Separate and Unequal by Design: What's the Matter with the Rising State Role in Kansas Education?

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Separate and Unequal by Design: What's the Matter with the Rising State Role in Kansas Education?

According to several scholars, Kansas demonstrates that state control of school finance may result in equality of educational opportunity. They assert that in the early 1990s, district court judge Terry Bullock, Governor Joan Finney and legislative leaders overcame their differences through a contentious political process, rather than a judicial one, and came together to implement a truly revolutionary system of funding for the state, adopting a much stronger state role, and more rational system of financing schools for the good of all Kansas children (Berger, 1998; Johnston & Duncombe, 1998). However, a closer look at the constitutional and statutory history of the state of Kansas in relation to public schooling reveals a far more nuanced and incremental story in which the Kansas legislature may have used centralized state control of school funding to maintain racially separate but equal educational systems.

This chapter discusses at length, how the Kansas legislature has used increased state control to maintain a tight coupling between racial segregation and racial disparities in school funding. Over time, the legislature has aided in the crafting of a highly racially segregated system of unified public school districts, and developed and implemented a multitude of strategies for allocating higher levels of "need-based" funding to those school districts that do not serve the state's black student population. This chapter further demonstrates that school finance litigation has been unable to stop the legislature. We further contrast Kansas and Missouri school finance reforms of the 1990s to show how Kansas could not have achieved such strong racially disparate effects in school funding if the state role had been less intrusive.

1.0 Race, Education, and the Kansas Constitution

A review of Kansas' constitutional history reveals the importance of public schooling even before statehood. The Organic Act of 1854 set aside certain sections of land to be used for education and designed a Territorial Superintendent of Common Schools, who certified teachers and organized school districts (*Montoy v. State*, 2005). Article 6 of the 1859 constitution provided funding for public education through taxation and the sale of public lands (*Montoy v. State*, 2005). Article 6 also specified that the "legislature *shall encourage the promotion of* intellectual, moral, scientific and agricultural improvement, by establishing a uniform system of common schools, and schools of a higher grade, embracing normal, preparatory, collegiate and university departments" (p. 316, emphasis added).

Of particular importance was that the adopted language specified that the legislature was compelled (shall) to encourage promotion of intellectual, moral, scientific and agricultural improvement, by establishing a uniform system of common schools, and schools of a higher grade. It was not optional. Further, that system was to be *uniform* suggesting not only a preference for the minimum adequacy of schooling – sufficient to *encourage the promotion of* – but also a preference that all Kansas children would have access to equitable common schools and higher schools, regardless of their location in the state, or arguably even the color of their skin.

Racial segregation of schooling in Kansas had not been a central policy issue in the immediate aftermath of statehood and the drafting of the 1859 constitution. This was largely because the state was not home to many blacks until the decade following the civil war as blacks fled nearby southern states. The push to permit racial segregation of schools in state legislation began with an 1879 statute permitting *cities of the first class* (those of approximately 15,000 or more residents) to operate separate elementary (common) schools for black children. Under the same legislation, cities of the first class were delineated as separate, autonomous school districts, while cities of the second class were governed partially by county superintendents (*Reynolds v. Board of Education*

of the City of Topeka, 1903). Without specific exemption for cities of the first class, racially segregated elementary schools might have violated the state's *uniform systems* clause which applied to common schooling. At the time, few Kansas blacks attended high school. However, as black high school attendance increased, in 1905, the legislature adopted a special statute allowing Kansas City, Kansas to operate segregated high schools.

A string of legal challenges to Kansas' "separate but equal" educational policies in state court preceded *Brown v. Board of Education of Topeka*. Most of the state court challenges affirmed the state's authority to permit segregation in specific locations, but denied segregation in those areas where not permitted under state statute. In the final case before *Brown, Webb v. School District # 90, Johnson County* (1949), the Kansas Supreme Court denied the establishment of segregated schools in Johnson County. District # 90 in then rural Johnson County had attempted to establish its own racially segregated elementary schools. Regarding the segregation plan, the court noted that the district had the authority to establish two schools and to designate areas of attendance for each. However, the designation of the areas had to be made on a reasonable basis, and the two schools were required to have comparable facilities and standards.

Concurrently, the few (15) black high school students residing in Johnson County, in the Shawnee Mission High School District were exported to segregated schools in Kansas City, a few miles to the north (KC Star, June 11, 1949). No blacks attended the Shawnee Mission High School. To some extent, it is surprising that any black families lived within the attendance boundaries of the Shawnee Mission High School District or in District # 90. Since the turn of the century, legislators and local government officials had been complicit to a regional real estate industry that gained national notoriety for designing and constructing vast expanses of racially restricted housing development. Gotham (2001) shows that between 1900 and 1947, 97% of the developed acreage in Johnson County, KS was racially restricted and 96% of Johnson County subdivisions were racially restricted.

Eventually, *Brown* invalidated the special exception provisions for cities of the first class and for Kansas City that permitted establishment of segregated schooling. By that time, however, Baker and Green (2005) show that the state's black population had, through racially restricted real estate development, been boxed in tightly to only a handful of zip codes in a handful of cities, primarily the pre-*Brown* cities of the first class. Those patterns of racial residential segregation remain largely in place to this day. As in many Southern states, the *Brown* decision did not eliminate the role of race in Kansas public schooling, but instead ushered in a new era of public policy development in Kansas requiring, in the eyes of some, a stronger state role.

2.0 Progressive Legislative Reforms of the 1960s

The first major wave of education reform that occurred in the post-*Brown* era in Kansas involved the re-organization of Kansas public schools. These attempts included the School Unification Act of 1963 (revised in 1965). Previous attempts at consolidation had been overturned on the partial basis that the legislature lacked the authority to delegate control to county level committees to oversee and manage consolidation (*Donaldson v. Hines*, 1947; *School District, Joint No. 71, Rooks County v. Throckmorton*, 1962). In the 1963 Act, the legislature adopted an alternative strategy of delegating oversight to the State Superintendent of Public Instruction. Every significant procedure in the process, including ratification of local elections, required the state superintendent's decision or approval (State Department of Public Instruction, 1967).

Perhaps questioning whether they were again walking on tenuous ground in allocating so much authority to the State Superintendent of Public Instruction, legislators sought to redraft the state's constitution to specifically grant themselves the authority to do what they had already done. An 11-member citizen task force was formed to make recommendations to legislators regarding guiding principles for revision of Article 6 of the constitution. The

proposed language for a new Article 6 included, among other things, the following:

> Section 1: The legislature *shall* provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.
>
> Section 2: (a) The legislature *shall* provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.
>
> Section 5: Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.
>
> Section 6: The legislature *shall* make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. The legislature may authorize the state board of regents to establish tuition, fees and charges at institutions under its supervision.

A notable omission in the new Article 6 was any mention of a preference for uniformity or equality of educational opportunity. The uniform systems clause had played a major role in pre-*Brown* segregation litigation under the "separate but equal" standard. The uniformity clause defined a high standard of equality, but uniformity had now been replaced with suitability, a more subjective standard granting the legislature the opportunity to treat individuals differently, at least under Article 6.

The new Article 6 was ratified in 1966 just as the Unification Act of 1963 reached completion of phase-in. Eventually under the School Unification Law of 1963 the total number of school districts in the state was reduced from approximately 1,600 to 306. Concurrently, in 1965 the legislature enacted the first organized state level system for allocating aid to local public schools: The School Foundation Act. Major provisions of the act included a basic allotment of $760 per pupil and included two major adjustments to that allotment: (a) an adjustment based on teacher education and experience levels; and (b) a multiplier based on each district's pupil-to-teacher ratio relative to the state average. In addition, the legislature implemented strict limits to budget growth (limits to local taxing authority) under the act. With the School Foundation Act, the state share of school funding rose from about 23.7% in 1960-61 to about 35.3% in 1965-66. At this point in time, state funding was at nearly the same level as local school district funding (35.6%), with county level funding making up 20% (State Department of Public Instruction, 1967). This balance of revenues placed Kansas at slightly lower state control than the national average at that time (Institute of Education Sciences, National Center for Education Statistics, 2005).

Reflecting on the 1960s Reforms

On the one hand, Kansas education governance reforms of the 1960s are consistent with the view of the *old* Kansas as a progressive, populist state. However, while the reforms of the 1960s might be seen as purely progressive in the *old* Kansas tradition, they may also be evaluated in an alternative light. For example, the

Unification Act of 1963 served to solidify the boundaries between black and white school districts in the state during a period when those school districts had been forced to eliminate racially segregated schooling within. As such, within those districts, whites could no longer escape blacks, leading to white flight into neighboring districts where residential housing remained racially restricted at least through 1962, despite U.S. Supreme Court precedents rendering such restrictions unenforceable (Gotham, 2001). The Unification Act strengthened the operational viability of rural and small town districts adjacent to cities and towns serving nearly 100% of the state's black population. In some cases, predominantly white unified school districts were formed within the municipal boundaries of cities of the first class. School districts were retained as separate and segregated even where the land on which the districts sat had been annexed into cities of the first class (History of the KCKs Public Schools Beginning July 1, 1844, n.d.). Population had already begun declining in rural outlying districts and pressure was already being felt to consolidate rural and small town districts with larger towns and nearby cities (State Department of Public Instruction, 1967). By reorganizing rural and small town districts amongst themselves, those districts would not be forced to consolidate and integrate with larger towns or cities.

One might also perceive implementation of an organized system of finance to be a step that could lead only to greater equity and adequacy of school funding over time. Yet, the Kansas legislature managed to use state control over school funding to create and perpetuate school funding disparities that, for the next 40 years, would systematically disadvantage those few districts in cities and towns of over 15,000 residents serving nearly all of the state's black population (Baker and Green, 2005). Baker and Green (2005) as well as the Education Trust (2005) identify Kansas as having among the largest, systematic gaps in funding across school districts serving high and low minority concentrations.

What is so unique about Kansas is that these black-white disparities in question came about as a direct function of highly centralized reorganization of public schooling in Kansas and highly centralized control over the financing of schools. Without such a high degree of state control, it is unlikely that Kansas legislators would have been able to perpetuate this combination of racial segregation and financial disparity. In short, taking full state control of the Kansas system of public schooling in the 1960s allowed the Kansas legislature to codify through district boundaries, highly racially segregated schooling and then through school finance policy to systematically disadvantage predominantly black schools for decades to follow.

3.0 The Role of School Finance Litigation

By the time the first legal challenge to state financing of public schools came about in Kansas, the legislature, under its newly drafted constitutional authority, had already taken full control over the organization and governance of public schools in Kansas and was already allocating over 35% of public school funding, with an additional 20% coming from county sources. That is, local unified school district control over finances had already been reduced to well less than a majority share. As such, it would be a stretch, at best, to attribute centralization of Kansas schooling to activist judicial interpretations of the legislature's role, under Article 6, Section 6 in financing schools. Article 6, Section 6 had just been adopted and no litigation invoking Article 6 had yet been filed. Further, the legislature had already adopted policies regulating school district budget growth and increases to local taxation for public schools.

Early Litigation over Legislative actions in School Finance

Specific provisions of the 1965 School Foundation Act brought about the first round of school finance litigation in the state in 1973. In particular, the court was asked to address three major deficiencies with the school finance formula. First, districts with well-trained and experienced teachers received more state funding than districts with less experienced teachers. That is, they got more simply because

they had more. Second, the pupil to teacher ratio multiplier placed large, urban districts at a disadvantage by placing significantly more state funding into the coffers of small, rural districts with fewer pupils per teacher (Green & Baker, 2005). Third, the index used for determining local tax effort harmed poor school districts in rich counties. This was the case because the expected contribution of a poor district was computed as equal to that of more affluent districts in the same county (Berger, 1998).

Another provision of the act restricted the budgetary authority of school districts. School districts were prohibited from increasing their budgets annually by more than 4%. This provision had the effect of codifying existing inequalities between rich and poor school districts, because the provision was put into place on top of (a) provisions of the 1965 Act that granted more funding to already advantaged districts and (b) disparities in local revenue raising that had existed prior to the 1965 Act.

In 1972, the Johnson County District Court ruled in *Caldwell v. State* that the school finance system violated the Equal Protection Clause to the extent that it "[made] the educational system of the child essentially the function of, and dependent on, the wealth of the district in which the child resides" (quoted in *Unified School District No. 229 v. State*, 1994, p. 1177). Note again that funding was highly related to local wealth NOT because of local discretion over school district taxes, but because the legislature had defined a system whereby lower wealth and especially larger districts would receive a smaller defined allotment and were then not allowed to increase their budgets at a higher rate to catch up. The court did not deny the legislature's authority to implement strict limits on school district budget growth.

Following legal challenges to the School Foundation Act, the legislature adopted the first iteration of the School District Equalization Act (SDEA). SDEA replaced the pupil to teacher ratio adjustment with different sized base budgets for districts of different size. SDEA provided districts with fewer than 400 students a base budget of $936 per pupil and districts with more than 1,300 students a base budget of $728 per pupil. That is, the previous mechanism was replaced with state defined allotments not directly associated with staffing parameters, but ultimately replicating the distributional effect of the previous mechanism.

In addition, the state established new limits on annual budget growth and tied those limits to district size groups. Districts above median spending of districts in their size group could increase their budget by 5% per year. Districts below the median spending of districts in their size group could increase their budget to the lower of (a) 5% above the median or (b) a 15% increase over the previous year. This policy would lead to a ratcheting effect over the next 18 years, whereby higher-funded enrollment categories (small districts) could significantly outpace revenue growth of lower-funded enrollment categories (large districts). That is, the same patterns of disparity would not only continue to exist, but the state defined disparities would widen in dollars over time since state controlled growth rates were established on a percentage basis and since districts could adjust their budgets relative to others in their same size group. In effect, the legislature was micromanaging the system toward increased disparity, with the biggest losers being larger cities and towns that were home to the state's minority population.

The second round of challenges to state school finance policy came in 1976, in *Knowles v. State Board of Education* (1976). Plaintiffs challenged the constitutionality of the SDEA on the ground that it violated the Bill of Rights of the state constitution and the Equal Protection Clause of the U.S. Constitution. The Chautaqua County District Court struck down the SDEA because "the distribution of state funds under the formula provided in the Act resulted in unequal benefits to certain school districts and an unequal burden of ad valorem school taxes on taxpayers in various districts with no rational classification or basis" (p. 700) The district court also held that the SDEA's provision for school funding "was not sufficient to enable the plaintiffs to provide a fundamental education for the students within the respective districts on a rationally equally basis with students of other school districts within the state as required in the state constitution" (p. 700).

However, the district court took judicial notice that the state legislature was in session

when it entered judgment and gave the legislature time to correct the inequalities. The legislature then amended the SDEA to address the deficiencies identified by the district court. For instance, the limitation on school budget increases was raised from 5% to 10%, and in some instances 15%. That is, under pressure from the court, legislators relaxed the restrictions on budget growth they themselves had pro-actively implemented. "District wealth" was also redefined to be an average of the previous three years to "soften any sharp increase or decrease in either the adjusted valuation or the taxable income within a district" (p. 700). The district court then dismissed the case as moot because the amendments to the SDEA were substantial enough to constitute an entirely new law.

The Kansas Supreme Court vacated the lower court's dismissal because "[t]he ultimate effect of the formula depends upon the use of similar factors contained in the prior law such as district wealth, local effort, budget per pupil and sales ratio to local assessed valuations" (p. 705). Thus, the constitutional questions raised by the plaintiffs' claims still remained unsolved. The case was remanded to the Shawnee County District Court because the record was insufficient to decide on these constitutional issues. The district court upheld the SDEA in 1981 – seven years after *Knowles* had been originally filed. Again, no pressure was provided by the courts to substantially alter the legislature's approach to financing schools.

Mock & USD 229

SDEA came under fire in the late 1980s through 1991, with 42 districts across the state taking 4 separate legal challenges to Shawnee County District Court. District Court Judge Terrence Bullock consolidated these cases into a single case and issued a pre-ruling indicating that if the case went to trial, he would likely declare SDEA in violation of both equal protection and Article 6, Section 6 of the State Constitution which mandates that the legislature "make suitable provision for finance of the educational interests of the state." Judge Bullock as an individual and through his actions during this time period is often credited with orchestrating the shift from a system of locally controlled schools to the new highly centralized system of Kansas schooling. Yet, we have already shown that the assumption that Kansas schooling was locally controlled in the pre-*Mock* era is largely incorrect.

Judge Bullock's pre-ruling was issued October 14, 1991, after which Governor Joan Finney immediately convened a task force which produced its recommendations for reforming the school finance formula in November. The 11-member task force (déjà vu) recommended a financing method that would set an equal tax rate across Kansas school districts and that would provide each district with a flat amount of basic operating aid. The task force also recommended that it would be appropriate to include some adjustment to that general fund budget to help sustain small, rural districts, and other adjustments to help districts cope with increased numbers of at risk and limited English speaking children.

During the legislative session of the spring of 1992, it appeared as if no solution would be reached on a new school finance plan. In April, 1992 after the regular session of the legislature adjourned failing to pass two separate plans, Judge Bullock warned the legislature that if they failed to comply with his preliminary ruling by June 1, he would order the schools closed in the fall. During the "veto session" which convened on April 29, the School District Finance (SDF) act, coupled with accountability legislation, the Quality Performance Accreditation Act (QPA) was passed into law (together, SDFQPA).

In general, the legislature followed the task force recommendations. Notable features of the new state school finance formula included a very large adjustment to compensate small school districts, based solely on what they had been spending in 1991, a sizeable adjustment (25%) for the number of children attending new school facilities, received initially by only a handful of suburban districts and relatively small adjustments for children qualifying for free lunch (6%) and children participating in

bilingual education programs.[1] In addition, the legislature carried on its tradition of tax and expenditure limits by setting a strict revenue cap of 25% above districts basic per pupil allotment.

In short, like previous funding formulas dating back to 1965, the School District Finance Act froze into place prior disparities, leaving specifically large cities and towns at the bottom of the spending distribution. Under SDF in the 1990s, more than 90% of the variations in school funding across Kansas school districts were a function of state control, not local control (Baker, 2003). Arguably, the Kansas legislature could have achieved a much fairer system with a much lower degree of state control. Instead, the Kansas legislature chose to adopt an unfair system – built almost entirely on past funding disparities – almost entirely under state control.

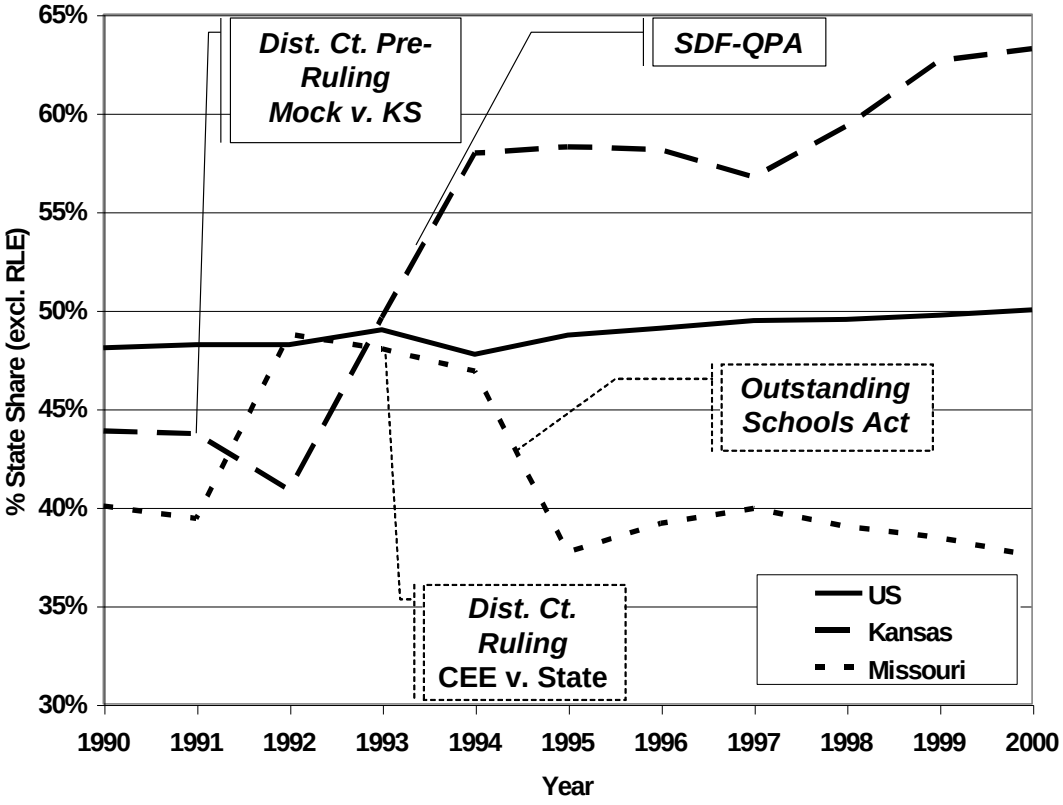
4.0 State Control and Inequality: Contrasting Kansas and Missouri Reforms

Contrasting Kansas and Missouri school finance reforms of the 1990s illustrates this point. Interestingly, Missouri like Kansas faced a state district court decision over their school finance formula in 1993. District court judge Byron Kinder declared the system of finance unconstitutional in *Committee for Educational Equality v. State.* Missouri's system of school funding was, in fact, more highly locally controlled than the Kansas system of the day, with no limits to local taxation and no specific floor of local tax effort or state support. The Missouri legislature responded to the CEE decision with the Outstanding Schools Act. In contrast to the highly state controlled School District Finance Act in Kansas, the Missouri legislature increased the local share requirement, and increased matching aid that could be received by districts choosing to levy higher local tax rates, with additional weighting for children in poverty and an adjustment to district matching aid rates based on district income levels. No other "cost" adjustments or major factors differentiating funding levels were introduced in Missouri.

Figure 1 tracks the events in Kansas and Missouri, alongside national trends in the percent of schooling revenue from state sources from 1990 to 2000. Nationally, state share of school funding climbed toward 50% during this period. In 1990, both Kansas and Missouri fell between 40 and 45% sate funded. Following Judge Bullock's *Mock* ruling, the Kansas share of state source funding climbed toward 60%. The Kansas share jumped above 60% in 1998 when the Kansas legislature chose to cut dramatically local property taxes. By contrast, following the CEE ruling, under the Outstanding Schools Act the state share in Missouri actually decreased to below 40%, as local districts raised additional local taxes to gain access to additional state aid.

[1] The weight was set at 20% but only attainable for Full Time FTE Bilingual Education Program students, where Full Time meant 6 full contact hours per day. On average children received only 2 to 3 contact hours, effectively halving this weight, making well less than half the weight used for children in new facilities.

Figure 1
Litigation and Reforms in Kansas and Missouri and the State Share of Education Funding

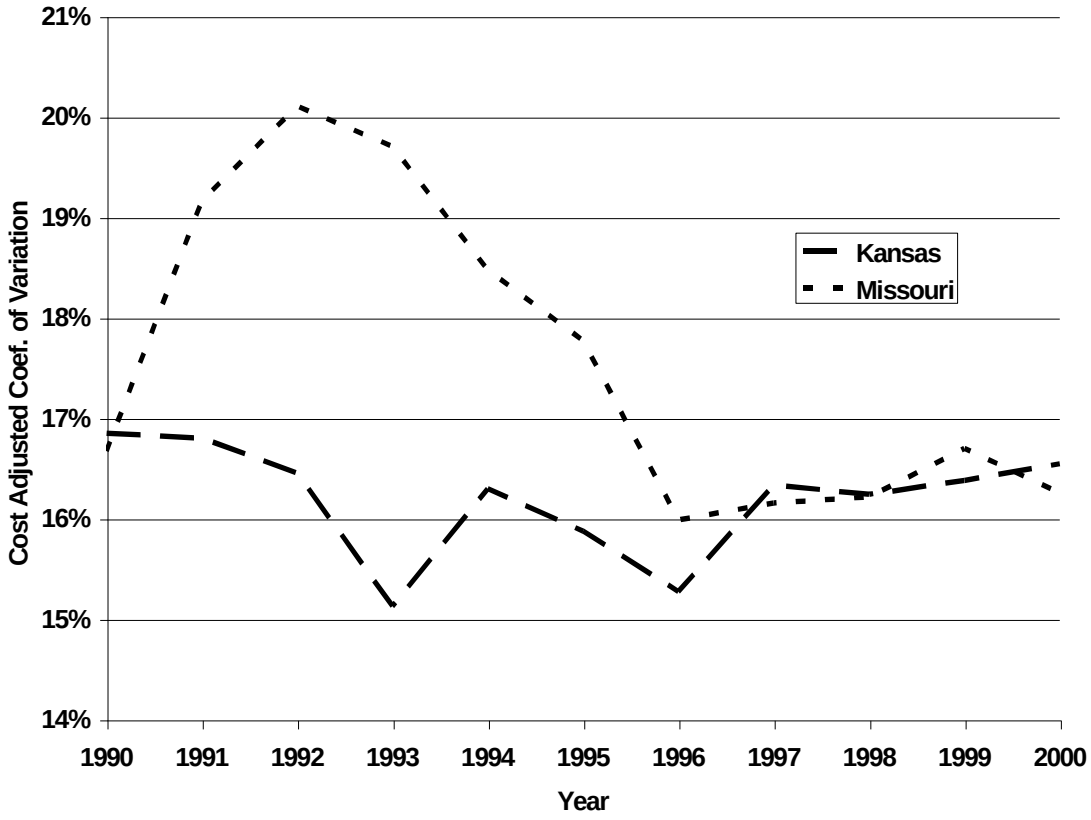


The common assumption would be that equity must have improved far more in Kansas than in Missouri because the Kansas legislature had adopted much greater state level control. Not only that, but Kansas had adopted numerous major adjustments in aid allocation, on the argued basis of different costs of education. Missouri had introduced only one weight for children in poverty, and allowed their system to be driven primarily by local taxing decisions. Figure 2, however, shows the cost adjusted coefficients of variation for Current Expenditures per Pupil in Kansas and Missouri districts from 1990 to 2000. In each state, district current expenditures per pupil are adjusted for differences in the costs of achieving state mandated outcome levels on state assessments, given districts student population characteristics, economies of scale and regional labor costs. An education cost function methodology was used to estimate cost indices for each district. For Kansas, cost function estimates prepared by Duncombe and Yinger (2006) for the Division of Post Audit for the Kansas legislature were used. In Missouri, cost function estimates were generated by the authors, and appear in Baker (2006). Duncombe and Johnston (2004) and Reschovsky and Imazeki (2004) use similar approaches to evaluating cost adjusted equity.

Figure 2 shows that equity in Kansas improved slightly between 1992 and 1993, but from 1996 through 2000, the coefficient of variation remained between 16 and 17%. Duncombe and Johnston (2004) also find that "Disparities in cost-adjusted spending have not generally been reduced since the reform." (p. 147) By contrast, Missouri, which reduced

rather than increasing its state share of funding, managed to dramatically reduce the coefficient of variation for cost adjusted current expenditures between 1993 and 1996. From 1996 to 2000, the two state systems were similarly equitable, or similarly disparate.

Figure 2
Cost Adjusted Coefficients of Variation of Current Expenditures per Pupil for Kansas and Missouri Districts from 1990 to 2000



The major difference in resource distribution between the two states is that in Missouri, poor urban, predominantly black school districts were able to raise their own tax rates to disproportionately high levels to achieve more adequate funding. Notably, Kansas City School District had its high local property tax rate forced upon it by Federal court in the case of *Missouri v. Jenkins.* In contrast to Kansas, Missouri is among those states where districts with higher concentrations of black children have systematically higher nominal (though lower adjusted) spending per pupil, albeit by inequitable taxation, highly statistically associated with district black concentration (Baker, 2006). In Kansas, under greater state control, districts with higher concentrations of black children were first provided less need adjusted general funding, and then prohibited from raising additional funding locally in order to meet their actual rather than state defined needs. Imazeki (2001) describes a similar effect of Wisconsin tax and expenditure limits on Milwaukee schools, and Baker (2005) shows that Nebraska's school finance formula, which applies budget growth limits by district groupings (similar to SDEA in Kansas in the 1970s), prohibits the city of Omaha from achieving its necessary funding. In short, by exercising a high degree of state control the

Kansas legislature was not attempting to promote greater equity, but rather actively micromanaging inequity, deciding from Topeka who should be advantaged and who disadvantaged across the state.

Nonetheless, the appearance of a more rational system was sufficient for Judge Bullock to dismiss some of the consolidated cases and transfer jurisdiction of the remaining cases, based on the new law, to Judge Marla Luckert (Shavers, 2005). After a trial, Judge Luckert ruled in 1993 that the SDF did not violate Article 6, § 6 of the state constitution. Luckert did find that the act's small school district adjustment provision violated the state equal protection provision. Luckert was the first state court judge, since *Caldwell* and *Knowles* to raise concerns over the way the Kansas legislature was exercising state control over school funding.

The Kansas Supreme Court agreed with the lower court's assessment that the act did not violate the state's "suitable provision for finance" clause because the school districts were presently meeting the accountability standards developed by the legislature. However, the Kansas Supreme Court reversed the lower court's finding that the SDF's low enrollment weighting policy violated state equal protection provision, noting that "[p]lain common sense advises there is a rational basis for the allowance of extra funding for low enrollment situations" (*Unified School District N.o. 229 v. State*, 1994, p. 1192).

In short, the state courts had again merely affirmed the legislature's authority to (a) adopt a highly centralized system of financing schools, (b) provide vastly different amounts of funding to schools and districts across the state and (c) apply strict limits to supplemental local property taxation for schools. The Supreme Court's decision went to the extreme of granting the legislature wide latitude to create whatever disparities in funding they might so choose, so long as the legislature could articulate a reason that met the *common sense* test. The Supreme Court at that time was unwilling to suggest that the legislature had used its substantial control over school funding inappropriately.

The decision to implement SDF, while under pressure of county district court, was under no formal judicial ruling and largely followed guidelines laid out in a citizen task force convened under the governor. The Kansas legislature, while significantly divided, had taken another incremental step toward increased state control. That said, the legislature had merely re-codified in school finance policy, 25 years of legislatively managed funding disparities resulting in roughly the same winners and losers that existed in the immediate post-Brown era.

5.0 Recent School Finance Litigation Challenging Legislative Actions

The most recent round of challenges placed renewed scrutiny on the ways in which the legislature had exerted its control over school funding toward creating inequities. The issue of misapplication of state control over school funding, raised by Judge Luckert in 1994, was again raised in district court by Judge Terry Bullock in 2003. Until this point, the judicial branch and most onlookers, except for Judge Luckert, had simply assumed that a more highly state controlled system of school finance must be fairer and more rational and therefore allowed the legislature to go on their way, micromanaging a system of carefully disguised policies to perpetuate educational inequality.

In fact, in pre-*Brown* cases heard (a) under the *Plessy v. Ferguson* separate but equal standard for black and white accommodations and (b) under the previous 1859 constitutional language mandating a *uniform system* of schooling, the Kansas courts often imposed an even stricter standard of teacher credential and school facilities quality for black and white children. It is possible that modern comparison of facilities quality and teacher qualifications across predominantly black and predominantly white schools in Kansas would fail to meet the "equal" or "uniform" standard applied in pre-Brown cases. In retrospect, the removal of the *uniform systems* clause in 1966 may have been an intentional act to increase legislative authority to apply differential treatment across Kansas schoolchildren.

In *Montoy v. Kansas*, Bullock first reflected on the 1992 decision and subsequent reforms:

> At the time of the adoption of this new financing scheme, this Court believed that funds under the new plan would be equally distributed for the benefit of all Kansas children…
>
> Judge Luckert, however, was concerned about whether the low enrollment weighting (extra funds for "small districts") would eventually skew the equity of funding distribution. But the Supreme Court, impressed that the scheme contained objective criteria for fairness and quality and a high-powered committee, consisting primarily of legislative leaders, to oversee future fairness in implementation, approved it conceptually.
>
> Sadly, for the children of Kansas, Judge (now Justice) Luckert's concerns were prophetic. (*Montoy v. State*, 2003, p. 31).

Regarding the small district weighting, Judge Bullock noted:

> [T]his weighting factor was also based solely on the spending history from the prior, unconstitutional SDEA and not from any actual or even estimated costs to operate such schools. Once again, the inequities of the old law were frozen into the new. (p. 30, emphasis supplied).

The Kansas Supreme Court adopted a peculiar *split-the-difference* perspective, agreeing with Judge Bullock that the current system of finance violated Article 6, Section 6 of the Constitution but determining that the system did not violate the equal protection clause, applying the *common sense* test used in 1994 to evaluate the differences in funding created by the legislature. However, the Supreme Court did determine that the various differences in funding created by the Kansas Legislature were *politically distorted* and therefore in violation of Article 6 (not suitable). That is, the state controlled system of inequity was on the one hand *common sense*, but on the other hand *politically distorted.*

While the Supreme Court recognized that the legislature had created a politically distorted system, the court applied little or no pressure on the legislature to actually correct the distortions across Kansas children by race, ethnicity and socio-economic status. Instead, the court gave the legislature total spending targets to reach, granting the legislature wide latitude as to who would receive more and who would receive less funding. While under court oversight between 2005 and 2006, the Kansas legislature did correct, to some extent, the political distortions that had emerged over the past 40 years. In addition, the legislature raised but did not eliminate caps on revenue raising, likely leading to a reduction in state share, but possibly compromising equity.

However, the legislature also introduced new, legislatively controlled inequities, including a new cost adjustment for districts with housing unit values in excess of 25% above state average. This adjustment, it was argued, would allow districts with high priced houses to recruit and retain teachers. While the high court noted that "the evidence at trial demonstrated that it is the districts with high-poverty, high at-risk student populations that need additional help in attracting and retaining good teachers," the court eventually let this new distortion pass, just as previous Kansas courts had let other substantial distortions pass or be replicated under new disguise. In the summer of 2006, the court dismissed *Montoy* on the basis that the legislature had allocated a large portion of the total amount the court mandated, they allowed this new distortion and others to be implemented. However, the court deferred on whether current law was constitutional.

6.0 Conclusions and Implications

In short, the Kansas saga paints a very different view from common perception about the relationship between state control and equity. Kansas legislators made a bold power grab in the 1960s, first through statutes governing organization of schools then through revising the constitution to grant them more power and responsibility. Further, the legislature removed language requiring uniform treatment of the state's children. From that point forward, Kansas

legislators actively used greater state control to create inequity in school funding, across school districts that they had actively organized to be racially segregated – even in the face of judicial opposition.

Amazingly, after implementation of supposed bold, progressive 1990s reforms, Kansas school finance remained as inequitable as Missouri school finance, a state often credited with one of the least equitable school funding systems in the nation (See Ed Week, 2005). While we lack direct measures, one might suspect that previous reforms in 1965, 1973 and 1976 were comparably ineffective. All along, while the legislature has incrementally stepped up control over state financing of schools, the role of the courts has merely been to affirm that the legislature did indeed have the authority exert significant control over school funding. Only in a handful of circumstances have the courts questioned the use of that authority and even more rarely have the courts actually demanded that the legislature use their control over financing to improve rather than erode equity.

Kansas policymakers past and present have favored strong state control over public elementary and secondary education for a variety of reasons. Consistent threads over time include the legislature's desire to maintain a high level of control over (a) who goes to school where and (b) who wins and who loses, especially in terms of finance. Further, greater state control has allowed the legislature to forestall scrutiny on their actions because in school finance, inaction is perceived to be the most significant source of inequity. Not so in Kansas.

The Kansas case is a cautionary tail. For those favoring greater state control in the name of equity and rationality, we suggest: *be careful what you ask for, and scrutinize carefully that which you receive*. Kansas school finance reforms of 1992 in particular reveal how state legislators can thwart, preemptively, state courts' best intentions by simply giving the appearance of compliance and greater rationality, while changing little in the actual distribution of educational opportunity. The Kansas case also reveals the importance of better understanding the connection between the organization and boundaries of local public school districts, and the way in which school districts are financed. The two are necessarily, inextricably linked. Kansas legislators would not have been able to maintain such a well-defined system of separate and unequal were it not for the concerted efforts of real estate developers in the Kansas City metropolitan area in particular and were it not for the legislature's own efforts to ensure that school district re-organization did not interfere with these practices but rather complemented them. Perhaps most importantly, the organization of Kansas school districts and the extent to which the state's minorities were and are to this day isolated in a handful of geographically and structurally similar districts, has allowed legislators to continue to identify *facially neutral* proxies for allocating *need based budget authority* to predominantly white districts, while excluding their predominantly black neighbors.

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