

Policy and Program Studies Service (PPSS) focuses on education policy analysis and evaluation of programs; analyzes current and proposed education policy; directs the development of policy for legislative proposals and program

reauthorizations using policy analysis, performance measures, and evaluation studies; designs, conducts, and reports on evaluations to describe program operations and outcomes to promote program improvement; provides technical expertise in formula development, modeling, forecasting, and trends analysis, and provides technical and analytic support for special projects both domestic and international. (Policy and Program Studies Service, 2012)

From the reports generated from the educational policy analysis office one can follow many important trends that can give clues to justice, but their reports do not address the basic question about the justice of the policies themselves.

The first major study of educational equity was conducted as a required mandate of the Civil Rights Act of 1964; entitled *Equality of Educational Opportunity* (Coleman, 1966) , it became known as *The Coleman Report*. This book-length report on racial inequities in education spells out via tables and charts and over 700 pages that the schools were very segregated and that there were vast inequalities in facilities, curricular opportunities, extracurricular opportunities and teacher quality (i.e. inputs) and that there were wide differences in academic achievement based on race (i.e. outputs). Though the truth of these differences is a common discussion in educational circles today, this report was the first time such disparities had been quantified (Viadero, 2006). The larger conclusion of the report was, however, that socioeconomic factors are the prime drivers of academic achievement, not that school inequity is the prime motivator of school achievement differences. The summary stated plainly, “It is known that socioeconomic factors bear a strong relationship to academic achievement. When these factors are

statistically controlled, however, it appears that differences between schools account for only a small fraction of differences in pupil achievement” (Coleman, 1966, pp. 20-21).

The report was quickly attacked on several fronts, most notably for this study regarding methodology, which would not pass modern levels of scrutiny; however, the value of the project and the broad conclusions were reaffirmed in a 1972 reanalysis (Viadero, 2006). A question that directly bears on the point of this current study was asked soon after the report was published about the relationship between the outcomes Coleman reports and issues under purview of educational policy makers (Cain & Watts, 1968).

The report was largely ignored by policy makers at the time due both to the fact the conclusions were so paradigm shaking, and because the War on Poverty was then at its highpoint and congress had just passed ESEA (Viadero, 2006); however, it was seminal for educational researchers who found in it a new way to address educational needs (Massagli & McCullough, 1979). One need only look at popular books by Darling-Hammond (2010) or Kozol (2005) to see the importance of Coleman’s work.

The Coleman report also sheds light on the method of both looking at inputs such as school funding, teacher quality and the larger community, as well as on outputs, i.e. academic achievement. I would propose that the two views of measuring justice in education would also reflect epistemological viewpoints. The measurement of inputs as justice can largely be seen as deontological while the measurement of outputs is more teleological. Large comprehensive studies, like Coleman’s, do well to address both; however, from a Rawlsian standpoint, the inputs should take precedence over the outputs.

In a final note about the value of the Coleman report to this study, I would propose that rather than accept the 1966 interpretation of the report that “schools don’t matter” (Viadero, 2006, n.p.), a more modern interpretation would be that schools will not matter until intervention to remediate for low socioeconomic status begins earlier and lasts longer. This would be consistent with Rawls’s position published just a few years after the Coleman report.

Other Measurement Tools for Education and Justice.

Educational justice, or justice related issues, is measured by many groups and in many ways. The U.S. Department of Education gives ready access to massive amounts of data (some already used in this project), by which one could assess both equity and adequacy of education via performance outputs related to various inputs. The Annie E. Casey Foundation produces an excellent overview of factors that impact children’s wellbeing including issues of poverty, educational attainment and child-relevant community issues. This could easily be a measure of social justice and education. On a global scale the Organization for Cooperation and Economic Development (OECD) produces copious amounts of data on educational issues which are used for proxies to measure educational justice. All these things are good to consider justice from a secondary or results perspective; however, none of them can begin to answer the question directly of the justice of the policies themselves. Like in the Coleman report, the linkage between the measured results and the actual educational policy might well be confounded by many unmeasured variables (Cain & Watts, 1968).

Equity Audits.

Equity Audits are one proposed way of measuring for educational justice at the local level (McKenzie & Skrla, 2011; Skrla et al., 2009; Skrla et al., 2004). Drawing from the tradition of using audits to ensure compliance for labor and civil rights laws, the authors propose a system of evaluation at the local level to ensure all groups of students receive equitable treatment from school officials. The authors conceded that their model suggests that equitable teacher quality combined with equitable programming will achieve achievement equity is simplistic; however, this is presented as a first step “that people have to begin this work somewhere” (Skrla et al., 2009, p. 24). As their model is designed for local use, the larger, more complicated, issue of justice in policy is beyond their intended scope. However, their use of a tool to measure educational justice helps provide justification for this project.

Health care justice evaluations.

The practice of creating evaluative instruments for healthcare also provides some guidance in the effort to justify the use of a tool for educational justice. One approach is in a narrative form. Feldheim (1998) used a narrative approach by addressing the ethical schools of thought as I did in chapter one and projecting how each ethical system would structure medical delivery systems (Hoedemaekers & Dekkers, 2003). Another author took the narrative to the next stage and proposed a specific normative check list to help prioritize justice issues in the debate over healthcare (Hoedemaekers & Dekkers, 2003). This checklist offered general topics such as “Effectiveness and Cost-Effectiveness” along with sub topics such as “should narrow or broad definitions of health, illness, and

health risk be used” (Hoedemaekers & Dekkers, 2003, p. 432). In this paper, the questions were proposed as open-ended and there was no example of use of the checklist given. Like the Equity Audits, the medical justice evaluation tools show the way forward.

Educational reform evaluation.

John Tharp (2007; 2008) produced in his dissertation and similar subsequent book an examination of historical school reform efforts, comparing them to the model of reforms ideals put forth by Seymour Sarason. In doing this he was able to take the theoretical ideas of a prolific author and compare them to real world educational reform efforts. This is very similar to my efforts to take the theoretical writings of Rawls and create a way to measure real policy documents. In that it allows me to take the conceptual idea of a justice measurement from the idea of Equity Audits and the justice checklist from the medical justice evaluation and combine them in a way that provides evidence by which to judge fealty to a theoretical model, I have chosen to use Tharp’s model.

My Proposed Tool to Measure Justice in Educational Policy

Foundations

Like Tharp, I will adopt Gardner’s model and terminology of “levers” and “arenas” to describe the larger conceptions of Rawlsian justice as “arenas” and the specific action oriented “levers” as the specific impacts of the policy under evaluation. As such I will look at how each policy document promotes or retards the three Basic principles (or arenas) of Rawlsian philosophy as described in chapter 2: (a) Basic Liberties, (b) Fair Equality of Opportunity, (c) The Difference Principle. I am proposing that, in a Rawlsian view, schools have specific obligations in each of these arenas in

order to fill their place in a just society. In order to do so, the governing policy documents should, at best, require actions that support these social goals and at the least, not hinder or forbid schools to act in support of these arenas of justice. To create a rubric I will assign each of these larger arenas action oriented “levers”. Figure 1 illustrates how the levers relate to the arenas.

The overarching question of this dissertation is dealing with specific educational policy documents, so the rubric will ask specific questions about the specific policy document’s relationship to these large questions. Thus the three arenas are more fully explained as (a) Basic Liberties: Does the policy document provide for all citizens to exercise equal basic rights and liberties in the design and implementation of publicly funded education? (Rawls, 1999) (b) Fair Equality of Opportunity: Does the policy document promote an educational system that provides young people a *fair equality of opportunity*? (c) Difference Principle: Does the policy document promote an educational system that brings the most benefit to those who are the least advantaged?

Each of these arenas is then supported by the levers, or mechanisms by which the goals are brought to fruition. It is the levers that this study will use directly in the rubric to measure policy alignment with Rawlsian justice.

Figure 1

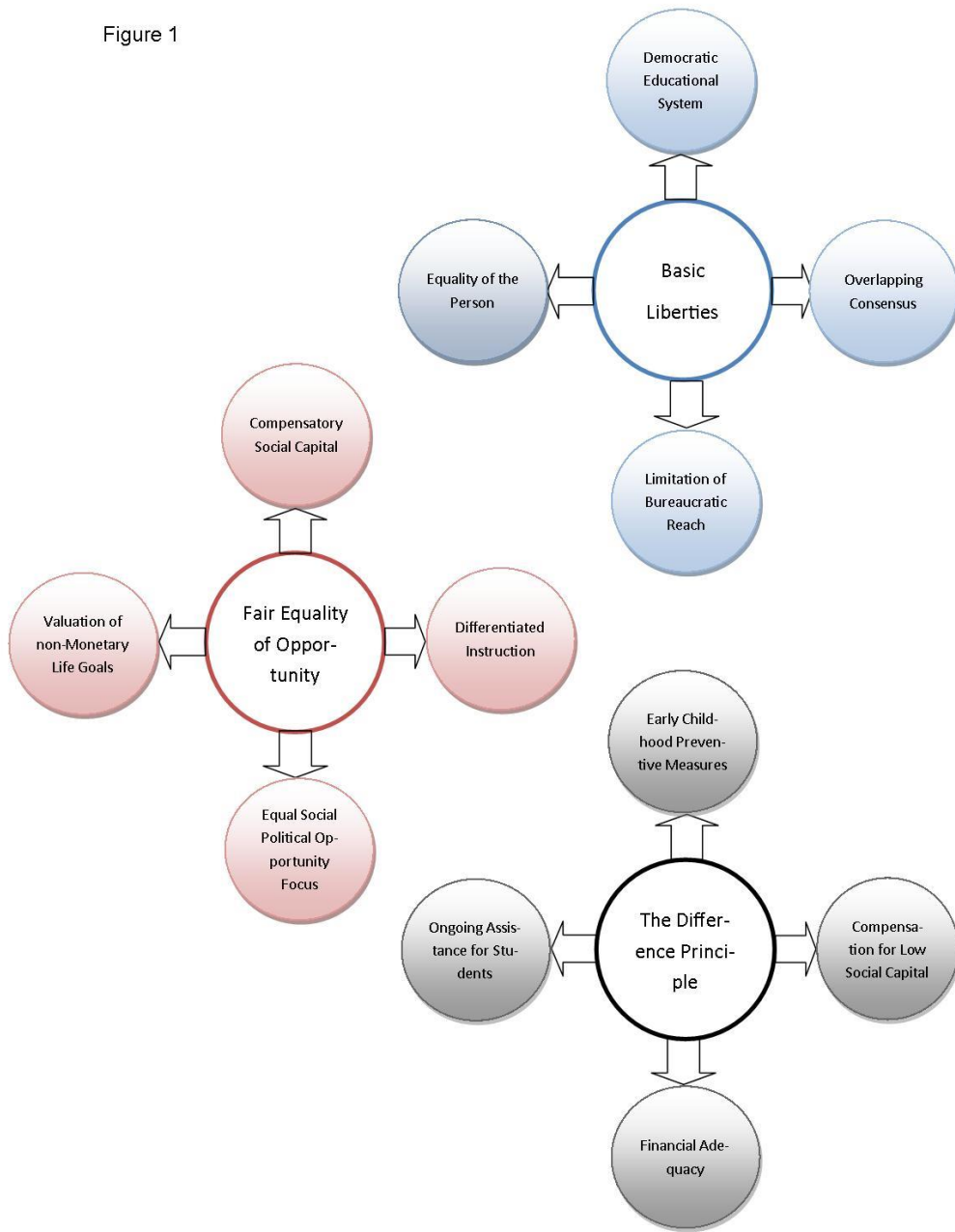


Figure 1: Arenas and Levers: Proposed Version

Following the example of Tharp I have created a table based rating system, Table 2, to explain and record my findings for each of the twelve levers in each of the policy documents analyzed. Though Tharp had a one way rating system measuring observable characteristics, I have created a two-way measure of both supporting Rawlsian justice and opposing Rawlsian justice.

Table 2: Criteria Rating Scale

Rating Level	Indicator
Highly Positive	The policy document directly addresses this justice lever in a way that supports Rawlsian justice
Positive	The policy indirectly addresses this justice lever in a way that supports Rawlsian justice
Not Addressed/ Not Applicable	The policy does not have language that appears to impact this lever of Rawlsian justice
Negative	The policy indirectly addresses this justice lever in a way that opposes Rawlsian justice
Highly Negative	The policy document directly addresses this justice lever in a way that opposes Rawlsian justice

The Twelve Levers

Each of the twelve levers or action points has its own rubric for measurement. None of these twelve should be taken in and of themselves as a measure of justice, but rather as indicators of attention given to Rawlsian justice. Only by assessing for all twelve do I imagine to give a report on the justice of a particular policy document.

Basic Liberties.

The reader will recall that Rawls's focus was on basic social institutions and how they are obligated to both preserve and enhance a whole scheme of basic liberties. The most basic of these deals with personal independence, self-respect and political inclusion (Freeman, 2007). Thus, as a nation's educational system is a prima fascia example of a

basic institution, a Rawlsian approach demands the educational system to actively support these basic liberties. For the sake of clarity and to prevent overlapping measures, this arena will focus not on the liberties of the children but on adult citizens.

Democratic educational system.

The right to democratic participation in the basic governmental structures is foundational to all other rights (Rawls, 1999a, p. 53); as such, the first characteristic of educational policy must be its democratic nature. Political access cannot be based on income, social status or professional status. The larger the institutional size the more concern must be given to preserving political access; institutional efficiency cannot justify exclusion (Rawls, 1999a, p. 56). Just policy measures must provide sufficient meaningful citizen input so as to support the individual’s sense of efficacy.

Table 3: Democratic Education System Rating Scale

Rating Level	Indicator
Highly Positive	The policy document explicitly requires meaningful local citizen involvement in the decision making process, implementation and review of the policy.
Positive	The policy document requires local citizen involvement in at least one of the processes of decision making, implementation or review.
Not Addressed	The policy does not require citizen involvement, nor does it create bureaucratic barriers to the citizen involvement.
Negative	The policy places large portions of the policy decision making, implementation and/or review out of reach of citizen impact. It is largely governed by bureaucratic/professional processes.
Highly Negative	The policy places large portions of the policy decision making, implementation and/or review out of reach of citizens or local elected officials. It is highly governed by bureaucratic/professional processes.

Equality of the person.

The equality of the individual when dealing with governmental entities must be preserved. Basic institutional policy must take steps to compensate for the tendency to move away from equality (Rawls, 2005, p. 268).

Table 4: Equality of the Person Rating Scale

Rating Level	Indicator
Highly Positive	The policy document has explicit measures to ensure representation by all strata of the local community in the decision making, implementation and review of the policy. The policy requires active measures to ensure inclusion of traditionally voiceless groups.
Positive	The policy addresses measures to ensure representation by all strata of the local community in the decision making, implementation and review of the policy indirectly. Inclusion measures are vague or voluntary.
Not Addressed	The policy measure does not address inclusion, nor does it favor certain groups by education, profession or income.
Negative	The policy indirectly favors certain individuals by favoring certain credentials (education, license or affiliation) or group identities in the decision making, implementation and review of the policy process.
Highly Negative	The policy document explicitly privileges or excludes individuals based on credentials (education, license or affiliation) or group identities in the decision making, implementation and review of the policy process.

Overlapping consensus.

Basic government institutions, including educational systems, cannot endorse or inhibit comprehensive doctrines unless they directly imperil basic liberties of citizens (Freeman, 2007, pp. 328-330). Comprehensive doctrines include both religion and systematic secular systems that provide an overarching meaning of life and basic questions of values. These systems cannot invade the educational space by excluding or privileging citizens in their political access or influence.

Table 5: Overlapping Consensus Rating Scale

Rating Level	Indicator
Highly Positive	The policy actively supports the basic liberties while actively encouraging a variety of voices from various comprehensive doctrines in the decision making, implementation and review of the policy as well as in the operations of the educational system governed by the policy.
Positive	The policy supports the basic liberties while passively encouraging a variety of voices from various comprehensive doctrines in the decision making, implementation and review of the policy as well as in the operations of the educational system governed by the policy.
Not Applicable	The policy does not have language that addresses any comprehensive doctrine.
Negative	The policy allows for a particular comprehensive doctrine to be favored and/or disfavored via a failure to require neutrality by both the community majority and/or the bureaucratic philosophical position in the decision making, implementation and review of the policy as well as in the operations of the educational system governed by the policy.
Highly Negative	The policy explicitly requires or highly favors a particular comprehensive doctrine in the decision making, implementation and review of the policy as well as in the operations of the educational system governed by the policy.

Limitation of bureaucratic reach.

The home and family choices of values are a basic liberty. Just as overlapping consensus forbids the establishment of a comprehensive doctrine in the school, similarly the public has reach into the home for only the direst of circumstances (Rawls, 1999a, p. 405). Thus educational policy that infringes on the family and/or undermines the comprehensive doctrine taught at home is only acceptable if such actions pose a direct threat to the more basic liberty of self-determination.

Table 6: Limitation of Bureaucratic Reach Rating Scale

Rating Level	Indicator
Highly Positive	The policy document explicitly limits the power of the bureaucracy, educational officials and/or elected officials to use the educational system to impinge on the basic liberties of parents, children or families except in clear cases of protection of more basic liberties. This also forbids the undermining of the parent’s comprehensive doctrine or culture by school officials, except when it clearly is in support of basic liberties and support of the doctrine of overlapping consensus.
Positive	The policy document reduces and or places parameters on the power of the bureaucracy, educational officials and/or elected officials to use the educational system to impinge on the basic liberties of parents, children or families except in clear cases of protection of more basic liberties. This also forbids the undermining of the parents comprehensive doctrine or culture by school officials, except when it clearly is in support of basic liberties and support of the doctrine of overlapping consensus.
Not Applicable	The policy is too far removed from this issue to be relevant.
Negative	The policy document passively allows the bureaucracy and/or educational officials to use the educational system to enforce or suppress a particular comprehensive doctrine. In doing this the basic liberties of parents, children and/or families are violated. The exception is in the support of the most basic liberties and of the doctrine of overlapping consensus.
Highly Negative	The policy document directly requires the bureaucracy and/or educational officials to use the educational system to enforce or suppress a particular comprehensive doctrine. In doing this the basic liberties of parents, children and/or families are violated. The exception is in the support of the most basic liberties and of the doctrine of overlapping consensus. The most extreme example of this was the U.S. Government’s efforts to use schools to eradicate the culture and values of the native Americans.

The Difference Principle.

Under a Rawlsian conception of justice, those children with the least in resources are due the most support from the school system. Rawls explains (Rawls, 1999a, §14 - 15) that least favored might be taken to mean many things including social status, income and abilities. Thus the *difference principle* as applied to educational policy has broad and

very significant implications; however, Rawls does not expect equal outcomes, only a system designed to disproportionately assist those with the most need (Freeman, 2007, pp. 92-93). While the basic liberties arena was cast as being adult centered, the difference principle in this evaluation will be student centered.

Early childhood preventive measures.

Building on the evidence cited in chapter two of the significant deficit faced by low income children when they enter school, the *difference principle* appears to demand empirically based very early intervention. It is beyond the scope of this study to specify what type of intervention is most effective, but the acceptance of the social obligation to intervene must be explicit.

Table 7: Early Childhood Preventive Measures Rating Scale

Rating Level	Indicator
Highly Positive	The policy document explicitly states that the process to provide equity across the income spectrum begins at birth, rather than waiting until the age of 5. Specifics might be spread over many educational policy documents; ratifying the principle of the obligation of early intervention is what matters here.
Positive	The policy document implicitly states that the process to provide the equity across the income spectrum begins at birth, rather than waiting until the age of 5. Specifics might be spread over many educational policy documents; implying the obligation of early intervention to educational policy is what matters here.
Not Applicable	Policies targeted at narrow age targets (i.e. high school) would not be applicable to this measure.
Negative	The policy is broad enough in scope to include early intervention language, but does not.
Highly Negative	The policy explicitly denies the responsibility for early childhood intervention.

Ongoing assistance for students.

Early intervention is only the beginning. Students whose progress is adversely impacted by either internal or external factors have a right to expect assistance throughout their educational career. Rawlsian distributive justice would say that any child who is not operating at his/her maximum potential should be given assistance for as long as needed. This would include not only assistance for both physical and mental obstacles to reaching their potential, but it would also include low expectations due to class or other social factors. The measure of success isn't "average" but rather the maximum of their ability. For instance a LD child or autistic child should not be dropped from service because they meet a minimum performance level, but rather only when they are as functional as they can be, even if that is far beyond a "minimum" or statistical average.

Table 8: Ongoing Assistance for Students Rating Scale

Rating Level	Indicator
Highly Positive	The policy document requires compensatory assistance is provided for children who are performing below their maximum capability due to disability or to socioeconomic status. The policy should require this assistance to be provided for as long as needed to reach and maintain that level of functioning.
Positive	The policy document requires compensatory assistance is provided for children who are performing below their maximum capability due to disability or to socioeconomic status.
Not Applicable Negative	The policy is too far removed from this issue to be relevant The policy addresses performance delays due in part to disability or to socioeconomic status but puts narrow limits on service type or duration.
Highly Negative	The policy document should have addressed children with delays due in part to disability or to socioeconomic status but did not do so.

Compensation for low social capital.

The concern was raised in chapter one that children from low income homes often do not have parents with sufficient social capital to ensure the system works to their best advantage. Sacks (2007) showed how parental influence and knowledge of the educational system skewed the outcomes in favor of wealthier children. Disempowering the involved parents is not an appropriate way to find balance, thus the just policy must include measures for child advocacy that mimics the positive effects of social capital.

Table 9: Compensation for Low Social Capital Rating Scale

Rating Level	Indicator
Highly Positive	The policy document requires independent advocates for low SES children and parents with authority to act <i>in loco parentis</i> if the parent and/or child wish.
Positive	The policy document requires schools to provide social workers or other semi-autonomous advocates for low SES children.
Not Applicable	The policy is too far removed from this issue to be relevant.
Negative	The policy is determined to be complicated and or otherwise disempowering to low income parents with no advocate for the child outside the local school's zone of direct control.
Highly Negative	The policy creates or supports bureaucracy that makes significant decisions for children without a required parental consultation and with no advocate for the child outside the local school's zone of direct control.

Financial adequacy.

It is axiomatic that if schools are to achieve the compensatory goals envisioned by Rawls, there must be adequate and equitable funding. Because Rawls values financial liberties as secondary issues, the needs of providing a just education outweigh the economic liberty rights of citizens, thus paving the way for sufficient taxation to achieve equity. It could be argued, as the CED does, that provision of adequate funds for just

education will achieve a net economic benefit (Freeman, 2007, pp. 88-89); however, by making such an argument the case for the primacy of justice is undermined.

Table 10: Financial Adequacy Rating Scale

Rating Level	Indicator
Highly Positive	The policy document requires funding that is sufficient for the needs of every student and is disproportionately spent on the children who are the least advantaged.
Positive	The policy document requires funding that is sufficient for the needs of every student and at least as much money is spent on the children who are the least advantaged as is spent on the most advantaged.
Not Addressed	The policy does not address finance.
Negative	The policy document requires funding that is sufficient for the needs of every student but does not address equality of spending.
Highly Negative	The policy document addresses funding but does not require funding that is sufficient for the needs of every student nor does it require equality of spending.

Fair Equality of Opportunity.

The concept that the community has an obligation to ensure every child, at the end of their schooling to have the opportunity to pursue any path to self-fulfillment that his or her talents and desires lead (Rawls, 1999a, pp. 62-63) provides a clear, albeit demanding, mandate for publicly funded schooling (Freeman, 2007, p. 90). In this project I will only look at schooling through the end of high school, though Rawls could be interpreted to intend public funding to post-secondary education. It should be noted that the FEO principle takes lexical priority over the difference principle in the same way that the first principle takes priority over the second (Freeman, 2007, p. 92). Thus, in a Rawlsian evaluation, it is just for the FEO or the basic liberties to impinge on the arena of difference principle.

Compensatory social capital.

This is different than that noted in the last arena where the state is expected to act *in loco parentis* to advocate for the child; rather, the thrust here is to provide the educational and social experiences that are not available to a socially or economically marginalized child. Rawls argued “Chances to acquire cultural knowledge and skills should not depend upon one’s class position and so the school system, whether public or private, should be **designed** to even out class barriers” (emphasis mine) (Rawls, 1999a, p. 64). This is as strong as any statement Rawls ever wrote about education. For him the importance of this lies in the fact that the ability to participate in the sociopolitical world is an integral part of having a fair equality of opportunity (Rawls, 1999a, pp. 54 -55). The ability to do this is part of social capital, the development of which can be facilitated in the school setting (Farrell, Tayler, & Tennent, 2004; Terrion, 2006); and in a Rawlsian system of justice is requisite.

Table 11: Compensatory Social Capital Rating Scale

Rating Level	Indicator
Highly Positive	The policy document explicitly acknowledges the value of the social capital amassed by children raised in high socioeconomic homes and the communities' obligation to provide compensatory experiences to children from low SES homes.
Positive	The policy indirectly acknowledges the value of the social capital amassed by children raised in high socioeconomic homes and the communities' obligation to provide compensatory experiences to children from low SES homes.
Not Addressed	The policy is too far removed from this issue to be relevant.
Negative	The policy is relevant to compensatory education, poverty or achievement gap but fails to acknowledge the impact of social capital.
Highly Negative	The policy actively reduces the social capital of low income children through creating barriers such as financial cost of participation or transportation to low income students without addressing and correcting this equality of access issue.

Valuation of non-monetary life goals.

To Rawls, the goal of a just society is first and foremost to have citizens who have respect for themselves and equal respect for others. Using the Aristotelian concept of maximum utilizing of talent being the greatest good, a Rawlsian view would see the end of successful education as the preparation for self-fulfillment. Thus, educational policy should reflect maximization of self as a goal as an end in itself as opposed to utilitarian economic goals.

Table 12: Valuation of non-Monetary Life Goals Rating Scale

Rating Level	Indicator
Highly Positive	The policy document specifically identifies the student’s self-maximization as the end goal of the publicly funded educational process. References to monetary rewards or economic benefit should only be present in an ancillary fashion.
Positive	The policy document gives equal weight to the student’s self-maximization and monetary rewards/economic benefit as the end goals of the publicly funded educational process.
Not Addressed	The policy does not have language that relates to the goals of the educational process.
Negative	The policy document specifically identifies monetary rewards or economic benefit as the end goal of the publicly funded educational process. References to student’s self-maximization are only present in an ancillary fashion.
Highly Negative	The policy document only identifies monetary rewards or economic benefit as the end goal of the publicly funded educational process.

Differentiated instruction and testing.

Students with learning disabilities, mental health and/or physical challenges fall within the “least well off” category and thus a just educational policy must include measures within the learning environment to ensure these students have equal standing with other students via differentiated instruction. Educational policy should be written to allow flexibility to both classroom teachers and to administration so as to allow for students with special needs to be a full part of the larger school community.

Table 13: Differentiated Instruction Rating Scale

Rating Level	Indicator
Highly Positive	The policy provides flexibility in instructional and special assistance requirements for those students with special needs to experience full participation in the social milieu of the school. Testing requirements must be psychometrically valid in method so as to be both informative as to the student’s real progress in the discreet subject matter while accommodating for non-subject disabilities.
Positive	The policy provides flexibility in instructional and special assistance requirements for those students with special needs to have minimal exclusion in the social milieu of the school. Testing requirements are flexible enough not to mislabel disabled students as students who are not learning.
Not Addressed	The policy does not touch on any issues related to the needs of disabled students.
Negative	The policy provides limited flexibility in instructional and special assistance options for those students with special needs that lead to some exclusion in the social milieu of the school. Testing requirements have limited flexibility sometimes requiring disabled students to abide by the same procedural rules as non-disabled, thus skewing results.
Highly Negative	The policy is not flexible in instructional and special assistance options for those students with special needs that lead to a large degree of exclusion in the social milieu of the school. Testing requirements are not flexible requiring disabled students to abide by the same procedural rules as non-disabled, thus skewing results

Equal social political opportunity focus.

Since the ultimate aim of the publicly funded school is to allow each graduating student to take an equal and active part of civil society (Rawls, 2001, p. 56), the skills to do so must be integral to the academic program. Civics, policies theory, rhetoric and community life would not be “extras” in a Rawlsian system, but have equal footing with reading skills. The Rawlsian model of liberal democracy hinges on a citizenry that has the verbal and political skills to engage one another.

Table 14: Equal Social Political Opportunity Focus Rating Scale

Rating Level	Indicator
Highly Positive	The policy document directly addresses the primacy of the sociopolitical life of citizens. The academic core of curriculum is in effective citizen production. Systematic coursework that leads to civic competence are given equal weight with reading and math.
Positive	The policy document recognizes the importance of the sociopolitical life of citizens. Effective citizen production is one of the prime goals of the academic curriculum. Systematic coursework that leads to civic competence, including government, civics and rhetoric are given significant weight throughout the student’s educational career.
Not Addressed	The policy does not address curriculum or goals of publicly funded education.
Negative	The policy that governs curricular content gives little emphasis to civic education but requires some civic coursework.
Highly Negative	The policy crowds out all civic oriented coursework in favor of dominated-by-business functional classes.

Analytic Method

Each policy document will be coded based on the twelve levers. Using the methods laid out by Saldaña (2009) I shall use a holistic-attribute coding system. I will be working through a great deal of text looking for references to any of the specific topics covered by the rubrics for the twelve levers; this might be expressly stated or implied in many lines or even pages. Saldaña (2009) describes holistic coding as “an attempt to grasp basic themes or issues in the data by absorbing them as a whole rather than by analyzing them line for line” (p. 119) Thus in the first round the approach will be often be holistic in that I will synthesize the entire policy document into codes.

Once the entire document has been coded for the first time, Saldaña (2009) then writes that a second round of coding is necessary to conduct “axial coding” so as to place

the different sections of text somewhere on one of the twelve rubrics. The final phase will be to synthesize the different codes by both assigning scores for the twelve individual questions as well as a narrative to both justify the scores given and to make a summary about the document's relationship to Rawlsian justice.

Document Selection

Educational policy in the United States is described as being decentralized (Hochschild & Scovronick, 2003; Tyack et al., 1987) in that there is no one place to find the governing documents for all U.S. schools. Not only are schools governed by both national and state legislation, numerous bureaucratic departments also produce their own rules that govern the operation of publicly funded schools in the U.S. (Davies, 2007).

The primary purpose of this study is to test the evaluation tool. Thus the primary criteria for the policy to evaluate were that it was both relevant to current educational practice and that it was comprehensive in scope. Title I of the 2001 revision of the Elementary and Secondary schools Act, better known as No Child Left Behind (ESEA/NCLB) fit this needs of these criteria.

The original ESEA was passed in 1965 as part of the War on Poverty, at a moment in history when there was (for a brief moment) a large national consensus that the United States should and could eradicate poverty (Ravitch, 1983). President Johnson had won re-elections in a historic landslide and brought with him an overwhelmingly Democrat congress. Even still the contentious issue of federal involvement in public education remained a serious concern to many. However, Johnson by tying the ESEA to the Great Society program was able to rhetorically link ESEA to the recently passed

Economic Opportunity Act, and thereby give the appearance of this act being more social than educational (Davies, 2007). Title I was arguably the centerpiece of the legislation, accounting for \$1 billion of the \$1.3 Billion allocated to implement ESEA. Entitled “Financial Assistance to Local Educational Agencies for the Education of Children of Low Income Families”, Title I brought federal money to no less than 94% of the counties in the US. The primacy of Title I funding has not abated with \$14.5 billion allocated to the program in 2011 (U.S. Department of Education, 2013). For the reason of size and impact, I chose Title I as the policy to test this evaluation tool.

Evaluation Tool Revision

The proposed tool in this chapter should not be assumed to be the tool that will appear in the final version of my dissertation. This dissertation’s purpose is the creation of a usable tool. The wording of the tool in this proposal is just the first version and as such it should be assumed that as the process of aligning current policy with the tool proceeds, there will necessarily be changes in the wording of the lever questions. The arena questions will not change as they represent the three general thrusts made by Rawls, using his terminologies.

CHAPTER 4

The purpose of this study is to develop and test a tool for the measuring of intrinsic justice in educational documents. Chapter 2 laid out the philosophical justification and chapter 3 presented the proposed tool and how it will be used. The purpose of this chapter is to present the data from the initial analysis of the use of the individual levers. The structure of this chapter is designed to help the reader see how each lever stands on its own, before I present how they work in conjunction in chapter 5.

Structure of this Chapter

This chapter consists primarily of the analysis of each of the levers presented in chapter 3 and two additional levers added during the process. For each lever the revised explicatory narrative and the revised table of indicators is presented followed by an analysis of the text of Title I using the revised lever. The axial themes are presented and then a summary judgment as to Title I's justice based on the Table indicators. Following the Title I analysis I present my notes on the tool development. Changes to the tool are noted and justified, followed by a summary of difficulties that arose during the process. At the beginning of each of the 3 arenas I have added a short explication of the arena to position the subsequent levers within the overall Rawlsian approach to justice.

The order in which the levers in the analysis has been changed from what was presented in chapter three in order to improve the logical progression of the concepts. Additionally, I have added questions to each of the arenas in order to further clarify the overarching question that drives each. The most significant change made in this revision is to change the base format for the tools indicators. After I had completed all the lever

assessments, it became evident that both the rating level descriptor words and the indicators needed to be revised to reflect how they worked in the assessment process.

Table 15 reflects these changes.

Table 15: Criteria Rating Scale

Rating Level	Indicator
Highly Just	The policy document actively addresses this justice lever in a way that supports Rawlsian justice.
Just	The policy passively addresses this justice lever in a way that supports Rawlsian justice.
Not Applicable	The policy does not have control over this lever of Rawlsian justice.
Unjust	The policy indirectly addresses this justice lever in a way that passively opposes Rawlsian justice.
Highly Unjust	The policy document directly addresses this justice lever in a way that actively opposes Rawlsian justice.

Analysis

Basic Liberties: Does the Policy Promote Democratic Process and Citizen Liberty?

Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value (Rawls, 2005, p. 6).

This arena reflects the primacy that Rawls puts on the equal access to political life. Rawlsian liberalism places the ability to not only have theoretical equality of political voice but in that voice to have “fair value” in real world political situations. Because Rawls laid out the principle that it is the collective good that necessitates collective action based on the scale of the need (Rawls, 1999a, p. 83), so too does the scale of democratic institution need to be scaled to the size of action. I believe this is a

fair interpretation of Rawls's concept of distributive justice (Rawls, 1999b). National issues like the military need national leadership, but local social institutions should be governed locally. Only by this can the fair value of the citizen be preserved. This concept of local democracy will color all the levers in this arena.

Lever: Democratic Educational System.

The revised lever.

The right to democratic participation in the basic governmental structures is foundational to all other rights (Rawls, 1999a, p. 53; Rawls, 2005, p.11); as such, the first characteristic of educational policy must be its democratic nature. Political access cannot be based on income, social status or professional status; however, those issues are addressed in the *Equality of the Person* lever. The larger the institutional size or political unit, the more concern must be given to preserving political access; institutional efficiency cannot justify exclusion (Rawls, 1999a, p. 56). Just policy measures must provide sufficient meaningful and inclusive citizen input so as to support the individual's sense of efficacy.

Table 16: Democratic Educational System Rating Scale

Rating Level	Indicator
Highly Just	The policy document explicitly requires meaningful local citizen involvement in the decision making process, implementation and review of the policy.
Just	The policy document requires local citizen involvement in at least one of the processes of decision making, implementation or review.
Not Addressed	The policy does not require citizen involvement, nor does it create bureaucratic barriers to the citizen involvement.
Unjust	The policy places large portions of the policy decision making, implementation and/or review out of reach of local citizen impact. It is largely governed by bureaucratic/professional processes.
Highly Unjust	The policy places large portions of the policy decision making, implementation and/or review out of reach of citizens or local elected officials. It is highly governed by bureaucratic/professional processes.

Policy evaluation.

After reviewing those sections of Title I previously coded to be part of the Democratic Education System Lever and considering the analytic notes made as I conducted the second cycle of coding, I developed the following three axial themes: notification, participation, and control. Each of these directly relate to the scale indicators in Table 16.

Axial theme 1: Notification.

Sec. 1116 (b)(6)(E) an explanation of how the parents can become involved in addressing the academic issues that caused the school to be identified for school improvement; and (F) an explanation of the parents' option to transfer their child to another public school.

Title I has many references to schools and states providing notification to the public and to parents. As per Table 16, these notifications are mandatory and very

specifically place the burden on the schools to provide information “in a language that parents can understand” (Sec. 1111 (b)(3)(A)(xii); (Sec. 1111(b)(6). Furthermore, there are requirements of hearings (Sec. 116 (c)(10)(D) and of timelines of the timely publication of information. All this rates very high on an axial justice rating; however, though notification is implied in Table 16, it was not listed because simple notification is lexically inferior to decision making, implementation and review as required by table 16.

Axial theme 2: Participation.

§1001(12) affording parents substantial and meaningful opportunities to participate in the education of their children.

Parental involvement is promoted throughout Title I. §1118 is even entitled *Parental Involvement*, and the entire section is given to that goal. Parental involvement certainly can be at least partially equated with citizen involvement, perhaps even mostly so, and “involvement” is specifically called for in Table 16. However, the tool is specific that this involvement is to be in the decision making process, implementation and review of policy. §114(b)(2)(B) states the school-wide reform plans envisioned by the legislation shall be “developed with the involvement of parents and other members of the community to be served and individuals who will carry out such plan, including teachers, principals, and administrators (including administrators of programs described in other parts of this title), and, if appropriate, pupil services personnel, technical assistance providers, school staff, and, if the plan relates to a secondary school, students from such school. . .” This would appear to be very strong language tied closely to the intent of this lever. Furthermore, §1116(b)(3)(B), which deals with corrective action plans for

unsuccessful schools, requires “feedback on the school improvement plan from parents and community leaders.”

These provisions meet the criteria for a *Just* score on this axis; however, reservations remain in that the policy does not make clear if the “parents and other members of the community” are to be voting or ex officio members of such a planning committee; nor does it use language to ensure those persons will be invited at sufficient numbers to even balance, let alone control, the members representing the bureaucracy.

Axial theme 3: Control.

§1111(b)(2) (A) IN GENERAL- Each State plan shall demonstrate that the State has developed and is implementing a single, statewide State accountability system that will be effective in ensuring that all local educational agencies, public elementary schools, and public secondary schools make adequate yearly progress as defined under this paragraph. (B) SAME STANDARDS- The academic standards required by subparagraph (A) shall be the same academic standards that the State applies to all schools and children in the State.(C) SUBJECTS- The State shall have such academic standards for all public elementary school and secondary school children, including children served under this part, in subjects determined by the State, but including at least mathematics, reading or language arts, and (beginning in the 2005-2006 school year) science, which shall include the same knowledge, skills, and levels of achievement expected of all children §1111 (b)(2)(G) MEASURABLE OBJECTIVES- Each State shall establish statewide annual measurable objectives, pursuant to subparagraph (C)(v), for

meeting the requirements of this paragraph, and which-- (i) shall be set separately for the assessments of mathematics and reading or language arts under subsection (a)(3); (ii) shall be the same for all schools and local educational agencies in the State;

Implementation and review of the policy is where Title I veers decidedly away from Rawlsian justice. §1111 centralizes power in the state bureaucracy with no apparent role for the local community. It gives the power to stipulate what should be taught and how a successful education should be measured exclusively to the state's professional educational apparatus. In this process the role of the parents is recast into a passive receiver of information mode.

§1111(d) PARENTAL INVOLVEMENT- Each State plan shall describe how the State educational agency will support the collection and dissemination to local educational agencies and schools of effective parental involvement practices. Such practices shall—(1) be based on the most current research that meets the highest professional and technical standards, on effective parental involvement that fosters achievement to high standards for all children; and (2) be geared toward lowering barriers to greater participation by parents in school planning, review, and improvement experienced.

Though the words are of parental involvement, this is limited to the local school's efforts to achieve the tasks set out by the state. Such a statement can be seen in a negative light of placing the local community in the position subservient to officials who are beyond the reach of the democratic process. This eviscerates the fair value of the citizen's

voice, in this case, not just a select citizen, but the entire community. The legislation goes on to describe penalties for failure to meet the state's assigned goals for two years. In §1111(b)(8)(B) the LEA is ordered to do one of the following:

- (i) Reopening the school as a public charter school.
- (ii) Replacing all or most of the school staff (which may include the principal) who are relevant to the failure to make adequate yearly progress.
- (iii) Entering into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the public school.
- (iv) Turning the operation of the school over to the State educational agency, if permitted under State law and agreed to by the State.”

Table 16 defines as *Highly Unjust* any policy that places large portions of the policy decision making, implementation and/or review out of reach of citizens or local elected officials. It is highly governed by bureaucratic/professional processes; thus on this axis Title I rates *Highly Unjust*.

Conclusion.

Despite the early positives seen in the first two axes, for Title I, the level of injustice presented in the last axis trumps the good in the two previous ones. This is due both the tepid conclusions for the first two axial themes, and the fact that the issue of control in the last is more critical than the first two themes. I therefore conclude that on the measure of fostering a *Democratic Educational System*, Title I is *Unjust*.

Tool evaluation.

This lever, as spelled out in chapter 3, is designed to help the evaluator focus on Rawls's contention that political rights are foundational to a just democratic system and that as a basic institution the educational system must be governed in a manner that preserves the fair equality of all citizens. The idea of fair equality should be addressed on two fronts: one is broad based access of the community to control basic institutions (which is what this lever is intended to measure) and the other is fair access for all citizens irrespective of their social status or other factors that have historically left certain types of people out of the decision making process (which is addressed in another lever). The explanatory portion of this lever was modified to make this distinction.

The original rating scale's indicators (Table 3) were useful in identifying the sections of the Title I that addressed the relevant issues and did not need clarification on that point.

Difficulties:

- 1) I struggled over deciding the difference between the significance in calls for parental involvement and community member involvement. Table 3 did not make specific reference to parents, but rather only used the phrase "citizen involvement". I then considered changing the wording to "Parent and citizen involvement"; however, I decided that the lever of *Overlapping Consensus* covered the issue of parental control and that the call for citizen involvement included parents and other family members. Thus I did not make the change.

2) In the text of Title I, the practical meaning of “local control” became somewhat difficult to manage in that the text spoke of schools, local educational agencies (LEA) and of states. As compared to a national law, all of these can be seen as more local than the federal government, and the term LEA as defined in §9101 (26)(A) does not necessarily have any requirement that the LEA be democratically elected or controlled. Part (B) states, “The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.” Thus, much of the project is hinged on these incomplete terms. However, in reading the texts, it appeared that the writers did indeed equate LEA with local control. Their failure to require such mechanisms was noted in the analysis. I did not change the wording to this lever because it did uncover the weakness in the legislation in that the LEA was not adequately defined.

Despite the noted difficulties, Table 16 operated as hoped to uncover the strengths and weaknesses of Title I as it relates to the fostering of a democratic educational system as a central social institution.

Lever: Overlapping Consensus.

The revised lever.

Rawls describes a comprehensive doctrine as “the culture of everyday life, of its many associations: churches, and universities, learned and scientific societies and clubs and teams to mention a few” (Rawls, 2005, p. 14). Civil society relies on an overlapping consensus, the space where we all agree on basic conceptions of justice (Rawls, 1999, p.

340). A stable democratic government depends on the mutual agreement that we need only to have agreement on the most basic conceptions of justice; in all other matters citizens may reasonably disagree (Rawls, 2005, p. 39). Therefore, basic government institutions, including educational systems, cannot endorse or inhibit comprehensive doctrines unless they directly imperil basic liberties of citizens (Freeman, 2007, pp. 328-330).

Furthermore, educational policy that infringes on the family and/or undermines the comprehensive doctrine taught at home is only acceptable if such actions pose a direct threat to the more basic liberty of self-determination (Rawls, 1999b, p. 596).

Comprehensive doctrines include both religion and systematic secular systems that provide an overarching meaning of life and basic questions of values (Rawls, 2005, p. 13). These systems cannot invade the educational space by excluding or privileging citizens in their political access or influence.

Table 17: Overlapping Consensus Rating Scale

Rating Level	Indicator
Highly Just	The policy document explicitly forbids educational officials and/or elected officials to use the educational system to undermine the families’ comprehensive doctrine or culture, except when it clearly is in support of basic liberties. The policy actively supports the doctrine of overlapping consensus by actively requiring or encouraging a variety of voices from various comprehensive doctrines in the decision making, implementation and review of the policy as well as in the operations of the educational system governed by the policy.
Just	The policy document implicitly forbids educational officials and/or elected officials to use the educational system to undermine the families’ comprehensive doctrine or culture, except when it clearly is in support of basic liberties. The policy supports the doctrine of overlapping consensus by encouraging a variety of voices from various comprehensive doctrines in the decision making, implementation and review of the policy as well as in the operations of the educational system governed by the policy.
Not Addressed	The policy does not have language that addresses any comprehensive doctrine.
Unjust	The policy does not implicitly or explicitly limit the ability of community majority and/or the bureaucratic structure to favor and/or disfavor a particular comprehensive doctrine in the decision making, implementation and review of the policy nor does the policy implicitly or explicitly limit the ability of schools to favor/disfavor a particular comprehensive doctrine in curricular materials or in providing access to students in execution of the policy.
Highly Unjust	The policy actively opposes the doctrine of overlapping consensus by explicitly empowering the community majority and/or the bureaucratic structure to favor and/or disfavor a particular comprehensive doctrine in the decision making, implementation and review of the policy; or, the policy explicitly favors/disfavors a particular comprehensive doctrine in curricular materials or in providing access to students in execution of the policy.

Policy evaluation.

Title I contains only the most Spartan references to preservation of overlapping consensus and/or the prevention of a hegemony by any partial comprehensive doctrine. It well might be that the crafters of the legislation assumed standard statutory provisions of religion were sufficient; however, Rawls's expansive view of comprehensive doctrine to include non-theological systems of life render the current religious provisions insufficient. This is one of the levers of justice that current policy makers are not addressing at all. Second cycle coding concluded that this topic only has one clear citation, that being §1120(a)(2) which applies only to federal funds going to private schools and stipulate, "Such educational services or other benefits, including materials and equipment, shall be secular, neutral, and non-ideological."

For this lever, Title I did not generate sufficient data to create axial themes. The assignment of the lever indicator *Unjust* reflects that on this lever the legislation did not meet the request safeguard to ensure the preservation of overlapping consensus.

Tool evaluation.

This lever, as spelled out in chapter 3, required significant revision on both the explanatory narrative and the indicators (Table 4). The original version of the explanatory narrative did not fully justify the principle involved which undermined the power of the indicators. Additionally, I decided the original version in chapter 3 had an unacceptably high level of overlap with the lever *Limitation of Bureaucratic Reach*. These two levers were both rewritten after approximately 50% of Title I had been first cycle coded. After

the revisions, the previously coded sections were recoded to correspond to the revisions. The indicators for this lever were again revised during second cycle coding.

Difficulties:

- 1) The primary problem in the measuring for overlapping consensus is most certainly its very definition and what constitutes infringement. Rawls's descriptions make comprehensive doctrine look more like culture than a formal theology or epistemology. In practice, the maintenance of overlapping consensus might need court clarification; however, for this tool statements of cultural inclusion such as in §1118(a)(2)(E) or the clear prohibition in §1118(a)(2) "shall be secular, neutral, and nonideological" provide justification that this lever is not overly vague.
- 2) Of potential concern could be the dearth of explicit textual evidence of this lever. However, the single clear statement in §1118(a)(2) supports the idea this topic can be addressed and conversely highlights the fact that the rest of Title I fails to do so.

Table 17 operated as hoped to uncover the lack of safeguards for citizen's comprehensive doctrines in Title I.

Lever: Equality of the Person.

The revised lever.

The equality of the individual when dealing with governmental entities must be preserved. Basic institutional policy must take steps to compensate for the tendency to move away from equality (Rawls, 2005, p. 268). This lever is best understood as the

“fair” part in his conception of “fair value of political liberties” (Rawls, 2005, p. 357).

Rawls envisioned an ideal where “citizens similarly gifted and motivated have roughly an equal chance of influencing the government’s policy and of attaining positions of authority irrespective of their economic and social class” (Rawls, 2005, p. 358). Though the practical effectiveness is predicated on the prior lever which measured the ability of the public at large to influence educational policy, this lever will operate on the assumption that the prior standard was met and will measure the efforts to ensure equal influence on policy by all citizens.

Table 18: Equality of the Person Rating Scale

Rating Level	Indicator
Highly Just	The policy document has explicit measures to ensure representation by all social groupings within the local community (with an emphasis on the families of children enrolled) in the decision making, implementation and review of the policy. The policy requires active measures to ensure inclusion of traditionally voiceless groups.
Just	The policy document has measures to promote representation by all social groupings within the local community (with an emphasis on the families of children enrolled) in the decision making, implementation and review of the policy indirectly.
Not Addressed	The policy measure does not address inclusion, nor does it favor certain groups by education, profession or income.
Unjust	The policy indirectly favors certain individuals by favoring certain credentials (education, license or affiliation) or group identities in the decision making, implementation and review of the policy process.
Highly Unjust	The policy document explicitly excludes the citizenry in the decision making, implementation and/or review of the process via credential requirements (education, license or affiliation) or requirements of official status.

Policy evaluation.

This lever is particularly important given the diversity of the US population and the historical de facto and de jure policies that have prevented the fair equality of the every citizen's political voice. In review of the relevant policy sections there were thirty-two sections that made direct reference this lever. These references formed three themes: income class, language, and unrepresented groups.

Axial theme 1: Income class.

This axial theme addresses how the legislation deals with equity of persons of different income groups. §1235(a) addresses this specifically when it requires inclusion:

(1) as indicated by a low level of income, a low level of adult literacy or English language proficiency of the eligible parent or parents, and other need-related indicators; (2) include screening and preparation of parents, including teenage parents, and children to enable those parents and children to participate fully in the activities and services provided under this subpart, including testing, referral to necessary counseling, other developmental and support services, and related services; (3) be designed to accommodate the participants' work schedule and other responsibilities, including the provision of support services, when those services are unavailable from other sources, necessary for participation in the activities assisted under this subpart, such as — (A) scheduling and locating of services to allow joint participation by parents and children; (B) child care for the period that parents are involved in the program provided under this subpart; and

(C) transportation for the purpose of enabling parents and their children to participate in programs authorized by this subpart;

(e) To ensure effective involvement of parents and to support a partnership among the school involved, parents, and the community to improve student academic achievement, each school and local educational agency assisted under this part —

This section is an excellent example of how legislation can be crafted to meet the external needs in order to improve the voices of lower income citizens; in particular the requirement to offer flexible meeting times, transportation and childcare. Furthermore, the texts explicitly empowers the parents by stating the school “shall educate teachers, pupil services personnel, principals, and other staff, with the assistance of parents, in the value and utility of contributions of parents, and in how to reach out to, communicate with, and work with parents as equal partners, implement and coordinate parent programs, and build ties between parents and the school (§1118 e 3). This is exactly what the tool’s language of “active measures to ensure representation” means. However, this section is limited to Title I, Part B: Student Reading Skills Improvement Grants. It has no applicability on the rest of Title I. As such, it serves more to highlight what is not being required in the rest of the legislation than to ensure equal representation of the poor. The lack of this type of specific proactive language in any of the other seven parts of Title I leads to a low rating on this axis.

Axial theme 2: Language.

This axial theme evaluates how the legislation addresses issues of language as a barrier to participating in the educational system.

§1116(b)(7)(E) PUBLICATION AND DISSEMINATION– The local educational agency shall publish and disseminate information regarding any corrective action the local educational agency takes under this paragraph at a school -- (i) to the public and to the parents of each student enrolled in the school subject to corrective action; (ii) in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand; and (iii) through such means as the Internet, the media, and public agencies.

Sixteen times in Title I the phrase “provided in a language that the parents can understand,” or a similar phrase, appears. This meets the proactive standard of policy requiring the school system to reach out to those who are cut off by language. Furthermore, unlike Axial 1, this language is repeated throughout the legislation. Thus, I rate Title One as *Highly Just* on this axial.

Axial theme 3: Underrepresented groups.

In the text many underrepresented groups are explicitly addressed such as in §1232(a)(1) “children of migratory workers; the outlying areas; and Indian tribes and tribal organizations.” §1411 has specific provisions to require the inclusion of Puerto Rico. However, these required inclusions are geared for child participation and for funding formulas, not for parents or other members of these communities. There is, for instance, no requirement that local schools provide for meaningful input from migrant families or that Native Americans have control of the educational programs governed by Title I in their schools. I must conclude that the lack of meaningful directives to include

any traditionally marginalized groups in decision making deserves an *Unjust* on this axial.

Conclusion.

This discussion of the inclusion of groups in the democratic process could be seen as contradictory to chapter 2 that discussed why this tool would measure individual justice over group justice; however, calling for the assurances that all strata of society is included in the political process is consistent with the very Rawlsian position that political equity is an critical part, but not the whole, of a liberal conception of justice. I therefore conclude that on the measure of fostering *Equality of the Person*, Title I has portions that show how this can and should be done; however, these bright spots of inclusion are the exception. The bulk of the legislation does not have meaningful language to promote and maintain the equal voice of each citizen, therefore I conclude, on the lever *Equality of the Person*, Title I is *Unjust*.

Tool evaluation.

This lever was designed to spotlight the parts of the legislation that promoted equality of the person, and on this point it was very successful. The tool, by spotlighting the parts of Title I that did an excellent job of inclusion, shows an equally bright light on the holes in those efforts for inclusion. Only minor changes to the tool were required. The explanatory portion of this lever was modified to clarify this lever's subordinate position to the *Democratic Educational System* lever. The original rating scale's indicators (Table 4) were modified to clarify the relationship of children's families as a privileged part of

the larger community reflecting Rawls's view that families are a basic structure of society (Rawls, 1999b, p. 597).

Difficulties:

- 1) The largest struggle I had in this lever was the question of how to place the term "parent involvement" into the larger lever of community involvement and, ultimately, control. I tried to take in two different considerations, first of parents being the subset of citizens with the most vested interests in education. On the other hand, parents are still just a subset of the citizenry, and this lever is about including all subsets. This is especially true in an era where "parents" may no longer represent primary caregivers.

In the end I chose to modify the lever itself to specify families (rather than parents) as a favored subset, but still just a subset of the larger community.

- 2) The dependency of this lever on the *Democratic Educational System* lever for meaningfulness is absolute. If (as in this case) there is not meaningful citizen participation in the larger policy, then this entire lever becomes moot. I added a sentence to that effect into the narrative before table 18.

Notwithstanding the noted difficulties, Table 18 operated as hoped to uncover the strengths and weakness of Title I as it relates to the promotion and maintenance of citizen equality of political voice. The tool guided the development of the three axial themes and the themes jointly provided me with a clear answer to the lever's basic question.

Lever: Limitation of Bureaucratic Reach.

The revised lever.

The educational system is a basic institution in society, and as such, Rawls's principle of participation applies to its management (Rawls, 1999a, p. 196-197). Rawls believed that a society is a fair system of cooperation among equally empowered citizens (Rawls, 2005, p. 16-17) and that even expressly guaranteed political rights can lose their fair value by regulation over which the citizen has no control (Rawls, 2005, p. 358). In some ways this is the inverse of the *Democratic Educational System* lever; however, the focus is different, i.e. the prior lever had a focus on empowering the citizen, but the focus of this lever is the restraint of power by the bureaucracy. Another way to distinguish the two is that this lever is concerned with the power vested in non-democratic systems while the prior lever was about the power vested in the citizenry.

Table 19: Limitation of Bureaucratic Reach Rating Scale

Rating Level	Indicator
Highly Just	The policy document explicitly limits the power of the bureaucracy to exercise control over local elected representatives, local appointed educational personnel and private citizens in the operation of local educational institutions to those circumstance where such control is clearly required to maintain more basic liberties.
Just	The policy document implies limits in its authorization to federal or state bureaucracy to exercise control over local elected representatives, local appointed educational personnel and private citizens in the operation of local educational institutions where such control is intended to maintain more basic liberties.
Not Addressed	The policy is too far removed from this issue to be relevant.
Unjust	The policy document implicitly empowers federal or state bureaucracies to exercise control over local elected representatives, local appointed educational personnel and private citizens in the operation of local educational institutions in order to meet state or national objectives.
Highly Unjust	The policy document explicitly authorizes or otherwise empowers state and local bureaucracy to fully control local educational institutions without oversight or input of local elected representatives, locally appointed educational personal and private citizens.

Policy evaluation.

The axial theme of this lever revolves around the levels of bureaucratic power: state, federal and local. Title I is composed of hundreds of references to the powers and obligations of these three bureaucratic systems.

Axial theme 1: Power of Federal Department of Education.

§1111(a)(5)(B)(i) meet all of the criteria in this subsection and any regulations regarding such standards and assessments that the Secretary may publish; and §1111(d)(1) The Secretary shall (C) approve a State plan within 120 days of its submission unless the Secretary determines that the plan does not meet the

requirements of this section; (D) if the Secretary determines that the State plan does not meet the requirements of subsection (a), (b), or (c), immediately notify the State of such determination and the reasons for such determination; (E) not decline to approve a State's plan before (i) offering the State an opportunity to revise its plan; (ii) providing technical assistance in order to assist the State to meet the requirements of subsections (a), (b), and (c); and (iii) providing a hearing; and (F) have the authority to disapprove a State plan for not meeting the requirements of this part, but shall not have the authority to require a State, as a condition of approval of the State plan, to include in, or delete from, such plan one or more specific elements of the State's academic content standards or to use specific academic assessment instruments or items.

Title I refers to the Secretary of Education 346 times and in 197 of those cases the reference is followed by the operational words *may* or *shall*. Many of these references are strictly obligations such as in 1119(b)(2)(A) where it states “the Secretary shall publish a notice in the Federal Register seeking public comment”; however, others as noted above give enormous discretionary powers to the US Department of Education bureaucracy with no statutory appeal or oversight.

There are limitations on such authority such as

§1116 (d) CONSTRUCTION– Nothing in this section shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining

agreements, memoranda of understanding, or other agreements between such employees and their employers.

However, as the text states, these limits are only imposed externally, not internally within the legislation. This would achieve the *Just* rating for *Limitation of Bureaucratic Reach*, as the state law is explicitly allowed to trump this federal legislation. Therefore this axial theme is rated *Just*.

Axial theme 2: Power of State Departments of Education.

§1111(b)(2)(A) IN GENERAL- Each State plan shall demonstrate that the State has developed and is implementing a single, statewide State accountability system that will be effective in ensuring that all local educational agencies, public elementary schools, and public secondary schools make adequate yearly progress as defined under this paragraph.

§1111 (b)(2)(I) Each year, for a school to make adequate yearly progress under this paragraph -- (i) each group of students described in subparagraph (C)(v) must meet or exceed the objectives set by the State under subparagraph (G).

Title I very explicitly gives enormous power to the individual state departments of education. This power is spelled out in 352 different references to this bureaucracy. Like in the federal statutes, there are some cases where the individual state departments of education are given responsibilities of support or notification; however, as in the above references, the power vested in the state level bureaucratic system is one of significant control. Like the above axial theme, §1116(d) explicitly limits the power of this law to give state regulators power over local schools and communities. This does imply that

Title I forbids state laws to give state level bureaucracy that control over local schools; however, that issue is outside the evaluation of Title I. The most local input that Title I requires in these cases is consultation with local officials such as in §1111(a)(1); however, this does not appear to be anything more than just that consultation.

As for the content of Title I's text, I judge it *Unjust* because although the caveat in §1116(d) implies some local control, the rest of the document, in its empowerment to set and judge standards, appears to assume such control is already out of the reach of local officials.

Axial theme 3: Power of local educational agencies (LEA's).

§1113(b)(7) A State educational agency that receives a grant under this subsection shall allocate at least 95 percent of the grant funds directly to local educational agencies for schools identified for school improvement, corrective action, or restructuring to carry out activities under section §1116(b), or may, with the approval of the local educational agency, directly provide for these activities or arrange for their provision through other entities such as school support teams or educational service agencies.

Despite the above guarantee of receiving most of the Title I moneys, the vast majority of the 222 references to LEA's were not to stipulate their power over their school systems, but rather to relate the obligations they incur under this legislation. This is the exact opposite of the state and federal axial themes. Title I clearly envisions the LEA as subject to the control of state and federal regulatory bureaucracy. The detail and

level of control over local officials looks very much like the *Highly Unjust* rating level in Table 19. Thus for this axial theme I rated Title I as *Unjust*.

Conclusion.

Table 19 calls for the policy to clearly limit the latitude of the bureaucratic structure as a measure of democratic justice. Title I does not do this. Though one of the axial themes rated as just and two as unjust, the overarching pattern of this legislation is to highly empower unelected officials to exercise enormous and unchecked power over LEA's and local communities. According to the indicators on Table 19, Title I is very problematic in its impact on democratic justice. The indicator for *Highly Unjust* states "The policy document explicitly authorizes or otherwise empowers state and local bureaucracy to fully control local educational institutions without oversight or input of local elected representatives, locally appointed educational personal and private citizens." I therefore conclude that on the measure of fostering a *Democratic Educational System*, Title I is *Highly Unjust*.

Tool evaluation.

This lever was entirely rewritten. The prior version of this lever was focused on bureaucratic threats to the overlapping consensus, while the current version is more basic with a more general concern about the power of the bureaucratic mechanisms. This change came as a direct result of the review of Title I and the legislation's empowerment of both state departments of education and of LEAs.

Difficulties:

- 1) As noted above, once I had evaluated half of Title I, I realized I had problems with several of the levers in the first arena. There was too much overlap between this lever and *Overlapping Consensus* and there was not sufficient separation between the concept of empowering citizens and the limiting of the power of unelected officials in the *Democratic Education System* lever. The solution was to modify the other two levers and completely rewrite this one in order to capture the concepts originally envisioned.
- 2) Of particular concern in the rewrite was the need to separate the intent of this lever from that of *Democratic Educational System*. This was done primarily in the second half of the narrative text that emphasizes the directionality of this lever.

Table 19 as revised did operate as hoped to uncover the strengths and weakness of Title I as it relates to the need to limit the reach of bureaucratic systems.

The Difference Principle: Does this policy provide for disproportionate resource allocation to the Least Advantaged Children?

“Social and economic inequalities are to . . . be to the greatest benefit of the least advantaged members of society.” (Rawls, 2005, p. 6)

I am aware that strictly speaking, Rawls’s use of the *difference principle* is primarily presented as an economic concept dealing with the distribution of basic goods as presented in *A Theory of Justice* (Rawls, 1999a, p.65). I have, however, taken his broader view of goods as all the things necessary to build a just and equitable society (Rawls 1999b, p. 361). Thus, the call for disproportionate educational resource

allocations for the least advantaged is squarely within the intent of the Rawls's difference principle.

Though Kant and Locke both supported the proposition that it was government's role to support the poor (Freeman, 2007, p. 86), Rawls takes this further by his concept of an obligation to all the least advantaged, not just the poor (Rawls, 1999a, p. 83). Rawls calls it background justice when the systems are created to increase the likelihood of a just outcome of procedural justice (Rawls, 2001, §14). The levers in this area are designed to measure the policy's commitment to providing disproportionate resources to the least favored children.

Lever: Ongoing Assistance for Least Advantaged Students.

The revised lever.

Rawlsian distributive justice requires that children who are least advantaged and are not progressing to their maximum potential should be given assistance for as long as needed. This includes assistance for both physical and mental obstacles to reaching the child's potential. The policy stipulates that measure of success cannot be "average" but rather the maximum of the individual child's ability. This lever is not measuring resources directed at needy schools but to individual children.

Table 20: Ongoing Assistance for Least Advantaged Students Rating Scale

Rating Level	Indicator
Highly Just	The policy document requires identification of and compensatory assistance for the least advantaged children who are performing below their maximum capability. The policy should require this assistance to be provided for as long as needed to reach and maintain that level of functioning.
Just	The policy document requires identification of and compensatory assistance for the least advantaged children who are performing below their maximum capability. The policy does not require individualized assessment for maximum ability but rather uses generic benchmarks to cut off compensatory services.
Not Addressed Unjust	The policy is too far removed from this issue to be relevant. The policy addresses student performance but makes no effort to disaggregate to identify the least advantaged children or does not require compensatory assistance for such children.
Highly Unjust	The policy document addresses student performance and either (1) allows disproportionate resources for the most advantaged children, or (2) forbids disproportionate resources allocated to the least favored.

Policy Evaluation

Title I has a great deal of text that cycle one coding related to this lever (36 pages). That provided an early indicator that this would be well covered, and it was. In particular, Title I includes a great deal of specific guidance for ensuring the needs of very vulnerable students, such the children of migrant workers. Second cycle coding found a total of six themes that once I reanalyzed, I was able to collapse into the three below: assessment/identification, coordination and continuation.

Axial theme 1: Assessment/identification.

§1115(2) CHILDREN INCLUDED- (A) IN GENERAL- Children who are economically disadvantaged, children with disabilities, migrant children or limited English proficient children, are eligible for services under this part on the

same basis as other children selected to receive services under this part. (D)

NEGLECTED OR DELINQUENT CHILDREN- A child in a local institution for neglected or delinquent children and youth or attending a community day

program for such children is eligible for services under this part. (E) HOMELESS

CHILDREN- A child who is homeless and attending any school served by the local educational agency is eligible for services under this part.

§1301(3) ensure that migratory children are provided with appropriate educational services (including supportive services) that address their special needs in a coordinated and efficient manner; (4) ensure that migratory children receive full and appropriate opportunities to meet the same challenging State academic content and student academic achievement standards that all children are expected to meet; (5) design programs to help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit the ability of such children to do well in school, and to prepare such children to make a successful transition to postsecondary education or employment; and

§1414(c)(2) provide an assurance that in making services available to children and youth in adult correctional institutions,

This axial theme deals with the importance of actually identifying the least advantaged children. Title I does an excellent job of specifically identifying the types of children that are clearly least advantaged, but might not be immediately visible to schools: homeless children, migrant children, children who are incarcerated; children in

protective custody and children with limited English skills. By specifically adding these groups to those children identified as disabled under IDEA and those who are economically disadvantaged, Title I is able to rate *Highly Just* on the efforts to identify the least advantaged.

Axial theme 2: Coordination.

§1112(b) PLAN PROVISIONS- (1) IN GENERAL- In order to help low-achieving children meet challenging achievement academic standards, each local educational agency plan shall include (D) a description of the strategy the local educational agency will use to coordinate programs under this part with programs under title II to provide professional development for teachers and principals, and, if appropriate, pupil services personnel, administrators, parents and other staff, including local educational agency level staff in accordance with sections 1118 and 1119; (E) a description of how the local educational agency will coordinate and integrate services provided under this part with other educational services at the local educational agency or individual school level, such as (i) Even Start, Head Start, Reading First, Early Reading First, and other preschool programs, including plans for the transition of participants in such programs to local elementary school programs; and (ii) services for children with limited English proficiency, children with disabilities, migratory children, neglected or delinquent youth, Indian children served under part A of title VII, homeless children, and immigrant children in order to increase program effectiveness, eliminate duplication, and reduce fragmentation of the instructional program;

The requirement of planned coordination of services for the least advantaged is a key component to the *continuing* portion of this lever. The coordination required by this lever is twofold. One is coordination with other legislations such as the Individuals with Disabilities Education Act (IDEA), the Carl D. Perkins Vocational and Technical Education Act of 1998, the McKinney-Vento Homeless Assistance Act, and other Acts (§1112a1). As evidence of this priority there were forty-two references in Title I to coordination, thirteen of those to the IDEA. The other intent is to coordinate with other agencies and programs such as Head Start.

The lever was written specifically with the intent to emphasize the broad scope ongoing nature of support to the child (as opposed to limited scope measures). The clear requirements for coordination on a variety of fronts give this a *Highly Just* rating on this axis.

Axial theme 3: Continuation.

Despite sections like §1414(c)(2) which focus on adolescents in correctional facilities and §1802 for high school dropout prevention, I saw little evidence for requirements for maintenance of support for children who are the least advantaged through their school career. However, this does not mean it is not implied because as previously noted there are many references to legislation like IDEA that has very stringent requirements for maintenance of support. Thus it is very difficult to judge whether the maintenance requirements were intended to be met via the associated legislation.

Conclusion.

I therefore conclude that on the measure of fostering the lever, *Ongoing Assistance for Least Advantaged Students*, Title I is very successful; however, I reserve the assessment of the *Highly Just* rating because Title I could have included language reinforcing the need for maintenance, but it did not. Therefore I give this lever the rating of *Just*.

Tool evaluation.

The explanatory portion of this lever was modified to make clear that this lever would not include interventions for the least privileged students at the school level, but only at the individual level. The rating scale's indicators (Table 8) were modified specifically to clarify the focus on *the least advantaged*. The data's focus on identification of those children was the reason for the addition of that language in Table 20.

Difficulties:

- 1) As noted in the evaluation section, a weakness of this lever lies in that, at least in Title I, the active mechanisms of how the interventions will be applied are in other laws. Conceivably with a homeless, migrant child with a learning disability, several pieces of legislation come into play, all of which are called upon specifically in Title I. This certainly confounds the assessment of Title I. But as noted in my conclusion, this overlap does not absolve the writers of this legislation from an obligation to call for maintenance of support. In fact, the very fact many laws come into play would seem to necessitate some sort

of blanket requirement to bridge the potential gaps between them. Thus, though this presented a difficulty, it is in fact not a liability for the tool.

- 2) A second problem, that of separating called-for assistance for students from calls for support of schools. Much of the support promised in Title I is geared for schools to generally improve education, which in theory, improves the condition of the individual child. The wisdom of this approach is beyond the scope of this tool; however, the lack of clarity could be a problem. The solution came by modifying the narrative to narrow the criteria of this lever to specifically refer to the child, and to rewrite another of the levers to address the school.

As revised, Table 20 operated as hoped to uncover the strengths and weakness of Title I as it relates to ongoing assistance for least advantaged students.

Lever: Financial Adequacy.

The revised lever.

It is axiomatic that if schools are to achieve the compensatory goals envisioned by Rawls, there must be adequate and equitable funding. Because Rawls values financial liberties as secondary issues, the needs of providing a just education outweigh the economic liberty rights of citizens, thus paving the way for sufficient taxation to achieve equity. It could be argued, as the Committee for Economic Development CED does, that provision of adequate funds for just education will achieve a net economic benefit (Freeman, 2007, pp. 88-89); however, by making such an argument the case for the primacy of justice is undermined.

Table 21: Financial Adequacy Rating Scale

Rating Level	Indicator
Highly Just	The policy document requires funding that is sufficient for execution of a just educational system as described in this tool with differential spending for the least advantaged built in.
Just	The policy document requires funding that is sufficient for the justice needs of every student and in the eventuality of a shortfall, at least as much money is spent on the children who are the least advantaged as is spent on the most advantaged.
Not Addressed	The policy does not address finance.
Unjust	The policy document requires funding that is sufficient for the needs of every student but does not address equality of spending.
Highly Unjust	The policy document addresses funding but does not require funding that is sufficient for the needs of every student nor does it require equality of spending.

Policy Evaluation

In this lever, Title I is only partially applicable in that the funds for Title I are not intended to be the base of finance for the schools, but rather to supplement state and local funding. §1120A(b) states plainly, “A State educational agency or local educational agency shall use Federal funds received under this part only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds.” Therefore on its face Title I cannot be used to judge the overall adequacy of spending within schools and all schools do not get funding from Title I. Interestingly, the entirety of §1125AA is a review of the use of Title I monies in the past including (a)(3) that states, “Fifty-eight percent of all schools receive at least some funding under this part, including many suburban schools with predominantly well-off students. (4) One out of every 5 schools with concentrations of poor students between 50 and 75 percent receive no funding at all under this part.” This text indicates that the

writers of NCLB were aware that the moneys were not always going to the neediest schools and (a)(9) states strongly that “Congress has an obligation to allocate funds under this part so that such funds will positively affect the largest number of economically disadvantaged students.”

However, neither this nor §1125A provides grants for states that meet the certain funding targets based on per capita income, and national spending targets actually provide funding guarantees as envisioned by this lever. This does not mean Title I is unjust according to this lever, but rather minimal funding guarantees are not addressed.

Notwithstanding this fact, I address the axial themes discovered as part of the evaluation of the measurement tool.

Axial theme 1: Rewarding just educational spending.

§1125A(b) Distribution Based Upon Fiscal Effort And Equity-(2)(B), the effort factor for a State shall be determined in accordance with the succeeding sentence, except that such factor shall not be less than 0.95 nor greater than 1.05. The effort factor determined under this sentence shall be a fraction the numerator of which is the product of the 3-year average per-pupil expenditure in the State multiplied by the 3-year average per capita income in the United States and the denominator of which is the product of the 3-year average per capita income in such State multiplied by the 3-year average per-pupil expenditure in the United States.

The provisions of §1125A call for both adequacy and equity of school spending based on formulas based on both the relative wealth of the region and the patterns of national spending on schools. The reward for meeting these baselines is additional federal

funds to supplement state funds. The problem with this approach is that it rewards those children in well-funded school systems with more money and provides nothing for children who live in underfunded school systems. Thus, the law punishes the victims. This approach is on its face unjust.

Axial theme 2: Specific compensatory spending targets.

§1124 9(a)(4) PUERTO RICO (A) For each fiscal year, the grant that the Commonwealth of Puerto Rico shall be eligible to receive under this section shall be the amount determined by multiplying the number of children counted under subsection (c) for the Commonwealth of Puerto Rico by the product of (i) subject to subparagraph (B), the percentage that the average per-pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per-pupil expenditure of any of the 50 States; and (ii) 32 percent of the average per-pupil expenditure in the United States.

The above language is mirrored with calls for funding in §1117(c)(4) for high poverty areas and in §1121(d) for Native Americans. Less comprehensive language is given for migratory children in §1308(b)(3) and for children in government custody in §1423. By providing specific language to ensure inclusion of children that might otherwise be left out of receiving benefits of Title I, the overarching goal of this arena, disproportionate resources for the least advantaged, has been addressed. Therefore this axial lever rates *Highly Just*.

Conclusion.

I therefore conclude that on the measure of ensuring *Financial Adequacy*, Title I has a mixed review in the axial levers; however, by its nature Title I is supplementary and therefore cannot be expected to guarantee adequate funding. Therefore I rate it *Not Addressed*.

Tool evaluation.

The fact that this legislation does not get a positive or negative rating on justice does not reflect badly on the tool. On the contrary, the very fact even a piece of legislation with the reach of Title I does not hit all 14 levers helps make the point that just because a policy does not meet all forms of justice it does not make it unjust. Rather the lack of direct reference draws attention to the parts of the educational policy milieu not covered by the legislation under review.

The second axial theme brought to the fore the advantages of using the arena and lever model. In the analysis I showed how the arena goals can be brought to bear on the axial theme even if not clearly laid out in the rating scale indicators. This helps to provide unity in analysis and instruction to future users of this tool.

Neither the explanatory portion of this lever, nor the rating scale's indicators (Table 10) were modified from the proposal. The original wording worked well without modification.

Difficulties:

- 1) The most difficult issue, as noted above, was in deciding how to deal with the fact that Title 1 is supplementary. Because the primary purpose of this project

was to create and test the evaluation tool, it was problematic to simply state why this lever does not apply. That is why I chose to present two axial themes even though I had already decided on the conclusion. I would not think this would be necessary in the usage of this tool outside this dissertation.

- 2) A second difficulty arose with the sheer volume of themes presented. My second cycle of coding came up with 8 distinct themes with limited ability to collapse them. In considering the themes individually, I concluded that most were too far outside the goals of this lever. For instance, one theme was on fiscal controls. The legislation repeatedly sets limits on how much money the State educational authority can take from Title I before forwarding the money to LEA's. In other types of reviews, this might be significant, but for this measure of justice I did not think such topics were sufficiently germane to this lever.

Table 21 did not operate as hoped. The *Not Addressed* conclusion showed the limits of Title I's reach and the usefulness of the tool.

Lever: Early Childhood Measures.

The revised lever.

Building on the evidence cited in chapter two regarding the significant deficit faced by low income children when they enter school, the application of the difference principle requires that the concept of publicly funded education be extended for the least advantaged to just after the child's birth. Drawing from Rawls's expansive view of "least advantaged" this vision would include those children with physical challenges as well as

those children born into impoverished homes where educational and emotional resources are insufficient for school readiness. In this instance, the primary caregiver (i.e. parent) is part of the educational system and is also a recipient of educational services in order to succeed at their societal task as primary teacher. It is beyond the scope of this study to specify what type of intervention is most effective, but the acceptance of the social obligation to intervene must be explicit.

Table 22: Early Childhood Measures Rating Scale

Rating Level	Indicator
Highly Just	The policy document explicitly stipulates that the process to provide educational equity and compensatory services to the least advantaged children begins at birth.
Just	The policy document suggests or otherwise encourages the process to provide educational equity and compensatory services to the least advantaged children begins at birth
Not Addressed	The policy is too far removed from this issue to be relevant. Policies exclusively targeted narrowly at children beyond the preschool age (i.e. high school) would not be applicable to this measure.
Unjust	The policy is broad enough in scope to include early intervention language, but does not include any.
Highly Unjust	The policy explicitly denies the responsibility for early childhood intervention.

Policy evaluation.

The evaluation of this lever is made in part with the specific focus on the use of early-childhood programs as a compensatory effort for those who are the least fortunate. Title I has a significant focus on this area, and the legislations provided more than just a few axial themes.

Axial theme 1: Least favored young children focus.

§1115(b)(1)(A)(ii) children who are not yet at a grade level at which the local educational agency provides a free public education.

§1115(b)(2)(A) Children who are economically disadvantaged, children with disabilities, migrant children or limited English proficient children, are eligible for services under this part on the same basis as other children selected to receive services under this part.

The basis of the *difference principle* is that those who are least favored have access to additional resources. To meet the justice requirement for this theme Title I must make efforts to target the early childhood program toward those children who have additional needs. The above section is tied to the sub-part 1 “Basic Program Requirements.” As such §1115(b) does directly address the identification of those children who have additional needs. In §1238(a)(1)(B) the definition of need is expanded to include not only children and families “as indicated by high levels of poverty, illiteracy, unemployment, limited English proficiency,” but also schools with a high number or percentage of parents who have been victims of domestic violence and parents who are legally disabled. Similar language is found in §1222(b), §1231(1) and §1236. As such Title I scores *Just* on this axial theme.

Axial theme 2: Coordination of service.

§1112(b)(1) In order to help low-achieving children meet challenging achievement of academic standards, each local educational agency plan shall include (E) a description of how the local educational agency will coordinate and

integrate services provided under this part with other educational services at the local educational agency or individual school level, such as — (i) Even Start, Head Start, Reading First, Early Reading First, and other preschool programs, including plans for the transition of participants in such programs to local elementary school programs;

Title I makes 32 references to Head Start and 28 references to Even Start (both early childhood pre-school programs) being included in educational planning by LEA's or the state. The above citation from §1112(b)(1) is mirrored in other sections such as in §1118(a)(2) where LEA's are required to “coordinate and integrate parental involvement strategies under this part with parental involvement strategies under other programs, such as the Head Start program, Reading First program, Early Reading First program, Even Start program, Parents as Teachers program, and Home Instruction Program for Preschool Youngsters, and State-run preschool programs.”

I believe this requirement of coordination of LEA's with other agencies' early childhood programs indicates that Title I is designed to positively impact coordination between K-12 schools as early childhood programs. Thus this axial theme rates *Just*.

Axial theme 3: Family inclusive approach.

§1201 The purposes of this subpart are as follows (5) To strengthen coordination among schools, early literacy programs, and family literacy programs to improve reading achievement for all children.

§1202 (i) Humanities-based family literacy programs (which may be referred to as Prime Time Family Reading Time) that bond families around the acts of reading and using public libraries.

Title I makes 47 references to Family Literacy as crucial to the overall success of the neediest children. The texts often link these references to family literacy in general, or the Even Start program in specific, to early preschool efforts such as Head Start such as in §1112(b)(1)(E)(i), §1112(b)(1)(K) or §1114 (b)(1)(G). This linkage indicates a recognition that school/center based early childhood compensatory programs are inextricably linked to family based interventions. Though Title I does concentrate this family focus on literacy development, it does reflect the intent of this lever; thus I rate this axial theme as *Just*.

Axial theme 4: Quality of efforts.

§1119 (c) (1) . . . all paraprofessionals hired after the date of enactment of the No Child Left Behind Act of 2001 and working in a program supported with funds under this part shall have (A) completed at least 2 years of study at an institution of higher education; (B) obtained an associate's (or higher) degree; or (C) met a rigorous standard of quality and can demonstrate, through a formal State or local academic assessment

§1235(5(A)(i) a majority of the individuals providing academic instruction (I) shall have obtained an associate's, bachelor's, or graduate degree in a field related to early childhood education, elementary school or secondary school education, or adult education; and (II) if applicable, shall meet qualifications established by the

State for early childhood education, elementary school or secondary school education, or adult education provided as part of an Even Start program or another family literacy program (iii) paraprofessionals who provide support for academic instruction have a secondary school diploma or its recognized equivalent; and (B) all new personnel hired to provide academic instruction (i) have obtained an associate's, bachelor's, or graduate degree in a field related to early childhood education, elementary school or secondary school education, or adult education;

The requirements for the education and qualifying of staff are significant in that they counter the trends in early childhood education that indicate there is low level of education in preschool education and that it is getting lower as time goes on (Bradley, Price & Herzenberg, 2005). The requirements in Title I to have professional staff in programs for low income young children indicate a commitment to justice as envisioned by this lever. This axial theme rates *Just*.

Conclusion.

On each of the axial themes found in the data, I found high levels of agreement with this lever's intent. Title I provides for a coordinated community wide effort to benefit the least advantaged children, however, much of the programming discussed is of a voluntary nature by LEA's and schools and thus does not reach the level of *Highly Just*. Title I succeeds in reaching the *Just* rating on this lever.

Tool evaluation.

The explanatory portion of this lever was modified to clarify that programs geared to improve family literacy and other parenting support programs fit within the scope of

this lever. The rating scale's indicators (Table 7) were only changed in minor ways to improve clarity.

Difficulties:

- 1) The difficulty in applying the tool to Title I lies in the fact that this section relies on knowledge of Head Start and other programs not covered directly in Title I. Thus to make judgment on this lever an evaluator needs to either have prior knowledge of these programs or do extensive research. In my case this was not a problem given my 15 years in early intervention and a familiarity with current literature; however, this might make this lever more difficult for some others.

Table 22 operated as hoped to uncover the strengths and weaknesses of Title I as it relates to its focus on early intervention for the least favored.

Lever: Compensation for Low Social Capital.

The revised lever.

The concern was raised in chapter one that children from low income homes often do not have parents with sufficient social capital to ensure the system works to their best advantage. Sacks (2007) showed how parental influence and knowledge of the educational system skewed the outcomes in favor of wealthier children. Ideally, educating and empowering the parents is a solution to this problem; however, absent the larger social changes that would allow all parents to have the social capital to foster their children's success, the just educational policy will include not only efforts to educate and

empower but also provisions for independent advocates to act *in loco parentis* to mimic the positive effects of social capital.

Table 23: Compensation for Low Social Capital Rating Scale

Rating Level	Indicator
Highly Just	The policy document requires measures for parent education and empowerment and independent advocates for low SES children and other children who lack effective familial advocates with authority to act <i>in loco parentis</i> if the parent and/or child wish.
Just	The policy document requires mechanisms and/or procedures to ensure proactive efforts to compensate for the lack of social capital of low SES and other marginalized children.
Not Addressed	The policy is too far removed from this issue to be relevant.
Unjust	The policy covers or creates systems that involve procedural processes that could reasonably be seen to favor families with high social capital, but fails to provide proactive efforts to ensure equal access to those who do not have such social capital. Note: this would include issues involving language barriers.
Highly Unjust	The policy creates or supports systems that can be reasonably foreseen to make significant decisions about a child’s education without a requirement of meaningful parental consultation.

Policy evaluation.

The call for social capital compensation for those children who do not have caregivers with the resources to efficiently advocate for their best interests is one of the levers I have the most difficulty approaching dispassionately given my years doing this very work. Though leaving all too many holes, Title I still is laced with meaningful policy sections in this lever.

Axial theme 1: Coordination of services.

§1112(b)(1)(E) a description of how the local educational agency will coordinate and integrate services provided under this part with other educational services at

the local educational agency or individual school level, such as (i) Even Start, Head Start, Reading First, Early Reading First, and other preschool programs, including plans for the transition of participants in such programs to local elementary school programs; and (ii) services for children with limited English proficiency, children with disabilities, migratory children, neglected or delinquent youth, Indian children served under part A of title VII, homeless children, and immigrant children in order to increase program effectiveness, eliminate duplication, and reduce fragmentation of the instructional program;

Sec. 1120B(b)(2) establishing channels of communication between school staff and their counterparts (including teachers, social workers, and health staff) in such Head Start agencies or other entities carrying out early childhood development programs such as the Early Reading First program, as appropriate, to facilitate coordination of programs;

Title I calls for two different levels of coordination. There are many calls for agency cooperation. §1114(b)(1)(J) calls for “coordination and integration of Federal, State, and local services and programs.” The other, less common, call for coordination is of services for individual children, such in the above two sections. This requirement for coordination is essentially a call to take the necessary steps to ensure a complete and seamless provision of service *in loco parentis*. Thus on this axis, Title I has met their justice obligation.

Axial theme 2: Advocacy.

§1302(C)(6) to the extent feasible, such programs and projects will provide for (A) advocacy and outreach activities for migratory children and their families, including informing such children and families of, or helping such children and families gain access to, other education, health, nutrition, and social services;

The language in §1302(C)(6) is excellent and exactly what I intended when I penned the indicators in Table 23. It calls for advocacy for both the child and family who *prima facie* are examples of being least favored, i.e. migrants. However, this strong language acts as evidence of Title I's injustice because it is only included with reference to migratory children. The inclusion of this language establishes that such requirement for advocacy is possible for all least advantaged children, but has been omitted.

Therefore, on this axis I rate Title I *Highly Unjust*.

Axial theme 3: Outreach.

§1112(g)(4) PARENTAL PARTICIPATION - Each local educational agency receiving funds under this part shall implement an effective means of outreach to parents of limited English proficient students to inform the parents regarding how the parents can be involved in the education of their children, and be active participants in assisting their children to attain English proficiency

Although the word "outreach" is only used 3 times in Title I, the principle of reaching into the community to assist parents in acquiring their own social capital is throughout Title I. For instance, Subpart 2: *Early Reading First* and Subpart 3: *William F. Goodling Even Start Family Literacy Programs* are both programs that build social

capital for the families. Additionally, §1118: *Parental Involvement* is also designed in such a way as to build parental social capital. Because of this, I rate this axial theme as *Highly Just*.

Conclusion.

Title I is inconstant when it comes to *Social Capital Compensation* as addressed by the indicators in Table 22. While scoring just on both coordination of services and on outreach to build social capital in families, it scores unjust on advocacy. The texts of Table 22 requires advocacy for a *Highly Just* rating, but not for a *Just* rating; therefore, the rating of *Just* is appropriate.

Tool evaluation.

This lever, as spelled out in chapter 3, is designed to measure how well Title I addresses the inequitable distribution of social capital. I was pleased with how well the revised tool worked in the process in highlighting the strengths and weakness of Title I. The explanatory portion of this lever was modified to better explain the goals in light of becoming more acquainted with the way legislation is written. The lever indicators were revised to fully include the concept of building social capital in the parents as a goal on par with providing external support for children.

Difficulties:

- 1) In the first cycle of coding I had not identified as many sections of Title I as I came to believe applied while I worked on the second cycle of coding for other levers. Therefore, I used the search functions of MS Word to look for phrases that were relevant to this lever, words such as coordination and

advocacy. In doing so I significantly increased the number of sections that appeared relevant to this lever.

Table 23 operated as I had hoped to uncover the strengths and weakness of Title I as it relates to the lever *Compensation for Low Social Capital*.

Lever: Differential School Resources.

The new lever.

Note: This is an entirely new lever, not a revision of a lever from the first version of the tool.

Children are not generally educated one by one (U.S. Department of Education, 2009); they are educated in schools. Though Rawlsian political liberalism is predicated on the individual human, he does stipulate that basic institutions also are governed by the difference principle (Rawls, 1999a, §16). In this the basic unit in the measure of educational program justice would be the school. As such, Rawls's requirement that in the presence of inequalities, a just society will ensure the most benefits be directed to the least advantaged (Rawls, 1999a, p. 68) should be applied to individual schools. When Rawls defines "least advantaged" he gives three domains: social status, wealth and unfortunate circumstance (Rawls, 1999a p. 83). All three are applicable at the school level. For this lever resources include, but are not limited to, facilities, equipment, circular materials, extra-curricular opportunities and faculty/administrative quality.

Table 24: Differential School Resources Rating Scale

Rating Level	Indicator
Highly Just	The policy document explicitly lays out the principle and/or practice that those schools that are characterized by students who are from homes that of the lowest income or social status should be provided proportionally more resources.
Just	The policy document recommends or otherwise favors that those schools that are characterized by students who are from homes that are of low income or social status should be provided proportionally more resources.
Not Addressed	The policy does not deal with resource allocation.
Unjust	The policy document deals with resource allocation but does not favor disproportionate resource allocation to schools characterized by students who are from homes of low income or social status.
Highly Unjust	The policy forbids disproportionate resource allocation to schools characterized by students who are from homes of low income or social status. Or, the policy provides disproportionate resource allocation to schools for reasons other than those addressed in this lever.

Policy evaluation.

Differential School Resources is the heart of Title I. There was more text on how additionally funds were to be targeted for the neediest schools and how this was to be determined than any other topic. Though there was a great deal of text, much was technical in nature dealing with formulas and such, leaving just two axial themes: targeting schools from the poorest communities and targeting schools with the least resources

Axial theme 1: Targeting schools from the poorest communities.

§1113. ELIGIBLE SCHOOL ATTENDANCE AREAS (a) DETERMINATION
 (3) RANKING ORDER- If funds allocated in accordance with subsection (c) are insufficient to serve all eligible school attendance areas, a local educational agency shall (A) annually rank, without regard to grade spans, such agency's

eligible school attendance areas in which the concentration of children from low-income families exceeds 75 percent from highest to lowest according to the percentage of children from low-income families;

In determining the allocation of funds in the core section of Title I, there are repeated calls to target the schools serving students from the lowest income homes. The language above is mirrored in §1113(b)(1) and in §1113 (c)(1). Then later in 10 different cases reference is made for use of the methods to determine schools with the poorest population using the formulas in §1113. This section represents exactly what is intended in this lever in identifying those schools with the highest concentrations of least advantaged students. Therefore I rate this axial theme *Highly Just*.

Axial theme 2: Targeting schools with the least resources.

§1003(c) PRIORITY - The State educational agency, in allocating funds to local educational agencies under this section, shall give priority to local educational agencies that — (1) serve the lowest-achieving schools; (2) demonstrate the greatest need for such funds; and (3) demonstrate the strongest commitment to ensuring that such funds are used to enable the lowest-achieving schools to meet the progress goals in school improvement plans under section 1116 (b)(3)(A)(v)

In §1003 and §1116 the intent is to bring additional scrutiny and resources to those schools with the least successful students. Although the justice of the methods Title I uses to remedy the low achievement is addressed in other levers, this lever focuses on identifying that children who attend low performing schools are less advantaged than those in high performing schools. Therefore, Title I rates *Just* on this axial theme in that

there is significant effort made to identify those low performing schools for additional resources.

Conclusion.

I therefore conclude that on the measure of fostering differential school resources, Title 1 meets the standard laid out in by the indicators on Table 24 for a judgment of *Highly Just*. The legislation explicitly lays out how to identify schools characterized by students who are from homes of the lowest income or social status and provides for additional resources for those so identified.

Tool evaluation.

As noted above, this is an entirely new lever. After conducting the first cycle coding on approximately half of Title 1, it became evident that I had not included anything that addressed school level resource allocation. This had been deliberate in my effort to keep the focus on the individual; however, as I read the text of Title I it became clear that while that resource allocation can be given to individuals (i.e. in an IEP), the school is the basic unit of educational funding and thus should be considered in a new lever.

Difficulties:

- 1) Once I had decided I needed to create a new lever, I had to go back to Rawls to ensure justification and then to repeat first cycle coding on the first part of Title I before moving forward.
- 2) The text of Title I gives a great deal of rather arcane directives in §1125A dealing with what is labeled the *Equity Factor*. The language deals with

formulas about dividing monies within a state. Although appearing to be significant to a justice analysis, in the end it was simply the application of §1113. This type of interconnected policy is why Title I needed to be addressed as an entire unit, not in pieces.

Table 24 operated as hoped to uncover the strengths and weakness of Title I as it relates to the justice need of providing differential school resources.

Fair Equality of Opportunity: Does this policy promote equal freedom of life goals?

“Social and economic inequalities are to . . . be attached to positions and offices open to all under conditions of fair equality of opportunity” (Rawls, 2005, p. 6).

The first arena was to provide background for justice, and the second for resource justice. This last arena is for actual outcome goals. To Rawls the entire purpose of publicly funded education was to produce empowered citizens able to take their place as equals no matter what their career or financial status. To Rawls economic disparities are only justified when there is a background guarantee of practical political equality. It is to that end Rawls believed publicly funded schools were to be focused.

Lever: Liberal Educational Goals.

The revised lever.

To Rawls, the goal of a just society is first and foremost to have citizens who have respect for themselves and equal respect for others. Using the Aristotelian concept of maximum utilization of innate talent being the greatest good, a Rawlsian view would see the end of successful education as the preparation for self-fulfillment (Rawls, 1999a,

§65). Thus, educational policy should reflect maximization of self as a goal as an end in itself as opposed to utilitarian economic goals.

Table 25: Liberal Educational Goals Rating Scale

Rating Level	Indicator
Highly Just	The policy document specifically identifies bringing natural capacities to fruition in each student’s life as the end goal of the publicly funded educational process. Policy should equally privilege skills/talents that promote the goal of entering adulthood on a path to personal fulfillment.
Just	The policy document identifies the student’s bring natural capacities to fruition as the end goal of the publicly funded educational process, but skills related to financial gain are privileged over non-economic skills.
Not Addressed	The policy does not have language that relates to the goals of the educational process.
Unjust	The policy document calls for the narrowing of the school mission to functional or economically valuable skills at the expense of a program designed to enhance a broad range of natural capacities and/or privilege skills related to financial gain over non-economic skills.
Highly Unjust	The policy document only specifically identifies monetary rewards or economic benefit as the end goal of the publicly funded educational process and actively suppresses or forbids a pursuit of skills not related to economic gain.

Policy evaluation.

Although there were three themes developed, the one dealing with so called “Core” curriculum was the most far reaching and most often repeated of the three. It showed up in many contexts and was tied to strong coercive language. I had considered only discussing this one theme; however, decided that some discussion of Vo-Tech and AP classes needed to be made even if they, in themselves are not critical to this lever.

Axial theme 1: "Core" curriculum.

§1116(b)(3)(A)(i) incorporate strategies based on scientifically based research that will strengthen the core academic subjects in the school and address the specific academic issues that caused the school to be identified for school improvement, and may include a strategy for the implementation of a comprehensive school reform model that includes each of the components described in part F; (ii) adopt policies and practices concerning the school's core academic subjects that have the greatest likelihood of ensuring that all groups of students specified in section 1111(b)(2)(C)(v) and enrolled in the school will meet the State's proficient level of achievement on the State academic assessment described in section 1111(b)(3) not later than 12 years after the end of the 2001-2002 school year;

Ten times in Title I the term *core academic* content is used to emphasize the primacy of what §1705(c)(4) spells out to be English, mathematics, and science. In other places such as §1118(b)(1) these three areas are specified by name and the states are to set specific standards for these three privileged subjects.

Title I then goes on in §1118(b)(3)(A) to state:

Each State plan shall demonstrate that the State educational agency, in consultation with local educational agencies, has implemented a set of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts, and science that will be used as the primary means of determining the yearly performance of the

State and of each local educational agency and school in the State in enabling all children to meet the State's challenging student academic achievement standards, except that no State shall be required to meet the requirements of this part relating to science assessments until the beginning of the 2007-2008 school year.

It is significant that the requirement for standards in these three areas are backed up by a requirement for testing to ensure these three subjects are given paramount importance with the corresponding effect of reducing the importance of all other parts of the curriculum (Ravitch, 2010). This is precisely the type of narrowing the curriculum that this lever is designed to identify as unjust. Thus in this axial theme Title I is rated *Unjust*.

Axial Theme 2: Vo-tech.

§1414 (a) (2) CONTENTS - Each such State plan shall (A) describe the program goals, objectives, and performance measures established by the State that will be used to assess the effectiveness of the program in improving the academic, vocational, and technical skills of children in the program;

Title I makes 16 references to vocational education and not one reference to arts education. In particular, Part D of Title I targets children who are at risk with vocational training. The implication is that these children are in need of income generating skills rather than the higher level self-actualization skills. Such prioritization runs counter to the entire concept of liberal education for all children. As a result this axial theme also reflects negatively on the justice of Title 1.

Axial theme 3: The special case of Advanced Placement courses.

§1705(c) PRIORITY- In awarding grants under this section, the Secretary shall give priority to an eligible entity that submits an application under subsection (b) (2) provides for the involvement of business and community organizations in the activities to be assisted . . . (4) demonstrates a focus on developing or expanding advanced placement programs and participation in the core academic areas of English, mathematics, and science;

Part G, known as the 'Access to High Standards Act' deals with increasing the access of Advanced Placement courses (AP) to low income students. The legislation spells out the many advantages accrued by students taking AP courses and exams and then provides incentives to make them more widely available. All this reflects highly in the *Difference Principle* arena, and could have fostered a broad curriculum in poor high schools. There are 34 AP courses offered (College Board, 2013), and 21 of those courses are outside “core” curriculum, including art, music, foreign language, history and other humanities. However, as noted in §1705(c)(4), the act deliberately prioritizes those AP programs in the core curriculum, and thus, this opportunity to broaden the high school curriculum for low income children once again narrows it. Thus in this third axial theme, I find Title I to rate poorly on this justice lever.

Conclusion.

I therefore conclude that on the measure of fostering liberal educational goals, Title I is *Unjust* in that it systemically narrows the curriculum. Though it does not state that the intent of this narrowing is to prioritize the monetary value of the educational

process, it effectively reduces the range of human optimization to those skills dealing with verbal mechanics, math and science. The justice lever indicator of *Unjust* is warranted for the lever *Liberal Educational Goals*.

Tool evaluation.

This lever was renamed from *Valuation of Non-Monetary Goals* in the dissertation proposal (Figure 1) to *Liberal Educational Goals*. This change was made to bring to the fore that liberal educational goals in their broader form are indeed the outcomes of a liberal conception of a just educational system. By liberal educational system, I include the concept of non-monetary goals and the broad goals of universal cultural literacy similar to what is advocated by W. T. Harris at the turn of the 20th Century and E. D. Hirsch at the turn of the 21st Century (Ravitch, 2000; Hirsch, 1996). Like Harris & Hirsch, a Rawlsian vision for educational curriculum would be universal and focused on the student as a human and citizen, not as a worker or manager. The explanatory portion of this and the rating scale's indicators (Table 3) lever were modified to increase the clarity of the distinction between economic oriented goals and liberal goals.

Difficulties:

- 1) In conducting the first and second cycle coding, I found sections of the legislation directly applicable, but some supported liberal type goals, and others clearly favored a narrow curriculum and/or monetary type educational goals. To differentiate the positive and negative goals, in the second cycle of

coding, I adopted a method of changing the text color in the .doc file containing all the files I decided were relevant to this lever.

- 2) There was one entire section that dealt with life preparation (sub-part 2); however, the entire subpart was dealing exclusively with students who were in correctional facilities. While this is relevant for other levers, I concluded it was not applicable for this lever.

Table 25 operated as hoped to uncover the strengths and weakness of Title I as it relates to liberal educational goals.

Lever: Social Capital Development.

The revised lever.

Rawls argued, “Chances to acquire cultural knowledge and skills should not depend upon one’s class position and so the school system, whether public or private, should be *designed* to even out class barriers” (emphasis mine) (Rawls, 1999a, p. 64). This is as strong as any statement Rawls ever wrote about education. For him the importance of this lies in the fact that the ability to participate in the sociopolitical world is an integral part of having a fair equality of opportunity (Rawls, 1999a, pp. 54 -55). The ability to do this is part of social capital, the development of which can be facilitated in the school setting (Farrell, Taylor, & Tennent, 2004; Terrion, 2006); and in a Rawlsian system of justice is requisite.

Table 26: Social Capital Development Rating Scale

Rating Level	Indicator
Highly Just	The policy document explicitly acknowledges the value of the social capital amassed by children raised in high socioeconomic homes and the communities' obligation to provide compensatory experiences to children from low SES and other marginalized homes.
Just	The policy indirectly acknowledges the value of the social capital amassed by children raised in high socioeconomic homes and the communities' obligation to provide compensatory experiences to children from low SES and other marginalized homes.
Not Addressed	The policy is too far removed from this issue to be relevant.
Unjust	The policy is relevant to compensatory education, poverty or achievement gap but fails to acknowledge the impact of social capital.
Highly Unjust	The policy actively reduces the social capital of low income children through creating barriers such as financial cost of participation or transportation to low income students without addressing and correcting this equality of access issue.

Policy evaluation.

The case of this lever is particularly interesting given Title I's expressed purpose to ensure all children have an opportunity to find success in public schools and beyond. Though there are few positive sections in the legislations, the overall approach is that mastery of English, math and science is sufficient for later success in the larger society or even the larger economy. As such this might be the most telling of all the levers as to the vision of the writers of ESEA/NCLB.

Axial theme 1: Piecemeal efforts.

§1301(5) design programs to help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related

problems, and other factors that inhibit the ability of such children to do well in school, and to prepare such children to make a successful transition to postsecondary education or employment;

§1418 (a)(2)(C) essential support services to ensure the success of the youth, such as (i) personal, vocational and technical, and academic, counseling; (ii) placement services designed to place the youth in a university, college, or junior college program; (iii) information concerning, and assistance in obtaining, available student financial aid; (iv) counseling services; and (v) job placement services.

Title I, Part C, Education of Migratory Children; Part D, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk; Part G, Advanced Placement Programs; and Part H, School Dropout Prevention can all be seen as having the intent of building the social capital of students, or at least designed to give students access to social capital building experiences. Though the text even in these sections falls short of acknowledging the need for social capital equity, in several parts, as noted above, there are oblique references to providing the kinds of things that build social capital.

However, the very fact that these provisions are on a narrow scale and, while recognizing certain groups of children are likely to be underserved, draws attention to the fact that the writers did not address all children or specifically address social capital needs. Therefore, these piecemeal efforts reflect negatively on Title I's overall justice.

Axial theme 2: Narrow school focus.

The discussion regarding the narrowing of the academic curriculum in Lever *Liberal Educational Goals* is directly related to this lever. As noted in that analysis, it was concluded that the school curriculum had been sufficiently narrowed as to crowd out the liberal curriculum components. In this lever, the narrowing of the curriculum relates as it draws attention to the lack of a similar textual focus on the social development of students in publicly funded schools. Thus, this axial theme focuses on the omissions in the text rather than things found in the text. This narrowing of focus by Title I relates negatively to justice in this lever.

Axial theme 3: School choice.

§1116(b)(8) (A) FAILURE TO MAKE ADEQUATE YEARLY PROGRESS – If, after 1 full school year of corrective action under paragraph (7), a school subject to such corrective action continues to fail to make adequate yearly progress, then the local educational agency shall (i) continue to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency, in accordance with paragraph (1)(E) and (F);

§1501(a)(2) (I) State educational agencies and local educational agencies to improve the academic achievement of students in low-performing schools, and the effectiveness of the implementation of such actions, including the following:

(iii) The number of parents who take advantage of the public school choice provisions of this title, the costs (including transportation costs) associated with implementing these provisions, the implementation of these provisions, and the

impact of these provisions (including the impact of attending another school) on student achievement.

The text of Title I does not link the provision that allows children of “failing schools” to attend other schools within the same LEA jurisdiction to the issue of social capital. I find such an omission interesting and reflective of the intent of the framers of this legislation when it would be so very simple to list social capital or even a more tepid comment about the potential positive effects to students of moving from a school with a high concentration of poor students to a middle class school. This divorce by omission of social capital and academic success is troubling in my overall analysis of Title 1.

As this assessment is not about the actual effectiveness of, but the justice of, the text and stated intent, the practical issues of school choice that Ravitch (2010) and others bring up regarding the net effect of choice are not germane. What is significant is the privileging of test results in core academic subjects over the student’s ability to function in society. This leads me to measure this axial theme as uncovering injustice in Title I.

Conclusion.

I therefore conclude that on the measure of fostering social capital development Title I fails to meet the basic standard of acknowledging the value of the social capital amassed by children raised in high socioeconomic homes and communities or to offer any reference to the publically funded educational system to provide compensatory experiences to children from low SES and other marginalized homes. Therefore, using the indicators in Table 26, I rate Title I *Unjust* on the indicators for this lever.

Tool evaluation.

Both the title of this lever and the explanatory portion of this lever were modified during the course of cycle two coding; however, the rating scale's indicators in Table 11 were not changed. I concluded that the first title and explication could be confused with the lever of *Compensation for Low Social Capital*. Despite this rewrite, the intent of the lever was not changed.

Difficulties:

- 1) The primary difficulty in this lever was the fact I was dealing mostly with omission of language that seemed to be called for. What made this lever more difficult than prior levers was the fact that so much appeared to be related, but no linkage was drawn in the legislation to the justice issue. After a good deal of analysis, I decided this was not a weakness of the tool at all, but rather it brought to the fore an unexpected strength. By bringing attention to sections of Title I that at once could have been justified as an effort at liberal justice, but instead limiting the justification of such sections as a kind of economic utilitarianism, this lever provides evidence that the authors of Title I did not have in mind the kind of justice envisioned by Rawls.

Table 26 operated better than had been hoped to uncover the strengths and weaknesses of Title I as it relates to social capital development. It appeared to work in an unexpected way to give evidence that the framers of Title I did not seek to make it a tool of liberal justice. The analysis in this lever will prove instrumental in making a final overall judgment as to the level of Rawlsian justice in Title I.

Lever: Differentiated Instruction and Testing.

The revised lever.

Rawls's *least advantaged* category includes students with learning disabilities, mental health and/or physical challenges, as well as those students who have social or economic disadvantages. Rawls's liberal conception of education prioritizes the student's academic and the student's civic (social) success as valuable. Therefore a just educational policy must include measures within the learning environment to ensure these students have equal standing with other students via differentiated instruction. Educational policy should be written to allow flexibility to both classroom teachers and to administration so as to allow for students who are the least advantaged to be a full part of the larger school community and to allow the student to maximize their own potential.

Table 27: Differentiated Instruction and Testing Rating Scale

Rating Level	Indicator
Highly Just	The policy requires instruction and testing to be adapted to for those students who are the least advantaged as to allow those students to experience full participation in the social milieu of the school. Testing requirements must be psychometrically valid in method so as to be both informative as to the student’s real progress in the discreet subject matter while accommodating for non-subject specific disadvantage.
Just	The policy provides room for instruction and testing to be adapted for those students who are the least advantaged as to allow those students to experience full participation in the social milieu of the school (but does not require it for all types of disadvantage). Testing requirements are required to be psychometrically valid in method so as to be informative as to the student’s real progress in the discreet subject matter while accommodating for non-subject disadvantage.
Not Addressed	The policy does not touch on any issues related to the needs of disabled students or defers to other applicable policy on this issue.
Unjust	The policy provides limited flexibility in instructional methods and highly limits special assistance options for disadvantaged students that will likely lead to a lack of success or exclusion from the social milieu of the school; and/or testing requirements have limited flexibility sometimes requiring disadvantaged students to abide by procedural rules that put them at a further disadvantage and/or create artificially low test scores.
Highly Unjust	The policy requires inflexible instructional methods and highly limits special assistance options for disadvantaged students that are likely to lead to a lack of success or exclusion from the social milieu of the school; and/or testing requirements forbid flexibility that requires disadvantaged students to abide by procedural rules that put them at a further disadvantage and/or create artificially low test scores.

Policy evaluation.

Title I was not created in a vacuum, but rather was written as a part of the larger NCLB legislation that works in concert with other legislation. For this analysis of Title I of NCLB, the relevant legislation is the Individuals with Disabilities Education Act of 1990 (IDEA) and its successor IDEA of 2004 passed after NCLB. Title I makes 13

specific references to IDEA which collectively tie the implementation of Title I to the rules of IDEA. Therefore this evaluation of justice for differentiated instruction and testing for children with mental or physical disabilities will defer to IDEA; however, Rawls's conception of the least advantaged encompassed a broader view including those who are socially and economically disadvantaged as well as those who fit the category of disabled.

Axial theme 1: Disabled students.

§1111(b)(3)(C)(ix)(II) the reasonable adaptations and accommodations for students with disabilities (as defined under section 602(3) of the Individuals with Disabilities Education Act) necessary to measure the academic achievement of such students relative to State academic content and State student academic achievement standards; and (III) the inclusion of limited English proficient students, who shall be assessed in a valid and reliable manner and provided reasonable accommodations on assessments administered to such students under this paragraph, including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what such students know and can do in academic content areas, until such students have achieved English language proficiency as determined under paragraph (7);

As noted before, the text of Title I clearly allows the resource allocations to abide by the stringent guidelines contained in IDEA. Though technically unnecessary as the rules for IDEA are binding, it is important that Title I makes a number of specific

references that allow the evaluator to clearly see this form of justice as the intent of this legislation. On this axial theme, I rate Title I as *Highly Just*.

Axial theme 2: Other least advantaged students.

§1114 (b) (1) A schoolwide program shall include the following components: (A) A comprehensive needs assessment of the entire school (including taking into account the needs of migratory children as defined in section 1309(2) that is based on information which includes the achievement of children in relation to the State academic content standards and the State student academic achievement standards described in section 1111(b)(1). (B) Schoolwide reform strategies that (i) provide opportunities for all children to meet the State's proficient and advanced levels of student academic achievement described in section 1111(b)(1)(D);

In Theory, Title I does what the act's title says "Improving the Academic Achievement of the Disadvantaged"; however, in this process little is done to address differentiated instruction and testing apart from the requirements of IDEA. The one exception is for migratory children.

In the evaluation of previous levers I have noted that Title I has, in certain cases, provided an excellent example of how legislation can address the needs of populations that have historically been left out of consideration. The best representative of this is how the needs of migratory children are addressed. Title I, part C, §1301-1309: Education of Migratory Children, provides a model of how Title I could have been written to provide for the special needs for the success of other types of least advantaged children; however, the legislation does not do so. §1111(a)(1) makes reference to the McKinney act for

homeless children as a parallel piece of legislation in the same way Title I does for IDEA; however, it does not then go on to build upon those protections for homeless children as it does for disabled children. . §1306(b) very specifically requires flexibility and assessment for unmet needs to “ensure that the State and its local operating agencies identify and address the special educational needs of migratory children (§1306(b)).” Thus the very presence of this language for one group of least advantaged, but a lack of corresponding language for other groups of least advantaged children points out the deficiency of Title I. Thus for the axial lever *Other least advantaged students*, I must judge Title I to be deficient.

Conclusion.

Due to multiple issues this lever has proven the most difficult for which to make a judgment. The fact that Title I is strongly linked to strong legislation (IDEA) that requires differentiated instruction and testing and the fact it would be reasonable to assume a large percentage of the least advantaged children might well fall into other least advantaged categories (such as low income) that would be covered by IDEA makes this lever more difficult to measure. The indicator of *Just* does not require all forms of disadvantaged to be addressed; therefore that condition applies in this case, so the lever is rated as *Just*.

Tool evaluation.

The explanatory portion and the Table 13 indicators were both modified after cycle one coding. I realized that several changes were necessary. First was the inclusion of testing in the title. The extensive use of the testing in Title I helped me to see that for any current policy document, testing will be a factor. Second was to change the language

in the narrative from “least-well off”, and the language in the indicators of “special needs” to the Rawlsian term “least advantaged”. Not only did this help bring more lexical continuity to the tool, but it helped keep the focus on Ralls’s vision of justice.

Difficulties:

- 1) This lever proved to have the most difficult evaluation of the 14 due to the complex mix of external legislation drawing into question whether it should not just simply be judged to be “not addressed”. I found need to partially repeat first cycle coding to find more textual examples dealing with both IDEA and of other special populations in order to pull out the details needed to fully accomplish second cycle coding using the revised lever. The real challenge was how to position the children with the IDEA label of disabled within the group of children who would fit under the Rawlsian conception of least advantaged. In the end I did not have to fully make that separation because the indicator for *Just* states that the policy “does not require it (adaption) for all types of disadvantage”.

Table 27 operated as hoped to uncover the strengths and weakness of Title I as it relates to differentiated instruction and testing. In specific this lever showed that even difficult overlapping policy issues can be addressed with this tool.

Lever: Adequate Educational System.

The new lever.

The term educational adequacy and what that entails is an entire field unto itself beyond the scope of this study. What is important in this measure of justice is that the

goal of adequacy is clearly stated and the clarification is made as to adequacy for what? To Rawls the purpose of an educational system is twofold: to even out class barriers and to allow “natural capacities (to) develop and reach fruition” (Rawls, 1999a, p. 63-64). Thus a just educational system must be adequate to the job of developing those natural capacities.

The indicators below use the word resources to include curriculum, staff and facilities because all three are intrinsic to educational adequacy; however, the details of what defines adequacy are left out because this tool is about intent not methods. That is why this lever is left intentionally vague as to sidestep the debates of methods. Also not covered in this lever will be financial adequacy for the programs put forth because that topic is covered in a separate lever.

Table 28: Adequate Educational System Rating Scale

Rating Level	Indicator
Highly Just	The policy document requires schools to provide an educational system that is committed to providing every student the resources necessary to allow them to reach their full natural capacities in a broad range of self-directed domains.
Just	The policy document requires schools to provide an educational system that is committed to providing every student the resources necessary to allow them to reach their full natural capacities in a limited range of domains.
Not Addressed	The policy is too far removed from this issue to be relevant.
Unjust	The policy allows for some students (or groups of students) to be provided less than adequate resources that makes it less likely some students will be able to reach their full natural capacities.
Highly Unjust	The policy document actively denies at least some children from an educational system with the resources necessary for them to reach their full natural capacities.

Policy evaluation.

In this lever, Title I has a lot to offer for a just educational system. The three axial themes reflect the positive thrust of the legislation: teacher quality, research and standards as goals. Though hampered by issues of a narrow curriculum as discussed earlier, Title I's writers did much to forward educational justice according to this lever.

Axial theme 1: Teacher quality.

§1111(b)(8)(C) the specific steps the State educational agency will take to ensure that both schoolwide programs and targeted assistance schools provide instruction by highly qualified instructional staff as required by sections 1114(b)(1)(C) and 1115(c)(1)(E), including steps that the State educational agency will take to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers, and the measures that the State educational agency will use to evaluate and publicly report the progress of the State educational agency with respect to such steps;

The term *highly qualified* in reference to teachers is made 26 times in Title I. The requirements for teaching qualifications include ongoing training. §1001(10) calls for “significantly elevating the quality of instruction by providing staff in participating schools with substantial opportunities for professional development.” The call for ongoing professional development is repeated 66 times in the legislation. In many of these cases there is, as in §1111(b)(8)(C), specific references to ensuring that the least advantaged children are provided with full qualified teachers.

This focus on teacher quality for all students including the least advantaged is highly indicative of a just policy regarding education adequacy. Therefore this axial theme is rates high in justice.

Axial theme 2: Research.

1112(c)(1) (F) take into account the experience of model programs for the educationally disadvantaged, and the findings of relevant scientifically based research indicating that services may be most effective if focused on students in the earliest grades at schools that receive funds under this part;

§1221 (a) (1) To support local efforts to enhance the early language, literacy, and prereading development of preschool age children, particularly those from low-income families, through strategies and professional development that are based on scientifically based reading research.

SEC. 1207(a)(1) disseminate information on scientifically based reading research pertaining to children, youth, and adults; (3) support the continued identification and dissemination of information on reading programs that contain the essential components of reading instruction as supported by scientifically based reading research, that can lead to improved reading outcomes for children, youth, and adults

The most common of all the words and phrases I analyzed in Title I was *research*, which shows up 94 times. From this I conclude that the writers of this legislation see research as very important to improving the quality of education. The word research is used in three primary ways. First, as in §1115(c)(1)(C)

where current methods are to be based on current research findings. Second, as in §1241 & §1503 where Title I authorizes and funds research into educational practice, and third, as in §1207(1) where several agencies are required to “disseminate information on scientifically based reading research pertaining to children, youth, and adults”.

This focus on funding, using and disseminating educational research gives every appearance to have the highest quality educational system possible. In addition to the fact that Title I is subtitled *Improving The Academic Achievement Of The Disadvantaged*, many of these references to research are attached to Parts B, C & D which deal with children who are easily described as the least advantaged. Such a focus on improving the education of the least advantaged via the most current educational research deserves a high justice rating.

Axial theme 3: Standards as goals.

§111(b)(1)(A) Each State plan shall demonstrate that the State has adopted challenging academic content standards and challenging student academic achievement standards that will be used by the State, its local educational agencies, and its schools to carry out this part, except that a State shall not be required to submit such standards to the Secretary

§111(b)(1)(D) Standards under this paragraph shall include (i) challenging academic content standards in academic subjects that — (I) specify what children are expected to know and be able to do; (II) contain coherent and rigorous content; and (III) encourage the teaching of advanced skills; and (ii) challenging

student academic achievement standards that — (I) are aligned with the State's academic content standards;

Although the justice concerns of a narrow curriculum were addressed in the lever *Liberal Educational Goals*, I felt it necessary to address this issue in this lever as well as adequacy implies the idea of adequacy of what. The indicators for this lever in Table 28 are very specific in that in a highly positive system the requirement is that young people should be able to decide for themselves in what domain they wish to achieve their maximum potential by the end of their publicly funded education.

It is quite clear from the analysis in the prior lever that the nearly 70 references to standards in Title I refer to narrow curriculum of reading, math and science. Thus even if Title I is focused on all children achieving their maximum capacity, the legislation provides little room for capacity development outside that core curriculum.

Conclusion.

As noted before, Title I is designed as a voluntary adjunct to local and state educational efforts. Therefore it is difficult to say that this legislation can require anything like an adequate educational system. However, within those constraints, Title I does appear to promote local educational systems that meet the needs of the least advantaged children. While there is plenty of room for improvement, I conclude that on the measure of fostering an *adequate educational system*, Title I is *Just*.

Tool evaluation.

This lever did not exist in the original version of the tool. It was added after I had completed half of the first cycle coding when I stopped and did a review of what I had

found in the first 150 pages of Title I coding. What I found was that I had not included the simple concept of having an expectation of an adequate educational system. In considering the other justice levers, I realized that minimal adequacy is foundational to a just educational policy because none of the other goals are engaged unless the base system is adequate. This concept would fall under the Rawls' category of principle institutions (Rawls, 1999a, p. 83) which are assumed to be operating efficiently for the common good. At the same time I felt it important to keep this tool out of the many debates about what constitutes adequacy (or efficiency). It was for that reason the indicators deal with a commitment to adequacy, not the methods by which that is achieved.

The axial themes I chose furthered this approach by looking at teacher quality and the use of current research which, while having some ground level applicability, are more theoretical than practical. The third theme of how NCLB measures adequacy by performance standards could have devolved into issues about the role of tests and testing; however, I limited the discussion to the narrow nature of the standards, again to keep the tool in the high level view.

Difficulties:

- 1) The creation of indicators that did not overlap other levers was particularly difficult. Several of the existing levers deal in part with the issue of adequacy; however, not in the broad sense. For instance the lever *Financial Adequacy* on the surface appears to be very relevant; however that lever is part of the

Difference Principle arena, and as such was intended to focus on the relative distribution of resources, not the general availability of resources.

The final version of the indicators has two main components: universally, i.e. all students not just selective students; and, resources sufficient for the reaching of the students natural capacities. In practice, I understand that this lever might well be the most difficult of the 14 to achieve. The practicalities of providing every student all the resources to reach their own potential could be an open-ended financial drain; however, when dealing with justice, it is sometimes not as important that the goal can ever be met, but rather that the goal provides a fixed point upon which practical policy can be aimed. Much of Rawls's writing can be seen in this light.

- 2) The size and scope of my analysis came to the fore in the fact I had missed a great deal of the sections I'd identified in first cycle coding and had to go back through all 300 pages and pull out the things from my first cycle but had failed to transfer to the document contacting all the references. This leads me to the conclusion that when I take this tool out of the trial phase to the next phase of full scale policy analysis, a team rather than an individual will be needed to look at large policies.

I conclude that Table 28 did operate as hoped to uncover the strengths and weakness of Title I as it relates to an adequate educational system.

Lever: Fair Civic Opportunity Curriculum.

The revised lever.

Since the ultimate aim of the publicly funded school is to allow each graduating student to take an equal and active part in civil society (Rawls, 2001, p. 56), the skills to do so must be integral to the academic program. Civics, policies theory, rhetoric and community life would not be “extras” in a Rawlsian system but would have equal footing with reading and math skills. The Rawlsian model of liberal democracy hinges on a citizenry that has the verbal and political skills to engage one another.

Table 29: Fair Civic Opportunity Curriculum Rating Scale

Rating Level	Indicator
Highly Just	The policy document directly addresses the primacy of the sociopolitical life of citizens. The academic core of curriculum is in effective citizen production. Systematic coursework that leads to civic competence are given equal weight with reading and math.
Just	The policy document recognizes the importance of the sociopolitical life of citizens. Effective citizen production is one of the prime goals of the academic curriculum. Systematic coursework that leads to civic competence, including government, civics and rhetoric are given significant weight throughout the student’s educational career.
Not Addressed	The policy does not address curriculum or goals of publicly funded education.
Unjust	The policy that governs curricular content gives little emphasis to civic education but requires some civic coursework.
Highly Unjust	The policy crowds out all civic oriented coursework in favor of dominated-by-business functional classes.

Policy evaluation.

In Title I the sole reference to civic competencies is §1504 that provides funding for the Close Up Foundation. This foundation’s goal is to promote the very civic competencies that Rawls envisions as core to the mission of publicly funded education.

Their mission is stated as “Close Up informs, inspires, and empowers young people to exercise the rights and accept the responsibilities of citizens in a democracy.” The statement goes on to state, “We believe that a strong democracy requires active and informed participation by all citizens; therefore we seek to reach participants of every race, creed, geographical community, socio-economic level, and academic standing” (Close Up Foundation, 2013). §1504 specifically goes on to target monies granted to this foundation be targeted to the least advantaged.

This civic focus would suggest that Title I is highly just in promoting a civic competency goal for publicly funded education if it were not limited to appropriating between 1.5 and 2 million dollars a year to this one foundation that provides extracurricular civic programs to a very limited number of students for a limited range of activities (Close Up Foundation, 2013). The lever *Liberal Educational Goals* showed how Title I was shown to promote active measures to narrow the curriculum to the areas of reading, math and science. Measures to promote curriculum to develop the civic competencies of students are not mentioned once outside §1504.

For this reason, I conclude there is not sufficient textual content to justify any axial themes on this lever. On the lever of fostering *Fair Civic Opportunity Curriculum*, Title I rates *Highly Unjust*.

Tool evaluation.

This last lever is the first with no applicable text to analyze. The only change made from the lever as presented in chapter 3 is that the title was changed to clarify the intent and to improve the continuity of the lever titles.

Difficulties:

- 1) The positioning of §1504 and its funding for a foundation that clearly is in line with a Rawlsian view of the primacy of civic duty within the larger context of Title I took a good deal of thought. I did not think it right to dismiss it entirely, but when reading about the nature of the Up Close foundation's excellent activities it was clear that this foundation does not meet the core criteria of being curricular in nature. Thus I excluded it from the final judgment.
- 2) The utter lack of textual reference to civic preparation or civic education in the school curriculum created the one time in this project that I could not find any basis for axial themes. After consultation with peers I chose to not put forth any axial themes for this lever.

Table 29 operated as hoped to uncover weaknesses in Title I in that it failed to emphasize the primacy of civic education of young citizens in order to prepare them to exercise their fair and equal voice in society.

Conclusion of Lever Analysis

In this chapter I have systemically used the proposed tool to evaluate Title I for the 14 levers of educational justice. The tool worked well to focus the analysis and lead to the analyst (me) to ask questions of substance in seeking an answer to the question of intrinsic justice. In chapter 5 these conclusions to both the justice of Title I and the efficacy of the tool will be discussed.

CHAPTER 5

Structure of this Chapter

This chapter is divided into two distinct parts. The first is a discussion of the analysis of Title I of Elementary and Secondary Education Act of 2001, better known as No Child Left Behind. This analysis will be based on the three arenas presented in chapter 3 using the data generated in chapter four. I will then make summary conclusions about the justice of Title I based on Rawlsian justice and what implications that might have. This part will also have the limitations and recommendations for future research as if the evaluation of Title I were a stand-alone study.

The second half of this chapter will be the discussion of the tool itself, which is the stated primary goal of this dissertation. I will summarize the revisions made between original and final version of the tool and will summarize and review the challenges and conclusions I developed for the usability of the 14 levers. I will then write my conclusions about the creation of this tool, its limitations, and finally my implications of how this tool might be used with a vision for the future use and development of this tool.

Title I Discussion

As noted in chapter 4 there were changes in the number and order of the levers. This is reflected in the revised diagram of the levers and arenas (Figure 2). Additionally the arena questions, presented in chapter 4 have been added to diagram to further clarify how the arenas work with the levers when considering the discussion of Title I

Figure 2

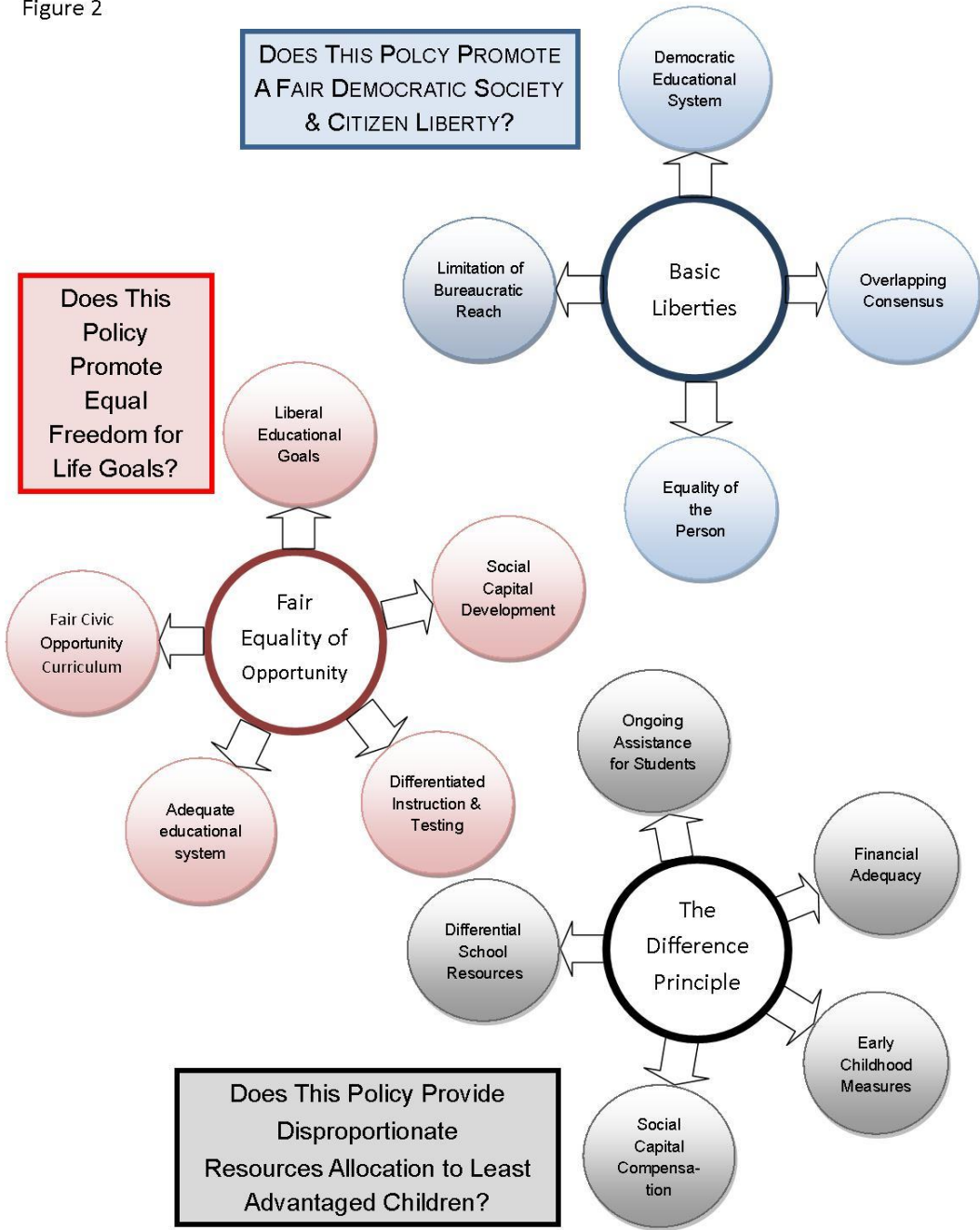


Figure 2: Arenas and Levers: Revised Version

Basic Liberties: Does this Policy Promote Democratic Process & Citizen Liberty?

Title I was found, in this analysis, to be consistently unjust in that it centralizes decision making authority away from the citizenry and fails to provide safeguards to prevent this centralized authority from undermining the fair equality of each citizen's voice. Though there were bright spots where Title I has very clear guarantees for specific subgroups, these guarantees only served to highlight the failure to do so for all.

Table 30: Basic Liberties

Lever	Indicator Rating
Democratic Educational System	Highly Unjust
Overlapping Consensus	Unjust
Equality of the Person	Unjust
Limitation of Bureaucratic Reach	Unjust

The failure of this arena is particularly catastrophic because of the lexical priority that Rawls puts on this “first principle” of basic political liberties (Rawls, 1999a, p. 52) over all other values (Freeman, 2007). Therefore, even if the other ten levers showed Title I as *Highly Just*, the policy as a whole would still be unjust due to the failure in this arena. Therefore, to reform Title I to make it more just, the first priority must be in this arena. Specific language should be added to actively promote policy and practice influence by all strata of local citizens. The policy should also explicitly limit the ability for bureaucratic entities to usurp the value of local elected bodies by issuance of compulsory edits to such bodies. Finally, the policy should provide clear limits on the power of the majority (citizens or elected officials) to favor a particular comprehensive doctrine via the funds made available via Title I.

Given the current gridlock in Congress I put forth that bureaucratic governance of schools is more efficient; however, Rawls makes it clear that efficiency is never an excuse to violate basic democratic rights.

It should be noted that I make no claim that if the language of Title I were to be amended to incorporate all these recommendations there would be fair democratic school systems. Title I is just one part of one piece of one Congressional act in a complex mix relevant to policy text and a larger mix of implementation methods; however, this fact does not reduce the responsibility to strive for the most just policy possible.

The Difference Principle: Does this policy provide for disproportionate resource allocation to the Least Advantaged Children?

Title I was found to be very successful at implementing the *difference principle* of justice. This is not surprising because Title I's official title is "Improving the Academic Achievement of the Disadvantaged" and §1001 states, "The purpose of this title is to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education." §1002 stipulates that monetary grants to needy schools will be the means to achieve that end. It could be fairly said that the espoused purpose of Title I is to provide for disproportionate resource allocation to the least advantaged children. This assessment was to ascertain whether the text lives up to the promise.

Table 31: The Difference Principle

Lever	Indicator Rating
Ongoing Assistance for Least Favored Students	Just
Financial Adequacy	Not Addressed
Early Childhood Preventive Measures	Highly Just
Social Capita Compensation	Just
Differential School Resources	Highly Just

Table 31 summarizes the result of the analysis and shows a clear pattern of justice. The only lever not showing as just is financial adequacy because Title I is not base financing to schools, but additional funding that only goes to the neediest schools. Thus Title I is not a school funding policy per se. Of particular note are the ratings of *Highly Just* on the levers of early childhood efforts and differential school resources. This reflects the fact that Title I has language that specifically targets money to be given to schools with the highest concentration of disadvantaged children and that programs to impact children before the reach school age are robust and integral to Title I. The rating of *Just* for the lever of providing compensatory social capital for the least advantaged is particularly laudable as social capital support could easily have been omitted if Title I had been approached as strictly about physical recourses.

This lever is openly about redistributing financial resources to the least advantaged based on need, and Title I is designed to do just that. It has been argued that NCLB has been underfunded since its passage (Darling-Hammond 2010) which, if true, would impede the effectiveness of the redistribution aspects of Title I; however, the issue of later funding is part of this analysis of the policy texts. This highlights once again that just policy documents do not guarantee just results. It also highlights that this tool, as I

am proposing it, cannot be used to measure just implementation by assessing only the governing legislation.

Fair Equality of Opportunity: Does this Policy Promote Equal Freedom of Life Goals?

Fair equality of opportunity represents a classic liberal vision of the purpose of education. Title I does not embrace that vision; however, the justice tool found this legislation to have points on which just policy is proposed even if the intent is not liberal. Thus in this arena, unlike the other two, Title I showed a mix of *Just* and *Unjust* ratings.

Table 32: Fair Equality of Opportunity

Lever	Indicator Rating
Liberal Educational Goals	Unjust
Social Capital Development	Unjust
Differentiated Instruction & Testing	Just
Fair Civic Opportunity Curriculum	Highly Unjust
Adequate Educational System	Just

On the levers of *Adequate Educational System* and *Differentiated Instruction & Testing*, Title I showed to be a just policy. This appears to relate to the consensus interest in both having adequate schools and special help for those in need. The congressional commitment to those in need is reflected in other legislation such as IDEA and ADA. The commitment of this legislation to adequacy cannot be taken too far, as Title I is explicitly a supplemental program which encourages and rewards actions taken to provide adequate schools; however, it cannot be confused with legislation that require adequate schools. Once again the reader must not confuse just intentions and just outcomes.

Three of the five levers in this area rate Title I as *Unjust* or *Highly Unjust*. This pattern reflects that the text of Title I does not promote Rawlsian liberal educational

goals. Title I goes to great length to promote a very narrow vision of publicly funded education that is focused on employability first and foremost. It is argued by authors from a wide range of viewpoints such as Ravitch (2010), Darling Hammond (2010) and Hirsch (2007) that NCLB has narrowed the curriculum via the testing mandates in particular to the detriment of those people Rawls described as the least advantaged. The ability to read, write and do basic mathematics might well be how to gain employment; however, Rawls (and I) would contend that simple employability is not enough to make an empowered citizen and a more egalitarian society. The question for this arena is: Does this policy promote equal freedom of life goals? I conclude that the text of Title I does not take adequate measures to promote the equal freedom of life goals, though it could have been written to do so without changing the purpose of the legislation.

Implications

Title I is the premier piece of federal legislation promoting educational justice for the least advantaged children in the United States. There is a good deal of excellent and just policy written into the 75,000 word document. In particular Part C (§1301-1309), which deals with *Education of Migratory Children*, provides a road map on how Title I could have been written with language which could have provided a more just educational environment for all children had such language been used for other groups of least advantaged children. However, the protections and support for migratory children were not included for children who live in high poverty communities, or are in poverty themselves, or come from families with limited English proficiencies. Thus the just protections for the one group throws a glaring light on the choice law makers made to not

provide the same supports for those other groups. The positive thing about this inconsistency is there is ready-made language within Title I itself that could be appropriated to improve the justice of Title I with little major revision.

While on balance, the two arenas that deal with the execution of education within Title I (The *Difference Principle* and *Fair Equality of Opportunity*) show operationally that Title I is generally just. The gross affront to the basic democratic liberties as identified by the lever *Basic Liberties* ultimately undermines the entire legislation's justice. The methods used in Title I to centralize power and decision making away from the messiness of democratic process might well seem logical. This is especially true today in an era of congressional gridlock; however, Rawls makes it quite clear that that efficiency is not what makes up justice (Rawls 1999a, p. 62). To choose an efficient educational system over one that promotes the political equity of each citizen is ultimately a utilitarian approach: the end of quality education justifies the means of making the process beyond the reach of the local communities. Such utilitarianism is precisely what Rawls contrasted to his vision of justice as fairness (Freeman, 2007, p. 146). Even if NCLB were widely acclaimed to be a resounding success 10 years after its passage, that success at the expense of democratic liberties would not be justified.

Limitations

It was mentioned several times in this chapter and in chapter 4 that Title I is a voluntary supplementary program. As part of the general rules of Title I, §1905 specifically states:

Nothing in this title shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction. Similarly, no state is limited to the protections of the least advantaged by what is proscribed in the text. It is always possible to do more.

This means any conclusions made to the justice or lack of justice of the text of Title I must be qualified by the fact that no state is required to abide by any of the policy stipulations contained therein.

A second limitation, also previously mentioned, is that of funding. §1125AA (g)(3) spells out the procedures for how the Secretary of Education proceeds if Title I is not fully funded. Though this is not a study on effectiveness, it is important to note that §1002(a)(4) calls for \$25 billion for Title I Part A in 2007 (the last year for which a figure was set in the legislation), but the actual appropriation was \$12,838,125,280 and in 2011 that figure was only up to \$14,463,416,198 (U.S. Department of Education, 2013). Thus, it would be incorrect to equate the program goals set out in Title I with the actual programs on the ground.

Finally, this study does not ever consider the actual effectiveness of any of the program initiatives or protections laid out in the legislation. This study was never intended for that purpose. It is recognized that a policy such as Title I goes through many hands and levels of bureaucracy before it directly impacts a least advantaged child. At

each and every level it is subject to the influence of whoever is implementing the program. At any level the justice could be negatively impacted.

Therefore considering these three limitations, it is important to note that any extrapolation of the justice to actual children would be inappropriate. The intent of this inquiry was to establish the level of justice with which Title I begins its journey to the local level.

Recommendations for Future Research

I would suggest that the remainder of ESEA/NCLB should be evaluated by this tool, along with IDEA and the other smaller federal legislation that make up the patchwork of laws that govern all the nation's schools. Only as this project is completed can a fair evaluation of federal policy be made.

Tool Development Discussion and Conclusions

In chapter 1 two research questions were presented:

#1 What constitutes a just educational policy?

#2 Does the proposed instrument provide a useful measure of policy justice?

I believe I have been able to answer both of the questions. The first research question was primarily addressed in chapters two and three where I presented an overview of John Rawls's vision of political liberalism and then parsed out how that translated into educational policy justice in chapter 3. I concluded based on Rawls's writing that a just educational policy has three components: basic liberties, the difference principle and fair equality of opportunity. An educational policy that respects basic liberties requires that the background institutions that make up a publicly funded

educational system promote the fair and equal value of each citizen's voice and that they provide protections for local governance of local schools from dominion by the bureaucracy, as well as protections for minority culture and belief systems from the majority. Just educational policy will actively promote and protect these liberties through clear language whenever the policy touches topics related to school system governance.

While the background institution must preserve basic liberties, the most active component in achieving a just educational policy is the *difference principle*. I appropriated the word from Rawls who mostly used it to discuss the just distribution of basic goods. I concluded in the realm of education its application was the call for the disproportionate resource allocation to those children Rawls called the least advantaged. Social justice in education recognizes that all children do not begin life on an even footing. Some children are born with biological handicaps while others are born into circumstances that create educational handicaps. A just educational policy will explicitly acknowledge that fact and will provide additional active resources to remediate the disadvantages these students face.

The third component of a just educational policy is an overarching commitment to *fair equality of opportunity* for every student. While the *difference principle* focuses on educational inputs, this arena of justice focuses on output goals. The goal of a just educational system is that each and every student has been fully prepared to fully and fairly participate in democratic civil society and has received the resources needed to equip them to pursue their chosen live goals as far as their talent and interests take them, regardless of their socioeconomic circumstances. There are many skills needed in the

pursuit of these goals; however, the policy must position these goals as means to the more important ends.

I also believe I found a solid conclusion for the second research question: Does the proposed instrument provide a useful measure of policy justice?

This tool was created in order to make a way to systematically evaluate educational policy documents against the Rawlsian vision of justice. The initial tool as proposed in chapter 3 was drawn from Thorn's model and the writings of John Rawls. The initial cycle of coding indicated that the lever indicators were, in general, effective at identifying sections of Title I that were applicable. The second effort of the first cycle, using the additional two levers and some rewrites of both narratives and lever indicators appeared to have improved this identification process.

The second cycle of coding and the development of the axial themes within the different levers brought about a second cycle of revision of the tool. These revisions were less in basic substance but in nuance to help clarify what the real question was. It was only after the second cycle of coding was nearly complete that the need to revise the rating scale became apparent. At the same time, the rating scale took on its final general pattern where the rating *Highly Just/Unjust* represented active measures while the ratings of *Just/Unjust* represented passive measures. This came from the pattern that emerged after 10 of the 14 levers.

The final change to the tool as a whole was to rearrange the order in which the levers were presented within each arena. This came from a logical progression of concepts on Title I. I would not necessarily blanket stipulate the use of the same order in

evaluating other policy documents because there is no lexical priority among the levers as there is among the arenas.

Two of the levers were not sufficiently addressed in Title I to draw axial themes. The reader will note, however, that only one was rated *Not Addressed*. The reason the other was given a rating, despite almost no applicable text, was due to the wording of the indicator. A lack of protections does not mean the topic is not addressed, but rather it was not sufficiently addressed, thus it was assigned an *Unjust* rating. Thus, it will not be possible to make a blanket statement for a need for axial themes to be able to make rating judgments.

In general, I was extremely pleased by the tool's ability to pull out themes and identify patterns. A review of chapter 4 will show that many of the questions and themes generated during the process could be pursued as an independent study. I believe this reflects the strength and practical usefulness of the tool. I found the process to be self-guiding which is an indicator that the tool could be used by researcher or policy makers without the guidance of the author.

Limitations

The earlier conclusion about Title I that positive results in education would be entirely trumped by the damage to democratic processes might be difficult for some to accept. This leads to a final but important theme that the evaluation of Title I highlighted a theme that could be seen as a major limitation to this tool. There appears to a natural and unavoidable tension between giving the full value to the democratic value of each citizen over the local schools system and the need to guarantee justice and equity to those

who are in the minority. When I lauded Title I for the guarantees of service and advocacy for the children of migrant workers as a model for justice, I did so knowing full well that in order to achieve real execution of these services there are mandates put upon LEAs. These mandates do not allow for local citizens to abridge the rights bestowed upon the children of migrants, even if 100% of the local citizens oppose. This clearly devalues the power of the local citizens. Rawls recognized this tension (Rawls, 1999a, p. 174-175) and responded with advocating a constitutional democracy that guaranteed the basic liberties. However, would the details of a just educational policy, like providing a migrant child with an advocate rise to the level of a constitutional right? Barry Bull (2008) addresses this issue in one of the few book length applications of Rawlsian liberalism to public schools and justifies a certain level of intrusive mandates as part of guaranteeing the fair liberty of the generation of children within the school system. This analysis, while it does not give a path to resolve this problem, does bring to light that inherent conflict.

A second potential limitation of this tool has to do with its scope. It worked very well on ESEA/NCLB Title I in large part because the text came to 300 pages, single spaced. There was a lot of text for me to evaluate and thus I believe I came to strong conclusions. However, the question must be raised about the usefulness of the tool, as written, in less voluminous policy documents. For instance, for a different project, I am attempting to use the tool on the 1965 ESEA Title I. At 11 pages, it is not possible to develop the axial themes that made the analysis of this dissertation compelling. Thus, it would be fair to raise questions about the tool's usefulness in smaller policy documents.

On the other hand, evaluating a large policy documents with this tool was time consuming. It was not a simple review process. Title I is only a portion of ESEA/NCLB, and even so the review and analysis took many hours. For that reason, I would say that this tool is more appropriate for teams than for individuals. Further, I know that the credibility of the conclusions would be greatly enhanced if each lever were addressed by more than one rater. Had this project been explicitly to evaluate Title I, the use of a single rater would have been less than optimal.

As noted in the discussion about Title I, it is important that any use of this tool be carefully positioned to emphasize that it is not about what works in education, but about the justice of the text's intent. I list this as a limitation (and it is); however, it is also a strength if the target audience is policy makers who have little expertise at implementation and methods. The most they can often hope to do is create policy that is on its face just and good for society. This tool could be used in the policy process for just that purpose.

Implications and Recommendations for Future Work

When I wrote chapter 2, near the beginning of this dissertation process, I said “This study is ultimately about showing how his (Rawls's) vision of social justice is both relevant and applicable to 21st century educational policy.” I was writing in a hopeful sense. I was hoping to find a way to define educational justice that could point the way forward both for me in my new career in the academy as well as to the larger society. Over half a year later, I am more than a little pleased because my hopes have been more fully realized than I imagined possible. I am fully convinced that political liberalism can

provide a roadmap toward a more just society in the next century. Closer to home, it can provide for me a way to connect my unique set of experiences and values which I brought with me to academia to my future career as a scholar.

There are three domains of implications for the use of this justice tool: for researchers, for policy makers and for leadership preparation. As noted in the literature review, I found several gaps in current research that I sought to fill. I noted that while there are justice measurement tools available, such as the Equity Audits (McKenzie & Skrla, 2011; Skrla et al., 2009; Skrla et al., 2004), and there are tools to measure the effectiveness of schools reforms, such as presented by Tharp (2008), I did not find any tools to measure the justice of legislative intent when it comes to educational policy. A tool to systemically evaluate the justice intentions of policy documents is a valuable contribution.

I also found very little current research and academic writing on the use of an enlightenment type liberal version of social justice. Beyond a handful of current writers such as Barry Bull & Catherine Audard, the liberal conception of justice represented with force and vigor by Rawls in the 1970's and 1980's has been eclipsed to the point that the term social justice is equated with crucial theory (Applebaum, 2009; Sensoy & DiAngelo 2011). Thus, to present (or re-present) a liberal conception of individual educational justice (as opposed to group justice) is of value to the research community.

This tool and the evaluation of Title I is not the envisioned end of my work on this subject. I would like to work with a team over the next few years to apply this tool to the rest of ESEA/NCLB and to the other primary federal legislation governing schools,

such as IDEA. Upon completion of such a project a composite summary of the justice of US educational policy can be made. I believe such a project would be of benefit to society as a whole in addition to researchers, educators and policy makers.

In addition to the assessment of current educational policy, this tool can be used to assess historical policy documents to study the changes of policy justice over time. Appendix B is an excerpt from just such a study (Thompson & Brewer, 2013) as evidence of the tool's usefulness.

A second strand of expansion I would like to pursue as I move into my career in the academy is to create a second set of lever indicators to measure the justice of policy at the implementation level. Once again, there are measures of equity and measures of effectiveness for education; however, I was not able to find tools to measure the policy justice in education. The Equity Audits (McKenzie & Skrla, 2011; Skrla et al., 2009; Skrla et al., 2004) are designed to measure equity of outcomes, but does not attempt to look at policy intent. A second version of this tool could be designed to look at district and state level policy targeted at individual schools and even individual students. Such an approach could inform the same three groups of researchers, policy makers and practitioners as does the current tool.

The implications for policy makers could conceivably be the most important. In chapter 1, I highlighted the need for common ground upon which many parties can agree to move forward with educational reforms. I propose here that the liberal ideas of the enlightenment are the best place to find that common ground. As noted in chapter 1, liberal values have been called the "American Creed" (Stark, 2011, p. 78), due to the fact

a commitment to individual human rights and opportunity are still the touchstones of mainstream political discourse in the US. It has been argued that the perceived great divide in US politics is almost entirely illusionary and that the U.S. public overwhelmingly believes in a similar core set of values (Fiorina, Abrams & Pope, 2010), and I would propose that the values Fiorina, et. al. found consistently reflect enlightenment liberalism. Thus policy makers (or policy advocates) on both sides of the aisle could look to this tool to evaluate how their proposed policies align with classical liberalism.

I recognize that some of Rawlsian liberalism would be hard for some to grasp, especially the concept that schools are about building citizens not getting a job; however, it would be fair to take Rawls's vision and this tool as an ideal to which to strive rather than a blueprint for actual policies. Additionally, there are unresolved (possibly unresolvable) issues within Rawls's liberal vision that also suggest that this tool is an ideal not an achievable goal. The theme noted earlier of the conflict between the fair value of the local citizen's political rights and the just policy guarantee of support and services for a small minority of least advantaged children is an example of how it might be impossible to score *Highly Just* on all the levers. This does not invalidate the tool. On the contrary, I propose that this high standard can promote policy documents that are as just as practically possible.

The final implication is for the use of this tool to me (and hopefully others) in the preparation of the next generation of school leaders. The use of the tool begins with the simple but profound mental exercise of Rawls's veil of ignorance (Rawls, 1999a) to help

the middle-school leaders develop a mindset that looks at policy and procedures from the standpoint of children and parents with very different backgrounds than their own. The teachers in U.S. schools are almost entirely from middle class homes (Bennett, 2008) and since the early 1990's the ranks of teachers in training have become ever more uniformly white (Hodgkinson, 2002). Further, the efforts to raise the academic standards of teacher training programs as advocated by Darling-Hammond (2010) raises the specter of further reducing the pool of educators with backgrounds outside the white-middle class norm. (Fisch, 2009). The tool can provide structure to the veil of ignorance exercise ensuring that the different domains (arenas) of educational justice are considered as well as their practical considerations (levers).

Thus I look forward to using this tool as a way to help my future students develop a systematic and internalized method for assessing justice when faced with implementation of the policies of superiors and/or developing policies under their own purview. What would hope to happen is that those emerging school leaders will make justice, not convenience, efficiency or personal benefit the touch stone of their decision making practice. There will be no way for me to prepare my students for every eventuality; however, the primacy of justice as fairness for the individual child will never become obsolete.

APPENDICES

Appendix A: A Rawlsian Instrument for the Evaluation of Justice in Educational Policy

Documents

Purpose:

To assess policy documents for their intrinsic justice based on the political liberalism of John Rawls.

Structure:

As noted in figure 1, Rawlsian education justice is divided into three arenas. Each arena has an overarching question and 4-5 individual levers by which justice is measured for that arena.

Procedure:

1st Cycle Coding:

The entire document to be evaluated should be coded by sections or phrases according to their relevance to one or more of the 14 levelers.

2nd Cycle Coding

- All sections or phrases rating to one lever should be collected and analyzed for patterns that could reveal a theme.
- In robust documents themes may develop during the analysis process. If so, each theme should be assessed for its individual justice, as described in the narrative section of the lever.
- The full body of data for that lever should be assessed and compared to the indicator in the rating scale table.
- A conclusion should be made regarding the how the data aligns to the lever indicator statements.

- Not all policies will have language related to every lever. However, that does not necessarily indicate a *Not Addressed* rating. If the evaluators conclude that the overall policy document covers areas of educational policy that reasonably could be linked with one or more levers that are not addressed, the evaluator may conclude that the omission was that of a justice duty and rate the lever as unjust.

Criteria Rating Scale

Rating Level	Indicator
Highly Just	The policy document actively addresses this justice lever in a way that supports Rawlsian justice.
Just	The policy passively addresses this justice lever in a way that supports Rawlsian justice.
Not Applicable	The policy does not have control over this lever of Rawlsian justice.
Unjust	The policy indirectly addresses this justice lever in a way that passively opposes Rawlsian justice.
Highly Unjust	The policy document directly addresses this justice lever in a way that actively opposes Rawlsian justice.

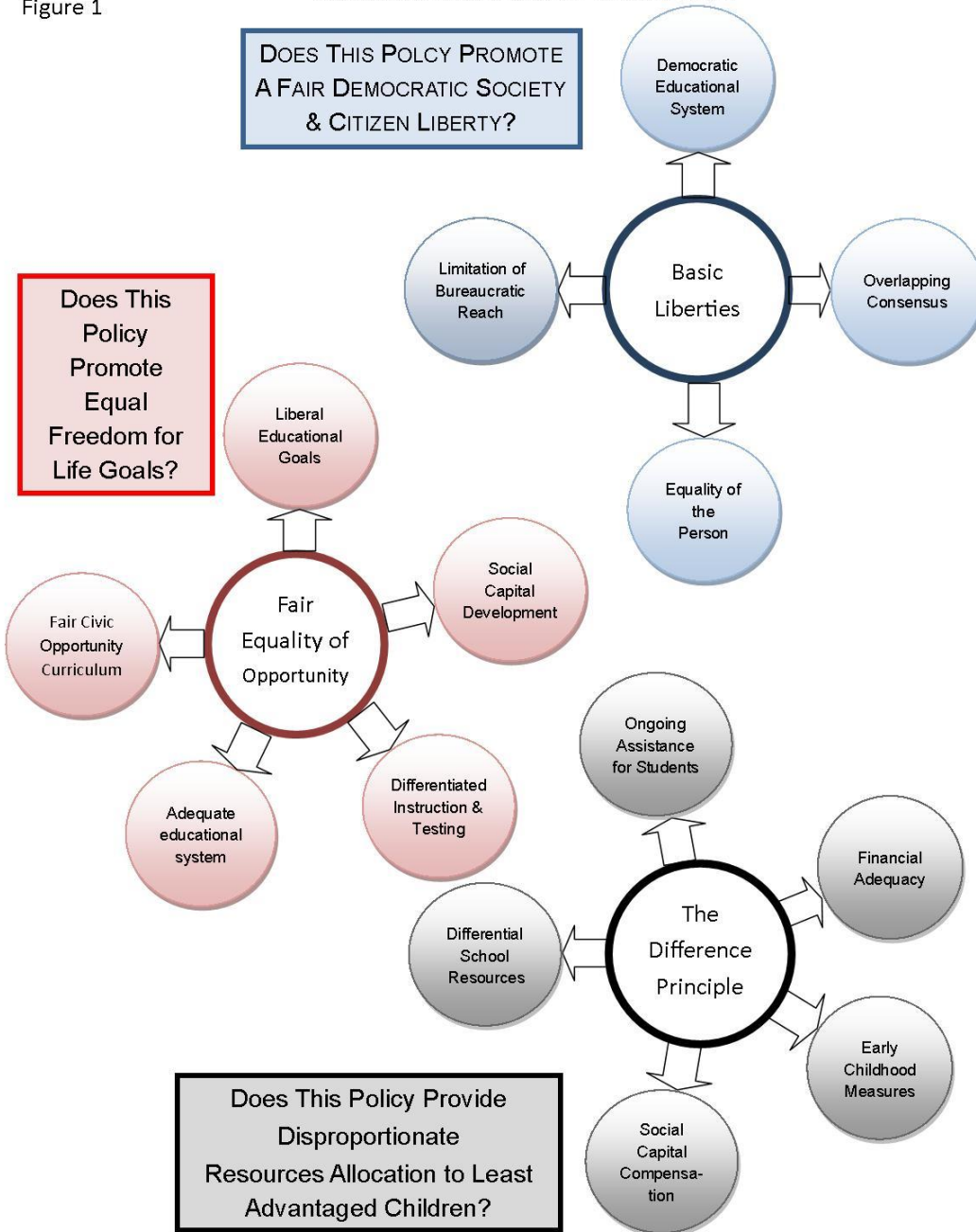
Conclusions

Conclusions are made for each of the three areas independently. The overall theme and stated intent of the policy should be considered as well as its relationship to other policies that might cover duties not addressed in the policy document under consideration. Conclusions should be primarily based on the individual lever conclusions. It should, however, be noted that it is entirely possible that a particular policy document might, using the tool, warrant a rating of *Unjust* in due to omissions; but, in practice the omission has no effect when another policy document covers the area omitted. It is for

that reason, to find the true justice of policy, all relevant policy documents should be assessed and their interaction considered.

**A RAWLSIAN INSTRUMENT FOR THE EVALUATION OF JUSTICE
IN EDUCATIONAL POLICY DOCUMENTS**

Figure 1



Arena: Basic Liberties

Arena Question: Does this Policy Promote Democratic Process & Citizen Liberty?

Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value (Rawls, 2005, p. 6).

This arena reflects the primacy that Rawls puts on the equal access to political life. Rawlsian liberalism places the ability to not only have theoretical equality of political voice but for that voice to have the fair value of political liberty means every citizen has equal opportunity to participate in the process; and, equally important, equal opportunity to influence policy (Rawls, 1999a). Rawls saw that the procedural justice has a tendency to erode over time due in large part to the problematic tendency for political power and wealth to concentrate. Thus, in considering a Rawlsian evaluation of educational policy, this evaluation must include a serious look at whether the policy supports or inhibits the fair value of the individual citizen's voice, especially when compared to the structural power of the bureaucratic system.

Because Rawls laid out the principle that it is the collective good that necessitates collective action based on the scale of the need (Rawls, 1999a), so too does the scale of democratic institution need to be scaled to the size of action. I believe this is a fair interpretation of Rawls's concept of distributive justice (Rawls, 1999b). National issues like the military need national leadership, but local social institutions should be governed

locally. Only by this can the fair value of the citizen’s voice be preserved. This concept of local democracy will color all the levers in this arena.

Democratic Educational System

The right to democratic participation in the basic governmental structures is foundational to all other rights (Rawls, 1999a, p. 53); as such, the first characteristic of educational policy must be its democratic nature. Political access cannot be based on income, social status or professional status; however, those issues are addressed in the *Equality of the Person* lever. The larger the institutional size or political unit, the more concern must be given to preserving political access; institutional efficiency cannot justify exclusion (Rawls, 1999a, p. 56). Just policy measures must provide sufficient meaningful and inclusive citizen input so as to support the individual’s sense of efficacy.

Democratic Educational System Rating Scale

Rating Level	Indicator
Highly Just	The policy document explicitly requires meaningful local citizen involvement in the decision making process, implementation and review of the policy.
Just	The policy document requires local citizen involvement in at least one of the processes of decision making, implementation or review.
Not Addressed	The policy does not require citizen involvement, nor does it create bureaucratic barriers to the citizen involvement.
Unjust	The policy places large portions of the policy decision making, implementation and/or review out of reach of local citizen impact. It is largely governed by bureaucratic/professional processes.
Highly Unjust	The policy places large portions of the policy decision making, implementation and/or review out of reach of citizens or local elected officials. It is highly governed by bureaucratic/professional processes.

Overlapping Consensus

Rawls describes a comprehensive doctrine as “the culture of everyday life, of its many associations: churches, and universities, learned and scientific societies and clubs

and teams to mention a few” (Rawls, 2005, p. 14). Civil society relies on an overlapping consensus, the space where we all agree on basic conceptions of justice (Rawls, 1999, p. 340). A stable democratic government depends on the mutual agreement that we need only to have agreement on the most basic conceptions of justice; in all other matters citizens may reasonably disagree (Rawls, 2005, p. 39). Therefore, basic government institutions, including educational systems, cannot endorse or inhibit comprehensive doctrines unless they directly imperil basic liberties of citizens (Freeman, 2007, pp. 328-330).

Furthermore, educational policy that infringes on the family and/or undermines the comprehensive doctrine taught at home is only acceptable if such actions pose a direct threat to the more basic liberty of self-determination (Rawls, 1999b, p. 596).

Comprehensive doctrines include both religion and systematic secular systems that provide an overarching meaning of life and basic questions of values (Rawls, 2005, p. 13). These systems cannot invade the educational space by excluding or privileging citizens in their political access or influence.

Overlapping Consensus Rating Scale

Rating Level	Indicator
Highly Just	The policy document explicitly forbids educational officials and/or elected officials to use the educational system to undermine the families' comprehensive doctrine or culture, except when it clearly is in support of basic liberties. The policy actively supports the doctrine of overlapping consensus by actively requiring or encouraging a variety of voices from various comprehensive doctrines in the decision making, implementation and review of the policy as well as in the operations of the educational system governed by the policy.
Just	The policy document implicitly forbids educational officials and/or elected officials to use the educational system to undermine the families' comprehensive doctrine or culture, except when it clearly is in support of basic liberties. The policy supports the doctrine of overlapping consensus by encouraging a variety of voices from various comprehensive doctrines in the decision making, implementation and review of the policy as well as in the operations of the educational system governed by the policy.
Not Addressed	The policy does not have language that addresses any comprehensive doctrine.
Unjust	The policy does not implicitly or explicitly limit the ability of community majority and/or the bureaucratic structure to favor and/or disfavor a particular comprehensive doctrine in the decision making, implementation and review of the policy nor does the policy implicitly or explicitly limit the ability of schools to favor/disfavor a particular comprehensive doctrine in curricular materials or in providing access to students in execution of the policy.
Highly Unjust	The policy actively opposes the doctrine of overlapping consensus by explicitly empowering the community majority and/or the bureaucratic structure to favor and/or disfavor a particular comprehensive doctrine in the decision making, implementation and review of the policy; or, the policy explicitly favors/disfavors a particular comprehensive doctrine in curricular materials or in providing access to students in execution of the policy.

Equality of the Person

The equality of the individual when dealing with governmental entities must be preserved. Basic institutional policy must take steps to compensate for the tendency to

move away from equality (Rawls, 2005, p. 268). This lever is best understood as the “fair” part in his conception of “fair value of political liberties” (Rawls, 2005, p. 357). Rawls envisioned an ideal where “citizens similarly gifted and motivated have roughly an equal chance of influencing the government’s policy and of attaining positions of authority irrespective of their economic and social class” (Rawls, 2005, p. 358). Though the practical effectiveness is predicated on the prior lever which measured the ability of the public at large to influence educational policy, this lever will operate on the assumption that the prior standard was met and will measure the efforts to ensure equal influence on policy by all citizens.

Equality of the Person Rating Scale

Rating Level	Indicator
Highly Just	The policy document has explicit measures to ensure representation by all social groupings within the local community (with an emphasis on the families of children enrolled) in the decision making, implementation and review of the policy. The policy requires active measures to ensure inclusion of traditionally voiceless groups.
Just	The policy document has measures to promote representation by all social groupings within the local community (with an emphasis on the families of children enrolled) in the decision making, implementation and review of the policy indirectly.
Not Addressed	The policy measure does not address inclusion, nor does it favor certain groups by education, profession or income.
Unjust	The policy indirectly favors certain individuals by favoring certain credentials (education, license or affiliation) or group identities in the decision making, implementation and review of the policy process.
Highly Unjust	The policy document explicitly excludes the citizenry in the decision making, implementation and/or review of the process via credential requirements (education, license or affiliation) or requirements of official status.

Limitation of Bureaucratic Reach

The educational system is a basic institution in society, and as such, Rawls's principle of participation applies to its management (Rawls, 1999a, p. 196-197). Rawls believed that a society is a fair system of cooperation among equally empowered citizens (Rawls, 2005, p. 16-17) and that even expressly guaranteed political rights can lose their fair value by regulation over which the citizen has no control (Rawls, 2005, p. 358). In some ways this is the inverse of the *Democratic Educational System* lever; however, the focus is different, i.e. the prior lever had a focus on empowering the citizen, but the focus of this lever is the restraint of power by the bureaucracy. Another way to distinguish the two is that this lever is concerned with the power vested in non-democratic systems while the prior lever was about the power vested in the citizenry.

Limitation of Bureaucratic Reach Rating Scale

Rating Level	Indicator
Highly Just	The policy document explicitly limits the power of the bureaucracy to exercise control over local elected representatives, local appointed educational personnel and private citizens in the operation of local educational institutions to those circumstance where such control is clearly required to maintain more basic liberties.
Just	The policy document implies limits in its authorization to federal or state bureaucracy to exercise control over local elected representatives, local appointed educational personnel and private citizens in the operation of local educational institutions where such control is intended to maintain more basic liberties.
Not Addressed	The policy is too far removed from this issue to be relevant.
Unjust	The policy document implicitly empowers federal or state bureaucracies to exercise control over local elected representatives, local appointed educational personnel and private citizens in the operation of local educational institutions in order to meet state or national objectives.
Highly Unjust	The policy document explicitly authorizes or otherwise empowers state and local bureaucracy to fully control local educational institutions without oversight or input of local elected representatives, locally appointed educational personal and private citizens.

Arena: The Difference Principle

Arena Question: Does this policy provide for disproportionate resource allocation to the Least Advantaged Children?

Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society. (Rawls, 2005, p. 6)

This arena addresses the second component of this, Rawls' second principle of justice. He refers to this as the *difference principle* (Rawls, 1999a, p. 65).

Though Kant and Locke both supported the proposition that it was government's role to support the poor (Freeman, 2007, p. 86), Rawls takes this further by his concept of an obligation to all the least advantaged, not just the poor (Rawls, 1999a, p. 83). Rawls calls it background justice when the systems are created to increase the likelihood of a just outcome of procedural justice (Rawls, 2001, §14). The levers in this area are designed to measure the policy's commitment to providing disproportionate resources to the least favored children.

Ongoing Assistance for Least Advantaged Students

Rawlsian distributive justice requires that children who are least advantaged and are not progressing to their maximum potential should be given assistance for as long as needed. This includes assistance for both physical and mental obstacles to reaching the child's potential. The policy stipulates that measure of success cannot be "average" but

rather the maximum of the individual child's ability. This lever is not measuring resources directed at needy schools but to individual children.

Ongoing Assistance for Least Advantaged Students Rating Scale

Rating Level	Indicator
Highly Just	The policy document requires identification of and compensatory assistance for the least advantaged children who are performing below their maximum capability. The policy should require this assistance to be provided for as long as needed to reach and maintain that level of functioning.
Just	The policy document requires identification of and compensatory assistance for the least advantaged children who are performing below their maximum capability. The policy does not require individualized assessment for maximum ability but rather uses generic benchmarks to cut off compensatory services.
Not Addressed	The policy is too far removed from this issue to be relevant.
Unjust	The policy addresses student performance but makes no effort to disaggregate to identify the least advantaged children nor does not require compensatory assistance for such children.
Highly Unjust	The policy document addresses student performance and either (1) allows disproportionate resources for the most advantaged children, or (2) forbids disproportionate resources allocated to the least favored.

Financial Adequacy

It is axiomatic that if schools are to achieve the compensatory goals envisioned by Rawls, there must be adequate and equitable funding. Because Rawls values financial liberties as secondary issues, the needs of providing a just education outweigh the economic liberty rights of citizens, thus paving the way for sufficient taxation to achieve equity. It could be argued that provision of adequate funds for just education will achieve a net economic benefit (Freeman, 2007, pp. 88-89); however, by making such an argument the case for the primacy of justice is undermined.

Financial Adequacy Rating Scale

Rating Level	Indicator
Highly Just	The policy document requires funding that is sufficient for execution of a just educational system as described in this tool with differential spending for the least advantaged built in.
Just	The policy document requires funding that is sufficient for the justice needs of every student and in the eventuality of a shortfall, at least as much money is spent on the children who are the least advantaged as is spent on the most advantaged.
Not Addressed	The policy does not address finance.
Unjust	The policy document requires funding that is sufficient for the needs of every student but does not address equality of spending.
Highly Unjust	The policy document addresses funding but does not require funding that is sufficient for the needs of every student nor does it require equality of spending.

Early Childhood Measures

Building on the evidence cited in chapter two regarding the significant deficit faced by low income children when they enter school, the application of the difference principle requires that the concept of publicly funded education be extended for the least advantaged to just after the child's birth. Drawing from Rawls's expansive view of "least advantaged" this vision would include those children with physical challenges as well as those children born into impoverished homes where educational and emotional resources are insufficient for school readiness. In this instance, the primary caregiver (i.e. parent) is part of the educational system and is also a recipient of educational services in order to succeed at their societal task as primary teacher. It is beyond the scope of this study to specify what type of intervention is most effective, but the acceptance of the social obligation to intervene must be explicit.

Early Childhood Measures Rating Scale

Rating Level	Indicator
Highly Just	The policy document explicitly stipulates that the process to provide educational equity and compensatory services to the least advantaged children begins at birth.
Just	The policy document suggests or otherwise encourages the process to provide educational equity and compensatory services to the least advantaged children begins at birth
Not Addressed	The policy is too far removed from this issue to be relevant. Policies exclusively targeted narrowly at children beyond the preschool age (i.e. high school) would not be applicable to this measure.
Unjust	The policy is broad enough in scope to include early intervention language, but does not include any.
Highly Unjust	The policy explicitly denies the responsibility for early childhood intervention.

Compensation for Low Social Capital

The concern was raised in chapter one that children from low income homes often do not have parents with sufficient social capital to ensure the system works to their best advantage. Sacks (2007) showed how parental influence and knowledge of the educational system skewed the outcomes in favor of wealthier children. Ideally, educating and empowering the parents is a solution to this problem; however, absent the larger social changes that would allow all parents to have the social capital to foster their children's success, the just educational policy will include not only efforts to educate and empower but also provisions for independent advocates to act *in loco parentis* to mimic the positive effects of social capital.

Compensation for Low Social Capital Rating Scale

Rating Level	Indicator
Highly Just	The policy document requires measures for parent education and empowerment and independent advocates for low SES children and other children who lack effective familial advocates with authority to act <i>in loco parentis</i> if the parent and/or child wish.
Just	The policy document requires mechanisms and/or procedures to ensure proactive efforts to compensate for the lack of social capital of low SES and other marginalized children.
Not Addressed	The policy is too far removed from this issue to be relevant.
Unjust	The policy covers or creates systems that involve procedural processes that could reasonably be seen to favor families with high social capital, but fails to provide proactive efforts to ensure equal access to those who do not have such social capital. Note: this would include issues involving language barriers.
Highly Unjust	The policy creates or supports systems that can be reasonably foreseen to make significant decisions about a child's education without a requirement of meaningful parental consultation.

Differential School Resources

Children are not generally educated one by one (U.S. Department of Education, 2009); they are educated in schools. Though Rawlsian political liberalism is predicated on the individual human, he does stipulate that basic institutions also are governed by the difference principle (Rawls, 1999a, §16). In this the basic unit in the measure of educational program justice would be the school. As such, Rawls's requirement that in the presence of inequalities, a just society will ensure the most benefits be directed to the least advantaged (Rawls, 1999a, p. 68) should be applied to individual schools. When Rawls defines "least advantaged" he gives three domains: social status, wealth and unfortunate circumstance (Rawls, 1999a p. 83). All three are applicable at the school level. For this lever resources include, but are not limited to, facilities, equipment, circular materials, extra-curricular opportunities and faculty/administrative quality.

Differential School Resources Rating Scale

Rating Level	Indicator
Highly Just	The policy document explicitly lays out the principle and/or practice that those schools that are characterized by students who are from homes that of the lowest income or social status should be provided proportionally more resources.
Just	The policy document recommends or otherwise favors that those schools that are characterized by students who are from homes that are of low income or social status should be provided proportionally more resources.
Not Addressed	The policy does not deal with resource allocation.
Unjust	The policy document deals with resource allocation but does not favor disproportionate resource allocation to schools characterized by students who are from homes of low income or social status.
Highly Unjust	The policy forbids disproportionate resource allocation to schools characterized by students who are from homes of low income or social status. Or, the policy provides disproportionate resource allocation to schools for reasons other than those addressed in this lever.

Arena: Fair Equality of Opportunity

Arena Question: Does this policy promote equal freedom of life goals?

Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; (Rawls, 2005, p. 6)

The first arena was to provide background for justice, and the second for resource justice. This last arena is for actual outcome goals. To Rawls the entire purpose of publicly funded education was to produce empowered citizens able to take their place as equals no matter what their career or financial status. To Rawls economic disparities are only justified when there is a background guarantee of practical political equality. It is to that end Rawls believed publicly funded schools were to be focused.

Liberal Educational Goals

Rawls had an expansive view of government's role in education. His concept of fair equality of opportunity (FEO) is promising for an evaluation of justice in educational policy. It is important to also note that his call for fair equality of opportunity is tied to the preceding phrase "positions and offices" which clearly sets a social and political priority (over economic) in the quest for equality of opportunity (Rawls, 1999a, § 16). This is likely because Rawls (2003) privileges a person's self-respect in regard to their occupation and personal fulfillment over income (§ 17.3). This simple concept of self-respect and personal fulfillment over earning power has significant ramifications when evaluating the goals of public educational policy.

To Rawls, the goal of a just society is first and foremost to have citizens who have respect for themselves and equal respect for others. Using the Aristotelian concept of maximum utilization of innate talent being the greatest good, a Rawlsian view would see the end of successful education as the preparation for self-fulfillment (Rawls, 1999a, §65). Thus, educational policy should reflect maximization of self as a goal as an end in itself as opposed to utilitarian economic goals.

Liberal Educational Goals Rating Scale

Rating Level	Indicator
Highly Just	The policy document specifically identifies bringing natural capacities to fruition in each student's life as the end goal of the publicly funded educational process. Policy should equally privilege skills/talents that promote the goal of entering adulthood on a path to personal fulfillment.
Just	The policy document identifies that students bring natural capacities to fruition as the end goal of the publicly funded educational process, but skills related to financial gain are privileged over non-economic skills.
Not Addressed	The policy does not have language that relates to the goals of the educational process.
Unjust	The policy document calls for the narrowing of the school mission to functional or economically valuable skills at the expense of a program designed to enhance a broad range of natural capacities and/or privilege skills related to financial gain over non-economic skills.
Highly Unjust	The policy document only specifically identifies monetary rewards or economic benefit as the end goal of the publicly funded educational process and actively suppresses or forbids a pursuit of skills not related to economic gain.

Social Capital Development

Rawls argued, "Chances to acquire cultural knowledge and skills should not depend upon one's class position and so the school system, whether public or private, should be *designed* to even out class barriers" (emphasis mine) (Rawls, 1999a, p. 64). This is as strong as any statement Rawls ever wrote about education. For him the importance of this lies in the fact that the ability to participate in the sociopolitical world is an integral part of having a fair equality of opportunity (Rawls, 1999a, pp. 54 -55). The ability to do this is part of social capital, the development of which can be facilitated in the school setting (Farrell, Taylor, & Tennent, 2004; Terrion, 2006); and in a Rawlsian system of justice is requisite.

Social Capital Development Rating Scale

Rating Level	Indicator
Highly Just	The policy document explicitly acknowledges the value of the social capital amassed by children raised in high socioeconomic homes and the communities' obligation to provide compensatory experiences to children from low SES and other marginalized homes.
Just	The policy indirectly acknowledges the value of the social capital amassed by children raised in high socioeconomic homes and the communities' obligation to provide compensatory experiences to children from low SES and other marginalized homes.
Not Addressed	The policy is too far removed from this issue to be relevant.
Unjust	The policy is relevant to compensatory education, poverty or achievement gap but fails to acknowledge the impact of social capital.
Highly Unjust	The policy actively reduces the social capital of low income children through creating barriers such as financial cost of participation or transportation to low income students without addressing and correcting this equality of access issue.

Differentiated Instruction and Testing

Rawls's *least advantaged* category includes students with learning disabilities, mental health and/or physical challenges, as well as those students who have social or economic disadvantages. Rawls's liberal conception of education prioritizes the student's academic and the student's civic (social) success as valuable. Therefore a just educational policy must include measures within the learning environment to ensure these students have equal standing with other students via differentiated instruction. Educational policy should be written to allow flexibility to both classroom teachers and to administration so as to allow for students who are the least advantaged to be a full part of the larger school community and to allow the student to maximize their own potential.

Differentiated Instruction and Testing Rating Scale

Rating Level	Indicator
Highly Just	The policy requires instruction and testing to be adapted to for those students who are the least advantaged as to allow those students to experience full participation in the social milieu of the school. Testing requirements must be psychometrically valid in method so as to be both informative as to the student's real progress in the discreet subject matter while accommodating for non-subject specific disadvantage.
Just	The policy provides room for instruction and testing to be adapted for those students who are the least advantaged as to allow those students to experience full participation in the social milieu of the school (but does not require it for all types of disadvantage). Testing requirements are required to be psychometrically valid in method so as to be informative as to the student's real progress in the discreet subject matter while accommodating for non-subject disadvantage.
Not Addressed	The policy does not touch on any issues related to the needs of disabled students or defers to other applicable policy on this issue.
Unjust	The policy provides limited flexibility in instructional methods and highly limits special assistance options for disadvantaged students that will likely lead to a lack of success or exclusion from the social milieu of the school; and/or testing requirements have limited flexibility sometimes requiring disadvantaged students to abide by procedural rules that put them at a further disadvantage and/or create artificially low test scores.
Highly Unjust	The policy requires inflexible instructional methods and highly limits special assistance options for disadvantaged students that are likely to lead to a lack of success or exclusion from the social milieu of the school; and/or testing requirements forbid flexibility that requires disadvantaged students to abide by procedural rules that put them at a further disadvantage and/or create artificially low test scores.

Adequate Educational System

The term educational adequacy and what that entails is an entire field unto itself beyond the scope of this study. What is important in this measure of justice is that the goal of adequacy is clearly stated and the clarification is made as to adequacy for what? To Rawls the purpose of an educational system is twofold: to even out class barriers and

to allow “natural capacities (to) develop and reach fruition” (Rawls, 1999a, p. 63-64).

Thus a just educational system must be adequate to the job of developing those natural capacities.

The indicators below use the word resources to include curriculum, staff and facilities because all three are intrinsic to educational adequacy; however, the details of what defines adequacy are left out because this tool is about intent not methods. That is why this lever is left intentionally vague as to sidestep the debates of methods. Also not covered in this lever will be financial adequacy for the programs put forth because that topic is covered in a separate lever.

Adequate Educational System Rating Scale

Rating Level	Indicator
Highly Just	The policy document requires schools to provide an educational system that is committed to providing every student the resources necessary to allow them to reach their full natural capacities in a broad range of self-directed domains.
Just	The policy document requires schools to provide an educational system that is committed to providing every student the resources necessary to allow them to reach their full natural capacities in a limited range of domains.
Not Addressed	The policy is too far removed from this issue to be relevant.
Unjust	The policy allows for some students (or groups of students) to be provided less than adequate resources that makes it less likely some students will be able to reach their full natural capacities.
Highly Unjust	The policy document actively denies at least some children from an educational system with the resources necessary for them to reach their full natural capacities.

Fair Civic Opportunity Curriculum

Since the ultimate aim of the publicly funded school is to allow each graduating student to take an equal and active part in civil society (Rawls, 2001, p. 56), the skills to do so must be integral to the academic program. Civics,

policies theory, rhetoric and community life would not be “extras” in a Rawlsian system but would have equal footing with reading and math skills. The Rawlsian model of liberal democracy hinges on a citizenry that has the verbal and political skills to engage one another.

Fair Civic Opportunity Curriculum Rating Scale

Rating Level	Indicator
Highly Just	The policy document directly addresses the primacy of the sociopolitical life of citizens. The academic core of curriculum is in effective citizen production. Systematic coursework that leads to civic competence are given equal weight with reading and math.
Just	The policy document recognizes the importance of the sociopolitical life of citizens. Effective citizen production is one of the prime goals of the academic curriculum. Systematic coursework that leads to civic competence, including government, civics and rhetoric are given significant weight throughout the student’s educational career.
Not Addressed	The policy does not address curriculum or goals of publicly funded education.
Unjust	The policy that governs curricular content gives little emphasis to civic education but requires some civic coursework.
Highly Unjust	The policy crowds out all civic oriented coursework in favor of dominated-by-business functional classes.

Appendix B: Excerpt from A Rawlsian Justic Critique of Past Educational Movements in
the United States

The following paper was written by Ronald Thompson and Curtis A. Brewer and presented at the annual meeting of American Educational Research Association May 1, 2013.

ESEA 1965 Analysis

The original ESEA of 1965 is a very different document from the one in force today. Though the expressed aims are the same, using federal money to help low-income/low-achieving children, the way it is expressed is very different. Title I 1965 runs only 7 pages, and of that the majority is taken up with the formulas for funding. However, the authors' tool for measuring justice is still useful because not addressing an issue, in some ways, is as telling as addressing an issue. Due to the very limited text available, we concluded the best way to report the findings is in a table for levers in each arena, then a discussion of the arena implications.

Lever	Applicable Section (s)	Assessed Justice
<i>Democratic educational system</i>	§203(a)(2)(B) §203(b)(3) §206 (a)	Not addressed
<i>Equality of the person</i>	§203(a)(1)	Not addressed
<i>Overlapping consensus</i>	§205(a)(2)	Just
<i>Limitation of bureaucratic reach</i>	§206(a)(3) §211	Just

The arena of Basic Liberties asks if the policy promotes a fair democratic society & citizen liberty. Title I 1965 does not strongly address the democratic process or citizens liberties. While it did increase the power of the federal Office of Education by giving the

Commissioner of Education a number of stipulated powers, these powers appear to be general oversight to ensure the intent of Congress is carried out by the money provided. The decision to rate the lever Democratic Educational System *Not Addressed* was due to the wording of the lever indicator that says no new rights or barriers are created to citizen empowerment; this is the appropriate scoring. The Equality of the Person was similarly judged not to be impacted. Overlapping consensus was judged as *Just*, based on §205(a)(2) that ensured equal treatment for impoverished children in private (religious) schools; however, it must be noted, this evidence was very minimal for the finding. Similarly §211 provides a clear path to appeal the federal Office of Education decisions via the courts, thus allowing a marginal report of *Just* in Limitation of Limitation of bureaucratic reach. In summary Title I 1965 has only the slightest relevance to the liberal conception of basic liberties.

Lever	Applicable Section (s)	Assessed Justice
<i>Ongoing assistance for least favored students</i>	§201 §203(a)(2) §203(a)(4) §205(a)(1) §205(a)(5)	<i>Just</i>
<i>Financial adequacy</i>	§201 §204	<i>Unjust</i>
<i>Early childhood preventive measures</i>	N/A	<i>Not Addressed</i>
<i>Compensation for low social capital</i>	§205(a)(7)	<i>Just</i>
<i>Differential school resources</i>	N/A	<i>Just</i>

Title I 1965 was specifically titled “Financial Assistance to Local Educational Agencies for the Education of Children of Low-Income Families.” Our examination of the text from a Rawlsian liberal lens reveals the policy did exactly what it intended to do:

provided funds to LEA's. Liberal justice is individual justice and demands justice be focused at the individual. The tool makes an exception for school wide interventions because the school environment is an indivisible unit. The language in §201 spell out support for programs "which contribute particularly to meeting the special educational needs of educationally deprived children" and §205(a)(1) states:

That payments under this title will be used for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of educationally deprived children in school attendance areas having high concentration of children from low-income families.

This, on its face, supports the levers *Ongoing Assistance for Least Favored Students* and lever *Differential School Resources* so these levers are found to be *Just*. The injustice comes in when the legislation does not stipulate the moneys are not to be fungible. The lever *Financial Adequacy* expects a just policy to ensure educational adequacy to all students. Given the circumstances in 1965, particularly in the Deep South, this omission makes a mockery of the justice aims of Title I. The brightest spot is §205(a)(7) which links Title I programs to other programs to help the poor created by the Economic Opportunity Act of 1964. This holistic approach of linking educational legislation to anti-poverty legislation models Rawlsian liberal justice in action. While mixed in the justice of the five levers, Title I 1965 is on balance just.

Lever	Applicable Section (s)	Assessed Justice
<i>Liberal educational goals</i>	N/A	Not Addressed
<i>Social Capital Development</i>	N/A	Not Addressed
<i>Differentiated instruction & testing</i>	N/A	Not Addressed
<i>Adequate educational system</i>	§205(a)(1) §205 (a)(5) §205 (a)(8) §212	Just
<i>Fair civic opportunity Curriculum</i>	N/A	Not Addressed

The Rawlsian conception of Fair Equality of Opportunity is largely unaddressed in Title I 1965. This is not necessarily a criticism in that the curricular decisions are not being dictated which allows for local decisions to be made that would promote FEO. The one lever that is addressed is *Adequate Educational System*. The texts in §205(a)(1) state that the Title I funds can be used on a host of basic needs; §205 (a)(5) focuses on finding empirical ways to help the least advantaged children to succeed; and, §205 (a)(8) encourages professional research and training. All of these reflect a commitment to the justice of an adequate educational system. On balance; however, we conclude that Title I 1965 does not address this lever.

Conclusion

Policy is an artifact of a specific time and place. The analysis above does not provide us with insight into how a policy came to be written as it was written. The politics of the moment often lead to discursive crystallizations in policy that reflect social regularities that are unfolding on multiple time scales (Brewer 2013). However, the analysis above does provide the reader a place from which to understand the similarities

and differences between two crystallizations that were undertaken (at least partially) due to a concern for social justice.

Title I of ESEA in 1965 was by all accounts ground breaking for its day (Davies, 2007); however, we find it largely tepid on the measures of liberal justice. In our analysis the most common lever result was *Not Addressed*, and of the levers rated just, only the levers of funding were robust. This legislation is ultimately of very narrow intent. This judgment should not be read to be a criticism; rather, it could be seen as a model of how to create policy with a specific justice focus that does not create injustices in one place while it creates justice in others. In addition this narrowness was possible due to the fact that it was linked to other legislation such as the Economic Opportunity Act (EOA).

By 2001 however, the EOA had been repealed and Title I of ESEA had become the premier piece of federal legislation promoting educational justice for the least advantaged children in the United States. Our analysis indicates that there is a good deal of excellent and just policy written into the 75,000 word document. In particular Part C (§1301-1309) which deals with *Education of Migratory Children*, provides a road map on how Title I could have been written in language which could have provided a more just educational environment for all children, had such language been used for other groups of least advantaged children. However, the protections and support for migratory children were not included for children who live in high poverty communities, or are in poverty themselves, or come from families with languages other than English. Thus the just protections for the one group throws a glaring light on the choice law makers made to not provide the same supports for those other groups. The positive thing about this

inconsistency is there is ready-made language within Title I itself that could be appropriated to improve the justice of Title I with little major revision.

While on balance, the two arenas that deal with the execution of education within Title I (*The Difference Principle* and *Fair Equality of Opportunity*) show operationally that Title I is generally just, the gross affront to the basic democratic liberties as identified by the lever *Basic Liberties* ultimately undermines the entire legislation's justice. The methods used in Title I to centralize power and decision making away from the messiness of democratic process might well seem logical. To choose an efficient educational system over one that promotes the political equity of each citizen is ultimately a utilitarian approach: the ends of quality education justify the means of making the process beyond the reach of the local communities. Such utilitarianism is precisely what Rawls contrasted to his vision of justice as fairness (Freeman, 2007, p. 146). Even if NCLB was widely acclaimed to be a resounding success 10 years after its passage, that success at the expense of democratic liberties would not be justified.

Indeed our evaluation of both versions of this legislation shows that there has been a growing focus on efficiency and accountability at the federal level over and above fighting the War on Poverty. Our analysis above should imply that need to think carefully about the balance between two strong U.S. cultural values, accountability and social justice, as we attempt to reauthorize ESEA.

REFERENCES

- Aguilar, J. P., & Sen, S. (2009). Comparing conceptualizations of social capital. *Journal of Community Practice, 17*(4), 424-443. doi: 10.1080/10705420903299979
- Alexander, N. (2013). *Policy analysis for educational leaders*. Boston: Pearson.
- Allen, K. (2011). *The social lens; an invitation to social and sociological theory* (2nd ed.). Los Angeles, London, New Delhi: Sage.
- Applebaum, B. (2009). Is teaching for social Justice a "liberal bias"? *Teachers College Record, 111*(2), 376-408.
- Anderson, B. (2003). The antipolitical philosophy of John Rawls. *Public Interest, 151*, 39.
- Aristotle, T. I. (2009). The virtuous life. In J. Sturba (Ed.), *Ethics: The big questions* (H. Racham Trans.). (2nd ed., pp. 330-348). West Sussex, UK: Wiley-Blackwell.
- Aud, S., & Hannes, G. (2010). *The condition of education 2010*. (No. NCES 2010-029). Washington, D.C.: U.S. Department of Education Center for Education Statistics.
- Aud, S., Hussar, W. F., Kena, G., & Roth, E. (2012). *The condition of education 2012*. (No. 2012-045). Washington DC: US Dept. of Education Center for Educational Statistics.
- Aud, S., Hussar, W., Kena, G., Bianco, K., Frohlich, L., & Tahan, K. (2011). *The condition of education 2011*. (No. NCES 2011-033). Washington D.C.: US Dept. of Education Center for Education Statistics.
- Audard, C. (2005). *Rawls En Europa*. Praxis Filosófica, 157. Retrieved from http://go.galegroup.com/ps/i.do?id=GALE%7CA156419000&v=2.1&u=clemsonu_main&it=r&p=AONE&sw=w
- Audard, C. (2007). *John Rawls*. Montreal: McGill-Queen's University Press.
- Bardach, E. (2012). *A practical guide for policy analysis: The eightfold path to more effective problem solving* (4th ed.). New York, N.Y: Chatham House Publishers, Seven Bridges Press.
- Bennett, M. M. (2008). Understanding the students we teach: Poverty in the classroom. *Clearing House, 81*(6), 251-256.

- Bernstein, J. M. (1995). *Recovering ethical life: Jürgen habermas and the future of critical theory*. New York: Routledge.
- Bianco, M., Harris, B., Garrison-Wade, D., & Leech, N. (2011). Gifted girls: Gender bias in gifted referrals. *Roper Review*, 33(3), 170-181. doi: 10.1080/02783193.2011.580500
- Boaheng, P., & Cooper, W. (2011). Robert Nozick, libertarian? *South African Journal of Philosophy*, 30(3), 257-266. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=65444383&site=ehost-live>
- Bowles, S. & Gintis, H., (2013) *Schooling in Capitalist America: educational reform and the contradictions of economic life*. New York: Basic Books.
- Boyd, D. (2011). Learning to leave liberalism...and live with complicity, conundrum and moral chagrin. *Journal of Moral Education*, 40(3), 329-337. doi: 10.1080/03057240.2011.596334
- Bull, B. L. (2008). *Social justice in education: An introduction*. New York: Palgrave MacMillan.
- Bush, G., W. (2000). Acceptance speech. *Republican National Convention*, Philadelphia.
- Cain, G. G., & Watts, H. W. (1968). The controversy about the Coleman report: Comment. *Journal of Human Resources*, 3(3), 389-392.
- Calvin, C. M., Fernandes, C., Smith, P., Visscher, P. M., & Deary, I. J. (2010). Sex, intelligence and educational achievement in a national cohort of over 175,000 11-year-old schoolchildren in England. *Intelligence*, 38(4), 424-432. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=eric&AN=EJ890846&site=ehost-live>; <http://dx.doi.org/10.1016/j.intell.2010.04.005>
- Card, D., & Blank, R. M. (2008). The changing incidence and severity of poverty spells among female-headed families. *American Economic Review*, 98(2), 387-391. doi: 10.1257/aer.98.2.387
- Carspecken, P. F. (1996). *Critical ethnography in educational research: A theoretical and practical guide*. New York: Routledge.
- CED. (1998). *The employer's role in linking school and work*. (Whitepaper). New York, Washington, D.C.: Committee for Economic Development.

- CED Research and Policy Committee. (2001). *Measuring what matters: Using assessment and accountability to enhance student performance*. (Whitepaper). New York; Washington, D.C.: Committee for Economic Development.
- CED Research and Policy Committee. (2002). *Preschool for all: Investing in a productive and just society: A statement*. New York; Washington, D.C.: The Committee. Retrieved from http://ced.issueelab.org/research/listing/preschool_for_all_investing_in_a_productive_and_just_society
- CED Research and Policy Committee. (2006). *The economic promise of high-quality preschool: Using early education to improve economic growth and the fiscal sustainability of the states and the nation*. Washington, D.C.: Committee for Economic Development.
- Chaikind, S., & Decision, R. C. (1985). *The effects of short-term and long-term poverty on educational attainment of children*. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=eric&AN=ED296017&site=ehost-live>
- Coleman, J. (1966). *Equality of educational opportunity*. Washington: U.S. Dept. of Health, Education, and Welfare, Office of Education.
- Coombs, F. (1994). Education policy. In S. S. Nagel (Ed.), *Encyclopedia of policy studies* (2nd ed., pp. 587-615). New York; Basel: Hong Kong: Marcel Dekker, Inc.
- Costa, M. V. (2004). Rawlsian civic education: Political not minimal. *Journal of Applied Philosophy*, 21(1), 1-14. doi: 10.1111/j.0264-3758.2004.00259.x
- Costa, M. V. (2005). Human rights and the global original position argument in the law of peoples. *Journal of Social Philosophy*, 36(1), 49-61. doi: 10.1111/j.1467-9833.2005.00257.x
- Cremin, L. A. (1961). *The transformation of the school: Progressivism in American education, 1876-1957*. New York: Knopf.
- Cross, C. T. (2004). *Political education: National policy comes of age*. New York: Teachers College Press.
- Cubberley, E. (1934). *Public education in the U.S.* (2nd ed.). Boston: The Riverside Press.
- Curren, R. (2006). Developmental liberalism. *Educational Theory*, 56(4), 451-468. doi: 10.1111/j.1741-5446.2006.00238.x

- Darling-Hammond, L. (2010). *The flat world and education: How America's commitment to equity will determine our future*. New York: Teachers College Press.
- Davies, G. (2007). *See government grow: Education politics from Johnson to Reagan*. Lawrence, KS: University Press of Kansas.
- Democratic National Committee. (2012). Moving America forward: 2012 democratic national platform. Retrieved, 2012, from <http://assets.dstatic.org/dnc-platform/2012-National-Platform.pdf>
- DeNavas-Walt, C., Proctor, B., & Smith, J. (2012). *Income, poverty, and health insurance coverage in the United States: 2011*. (Current Population Report No. P60-243). Washington, D.C.: US Census Bureau.
- Diebels, K. J., & Czopp, A. M. (2011). Complaining about a compliment: Evaluating attributions of positive outcomes to discrimination. *Asian Journal of Social Psychology, 14*(3), 217-223. doi: 10.1111/j.1467-839X.2011.01343.x
- Costa, M. V. (2011). Rawls, citizenship, and education. *Journal of Applied Philosophy, 28*(2), 217-219.
- Dilley, F. B. (2004). Taking consciousness seriously: A defense of Cartesian dualism. *International Journal for Philosophy of Religion, 55*(3), 135-153.
- Crotty, M. (1998). *The foundations of social research: Meaning and perspective in the research process*. Thousand Oaks, CA: Sage.
- Curren, R. (2006). Developmental liberalism. *Educational Theory, 56*(4), 451-468. doi: 10.1111/j.1741-5446.2006.00238.x
- Dixson, A., & Rousseau, C. (2005). And we are still not saved: Critical race theory in education ten years later. *Race Ethnicity and Education, 8*(1), 7-27. doi: 10.1080/1361332052000340971
- Dudley, W., & Engelhard, K. (Eds.). (2011). *Immanuel Kant: Key concepts*. Durham, UK: Acumen.
- Dunn, W. (2012). *Public policy analysis* (5th ed.). Boston: Pearson.
- Edgar, A. (2005). *The philosophy of Habermas*. Montreal: McGill-Queen's University Press.

- Engel, M. (2000). *The struggle for control of public education: Market ideology vs. democratic values*. Philadelphia, PA: Temple University Press.
- Evans, R. W. (2008). The (unfulfilled) promise of critical pedagogy. *Journal of Social Studies Research*, 32(2), 16-25.
- Farrell, A., Tayler, C., & Tennent, L. (2004). Building social capital in early childhood education and care: An Australian study. *British Educational Research Journal*, 30(5), 623-632. doi: 10.1080/014119204200234610
- Feldheim, M. A. (1998). Health care policy evaluation: A conceptual model using medical ethics. *Journal of Health and Human Services Administration*, 21(2), 181-198.
- Fiorina, M., Abrams, S. & Pope, J. (2010),) *Culture war? The myth of a polarized America* (3rd Edition). London, Pearson.
- Fisch, A. A. (2009). The difficulty of raising standards in teacher training and education. *Pedagogy*, 9(1), 142-149.
- Fischer, F. (2003). *Reframing public policy: Discursive politics and deliberative practices*. Oxford: Oxford University Press.
- Freeman, S. R. (2007). *Rawls*. New York: Routledge.
- Froses-Gremain, B. (2006). Educating boys: Tempering rhetoric with research. *McGill Journal of Education*, 41(2), 145-154.
- Galvin, R. (2011). Rounding up the usual suspects: Varieties of Kantian constructivism in ethics. *Philosophical Quarterly*, 61(242), 16-36. doi: 10.1111/j.1467-9213.2010.657.x
- Ganley, C. M., & Vasilyeva, M. (2011). Sex differences in the relation between math performance, spatial skills, and attitudes. *Journal of Applied Developmental Psychology*, 32(4), 235-242.
- Gardner, D. P. (1983). *A nation at risk*. Washington, D. C: The National Commission on Excellence in Education, US Department of Education.
- Glynos, J., Howarth, D., Norval, A., & Speed, E. (2009). *Discourse analysis: Varieties and methods*. (No. NCRM/014). Swindon U.K.: Economic and Social Research Council, National Center for Research Methods.

- Google Scholar. (2012). Search: Policy paradox. Retrieved 10/12, 2012, from http://scholar.google.com/scholar?cluster=17235017481072392768&hl=en&as_sdt=0,41
- Graham, P. (2007). *Rawls*. Oxford: One World.
- Guttek, G. L. (1974). *Philosophical alternatives in education*. Columbus, OH: Merrill.
- Guyer, P. (2011). Freedom: Will, autonomy. In W. Dudley, & K. Engelhard (Eds.), *Immanuel Kant: Key concepts* (pp. 85-102). Durham, UK: Acumen.
- Hannan, D. J. (1995). Gender equity in the American classroom: Where are the women? *English Journal*, 84(6), 103. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=9510172609&site=ehost-live>
- Hardaway, C. R., & McLoyd, V. C. (2009). Escaping poverty and securing middle class status: How race and socioeconomic status shape mobility prospects for African Americans during the transition to adulthood. *Journal of Youth & Adolescence*, 38(2), 242-256. doi: 10.1007/s10964-008-9354-z
- Hart, B., & Risley, T. R. (1992). American parenting of language-learning children: Persisting differences in family-child interactions observed in natural home environments. *Developmental Psychology*, 28(6), 1096-1105. doi: 10.1037/0012-1649.28.6.1096
- Hart, B., & Risley, T. R. (2003). The early catastrophe: The 30 million word gap. *American Educator*, 27(1), 4-9. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=eric&AN=EJ672461&site=ehost-live>
- Hayek, F. (2011). In Hamowy R. (Ed.), *The constitution of liberty: The definitive edition*. Chicago: University of Chicago Press.
- Hayes, W. (2008). *No child left behind: Past, present, and future*. Lanham: Rowman & Littlefield Education.
- Heuer, R., & Stullich, S. (2011). *Comparability of state and local expenditures among schools within districts: A report from the study of school-level expenditures*. (No. ED527141). Office of Planning, Evaluation and Policy Development, US Department of Education. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=eric&AN=ED527141&site=ehost-live>

- Hicks, B. M., Johnson, W., Iacono, W. G., & McGue, M. (2008). Moderating effects of personality on the genetic and environmental influences of school grades helps to explain sex differences in scholastic achievement. *European Journal of Personality*, 22(3), 247-268. doi: 10.1002/per.671
- Hinkle, D., Wiersma, W., & Jurs, S. (2003). *Applied statistics for the behavior sciences*. Boston; New York: Houghton Mifflin Company.
- Hirsch, E.D. (1996) *The Schools We Need: And Why We Don't Have Them*. New York: Doubleday.
- Hirsch, E.D. (2007) *The Knowledge Deficit: Closing the Shocking Education Gap for American Children*. New York: Houghton Mifflin.
- Hochschild, J. L., & Scovronick, N. (2003). *The American dream and the public schools*. New York: Oxford University Press (US).
- Hodgkinson, H. L. (2002) Demography and democracy. *Journal of Teacher Education*, 53(2), 102–5.
- Hoedemaekers, R., & Dekkers, W. (2003). Justice and solidarity in priority setting in health care. *Health Care Analysis*, 11(4), 325-343. doi: 10.1023/B:HCAN.0000010061.71961.87
- Howell, M. C., & Prevenier, W. (2001). *From reliable sources: An introduction to historical methods*. Ithaca, N.Y: Cornell University Press.
- Hursh, D. (2007). Assessing No Child Left Behind and the rise of neoliberal education policies. *American Educational Research Journal*, 44(3), 493-518. doi: 10.3102/0002831207306764
- Hussar, W., & Bailey, T. (2012). *Projections of education statistics to 2020: 39th edition*. (Projection of Education Statistics No. NCES 2011-026). Washington D.C.: U.S. Department of Education.
- Jenkins, C. (2000). New education and its emancipatory interests (1920-1950). *History of Education*, 29(2), 139-151. doi: 10.1080/004676000284427
- Johnson, H. B. (2006). *The american dream and the power of wealth: Choosing schools and inheriting inequality in the land of opportunity*. New York: Routledge.
- Kafer, K. (2011). *Wasting education dollars: The women's educational equity act*. (No. Backgrounder #1490). Washington, D.C.: Heritage Foundation.

- Kant, E. (2009). Transition from the common rational knowledge of morality to the philosophical. In J. Sterba (Ed.), *Ethics the big questions* (pp. 217-234). West Sussex, UK: Wiley-Blackwell.
- Karen, D. (2008). No Child Left Behind? Sociology ignored! In Sadovnic, A., O'Day, J., Bohrnstedt G., & Borman, K. (Eds.), *No Child Left Behind and the reduction of the achievement gap* (pp. 13-24). New York; London: Routledge.
- Kaufman, A. (2006). Kant and constructivism. *Conference Papers -- American Political Science Association*, 1-24. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=poh&AN=26944062&site=ehost-live>
- Kozol, J. (1991). *Savage inequalities: Children in America's schools*. New York: Crown Pub.
- Kozol, J. (2005). *The shame of the nation: The restoration of apartheid schooling in America*. New York: Crown Publishers.
- Kulic, C., & Kulic, J. (1982). Effects of ability grouping on secondary school students: A meta-analysis of evaluation findings. *American Educational Research Journal*, 19(3), 415-428.
- Ladson-Billings, G. (2006). Chapter 15 the meaning of brown . . . for now. *Yearbook of the National Society for the Study of Education (Wiley-Blackwell)*, 105(2), 298-315. doi: 10.1111/j.1744-7984.2006.00087.x
- Ladson-Billings, G. (1995). Toward a critical race theory of education. *Teachers College Record*, 97(1), 47-68.
- Ladson-Billings, G. (2006). From the achievement gap to the education debt: Understanding achievement in U.S. schools. *Educational Researcher*, 35(7), 3-12. doi: 10.3102/0013189X035007003
- Lehning, P. B. (2009). *John Rawls: An introduction* [Originally published in Dutch as *Rawls*] (P. B. Lehning Trans.). (English Translation ed.). Cambridge, UK: Cambridge University Press.
- Legewie, J., & DiPrete, T. A. (2012). School context and the gender gap in educational achievement. *American Sociological Review*, 77(3), 463-485. doi: 10.1177/0003122412440802

- Leonardo, Z. (2012). The race for class: Reflections on a critical race/class theory of education. *Educational Studies*, 48(5), 427-449. doi: 10.1080/00131946.2012.715831
- Mabry, L. (2004). Strange, yet familiar: Assessment driven education. In K. Sirotnik (Ed.), *Holding accountability accountable; what ought to matter in public education* (pp. 116-134). New York; London: Teachers College Press.
- Marcus, K. (2007). The resurgence of anti-Semitism on American college campuses. *Current Psychology*, 26(3), 206-212. doi: 10.1007/s12144-007-9014-6
- Massagli, M. P., & McCullough, B. C. (1979). Policy research and politics: Some inferences from the "Coleman report" for the policy role of the social scientist. *Sociological Focus*, 12(2), 87-101. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=sih&AN=11648463&site=ehost-live>
- Matusov, E. (2011). Imagining No Child Left Behind freed from neoliberal hijackers. *Democracy & Education*, 19(2) Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=eric&AN=EJ943335&site=ehost-live>; <http://democracyeducationjournal.org/home/vol19/iss2/2>
- McCall, G. (1994). Policy analysis across academic disciplines. In S. S. Nagel (Ed.), *Encyclopedia of policy studies* (pp. 201-218). New York: Marcel Dekker.
- McKenzie, K., & Skrla, L. (2011). *Using equity audits in the classroom to reach and teach all students*. London: Corwin Press.
- McKnight, D., & Chandler, P. (2012). The complicated conversation of class and race in social and curricular analysis: An examination of Pierre Bourdieu's interpretative framework in relation to race. *Educational Philosophy and Theory*, 44, 74-97.
- McLean, I., & McMillian, A. (2012). *Utilitarianism in the Concise Oxford Dictionary of Politics*. Oxford University Press.
- Mill, J. S. (2004). Utilitarianism. Reprinted from *Fraser's magazine* (1879) (7th ed.). London: Longmans, Green & Co.
- Mills, M., & Keddie, A. (2010). Gender justice and education: Constructions of boys within discourses of resentment, neo-liberalism and security. *Educational Review*, 62(4), 407-420. doi: 10.1080/00131911.2010.482202
- Mills, C., & Durden, W. (1992). Cooperative learning and ability grouping: An issue of choice. *Gifted Child Quarterly*, 36(1), 11.

- Mistry, R. S., Benner, A. D., Biesanz, J. C., Clark, S. L., & Howes, C. (2010). Family and social risk, and parental investments during the early childhood years as predictors of low-income children's school readiness outcomes. *Early Childhood Research Quarterly*, 25(4), 432-449.
- Morrison, K. (1989). Bringing progressivism into a critical theory of education. *British Journal of Sociology of Education*, 10(1), 3-18.
- Naticchia, C. (1998). Human rights, liberalism, and Rawls's law of peoples. *Social Theory and Practice: An International and Interdisciplinary Journal of Social Philosophy*, 24(3), 345-374.
- National Center for Education Statistics. (2011). *National assessment of educational progress (NAEP), 2011 reading assessments*. (National Assessment of Educational Progress). U.S. Department of Education, Institute of Education Sciences.
- Noble, K., Houston, S., Kan, E., & Sowell, E. (2012). Neural correlates of socioeconomic status in the developing human brain. *Developmental Science*, 15(4), 516-527. doi: 10.1111/j.1467-7687.2012.01147.x
- Nozick, R. (1974). *Anarchy, state, and utopia*. New York: Basic Books.
- Nussbaum, M. (2011). Rawls' political liberalism: A reassessment. *Ratio Juris*, 24(1), 1.
- Okin, S. M. (1994). Gender inequality and cultural differences. *Political Theory*, 22(1), 5.
- Partridge, E. (2004). John Rawls. *Free Inquiry*, 24(2), 43-44.
- Patton, C. V., & Sawicki, D. S. (1986). *Basic methods of policy analysis and planning*. Englewood Cliffs, N.J: Prentice-Hall.
- Pogge, T. (2007). *John Rawls: His life and theory of justice* (M. Kosch Trans.). Oxford: Oxford University Press.
- Pogge, T. W. (1991). *Realizing Rawls*. Ithaca, NY; London: Cornell University Press.
- Policy and Program Studies Service. (2012). Policy and program studies service. Washington DC; US Department of Education. <https://www2.ed.gov/about/offices/list/opepd/ppss/index.html>
- Portes, A. (2000). The two meanings of social capital. *Sociological Forum*, 15(1), 1.
- Putnam, H. (2005). John Rawls. *Proceedings of the American Philosophical Society*, 149(1), 113-117.

- Radin, B. (2000). *Beyond Machiavelli: Policy analysis comes of age*. Washington, D.C: Georgetown University Press.
- Ravitch, D. (1983). *The troubled crusade: American education 1945-1980* [null]. New York: Basic Books.
- Ravitch, D. (2000). *Left back: A century of failed school reforms*. New York: Simon & Schuster.
- Ravitch, D. (2010). *The death and life of the great American school system: How testing and choice are undermining education*. New York: Basic Books.
- Rawls, J. (1999c). In Freeman S. R. (Ed.), *Collected papers*. Cambridge: Harvard University Press.
- Rawls, J. (2003). In Kelly E. (Ed.), *Justice as fairness; A restatement*. Cambridge, Massachusetts; London: The Belknap Press.
- Rawls, J. (2007). In Freeman S. R. (Ed.), *Lectures on the history of political philosophy*. Cambridge, Mass: Belknap Press of Harvard University Press.
- Rawls, J. (1999a). *A theory of justice: Revised*. Cambridge, Mass: Belknap Press of Harvard University Press.
- Rawls, J. (1999b). *The law of peoples*. Cambridge, Massachusess: Harvard University Press.
- Rawls, J. (2005). *Political liberalism, expanded edition* (2nd ed.). New York: Columbia University Press.
- Rizvi, F. & Lingard, B.: (2010) *Globalizing education policy*. New York; Routledge
- Rizvi, F. and Lingard, B. (2000), Globalization and education: Complexities and contingencies. *Educational Theory*, 50: 419–426. doi: 10.1111/j.1741-5446.2000.00419.x
- Rochester, J. M. (2002). *Class warfare: Besieged schools, bewildered parents, betrayed kids, and the attack on excellence*. San Francisco, CA: Encounter Books.
- Rodríguez-Sedano, A., Aguilera, J. C., & Costa-Paris, A. (2009). The decline of the family as a source of social capital in the EU: Some indicators. *Educación y Educadores*, 12(3), 161-177.

- Rothstein, R., Jacobsen, R., & Wilder, T. (2008). *Grading education: Getting accountability right*. New York: Teachers College Press.
- Sacks, P. (2007). *Tearing down the gates: Confronting the class divide in American education*. Berkeley: University of California Press.
- Saldaña, J. (2009). *The coding manual for qualitative researchers*. Los Angeles, CA: Sage.
- Sandel, M. (2009). *Justice: What's the right thing to do?* New York: Farrar, Straus and Giroux.
- Sandel, M. J. (1982). *Liberalism and the limits of justice*. Cambridge [Cambridgeshire]: Cambridge University Press.
- Schneider, S. L., & Tieben, N. (2011). A healthy sorting machine? Social inequality in the transition to upper secondary education in Germany. *Oxford Review of Education*, 37(2), 139-166. doi: 10.1080/03054985.2011.559349
- Schouls, P. A. (1992). *Reasoned freedom: John Locke and the enlightenment*. Ithaca, NY; London: Cornell University Press.
- Schouten, G. (2012). Educational justice: Closing gaps or paying debts? *Journal of Applied Philosophy*, 29(3), 231-242. doi: 10.1111/j.1468-5930.2012.00563.x
- Sensoy, O., & DiAngelo, R. (2011). *Is everyone really equal? An introduction to key concepts in social justice education*. Multicultural Education Series. Teachers College Press.
- Shell, S. (1980). *The rights of reason: A study of Kant's philosophy and politics*. Toronto: University of Toronto Press.
- Singer, P. (2000). *Writings on an ethical life*. New York: Ecco Press.
- Skrla, L., McKenzie, K., & Scheurich, J. (2009). *Using equity audits to create equitable and excellent schools*. Thousand Oaks, CA: Sage.
- Skrla, L., Scheurich, J. J., & Garcia, J. (2004). Equity audits: A practical leadership tool for developing equitable and excellent schools. *Educational Administration Quarterly*, 40(1), 135-163. doi: 10.1177/0013161X03259148
- Spring, J. (1997). Equality of educational opportunity. In J. Strouse (Ed.), *Exploring themes of social justice in education: Readings in social foundations* (pp. 224-256). Upper Saddle River, NJ: Merrill.

- Spring, J. H. (2001). *The American school, 1642-2000*. Boston: McGraw-Hill.
- Stark, A. (2011). Conservative humility, Liberal irony. *Policy Review*, (168), 69-80.
- Stillwell, R., Sable, J., & Plotts, C. (2011). *Public school graduates and dropouts from the common core of data: School year 2008-09. first look. NCES 2011-312*. National Center for Education Statistics. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=eric&AN=ED519147&site=ehost-live>
- Stone, D. (2002). *Policy paradox; the art of political decision making* (revised ed.). New York: W. W. Norton & Co.
- Swanson, C. (2008). Double standards for graduation rate accountability, or none. In Sadovnic, A., O'Day, J., Bohrnstedt, G., & Borman, K. (Eds.), *No Child Left Behind and the reduction of the achievement gap* (pp. 53-76). New York, London: Routledge.
- Tanenbaum, C., Boyle, A., Soga, K., Le Floch, K. C., Golden, L., Petroccia, M., & O'Day, J. (2012). *National evaluation of title III implementation: Report on state and local implementation*. (No. ED531982). Office of Planning, Evaluation and Policy Development, US Department of Education. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=eric&AN=ED531982&site=ehost-live>
- Terrion, J. L. (2006). Building social capital in vulnerable families success markers of a school-based intervention program. *Youth & Society*, 38(2), 155-176. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=23161907&site=ehost-live>
- Tharp, J. (2007). *An archival test of the efficacy of James Comer's school development plan: A comparative study based on Seymour Sarason's "failure of school reform" descriptors*. The University of North Carolina at Chapel Hill. (304831447).
- Tharp, J. (2008). *Breaking the cycle of failed school reform: What five failed reforms tell US*. Lanham, MD: Rowman & Littlefield Education.
- Thomassen, L. (2010). *Habermas: A guide for the perplexed*. London: Continuum.
- Thompson, R. & Brewer, C. (2013, May). *A Rawlsian Justice Critique of Past Educational Movements in the United States*. Paper presented at the annual meeting of the American Educational Research Association, San Francisco.

- Tyack, D., James, T., & Benavot, A. (1987). *Law and the shaping of public education: 1785-1954*. Madison, WI: The University of Wisconsin Press.
- U.S. Department of Education. (2013). Improving basic programs operated by local educational agencies (title i, part a). Retrieved from <http://www.ed.gov/about/overview/budget/titlei/fy11/index.html>
- U.S. Department of Education. (2010). Women's educational equity. Retrieved from <http://www2.ed.gov/programs/equity/index.html>
- U.S. House of Representatives (1994). Goals 2000: Educate American Act. Sec. 101. Retrieved from <http://www2.ed.gov/legislation/GOALS2000/TheAct/intro.html>
- Vedung, E. (1997). *Public policy and program evaluation*. London: Transaction Publishers.
- Verstegen, D. A., Venegas, K., & Knoepfel, R. (2006). Savage inequalities revisited: Adequacy, equity, and state high court decisions. *Educational Studies: Journal of the American Educational Studies Association*, 40(1), 60-76. doi: 10.1207/s15326993es4001_6
- Viadero, D. (2006). Race report's influence felt 40 years later: Legacy of Coleman study was new view of equity. *Education Week*, 25(41), 1,. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=eric&AN=EJ739368&site=ehost-live>; <http://www.edweek.org>
- Vinovskis, M. (2009). *From A Nation at Risk to No Child Left Behind: National education goals and the creation of federal education policy*. New York: Teachers College, Columbia University.
- Wei, W., Lu, H., Zhao, H., Chen, C., Dong, Q., & Zhou, X. (2012). Gender differences in children's arithmetic performance are accounted for by gender differences in language abilities. *Psychological Science (Sage Publications Inc.)*, 23(3), 320-330. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=sph&AN=73500802&site=ehost-live>
- Weiler, K. (2006). The historiography of gender and progressive education in the united states. *Paedagogica Historica: International Journal of the History of Education*, 42(1-2), 161-176.
- Weimer, D., & Vining, A. (2011). *Policy analysis* (5th ed.). Boston: Longman.

- Welsh, B. H. (2010). Equality and schooling: Laggards, percentiles and the U.S. constitution. *Philosophical Studies in Education*, 41, 29-37. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=eric&AN=EJ896304&site=ehost-live>
- Wilkins, A. (2012). "Not out to start a revolution": Race, gender, and emotional restraint among black university men. *Journal of Contemporary Ethnography*, 41(1), 34-65. doi: 10.1177/0891241611433053
- Wise, A. (1967). *Rich schools, poor schools: The promise of equal educational opportunity*. Chicago, London: University of Chicago Press.
- Zyngier, D. (2009). Doing it to (for) boys (again): Do we really need more books telling us there is a problem with boys' underachievement in education? *Gender and Education*, 21(1), 111-118. doi: 10.1080/09540250802580844