

**The State's Obligation to Provide Education:
Adequate Education or Equal Education?**

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Introduction

In the wake of *Brown v. Board of Education* and at least through *San Antonio Independent School District v. Rodriguez* and state “equity” finance litigations, congressional and judicial policy-making in the arena of education was focused on creating greater equality of educational opportunity for racial minority and poor children by tying the fortunes of poor and privileged children together and targeting resources to those in need. In the past two decades or so, however, there has been a shift away from the rhetoric and policy of providing equal educational opportunities to the rhetoric and policy of providing an adequate education. Rooted in political pragmatism, legal-doctrinal constraints, and a laudable desire to move the debate from an educational input orientation (e.g., per pupil expenditures, teacher quality, etc.) to an educational output orientation (e.g., standardized test scores, graduation rates, etc.), this paradigm shift has been so pervasive that virtually all modern “school finance” litigation—which frequently aims to reform entire school systems—is labeled “adequacy” litigation.

Pervasive and profound, this shift from equity to adequacy has received much scholarly attention. There is a rich literature that explores the dimensions and meanings of “adequacy” and “equality of educational opportunity.”¹ And even more has been

¹ See, e.g., ROBERT BERNE & LEANNA STIEFEL, *THE MEASUREMENT OF EQUITY IN SCHOOL FINANCE*, 7-44 (1984). JOHN COONS, WILLIAM CLUNE & STEPHEN SUGARMAN, *PRIVATE WEALTH AND PUBLIC EDUCATION*, 395-433 (1970); Harold Horowitz, *Unseparate But Unequal: The Emerging Fourteenth Amendment Issue in Public School Education*, 13 UCLA L. REV. 1147 (1966); Harold Horowitz & Diana Neitring, *Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs from Place to Place Within a State*, 15 UCLA L. REV. 787 (1968); Christopher Jencks, *Whom Must We Treat Equally for Educational Opportunity to be Equal?* 98 ETHICS 518, 518-33 (1988); David L. Kirp, *The Poor, the Schools, and Equal Protection*, 38 HARV. EDUC. REV. 635, 636 (1968); Frank I. Michelman, *The Supreme Court 1968 Term Foreword: On Protecting the Poor Through the Fourteenth Amendment*, 83 HARV. L. REV. 7, 13 (1969); Paul A. Minorini & Stephen D. Sugarman, *Educational Adequacy and the Courts: The Promise and Problems of Moving to a New Paradigm*, in *EQUITY AND ADEQUACY IN EDUCATION: ISSUES AND PERSPECTIVES* 175 (Helen Ladd, Rosemary Chalk & Janet S. Hansen eds., 1999); James E. Ryan & Thomas Saunders, *Foreword to Symposium on School*

written on the shift from equity to adequacy in school finance litigation, its doctrinal basis, and remedial implications.² Some have even sought to understand the meaning of educational adequacy by looking to the purposes of education and whether the adequacy paradigm serves those purposes.³ But little attention has been paid the state's interests and normative obligations to provide either an adequate or equal education to all children. We address that normative gap with an exploration of the purposes of education and a normative consideration of the state's duties to serve those purposes.

To be sure, compulsory and publicly-funded education is justified by the public good of an educated citizenry—one that is civic-minded, socially cohesive, and economically productive. Yet it is nevertheless true that the economic or vocational purposes of education have assumed a central place in discussion of schooling and school reform in recent decades. These economic purposes have public benefits—e.g., a vibrant economy—but there are also unmistakable private benefits that flow from ensuring that public education produces economically productive citizens. Put differently, publicly

Finance Litigation: Emerging Trends or New Dead Ends? 22 YALE L. & POL'Y REV. 463, 467 (2004); Julie K. Underwood, *School Finance Adequacy as Vertical Equity*, 28 U. MICH. J. L. REF. 493, 493 (1995); ARTHUR WISE, RICH SCHOOLS, POOR SCHOOLS: THE PROMISE OF EQUAL EDUCATIONAL OPPORTUNITY, 143-58 (1967).

² See, e.g., William H. Clune, *New Answers to Hard Questions Posed by Rodriguez: Ending the Separation of School Finance and Educational Policy by Bridging the Gap Between Wrong and Remedy*, 24 CONN. L. REV. 721 (1992); Enrich, *supra* note 1; Michael Heise, *State Constitutions, School Finance Litigation, and the "Third Wave": From Equity to Adequacy*, 68 TEMP. L. REV. 1151 (1995); William S. Koski, *Of Fuzzy Standards and Institutional Constraints: A Re-examination of the Jurisprudential History of Educational Finance Reform Litigation*, 43 SANTA CLARA L. REV. 1185 (2003); William S. Koski, *The Politics of Judicial Decision-Making in Educational Policy Reform Litigation*, 55 HASTINGS L.J. 1077 (2004); William E. Thro, *Judicial Analysis During the Third Wave of School Finance Litigation: The Massachusetts Decision as a Model*, 35 B.C.L. REV. 597 (1994); William E. Thro, *The Third Wave: The Impact of the Montana, Kentucky, and Texas Decisions on the Future of Public School Finance Reform Litigation*, 19 J.L. & EDUC. 219 (1990); Julie K. Underwood & William E. Sparkman, *School Finance Litigation: A New Wave of Reform*, 14 HARV. J.L. & PUB. POL'Y 517 (1991); Gail F. Levine, Note, *Meeting the Third Wave: Legislative Approaches to Recent Judicial School Finance Rulings*, 28 HARV. J. ON LEGIS. 507 (1991); William E. Thro, Note, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Litigation*, 75 VA. L. REV. 1639 (1989).

³ See, e.g., William S. Koski & Henry M. Levin, *Twenty-Five Years After Rodriguez: What Have We Learned?* 102 TEACHERS COLLEGE REC. 480 (2000); Minorini & Sugarman, *supra* note 2.

funded education yields public goods but also delivers unmistakable private returns. Moreover, the scope of private returns to education has grown significantly over the past few generations.⁴

We argue that the private returns to education are also of public concern. The reason is that education is a good with strong positional aspects and that the state has a legitimate interest in establishing fair competitions for access and entry into higher education and the labor market. Recognizing the positional nature of education is crucial here. The importance of education is not merely in attaining some absolute standard of educational attainment – a level *adequate* to the state’s interests in education. Rather, the (absolute) value of one’s educational attainment can only be discerned by observing a person’s (relative) standing in the distribution of educational attainment. Given the positionality of education, we believe that the state has an obligation to ensure that public education is provided in such a manner as to ensure fairness in competitions for postsecondary admissions, the labor market, and within one’s exertions as a citizen in the political sphere.

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What this means is that the state must provide equal opportunity to develop talent.

If, then, the state is to ensure not only the public good of an educated citizenry and the private good of a fair chance to compete for postsecondary, occupational, and political positions, which paradigm of educational opportunity—adequacy or equity—should the state adopt? We argue that the state’s interest in providing education as a public good to foster a civic-minded populace, social cohesion, and a vibrant economy

⁴ See, for instance Thomas Lemieux, *Post-Secondary Education and Increasing Wage Inequality*, National Bureau of Economic Research Working Paper 12077 (2006); Chinhui Juhn, Kevin M. Murphy & Brooks Pierce, *Wage Inequality and the Rise in Returns to Skill*, JOURNAL OF POLITICAL ECONOMY (1993) 101(3), 410-42; and for a more general argument that a focus on the economic returns to education has increased social inequality, see W. NORTON GRUBB & MARVIN LAZERSON, THE EDUCATION GOSPEL: THE ECONOMIC POWER OF SCHOOLING (2004).

can be satisfied by providing all an adequate education. Adequacy may be adequate for some state interests. On the other hand, given the public interest in the private returns to education and the strong positional aspects of education, we argue that only an egalitarian paradigm is defensible. In other words, adequacy is inadequate to fulfill some state obligations.

At the outset, however, we wish to address a well-founded concern. It might be objected that educational adequacy is superior to educational equity because only adequacy links together educational inputs with educational outcomes in a way that will direct additional resources to the most disadvantaged students. This is the interpretation of adequacy as the setting of high and rigorous outcome standards paired with aggressive, so-called vertical equity of inputs in order to allow students with varying educational needs to reach these standards. Some who endorse the shift from equity to adequacy argue that such a move may actually enhance vertical equity in practice as compared to previous efforts that were guided by the egalitarian paradigm of school finance reform.⁵ After all, poor and minority students in failing schools are so far from reaching even an adequate level of performance that getting them over the adequacy hurdle will require a significant infusion of resources to meet their needs, i.e., a significant enhancement in vertical equity.

Our response to this important objection is twofold. First, it must be recognized that there is something peculiar about assigning the label “adequacy” to an approach that promotes vertical equity of resources such that all students can achieve to some specified output level. After all, the core idea behind connecting outcome standards with vertical

⁵ See, e.g., Michael A. Rebell, *Adequacy Litigations: A New Path to Equity?*, in BRINGING EQUITY BACK: RESEARCH FOR A NEW ERA IN AMERICAN EDUCATIONAL POLICY 291, 305 (Janice Petrovich & Amy Stuart Wells, eds., 2005).

equity inputs is to give every child an *equal opportunity* to reach the specified standard. So in this respect, the adequacy approach may be mislabeled; it is an egalitarian argument at heart. We return to this fact in our conclusion.

But, secondly, setting aside the fact that certain adequacy arguments are at heart egalitarian arguments, we shall demonstrate that decoupling the fortunes of the poor from the fortunes of the rich, as adequacy must, does not meet the state's obligation to ensure fairness in competitions.

The Goals of K-12 Public Education and the Obligation of the State

What are the purposes of American public education? This is a question that can be answered in historical terms, philosophical terms, or legal/doctrinal terms. It should be obvious that we cannot provide here a definitive answer to the question. Nor can we provide even a broad canvas of possible answers. It is perhaps safest to begin by acknowledging that although many Americans share some core beliefs about the purposes of education, there are many diverse and sometimes divergent purposes that certain persons and groups seek to achieve through education.

American thinkers from Thomas Jefferson, Horace Mann, John Dewey, Milton Friedman to Amy Gutmann have opined on the purposes of education. Historically, public schools were created, and compulsory attendance laws passed, largely for civic reasons.⁶ But obviously there is no single, authoritative source of the state's interests in and obligation to provide an education.

⁶ DAVID TYACK, *ONE BEST SYSTEM* (197X); CARL KAESTLE, *PILLARS OF THE REPUBLIC* (19XX); additional citations on Americanization.

For our inquiry, however, we draw mainly from philosophy and law, and we simplify the question by dividing the purposes of education into those public or civic interests that sustain and further American society and its democratic institutions and those private interests that enhance the well-being of individuals and their families. The question we then seek to address is which of those public and private interests *ought* the state serve through public education?

We first look to constitutional and judicial edicts on the subject to provide at least the legal underpinning for the state's obligation. In the next section, we turn our attention to more straightforwardly normative arguments.

Courts recognize the public goods of producing civic-minded individuals, productive workers, and social cohesion. And some judicial opinions even suggest that the private goods of being able to provide for oneself and develop one's own talents rise to the level of a state obligation. The occasional court even alludes to the necessity of ensuring that persons can *compete* in the labor market. It is this last state obligation that we look to further in the following section by arguing that it is the state's obligation to ensure a fair educational playing field so that people will not only be able to compete in the labor market, but will also be able to compete on fair grounds for postsecondary educational opportunities and in the political arena.

Societal Interests: Education as a Public Good

Though it is everywhere cited, it is worth beginning with one of the most famous passages from one of the most famous U.S. Supreme Court's decisions: "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both

demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship”⁷ Apart from abolishing the evils of racial segregation in public schools, the Court’s decision in *Brown v. Board* made clear that public education serves the central collective good of *producing civic-minded persons capable of participating in our civic and democratic institutions*. The Court reiterated this commitment in *Plyer v. Doe*, by finding that Americans “have recognized ‘the public schools as a most vital civic institution for the preservation of a democratic system of government,”⁸ More recently, state supreme courts are construing their state constitutional Education Articles in adequacy litigations to require that their legislatures provide the basic tools to participate in civic life. The Kentucky Supreme Court ordered its legislature to provide its students with “sufficient knowledge of economic, social, and political systems to enable the student to make informed choices [and] sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation”⁹ Similarly, the New Jersey Supreme Court held that “[A] thorough and efficient [education] means more than teaching the skills needed in the labor market, . . . [i]t means being able to fulfill one’s role as a citizen, a role that encompasses far more than merely registering to vote.”¹⁰ And New York’s highest court defined a “sound basic education” to include the capacity “of voting and serving on a jury.”¹¹

⁷ *Brown v. Board of Education*, 347 U.S. 483, [PIN] (1954).

⁸ *Plyler v. Doe*, [CITE].

⁹ *Rose v. Council for Better Education*, 790 S.W.2d 186, 212 (Ky. 1989).

¹⁰ *Abbott v. Burke*, [CITE] (1990).

¹¹ *Campaign for Fiscal Equity v. State*, 801 N.E.2d 326, 331 (N.Y. 2003) (CFE II). The trial court in that matter was more specific when it required an education to ensure citizens “capable of civic engagement,” which includes acting as a knowledgeable voter who has the “intellectual tools to evaluate

Beyond the democratic purposes served by education, courts have recognized the collective good of *producing economically self-sufficient persons who will not be a drain on the state's resources and who will drive the continued expansion of the economy.*

While permitting certain Old Order Amish students to be exempted from compulsory high school education, the U.S. Supreme Court was careful to ensure that the State of Wisconsin had fulfilled its self-proclaimed obligation to prepare its children to “be self-reliant and self-sufficient participants in society.”¹² The Texas Supreme Court’s initial opinion in its long-running school finance litigation was even clearer about the state’s obligation to ensure its own self interest when it cited its constitution’s framer’s belief that an “efficient” education was one that diffused knowledge “among the masses” for the “prevention of crime and for the growth of the economy.”¹³ And the *Campaign for Fiscal Equity* court in New York demanded that the state provide an education that would permit students to “compete for jobs that enable them to support themselves.”¹⁴

Although not a judicial statement as to the purposes of education, the 1983 report by the National Commission on Excellence in Education, *Nation at Risk*, is often cited as a precursor to the standards-based reform and adequacy movements. There the economic purpose of public education is clear: “Our Nation is at risk. Our once unchallenged preeminence in commerce, industry, science, and technological innovation is being overtaken by competitors throughout the world.”¹⁵ The report continued, “the

complex issues, such as campaign finance reform, tax policy, and global warming” and serving as on a jury called to “determine questions of fact concerning DNA evidence, statistical analyses, and convoluted financial fraud.” *Campaign for Fiscal Equity v. State*, 719 N.Y.S.2d 475, 486 (N.Y. S. Ct. 2001).

¹² *Yoder v. Wisconsin*, 406 U.S. 205, 221 (1972).

¹³ *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 395-96 (Tex. 1989).

¹⁴ 801 N.E.2d at 331.

¹⁵ NAT’L COMM’N ON EXCELLENCE IN EDUC., *A NATION AT RISK: THE IMPERATIVE OF EDUCATION REFORM 1* (1983).

educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people.”¹⁶

The final public good produced by public education which the state may be obligated to provide is, perhaps, the most contested as it suggests a common value that all should share: *public education should produce individuals who are sufficiently tolerant and sharing of a common core of values to ensure social cohesion.* In her recent opinion confirming that “diversity” in higher education is a compelling state interest for which the Michigan Law School could maintain its racially conscious affirmative action policy, Justice Sandra Day O’Connor echoed the opinions of business leaders that “the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and view points” and reiterated the experience of retired military leaders that a racially diverse officer corps is essential to the effective operation of the armed forces.”¹⁷ In short, such diversity in schools promotes the important goal of “cross-racial understanding.”¹⁸ Whether K-12 public education is obligated to ensure such social cohesion is, admittedly, an open legal question in most jurisdictions.

Personal Interests: Education as a Private Good

Education is also a private good. Through K-12 education people obtain the skills and knowledge necessary to advance to post-secondary education, to secure spots in the labor market, to enjoy leisure time, and to develop and pursue their own interests. And, as we have argued elsewhere and discuss further below, education as a private good

¹⁶

Id.

¹⁷

Grutter v. Bollinger, [CITE].

¹⁸

Id. at [X].

possesses unusually strong positional aspects.¹⁹ That is, relative standing in the distribution of education matters as well as possession of some absolute quantity of education. To the extent that education is a positional good, one person's possession of more education necessarily decreases the benefit derived by another person from her education. That individuals derive such personal (and positional) benefits from education is one thing. Indeed, it is probably unavoidable that education confers positional advantages. But it is quite another thing to say that the state institutions ought to be the vehicle for reinforcing and compounding the positional advantages gained from education. Here we consider whether and how the courts have viewed the private interests in education.

The *Brown* decision, while invoking the civic or public purposes of educational provision, also took notice of the state's interest in the private returns to education. "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."²⁰ Of course, what it meant to provide educational opportunity on equal terms was the subject of enormous disputation and litigation for two decades following *Brown*. In the 1973 *Rodriguez* case, the Court found that education was not a fundamental right and that interdistrict inequalities in funding based on local property wealth were no violation of the Equal Protection clause. As a consequence, arguments about the equal provision of educational opportunity were thrown down to the level of the fifty states. And here the

¹⁹ William S. Koski & Rob Reich, *When Adequate Isn't: The Retreat from Equity in Educational Law and Policy and Why it Matters*, unpublished manuscript.

²⁰ *Brown v. Board of Education*, 347 U.S. 483, [PIN] (1954).

court decisions have shown a special appreciation of the state's obligations with respect not only to the civic purpose of education but also to private returns to education.

Indeed, from the outset, educational finance litigation pinned to state constitutional education articles recognized the state's obligation to provide the private good of education to ensure individual well-being and economic competitiveness. In interpreting its "thorough and efficient" clause, the New Jersey Supreme Court in the first state equity decision opined that the state shall provide an "educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market."²¹ Shortly thereafter, the Washington Supreme Court found that an "ample provision for the education of all children" included "educational opportunities needed in the contemporary setting to equip children for their role as citizens and as potential competitors in today's market as well as in the marketplace of ideas."²² West Virginia's high court went even further to provide its students an education for "useful and happy occupations, recreation, and citizenship."²³

Reflecting the ever-more complex society and information-based economy in which we live, modern "adequacy" decisions are even more detailed in their requirements to ensure that individuals' private needs are met. Paradigmatic in that regard is Kentucky's *Rose* decision that requires the state to ensure that students possess: "sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; . . . sufficient self-knowledge and knowledge of his or her mental and physical wellness; . . . sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; . . . sufficient training

²¹ Robinson v. Cahill, 303 A.2d 273, 295 (N.J. 1973).

²² Seattle Sch. Dist. No. 1 v. State, 585 P.2d 71, 94 (Wash. 1978).

²³ Pauley v. Kelly, 255 S.E.2d 859, 877 (W. Va. 1979).

or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.”²⁴ Relying on the Kentucky decision, the North Carolina Supreme Court recently held that a “sound basic education” includes “sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training, . . . and sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.”²⁵

Thus, there is little doubt that state constitutions, as interpreted by the states’ highest courts, recognize a duty of the state to provide for the private interests of its citizens. It is the North Carolina decision, however, that presages our central argument: that it is not only the state’s duty to provide basic (read: adequate) skills and capacities to obtain employment in the labor market, it is also the state’s duty to ensure that its children can compete *on an equal basis* with others for slots in post-secondary education and the job market (we would add to this list the political arena). In other words, the state *ought* to ensure a level playing field.

Adequacy Versus Equity

Adequate provision or equal provision of education? Which is the state’s obligation, and does understanding of the purposes of education as serving public or

²⁴ 790 S.W.2d at 212.

²⁵ Leandro v. State, 488 S.E.2d 249, 255 (N.C. 1997),.

private interests affect the state's obligation? We argue that the move from equity-oriented to adequacy-oriented school reform, though understandable and in some respects even laudable, is a mistake. But to understand why, we must first gain a sharper appreciation of the conceptual differences between equity and adequacy, or, as it is more commonly described in philosophical terms, between equality and sufficiency.

The fundamental conceptual difference between equality and sufficiency is that equality is necessarily comparative or relational while sufficiency is not. To ask if somebody or something is equal, we must engage in a comparative evaluation. Does X have as much as Y? Is the outcome in situation A equal to the outcome in situation B? To ask if somebody or something is sufficiently well off, however, we need not make any such comparison; we simply identify what constitutes the level of sufficiency or adequacy and then make the appropriate allocation or redistribution of resources. To put it another way, the sufficiency framework aims to combat *absolute* deprivation. The equality framework aims to combat *relative* deprivation. For the sufficiency advocate, we should not care that people are equal but only that they have enough. But it is bad, the egalitarian claims, for some people to be worse off than others.²⁶

The sharpness with which we have drawn this conceptual distinction requires a qualification. Sufficiency encompasses relational or comparative assessments in one respect. What constitutes a sufficient level of resources will be relative to the norms of any given society at a particular time. A sufficient level of education in Africa will be

²⁶ Because sufficiency applies a uniform standard equally to all, one might claim that sufficiency should be understood as a kind of egalitarian argument. Indeed, any champion of sufficiency will claim that sufficiency possesses two features that are routinely associated with egalitarianism. First, sufficiency should be universal among the relevant group; second, and following from the first, sufficiency should be impartial and treat people equally. In practice, this means no discrimination should be made among people on the basis of arbitrary characteristics such as race and sex. Universality and impartiality are part and parcel of the sufficiency paradigm, and in this respect the sufficiency paradigm overlaps with the equality paradigm. For a fuller explanation, see Temkin at 330 [CITE].

different from a sufficient level of education in the United States at the present moment. Sufficiency is also relative to historical developments within societies. What seemed a luxury a generation ago can now seem a necessity. One hundred years ago, sufficient education in the U.S. was certainly less than a high school degree. Today, however, a sufficient education is more demanding because social norms and expectations have changed. A sufficient education in the 21st century, most policymakers and courts agree, must prepare all children for postsecondary education without remediation.

But this relational aspect of sufficiency is unimportant here. While our standards for what is sufficient will vary across societies and over time, sufficiency at any given moment is an absolute, or non-comparative, thing. This is not true about equality, which is always and necessarily **comparative**. In addition, it is important to be mindful of the practical consideration that when a society wishes to place "sufficiency" into institutional practice -- as is the case with the adequacy movement in American school reform -- policymakers will be very strongly attracted to an absolute standard.

A few observations about the difference between equality and sufficiency. First, the sufficiency framework, to be sure, can justify equality-enhancing transfers from the well-off to the needy. If many people have more than enough and a few have less than enough, then taking from the many to boost the few above the threshold that marks the level of adequacy looks like a good thing. (This is equally true, of course, if few have more than enough and many have less than enough.) But if all are above the threshold, then transfers from the well-off to those who already have enough no longer seem justifiable.

Comment [RR2]: Page: 15
Perhaps add footnote about how the objects of comparison for adequacy do not involve people to people, they are outcomes to social norms, or something like this.

Second, adequacy might seem less demanding than equality. All that appears to be required is that those below a specified threshold (of inputs or outcomes) be brought up to that level. Equality, by contrast, demands that all people be brought into an equal relationship. In practice, pursuing equality is often more demanding. But, clarifying the conceptual relationship between the two ideals reveals that it can also be the case that adequacy is far more demanding than equality. Consider a scenario in which the level of adequacy of some good is 100 units per person. A has 10 units, B has 15 units, and C has 20 units of the good. Equality can be attained by giving A 5 units from C. Adequacy, obviously, would be much more difficult to attain. Indeed, as we will describe below, some critics believe that educational adequacy is far more fiscally demanding than educational equality, and objectionable for this very reason.

Third, the implications of the equality and sufficiency frameworks for educational law and policy are obvious. Paul Minorini and Stephen Sugarman capture it well: “What is most distinctive about the adequacy approach is that, unlike the traditional school finance cases, it does not rest on a norm of equal treatment. Indeed, the adequacy cases aren’t about equality at all, except in the sense that all pupils are entitled to at least a high minimum. In other words, adequacy is not a matter of comparing spending of the complaining group with spending on the others. It is rather about spending what is needed (and its focus is in some respects more on the school or the pupil than on the district).”²⁷ Similarly, James Ryan and Michael Heise observe that, “Even successful adequacy suits . . . presuppose that existing funding inequalities will remain. More precisely, adequacy suits abandon the idea of tying districts together financially by requiring access to equal resources. Those districts that can fund a more-than-adequate

²⁷ Minorini & Sugarman, *Educational Adequacy and the Courts*, *supra* note 1 at 206.

education are free to do so.”²⁸ In previous work, we have shown how education law and policy has in fact had exactly these effects, and many others, in its shift from an equity paradigm to an adequacy paradigm.²⁹

American litigation and legislation about school reform has shifted from an egalitarian ideal rooted in the Brown decision and the Equal Protection Clause to an adequacy ideal focusing on the language of state constitutions. The cause of the shift was threefold. First, it was partly a result of the 1973 *Rodriguez* decision, which effectively relocated the school finance battlefield from the federal to the state level. Second, it was partly a result of worries, sometime borne out in practice, that to achieve equality the state would “level down” spending of the wealthy districts rather than “level up” spending of the poorest. And third, it was partly a result of a pragmatic decision among school reform advocates about how best to improve the position of the least advantaged schoolchildren. Equity lawsuits had generated some significant political blowback – adverse reaction to so-called “Robin Hood” schemes that captured locally raised revenue from wealthy districts and redistributed it to poorer districts. And moreover, despite the success of equity lawsuits in many states and the narrowing of funding gaps between districts, student achievement scores had not improved considerably. Most notably, the black-white test score gap, which had narrowed in the 1980s and early 1990s began to grow anew. One additional attraction of the adequacy paradigm, according to its supporters, was that it quite deliberately focused on academic outcomes in addition to resource inputs.

Comment [RR3]: Page: 18
[Check Jencks and Phillips for exact data]

²⁸ James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 YALE L.J. 2043, 2062 (2002).

²⁹ Koski & Reich, *supra* note [x].

If achieving equality by leveling up to the spending of the wealthiest districts was thought to be financially difficult and politically treacherous, it must count as a magnificent irony of the adequacy movement that some critics view its judicial and legislative successes as an even greater fiscal and political burden. The reason is rather simple, and is rooted in the conceptual distinction between equality and sufficiency. If states specify certain academic outcomes and insist that all children have the resources necessary to achieve those outcomes, then the marginal cost of the last batch of the most difficult to educate children will be enormous. Indeed, literally to have no child left behind would cost nothing less than the entirety of each state's budget, and even then it is doubtful that the last child would achieve to the adequate standard. (Imagine the marginal cost of that final child!). So while the equality ideal in its most fiscally demanding form required that the state level up expenditures to the rate of the highest spending district, this was at least an expense imaginable within the constraints of the state's overall budget, even if reaching this spending goal was politically unviable. But the adequacy ideal, matching high outcome standards for all children to the resources necessary to attain these standards, represents a tapline into the state treasury that could drain it of every last dollar.

Adequacy, Equality and the State's Obligations

With a clearer understanding of the conceptual differences between equality and sufficiency and of how these differences manifest themselves in the institutional context of school reform, we are now better positioned to provide some answer to our initial question. Adequacy or equality in education, which is the state's obligation?

The State's Obligations that Adequacy Serves

To the extent that the purposes of education are seen as strictly public or civic, adequacy is a satisfactory and appropriate ideal to govern the public provision of education. What is important is to establish a threshold of educational provision *sufficient* to whatever is considered to define able citizenship. For instance, the public provision of education should ensure that children acquire certain civic capacities (e.g., that they can read and write), learn certain facts (e.g., about the structure of government and some history), and that they will have access to higher education and the labor market. Inequalities in educational provision above the threshold necessary to produce these outcomes are unobjectionable on the civic view.

To capture this in more precise philosophical terms, consider the position of philosopher Elizabeth Anderson. In a series of articles, Anderson has developed an egalitarian view that she calls “democratic equality.”³⁰ What equality demands is that citizens stand in equal relations to one another, that no citizen is subjugated or oppressed, that there exist no caste-like groups in society, that all can appear in public without shame or humiliation. Democratic equality is therefore a theory of social justice rooted in a view about people in their capacities as citizens. It has implications for the distributions of goods and resources, but it is fundamentally a relational view about citizenship. The upshot for education is clear: adequate not equal provision is all that is required.

Democratic equality is egalitarian in its conception of just relationships among citizens, but sufficientarian in its conception of justice in the distribution of resources and opportunities. What is important is not that everyone has equal opportunities to acquire resources and fulfilling jobs, but that everyone has ‘enough’. The ideal of democratic equality specifies how much this is: enough to

³⁰ Elizabeth Anderson, *What is the Point of Equality?* 109 *Ethics* 2 (1999): 287-337; Elizabeth Anderson, “Rethinking Equality of Opportunity: Comment on Adam Swift’s How Not to Be a Hypocrite,” *Theory and Research in Education* Vol. 2, No. 2 (2004).

secure the conditions of citizens' freedom and civic status as an equal to other citizens. On this view, as long as everyone has enough to function as an equal, inequalities beyond this threshold are not of particular concern.³¹

Of course, what is enough to establish the conditions of citizens' freedom and civic status as an equal may be a matter of considerable debate. Anderson has her own view, an expansive one that includes not merely the capacity to function as a political agent (e.g., voting, petitioning government, etc.), but also the capacity to function in civil society (e.g., to be free to form private groups, have access to public space, etc.) and certain minimum levels of human functioning (e.g., adequate nutrition, shelter, clothing, etc.).³² But the essential point is that the distribution of educational resources need not be equal; the distributions must give every student enough, must be *sufficient* to establishing equal standing as a citizen. Inequalities, even vast inequalities, above the threshold of adequate provision are a matter of indifference to the state. Note also that vast inequalities in educational achievement are also unobjectionable, so long as all children attain an education sufficient to establishing equal standing as a citizen. In short, adequacy sets a floor of educational provision and attainment below which no child or no group of children should fall. The connection here to actual school finance litigation should be obvious.

Debra Satz, another philosopher, has taken the ideal of democratic equality one step further, showing that a concern for equal civic status establishes not merely a floor but also has implications for a ceiling of provision.³³ Thus a proper understanding of

Comment [RR4]: Page: 21
Note to Goodwin: I have just recently read through your draft article, which reaches a nearly identical conclusion to Debra Satz's. I'll revise this section at some point to address your arguments as well.

³¹ Anderson (2004) at 106.

³² Anderson (1999) at 317-18.

³³ Debra Satz, "Unequal Schooling: The Egalitarian Case for Educational Adequacy" draft ms on file with authors. For another view, see Goodwin Liu's similar argument, "Education, Equality, and National Citizenship" draft ms on file with authors.

how the adequacy ideal guides educational provision gives us on Satz's account both a minimum threshold and a maximum threshold. The reason is that equal standing as a citizen can be undermined when persons or groups of persons are so high above the adequate standard that they form an encrusted and perhaps self-perpetuating elite. "Great inequalities", writes Satz, "regarding who has a real opportunity for important goods above the threshold might relegate some members of society to second-class citizenship, where they can be effectively denied effective access to positions of power and privilege in the society."³⁴ Adequate provision of education has to be understood not as a fixed level of inputs or outcomes. The level of adequate inputs or outcomes will sit in dynamic relation to whatever the highest spenders or highest achievers are doing. Only such a dynamic relationship can ensure equal standing as a citizen and ward off the creation of entrenched and segregated elites.

When the purposes of education are understood to be public – related to the preparation of able citizens and to sustain the flourishing of democratic life – the adequacy ideal defended by Anderson and Satz has undeniable attractions. One might quibble that neither offers very much in the way of operational specifics – how exactly equal standing as a citizen is to be measured in terms of dollar inputs or achievement outcomes in education³⁵ – and it is notable that no recent adequacy litigation or legislation of which we are aware has attempted to define the adequate threshold of

³⁴ Satz ms at 20.

³⁵ From a litigation and policy perspective, however, this is more than a mere quibble. To the extent that policy-makers must craft educational finance or standards-based reform policy based on an adequacy framework tied to a notion of democratic citizenship, we need a clear understanding of what level of education will produce the type of citizens we seek. This is no simple task. Witness the recent methodological debates surrounding the establishment of adequacy standards that are tied to the likely more objective notion of educational achievement. We need, too, some specification of how to identify the ceiling of provision such that inequalities above a high threshold do not produce some kind of encrusted elite or super-class of citizens.

educational resources as a dynamic function of whatever the wealthiest districts in a state spend on education (though an early decision in the New Jersey *Abbott* litigation attempts to equalize the spending in the 28 high poverty “Abbott” districts with those of the wealthier surrounding suburbs).³⁶ In the real world, educational adequacy has been pursued as legislatively-defined static outcome standards and countless attempts are now underway to determine the cost of an “adequate” education that will get all students to these outcome standards. So we now have “costing-out” methodologies whose calculations can be performed only with sophisticated statistical models, professional judgment panels whose task is to decide what constitutes resources sufficient to generate equal opportunities at the specified outcomes, and “best practice” analyses to determine what cost-effective strategies work for improving the achievement of disadvantaged students.

We shall argue shortly that the adequacy ideal is inadequate because of the narrow view of the purpose of education taken by its defenders. Education, as we have described, has private returns in addition to public purposes that are properly the purview of the state. But it is important to see that Anderson’s and Satz’s defense of adequacy misses something important. Both Anderson and Satz defend egalitarianism in the space of civic relations and sufficientarianism in the space of the distribution of educational resources. But, even were the demands of sufficiency met, we believe that there is something problematic about the use of public institutions, such as public schools, to deliver resources over and above the level of sufficiency. Private individuals can essentially deploy public institutions to deliver private advantages to one’s own children.

Comment [RR5]: Page: 22
Just end section here by beginning with
“But the adequacy ideal is inadequate...”

³⁶ *Abbott v. Burke*, 495 A.2d 359, 408 (N.J. 1990) (requiring “substantially equivalent” per pupil expenditures among the Abbott districts and the property-rich districts).

To illustrate this objection, consider one of the more recent phenomena in school funding in California: the rise of local education foundations that raise private dollars to supplement public funding of schools. In the wake of the *Serrano* decision, which centralized and largely equalized the distribution of public funds for schools in California, many schools and school districts have created school foundations whose sole purpose is to fundraise. The consequence has been a wide inequality in the capacity of schools and school districts to raise private money, for of course wealthy towns can generate far more charitable dollars than can poor and urban areas. In 1998, the Woodside School Foundation in Woodside, CA, for instance, raised more than \$3.3 million dollars for its single elementary school, translating into a bump of more than \$7,000 in per pupil funds, which, if spent in that year, would have been *more money per pupil than the district received from through the state's school funding scheme*. By contrast, a group of foundations in the Oakland Unified School District raised only an additional \$138 per pupil in 1998.³⁷ In our view, it is one thing to protect the liberty of parents to use their private wealth to purchase services that enhance the educational resources and opportunities for their children; it is quite another to permit them to use public institutions to deliver these resources and opportunities. What Anderson and Satz fail to recognize is that, while sufficient provision of education may satisfy the conditions necessary to establish equal standing as a citizen, the state has special obligations to administer public institutions in a way that does not permit them to become the vehicle

³⁷ The disparities in private fund raising are worrisome in their own right. They become even more objectionable when one realizes that the contributions of private dollars were considered charitable contributions and were therefore tax deductible. In effect, the federal government subsidizes the exacerbation of funding inequalities between wealthy and poor schools and school districts. See Rob Reich, "The Uneasy Relation Between Philanthropy and Equality" in *Taking Philanthropy Seriously: Beyond Noble Intentions to Responsible Giving*, William Damon and Susan Verducci, eds. (Bloomington, IN: Indiana University Press, 2006).

for delivering private advantages. Indeed, we are tempted to suggest that there is something insulting to our equal standing as citizens when Woodside parents more than double per pupil expenditures in their public school as compared to what is available in Oakland. The state is complicit in the infliction of dignitary harms, regardless of the level of material resources available to Oakland students.

The State's Obligations that Equality Serves

It is a virtual commonplace today to observe that the economic or vocational purposes of education have eclipsed the civic or public purposes of education. Parents see the purpose of schooling not as a vehicle to acquire the skills and dispositions necessary for good citizenship and the sustenance of democracy. They see schooling as the necessary vehicle for entry into the labor market and financial security. Similar things might be said about policymakers, who, when they argue about how to reform schools, see the main issue as how best to educate children so that they will become productive, high-skilled workers. Finally, economists tend to examine educational provision as a question about how to fulfill local or private preferences about educational consumption most efficiently, how best to match the public supply of schooling with the private demand for it. In short, public education is seen less and less as an institution necessary to preserve healthy citizenship and more and more as the institution necessary to ensure the ability to obtain a high paying job and to maintain the competitive advantage of the American economy in a globalized world.

When the purposes of education are seen as economic and deliver significant private returns, equality seems to us the most appropriate ideal to govern the public

provision of education. The reason is that private returns to education are very much a state concern. The state's interest in the private returns to education rests in the fact that education is a positional good conjoined with the argument that the state justly attempts to secure or provide *equality of opportunity*, a contested ideal to be sure but also one that, we would note, is central not merely to most visions of social justice but also to the ideal of social mobility and the American Dream.³⁸ The state has good reason to view public schools as one of several vehicles for providing equality of opportunity to its citizens. In the context of education, we interpret this to mean something like the claim that every student deserves an *equal opportunity to benefit* from education, such that he or she can compete on fair terms with their peers for admission to college and for places in the labor market. Fairness can be satisfied only by the egalitarian ideal, for adequate chances or adequate opportunities to compete are not fair chances or equal opportunities to compete. Let us explain.

Our argument has three parts. First, we show that education is a positional good, that it confers positional advantages on its possessors. That this is so can be seen in the earnings benefits that attach to levels of educational attainment. Second, we argue that the state has a justifiable interest in providing equality of opportunity to its citizens in the competitions for postsecondary education and in the labor market. Finally, we show that the adequacy ideal cannot supply equality of opportunity, no matter how equality of opportunity as applied to schooling is understood. In short, what educational adequacy represents is nothing less than a repudiation of the state's interest in securing equality of opportunity for its citizens.

³⁸ Jennifer Hochschild and Nathan Scovronick, *The American Dream and Public Schools* (2003).

Education as a positional good

Equality is normatively important in the provision of education because education is in part, and has historically become in larger part, *a positional good*. Education is a positional good because, while acquiring some absolute level of educational attainment matters, the possession of education relative to one's peers also matters a great deal.

The term "positional good" comes from economist Fred Hirsch's *Social Limits to Growth*,³⁹ where he discusses the way in which the value to a person of certain goods depends on other people not possessing that good, or not possessing as many of that good. Positional goods fuse the notions of absolute and relative value. The absolute value of the good one holds, to the extent it is positional, can only be determined by referring to one's standing in the distribution of that good. Positional goods are competitive goods and valued as a means to achieving some other end or goal. As an illustration, Hirsch quips, "If everyone stands on tiptoe, no one sees better."⁴⁰

The contrast, of course, is with goods whose absolute value is independent of how many of that good is possessed by others. Most goods, when examined closely enough, have some positional aspects. But consider, for instance, the following as an example of a non-competitive, non-positional good. If I find a radio on the street, its use value to me is unaffected by how many radios other people have. (Its marginal value to me may of course be different from its marginal value to others who occupy different places in the income distribution, but that is not the point here.) If radios were positional, use-wise, then the fact that another person found a radio on the street would affect the use value of the radio I have in my house.

³⁹ FRED HIRSCH, *SOCIAL LIMITS TO GROWTH* (1976).

⁴⁰ *Id.* at 5.

Notice that in the case of positional goods, the typical understanding of the value of goods to a possessor can come apart. If a distribution of positional goods to A and B increases the holdings of each but in unequal amounts, a greater gain for B may ultimately harm A. Though the absolute holdings of A have increased, and aggregate holdings of A and B have increased, A experiences a decline in welfare.

Education is a positional good in at least two very strong ways. First, education is crucial to competition for admission to college and other post-secondary opportunities; call this the *admissions benefit of education*. Those who obtain a good education are better able to gain admission to postsecondary education, especially selective colleges, and to professional schools. Second, education is crucial to competition for well-paying jobs in the labor market; call this the *earnings benefit of education*. Those who obtain a good education are better able to win high-paying and high-status jobs in the modern economy. The admissions benefit of high quality K-12 education feeds into the earnings benefit of high quality post-secondary education, so the first benefit reinforces the second benefit. And the results of both together – graduating from a selective college and obtaining a high-paying job – are correlated with some important long-term outcomes, including greater job satisfaction, more civic engagement, better health and access to healthcare, and general well-being. Our point is well captured by educational historian David Labaree in his discussion of the way in which the private good aspects of education have swamped the public good aspects. Labaree writes, “From the perspective of the consumer, education is an arena for zero-sum competition filled with self-interested actors seeking opportunities for gaining educational distinctions at the expense of each other. This is especially true for families from the upper middle class, whose

experience demonstrates the enormity of the potential benefit that can accrue from education and whose privileged starting position means that they have a long distance to fall if the educational outcomes do not turn out in their favor.”⁴¹

The correlation between educational attainment and economic returns is surprisingly robust. That is, private returns to education in the form of economic benefits are strong. People holding a college degree on average experience greater economic success in life than people without a college degree, and the earnings benefits to obtaining postsecondary education have increased significantly over the past twenty years. Census Bureau information shows that over the course of an adult’s working life, a person holding only a high school diploma earns an average of \$1.2 million; a person holding an associates degrees earn about \$1.6 million; and a person holding a bachelors degree earn about \$2.1 million.⁴² Per year in 2002, the average high school dropout earned \$18,900; high school graduates earned \$25,900; college graduates earned \$45,00; and those holding professional degrees (M.D., J.D., D.D.S., D.V.M) earned an average of \$99,300.⁴³

Comment [RR6]: Page: 28
Insert our graph here to show the linear return to educational attainment, with the conspicuous exception of returns to a PhD.

Now it is true that these figures do not control for the kind of person who actually obtains higher education. Perhaps the differential earnings can be explained not by educational attainment but by the personal characteristics of individuals who were motivated to seek increasing levels of education. We certainly acknowledge the point. We believe there is evidence to suggest that personal characteristics cannot account for

⁴¹ David Labaree, *Public Goods, Private Goods: The American Struggle Over Educational Goals*, 34 AM. EDUC. RES. J. 39, 56 (1997).

⁴² Kathleen Porter, *The Value of a College Degree* (ERIC Clearinghouse on Higher Education, Washington D.C.), 2002.

⁴³ Jennifer Cheeseman Day & Eric C. Newburger, *The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings* (U.S. Dept. of Commerce Current Population Reports, Washington D.C.), July 2002.

all of the earning inequalities.⁴⁴ But the more fundamental point is that the arena of our concern – public provision of K-12 education – is where personal characteristics and interests are developed not rewarded. That is, merit and personal attributes are may be considered exogenous to postsecondary education in order to determine the source of wage inequality, but merit and personal attributes must be considered endogenous to K-12 education.

Higher earning potential is not the only private return to acquiring postsecondary education. Research shows that there are numerable other benefits besides salary. These include benefits such as greater vacation time and health care, higher levels of savings, increased personal/professional mobility, improved quality of life of offspring, and better consumer-making decisions.⁴⁵ Also important are the numerous non-economic benefits to obtaining a college degree, including better health and a longer life.⁴⁶ Thus the positional advantages obtained by students in K-12 education, which translate into better chances for admission to college and acquisition of a high-paying job, reverberate across most of life's main concerns, including the length of a person's life itself!

If education does indeed possess these positional aspects – and we believe the evidence is nearly irrefutable that it does – we can begin to discern the argument against adequacy and in favor of equality. In its most sympathetic interpretation, educational adequacy connects vertical equity of resources with high outcome standards. The state is then indifferent to districts or schools that choose to spend far above the level required

⁴⁴ Norman Nie research and other cites.

⁴⁵ THE INSTITUTE FOR HIGHER EDUCATION POLICY, *REAPING THE BENEFITS: DEFINING THE PUBLIC AND PRIVATE VALUE OF GOING TO COLLEGE* (1998).

⁴⁶ David Boesel and Eric Fredland, *College For All? Is There Too Much Emphasis on Getting a 4-Year College Degree?* Research Synthesis (National Library of Education, U.S. Dept. of Education, Washington D.C.), January 1999.

for adequacy. In effect, the state confers its official imprimatur on educational inequalities in both inputs and outcomes above the threshold of adequacy. Yet if education is positional, then even in a miracle world in which no child is left behind and indeed achieves the high outcome standards, those who fly high above the adequate threshold will gain positional advantages, and do so with the official sanction of the state.

Thus, to the extent that education has positional value, adequacy threatens to entrench or exacerbate the positional advantages of the well-off. If education is a strong positional good, then inequalities in educational opportunity above even an adequate threshold are objectionable. The reason is that possession of educational goods above an adequate or even high minimum creates a positional advantage for their possessors, a fact that affects the value of the education of those at the minimum. Moreover, the adequacy paradigm not only tolerates but provides new incentives for the well-off to maintain and increase their positional advantage. If the lowest performing schools and students begin to perform better, or gain proficiency, the existing advantage of the well-off is threatened. Parents and communities who seek to protect the positional advantages of their children will now have reason to increase ever more the educational goods and opportunities for their children.

Adequacy and its failure conceptually to focus attention on the worse off (instead insisting in a uniform way that every child receive and achieve at adequate levels), is insensitive to positional advantages. Only equality, which is necessarily comparative, directs attention to those who are worse off than others, and therefore only equality can fully account for and, if necessary, redress the unfair positional advantages in education.

Simply put, the stronger that education is a positional good, the more necessary it becomes to be an egalitarian. Any alternative framework that tolerates inequalities will necessarily condone worsening the position of the comparably worse off, even if their absolute quantity of educational resources or achievements increases. For positional goods, the relative amount of the good determines the absolute value of the good. With respect to education, this is why adequacy is not good enough.

Let us be clear, however, about the implications of our defense of egalitarianism. The concern is not that education is positional and that, therefore, egalitarianism requires that the state attempt to eliminate the availability of positional advantages children can gain through educational opportunities in K-12 schooling. It is probably inevitable that education possesses strong positional aspects. The egalitarian implication is not to subdue or suppress the positional advantages which education can afford.

Our concern is that with the sufficiency paradigm, the public institution of the schoolhouse is being used, or can be used, with state sanction, to compound or extend the positional advantages of the already privileged and advantaged for reasons having nothing to do with whether the already privileged merit this additional positional benefit. That is to say, when a child, however talented, has at his or her disposal the educational opportunities of a wealthy school that spends and achieves far above the adequacy threshold, the child in a poorer school is denied the opportunity to benefit from such an educational environment for reasons that cannot have anything to do with what the child deserves. Moreover, given the positionality of education, the additional advantages gained by the child in the wealthy school will harm the child in the poorer school, even if the poor child's school meets the adequacy standards. And all of this will happen with

the sanction, indeed the endorsement, of the state. This is why an acknowledgement of the positionality of education requires the state to pursue egalitarian not sufficientarian policies in education.

Fairness and equality of opportunity

A separate reason for endorsing equality over adequacy is the state's justified concern with fairness and equality of opportunity. We cannot provide here a brief in favor of equality of opportunity. Instead, we assume that its pursuit is defensible, perhaps even required, by a just state.⁴⁷ The modern state has a great many policies at its disposal for making equality of opportunity possible, ranging from estate and inheritance taxes to social welfare programs to antidiscrimination laws. Public and political appetite for certain of these means waxes and wanes. But perhaps the most important and uncontroversial vehicle, indeed one might say the central engine, in realizing equal opportunity is the system of compulsory K-12 education.

The philosopher Thomas Scanlon provides a useful explanation about why inequality of opportunity can be objectionable. Inequality of opportunity threatens fundamental norms of fairness. "When inequality of starting points undermines the fairness of a process, domination of those who are placed at a disadvantage does not always result, since the process may confer no power but only honor or the opportunity for a more pleasant and rewarding life. Unfairness, however, remains, and can take several forms: some people can be excluded from competition, or background conditions such as inequalities in training and resources can render the competition unfair."⁴⁸

⁴⁷ In the contemporary literature on theories of justice, virtually all argue in favor of some version of equality of opportunity.

⁴⁸ Thomas Scanlon, "The Diversity of Objections to Inequality" in *The Difficulty of Tolerance: Essays in Political Philosophy* (Cambridge: Cambridge University Press, 2003) at 205.

Consider next what philosopher John Rawls says about “fair equality of opportunity” and what it requires in terms competition for open positions in the labor market. The principle of open positions is not based on efficiency but rather on fairness. And this provides an argument against those who would complain that equality of opportunity can be traded off on the basis of greater economic returns. “[T]he principle of open positions forbids this [excluding groups from competing for positions]. It expresses the conviction that if some places were not open on a basis fair to all, those kept out would be right in feeling unjustly treated even though they benefited from the greater efforts of those who were allowed to hold them. They would be justified in their complaint not only because they were excluded from certain external rewards of office but because they were debarred from experiencing the realization of self which comes from a skillful and devoted exercise of social duties. They would be deprived of one of the main forms of human good.”⁴⁹ Equality of opportunity, that is, is required in order for human beings to flourish as individuals; inequality of opportunity is nothing less than a devaluing of a person’s humanity and capacity to pursue the good, as he or she defines it, in life.

This argument supplies a reply to the person who might object that the pursuit of equality is at odds with economic efficiency and the potential gains in overall social assets that can be produced by a robust economy, which create, as a result, potentially greater long-run returns to those who are positionally disadvantaged. That equality sits in tension with efficiency is a commonplace.⁵⁰ We acknowledge that it is important to

Comment [RR7]: Page: 34
INSERT DAVID SCHMIDTZ HERE.

⁴⁹ John Rawls, *A Theory of Justice*, 73..

⁵⁰ It is important to recognize that the tradeoffs between equality and efficiency may be a mirage and that, in fact, greater equality may *promote* economic growth. Economists have shown that in certain circumstances a growth in inequality is correlated with a decline in economic growth and a decline in

assess the implications of increasing educational attainment not merely in a snapshot view, where the benefits to be distributed are fixed, but in a dynamic, temporal view, where the size of the pie to be distributed may very well expand. Indeed, that education is connected to a rising economic tide seems unquestionable (though one could easily imagine that the marginal returns to individual or societal educational attainment diminish and may become economically inefficient at some point), and that a rising tide lifts all boats is at least possible. But there is still something fundamentally wrong with this objection. For even if the rising tide picture is correct, and the disadvantaged today would have more income in the long run as a result of growing social assets, their long-term greater income may nevertheless not compensate for what they wanted in the first place: a fair shot at competing for a college slot or a particular job opportunity. In other words, a bigger economy with trickle down effects that effectively buys off the disadvantaged is beside the point here. The violation of fairness cannot justly be compensated for by long-run economic returns.

We conclude this section by considering what equality of opportunity as applied to education could mean, and we demonstrate that adequacy cannot fulfill any possible interpretation of equality of opportunity as applied to education.

a. Horizontal Equity, or One scholar, One Dollar.

Equal opportunity in education might mean the simple treatment of everyone equally by allocating identical resources to each student. Each student in every state—

inequality is correlated with greater economic production and efficiency. (See Alberto Alesina & Dani Rodrick, DISTRIBUTIVE POLITICS AND ECONOMIC GROWTH, QUARTERLY JOURNAL OF ECONOMICS (1994) and T Persson & G Tabellini, IS INEQUALITY HARMFUL FOR GROWTH: THEORY AND EVIDENCE, AMERICAN ECONOMIC REVIEW 48 (1994)). One possible explanation of the compatibility of equality and efficiency is that people have a greater sense of solidarity when the gaps between them are not so large. We thank Avner de-Shalit for this point.

indeed, the nation—receives exactly the same per pupil dollars. It focuses solely on inputs, and in practical application, solely on financial inputs. It does not consider the particular needs of individual students (e.g., the physically disabled, the gifted, the cognitively disabled, English language learners, etc.) and thereby rejects vertical equity. Adequacy quite obviously falls short of this conception, for adequacy explicitly sanctions the additional spending of schools and districts above the adequate threshold. Adequacy in education seems to guarantee the perpetuation of what Jonathon Kozol famously labeled “savage inequalities.” Even so, practically no one embraces horizontal equity as the appropriate conception of equal educational opportunity. Egalitarians and adequacy advocates alike wish to grant additional resources to the disadvantaged.

b. The “Do No Harm” or “Neutrality” Principle of Equality of Educational Opportunity.

This conception of equal opportunity ensures that all are provided equal access to education and that education does not discriminate against any child or identifiable and “arbitrary” class of children (e.g., the poor) by creating or exacerbating their subordinate status. We know from a long line of social science research, e.g., the Coleman Report,⁵¹ Christopher Jencks’s *Inequality*,⁵² and the recent collection by Samuel Bowles, Herbert Gintis, and Melissa Osborne,⁵³ that a very large percentage of differential academic achievement and later social inequalities are the product of the family – the socioeconomic standing of parents, parenting styles, and the genes passed on from

⁵¹ COLEMAN, ET AL..

⁵² CHRISTOPHER JENCKS, *INEQUALITY: A REASSESSMENT OF THE EFFECT OF FAMILY AND SCHOOLING IN AMERICA* (1972).

⁵³ SAMUEL BOWLES, HERBERT GINTIS & MELISSA A. OSBORNE, *UNEQUAL CHANCES: FAMILY BACKGROUND AND ECONOMIC SUCCESS* (2005).

parents to children. Children do not show up at Kindergarten at an equal starting line; they are already unequal in many relevant respects.

The “do no harm” principle of equality of educational opportunity holds that schools should at least not worsen any of the already existing inequalities that students bring with them – from their native endowment or social background – into the schoolhouse. What this amounts to is the claim that whatever is spent on education should not affect, or at least not worsen, the distribution of inequalities caused by non-school factors. Put more bluntly, after the completion of K-12 education, children will occupy the same rank in the distribution of human and social capital as is the case with their parents.

This too is a conception of horizontal equity, or equal treatment. It might nevertheless also require a form of vertical equity. Why? If schools aim to do no harm, yet a very large proportion of social inequality can be traced to the socioeconomic status, parenting techniques, and genetic influences from parents, then differential inputs will be necessary merely to prevent the school from becoming an engine of producing (and reproducing) inequality itself.

c. Equality of Educational Opportunity Requires That Schools Attempt to Remedy Socially-Produced Inequalities.

Pursuing this conception requires more aggressive vertical equity, treating differently placed children differently, giving the most disadvantaged substantially more resources than the advantaged. Yet such a concept begs the question of what disadvantaging background characteristics educational resources must be deployed to compensate. One such set of characteristics are those produced by social factors

(poverty, language proficiency in the home, exposure to early childhood learning, etc.), while another would include those factors as well as factors intrinsic to the child such as genetic capabilities and disabilities. If we compensate for only socially-produced inequality, we will target resources to the poor and those lacking social capital.

d. Equality of Educational Opportunity Requires That Schools Attempt to Remedy Socially-Produced and Naturally-Produced Inequalities.

Here schools attempt to compensate for the arbitrary distributions in the genetic lottery. This is the most demanding form of equal educational opportunity. Pursuit of this conception would require more than even vertical equity; it would seem to require, at a minimum, massive social investments to compensate for disability, and, in the extreme, abolishment of the family. This conception of equality of opportunity begins to look suspiciously like the pursuit of equality of outcome.

We offer the preceding as a plausible taxonomy of what equality of opportunity might mean when applied to education. We do not endorse any of these particular conceptions of equality of educational opportunity. Instead, we take it for granted that equality of educational opportunity is desirable. If we are for equality of educational opportunity, then, because of its centrality to the American Dream, then how does adequacy fare with respect to the various interpretations offered above?

It is obviously the case that the stronger, or more demanding, the conception of equality of educational opportunity, the correspondingly more demanding become the implications of pursuing equity-minded reforms. If equality of opportunity requires that society attempt to redress socially-produced and naturally-produced inequalities, then it

seems that the family must go. The existence of the family and the promotion of strong versions of equality of opportunity are in deep and inescapable tension.

But what's important to see is that the adequacy framework necessarily undermines even the least demanding of these conceptions. If we expect fair competitions for college admissions and in the labor market, where merit rather than arbitrary characteristics of people determine outcomes, and if fairness requires that we embrace equality of opportunity, then, even under the one scholar, one dollar and the do-no-harm standards, the adequacy principle allows the well-off to protect, enhance, and entrench their advantage, thereby making competitions for admissions and occupations unfair. Put most strongly, adequacy is incompatible with any form of equality of educational opportunity. This is so because adequacy is not a subspecies of egalitarianism; it is conceptually distinct from equality.

Let us now tie together the argument of this section. The state has a legitimate interest in the private returns to education. The reason is that education is a good with strong positional aspects and that the state has a legitimate interest in seeking to establish fair grounds of competition for access and entry to higher education and into the labor market, which is to say that the state justly attempts to provide for equality of opportunity. The state is obligated to create fair grounds of competition for admissions to college and open positions in the labor market. If education is positional, as we argue, and one's relative standing in the distribution of K-12 education has both admissions and earnings benefits, then the positionality of education forces us to conclude that an egalitarian commitment is necessary to protect children from unfairness in the competitions for admissions and in labor markets. And if attempts to guarantee fairness,

independent of the positional value of education, force us to endorse some version of equality of opportunity, then we must also acknowledge that adequacy cannot satisfy even the least demanding form of equality of educational opportunity. The ultimate conclusion is clear. In education, adequacy is inadequate.

Conclusion

These two final points to be expanded.

1. We have concluded that equality not adequacy is the appropriate paradigm or aspirational value that ought to guide the provision of K-12 education. The reason is that the state has legitimate interests in the private returns to schooling not merely the public goods produced by schooling. While adequate education may be enough to secure the public goods we seek in schooling, only an egalitarian education suffices when it comes to regulating the private returns to schooling. Equality ought to govern educational provision because of the strong positional aspects of education and the importance of equality of opportunity.

But if we care about equality of opportunity, it might be objected, then we should be worried about the application of egalitarian norms only to schools. Schools are responsible for comparably little in the way of inequality. Lots of evidence to show that socioeconomic status, parenting styles, and genetic lottery accounts for a much greater percentage of educational inequalities. Doesn't this suggest that egalitarians such as ourselves would better devote our attention to the institution of the family, to wage inequalities, etc.? We don't rule these approaches out. But our position is that the recognition of the small role of the school gives us additional, not fewer, reasons to focus

our energy on the importance of the equality norm as applied to schools. Why? The schools are public institutions. Then mention the weak reed of public institutions. But this is all the more reason to insist upon egalitarian rather than sufficientarian commitments in public institutions!

2. Return to the issue of equality of opportunity. In the introduction, we described what we took to be the most sympathetic and defensible version of the adequacy approach in education. This was the marriage of aggressive vertical equity with the specification of high outcome standards. We then described this approach as, at its philosophical heart, egalitarian rather than sufficientarian. The reason was that the underlying aspiration seems to us best described as giving every student, no matter his or her background, an equal opportunity to achieve the outcome standards.

Is this sort of adequacy approach compatible with the equality of opportunity we have described in the latter half of this paper? The answer is no. The differences between the sympathetic adequacy approach and our defense of egalitarianism do not boil down to a semantic difference of labels. The difference is substantial and important. It may indeed be accurate to describe the adequacy approach as motivated by an equality of opportunity principle, an equality of opportunity to reach an outcome standard. But this represents a debasement of equality of opportunity.

The difference is the object of comparison that is to drive vertical equity of inputs. For the equity advocate, the aim is to compare the disadvantaged with the well-off, to compare students with students or districts with districts, in order to assess whether a relationship of equality (of resources, of opportunities) holds. For the adequacy advocate, the aim is to compare students or districts with the specified outcome goals.

We have shifted from a distribution of resources that compares what one student has to that which another has (equity) to a distribution of resources in which all receive some baseline level of resources or quality of education, while some may receive more than that (adequacy with vertical equity).

Equity orientations sought to tie together the fortunes of poor and privileged students and school districts. This was intended as more than mere metaphor. Funding formulas explicitly hooked together, for example, the wealthiest and the poorest districts. Adequacy severs the tie between the poor and the privileged, making the object of comparison for the poor not the fortunes of the privileged but the specified outcome standard.

This difference matters. When we continue to allow wide and increasing gaps in the quality of education that children receive (even if those at the bottom of the distribution are receiving an adequate education), the value of the education received by those at the bottom is diminished in direct relation to the growth at the top. Education has very strong positional aspects and those positional aspects are left unaddressed by a resource distribution based on adequacy principles.