Chapter 8 The Judicial Panels

§ 1. The Social-natural Context of a Justice System

Most Americans upon hearing the words "justice system" think of the courts, judges, lawyers, the police, criminal or civil trials, juries, jails, and penitentiaries. They are not incorrect to do so in the nominal everyday contexts in which the term is used. Social-natural sciences, in contrast, require more than these nominal associations and must therefore be concerned with objectively valid usages of the term in the context of human nature (the human being as *homo noumenon*). This chapter discusses the judicial panels introduced in chapter 6, and to properly understand the explanations set out in this chapter we must begin with the idea of a justice system in its social-natural context, i.e., that it is the mechanisms of governance for realizing justice in a Society.

This explanation, given in the glossary, differs from traditional legal contexts. It might seem peculiar that *Black's Law Dictionary* [Garner (2006)] does not define "justice system." However, it does provide the definition for "justice" that is used in the American legal system, *viz.*,

> **justice.** (17th century) the fair and proper administration of laws. [Garner (2006)]

This would be an adequate definition, perhaps, if there were no unjust laws. That, unfortunately, is not the situation and the definition in *Black's* has the consequence that in the U.S. we have a legal system but not a social-natural justice system.

Deontologically, ***justice*** is *the negating of anything that is unjust*, and ***unjust*** means *anything that breaches or contradicts the social contract*. Let us compare these *real explanations* with six historical connotations of ideas of justice. These nominal explanations are "justice" as:

1. the interest of the stronger or conformity to the will of the sovereign;
2. harmony or right order in the soul; original justice;
3. moral virtue directing activity in relation to others and to the community; the distinction between the just man and the just act;
4. the whole of virtue and as a particular virtue; the distinction between the lawful and the fair;
5. an act of will or duty fulfilling obligations to the common good; the harmonious action of individual wills under a universal law of freedom;
6. a custom or moral sentiment based on considerations of utility. [Adler & Gorman (1952), pg. 857]

Explanation 5 has roots in deontological ethics, particularly Kant's theory. The *Realerklärung* stated above likewise is a deontological explanation but one deduced after correcting for Kant's error in equating the categorical imperative of pure practical Reason with his objectively invalid concept of "the moral law within me." In contrast, the *Black's* definition draws its contextual roots and directs the outgrowths from these roots primarily from ideas 1 and 6 above. Judges are, of course, human beings and so it happens that their rulings are often influenced by contexts of ideas 2 through 5 as well. Because of this, the *Black's* definition is further refined by legal concepts of commutative justice, distributive justice, personal justice, popular justice, positive justice, and social justice – all of which are contextual sub-definitions found in *Black's* under "justice."

The social contract is the connection point between contexts 1 and 5 insofar as justice pertains to a republic's body politic in its capacity as the Sovereign corporate person. Indeed, it is by this connection that any nation's or community's legal system derives its justification and standing. Moral connotations are always inherent in ideas of law and justice; but herein lies the Critical importance of the fact that each human being constructs his own private manifold of practical

rules and that a subset of these practical rules constitutes a *de facto* private moral code. A justice system in a Society must strive to reconcile differences between different people's different moral codes and do so in such a way as to sustain Order in that Society. The *Black's* definition and the legal system which is based upon it attempts to be amoral, correctly recognizing that moral systems based on ontological premises – as is the case for both consequentialist ethics and virtue ethics – have only subjective validity for individuals but no reconcilable objective validity held-to-be-binding by all persons. However, individuals' private moral codes are practical rules of Obligation held-to-be-practically-binding by the individuals who have constructed them. For this reason, it simply is not possible to divorce a justice system from considerations of *deontological* ethics in Relation to reciprocal duties mutually binding the members of a civil Community. As Aristotle said,

> [I]n one of its senses the term 'just' is applied to anything that produces and preserves the happiness, or the component parts of the happiness, of the political community. And the law prescribes certain conduct . . . with actions exemplifying the rest of the virtues and vices, commanding these and forbidding those – rightly if the law has been rightly enacted, not so well if it has been made at random. Justice then in this sense is perfect Virtue, though with a qualification, namely that it is displayed towards others. [Aristotle (date unknown), $1129^{b}13$-28]

The significance of all this is that social-natural grounding leads to a different conception of the justice system for a Republic. Consequently, in what follows you will encounter a number of concepts that differ significantly from habitual ideas you might hold. Insofar as the word *radical* means "of or from the roots; going to the foundation of something," you might call them radical concepts. Their roots are the roots of human nature in regard to human beings as the social atoms of Societies generally and a Republic in particular. The only "revolution" they involve is that of Kant's "Copernican revolution" of epistemology-centered metaphysics proper. I do not censure the lawmakers or judges among us, for their actions are habituated by hundreds of years of social conventions that have gradually lost touch with their original foundation and justification. This proposal merely proposes to return them to that point of origination and establish a deontological foundation for concepts contained in a system *of* justice necessary for the possibility of Order, Progress, *and* robustness in civil Society.

§ 2. A Judicial Panel of Education Constitutes a Different Kind of Court

The Constitutional objective "to establish justice," which is an object of government at every level of government, does not say "to establish law" or "to establish a legal system." Both of these are obvious necessities for the possibility of establishing justice in a nation of millions, but they are not sufficient to accomplish the whole object. From the beginning of the United States the habituated view taken of the court system has heavily presupposed the sole purpose of courts is to make findings and decisions of law. One would expect this from *Black's* definition of "justice" stated above. The design of the judiciary system of the U.S. is biased by the concept of a judicial pyramid with *trial courts* at its base, *appellate courts* in the middle, and Supreme Courts at its apex [Walker & Epstein (1993), pg. 22]. The trial courts are subdivided into *trial courts of general jurisdiction* and *trial courts of limited jurisdiction*. A trial court conducts trials, and a *trial* is defined in *Black's Law Dictionary* as "a formal judicial examination of evidence and determination of legal claims in an adversary proceeding." An *adversary proceeding* is "a hearing involving a dispute between opposing parties." The court system in the United States is set up as an *adversary system*, i.e., "a procedural system involving active and unhindered parties contesting with each other to put forth a case before an independent decision-maker."

When what is at issue is a matter of criminal law, one or the other party must "win" the case in

the connotation that one side gets what it wants and the other side gets what it does not want. None of us think it is unusual if a person guilty of committing a felony does not want to go to jail, or that Society, as represented by a district attorney, wants him put there. There are clearly many circumstances in which an adversary proceeding is an appropriate part of a justice system.

However, there are also many different kinds of cases where what is in dispute is not a matter of crime-and-punishment but, rather, whether or not a legislative or other governmental agency has a constitutional power to take some particular action. Here what is at issue is not necessarily a deontological crime. The case could involve the making of a mistake without any intention to transgress and therefore be the case of merely a deontological moral fault[1]. For example, in 1916 the U.S. Congress passed the Keating-Owen Act. This act attempted to regulate (and prohibit) child factory labor in the United States through the constitutional power to regulate interstate commerce[2]. The Supreme Court struck down this Act in the 1918 case of *Hammer v. Degenhart*, ruling that regulation of child labor in circumstances purely internal to a state was outside the power of Congress. *Hammer v. Degenhart* was essentially a 10th Amendment case.

Presumably Congress was aware it was attempting legal trickery by regulating child labor behind the facade of its interstate commerce powers. This *was* a moral fault because their intent was social justice legislation that is forbidden to Congress by the 10th Amendment. Did Congress commit a crime by passing the Keating-Owen Act? No court has said so. No crime was held to have been committed by Congress or by any Congressman. No one went to jail and no one was impeached for Keating-Owen. The Supreme Court used an interpretation of the Constitution (and, strictly speaking, a correct interpretation) to strike down an act of Congress, and that was all.

Hammer v. Degenhart is one example of the courts using their power of *judicial review*. Today that power is almost-generally accepted in the United States. I say "almost-generally" because complaints that "the Supreme Court misuses this doctrine to legislate" are often raised by various parties – usually those who come out on the losing side of a case. The power of judicial review is not explicitly stated in the U.S. Constitution. It was established by the Supreme Court in the case of *Marbury v. Madison* in 1803. Walker & Epstein remark,

> *Marbury* explicitly gave the federal courts the power to review the actions of national institutions and actors. In later cases the Court assumed the same authority over state actions. What they did not do, and perhaps could not do, was put an end to the controversies surrounding judicial review. Though most Americans accept the fact that the courts have this power, many legal analysts still debate whether or not they should. [Walker & Epstein (1993), pg. 10]

Such controversies grow out of traditions of regarding a legal system as predominantly an adversary system. There is, however, a second kind of system, called an *inquisitorial system*, which is defined in *Black's* as "a system of proof-taking used in civil law whereby the judge conducts the trial, determines what questions to ask, and defines the scope and the extent of the inquiry." In the U.S. some issues coming before courts are handled by an inquisitorial system, but these are usually restricted to very minor legal circumstances (e.g., parking tickets) and most major cases are habitually handled by means of an adversary system.

Most of us are not legal scholars and so most of the important detailed implications of an adversary system are not at all clear to most citizens. Some of these implications – for example, ones frequent in situations of judicial review – can have heavy consequences. One good source by

[1] A (moral) transgression is any deed contrary to duty. A crime is an intentional transgression. A (moral) fault is an unintentional transgression. Injustices caused by faults must merely be negated and corrected.
[2] The Congress took this seemingly round-about route because the 10th Amendment prohibited Congress from prohibiting or regulating child factory labor directly.

which people without a specialized law education can 'develop a feel' for the sort of tightrope a judge might find himself having to walk, especially in social justice circumstances, is provided by a fictional yet realistic story told by Arthur Hailey in his 1962 novel *In High Places*. The fictional case in this novel involved judicial review of an immigration case. The story presented a well balanced picture of how the legal issues it portrayed looked to all parties [Hailey (1962)][3].

The judicial panels I propose in this treatise for reform of the education institution in the U.S. are tribunals intended to operate under an inquisitorial system with an explicit intention that their primary role is that of judicial review of education legislation enacted by the divers education committees explained in the previous two chapters. Proceedings conducted in them are not criminal trials. Rather, their concern is with adjudicating whether or not moral faults have been committed by the system's legislative or executive branches. Settling of disputes is to be non-adversarial. The panels are given the power to try impeachments, but no power to penalize beyond the act of removal from office is granted to them by the expectation of authority vested in their judges. This is consistent with Article I section 3 of the U.S. Constitution.

The reason the judicial panels constitute a different kind of court from that which most people commonly associate with the legal system is because the intention of the institution is to preserve and protect *justice* under the nation's social contract. Their power to conduct judicial review of legislative and other actions by the education committees is based on having the panels focused on the justice objective of government. This is a different focus from the one that traditions and habits of thinking usually set for American courts. This change of focus, and the changes in traditions and habits it is designed to evoke, brings with it an implied necessitation for altering the structure of the present U.S. legal system. Nonetheless, the judicial panels fit naturally into the existing system as courts of limited jurisdiction. This accommodation is illustrated in figure 1, which was modified from Walker & Epstein (1993), pg. 22.

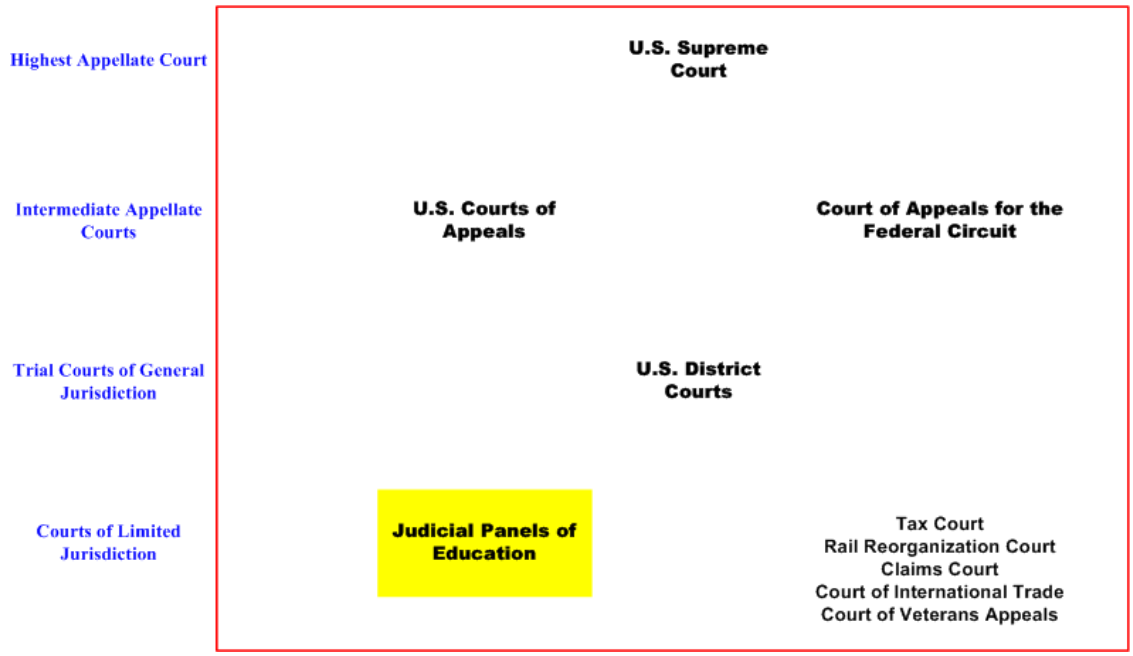

Figure 1: The placement of the judicial panels of education within the court system.

[3] A work of fiction does not carry any legal standing, nor should it. But if it is written with a reasonably accurate portrayal of circumstances, alike to those actually found in real cases, such a novel can be made an excellent vehicle *of education* for helping people learn to understand the nature of their legal system and its relationship to *justice* in their Society.

I have already mentioned that a Constitutional amendment of the 10th Amendment is required before this proposal for public education reform can move forward. That it is appropriate to place the judicial panels within the system of federal courts is because of the cross-level coordination required for the divers heterarchy levels of the legislative branch of education governance. Once the amendment to the 10th Amendment is made part of the Constitution, the Constitutional power to set up this system is vested in the Congress under Article I section 8. The Congress is further empowered to vest the power to appoint judges to the judicial panels to the Courts under Article II section 2 of the Constitution. This should be done because it is unlikely that members of Congress would possess the technical expertise to properly administer these appointments. This is because of various specialized scientific considerations that must be taken into account if the reformed system is to work effectively to educate young learners and satisfy the objectives of the reform. As part of the Court system, governmental authority over the judicial panels is vested in the Courts under Article III section 1 of the Constitution. It would be prudent to write the afore-mentioned Amendment in such a way that the proposed general organizational schema of the system and some explicit directions delineating lines of authority for appointments of its agents are specified to the Congress. This is because the pieces of the overall proposal are co-designed to work together. A piecemeal approach to implementing the institutional reforms will fail because of failure to properly integrate its interacting components.

§ 3. Organization of the Education Justice System

Black's Law Dictionary does not provide definitions for the terms "legal system" and "justice system." I have previously stated that a legal system and a justice system are not the same thing, and that the former is subordinate to and serves the latter in the civil Community of an American Republic. It is almost always the case in most instances where an "x system" is discussed that the term "system" is left undefined. This is an ambiguity that cannot be tolerated in social-natural institution design, and so the first order of business in this section is to clarify what these two types of systems mean in a Critical science of organization institution.

The Critical meaning of the word "justice" has already been explained and tied to the Idea of the Social Contract. *Black's* defines the adjective "legal" as "of or relating to law." A ***system*** is *the unity of various knowledge under one Idea*. An ***Idea*** is *a pure regulative principle of actions*. The regulative principle for our present context is the Idea of the Social Contract, and therefore the systems being considered here are institutions of practical ways and means by which the type of knowledge specified by the adjective label is unified under the regulation of a social contract. A legal system is therefore the ways and means by which laws are unified and enforced under the regulation of a social contract. A justice system is the ways and means by which anything that is *unjust* under the terms and conditions of the social contract is negated.

The judicial organization in an institution of public education is an organization made to serve fulfillment of the justice objective of government insofar as the matters within its jurisdiction are matters of public education. The proposal presented in this treatise calls for the establishment of divers judicial panels as a system of courts for adjudicating the legislative actions of the various education committees. The question before us now is: How shall this judiciary be constituted? To appreciate the important if not-so-obvious contexts for this question, it is instructive to briefly review the early history of American law. It is not-uncommon for people to suppose that there is something essentially static about legal systems, that such systems are set up only once, and that forever after these systems retain their original character so long as the nation endures. In fact this is not true. Friedman writes,

> Law, by and large, evolves; it changes in piecemeal fashion. Revolutions in essential structure are few and far between. That, at least, is the Anglo-American experience. Most

> of the legal system is new, or fairly new; but some bits of the old get preserved among the mass of the new.
>
> What is kept of the old is highly selective. Society may be fast or slow as it changes; but in either case it is ruthless. . . . Old rules of law and old legal institutions stay alive only when they have a purpose. They have to have survival value. . . . At any rate, the theory of this book is that law moves with the times and is eternally new. . . .
>
> In an important sense, law is always up-to-date. The legal system always "works"; it always functions. Every society governs itself and settles disputes. Every society has a working system of law. If the courts, for example, are hidebound and ineffective, that merely means some other agency has taken over what the courts might otherwise do. . . . The basic premise of this book is this: Despite a strong dash of history and idiosyncrasy, the strongest ingredient in American law, at any given time, is the present – current emotions, real economic interests, and concrete political groups. . . . The history of law has meaning only if we assume that at any given time the vital portion is new and changing, form following function, not function following form. [Friedman (2005), pp. xi-xii]

The organization being proposed here is in part radical and also in part evolutionary. It does not propose to divorce the judicial system of education from the legislative and judicial super-structures that are of greater scope in the government of the nation. It also does not suppose that evolution in governance is *determined* by present social conditions, although these are clearly *provocateurs* of its evolution and change. Because human beings are the agents of all social and institutional changes, the principle is: *Natural paths of social evolution and change proceed with a great deal of similarity to past behavioral responses*. These are provoked by effects on human judgmentation arising from uncertainty about what the contingent future will bring. No one can guarantee what future outcomes will be. One can only guarantee that his design decisions are made with due diligence to: the end objective of the design; lessons of past history; and those present facts and existing circumstances making up the *materia circa quam* about which the design synthesis revolves. Such is the reflective judicial nature of human design *téchne.*

In this regard, the history of the early judges in the Revolutionary Era is pertinent. Friedman provides an historical background for this [Friedman (2005), pp. 79-91]. One pattern that is seen to repeat time and again in history is that new institutions are first made as simple as possible and exploit the comforting familiarity of mimesis as much as is practicable. Then, as new Institutes meet their trials by experience, they are gradually modified and reshaped from lessons learned from those experiences. So it is with the American legal system. In the Revolutionary Era there were few who could legitimately lay claim to the title of "legal expert," just as today there are few who can legitimately lay claim to the title of "social contract expert." New institutions are, to a considerable degree, amateur undertakings; the facade of sophistication comes later as specialists are gradually spawned and practitioners begin claiming for themselves the title of "professional."

In colonial and Revolutionary Era America, many of the judges were laymen insofar as formal legal training is concerned, and many of them were politicians. Common law cases made up the majority of court cases and these were most frequently judged by lay judges. This was what the American Society *could* do at that time, and so this was how our legal system began. Friedman observes,

> Generally speaking, court organization in the colonies followed one fundamental social law. The colonies began with simple, undifferentiated structures, and developed more complex ones, with more division of labor. [*ibid*., pg. 7]

What is "common law"? *Black's* defines it as "the body of law derived from judicial decisions rather than from statutes or constitutions." Is the system being proposed here primarily a common law system? The answer is "no" in part because the education committees are legislative bodies

and the panels' primary function in relationship with them is *judicial review* according to the terms and conditions of a social contract. The answer is "yes" in part because judicial review implies interpretation and, because panel rulings are binding on education committees, in this context panel judges can be said to determine education law. The latter necessitates that particular qualifications must be considered in the appointment of judges to judicial panels. I discuss these in more depth in the next section.

The history Friedman documents plainly teaches that numerous issues of political beliefs, personal prejudices, the popularity or unpopularity of specific decisions, and other subjective factors in judgments of taste have been contentious. This is especially so for institutions in which judges are appointed for terms of good behavior. The Presidencies of both Adams and Jefferson were marked by such controversies concerning the U.S. Supreme Court and, indeed, the general institution of the judicial system by the Judiciary Act of 1789. The root issue of concern was an old and venerable one, namely that of concern over power that might be exercised by judges whose terms of office were for life subject to their good behavior. It is an issue of self-protection keenly appreciated by the ancient Romans, who expressed it thusly: *Quis custodiet ipsos custodes?* – who will watch the watchers themselves? It is a question easily carried off into an infinite regress: who will watch the watchers of the watchers? &etc. The issue is one that often reminds me of an old story of a little boy who was asked what he had learned in school that day. His reply was, "Today we learned how to spell 'banana' but we didn't learn when to stop."

In the present case, the question becomes twofold: Who will elect those who elect the judges of the judicial panels? and Who will judge those who judge the performance of the judges on the judicial panels? Like the little boy who was trying to spell 'banana,' the judicial institution for the system of public education requires some stopping rule or criterion for cutting off an infinite regression. How this cut-off is to be effected must pay due attention to the principle of checks and balances in government, especially in this case where the judges sitting on the judicial panels are appointed for terms of good behavior. It must also render due diligence to the purpose of the institution, for which the prime objective is establishing justice *in* public education.

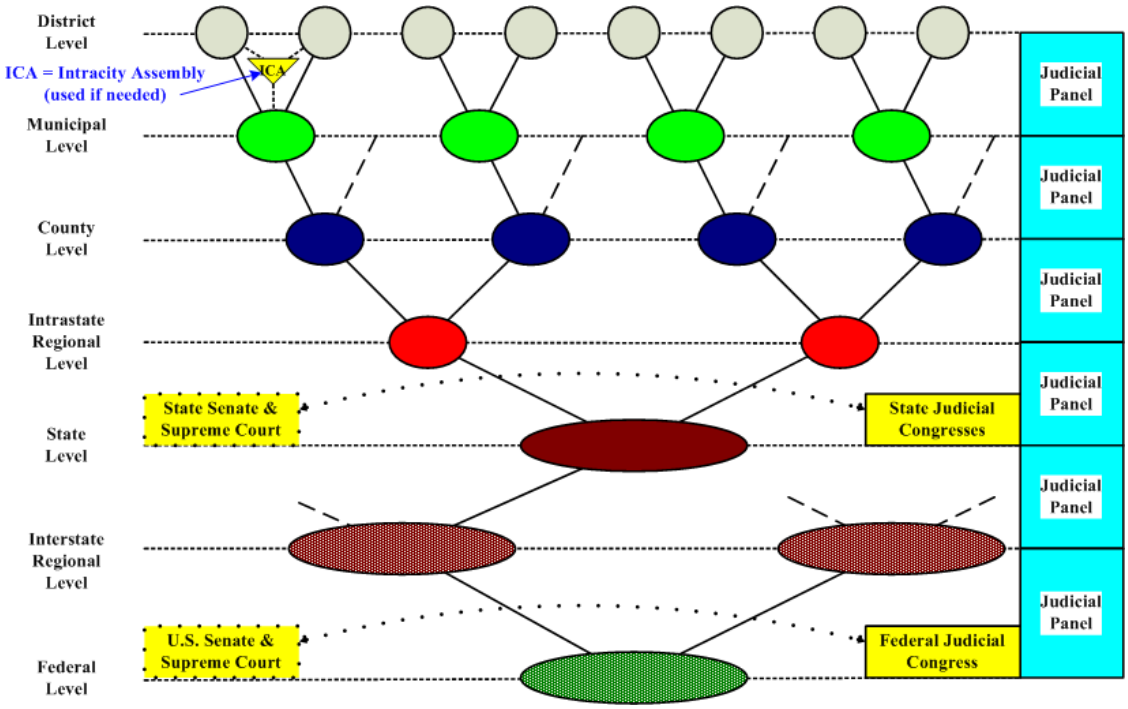

Figure 2: Proposed general judiciary organization for public education.

Figure 2 illustrates the general schema of the proposed judiciary organization. Because (1) the primary function of the judicial panels is to adjudicate justice in the system; and (2) justice has real meaning only in the context of a social contract, those appointed to the judicial panels must be selected on the basis of deep expertise in several criteria (discussed in the next section). Those who select and appoint these agents must themselves be capable of competently judging whether a particular candidate adequately meets these criteria and whether or not judges faithfully execute the duties of the office. Let us call the bodies who carry out the selection and evaluation functions Judicial Congresses. The word 'congress' is used here in the connotation of its definition in *Black's*, i.e., a congress is "a formal meeting of delegates." The delegates are electors of members of judicial panels. They can impeach judges for cause but cannot conduct impeachment trials.

The delegates to these Congresses should themselves be scholars of Critical Social Contract theory and be "persons of merit" because Society invests its trust in these people by placing in their charge the peculiar expectation of authority for their offices. The members of the Congresses should be appointed for terms of good behavior in order to best safeguard fidelity to their selection and appointment duties. They must not hold any other public office in government. They must not be members of any political party or lobbying group because both of these are indicative of prejudicial commitments to special interests. They may not act as proxies for any political party or lobbying group, and any action made as such a proxy on behalf of a political party or lobby constitutes impeachable misconduct *requiring* removal from office. Each must have a formal college education attested to by a year-2010-equivalent of a Master's degree in some field of study, and each must have practical work experience acquired through at least fifteen years of gainful employment or business ownership. They may not have criminal records, must be U.S. citizens, and be at least thirty-five years old. Their civic characters must be attested to by at least ten independent character witnesses testifying under oath.

And here we come to "the cut-off problem." Who is to select and appoint Judicial Congress members? Here, too, we come to the issue of providing checks and balances in the system. The judicial system of education cannot be merely appended to the general system of government. It must be made an integral part of it. At some point it is a practical necessity to trust the overall structure of American government because if this be not possible it would mean that the overall structure of government is not merely broken down but, in fact, is no longer fit to be maintained at all. If the opinions of those who think the latter – the already considerable Toynbee Proletariat in the United States – were to prevail, it would mean nothing else than that the reform is too late and the fall of the American civilization is already in progress. In that case, no one can predict what might emerge from the chaos of the ensuing interregnum, and history is not reassuring here.

Rather than take such a reckless and irresponsible plunge, this proposal proposes that here is the point of explicit integration of the new system into the old. It is proposed that there be, at least initially, two types of Judicial Congresses. The first operates at the level of the individual states in the Union and is appointed by that part of the *state legislature* corresponding to the U.S. Senate[4] *with the advice and consent of the state supreme court*. The reason for vesting the power to confirm the appointments with the latter is because the justices of the courts are currently in the superior position to evaluate the suitability of nominees *to serve social justice* than is any body that has been thoroughly taken over and dominated by political parties. This proposal is seeking to distance those who adjudicate justice as far as possible from the special interests of political party factions and their rulership. It must be pointed out and admitted, however, that likelihood of success in this endeavor is much less in states where state supreme court justices are periodically

[4] All of the states except the state of Nebraska have bicameral state legislatures (known by divers names in different states). The smaller of the bicameral bodies is usually that which functions as the state's equivalent of the U.S. Senate. Nebraska, since 1936, has chosen to have a unicameral legislature and, since Nebraska chooses to be different, it should be left to the Nebraska Legislature how to best divide this labor.

elected by popular vote, rather than being appointed during terms of good behavior, because in these cases the judicial branch of government is not truly an independent third branch of government and is frequently unable to effect checks on usurpations of power by the other branches of government. Under such conditions, *justice* is placed in a precarious and weak condition. In the state of Idaho, for example, a state supreme court justice gainsays the state legislature at the risk of the ruling party retaliating against him by campaigning against his reelection. Adams wrote,

> The dignity and stability of government in all its branches, the morals of the people, and every blessing of society depend so much upon an upright and skillful administration of justice that the judicial power ought to be distinct from both the legislative and executive, and independent of both, that so it may be a check upon both, as both should be checks upon that. . . . To these ends, they should hold their estates for life in their offices; or, in other words, their commissions should be during good behavior [Adams (1776), pg. 239]

Alexander Hamilton echoed this precept and added to it remarks as to the lack of possibility for independent judiciaries to usurp the power to rule:

> Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the constitution because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors but holds the sword of the community; the legislature not only commands the purse, but prescribes the rules by which duties and rights of every citizen are to be regulated; the judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of society and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment, and must ultimately depend on the aid of the executive arm even for the efficacy of its judgments.
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> This simple view of the matter suggests several important consequences. It proves incontestably that the judiciary is beyond comparison the weakest of those three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. . . .
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> The complete independence of the courts of justice is peculiarly necessary in a limited constitution. By a limited constitution I understand one which contains certain specified exceptions to the legislative authority . . . Limitations of this kind can be preserved in practice no way other than through the medium of the courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing. [Hamilton *et al*., no. 78, pp. 428-429]

Members of the Federal Judicial Congress should be appointed by the United States Senate with the advice and consent of the U.S. Supreme Court. The reasons for this are the same as just given for the state Judicial Congresses. The difference between the two types of Congresses, other than the designated appointing authority, is in their jurisdictions. State Judicial Congresses have jurisdiction over the judicial panels operating from the district level down to the state level, as indicated in figure 2. The federal Judicial Congress has jurisdiction over judicial panels from the interstate regional level down to the federal level.

Despite what the name might suggest, the Judicial Congresses are part of the executive branch of education governance. They have no power to legislate. They have only the power to select and appoint members of judicial panels and to impeach members of those panels for dereliction of Duty, incompetence, or misconduct. In cases of impeachment, *trial* of impeachments is placed under the jurisdiction of the U.S. Court of Appeals. I discuss the reason for this placement in the

final section of this chapter.

As for the members of the Judicial Congresses themselves, the power to impeach a member is placed under the jurisdiction of the supreme court associated with that Congress. Trial jurisdiction is vested in the associated Senate – the state Senate in the case of state Judicial Congresses, and the United States Senate in the case of the federal Judicial Congress. Here the senate's trial authority is congruent with Article I section 3 of the Constitution of the United States.

§ 4. Qualifications for Members of the Judicial Panels

Are judicial panel members judges? According to *Black's Law Dictionary*, a judge is "a public official appointed or elected to hear and decide upon legal matters in court." This narrow usage goes back to the 14th century AD. But in Western history, the term 'judge' is much older than that:

> Then the Lord raised up judges, who saved them out of the power of those who plundered them. And yet they did not listen to their judges; for they played the harlot after other gods and bowed down to them; they soon turned aside from the way in which their fathers had walked, who had obeyed the commandments of the Lord, and they did not do so. Whenever the Lord raised up judges for them, the Lord was with the judge, and he saved them from the hand of their enemies all the days of the judge . . . But whenever the judge died, they turned back and behaved worse than their fathers [Judges 2:16].

Old Testament judges were military heroes whose deeds resulted in their being entrusted with the power of Israelite government during their lifetimes. They interpreted religious commandments, decreed penalties to be suffered by violators, and led the army. Because the commandments are held-to-be laws of God, judges' legal connection is an ancient one. It was a long road indeed from ruler to the more modest office of "a public official appointed or elected to hear and decide upon legal matters in court." It is not simple poetry that kings were said to hold courts. The office that eventually became the modern judgeship evolved through a process of delegation as kingdoms grew larger and expanded beyond the confines of a simple city-state. By Charlemagne's era,

> A prince worthy of the name was expected to protect the weak and take widows, orphans, travelers, pilgrims, and strangers under his protection . . . As guardian of the public order, the king[5] offered rewards of sixty sous apiece for punishing criminals attainted under the "royal ban" whose offenses included concealing fugitives, stealing pack animals, murdering pilgrims, forced requisitions for men of war, abusive collection of tolls and customs. Finally, the king aimed at protecting the non-free from the arbitrary actions of their masters. He commanded them to refer *servi*[6] accused of capital crimes to the public tribunals: thieves, brigands, assailants were no longer to be at the mercy of expeditious and private justice.
>
> The king delegated his judicial functions to the count . . . [At] least three times a year, the count presided over the tribunal and directed its proceedings[7]. He had the help of assessors who "knew the law," *rachimbours* or *boni homines*[8]. Toward 780, Charlemagne attached these men permanently to the tribunal under the title *scabini*[9] . . . The twelve *scabini* were notable folk trained to know the different laws and customs under which the accused lived. [Riché (1973), pp. 259-260]

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[5] The king referred to here is Charlemagne (742-814 AD). He is considered by some to be "the father of Europe" and many of the institutions of governance organization he began survived the Dark Ages.
[6] servants
[7] Charlemagne divided his kingdom into "counties," each under the local rule of a count. Our counties and county courthouses are direct lineal descendents of the organizational structure set up by Charlemagne.
[8] "good men"
[9] The term was used to mean "lay judges."

An expectation of moral leadership was part of the expectation of authority for judges since at least around the 14th century BC (thought to be the era of Joshua in the Old Testament) and likely goes back even further than this to the Mesopotamian empires and Egypt under the Pharaohs. It is beyond reasonable doubt that this was so in the 19th century United States:

> The rules governing the conduct of those holding judicial office are generally found in tradition rather than in statutes. For the American judge of the Nineteenth Century, much of this tradition was molded by Biblical teachings. The Old Testament contains many verses expounding the proper conduct for a judge. The high ethical standards in the teachings of the Bible made it unnecessary for the founders of this nation to spell out explicitly the conduct expected of a judge. [Surrency (2002), pp. 389-390]

Surrency's Biblical references refer to passages in the Old Testament addressed in many cases to every Israelite, not just the judges, and pertain to conventions of moral custom that are familiar to most Americans today. Just a few of these many Biblical moral precepts are:

> You shall do no injustice in judgment; you shall not be partial to the poor or defer to the great, but in righteousness shall you judge your neighbor. [Leviticus 19: 15]
>
> You shall do no wrong in judgment, in measures of length or weight or quantity. You shall have just balances, just weights, a just ephah, and a just hin . . . and you shall observe all my statutes and all my ordinances and do them [Leviticus 19: 35-37].
>
> You shall not pervert justice; you shall not show partiality; and you shall not take a bribe, for a bribe blinds the eyes of the wise and subverts the cause of the righteous. Justice, and only justice, you shall follow [Deuteronomy 16: 19-20].
>
> These also are sayings of the wise. Partiality in judging is not good. He who says to the wicked, "You are innocent," will be cursed by peoples, abhorred by nations; but those who rebuke the wicked will have delight, and a good blessing will be upon them. [Proverbs 24: 23-25]

An overriding concern for seeing that justice is done – which is an expectation broader than the scope of mere laws – runs throughout ethical foundations a judge is expected to demonstrate as a social role model, moral leader, and as a guardian of liberty *with* justice for all. It is one of the chief factors that led Rousseau to say of social contracting,

> At once, in place of the individual personality of each contracting party, this act of association creates a moral and collective body composed of as many members as the assembly contains voters, and receiving from this act its unity, its common identity, its life, and its will. [Rousseau (1762), pg. 14]

When a civil Community is comprised of a homogeneous people sharing a common religion or creed, it matters little to the administration of justice that justice might be defined ontologically by religious laws. However, for a heterogeneous people who follow divers religious faiths or different peculiar sects within a religious genus (as is the case with both Christianity and Islam), ontology-centered understandings of 'justice' are no longer adequate because all ontological definitions of justice are at their root fiats based on subjective judgments. Only epistemology-centered understandings of 'justice' are capable of providing real explanations acceptable to all the citizens of the Society. For this, the deontological explanation can only refer to the social contract that makes their association a civil Society. For that reason, a keen understanding of the Idea of the Social Contract plus a keen interpretation of the particular social contract peculiar to a civil Community are the first necessitated prerequisites that must be possessed by someone appointed to a judicial position of authority. This is a key element of individual *Personfähigkeit* required to possess the *Kraft* to be a competent judge.

And so, again, are the members of a judicial panel in an institution of public education judges? They have not the power to sentence anyone to any term of imprisonment, but they do have the power to decide cases of impeachment. They do not have the power to make laws but they do have the power and the Duty to interpret the legislating acts of education committees. These acts are ***statutes***, i.e., "legislation passed by any lawmaking body including legislatures, administrative boards, and municipal courts" [*Black's Law Dictionary*], and, as such, fit the broad definition of a "law" given in *Black's*. They do have the power to decide cases and grievances brought before them by the executive branch of education governance (which I discuss in the next chapter) or by a citizen's petition for redress of grievance insofar as the grievance pertains to the institution of public education. They are charged with the Duty to uphold justice under the social contract, and so are placed under the same expectation for authority vested in the traditional office of American judges. It is to be concluded from all this that, while the social nature of the judgeship differs from that of the office of judge with which we are already familiar and as its contextual connotation is understood in *Black's*, the members of a judicial panel in the proposed institution of public education ***are*** judges as the *function of a judge* is understood in its evolution from its ancient origins. The *function* validates the *title*.

I think it likely that only a brief reflection is needed to see that other types of knowledge, in addition to that of the human nature of social contracting, are necessitated for the office of a judge serving on a judicial panel. Specifically, since upholding the American social contract eventually comes down to practical fulfillment of the general objectives of all government, these types of knowledge are implicit in the six fundamental objectives spelled out in the Preamble of the U.S. Constitution:

1. To form a more perfect Union;
2. To establish justice;
3. To insure domestic tranquility;
4. To provide for the common defense;
5. To promote the general welfare;
6. To secure the blessings of liberty to ourselves and our posterity.

The knowledge implicit for practices aimed at the first objective is knowledge of the empirical nature of mini-Communities and the interpersonal interactions that stimulate inter-Community bonding relationships or provoke the formation of antibonding relationships. Knowledge of this sort pertains to the understanding of the D-PIPOS circumplex model of personalities and interpersonal styles.

Knowledge implicit for practices aimed at the second objective has already been discussed. It is knowledge of the human nature of social contracting and the theory of the Social Contract [Wells (2012)]. Knowledge implicit for practices aimed at the third objective is knowledge relating to a crucial part of ***social-natural political science***. The connection between social-natural political science and domestic tranquility is not a casually obvious one. Its deduction required a Critical assessment of both the real explanation of 'domestic tranquility' and social factors that lead to lack of domestic tranquility. This analysis was previously carried out in Wells (2010), chap. 6. ***Domestic tranquility*** is *collective tranquility in the members of a Society insofar as this tranquility pertains to the Social Molecule within the Society's body politic*. As for 'tranquility,' the real explanation of this term is *tranquility is a state of mind that results from being sufficiently satisfied in relationship to one's general state of life and desiring nothing more or different in this relationship*. Domestic tranquility is not a condition that can be measured or monitored; we know it only from the *absence* of expressions of grievances that signal peoples' lack of satisfaction with their general state of life – and then only in cases of Societies where giving expressions to grievances is not suppressed by coercion or force.

The point of connection between the Duty to insure domestic tranquility and social-natural political science is found in the idea of the Sovereign general will of the body politic [Wells (2010), chap. 6, pp. 177-187]. The challenge of determining what this Sovereign will might be has always been a formidable challenge for social contract theorists, who typically used ontology-centered notions in their theories. The problem was not resolved until deontological analysis of the issue was employed and its *Realdefinition* was deduced [Wells (2010), chap. 6, pp. 196-209; Wells (2012), chap. 13, pg. 490]. That issues pertaining to determination of the general will of the Sovereign are issues of *social-natural* political science has been understood – sometimes clearly and often only vaguely – since antiquity. Cicero's treatise of *c*. 51 BC [Cicero (51 BC)] is an early example of its treatment by social-natural political science as that science existed in Cicero's day.

This general topic is vast, but its pertinences for the office of a judge serving on a judicial panel come down to considerations of attending to expressions of domestic unrest. These are discussed in more depth in Wells (2010), chap. 6, pp. 187-196 and involve (among other things) judicial mechanisms there called a Petition of Right and a Board of Right. The Duty to insure domestic tranquility requires judicial panels to function as Boards of Right in matters pertaining to public education. But for mere mechanisms such as these to be effectively and justly used, judges in such cases must understand politics and political institution from an objectively valid social-natural basis. Thus it is that knowledge of *social-natural* political science is found among the qualifications a competent judge must exhibit[10].

The fourth general objective has only a slight but non-negligible pertinence to education. This connection is limited to knowledge of the role public education plays in national defense and public safety. For example, relatively few of the 18-year-olds who will graduate from high school this year are aware that they are by law members of the unorganized militia of the United States; not many of them are probably even aware that the unorganized militia exists. It is a topic that doesn't tend to come up when the Selective Service is not conducting military inductions. Negligence of the objective tends to make public schooling not seek partnerships with such non-school institutions as the cadet program conducted by the Civil Air Patrol. It tends to make college and university faculty adopt peculiarly limited views of Military Science and Reserve Officer Training Corps programs, and to fail to take advantage of or adopt-and-adapt moral leadership education functions these program provide. During the civil war period of the 1960s and early 1970s, many student activists pushed for the expulsion of ROTC programs from college campuses, failing to recognize that the presence of these programs was providing a just function of public education, albeit a limited one.

Knowledge implicit for practices aimed at the fifth objective include knowledge of social-natural economics and adequate layman's understanding of science and technology. These both affect the economic wellbeing of a region and its people, the viable options open to them for obtaining personal incomes, the kind and wealth-making potential of enterprise activities, tax and budget policies, availability of health care, and the state of the environment in which they live. To preserve justice in a Society, knowledge of economics, the operations of science, and capabilities of existing technology are key considerations in all decision- and policy-making. But these factors do not have equal effects on all people, and for this reason judges must be able to weigh possibly conflicting interests in order to arrive at solutions whereby satisfaction of some people's interests does not come at the expense of dissatisfaction by frustrating the interests of others.

[10] I insist on emphasizing that the science be a social-natural one because present day "political science" is not a social-natural science. It, like economics, lost its connection with the social atom some time during the 19th century – so much so that by the early 20th century political scientists were debating if their field was or could justly be called a "science" at all. The Critical answer is that the field as they knew it is not, although it can pass muster as a form of natural history of more intellectual depth than a National Audubon Society bird study.

As for the sixth objective, just resolution of challenges facing a Society requires knowledge of general considerations pertaining to natural sociology and how various factors will impact the social dynamics within the Society. History is an indispensible guide for gauging social effects that can be expected to follow policy actions in governance. Exercise of individuals' natural liberties such that these are at the same time the exercise of civil liberty – and, therefore, the exercise of a liberty that does not hinder the civil exercise of the liberties of others – can only be judged if those who judge are able to generally gauge likely broad consequences of those actions.

From one perspective, the types of knowledge just summarized are types of knowledge that are needed by all citizens in a civil Society. A judge, however, requires wider breadth with more depth in his knowledge of these factors, in comparison with others in Society, in order to maintain a fair, equitable, and impartial understanding of overall consequences that can be foreseen if one rather than another decision is made to prevail. Progress *with* Order depends on accuracy of the foresight of decision makers because Progress achieved in one thing by some people that is purchased at the cost of deterioration in another thing for other people is not Progress in Society at all. There can be no utilitarian tradeoff or compromise of "the greater good for the greater number" when this "greater good for the greater number" comes at the expense of or harm to the lesser number. No person joins himself in an association with others in order that these others will benefit themselves at his expense. Preservation of the social contract especially depends on this being understood by those who are entrusted with the power to decide upon public matters.

I call the qualifications for knowledge itemized here "depth-in-breadth." What I mean by this term is this. The qualified office holder must have a deeper level of understanding of a wider span of knowledge fields than a layperson. At the same time, the officer will have less depth of knowledge in any one particular field than a specialist in that field possesses; but the officer will also have significantly more depth of knowledge in *other* fields than the aforementioned specialist will typically have. A specialist's knowledge can be crudely described as being "an inch wide and a mile deep." In contrast, the sort of general expertise the officer must have can be described as "a mile wide and many feet deep." In comparison, a typical layperson would be described as "a mile wide and a few inches deep."

I think I cannot stress too much that the often-resorted-to practice of seeking specialists for positions of responsibility that require a broad synthesis of divers knowledge is a practice to be avoided at all costs. Plato's prescription is a catastrophe. Interdisciplinarity is not achieved by assembling a collection of specialists; that only results in a cluster of isolated silos of knowledge and failure to accomplish a satisfactory level of achievement because of the phenomena of juxtaposition and what psychologists call "syncretic incapacity" [Piaget (1928), pp. 221-244].

Perfection of any sort of governance is a process of improvement, and this is at no time more true than it is at the outset of new institutional initiatives. When an institution has never been tried before, changes that accompany it are radical and no one in the beginning is experienced in it. All new institutions necessarily involve learning processes because mistakes will be made and there will be errors in judgment through unforeseen and unintentional consequences. To expect that the qualifying objective knowledge just called for can be complete knowledge in possession of the first judges appointed is an impractical hope. But an honest and unintentional mistake is not an evil. Mistakes are vehicles for making improvements. To learn from mistakes – one's own and the mistakes of others – so as not to repeat them and to do better at the next effort is the essence of the idea that experience is the greatest teacher.

There are, therefore, two additional *qualifications of character* to be sought in choosing the people who first occupy the office. They are these: (1) the humility to recognize and courage to admit that they do not already know everything that ideally should be known; (2) a spirit of self-commitment to remedy personal lacks through a process of educational Self-development. A

good judge is a perennial student with an insatiable Desire for self-improvement and the persistence to achieve it even as he acknowledges to himself that Self-perfection is a process that has no ending during one's lifetime.

Some people I know hold the opinion that before anything is commenced there ought to be a fully completed plan with every process detailed and everything made as specific *a priori* as imagination can make it. This is a very Plato-like maxim observable in the behavior of twelve-year-olds. In point of fact, few things can be accomplished this way – not from want of effort but from the impracticality of trying to predict the contingent future in detail. This is one reason why flexibility for change is a *sine qua non* for long-term-successful institution. Experienced military officers, who must by the nature of their offices deal with what Clausewitz famously called "the fog of war," know this perhaps better than anyone. General Dan Laner, who commanded the Israeli Defense Forces on the Golan Heights in 1973, once said in an interview,

> Well, in my opinion a battle never works according to plan. . . . The plan is only a common basis for changes. It's very important that everybody should know the plan so you can change it easily. But the modern battle is very fluid, and you have to make your decisions very fast – and mostly not according to plan. [Dyer (1985), pg. 134]

War is far from being the only example of coordinated human efforts where a fog of uncertainty blankets the circumstances challenging the implementers. It occurs in business and government. It occurs in science and in family life. It is the original source of *risk* in all decision-making.

My point here is that all Progress occurs through a process of making a best effort, being checked by hindrances of circumstance, adapting, and going on to further effort. There are few people alive today who possess what I call the depth-in-breadth one would wish for in the first actions in institution of the judicial panels. It is unrealistic for anyone to expect a Solomon to be placed in every judge's chair. The same was true at the start of the American legal system. Friedman tells us,

> How judges were to be chosen and how they were supposed to behave was a political issue in the Revolutionary generation, an issue whose intensity has rarely been reached since that time. State after state – and the federal government – fought political battles over issues of selection and control of the judges. The bench was not homogeneous. Judges varied in quality and qualification from place to place and according to their position in the judicial pyramid. . . . English and colonial tradition had allowed for lay judges as well as for judges learned in the law. There were lay judges both at the top and the bottom of the pyramid. . . . [The 1776 constitution of New Jersey] made the governor and council "the court of appeals in the last resort in all cases of law as heretofore." Since governor and council were or might be laymen, this meant that non-lawyers had final control over the conduct of trials and the administration of justice. In the New York system, too, laymen shared power at the apex of the hierarchy of courts. . . . This system lasted until well into the nineteenth century. The lay judges were usually but not always politicians. But they were invariably prominent local men. . . . William E. Nelson studied the background and careers of the eleven men who served as justices of the superior court of Massachusetts between 1760 and 1774 . . . Nine had never practiced law; six had never even studied law. . . .
>
> Laymen were even more dominant at the base of the pyramid. Lay justice did not necessarily mean popular or unlettered justice at the trial court level. The English squires were laymen, but hardly men of the people. Lay justice in America had a certain resemblance to the English system of rule by local squires. Lay justice was not necessarily informal. A lay justice sitting on the bench for years tended to soak up at least something of the lawyer's jargon, tone, and lore. After all, the difference between lawyers and non-lawyers was not that sharp. . . . The way lay judges absorbed law was not so different from the way a young lawyer did on his journey to a legal career. [Friedman (2005), pp. 79-80]

"On the job training" of this sort is often a practical necessity early in the institution of new systems. Its success or failure depends almost entirely on the attitudes and personal commitments of the persons who undertake this educational Self-development. It is this practical real situation that necessitates an evaluation of *intangible* character called for as a part of the process of selecting and appointing judges for the judicial panels.

Because degrees of success achieved by learners undertaking educational Self-development activities also depend on the individuals' maturity of judgment and previous knowledge, both from study and from experience, it is prudent to establish a minimum age criterion for appointing judges to the judicial panels. Here the issue is that any such criterion is always going to be a crude estimate of an average time sufficient for these prerequisite qualities. Possibly as good or better than any other heuristic for setting this arbitrary standard is to pick an age that is consistent with some other occupation or office where the officers experience a similar practical need for "on the job training." Perhaps the most well known and visible example of such an office is that of the President of the United States. The minimum age criterion for this office is 35 years of age, as set by Article II section 1 of the Constitution.

As an additional safeguard against mistakes that maturing individuals are prone to make, it is prudent to employ a panel rather than a single judgeship, and this is why the organization depicted in figure 2 is based on judicial panels. The not-atypical practice of using three-person judiciary panels seems as likely to be adequate for the present proposal as any other.

§ 5. Primary Duties of a Judicial Panel

Judicial panels are set up within this proposed institution of public education to insure that the operation of every part of the education Institute is congruent with the social contract and that no perpetrations of injustice, whether unintentional or intentional, are allowed to be perpetuated. To achieve these ends, the judicial panels are tasked with the following primary Duties.

- To mediate and, whenever mediation fails to produce agreement, decide upon disagreements and disputes between different education committees so that justice in public education is insured. In all cases the terms and conditions of the social contract and the general objectives of government stated in the Preamble of the Constitution of the United States are to be the standards for judgment of justice.
- To insure the common interests of the public are satisfied while safeguarding the special interests of all mini-Communities recognized and certified as just stakeholders in public education. 'Safeguard' is interpreted to mean that no actions taken by any Institute or agent of public education and no policies or designs of the system of public education are contradictory to the special interests of the corporate person of a mini-Community. The technical distinction between the terms 'contradictory' and 'contrary' is to be strictly maintained in all cases.
- To hear applications for the certification of and decide upon on the chartering of mini-Communities for representation of their corporate persons in education committees. In all cases, any group of people seeking recognition as a corporate person must be able to document that their group does constitute an actual and civil mini-Community and that it is possible to identify the citizens who are members of this mini-Community. In order to be chartered, every applicant must pledge its allegiance to the social contract of the United States and be able to present its own peculiar social contract that is the basis of their association as a corporate person. In all cases, every member of a chartered mini-Community must be a human being, and no other corporate persons or legally established entities may be members. Membership by any particular and individual human being in

another chartered mini-Community does not preclude that person's membership in a new mini-Community seeking certification and chartering.

- To try cases of impeachment of legislative or executive agents of public education.
- To make final rulings in all cases where congruence with the social contract in the matter of a decision or action taken by any agent or agency of public education is challenged. The matter being challenged must fall within the jurisdiction of the judicial panel with said jurisdiction determined by the judicial panel's level within the education pyramid.
- To hear Petitions of Right filed by citizens living within the jurisdiction of the panel and to act in all such cases as a Board of Right in deciding the merit of the Petition. In all such cases, the basis for judgment of the Petition will be the social contract of the United States with its terms and conditions. The Petition itself must seek redress of grievance in a matter of public education. The panel acting as a Board of Right is empowered to compel compliance with its decisions on any person, agent, or corporate person[11].
- To compel agents or agencies of public education to carry out their official Duties in compliance with the social contract. The formal document ordering this compliance is called a writ of mandamus. Refusal to comply constitutes impeachable misconduct.

The foundation of all these Duties is the Constitutional mandate to establish justice in the Republic under the terms and conditions of its social contract. The Duties listed above in some instances call for the judicial panel to compel obedience from persons, especially from persons who are agents of public education. However, enforcement power under the system of checks and balances does not lie with the judicial branch of government and is vested instead in the executive branch. For this reason, the power of legal compulsion must be Constitutionally specified and granted in the Amendment or Amendments that set up the proposed institution of public education. As I have mentioned earlier, amendment of the Constitution is necessary to carry out this proposed institution because it is presently blocked by the wording of the 10th Amendment.

§ 6. The Appellate Authority

The Duty to uphold justice in the public education system lies primarily with the judicial panels. But what happens when it is a judicial panel that is derelict of Duty? *Quis custodiet ipsos custodes?* Who issues a writ of mandamus when the person being commanded is an agent of a judicial panel? Who can compel the members of a judicial panel to do their Duty upon pain of impeachment if they will not do so? To whom do citizens appeal when the matter of grievance to be redressed is an action of a judicial panel?

The appellate authority cannot be another judicial panel of public education. This is because the divers judicial panels illustrated in figure 2 do not constitute a system of higher and lower courts. No judicial panel of education has authority over another judicial panel. The system of governance of public education is a coordinated heterarchy, not a subordinated hierarchy. Yet some appellate authority is required for the system or else checks and balances in government is not established. The appellate authority cannot be vested in a Judicial Congress either because these bodies are part of the executive branch of government, not the judicial branch.

Here is an issue pertaining to the legal establishment of the institution. This institution must go forward by constitutional amendment, as just stated above, or it will have no legal foundation in the government of the Republic. The legal foundation integrates it into the general government

[11] See Wells (2010), chap. 6, pp. 192-194 for a discussion of the Petition of Right and Boards of Right. See also the technical glossary for definitions of these terms.

and places it relative to other agencies of government. Once it is so placed, dereliction of Duty by agents of a judicial panel of education becomes not merely a moral transgression but, as well, an illegal act under the legal system of the United States. Because a judicial panel of education is constituted as a court of limited jurisdiction, the answer to the question posed above becomes clear at once. The appellate authority must be vested in a higher court and, under the organization depicted in figure 1, this higher court is easily identifiable. It is a U.S. Court of Appeals.

This is, of course, a new jurisdiction for the Courts of Appeals. As such, it, too, requires that the necessary framework of law be established to grant this power of jurisdiction. Thus, this too is a necessary part of the institution of this proposal. That it is appropriate and proper to place the judicial panels under the legal authority of the Courts of Appeals follows from the maxim that a higher standard of behavior is expected of the judiciary of a nation. The deontological moral transgressions of a judge are more serious than those of a common citizen because the authority of a judge is vested in the expectation that he will be an appointed guardian of justice for all the citizens of the Republic. Placing the appellate power with the Courts of Appeals brings the judiciary of public education under the general judicial system of the Republic.

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