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COURTS AND EDUCATIONAL OPPORTUNITY: THE MOVEMENT FROM RACE TO CLASS

Learning to Divide: Race, Class, and Educational Disparities

ALTHOUGH POPULAR OPINION typically regards *Brown* and its progeny as a symbol of pride in American constitutionalism, the lived reality of school districts in the wake of court-ordered integration has failed to meet the promise of those early decisions. In major metropolitan areas, white flight to the suburbs—already apparent in the 1950s and 1960s—accelerated with court-ordered busing in the North in the early 1970s. With the rise of "chocolate cities and vanilla suburbs," racial homogeneity of urban school districts increased (Farley et al. 1978). In his 1978 book on busing, Gary Orfield wrote that our nation's pattern of fragmented metropolitan areas, combined with continuing residential segregation, made desegregation a difficult task: "The rapid departure of young white middle class families from the central cities, together with the plummeting birthrate, means that an increasing number of cities and some inner suburbs are left with few whites to integrate" (Orfield 1978, 55).

One initial response to this white flight was to include outlying suburbs within the desegregation remedy. In Detroit a federal judge ruled that fifty-three of eighty-five surrounding suburban districts were to be included within a desegregation plan that encompassed most of the Detroit metropolitan area. By designing a metropolitan-wide solution to the problem of interdistrict racial segregation, plaintiffs hoped to reincorporate the white students who had flown beyond the Detroit school district boundaries. The U.S. Supreme Court, however, put a stop to this interdistrict remedy in its 1974 *Milliken v. Bradley* decision.[1] Writing for a slim 5-4 majority, Chief Justice Warren Burger declared that only an interdistrict violation of constitutional rights could justify an interdistrict remedy. The Supreme Court found that a remedy could not be imposed on districts that had not actively segregated their own students. In construing the state-action requirement in this fashion, the Supreme Court ignored the growing reality of suburban-central-city segregation and left district court judges with few tools to integrate schools on a metropolitan-wide basis. As Stephen Halpern has written:

> In America's greatest cities, by the end of the decade in which the Court decided *Milliken*, even the limited educational goal that had emerged from the late 1960s—racial integration—was endangered. By 1980, in many of the nation's largest cities, including New York, Los Angeles, Baltimore, Washington, D.C., and Chicago, whites represented a numerical minority of the total public school population and lived in highly segregated neighborhoods, raising serious impediments to achieving racial integration in schools. (Halpern 1995, 94)

This shifting demographic pattern of American cities emerged out of many factors, but the increasing prospects of residential and educational integration clearly played a role. The capacity of local officials to delay school desegregation, in both the North and the South, gave middle-class whites time and opportunity to abandon already shrinking central city school districts. Their departure changed not only the racial dynamics of public education, producing greater racial homogenization within school districts, but it changed the economic bases of education as well. Historically, poverty in America has been largely a rural phenomenon—and in many regions it still is. But the white middle-class abandonment of central cities in the post–World War II era, combined with a wrenching deindustrialization of American cities, helped created an urban poverty that is racially skewed. Declining property values, excess school capacity, and shrinking incomes of the remaining residents hit inner-city districts particularly hard, especially within the Northeast urban corridor. Although the picture was somewhat different in the West and South, because of growing urban populations and more expansive central-city boundaries, wherever multiple school districts existed within metropolitan areas, similar economic, if not racial, segregation occurred.

At about the same time as school desegregation suits turned northward, litigators in a number of areas began filing suits against the funding systems that states used to finance public education. These suits came out of a growing sense among civil rights lawyers that desegregation alone would not get to the heart of unequal educational opportunity. To the extent that blacks and other minorities were disproportionately poor, and to the extent that educational resources were most available to middle-class and upper-middle-class school districts, desegregation was not going to resolve the issues of profound educational disparities between whites and nonwhites. Also, growing frustration with white flight and the reluctance of middle-class whites to send their children to school with minority students led many activists to increasingly doubt the effectiveness of further desegregation efforts. Thus, both as part of the quest for greater educational opportunity and as part of a growing frustration with desegregation as a remedy for the educational inequalities suffered by blacks and other minorities, educational legal activists increasingly turned their attention to the financing dis-

parities among school districts. As a result, lawsuits began to emerge that challenged the distribution of educational resources.[2]

These suits, arising first in California, Texas, and New Jersey, sought to fuse two significant elements of the Warren Court's political and jurisprudential commitments to equality. First, school finance litigators hoped to transform the Warren Court's rulings on behalf of equal educational opportunity for blacks and whites into a broader commitment to equal resources for education. Second, they hoped to extend a series of Warren Court–era rulings that suggested class was a constitutionally impermissible basis for public policy. In earlier decisions such as *Edwards v. California*,[3] the Supreme Court had suggested that the poor might merit special judicial protection because of their limited access to political channels. The Warren Court took that burden seriously, and in cases such as *Griffin v. Illinois*[4] and *Gideon v. Wainwright*[5] struck down the provision of rights according to wealth. The Warren Court was particularly responsive if a claimant's indigence prevented the exercise or enjoyment of a fundamental right. In California the state supreme court applied precisely this reasoning in the 1971 school finance case *Serrano v. Priest*.[6] In *Serrano* the California High Court declared that poverty was a suspect classification under the equal protection clause of the Fourteenth Amendment and that public education was a fundamental right under the U.S. Constitution. A few months later, a federal district court in Texas adopted that logic in *Rodriguez v. San Antonio Independent School District*.[7] The U.S. Supreme Court accepted the Texas decision for review on appeal, and by 1973 the judicial stage was set for an important ruling by the Supreme Court on inequality in public school finance.

The Fundamental Lessons of Rodriguez

In retrospect, there were clear signs that the Supreme Court would not look too favorably on the lower court rulings on school finance coming out of Texas and California. Although the Warren Court's aura of judicial activism still glowed, the Court was under increasing political pressure to scale back its agenda. Importantly, President Nixon had appointed three politically moderate or conservative judges in the early 1970s: Chief Justice Warren Burger and Associate Justices William Rehnquist and Lewis Powell. The Burger Court clearly consolidated a number of Warren Court doctrines—most notably within the area of school busing[8] and the right to privacy,[9] but the notion of poverty as a suspect classification under the Fourteenth Amendment was not among those consolidations. Indeed, in an early Burger Court decision, *Dandridge v. Williams*,[10] Justice Potter Stewart explicitly chose not to construe Maryland's limitation on welfare benefits to large

families as a violation of constitutional rights. Instead, he viewed the regulation as simply one of any number of rational policies a state might employ in the administration of its social policies. This test, known as the rational basis test, simply requires that there be a logical nexus between the policy and a legitimate government interest.

With the *Rodriguez* case, the plaintiffs hoped that the important position of public education within American political and economic life would lead the Court to declare education a fundamental right, thereby forcing the Court to examine much more carefully any wealth-based discrimination in the provision of public education. Certainly, the Court's position in *Brown v. Board of Education* supported the view that education was, implicitly at least, of central importance to governance and citizenship. After all, Chief Justice Earl Warren had written for a unanimous Court that "education is perhaps the most important function of state and local governments," adding, a few lines later, that educational opportunity, "where the state has undertaken to provide it, is a right which must be made available to all on equal terms."[11] But what had been "the most important function of state and local governments" under the Warren Court in 1954 became somewhat less important under the Burger Court in 1973. This transformation of education's centrality—combined with a reluctance to view wealth as a suspect classification—led the Supreme Court to deny, by a narrow 5-4 margin, the claims of Demetrio Rodriguez and his fellow plaintiffs. Instead, Justice Lewis Powell contended that a healthy respect for federalism and the importance of local control in educational financing virtually required the Supreme Court to find the admitted disparities as outside the Court's purview.

The facts of *Rodriguez* are simple enough. The state of Texas funded its public schools as most states do, through a two-tiered system of local property taxes and state aid. The bulk of a district's educational revenues came from local property taxes, which made the revenues highly dependent on the property wealth within the area. Districts with high property values could generate greater sums at lower tax rates than those with low property values. The mechanism for distributing state aid took these different capacities into account, but only to a very modest degree. As a result, districts across Texas allocated widely varying per pupil expenditures. The question before the Court was whether this two-tiered system generated inequalities prohibited by the Equal Protection Clause of the Fourteenth Amendment.

Justice Lewis Powell, writing for the majority, had to disengage two critical issues in *Rodriguez* from earlier Supreme Court rulings. First, the *Brown* decision strongly implied that education is a fundamental right in America. Second, if education is a fundamental right, then the line of wealth discrimination rulings suggested that wealth was a constitutionally suspect classification by which to distribute that right. Together, these two claims formed the foundation of the plaintiffs' claims in *Rodriguez*.

Powell aimed first at the fundamental status of education. He wrote that "[T]he importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause" Powell further noted that "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected."[12] The Supreme Court's retreat from the fundamental—or at least quasi-fundamental—status of education was, in itself, a marked departure from the normative commitments of the Warren Court. Next, Powell also engaged the question of whether the poor—as a class—are an identifiable minority whose interests ought to be safeguarded because they are particularly vulnerable to attack or neglect by the state.

Powell rejected the notion that the Fourteenth Amendment's Equal Protection Clause requires the Court to regard poverty as a "suspect classification," for two reasons. First, the Texas school children living in poor districts were not clearly definable as a class of "poor," and second, they did not suffer "an absolute deprivation of the desired benefit."[13] In support of the first contention, the Court argued that it is not clear that poor school children—as measured by family income or per capita income—were clustered in poor districts, as measured by property wealth.[14] Thus, according to Powell, it is hard to link the poverty of a district and its limited resources to the poverty of the individual students. The Court did not accept an implicit and important contention of the appellees: that land-poor districts contain cash-poor students.

Even if he had accepted this view, Powell's second reason for rejecting the suspect status of a poverty classification would have prevented the Court from finding for Rodriguez. Powell wrote:

> The argument here is not that the children in districts having relatively low assessable property values are receiving no public education; rather, it is that they are receiving a poorer quality education than that available to children in districts having more assessable wealth. . . . [A] sufficient answer to appellees' argument is that, at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages.[15]

An absolute equality, Powell argues, cannot be obtained. Instead, the court can only ask if the education received in property-poor districts is "adequate." The state of Texas argued that it was, and the Court agreed.

The claims made by Demetrio Rodriguez in *San Antonio Independent School District v. Rodriguez* provide an illuminating contrast to those made by Linda Brown in *Brown v. Board of Education*. In both cases, the plaintiffs contended that the laws governing the administration of education yielded grossly unequal educational opportunities. In Mr. Rodriguez's case, those disparities emerged from differences in wealth among communities. Educa-

tional resources, in other words, were segregated by place. In Ms. Brown's case, the disparities emerged from differences in skin color, with students segregated by race and then provided different resources accordingly. These similarities, however, belie important differences between the two claims, differences that a majority of the Supreme Court could not ignore. A number of political reasons—independent of jurisprudential rationales—stood in the way of a Supreme Court intervention to reduce the class biases of public education, despite the precedent of *Brown*. First and foremost, *Brown* was fundamentally different because it emerged from a lineage of slavery. The racial hierarchy implicit within Jim Crow and racially segregated institutions obviously echoed the power dynamics of slavery. The legal systems that mandated racial segregation controlled and dominated former slaves and their children, and it arose as a mechanism of social control not long after the physical controls of involuntary servitude were abolished in the Thirteenth Amendment (Woodward 1974). Thus, as a moral issue, if not a legal one, judicial involvement in the dismantling of racial segregation was much more readily justified. There is no historical parallel in the practice of economic or class segregation. Indeed, American society prides itself on its ideology of individual economic advancement, even if the reality of our economic disparity is often more bleak than the nation's sunny economic optimism would ever admit.

Second, public education historically has been the province of state and local governments. Despite *Brown*'s precedent, the Supreme Court has been loathe to impose a federal presence on such a decentralized and localist institution, especially without express constitutional language to uphold the federal right at issue. In the *Rodriguez* decision, the court recognized and admitted profound financing disparities among school districts in Texas, but contended that the U.S. Constitution could provide no relief for such inequalities. Although the Court implicitly condemned the Texas financing scheme, it found no federal constitutional violation.[16] Instead, any wrong that existed was a function of an unfair taxation scheme—a matter best left to states and local governments to work out. As Justice Powell wrote:

> The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various States, and we do no violence to the values of federalism and separation of powers by staying our hand.[17]

The federal judiciary, the Court stated, is the wrong place to seek the reform of "tax systems which may well have relied too long and too heavily on the local property tax." School financing goes to the heart of state taxation policies and is best resolved, the Court contended, through local efforts: "[T]he ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them."[18]

This reliance on local solutions was premised, of course, on the notion that education is not a national right, at least not one conferred by the U.S. Constitution. Despite *Brown*'s strong language about the importance of education, the Supreme Court declined to declare equal education a right enforceable in federal court. That reasoning, however, left an opening for state courts and state constitutions, an opportunity that school finance equity activists were quick to exploit. Many state constitutions contain equality provisions, and virtually all contain explicit language about the structure of public education. These direct references could, many constitutional scholars noted, provide a doctrinal foundation for striking down unequal or inadequate financing systems under *state* constitutional provisions.[19] If a judge can demonstrate that a state constitution holds "independent and adequate" state grounds for greater educational equity, his or her decision lies beyond the reach of federal courts.[20] Because of this federal deference to state constitutional issues, state supreme courts were largely free to rule on these cases as they saw fit. They could offer the final word, free from the possibility of federal court reversal.

The "New Judicial Federalism" and School Finance Reform

Thirteen days after *Rodriguez* came down, the New Jersey Supreme Court offered its own ruling on school finance, *Robinson v. Cahill*.[21] That decision was based on the state's educational clause, which requires the state to provide all schoolchildren with a "thorough and efficient" education.[22] Unlike the U.S. Supreme Court, the New Jersey Supreme Court chose not to view the case as a violation of constitutional principles of equality, but as a violation of the state constitution's educational provisions. But like the U.S. Supreme Court's experience in the *Brown* decision, the New Jersey Supreme Court confronted major obstacles to the implementation of its decree. Ultimately, the New Jersey Supreme Court forced a nine-day shutdown of New Jersey schools in 1976 in order to compel the state legislature to fund the reform legislation adequately (for details, see Lehne 1978). That initial clash of wills between state legislature and state court has proven, over the years, to be a recurring pattern within the judicial politics of school finance equalization. The judicial rulings requiring either greater equality of educational expenditures or a greater adequacy of funding for poor districts often pit judges against elected officials in a battle of wills over educational policy-making. Surprisingly enough, state supreme courts win their fair share of battles, but the institutional context ensures that none of the battles are short lived. School finance struggles are political and legal wars of attrition.

The New Jersey experience with court-mandated school finance reform was the first of many post-*Rodriguez* decisions in which state supreme courts

declared existing school finance mechanisms constitutionally invalid. Over the twenty-five years between 1972 and 1997, thirty-two state supreme courts have ruled on school financing lawsuits. Sixteen of those decisions have struck down the existing systems of funding schools and sixteen have upheld them. These lawsuits did not emerge, however, out of thin air. Inspired at first by judicial successes in New Jersey and California, school finance litigators also relied on judicial and academic theories about state constitutional interpretation. Beginning in the mid-1970s, lawyers and state court judges began using state constitutions to protect individual rights and liberties.[23] The increasingly conservative nature of the federal judiciary (particularly in the Reagan and Bush years) helped bolster what has become known as the "new judicial federalism." Since 1977, when Supreme Court Justice William Brennan published the "Magna Carta" of state constitutionalism, the new judicial federalism has grown steadily and been applied to an array of issues.[24] State rulings on search and seizure, the right to die, the right to privacy and free speech have expanded individual liberties in areas where the Supreme Court has limited its reach or not yet ruled.[25]

Most of these rulings that reinterpret state constitutional obligations have not, however, forced a systematic and wholesale revision of state institutions.[26] For example, a state supreme court may recast the scope of the exclusionary rule, but the general framework of law enforcement remains intact. In contrast, the school finance decisions aim to sharply restructure educational policies at the state level. Indeed, these decisions go to the heart of two central features of state government: education and taxation policies. As a result, these rulings are far more controversial and are of far greater consequence than other developments within the new judicial federalism. The movement of educational financing lawsuits from federal court to state courts—combined with the increasing robustness of state constitutional protections—has, in many states, effected a substantial transformation in educational financing, as we will see in chapter 2.

The Logic of It All: How (and Why) Do Courts Strike Down School Finance Systems?

But just what are the provisions of state constitutions that enable state supreme courts to restructure the distribution of educational resources? By what guiding principles do these state courts make these decisions? In *Brown*, the logic of the U.S. Supreme Court was clear: Separate is inherently unequal. It is more difficult to summarize the rationale of state supreme court rulings that strike down school financing systems. Different courts have offered different rationales for their decisions and some constitutions are more amenable to school financing suits than others. For example,

Montana's constitution stipulates that "Equality of educational opportunity is guaranteed to each person of the state."[27] In contrast, the Alabama Constitution proclaims that the state shall "foster and promote the education of its citizens in a manner and extent consistent with its available resources . . . but nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense."[28] Clearly, a lawyer in Missoula has much more to work with than a lawyer in Mobile.

In general, however, we can group state supreme court rulings that strike down existing school finance systems into two major groups: those that rely on a principle of equity and those that rely on a principle of adequacy.

Equity decisions: Generally built on a foundation of U.S. Supreme Court equal protection rulings, equity decisions substitute state equality provisions for the Fourteenth Amendment of the U.S. Constitution. Many state constitutions do not expressly provide for "equal protection of the laws," but contain other equality provisions—some dating back to the Jacksonian Era and others more recent adoptions of state equal rights amendments.[29] Within the context of school finance, these equality provisions have been used to argue that gross inequalities in educational financing violate state constitutions. For example, the early school finance decision in California, *Serrano v. Priest*, anchored its analysis firmly within the framework of federal equal protection analysis, declaring wealth a suspect classification under the California Constitution and declaring education a fundamental right for California citizens.[30] Other courts, however, have been less enthusiastic about viewing school finance litigation through the lens of equal protection. Declaring education a fundamental right, they have argued, could bring a wave of lawsuits over disparate police and fire protection, water services, even housing needs.[31] Also, many state courts have traditionally interpreted state equality provisions as coextensive with the U.S. Constitution's equal protection clause. Reluctant to break this "lockstep" interpretation, some state courts have applied the *Rodriguez* rationale to the state context, holding that equality in educational spending does not fall under the purview of state equality provisions.[32] In general, state supreme court decisions based wholly or in part on state equality provisions are becoming increasingly rare, as state supreme courts have more recently relied solely on state educational clauses to strike down existing school finance systems.[33]

Adequacy decisions: When plaintiffs make a claim under a state educational clause, they are typically seeking a judicial declaration that the state is not providing an adequate education within public schools. In short, they want the court to assert that the state is not meeting its constitutional obligations within public education. Commonly, this would be remedied by a new financing structure that would provide greater assistance to the worst-off districts so they could provide students with an adequate education. In adequacy cases, plaintiffs are typically not so concerned with establishing a

strictly equitable distribution of funds among school districts, but with simply securing more resources for the poorest districts. Of course, determining that an existing finance system cannot generate sufficient revenues for an adequate education within all districts forces courts to address all kinds of thorny issues about what constitutes an "adequate" education and even whether the court can discern its elements. Thus, courts that face an adequacy claim must closely examine the meaning of a state constitution's educational clauses. Unfortunately, these provisions provide only the roughest definitions. The language in these clauses ranges from simple declarations that create a system of schools to broad assertions about the fundamental importance of education within the state. For example, the Oklahoma education clause reads, "The legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated,"[34] while the Washington Constitution asserts that education is the "paramount duty of the state."[35] Between these two extremes lies the more common educational clause that stipulates a particular level of educational opportunity to its students. States in this middle ground must provide their students with a "thorough and efficient"[36] education or a "general and uniform"[37] education throughout the state.[38]

Mingling equity and adequacy: Over the past few years, school finance litigators have come to rely increasingly on these general education provisions to sustain their adequacy claims. Indeed, William Thro has argued that school financing decisions have come in three waves, culminating in an almost exclusive reliance on educational clauses rather than equality provisions (see Thro 1990; 1993; 1994). The first wave, Thro argues, began with suits that relied on the equal protection provisions of the U.S. Constitution; of course, that wave crashed to the shore with the *Rodriguez* decision. The second wave of rulings, beginning shortly after *Rodriguez* and continuing until 1989, relied on both state equality provisions and state education clauses. In the third and current wave, state supreme courts, according to Thro, are basing their decisions exclusively on state education clauses, ruling that the existing financing systems do not provide students with an adequate education. The remarkable string of successes enjoyed by adequacy claimants has led some to argue that equality claims no longer play a central role in school finance litigation (see, for example, Enrich 1995). Recent decisions coming out of Arizona, Vermont, and Ohio, however, indicate that the abandonment of equity claims is not complete—for two important reasons. First, equity claims are still viable, independent vehicles for school finance litigators, and second, adequacy claims often implicitly involve equity issues. This can lead to mixed rulings that intermingle equity with adequacy concerns.

The 1997 ruling in Vermont nicely illustrates the first point, the continuing viability of equity claims. In that decision, the state supreme court ruled

that "the present system has fallen short of providing every school-age child in Vermont an equal educational opportunity." Indeed, the Vermont Supreme Court explicitly held that "to fulfill its constitutional obligation the state must ensure substantial equality of educational opportunity throughout Vermont."[39] Clearly, within Vermont, equity claims are still quite robust. And in Arizona the state supreme court recently struck down the existing system of financing school facilities, concluding that the "general and uniform" requirement of the Arizona Constitution held an implicit norm of equality. The court ruled, quite simply, that the state's obligation under the education provision would be met only if the "[f]unding mechanisms provide sufficient funds to educate children on *substantially equal terms*."[40]

The Arizona case also illustrates how adequacy claims often become tangled up within egalitarian language, making the distinction between equity and adequacy difficult to discern. Although many adequacy rulings are based expressly on educational provisions of state constitutions, norms of equal distribution nonetheless surface within cases that merely seek to demonstrate inadequate funding. This is true even for older rulings that some analysts have seen largely through the lens of adequacy. For example, the Kentucky Supreme Court ruling in *Rose v. Council for Better Education*[41] held that

> The system of common schools must be substantially uniform throughout the state. Each child, *every child*, in this Commonwealth must be provided with an equal opportunity to have an adequate education. Equality is the key word here. The children of the poor and the children of the rich, the children who live in the poor districts and the children who live in the rich districts must be given the same opportunity and access to an adequate education.[42]

Is this decision about equity or adequacy? It is about both, and to argue that norms of equality did not figure in the court's construal of what constitutes an "efficient" school system is to ignore the language of the decision itself.[43]

The point here is that equality claims are still integral components of school finance decisions, even if judges are basing their decisions on state educational provisions rather than state equality provisions. As the Vermont experience shows, courts still can, and do, base their decisions on norms of equality, but their egalitarian impulses are often infused with notions of adequacy. This is due to a number of factors. Judges often view adequacy in light of relative resource levels rather than absolute levels, lending support to the argument that the constitutional inadequacy of a school financing system stems from its overall inequality. In other words, a judge may see a system as inadequate or inefficient simply because it generates significant resource inequalities. Also, judges may define "equality of educational opportunity" in terms not of perfect equality of resources or education, but in terms of fairness, which requires a rough parity of resources. Part of state

supreme courts' tendency to conflate adequacy and equity may, in fact, arise from confusion over what equality actually means. As I will discuss in chapter 5, equality comes in various forms and if judges do not specify carefully what *kind* of equality the state constitution requires, they may be asking state legislatures to enact contradictory policies.[44] All of these factors lead state supreme court justices to sometimes mingle equity issues with adequacy issues in their rulings. Courts often draw freely on the multiple and possibly conflicting arguments made by plaintiffs' lawyers, and lawyers, being lawyers, are more than happy to provide courts with multiple ways to reach similar conclusions. As a result, judges—who are generally not specialists in the technical aspects of school financing formulas—blend arguments and sometimes conflate issues that are analytically distinct, but enjoy a political or rhetorical affinity.

The jurisprudential routes to school finance reform are varied, but they vary within fairly specific constraints. State equality provisions define one boundary while state educational clauses constitute another. Within those boundaries, claims are often mingled; the routes to reform often crisscross. Clearly, claims made under state education clauses are increasingly effective, but equity claims still suffuse—either explicitly or implicitly—school finance reform litigation. As state supreme courts increasingly look at class disparities among classrooms, the judicial notion of equal educational opportunity shifts from a race-based conception to a class-based notion. This is true whether one sees these state supreme court decisions as efforts to achieve equity or adequacy or both. In either case, these courts have both initiated a judicial politics of educational opportunity and extended and redefined a judicial tradition begun in *Brown v. Board of Education*. The next chapter assesses the success of that project.