

EQUAL OPPORTUNITY AND CHILDREN: AN AMERICAN HISTORY

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I. INTRODUCTION

The Revolution made Americans see themselves as different; remarkably, almost all foreign observers agreed. “They are all liberty mad,” wrote a British immigrant of 1775 (Foner [1998], p.12). Sixty years later de Tocqueville wrote in his renowned *Democracy in America*:

“Among the *new* things that attracted my attention during my stay in the United States, none struck me more forcefully than the equality of conditions” (p.3).

“Not that peoples whose social state is democratic naturally despise liberty; on the contrary, they have an instinctive taste for it. But liberty is not the principle and constant object of their desire. What they love with a love that is eternal is equality” (p. 60; italics added).

With the hindsight of two centuries, that view of the post-Revolutionary Americans has not changed. The British historian, J.R. Pole, puts it eloquently:

“Not only were the people of Britain’s North American colonies the first subjects of any of Europe’s colonial empires to gain their independence from the Old World, but they were first of any nation to base their national existence on an abstract moral principle. The principle that all men are created equal was inseparably woven into the moral foundation on which the Continental Congress justified the colonies’ rebellion against the crown and the existence of the United States as an independent nation.” (Pole [1993], p.1)

The aim of this study is to trace the development and impact of that “abstract moral principle” from the Revolution to the present. A particular emphasis will be on children: their role in the modern version of the principle or ideal, the degree to which their treatment in society has been affected by it, and an assessment of the consistency between that treatment and the ideal.

I hope to be able to demonstrate that the abstract moral principle – the meaning and implications of “all men are created equal” – has evolved and become more precise over time: into what we now call “equal opportunity.” The next section covers the current meaning of the American ideology of equality as expressed in the concept of equal opportunity. Section III attempts a history of how the early notions of pre- and post-Revolutionary equality developed over time and how, if at all, these notions affected American life and institutions. Developing notions of our duties to children is a key part of that history. An important further question, addressed in Sections III and the Conclusion is whether the ideal and the underlying reality of American life are now close to each other, and whether the two are converging toward or diverging away from each other.

I propose this project despite knowing that we live in a “post-modern” age – a time of “incredulity toward meta-narratives.”² As one commentator has described it, looking at

today's society through a post-modern lens means that "we are charging headlong into a new era: a time of rethinking and rebuilding in which beliefs about beliefs are shaken as never before ..." (Anderson [1996], p.3). The pages below show, if nothing else, that the meta-narrative of a society founded and developing on the basis of the "abstract moral principle" of equal opportunity has been, almost since its beginning, under intellectual scrutiny and outright attack.

II. THE CURRENT, TWO-STAGE MEANING OF EQUAL OPPORTUNITY

From the beginning, it was clear that American leaders of every stripe took the words of the Declaration seriously, but some were concerned about the implications of "all men are created equal." Few voiced concern about the implied universality of "all", but many feared the inferences that might be drawn from "equal." John Adams, as was often the case, saw the alternative implications clearly. On one hand, as a primary drafter of the new Massachusetts Constitution of 1780, Adams subscribed to and probably drafted the first sentence of that constitution's Declaration of Rights: "All men are born free and equal, and have certain natural, essential, and unalienable rights" (Pole [1993], p.35). On the other hand, he feared that this equality would be expanded beyond the equal possession of rights to a demand for the equalization of property: ³

"That all men have one common nature, is a principle that will now universally prevail, and equal rights and equal duties will in a just sense, I hope, be inferred from it. But equal ranks and equal property can never be inferred from it, any more than equal understanding, agility, vigor or beauty. Equal laws are all that can ever be derived from human equality." (as quoted in McClosky and Zaller [1984], p.80).

Adams' specific fear of "leveling" turned out to be unfounded – as the next section makes clear. I *will* argue, however, that the rights inferred from being "born free and equal" did change and develop over time.

Today we describe the contents of Pole's "abstract moral principle" as "equal opportunity." The purpose of the present section is to elucidate the current understanding of "equal opportunity" and to show that there is almost universal agreement today among Americans of all political persuasions that equal opportunity is what we mean by the notion of equality first expressed in the Declaration. While there is, I would argue, widespread acceptance of equal opportunity as the foundation and goal of American civil society, there may be less agreement concerning the specific conditions that must exist before it is achieved.

The broad outline of the contemporary understanding of equal opportunity was in place by the early 20th century. Although not the first to coin the phrase or the concept, Woodrow Wilson in 1912 stated and explained the modern contours of the concept:

"Of course, this was intended to be a government of free citizens and of equal opportunity, but how are we going to make it such? ... America was created in that every man should have the same chance with every other man to exercise mastery over his own fortunes." (Wilson [1912], p.471 and p.479)

Wilson's vision was drawn even more insistently 50 years later by President Lyndon Johnson:

"This is the next and more profound stage of the battle for civil rights. We seek not just freedom, but opportunity. ... You do not take a person, who for years has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say 'you are free to compete with all the others' and still justly believe that you have been completely fair." (as quoted in Pole [1993], p.410)

The concept of equal opportunity and the ideas behind it were not just the possession of Democrats or so-called liberals or leftists. The much-maligned Herbert Hoover posited equal opportunity as a cornerstone of his philosophy of "progressive individualism" – guaranteeing equal chances for the reward of "intelligence, character, ability, and ambition." Although short on specific policy proposals to realize his goal, Hoover was clear that birth and family position were to be irrelevant:

"The sons of the successful shall not by any mere right of birth or favor continue to occupy their fathers' places of power against the rise of a new generation in the process of coming up from the bottom." (Hoover [1922], p.22)

Also representing a conservative viewpoint, in 1960 President Eisenhower's Commission on National Goals described the concept as follows, linking it to the positive goal of developing an individual's capabilities:

The status of the individual must remain our primary concern. All our institutions – political, social, and economic – must further enhance the dignity of the citizen, promote the maximum development of his capabilities, stimulate their responsible exercise, and widen the range and effectiveness of opportunities for individual choice. (President's Commission on National Goals [1960], p.3)

Out of these various statements we can extract at least two separate stages, each with somewhat different private rights and public responsibilities. Most familiar is the stage, sometimes called a "race", where individuals exercise their capabilities, their "intelligence, character, ability, and ambition," and reap their rewards. During this stage, society has the responsibility of assuring that rewards are distributed fairly, according to the demonstration of the above capabilities, and not as a result of irrelevant characteristics such as birth and color (to be discussed more fully below). Many commentators use the analogy of the "fair race" to describe this stage, but there are a number of reasons to be wary of it. First, while people entering politics or the world of the large corporation may, indeed, be entering a true race, others may productively exercise their capabilities in a non-competitive environment – yet still need social protections ensuring fairness. Second, as most of the previous statements imply, the responsibilities of society extend beyond the stage where individuals exercise their already-developed capabilities. Fixating on the requirements for a fair race may cause us to ignore "what happens before the starting line" – a separate stage where people, typically children, are *developing* their capabilities. We now know that fully functioning adults do not emerge untutored and unaided from childhood to take their place at some pre-determined starting line.

Given the facts of childhood development, it would be difficult to argue that *society's* responsibility begins only at the starting line.

A particularly perceptive discussion of the components of equal opportunity and their associated social responsibilities is made by conservative commentator and author George Will in his book, *Statecraft as Soulcraft*. After echoing John Adams by saying “Conservatives rightly stress equality of opportunity rather than equality of outcome” he goes on:

“Conservatives are fond of the metaphor of a footrace: All citizens should be roughly equal at the starting line of the race of life. But much that we have learned and continue to learn – and we are learning a lot – about early-childhood development suggests that ‘equality of opportunity’ is a much more complicated matter than most conservatives can comfortably acknowledge.” (Will [1983], p.130)

Will then goes on to link the “equality at the starting line” to such requirements as prenatal care, “infant stimulation”, childhood nutrition, and the environment of the home.

Conservative thinkers Milton and Rose Friedman would agree with the footrace metaphor, but also describe the goal of the process in the words coined earlier in the French *Declaration of the Rights of Man and the Citizen*: “a career open to the talents.” They see this aspect of equal opportunity as a necessary condition of the “liberty and the pursuit of happiness” in the Declaration of Independence. They also describe conditions that would constitute *violations* of equal opportunity:

“No arbitrary obstacles should prevent people from achieving those positions for which their talents fit them and which their values lead them to seek. Not birth, nationality, color, religion, sex, nor any other irrelevant characteristic should determine the opportunities that are open to a person – only his capabilities.” (Friedman & Friedman [1980], p.132)

It may be that the Friedmans and Will are in perfect accord. Any difference in their respective positions would hinge on the Friedmans’ interpretation of the arbitrariness of “birth,” and whether, in their view, differences in family wealth that lead to differences in the services Will finds important – prenatal care, nutrition, for example – constitute a violation of equal opportunity.

George Will’s incorporation of requirements for childhood health and development into the definition of equal opportunity would undoubtedly find favor with all of the authors cited above. Three years before Woodrow Wilson’s 1912 statement, Herbert Croly, an advisor to Theodore Roosevelt and as editor of *The New Republic* one of the country’s most noted intellectuals, wrote in similar terms:

“The democratic principle requires an equal start in the race, while expecting at the same time an unequal finish. ... The chance which the individual has to compete with his fellows and take a prize in the race is vitally affected by material conditions over which he has no control. It is as if the competitor in a Marathon cross country run were denied proper nourishment or proper training, and was obliged to toe the mark against rivals who had every benefit

of food and discipline. .. Those who have enjoyed the benefits of wealth and thorough education start with an advantage which can be overcome only by very exceptional men, -- men so exceptional in fact that the average competitor without such benefits feels himself disqualified for the contest.” (Croly [1909], pp. 444-445)

Thus, in summary, for the better part of a century, there has been broad agreement on both the political right and left on what equality means in the American context – equal opportunity. Although the race metaphor is often used, there is general agreement that the fairness and legitimacy of the overall two-stage process depends, not only on what happens to adults during the race proper, but what happens to children prior to the start of the race. Moreover, as many of the quotations above at least suggest, there are serious reasons to believe that Americans are not treated fairly during this initial stage.

Public Support: Public Opinion Data

Not only is there widespread agreement among political and intellectual leaders, but polling data show that there is general agreement among the population at large as to what equality stands for in America. Moreover, unlike many of the commentators cited above, the majority of the public believes strongly in the essential fairness of the current system – that equal opportunity reigns in the United States today.

Ever since public-opinion polling was instituted, huge majorities have always supported the principle of equal opportunity, and equally, have supported the view that society has a duty to assure it. A typical question, posed by the Pew Research Center in both 1990 and 1997 goes as follows: “Our society should do what is necessary to make sure that everyone has an equal opportunity to succeed.” In both 1990 and 1997, 91 percent of Americans either completely or mostly agreed with that statement. As it turns out, such overwhelming agreement was duplicated by the average of European countries in 1997 – France, Germany, Italy, Spain and the UK (Pew Research Center [2000], p.42).

When the Pew questions move beyond equal opportunity to public support for the equivalent of a “safety net” for the poor (adults, as well as children), U.S. opinion diverges somewhat – but not in my view dramatically – from the European: when the question is posed as “The government should guarantee every citizen food and basic shelter,” 80 percent of Europeans in the above countries completely or mostly agree with the proposition, while U.S. agreement, still a majority, falls in both 1990 and 1997 to the low 60s (p.42).

However, when *children* are mentioned in questions relating to equal opportunity and/or the reduction of poverty, the U.S. majority turns typically to near unanimity. A typical question from the 1960s, “Children should have equal education opportunity,” found 98 percent in agreement and only 1 percent disagreeing (Westie [1965], as quoted in McCloskey & Zaller [1984], p.83). In 2000, at the height of the opposition to welfare payments for adults, large majorities nevertheless supported reducing child poverty and allocating significant parts of the then existing federal budget surplus to children’s programs. Thus, in a poll commissioned by the National Center for Children in Poverty at Columbia University, 85 percent of those polled endorsed the goal of reducing child poverty by at least 50 percent in the current decade;

further, almost 2/3 of the population supported investing 10 percent or more of the projected federal surplus to reduce child poverty (amounting to \$40 billion per year).

Weaver [2000] noted this pro-child phenomenon when pollsters in the 1990s posed questions on welfare payments. When the question was posed as “Are we spending too much, too little, or about the right amount on ... welfare?” without mentioning children, by 1993, 60 percent more people said “too much” than said “too little.” When the question was reframed to replace “welfare” with “poor children,” the percentages changed dramatically: approximately 40 percent *more* said “too little” rather than “too much” (Table 7-1, p.173). Of course, spending on children while *not* spending on their parents is easier said than done!

Summary Definition and Questions to Pursue

We thus have quite strong public agreement on the meaning and desirability of equality today in the economic and social realm. The contours of the concept of equal opportunity have commanded fairly general agreement for approximately a century. The notion of equal rights, but *not* equal outcomes in the race stage has always appealed to conservatives – from John Adams to George Will. The notion of equality at the starting line and the duty of society to assure it appeals to liberals and many conservatives alike.

Despite this general agreement, we have discussed above how the precise meaning and implications of the concept are not immediately obvious: equal opportunity involving as it does *two*, arguably equally important, stages – the “training period” of childhood and what some call “*the race*” stage – with possibly different criteria for judging the fairness of each.⁴ Distinguishing a stage called the training period rests on the now general understanding that childhood is a period of physical and emotional development that requires costly inputs of a number of kinds in order that the child may realize his/her full potential (however that may be defined). The nature and costliness of these inputs depends on the accumulated knowledge of the process of childhood development. If all children were born with exactly the same capabilities, then each would be expected to receive the same bundle of training resources (from all sources, private and public); to the extent that children differ in the innate capabilities, society must decide whether different levels of training inputs are required by criteria of fairness.⁵

The second stage, the “race” or “pursuit of happiness,” is meant to pay homage to the American view that people should have a certain amount of freedom to choose what they seek or aspire to. If the person wishes to enter a competition, e.g. for political office or for the top position in a corporation, then a race would seem to be the proper metaphor; however, in many, if not most cases, the individual may not feel he/she wants to enter a competition, but rather is just pursuing happiness – which may include service to society or others. Standards of fairness apply to this stage – which we argue below have also changed over time – but now focus on providing a “level playing field”: forbidding and preventing discrimination based on irrelevant characteristics and assuring equal protection of the law. It might be noted that the fact that Americans support a considerable degree of freedom of choice in this second stage, does not in my view imply, as some suggest, that Americans support an individualism so “rampant” that the integrity of the overall system of equal opportunity may be threatened.⁶

The next section examines the historical development of the concept of equal opportunity. The primary aim is to show how this rather complicated concept of equality evolved from that “abstract moral principle” contained in the Declaration of Independence: “that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.” An historical account of the evolution of a concept is one method of understanding the nuances of its present content. Such an approach can also help illuminate other important questions: if this concept or ideal changed over time, can we identify what caused it to change? Given the importance attributed to this “abstract moral principle” by J.R. Pole and others, did it affect American life and institutions in important ways? And given its presumed importance, what happened when it came into conflict with other principles? Did it trump them or get trumped? And, finally, how does American society, today, measure up to the ideal of equal opportunity? Are we close to realizing the ideal and, if not, are we at least moving in the right direction?

III. THE DEVELOPMENT OF THE AMERICAN VIEW OF FREEDOM, EQUALITY AND EQUAL OPPORTUNITY

Antecedents and Early Views to 1800

As we have seen above, foreign observers saw in post-Revolutionary America an allegiance to, and even an obsession with, liberty and equality that was very different from that in their home countries. Americans took a similar position when comparing America to what they perceived as the state of affairs abroad. In 1793, the lexicographer, Noah Webster, described the situation as follows:

“Here the equalizing genius of the laws distributes property to every citizen.”
[And because of the lack of religious tests and corporate monopolies], “here every man finds employment, and the road is open for the poorest citizen to amass wealth by labor and economy, and by his talent and virtue to raise himself to the highest offices of the State.” (as quoted in Pole [1993], p.151)

If one were to accept the empirical validity of such statements, post-Revolutionary Americans not only had a passion for the twin values of liberty and equality, but also lived in a society where equal opportunity as defined in the previous section *already existed*. With respect to the two-stage definition above, neither poverty, nor lack of education, nor any other discrepancy attributable to the training period was recognized as an impediment to later economic or, even, political success. Moreover, during the so-called race stage, no impediment or source of discrimination was recognized as a significant *external* deterrent to self-realization. Certainly this would have been a society where careers “were open to the talents,” as later writers put it. No further governmental or other institutions seemed necessary to improve or maintain equal opportunity.

Given the lack of empirical data, it would be hard to statistically confirm or refute Webster’s thesis. However, it is clearly the case that it cannot possibly be meant to include blacks – slave or free – or women. Further, information presented below on colonial poverty, early attempts to alleviate the poverty of urban youth, and a growing concern with increasing

inequality in the first quarter of the 19th century, suggests that the optimistic view shared by Webster, de Tocqueville (noted in the Introduction, above), and many others was in error with respect to the asserted widespread existence of equality at the starting line.

How is one to account for such over-optimism? Part of the explanation is entwined with the Revolution and the conditions that brought it on. The goal of the Revolution, as expressed for example in the Declaration of Independence, was always framed in terms of eliminating the restrictions on liberty imposed by an absent and tyrannical government. The virtual elimination of the negative restrictions imposed under British rule was eventually very successful – evidenced by the Bill of Rights and, as discussed below, by the wholesale elimination of the British restrictions on inheritance and religious toleration. If one focused on the elimination of government-imposed restrictions – known as the increase of “negative” freedom or liberty – the Revolutionary record was indeed a sweeping success.⁷

A second reason for this early absence of criticism concerning the actual state of American equality – as opposed to the shared set of values – was that most commentators were themselves, like Webster, of the educated or propertied classes; for them the main bar to achievement or the “pursuit of happiness” was not a lack of education or the availability of resources in the “training” period – later described as components of “positive freedom”— but the impediments and discriminations swept away by the Revolution and its aftermath. Such is the implication I draw from two fascinating articles by Isaac Kramnick [1981 and 2004]. Kramnick traces the origins of what evolved into equal opportunity to French and British thought of the late 18th century; the British writers, in particular, who influenced and even sometimes composed American revolutionary writing, were for the most part religious dissenters objecting to the legally-imposed, religious restrictions on public employment and political office represented by the British Test Act and Corporations Act. These people, for the most part educated and accomplished, like J.B. Priestly and Tom Paine, called for “careers open to talent.” Kramnick illustrates this thrust with a 1794 statement from cotton manufacturer and religious dissenter, Thomas Walker:

“We do not seek an equality of wealth and possessions, but an equality of rights. What we seek is that all may be equally entitled to the protection and benefit of society, may equally have a voice in elections ... and may have a fair opportunity of exerting to advantage any talents he may possess” (Kramnick [1981], p.181).

For these people, the path to equal opportunity was impeded by British restrictions during the race stage, not by a lack of resources during the training stage. This orientation and limitation of vision were shared by an important segment of American elite opinion of the time. John Adams, as we have seen above, wrote in similar terms, making it clear that ideas like Walker’s were, in his view, the essence of the Declaration of the Independence.

Had commentators like Walker and Webster come armed with today’s concept of equal opportunity and a deeper knowledge of the process of childhood development, they might have modified their conclusion that equal opportunity existed in fact. What historical evidence we have today indicates that in the years leading up to the Revolution, poverty and public assistance were widespread and increasing. Trattner ([1999], p.30) citing work by Nash and Virgadamo, documents how, in Boston, New York, and Philadelphia, funds allocated to public

relief rose rapidly throughout the 18th century, especially from 1750 to the Revolution. However, given the state of their knowledge, commentators at the time might be forgiven for not linking poverty to a lack of equal opportunity: they might well have believed that a system was in place that would break the relationship between the two. All colonies had adopted some form of the English system based on the Elizabethan Poor Law of 1601. Poor children, in particular, were expected to be put on the right course by arranging for them to be apprenticed in a useful trade; in principle, at least, given the knowledge of the era, such a course allowed the poor child to escape poverty and to build a successful life.

The Interaction between Ideology and Reality: An Argument for American Exceptionalism

While the early ideology of equal opportunity was over-simplified, and the early view that equality held in fact over-optimistic, there is strong evidence that the ideology of equality that so many found unique had an important impact on reality. It was a spur to action in a number of areas. In this sense, there is support for the idea of *American Exceptionalism* as formulated by Louis Hartz [1955] and elaborated by Seymour Lipset [1996] – even if one might be reluctant to accept all the implications drawn by the above authors. Some of the most important areas where the new ideals of equality had an impact are outlined below.

Freedom of Religion The first amendment to the Constitution guaranteed the freedom from federal laws that might establish religion or the religious tests that the English dissenters like Walker and Priestly were fleeing from. Similar state laws or constitutional provisions provided guarantees in most states.

The Laws on Inheritance Within but a few years of Independence virtually every state swept away all the remnants of English feudal practices. Jefferson led what turned out to be a remarkably easy fight in Virginia against the practices of primogeniture and entail (Pole [1993], p.135). He saw these practices as examples of the many governmental limitations on freedom – in this case on the ability to sell or accumulate property. That these laws turned out to be so easily repealed is seen by a number of historians as evidence for the proposition that feudalism and its associated aristocracy were never important elements in colonial America. Louis Hartz [1955] and Seymour Lipset [1996] concurred with this assessment and concluded that the American escape from a feudal past was a key factor in explaining the lack of class consciousness and of an appeal of socialism to 19th century American workers.

Suffrage The passion for and belief in equality and liberty seemed also to be key factors in the much faster attainment of universal male suffrage in American than in European countries. Under both the Articles of Confederation and the Constitution, voting requirements were set by the states for federal as well as state elections. As explained by, for example, Hofstadter, *et al.* ([1959], Vol.1, p.201), the initial qualifications for voting and office-holding set by the states after independence (under the Articles of Confederation) tended to follow what had been in place prior to the Revolution. States like New York retained fairly significant property qualifications, whereas states like Georgia allowed all male taxpayers to vote. Needless to say, women and slaves were excluded. Such early property or income requirements were justified by conservatives of the ilk of John Adams in their quest to inoculate against leveling, by vesting political power in people who had a serious “stake” in the new nation.

However, over the next 40 years there was an inexorable movement, in both old and new states, toward universal manhood suffrage. This trend culminated in the 1828 election of

Andrew Jackson – a presidential election when the voter turnout increased by over 300 percent from that in 1824 (Hofstadter *et al.* vol.1, pp.390-391). A number of factors seem to have conspired to defeat the old property limitations on political freedom and equality. First was the example set by new states carved out of the Northwest Territories and, later, the Louisiana Purchase: virtually every new state entered under the principle of universal manhood suffrage. Apparently these examples, plus the pressure from war veterans and rural dwellers in the original states, also led to the gradual elimination of property restrictions in the 13 original states.

By contrast, it took more than an extra fifty years for England, with the Parliamentary reform of 1885, to even approximate universal manhood suffrage. In the much-publicized Reform Act of 1832, Lunt [1957] calculates that the actual suffrage was only 15 percent of what it would have been with universal manhood suffrage (Lunt, p.643 and pp.712-13).

Clearly the possession of the right to vote by virtually every white adult male was strong, tangible evidence supporting the belief in a natural state of equality. It can be argued, as well, that the resulting great expansion of the suffrage had an important impact not only on the choice of political leaders and policies at all levels of government, but also on the development of modern political parties, political campaigns, and urban machine politics (Hofstadter *et al.* [1959], vol.1, pp.390-400).

Education Publicly supported and universal primary and secondary education has turned out over the years to be America's most important tool for promoting equal opportunity. It might be a surprise to learn, however, that the history of education in the 18th and early 19th centuries shows that principles other than equal opportunity, but to some extent complementary with it, were more important in motivating educational change. In pre-Revolutionary times and the fifty years after 1776, the equal opportunity motive was rarely the primary argument used by educational advocates. At least three alternative arguments for various types of education took precedence over equal opportunity. (See, e.g., Kaestle [1983], pp.32-36.)

Pre-Revolutionary efforts toward state supported education, as practiced in, say, Massachusetts, were typically for religious and moral purposes: literacy and the ability to read the Bible was thought important for budding Protestants. (See Vinovskis [1999], pp.148, for evidence that these efforts bore considerable fruit.)

After the Revolution, Jefferson, Benjamin Rush, and other leaders saw a certain level of universal education as a necessary component of citizenship. The protection of the republic demanded it. Rush went so far as to write that students should be taught that they were "public property" (as quoted in Pole [1993], p.147). This particular argument may well have helped justify public expenditures for education in such states as Connecticut and New York, but, in Virginia, Jefferson's plan was rejected at least three times through 1817, and Virginia did not have a free statewide school system until 1870 (Kaestle, p.9). Kaestle details how Jefferson's failure was caused by factors that loomed large in educational debates for the next half century and more: the question of who should pay and how, and the fear of governmental control from above the local level. It is nevertheless interesting to note what degree of education Jefferson saw as necessary for the new Republic. First, there was to be free, statewide elementary education. Beyond that, twenty regional academies or secondary schools would be established. Free tuition would be offered to selected, but not all, students to the secondary

schools and, in addition, to ten outstanding but needy students at William and Mary College. Thus, both citizens and a cadre of leaders would be educated at public expense (Kaestle, p.9; Pole, p.146).

A third argument for public-supported education surfaced in urban areas around the turn of the 19th century. A varying mix of compassion and fear spurred city elites to take the lead in promoting education for the poor – a population, often of immigrants, that was seen to be in need of both acculturation and moral development. Kaestle and others note that, unlike in England, the debate was over the funding and curriculum in such “charity” schools, *never* over the *desirability* of educating the poor. According to Kaestle, by shortly after 1800 there were six such charity schools in New York City and twelve in Philadelphia (p.31). The motivation for the education of poor children was less for the promotion of equal opportunity than for the limitation of the damage of poverty to society. As the *New York Daily Advertiser* said in 1791: poverty “exposes them to innumerable temptations to become not only useless, but hurtful members of the community” (Kaestle, p.32). Thus, to put things into economic parlance, a firmly held premise was that some sort of universal children’s education could and would lead to important societal externalities – in addition to the direct personal benefits. A quotation from Thomas Eddy, one of New York’s early reformers, and like many of them a Quaker, shows both this orientation and, incidentally, the continued influence of John Locke:

“The great preventive of offences is doubtless an early attention to moral and religious instruction, and thus to fortify the infant mind with good principles. The observation made by John Locke is remarkably appropriate and excellent: ‘I think I may say, that of all the men we meet with, nine parts of ten are what they are, good or evil, useful or not, by their education.’ ” (Kaestle, p.33)

With the possible exception of the original, Puritan goal of making the Bible accessible to all, the preceding discussion shows that the key *early* arguments for American public education were based on the discovery of public externalities, a clear justification for public expenditure: education would protect the new Republic by training good citizens, and, alternatively, would reduce crime, vice, and undefined immoral practices by weaning the children of the poor and immigrants from their parents’ undesirable habits and customs.

Perhaps surprisingly, what evidence there is suggests that the spread of education – or at least literacy – from these multiple, decentralized efforts was impressive. Vinovskis [1999, p.148] reviews the available empirical evidence and, among other things, shows that as early as 1840, almost 99 percent of white adults in Massachusetts could read and write. Granted, these results are probably limited to the Northeast or even just Massachusetts, but it is nevertheless interesting to note that they come at the very beginning of the period of great educational reform led by the likes of Horace Mann and Chester Barnard.

If not a vindication for the motivating force of the 20th century notion of equal opportunity, this history of early American education does show, I believe, support for “American exceptionalism” – but in a form that does not imply an extreme view of American individualism. Beliefs in fundamental equality and the need for a large measure of individual freedom do not preclude a belief that education is a public good, essential to train good citizens, especially in a land of immigrants. This emphasis on the public benefits of education is seen as part of the “republican synthesis” or the “republican virtue tradition.”⁸

Trouble in Paradise: Developments from 1800 to the Civil War – Reservations with the Existence of Equal Opportunity and the Interplay of Other Concerns and Principles

With the certainty of hindsight, it seems clear that, despite the “passion for equality” and the “liberty madness,” equal opportunity as we now define it did not exist in America of 1800. However, thrusts toward realizing aspects of the ideal were being made on multiple fronts, in many, if not all, geographical areas: the democratization of qualifications for voting and political office; the elimination of aristocratic restrictions on inheritance; and the extension of education.

Critics and reformers began to cite evidence that called into question the sanguine observations of the likes of Noah Webster, arguing, rather, that the average citizen had lost or was losing the ability to prosper by hard work and talent. In this section, we will address a number of sources of such criticism and evidence: first is the writing and actions of people, particularly educators, who worked directly with the poor, particularly the urban and immigrant poor; second, is the commentary of writers on economic developments who became aware of the tendency towards periodic business cycles, and toward the inexorable development of an industrial system that seemed to feature great increases of market concentration and industrial power.

The Impact of Economic Developments and the Accumulation of Wealth, 1810-1830

Beyond the analysis of urban poverty and immigration discussed above, there were other developments that made Americans question whether hard work and talent could assure success. One of the first systematic attempts to criticize the path of development of the economic system was John Taylor’s 1814 work *An Inquiry into the Principles and Practice of Government of the United States*” (Pole [1993], p.163). He warned of and abhorred the rise of what he called a new aristocracy based on a “system of paper and patronage.” How much his substantive argument that much of the new wealth was the result of the undue legislative power of banks and businesses was correct, or just a reflection of the loss of power of the landed Virginia interests of which he was a member, is unclear. However, in Taylor’s book we have one of the first warnings of what would become a fact after the Civil War: the dangers of market concentration – particularly that gained by political influence. Little more than a decade later, this general argument would form the backbone of Andrew Jackson’s campaign and program.

The fear of the rise of a new aristocracy of wealth begot serious intellectual thought as well as political action. The danger of concentrated wealth to the realization of equal opportunity and consideration of what might be done guard against its effects was discussed at least as early as 1794 by the French political philosopher, Condorcet – and was probably well known to many Americans shortly thereafter (Sabine [1951], pp.481-83). In the work of Thomas Skidmore [1829] and the program of the Workingman’s Party, there was the realization, perhaps for the first time in the American intellectual consciousness, that wealth, whether ill-gotten or not, could destroy what we now call equal opportunity by its impact on children (Pole [1993], p.165). Skidmore clearly saw the danger of disparities of wealth for the equality of children’s education and training. Consequently, he believed that education should be a public responsibility and proposed that the state should pay for all education – going so far as to echo Revolutionary leaders, such as Benjamin Rush, by saying that children belonged to the community, and not to their parents (Pole, p.147). But beyond that, observing, like Condorcet,

that wealth could destroy the requirements of equality at both stages, Skidmore came out for the abolition of inheritance.

A different approach that played a short-lived part in the platform of the same Workingman's Party also showed a keen understanding of factors determining equality in the children's training stage. Under the influence of the English-born reformers, Robert Dale Owen and Frances Wright, the party came close to promoting an educational policy that proposed a "national system of boarding schools for all children aged 2 to 16" (Kaestle [1983], p.144). Skidmore's inheritance and redistribution proposals were rejected as politically too radical, in favor of what seemed to be this more palatable approach. Ironically, this plan also proved too radical for a functioning political party; but it did show a growing recognition that the training period of childhood could not be left to laissez faire alone. The rejection of redistributive policies proved prophetic: never again did a major American labor organization support radical redistribution or public ownership.

Addressing Children's Poverty and Welfare from 1800 to 1860

In addition to education, the attempts to address the increasing poverty alleged to be occurring in the early 19th century affected both the lives and equality of opportunity of children. The discussion in the previous section showed that a number of different values, in addition to equal opportunity, motivated public officials and reformers to intervene into children's lives. All of these values, however, assumed that childhood was important, that a child's behavior could be changed for the better, and that, for one reason or another, it was in society's interest to promote change in the right direction.

The study of the history of children's welfare throughout the 19th century is a fascinating story of a multitude of different programs trying to turn children into responsible citizens – if not into individuals whose "capabilities are developed to the maximum."

In the first two decades of the 19th century, in both England and the United States, public officials detected what they saw as a dramatic increase in pauperism. At the time the causes identified included increased drunkenness, the rapid pace of foreign immigration, and the failure of local and private charity to properly distinguish between the unworthy – the able-bodied – and the worthy poor. The English solution, contained in the Poor Law of 1834, was to force the poor, particularly those deemed able-bodied, into poorhouses in order to receive relief; the failures and corruption of local administrators were attacked by centralizing oversight into a central board. (Lunt [1957], p.648). What now appears as a draconian solution was instituted by the English liberal government that only a year earlier had abolished slavery and passed the first effective Factory Act limiting the working hours of children.

U.S. states and localities – there was, of course, no national policy toward poverty -- were far less consistent than the centralized British regime, but there was a decided move away from "outdoor relief" to British-style poorhouses. As far as children were concerned, early reports predicted that the "indoor" relief of poorhouses would be superior to a number of other American practices such as the auction of paupers. Well before the English reform, but undoubtedly influenced by the English debate, the 1824 *Yates Report* in New York – called "one of the most influential documents in American social welfare history" (Trattner [1999], p.57) – stated:

“The education and morals of the children of paupers (except in alms houses) are almost wholly neglected. They grow up in filth, idleness, ignorance and disease, and many become early candidates for the prison or the grave. The evidence on this head is too voluminous even for reference.” (Katz [1996], p.22)

The proposed solution by Yates was to move from outdoor relief to the supervised indoor relief of publicly-financed poorhouses (almshouses). Needless to say, history demonstrated in both England and America that the almshouse failed with respect to its aims for children. Katz [1996] shows that by about 1850 the reported picture changed completely. The failure of the almshouse model was diagnosed as primarily the result of placing *disparate* populations together, e.g. commingling the likes of children, respectable widows, and the insane.

Special needs of children, in general, were always recognized, but, also, it turns out, a constant theme in American history that complicated the satisfaction of children’s needs was a public desire not to reward the idleness of able-bodied adults. Still with us, this complicating goal is now known as the “dual clientele” problem or trap (Weaver [2000]). A number of approaches tried to harmonize these potentially conflicting goals. These included the starting of specialized institutions, e.g. orphanages, the outplacement of children through such organizations as Children’s Aid Societies, and, as became more important especially after the Civil War, the supervision of poor families outside the almshouse by private and public workers (Katz [1996], Part I).

Enriching the Definition of Equality

By the early 1830s, there seemed to be a perceptible shift in what many, but not all, Americans saw as the essential requirements of equality: roughly, if vaguely, approximating the definition of equal opportunity discussed in section II above. The modified view reached the political sphere in an oft-quoted 1833 statement from Robert Rantoul, Jr., a prominent Boston Jacksonian:

“We have a right to have the career kept fairly open to talent, and to be brought equally and together up to the starting point at the public expense; after that we must shift for ourselves.” (Meyers [1957], p.218)

Rantoul articulates clearly, perhaps for the first time, key aspects of what was to become the definition of equal opportunity. First, life is divided into two stages with different rights and responsibilities in each. Moreover, although Skidmore and others had done so before, note how the responsibility for making sure that children achieve what is required during the training period is lodged with the *government* (at least as far as financing is concerned).

This broad outline of principle – it is made clear by Meyers, Kaestle, and others – was well known by this time to a large group of Americans. However, it is also made clear by these historians that there were strong disagreements as to whether and how to achieve this vision. Further, it is still possible to find authoritative statements claiming that equal opportunity was fully realized:

“The necessities of life are easily obtained by every person now, as ever they were, and the luxuries far easier.” (*Scientific American*, 1849, as quoted in McClelland [1990], p.33)

Democrats, especially as personified by Jackson and many of his followers, opposed centralized (state) control and, usually, centralized financing of education. Many of the great names in educational reform, e.g., Horace Mann and Chester Barnard, were for state standards, state training of teachers, and state laws assuring financing, and found their strongest support in the Whig party.

The program of the *national* Democratic Party under Jackson concentrated on increasing “negative” freedom, focusing on the dismantling of Federal intervention in economics and politics. The fight against the Bank of the United States is emblematic of that philosophy. As far as I can tell, in his battles against what he saw as government-supported “artificial distinctions” and “exclusive privileges,” Jackson, himself, did not make the distinctions that some of his supporters like Rantoul did. To me at least, his veto message of the bill rechartering the Bank makes this clear:

“Distinctions in society will always exist under every just government. Equality of talents, *of education*, or of wealth cannot be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law. ...” (quoted in Hofstadter, et. al. [1959], vol.1, p.413, italics added).

Here and most everywhere in his thought and action, Jackson, expresses a pure form of the government as protector of “negative” liberty or freedom in the sense of Isaiah Berlin [1969]: protecting equal protection of the laws, but nothing else – not even children’s rights to education and other protections derived from the English common law. To give Jackson his full due, however, one must note his strong action against discriminatory government benefits: government contracts and what he saw as all-but-hereditary government jobs. Clearly many of his supporters such as Rantoul disagreed, and the thrust for publicly funded and universal education did not founder.

Returning to the “Plain Meaning” of the Declaration: The Civil War and Its Aftermath

By 1835 or so, the intellectual ideas defining the notion of equal opportunity were reasonably well-known, if rudimentary, in form. Virtually no one believed in leveling. While the notion of the “maximum development of capabilities” as the ultimate goal of the training period was barely articulated, the notion of a government duty to provide services such as education was widely accepted as a necessity in the effort to build good citizens and acculturate immigrants. Far too many, however, still seemed to believe that equality of opportunity actually existed throughout America – if the class to which it applied was suitably defined.

For all of us today, and for many of those living in that age, the “suitably-defined” class – excluding slaves, women, and a large part of the poor – clearly violated the plain meaning of that key phrase of the Declaration of Independence: “all men are created equal.” There are a number of partial explanations for how such an all-encompassing principle could live side-by-side with the constant violation of its plain meaning. With respect to slavery, Lincoln in his speeches made the argument that slavery always was seen as a regrettable anomaly – that at

worst would be limited and at best would wither away.⁹ Garry Wills [1979] view is that the Declaration was all but forgotten soon after its writing and, somewhat unhappily in my opinion, criticizes Lincoln for bringing it back in the way that he did. Others, as noted in more detail below, among them Southern apologists, but also including Senator Stephen Douglas, maintained that the principles of the Declaration no longer, if ever, applied.

However, if one doubts the potential power of an ideal, the story of the role of “all men are created equal” in the speech and action of Abraham Lincoln provides a forceful refutation. The Kansas-Nebraska Act of 1854 brought Lincoln out of retirement; the Act repealed the Missouri Compromise of 1820 that had governed the spread and containment of slavery in the territories and, in the view of Lincoln and many others, made inevitable either war or the breakup of the Union. Lincoln was no abolitionist – because he knew abolition would lead to war – but in his first public words his argument against Kansas-Nebraska was based on the Declaration:¹⁰

“Equal justice to the South, it is said, requires us to consent to the extending of slavery to new countries. That is to say, inasmuch as you do not object to my taking my hog to Nebraska, therefore I must not object to you taking your slave. Now, I admit this is perfectly logical, if there is no difference between hogs and Negroes.”...

“The doctrine of self-government is right – absolutely and eternally right – but it has no just application, as here attempted. Or perhaps I should rather say that whether it has such just application depends upon whether a Negro is *not* or *is* a man. ... If the Negro is a *man*, why then my ancient faith teaches me that ‘all men are created equal’; and that there can be no moral right in connection with one man’s making a slave of another.” (Italics in the original) ...

“Our republican robe is soiled, and trailed in the dust. Let us repurify it. Let us turn and wash it white, in the spirit, if not the blood, of the Revolution. Let us turn slavery from its claims of ‘moral right’, back upon its existing legal rights, and its argument of ‘necessity.’ Let us return it to the position our fathers gave it; and there let it rest in peace. Let us readopt the Declaration of Independence, and with it, the practices, and policy, which harmonize with it.”

In an important sense, Lincoln resurrected the Declaration of Independence. To show that the inclusivity of “all men are created equal” was a dead letter prior to the Civil War, one only has to note that after 1800 every new state except Maine prohibited blacks from voting (Foner [1998], p.74). Moreover, in the 1830s, Pennsylvania eliminated the vote for free blacks; and of the original 13 states, on the eve of the Civil War only five New England states continued to allow blacks to vote on the same basis as whites (Foner, p.74). Beyond this lack of political equality, as an indicator of widespread discriminatory treatment, Foner also notes that blacks were barred from access to federal public lands and a number of states prohibited blacks even from entering: Indiana, Illinois, Iowa, and Oregon (see Foner p.76 and the references cited there). All of these discriminatory practices occurred before the Dred Scott Decision of 1857, which declared, among other things, that the Constitution barred Negroes from citizenship.

On the other side, developments in the South after 1830 teach the important lesson that when there is a discrepancy between ideology and the reality on the ground, the tension between the two can be resolved by a change of the ruling ideology just as easily – at least in a logical sense – as one in the institutional reality. C. Vann Woodward (1961) in *The Burden of Southern History* documents how, after the early 1830s, there was widespread suppression of a previously robust movement for emancipation and abolition throughout the South: for example, of the large number of anti-slavery societies extant in 1830, not one remained by 1837 (p.179).

In addition to the suppression of anti-slavery activity, some of the best minds of the South attempted to formulate general ideological principles that supported their “peculiar” institution. One approach was an outright denial of the truth and applicability of the principles embedded in the Declaration: some in this school argued that the example of ancient Greece proved the necessity of slavery in order to allow equality to hold among the members of the class of (white male) citizens; others discovered Biblical justifications. Intellectual leaders John C. Calhoun and George Fitzhugh took a more relativist approach, comparing the heartless “wage slavery” of the North to the benign, structured community that slavery purportedly realized in the South.¹¹

It must be noted that the denial of the universal applicability of the Declaration was not limited to the South. In the Lincoln-Douglas debates, Stephen Douglas took a position amounting to a total denial of any universal applicability of the Declaration:

“I believe it [the US government] was made by white men, for the benefit of white men and their posterity for ever, and I am in favor of confining citizenship to white men, men of European birth and descent, instead of conferring it upon Negroes, Indians and other inferior races.” (as quoted in Foner [1998], p.92)

Lincoln’s reply, although not put in a way that would be appealing today, made it clear that one did not have to prove equality of intelligence or accomplishment to argue for the universal possession of the unalienable rights enumerated by the Declaration. As he well knew, as far back as Locke and Hutcheson, that question was answered by the conclusion that behind “all men are created equal” was the assertion that the vast majority of mankind possessed the faculty of reason sufficiently developed for citizenship – and life.¹² Exceptions like children, the legally insane, and criminals – not to mention women – had long been handled by the English common law.

The Civil War and the 13th amendment settled the question of slavery. The 14th amendment, among other things, abolished race or color as a criterion of citizenship. It also enhanced the negative freedom of whites as well as blacks, by providing to all citizens Andrew Jackson’s right of due process against all state action and, as interpreted by the Supreme Court over the years, by requiring states to adhere to the Bill of Rights of the Federal Constitution. Finally, the 15th amendment was a rather anemic attempt to prevent states from using their Constitutional power to set voting requirements for the purpose of excluding voters on the basis of color, race, or “previous condition of servitude.” Of course, it took almost another hundred years to even begin to overcome Southern efforts to vitiate the spirit of the 14th and 15th amendments by various subterfuges.

Negative and Positive Freedom (or Opportunity) in the Wake of the Civil War

During the decade or so after the conclusion of the war, it gradually became clear that the equality and freedom guaranteed by the Civil War amendments and legislation was at best a “negative” equality – removing restrictions, but not increasing the opportunities available to blacks or whites. Legislative attempts to do more, even if ultimately unsuccessful, opened the question of the ability under the Constitution and existing judicial doctrines – not to mention the advisability – to provide opportunities and services to U.S. citizens, i.e., the question of the ability and advisability of extending *positive* freedom by federal-government action. In 1865 congressman and future-president James A. Garfield posed well the distinction between the negative freedom guaranteed and a positive freedom still in question:

“What is freedom? Is it the bare privilege of not being chained? If this is all, then freedom is a bitter mockery, a cruel delusion.” (as quoted in Foner [1998], p.100)

The post-war Republican-dominated Congress made an attempt to avoid Garfield’s bitter mockery by establishing the Freedman’s Bureau, but the Radical Republican plans to go further and redistribute property to freed slaves was stymied. During the period of its existence, the Freedman’s Bureau, over the objections of President Andrew Johnson, provided a wide variety of goods and services to freed slaves: food, help in finding employment, the leasing of abandoned lands, health, education, and the supervision of the writing of contracts. However, the Bureau was eliminated in 1872. One could have justified the defeated attempt at land reform as either a form of compensation to blacks for their years of servitude or, alternatively, using the argument of Rantoul, above, as a delayed attempt to bring everyone “up to the starting line at public expense.” However, the Republicans were split and no land and limited training were provided.

Perhaps even more important in the effective limitation and vitiation of the rights established by the 14th and 15th amendments were the principles developed in the ensuing opinions of the Supreme Court. In a series of Civil Rights Acts, from 1866-1875, the Republican Congress forbade racial discrimination in such areas as the writing of contracts, the bringing of lawsuits, and the use of public accommodations. In 1883 the Court declared the Civil Rights Acts unconstitutional, resting on grounds that have formed the subject of much litigation even up to the present: it held that the 14th amendment protected only against “state action,” not the discriminatory actions of private individuals. A few years later, in *Plessy v. Ferguson* (1896), the Court even hit at the heart of the prohibition of “state action”: by endorsing the doctrine of “separate but equal,” the Court opened the door to state-sanctioned segregation in schools and, eventually, in all of public life.

Finally, while the principles of the Declaration motivated Lincoln and, therefore, all of the North, postwar events continued to demonstrate how the seemingly clear “all men are created equal” could not automatically assure negative freedom even in cases of governmental regulations that seemed as discriminatory as those based on race. For example, women leaders drew the obvious implications in pushing hard to be included in the 15th amendment’s right to vote. It took almost another fifty years for their efforts to bear fruit.

1870 to 1920: The Acceptance of the Ideal and the Struggle with Reality

Despite the above setbacks in the *implementation* of the ideal, we can argue strongly that by the end of Reconstruction, Lincoln's vision of the universality of "all men are created equal" would never again be directly contested. All attempts to subvert the universality of its reach, of which there were an embarrassingly large number – such as poll taxes and literacy tests for voting, and state-sponsored discrimination under the guise of "separate but equal" – had to be defended, if disingenuously, as consistent with Lincoln's vision while realizing some other justifiable goal. As to what was owed by society to its equal citizens was much less agreed-upon, even in principle, let alone in practice. We did have in the words of Rantoul, Skidmore, and the reformers around the Workingman's Association, the articulation of the two-stage view of equal opportunity that is today's standard. However, it is my view that it was not until 1900 or afterward that the concept became *embedded* in the culture. What I mean by that is that it was not until at least the era of Theodore Roosevelt that the principle was so widely shared and so obvious to the public that all political leaders stated and espoused it in various forms. By that date, if not before, no one – at least no political leader – could mount a direct attack on any of the parts of the concept. Whether this distinction in the degree of acceptance of the ideal is truly important may be an open question, especially in view of its widespread violation in reality, then and now. In this section, I shall assume the importance of this embedding and ask how did it occur? And once again, what, if any, impact did this ideological change have on the reality for children and adults?

The period from the end of the Civil War to 1920 – spanning the Gilded Age and the Progressive Era – was one of dramatic economic and social change even beyond the working out of the Civil War settlement: it included an unprecedented period of industrial growth and concentration, the addition of 28 million new immigrants, the end of the frontier, and, as a result of all of these forces, an increase in urbanization that was almost beyond belief: the 250 percent growth of New York and Philadelphia in the latter half of the 19th century turned out to be miniscule compared with that of cities like Pittsburgh (670 percent) and Chicago (5,666) percent.¹³ In addition – possibly caused in part by the above developments – the age witnessed the widespread application of science and the scientific method both in industry and in the study of society: the study of child development; the study of private and social costs in economics, and their implications for government intervention; and the application of the theory of evolution to society in the form of Social Darwinism.

These fundamental changes caused the restructuring of the traditional American division of power in the political, social, economic, and legal realms. The changes also caused and required a rethinking of the meaning and implications of equal opportunity.

From Laissez Faire to Government Intervention

We have noted above that the administration of Andrew Jackson had rolled back federal government intervention in the economy and had tried to establish a minimalist federal government limited to assuring equal protection of the laws. More than fifty years before Jackson, Adam Smith in the *Wealth of Nations* [1776] had elaborated conditions under which such a minimalist government role would lead to optimal economic results: (setting aside the existence of social costs and benefits) a market system populated by small, so-called atomistic producers and consumers, the prototypical system of *laissez faire*. Such a society would also provide a promising setting for the maximization of individual freedom as described by John

Stuart Mill in his justly famous, *On Liberty* [1859]: individuals should have complete freedom of action as long as their actions did not impinge on the freedom of others. The essence of the optimality of *laissez faire* was that firms and individuals of minimal size would exert no power over other actors, or over *market* prices and quantities.

Adam Smith was clear, however, that the optimality of *laissez faire* would be lost in a world of market concentration and monopoly. As industrialization progressed, it became clear, particularly after the Civil War, that American industry looked less and less like the collection of atomistic producers required by the theories of Adam Smith. Fortunately for industrialists and conservatives, however, an alternative justification of the existing system was available: Social Darwinism. Fathered by Herbert Spencer, and developed in the United States by eloquent advocates including William Graham Sumner, Social Darwinism, by applying the principles of natural selection to the societal sphere, argued that what exists, whatever that may be, must be optimal. The adage “the survival of the fittest” was an attractive doctrine for protectors of the status-quo (Hofstadter [1955]).

For me, it is hard to assess how much Social Darwinism changed the direction or slowed up the pace of reform by way of governmental action. Although it provided support in the United States for minimalist interpretations of governmental powers, it turns out that there was ample support for such views in any case – because of U.S. legal history and the unique division of powers in the United States between the federal government and the states.

Social Darwinism, particularly as practiced in England, had a direct impact on children by adding yet another argument for the proposition that the poor were unworthy, the just failures in a system that rewarded the fittest. In the work of Spencer this unworthiness was even extended to children directly, to a general opposition to public schools and, therefore, to the notion of equal opportunity expounded above.¹⁴ There is evidence that this extreme view never gained currency in the United States; for example, Hofstadter ([1955], p.62) maintains that William Graham Sumner was a progressive on education. Although I have not been able to verify this conclusion in consulting Sumner’s writings, Sumner, in one of his most famous works, makes statements that are fully consistent with current notions of equal opportunity:

“The State gives equal rights and equal chances just because it does not mean to give anything else. *It sets each man on his feet, and gives him leave to run,* just because it does not mean to carry him.” (Sumner [1883, 1954], p.36, italics added)

Whatever Sumner’s true views, Social Darwinism generated important philosophical and empirical refutations. We have examined how for decades various arguments were developed to justify state intervention on behalf of children – justifications on the basis equal opportunity or of building good and/or moral citizens. More generally, philosophers like the Englishman T.H. Green in the 1870s began to develop notions of how government action could be important for providing “positive” freedom to correct various violations in the conditions leading to the optimality of *laissez faire*. American thinkers like Lester Ward took on Social Darwinism directly, pointing out particularly that human evolution was different from that of other animals because of our ability to “use purposeful action.” Thus, for a variety of reasons, the direct biological analogy did not apply.¹⁵

Developments in the Application of Equal Opportunity for Children: The Search for New Views, New Tools, and New Divisions between Private and Public Power

America's approach to the raising of children, and particularly the raising of poor children, could not escape the major post-Civil-War developments discussed above. The numbers of children that had to be helped must have appeared staggering. The Civil War caused a huge number of war orphans in both South and North. Moreover, because of immigration, the population of the poor and of poor children swelled almost beyond belief. Leaven these developments with the fact that by the beginning of the Civil War the poorhouse system was thoroughly discredited as a vehicle for assuring children's development, and you have a situation that was ripe for change.

As seen by reformers, the throwing together in almshouses of all the poor, children and adults, led because of "errors of classification" to bad influences on both children and the worthy members of the poor, e.g. widows. But what could be done? There was no end of opinion and models. In addition to a lack of agreement as to what would work for poor children, the choice of solution was also influenced by decades-long struggles between supporters of public and private charity. City governments, especially, were besmirched by scandal, e.g. the Tweed gang in New York, so plans to privatize at least the administration of welfare were especially attractive to the middle class. Other factors noted by historians were the dramatic success of the Civil War's privately-run Sanitary Commission, and the large pool of educated middle and upper class matrons. Important questions that were in play were whether private labor and private funds could substitute for public, especially outdoor, relief; and whether an emphasis on "moral uplift and education" of poor parents would suffice as the main thrust of welfare strategy. Another key issue was to what extent keeping the family unit together was optimal for children's welfare.¹⁶

It is remarkable to learn how many alternatives were tried, often over extended periods of time. Moreover, enough records were kept and enough data were collected to allow lessons to be learned. The orphanage was a considered attempt to right the wrongs of the poorhouse with respect to children, but experience led to objections on the old grounds of poorly trained personnel, corruption, and the unavoidable loss of the positive benefits of caring and attentive parents. One approach to these dilemmas, often identified with Charles Loring Brace and New York's Children's Aid Society, was removal: children, perhaps as many as 90,000 over the years, would be removed from pernicious surroundings and sent off to the country, often to the West, where, in theory, they would become part of a wholesome family (Katz [1996], p.110). Another approach would for the most part keep children in their original homes, but would avoid the corruption of "outdoor relief" by privatizing the distribution of funds. A few sentences cannot do justice to the ramifications of the "Scientific Charity" movement with its tradition of "friendly visitors," which many credit as leading to the professionalization of social work and data collection (Katz [1996], chapter 3). As many predicted, a reliance on private charity could not survive hard times; major downturns, especially the depression of 1893 and thereafter, inundated private efforts (Katz [1996], pp.83-87).

Historians like Katz (p.117) see a certain inevitability to subsequent developments, based on the factors leading to the failures of orphanages, "removal", and privatized "scientific charity." Moreover, since private funds were demonstrably insufficient, public funding, if not public administration, became imperative.

The progressively bad reputation of programs of removal and institutional care pointed to the increasingly firm view that, except as a last resort, children should be raised in their own homes. Whether this view was supported by firm evidence or not, it does predict the “mothers’ pension movement” of the Progressive era of 1910-30 and, ultimately, Aid for Dependent Children (ADC), born in 1935 with the New Deal. But developments in both these eras, and in between, require a direct treatment.

The Progressive Era

Some date this era from the ascension of Theodore Roosevelt, in 1901; most agree that it ended no later than the end of Wilson’s second term in 1920. Hofstadter, et. al. [1959] describe the period as one with a more widely shared view that social justice was not only desired, but also achievable (pp.354-358). It was an era of optimism that rational social policies could be developed and passed, and that research investigating alternative policies would be rewarded. Even though the opponents of change were recognized as powerful – corrupt political machines and big business – progressives believed that legislation and government regulation, especially at the federal level, could be a successful corrective.

In reality, the era did see an expanded use of both state and federal governmental power. But it was also a period where severe limitations on the exercise of these powers were brought to light – uniquely American limitations based on narrow Constitutional interpretations and traditional divisions between state and federal authority.

Federal, as opposed to state, regulation and legislation in the economic sphere started in a big way after the Civil War – with the Civil War amendments, the Civil Rights laws and the short-lived Freedman’s Bureau. At every turn, however, the Congressional legislation was opposed for invading what opponents said were subject areas reserved to the states.¹⁷ Moreover, as discussed above, for many decades the Constitutional Amendments were interpreted narrowly by the Supreme Court, excluding the regulation of “private” action and eventually allowing poll taxes, literacy tests, and state-enforced segregation based on the doctrine of “separate but equal.”

The obvious violation of the economic conditions required for the optimality of *laissez faire* led after years of turmoil to the first federal regulation of big business, with the Interstate Commerce Act of 1887. Railroads were, in retrospect, an obvious first step for the exercise of federal economic power. The interstate nature of railroading clearly came under Congress’s constitutionally-defined power to regulate interstate commerce; and railroad practices, such as discriminatory pricing and “pooling” arrangements among different lines to keep prices high, generated strong opposition from farm and Western interests. Nevertheless, it took over 15 years for the first bill to pass; and by the time it did, the United States was over 30 years behind countries like England in railroad regulation (Hofstadter, et al. [1959], p.139).

Other federal legislation followed. The Sherman Anti-Trust Act passed in 1890 after years of public outcry against the price-fixing and monopolization activities of the trusts in oil, steel, and other industries. However, before Theodore Roosevelt went after the Northern Securities Trust in 1902, the major use of the Sherman Act was to attack labor unions! Under President Roosevelt and his successors, Presidents Taft and Wilson, numerous trusts were broken up, the ICC was made effective by the Hepburn Act, the Pure Food and Drug Act was passed and,

among other things, central banking was re-established after 75 years with the Federal Reserve Act of 1913 (Hofstadter, et al. [1959], pp.378-393).

How difficult the extension of legislative power – both federal and state – could be is illustrated by a number of Supreme Court rulings that declared various laws – both state and federal – unconstitutional. One of the most egregious cases was *Hammer v. Dagenhart* (247 U.S. 251), decided in 1918, that declared unconstitutional the Keating-Owen Act that in 1916 tried to regulate child labor by banning from interstate commerce goods made with suitably-defined child labor. In a bizarre decision that took over 20 years to overturn, the Court ruled that, in the U.S. system of “dual federalism,” only states could regulate child labor.¹⁸ Federal Regulation of child labor was finally achieved with the *Fair Labor Standards Act* of 1938, but that was over a century after England passed its first law limiting the hours of children’s work in cotton mills, and some 60 years after the U.K. established a complete codification of child labor law under the Factories and Workshop Act of 1878.

Even at the state level, social legislation could be stymied by Constitutional considerations. How difficult it could be for social regulation to escape Constitutional limitations posed by protections of property and freedom of contract can be seen by comparing the 1905 *Lochner* case and the 1908 *Muller* case. In *Lochner v. New York* (198 U.S. 45), the Supreme Court ruled that New York could not limit the working hours of bakers because such limitations were far enough removed from a state’s traditional “police power” for regulating public health that they could not withstand a claim of freedom of contract under the 14th Amendment. In dissent, Justice Holmes famously objected that: “The 14th amendment does not enact Mr. Herbert Spencer’s ‘Social Statics.’ ” On the other hand, in 1908 the Court found in *Muller v. Oregon* (208 U.S. 412) that the state’s regulation of *women’s* hours *was* closely enough related to health issues to withstand the *Lochner* test. Many commentators over the years credit Louis Brandeis’ data-laden, “scientific” brief as the critical input which tipped the decision. However, other state attempts to regulate the women’s labor market could not escape the Court’s interpretation of freedom of contract: as late as 1923, in *Adkins v. Children’s Hospital* (241 U.S. 525), the Court ruled that minimum wage legislation for women was not closely enough related to women’s health issues.

Given the near straitjacket imposed by the above and similar Supreme Court decisions, it is remarkable that *anything* on a national level was achieved during the Progressive era. One approach that was consistent with the Supreme Court cases was to push a national campaign to press for *state* legislation on a particular subject; this was the case for “mother’s pensions,” discussed below. Another approach was to gingerly press Congressional legislation in ways that did not fall victim to the Court’s restrictive interpretations. Although legislative efforts to regulate child labor failed in this regard, they succeeded in the creation of the federal Children’s Bureau and in the 1921 passage of the Sheppard-Towner Act.

Mothers’ Pensions¹⁹ Most historians of the period are pleasantly shocked that between 1908 and 1920 over 40 states passed laws giving support or “pensions” to various classes of single mothers with dependent children (Skocpol [1992], p.425). By 1931, all but two states had done so. Although these were state laws enacted in an area of well-established state jurisdiction – and thus safely free of Supreme Court scrutiny – the nationalization of the push for state laws was a new departure. This national effort seemed primarily the result of strong federal moral support, nationwide publicity, and the grass roots efforts of such national

women's groups as The National Congress of Mothers and the General Federation of Women's Clubs. Federal support came from then-President Theodore Roosevelt and the hosting of White House conferences on "the welfare of the child" in 1908 and 1909. A remarkable number of campaigns for programs benefiting women and children were conceived or strengthened as a result of these conferences: mothers' pensions, the creation of a federal children's bureau, minimum wage legislation for women (and men), child labor legislation – not to mention the moral support, at least, given to women's suffrage.

Wasn't the idea behind mothers' pensions, to provide mothers with stipends sufficient to allow them to raise their children adequately in their own home, a total reversal of previous trends? – for example, the scientific charity movement's unqualified opposition to governmental welfare expenditures; and the age-old worry that widespread public outdoor relief would compromise the worthy and be exploited by the unworthy. First, let us note some of the limitations of the initiative. Nobody was proposing *federal* legislative control. As Skocpol's and other writers' analyses of the results show, the adequacy of the resulting pensions and the extent of coverage of the needy population varied widely from state to state. Further, in Roosevelt's speech in 1909, the then-President covered himself on both the "worthiness" issue and the governmental provenance of the payments. He endorsed only private relief and limited the worthy class to widowed mothers (Skocpol, p.425).

Exclusively private relief immediately went by the boards, however, as one state legislature after another addressed the issue – probably because the limitations of exclusively private charity had been shown in depression after depression. With respect to worthiness, women's organizations and publications made a strong and largely successful effort to change the nature of the discussion: there was a strong effort to ennoble the occupation or calling of motherhood, valuing homemaking services by descriptions such as "mothers serving the nation." Moreover, many different interest groups seemed to focus on the goal of *child* welfare: providing good homes for children. Women's groups were joined in this effort and in the related one of juvenile justice reform by juvenile court judges.

Analyses of to whom women's pensions were actually paid showed a much more traditional definition of worthiness. By 1931, 80 percent of the recipients were widows. Only three states allowed unmarried mothers to be eligible. The programs were often underrepresented in rural areas; only 3 percent of the recipients were black (Skocpol, p.471). Finally, pensions tended to be inadequate in comparison with any standard of need, and many states kept needy families on waiting lists. Thus, by the time ADC was passed as a federal program as part of the Social Security Act of 1935, virtually every state had in place some sort of welfare program to support dependent children in their own homes.

Finally, with respect to this and other departures during this era, we should not fail to mention the successful tactics used by the programs' supporters. Skocpol provides a fascinating picture of the organization of support by women's organizations, such as the General Federation of Women's Clubs and the National Congress of Mothers. These were supported by important women's and general interest magazines and by women reformers, many of whom had been in the settlement house movement, the trade union movement, and/or such organizations as the National Consumers' League. This coalition functioned as an advocate in many other campaigns.

The Children's Bureau. The Children's Bureau was created as a federal agency in 1912, expressly to gather facts and do research on children's issues. In retrospect, the Bureau's creation and first decade of life appear to me to be an example of brilliant advocacy and political "saleswomanship," and adept maneuvering through the shoals of governmental intrigue. An historian of the Bureau described it in conception and practice as similar to a "national settlement," reflecting the settlement-house experience of such proponents as Florence Kelley and Lillian Wald, and of its first director, Julia Lathrop.²⁰ An early problem that propelled the Bureau's creation and became one of its first subjects of research was the cause of the United States' high and variable rate of infant mortality – an issue that remains with us today.

The coalition that successfully guided the campaign for mothers' pensions also got President Roosevelt's support for the establishment of the Children's Bureau, both in the 1909 Conference on the Care of Dependent Children and in a message to Congress. It took three more years for the enabling legislation to pass. In addition to a general opposition to new federal agencies of any kind, legislators and business interests feared that the Bureau would become a crusader for federal limitations on child labor.

After passage, the leadership of Julia Lathrop was exceptional in many ways. She charted a valuable work and research program in the area of infant mortality, while skirting the politically dangerous area of child labor. This first systematic investigation of infant mortality in the United States and its comparison with rates in the rest of the world led later to similar work on maternal mortality. Both areas proved relatively safe from legislative and business attacks; they were also at that time of little interest to organized medical groups like the American Medical Association (Skocpol [1992], p.486). Beyond avoiding potentially murderous political and bureaucratic infighting, Lathrop led the establishment of close ties with supporters and constituents – women's organizations to be sure, but also state and local groups interested in child and maternal health.

Later the Bureau used all these allies when it supported a large federal program of maternal education and clinics passed in 1921 as the Sheppard-Towner Act. Its research identified a need for "public protection of maternity and infancy with federal aid." The lessons from the design, passage, implementation, and eventual demise of Sheppard-Towner are worth a detailed separate treatment.

Sheppard-Towner Act, 1921-1929. The Sheppard-Towner Act was probably the first federally passed and administered law providing services for children and mothers. Its achievements include the establishment of 3000 maternal and child health centers in 45 states (Trattner [1999], p.221); these were open to all – without a means test – and there were efforts in at least some states, including some in the Deep South, to provide for the needs of minority groups (Skocpol, p.510, Meckel [1990], p.212). The Act successfully copied the financing mechanism of matching grants-in-aid to the states that had been recently developed for popular legislation such as the 1914 Smith-Lever Act that established the Agricultural Extension Service (Skocpol, p.495). Not only did the Act provide substantial new federal funds, but it also generated an increase in state funds devoted to this area.

Many consider the initial passage of the Act as something of a miracle. The coalition that earlier promoted the legislation for the original Children's Bureau got this law through a

Republican Congress and signed by a Republican President, Warren G. Harding. In addition to the coalition's lobbying and grass-roots work, a reason singled out as important was Congress's fear of retribution from the newly enfranchised population of women voters (Skocpol, p.505; see also Lemons [1975]).

By the time the Act came up for renewal in 1927, seven years after women gained the suffrage, the fear of retribution from women voting as a bloc had largely subsided. Moreover, other antagonistic forces had strengthened: anti-communist and anti-socialist forces were more practiced at attacking any federal legislation; and the AMA's opposition had intensified, as it now wanted to take over for its own members the new field of infant preventative medicine.²¹ Finally, Presidents Coolidge and Hoover believed either that federalized programs impinged too much on state powers or that the programs supported by Sheppard-Towner should be housed in the Public Health Service. It is interesting to note that none of these groups overtly opposed the providing of services to infants and mothers; rather, they claimed that the services would continue, only by different providers and with alternative funding. Of course, for various reasons, including the onset of the Great Depression, it didn't happen. Sheppard-Towner was terminated in 1929. However, the scope and financial mechanism of Sheppard-Towner was resurrected during the New Deal.²²

Hoover, Franklin Roosevelt, the New Deal, and Children

Despite President Hoover's advocacy for children and equal opportunity quoted in Section II, the Hoover presidency had no positive accomplishments to balance the decidedly major blot of the repeal of Sheppard-Towner. How the Hoover regime managed to handle the potential contradiction between the reality and the ideology of equal opportunity bears some reflection – not least because of the arguably similar repeal of AFDC in 1996. No one attacked the two-part definition of equal opportunity with its emphasis on children. Nonetheless, in my view, equal opportunity was not treated as the overarching value that political rhetoric accorded it.

Hoover's defense of the repeal of Sheppard-Towner would maintain that by 1930 a substitute model had been developed, incorporating a strengthened Public Health Service and the recommendations of the 1930 White House conference on children. This model emphasized municipal health departments and the gradual transfer of functions from said health departments "to the general practitioner of medicine" (Skocpol, p.517). In theory the model might have been able to provide the same mix of services as Sheppard-Towner, and it met the twin goals of reducing federal control and increasing the power of the medical profession. In practice we will never know. After the Depression hit, little was done to assure the services provided under Sheppard-Towner; and in 1935 much of Sheppard-Towner was incorporated into Title V of the Social Security Act.

The Roosevelt landslide of 1932 swept in, as well, large Democratic majorities in both houses of Congress. After a first term where the administration was at loggerheads with the Supreme Court, a period that included Roosevelt's famous "court-packing" attempt, the Court dropped the old arguments, discussed above, that invalidated Congressional legislation based either on an absolutist interpretation of freedom of contract or a narrow interpretation of federal jurisdiction under the Commerce Clause.

For children, the turning point – or perhaps renaissance – was the passage of the Social Security Act of 1935. History shows us that Title IV of the Act – Grants to States for Aid to Dependent Children – got into the bill as an afterthought; but it did more for children than had ever been done before: mothers' pensions, adopted as state laws in all but two states, were made national; in so doing, an entitlement was set up for "needy dependent children", although it turned out to be a fairly weak one. In Title V of the Act, "Grants to States for Maternal and Child Welfare", the old provisions of Shepard-Towner were reinstituted, again under the supervision of the Children's Bureau.²³

Everything about the crafting of the Social Security Act, including the children's sections, is mind boggling and inspiring. The drafting Committee on Economic Security was constituted a few weeks after a Roosevelt speech on June 18, 1934 and completed a draft bill by mid-January, 1935. The committee was headed by Frances Perkins, then-Secretary of Labor, included Harry Hopkins, was directed by Wisconsin economics professor, Edwin Witte, and featured the now legendary Wilbur Cohen. All of these participants had direct or indirect connections to the social-work movement and the Progressive Era.

Title IV, on aid to dependent children, "was based on a report by Katherine Lenroot and Martha Eliot of the Children's Bureau, with the assistance of the Bureau's former director, Grace Abbott" (Katz [1996], p.229). On the positive side, the Act followed the earlier grants-in-aid approach, developed for Sheppard-Towner, required state plans to cover all areas of the state, and forbade anything but the mildest residency requirements for aid. On the negative side, the final Act did not include any requirement that financial support be adequate, or any common national standard for support across states. The original bill presented to Congress included a provision for states to pay "a reasonable subsistence compatible with decency and health," but no such provision survived to become law. Another negative was the failure of the final Act to include health insurance; it was a primary goal of the drafting Committee, but it fell prey to the opposition of the AMA.

In 1938 the damage of the Supreme Court's Dagenhart (1918) decision declaring the federal regulation of child labor unconstitutional was finally undone. The *Fair Labor Standards Act* included the federal regulation and, in many cases, the abolition of child labor. It was held constitutional and Dagenhart overruled in the 1941 case *U.S. v. Darby* (312 U.S. 100).

Beyond the New Deal – The Run-up to the War on Poverty

Some commentators saw very little happening with respect to children, welfare, and equal opportunity between the breakout of World War II and the beginning, in 1964, of the War on Poverty. Thus, Katz in his 1996 book, *In the Shadow of the Poorhouse*, devotes virtually no pages to this period, jumping from the new deal to the War on Poverty. Trattner [1999] has a somewhat different view, devoting a chapter to the period (chapter 14). I think one must take a position closer to Trattner's, not because revolutionary new programs like Social Security were being debated and passed, but because trends and practices were developing during this period that throw light on much of what happened afterward – not only what happened in the War on Poverty, but also what developed subsequently, leading to the Reagan era called by both Katz and Trattner as *The War on Welfare*.

The New Dealers did not just die off after the 1930s without leaving any legacy. It is true that the political climate in the 1950s, especially, may not have been inviting to further development of children's programs, but the history of ADC shows to me that federal, Congressional, and state leaders were developing the original ADC legislation (Title IV of the Social Security Act) in logical directions.²⁴

Without trying to duplicate Vee Burke's exhaustive history in the *1998 Green Book*, cited in the previous footnote, we should note that, in 1950 and 1956, Congress substantially revised the 1935 legislation. As it became clear that most dependent children were *not* in the families of worthy widows, eligibility rules and purposes were revisited time and again. In 1950, for example, the name of the program was changed from ADC to AFDC, Aid to *Families* of Dependent Children. This was thought to be a necessary change, but in an important sense it was also a Trojan Horse: for the first 15 years of the ADC program, aid was given exclusively to children in need, and need was defined not so much in terms of income, but in terms of the family structure of having "only one able-bodied parent at home." Under AFDC, however, payments were extended expressly to account for the status of the parent or caretaker, and the status of any other adults that might live in the child's home (so-called "caretaker" grants). In 1956, even the purpose of AFDC was expanded, adding on "to strengthen family life" and "to promote family self-support."

A list of other legislation passed during this period shows that Congress and the Executive Branch were indeed addressing social problems revolving around children and equal opportunity: the National School Lunch Program (1946); the School Milk Program (1954); the Vocational Rehabilitation Act (1954). Moreover, in revisions to AFDC, Congress attempted to address the key issue of the lack of a nationwide standard of support for poor children by introducing a sliding scale of reimbursement to states based on state poverty (1956); it also, in 1950, began addressing the fact that many dependent children were now so because of abandonment, not widowhood. In the early 60s, AFDC paid for an increasing set of social services for children and families and addressed the misused "suitable" home provision found in many state programs by banning such rules and supporting the provision of foster care. I see many of these changes as the natural fleshing out and updating of the original 1935 program that was constructed hastily and that, with its emphasis on widowhood, over time was based on progressively faulty and outdated information.

The War on Poverty

Detailed contemporary histories make it clear that the precipitating cause of the process that led to the War on Poverty was the personal interest of President Kennedy, expressed during an end-1962 program review (Sundquist [1968], p.112). By the time of Kennedy's tragic assassination, almost a year of planning by the Council of Economic Advisers had been completed amid general agreement that some sort of comprehensive attack on the problem of poverty would be the centerpiece of his 1964 State of the Union Address.

It seems clear that the personal interest of Presidents Kennedy and Johnson was a fundamental necessary condition for the launching of the War on Poverty in 1964. What stimulated the original commitment of President Kennedy and his closest advisors is less clear. Sundquist is convinced that it was *not* the result of any government or constituent pressure. Trattner

supports this view by showing how observers as astute as, say, John Kenneth Galbraith (in 1958's *The Affluent Society*) got it all wrong concerning the extent and importance of poverty in America of the late 1950s and early 1960s.

Kennedy's commitment seemed to be founded both on an increased awareness of the extent of poverty and a view that more than dollars was required to conquer poverty. There is the possibility that the President's awareness was heightened by Michael Harrington's disquieting 1962 book, *The Other America*, but some maintained that it dated at least to his first-hand experience of the poverty of Appalachia during the 1960 presidential campaign (Patterson [2000], 122).

Much of the legislative and policy work in 1961-62, prior to the War on Poverty, focused on providing rehabilitation and opportunity, rather than just on increased monetary aid to the poor. The President's Committee on Juvenile Delinquency and Youth Crime, established in 1961, led to such comprehensive programs as the Mobilization for Youth in New York City, which sponsored programs for employment, training and remedial education, among other things. 1961 saw also the passage of the Area Redevelopment Act. The theme of training and rehabilitation was furthered in 1962 by the Manpower Development and Training Act. Finally, with the passage of the 1962 Public Welfare Amendments to the Social Security Act, strong federal support was given to the provision of rehabilitative and preventive social services to the poor (Patterson, pp.125-26).

President Johnson took over the roughly-defined program, put his stamp on it, and, because of his legislative skills and a tragedy-induced Congressional flexibility, got the Economic Opportunity Act passed in 1964. Johnson turned a paper-thin Kennedy majority in the House (5 votes to break the stranglehold of the House Rules chairman in 1961) into a 226-185 margin in the 1964 vote – adding 60 of 100 southern Democrats and 22 Republicans to the 144 solid non-southern votes. The majorities held in appropriation battles in 1965 and 1966 (Sundquist, p, 149).

Sundquist [1968] describes clearly how the War assumed an integrated structure -- organized around "community action programs" -- that attempted to address virtually all the known impediments to equal opportunity. In particular, the Act featured the creation of the Job Corps and a domestic peace corps in VISTA, in addition to community-action agencies in many cities that had broad planning and monetary power. What many argued for, but did not get – including Willard Wirtz and the first OEO director, Sargeant Shriver – was a comprehensive program of public service jobs as a stop-gap or last resort. President Johnson allegedly cut that part of the program because of cost considerations – at a time when taxes were being cut (Sundquist, p.144). As feared, this meant that all the benefits of the Act would come, if at all, in the intermediate-to-long run – a payoff that might not be visible before substantial opposition grew. Another curious omission from the original program was any attempt to mandate AFDC benefits that were both uniform across the states and more adequate in terms of the poverty line. Soon after the Act was passed, OEO did propose to address the poverty gap with a negative income tax featuring a single nationwide payment schedule (Citro and Michaels, eds. [1995], p. 340). Neither this nor a later Johnson proposal for benefit levels equal to state-determined standards of need gained Congressional approval.

Let us also not forget the key programs that were passed, both outside of and under the OEO umbrella. 1964 saw the beginning of the Food Stamp Program; in 1970, under President Nixon, this program achieved what AFDC never could: a uniform national benefit level, based on a centrally-determined measure of need. Head Start was started under OEO and began operation in 1965. Equal opportunity in education was also addressed by higher education grant and loan programs, in addition to other legislation to aid elementary, high school, and higher education. 1965 also saw the beginning of Medicare and, especially, Medicaid – the latter in principle plugging the gap between poor children and adequate health care. Adequate housing for the poor was addressed through rent supplements and the later Model Cities Program.

Despite this record of legislative accomplishment, within three years of passage, the apparent results of the *War* led to considerable Congressional concern and opposition. The War had been sold as a means to provide equal opportunity, symbolized by the slogan “a hand up, not a handout”; but by 1967 the fact of “ballooning” welfare roles seemed to be inconsistent with that original vision. Little joy seemed to be generated by the concomitant accomplishment of a dramatic reduction of the poverty rate: by the end of the 1960s, the children’s poverty rate had been reduced by almost 50 percent in a decade, falling by over 13 percentage points to a historically low rate that has not yet been duplicated.

It is nevertheless true that the welfare rolls and payments “ballooned” during the decade of the 1960s. As shown in the 1998 *Green Book*, AFDC payments more than tripled in 1996 dollars, from \$5.4 billion in 1960 to \$16.8 billion in 1970; during the same span the number of poor children covered by these payments more than doubled, from 2.4 million to 5.5 million (Committee on Ways & Means [1998], Table 7-2, p.402). This obviously large increase occurred, however, while the overall poverty numbers and rate and, in particular, the children’s poverty rate was *falling dramatically*. Over 7 million children were helped out of poverty during the decade, and by 1969 the children’s poverty rate had fallen over 13 percentage points to its all time lowest level: 14 percent (Tables H-3, H-4, pp.1302-3).

Clearly, then, this ballooning of AFDC payments was not the result of forces that were increasing the number of poor people. What did happen in the decade was that a much larger percentage of those already poor, particularly poor children, were now collecting AFDC payments: it could be argued that they were collecting – finally – on their previously deferred or denied entitlement. Although unanticipated, this dramatic increase in AFDC payments was in a very key sense a *positive* development. Using the two *Green Book* tables cited above, we can easily calculate that in 1960, just prior to the War on Poverty, only 13.4 percent of poor children were, on average, collecting AFDC payments – a disgraceful figure. By 1970, the coverage was up to 53 percent – a considerable improvement, but far from stunning.²⁵

Whatever caused this explosion in welfare payments for children – and there seems to be differences of opinion on this question – can we be anything but happy with the result? Trattner ([1999], ch.14) sees much of this change as the product of massive demographic changes, particularly the long-term mass migrations from the rural South and Appalachia to northern urban cities. At the same time, Trattner admits that other researchers, e.g. Piven and Cloward [1971], have a very different perspective, emphasizing more the increased demand for social services, as groups sought empowerment as a result of the civil rights’ struggle and the War on Poverty.

Congress choose not to focus on the positive trends in the overall poverty rate and the percentage of poor children covered by AFDC, but rather began a multi-decade preoccupation with AFDC expenditures and the numbers on the welfare rolls. A first step was the passage of limits on the number of children who would be allowed to receive AFDC benefits because of an “absence of a parent from the home”; these were instituted in an effort to get states to do something about desertion and illegitimacy. Further, Congress established in 1967 the first of many “work incentive” (WIN) programs which threatened, perhaps for the first time, to exclude parents from AFDC if they did not accept jobs or at least job training. These tougher programs may also have been influenced by new research ideas, such as Oscar Lewis’s “culture of poverty” and Daniel Patrick Moynihan’s concern over the destruction of the Negro family.²⁶

On the positive side, the WIN program of 1967 attempted to increase the incentives to work, rather than just threatening welfare recipients with the termination of their benefits: the “thirty plus one-third” rule was established which allowed welfare recipients to keep the first \$30 of wages before suffering a reduction in their welfare payment; moreover, Congress also increased funding for day care (Patterson, p.169). For various reasons detailed by Patterson (p.170), less than 2 percent of the 2.8 million recipients originally eligible for WIN were actually employed a few years after the program was enacted.

Subsequent Developments through 1980²⁷

The Vietnam War brought down Johnson and the Democrats in 1968. President Nixon took aim at the bureaucracies created by the OEO and local community action organizations; but interestingly, Nixon increased social welfare spending much more than either Johnson or Kennedy – and unsuccessfully proposed still more. In particular, Nixon, with his Family Assistance Plan, proposed a negative income tax with a national benefit standard. The plan was defeated, partly because Democrats would not accept floors that were considerably below the poverty line and because the proposal contained mandatory work or training requirements for all recipients with children over three years of age. This bill failed, but a companion piece that federalized all public assistance for the disabled poor (under Social Security) passed – showing that adequate payments and national standards were not out of reach for poor Americans – as long as the recipients were certifiably “worthy.”

In his idiosyncratic way, Nixon vetoed the Comprehensive Child Care Act, but signed laws establishing the Earned Income Tax Credit (EITC), the Occupational Safety and Health Act (OSHA), the 1973 Rehabilitation Act, and the Comprehensive Employment and Training Act (CETA). He also nationalized the Food Stamp Program and began the indexation of social security payments.

Post-Nixon to Reagan

The importance of presidential commitment was illustrated in both the Ford and Carter years. President Ford apparently had no interest in legislation on child welfare or, in fact, on any welfare. In the area of children’s welfare, he was known primarily for his vetoes: public works bills, federal aid to education, health care, and even school lunches (Trattner [1999], p.352).

President Carter tried, but under conditions of low growth, high inflation, and the Iran hostage crisis, could get nothing through Congress. He gave only lukewarm support to a bill introduced by Senator Humphrey to create public service jobs that would have been triggered by the level of the unemployment rate. On the other hand, he pushed hard for a comprehensive revision of public assistance, featuring a national minimum standard, an integration of food stamps and AFDC, and a national program of public-sector jobs of last resort. This and his proposals for health care reform never could get through a Democratic congress.

Reagan and the War on Welfare

Something happened in 1980; in important ways it affects us today. Virtually all economic or social histories of the final two decades of the 20th century denote the Reagan years as the *War on Welfare* or on the *Welfare State*. In practice, Reagan managed to eliminate or cut many federal social programs: jobs programs such as CETA were killed; programs such as AFDC, child care, school lunches, food stamps, the Job Corps, housing, and a host more suffered significant cuts (Trattner [1999], p.365; Katz [1996], pp.295-299; Patterson [2000], ch.14).

Why? What changed? The dramatic change was President Reagan, himself. Based on the sweep of his attack on virtually all domestic social programs, it seems likely that Reagan truly believed his slogan that “government *is* the problem.” But there also were other changes that had built up gradually over the previous decade. Polling data showed a dramatic decrease in the public’s confidence in government’s ability to solve social problems – a loss of confidence that had started as long ago as the late 1960s.²⁸ This latter undoubtedly was influenced by the U.S. failure in Viet Nam, the economic stagflation of the 1970s, and the political humiliation of the Iran Hostage Crisis.

At the same time, as seen in the poll numbers cited in section II, public opinion never wavered in its support of equal opportunity in general and of programs furthering equal opportunity for children, in particular. The constancy of this support is perhaps one reason why Reagan’s attempt to follow his early successes with, in 1982, a total revamping of all federal social programs under the rubric of the “New Federalism” failed to gain Congressional support or a further shift toward a Republican House majority. This 1982 program proposed to use bloc grants to shift all responsibility for social programs to the states, while federalizing Medicaid (with no federal mandates). While there was a decided retreat from the highpoint of Reagan’s proposed New Federalism, leading ultimately to the bipartisan – if finally unsuccessful – Family Support Act of 1988, the assault, practical and intellectual, on AFDC, job training, and jobs programs continued – and continues to the present day (Trattner [1999], pp.365-66).

Intellectual Foundations of the War on Welfare

This continuing intellectual assault has a number of common, but also some subtly different, strands. A critical common strand was that existing welfare programs were not working effectively. In the most extreme form were the arguments of people like George Gilder [1981] and, particularly, Charles Murray [1984], the latter arguing that existing poverty programs were actually *counter-productive*: in effect, by robbing the poor of the incentive to produce and climb, these programs increased the number of the “unworthy poor.” Murray’s thesis

gained the most currency among conservative circles, contending that the failure of existing poverty programs was attributable to the host of perverse incentives they contained – thereby encouraging welfare dependence and joblessness. In my view, a number of authors effectively rebutted Murray’s empirical arguments.²⁹

For the purposes of the present paper, however, the major question is not the empirical validity of Murray’s thesis, but what it says about the programs necessary to achieve equal opportunity. Murray follows his critique of welfare programs to its logical conclusion: advocating “scrapping the entire federal welfare and income-support structure for working-aged persons...” (Murray [1984], p.227). But if we were to do that, what do we do about children and the training period? Murray’s recommendation for poor children was (1) a generous and free education system, and (2) locally administered *and funded* social services. Murray recognizes the importance of equal opportunity as defined roughly in accord with the definition in section II; he even goes so far as to assert: “Billions for equal opportunity, but not one cent for equal outcome” (p.233). But almost imperceptibly he changes a key feature of the concept as it has developed: *no longer do children have an entitlement*. Murray firmly believes that, on average, children will be better off under his reforms; however, he readily admits that some families and their children will fall by the wayside, be worse off, possibly even be destroyed. No longer would the poor or abused child have a *right* to whatever services are required during the training period for a child to reach his capacity.

A somewhat later book, just as important for the war of welfare, goes even further in its downgrading of the importance both of welfare and of children’s entitlements: Lawrence Mead’s *Beyond Entitlement* [1986]. This book is seminal in a number of ways. As the subtitle of the book indicates – *The Social Obligations of Citizenship* – Mead carefully analyzes what he takes to be the duties of citizenship, as well as the rights; the latter he suggests have been overemphasized with respect to the former, particularly the duty to work productively. Moreover, Mead’s criticism of the ineffectiveness of the 1970s to early 1980s jobs programs seems, to me, to have been the intellectual genesis of the movement that a decade later led to both the abolition of AFDC and its entitlement for children, and to the substitution of today’s Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA) with its emphasis on “jobs now” and time limits on welfare.

The flavor of Mead’s argument, along with my objection to it, can be grasped by the following quotes:

“These criticisms have weight [Gilder’s and Murray’s], but mainly in ways their makers do not intend. Washington does give too much to the poor – in the sense of benefits given as entitlements. It also gives too little – in the sense of meaningful obligations to go along with the benefits.” (p.3).

“However, simply to cut back welfare as Gilder and Murray advise, while it would force independence on the recipients, lacks the political support to be carried very far, as the Reagan administration has discovered. Most Americans, and their leaders, want to continue a humanitarian social policy. Also, many dependent people could not immediately cope on their own. They need support and guidance, even if the goal is overcoming dependency.”(p.4)

Many Americans of all ideological stripes – certainly this one – can warmly support the above implication that duties are equally important as rights. One such is the duty to be economically productive, if at all possible. But what about the rest of the attributes of citizenship? What about, in particular, the implications of equal opportunity for children’s welfare? – argued here to be a key attribute of what it means to be an American. Mead might maintain that his argument is limited to *adults* and the problem of bringing them to fully functioning citizenship; but I argue that his book and its thesis cannot be treated this way. Because of the interdependence of adult and children’s welfare in our society, one cannot ignore the impact of new adult duties on their children.

Despite this necessary interdependence, one searches in vain through *Beyond Entitlement* for a discussion of the impact of his proposed programs on children and their rights. In his index, Mead lists nothing under the heading of equal opportunity. Under “equality” there are four listings, but all discuss how the duty of work can be squared with our notions of equality – an informed and subtle discussion as far as it goes; but ultimately one that does not go far enough.

That Mead’s analysis does not go far enough -- and therefore is dangerous to those who seek a *full* discussion of the rights and duties of American citizenship – is demonstrated in his subsequent analysis, published 18 years later, of the results of Wisconsin’s welfare reform program: *Government Matters: Welfare Reform in Wisconsin* [2004]. Since it is well documented that almost two-thirds of Wisconsin’s welfare leavers are still in poverty, and with that at least an equal percentage of the *children* of these leavers also in poverty, one might wonder how Mead will be able to give Wisconsin’s program anything but a failing grade. Such facts do not deter him.

In the section on the “Effects of Reform,” Mead ends the section on “Poverty” with the sentences:

“It [the Wisconsin program] never promised to support families above poverty by itself, but only to help working parents do so. That promise it does appear to fulfill.” (p.201)

And about the children: “Since the original purpose of family welfare was to protect children, welfare reform must at least “do no harm” to them.” (p.202)

This is a decidedly modest set of criteria for evaluating the Wisconsin program.

With respect to children’s health:

“If the health of Wisconsin’s poor children is nevertheless subpar, that is probably for nonpolicy reasons, particularly the depressed condition of inner-city Milwaukee.” (p.202)

With respect to school:

“Large minorities of respondents said their children’s health and their grades and behavior in school had recently improved, although as many or more reported no change.” ... “All these effects are small.” (p.202)

Managing to do no harm seems okay in Mead's view, since he goes on to say:

"The actual outcome of welfare reform vindicated government against the critics. Although poverty is correlated with myriad social barriers, these did not prevent a 60 percent reduction of the welfare rolls when work was enforced. Part of that success was indeed due to an easing of constraints – a good economy and new benefits. But the new demands to work also caused vastly more nonworking adults to take jobs than any expert anticipated. In the policy arena, it was an embarrassing defeat for academia, comparable to the failure of the Kremlinologists to predict the fall of the Soviet Union." (p.274)

Is that it? Can we be at all happy, at all satisfied with the results of a program that after five years leaves almost two-thirds of its children below the poverty line – even if that percentage is no worse than before?

Counterattack: The Family Support Act of 1988

In retrospect, one can evaluate the *Family Support Act of 1988* (FSA) in a number of ways. On one hand, the act, particularly as passed, can be defended as a good-faith and logically consistent attempt to combine the new emphasis on work with a maintenance of the commitment to poor children and adults. Led by Senator Daniel Patrick Moynihan, with both houses of Congress in Democratic hands, the Act was passed by overwhelming bipartisan majorities: 347-53, and 96-1, and was signed by President Reagan (Katz [1996], pp.305-309; Trattner [1999], pp.376-378, Danziger [2000]). Among other provisions, FSA created the JOBS program, which required work or, in lieu of it, education and/or job training for all adults recipients, with the exception of mothers with children under 3 years of age. For the first time, to promote a successful transition to steady work, the act also provided the carrots of child care and transportation support, and the continuation of Medicaid for up to a year after finding a permanent job. The new carrots were balanced by a new stick: the power of states to terminate welfare to recipients who refused to comply with the requirements of JOBS.

The hope and expectation of the framers and Congress was that the FSA would lead to a reduction in poverty, lower welfare rolls, and, possibly, lower expenditures on welfare. These goals were never realized and, naturally, ex-post analyses found many, sometimes contradictory reasons why.

Despite prior studies by the non-partisan Manpower Development Research Corporation (MDRC) and the Government Accounting Office (GAO) that jobs programs, if properly structured, had positive if not overwhelming payoffs, JOBS was not successful in reducing the welfare rolls; in fact between 1989 and 1993, the numbers on welfare increased from 11 to 14 million, and total federal and state welfare expenditures reached a new record of \$23 billion (Patterson [2000], p. x, 225). In adducing reasons for the failure, some point to the direct and indirect effects of the economic downturn that hit just after the passage of FSA: after 1988, without embarking on a program for full-time, publicly guaranteed jobs, the required number of jobs simply did not exist. States, strapped for funds by the downturn and the consequent higher welfare roles, cut benefits and failed to fully fund their child care and job training programs; as a result the stick of allowing states to terminate benefits was rarely utilized (Patterson).

These troubles emboldened politicians, notably candidate Clinton in 1992, to put welfare reform once again on the front burner. In addition to the attraction of pure political gain, Clinton's interest was stimulated by a more widespread acceptance by liberal economists of such tools as required jobs, time limits for the receipt of welfare benefits, and the sanction of benefit termination. Thus, as early as 1986, Garfinkel and McLanahan ([1986], p.185) considered the possibility of time limits – in the context, however, of a guaranteed jobs program.³⁰ Moreover, after determining that almost 50 percent of those on welfare at any given time had been there for 10 or more years, Ellwood [1986] and Bane and Ellwood [1994] proposed converting “welfare as we knew it” to a transitional system; but, again, this system would include all the benefits of the FSA and, as a last resort, publicly supported jobs.

In my view, the FSA and the above subsequent recommendations were almost as broadly consistent with the requirements of equal opportunity as the then-existing system. That may not say a lot, as our comments in previous sections indicate: a large percentage of children were in poverty and almost all children on welfare were so; and despite the efforts of a number of administrations, there was no national standard for welfare payments. The one potential further departure from equal opportunity was the introduction of the “stick” of termination of benefits. Termination by definition takes away a child's benefits – unless that termination is understood to be coupled with provisions to protect the children affected. The dangers linked to the concept of termination rarely or never were realized in practice under the operation of the Family Support Act; and, when advocated directly or in the guise of time limits by the academic writers such as Ellwood, were always linked to guarantee of jobs of last resort.

PRWORA

The danger to equal opportunity of termination of benefits and time limits became a reality soon after the Democratic victory in 1992. Between the election of Clinton and the passage of PRWORA in 1996, there ensued a period of state-lead welfare reform, where, with federal encouragement, more than 40 states were granted welfare waivers and instituted a wide range of variations on the basic AFDC system. Most of these variations put stiff requirements on welfare receivers, including time limits, and attempted to reduce AFDC payments and other state welfare expenditures further (at least in real terms). Some, like Wisconsin's reform program, attempted to provide a transition to independence by providing community service jobs for a limited term – but none, to my knowledge, provided guaranteed jobs of last resort after a transitional period. As such, there was a not-so-subtle transfer of the ultimate risk of destitution from the state to the welfare recipient (Trattner [1999], p.396; Weaver [2000], p.340).

PRWORA, the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, swept away AFDC and the recently enacted Family Support Act. Its provisions accepted most of the proposals of Lawrence Mead, if not instituting the clean sweep advocated by Charles Murray. No longer would the federal welfare system, in Mead's words, “give too much to the poor – in the sense of benefits given as entitlements.” Rather, all entitlements under AFDC were eliminated – including the entitlement of children to aid that had existed since the Social Security Act of 1935. Instead of giving welfare recipients a clear set of rules to follow which

would assure welfare support, PRWORA completed the shifting of risk to the welfare recipient: after a time limit, federal welfare would be eliminated, whether one had a job or not.

It is not the goal of this paper to analyze the practical effects of PRWORA – now ten years old – but rather to try to discern whether this act changed our conception of equal opportunity, particularly as it applies to children.³¹ At first blush some might conclude that the American people had given up on children's rights and the goal of equal opportunity. Not only was the symbolic entitlement for children repealed, but a number of provisions of either PRWORA or earlier vetoed versions of PRWORA showed virtually no regard for the implications of equal opportunity for children. In the bill as passed, there was the infamous denial of services or support to the children of legal immigrants; in earlier versions of PRWORA, proposed and passed by the Republican-dominated House, Senate or both, one finds provisions that took away the entitlement to food stamps, jeopardized funding for school lunches as well as food stamps by putting them in block grants, cut Medicaid benefits, and cut benefits for disabled children under SSI (Weaver [2000], pp.316-328).

However, as shown above in section II and in the work of, for example, Weaver [2000], this lack of concern for children is not the conclusion that would be drawn from examining public opinion data. Aid to the poor and, especially, to poor children still is supported by an overwhelming majority of the population.

These polling results also shed some light on what happened in 1996. For a number of reasons the supporters of PRWORA managed to focus attention on the negative side of the “dual clientele problem” and not on the requirements, for children, of equal opportunity. Thus, whenever polling questions were framed to focus on welfare spending generally or on the adult recipients of welfare – without bringing up the needs of the children involved – Weaver's results, reported above in section II, show that a large majority asserted that too much money was being spent on welfare. How could such a schizophrenic attitude occur and persist?

Assuming, then, that there was no national turning against children, one must look elsewhere for an explanation. In the view of Weaver [2000] and others, the story involves a number of factors, in some sense a “perfect storm” of negative influences.

The progressively more negative attitude toward welfare expenditures and adult welfare recipients, noted by Weaver, was mirrored by and perhaps partially caused by the large increase in the number of welfare recipients between 1989 and 1993. Moreover, out-of-wedlock births had been increasing for many years. Such facts seemed to signal, probably unfairly, the failure of the JOBS program and the Family Support Act.

It may also have been easier to eliminate children's entitlement at a time when the results of the welfare system seemed very unsatisfactory for children. Despite decades of trying, Congress never was able to pass a minimum national benefit; in fact, the real value of welfare benefits had been falling for a number of years, and in virtually no case was a child whose family relied on welfare alone able to rise above the poverty line.

Further, with Clinton's pledge of “ending welfare as we know it,” the existing welfare system lost its major sources of historical support, the Democratic president and the Democratic party.

Unable to pass a Democratic welfare reform before the Republicans took over Congress in 1994, the initiative for reform passed to welfare's traditional opponents.

An added Democratic failure of foresight is attributable to the Clinton administration's decision to allow and even encourage the widespread granting of state waivers, permitting the states to essentially construct their own welfare programs. With over 40 waivers granted before the passage of PRWORA, state governors had little interest in pushing for or protecting national mandates or programs (Trattner [1999], p.396; Weaver [2000], p.340).

IV. CONCLUDING COMMENTS AND A SUMMING UP

Sections I and II have attempted to show that, from the time of the Revolution, Americans – and the foreigners who observed them – had “an instinctive taste for equality” and in many ways took the words of the Declaration seriously. The meaning and implications of equality evolved, from this beginning, throughout the 19th century – as shown in the historical sketch of section III. By the beginning of the 20th century, however, a consensus emerged that equality in the American sense meant *equal opportunity* – a concept that involved two, equally important, parts or stages. First was the “training” stage, roughly identical to childhood; second was what some call “the race” or “the pursuit of happiness” stage. For equality of opportunity to exist, criteria of fairness had to be satisfied during both stages.

Distinguishing a stage called the training stage rests on the now general understanding that childhood is a period of physical and emotional development that requires costly inputs of a number of kinds in order that the child have the capability to realize his/her full potential (however that may be defined). The nature and costliness of these inputs depends on the accumulated knowledge of the process of childhood development. If all children were born with exactly the same capabilities, then each would be expected to be offered the same bundle of training resources (from all sources, private and public). Technical difficulties arise when we take into account that children differ in their innate capabilities; a society must determine what fairness requires when different levels of training inputs are required to train children with different capabilities.

The second stage, the “race” or “pursuit of happiness,” is meant to pay homage to the American view that people should have considerable freedom to choose what they seek or to what they aspire. If a person wishes to enter a competition, e.g. for political office or for the top position in a corporation, then a fair race would seem to be the proper metaphor; however, in many, if not most cases, the individual may not feel he/she is entering a competition, but rather is just pursuing happiness – which may include service to society or others. Standards of fairness apply to this stage – which I believe have also changed over time – but now focus on providing a “level playing field”: forbidding and preventing discrimination based on irrelevant characteristics and assuring equal protection of the law.

At the end of section II, I posed a number of what I thought were important questions. Has this rather complex concept changed over time and, if so, how? Has the concept of equal opportunity affected American institutions and practices in any important way – or just served as an elusive ideal? Then there is the important factual question of how closely American

society approximates one where equal opportunity reigns. Finally, given its presumed importance, what has happened when equal opportunity comes into conflict with other principles? Does it trump them or get trumped? And by what societal process are conflicting principles weighed and/or harmonized? I summarize below what I think the historical investigation of section III has revealed about these questions.

The Changing Content of the Concept of Equal Opportunity

Section III concludes that the majority of early commentators on the American condition, say from 1780 to 1820, believed that equal opportunity already existed in the fledgling republic! It is my view that that this impression is partly the result of whom you were reading and the general undervaluing of the importance of the training stage.

Many of these early writers were caught up in the appreciation of the newly established freedom from British colonial and social restrictions: imperial taxes and other economic restrictions; feudal restrictions on inheritance; and the religious, journalistic, and other colonial practice freedoms now outlawed by the U.S. Bill of Rights. All of these developments made the “playing field” of the second stage much more level and, by reducing restrictions on freedom of action, dramatically increased negative liberty as defined by Berlin [1967]. Moreover, as explained in section III, many of the early commentators never had to experience conditions that led to stunted growth in the first, training stage: e.g., poverty, lack of education, and parental death – a lack of opportunity or “positive freedom” in Berlin’s sense – that meant that children were not equal at the starting line of stage two. Throughout the 19th century there was growing appreciation that even a perfect or ideally free second stage could not compensate for an unfair training stage – that equal opportunity of this description became “a bitter mockery” or a “cruel delusion.”

The Interaction between the Concept of Equal Opportunity and Reality

In an earlier paper, Stevens [2002], I documented what I argued were large discrepancies between the ideal of equal opportunity and American empirical reality. This raised a question that was a major motivation for the present paper: the *role* and *significance* of the ideal of equal opportunity in American society. Is it possible that equal opportunity, especially as applied to children, is largely a *myth*: merely, as Marxist theory has contended for over a century, a creation of the ruling class that functions to distract real attempts at reform? Research in a “post-modern” vein, with its “incredulity toward meta-narratives”, while not subscribing to the Marxist view, would also not be surprised by large discrepancies between the ideal and reality. Accepting the existence of such discrepancies does not eliminate other important, related questions: Has the ideal (at least) influenced the reality on the ground? And is there any expectation that it will do so again? And, conversely, has the reality on the ground affected the ideal? ³²

It is my conclusion that, in a number of the cases in section III, one or more of the components of what we now call equal opportunity did in fact cause changes in American institutions and America history: that is to say, without the widespread acceptance of the ideal, the observed change would not have occurred. This is certainly the conclusion of historians such as J.R. Pole and Eric Foner. In key cases it can be argued that the principle was *not* just a veil for other motivations. Let us not forget, however, the somber example of the South in the years prior to the Civil War: as shown by the research of Woodward (1960) and others, the causation

in this period went in the opposite direction – from the reality of slavery to a rejection of the ideal of equality embodied in the Declaration.

Let us just list a few of the relevant cases where we have argued above that the ideal of equality or equal opportunity probably affected the course of American history. A number reflect the universalistic thrust of *all in all men are created equal* – a thrust relevant for both the training stage and the race or pursuit-of-happiness stage of the concept, but particularly the latter. First is the rapid spread of voting rights: initially, this was the expansion from limited to universal white manhood suffrage more rapidly in America than in any other country; later, there was the eventual, if long-delayed, winning of the suffrage for African-Americans and women. Second was the rapid abolition of aristocratic titles and British restrictions on inheritance. Third, again reflecting the universalistic thrust is the complicated role played by the ideal in the Civil War leadership of Abraham Lincoln and the Radical Republicans, and the War's settlement with the 13th, and especially the 14th and 15th amendments. Further, legislation and various court decisions over the years declared illegal the use of factors deemed *irrelevant* and contradictory to equal opportunity – for example, factors such as race, gender, religion, and sexual orientation in areas such as voting, housing, public accommodations, and jobs.

In addition to the above universalistic thrust, there was also the acceptance of a positive societal duty to bring all children up to the starting line equal – irrespective of irrelevant factors such as wealth, color, and religion. This aspect of the ideal was an important factor in the establishment of the Children's Bureau, the passage of such legislation as the Sheppard-Towner Act, Title IV of the Social Security Act (the entitlement for aid to dependent children), child labor legislation in 1938 and the Head Start Program. This particular societal duty was also recognized in the 1954 decision of *Brown v. Board of Education* and other decisions striking down "separate but equal."³³

The Reality and Power of Equal Opportunity Today

By "reality" I mean the degree to which equal opportunity, in all its aspects, actually exists in American society. By "power" I am trying to ask whether, and to what extent, the principle can be an instrument that changes reality so that it corresponds more closely to the ideal.

In approaching these two considerations, I find that the historical survey of this paper can provide solace – but also a warning. A measure of solace can come from observing that the American ideal of equality and equal opportunity – that founding "abstract moral principle" that J. R. Pole identifies – has, in fact, served as a tool that has sometimes moved reality toward the ideal. On the other hand, because of the nature of the ideal, particularly because of its sometimes ambiguous legal status, changes in reality have frequently not come easily, if at all. This is the warning.

In the historical narrative, there have been, I believe, a number of cases where the ideal of equal opportunity has been trumped by other principles; as a result, reality and the ideal have sometimes moved further apart. As I see it, the fragility of the principle of equal opportunity in effecting change is the result of the ambiguity of its status – particularly as a legal principle. From the Revolution to the Civil War, it can be argued that equal opportunity had little or no legal status at all, functioning only as an ideal – although, nevertheless, sometimes functioning as a motivator of legislative change. After the Civil War, the 14th and 15th amendments gave a

legal tool to fight discrimination in political and, to some extent, economic life. These amendments and subsequent judicial decisions and legislation slowly gave a strong measure of equal protection to the race or pursuit-of-happiness stage of equal opportunity. Through these legal means the power of equal protection has slowly trumped other principles such as “separate but equal”.

However, the rights of children during the “training stage” have often suffered from a lack of Constitutional or judicial underpinnings, particularly *federal* legal underpinnings. As a result, our duties toward children have often been trumped by other principles and concerns. Throughout the long history of this country we have seen above that there *always* has been a potential conflict between the requirements of children’s welfare and the society’s desire *not* to reward the “unworthy” poor. In the 19th century, the attempt to find a workable compromise between the two principles led to the abolition of “outdoor relief” and the substitution of poorhouses; later, the attempt at harmonization led to orphanages, “removal,” “scientific charity,” and so on. In recent years, with PRWORA, I would argue that the conflict was temporarily resolved by allowing the concern to force mandatory work for welfare mothers to trump all duties to children – including the abolition of the weak national entitlement for support that children possessed under the 1935 Social Security Act. The federal government resolved this dramatic conflict with the ideal by delegating all *welfare* responsibilities for children to the states. This does not mean that children have no federal rights at all: some rights still exist with respect to food stamps and Medicaid, for example. But consider how different the situation might be if, somewhere in federal law or the Constitution, one could discover a child’s right to at least a minimum level of health, sustenance, and education.

We have noticed historically how other forces also trumped children’s rights: how the power of organized medicine, and the belief in state over federal rights, led to the repeal of the Sheppard-Towner Act in the late 1920s; how narrow Supreme Court interpretations led to the unconstitutionality in 1918 of the first federal attempt to regulate child labor; and how various interests, such as states’ rights, prevented the establishment of a national standard for children’s welfare payments.

On the other hand, on the positive side, we have observed how, when children’s interests could be isolated from potentially conflicting ones, society has often responded in a way consistent with the implications of equal opportunity. We have summarized a number of these responses in section III. A particularly interesting recent case is the passage in 1997 of SCHIPS, the State Children’s Health Insurance Program. Passed just a year after PRWORA, this program allocated substantial resources in an effort to provide health insurance to all poor children (Stevens [2002], p.29).

The weakness of the legal and Constitutional underpinnings for the rights of children during the training stage, plus the sad political fact that children cannot vote, has led to great discrepancies between the implications of the ideal of equal opportunity for children and the reality in society. In particular, there is overwhelming evidence that American children are not equal at the starting line. As stated by the Friedmans [1980] in section II, once a criterion is established as important for equality at the starting line, childhood outcomes for this criterion should not be correlated with such *irrelevant* factors as “birth, nationality, color, religion, sex.” On the other hand, as maintained by John Adams, it is perfectly permissible under equal

opportunity for differences in outcomes during the race phase to be correlated with differences in “agility, vigor or beauty.”

In Stevens [2002], I attempted to examine informally the significance of the correlations between agreed-upon criteria of children’s well-being and “irrelevant” factors such as race, parental poverty, and state of residence. Selecting just a few of the comparisons in Table 1 of Stevens [2002], one observes that American infant mortality in 1998 was highly correlated to all three of these factors. For example, the infant mortality rate was more than twice as high for African-American infants than for whites or Hispanics (13.7 v. 6 per thousand births); for families below the poverty line, the infant mortality rate was 60 percent higher than for those above it; moreover, by state, the highest rate was 2 ½ times that of the best (lowest). Further, comparisons with infant mortality rates in other countries, showed that the U.S. rate, *even for whites*, was twice as high as that in countries with the lowest rates. Similar significant discrepancies by race and state occur, for example, for other important criteria such as children’s poverty rates and for high-school dropout rates.

Inequality in infant (and childhood) mortality rates means that children of different racial, income, and geographical groups do not even have an equal chance of *reaching* the starting line. Correlations of poverty and such factors as high-school dropout rates with irrelevant factors have been shown to lead to similar correlations with adverse adult outcomes after the starting line. In a 2001 study, Mary Corcoran, after presenting her own work and examining results from a multitude of other studies, concluded that persistent childhood poverty has a sizable impact on adult earnings, even after taking account of other measured parental differences. Further, poverty seems to have “modest [negative] effects on childhood test scores, schooling, teen fertility, unwed births, and male idleness” (p.158). Moreover, the effects of poverty on adult outcomes hit African-American children harder than white children. Finally, as for infant mortality, if one compares poverty rates for children and adults across advanced industrialized countries, America is judged at or near the bottom (Smeeding, Rainwater, and Burtless [2001]).

What Can Be Done?

All of the above facts about the discrepancies between the ideal of equal opportunity and the reality with respect to children’s and adults’ outcomes were well known in 1996 when PRWORA was passed. As we discussed above, the repeal of the child’s entitlement to income support could have been seen as *prima facie* evidence of a violation of equal opportunity. Had there been a law in place, or a Constitutional provision that required the promoting of equal opportunity or, better still, that required the attainment of certain predetermined goals related to equality at the starting line, then children’s groups or children themselves could have gone to court and sued to uphold their rights. Is it not a shock that children had *no recourse* to attempt to protect what historians like J.R. Pole see as the most fundamental American right, “the abstract moral principle” on which Americans “base their national existence”?

Is it a useful or feasible strategy to attempt to pass laws or discover legal principles in existing law in order to give equal opportunity and *all* its components firm legal support? This is a question that is beyond the scope of this historical paper and one the present author feels unqualified to answer. History does show that Constitutional amendments, like the 14th and 15th, not to mention the 19th, did, along with related legislation, provide tools that eventually led to a much wider sharing of political and civil rights. It is conceivable that laws could be

drawn up that would help protect the components of equal opportunity that refer to children – everything related to bringing children equally up to the starting line. More than just conceivable, we already have a promising legal model: The Convention on the Rights of the Child – that has been signed by every country except Somalia and signed *and ratified* by every country except the Somalia and the United States.³⁴ Provisions of the Convention that are especially relevant to areas where there is a pronounced discrepancy between the ideal of equal opportunity and American reality can be found in Articles 24 and 27:

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. (Article 24)

States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, more and social development. (Article 27)

If the United States became one of the last countries to ratify the Convention, articles 24 and 27 would become U.S. law, enforceable in U.S. Courts. If it does not, and if we do not provide other means to promote the maximum development of the capabilities of all our children, America will have earned the timeless rebuke of R.H. Tawney in his classic, *Equality*:

But, in the absence of measures which ... make the external conditions of health and civilization a common possession, the phrase *equality of opportunity* is obviously a jest, to be described as amusing or heartless according to taste. It is the impertinent courtesy of an invitation offered to unwelcome guests, in the certainty that circumstances will prevent them from accepting it. (p.3, italics added)

In proportion as the capacities of some are sterilized or stunted by their social environment, while those of others are favored or pampered by it, *equality of opportunity* becomes a graceful, but attenuated, figment. (pp.103-04)

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ENDNOTES

¹ This paper was written while I was a Visiting Scholar at the National Poverty Center, associated with the Gerald Ford School of Public Policy, University of Michigan. I am very grateful to the Center's co-directors, Rebecca Blank and Sheldon Danziger, and its staff members for providing a unique environment in which to learn and do research. The present draft is preliminary and not for quotation; comments will be welcomed.

² The term "incredulity toward metanarratives" comes from Jean-Francois Lyotard [1984], p. xxiv. I am indebted for the quotation to the outstanding introduction, "What's Going On Here?" by Walter Truett Anderson in *The Fontana Postmodernism Reader* [1996].

³As made clear in Clinton Rossiter's *Conservatism in America* [1962], the importance of John Adams as both political philosopher and statesman cannot be overestimated. He feared extending the vote and political power to those who did not have a "stake in society," but hoped property would be distributed as widely as possible.

⁴ See McClelland [1990] and Stevens [2002] for a more detailed examination of the components of equal opportunity. My 2002 article depends heavily on McClelland's path-breaking work. I have noted above my concern with denoting the second period as "the race." I would prefer to call it something like "the pursuit of happiness" or the realization (of potential) stage.

⁵Much important work has been done on the duties of society when children differ in their innate capabilities. See, for example, Roemer [1998] and the essays in Arrow, Bowles, and Durlauf, eds. [2000].

⁶ John Stuart Mill's *On Liberty* [1859] is probably the first of the many works that have addressed this critical subject. Of the many important (and disquieting) modern works, see Arblaster [1984] and Bellamy [1992].

⁷For a discussion of the concepts of negative and positive freedom (opportunity) see Berlin [1969] and Connolly [1993].

⁸ See the discussion in Skocpol [1992], pp. 18-19.

⁹ See, for example, his speech delivered at Peoria, Illinois, October 16, 1854. (Reprinted in T. Harry Williams, ed., [1957]).

¹⁰ Speech at Peoria, Illinois, October 16, 1854. For the above quotations, see, for example, pages 46, 48, and 56 in T. Harry Williams, ed., [1957].

¹¹ See Hofstadter, et al. [1959], vol.1, pp. 522-523; Pole [1993], pp. 196-202.

¹² See the discussion in Wills [1979], Chapter 15, and the references cited there to Locke and Hutcheson.

¹³ The figure for total immigration from 1865-1920 comes from U.S. Bureau of the Census [1960], Series C88-114 ("Immigrants, by Country: 1820 to 1957"), pp.56-57. For the figures on the growth of urbanization, see Hofstadter, et. al. [1959], vol. 2, p.262. More generally, see Hofstadter et. al. [1959], chapters 24-29, pp. 95-288.

¹⁴ See Hofstadter [1955], p.41.

¹⁵ For Green, see his *Lectures on the Principles of Political Obligation* [1895], which, according to Bellamy (1992) went through eleven editions from 1901 to 1950; see also Bellamy [1992], pp.35-47. Hofstadter [1955], chapter 4, discusses Lester Ward's work thoroughly. On Ward's passionate support for public education, Hofstadter recommends Kimball [1932].

¹⁶ My references here are primarily Trattner [1999], chapters 5 & 6, and Katz [1996], chapters 1-4.

¹⁷ One of the earliest examples of a supposed Constitutional limitation on federal power was found, not by the Supreme Court, but by President Franklin Pierce in 1854, when he explained his veto of a bill that, responding to the work of Dorothea Dix, had established land grants to allow states to construct and maintain mental hospitals (Trattner [1999], p.66). Pierce's veto message puts the position clearly: "If Congress has the power to make provisions for the indigent insane ... it has the same power for the indigent who are not insane ... I cannot find any authority in the Constitution for making the Federal government the great almoner of public charity throughout the United States." (pp.66-67). Whatever Pierce's true motivation –and it is likely that it was largely an attempt to curry favor with the South – Trattner makes it clear that the result was devastating: "the veto was upheld and federal involvement in social welfare, while not eliminated, was retarded for years to come and confined to certain "wards" of the nation ..." (p.67).

¹⁸ A reasonable source for summaries of Supreme Court decisions prior to 1960 is Bartholomew [1962].

¹⁹ My treatment of mother's pensions relies mainly on the outstanding treatment in Skocpol [1992].

²⁰ The source of this quote is Weiss [1974], quoted by Skocpol [1992], endnote 10 at p. 683.

²¹ As discussed in Markel and Golden [2005], many doctors opposed the attacks of the AMA and, in fact, the position of the AMA was opposed by its Section on Diseases of Children, and led to the founding of the American Academy of Pediatrics (p.1131).

²² On the interplay of forces causing the demise of Sheppard-Towner, see Trattner [1999], p.221 and, especially, Skocpol [1992], pp. 512-522.

²³ The discussion of the composition and passage of the Social Security Act of 1935 is based primarily on Trattner [1999], pp. 288-291.

²⁴ Much of the information on the development of federal and other programs for children is based on Vee Burke's fine history entitled "Aid to Families with Dependent Children and Temporary Assistance for Needy Families (Title IV-A)," which appears as Section 7 (pp. 397-543) in the *1998 Green Book* put out by the Committee on Ways and Means of the U.S. House of Representatives.

²⁵ There may be some measurement error introduced by the fact that the number of children receiving AFDC payments is expressed as average monthly numbers; but we have no reason to believe that such errors lead to bias in the changes.

²⁶ See Oscar Lewis [1961] and Daniel Patrick Moynihan [1965].

²⁷ This section is based on Trattner [1999], chapter 15, and Katz [1996], chapter 9.

²⁸ A typical question whose results are tabulated over time by the Washington Post/Kaiser/Harvard Survey Project (1998) on American Values reads: "How much of the time do you trust the government in Washington to do the right thing? Just about always, most of the time, or only some of the time?" The percentage saying "just about always or most of the time" fell from over 75% in the early 1960s, to 53% in 1970, to 33% in 1976, to 25% in 1980. Since then it has been no higher than 44% (1984), and in the 1990s no higher than 34%.

²⁹ In my view, two contemporary reviews of Murray's book provide complete refutations of his empirical claims: Greenstein [1985] and Danziger and Gottschalk [1985]. See also Katz [1989], pp.137-165), and McClelland [1990], chapter 10.

³⁰ See Danziger [2001] for a penetrating analysis of the interaction between social science and politics during this period.

³¹ I have examined the actual and potential empirical impact of PRWORA on children in Stevens [2002]. This paper also presents an early discussion of interactions between PRWORA and equal opportunity.

³² Posing the above questions and proposing to use narrative historical data to throw light on, if not answer, questions about “causation” or what we mean by “affect” raises all sorts of questions about hypothesis testing with historical data – considerations that we have at least touched on above. A more in-depth discussion – which is certainly required – can do no better than start with a second important book by Peter D. McClelland: *Causal Explanation and Model Building in History, Economics, and the New Economic History* (1975). I have some hope that the present paper and McClelland’s book might inspire some to examine the causation between equal opportunity and American reality in a more scientific way.

³³ I have not included the spread of the common school and universal education in this list, because the discussion in section III indicates that other causes were just as important as the ideal of equal opportunity: e.g. the building of good citizens for the new Republic, and the acculturation and moral development of immigrants and the poor.

³⁴ Details on the Convention can be found at the UNICEF website: www.unicef.org/crc.