Financing a constitutional education: Views from the bench

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2.1 Introduction

In the United States, education reformers have long been troubled by the differences in money and resources available to different school districts and by the resulting differences in the educational opportunities that these districts can offer their students. These disparities are due, at least in part, to the fact that school districts in many states rely on local property tax revenues for a significant portion of their budgets and that local districts often vary dramatically in property wealth per pupil. State aid systems, even when they are designed to equalize the resources available to different school districts, rarely do so completely. Sometimes (or in some part), state aid systems may exacerbate the inequalities.

In response, reformers in many states have brought suits, arguing that, because of these disparities, property tax–based school funding systems violate federal and state constitutions. Over forty states have now faced court challenges to their school funding systems, and plaintiffs have prevailed (in full or in part and at some level of court) in more than half. And there is convincing evidence that the distribution of school spending is more equal in states that have undergone judicially mandated reforms (Murray, Evans, and Schwab 1998; Evans, Murray, and Schwab 1997).

Courts and court interpretations of what the U.S. Constitution and state constitutions require have thus played an important role in the development of school finance systems. The possibility, if not the reality, of a court challenge must be considered in designing a state aid system. This chapter provides an overview of school finance reform suits.
2.2 History and Underlying Legal Theories

Legal scholars (Thro 1990; Levine 1991) have categorized school finance reform suits in terms of three "waves." Each wave differs from the others in terms of the rates of plaintiffs' victories and the primary legal basis for those victories.

2.2.1 Wave I
The first wave of cases extended from the late 1960s until 1973. These cases focused on claims that school funding systems violated the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. Wave I began with cases brought in federal district courts, but plaintiffs achieved their most influential victory in a state court: the California supreme court's 1971 decision in Serrano v. Priest. In that decision, the court found that claimed disparities in California school funding and resources violated both federal and state equal protection clauses. Less than two years later, however, in San Antonio Independent School District v. Rodriguez (1973), a five-justice majority of the U.S. Supreme Court concluded that very similar disparities in the Texas school system did not violate the federal equal protection clause. Although some plaintiffs have continued to bring federal equal protection challenges to school finance systems, Rodriguez essentially foreclosed federal equal protection claims as a viable route to reform.

2.2.2 Wave II
After Rodriguez, plaintiffs in the second wave brought suits in state rather than federal courts, arguing that school finance systems violated state constitutional provisions. These claims took two forms. First, most state constitutions contain provisions guaranteeing protections similar to those of the federal equal protection clause (Enrich 1995). In interpreting state constitutions, state supreme courts are not bound by federal court interpretations of even identically worded federal constitutional clauses. They can thus interpret clauses in state constitutions as providing protections that the U.S. Constitution does not. Therefore, plaintiffs continued to bring claims based on state equal protection clauses.

In addition, all state constitutions contain provisions addressing public education (Enrich 1995). These provisions, commonly termed "education clauses," provided a second basis for plaintiffs' claims. In the case inaugurating wave II, Robinson v. Cahill (1973), the New Jersey Supreme Court found that that state's school funding system violated the state's education clause. Wave II lasted from 1973 to 1989 and resulted in relatively few reformers' victories. Both equal protection and education clause claims provided a basis for plaintiffs' victories (Levine 1991; Thro 1994).

2.2.3 Wave III
Wave III began in 1989, when three state supreme court victories provided renewed momentum to school finance reform litigation. That year, courts in Montana, Kentucky, and Texas held that their states' school finance systems violated their states' education clauses. Although state equal protection clauses have continued to play a role in some reformers' victories, most wave III courts overturning school finance systems have relied primarily on education clauses (Thro 1994).

2.3 Application of Legal Theories to School Finance Claims

2.3.1 Education Clause Claims
In most civil suits, plaintiffs bear the burden of both pleading a claim that the law recognizes and proving their claim to the court. First, they must state a legally recognizable claim. That is, they must allege that a violation has occurred of an obligation that the law recognizes and that the court can remedy. Second, if they have stated a recognizable claim, then they must produce evidence and prove that the defendant did, in fact, breach the obligation as they claim.

To prevail on an education clause claim, plaintiffs must successfully meet both burdens. First, they must persuade the court that the education clause requires the state to meet a judicially definable and enforceable obligation, such as, for example, equal per-pupil educational spending or equal access to educational resources. Second, they must prove that, in fact, the state is not meeting that obligation (see Thro 1994).

Two cases, one in which plaintiffs were successful and one in which they were not, illustrate common patterns in courts' analysis of education clause claims. Board of Education, Levittown Union Free School District v. Nyquist (1982), a wave II case, provides a good example of a case in which plaintiffs did not succeed on their education clause claim. In Levittown, property-poor school districts and their students claimed that the New York school finance system, which provided grossly
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different levels of funding and, therefore, grossly different levels of educational resources across districts, violated the state constitutional provision requiring the legislature to provide "a system of free common schools, wherein all the children of this state may be educated" (Levittown, 439 N.E.2d at 368).

Although plaintiffs experienced some victories in the trial and intermediate appellate courts, New York's highest court ruled against them. The high court acknowledged that there were substantial inequalities in resources and educational opportunities across school districts. Because the state's education clause made "no reference to any requirement that the education to be made available be equal or substantially equivalent in every district," however, the court determined that the clause did not require equal educational opportunities, as the plaintiffs claimed. Instead, the clause required only a school system that "assur[ed] minimal acceptable facilities and services" throughout the state and that provided statewide access to a "sound basic education" (Levittown, 439 N.E.2d at 368–369). In this case, the plaintiffs had failed to claim or prove that their school districts were not providing an education meeting the state's minimum requirements. Observing that the state's average expenditure per pupil was among the highest in the country and that New York was an acknowledged leader in public schooling, the court concluded that the current system met the education clause standard as it had defined it and denied plaintiffs' claim.

The Kentucky Supreme Court's opinion in Rose v. Council for Better Education, Inc. (Kentucky 1989), one of the leading cases of the third wave and one of the cases discussed in this volume, provides an example of a plaintiff's victory. In Rose, school districts, students, and a nonprofit corporation of school districts claimed that the state's school finance system placed too much emphasis on locally generated revenue, resulting in inadequacies and inequalities throughout the state, in violation of section 183 of Kentucky's constitution, which required the Kentucky General Assembly to provide "an efficient system of common schools throughout the state." After reviewing records of constitutional debates and judicial opinions from Kentucky and other states, the court concluded that section 183 required a school funding system that provided every child, rich or poor, with "an equal opportunity to have an adequate education" (Rose, 790 S.W.2d at 211). Further, the court defined the level of education that the state must provide its students as a high one:

[A]n efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training 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 (vii) 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. (Rose, 790 S.W.2d at 212)

The court interpreted the evidence as a "virtual concession" that Kentucky's school system was not only unequal but also underfunded and inadequate throughout the state (Rose, 790 S.W.2d at 197) and concluded that the state had failed to meet its constitutional obligations under the education clause.

2.3.2 Equal Protection Clause Claims

In contrast to those adjudicating education clause claims, courts evaluating equal protection claims traditionally follow a different and more formal structure. Plaintiffs bringing equal protection claims argue that the law unjustifiably discriminates against them, treating them less favorably than others. Under traditional equal protection doctrine, the degree of legal tolerance for such unequal treatment depends on the level of scrutiny applicable to the challenged law or government action. Most laws—such as, for instance, laws that govern most business and economic matters—are subject only to "rational-basis" scrutiny. Rational-basis scrutiny is very deferential to the validity of the challenged law: laws survive this test so long as the unequal treatment is rationally related to a legitimate state interest. Courts apply this test liberally in favor of the challenged legislation, and most laws easily satisfy it.

Courts use heightened, less deferential scrutiny only under specified circumstances. They employ the very rigorous "strict" scrutiny only if the challenged unequal treatment is based on a "suspect" classification, such as race, or if the challenged law burdens a fundamental right, such as freedom of speech. To survive strict scrutiny, a law must serve a compelling state interest. Few laws meet this test.
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Plaintiffs bringing an equal protection claim usually attempt to persuade the court that it must apply strict scrutiny to the school finance system. They typically contend that the school funding structure fails to treat similarly situated students equally because the quality of the education offered to them depends on the property wealth of their school district, that education is a fundamental right, and that district property wealth (or district residents' wealth) represents a suspect class. Consequently, the plaintiffs argue, the court must evaluate the school finance structure using strict scrutiny. Defendants, on the other hand, commonly contend that school finance involves neither fundamental rights nor suspect classes. Therefore, they assert, the court should apply only rational-basis scrutiny. Because the property tax-based school finance structure isrationally related to a legitimate state interest in local control of education and educational funding, defendants contend, the current system should be upheld.

2.4 Judicial Definitions of Constitutional Obligations

Not all courts have interpreted their state's equal protection or education clauses as imposing an obligation on the state that is subject to effective judicial enforcement. Courts that do not interpret their constitutions as imposing such an obligation often view education finance issues as committed to the discretion of the legislative branch and subject to no or very limited judicial education clause review and only rational-basis equal protection review. In these states, of course, judicial mandates based on these clauses may play little or no role in school finance reform. Of the five states examined in this volume, only in Michigan was school finance reform undertaken outside of a judicially defined context.

This part of the chapter and the part that follows concentrate on cases in which courts have interpreted the education or equal protection clauses in their state constitutions as imposing a judicially enforceable obligation. Of course, as the previous discussion of Levittown shows, the mere fact that the court interprets the constitution as imposing an enforceable standard is not, in itself, sufficient for a plaintiff's victory: The court may find that the current finance system meets the standard or simply that plaintiffs have failed to show that it does not. Even so, the court's interpretation (at least until it is overruled or modified) provides a constitutional minimum below which the school finance system may not fall. This section discusses the major ways in which courts have defined the constitutional standard that a state's school finance system must meet. Section 2.5 presents trends on related issues of interest to those attempting to design a school finance system.

2.4.1 Framework for Analysis

As Figlio observes in chapter 3, different people may define school finance equity differently, and different definitions of an equitable school finance system can imply very different distributions of school spending, school resources, and student outcomes. Drawing particularly on the work of Duncombe and Yinger (1996) and Levine (1991), the current chapter presents a typology for categorizing courts' definitions of the characteristics of a constitutional school funding system. This typology characterizes constitutional requirements in terms of two dimensions: equity objects and equity standards.

Equity objects describe what is being distributed according to an equality or some other standard of fairness or equity. Three categories of equity objects appear relevant to this litigation:

1. spending per pupil
2. school resources and services (such as teachers, curricular offerings, laboratory equipment, and counseling programs)
3. student outcomes or achievement.

When defining a state's constitutional obligation, a court's choice of equity object matters because different equity objects imply different distributions of funds. Because some districts face higher input costs than others, equalizing spending across districts is unlikely to result in equalizing school resources and services. Districts in urban areas may, for instance, have to pay higher salaries to attract teachers. Similarly, because of differences in student and family characteristics, equality in school resources or services may not substantially reduce disparities in student outcomes. Districts with higher concentrations of students needing special services, disadvantaged students, or students whose native language is not English, for example, may need to provide additional resources (and thus may face additional costs) to bring their students to a given level of achievement.

Further, there is evidence that the impact of these factors in central-city schools is significant (Duncombe and Yinger 1997; Reschovsky and Imazeki 1998, 2001; Yinger 2001). For instance, Reschovsky and Imazeki (1998) estimated that Milwaukee school districts with high concentrations of low-income students required two and one-half times as much money as the average district to achieve a given level of
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student performance. This represented an increase of $8,080 (per low-income student) over the average spending of $5,082 per student. Yinger (2001) reached a similar conclusion with respect to New York City schools. Focusing on per-pupil spending, then, can hurt schools with high input costs or high concentrations of disadvantaged students or other students needing special help.

The second dimension of the typology involves the standards used to assess equity or fairness in the distribution of the chosen object. Four standards appear useful for analysis of school finance reform litigation:

1. Minimum adequacy. All schools must provide some minimum level of spending per pupil (or resources or other equity object). The required level may be high or low. Schools are free to spend above this level without limit but may not fall below it.

2. Equality. Expenditures per pupil (or other equity object) must be equal across school districts. Alone, an equality standard implies no absolute minimum. It is satisfied so long as all districts spend equally, regardless of the spending level.

3. Access equality. Access equality attempts to counter differences in tax bases across school districts and to equalize revenue-raising ability. This standard is met when each school district can produce equal amounts of the chosen equity object with a given tax effort.

4. Wealth neutrality. The selected equity object may not vary systematically with district property tax base. This standard allows different districts to provide widely different levels of resources (or other equity objects), so long as the level of object is not systematically related to district tax wealth.

Access equality, as a goal or standard for school finance reform, is not the same as either equality or wealth neutrality, and achieving access equality is unlikely to result in equal educational spending across districts or even in wealth neutrality (Feldstein 1975; Friedman and Wiseman 1978). Taxpayer choices (and voting) with respect to spending for local government services are affected by, among other variables, taxpayer income and taxpayer preferences. Because of differences in income and preferences, even with equalized tax bases across districts, taxpayers in some districts may choose lower rates of taxes and of educational expenditure (Feldstein 1975; Clune 1992; Odden 1992; Reschovsky 1994; Ladd and Yinger 1994). Therefore, even with full access equality, districts with large concentrations of families facing the constraints of a lower income may choose lower school tax rates. Thus, access equality may well reproduce a pattern that reformers oppose: lower school spending in lower-income districts.

Clearly, then, the combinations of equity standards and equity objects that reformers seek and that judges choose to enforce have implications for the school finance system that results. An equal-spending standard implies a different distribution of funds than a minimum-adequacy standard. Equalizing outcomes—or even resources—may require a very different distribution of funds than equalizing spending.

2.4.2 Courts' Definitions of Equity Objects

The essential issues in this case are quality and equality of education. The issue is not, as insisted by defendants and intervenors, equality of funding.

—Tennessee Small Schools, 851 S.W.2d at 156

As the epigraph demonstrates, despite the fact that these school finance reform suits were brought as challenges to school funding systems, most courts who have interpreted their state's education or equal protection clauses as imposing an obligation on the state have defined that obligation primarily in terms of a substantive object (resources or outcomes) rather than dollars. The courts do not, however, clearly distinguish between school resources and student outcomes in their definitions of the state's constitutional duty. Although the courts' definitions have almost always clearly encompassed resource objects (such as school programs and curricula), the courts have often defined the equity object in ways that could, but need not necessarily, encompass a role for outcomes. "Educational opportunity" or "quality of education" have been particularly common terms. To evaluate whether the school system provides an "educational opportunity" or an "education" meeting the constitutional standards, courts have considered a wide variety of evidence, such as spending per pupil; breadth and depth of curricular offerings; student-teacher ratios; availability of computers, up-to-date textbooks, and laboratories; condition of school facilities; various indicators of student achievement; and testimony of educators and other expert witnesses.

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on the state have defined the state’s duty in terms of a minimum-adequacy standard, either alone or in combination with one of the other standards. The level of education that these courts have defined as adequate has varied considerably, however. Some courts, such as the Kentucky court in *Rose*, have defined their constitutions as requiring a high level of competence in a broad range of subjects. The New Jersey court, in *Abbott v. Burke* (1990), provides another example of a high standard:

Thorough and efficient means more than teaching the skills needed to compete in the labor market, as critically important as that may be. It means being able to fulfill one’s role as a citizen, a role that encompasses far more than merely registering to vote. It means the ability to participate fully in society, in the life of one’s community, the ability to appreciate music, art, and literature, and the ability to share all of that with friends. (*Abbott II*, 575 A.2d at 397)

Other courts have set the level fairly low. For instance, in *Olsen v. Oregon* (1976), the Oregon court concluded that the state’s education clause required it to provide only “a minimum of educational opportunities” (*Olsen*, 554 P.2d at 148). Similarly, the Oklahoma court interpreted the state’s constitution as requiring a “basic, adequate” education (*Fair School Finance Council v. Oklahoma* [1987], 746 P.2d at 1149).

In most cases in which the courts have defined the state’s duty in terms of a minimum-adequacy standard, they have interpreted the constitution as clearly imposing only that standard. The New York court’s opinion in *Levittown*, discussed in section 2.3.1, provides an example of a court defining the constitution in its state as imposing solely an adequacy standard, without elements of any of the other standards. In some cases, however, the courts have clearly adopted an adequacy standard but also used language that might, but need not necessarily, incorporate a relaxed equality standard. These cases include *Rose v. Council for Better Education, Inc.* (Kentucky 1989) (discussed in section 2.3.1), in which the Kentucky court articulated the constitutional standard as follows:

Each child, *every child*, in this Commonwealth must be provided with an equal opportunity to have an adequate education. Equality is the key word here. The children of the poor and the children of the rich, the children who live in the poor districts and the children who live in the rich districts must be given the same opportunity and access to an adequate education. (*790 S.W.2d at 211*)

Although the court emphasized equality and equal opportunity (“Equality is the key word here”), it apparently qualified that equality of opportunity as one of access to an *adequate* education. Later in the opinion, the court made it clear that once the state provided an adequate education to all children, local districts could provide supplemental resources (*790 S.W.2d at 212*).

State supreme courts in a few cases have interpreted the constitutions in their states as *clearly* imposing both an adequacy and an equality standard. The majority of these courts have relied on both education and equal protection clauses to develop this combination of standards. In *Abbott v. Burke* (New Jersey 1990, 1994), however, the New Jersey court found both standards in the state’s education clause.

In Texas, another of the states discussed in this volume, the court also interpreted the state’s education clause in terms of a combination of two standards. The Texas court, however, interpreted the clause as combining an adequacy standard with an access equality (rather than an equality) standard. In *Edgewood Independent School District v. Meno* (1995), the Texas court required that each district have substantially equal ability to raise the funds necessary to provide an adequate education as defined by the legislature through accreditation standards.

Finally, a small group of courts have interpreted the constitutions in their states as imposing primarily an equality, access equality, or wealth neutrality standard. Perhaps the most distinctive feature of this group is that many of the courts appear not to distinguish among the three standards. Instead, they use language invoking one or another of them at different places in the opinion. The reforms in Vermont, also discussed in this volume, resulted from a decision falling into this group. In *Brigham v. Vermont*, the Vermont Supreme Court interpreted the education and equal protection clauses of the state’s constitution as providing a “right to equal educational opportunities” (*692 A.2d at 397*). Although the Vermont court seemed to emphasize an equality standard, like many of the courts in this group, it sometimes used language invoking an access equality or wealth neutrality standard:

Equal opportunity ... does not allow a system in which educational opportunity is necessarily a function of district wealth [suggesting wealth neutrality]. Equal educational opportunity cannot be achieved when property-rich school districts may tax low and property-poor districts must tax high to achieve even minimum standards [suggesting access equality]. Children who live in
on the state have defined the state’s duty in terms of a minimum-adequacy standard, either alone or in combination with one of the other standards. The level of education that these courts have defined as adequate has varied considerably, however. Some courts, such as the Kentucky court in *Rose*, have defined their constitutions as requiring a high level of competence in a broad range of subjects. The New Jersey court, in *Abbott v. Burke* (1990), provides another example of a high standard:

Thorough and efficient means more than teaching the skills needed to compete in the labor market, as critically important as that may be. It means being able to fulfill one’s role as a citizen, a role that encompasses far more than merely registering to vote. It means the ability to participate fully in society, in the life of one’s community, the ability to appreciate music, art, and literature, and the ability to share all of that with friends. (*Abbott II*, 575 A.2d at 397)

Other courts have set the level fairly low. For instance, in *Olsen v. Oregon* (1976), the Oregon court concluded that the state’s education clause required it to provide only “a minimum of educational opportunities” (*Olsen*, 554 P.2d at 148). Similarly, the Oklahoma court interpreted the state’s constitution as requiring a “basic, adequate” education (*Fair School Finance Council v. Oklahoma* [1987], 746 P.2d at 1149).

In most cases in which the courts have defined the state’s duty in terms of a minimum-adequacy standard, they have interpreted the constitution as clearly imposing only that standard. The New York court’s opinion in *Levittown*, discussed in section 2.3.1, provides an example of a court defining the constitution in its state as imposing solely an adequacy standard, without elements of any of the other standards. In some cases, however, the courts have clearly adopted an adequacy standard but also used language that might, but need not necessarily, incorporate a relaxed equality standard. These cases include *Rose v. Council for Better Education, Inc.* (Kentucky 1989) (discussed in section 2.3.1), in which the Kentucky court articulated the constitutional standard as follows:

Each child, *every child*, in this Commonwealth must be provided with an equal opportunity to have an adequate education. Equality is the key word here. The children of the poor and the children of the rich, the children who live in the poor districts and the children who live in the rich districts must be given the same opportunity and access to an adequate education. (*790 S.W.2d at 211*)

Although the court emphasized equality and equal opportunity (“Equality is the key word here”), it apparently qualified that equality of opportunity as one of access to an *adequate* education. Later in the opinion, the court made it clear that once the state provided an adequate education to all children, local districts could provide supplemental resources (*790 S.W.2d at 212*).

State supreme courts in a few cases have interpreted the constitutions in their states as clearly imposing both an adequacy and an equality standard. The majority of these courts have relied on both education and equal protection clauses to develop this combination of standards. In *Abbott v. Burke* (New Jersey 1990, 1994), however, the New Jersey court found both standards in the state’s education clause.

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Equal opportunity ... does not allow a system in which educational opportunity is necessarily a function of district wealth [suggesting wealth neutrality]. Equal educational opportunity cannot be achieved when property-rich school districts may tax low and property-poor districts must tax high to achieve even minimum standards [suggesting access equality]. Children who live in
property-poor districts and children who live in property-rich districts should be afforded a substantially equal opportunity to have access to similar educational resources [suggesting access equality]. Thus, as other state courts have done, we hold only that to fulfill its constitutional obligation the state must ensure substantial equality of educational opportunity throughout Vermont [suggesting equality]. (692 A.2d at 397)

The role of an adequacy standard in school finance litigation has been the subject of some debate. Some argue that a high minimum-adequacy standard can be a particularly effective route to school finance reform (Jensen 1997). Others point out that a court’s interpretation of the constitution in its state as imposing an adequacy standard can sometimes play a conservative role in school finance litigation, allowing the court to uphold the existing school funding system, despite substantial inequalities, on the basis that all districts can provide their students with an education meeting some (perhaps low) standard of adequacy (Lukemeyer 2003). Courts in the states examined in this volume provide some support for each view.

The Kentucky court’s opinion in Rose represents a court’s use of an adequacy standard as a strong lever for reform. As the discussion in section 2.3.1 shows, that court defined the Kentucky constitution as imposing a very high minimum-adequacy standard and found that the entire educational system failed to meet that standard. Thus, in Kentucky, a decision interpreting the constitution as requiring a high minimum-adequacy standard stimulated extensive reforms. Further, Rose has been a particularly influential decision, and adequacy standards have been the ground for overturning school finance systems in a number of states (Jensen 1997).

In contrast, in the Texas litigation, an adequacy standard played a conservative role. In Article VII, section 1, the Texas constitution states: “A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.” In 1989, in Edgewood Independent School District v. Kirby, the Texas Supreme Court interpreted this clause as requiring access equality.

There must be a direct and close correlation between a district’s tax effort and the educational resources available to it; in other words, districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort. Children who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds. (Edgewood I, 777 S.W.2d at 397)

Observing that the hundred richest school districts in Texas spent an average of $7,233 per pupil whereas the hundred poorest, despite a substantially higher property tax rate, spent only $2,978 per pupil, the court concluded that the existing school system was not “efficient” within the meaning of the clause (Edgewood I, 777 S.W.2d at 393, 397). In a suit that reached the Texas supreme court in 1991 (Edgewood Independent School District v. Kirby), plaintiffs challenged the reform legislation enacted in response to Edgewood I, arguing that it did not sufficiently mitigate access inequality across school districts. The court agreed, striking down the reform legislation.

Several years later, property-poor school districts were back in the Texas supreme court, arguing once again that reform legislation enacted shortly before (Senate Bill 7) did not go far enough to eliminate access inequalities. This time, however, the court upheld the reform legislation (Edgewood Independent School District v. Meno [Texas 1995] [Edgewood IV]). To do so, it added an adequacy standard to its previous definition of education clause requirements. Specifically, the court stated that, in Edgewood I and II, it had interpreted the education clause’s efficiency requirement in terms of a financial standard (access equality). Drawing on the “general diffusion of knowledge” language in the state’s education clause, the court in Edgewood IV concluded, however, that this clause also contained a “qualitative” component and that an efficient system required equality of access to revenues, but only up to the amount necessary to provide an education meeting the qualitative standard. The court found that in Senate Bill 7 the legislature had “equate[d] the provision of ‘a general diffusion of knowledge’ with the provision of an accredited education” and that the accountability provisions in Senate Bill 7 satisfied the constitutional obligation to provide for a general diffusion of knowledge statewide (Edgewood IV, 893 S.W.2d at 463). Finding that Senate Bill 7 provided “substantially equal access to the funding up to the legislatively defined level that achieves the constitutional mandate of a general diffusion of knowledge,” the court held that the school finance system met education clause requirements (Edgewood IV, 893 S.W.2d at 464). In essence, then, in Edgewood IV, the court used a newly defined adequacy standard (the qualitative component) to limit the reach of its previously defined access equality standard and upheld the reform legislation as meeting this newly limited standard.
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In contrast to its Texas counterpart, the Vermont Supreme Court expressly rejected the use of an adequacy standard as a boundary on the state's constitutional obligation. The court stated that, even if the state's foundation aid program achieved its purpose of ensuring that every district had the funds to provide at least a minimum quality education, this alone did not satisfy the state's obligation to provide substantially equal educational opportunities for all students in the state: "We find no authority for the proposition that discrimination in the distribution of a constitutionally mandated right such as education may be excused merely because a 'minimal' level of opportunity is provided to all" *(Brigham v. Vermont, 692 A.2d at 397)*. The court shied away from requiring absolute equality of education opportunity, however, defining the state's obligation in terms of "substantial equality of educational opportunity" *(692 A.2d at 397)*. And it left open the possibility of some unequalized spending, stating that the constitution did not "necessarily" prevent some districts from "spending more on education if they chose" *(692 A.2d at 397)*.

2.5 Related Issues and Themes

In addition to their definitions of constitutional obligations, the courts in school finance reform suits have addressed several related issues that are relevant to the design of school finance systems. This section examines these issues.

2.5.1 State-Local Distribution of Responsibility for Providing an Education Meeting Constitutional Standards

Among courts concluding that the education clause in their state's constitution imposes a judicially enforceable obligation, almost all that have addressed the issue have held that the ultimate responsibility for providing a constitutionally adequate educational system rests with the state rather than with local governments. The state may delegate to local governments some responsibility for implementing the school system and for funding it, but the state must see that local governments provide a constitutional education system, and it must carry the fiscal burden of such provision if local governments cannot. Once the state has established a constitutionally adequate system, local governments can raise additional funds for supplemental educational resources.

2.5.2 The Role of Standards for Funding in Relationship to the State's Constitutional Obligation

Even though the vast majority of courts have defined the obligation imposed by the constitution in their state in terms of substantive educational criteria, school finance reform suits come to the court primarily as challenges to the school funding structure. Therefore, the courts must, at least implicitly, identify a standard against which to measure the funding structure. For most courts, though, the measure of the constitutionality of the funding structure has been simply whether it allows schools to provide an educational program meeting whatever substantive standards the state's constitution requires. Beyond this, most courts have viewed designing a particular funding structure as a legislative task. Other than placing ultimate responsibility at the state level, the courts have been reluctant to interpret state education or equal protection clauses as mandating any particular funding structure or distribution of the school tax burden.

Courts in a few cases have articulated specific requirements for school spending or the school finance structure in the state. The majority of these courts appear to have imposed a standard for spending as a means of attaining a substantive educational object for students rather than out of concern about the finance structure as such or the distribution of the school tax burden. A small number, however, have identified a standard for the distribution of the school tax burden.

Two states, New Jersey and Washington, provide examples of different ways in which courts falling in the first, student-centered group have used a standard for spending as a means to achieve a substantive goal. Throughout two rounds of school finance litigation—*Robinson v. Cahill* (1973–1976) and *Abbott v. Burke* (1985–present)—the New Jersey court has consistently defined the education clause in the state's constitution as imposing a substantive obligation on the state to provide "that 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" *(Robinson v. Cahill* [1973], 303 A.2d at 295). Nevertheless, after repeated legislative failures to design a constitutional funding system, the court imposed an explicit dollar standard for poorer urban districts with high concentrations of disadvantaged students: Per-pupil spending in these districts must be equal to that of the wealthy suburban districts, and sufficient additional dollars must be made available to fund the programs and services needed to meet
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the students' special needs (Abbott v. Burke [1990], 575 A.2d at 388).\textsuperscript{37} In Washington, the genesis of the spending requirement was much simpler. In Seattle School District No. 1 v. Washington (1978), plaintiffs complained that the school finance system made provision of even basic educational services dependent, in part, on special levies requiring voter approval and that voter approval of such levies was often not forthcoming. In response to this situation, the court ruled that the state's education clause required the state to make ample provision for a constitutionally adequate educational system through regular and dependable tax sources.

In short, for the New Jersey court, the funding standard was simply an enforceable interim step. In Washington, the funding standard played a slightly different role, that of necessary support for the substantive standard. In both of these cases and in most of the cases in which the courts have identified an explicit standard for funding,\textsuperscript{38} the standard has served primarily as an aid to meeting the state's substantive constitutional obligation.

In a small number of cases, however, the courts have articulated a standard for funding as a means of equitably distributing the school tax burden. The leading cases here are Edgewood I, II, and IV, in which the Texas court developed a taxpayer equity standard first (access equality) and then bounded it by substantive adequacy standard. Kentucky and Wyoming have also included a taxpayer equality standard as one part of the state's obligation under the education and/or equal protection clauses. In all of these cases, however, the taxpayer equity standards represented just a part (and for all states but Texas, a subordinate part) of the state's obligation under the education clause in the state constitution.\textsuperscript{39}

2.5.3 Legislative Definition of an Adequate Education as a Standard for Funding

A number of courts have emphasized that the legislature is the appropriate party in their state to define the particular substantive content of a constitutionally adequate education.\textsuperscript{40} Although the courts show varying amounts of deference when reviewing whether legislative definitions meet constitutional standards,\textsuperscript{41} if a particular legislative definition passes constitutional muster, it often becomes the standard against which the school finance system in the state is judged. For instance, as the discussion in section 2.4.3 shows, in Edgewood IV, the Texas court interpreted school finance reform legislation as equating provision of a constitutional level of education with provision of an accredited education. Then the court apparently found that the legislative definition met education clause standards and approved the finance legislation challenged in that case on the ground that it provided all districts with reasonably equal access to the funds necessary to provide this level of education (Edgewood IV, 893 S.W.2d at 464). Similarly, the Kansas Supreme Court used the legislatively defined goals and accreditation standards "as a base" for evaluating whether finance reform legislation met education clause requirements. Since the evidence showed that all school districts could meet these standards, the court upheld the finance system (USD No. 229, 885 P.2d at 1182-1184, 1186).\textsuperscript{42}

A court's deference to legislative authority to define the particularities of a constitutionally adequate education can also be viewed as imposing an obligation or duty on the legislature. In fact, in Robinson v. Cahill I, the state's failure to define specifically the substance of a constitutional education was a major factor in the New Jersey court's finding that the state had not fulfilled its duty under the state's education clause. For that court, this definition was a necessary first step to crafting a constitutionally adequate finance system.\textsuperscript{43}

2.5.4 Rational versus Political Determination of School Funding Amount

Further, in some cases, the courts have required the state not only to identify the specifics of a constitutionally adequate education but also to determine rationally the cost of providing that education and to ensure that it is funded. Two of the courts that have been the most aggressive in this regard have been those in New Jersey and Wyoming.\textsuperscript{44} These two courts are among the most aggressive in other respects as well, defining the constitutional obligation in their states in terms of both a high minimum-adequacy and an equality standard and requiring the state to fund additional resources and services necessary to allow disadvantaged students to compete on an equal footing with their more advantaged peers.

2.5.5 Providing Additional Resources for At-Risk Students

A factor motivating many school finance reformers is concern that schools with many disadvantaged or at-risk students do not have sufficient resources to educate their students successfully. Nevertheless, relatively few courts in school finance reform litigation have expressly
the students’ special needs (Abbott v. Burke [1990], 575 A.2d at 388). In Washington, the genesis of the spending requirement was much simpler. In Seattle School District No. 1 v. Washington (1978), plaintiffs complained that the school finance system made provision of even basic educational services dependent, in part, on special levies requiring voter approval and that voter approval of such levies was often not forthcoming. In response to this situation, the court ruled that the state’s education clause required the state to make ample provision for a constitutionally adequate educational system through regular and dependable tax sources.

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specified that the school finance system must provide additional resources for compensatory programs for at-risk or disadvantaged students (Lukemeyer 2001, 2003). Instead, most courts that have addressed the issue have said simply that school finance systems may adjust funding to take into account the needs of at-risk students, but few have explicitly required them to do so. None of the courts in the states studied in this book has explicitly interpreted the education or equal protection clauses in its state as requiring school finance systems to adjust funding in this way. Decisions from courts in Texas, Kansas, and Vermont indicate that these courts do not see their states’ education or equal protection clauses as prohibiting such additional funding, however. Texas and Vermont have expressly stated that the school finance system may provide additional funding for high-cost students. In USD No. 229, the Kansas Supreme Court upheld, against an equal protection challenge, school finance reforms that included adjustments for higher costs associated with educating some types of students. The Kentucky court did not explicitly address the issue in Rose, but given its emphasis on providing rich and poor children with equal access to an adequate education, it seems very unlikely that the court would interpret the Kentucky constitution as precluding adjustment for costs of educating certain types of students.

2.6 Conclusion

Clearly, state courts have played an important role in defining a constitutional structure for financing education. Several commonalities stand out across most of these school finance reform cases. First, state courts have consistently defined the state’s constitutional obligation in substantive terms such as providing an educational opportunity or an education that meets a broadly specified standard. Although some courts have supplemented this substantive standard with a specific standard for funding, many, any finance structure is acceptable, so long as it allows the state to meet the substantive constitutional requirements. Second, the courts are almost unanimous in placing the responsibility for devising and enforcing a constitutional school system at the state rather than local level. Finally, a number of courts have emphasized that the legislature must identify the specific content and processes of education in the state that will meet this substantive standard.

The courts’ emphasis on substantive obligations seems to have two opposing implications for the effectiveness of judicially mandated school finance reforms. To the extent that court rulings require legislators to determine educational funding on the basis of the cost of providing school resources and services that meet a specifically defined substantive standard, the emphasis on substantive rather than financial standards seems likely to rationalize the process of determining the amount of funds needed in school districts and, perhaps, to result in a finance system that more accurately accounts for differences in the costs among districts.

An alternative outcome seems plausible, however. Those courts defining only a substantive standard leave the legislature considerable leeway to enact school funding systems that “might” result in attainment of the courts’ definition of educational equity but that are not well designed for that purpose. If this is the case, then judicial reforms are likely to be less effective and are less likely actually to result in an education system whose characteristics match those of the courts’ definitions. Thus, for a substantive definition of educational equity to be effective, courts must be willing, as some courts have been, to enforce a rational (rather than a political) process for calculating school aid.

Beyond their emphasis on distribution of educational opportunity rather than funding, courts vary in their definition of what the constitution in their states requires with respect to educational equity. The majority of courts interpret the constitutions in their states as requiring primarily that the state provide an education in all schools that meets certain standards of adequacy. A minority of courts enforce one of the other types of standards—equality, access equality, or wealth neutrality—either alone or in combination with an adequacy standard. The courts’ definitions of states’ educational obligations tend to be vague in several ways that make it difficult to use them as templates for crafting a school finance system, however. First, whereas some courts’ definitions of the requirements imposed by the constitutions in their states are clear in terms of the type of standard to be used to measure equity, others are not. Some use phrasing that suggests that they may (or may not) be supplementing an adequacy standard with an equality standard. In addition, courts’ articulations of what constitutes an adequate education tend to be abstract and open to a considerable range of interpretation. A final area of confusion appears in courts’ defining the constitutional obligation primarily in terms of
specified that the school finance system must provide additional resources for compensatory programs for at-risk or disadvantaged students (Lukemeyer 2001, 2003). Instead, most courts that have addressed the issue have said simply that school finance systems may adjust funding to take into account the needs of at-risk students, but few have explicitly required them to do so. None of the courts in the states studied in this book has explicitly interpreted the education or equal protection clauses in its state as requiring school finance systems to adjust funding in this way. Decisions from courts in Texas, Kansas, and Vermont indicate that these courts do not see their states’ education or equal protection clauses as prohibiting such additional funding, however. Texas and Vermont have expressly stated that the school finance system may provide additional funding for high-cost students. In USD No. 229, the Kansas Supreme Court upheld, against an equal protection challenge, school finance reforms that included adjustments for higher costs associated with educating some types of students. The Kentucky court did not explicitly address the issue in Rose, but given its emphasis on providing rich and poor children with equal access to an adequate education, it seems very unlikely that the court would interpret the Kentucky constitution as precluding adjustment for costs of educating certain types of students.

2.6 Conclusion

Clearly, state courts have played an important role in defining a constitutional structure for financing education. Several commonalities stand out across most of these school finance reform cases. First, state courts have consistently defined the state’s constitutional obligation in substantive terms such as providing an educational opportunity or an education that meets a broadly specified standard. Although some courts have supplemented this substantive standard with a specific standard for funding, for many, any finance structure is acceptable, so long as it allows the state to meet the substantive constitutional requirements. Second, the courts are almost unanimous in placing the responsibility for devising and enforcing a constitutional school system at the state rather than local level. Finally, a number of courts have emphasized that the legislature must identify the specific content and processes of education in the state that will meet this substantive standard.

The courts’ emphasis on substantive obligations seems to have two opposing implications for the effectiveness of judicially mandated school finance reforms. To the extent that court rulings require legislators to determine educational funding on the basis of the cost of providing school resources and services that meet a specifically defined substantive standard, the emphasis on substantive rather than financial standards seems likely to rationalize the process of determining the amount of funds needed in school districts and, perhaps, to result in a finance system that more accurately accounts for differences in the costs among districts.

An alternative outcome seems plausible, however. Those courts defining only a substantive standard leave the legislature considerable leeway to enact school funding systems that “might” result in attainment of the courts’ definition of educational equity but that are not well designed for that purpose. If this is the case, then judicial reforms are likely to be less effective and are less likely actually to result in an education system whose characteristics match those of the courts’ definitions. Thus, for a substantive definition of educational equity to be effective, courts must be willing, as some courts have been, to enforce a rational (rather than a political) process for calculating school aid.

Beyond their emphasis on distribution of educational opportunity rather than funding, courts vary in their definition of what the constitution in their states requires with respect to educational equity. The majority of courts interpret the constitutions in their states as requiring primarily that the state provide an education in all schools that meets certain standards of adequacy. A minority of courts enforce one of the other types of standards—equality, access equality, or wealth neutrality—either alone or in combination with an adequacy standard. The courts’ definitions of states’ educational obligations tend to be vague in several ways that make it difficult to use them as templates for crafting a school finance system, however. First, whereas some courts’ definitions of the requirements imposed by the constitutions in their states are clear in terms of the type of standard to be used to measure equity, others are not. Some use phrasing that suggests that they may (or may not) be supplementing an adequacy standard with an equality standard. In addition, courts’ articulations of what constitutes an adequate education tend to be abstract and open to a considerable range of interpretation. A final area of confusion appears in courts’ defining the constitutional obligation primarily in terms of
equality, access equality, and wealth neutrality. Although finance systems designed to meet one of these types of obligations need not meet another, a number of courts seem to treat these obligations and the standards they imply as interchangeable. Again, all this vagueness of standards leaves legislatures considerable leeway (or room for error and repeated litigation) in designing a constitutional finance system.

We have good evidence that, overall, plaintiffs’ victories in court cases that challenge a state’s existing school finance system result in a more equal distribution of school funding and an increase in the state’s share of total school funding (Evans, Murray, and Schwab 1997; Murray, Evans, and Schwab 1998). Whether the particular type of standard for educational equity that a particular state court articulates consistently affects the distribution of school funding or resources in that state remains a question for further research.

Notes

Revised version of paper prepared for the Conference on State Aid to Education sponsored by the Education Finance and Accountability Project, Syracuse University, April 5–6, 2002. The author wishes to thank Rebecca Raper for her excellent assistance with research and analysis of recent cases.

1. Numbers calculated from information presented in ACCESS 2003.

2. This chapter presents, in a condensed format, information and findings presented in earlier works by the author. The conclusions presented here, unless otherwise noted, are based on state supreme court decisions and may not be applicable to lower-court decisions. For a more detailed discussion of the themes in this chapter, see Lukemeyer 2003. For additional perspectives on this litigation, see Enrich 1995; Minorini and Sugarman 1999a; and Minorini and Sugarman 1999b.

3. McMillan (1998) argues that school finance litigation is entering a fourth wave in which courts’ concerns about the legitimacy of their involvement in school finance issues and doubts about their competence to effect reforms are leading to fewer plaintiffs’ victories. In addition, McMillan suggests that fourth-wave cases, unlike earlier cases, are characterized by a combination of school finance with racial and ethnic discrimination claims. An analysis of claims based on racial or ethnic discrimination is beyond the scope of this chapter.

4. The California Supreme Court was reviewing the lower court’s decision to dismiss the plaintiffs’ claims without hearing evidence. Under these circumstances, a reviewing court normally assumes that the facts as alleged by plaintiff are actually true. If the reviewing court finds that these facts describe a condition that violates the law as plaintiffs claim and that the courts can remedy the condition, then the reviewing court will remand the case to the trial court to provide plaintiffs with an opportunity to prove the facts. Alternatively, if the court concludes that what plaintiffs allege, even if true, violates no judicially enforceable law or obligation, then it will uphold the trial court’s dismissal, and plaintiffs lose. In Serrano I, the court ultimately concluded that the facts that plaintiffs alleged, if true, violated the federal and state constitutions. In a later (1976) case (Serrano v. Priest II), the court upheld the trial court’s conclusion that plaintiffs had proven facts showing that the finance system was unconstitutional.

5. Because Serrano I was decided on the basis of both the federal and the California state equal protection clauses, the California court’s decision was not necessarily overturned by Rodriguez, and the California court subsequently (1976) affirmed its decision on the basis of the state clause (Serrano II).


7. These plaintiffs also made state and federal equal protection clause claims, which the high court denied. Upstate big-city school districts intervened as plaintiffs in this suit, also bringing state education clause and state and federal equal protection clause claims. The upstate big-city school districts alleged that, although they were not property poor, they were in a position similar to that of property-poor school districts because of the impact of “municipal overburden.” The New York high court rejected their claims as well.

8. Plaintiffs also brought state and federal equal protection clause claims. Because the court was able to decide the case on the basis of the education clause claims, it did not have to decide the federal or state equal protection clause claims and it apparently did not do so.

9. Not all courts use the traditional form of analysis described here. Some, for instance, combine education clause claims and equal protection clause claims in an analysis more like that described for education clause claims.


14. This argument carried the day in San Antonio Independent School District v. Rodriguez (1973). Some state courts, however, have concluded that their states’ school funding systems result in inequalities that do not survive even rational-basis scrutiny (DuPree v. Alma School District No. 30 [Arkansas 1983]; Tennessee Small School Systems v. McWherter [1993]).

15. Recent opinions from the Florida and Illinois Supreme Courts exemplify this deference: Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles (Florida 1996) (plurality concluding that to decide whether legislative appropriation for education is adequate would be to usurp legislative powers); Committee for Educational Rights v. Edgar
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16. There is some evidence, however, that litigation affects school funding even when plaintiffs lose (Hickrod et al. 1992). Although Kansas is not a state in which plaintiffs lost, that state’s recent school finance reforms illustrate the complexities that can occur as legislators respond to the filing of a suit. As Duncombe and Johnston point out in chapter 5, Kansas’s 1992 school finance reforms took place within the context of lawsuits brought by a number of school districts challenging the constitutionality of the school funding system existing at the time. The document that provided the legal context for the reform legislation, “Opinion of the Court on Questions of Law Presented in Advance of Trial,” was an opinion on questions of law issued by the trial court judge before the case actually went to trial. This document, which interpreted the state’s constitutional obligation rigorously as requiring equal educational opportunity for each child, set out the legal framework that the judge would use to evaluate the existing school finance system if the case came to trial and was part of an aggressive effort by the trial court judge to facilitate a settlement of the case (Berger 1998). In fact, the parties were able to agree on school finance legislation (described in chapter 5), and the trial judge dismissed the suit. Thus, this set of reforms was guided by a trial court judge’s interpretation of the law that was never reviewed by a higher court (Berger 1998).

The resulting reform legislation was, of course, immediately challenged on various grounds by a number of wealthier school districts who were disadvantaged by the new finance scheme. A smaller group of poorer districts also challenged the reform legislation as not going far enough (Berger 1998). These suits reached the Kansas Supreme Court in Unified School District No. 229 v. Kansas (1994). That court defined the state’s constitution as imposing an adequacy requirement and found that the current system met that requirement (USD No. 229, 855 P.2d at 1185–1187). It evaluated the parties’ equal protection claims using a rational-basis test and, showing considerable deference to legislative judgment, upheld the finance system (USD No. 229, 855 P.2d at 1190–1193). Because the supreme court was addressing primarily claims brought by comparatively wealthy districts, the opinion leaves many questions unanswered with respect to the extent to which the Kansas constitution requires (rather than allows) equalizing aid for the poorer districts (Berger 1998). Overall, however, the supreme court’s opinion seems to interpret the state’s education clause and equal protection clause obligations less rigorously and with more deference to legislative judgment than the trial court’s. In short, the interpretation of constitutional requirements driving the legislation appears different from the interpretation later articulated by the state’s highest court. (For a fuller analysis of the interaction of judiciary and legislature in the Kansas reforms, see Berger 1998.)

17. Michigan experienced an early school finance reform suit, and at the end of 1972, the Michigan Supreme Court ruled that the existing funding system violated that state’s equal protection guarantee. After the U.S. Supreme Court’s opinion in Rodriguez, however, the Michigan court withdrew its earlier opinion and dismissed the finance reform suit without issuing a majority opinion (Millikin v. Green, 1973). A later suit was also dismissed (ACCESS 2003).

18. Many scholars have developed frameworks for characterizing different definitions of an equitable school funding system, including Berne and Stiefel (1984, 1999), Monk (1990), Levine (1991), Clune (1992), Reschovsky (1994), and Duncombe and Yinger (1996).
(Illinois 1996) (observing that education policy is almost exclusively within the province of the legislative branch and holding that questions relating to the quality of education are solely for the legislative branch); and Lewis v. Spagnolo (Illinois 1996) (reaffirming that questions of education quality are solely for the legislative branch even if plaintiffs allege a "virtual absence" of education within a district [710 N.E.2d at 816]).

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of the Office of Executive Education [Massachusetts 1993]."

29. Although it emphasized access equality, the decision also included some language suggesting an equality standard:

"We conclude that, in mandating "efficiency," the constitutional framers and ratifiers did not intend a system with such vast disparities as now exist. Instead, they stated clearly that the purpose of an efficient system was to provide for a "general diffusion of knowledge." (Emphasis added.) The present system, by contrast, provides not for a diffusion that is general, but for one that is limited and unbalanced. The resultant inequalities are thus directly contrary to the constitutional vision of efficiency. (Edgewood I, 777 S.W.2d at 396)"

In later opinions, the court seems to have settled fairly clearly on an access equality interpretation of the "efficiency" requirement.

30. This does not, of course, render the efficiency requirement toothless. Its equalizing power diminishes, however, to the extent that the court allows the legislature to define what constitutes a general diffusion of knowledge. (Edgewood IV, 893 S.W.2d at 463, n.8).

31. Under the school aid system reviewed by the court, this was the per-pupil amount necessary for an elementary student to receive an education meeting school approval standards (Brigham v. Vermont 692 A.2d at 388).

32. Among the states reviewed in this book, Kentucky, Texas, and Vermont have all explicitly placed the ultimate responsibility for providing and funding a school system at the state level (Rose v. Council for Better Education, Inc. [Kentucky 1989]; Edgewood Independent School District v. Kirby [Texas 1989, 1991]; Edgewood Independent School District v. Meno [Texas 1995]; Brigham v. Vermont [1997]). The Kansas constitution charges both the state and school districts with responsibilities for local schools. In USD No. 229, the Kansas Supreme Court interpreted this as putting some limits on state authority over school boards but concluded that the spending limits in that state's reform legislation did not unduly encroach on the local school district's power. Other cases in which the court has placed ultimate responsibility at the state level include Robinson v. Cahill (New Jersey 1973, 1975, 1976); DuPree v. Alma School District No. 30 (Arkansas 1983); Abbott v. Burke (New Jersey 1990, 1994); McDuffy v. Secretary of the Office of Executive Education (Massachusetts 1993); Roosevelt Elementary School District Number 66 v. Bishop (Arizona 1994); and Cambridge School District v. Wyoming (1995). So far as I know, only Maine's high court has indicated that the primary obligation for supporting education in that state rests with local rather than state government. The case in Maine that prompted that observation involved an equal protection (but not an education clause) challenge to the state's distribution of cuts in state aid (School Administrative District No. 1 v. Commissioner [Maine 1995]).

33. Brigham v. Vermont (1997), 692 A.2d at 395 ("The state may delegate to local towns and cities the authority to finance and administer the schools within their borders; it cannot, however, abdicate the basic responsibility for education by passing it on to local governments, which are themselves creations of the state"); see also Robinson v. Cahill (New Jersey 1973, 1975, 1976); Pauley v. Kelly (West Virginia 1979); DuPree v. Alma School District No. 30 (Arkansas 1983); Horton v. Meskill (Connecticut 1985); Abbott v. Burke (New Jersey 1990, 1994); McDuffy v. Secretary of the Office of Executive Education (Massachusetts 1993); Campbell County School District v. Wyoming (1995); Hull v. Allbrecht (Arizona 1997) (legislation improperly delegates responsibility for constitutional school system to local districts because it allows them to opt against bonds necessary to finance adequate capital facilities); and Lake View School District No. 25 v. Huckabee (Arkansas 2002).

34. Among the states examined in this book, both Kentucky and Texas have explicitly stated that local governments may provide supplemental school funds or resources, and the Kansas Supreme Court approved that state's reform legislation even though it included the local-option budget provisions described by Duncombe and Johnston in chapter 5 (Rose v. Council for Better Education, Inc. [Kentucky 1989]; Edgewood Independent School District v. Kirby [Texas 1989, 1991]; Edgewood Independent School District v. Meno [Texas 1995]; Unified School District No. 229 v. Kansas [1994]). Of course, adequacy standards, which inherently allow some districts to provide additional school resources, have played a prominent role in these three courts' definitions of the obligations imposed by the education clauses of the constitutions in their states. The Vermont court, on the other hand, has explicitly refused to allow an adequacy standard to limit the state's equalizing obligation. Nevertheless, even that court has not ruled out local supplementation (Brigham 692 A.2d at 397 ["Equal opportunity does not necessarily require precisely equal per-capita expenditures, nor does it necessarily prohibit cities and towns from spending more on education if they choose, but it does not allow a system in which educational opportunity is necessarily a function of district wealth"]). Other cases in which the courts have expressly stated that local governments may provide additional funding or resources include Robinson v. Cahill (New Jersey 1973, 1975, 1976); Olsen v. Oregon (1976); Seattle School District No. 1 v. Washington (1978); McDaniell v. Thomas (Georgia 1981); Lujan v. Colorado State Board of Education (1982); Horton v. Meskill (Connecticut 1985); Kukor v. Grover (Wisconsin 1989); Skenn v. Minnesota (1993); and Roosevelt Elementary School District Number 66 v. Bishop (Arizona 1994). Only a very few courts have expressed doubts about whether some local supplementation might be constitutional (Abbott v. Burke [New Jersey 1990]; Campbell County School District v. Wyoming [1995]).

35. Courts have interpreted other constitutional clauses, for instance, those specifically addressing taxation, as limiting structures that states can use to fund schools. See, e.g., Buse v. Smith (Wisconsin 1976); Carrolton-Farmers Branch Independent School District v. Edgewood Independent School District (Texas 1992); Claremont School District v. Governor (New Hampshire 1997).

36. See, e.g., Brigham v. Vermont (1997) (constitution does not mandate local property tax or any other structure as a required method of financing education); Robinson v. Cahill (New Jersey 1973) ("In light of the foregoing, it cannot be said that [certain amendments to the education article] were intended to insure statewide equality among taxpayers. But we do not doubt that an equal educational opportunity for children was precisely in mind" [303 A.2d at 294]); DuPree v. Alma School District No. 30 (Arkansas 1983) ("[T]his court is not now engaged in—nor is it about to undertake—the 'search for tax equity'"
judicial review, but the court gave no clear lower limit: "This is not to say that the Legis-

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28. The Massachusetts court, for instance, adopted the Kentucky court's seven goals verbatim in defining the education clause obligation in that state (McC Duffy v. Secretary of the Office of Executive Education [Massachusetts 1993]).

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We conclude that, in mandating "efficiency," the constitutional framers and ratifiers did not intend a system with such vast disparities as now exist. Instead, they stated clearly that the purpose of an efficient system was to provide for a "general diffusion of knowledge." (Emphasis added.) The present system, by contrast, provides not for a diffusion that is general, but for one that is limited and unbalanced. The resultant inequalities are thus directly contrary to the constitutional vision of efficiency. (Edgewood I, 777 S.W.2d at 396)

In later opinions, the court seems to have settled fairly clearly on an access equality interpretation of the "efficiency" requirement.

30. This does not, of course, render the efficiency requirement toothless. Its equalizing power diminishes, however, to the extent that the court allows the legislature to define the education necessary for "a general diffusion of knowledge" at a low level. The court warned that the legislature's discretion to define the constitutional level was not beyond judicial review, but the court gave no clear lower limit: "This is not to say that the Legislature may define what constitutes a general diffusion of knowledge so low as to avoid its obligation to make suitable provision imposed by article VII, section 1. While the Legislature certainly has broad discretion to make the myriad policy decisions concerning education, that discretion is not without bounds." (Edgewood IV, 893 S.W.2d at 463, n.8).

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petency as well as constitutional function is assigned that difficult and perilous quest" [651 S.W.2d at 95, quoting Serrano II]; Horton v. Meskll (Connecticut 1985) (declining as un
sound plaintiff’s request to fix a specified percentage of school funding that must come
from state rather than local taxes); and Olsen v. Oregon (1976) (rejecting plaintiff’s claim
that the state may not impose minimum educational standards on local districts without
also providing funding from state sources sufficient to meet those standards). In a few
recent opinions, however, the courts have been more willing to impose specific funding
obligations at the state rather than the local level (Abbott v. Burke [New Jersey 2000]
[interpreting an earlier order as requiring the state to fund the entire cost of capital facili-
ties]; and Opinion of the Justices [Reformed Public School Financing System] [New Hampshire
2000] ["First, the New Hampshire Constitution imposes solely upon the State the obliga-
tion to provide sufficient funds for each school district to furnish a constitutionally ade-
quate education to every educable child" 765 A.2d at 677]).

37. By 1998, the New Jersey court had imposed specific programmatic requirements for
the poor urban districts (Abbott v. Burke [1998]).

38. In addition to the Abbott cases and Seattle SD, cases in which the courts have articu-
lated a spending standard whose primary function appears to be to support a substan-
tive standard include Serrano v. Priest (California 1976) (California high court upholds
trial court order requiring wealth-related disparities in spending—other than categorical aids—to be "considerably less than $100.00 per pupil" [557 P.2d at 940 n.1]); Washakie
County School District No. 1 v. Herschler (Wyoming 1980) (court articulates a standard for
spending because level of spending is directly related to quality of education, spending is
judicially manageable, and equality of spending is a necessary precursor to quality of
quality); Campbell County School District v. Wyoming (1995) (court defines obligation in
substantive terms but takes equal spending, adjusted for differences in input costs and
student needs, as its baseline); Hull v. Albrecht (Arizona 1997) (to satisfy constitution with
respect to capital funding, state must establish minimum adequate facility standards and
provide funding to ensure that no district falls below them, and the funding mechanism
may not itself cause substantial disparities between districts).

dollars to finance a constitutionally adequate education, it must assess and tax at a un-
iform rate); Campbell County School District v. Wyoming (2001) (state must fund necessary
facilities through a statewide tax or other revenue-raising mechanism imposed equally
on all taxpayers).

40. The courts through 1996 provided mostly very general guidelines of the sort illus-
trated by the Kentucky court’s opinion in Rose. In a 1998 opinion, however, the New
Jersey court, stymied by the legislature’s apparent inability to implement a constitu-
tional education system, prescribed very specific educational programs for implementa-
tion in poor urban school districts (Abbott v. Burke [1998]).

41. See, e.g., City of Pawtucket v. Sundlun (Rhode Island 1995) (court suggests that legis-
lature’s definition is basically unreviewable); Board of Education v. Walter (Ohio 1979)
(court reviews whether legislative definition meets constitutional requirements with
great circumspection); Robinson v. Cahill V (New Jersey 1976).

42. In a more recent suit, brought by two large school districts and minority and disabled
students, the Kansas Supreme Court made it clear that, although in USD No. 229 it used
the legislative standards as a base, “the ultimate question on suitability must be one for
the court” (Montoy v. Kansas [2003], 62 P.3d at 234).

43. Similarly, in a recent opinion, the New Hampshire court concluded that the legis-
lative and executive branches had a duty to define the specifics of a constitutionally ade-
quate education and to adopt standards of accountability to ensure its delivery (Clark-
emont School District v. Governor [New Hampshire 2002]).

44. As the previous section shows, New Jersey required its legislature to specify the con-
tent of a constitutionally adequate education as early as 1973. And the New Jersey legis-
lature has been relatively successful in setting out content and related substantive
standards that meet the constitutional requirement of a “thorough and efficient” educa-
tion (Robinson v. Cahill [1976]; Abbott v. Burke [1997]). In Abbott IV, however, the New Jer-
sey court also concluded that, because the school finance legislation did not “in any
concrete way attempt to link the content standards to the actual funding needed to de-
deliver that content,” it was “clearly inadequate and thus unconstitutional as applied to
/plaintiffs’/ districts” (693 A.2d at 429).

In Campbell County School District v. Wyoming (1995), the court required the legislature
to “first design the best educational system by identifying the ‘proper’ educational pack-
age each Wyoming student is entitled to have whether she lives in Laramie or in Sun-
dance. The cost of that educational package must then be determined and the legislature
must then take the necessary action to fund that package” (907 P.2d at 1279). In Campbell
County II (2001), the court reviewed in detail the legislative efforts to develop a cost-based
model with adjustments for district and student differences.

See also Leandro v. North Carolina (1997) (“a funding system that distributed state funds
to the districts in an arbitrary and capricious manner unrelated to such educational
objectives simply would not be a valid exercise of that constitutional authority and could
result in a denial of equal protection or due process” [488 S.E.2d at 258]).


46. This statement excludes claims based on racial or ethnic discrimination.

47. Edgewood Independent School District v. Kirby (Texas 1989) (“This does not mean that
the state may not recognize differences in area costs or in costs associated with providing
an equalized educational opportunity to atypical students or disadvantaged students” [777 S.W.2d at 398]); Brigham v. Vermont (1977) (“In so holding, we emphasize that absolute
equality of funding is neither a necessary nor a practical requirement to satisfy the
constitutional command of equal educational opportunity. As plaintiffs readily concede,
differences among school districts in terms of size, special educational needs, transporta-
tion costs, and other factors will invariably create unavoidable differences in per-pupil
expenditures” [692 A.2d at 397]).

48. The equal protection clause challenge in USD No. 229, discussed in the text, was
brought by the Blue Valley School District, which included “some of the wealthiest sub-
urbs of Kansas City” (Berger 1998, 36).
which defendants prefigure. . . . [It] is the legislature which by virtue of institutional competency as well as constitutional function is assigned that difficult and perilous quest“ [651 S.W.2d at 95, quoting Serrano II]; Horton v. Meskill (Connecticut 1985) (declining as unsound plaintiff’s request to fix a specified percentage of school funding that must come from state rather than local taxes); and Olsen v. Oregon (1976) (rejecting plaintiff's claim that the state may not impose minimum educational standards on local districts without also providing funding from state sources sufficient to meet those standards). In a few recent opinions, however, the courts have been more willing to impose specific funding obligations at the state rather than the local level (Abbott v. Burke [New Jersey 2000] [interpreting an earlier order as requiring the state to fund the entire cost of capital facilities] and Opinion of the Justices [Reformed Public School Financing System] [New Hampshire 2000] ["First, the New Hampshire Constitution imposes solely upon the State the obligation to provide sufficient funds for each school district to furnish a constitutionally adequate education to every educable child" 765 A.2d at 677].

37. By 1998, the New Jersey court had imposed specific programmatic requirements for the poor urban districts (Abbott v. Burke [1998]).

38. In addition to the Abbott cases and Seattle SD, cases in which the courts have articulated a spending standard whose primary function appears to be to support a substantive standard include Serrano v. Priest (California 1976) (California high court upholds trial court order requiring wealth-related disparities in spending—other than categorical aids—to be "considerably less than $100.00 per pupil" [557 P.2d at 940 n.1]); Washakie County School District No. 1 v. Herschler (Wyoming 1980) (court articulates a standard for spending because level of spending is directly related to quality of education, spending is judicially manageable, and equality of spending is a necessary precursor to quality of education); Campbell County School District v. Wyoming (1995) (court defines obligation in substantive terms but takes equal spending, adjusted for differences in input costs and student needs, as its baseline); Hull v. Albrecht (Arizona 1997) (to satisfy constitution with respect to capital funding, state must establish minimum adequate facility standards and provide funding to ensure that no district falls below them, and the funding mechanism may not itself cause substantial disparities between districts).

39. Rose v. Council for Better Education, Inc. (Kentucky 1989) (if state uses property tax dollars to finance a constitutionally adequate education, it must assess and tax at a uniform rate); Campbell County School District v. Wyoming (2001) (state must fund necessary facilities through a statewide tax or other revenue-raising mechanism imposed equally on all taxpayers).

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