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Ethical issues in the Basic Education Act No.14 of 2013: an Aristotelian interpretation



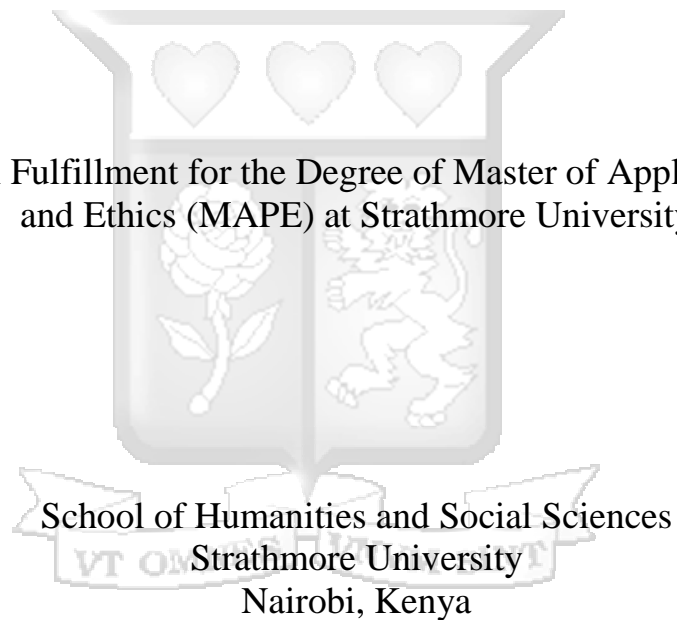
Master of Applied Philosophy and Ethics

2019

Ethical issues in the Basic Education Act No.14 of 2013: an Aristotelian
interpretation

MOMANYI CHRISTOPHER

Submitted in Fulfillment for the Degree of Master of Applied Philosophy
and Ethics (MAPE) at Strathmore University



June, 2019

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DECLARATION

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Momanyi Christopher

June 2019

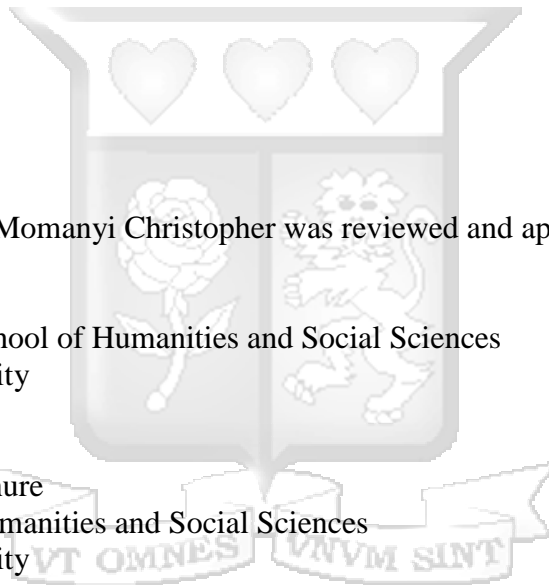
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Abstract

Aristotle in his educational ideals as presented in his Politics and Nicomachean Ethics, believed that education is a requirement for a fulfilled life. Other philosophers such as Plato and Socrates were greatly concerned about the education of the youth and the role of the *polis* and the family. The Aristotelian ideas on education as expressed in the Politics and Nicomachean Ethics are not insignificant but very important for the modern day educational disputation. Especially on the debate on connection between law and education, morals and the education of the person.

This dispute then arises, who between the *polis* and the *household* is to determine the training that students receive in school? Is there plurality of education in Kenya in light of passing of the Basic Education Act no. 14 of 2013? This research discusses the modern times importance of Aristotle's ideas on plurality of education as presented in his Nicomachean Ethics and Politics. This research discusses whether the Basic Education Act no. 14 of 2013 observes the plurality of education as taught by Aristotle.

Key words – Aristotle, Basic Education Act No. 14 of 2013, Moral Education, Public Education, Private Education, Habituation and Ethics.



TABLE OF CONTENTS

Title page-----	i
Declaration-----	ii
Abstract-----	iii
Chapter one	
1.1 Introduction to the study-----	1
1.2 Background to the study -----	3
1.3 Private education in Kenya-----	4
1.4 Statement of the Problem -----	5
1.5 Aims and objectives-----	6
1.6 Research questions -----	7
1.7 Scope of the study-----	7
1.8 Significance of the study-----	7
Chapter two	
2.1 Introduction -----	9
2.2 Conceptual framework-----	9
2.3 Education as a private and common good-----	14
2.4 Freedom of education-----	19
2.5 Literature review-----	25
2.6 Summary of Aristotle’s ideas on education -----	31
Chapter three	
3.1 Introduction-----	33
3.2 Research Design-----	33
3.3 Sampling Procedure-----	33
3.4 Data collection techniques and analysis-----	33
3.5 Validity of the research-----	37
3.6 Reliability the research -----	37
3.7 Objectivity the research -----	37
3.8 Ethical consideration-----	37
Chapter four	
4.1 Introduction-----	39
4.2 Background to the Kenya Basic Education Act No. 14 of 2013-----	39
4.3The structure of the Kenya Basic Education Act No. 14 of 2013-----	40
4.4 Comparison between the Aristotelian ideas on education with the Kenya Basic Education Act No. 14 of 2013 -----	41
Chapter five	
5.1 Introduction-----	47
5.2 The role of public education-----	47
5.3 The role of private education and right to private property-----	50
5.4 Concern for moral education-----	50
5.5 The individual and common good in the provision of education-----	53

5.6 Plurality in the provision of education-----	54
5.7 The principle of subsidiarity in the provision of education-----	57
5.8 The role of the natural family-----	59

Chapter six

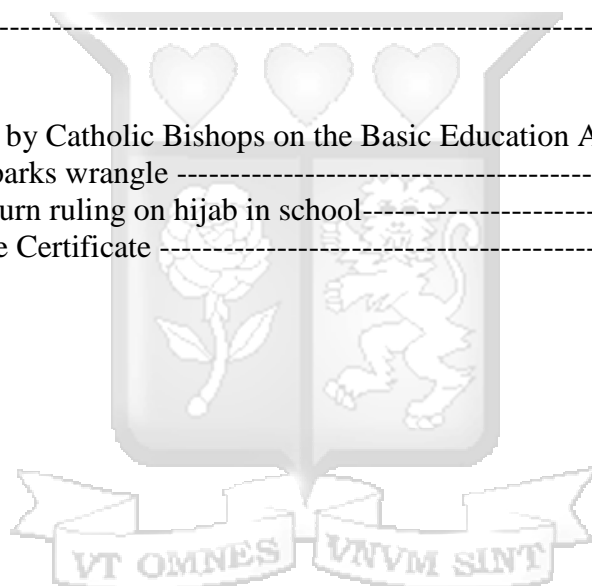
6.1 Introduction -----	62
6.2 Differentiation between public and private schools-----	62
6.3 The right to private property -----	67
6.4 The role of parents in their children’s education-----	68
6.5 The role of the state in education -----	69
6.6 Plurality of education-----	69
6.7 Rights of voluntary institutions-----	74

Chapter seven

Conclusion-----	76
References-----	78

Appendices

Press conference by Catholic Bishops on the Basic Education Act no. 14 of 2013--	86
Education Bill sparks wrangle -----	87
Top judges overturn ruling on hijab in school-----	88
Ethical Clearance Certificate -----	89



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Nevertheless, I take sole responsibility for any errors and shortcomings of this study.



Dedication

To my little nephew, Aventinus who at the age of 3 years has refused to stay at home and insists to go to school, he is always eager to recite to me the prayers he has been taught at school.



CHAPTER ONE

1.1 Introduction to the study

Aristotle is considered to be one of the greatest teachers and educationist. His main teaching on education is established in his *Nicomachean Ethics* and *Politics*. He upholds a plurality of education and equality of opportunity, thus he supports both public and private education by affirming that “...*Every state is as we see a sort of partnership, and every partnership is formed with a view to some good...*” the polis¹ is the greatest class of political partnership “...*and aims at the most supreme of all goods;*” (*Politics*, 1252a1-5). Aristotle insisted that the “... *state is a plurality that should be made into a community by education....*” (*Politics*, 1263b36-37). He criticizes those who equate the state to a large household² by stating that “...*those then who think that the natures of the statesman, the royal ruler, the head of an estate and the master of a family are the same, are mistaken ...*” (*Politics*, 1252a7-9; 1260b22-1261a22). There is need to recognize smaller units of association that make up society (family, clans and other associations), their existence helps in the plurality of institutions which are in pursuit of the good that a society seeks because “...*The state is a union of families and villages in a self-sufficing life....in the first place we see that all states are made up of families....*” (*Politics*, 1280a31).

The education given in the *household* is meant to help the citizens to be virtuous, which translates to better citizens and a good polis (*NE*, 1094a14-16). Here Aristotle does not exactly agree with Plato’s statement that the most excellent kind of good is “...*one that is desirable both in itself and for the sake of its results....*” (*Republic*, 357d-358a). Aristotle’s supreme good is desired for its own sake, it is suitable for itself and not for the sake of

¹ Polis (πόλις) – a city state in ancient Greece (Athens, Sparta Corinth etc)/a political community, as considered in its ideal form for philosophical purposes, its derivative *politeia* (πολιτεία) means a community of citizens in a polis, their conditions and rights. “...*It is a partnership of clans and villages in a full and independent life which constitutes a noble and happy life...*” (*Politics*, 1280b40-1281a1). *It is a partnership in living well, with the object of an independent and full life* (*Politics*, 1280b33-35). *The polis is a formation of two smaller classes of association, the household (oikia/household) and the village (kome/village).*

² Household (οἶκος/oikos) – association/s of people starting with the natural family for purposes of self-sufficiency headed by somebody responsible for the whole association (associations of; man-woman, child-father, master-slave etc). Aquinas taught that the many and various forms of human associations which exist bring about a whole host of familial, professional, geographical, mercantile, scholarly and other specialized communities.

another good, and all other goods are desirable for its own sake. There is a connection between virtue and other goods, if a person lacks some goods like education, he is poor and lacks honour; this will be an impediment to his happiness (NE, 1094b11–22). Aristotle's affirmation that the political community is prior to the individual citizen which he compares to the whole body being prior to its parts (Politics, 1253a18–29), is a strong support for the plurality of institutions. In an ideal community, the education each child receives should be the same in terms of the aims of education. The responsibility to educate each child should be a common concern for all in the community (Politics, 1337a21–7). A citizen does not belong to himself; every citizen belongs to the city (1337a28–9). Aristotle implies in this statement that in matters of education each citizen should be guided by the collective decisions of the whole community, it is not up to each citizen to decide how to act.

In those matters that affect the whole community, for instance education. Each citizen should subordinate his powers in decision making to those of the whole community. From an egoistic point of view, the principle of precedence of the state (polis/city-state) to the individual makes the claim that the good of others in the community has no valid claim on the individual citizen. Each citizen should serve other members in the community only when he can connect their interest to his own (Clayton, 2014).

For Aristotle a differentiation in authority is necessary because of the differences in the character of the appropriate subjects, thus “...*household management (oikonomia)*...” looks at the rational use of material resources as a means to an end rather than using resources for its own sake. Resources should be used as a means to lead people to a good live in the polis “...*in the excellence of these than in that of its property..... and more in that of its free members than in that of slaves*” (Politics 1259a37–1259b17; 1260a12–14). Aquinas commenting on Nicomachean Ethics (NE, 1094) says that external goods used by man have a moral consideration, some men are helped by them while others hampered by them (Aquinas’ commentary on Nicomachean Ethics, 1[34]). In matters of education, every person is unique and his individual peculiarities should be taken into account while educating him. Therefore the state cannot handle all individual cases, there is a necessity for participation of other institutions in the provision of education to

complement the state. Therefore whenever a few or many make decisions they should think about how their decisions benefit the whole community (Politics, 1279a28–29), they should not merely rely on the strict principle of governance by the majority (Politics, 1279b32–1280a5). Thus what is called judgement when men are sympathetic judges is the “...*right discrimination of the equitable*...” (NE, 1143b1). Using Aristotelian educational ideas as a reference point, this research explores whether part II, III, IV, VIII, IX and X of the Kenya Basic Education Act No. 14 of 2013 respects freedom, diversity and plurality of education in Kenya. In this research, an Aristotelian interpretation is chosen because of Aristotle’s essential knowledge of the human person as presented in his Nicomachean Ethics, Politics and Eudemian Ethics. Aristotle’s teaching that all truth comes through the senses explains the human nature better than Plato’s rationalism.

1.2 Background to the study

Education is highly valued in Kenya; with many of the students who can afford using strategies such as after-school and weekend tutoring to maximize their chances of passing national exams (Hongo S. O, and Mwenda, 2019). Many families make huge sacrifices to send their children to school. While many parents enroll their children in public schools, some parents prefer enrolling their children in private schools. Statistic from the ministry of education show that the number of private primary schools has more than doubled from 7,742 in 2014 to 16,594 in 2019 in comparison to 21,718 public primary schools in 2014 to 23,446 in 2019. Private secondary schools have increased fourfold, from 1,048 in 2014 to 4,310 in 2019 against 7,686 public secondary schools in 2014 to 9,417 public school in 2019. Parents in the middle class are shunning public schools in favour of private schools, most of which charge fees far higher than those charged in public schools (Kariuki Waihenya, Daily Nation, 24th March 2019).

Opinions differ on the role of parents and the state in the running of education (Thompson, 2007). In the work of education the family needs the help of the entire community since the family has the duty which is to impart education to its members. The efforts of parents and other associations to execute the function of education for their members should be in line with the desires of parents and the demands of the public good to construct schools and other institutions of learning. Parents have the inalienable right to form the character

and mind of their children, with freedom, they must have the advantage of selecting schools for their children; this right belongs to them (Universal Declaration of Human Rights Article 26.3). Aristotle views the family as very important and is the basis for human association, he does not establish the significance of the individual in his teaching (Hittinger, 2013).

Since colonial times, the government of Kenya has come up with legislation, to guide the management of education. Many of these laws have been debated and implemented, the Phelps Stokes Commission of 1924 recommended for more subsidy to African schools that were being run by missionaries (Chura and Mwaura, 2008). The missionaries were afraid that the government support might come with the regulation of the syllabi, they withdrew from the government grants-aid scheme in 1918. A struggle between the government and the missionaries as to who has the rights to control schools continued throughout the colonial period (Sifuna, 1982). The church missionaries (catholic and protestant) who were running schools at that time were members of the 1910 Education Board, they participated in the 1919 education commission and were active members of the Central Advisory Council of African Education (Chura and Mwaura, 2008). It was notable that there was no single missionary or church agent in the Ominde commission of 1964 (Muhoho, 1970). The Education Act of 1968, replaced school managers appointed by the churches and named them school sponsors. The Ominde commission recommended for the nationalization of all schools which got opposition from the churches, especially the Catholic Church, since the churches were not involved.

1.3 Private education in Kenya

The traditional community education financing standard and management of schools has varied over the last few years. The role of the Kenyan government in the management and financing of public education has expanded through the provision of free secondary and primary education. The fee-charging private schools' market has rapidly grown, in particular at the primary school level (Tessa Bold et al. 2013). Since the debut of free primary education (FPE) in 2003, the number of private schools has more than quadrupled. The number of children enrolled in private primary schools grew from 4.6% in 2004 to 11.5% in 2007 in comparison to children attending public primary schools. Parents

seemingly react to the quality of public education, basing it on the pupil–teacher ratios of public schools (Mikiko Nishimura and Takashi Yamano, 2013).

Aquinas says that, "*....Men establish relations in common with one another in the setting up of a commonwealth³*"(36). Aristotle in his politics says that men aggregate themselves because of their needs (Politics, 1253a29-30). Aquinas teaches further that associations which are conceived in the bosom of the commonwealth are designed private, because the reason for their formation is the private advantage of their members. Aquinas commenting further on the politics says that smaller associations formed in any society at a lower level are formed for the sake of private concerns of their members just like when two or more people form an association for the sake of trading together (Summa theologiae, IIa-IIae, q. lxi). The smaller societies comprise the state, the state is the highest society, there is a twofold society; the state and the household (Aquinas commentary on Politics, book I, 11-13). There are many human associations smaller than the state for various interests. They are individually part of the whole community (state) (NE, 1094a1- 18).

1.4 Statement of the problem

On 20th November 1989, the United Nations came up with the United Nations Convention on the rights of the child (UNCRC). The resolutions of the UNCRC came into effect on 2nd September 1990, Kenya ratified the UNCRC resolutions in 1990 thus becoming one of the first countries among the 134 that have so far ratified the UNCRC. The rights of a child was also a topic of discussion during the 1924 Geneva Declaration of the rights of a child which was adapted by the United Nations General assembly on 20th Nov.1959 and acknowledged in the Universal Declaration of Human rights. The contents of the UNCRC, gives the child autonomy from parental control and guidance (UN, 1989). Kenya promulgated a new constitution in 2010, this constitution is the basis of the Basic Education Act No 14.of 2013. The first chapter of the Kenyan constitution article 2 (5),

³ *Commonwealth – a state/a body politic made up of a certain number of people, who are united, in subjection of one form of governance and scheme of laws (Biblehub.com)/ People in a given state/Republic. Aquinas uses the term commonwealth in relation to human law, which he says cannot eradicate all evil in society (Summa Theologiae, I- II, 91.4).*

affirms that “...*the general rules of international law shall form part of the law of Kenya...*”

Aristotle in his teaching supports the participation of the state and the family but strongly supports the parents taking part in their children’s education especially in moral instruction. Because of this incapability, domestic authority and other institutions are required to make greater accuracy to particular cases in order to be responsive to particular individual needs. The Aristotelian view points out that by not respecting the plurality of institutions and the diversity of goods that exist in the political community. A political regime is unable to cultivate virtues like piety, civic friendship and generosity which are required for the common good to exist and be sustained. The volitional societies with their semi-political roles take on a major part in the education sector. Individuals, families, volitional societies and the government constitute an organic hierarchical classification. Voluntary associations should be allowed to retain their unique identity, rights, functions and relative independence.

Although public schooling is seen as a repository and conveyance of education, education is transmitted through other institutions in the political community. Such as the family and other voluntary institutions like religious organizations. The state should not monopolize education by dominating the whole curriculum and the management of schools. It should rather provide a favourable surrounding in which families, individuals and voluntary institutions can freely accomplish their function in the provision of education. This research investigated whether the Kenya Basic Education Act No. 14 of 2013 Using Aristotle’s educational ideas as a reference point. This research explored whether part II, III, IV, VIII, IX and X of the Kenya Basic Education Act No. 14 of 2013 respects freedom, diversity and plurality of education in Kenya in view of the function of the state and the parents in their children’s education from an Aristotelian interpretation.

1.5 Aims and objectives

- i. To establish whether the Kenya Basic Education Act 2013 reflects the Aristotelian view on public education;

- ii. To establish whether the Kenya Basic Education Act 2013 reflects the Aristotelian view on private education;
- iii. To establish whether the Kenya Basic Education Act 2013 observes the Aristotelian view of the parents role in their children's education;
- iv. To establish whether the Kenya Basic Education Act No. 14 of 2013 reflects the Aristotelian perspective of the role of the state in education.
- v. To establish whether the Kenya Basic Education Act no. 14 of 2013 supports the Aristotelian perspective on plurality in the provision of education.

1.6 Research questions

- i. What is the contrast between Aristotelian view on private and public education and the Kenya Basic Education Act No. 14 of 2013?
- ii. What is the contrast between the Aristotelian view on private education and the Kenya Basic Education Act No. 14 of 2013?
- iii. What is the contrast between Aristotelian view on the role of the parents in their children's education and the Kenya Basic Education Act No. 14 of 2013?
- iv. What is the contrast between the Aristotelian view on the role of the state in education and the Kenya Basic Education Act No. 14 of 2013?
- v. What is the contrast between the Aristotelian perspective on plurality in the provision of education

1.7 Scope of the study

In this research, a study was done to establish whether the Basic Education Act No. 14 of 2013 maintains freedom of education based on the Aristotelian teaching.

1.8 Significance of the study

This research assessed the Kenya Basic Education Act No.14 of 2013 in line with Aristotelian ideas on education. The research contrasted the Kenya Basic Education Act No. 14 of 2013 ideas on education with the Aristotelian ideas on education which are fundamental to the current debate on education in Kenya. There is a proper function for the state's participation in education and there is also a proper function played by private players, both are distinct but with the same aim. The recognition of both as per

the Aristotelian view enables parents to make a choice between the two for what is best for their children while taking into account that moral education is the responsibility of parents from basic to higher education.



CHAPTER TWO LITERATURE REVIEW

2.1 Introduction

In this chapter the conceptual framework is presented, some selected literature on education and a summary. In this research the edition of Nicomachean Ethics and politics that are used are the translation of Nicomachean Ethics by David Ross (1980) and the translation of Politics by Benjamin Jowett (1920). Public or government-controlled education wasn't a common practice or familiar during Aristotle's time except for some state military training. Therefore an Aristotelian exposition of the ethical issues in the Basic Education Act No. 14 of 2013 of education (freedom and plurality) in the framework of use in this study means the judgment of Aristotle's educational ideas as presented in his Nicomachean Ethics and Politics, these ideas' modern time's meaning as explained by diverse writers among them; Trepanier (2014), Curren (2010), Dobbs (1984), Mayhew (1997), Inamura (2015), Deslaurieres et al (2013), Otteson James R. (2000), Tierney (1992) and Thomas Aquinas (commentary on Politics and Nicomachean Ethics). Comments from quotations in Plato's Republic are used in this study to compliment and not to contrast Aristotle's views.

2.2 Conceptual framework

The right to schooling and the right to education are not necessarily synonymous to freedom and plurality of education which are necessary conditions for parents to make a choice. Any law on educational legislation which avoids to mention freedom and plurality of education but only mention the right to schooling and education should be treated with great care. The right to free education with legal provisions sanctioned by governments, in preference of a plurality of educational provision, has been confused for many years. Internationally, since 1948 education has been viewed by many countries as a human right and at the same time a common good as promoted mainly by the United Nations agencies. *“Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.... education shall promote understanding, tolerance and friendship among all nations, racial or religious groups....”* (Article 26 of the universal declaration of human rights, UN, 1948). Since 1948, the educational scene has changed greatly and nowadays it is

marked by the participation of non-state agents with a wide range of non-profit associations (Tibor, 1974). The concerns of plurality and freedom of education have been lacking from international debates and educational policies. They have been subjected to the matters of benevolence settled on behalf of the parents. Against the Aristotelian view that parent's participation in their children's moral education is greater than the state's (Politics, 1161a11). Aristotle sees practical wisdom (*phronesis*) as the conception of the proper thing to do i.e the intellectual capacity for one to discern the moral virtues and how to be virtuous in regard to the functions of the natural family and the political community (NE, 114b31-5; NE, 1115b12). The family and the political community are analogous rather than identical, a practically wise person will have different goals for the family from those he has for the political community. For household management is *phronesis* directed to matters affecting the entire household and political wisdom when directed to politics (NE. 1141b23-4; NE. 1141b29- 35).

Aristotle says in his Nicomachean Ethics says that every human pursuit is directed at some good and that each particular good will have a variety in its attainment and this variety has to be observed by the state. This Aristotelian idea is true when applied to education, there are many players and a variety (a plurality) of interests, which gives reason why any given society educates its members (NE. 1094a1-3). The Kenya constitution of 2010 in chapter four article 43(1f) lays emphasis on the right of everyone to have education by stating that “...every person has a right to education...” Education should be in line with the race, age, condition of each individual person since every person enjoys the dignity of a human being. Education should also foster the fraternal association with other people; education not only has formative function but also a unifying function (Gravissimum educationis article 1). The Aristotelian definition of education agrees with the famous quotation of Thales Miletus ‘... a sound mind in a sound body...’ and therefore education “...is the creation of a sound mind in a sound body....” Education opens a person's capacity especially the capacity of the mind and helps him to “...enjoy the contemplation of supreme truth, goodness and beauty of which perfect happiness essentially consists of” (Politics, 1338b1-2). Aristotle identifies education as a means of forming a happy man,

one who “...lives well...” and “...does well...” he identifies education as a means to happiness (*Eudaimonia*)⁴...” (NE, 1098b8).

Aristotle identifies four main subjects of education; writing, reading, music and gymnastics, some people add drawing. Reading and writing are beneficial for all intents of life and are remarkably useful. Gymnastics contributes to manly valour and for music, “....most people take part in it for the sake of pleasure;” (Politics, 1337b1). The Aristotelian curriculum gives reasons why the subjects contained in the curriculum are taught. Some of “....these types of learning ought to be for their own sake, whereas those types of learning whichare necessary and for the sake of other things...” (Politics, 1337b26-7) have to be studied for the sake of gaining some other knowledge. He stresses on the training in gymnastics for the development of sound physique (strength) and moral qualities and to acquire virtues and moderation of the appetites (courage) “...we pursue gymnastics, for the sake of health and strength....” (Politics, 1338a19-20). Letters are taught to facilitate property acquisition, household management, learning and many political activities (Politics, 1338a15-17).

Literature and music are advantageous for the ethical and mental growth at the childhood stage of education (Politics, 1337b30-5), music in particular in its “.... rhythms and melodies, there are likenesses closest to the true nature of anger and gentleness and courage and temperance and of all their opposites and of the other states of character...” (Politics, 1337b30-5). Mathematics helps in the development of deductive and inductive reasoning in man (*Prior Analytics*, I.2, 24b18–20). Drawing enables one to judge better the works of artisans and for the purpose of buying and selling (Politics, 1338a17-19, 1338a41-b1), it can make one capable of contemplating the beauty of bodies (Politics, 1338b1-2). A child possesses passions from birth, but he must be trained to reason as he grows older and this is a function of education as “.....in men rational principle and mind are the end towards which nature strives, so that the birth and the moral discipline of the

⁴ *Eudaimonia* (εὐδαιμονία)/translated as happiness/human flourishing - the highest good for human beings (NE, 1095a15–22). Plato in his writings written by his followers in the academy defined eudaimonia as the good constituted of all goods/a sufficiency which will be enough for living well. Aristotle defines Eudaimonia as “...virtuous activity in accordance with reason...” (NE, 1097b22–1098a20). Having an objectively good/desirable life.

citizen ought to be ordered with a view toward them....” (Politics, 1334b14 -16). Thus education should aim at training children to use their faculty of reason “...as soul and body are two, so we observe that the soul also has two parts.....the body is prior in its development to the soul, so the irrational part of the soul is prior to the rational. ...” (NE, 1334b1).

Aristotle insists on the oversight of education by the public authority which does not mean abolishing household responsibilities because there is a kind of instruction “... in which parents should train their sons, not as being useful or necessary, but because it is liberal or noble ...” (Politics, 133a21-26). Trepanier (2014) commenting on this excerpt from politics explains that what Aristotle means is that the aims of education are not determined by the household. The political society necessarily needs the domestic society (household) to participate in delivery of part of that education, therefore Aristotle’s one and the same education for all is a reference to the final objectives of education. In the aim of education, Aristotle’s golden mean is the choice between the extremes of political indifference and political indoctrination (Trepanier, 2014).

Aristotle says that politics’ main concern should be “...to engender a certain character in the citizens and to make them good and disposed to perform noble actions....” (NE, 1099b30). He says that individuals can only fulfill their end/*telos*⁵; to be an ethical and a happy person within a well-constructed political community. He further argues that virtue is brought about in a community through education and laws which command certain actions and forbid others. He says further that men aggregate themselves because of their needs and “....cities are formed for the sake of living... ” and since human beings on their own cannot be self-sufficient⁶ there is “...an impulse toward this sort of community (*polis*)

⁵*Telos (τέλος) –means end/purpose/goal. Its derivative term teleology, means the learning of Purposiveness/the study of reality with a view to their intentions, aims or purposes. Aristotle’s believe was that the essential essence of things lay not at their origin (beginning) but rather at their end (telos). Aquinas in his commentary on Aristotle’s Nicomachean Ethics says that telos is Eudaimonia/happiness, where he understands “happiness” in terms of wellbeing, completion or perfection which requires a variety of intellectual and moral virtues.*

⁶*Self-sufficiency (αὐτάρκεια/autarkeia) – means political independence intertwined with economic independence, the term on its own connotes economic independence. Aristotle taught that a self-sufficient region/*polis* is one that produces everything within its borders (Politics, 1326b29).*

exists by nature in everyone...” (Politics, 1253a29-30). Several villages (clans/*Oikos*) constitute a complete community, and “...*once it reaches the limit of total self-sufficiency...comes to be for the sake of living well...*” (Politics, 1252b27-53a1). Clayton (2002) commenting on this excerpt from Aristotle says that individuals can only accomplish their *telos/ends* and be ethical and gladdened persons within a well-constructed civil society. He further argues that Aristotle’s view is that the political society achieves virtue through education and legal action which command certain actions and forbid others.

Aristotle says that living well (*Eudaimonia*) consists in having activities according to some excellences (virtues both moral and intellectual). There is a general agreement among men both common and those of superior refinement that these excellences (*Eudaimonia*), “...*identify living well and faring well with being happy.....*” (NE, 1095a15–22). He says that a person is not happy if he is not courageous, he is intemperate, lacks justice, is not intelligent, is fearful, cannot stop at gratifying his craving for food and drink and “... *betrays his friends for pittance, and has a mind as foolish and prone to error as a child’s or a madman’s....*” (Politics, 1323a26-33). These moral and intellectual virtues (activities) require an appropriate education which is one of the tasks of true politics because “...*it is through habituation that legislators make citizens good; this is what every legislator aims at...*” (NE, 1103b2-6). In line with Aristotle’s teaching, the political community and other societies should bear in mind the pluralism⁷ in the contemporary society and respect religious freedom and aim at assisting families so that the education imparted to their children in all schools is in accordance with their individual moral and religious principles of their families (Gravissimum Educationis article 7).

⁷ *Pluralism- there are ends which are incompatible with one another, because there is lack of a universal standard that would enable one person or group of persons to choose between them rationally between them* (Berlin, I. (1982). *Against the current*. New York: Penguin). *All citizens cannot be of the same character* (Politics, 1277a1). *The polis is composed of dissimilar citizens,* (Politics 1277a29–31). *The state should cautiously be observant of these associations of citizens “... in accordance with their rights, but it should not trust itself into the peculiar concerns of their organization...”* (Leo XIII, (1891), *Rerum Novarum*, note 45, para.55).

2.3 Education as a private and a common good

The common good (*summum bonum*)⁸ as a phrase has been in use in various ways, it is by and large acknowledged by many people that it has Aristotelian roots. The common good is a proper good and is feasible solely by the society, and yet it is shared by all its members (Dupre, 1993). Aristotle is not affirmative about the public good, according to him it demands participation by members of the community who are just, but in any community there is persistence of injustice (Smith, 1999). A great majority of people are not good since they have been moulded to a greater degree by the customs and conventions of the more or less unfair authorities (Dupre, 1993). Since the man who is unjust “....takes the larger share, he will be unjust in respect of good things....” *the unjust man does not however always choose the larger share....because the lesser of two evils seems in a sense to be a good,taking more than one's due means taking more than one's due of good,....taking too much of good things and too little of bad things....*” (NE, 1129b4-6). From the Aristotelian view, fairness is not only moderate or a predisposition to other person's rights and conception of the good, but a proclivity to commit in accommodative contingencies that nurture the non-zero sum, sharable goods which fulfill the common life (Smith, 1999).

According to Aristotle, the limits of the common good is between justice and injustice; i.e a want of predisposition to other people's perceptions of the good (Thomas, 1999), “....there is another sort of injustice, which is a part of injustice in the universal sense, and there is something unjust which is a part of the unjust in general, or illegal....” (NE 1130a3-4). Aristotle distinguishes the double signification of “...the unjust...” particularly the illegal and the disproportionate or unjust, and the double signification of “...the just...” that is the legitimate and the proportionate or just”(NE, 1130b8-10).

⁸*summum bonum* – the highest good; Aristotle defends Eudaimonia as the highest good for human beings (NE, 1094a21–2). Eudaimonia satisfies the criteria which Aristotle sets as being (i) superordinate to all other human goods; (ii) it is sought for its own sake; (iii) it is sought for nothing beyond itself; (iv) it is something whose possession renders a life perfected/complete and (v) it is something the possession of which renders life self-sufficient or lacking in nothing (NE, 1094a1–22; 1097a25–34; 097b6–16). Eudaimonia is the “...source and cause of good things...” (NE, 1102a3-4). If there were no highest good as the ultimate end of all intentional human action, all human desire would be in vain (NE, 1094a20–1). The final good of all intentional action is one, and not several (NE, 1094a18–22). According to Aquinas, God is the *Summum bonum* (*Summa Theologiae*, Ia. Q. 6).

The other limit of the common good is demand and supply (material possessions) which make the common good a subject of intense competition, i.e. “...goods that men struggle to win...” (NE, 1169a21). Plato says that, “...honour is also a limited resource “.....in any constitution⁹ that is of the form entitled aristocratic... since a person living a life of manual toil or as a hired laborer cannot practise the pursuits in which goodness is exercised”(Republic, 1278a1-3).

Aristotle says that every state is a community whose establishment is conducive to some intended achievable advantage “.....it is clear that every community aims at some good, and the community which has the most authority of all and includes all the others aims highest, that is, at the good with the most authority (Politics, 1252a1–7). He adds further by saying “....even if the end is the same for an individual and for a city-state, that of the city-state seems at any rate greater and more complete to attain and preserve. For although it is worthy to attain it for only an individual, it is nobler and more divine to do so for a nation or city-state....” (NE, 1094b7-10). According to him the polis “..... is prior by nature to the household and to each of us.....” (Politics, 1253a19). He makes a comparison between the relationship of the individual and the city to the connection between part of a body to the whole body and “... if the whole is destroyed there will not be a foot or a hand...” (Politics, 1253a20). A part of the body cannot survive if it is not attached to a functioning body, the same way an individual will need to be attached to a city to survive (Clayton, 2002).

⁹ Constitution – Aristotle sees the polis as a hylomorphic (i.e., made of matter and form) as a compound of distinct people living in a given land (which is the material cause) and a constitution (the formal cause). The constitution specifies the objectives of the polis (the final cause), (Politics, 1289a17–18). The constitution is a particular way of organizing the people living in the polis” (Politics, 1274b36-8). The constitution (politeia) is a way of organizing the offices of the polis (Politics, 1278b8–10; 1289a15–18). A Democracy is the rule of many/all, an oligarchy is the rule of a select few over many and a Tyranny is the rule of one over many. In an oligarchy there is a mistaken idea that those superior in wealth should have superior political rights, in a democracy it is held that those who are equal in free birth should have equal political rights. These views of political equity are misguided, and in Aristotle's consideration, they have an untrue conception of the last end of the polis. The polis is neither a commercial enterprise to maximize wealth (as per the oligarchs view) nor a partnership to advance autonomy and equality (as per the democrats view). Aristotle argues that, “....the good life is the end of the Polis,” it is a life made of noble actions (Politics, 1280b39–1281a4). The correct view of justice which is Aristotelian is the aristocracy, i.e. allotting political rights to people who make an utmost contribution to the polis, people with virtue, property and freedom (Politics, 1281a4–8), hence an “aristocratic” constitution according to Aristotle.

When the common good is made the object to be loved, friendship then resolves both private and public disputes. Because friendship is the bond of the state which promotes “... concord¹⁰, which seems akin to friendship...while faction, which is enmity, is what they are most anxious to banish...” (NE, 1155a3-17). According to Aristotle, every action and endeavour is aimed at some advantage, due to this conclusion “...the good has rightly been declared to be that at which all things aim...” (NE, 1094a1-4). The valid classes of the constitution are directed at the common good and they mainly work on the foundation of agreement among the citizens, at the same time on the other hand, the constitution which is illegitimate aims at the good of those in authority and mainly relies on coercion and “...in some states the entire aim both of the laws and of the constitution is to give men despotic power over their neighbour...” (Politics, 1279a17-22). The participation by each member in the community towards the common good is not the same “... the goodness of all the citizens is not one and the same...” (Politics, 127a17-22). The city/society is ordered to the highest human good (Aquinas commentary on politics, book 1[10]).

The Aristotelian common good is a complete happiness for all members of a given community (Donald Morrison in Deslauriers et al, 2013). Since society is ordered to the highest good of man, to govern needs prudence on the part of the ruler. However the subjects share in the governance of the affairs on the society by giving true opinion concerning things to be done and they can govern themselves in their own conduct in accordance with the government of the ruler (Aquinas commentary on Politics, 376). Aquinas further commenting on Aristotle defines the commonwealth as the disposition of

¹⁰ Concord (friendship/homonoia (ὁμόνοια)/goodwill/beneficence) – is a particular agreement which is not the same as unanimity and is characterized when citizens agree on practical matters which are direct to civic importance (Politics, 1167a22-67b4). For instance concord exists when citizens in the polis are of the same mind concerning the ruling structure of the polis, choosing a ruler or a particular foreign alliance. Homonoia (concept of order and unity) is when the citizens agree on what is advantageous to the polis, homonoia is characterized by political friendship; where the citizens carry out common resolves into action. Aristotle clarifies between what is base and what is decent (Politics, 1167b4-16). Homonoia is characteristic of decent people since they will be of one mind within themselves and with one another, and thus they will make an effort to secure what is advantageous for the polis. Base people are capable of concord to a very small degree since they desire to seek advantage for themselves than for the polis.

a city with respect to all rules found it, principally with respect to the highest rule governing all the others (Aquinas commentary on Politics, 385).

Aristotle and Plato in their teachings reflected deeply on what is the basis and aim of the political community (Hitinger, 2013). The differentiation between public and private good has been subjected to debate since the times of Ancient Greece. Both Aristotle and Plato pondered over private and public realms of the good and present a view of the common good whose promotion supports the preservation of both individual and common interests (Etzioni, 2015). Throughout the Dark Ages, up to the 16th Century, some leading political philosophers such as Locke, Hobbes and More have exhibited the difference between the private and public good (Mansbridge, 1998). Arguing from a liberal stand point, Callan and White (2003) endorse the individual freedom for the citizens to lead their own lives while the task of the state is principally to protect each citizen's rights.

The holistic understanding of the public good shuns the overall subjection of the person to the state and the regard that the good of the whole society includes all its individual citizens. The private good of the individual citizens in a community forms part of the common good of all members in that community (Tattay, 2013). The state has the role of enabling and promoting the public good, but it cannot specify or impose its content to accomplish it (Argandona, 2011). In the mediaeval and ancient times, the understanding of the Aristotelian way of reflection was that the public and personal good existed in consonance without any conflict (Tattay, 2013).

Public education stands in-between two legitimate rights. A democratic society's right to protect its regeneration and continuity in democratic operation by means of the provision of a general prescribed values and learning, and the families' right to choose in which methods their children will be guided and the type of influence they will be open to (Levin, 1987). Different families have diverse social, political, religious beliefs and values. Some of these values may be incompatible with believes and values passed to children in public schools because of their private concerns (Levin, 1987). Different families may take their children to school for the purposes of reaping the many private benefits which accrue to educated people because of their level of education. Parents have a natural right to

supervise the education of their own children. Both the family and the state have a stake in education, and because of this interest, the question as to who has the sole right to supervise children arises (Fagothey, 1959).

Aristotle's teaching supports a public mode of education to all children (Politics, 1337a23). He advises that instruction should be provided publicly "... *since the whole city has one end, it is manifest that education should be one and the same for all...*" (Politics, 1337a23-24). This statement may sound contradictory; Aristotle means that it is up to each individual parent to determine what sort of education, most importantly ethical education, which their children should acquire (Mayhew, 1997). The role of the state is to set aims, criterion, come up with the curriculum, etc, but implementation of all these belongs to the parents (more so the father) since the parents are best placed to know the personal peculiar necessities of each of their children. In an ideal situation all parents should be able to make a choice from a variety in the provision of high-quality alternatives in education irrespective of their resources (Cato Institute, 2016).

Aristotle rejects Plato's common husbandry¹¹ in which Plato supports having wives and children in common for the guardian class, "...*the wives of our guardians¹² are to be common, and their children are to be common, and no parent is to know his own child, nor any child his parent....*" (Republic, 449d). Aristotle rather advocates for a diverse community which is unified by friendship so that it is secure against any factional division. Aristotle says that it is more promising to unify the community through civic institutions which foster friendships, institutions which bring all social groups together. He

¹¹ *Common husbandry/Socratic communism - Socrates' design of a state –a system of having children and wives in common so that "...all saying mine and not mine together...."* (Republic, 461e5-462c8; 463e1-464a10). Aristotle criticizes Plato "... *it is clear that as the city advances and becomes more one it will not be a city. For the city is by nature a certain multitude and becoming more one it will first be a household instead of a city and then a single human being instead of a household. .the household is more one than the city and the individual more one than the household. So if someone were able to do this they should not do it, for they would do away with the city...*" (Politics, 1261b16-22).It is not practicable to have wives and children in common "...*since in the republic described by Plato there will be the least possible necessity for people to care for one another as father for sons or as son for father or as brother for brother. For there are two things that most cause men to care for and to love each other, the sense of ownership and the sense of preciousness...*" (Politics, 1262b1-20).

¹² *Guardians-warriors, were supposed to renounce ownership of wealth, live together in common barracks; where they would share meals together. They will share women in common and for the female guardians' children would be taken shortly after birth to prevent bonding with the child* (Dr Richard M.Ebeling (2016). Ethics)

recommends having public schools (day schools) in which different children from the city can grow up together a few hours daily and it is “...*the sort of education which it is proper for the Guardians to have....*” (Politics, 1264b1-2).

Aristotle advises that a community can be made into a unity out of several societies unified through education (Politics, 1263b34-40). In his Politics he sees the legitimacy of the rule of law through a government to rest on a thorough education to prepare every citizen on a voluntarily basis to accept the demands of the law on their own independent individual judgment. And therefore it is “...*another kind of democracy for all the citizens that are not open to challenge to have a share in office, but for the law to rule; and another kind of democracy is for all to share in the offices on the mere qualification of being a citizen, but for the law to rule....*” (Politics, 1292a5; 1324b7). According to Aristotle “...*the best character is always a cause of a better political community...*” (Politics, 1137a16-17).

According to Aristotle all members of a community are different and cannot have the same character, “...*the goodness of all the citizens is not one and the same....*” (Politics, 1277a1). In the case that the citizens are of the same character because of receiving the same education, they will be unable to discern their defectiveness since they will have no point of equivalence. The citizens will also be unable to put aside their private interests in favour of the common good as they will all share the same self-interest. Aristotle differs with Socrates on his communism of wives, children and property because of his understanding that the common good is upheld when there is a diversity of members and a multitude of institutions in the community.

2.4 Freedom of education

The Platonic teaching on public education is that education at every stage; from basic to senior education is the responsibility of the state. The individual citizen mainly exists to serve the state “...*neither must we suppose that any one of the citizens belongs to himself, further they all belong to the state, and each of them a part of the state....*” (Politics, 1337a11). Aristotle criticizes the Socratic communism¹³ as presented in Plato’s Republic;

¹³ *Socratic communism- Socrates' design of a state is referred to as Socratic communism, where he makes a claim that for a society to be successful; every aspect of the society must work in harmony with all other*

he does not support Plato's teaching on the communism of wives, property and children. Aristotle further does not support Plato's communism in matters of education, he deemed this system as being too ideal; he sees it geared to indoctrination of parents and children so as to make them think and act as prescribed by the state and "...each speaks of one of his fellow-citizens who is prospering or getting on badly as 'my son' only in the sense of the fractional part which he forms of the whole number—that is, he says 'my son' or 'so-and-so's son,' specifying as the father any individual of the thousand citizens or whatever the number be of which the state consists, ..." (Politics, 1262a1-20). Aristotle calls attention to the impracticability of communizing children and wives, since people easily lose interest in the nurturing and in the education of children who they have not sired (Trepanier, 2000).

Aristotle in acknowledging the merits of both individual and common education; affirms that it is good that education is the aim of any given society (NE, 1180a24-30; Politics, 1337a21-33). By using an analogy from medical treatment (NE, 1180b7-13), he makes a recognition of the importance and necessity of individual instruction. He observes that an education which is suited to an individual is much better than public education for all. He reckons that the education which is adapted to the peculiarities of an individual is to a larger degree suited to a person's needs and the distinctive features of an individual person. The same way medical attention is directed to a particular person.

Socrates teaching on public possession of children induces the father's affection for his children weak. The community will take very little concern about their common fathers or children (Politics, 1262b15-24). Aristotle criticizes Socrates' proposals of communizing the household and ownership of wealthy. He proposes that the best government is one that recognizes plurality and individual ownership of wealthy (Dobbs, 1985). In accordance with his view, a father's endorsement of the law to his children increases the push of filial love and regard to the law's sanction (NE, 1180a18-24;

parts of the society. He lays emphasis on a censored education, the abolishment of family and class divisions. He proposes a form of communism for the ideal republic, where the guardian class share all women, children, and property and look after these collectively for the survival of the state by eliminating selfishness which accompany freedom

1180b3-7). Combining private and community participation in the care and supervision of education of children is the highest and best program (NE, 1180a29-b13). Socratic communism eliminates the combination of private family connections, and does away with the participation of the community and private partnership in the education of the children (Dobbs, 1984).

Education and religion are subjected to the function of sensing of right and wrong. Therefore protection of both on the significance of the doctrine that every person's individual moral sense is sacrosanct and must be protected is necessary (Otteson, 2000). There exists a strong relationship between the preservation of a person's freedom of moral sense and the capacity for one to live a genuinely happy life. Legislation alone can't lead people to live honestly happy lives, but indirectly, it can be used to institute unquestionable protections which allow citizens to advance and lead genuinely happy lives on their own. One of the greatest essential preservations is the preservation of one's freedom of moral sense of each person (Otteson, 2000).

The 1914 bulletin of the United States' Education Bureau says that common schools are there for the principal advantage of the state and not for the advantage of the private person. According to Smith (2012), this is the logic which was used to justify the compulsory attendance laws in the USA. The New Hampshire Supreme Court ruled in 1902 by saying that free instruction is not a right given to pupils but rather a duty imposed upon them for the common good, if children don't freely go to public schools put up for them, then they must be forced to attend. Most people may look at the common schools as the means of outstanding benefit to the pupils, the actuality remains that it is a government's means for defending the state from effects of an illiterate and unskilled population (Smith, 2012). Therefore, making decisions on how person should educate himself and his children arises from deep-seated beliefs on how a person ought to live his life and what is the composition of a beneficial life (Otteson, 2000).

Aristotle is convinced that the civic society is incapable of composing specific differences needed for a good education. The civic society is incapable of addressing those distinct necessities and claims of each child in his nurture. The household rule is necessary since

it has greater exactness when attention is individual and addressed to a specific case. In this case, each child is expected to get what is suitable to him since “...*paternal exhortations and family habits have authority in the household, just as legal enactments and national customs have authority in the state.....moreover individual treatment is better than a common system, in education as in medicine....*” (NE, 1180b11-13).

According to Aristotle, the best education is an education system that pays attention to the particular necessities of the person as long as it is being led by a person who possess law-making art, hence “.... *to mold aright the character of any and every person that presents himself is not a task that can be done by anybody, but only by the man with scientific knowledge, just as is the case in medicine and the other professions involving a system of treatment and the exercise of prudence...*” (NE, 1180b13-25). The civic society has a function in education and in accordance with the Aristotelian view, the political society can't substitute the domestic authority's function in education. The household is appropriate and better in guiding their children and friends to be virtuous since “.... *private attention gives more accurate results in particular cases, for the particular subject is more likely to get the treatment that suits him.... it would seem to be the duty of the individual to assist his own children and friends to attain virtue....*” (NE, 1180a31-34).

Trepanier (2014) while remarking on this excerpt from Aristotle's Nicomachean Ethics, asserts that the civic society lacks the overlooking effectiveness that the household has in their children's obedience, since “....*men are hated when they thwart people's inclinations, even though they do so rightly....*” (NE, 1180a31-34). The political authority does not have the approach to the internal power of motivation that the household has. The civic sanction tends to use force to command its subjects. While on the other hand the household instils habits that are interiorly actuated and which becomes part of a child's disposition. The civil society is required to uphold the domestic society instead of replacing it, especially in matters of education. The domestic authority must be elevated by the political authority. The golden mean between the political authority and the domestic authority by Aristotle is the complementarity in the contributions of both authorities in education. The plurality in institutions and their preservation helps to avoid the primordial tribalism in the political community and the civic indoctrination of the citizens (Trepanier, 2014).

The curricula and educational policies are extremely contingent on citizens' notions about influential deep affairs such as the nature of the human person, the excellent life and the right affinity within a community (Otterson, 2000). Each person has a right to preserve his beliefs about such important affairs as religion and similarly preserve and propagate these beliefs through education. Thus, an individual's convictions on matters of religious belief and educational training are built upon the same set of essential principle beliefs. In the mediaeval and ancient times, the Aristotelian reasoning was that the individual and the common good existed in congruity with one another and not in a state of discord (Tierney, 1997).

Since the times of Plato, the debate on the difference between the individual and common good has been going on. Plato says that “...more plentiful and better goods are more easily produced if each person does one thing for which he is naturally suited...” (Republic, 357a-368c, 368d). The whole political society that the family or multitude constitute has only the unity of order, therefore a part of the whole can have an operation which is not the operation of the whole just like a soldier in the army may have an activity that does not belong to the whole army, while on the other hand the whole army may not have an operation that is proper to each individual soldier but the whole army for instance a battle of the whole army. The private individual's good forms part of the common good, and therefore it cannot be excluded from the individual good (Aquinas commentary on the Ethics I, 5)

The private individual's good is part of the common good (Suarez, 1944). It is a fact that many people admit that the household and the polis have a stake in education. Therefore education is not only a function of the household, but also a function of the *polis*/state. The state is hierarchical in structure when viewed from an organic perspective. It is made up of families, individuals and discretionary partnerships which should be left to preserve their individuality, rights and operations while ordered to the common good by the state under the precept of subsidiarity (Fagothey, 1959). According to Aristotle the common good shuns the total subjection of the person to the state since the state's “.....unification proceeds will cease to be a state, and in another way, though it continues a state, yet by coming near to ceasing to be one it will be a worse state, ...the proper thing is for the

state, while being a multitude, to be made a partnership and a unity by means of education....” (Politics, 1263b37).

A good education should address private and as well as public interests. It should simultaneously address the private interests of families and students through the provision of a variety of modes of growth (Levin, 2000). Education in general and specifically elementary education, can be classified as both a private and a public good (Menashy, 2011). In what properly appertains to the family, the state should not interfere; the education function doesn't appertain to the state and the family autonomously and on the same level. Aristotle's golden average for education gives reasons why he criticizes Socratic communism as reported in Plato's Republic. Socrates in his communism prescribes a political unity in the polis which reduces it into a household, which according to Aristotle leads to the destruction of the political society and “...we should pronounce the family to be a more complete unity than the city, and the single person than the family; so that even if any lawgiver were able to unify the state, he must not do so, for he will destroy it in the process. And not only does a city consist of a multitude of human beings, it consists of human beings differing in kind.....” (Politics, 1261a21-22).

The Socratic communism's aim is to abolish the family and create a communal common education in order to boost political unity. Aristotle's proposition is that parents should remain with their children in order that the polis and the household can labour jointly to oversee them “....it would seem to be the duty of the individual to assist his own children and friends to attain virtue, or even if not able to do so successfully.....presumably a professor of boxing does not impose the same style of fighting on all his pupils.....”(NE, 1180a29-b13). Parents by nature are able to provide *philia*¹⁴ to their own children while

¹⁴ *Philia* (φιλία)/friendship/affection – in *Nicomachean Ethics*, Aristotle used the word *philia* to refer to brotherly love. Wanting good for another person what one thinks is good, for the other person's sake (NE, 1380b36–1381a2). Aristotle gives different meanings of the word *philia* for instance it refers to young lovers (NE,1156b2), lifelong friends (NE,1156b12), love between people of one city with one another city (NE,1157a26), love between political/business contacts (NE,1158a28), love between parents and their children (NE,1158b20), love for fellow-voyagers/fellow-soldiers (NE,1159b28), love between members of the same religious society (NE,1160a19), or of people from the same tribe (NE,1161b14) and love between a buyer and a seller (NE,1163b35).

on the other hand the political society provides laws that will support in supplementing the parental rule over children.

Parental support for laws aids the children's piety in regard to the political authority, "*....there should be a proper system of public regulation* (NE, 1180a18-24). Since "*....Paternal exhortations and family habits have authority in the household, just as legal enactments and national customs have authority in the state, and the more so on account of the ties of relationship and of benefits conferred that unite the head of the household to its other members: he can count on their natural affection and obedience at the outset....*" (NE, 1180b3-7). The political society lacks access to the interior principles of motivation of children which the parents have by nature. Therefore parents are able to provide a more robust education in respect to what the political society's laws can do (Trepanier, 2014).

Expanding further on Aristotle's critique of the Socrates' communism, good parents are able to instill in their children virtuous habits because of the children's natural affection for their parents. The parents know the distinctive context and situation of their own children which the political society can't (Trepanier, 2014). Mutually the family and the civil society strengthen each other in children's education. Aristotle supports a diversity not only within the household but also in the political society; plurality empowers the citizens in their education in political fairness.

2.5 Literature review

Plato says that "*....it is better for everyone to be ruled by divine reason, preferably within himself and his own, otherwise imposed from without...*" (Republic, 590d-91a)., Aristotle differs with Plato' on this statement, according to him even those who lack the potential for rational self-governance can and should be made better and happier by training, instruction and arrangements which may make them more responsible to reason and allow them to live more in compliance with it, slaves can participate in the polis's common advantage (Randal and Curren, 2000). Then "*...a question may indeed be raised, whether there is virtue at all in a slave beyond those of an instrument and a servant- whether he can have excellences of temperance, courage, justice, and the like; or whether slaves possess bodily services. And whichever way we answer the question, a difficulty arises;*

for if they have virtue in what will they differ from free men? On the other hand, since they are men and share in the rational principle it is absurd to say that they have no virtue. A similar question may be raised about women and children....” (Politics, 1259b21-310).

Aristotle characterises the terms ‘*natural slave*’ and ‘*slavish*’ (NE, 1095b19, 118a23-25), by using the word slavish he seems to suggest unresponsiveness to anything but force or the prospect of bodily pleasures (Randal and Curren, 2000). He says that “...*he who participates in reason enough to apprehend, but not to have is a slave by nature...*” (Politics, 1254b22-23). Those who rule and are ruled must have “...*a share of virtue....*” (Politics, 1260a3). The one having “...*virtue of the rational and the other of the irrational part*” (Politics, 1260a7-8). According to Randal and Curren (2000), Aristotle says that parts of the soul are not present in the same degree to free men (woman, children and natural slaves), but in different degrees. He further adds that “...*the slave has no deliberative faculty at all, the woman has, but it is without authority and the child has but it is immature.....*” (Politics, 1260a12-14). Therefore “...*a natural slave is to that extent not a wild animal, who can only be moved by force, for to obey well surely means to obey from desires which lead one to do willingly what the voice of reason commands...*” (Politics, 1254b10-12). According to him everybody needs education therefore “... *the master ought to be the source of virtue in the slave and not a mere possessor of the art of mastership which trains the slave in his functions. That is why they are mistaken who forbid us to converse with slaves, and say that we should employ command only, for slaves stand even in need of admonition more than children...*” (Politics, 1260b3-80).

Education is a political concern, Aristotle says in the politics that “...*a human being is by nature a political animal. That is why, even when they do not need one another’s help, people no less desire to live together to the extent that it contributes some share of noble living to each....*” (Politics, 1278b17-21). Accordingly he says that “...*the running of education is the function of the polis...*” (Politics, 1253a1-18). For many centuries, some kings, heads of state and legislatures have acted on the perception that controlling both education and religion is the answer to having authority over the people (Otteson, 2000). The Kenyan constitution of 2010 in part 3 (53a) states that it is obligatory for every child to have free basic education as a right (Republic of Kenya, 2010). Otteson further says

that it would seem that obligatory public education is categorically conducted and precisely for similar reason. Indeed it is noted that in America the present-day public education has its origins in the 16th Century endeavours by Protestant church leadership to compulsorily educate people in the right spiritual beliefs (Katz, 1976).

Aristotle says that “... *Since there is a single end for the city as a whole, it is evident that education must necessarily be one and the same for all, and that the superintendence¹⁵ of it should be common and not on a private basis....For common things the training too should be made common.....*”(Politics, 1337a21). A citizen is part of the state and “.....*one ought not even consider that a citizen belongs to himself but rather that all belong to the city; for each individual is part of the city.....*”(Politics, 1337a26). There is a common end for all in the state (*polis*), the objectives of an education system should help a given society to reach its common end but the means of reaching this end through education should not be uniform as the individuals constituting the state are different and therefore should be treated differently based on their individual peculiarities.

Aristotle is concerned about fairness; to enable all members in a given society to live well. This requires education to advance a sound collaboration in the endeavour of a participated governing; teaching diverse children together helps them to learn to live and regard everyone as peers (Curren, 2010). Aristotle expressly states that the instruction that suits the constitution is not an instruction that is favoured by leaders of an unfair government and “...*the greatest of all the means spoken of to secure the stability of constitutions is one that at present all people despise: it is a system of education suited to the constitutions....*” (Politics, 1310a12-25). Curren (2010) explains this extract from Aristotle’s Politics by observing that constitutions should be tailored to accommodate the needs of the citizens and not the needs of the rulers. Curren further affirms that the establishment of law and

¹⁵*Superintendence-The management or arrangement of an activity or organization/supervision-(en.oxforddictionaries.com). “...For it will possess the merit of both systems; the advantage of property being common and the advantage of its being private. For property ought to be common in a sense but private speaking absolutely. For the superintendence of properties being divided among the owners will not cause these mutual complaints, and will improve the more because each will apply himself to it as to private business of his own; while on the other hand virtue will be exercised to make 'friends' goods common goods...”(Politics, 1263a1-20).*

state are important for a suitable education for everybody. Curren observes that one viewpoint that is genuinely Aristotelian is that we are required to direct education to ascertain that which is advantageous for the individual person and on that foundation distinguish what is acceptable and suitable for prolongation through the school system (Curren, 2009). Then “... it is clear then that there should be legislation about education and that it should be conducted on a public system. But consideration must be given to the question, what constitutes education and what is the proper way to be educated...” (Politics, 1337a11).

Aristotle is a strong proponent of the double intention of education whereby the family represents a crucial function in the civilization of citizens, and the state plays the function of directing the aims of education. The education of the young should be the leading concern of the political society for the reason that they influence the persistence and perpetuation of the society and “...the legislator should direct his attention above all to the education of youth; for the neglect of education does harm to the constitution..... for each government has a peculiar character which originally formed and which continues to preserve it...” (Politics, 133a10-18). Aristotle contends that education must suit the particular aims of the civil society: education of the citizens for democracy and also for virtue “...since every political community is composed of rulers and subjects, we must therefore consider whether the rulers and the subjects ought to change, or to remain the same through life;their education also will have to be made to correspond with this distribution of functions... certain forms of preliminary education¹⁶ and training in their various operations are necessary so that manifestly this is also requisite in regard to the actions of virtue... the state may be successful in securing those goods which are in the control of fortune ...but when we come to the state's being virtuous, to secure this is not

¹⁶Preliminary education – a child should receive an intellectual formation corresponding to his level of development. A child/student who has not received the proper formation at his privileged age will be challenged to attain wisdom at an advanced age. When Aristotle says that a young man cannot be a philosopher he does not mean that a young person cannot be exposed to philosophy at an earlier age (Politics, 1282a1). It also refers to the education a child receives before starting formal schooling, which he gets at home or an earlier educational institution, which is mainly the responsibility of the parents.

the function of fortune but of science and policy...” (Politics, 1276b16-1277b32, 1337a10-21, 1332a33-34).

Aristotle asserts that the citizens cannot be alike in disposition in respect to virtue and “.....*all citizens cannot be alike, the virtue of the citizen and of the good man cannot coincide....*” (Politics, 1277a1). According to Aristotle the civic society is composed of diverse citizens the same way there are different goods in the citizen’s soul, and “... *the state is composed; and therefore the virtue of all the citizens cannot possibly be the same...*” (Politics, 125a1-31). Those who govern require a separate sort of education than those who are governed since “...*there is a special education for a ruler ... the education of a ruler must be different...*” (Politics, 1277a29-31). In his view, the household subsists as a division of the civil society, its particular virtue exists as a component of the virtue of the total. Since “... *the state is made up of households, before we speak of the state we must speak of the management of the household ...*” (Politics 126b8-24).

Aristotle supports both private and public education by embracing a plurality of institutions and a distinction (differentiation) of goods. He supports individual possession of wealth for both individuals and associations. He asserts that the use of wealth could be public while its ownership is private or both ownership and use could be made public and all “...*the members of a state must either have (1) all things or (2) nothing in common or (3) some things in common and some not*” (Politics, 1262b37-1263a3). According to Aristotle public ownership results to negligence and public use results to overuse, he stops short of commending that wealthy should be held private. He says “...*I do not think that property ought to be common... property is made common by virtue ...*” (politics, 1263a26-27; 1263a37-39). Right to private property guards brings about serenity and concord in any association of free people, it is the basis of a free society. Private or social liberty cannot be guaranteed in the absence of liberty in the use of one’s wealthy (Menger, 1871).

Aristotle did not advocate for the Socratic communism especially in matters of education, he saw it to be too idealistic. According to him, Socratic communism would ground parents and children in the doctrines of the state and would orient them to deliberate and behave as dictated by the government. In his politics, Aristotle asserts that education

should be regulated by statute law. He supports private education while likening it to individual medical care and individual possession of wealthy. He identifies the family and the government as the establishments that are involved in the educational management (Politics, 1269b19-22; 1270a16; 1271a30-35; 1270b7-10). He arrived at this decision since most of the city states in Greece during his time did not have sufficient provisions for paternal authority; the private authority of a person has neither the realization nor the commanding power of the law; because paternal coercion comprises of a system that expresses practical wisdom (*phronesis*)¹⁷ and understanding/discernment (*nous*)¹⁸ (NE,1143a8).

Aristotle's primary proposition on political philosophy is that the family and the city state are fundamentally separate/different communities, but they are affiliated through an innate teleology (Politics, 1252b9-39). This forms the foundation of Aristotle's criticism of Plato's disproportionate uniformity of the polis and the degeneration of the person. Aristotle critiques Plato's Republic on the communism of wives and children and the doing away with the individual ownership of wealthy (Politics, 1261a18-23). He uses the analogy of private medical care in medicine to defend private education by affirming that "...individuals can be best cared for by a doctor or gymnastic instructor or else who has the universal knowledge of what is good for everyone or for people of a certain kind..." He characterizes education as a kind of care, a skill (*techne*)¹⁹ which can be likened to the practice of medicine or gymnastic training based on a certain body of knowledge (*episteme*)²⁰. In the management of education, the general standards of education can be laid out by the government but separately the citizens have to be left to live and exercise

¹⁷Phronesis (φρόνησις)/wisdom/intelligence/practical wisdom – this word is related to: Ethics and deliberation about values with reference to action (Aquileana (2014). Aristotle's Three Types of Knowledge in The Nichomachean Ethics: "Techné, Episteme and Phronesis).

¹⁸ Nous (νοῦς) – practical interlinkage/common sense. In philosophy it means the mind/intellect

¹⁹ Techne/skill/art – "Since building is an art [techné] and is essentially a reasoned productive state, and since there is no art that is not a state of this kind, and no state of this kind that is not an art, it follows that art is the same as a productive state that is truly reasoned. Every art is concerned with bringing something into being, and the practice of an art is the study of how to bring into being something that is capable either of being or of not being..." (NE, 1140a1-23). Techne is "... a particular sort of knowledge of a particular sort of thing..." (Republic, 438c).

²⁰ Episteme – Aristotle uses the term episteme in two ways; one way he uses it to denote an organized body of knowledge and the other way is the soul of the person who has leaned a certain body of knowledge (NE, 1139a21-b5)

particular view of the general standards of education founded on their practical wisdom (NE, 1180b7-13).

Walsh (1997) argues that Aristotle does not give an explicit definition of freedom of education in his Politics and Nicomachean Ethics he only discusses freedom in metaphysics (982b25-26). However Aristotle defends private ownership of property, public and private education and the role of the family and state in education of the young in his politics and Nicomachean ethics which are the main contemporary issue in freedom of education. Aristotle's conservation of pluralism, particularly through the household, takes into account the internal needs of people which the political authority doesn't warrant. Aristotle provides for a civic education with a dual aim. Plurality of institutions and a variety of goods are essential for civic education to thrive (Trepanier, 2014).

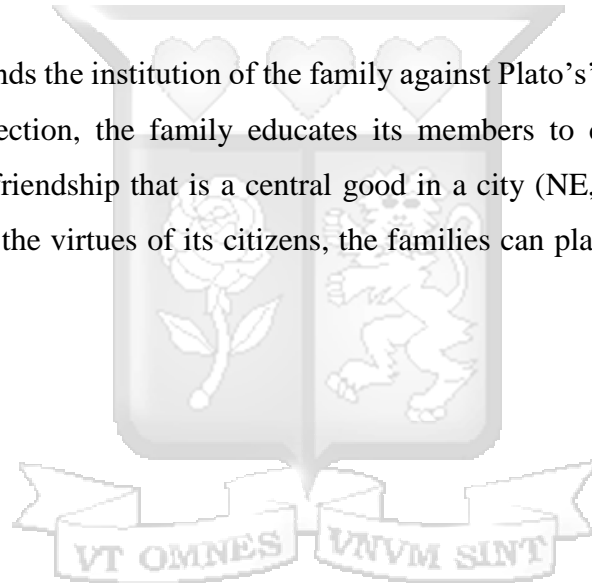
The two reasons advanced by Aristotle for public education are: living virtuously, which is not a light or pleasant thing for most people particularly when they are young; they need authority, sometimes harsh castigation which a loving father may not be willing to provide (NE, 1180a22-24). The second reason is the nature of knowledge: someone should have to be qualified to provide an education properly, contrary to what some may think in defending the family and private education. Providing a genuine education requires a specific knowledge, which not every family is capable of. Aristotle compares this knowledge to that of doctors and musicians (Desalaurieres et al, 2013).

2.6 Summary of Aristotle's ideas on Education

- 1) There is a function for state-run and private education in any community (NE 118a29-b13)
- 2) Moral education is a public concern (1180a29-b13) but a function of the family (NE, 1103b23-5).
- 3) For the Aristotelian way of thinking, the common and individual good was seen existing in harmony with one another rather than in a state of conflict (Tierney, 1997).
- 4) Aristotle defends the right of household to own private property to meet its private

provisions. Aristotle's household is wider than a nuclear family; it is interpreted in this research to include voluntary institutions that provide education (Politics, 1262b37-1263a3, 1263a37-39, 126a26-27).

- 5) There has to be a plurality in the provision of education with the household complementing what the state can offer (Politics, 1252b22-23; NE, 1180a24-29).
- 6) Aristotle does not give an explicit definition of freedom of education in his Politics and Nicomachean Ethics: he only discusses freedom in Metaphysics (982b25-26). This research will work with his ideas on public/education and the role of the family and state.
- 7) Aristotle defends the institution of the family against Plato's' common husbandry. Due to natural affection, the family educates its members to care for one another and cultivate the friendship that is a central good in a city (NE, 1180b3-7). Where a city fails to foster the virtues of its citizens, the families can play this role (NE, 1180a30-32).



CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter presents the research methodology used for the study, i.e. research design, data collection techniques and analysis, validity of the research, reliability of the research, objectivity of the research and ethical considerations.

3.2 Research design

A research design is the plan or proposal to conduct research; it involves the intersection of philosophy, strategies of inquiry, and specific method (Creswell, 1994). According to Muaz (2013), a research design refers to the logical structure of the inquiry; it articulates what data is required, from whom, and how it is going to answer the research question.

3.3 Sampling procedure

There are greater components of a qualitative research; in the midst of them are data which can be sourced from various origins such as, documents, records, observations, interviews and films (Strauss and Corbin, 1987). There are various processes that a researcher can use to make clear and arrange the data; elaborating categories in terms of their properties and dimensions, conceptualizing and reducing data and relating through prepositional statements (Strauss and Corbin, 1987). This research adopted a content analysis for qualitative data. The main document that was investigated was the Basic Education Act No. 14 of 2013.

3.4 Data collection techniques and analysis.

Only qualitative data was selected from the Basic Education Act that was investigated in this research. The document that was studied was the Basic Education Act No. 14 of 2013. This document was studied from the perspective of whether it supports plurality of education in Kenya. According to Kohlbacher (2005) the major elements of content analysis are: content of text components, latent structures of sense, distinctive particular cases and things that do appear in the text. Accordingly, this research had the following design: The research questions had a text-grounding in Aristotle's works or that of his

commentators, and in the Basic Education Act No. 14 of 2013, a latent context-grounding, together with a reference to exceptional cases and explicit commentaries on them.

Research Questions and BEA 2013	Text components	Latent structures	Individual cases	Things that do appear
RQ1 Aristotelian view on public education BEA PART II,III	(1) Adult, (2)cabinet secretary, (3)person, (4)community, (5)manager, (6)parent, (7)skills, (8)head teacher, (9)knowledge, (10)attitudes, (11)curriculum, (12)basic education, (13)accreditation, (14)county education board, (15)director general, (16)education appeals tribunal, institution of basic education and training(17), (18)national education board, (19)principal, (20)professional teacher, (21)school, special education needs(22), provision of the basic education(23), guiding values and principles(24), continuing education(25), county education committee(26).	(1)There is no distinction between private and public education, parents, and voluntary institutions like churches and trusts which play a great role in private and public education are not mentioned. (2)Running of education, is a function of the cabinet secretary. (3)The National education Board, assumes the role of management institutions (4)Parents and voluntary institutions that run schools are not mentioned anywhere in the development of the curriculum. (5)There is no mention of parents in the constitution of county education board, (6)Parents have no say in the running of schools	<i>“Subject to subsection (1), the Cabinet Secretary shall accredit curriculum development agencies for all levels and programmes on the basis of approved criteria”</i>	Education is a function of the state under the national education board and County Education Board. According to the Act, Education is a concern of the state and not a common concern of all agents of education
RQ2 BEA & Aristotelian view on private education BEA PART II, III, IV	(1)The role of sponsor(mentioned once),(2)parent(mentioned 8 times), (3) child (mentioned 5 times),(4) free and compulsory education (mentioned twice), (5)admission to a basic education institution(mentioned once), (6)child rights institutions (mentioned once), (7)teachers’ trade unions (mentioned once),(8) cabinet secretary(mentioned 32 times), (9) national education board(mentioned 9 times), (10)county education boards (mentioned 24 times),(11)basic education, education, (12)human rights(mentioned once), (13)chapter six of the constitution(mentioned 4	(1)There is no mention of other providers of education apart from the government, therefore stifling choice on the part of parents. (2)The management of education adopted is a top-down rather than a down-up approach.	(1) “All immovable and movable property and assets which immediately before the commencement of this Act were vested in, or possessed by the No. 14 of 2013 Basic Education [Rev. 2017] 44”	No clear distinction between private and public education

	times), (14) service commission (mentioned 3 times)			
RQ3 Aristotelian view on the role of parents in their children's education BEA PART V, VI, VII, VIII	(1)Cabinet Secretary(mentioned 19 times) , (2)National Education Board (mentioned 5 times), (3)government, public schools (mentioned 4 times), (4)private schools(mentioned 9 times),(5)Registration of a private school(mentioned once), (6)curriculum(mentioned 6 times), (7)county education boards(mentioned 12 times), (8)director general(mentioned 4 times), (9)Establishment of private schools (mentioned once), (10)Right to attend a private school (mentioned one), (11)Duties and rights of a private school(mentioned once), (12)Board of management(mentioned 15 times), (13)Composition of Board of Management	(1)Parents and private providers of education don't have a say on the content of the curriculum. (2)They are recipients rather than the main actors in education. that parents are responsible for their children's (3)moral education, education is entirely under government control under the basic education of 2013	Moral education is the responsibility of the parents, the act does not mention this role. Under the Aristotelian view, parents are responsible for the moral education of their children from preschool to higher education. The society in which a school is established has a role in education, the act does not mention these roles.	Education is entirely in the hands of the government, parents have no say in matters of the content of the curriculum
RQ4 BEA & Aristotelian view on the role of state in education BEA PART II,III,IV,VI, X,X	(1)Cabinet secretary (Mentioned,14 times), (2) educational standards and quality assurance council (mentioned 8 times) (3) director general (mentioned 3 times) (4) county education boards (mentioned 10 times) (5)national education board (mentioned 3 times),(6) principle secretary (mentioned) (7)curriculum (mentioned) (8) persons and institutions of basic education and research (mentioned once), (9) school property (mentioned once)	(1)Parents should be responsible for the Basic education of their children and the state should be responsible for higher education, still parents should be responsible for the moral education of their children. In the act, this role has been taken away from the parents and given to the government	The state has a role in education but it is not the only agent of education, the basic education act does not give the roles of parents and other voluntary institutions that provide basic education	There is over-representation of the state in education, parents are not mentioned as main educators, the curriculum is not defined in terms of content, the purpose of education is not defined in the Act
RQ4 Plurality of education in Kenya PART V – PART VIII	(1)Cabinet secretary (mentioned 9 times), National Education Board, relevant stakeholders, technical, vocational and talent public schools, Private schools, special needs education, management of special schools and institutions, Education. Governance and management of education and training, Structures of governance and management in education, Board of management, Composition of Board of Management, Functions of a Management Committee of pre-primary institution, Functions of the Board of Management, , Committees of the Board of Management of a basic education institution, Secretary to the Board of Management, Remuneration of the members of the Board of Management, Promotion of education,	(1)The act treats all schools as public schools and give too much discretion to cabinet secretary on management of education	The act only gives two categories of schools, private and public yet there are more categories of schools. There is home schooling or schools of a religious nature (junior seminaries)	Other forms of schooling are not mentioned, there is no clear distinction between private and public school and a lot of powers are given to the cabinet secretary

RQ4 BEA & the rights of voluntary institutions in the provision of education – PART III & VII	County education board, TSC, board of management, cabinet secretary, county director of education, county governor, representative of religious organizations, representative of private schools, representative of teachers union, proprietor, registration, manager, private school	(1)There is no clear distinction between the various sponsors of schools all of them are lumped together and yet there are sponsors of a religious nature, community sponsors and sponsors on whose land a school is constructed	“A school or person responsible for admission shall not discriminate against any child seeking admission on any ground, including ethnicity, gender, sex, religion, race, colour or social origin, age, disability, language or culture”	The definition of sponsors does not take into account the various sponsors of school; they are simply classified as one
RQ5 Is there plurality of education in Kenya in the light of BEA? – PART IX,V,X	Registration of institution of basic education quality assurance, county education board, cabinet secretary, registration fees, accreditation, Kenya national examinations act, auditing, “A person may not use any premises or facilities to provide education and training through face to face, open distant or electronic learning or any other mode of delivery unless the institution has undergone quality review and approved in accordance with this Act”	(1)On quality and standards, registration of institution of basic education and registration of proprietors, there is too much government control	It is illegal to give basic education by other means not recognized in the Basic education act	Does not recognize other forms of schooling like home schooling

3.4.1 Summary of the Kohlbacher content analysis of the Basic Education Act no. 14 of 2013

- i. There is no distinction between public and private education
- ii. The management of education is totally under the government
- iii. There is too much powers given to the Cabinet Secretary
- iv. The Basic Education Act creates multiple positions that will bring on board non actors in the education sector
- v. The curriculum is a function of the government, it controls religious and moral education, parents and other players with an interest in education have no say on the content of moral education
- vi. The National Education Board assumes the management of all education institutions
- vii. There is no distinction between the various sponsors of schools
- viii. Other forms of schooling are not mentioned like home schooling
- ix. The Act is so rigid, there is no room for parents and other players in the education sector to opt out of the state curriculum if it does not meet their needs

- x. The Act takes away property of schools including those that are owned privately and gives them to the County Education Boards against the right to private property (Kenya Basic Education Act No.14 of 2013, Part III, 100 (1) and (2).
- xi. The registration process of a school discriminates against private institutions
These issues formed the basis of the discussion in chapter five of this research from an Aristotelian perspective.

3.5 Validity of the research

A qualitative research concerns itself with words and meaning and takes the view of the participants into consideration; the researcher is close to the social reality and therefore the gap between reality and representation is reduced (Ali, 2012). Validity is the result and culmination of other empirical conceptions into universal laws, evidence, objectivity, truth, actuality, deduction, reason and fact (Winter, 2000).

3.6 Reliability of the research

A good qualitative research helps to understand a situation that would otherwise be enigmatic or confusing (Eisner, 1991). In qualitative paradigms the terms Credibility, Neutrality or Conformability, Consistency or Dependability and Applicability or Transferability are to be the essential criteria for quality (Lincoln & Guba, 1985). This research was conducted with the main objective of generating understanding regarding the Basic Education Act No. 14 of 2013 and the Ethics behind its enactment and as to whether it supports plurality of education in Kenya in its current draft.

3.7 Objectivity of the research

In research, objectivity is an assumption that a truth or independent reality exists outside of any investigation or observation. In this research, the realistic aim for the researcher was to remain impartial to the outcome of this research, to acknowledge his own preconceptions so as to operate in an unbiased and value-free way as possible.

3.8 Ethical considerations

All the data obtained for this research was utilized for purposes of this study only. The researcher adhered to the European University Institute's Codes of Ethics in academic

research of Honesty, Trust, Fairness, Respect, Responsibility, Legality and Communication (European University, 2013).



CHAPTER FOUR

PRESENTATION OF RESEARCH FINDINGS

4.1 Introduction

This chapter explains the findings with regard to the stated research questions. This chapter presents results of the study of the Kenya Education Act No. 14 of 2013. The study is a qualitative analysis of the provisions of the Basic Education Act in line with Aristotle's ideas on educational plurality and freedom of education in Kenya after the passing of the Basic Education Act no.14 of 2013.

4.2 background to the Basic Education Act No. 14 of 2013

In 1924, the Phelps-Stokes Commission advised that Christian missionaries run the African schools and the government increase aid to these schools and supervise them. As well as moral and religious instruction the report pointed out the significance of moral development besides a school atmosphere which reflect an interest in character development. The missionaries and the Phelps stock Commission observed that the colonial government taxed the Africans highly but gave them very poor education among other services in return (Muhoho 1970).

The increase in subsidies improved funding to African schools but the Catholic missionaries feared that would lead to the colonial government controlling the education syllabus which they feared will lead to unwelcome developments. Because of this fear, the Catholic Missionaries withdrew from the government grants-aid scheme in 1918 leading to a worsening in the relationship with the education office of the colonial government. A struggle between the colonial government and the Catholic missionaries on the right of control of schools continued throughout the colonial period (Sifuna, 1980). Monsignor Arthur Hinsley, the papal delegate to English-speaking Africa in his visit of 1928-1929, suggested that Catholic missions should concentrate more on schools than on churches (Njoroge, 1999). Monsignor Arthur Hinsley's view was that having control of the mission schools by the missionaries would be key to subsequent chances of evangelization (Philomena and Churu, 2008).

The Education Act, chapter 211 enacted in 1968 transferred schools formerly run by the church (catholic and protestant) and placed them under government management; the churches were regarded as sponsors (religious) of these schools. Schools that were under the management of local authorities were placed under school management committees while other schools (aided or maintained schools) were placed under management boards whose members were appointed by the local authorities.

In August 2010, Kenya adopted a new constitution; it is on this basis that the government formed a task force on the re-alignment of the education sector to the constitution of Kenya 2010 in Feb. 2012. The government formed a task force to align the running of Basic Education in Kenya to enforce article 53(b) of the constitution which makes a provision for a free and mandatory education for all children in Kenya. The task force drafted the Basic Education Act No.14 of 2013 which will transform the education sector in Kenya when implemented in full. The definitions below as stated in the basic education Act are of interest to this research in line with the Aristotelian interpretation of the Basic Education Act.

4.3 The structure of the Basic Education Act no.14. of 2013

Part i – preliminary

Part ii – establishment, powers and functions of the national education board

Part iii – county education boards

Part iv – free and compulsory education

Part v – systems and structure of basic education

Part viii – governance and management of basic education and training

Part ix – standards, quality and relevance

Part x – licensing, registration and accreditation procedures in basic education and training

Part xi – financial provisions

Part xii – general provisions

Part xiii – repeal, savings and transitional provisions

4.4 Comparison between the Aristotelian ideas on education with the Kenya Basic Education Act No. 14 of 2013

(i) Definitions in the Act relevant to the study

One of the most important provision of the Basic Education Act is section II, where definitions used to interpret the key terms of the Kenya Basic Education Act No.14 of 2013 are found. Some of the key terms relevant to the study are discussed below comparing them with the Aristotelian perspective.

(ii) Child

The Basic Education Act no. 14 of 2013 (Part I, 2) defines a child as “... *an individual who has not attained the age of eighteen years*”. The Aristotelian view is from a content perspective and not the age of the learner. Aristotle in his Politics and Nicomachean Ethics lays emphasis on the attainment of moral and intellectual virtues, which go together and are necessary for a person to attain self-fulfillment. The Kenya Basic Education Act No. 14 of 2013 lays emphasis on the attainment of intellectual virtues only, which in the Aristotelian view is defective as both are necessary for any person of whatever age to live a good life (NE, 1103b25).

The Aristotelian perspective looks at the content which a person receives for the purpose of living well in society (*Eudaimonia*). Aristotle does not look at the age of the person rather at what is necessary for living well in society, education has a purpose of helping a person acquire virtue. The Aristotelian view distinguishes intellectual virtue and moral virtue, Aristotle says both are necessary for living well in society (Politics, 1143b8-9; 1145a1-2). They are necessary for a person to live a life of contemplation. The Kenya Basic Education Act No.14 of 2013 does not reflect this meaning of Aristotle. Aristotle only talks of parents educating their children at home first before handing them over to other people but still they must continue educating them in moral education. There is a contrast between the Aristotelian view and the Basic Education Act No. 14 of 2013, which does not lay emphasis on a person becoming better by receiving education but by acquiring both intellectual and moral virtues.

(iii) Basic education

The Basic Education Act No. 14 of 2013 (part I, 52), defines basic education as “.... *the educational programmes offered and imparted to a person in an institution of basic education and includes adult basic education and education offered in pre-primary educational institutions and centres*” which in the Aristotelian interpretation is different. The Aristotelian view goes beyond the structured content that is included in the curriculum and taught within the walls of the school. The Aristotelean view is that the *polis*/state is a school and basic education is what is necessary for one to lead a virtuous life (*Eudaimonia*) in whatever he does. The scope of the basic education is wider and involves the family and other institutions in the wider society, in short it involves everybody who shares in the aims of education as ordained by nature and vested on the natural family

The Kenya Basic Education Act No. 14 of 2013 differs from the Aristotelian perspective which emphasizes on an education that is continuous and involves all in the *polis*/city state to participate since they share a common end. All associations within the polis starting with the family have a stake in educating the young people. Basic Education goes beyond what is taught in school, the aims of education are enshrined in the aims of the wider society.

(iv) Curriculum

In the Basic Education Act No.14. of 2013 (part I, 52), a curriculum “*means all the approved subjects taught or programmes offered and includes all the activities provided at any institution of basic education*”. The Aristotelian curriculum does not refer only to what is taught at school. It covers intangible aspects of the curriculum which are learned through observation and piety: for instance in the Politics Aristotle talks of the father of a family out of *philia* has to educate his children. There is a basic content that is covered in order to help a person achieve contemplation of the truth, the curriculum does not cover everything but prepares a person for the higher truths.

Aristotle’s curriculum is meant to train a person in good habits for instance a person has to be educated on how to control his passions (NE, 1172a19-4a12). All that a person ought to learn cannot fit in the curriculum, some content is contained in the Ethos of the *polis*.

The content contained in the curriculum is meant to attain certain ends in the polis (Politics, 1337b1; 1337b26-7; 1338a19-20; 1338a15-17). In contrast, the Kenya Basic Education Act No. 14 of 2013 lays emphasis on the written down content and on the people to implement the curriculum. In the Aristotelian view the whole community with its plethora of institutions lays down the curriculum. There is content that parents don't have the expertise in and the state comes in to help. For moral education, the responsibility of coming up with the content belongs to the parents.

(v) Head Teacher Manager, principle and Cabinet Secretary

The Kenya Basic Eduaton Act No. 14 of 2013 defines the Head Teacher as “...*The lead adminstrator or educator in a primary school and includes a manager of a private school who is charged with the responsibility of implementing educational policy guidelines....*”, an Education Manager as “...*a person who has been appointed by the Cabinet Secretary in consultation with the proprietor through regulations to coordinate and oversee implementation of education policies....*” and Cabinet Secretary meaning “...*the person for the time being responsible for matters relating to basic education and training*”. These definitions in the Aristotelean perspective will have the meaning of the head of the household (the many associations formed for the purpose of providing education). The head of the household does not only have a responsibility of governing the functions of education entrusted to him but should have *philia* for those he governs.

The Aristotelian view does not look at the administrators of education who are paid a salary but heads of a household which has a definition wide enough to include all those who head associations interested in education whose foundation is the natural family. The household head has *philia* for those he heads which is not the case in the Kenya Basic Education Act No. 14 of 2013. The household educates its members because of the bonds of love that exist between people who have the same lineage. The political society may not have the same aims for education as the natural family. The Basic Education Act falls short in this aspect of *philia* in the Aristotelian perspective.

(vi) Institution of basic education and training/school

The Kenya Basic Education Act No.14 of 2013 defines and institution of Basic Education and Training as “.....a public or private institution or facility used wholly or partly, regularly or periodically for conducting basic education and training and includes a school, a tuition facility, an educational centre, an academy, a research institution, a school correctional facility or a borstal institution” which differs from the Aristotelian perspective which views the whole society/*polis*/city state as an institution involved in the education process. Aristotle’s idea of a school refers to the whole learning environment and not just the structure of a school, in a nut shell he refers to the whole society, the participation of the parents and other members of the household (church groups and other private associations, etc.) is crucial, the whole cannot exist without the parts (Politics, 1252b15-16, 27–30; 1253a15-18).

The Kenya Basic Education Act ignores the complimentary role that private institutions play in the provision of education. There are aspects of educational provision that the government cannot manage and therefore families and other private associations/ institution came in to bridge. Education is not only a function of the government, but also of private institutions that have private interests. Not every family can afford private education but private education is necessary to complement government efforts to provide education. The private interest of families are many, education is not only provided at school, but also in the wider society, in the Aristotelian view.

(vii) A parent

The Kenya Basic Education Act No. 14 of 2013 defines a parent as “.... a mother, father or guardian of a child and includes any person who is responsible under the law to maintain a child or is entitled to a child’s custody”. In the Aristotelian view education is a function of institutions not individuals, the basic institution of society is the natural family that is responsible for the education of its members. Aristotle in his Politics discusses the unification of those that are contrary i.e. man and woman, and he discusses the purpose of their unification in the education of their offspring (Politics, 1252a26-28). The definition given in the Kenya Basic Education Act No. 14 of 2013 gives room for

inclusion of other “families” which are not natural, thus manipulating the Aristotelian view of the natural family as ordained by nature.

Man has an inclination to live in a community (Politics, 1253a2-3; 253a29-30). The first community man has an inclination to live in is the family and several families and clans make up the *polis*, the family naturally educates its members. Aristotle recognizes the necessity of family as the basis for a community, he does not discuss the significance of the individual in relation to the education given to the young. The Kenya Basic Education Act No. 14 of 2013 by not defining the natural family falls short of the Aristotelian view of education as a function of institutions and not individuals. The definition of parent is prone to manipulation and may accommodate other definitions of a family against the natural family as ordained by nature.

(viii) A private school

A private school in the Aristotelian perspective has the meaning of private instruction which a child may receive at home or in a formal institution (Politics, 133a21-26; NE, 1180b7-13). Public instruction may not be enough based on individual needs of a child. The parents may opt to hire a person with special skills to instruct their child to have certain skills or enrol him in a private institution. The Kenya Basic Education Act No. 14 of 2013 defines a private school as “*a means a school established, owned or operated by private individuals, entrepreneurs and institutions*”. This definition does not reflect the Aristotelian view which means the private instruction that is given to an individual child as per the desires of his parents, may or may not be contained in the official public curriculum.

(ix) Sponsor

The Kenya Basic Education Act No. 14 of 2013 defines a sponsor as “... *a person or institution who makes a significant contribution and impact on academic, financial, infrastructural and spiritual development of an institution of basic education*”. The definition falls short of the Aristotelian household whose foundation is the family. The definition of Aristotle’s household is big enough to include smaller units within the state

that have an interest in education. Institutions like trusts, or religious institutions fit in the definition of household.

The Basic Education Act defines the key terms from a political authority's perspective. Education is first and foremost the function of the family before it is a function of the state. Aristotle's perspective on education is that all associations that help the family educate its members should be recognized and assisted by the state and not assumed by the state. The Kenya Basic Education Act No. 14 of 2013 does not take this into account.



CHAPTER FIVE

DISCUSSION

5.1 Introduction

The Basic Education Act No. 14 of 2013 as approved by the Cabinet in August 2012, will change the running of education in Kenya, its approval brings some ethical issues into focus. The process of transforming education has been going on for some time, led by the Ministry of Education together with some of the key stakeholders in education. This section discusses the contradictions between the Aristotelian ideas on the participation of the state and the private associations whose foundation is the basic association of the natural family.

5.2 The role of public education

A common education equalizes people by giving them things in common and a common enterprise “...*democracy appears most fully in households without a master, for in them all members are equal....it is natural for the father to rule his children, and forefathers those descended from them...*”(NE, 1161a31-b10). Public supervision of education is not only necessary for the common end of any given society “...*since the whole city has a common end education should be one and the same for all....training in things that are of common should be made common.....*” (Politics, 1337a21-27). Public supervision of education is also a necessary condition for a just society, it creates educational equality but does not legitimize state monopoly in providing schooling to everyone, some private schemes are compatible with this result by complimenting government efforts. In a specific sense “justice” means “equality” or “fairness”, to everybody which comprises distributive justice, for different citizens in the *polis*/city-state. Every person in the *polis* has a right to a just claim to personal wealthy (Clayton, 2014).

The education of a child is thought to begin on the first day of life and not when a child starts formal schooling. The education of the passions of the child are required to be taken into account in order for his education to succeed. Neiman (1995) commenting on Aristotle, says that the aim of education in general is to make a child become like the adults around him, therefore, both parents and teachers in the child’s school must commit to a constant conflict with the affective life of the child. Therefore “...*the friendship which*

parents have for their children is not the same as that which a ruler has for his subjects, and even the friendship of a father for his son is different from that of the son for his father...the friendship of a father [for his children] is of the same kind, but it differs in the magnitude of benefits bestowed. For he is the author of their being, which is regarded as the greatest good, and he is responsible for maintaining and educating them..."(NE, 1158b14). The parents' responsibility for their children's education does not only refer formal education, but their moral education as well. The moral education of children is strictly the parents primary duty, formal education begins later at about the age of seven years, the parents moral education of their children starts at birth. The household prepares its members for their life in the state (*polis*) by means of friendship within the household (Freccia, 2015).

Aristotle analyses five ways in which the soul arrives at truth, the "*...virtue of which the soul possess the truth by way of affirmation or denial are five in number, ie. art, scientific knowledge, practical wisdom, philosophical wisdom, intuitive reason.....*"(NE, 1139b-1141a).The Aristotelian aim of education is to teach the rational and ethical virtues essential for right action (Neiman, 1995). And "*...the statesman therefore must legislate with all these considerations in view, both in respect of the parts of the soul and of their activities, and aiming more particularly at the greater goods and the ends. And the same principle applies in regard to modes of life and choices of conduct: a man should be capable of engaging in business, and war, but still more capable of living in peace and leisure; and he should do what is necessary and useful, but still more should he do what is noble. These then are the aims that ought to be kept in view in the education of the citizens both while still children and at the later ages that require education...*" (Politics, 1333a9).

Aristotle's definition of education has a universal concept which is not static, it goes beyond what is taught in school "*.....it is plain that education by habit must come before education by reason, and training of the body before training of the mind.....*" (Politics, 1338b1-2). Education should produce a person who is "*.....more capable of living in peace and leisure; and he should do what is necessary and useful, but still more should he do what is noble. These then are the aims that ought to be kept in view in the education*

of the citizens both while still children and at the later ages that require education.....”
(Politics, 1333b1).

Based on Aristotle’s idea of habituation of children in morals while young, this interpretation can also be applied to children being manipulated by habituation in an undesirable ways by force; children’s powers of reason take time to develop, until their powers have developed children remain vulnerable to manipulation (Politics, 1337a23-24), especially those enrolled in public schools. In this Aristotelian definition of education, the state is not the main agent of education, parents have a role in the education of their children especially at the early stages of education (Politics, 1333a21-26).

St. Thomas Aquinas’ explanation of Aristotle’s political society is that the whole does not possess a total unity but a unit of order (NE, 1094a1-18). His commentary on Aristotle’s politics that “...*the state is a partnership of families and of clans in living well, and its object is a full and independent life...*” (Politics, 1280b) disagrees with the idea that the household provides the essentials of life and the polis is directed to the necessities of a good life. Which implies a connection of inferiority/superiority between the household and the *polis*. This doesn’t do justice to the common good which the principle of subsidiarity assigns to the many and varied social forms of which the state is constituted (ScG I.9.1; I.3.2 and I.7.3). One of the Aristotelian lessons about schools is that it is very easy to undermine their mission and right role in preparing the basis for voluntary intellectual reception of the proper demands of law. We rely on education but resort to supervision and force in an attempt to make a good order within the schools (Curren, 2000).

Some key issues raised in education by groups (gender, race, social class, disability and sexuality) show how a system of education can be used to damage a whole society or a large number of individuals within it. Education just like other goods (health, family life, wisdom, etc.) belongs to individuals, but it also belongs to all members of a given society. The government or privileged individuals cannot impose a damaging competitive system of education. A just society has to resolve the possible conflict between benefits of education for individuals and the community to the satisfaction of both (Morwenna, 2003).

5.3 The role of private education and right to private property

One of Aristotle's treatise is on justice (NE, 1129b11-19, Politics, 1282b16-17). Aristotle defends what he calls common advantage and happiness of a political community. In his treatise Aristotle defends individual persons or group of persons to have a fair claim to private property and education (Politics, 1329a23-4, 1332a32-8). A group of people (families, voluntary institutions trusts, etc) can come together and start a school or private schools to educate their children. They necessarily have a claim to the property on which a private school is established. The common advantage of every citizen is that each is free to own property and to access ad an education that suits him (Politics, 1329a23-4; 1332a32-8).

Aristotle rejects the Socratic idea of having things in common, as property held in common tends to result in neglect, abuse, and overconsumption (Politics, 1262b37-1263a3). Property should be privately owned but used publicly (Politics, 1263a26-27, 1263a37-39). The basis of Aristotle's critique of Plato's communism is the abolition of the right to private property (Politics, 1263a26-27, 1263a37-39). *"....There is the least concern for what is common (koinon), but the most care for the private...."* (Politics, 1261b34-3). Aristotle saw the right to private ownership of property as inherent in the moral order. Aristotle Criticized Plato's preference for common ownership of property.

The Kenya Basic Education Act no.14 of 2013 goes against the right to own private property, in part XIII, 100 (1) it creates a provision which takes private property owned by trusts and private individuals and puts them under the management of institutions created in the Act. Under the Act, private property, movable and immovable, is taken away from legal owners and given to government entities assigned the function of running education. This goes against the natural right to own private property.

5.4 Concern for moral education

The responsibility of the parents is the moral education of their children. Education is first and foremost a function of the family (community, household) before it is a function of the state (polis) since the state is a union of families and villages (Politics, 1263b37; NE, 1180a30-32). The evils that Plato would eliminate from the polis (state) by abolishing

individual life are better treated by the education of persons privately (Vernon, 2001). Aristotle says that “.....*the proper love of self creates community, the improper love of self destroys it.....*” (Politics, 1263b2-5; 1263b22).

Aristotle defends education as being first a function of the family before it is a function of the state since the state is a union of families and villages (Politics, 1263b37; NE, 1180a30-32). More so he says that moral education is the function of the family right from basic to higher education, parents have to be responsible for the education of their children, if for whatever reason the state fails to fulfill what the parents want in the education of their children, then families will naturally take up this responsibility and educate their children, “...*it is best that there should be a public and proper care for such matters; but if they are neglected by the community it would seem right for each man to help his children and friends towards virtue, and that they should have the power, or at least the will, to do this*” (NE, 1180a25). He asserts that “.....*the state (polis) is by nature clearly prior to the household and to each of us individually* (Politics, 1253a19)....For the whole must necessarily be prior to the part..... (Politics, 1253a20). The family as an institution is “.....*earlier and more necessary than the city.....*” (Politics, 1253b18), this fact is natural since “.....*man is by nature more inclined to live in couples than to live as a social and political being, inasmuch as the household is earlier and more indispensable than the state,.....*”(NE, 1162a17).

The natural family is the main agent of education as “...*it is necessary to tie together those unable to exist without the other, such as the female and the male on account of generation...*” (Politics, 1252a26-28). This is “.....*a necessity required by nature, since the race of creatures which are separated into male and female has got to be kept in being...*” (Politics, 1252a20). A natural society develops “....*when several villages are united in a single community, large enough to be nearly or quite self-sufficing, the state comes into existence, originating in the bare needs of life, and continuing in existence for the sake of a good life.....*” (Politics, 1280a31): one of the needs of the natural society is the education of its members. Aristotle’s teaching is that the family is the primary social unit of any society (Politics, 1252b), families have a transformative power on persons and on the

bigger society. A family teaches responsibility to its members; a virtue that is essential for a fair and good society (Trepanier, 2014).

Moral education is properly the function of the family and secondly of the private institutions that constitute the *polis* (city-state) because of the natural diversity of values and the repression that may be a consequence of trying to get rid of diversity, together with the possible traps of investing the power to regulate moral education in the hands of public officials (Miller, 1995). Legal reform can be an effective tool of moral progress on the understanding that ordering towards an end needs a directing authority which must consider by testing the usefulness of possible rules and determine which is most appropriate to be law (Politics, 1253a30-39; 1269a14-23).

The development of a person's character should be left to him, with assistance from his family, religion, and other non-state associations to develop. Religious and cultural education is strictly the responsibility of the parents. It is important that parents exercise their right and obligation to their children by educating them with a sound cultural and religious formation. Cultural and religious education is the function of the family and other associations that support the family in this regard, like the religions organizations. Therefore religious and cultural formation are not functions of the state. Because of the person's social nature, the relationships based on a person's spiritual nature are important in building up a good society (Politics, 1278b17-21).

The virtues practiced in the household (home, clan) are "...*origins and founts...*" (NE, 1160b22) of those practiced in the state. An Aristotelian curriculum aims at the growth of good habits for the domination of passions and appetites; it aims at ethical and rational development at an early stage of education, "...*moreover, to like and to dislike the right things is thought to be a most important element in the formation of a virtuous character. For pleasure and pain extend throughout the whole of life, and are of great moment and influence for virtue and happiness...*" (NE, 1172a19-4a12).

The parents have the role of educating their children in morals since "... *it is not enough for people to receive the right nurture and discipline in youth; they must also practice the lessons they have learnt, and confirm them by habit, when they are grown up. Accordingly*

we shall need laws to regulate the discipline of adults as well, and in fact the whole life of the people generally ...” (NE, 1180a29-b13;), The family is very important in the education of children “.....Paternal exhortations and family habits have authority in the household, just as legal enactments and national customs have authority in the state....Moreover individual treatment is better than a common system, in education as in medicine....” (Politics, 1180b3-7). The inadequacies of public education are provided for by the provision of private education.

Moral education should be a concern of the political community but a function of the family and other associations based on the natural family (Politics, 1099b30). The Kenya Basic Education Act No. 14 of 2013 gives a lot of discretion in matters of education to the Cabinet Secretary. The Cabinet Secretary in the Kenya Basic Education Act No. 14 of 2013 has power to decide the content of the moral curriculum which properly belongs to parents and institutions like trusts, and religious institutions because they support the natural family on teaching moral education.

5.5 The individual and common good in the provision of education

A Socratic regime erodes the natural family (household), children should be natured and developed in an environment that does not objectify them (Politics, 1262a25–27). This is possible where the political community (state) and the natural household (family) are preserved as they work together to care for them (NE 1180a29–b13). Every association is established for the attainment of some good (Politics, 1252a3). In the Nicomachean Ethics, Aristotle says that laws should foster a good life for each citizen to live happily (NE, 1094b8-11). He further says that it is godlike to obtain and preserve the good of the whole community than that of one man, the good is worthy being pursued even for one man. The good is desired for itself and not for something else, it is not desired as a means to something else. Aristotle says that the common good is self -sufficient (NE, 1097a35-1097b22).

In the Politics, Aristotle says that the common good encompasses the entire community and no community exists for a certain end (Politics, 1252a1-6). The common good and the individual good are in competition but complement each other. Aquinas comments in the *libros Politicorum Aristotelis expositio* on this excerpt from Aristotle’s politics by saying

that, in any community there is a human good and a political good where the human good is relative to the citizen (Aquinas, 1951). The Basic Education Act no. 14 of 2013 creates many management positions and assumes that smaller associations based on the family do not participate in the common good of the country. For instance curriculum development as contained in Part VI, 52(c), Part IX, 75, and ownership of private property as contained in Part XII, 100 (1).

5.6 Plurality in the provision of education

Education is a means through which the *polis* (state) should be united, through reciprocal goodness and trust (Curren, 2000). There is natural commitment to states (*polis*'s) natural end, a happy life (Politics, 1276b1-2; 1280b7-10; 1328a35-36). Most commentators have done little to say what Aristotle means in these passages, even though it implies a concept of statesmanship. It is through friendship and a commitment to a common end that a polis (state) achieves unity (Curren, 2000). The plurality of institutions together with the diversity of goods that exist within the political community are the necessary conditions which will enable citizens to recognize the common good, and become integrated into the political community (Politics, 1259a40; 1260b20–21). The Aristotelian political community is a plurality and a diversity in institutions. The political justice of the community strictly presupposes the natural justice of the household whereby the political authority does not supplant the domestic authority in its role in educating its subjects (Politics, 1259a37–1259b17; 1260a12–14). The political authority is incapable of making the specific characteristic difference needed for a good education. Because of this incapacity to address the specific needs and requirements of every child in his peculiar nurture, household rule is required, since “...*greater accuracy will result when care is private and directed to the particular case, for then each is more likely to receive what is suitable....*” (NE, 1180b11–13).

Unanimity can only exist among good men, in themselves and with one another. Bad men cannot be unanimous since “.... *they wish for what is just and what is advantageous, and these are objects of their common endeavour as well. Bad men cannot be unanimous except to a small extent, any more than they can be friends, since they aim at getting more than their share ...*” (NE, 1167b2-14). Aristotle advocates for a reciprocity between public

and private education where there is a mutual recognition of virtue; where the citizens are trained to maintain a moderation between two vices; the extreme and the deficient in the operations and in passions (NE,1157a21-25). He further says that tyrants fear the bonds of loyalty and would want to cause mistrust and quarrels among their subjects under the guise that power is maintained by dividing the citizenry against itself (NE, 1313b16-18;1314a17-18). The aims of the household are subordinate to the aims of the civil society, the household must be left to flourish to make a genuine civic education possible. The path to incorporate citizens more fully into the civil society requires regard of the diversity of goods and the plurality of institutions that prevail in the civil society (Trepanier, 2014).

Aquinas commenting on Aristotle's treatise on friendship states that each form of government and political order involves a kind of friendship based on the fact that there is a kind of justice in every polity (Summa Theologiae II, A). Friendship and justice are in some way concerned with the same matters. Justice therefore establishes the underlying rules for social conduct under a form of friendship, it does not give into a friendship of unanimity. In a broader sense, justice entails a rule aiming at the common good distributed according to virtue so as to maintain a reciprocity between the civil society and the private associations (NE, 1161b5-8).

Aristotle's teaching on human society is that human governance and its realization should not be eclipsed, since there are many and wider forms of human association, such as inter-state alliances (federations), national peoples and conglomerates (Politics, 1280a7-31). In these associations neither of the contracting parties is interested in the internal virtues and vices of the other. But in contrast, i.e. in the *polis*, Aristotle teaches that there is a true unity, which is deduced from the reality that a *polis* is an association of unequals, it consists of the rulers and the ruled, who are in an association for the sake of living the good life (*Eudaimonia*) (Politics, 1282b17-21). Aristotle teaches that political justice can only be among people who participate in living together within the *polis* (NE, 1134a24-30). He looked at the possibility of an entire people (*ethnos*/ethnic communities) united into a sole political community, he could not see an overly large group of people constituting a *polis*, it would not be possible to have a constitutional/political government which is suitable for a *polis* (Politics, 1261a28-9;1326b1-6;1276a25-34).

Aquinas following Aristotle's teaching says that the civil order is not the only perfect community in the Aristotelian sense: there are other associations like the church with all of its many grades and jurisdictions, which are organized internally into graded hierarchies. Aquinas noted that there are many variations in aims for which various human community associations exist and are formed. These aims give rise to a whole range of familial, religious, professional, geographical, scholarly, mercantile, and other specialized societies. All these associations, from the smallest to the largest, have their proper place and role in the wider society. Each of these associations should be left free to make their unique and special contributions to the whole human fulfillment, without any unjustified hindrance from any other, including the government (Summa Theologiae, I-II, 90.3; 3, II-II, 47.11, 50.1). This should be in line with the Aristotelian teaching on the right to private property (Politics, 1329a23–4) which is also protected by the Kenyan Constitution of 2010.

Aristotle points out that the political community may undermine the conditions that are necessary for a meaningful civic education. One of the ways they can do this is by not respecting the plurality of institutions and the diversity of goods in the political community. An Aristotelian political community needs a plurality and a diversity. Preservation of the plurality of institutions and diversity of goods that exist in a political community enables citizens to become part of the commonality of the regime (Trepanier, 2014). Aristotle criticizes the Socratic idea of equating the polis to a large household, saying that “...*there is no difference between a large household and a polis...*” (Politics, 1252a12–13). Aristotle's criticizes “...*those who think the same person a fit statesman, and a king, and a household head, and a slave-master...*” (Politics, 1252a7–9; 1260b22–1261a22). The political authority should not supplant domestic authority (Politics 1259a37–1259b17; 1260a12–14). “...*Living together and sharing any human concern is always difficulty...*” (Politics, 1263a15), having common schools (public schools) where the rich and poor school together can be present in different places in the state thus creating a unifying form of friendship. Public schools are open to all people since the government supports them, at the same time private institutions should be respected and supported. Education should be seen as a need whereby there are many actors with the government playing the surety of fairness (UNESCO, 2015), in line with

Aristotle's teaching (Politics, 1260b36-1261b15). The Kenya Basic Education Act No. 14 of 2013 creates unanimity by assuming smaller institutions that offer education. The Act does not differentiate between public and private schools.

5.7 The principle of subsidiarity in the provision of education

Political justice requires freedom, equality, sociability and self-sufficiency, this justice presupposes the natural justice of the household (NE, 1134a26–30; Politics, 1134b8–18). The concepts of freedom and equity are first learned in the household and not in the political community where natural justice is performed (NE, 1162a16–18). In fact, Aristotle claims that natural justice would exist even if the political community were absent: “.....a person is characteristically not a solitary but a social animal with those whom he shares a natural kinship. There would therefore be a sociability and some justice even if there were no political community....” (Eudaimean Ethics, 1242a24–28). Politics and justice originate in the household and becomes a model for the political regime (NE, 1160b23–24, Eudaimean Ethics, 1242a24–28, 42b1–2). Political justice does not strictly exist in the household because “...there is no injustice in an unqualified sense towards one's own possessions... and a child, until it reaches a certain age and is separated, is, as it were, a part of one's self...” (NE, 1134b9–12).

Aristotle's teaching is echoed in the Universal Declaration of Human Rights which solemnly and intentionally proclaims that parents have a right to choose the kind of education to be given to their children (Universal Declaration of Human Rights Article 26.3). Many human goals exist, and many bonds unite people for instance ethnicity, language, culture, country e.t.c , the family and state as societies correspond directly to human nature, from an Aristotelian view, they are natural and necessary for human development (Politics, 1253a29-30; 1252b27-53a1). Other societies result from human initiative to achieve certain temporal ends for their members (Fargothy, 1959).

The Universal Declaration of Human Rights recognizes the right to education. In Article 26.3 it states that “Parents have a prior right to choose the kind of education that shall be given to their children”. The Declaration envisions education to affect the person, his family, neighbourhood, village, city, state, culture, nation and the entire world. The state

should respect the person, the family, and the cultural context of the person and his family and his right with others to self-determination. Aristotle teaches that plurality and diversity are necessary for a civic education of philosophical truth and civic friendship (Trepanier, 2014).

Aristotle was opposed to an “...*extreme unification...*” of the *polis* (city-state), by rejecting Plato’s proposal that “...*the highest unity of a state is its highest good...*” (Politics, 1261b6-15). “...*a lesser degree of unity is preferable to the greater...not only does the city consist of a multitude of human beings (plethos)²¹ different in kind. A collection of persons all alike does not constitute a state...*” (Politics, 1260b36-1261b15). The political justice of the community presupposes the natural justice of the household; and devotion to the common good that arises from private friendships (Trepanier, 2014). The *polis* (state) should not dislodge smaller associations, like the household (family, village etc), like the community of wives and common property recommended by Plato in his Republic (Republic, 416d; 449a-466d). The *polis* (city-state), the village and the household are all smaller units of a community which are parts of the polis (Politics, 1252b15-16, 27–30; 1253a15-18). A larger association should not supplant a smaller association (clans, tribes, religious guilds, social clubs, etc) which to a large extent are formed for purposes of partial goods in contrast to the polis, which is naturally established for the purposes of the common good (NE, 1160a9-30; Politics, 1280b36-39).

Aquinas developed the idea of ‘*public*’ societies (cities, provinces and kingdoms) and differentiated them from ‘*private*’ societies (households, business companies, trade guilds and religious associations) all of them he called specific kinds of ‘*society*’ (Impugn, II.2, co; Impugn., II.3, ad 6; Pol., I.1.23 [31]). These assorted forms of society are proportionately separate and independent from one another and at the same time a degree of integration into the wider society and interdependence between them (Impugn., II.2, ad 2). Because of these relationship, the wider society (state) is not the only institution that has an interest in education, other forms of society (both public and private) have an interest in education. The plurality of associations of a political, ecclesiastical, societal,

²¹ *Plethos* (πληθος) – a plurality/many people/a certain quantity. What Aristotle refers to in (Politics, 1260b36-1261b15) is a multitude of people in the polis who are diverse (a plurality of people).

and economic nature composed of smaller constituent communities, suggests the idea of a right of suffrage, corporate personation of the smaller community in the governing institutions of the larger (Aroney, 2014).

In the Aristotelian teaching the household exists only as a section of the political community and its particular virtue exists only as a part of virtue as a whole “...for every household is part of the state, and these relationships are part of the household, and the excellence of the part must have regard to that of the whole....” (Politics, 1260b8–24). Even though the household exists prior to the political community, the Aristotelian pluralism and diversity exists conceptually before the household. Education in the household will ultimately be supervised by the political community, this does not directly translate into political indoctrination. Aristotle allows the possibility of a prudent head to incorporate lessons from the household so as to improve the character of the political regime, even if these teachings are contrary to the peculiar ends of the political community (Trepanier, 2014).

Individuals or ‘subsidiary’ organizations should be left to solve issues closest to them, the larger organizations similar the political community then will be able to carry out their allocated functions. With this view, individuals are enabled and are accountable in solving problems affecting them and close to them, this will help the political community and its organizations to function more efficiently, without overlap. Overall, this distinction under the principle of subsidiarity helps to secure the self-governance of groups and specifically the right relationships that should exist between different organizations and associations within the wider society (Evans, 2013). The Kenya Basic Education Act No. 14 of 2013 creates many management structures some of which can be done by associations at a lower level (Part II, National Educational Board, Part III County Educational Boards).

5.8 The role of the natural family

Aquinas supports Aristotle’s assertion that a well-regulated family life is a prerequisite condition for a prosperous society, in the natural family there is a strong protection and defense for virtue (Summa Theologiae, q.44-69). Aristotle taught that the family is the fundamental social unit of society and has a transformative effect on individual persons

and on the larger society, the family teaches responsibility to its members (Politics, 1252b). The natural family is not in a position to provide all the wants of men, it needs a larger association to meet the needs of men that it cannot provide. The family as an association is far superior in dignity than the state for its rights and privileges come before those of the State. The rights of the family cannot be minimized in regard to education, even though the State has certain rights in education it cannot violate this natural justice by overstepping its limits in this regard. The mission of the State is not so universal that it proscribes domestic society. The state and its purpose is the fulfillment of very definite wants and accomplishment of very definite things of which individuals are incapable. In the Aristotelian thinking, Aquinas makes an emphasis that the State should help individuals to help themselves to secure as large a measure of happiness as possible (Summa Theologiae, II-II q.101.a.5).

The recognition of the family in education is because *“the family is the natural and fundamental group unit of society and is entitled to protection by society and the State”* (Universal declaration of human rights Article 16.3) and is the first school of education and training. The state should respect and encourage families to fulfill their roles concerning the education and nurture of their children. In this respect then, the state should comply with the principle of subsidiarity, only taking on any typical tasks of the family only in extreme situations where there is prove that a given family will not do them (NE, 1180a25). Aquinas commenting on this Aristotelian teaching says that in case the family fails in bringing up their children then the state can help especially in external goods to enable the children to be reared comfortably (Summa theologiae II-II, q.2.a.6). There are many associations like religious associations, children’s homes, association dealing with children’s rights etc which can take up the responsibility of bringing up children alongside the state as enshrined in the Basic Education Act no. 14 of 2013.

Children need education first in the household (family) in order to prepare them for justice in the political community (Politics, 1260b20–21; 1259a40). In the household, children are taught how to be ruled and how to rule, parents provide them with their existence and education, parental rule of children serves the best interest of the children who later practice political justice (Politics, 1332b36). Aristotle’s teaching on the household and the

polis (Politics, 1253a20; 1253a19; 1253b18) is that the basis of any state (*polis*) is not the individual citizen but the family (household) since the family is the first association. Individual citizens comprise and constitute the State (*polis*) and the state's role is to confer on the individual citizens a fuller and more perfect life which doubles as a means of limiting the power of the state. There are certain individual rights conferred on the individual citizen by the natural law which the state is not supposed to interfere with. Therefore society is necessary for the individual citizen because without it the individual citizens will be unable to provide for themselves and would not enjoy the full use of nature.

Parental support helps children respect political authority (NE, 1180a18–24, 1180b3–7). Governmental support alone is not enough, parents have the means to the interior principles of motivating their children which the political authority (government) lack. Parents are able to provide an education for their children to respect the political community's laws by guiding them to see what the political community's laws can do. They are better than the political community at inculcating virtuous habits in their own children not on the basis of their children's affection for them but because parents know their children's specific circumstance and conditions and they respond accordingly, which the political community cannot. There is a mutual complementarity between the political community and the household in the education of children.



CHAPTER SIX

RECOMMENDATIONS

6.1 Introduction

The Basic Education Act no.14 of 2013 has many provisions, however, some of them may as currently stated in the Act may go against freedom of education and stifle choice on the part of the parents. It will eventually divest other players of their proprietary interest in schools they sponsor or own. The Act in its current state does not safeguard the basic interests of owners and sponsors of schools at the same time the constitutional rights of parents and students.

Therefore the Basic Education Act No. 14 of 2013 does not protect religious and academic freedom as envisioned under articles 32 and 33 of the Kenyan Constitution. The Basic Education Act in its current state is designed to enforce thought control of children and teachers, take the primary responsibility for education from parents and prescribe uniform curricula using a top-down approach. It does not respect academic freedom, it waters down the choice between private and public education by controlling private education. There is need for both public and private education in society, the Act removes the distinction between public and private education and treats them as the same. The proper Aristotelian perspective is that where public education fails private education will fill the gap and vice versa, families should be able to choose what suits them in regard of the kind of education they desire for their children. The Aristotelian view supports both private and public education to help families choose between the two which is the best for their children. Some problematic sections of the Basic Education Act are discussed below and recommendations made from an Aristotelian perspective.

6.2 Differentiation between public and private schools

Respect for religious and academic freedom as stipulated under articles 32 and 33 of the Kenyan constitution go conjointly with the recognition and support of private and public education, the Basic Education Act leans more on public education and stifles private education as it treats both as the same. The basic education act gives the guiding principles which are to be applied in the entire Education Sector in section IV of the Act. This is the most important provision in the Basic Education Act No. 14 of 2013. In this section of the

Education Act there is an attempt to standardize education, and there is an effort to remove distinctions which will effectively stifle choice and enforce uniformity without distinction between private and public schools which in the end will discourage variety (plurality). This specific provision as contained in the Basic Education Act will gradually kill private schools as well as religious sponsored public schools. This section of the Basic Education Act will dilute and gradually remove control of the schools from sponsors and proprietors in the case of private and sponsored schools. The Act goes against the Aristotelian view of the necessity of a variety in the provision of education and the right to own private property. The following provisions in the Act could be problematic.

(i) S.4 (d) “*accountability and democratic decision making within the institution of basic education*”

A school (learning institution) and the family are not democratic institutions, it is not possible to apply democratic principles as demonstrated in the Politics and Nicomachean Ethics by Aristotle and apply them to an academic institution. However the Aristotelian ideas are applicable to a school in decision making for the sake of the common good through consultation rather than democracy. Those who manage education should have the interests of the parents for their children’s education which is not a democratic process. Therefore the state is expected to respect and protect the fundamental rights of the parents and the parents’ primacy as a necessary prerequisite for the common good and for the genuine development of the whole person and his society. This section of the Act is designed to micromanage the education sector by taking authority away from parents and teachers and giving it to the children. On the other hand its net effect will be to take authority and autonomy away from schools and to give it to the Government (State) which may finally have serious consequences when it fully comes into operation.

This section needs to be repealed by removing the word democracy and inserting participatory decision making. This will mean that decisions are made after wide consultations but not through a democratic process to preserve the plurality of institutions that provide education (Politics, 1252a30; 1261a21-22)

(ii) S.4 (e) “*protection of every child against unfair discrimination within or by an education department or education or institution on any ground whatsoever.*”

The Kenya Basic Education Act No. 14 of 2013 asserts that every child should be protected against unfair discrimination. Conventional equality promotes individual justice as the ground that for a moral requirement to virtue and is reliant upon the affirmation that equity demands uniform or equal treatment (Wesson, 2007). Equality rules assume the essence of a ‘*universal individual*’ which can ignore the Aristotelian multiplicity and variety of modern society and ignores the personal characteristics of an individual altogether. While uniform treatment has a function in society, the abundance and intricacy of contemporary life and civil connections makes the application of this advance, as a foundation for incorporated and broad non-discrimination laws and measures, excessively simplistic (Western, 1982).

The classical notion of discrimination (judgment), suits cases where excessive consideration has been given to some attributes of a person whereby some distinction has been made between one person and another actual or supposed. It doesn’t mean that a student is lesser or discriminated because he has missed placement in a certain school. The counter argument will mean that no student should be admitted into a school since some students will not be admitted and therefore make them ‘equal’. This provision in the Kenya Basic Education Act will open a Pandora’s Box, it will be the basis on which the state will have a total intrusion into the education sector. It may be used to attack religion, parental choice, culture, variety in education and gender specific education. For instance if a school does not embrace homosexuality, this provision may be used to outlaw textbooks that do not recognize homosexuality as a valid lifestyle choice, it may also be used to penalize teachers who go against the state sanctioned orthodoxy on this issue and withdrawal registration of schools, private or public that refuse to follow course. This provision as currently maintained in the Basic Education Act, may be used to attack gender specific schools which is the mainstay of most church sponsored schools. It may also be used to penalize opting out of the state curricula, in the case of private and church sponsored schools.

The fair treatment of children should be left to the particular school community to decide and implement and not the Cabinet Secretary who has been given enormous powers in the Kenya Basic Education Act. There are cases where a student may be denied admission to a school because of his personal characteristics or situation that may be incompatible with the culture in a given school. Aristotle supports fairness in decision making (NE, 1143b1), which a smaller association (school) should be able to arrive at.

(iii) S.4 (f) *“advancement and protection of every child to be instructed in their in the language of his or her choice where this is reasonably practicable”*

This provision is unworkable and unnecessary, bearing in mind that the official languages in Kenya are Swahili and English, most of the instruction in schools is done in English. It will simply be another instrument for the state to exercise discretion and penalize schools that refuse to play ball on wider state objectives.

(iv) Part IV. 36 (1) *“No pupil shall be subjected to torture and cruel, inhuman or degrading treatment or punishment, in any manner, whether physical or psychological”*

This provision may eventually be interpreted to mean that parents and schools should not punish children even when they commit serious mistakes. It may lead to litigation where children take their parents and schools to court for punishing them when they commit mistakes. Children will be a law unto themselves, this will hinder the moral development of children in the long run especially those enrolled in public schools. It may also be used to complicate the running of private schools when it comes to expelling an unruly student who does not fit in the culture of a private school.

Children are not completely responsible, rational beings, therefore punishing them can be justified as a way of encouraging them develop certain kinds of morally desirable habits. Punishing children conditions them to act well morally. Between the state and parental disciplining of children, there are sharp and important differences. The Kenya Basic Education Act does not recognize the basic learning institutions role in punishing their students and at the same time it does not recognize the parents’ role in punishing their own children. Parents are more responsible for the full maturation and moral development of

their children. Parents are naturally given a claim to punish their children for many more offenses and in distinct ways, than their children's school teachers. This provision should be repealed to allow reasonable punishment in schools to maintain discipline. Aristotle argues that discipline is part of the moral formation and parents should discipline their children (Politics, 1161a11).

(v) Part I 4(i) *“Promotion of good governance, participation and inclusiveness of parents, communities, private sector and other stakeholders in the development and management of basic education”*

This principle is good but in the Kenya Basic Education Act it is being equally applied in public and private schools (institutions). This provision will finally stifle private institutions, inclusiveness may mean a religious-sponsored school having to incorporate persons opposed to its religious traditions in its management board.

Parents should have a right to participate in the drafting of the curriculum and also of rejecting a curriculum that does not follow their moral values. The curriculum as defined by the Kenya Basic Education Act no.14 of 2013 does not say anything about the parent's or the sponsor's participation in the curriculum development especially the development of the moral content that children will be taught in school. This has a danger of bringing an agenda through the back door to manipulate children especially at the lower level of education to certain moral trends which could be against their parents' wishes for instance teaching atheism and LGBT (lesbian, gay, bisexual, and transgender) as something acceptable. This fact is noted in part IX 74(2) which states; Subject to subsection (1), the Cabinet Secretary shall accredit curriculum development agencies for all levels and programmes on the basis of approved criteria. Part IX 75 which prohibits development and examination of own curriculum. In the Aristotelian perspective, the parents are endowed by nature to be responsible to teach their children moral education (Politics, 1161a11).

Curriculum development without the participation of parents and other agents of education like the church and other trusts leaves a gap whereby children may be subjected to manipulation. Moral education content may be used to establish beliefs that are evidently

not true and it will not be easy to dislodge this believes at a later date. If children can be habituated in what is morally right they can also be habituated in what is morally wrong. What children are habituated in when they are young tends to have an enduring influence on them on the choice of what is good. Children can neither be good nor responsive to reason unless they have a good upbringing (at home and school) that surrounds them with good models that guide them toward good habits.

The state should not impose a standardized educational model for all children disregarding the actual situation of each individual child and his individual peculiarities; but adopt an educational model that respects the principle of an individualized education rather than a uniform model. Parents and other private players in education should be involved in the development of the moral curriculum to be taught to their children and should be free to reject anything taught to their children against their moral standards. Religious institutions should not be left out of the development of what moral content should be taught in the schools they sponsor.

6.3 Right to Private Property

Proprietors of private schools necessarily have a claim to the property on which these schools are established. The Kenya Basic Education Act takes away property belonging to schools including private schools and gives it to National Education Board and County Educational Boards which were not in existence when these schools were started. This is contained in PART XIII 100 (1) and (2). Which states that:

(1)“All immovable and movable property and assets which immediately before the commencement of this Act were vested in, or possessed by the institutions established under the repealed Acts shall by virtue of this section vest in the respective institutions established under this Act without further conveyance, transfer or assignment”

(2)“All rights, obligations and liabilities which immediately before the commencement of this Act were vested in or imposed on the institutions established under the repealed Acts are deemed to be the rights, obligations and liabilities of the respective institutions established under this Act”

This section of the Basic Education Act No. 14 of 2013 goes against the right of individuals and institutions to own private property. In the Aristotelian perspective property should be owned privately by individuals and institutions but used publicly for educational purposes (Politics, 1263a26-27; 1263a37-39). Without this right the religious institutions or private individuals who started these schools will lose them to the government and may lose any right to make decisions concerning these schools.

Since most public and private schools are sponsored, the Kenya Basic Education Act No. 14 of 2013 should distinguish between the different sponsors of schools,

- (i) there are sponsors (person or institution) who own the land and or property on which the institution which provides basic education is constructed,
- (ii) or a person or institution who founds or provides foundational objectives to the institution providing basic education
- (iii) or a person or institution who represents the community, parents and or religious group associated with the basic education institution who may have a stake in ensuring that the educational as well as non-curricular objectives of a basic education institution are met
- (iv) a religious sponsor means a sponsor who has religious character and is associated with the basic education institution (public school) in a foundational manner and has special rights to represent parents, the community as well as the religious community in the operations and management of the public school

6.4 The role of parents in their children's education

Education is a function of the family before it is a function of the state since the state is a union of families and villages. The family is only mentioned once in the whole Kenya Basic Education Act No. 14 of 2013. Moral education is the function of the family. Families have the right to take over the education function when the state fails. It is the natural responsibility of the family to educate its members. The Aristotelian perspective is that the family is a more perfect union than the state (Politics, 1261a21-22).

6.5 The role of the state in education

The Kenya Basic Education Act No. 14 of 2013 gives unnecessary discretion to the Cabinet Secretary, some of the functions of the Cabinet Secretary can be done at lower levels by teachers and parents associations (PTAs) and sponsors of the schools. It will be proper to decentralize some functions of the Cabinet Secretary's office. Private schools should be left to choose their own management structures which suite them rather than merely conform to government imposed structures which may not suit them. For instance governance structure of education as contained in the Kenya Basic Education Act support the inclusion of people in the management of schools who do not share the mission and vision of these schools which is detrimental. The Aristotelian cultivation of moral and intellectual virtue needs other players (the family, voluntary institutions etc) in the education sector to play their role.

The National Education Board assumes the role of management of educational institutions. The people who serve under the national board are approved by the Cabinet Secretary. This provision is created whereby the Cabinet Secretary will use the immense powers given under the Kenya Basic Education Act to advance personal or sectarian interests against the religions sponsors of schools he does not like by appointing people not approved by these institutions. There are multiple governance structures created in the Kenya Basic Education Act bringing on board no-actors in education. The other providers of education like trusts, religious institutions and other private providers are not actors but recipients of government instructions. There should be a differentiation between public and private institutions in terms of governance and standards of education.

6.6 Plurality of education

There are other forms of schooling like home schooling which the Kenya Basic Education Act does not recognize. Some parents may opt out of schools and educate their children at home (home schooling), they cannot be penalized as stated in the Kenya Basic Education Act under the fourth schedule part IV, 30(3). The curriculum on moral education should be left to parents to come up with, rather than the Cabinet Secretary.

The definition of a teacher should include people who have special knowledge that can benefit learners even though he is not trained as a teacher. For instance a school can hire a coach in a certain game to train students. There are certain cultural knowledge possessed by a few people by virtue of their age or experience. A school can use these people as resource persons, trained teachers may not possess certain knowledge that will benefit the learners.

The following sections need to be repealed so as not to curtail plurality of education.

(a) Section 4

(i) Guiding principles,

(d) “accountability and democratic decision making within the institutions of basic Education”

(e) “protection of every child against discrimination within or by an education department or education or institution on any ground whatsoever”

Should be rephrased to read *“protection of every child against unfair discrimination, but without limiting the rights of a particular educational institution for cultural, religious, academic or other proper reasons to build institutions that are gender-specific to advance certain religious or cultural values or educational aims farther than the whole curriculum”*

(h) “encouraging independent and critical thinking; and cultivating skills, disciplines and capacities for reconstruction and development;”

(p) “elimination of gender discrimination, corporal punishment or any form of cruel and inhuman treatment or torture;”

On the other hand, this should not restrict the right of individuals, institutions or government to uphold gender-specific institutions of basic education. Without this clarification, it may be deemed an act of discrimination if a student wants to be admitted to a certain school but cannot because the school is gender specific.

(c) Section 5

(b) “working with all relevant authorities and agencies to ensure that all the barriers to the right to quality education are removed and that the National and County governments facilitate the realization of the right to education by all Kenyans;”

This section should be rephrased so as to recognize other forms of schooling like home schooling.

(d) Section 29

(1) No public school shall charge or cause any parent or, guardian to pay tuition fees for or on behalf of any pupil in the school.

This section criminalizes any charges that a school may levy on parents for non-curricular or some other purposes including aims of development of installations required in an institution of basic learning. There is too much power vested in the Cabinet Secretary in making decisions on matters related to education, religious sponsored schools should be allowed to levy some money on the parents to develop the facilities of the schools that they sponsor. The government only pays tuition and there is minimal or no allocation for development of school facilities.

(e) Section 34

(2) A school or person responsible for admission shall not discriminate against any child seeking admission on any ground, including ethnicity, gender, sex, religion, race, colour or social origin, age, disability, language or culture.

This section implies that a child must be admitted to a school he or she wants even if the child does not fit in the culture of the school. It also implies that gender specific schools discriminate against pupils or students who may want to be admitted into these schools. This section should be repealed so as not to restrict the freedom of individuals, institutions or government to preserve gender-specific institutions of basic education or to restrain admission based on founding aims of the sponsors of the institution including religious, cultural, and academic or any other defensible reasons.

(f) Section 36.

Prohibition against physical punishment and mental harassment to the child

(1) No pupil shall be subjected to torture and cruel, inhuman or degrading treatment or punishment, in any manner, whether physical or psychological.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment not exceeding six months or both.

This section of the Act should be repealed so that it doesn't restrict the freedom of parents or the school to administer suitable discipline on the child for the aims of learning.

(g) Section 37.

(1) No pupil shall be subjected to holiday tuition.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding one year or to both.

A distinction should be made between paying tuition for learning an extra skill that is necessary for the learners and tuition to cover curriculum content as stipulated in the syllabus. Parents during school holidays or weekends can engage an expert in a certain skill to tutor their children so that they acquire a certain skill, this should not be penalized as stipulated in the Basic Education Act.

The Kenya Basic Education Act has good intentions but some of the identified sections need to be repealed so as not to leave loopholes that will lead to manipulation of children and total control of education by the government. The Kenya Basic Education Act in its current state will allow the state to enforce thought control of children and teachers, to take away the responsibility for education from parents and prescribe a uniform curricula using a top-down approach. It creates a provision for taking away freedom of choice of education on the part of parents and academic freedom from teachers. Though the government may want to implement free primary and secondary education, it cannot kill freedom of choice in education. The principle of subsidiarity has to be observed, what

parents and voluntary institutions can do, the government should facilitate and not take over their responsibilities.

The Kenya Basic Education Act gives too much discretion to the Cabinet Secretary. This discretion may be used to create an avenue to discriminate among religious institutions. The Cabinet Secretary is given powers to regulate who can be appointed into school management boards (s.55), he has unilateral power to appoint members of the County Education Boards (s.20) etc.

The family is only mentioned once in the whole Basic Education Act. This definition is needed in the definitions section of the document. The Kenya Basic Education Act No. 14 of 2013 ignores the other agents of education apart from the school, e.g. home, church, society etc. Education is planned to be under total control of the state. In the Basic Education Act, the family is not recognized as the main agent of education. There is a danger of some radicals imposing a perversion of what a family is against what the natural family is. This will safeguard children being taught other ‘families’ against what a family is as ordained by nature. A family teaches responsibility to its members; a virtue that is necessary for a just and good society. The function of families in the moral instruction of their children should be stated in the Act. This omission will open up to people who may have wrong ideas pushing them into the curriculum especially the content on human sexuality taught in the comprehensive sex education syllabus in some countries.

Even though the Kenya Basic Education Act in Part I 4(i) says that it will involve “*parents, communities, private sector and other stakeholders in the development and management of basic education.*” There is no mention of parents and voluntary institutions in the constitution of County Education Boards. Under the guiding principles, it states in 4(i) that education will be guided by;

“Promotion of good governance, participation and inclusiveness of parents, communities, private sector and other stakeholders in the development and management of basic education”

The development and management of basic education as stated in the Kenya Basic Education Act assumes that there is only one human goal to be achieved through education and that goal is the responsibility of the government whereas there are other goals. The Basic Education Act does not take into account certain goals that may be applicable to certain smaller groups that have an interest in education like the family, trusts, certain localities where a school is located. Education has its foundation on smaller groups based on the family.

6.7 Rights of voluntary institutions

The state is made of smaller units that have an interest in the education of its members. This demands that there is variety of schools and curricula if necessary to achieve the different aims of education by the various groups that may exist in the state. Plurality discourages uniformity, unfortunately, the Kenya Basic Education Act no. 14 of 2013 is designed to discourage plurality of education even though the 2017 revised edition of the Basic Education Act creates a provision for accreditation of curriculum development delegacy for all grades and programmes in section 74 and the development, teaching and examining of a curriculum in section 75 of the Act.

(i) Sponsors of schools

Although sponsors of schools in its definition in the Basic Education Act includes spiritual development, it fails to note the difference between religious sponsor and any other sponsor. It fails also to note the different kinds of sponsors for instance those who own land on which a public school is built. A religious sponsor is a religious institution or agency of a religious institution which starts an academic institution in exchange for espousing certain values, outlook or religion.

(ii) Composition of education boards and school management boards,

The composition of education boards (ss.10 (2), 20(1), 53, 54(1), 3rd schedule. This provisions as provided in the Basic Education Act may dilute owner/sponsor control of schools they sponsor and create room for special focus groups, for instance people interested in liberal agenda may get a foothold in institutions of basic education. With this provision, the meaning of religious sponsorship of a school will lose meaning, because the

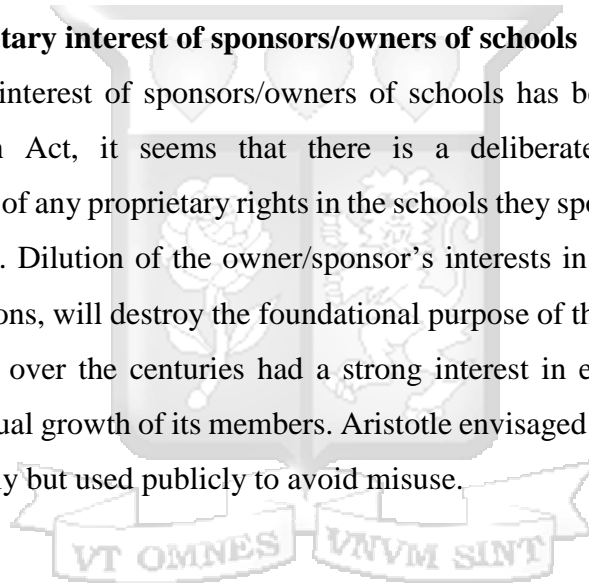
current meaning of religious sponsorship as provided in the Basic Education Act is diluted of its real meaning. The main stay of schools sponsored by religious institutions is religious education which is the basis of moral education.

(iii) Religious education

The Cabinet Secretary is given immense powers in the Kenya Basic Education Act to control religious education including Madarasa (s.92 (2) (f)), regulating any religious instruction given in basic education institutions (s.92 (2) (e), 92(3) (1). Religious instruction is the role of parents and religious intuitions. Religious instruction should be left to parents to decide what they want for their children.

(iv) The proprietary interest of sponsors/owners of schools

The proprietary interest of sponsors/owners of schools has been totally ignored in the Basic Education Act, it seems that there is a deliberate hidden plan to divest sponsors/owners of any proprietary rights in the schools they sponsor (s.97 (1), paragraphs 18, 4th schedule). Dilution of the owner/sponsor's interests in the management of these learning institutions, will destroy the foundational purpose of these institutions. Religious institutions have over the centuries had a strong interest in education which is tied to morals and spiritual growth of its members. Aristotle envisaged a situation where property is owned privately but used publicly to avoid misuse.



CHAPTER SEVEN

CONCLUSION

The Kenya Basic Education Act No.14 of 2013 leans in favour of the State, for the sake of national unity and national values. But it takes power away from the family, sponsors and other smaller institutions (associations) that have a stake in education and grants full powers to the State. The Kenya Basic Education Act No. 14 of 2013 prefers that the State handles plurality over the platform of a uniformity instead of unity (a society united in diversity). Plurality is manifested by having a variety of schools, education systems and approaches, some sections of the Act raise Ethical concerns and need to be repealed before the Act is implemented in full.

The Basic Education Act also does not distinguish between private and public education; private education caters for private interests while public education caters for public interests, without this distinction the Act will stifle choice which is the basis of freedom of education. Private education fills the gap left by public education and public education fills the gap left by private education. The Kenya Basic Education Act creates many offices in the chain of management of the education sector. It creates room to bring on board non-actors in the education sector leaving out the main actors like parents and private associations like religious institutions which sponsor a majority of schools in Kenya. The composition of the Education Boards (National Education Board, County Education Board, Board of Governors) and school management committees dilutes the sponsor/owner control and creates room for special-focus groups(e.g. persons interested in liberal agenda) to have a foothold in schools.

Moral education is the primary duty of the family. The parents have the natural duty to train their children in morals. They have to be involved in the drafting of the moral education curriculum. Instead of recognizing this parental role, the Basic Education Act gives this responsibility solely to the state. The Basic Education Act takes away private property owned by private schools and public schools sponsored by religious institutions and gives it to the County Education Boards.

The Basic Education Act No. 14 of 2013 does not distinguish between the different sponsors of schools, the following distinctions are lacking in the Act. Without this distinction, the religious institutions or private individuals who are founders of sponsored schools will lose their proprietary interest. This is contrary to article 40 of the Kenyan Constitution. Coupled with the dilution of owner/management of schools, this will destroy the foundational purposes of sponsored schools.

The Basic Education Act, does not recognize the natural family as the main agent of education. There is a danger of some radicals imposing a perversion of the family in the curriculum. Parents will be limited in choice of the type of curricula they want for their children; private and public curricula should be recognized. The Act gives unnecessary discretion to the Cabinet Secretary, including controlling religious education. Some functions of the Cabinet Secretary can be done at a lower level. Private schools should be left to choose their own management structures which suite them rather than merely conform to government imposed structures which may not suite them.

The state should not become an all-knowing state, which enforces thought control of teachers and children. And is able to grab the responsibility for education of children from parents and prescribe a uniform curricula using a top-down approach. This goes against the Aristotelian idea of complementarity between private and public education.

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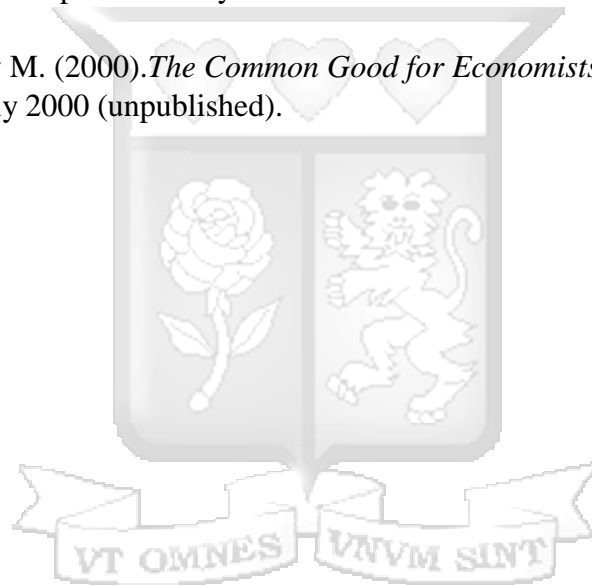
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APPENDIX A

Press conference by Catholic Bishops on the Basic Education Act no. 14 of 2013

“The Catholic Church appreciates that the Act not only recognizes and spells out the roles of religious sponsors who have played a very central role in Kenya’s education sector before and after independence, but also that the Church’s efforts are still needed in the on-going reforms. It is in the public domain that we have more than 5,000 Catholic Private and Sponsored institutions and most are the finest in the country while several are in far flung areas where Catholics are the minority.

In the past 5 years, we have invested more than Kshs 1.5 Billion in developing such institutions.

However we reiterate our opposition to certain sections of the Act namely;
Most of the Catholic sponsored schools are on land owned by the Church or land held in trust by the Church for the community. The Act is in violation of the ownership rights of the religious sponsors which are recognized and respected by the Constitution.

The nationalization of schools by the basic education act threatens to disposes the church of its rightful property yet the church as an institution is protected under the constitution. The Act does not seem to be appreciating.

In addition, the church demands active involvement in the selection and appointment of the heads of such institutions which is crucial in character formation and maintenance of the well-established tradition of these schools.”

Source (<http://communications.amecea.org/index.php/2013/07/04/kenya-press-release-by-catholic-bishops/>)

APPENDIX B

Education Bill sparks wrangle (Saturday March 21 2015)

By OUMA WANZALA

“The Teachers’ Service Commission (TSC) will now be required to consult public school sponsors before appointing a person to head their institutions, if a Bill before the National Assembly is passed. The Basic Education (Amendment) Bill, 2014, by Education committee vice-chairman Julius Melly, also states that the sponsor of such schools must be consulted for one to be appointed deputy head teacher. The Bill, could trigger another row between sponsors, teachers’ unions and the TSC, which have opposed a similar proposal by the Ministry of Education that also seeks to appoint school heads as agents in the Basic Education Regulations 2014.

The Basic Education Regulations also propose that school heads will be hired as agents by the Ministry of Education for a period not exceeding 15 years with the ministry having powers to discipline school heads recruited as agents. The regulations further state that for one to be appointed as a lead educator by the TSC, he or she will be required to have served for a period of at least 20 years and also undertaken at least a six-week course in education administration or its equivalent in the last three years to be appointed as an agent. The Commission for the Implementation of the Constitution (CIC) now wants Attorney-General Githu Muigai to halt the gazettelement of the controversial Basic Education Regulations, 2014, until a consensus is reached. Teachers unions — Kenya National Union of Teachers (Knut) and Kenya Union of Post Primary Education Teachers (Kuppet) — are opposed to the regulations, arguing that they are unconstitutional.

On its part, the Ministry of Education is pushing for the gazettelement of the regulations in order to operationalise the Basic Education Act 2013. CIC is now planning for a stakeholders’ forum in order to review some of the education policies in order to address the concerns raised by the unions. However, the date and venue are yet to be agreed upon. Education Cabinet Secretary Jacob Kaimenyi maintains that the ministry has been involved in wide consultations on the operationalisation of the Basic Education Act, 2013.

“We have spent a considerable length of time discussing the regulations and they are now ready for gazettelement and implementation,” said Prof Kaimenyi. However, CIC Chairman Charles Nyachae said the regulations should not be gazetted until the national policy and Basic Education Act 2013 have been reviewed saying they have substantial unconstitutional provisions. Mr Nyachae maintained that the TSC role is recruitment, employment, disciplinary control and transfer and no one can take it away.

The regulations have since been approved by the Attorney-General. Knut Secretary-General Wilson Sossion on Thursday wrote to Mr Nyachae seeking clarification on the conflicting constitutional mandate of the Education ministry, TSC and its agencies”.

APPENDIX C

Top judges overturn ruling on hijab in school

Thursday, January 24, 2019

“The Supreme Court on Thursday overturned a decision allowing girls professing Islamic faith to wear hijabs in a church-sponsored school.

In a majority decision, the judges agreed with the Methodist Church that it was not given an opportunity to fully address the matter when the Appellate Court allowed Muslim students to wear hijabs contrary to rules of St Paul’s Kiwanjani Day Mixed Secondary School.

The judges said the matter was an important national issue which should be formally filed at the High Court to allow courts below them to make a determination.

“...it is imperative that the matter ought to reach us in the proper manner so that when a party seeks redress from this court, it ought to have had the matter properly instituted...” Justice Njoki Ndung’u said while reading the majority decision. Justice Jackton Ojwang dissented saying he would have dismissed the appeal arguing that a right balance amidst people holding different faiths, in the multi-cultural environment prevailing at the school, will by no means be jeopardised on account of the variation to the school dress-code.

In the case Mohamed Fugisha, a parent of three students at the school, had complained after his children were barred from wearing hijabs and white trousers”.

Source - <https://www.businessdailyafrica.com/economy/Top-judges-overturn-ruling-on-hijab-in-school/3946234-4950000-mskm39z/index.html>

APPENDIX D

RHInnO Ethics - - 1 of 1

Final Decision Certificate

This document certifies that the study:

"The Ethics of Education in Kenya in the light of the Basic Education Act No. 14 of 2013; an Aristotelian interpretation "

Principal Investigator: Mr. Momanyi, Christopher
Reference number: SU-IERC0376/19

Was reviewed and received the following status:

"done"

Additional Comments: Final decision: **approved**

Comments sent:

*Reviewer #1:
'None needed'*
