

Adequacy and the Courts: A Review

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Questions of the structure and content of publically funded education are typically considered the province of state legislators, educational policymakers, and philosophers, but deciding how to pay for the resulting system has largely been left up to the court system. School finance litigation's long history dates to the 1960s and such litigation has continued nearly unabated into the present; nearly every state's school finance provisions have been challenged and states compelled to adjust how educational resources are generated and distributed to local school districts. Texas has remained in seemingly constant litigation over how to pay for its public schools since the first *San Antonio v. Rodriguez* suit was filed in 1968 (Sracic, 2006). Currently over 600 Texas public school districts are suing the state alleging failure to provide an equitable and adequate level of funding for a growing and rapidly changing student population. And the state's Supreme Court is expected to render a decision before the 2015 legislative session convenes. Given the legislature's past response to Supreme Court school finance decisions, pending rulings are unlikely to put an end the matter.

In this paper I examine one major legal concept employed in challenging state school finance provisions: adequacy. I first offer a brief definition of adequacy; then examine its emergence as a legal argument to challenge state school finance arrangements; discuss the ways in which the courts have applied the concept; address the problems associated with adequacy theory as a remedy for flawed state school finance plans; and finally note the growing tendency of courts to blur lines between equity and adequacy in their efforts to devise a more comprehensive and effective pattern of state school finance provisions. I conclude by recommending the trend toward combining adequacy and equity in a broad approach to school finance reform continues.

The Meaning of Adequacy

It is impossible to define adequacy in isolation, rather the concept must be understood in relation to external criteria, such as that offered by the language of a state constitution's education clause (West & Peterson, 2007) or a set of externally determined outcomes. Simply stated, adequacy theorists assert the education clause of a state's

constitution commits the state to guaranteeing all students reach a minimum level of academic achievement and requires the state provide the level of spending needed for all school districts to produce a specified level of educational achievement. The concept of adequacy differs from that of equity since, while a standard of equity requires a state eliminate spending variations between rich and poor school districts, adequacy establishes a minimum spending level required to produce specified educational outcomes (Costrell, 2007). Ascertaining baseline adequacy requires setting standards gauged by answers to four questions: adequate to do what?, for whom?, to what extent?, and for what period of time? (Odden & Picus, 2014). As a standard, adequacy may be applied both to traditional resource inputs and the results those inputs produce. Koski and Hahnel (2008) note adequacy “is understood to mean a specific qualitative level of educational resources or...a specific level of resources required to achieve certain educational outcomes based on external and fixed standards” (p. 47). As a tool to challenge state school finance arrangement, adequacy is a relatively recent arrival on the scene.

The Emergence of Adequacy

Scholars usually divide the history of school finance litigation into three distinct “waves” (Heise, 1995; Thro, 1989). The first wave, roughly the period 1970–1973, grounded legal challenges to state school finance provisions based on two sources, the Equal Protection Clause of the Fourteenth Amendment to the *U.S. Constitution* and the theoretical work of Coons, Clune, and Sugarman (1970). These authors contended state funding for public education should be both substantially equal among school districts and independent of the wealth of the school district in which students reside. This approach to school finance litigation was initially successful at the state level but was foreclosed when the U.S. Supreme Court decided, in 1973, education was not a federally protected right (*San Antonio Independent School District v. Rodriguez*). This decision closed the doors of federal courts to state school finance litigation.

The second wave (1973–1989) concentrated on legislating disparities in the distribution of state school funds across school districts. The purpose of such litigation was to convince courts to interpret the language of the education clause of the state constitution in ways that would recognize differentials in need among school districts and free districts from dependence on local wealth to fund educational programs. Unfortunately, the courts were largely unconvinced by these arguments and plaintiffs won only a minority of court decisions in this period (Augenblick, Myers, & Anderson, 1997).

The third wave began in 1989 with the Kentucky State Supreme Court’s decision in *Rose v. Council for Better Education, Inc.* Based on its

interpretation of the state constitution's wording, the court declared Kentucky's legislature had failed to afford students the required adequate public education, directing the state to remedy those inadequacies. To guide the legislature's response, the court included in its decision a list of skills and knowledge that, in its view, constituted an adequate education. *Rose* is a landmark case marking a turning point from a standard of equity to a standard of adequacy as a basis for challenging state school finance provisions (Koski & Hahnel, 2008; Rebell, 2002; Thro, 1989).

What motivated this shift from equity to adequacy as a basis legally to challenge school finance reform? During the second wave of school finance reform litigation, state defendants prevailed in the majority of cases decided (Augenblick, Myers, & Anderson, 1997; Hanushek & Lindseth, 2009; Rebell, 2002). Losing became a powerful incentive to seek a new basis for challenging state school finance revisions. A second motivating factor was the seemingly simultaneous emergence of the standards movement, especially at the state level where rigorous content standards in most academic areas had been implemented. Standards began to provide the framework for challenging state school finance provisions. As Peter Schrag remarks,

There's incontrovertible logical, ethical, fiscal, and legal, [*sic*] in the tight two-way link between standards and adequate resources. If a state demands that schools and students be accountable—for meeting standards, for passing exit exams and other tests—the state must be held equally accountable for providing the wherewithal to enable them to do it. (quoted in Rebell, 2009, p. 64)

Thereafter, standards and adequacy became linked in the minds of many school finance reform advocates.

Additional reasons exist for the emergence of adequacy arguments in the period following 1989 (Koski & Hahnel, 2008; Koski & Reich, 2006; Rebell, 2002). First, by concentrating on the language of the state constitution's education clause, the courts avoided a "spill-over" effect to other areas of state services and thus the need for increased revenue and taxes. Moreover, adequacy arguments appear to flow naturally from state education clauses' existing language, negating judges' necessity to look for language supporting "fundamental rights" and "suspect classes" required by an equal protection claim (Koski & Hahnel, 2008, p. 48). Third, establishing adequacy as a floor beneath state support permits local districts to provide additional resources for their students over and above what courts demand. Nor does the standard of adequacy threaten the sanctity of local control. In fact, for wealthy districts with resources

able to provide educational programs beyond what adequacy requires, local control is actually enhanced. Importantly, adequacy appeals to established U.S. norms of fairness and equal opportunity and seems to support education's continued role as key to economic success and upward social-class mobility. Finally, establishing adequacy appears, on first glance at least, to be an uncomplicated undertaking. "All that the state legislature is required to do is to define what constitutes an adequate education and provide districts with the resources and conditions to deliver than level of education" (Koski & Hahnel, 2008, p. 48). Thus a complex problem of public policy became reduced to its simplest form.

How Courts Interpret Adequacy

Hanushek and Lindseth (2009) note a substantial number of states have faced adequacy challenges to school finance provisions. To examine all or even most of those cases is far beyond the scope of this paper. However, a review of three cases provides strong exemplars illustrating how courts in different states have interpreted adequacy: Kentucky's *Rose* case; the series of decisions by the New Jersey state Supreme Court known as the *Abbott Decisions*; and, from New York, the *Campaign for Fiscal Equity* case. I offer readers a word of caution; courts often use the terms "adequate" and "sufficient" interchangeably. For present purposes readers should consider these terms synonymous.

The Rose Case. In 1985, the Council for Better Education, a coalition of 66 school districts, filed suit against the state of Kentucky alleging it had failed to provide "an efficient system of common schools" as plainly required by the language of the state's constitution. The trial court ruled for the Council, asserting an "efficient school system must provide sufficient physical facilities, teachers, support personnel, and instructional materials to enhance the educational process" (Hanushek & Lindseth, 2009, p. 107). The court directed the Kentucky General Assembly to supply appropriate financial remedies.

The state appealed the lower court's ruling but the Kentucky Supreme Court upheld the lower court's ruling. The court declared the state's public school system unconstitutional because it was "inadequate and well below the national effort" (*Rose v. Council for Better Education, Inc.*). The court then directed the Kentucky General Assembly to "re-create...a new system of common schools" based on the premise that education is "a basic, fundamental constitutional right that is available to all children within the Commonwealth (*Rose v. Council for Better Education, Inc.*). To guide the Assembly's work, the court laid out seven standards for a constitutionally adequate education:

- *Sufficient* oral and written communication skills to enable students to function in a complex and rapidly changing civilization
- *Sufficient* knowledge of economic, social, and political systems to enable students to make informed choices
- *Sufficient* understanding of governmental processes to enable students to understand the issues that affect their community, state, and nation
- *Sufficient* self-knowledge and knowledge of student's mental and physical wellness
- *Sufficient* grounding in the arts to enable students to appreciate their cultural heritage
- *Sufficient* training or preparation for advanced training in either academic or vocational fields so as to enable students to choose and pursue life work intelligently
- *Sufficient* levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states in academic or the job market

Pursuant to the court's direction, Kentucky redesigned its public school system. Reforms included a new three-tiered school finance system with a significant infusion of new money, the establishment of content student performance standards, standardized testing, changes in school governance and management, and an accountability system with rewards and sanctions for schools and school districts (Adams, 1994).

Uniquely, in the *Rose* decision, those standards used to define adequacy emerged out of a statewide public engagement process initiated by the trial court and carried out during a six-month stay of its decision (Rebell, 2009). During this time a select committee appointed by the trial court held a series of public meetings, all of which received extensive media coverage. The standards were a product of this statewide public engagement process and were adopted by the trial court and approved by Kentucky's Supreme Court. Although Hanushek and Lindseth (2009) contend the *Rose* decision moved well beyond the Kentucky constitution's language and "hardly constitute[s] operational definitions that are easily judged or applied" (p. 109), courts in several states including Alabama, Massachusetts, New Hampshire, North Carolina, and South Carolina have adopted them (Rebell, 2009). Indeed the *Rose* decision "set the agenda for school finance up to the present time" (Odden & Picus, 2014, p. 33).

The Abbott Decisions

New Jersey represents one of the more extensive attempts to define adequacy through both litigation and legislation. Beginning with *Robinson*

v. Cabill (1973–1976) and continuing through *Abbott v. Burke* (1985–2009), New Jersey struggled with the problem of providing all students in the state with equal access to a quality education (Goertz & Weiss, 2009). New Jersey’s Supreme Court would issue over twenty opinions and the state legislature enacted three separate versions of school finance reforms reform legislation. It was not until 2009 in *Abbott XX* that the court finally declared the state’s school finance system constitutional for all students and lifted its standing order for additional funding for a set of supplemental programs for poor and minority students. While the original litigation in New Jersey addressed conditions specifically in 28 poor, urban school districts, the final decision applied to all New Jersey public school districts.

In 1981, the Education Law Center, a New Jersey advocacy organization, sued the state on behalf of students in four poor, minority urban school districts (Camden, East Orange, Irvington, and Jersey City). This number would eventually expand to 31 poor, urban school districts who would be designated the Abbott districts. The suit (*Abbott v. Burke I*) claimed the existing school finance system created disparities in funding between poor urban and wealthy suburban school districts that unconstitutionally deprived the poor district of needed student resources. When the case finally reached the New Jersey Supreme Court it was remanded to an administrative law judge for hearing and decision (Education Law Center, 2012). The judge upheld the plaintiff’s claims. In its 1990 opinion, the Supreme Court upheld the administrative law judge’s ruling that the state’s school finance system affected poor urban school districts unconstitutionally. The court’s ruling notes the “thorough and efficient” public education clause of the state constitution must be interpreted broadly. Public education should provide all students with the ability to meet the duties of good citizenship and “participate fully in society, in the life of one’s community, to appreciate art, music and literature, and to share that with friends” (*Abbott v. Burke II*, quoted in Goertz & Weiss, 2009, p. 11). The court directed the New Jersey Legislature to amend existing law or enact new legislation that would “substantially equalize” funding between poor and wealthy suburban school districts and be adequate to fund supplemental programs that addressed the disadvantages of poor and minority urban students. The new funding system was to be in place for the 1991–1992 school year. The legislature responded by passing the Quality Education Act of 1990. The act increased funding for poor, urban schools to a limited degree but failed to equalize funding to any great extent (Education Law Center, 2012).

The plaintiff districts argued the Quality Education Act fell short of meeting the needs of poor and minority students and returned to court.

In a 1994 decision (*Abbott v. Burke III*), the court agreed the Quality Education Act failed to meet the requirements of *Abbott v. Burke II* and directed the state legislature to enact a new law to comply with the court's requirements for equitable and *adequate* funding. The legislature's response, the Comprehensive Education Improvement and Financing Act, was then challenged as inadequate, so litigation continued. In *Abbott v. Burke IV*, the court directed the state legislature to create parity in educational funding by the 1997–1998 school year. The court ordered a new trial in the lower court to develop an evidentiary record of needs for supplemental programs. It also directed the State Education Commissioner to study the needs of poor and minority schoolchildren to present recommendations for remediating funding programs (Education Law Center, 2012). In *Abbott v. Burke V* (1998) the court directed implementation of extensive supplementary programs for the districts' poor and minority children. The programs included: implementation of a research-based, whole-school reform (*Success for All* was the preferred model); full-day Kindergarten programs; half-day preschool programs for three- and four-year-olds; referral services for social and health care; alternative school and school-to-work plans; supplemental funding for additional programs based on student needs; and state funding for the entire cost of remodeling unsafe and out-of-date facilities or construction of new ones where remodeling was not possible (Education Law Center, 2012). Taken together, the court's actions in *Abbott v. Burke IV* and *V* established requirements for an adequate and equal education for poor and minority, urban schoolchildren. In a subsequent opinion, *Abbott v. Burke X* (2003), the court amended the list of supplementary educational programs to include early literacy programs, class size limitations, family support programs for elementary schools, secondary school reform, and the hiring of technology personnel (Goertz & Weiss, 2009).

In 2008, the state legislature passed the School Funding Reform Act. The state asked the court summarily to declare the Act constitutional and the supplementary programs ordered in *Abbott v. Burke IV* and *V* unneeded. The court declined to comply and remanded the issue to the lower court for trial (*Abbott v. Burke XIX*). The court subsequently upheld the results of that trial and, in *Abbott v. Burke XX* (2009), declared the School Funding and Reform Act constitutional and applicable not only to the Abbott districts, but for all the state's students (Education Law Center, 2012). Litigation would continue into 2011, when the court declared the extant version of the school finance law constitutional, extending the *Abbott v. Burke* criteria to all districts in the state, thus closing the books, however temporarily, on adequacy litigation in New Jersey (Odden & Picus, 2014).

The *Abbott* decisions are important to understanding adequacy standards for several reasons. First, litigation focused primarily on districts serving urban poor and minority students. Additionally, the court, early on, combined equity and adequacy in its search for a comprehensive school finance remedy. Moreover, the decisions were unique in that they appear to define educational adequacy as single, comprehensive, whole-school reform fitting with state-adopted content and performance standards. In terms of funding, adequacy consists of the “resources needed to implement an effective (research-based) comprehensive set of school strategies that would provide all students with an equal opportunity to learn to state performance standards” (Odden & Picus, 2014, p. 37). The decisions also expanded the meaning of adequacy to include services for pre-school children who fell outside the ages specified for services in the state’s education clause (5–17 years old). Finally, in the *Abbott* decisions, the Court compelled the state legislature directly to deal with the need to define an adequate education, rather than avoiding the issue (Odden & Picus, 2014).

The Campaign for Fiscal Equity

This case originated in challenge to New York’s public school finance system filed by the Campaign for Fiscal Equity (CFE). CFE is a non-profit advocacy group composed of parents, low-performing school districts, and public education advocates. While the organization’s goal was to ensure all schools in New York received adequate resources, the specific objects of their efforts were New York City’s school districts and students. This case is significant not only because it involved the nation’s largest public school district, but also for the total amount of money involved (Hanushek & Lindseth). Litigation would prove to be a 13-year process before a final decision was rendered.

CFE charged New York City was failing its duty under the state constitution to provide an opportunity for a sound, basic education to the school children of the nation’s largest city. At the heart of the CFE suit was the right of New York City schoolchildren to be accorded the sound, basic education as required by the court in *Levittown v. Nyquist* (1982). In support of its claims, CFE presented evidence to show New York City’s public school students performed poorly on academic tests and experienced low graduation rates. Furthermore, a lack of resources resulted in overcrowding in some areas, large class sizes, and unqualified teachers, as compared to teachers’ credentials in other parts of the state. Plaintiffs blamed a “broken political process” in state government that failed realistically to address the finance issue. The trial court ruled in favor of CFE and ordered the state to reform the school finance system to make it predictable, transparent, and reactive to student needs. The

court also identified acceptable criteria for sound, basic education as providing students with those skills needed to become productive citizens capable of engaging in civic life and participating in a competitive job market. Criteria for a sound basic education included:

- *Sufficient* numbers of qualified teachers, principals, and other personnel appropriate to class sizes
- *Adequate* and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum
- *Sufficient* and up-to-date books, supplies, libraries, educational technology, and laboratories
- *Suitable* curricula, including an expanded platform of programs to help at-risk students by giving them additional time on task
- *Adequate* resources for student with extraordinary needs
- A safe and orderly environment (*Campaign for Fiscal Equity v. State*, 2001)

On appeal the trial court's decision was overturned when the New York Court of Appeals ruled students in New York constitutionally were entitled to no more than an eighth-grade education (*Campaign for Fiscal Equity*, 2012).

The plaintiffs returned to court and, in 2003, the New York Court of Appeals reinstated the original trial court's decision, holding the "sound basic education" to which all New York students were entitled was "a meaningful high school education." The court returned the matter to the trial court, instructing it to undertake a costing-out study to determine the amount of funding required to provide this level of schooling. The lower court appointed a panel of three referees to conduct the study. The panel concluded New York City schools should receive an additional \$5.6 billion per year in operating funds and \$9.2 billion for the modernization of school facilities. The trial judge accepted the panel's recommendations and ordered the state to phase in the additional monies over a five-year period. These additional funds were over and above the \$12.6 billion already devoted to the city's public schools (Hanushek & Lindseth, 2009), yet the state legislature balked at appropriating this amount of money. Ultimately, in 2006, Governor Elliot Spitzer mediated a compromise that supplied New York City's schools with an additional \$5.4 billion over a four-year period (*Council for Fiscal Equity*, 2012).

Judicial determinations of adequacy vary from state to state depending upon specific circumstances and the plain language of the relevant state constitution's education clause. Yet, as Michael Rebell (2002) argues, a consensus on certain "core concepts" deemed to make

up a constitutionally adequate public education has emerged from state adequacy decisions, holding that an adequate education must “prepare students to be citizens and economic participants in a democratic society;” reflect “contemporary, not archaic educational needs;” be attached “to more than a minimal level” of achievement; and “focus on opportunity, rather than outcome” (p. 239).

Problematising Adequacy Theory

For all its popularity and its use as a basis for challenging state school finance arrangements, problems are associated with standards of adequacy. Three problem areas are particularly relevant to this issue: difficulties in clearly defining adequacy requirements; problems determining the cost of adequate educational programming; and adequacy standards’ lack of attention to the needs of poor and minority students. While most may agree children should have an “adequate” education, there is nevertheless wide disagreement on what an adequate education entails. In this regard, the language of state constitutions rarely is helpful. These documents typically use terms such as “general,” “thorough,” “efficient,” “uniform,” “a general diffusion of knowledge,” and “suitable” to describe the state’s educational responsibilities (Hanusheck & Lindseth, 2009). Such nonspecific language compels courts to interpret the actual meaning of the education clause to create a standard against which to judge states’ funding efforts’ adequacy. Quite often, derived standards remain vague and non-specific (see *Rose* and *CFE* definitions of an adequate education quoted earlier in my argument). As Dunn and Derthick (2007) aptly remark, “Defining a generality with more generalities does not make a generality more precise” (p. 331). Nor are standards of great assistance in defining adequacy. The appeal of standards lies in their links to quantitative measures, which appear to offer an alternative to the vagaries of constitutional language (Hanushek & Lindseth, 2009). Yet constitutional requirements rarely, if ever, enter into the development of standards. “Instead, [standards] are derived from the rules and procedures of schools, and from policy discussions within state boards of education, state education departments, legislative bodies, and special commissions” (p. 120). Standards also vary from state to state, are rarely consistent, and often include assumptions about teaching and learning. Thus justices are given little guidance as they attempt to craft a definition of adequacy.

There are also difficulties associated with determining an adequate education’s cost. There are four generally accepted approaches to “costing out” an adequate education (Downes & Steifel, 2008; Hanusheck, 2007). The Professional Judgment approach relies upon a

panel of professional educators to decide the level of spending needed to achieve adequacy in a school with predetermined characteristics. The Successful District Approach examines spending patterns in districts already meeting the state's performance standard. The goal is to identify an adequate level of spending before applying it to districts not achieving the standard on the assumption, but which assumes the designated level of spending is adequate. The Whole School Design Approach applies the same reasoning as the Successful District Approach to individual schools to identify an adequate level of spending. The School District Cost Function Approach uses economic analysis techniques to determine the cost of achieving a specific educational outcome or outcomes (Downes & Steifel, 2008). Each of these cost-estimating procedures is widely used, but each possesses significant procedural and methodological flaws. The problems associated with cost estimation led Hanushek (2007) to conclude "[t]here simply is not a reliable, objective, and scientific method to answer the question of how much it would cost to obtain achievement that is noticeably better than that currently seen" (p. 97). But perhaps the search for a "scientific" process of determining the cost of an adequate education is misdirected. As Rebell (2009) remarks, "the educational process inherently involves an array of judgmental and environmental factors" not conducive to establishing a direct, causal link between spending and achievement (p. 161).

Finally, some scholars (Koski & Reich, 2006) reject the notion of adequacy entirely, instead calling for a return to equity as a guiding principle in designing state school finance schemes. They assert moves towards adequacy, standards-based reform, and "new accountability" in education "are antithetical to egalitarian goals such as achieving equality of educational opportunity" (p. 549). Although they acknowledge these policies may improve education for some, they maintain the overall impact of adequacy and its associated policies are "indifferent" or even hostile to whether disadvantaged children are afforded opportunities for an education equal to that provided their wealthier peers. Koski and Reich (2006) contend the policy shift away from equity and towards adequacy will only increase existing disparities in academic achievement for poor and minority students largely because "[a]dequacy focuses on bringing all schools up to a certain standard of quality, but once this standard is met, adequacy allows districts with greater means to supplement their local schools" (Ryan & Saunders, 2004, p. 467). In its "purest form," adequacy permits "objectionable inequalities" to exist and may even worsen differences in achievement and educational opportunities for poor and minority children (Koski & Reich, 2006, p. 549). A possible response to Koski and Reich's criticism may be some

combination of adequacy and equity to ensure more comprehensive school finance reform (Baker & Green, 2008; Underwood, 1995).

Combining Adequacy and Equity?

Most observers of recent school finance litigation note a tendency in the courts to combine adequacy and equity—especially vertical equity—in crafting remedies for state school finance cases (Baker & Green, 2008; Briffault, 2007; Hanushek & Lindseth, 2009; Rebell, 2009; Underwood, 1995). This “blurring of adequacy and equity” (Briffault, 2007, p. 27) occurs because courts recognize the interrelatedness of the two concepts, even when they have been asked to separate them. “A judicial determination of educational inadequacy in a particular school district,” notes Briffault, “is almost always predicated in some finding of inequity” (p. 27). Underwood (1995) recognizes the connection between the two concepts when she comments “[t]he theme [in school finance cases] using the state education clause is adequacy from the perspective of ‘vertical equity,’ meaning that different students should be treated differently based on their special educational needs” (p. 493). And Rebell (2005), prominent adequacy advocate and litigator, writes:

[T]he concepts of [“adequacy”] and “equity” increasingly are becoming merged, since the society requires all students to learn to function at high cognitive skill levels. Recognizing this link, lawyers, activists, and plaintiffs in education adequacy cases have begun to articulate demanding concepts of “adequacy” in the educational opportunities they expect to be extended to historically disadvantaged minority populations. (p. 291)

If courts do, in fact, combine equity principles with adequacy in an attempt to craft a fairer school finance plan, as a review of the remedies prescribed in the *Rose*, *Abbott*, and *CFE* cases indicates, what patterns might these connections take? In an analysis of state school finance decisions connecting adequacy and equity Briffault (2007) finds adequacy/equity relationships fall into one of three categories: adequacy as inequality excused; adequacy as equity minus; and adequacy as equity plus.

Decisions in which adequacy has been used to *excuse or mitigate inequality* include *Rodriguez*, in which the U.S. Supreme Court found the Texas school finance formula constitutional despite spending inequalities since the system provided children with basic skills. Courts who connect adequacy and equity in this manner either adopt a very limited definition of an adequate education, or they severely restrict the scope of the adequacy requirement in a state’s constitution by asserting adequacy does not require equality of spending. In some instances courts decline to

undertake an extensive investigation of the actual adequacy of the education being financed. In these litigations adequacy is inferred either from the amount of money devoted to funding education, or from the existence of state standards. When adequacy is employed to excuse inequalities in the system, no attempt is made to determine what adequacy might mean. Briffault (2007) points out many such cases predate the dominance of an adequacy argument.

In adequacy as *equity minus* decisions, adequacy is construed to create greater equity in the way funds are distributed to districts, but complete equity in funding across the board is not required. This approach to adequacy and equity responds to some of the practical and political problems associated with equity theory (Briffault, 2007). It permits courts to sidestep issues of extreme expense that may be required to ensure all districts have access to the same level of resources the wealthiest districts in the state enjoy. Equity minus decisions typically require the state to provide additional funding for poor districts but leave in place higher levels of funding available to wealthier districts. In effect adequacy is used to improve the quality of education for poor districts without requiring they be made fully equal to wealthy districts (Briffault, 2007). In effect, equity minus decisions enable state legislatures to increase spending for the bottom tier of district, to level spending for the middle and upper middle tier, but to avoid “leveling down” the resources available to the districts’ wealthiest tier. Adequacy as equity minus “is more modest than full equity, costs less, and makes space for a significant continuing local financing role” (Briffault, 2007, p. 38). States whose school finance decision fall into this category include New Jersey, Texas, Ohio, South Carolina, and Kansas.

Adequacy as *equity plus* decisions emerged only after the *Rose* and *Abbott* decisions were known. Adequacy as equity plus decision incorporates three strands of thinking to address problems inherent in equity theory (Briffault, 2007). First, adequacy as equity plus acknowledges the need for effective school finance plans to provide additional funding for specific groups of schoolchildren so they may receive a genuinely adequate education. Second, such decisions frequently require legislatures provide more money for education statewide, not limited to improved funding for poorer school districts. Finally, adequacy as equity plus goes beyond financing. These decisions require state legislatures to specify the components of a constitutionally adequate education, to determine appropriate inputs, including curriculum, staffing, facilities, and instructional materials needed, and to monitor more effectively local school districts to ensure they are delivering the specified level of education (Briffault, 2007). Adequacy as

equity plus “reflects a maturation of the equity idea from one of simple equalization of interdistrict tax-base or per-pupil spending to a more sophisticated understanding of the additional resources...that may be necessary in order...actually [to] equalize educational opportunities” (Briffault, 2007, p. 43). These cases combine equity and adequacy rather than rely on adequacy alone to craft a more complete scheme of state school finance.

Conclusion

Adequacy theory has dominated the debate over state school finance provisions for an extended period of time. Adequacy challenges, based on the language of state constitutions’ education clauses, have occurred in almost every state, with varying results (Hanushek & Lindseth, 2009). Yet, as I argue, adequacy theory is beset with several flaws, including difficulties in defining what a constitutionally adequate education actually is, problems in estimating the cost of an adequate educational program, and a de-emphasis on issues of equity and promotion of equal educational opportunity. As a stand-alone basis for challenging state school finance schemes, adequacy has serious shortcomings, but courts have been creatively and effectively blurring the lines between equity and adequacy. The most comprehensive of remedies devised for flawed state school finance reform are decisions which combine a clear definition of adequacy with a broadly interpreted version of equity that Briffault (2007) calls “adequacy as equity plus.” These decisions combine a clearer state definition of adequacy, a partial equalization of financing for poorer schools and school districts, and a genuine concern for the needs of disadvantaged school children. This trend will only strengthen as states struggle to deal with the educational needs of a rapidly changing world.

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