New legislation cannot abolish the problem of scarcity; all it can do is to rearrange our institutions that seek to resolve it. Neither can new legislation liquidate the social conflict that accompanies scarcity; all it can do is to change its pattern according to the prevailing circumstances of political power. Generally most economists, by the nature of their trade, have for a long time espoused this nonromantic attitude to lawmaking and law makers.

A different attitude seems to predominate however in the field of education. Here there seems to be general agreement that legislation can do, and has done, much more than merely reallocate. A widespread belief seems to prevail that in this case the effect of legislation has been much more than marginal; that without it very few educational resources would exist and that, in consequence, society would be engulfed in crime, ignorance and economic catastrophe. This view may be justified; but it is based more on intuition than on empirical verification. Certainly economists seem to have been much less demanding in terms of evidence when faced with popular histories of the evolution of the public school system than they are when presented with historical claims about the special achievements of say agricultural or labour legislation. And views seem to be especially inflexible about the particular pattern of legislation that happens to have evolved. For instance, although there are possible alternatives to a nationalised school system, alternatives that might redistribute income and protect the poor more effectively, there is a widespread reluctance to discuss their relative merits.

Economists have often "justified" parts of our inherited educational legislation by arguing that originally they must have been built upon the basis of "scientific" propositions in welfare economics. Compulsory laws, to take one instance, are sometimes considered to have arisen as the logical outcome of the recognition of external benefits in education. Such a view betrays excessive rationalization. The mere fact of legislation does not presuppose "scientific" legislators. In other fields, economists are quick to recognize that we do not have an "ideal" political process and that instead of problems be-

* The author wishes to thank Professors R. H. Coase, George J. Stigler and Harold Demsetz for their helpful suggestions.
ing resolved according to "optimal welfare criteria," they are usually settled crudely according to the distribution of political power. Since it is typically assumed that self interest motivates representative politicians no less than others it is clear that normally it must be only by coincidence that political decisions will truly reflect the economist's "ideal" welfare prescriptions.

Has such a coincidence indeed occurred in the field of educational legislation? Has the political process been "purer" in this area than in others? If so, it would be worthwhile to know more about those responsible for passing the original legislation. Furthermore, it would be interesting to see whether the special sequence of economic circumstances of those times can throw light upon our present attitudes and adherence to particular institutions. It is the business of the present article to attempt such an investigation. Attention will be focused especially upon the emergence of the nationalisation principle in schooling and upon the genesis of the three particular features described in the terms universal, free and compulsory. Problems of manageability suggested that the investigation should, in the first instance, be confined to a single state. New York State was chosen for special study because it is considered to be reasonably representative.

The first part of the article will outline the history of New York State education between 1800 and 1840. The second part will examine the Free School Campaign of 1840-1850. This will be followed by a brief review of propositions from the newly developed economic theory of politics whose relevance is suggested by the data. The final part of the article, in pursuing particular questions suggested by these propositions, will draw out further details from the history after 1850 in an attempt more fully to interpret the events of the remainder of the nineteenth century.

I. PUBLIC SCHOOL LEGISLATION BEFORE 1850

After the 1776 Revolution, the first government intervention in education in New York State was an Act in 1795, "for the encouragement of schools." By this legislation, $50,000 a year was appropriated for five years, "for the purpose of encouraging and maintaining schools in the several cities and towns in this State . . . ." The Act was operative for the first five years but was discontinued thereafter. In 1804 another Act was passed providing that the net proceeds of the sale of five hundred thousand acres of the vacant and unappropriated lands owned by the State, be appropriated as a permanent fund for the support of schools. The interest of this fund (known as the school fund) was to be distributed to the schools once it had grown to the figure of $50,000 per annum. The first distribution was not made until 1814.

In 1811 five Commissioners were authorised to report on a system for the establishment and organisation of Common Schools. Their report appeared
in 1812 accompanied by the draft of a bill which was the basis of the Act passed later in that year. It is interesting to compare the terms of the bill with the rationale of state aid as argued in the report. The commissioners contended that while public education was not indispensable to a monarchical government it was so to a republic; where every act of the government was an act of the people it was absolutely necessary that people be enlightened. Education was also essential for prosperity.

The Commissioners think it unnecessary to represent in a stronger point of view the importance and absolute necessity of education, as connected either with the cause of religion and morality, or with the prosperity and existence of our political institutions.¹

For state aid to be completely justified, however, it was further necessary to establish in what respects the people were not already securing sufficient education for their children. The Commissioners acknowledged that schooling was indeed already widespread:

In a free government, where political equality is established, and where the road to preferment is open to all, there is a natural stimulus to education; and accordingly we find it generally resorted to, unless some great local impediments interfere.²

Poverty was in some cases an impediment; but the biggest obstacle was bad geographic location:

In populous cities, and the parts of the country thickly settled, schools are generally established by individual exertion. In these cases, the means of education are facilitated, as the expenses of schools are divided among a great many. It is in the remote and thinly populated parts of the State, where the inhabitants are scattered over a large extent, that education stands greatly in need of encouragement. The people here living far from each other, makes it difficult so to establish schools as to render them convenient or accessible to all. Every family therefore, must either educate its own children, or the children must forego the advantages of education.³

The problem was thus presented in the same terms as those later to be used in England by W. E. Forster, the architect of the 1870 English Education Act; it was largely a problem, to use Forster’s words, of “filling up the gaps.” The logic of such argument, of course, called mainly for discriminating and marginal government intervention. To this end three methods were available. First, the government could assist families, but only the needy ones, by way of educational subsidies. Second, it could subsidise

² Id. at 18. Italics supplied.
³ Id. Italics supplied.
the promoters of schools in the special areas where they were needed. Third, the government itself could set up schools, but only in the "gap" areas. The Commissioners, without discussing possible alternatives, recommended that the inconveniences could generally best be remedied "by the establishment of Common Schools, under the direction and patronage of the State."

The report, having stressed the plight of the rural areas, leads the reader to expect special attention to be paid to them in the general plan of intervention. No such priority appears, however. The main features of the plan suggested by the Commissioners were: that the several towns of the State be divided into school districts by three commissioners, elected by the citizens to vote for town offices; that three trustees be elected in each district, to whom shall be confined the care and superintendence of the school to be established therein; that the interest of the school fund be divided among the different counties and towns, according not to the distribution but to the size of their respective populations, as ascertained by the current census of the United States.

Thus, in place of discrimination in favour of poor and thinly populated districts, a flat equality of treatment was decreed for all areas; the public monies were to be distributed on a per capita basis according to the number of children between five and fifteen in each district whether its population was dense or sparse. Beyond this, each town, at its own discretion, was to raise by tax, annually, as much money as it received from the school fund.

The 1812 Act in addition to incorporating all the points mentioned above, created the office of trustee, clerk, and collector for school districts. The three commissioners of common schools, whose first duty was to form the school districts, were the financial officers of the schools, to whom was paid the public money for distribution to the districts, and to whom the trustees were required to report. The act also provided for the election of from one to six inspectors of schools, who, together with the commissioners, had the supervision of Common Schools and the examination of their teachers. The office of State Superintendent of Common Schools was also created.

The State Superintendent himself submitted a draft of an amending law in 1814. His amendments were designed to correct what he considered to be administrative defects in the operation of the 1812 Act. An amending Act of 1814 embodying the Superintendent's proposals made it compulsory for the boards of supervisors to levy on each town a sum equal to its distributive share of the school monies. Such a levy, it will be remembered, had previously been left to the discretion of the towns. Since many of them had not done this, the Superintendent apparently assumed that they were negligent in providing education. The 1814 Act also authorised the levy of a like sum, in addition, if voted by the town. Furthermore, the new law required the trustees to see that a school was kept open at least three months.
Two further details of this early legislation are worthy of observation. First, there seems to have been no announced intention of making education free. Pointing out that the public monies would never be adequate alone to maintain the Common Schools, the Commissioners of 1812 observed:

But it is hardly to be imagined the Legislature intended that the State should support the whole expense of so great an establishment. The object of the Legislature, as understood by the Commissioners, was to rouse the public attention to the important subject of education, and, by adopting a system of Common Schools in the expense of which the State would largely participate, to bring instruction within the reach and means of the humblest citizen.4

Even with the addition of the revenues from the town taxes there were far from sufficient monies to cover expenses. The substantial balance was presented in the form of rate bills (fees) to the parents who were required to pay in proportion to the attendance of their children. For instance, in 1830 parental fees contributed $346,807 toward the total sum for teachers wages of $586,520.5

The second detail of the early legislation worth noticing is that religion was regarded as an integral part of school education. The Commissioners observed: "Morality and religion are the foundation of all that is truly great and good; and consequently, of primary importance." The Bible in Common Schools was to be treated as more than a literary work. The Commissioners particularly recommended the practice of the New York Free Schools (the charitable establishments) in "presuming the religious regard which is due to the sacred writings."7

Subsequently the annual reports of the Superintendents revealed a steady growth in the number of school districts organised. In some cases, entirely new schools were built; in others the personnel of existing private schools allowed themselves to become socialized, that is, to become Common Schools, in order to qualify for the public monies. In the report of 1821 it was stated that the whole number of children, between the ages of five and sixteen, residing in the State was 380,000; and the total number of all ages taught during the year was 342,479.8 Thus, according to this evidence, schooling in the early nineteenth century was already almost universal without being compulsory. Moreover, although it was subsidised, it was not free except to the very poor.

4 Id. at 21.
5 Id. at 66. Teachers wages constituted about one half of total expenses. More detailed estimates of the proportionate contribution of rate bills will be given below.
6 Id. at 19.
7 Id. at 22.
8 Id. at 39.
Charity schools had existed well before 1812. But the new legislation seems to have caused much subsequent quarrelling among them. The city of New York had special arrangements. The Free School Society, by the General School Act of 1812, became entitled to a distributive share of the Common School Fund in proportion to the average number of pupils under instruction. By an Act of the following year, incorporated religious societies in the city which “supported or should establish Charity Schools” were also entitled to apply for a similar share. The vigorous response to the latter concession led the Free School Society to become alarmed at the competition for its clientele that the religious bodies began to make. The Society began to make strong objections and among other things accused some of the religious bodies of perversion of the funds to purposes not contemplated by the Act. The Legislature thereupon passed an Act transferring the local distribution of the fund to the Common Council who immediately referred the subject to a special committee. This committee recommended the cessation of distribution of public money to the schools of religious societies, arguing that the school fund of the State was purely of a civil character, designed for civil purposes and that “the entrusting of it to religious or ecclesiastical bodies was a violation of an elementary principle in the politics of State and country.” Thereupon an ordinance was introduced directing distribution to be made exclusively to the secular free school societies.9

In the first half of the century figures of private schooling throughout the State were hard to come by. But it will be remembered that the 1811 Commissioners observed that in thickly populated areas the means of education were already well provided for. The Superintendent’s Report of 1830 contained an account of a census of the schools of the city of New York for the year 1829. It showed that of the 24,952 children attending school in the city, the great majority, 18,945, were in private schools.10 In 1832 the Superintendent of Common Schools estimated that in the State as a whole there were annually instructed in private schools about 43,000 scholars—compared with 512,000 in the Common Schools. By this time the Superintendents were expressing complete satisfaction with the whole system. On the quantity of education the Report of 1836 asserted:

Under any view of the subject, it is reasonable to believe, that in the common schools, private schools and academies, the number of children actually receiving instruction is equal to the whole number between five and sixteen years of age.11

The fact that education could continue to be universal without being free and without compulsion seems to have been readily acknowledged. Where

9 Id. at 43-48.
there were scholars who had poor parents the trustees had authority to release them from the payment of fees entirely, and this was done "at the close of the term, in such a manner as to divert the transaction of all the circumstances calculated to wound the feelings of scholars." It was felt that too large a sum of public money distributed among common schools had no salutary effect. After a certain point the voluntary contribution of the inhabitants declined with almost uniform regularity, as the contributions from the public fund increased.

In almost every case, in which a town possesses a local fund [that is, a local tax to augment the state contribution], the amount paid for teachers' wages, above the public money [that is, collected in fees] is about as much less, compared with other towns having no local fund, as the amount received from that source.

The Superintendents of the 1830's argued that it was better to allow individuals to make an appreciable contribution in direct payments because this would keep awake their energies and interests. Since most children of school age were now being educated, the pressing requirement was acknowledged to be the necessity of improving the quality of schools.

The mere distribution of money, however abundant, will not produce good schools. They can only be established and kept up by the continued exertion, and much painstaking on the part of a number of the inhabitants of each district.

Comparison with other states was claimed to bear this out. For instance while the annual apportionment from the New York State treasury amounted to 20 cents to each child, between five and sixteen, in the state, the apportionment in Connecticut, gave about 85 cents per child.

If the mere distribution of money from a state fund, would produce good schools, it might be inferred that those in Connecticut were much superior to our own. But even there, with an ample fund, there is much complaint in regard to the low state of common school education.

On the next page of the 1831 Report the Superintendent observed:

Of the three modes of providing for popular instruction—that in which the scholars pay everything and the public nothing—that in which the public pays everything and the scholars nothing—and that in which the burden is shared by both; the exposition given by Dr. Chalmers, in the "Considerations on the System of Parochial Schools in Scotland," Edinburgh Review, No. 91 in favour of the last, appears to us unanswerable.
This was an interesting connection with the views of the British classical economists. Adam Smith, of course, had expressed his approval of Scottish practice long before Chalmers.\textsuperscript{16}

\section*{II. The Free School Campaign 1840-1850}

In the following decade there was a remarkable switch in the tone of public discussion. Official sentiment suddenly turned against the rate bills (fees) which were now declared a serious enemy of the system. The opposition, mainly by teachers and government officials, stressed first the administrative difficulties of collection and second the discouraging effects upon poor families. There were indeed strong grounds for complaint on the administrative score. Teachers were employed for stipulated wages and at the close of the term they were given orders upon the town superintendent for such portion of the public money as was their due. The residue was collected in the form of rate bills upon the parent or guardian according to the number of days' attendance of his children; poor parents were exempted. After the rate bills were completed, thirty days' notice was given by the trustees, one of whom had to be in attendance on a day and at a place appointed, once a week for two successive weeks, to receive payment. After the expiration of thirty days, if all the persons named in the rate bill had not voluntarily paid, the trustees put it, with their warrant, into the hands of the district collector. He was allowed thirty days to make his return to the trustees. Thus the teacher was obliged to wait thirty or sixty days for his pay after having fulfilled his contract. The remedy demanded by the teachers, however, was not a reform of the administrative machinery, a reform which was obviously feasible, but the substitution of a "free school system" which completely relieved the trustees from the duty of making out rate bills.\textsuperscript{17}

The campaign for free schools seems to have originated in the teachers institutes. These were first held in 1843 and they received legislative recognition in 1847. The first step in the campaign seems to have come from the Onondaga County Teachers' Institute. In 1844 it presented a committee report on the subject which gave three reasons why the Free School System was favoured. First, it argued, every human being has a right to intellectual and moral education; "it is the duty of government to provide the means of such education to every child under its jurisdiction." Second, the Free School System was a means for the prevention of crime. "It will be found universally true that the minimum of crime exists, where the maximum of moral education is found." The Committee did not elaborate on the meaning of "moral

\textsuperscript{16} West, Private Versus Public Education: A Classical Economic Dispute, 72 J. Pol. Econ. 465 (1964). The work of Chalmers was first published in 1819. It was reviewed in the Edinburgh Review, June 1827, at 107-14.

\textsuperscript{17} Randall, supra note 1, at 250-52.
education;” it did not for instance mention the relevance of religion and the church. Neither did it present any formal evidence of the general proposition that state education reduces crime. Third, the Free School System, it was argued, by overcoming the impediment of poverty, would benefit and develop the latent talents of the lower classes. In the following year (1845), the County Superintendent of Genessee also presented (to the State Convention of Superintendents) a report in favour of free schools. He argued that “we have reason to believe” there were children in every county who did not attend school because the self-respect and pride of their parents prevented them from being relieved of payment of fees by the trustees.

During the next session, in 1846, an animated speech on the subject was delivered by the celebrated champion of education: Horace Mann. Since he was such an influential figure, it will be useful to have a special look at his arguments. Mann contended:

The individual no longer exists as an individual merely, but as a citizen among citizens. . . .

Society must be preserved; and in order to preserve it, we must look not only to what one family needs, but to what the whole community needs; not merely to what one generation needs, but to the wants of a succession of generations.

Much of Mann’s reasoning, and that of the other protagonists, could be taken as constituting an early formulation of what has today become known as the “neighbourhood effects” argument. But if so, they do not seem to have appreciated that the onus was upon them to give evidence and measurement demonstrating how deficient was the existing supply of education. Proof of positive neighbourhood effects even if it is unambiguously established, is only a necessary, not a sufficient, condition for state provision. Such proof does not simultaneously demonstrate that every person, acting individually, will underinvest in schooling. And even if underinvestment could be shown it would be a coincidence if this called for exactly 100 per cent government subsidy instead of say 50 per cent or 60 per cent; or for an equal subsidy to every family regardless of its income. Requisite conditions for government intervention moreover include a consideration of all the costs of such interventions.

18 Id. at 215-16.
19 Id. at 217. Eventually a select committee (in 1850) reported to the State Government that the evidence, although imperfect, was enough “to authorize the opinion that, in all the State, over 46,000 children were thus deprived of a participation in the benefits of our common schools.” Finegan, Free Schools 293 (1921). This figure amounted to 6% of the common school population of that year of 742,000.
20 Randall, supra note 1, at 221.
21 See West, Education and the State 226-27 (1965). See also Pauly, Mixed Public
But Mann's oratory on this occasion\textsuperscript{22} swept past such precise considerations;

\ldots If education, then, be the most important interest of society, it must be placed upon the most permanent and immovable basis that society can supply. It should not be found upon the shifting sands of popular caprice or passion, or upon individual benevolence: but if there be a rock anywhere, it should be founded upon that rock. What is the most permanent basis—that which survives all changes—which retains its identity amid all vicissitudes? It is PROPERTY. I mean the great, common, universal elements, which constitute the \textit{basis} of all property—the riches of the soil, the treasures of the sea, the light and warmth of the sun, the fertilizing clouds, and streams, and dews, the winds, the electric and vegetative agencies of nature. Individuals come and go; but these great bounties of heaven abide.\textsuperscript{28}

Thus not only was there a failure more precisely to quantify the external benefits (neighbourhood effects) from education; proposals for the imposition of the costs, which implies some idea of the incidence of the requisite taxes, were equally nebulous.

In his secretarial reports to the Massachusetts Board of Education, Mann proclaimed repetitively the classical economic theme that education was a good public investment because by reducing crime and disorder it reduced public police expenditure and increased output. He insisted that such an educational investment should be made primarily in Common Schools. He eventually offered as proof the replies to a questionnaire which he had circulated to teachers selected "from the sobriety of their judgment and from their freedom from any motive to overstate facts"\textsuperscript{24}. In the circular, Mann asked the teachers

\ldots how much of improvement, in the upright conduct and good morals of the community, might we reasonably hope and expect, if all our Common Schools were what they should be, what some of them now are, and what all of them,

and Private Financing of Education: Efficiency and Feasibility, 57 Am. Econ. Rev. 120 (1967). Pauly argues that there are inefficiencies inherent in \textit{equal} provision of public support to each student, whether facilities be publicly or privately operated.

\textsuperscript{22} On other occasions, Mann did attempt to examine these questions; but even then he relied more upon assertion than upon concrete evidence. Thus in the 12th Annual Report of the Secretary of the Massachusetts Board of Education, he simply asserted "the opposition" to the Massachusetts system of free schools, would, should it prevail, "doom to remediless ignorance and vice, a great majority of all the children of this land." Mann did not refer to the evidence of New York State which showed that the majority of children there were being educated in "non-free" schools. Contemporary evidence showed indeed that wherever there was a relative decline in expenditure on the New England public schools in the 1830's and 1840's, private school expenditure increased.

\textsuperscript{28} Randall, \textit{supra} note 1, at 222.

by means which the public is perfectly able to command, may soon be made to become?

... Should all our schools be kept by teachers of high intellect and moral qualifications, and should all the children be brought within these schools, for ten months in a year, from the age of four to that of sixteen years; then what percentage, of such children as you have had under your care, could in your opinion, be so educated and trained, that their existence, or going out into the world, would be a benefit and not a detriment, an honor and not a shame to society? 25

The respondents, each of whom were later described by Mann as being a "sincere believer in such innate natural condition of the human heart as opposes the most formidable obstacles to success in moral training," replied that Mann's policy would be between 99 to 100 per cent successful. It should be added that such "evidence" of the profitability of government investment was qualified by Mann's important proviso that the persons of "highest talent and morality" could only be attracted into education by very substantial increases in the wages of common school teachers.

Mann did concede that, besides property, there was another "rock" upon which education was also naturally founded: the natural fidelity of the family. An "all-mastering instinct" prompted parents to accept willingly the duty of educating their children. Observation on these lines led to the conclusion, as it did for John Stuart Mill, that the state's educational powers are to be regarded as powers of last resort. Mann accordingly concluded that society succeeds to the place of parents only where the latter cannot provide the sustenance and care.

If any period previous to the age of discretion, the parents are removed, or parental ability fails, society, at that point, is bound to step in and fill the parents' place. 26

But Mann did not seem to want to grasp the implications of this reasoning. For, in practice, his observations were relevant only to the problem of what to do with the minority of families which was neglecting to educate its children. His proposals to provide free schools for all implied that he was willing for the majority of parents to reduce their existing direct payments. This further step required the support of extra argument. For, in so far as other people (nonparents) were now expected to shoulder the burden of school finance, this amounted to a free gift of money to the average parents, and a gift spendable upon anything but schooling. On the other hand, in so far as most parents were intended to contribute to "free" schools via the incidence of the new taxes, the change merely amounted to the substitution of an indirect for a direct payment.

26 Randall, supra note 1, at 225.
The New York State Free School Campaign, to which Mann's arguments made a significant contribution, almost achieved its goal in 1849. The Legislature passed an Act in that year establishing free schools, abolishing the rate bills (fees) and leaving the deficiency of teacher's wages to be made up by district taxation. It is interesting, however, that the legislation proved to be unworkable and that the Act was met with immediate and widespread hostility. The new law had made it compulsory upon the local districts to supply any deficiencies beyond the state allocation so that their schools could be kept open for a statutory minimum of four months. In some districts, especially those which were poor or had a large proportion of nonparents, the majority of voting taxpayers grudgingly provided only enough revenue to keep the schools open for the legal minimum of four months. Parents, who were typically accustomed to using the schools for up to eight months, now found the school doors closed to them after four.

The new legislative provision, therefore, far from facilitating the supply of schooling, actually reduced it. Moreover the parents' direct means of action to encourage supply, the payment of rate bills, were now removed. After only two or three months in operation there was a torrent of petitions from all parts of the State demanding a repeal of the Act. The controversy was eventually settled by a repeal of the law in 1851. The rate bills were restored in this year and at the same time the public monies for the Common Schools were augmented by the revenue from a state tax amounting to $800,000. The rate bills were not successfully removed until 1867 with the "Free School Act" of that year.

Between 1828 and 1867, the rate bills had returned on an average $410,685 per annum. In 1849, the climax year of the first "free school controversy," they had risen to $508,725 which amounted to 29 per cent of the total expenditure on schools ($1,766,668). Down to 1849 they provided the largest single source of revenue for most rural school districts. The other three major sources were the federal funds, the town and county tax and the school district tax. For the year ending 1866, the year before their abolition, the rate bills were still yielding the significant sum of $709,025. Parents of ordinary means, therefore, were still directly buying education for their children in New York State a century ago, an education which, to repeat, although almost universal, was not yet compulsory.

27 Ample evidence is given in the Report of the select committee on the petitions for the amendment or repeal of the free school law in 1850. For a reproduction of the report see Finegan, supra note 19, at 286-308: "Not only are our schools thus closed for a portion of the year, during which they were before taught, but this diminution is accompanied by much ill-feeling on the part of those who were intended to be benefited by the act in question." Id. at 295.

Whatever the attitude of a minority of negligent or poor families there is no systematic evidence to show that average parents, as distinct from public school teachers and administrators, preferred the method of paying for schooling through increased taxes to that of the rate bill system.\textsuperscript{29} The teaching organisations insisted that "society" basically demanded the change because the electorate voted for the 1849 Act with a firm majority.\textsuperscript{30} But it is clear, from people's immediate hostility to the practical operation of the Act, that the political spokesmen had not presented them with all the issues.\textsuperscript{31} The decision process which was involved in the legislation consisted of two parts: the demand choice and the supply choice. These two parts had become arbitrarily separated at the ballot box. The voting issue, of course, as it presented itself to each individual voter, appeared mainly as a demand choice. People would have been irrational indeed if, believing that they could really obtain something free merely by voting for it, they did not in fact do so.\textsuperscript{32}

In retrospect, the "best" economic solution of the mid-nineteenth century problem of financing schools demanded much stricter comparisons of all the costs which were implicit in any proposed change. These would have included, for instance, a comparison between the costs of operating some improved administration of the existing rate bill system\textsuperscript{33} on the one hand, and the various costs of switching to and maintaining a free school system on the other. The latter would include not only a consideration of the burdens of inequity caused by the tax change, but also the costs implied by a reduction of parental choice.

To obtain deeper understanding of the reasons why contemporary political discussion so readily brushed aside considerations of administrative improvement as an alternative to the revolutionary step of complete abolition of the rate bills, we obviously need further study of the facts. But here, of course, we openly confront the familiar dictum that facts by themselves are inadequate. Since, as always, deductive and inductive reasoning should preferably

\textsuperscript{29} Finegan, \textit{supra} note 19, at 305. The select committee reported that the rate bills were "willingly paid."

\textsuperscript{30} \textit{Id.} at 239-43.

\textsuperscript{31} The 1850 select committee stated: "It is useless to say that the law was adopted by a majority of thousands, of hundreds of thousands; ... This law has now been in operation some four months only, and yet we are already daily receiving petitions for its amendment, or its total and entire repeal." \textit{Id.} at 294.

\textsuperscript{32} On the separation between demand and supply choices in the political process see Buchanan, The Inconsistencies of the National Health Service (1964). See also Buchanan, Public Finance in the Democratic Process (1967).

\textsuperscript{33} Finegan, \textit{supra} note 19, at 149. The first obvious improvement needed was to make the parental contributions payable in advance. Only one superintendent seems to have advocated this, however. \textit{Id.} at 152.
go hand in hand, our next immediate requirement is for suitable hypotheses which, when combined with the facts will more fully illuminate the scene.

III. School Legislation and the Economic Theory of Democracy

The study of the evidence so far strongly suggests the relevance of that new branch of economics which has come to be known as the economic theory of democracy. It will be remembered that this theory distinguishes itself by an application of the self-interest axiom ("the profit motive") to the actions of voters, governments, public agencies and to all aspects of political activity in general. In other words, the maximisation hypothesis, which is the traditional foundation of analysis concerning private economic agents, is extended to apply to those in the political process also. There are many important corollaries to this hypothesis but three of them seem to be particularly relevant here.

Since it is postulated first that every government seeks to maximise political support, it follows that in order to do this it has to be constantly informed about the wishes of the majority of voters. Second, in the real world, the existence of uncertainty creates barriers to communication. On the one hand it is costly for government to keep constantly in touch with voters; on the other hand, the electorate is not fully aware of all the issues. Such a situation is favourable to the emergence of special interest groups claiming that they are representatives of the popular will. Propaganda put out by them will serve to create real public opinion at the same time that it attempts to persuade government of the existence of such opinion.

Third, let it be observed that producing political influence is a particularly costly operation and that, consequently, the costs will be assumed mainly by those who stand most to gain from it. For instance, those individuals who work in a service which is provided by government can afford to bring greater than average influence to bear upon government policy since their incomes will be particularly responsive to it. In contrast, the consumers, having interests which are spread over many products and services, cannot so afford to buy influence over the supply of only one of them. In particular, they will not be able to afford the information necessary to evaluate the full implications of government policy such as, for example, the true incidence of taxation necessary to pay for "free" services or the eventual effects of a "free" service upon consumer choices.

The application of the maximisation hypothesis to education is not to imply that educators are prompted by motives of self-interest in any greater degree than anybody else. Every profession no doubt has its full share of benefactors and altruists. But on any realistic assessment the typical member

of a profession can reasonably be regarded as having more than one motive in life. Thus he may be prompted by the desire to help others as well as by the desire to help himself and his family. Predictions which relate to actual human behaviour require as assumption not about which motives are highest but which are strongest. And what people do is a better guide than what they say. It is interesting that while Horace Mann, for instance, typically referred to the teaching profession as a noble and religious calling which demanded persons of the very highest principles, he nevertheless continually attributed to teachers the strongest of economic motives:

We want a profession which understands the laws of the intellectual and spiritual nature of man,—so much more prolific of true enjoyment than any laws of property can be. . . . But how can this be done, while the salaries and the social consideration bestowed upon teachers, furnish so little inducement to enter the profession, and while avenues to greater honour and emolument, constantly opening around, are seducing its members into more brilliant or more lucrative walks of life?

Mann was especially sensitive to the tendency of the private sector to bid teachers away from the public:

If teachers look for more liberal remuneration, they abandon the service of the public, and open private schools . . .

While we pay so inadequately a salary at home, many of our best educated young women go south and south-west, where they readily obtain $400, $500 or $600 a year. . . . Others of our best educated young women become assistants in academies, or open private schools on their own account.

It is merely an extension of such observation to suggest that teachers will promptly be energetic in the political arena if it so happens that the political process suddenly provides one of the easiest routes to economic gain.

To return now to the facts surrounding the emergence of a free school system in nineteenth century New York State. The suppliers of educational services to the government, the teachers and administrators, as we have seen, had produced their own organised platforms by the late 1840's; it was they indeed who were the leading instigators of the free school campaign. Whilst conventional history portrays them as distinguished champions in the cause of children's welfare and benevolent participants in a political struggle, it is suggested here that the facts are equally consistent with the hypothesis of self-interest behaviour as described above.

35 This distinction between highest and strongest motives is taken from Alfred Marshall. See Memorials of Alfred Marshall 310 (Pigou ed. 1925).
37 Id. at 30.
38 Id. at 36.
This hypothesis assumes that it is in the interests of individual suppliers, whatever the setting they find themselves in, to seek out those courses of action which bring either better returns for given efforts or the same returns for less effort. The outcome, of course, will differ according to the number of obstacles that the social framework places in the way of competition. Where the benefits of improved efficiency of a competitor cannot be denied to consumers in general, the only course is for others to try to match his efforts. But, where an opportunity presents itself, it may be more profitable to concentrate upon schemes to prevent a competitor's action from being effective—that is to say upon schemes of monopolisation. The success of an efficient competitor is normally demonstrated by the actions of new customers in placing orders with him. Customers can only do this, however, if their expenditure is not tied in some way to their "normal" supplier.

IV. IMPLICATIONS FOR THE LATER 19TH CENTURY DEVELOPMENTS

By the mid-nineteenth century, most parents were already considerably tied to the Common Schools because much of the finance was already preempted through compulsory taxation. If a parent transferred his child from a common school to a competitor outside the system (that is, a private school) the only funds that he could transfer consisted of his fees. Nevertheless so long as these fees were of some marginal significance they remained some threat to the Common Schools.

The total amount paid in fees (rate bills) by parents in New York State in the year 1845, for instance, was $461,000. The number attending Common Schools was 742,000. As it was estimated that in the same year one quarter of the population were in districts which had already made their own free school provisions, this means that about 560,000 were attending schools where rate bills were payable. On this basis, the average payment was about 80 cents per child. There was, however, considerable variation on either side of this average. The charges were assessed according to the length of attendance during the year; and school attendance varied significantly. Furthermore there were wide variations in charges between districts. Parents who sent their children to school for the whole year, seem to have been paying $4 or more per child in some districts. One important feature of the system was that because they varied with attendance, the rate bills were unpredictable to the parents. If attendance fell, the "loyal" parents would automatically be obliged to pay more. Mr. Pierpont Potter, county superintendent of Queens County wrote in his annual report of 1846:

---

39 Finegan, supra note 19, at 156.
40 See the estimate for 1852 in Finegan, supra note 19, at 466.
41 Id. at 84, for the case of Westchester in 1846.
I have witnessed more than one instance under the present system, where one or two wealthy individuals, from some trifling offense, withdrew their children from the common school in the vicinity, and sent them either to a select or boarding school, which act so alarmed others in the district, that they withdrew their children through fear of being compelled to pay a very high rate bill. The result of all these evils was that those who had the patriotism and the firmness to adhere to the common school, were compelled to pay six or seven dollars per scholar for one quarter's tuition.\footnote{Id. at 91. Italics supplied. This was originally printed in Teachers Advocate, 1846. Potter did not say what the "trifling offense" was. Nor did he give any indication whether other private schools eventually catered for the less wealthy who could not pay the high rate bills.}

There is not much evidence available about fees charged by typical private schools. Some idea of the range of charges to be expected from competing private entrants into schooling may be obtained, however, by considering the following estimates\footnote{Id. at 93.} of total costs per pupil in attendance in the various parts of the Common School system in 1845:

<table>
<thead>
<tr>
<th>Costs of Public Schooling Per Pupil</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York</td>
</tr>
<tr>
<td>Brooklyn</td>
</tr>
<tr>
<td>Albany</td>
</tr>
<tr>
<td>Buffalo</td>
</tr>
<tr>
<td>Rochester</td>
</tr>
<tr>
<td>Troy</td>
</tr>
<tr>
<td>Utica</td>
</tr>
<tr>
<td>Schenectady</td>
</tr>
<tr>
<td>Hudson</td>
</tr>
<tr>
<td>Syracuse</td>
</tr>
<tr>
<td>Geneva</td>
</tr>
</tbody>
</table>

Such information does suggest therefore that where rate bills were charged they were often of sufficient importance at the margin to encourage many ordinary families to be choice conscious. In a free school system, it is usually out of the question for the majority of parents to consider transferring their children to private schools and so "paying twice." In contrast, in a nonfree (rate bill) system of public schools, many people would be prompted more realistically to consider alternatives. Paying, say, "one and a half times" is more within reach than "paying twice."

Self-interest would have dictated to the Common School employees and organisers that the best course was to campaign for a one hundred per cent subsidised, that is, free school system, in order that the last traces of customer discretion be removed. Teachers in private schools stood to lose wherever the contest was transferred to the political arena since they were in a minority in the profession as a whole. Moreover the public school teachers had allies
in the form of the growing body of administrative personnel which had a
direct interest in the expansion of the public school sector.

To what extent had the parents been using those powers of choice between
the public and private sector which remained with them before 1849 and to
what extent had private schools become a competitive threat to public
schools? Between 1832 and 1847, according to the State Superintendent's
reports for those years, the numbers of students attending private establish-
ments increased from 43,000 to 75,000. Over the same period the numbers
attending Common Schools rose from 512,000 to 776,000. The private institu-
tions had thus taken over 12 per cent of the increase in school “customers”
over the period.

Other states, incidentally, had similar experience in the 1830's and
1840's. It was in the setting of competition from private schools, interestingly
enough, that the very strenuous efforts of Horace Mann were made. It will be
helpful to present here a quotation in which Mann not only gives evidence of
the contemporary private school “problem,” but also reveals his full reaction
to it. Reviewing the progress of his work from 1837 as Secretary to the
Massachusetts Board of Education he stated in his Report of 1849:

Facts incontrovertibly show, that, for a series of years previous to 1837, the
school system of Massachusetts had been running down. Schoolhouses had been
growing old, while new ones were rarely erected. . . . To crown the whole, and
to aggravate the deterioration which it proved to exist, the private school system
was rapidly absorbing the funds, patronizing the talent, and withdrawing the
sympathy, which belonged to the Public Schools. All these things were undeniably
true, and yet the Secretary, in reporting upon our school system from year to
year, might have concealed or palliated these steps of declension and prognostics
of ultimate ruin; he might have conspicuously set forth whatever remained of
hope or of promise, and the general indifference of the public
would have made
the imposture easy.

The other course led in a direction diametrically opposite. It counselled an
energetic and comprehensive system of Popular Education, good enough for the
richest, open to the poorest . . . . The intelligence of the State was to be invoked
to justify such a system, and its liberality to support it . . . Committees were
to be informed and stimulated, that they might both know and discharge their
duty. Money, for the more liberal payment of teachers, was to be won from the
pockets of the wealthy by persuasion, or exacted by law.45

esting account of the decline of the public schools in Rhode Island at this time see
Carroll, Public Education in Rhode Island 110-14 (1918). It is noteworthy, incidentally,
that this author challenged the popular view that Massachusetts was superior because
it had earlier, or more elaborate, legislation:

"The unfavourable estimate of Rhode Island's school history which has prevailed
generally, arises largely from the error of studying school progress exclusively in legis-
lation. The historians of the past who found general school laws in Massachusetts and
One possible explanation of the public school decline in the 1830's and 1840's is that, dollar for dollar, an increasing number of parents were preferring the quality of the private schools. Another possibility was that there was a high income elasticity of demand for schooling and that increased incomes were finding a more ready outlet in the private sector, the public sector keeping one step behind. For whereas expenditure on a public system, dependent as it is on political votes, is determined by the median preference only, under private financing the full range of all preferences and all incomes is reflected. Hence significant differences are likely between the growth of public and private schools, especially when the former are not free of charge. Whatever the case it is clear that the fortunes of the private schools could have been expected to vary in proportion to the level of fees charged in the public sector.

The Act of 1851 in New York State sought a compromise to resolve the first free school controversy. By putting more dependence on State funds it relied more upon new taxes whose incidence was less clear than those of district taxes. By introducing a State tax of $800,000, the immediate significance of the fees (rate bills) in public schools was substantially reduced. From the economic principles so far discussed, we are led to expect that this would have resulted in a severe check on the growth of private schools. This seems to have been the case; evidence indicates that growth was slowed down and, indeed, there may well have been an absolute decline.

By the 1860's the rate bills had become confined to the rural areas. But here their importance eventually began to revive considerably. For the year 1860-1861, the State money allocated to the rural districts was $950,000. The rural district taxes brought in $500,000 and the rate bills $400,000. There was a dramatic increase in the annual revenue from rate bills to over $700,000 in 1867. This was accompanied by another revival of the private school population. Excluding Kings County and New York City (for which figures for the earlier years are not available), the statistics published by the State Superintendent show an increase in the number of pupils in private schools from 48,541 in 1863 to 68,105 in 1867. This was followed by a
decrease to 49,691 in 1871 after the passage of the Act of 1867, which abolished rate bills. Notwithstanding the incompleteness of these figures, there can be little doubt that the abolition of rate bills led to a decline in the private school share of school population.

Increasingly hostile propaganda put out by the protagonists for free common schools indicated the continuing competition of private schools. There was also an attempt to shift the popular image of the public school system. As was suggested above, it is consistent with motives of self-interest that special pressure groups should try to mold public opinion at the same time as they are trying to persuade the government that such opinion exists. There is plenty of evidence that this kind of strategy was employed by the teachers' associations and organisations by the middle of the nineteenth century.

The initial motive of the original legislation it will be remembered was to encourage education in order that the members of the republic become responsible voters, prosperous individuals, property-respecting and God-fearing persons. The expressed desire was simply to aid those who were too poor to provide education voluntarily. There was no suggestion of abolishing, hindering, or taking over existing private schools; such a policy indeed would have been in direct conflict with that of encouraging education.

Already by the 1840's, however, the special interest groups in the public school sector were beginning to distill new ideology from the legislation. They urged the demise of the private schools and the establishment of free schools on the grounds that the State and the will of the people demanded it.49 Among the arguments in the 1844 report of the Onondaga County Teachers' Institute (which provided the opening attack in the free school

49 Finegan, supra note 19, at 305. The claim that the "popular will" demanded free schools conflicts with the evidence given in the 1850 select committee on the free school law. It is interesting to compare the experience in Great Britain in the 1860's. Active pressure groups such as the Birmingham League proclaimed themselves as representing popular wishes in their campaign for "free" education for all. Yet systematic evidence which was then available pointed firmly in the opposite direction. A massive Royal Commission Report published in 1861 (known as the Newcastle Report and written by a body which included the economist Nassau Senior) stated:

"Almost all the evidence goes to show that though the offer of gratuitous education might be accepted by a certain proportion of the parents, it would in general be otherwise. The sentiment of independence is strong, and it is wounded by the offer of an absolutely gratuitous education."

Even those in the minority who wanted "free" education in England often consisted of ordinary people who only supported it because they thought it was one practical way of being compensated for the heavy taxes they paid. For, as Senior remarked when referring to the government subsidy to education:

"A considerable portion of it, probably one half, is paid by the labourers whose children frequent those schools. In the price of every pot of beer and of every pipe the labourer pays a portion of the expense of the education of his own children." Suggestions on Popular Education (1861).
campaign) was the new assertion that free schools were especially necessary for the children of the rich:

The children of the rich do not generally form those habits of energy or perseverance—steady, unwearied, continuous labor—without which no man can attain eminence. The Free School system . . . would benefit the children of the rich by the lesson invaluable to them, that they are just such beings as the children of the pauper, and that if they would attain greatness they must work with untiring energy and perseverance.  

The next year the County Superintendent of Genesee in his report complained that without sufficient public funds the Common Schools would never be made acceptable to the rich and that therefore they were witnessing the rise of "private and select" schools, "thus creating a distinction in society that ought not to exist in a community of free men, who profess to believe in, and attempt to sustain the principles of republican liberty."  

At the height of the free schools controversy of the late 1840's, the State Superintendent told his Government:

Private schools ought not to receive the encouragement of the State, or the support of the community. They are usually sustained by those who have the ability to employ competent teachers, and the common schools are weakened by the means applied to their support. Our district schools may be so elevated, [by more public expenditure] that those who seek superior advantages for their children, can find them only in the common schools.  

Randall supra note 1, at 216-17. Others in the public system began to denounce the support of private schools as unpatriotic. See for instance the protest of the County Superintendent of Queens Court in his 1846 report quoted in Finegan, supra note 19, at 91.  

Finegan, supra note 19, at 162. Horace Mann pointed to the likelihood of alienation arising from the strong tendency for wealth to become concentrated in the hands of one class. Universal education in Common Schools was necessary, he maintained, to countervail the tendency to "the domination of capital and the servility of labour." He pointed to the example of Britain where, he said, the manufacturer prescribed wage rates and reduced them under any pretext he pleased. Only in rare instances "have kindly offices smoothed the rugged relation between British Capital and British Labour." No power in the realm had been able to secure working class children an education. See 12 Ann. Rep. of Sec. Mass. Bd. Educ. 58-59 (1849). This is not the place to discuss the validity of the theory of the class struggle. It seems necessary, however, to point out that Mann's view of the mid-nineteenth century educational attainment of the masses in England was wrong. The majority of English people were literate and the majority of children were receiving a schooling by this time. See West, Education and the State, chs. 9-10 (1965).  

1849 Ann. Rep. N.Y. Supt. Common Schools 8. The argument that private schools "weaken" public schools has long been prevalent despite the fact that there is little or no evidence for its support. Even if we ignore the beneficial effects of competition that private schools bring, the argument can only be true if education resources are infinitely inelastic. Private expenditure in fact may so enlarge total educational resources (e.g. by attracting more people into teaching) as to cause an enlarged expenditure per head in the public sector. The point is developed in my contribution to Education: A Framework for Choice 78-83 (Institute of Economic Affairs, London, 1967).
In some instances, particularly in the case of teacher training colleges, Government had been making special grants to private establishments. Eventually those who were associated with Common Schools began strongly to oppose such practice. They called for the complete termination of what they termed the two conflicting systems of education, the public and the private. As a New York State Superintendent argued:

If all the schools of every grade, which the State to any extent supports, were associated in one homogeneous system, and the appropriations of the State were confined to that system, as heretofore recommended by this Department, and as repeatedly urged by the State Teachers' Association, there would be no ground for conflict.58

Never was there any suggestion by the operators of the State system that open competition, by spurring most schools into adopting the methods of the best, could also be to some degree effective in reducing distinctions of efficiency. Indeed competition was openly disliked by the administrators because it was untidy, embarrassing, and disruptive of their "system." Competition between schools within the public system, as well as from without, was disliked by them. Consider the following view concerning competition in the city of New York in 1850. Because the city was at that time unique in allocating the proceeds of public taxes "untidily" to miscellaneous groups, to charitable bodies, incorporated societies as well as to municipal schools, parents were enjoying a wide range of choice. The Superintendent protested however:

Scholars or parents being thus privileged to select any school they please, it is not strange that some go two miles to school; and that large [school] houses, which will conveniently accommodate one thousand scholars in the three departments, have, some of them, but four hundred, and some of them have sixteen hundred.54

The Superintendent's solution, which he urged continually in his annual reports and which was eventually adopted, was that of "districting" (zoning) the city:

... as is done in most other towns, or at least confining the scholars to their own wards; but this cannot be speedily accomplished, nor perhaps ever, so long as there are rival organizations of schools, overlaying one another, and each in competition for the same scholars.55

In one report, the Superintendent suggested that the preferences of parents were not well founded and described children going "from one side of the

55 Id.
city to another, to attend a crowded School, passing half a dozen Schools just as good as the one they had chosen to attend. But in another he suggested that the parents choice might be based on real differences between the schools (at least in the minds of the parents): "The disadvantages of conflicting school limits are too obvious to need much comment. One effect most observable is, that respectable people prefer to send their children to schools that are in good neighborhoods; we accordingly see schools that are well located, are filled to repletion, and those that are unfavorably located, are not half full."

The strategy employed by the administrators was to try to focus public attention on what they called the "inequity" of having schools with superior advantages outside their province (the private schools) while at the same time themselves allowing what were to ordinary people gross differences of quality within their own public system. There was a tendency, in other words, for areas of "privilege" to creep into the public system. For the erection of district boundaries to prevent parents and scholars from moving to the best areas, created privileges for those who happened to reside in them. Although presenting themselves as champions of the needy the supporters and leaders of the Common School system do not seem to have given any serious attention to the possibility that the expansion and evolution of it might thus serve to worsen, not improve, the chances of poor children. For in such a system, as subsequent experience has shown, where all pay taxes for its support, it often transpires that it is the poor who subsidise the middle class.

Being more politically active, the latter are more able to obtain and to perpetuate, bigger revenues and superior provision for the districts serving their own children. Lack of money or obstacles to mobility prevent others from moving into the superior middle class districts to correct the imbalance. The point is more emphasised where housing also becomes, as it has subsequently become, government subsidised and controlled. For then the population tends to be distributed geographically even more strictly in accordance with income groups and becomes generally still less mobile since the subsidy cannot be transferred to other areas.

With the passing of the Free Schools Act of 1867 the rate bills (fees) were finally abolished. As we have seen, the statistical evidence indicates that this led to a check in the growth of education in private schools after the passage of the new Act. In his report of 1870, the Superintendent of Cortland County observed with satisfaction:

58 Kenneth E. Boulding has recently written: "One wonders also whether 'free' public education, supported by a tax system which is regressive as most state and local tax systems tend to be, is not really a device for subsidizing the education of the rich rather than that of the poor." 33 U. Chi. L. Rev. 618 (1966).
Private schools, always exerting, to a greater or less extent, a deleterious influence on the public schools, do not flourish under the operation of the free school system. Most of the academies are unable to compete with free schools, and are rapidly giving place to union schools. Of the four academies, formerly located in this commissioner district, but one remains. It is generally conceded that union free schools are best adapted to meet the wants of the people.58

The process of school monopolisation after 1867 was carried much further than was possible for any undertaking, educational or otherwise, in the private sector. For while it was possible for monopolising private organisations to charge high prices, they could not, as could the Common Schools, go further and enforce payment from their customers through compulsory taxes. But, unique as this particular feature was, there yet remained for the organisers of the Common Schools the possibility of securing and strengthening their monopoly still further.

It must be remembered that there remained one area of discretion for the customers of education; they still possessed the freedom to restrict their consumption. This meant, for instance, that in those areas where the public supply was inferior, and where the new public monopoly removed any hopes of quick improvement, it was likely that some parents would want to exercise their remaining freedom by removing their children from school at an earlier age than in those areas where better quality teaching existed. Still bearing in mind our economic theory of politics, it is interesting retrospectively to "predict" the responses of the school suppliers in such circumstances. Especially since public money was distributed to the schools and their staffs in proportion to the numbers in attendance, we should expect that the kind of agitation that would next have been undertaken by the income maximising teachers, managers and other officials, especially those of average or less than average ability, would have been a campaign for an education that was compulsory by statute. The historical evidence is in fact compatible with such "prediction." Serious agitation for compulsory attendance built up very soon after the success of the free school campaign of 1867. "The irregular attendance of a large number of enrolled pupils is a serious obstacle," protested the Superintendent of the City of Newburgh in 1870, and he placed the blame on "the laxity and indifference of the parents." The Superintendent believed that:

. . . not only the true enjoyment and perpetuity of our liberties, but also the true and real progress of our national prosperity, demand and enforcement by legislative enactment, of a system of education that shall contain, among its provisions, one that will compel the attendance, at some good school, of all the children of proper age . . . 60

60 Id. at 303-304.
Thus while before 1867 the prevailing argument had been that the main reason for lack of attendance had been the rate bills, after 1867, when these had been abolished, and when what was considered to be bad attendance persisted, the new contention was that parental indifference was the main trouble.

Curiously enough there was one dissentient voice, that of the Superintendent for the State himself. He conceded, in his annual report dated 1871, that it was rarely the case that “parents who provide for their children in other respects, wholly neglect their education.” To meet the minority case of the children of vagrant or improvident parents, he pointed out that there was already on the statute books a law applicable to them but which had not been enforced. This law, an Act of 1853, provided discriminatory powers to rescue and care not only for their education but for their physical and moral needs as well.

And yet, with such a statute unemployed, a demand is made for a compulsory law which could not be enforced against the destitute classes amenable to the existing law, but which would be directed against those who are not idle, nor truant, nor vagrant, nor vicious, and which might be made the means of annoyance and oppression to many well disposed people."

In effect the Superintendent was pointing out that there were two types of compulsion—universal and selective; and that existing laws already involved compulsion anyway. Where a minority class of malefactors was aimed at, the correct policy was to use a selective law and therefore a selective kind of compulsion. Government funds might be dissipated if the authorities tried the costly method of continually policing the whole responsible majority which did not need it. To illustrate from another field, child malnutrition was an offence but it had not been found necessary to pass universal laws for compulsory feeding of every child.

It is interesting to reflect that, in an “ideal” democratic world where there was little uncertainty and where there were low costs of political participation, such legislative powers of compulsion would be less easy to establish than in the real world case of “impure” government with its powerful lobbyists and special interest groups. This is not to say that compulsion would never be resorted to; only that the costs and benefits would be more widely and carefully scrutinized. For instance, the costs of the activities of officials operating under a new law of compulsion would be compared with the benefits of reduced (time) costs of parents in their accustomed and self imposed task of checking that their children went to school. Among the costs to be reckoned would be the danger of undermining the feeling of responsibility

61 Id. at 65.
62 For fuller discussion of this argument see West, supra note 51 at 199-208.
in parents as a whole. Another cost to be considered would be the social cost of monopolising. A consideration of the latter would involve an attempt to measure the deterioration in the quality of schools consequent upon the reduction of competition between schools and the restriction of consumer choice. Moreover, since competition might be considered to cause a total upgrading of the quality of schooling, reliance on it to encourage a voluntary increase in attendance might be judged a preferable (less costly) policy than compulsory laws. But the State Superintendent of 1871 seems to have been an isolated voice when he raised these kind of considerations:

It is palpable that the prominent defect, that calls for speedy reformation, is not incomplete attendance, but poor teaching ... I speak of the needed improvement in the particular mentioned, in comparison with compulsion, as a means of securing attendance; and I contend, that, before sending out ministers of the law to force children to school, we should place genuine teachers in the school room to attract them ...

... Let the attendance at school of every child within the State be secured, and that would not improve the schools in other respects; but let the schools be made what they should be in themselves, and it is more than probable that there will be no occasion to send for pupils. In any event, the improvement in question should be made; and, in my judgment it should be made before resorting to the doubtful experiment of compulsion. It cannot be done suddenly, by legislation.63

On reflection, if we may digress a little, it is remarkable how readily most democratic governments, especially republican governments, have, within the last century, resorted to the general use of police power in education. In the case of America, the addition of the term “compulsory” to those of “free” and “universal” seems to the modern ear to be rooted in the same kind of sentiments as those which inspired the Constitution itself. It is interesting too, to notice how often historians rank the different states according to the dates of their adoption of compulsory laws. The first honor is usually given to the State of Massachusetts whose laws of 1642 and 1647, in the words of one historian, “constitute the precedents upon which the subsequent universal free education program of the country has been established.”84 The fact that this type of legislation should respect such an ancestry has its paradoxes. In one respect at least, nothing could have been more alien to the spirit of the American Constitution than the early legislation of Massachusetts. For it was passed at a time when the policy of the state being that of the church, a puritan theocracy was in full power. Certainly, nothing can be further from the spirit of the Fourteenth amendment than the idea of compulsory religious instruction which was contained in the 1642 measure.

64 Allen, Universal Free Education 10 (1934).
But to return to the particular events in New York State: the agitation by the teachers' association (and other interested groups) for compulsory laws, following the victory in 1867 of their Free School Campaign was soon rewarded. The Compulsory Education Act was in fact passed in 1874. And interestingly enough, after several years of operation this Act was declared ineffective. The Superintendent of 1890, asking for yet more legislation, complained that the existing laws were still not reaching the hard core of truant cases, those associated with dissolute families.

It is worse than futile to assume that all persons charged with the care of children will send them to school. The great majority will. But unfortunately some parents are idlers, drunkards or criminals themselves. . . .

But whatever the fate of the children of the "hard case" families, the final link in the process of monopolising had now been firmly secured in the education of all the other children. Compulsory payment and compulsory consumption had become mutually strengthening monopoly bonds and the pattern of schooling for the next century had been firmly set.

Our account of the nineteenth century evolution of school legislation therefore draws to its conclusion with the observation that whether or not it was appropriate to apply compulsory laws unconditionally to all classes of individuals, the laws which were actually established did not in fact secure in the nineteenth century, an education which was universal in the sense of 100 per cent school attendance by all children of school age. If, on the other hand, the term "universal" is intended more loosely to mean something like, "most," "nearly everybody," or "over 90 per cent" then we lack firm evidence to show that education was not already universal prior to the establishment of laws to provide a schooling which was both compulsory and free.

IV. Conclusion

Whilst propositions from welfare economics about the role of government in education might have logical appeal in themselves, the full application of our economic knowledge is not complete until we have considered the motivations and behaviour of those individuals who operate in or near to the seat of government itself. Accordingly the present article has concentrated not upon such conventional matters as the question of the optimal allocation of public funds to our state education institutions, but rather upon the shape of the institutions themselves and upon the economic behaviour of those who have a personal stake in their specific form.

At least one conclusion emerges from this investigation. The familiar "trinity" in educational parlance: "universal," "free," and "compulsory,"

takes on a quite different perspective from that to which most of us have been led to hold. The word "universal," as we have seen, may have been used in more than one quantitative sense. Moreover, what has been intended by this term has often been not a target of universal education so much as an education which is universally in public schools—a universal system, or a system which is used exclusively to anything else. The word "free" also appears more than usually equivocal. True, average parents and scholars were eventually given a schooling which was "free," but this was largely in a technical sense. Furthermore, they were simultaneously made "unfree" in the sense that their choice became severely restricted. As for the term "compulsion," the above survey suggests the need to consider more carefully not only the exact purposes of the legislation but also the political and economic consequences of the precise shaping of it.

Beyond this it is clear that government intervention can lead to conflict between those already established in education; to disagreement for instance between charitable society schools and to bankruptcy among private ones. And, prompted not so much by abstract welfare theorems as by motives of self-interest, it is likely that those engaged in the initiation of a Common School system to augment a private one will soon give reasons why the former should replace or supersede the latter.

As was shown in our introduction, there are several patterns of intervention from which government is able to choose; each of them has costs peculiar to itself and something more than intuition is needed in order to select the "right" one. The moral seems to be that economists more than anybody else should question how far their acceptance of particular instruments of public intervention spring from logical demonstration and how far from the successful salesmanship of those already employed in government undertakings; and how far indeed, those which we call necessary institutions are, in the words of De Tocqueville, simply no more than institutions to which we have become accustomed.