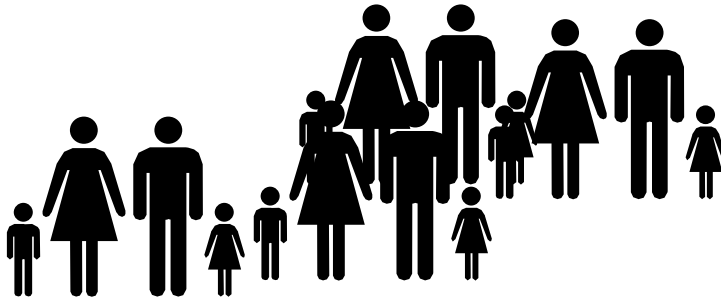


Justice Funding:
Experimenting with the language of struggle
to clarify policy and strategy choices

A Working Paper

by

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The Supreme Court decision in *Brown v. Board of Education* in 1954 represented a major turning point in the seventy-five year struggle to end formal, legalized racial segregation throughout the United States. Thurgood Marshall was one of the lead attorneys for the black children and families who had the courage to put themselves in harm's way on behalf of their communities to bring an end to segregation in the public schools. Later, during the 1960s, Marshall became the first black Justice on the US Supreme Court.

In *Brown* the Court tried to create a new set of values to guide the nation. The Court's choice of language described where we were and where we needed to go. What the Court said and did not say had an extraordinary impact on the issues of race that faced the nation.¹

On May 17, 1954, the Supreme Court announced its decision in the case of *Brown v. Board of Education*. "Separate educational facilities are inherently unequal," the Court ruled unanimously, declaring that they violated the equal-protection clause of the Fourteenth Amendment. It thus overturned the doctrine of "separate but equal," which been the law of the land since 1896, when *Plessy v. Ferguson* was decided. The *Brown* ruling – the culmination of a decades-long effort by the N.A.A.C.P. – has today acquired an aura of inevitability. But it didn't seem inevitable at the time....

Thurgood Marshall, a principal architect of the litigation strategy that led to *Brown*, recalled, "I was so happy I was numb." He predicted that school segregation would be entirely stamped out within five years....

A quiz: In 1960, on the sixth anniversary of the *Brown* decision, how many of the 1.4 million African-American children in the Deep South states of Alabama, Georgia, Louisiana, Mississippi, and South Carolina attended racially mixed schools? Answer: Zero. Even in 1964, a decade after *Brown*, more than ninety-eight per cent of African-American children in the South attended segregated schools....

... In the 1954 decision, the Court declined to specify the appropriate remedy for school segregation, asking instead for further arguments about it. The following year, in an opinion known as *Brown v. Board of Education II*, the Court declared that the transition to integration must occur "with all deliberate speed." Perhaps fearing that an order immediate desegregation would result in school closings and violence, the justices held that lower-court judges could certainly consider

¹ Sunstein, Cass R., *Did Brown Matter?*, The New Yorker, May 3, 2004, 102-106.

administrative problems; delays would be acceptable. As Marshall later told the legal historian Dennis Hutchinson, “In 1954, I was delirious. What a victory! I thought I was the smartest lawyer in the entire world. In 1955 I was shattered. They gave us *nothing* and then told *us* to work for it. I thought I was the dumbest Negro in the United States.” As a Supreme Court justice, Marshall – for whom I clerked in 1980 – liked to say, “I’ve finally figured out what ‘all deliberate speed’ means. It means ‘*slow*.’”

So – the Court said that segregated schools were unconstitutional. But the court also said that school districts did not have to desegregate immediately. They could take their time. They could find reasons not to move quickly, or perhaps at all. The Court was clear that the children had rights, but was reluctant to ensure that they had remedies to protect and enforce such rights.² The Court could have made a clear and unequivocal statement that school districts had to do the right thing without further delay. That would have thrown the full weight of the federal government behind the constitutional rights of the children. Instead, the court left it up to the combatants at the local school district level where the local districts had the advantage, often supported by corrupt, racist federal judges who had no reluctance to flaunt and attack the Supreme Court and the United States Constitution.

The phrase “with all deliberate speed” was not the bridge to a new beginning, but the barrier that blocked passage. The Court’s language that was supposed to express and synthesize the complex path to fundamental change, at the school district level became a mocking, sarcastic characterization of how best to preserve the *status quo*.

Language is the key to effective communication. At every stage of struggle a battle arises over control of the language that is used to shape the understanding that people have as to what the goals of the struggle ought to be, and how best to achieve these goals. One key piece in the unfolding fabric of language is the deployment of words intended to synthesize and simplify discussion of complex ideas, and which are intended to become a *shorthand*. Shorthand can be used to illuminate or obscure the discussion, depending on the circumstances and the motivation behind its use. Therefore, it is very important to make sure that we understand the complexity that underlies the shorthand references used during battle.

² The Court tried to duck one of the first principles of American law. In *Marbury v. Madison*, decided in 1803, the Court said, “...Where there is a right, there is a remedy.” The Court also said that not even the King [and in the United States that means *not even the government*] is above the law.

Fifty years after *Brown v. Board of Education*, academic studies reach the conclusion that public schools in the nation, especially in the south, remain substantially segregated by race. In addition, there is great consternation that the public schools fail to deliver a quality, first-rate education, and that this problem is particularly acute in schools that are substantially or majority students of color.

At present, in the struggle to improve schools to the extent that they are able to deliver a quality, first-rate education, two principal *concepts* have emerged that are used by academics, educators, activists, legislators, and judges to characterize their reform goals: *educational adequacy* and *educational equity*.

At the same time, Southern Echo wants to put another concept on the table for discussion: *justice funding*. Southern Echo is experimenting with the *justice funding* concept in order to ensure that the discussion of how to provide a quality, first-rate education to all children in states like Mississippi includes the necessary and appropriate references to the historical context, policy development and decision-making at the state and local school district levels, and the delivery of education at the school district level.

Educational Adequacy: The concept of “educational adequacy” is rooted in a two-step process:

1. Determine the educational needs of students and schools; then
2. Match sufficient state and local funding with those needs.

Educational Equity: The concept of “educational equity” is rooted in two primary ideas:

1. That all students in the public school system, regardless of where they reside or the wealth of their families, should be treated equally; and
3. That each student should receive the same education regardless of the tax base of the school district, or the willingness of public officials to raise through taxation the resources needed, or the willingness of public officials to spend money, to provide the same, or equal, education to all children.

Justice Funding: The concept of “justice funding” which we are in the process of developing is rooted in the following framework:

1. That the deprivation of and discrimination within public education for children of color and low-wealth has been a matter of intentional, official state and local policies;
2. Therefore, the state has a duty and responsibility, morally and legally, to eliminate the impact of past deprivations and discrimination that have resulted from intentional, official state and local policies;
3. Therefore, the state and local school districts have a joint duty and responsibility to level the playing field for all children of low-wealth and color by providing all necessary and appropriate funds, resources, programs and support services to eliminate the impact of past deprivations and discrimination;
4. That the standard for evaluation and assessment of whether past deprivation and discrimination has been effectively eliminated must be based on *actual outcomes* for students, as opposed to good intentions;
5. That the standard for *outcomes*, while the playing field is being leveled and thereafter, must be based on delivering to all public school students a quality, first-rate education, and quality, first-rate support services, rather than the minimum education that may be defined in existing state constitutions, or as limited by the current willingness of legislators to support public education; and
6. That the issue is not whether every child can achieve at the same level, but that every child receives the quality of education and support services that enable each child to realize his or her capacity and to achieve up the level of which they are capable.

Southern Echo is concerned that “educational adequacy” needs to be understood in terms of “educational quality”. For that reason we think that it would be appropriate to substitute *quality education* for “adequate” education. In our experience, the parents in our communities, for the most part, do *not* talk about “adequate education”, but rather

talk about “quality education” for their children. In our experience poor communities and communities of color often perceive the word “adequate” as demeaning, rather than validating, their value. Their premise is that “adequate” refers to something somewhat better than we had before (where everyone agrees that what we had was less than, and often considerably less than, “adequate”) and that we should be happy with “adequate” and not complain about it. “Adequacy” should be defined in terms of outcome: that is, students should be enabled to meet challenging goals en route to obtaining a *quality, first-rate public education* and the goals should not be defined in terms of a “minimum education.”

“Quality” needs to be understood in terms of the impact or outcomes of the education needed by low-wealth, rural communities *in light of the history and culture of those communities* in which the educational process is being delivered. This may differ from one area of the country to another. But, this is especially important to us in Mississippi, where as a matter of formal state and local education policy throughout its history, the state and local school districts have sought to minimize and depress the level of education for students of low-wealth and or color.

Understanding our “history” is no small matter. History is not simply a pile of recollected facts, but in its essence is a rendering of the culture of the community as a living and organic process. Education policy in Mississippi was consciously designed to support and perpetuate a disparity in education between blacks and whites in order to vindicate the first-principles of racism that black children:

- must internalize “the premise of inferiority”,
- must learn “to stay in their place”,
- must accept “second-class” citizenship and status,
- must be exposed only to second-rate educational and vocational skills and tools,
- must be denied the development of critical thinking skills, and
- must be taught never to aspire to compete with whites in the political, economic or academic spheres.

This cultural phenomenon is deeply rooted in both the black and white communities and has been reinforced through a history of fear in both communities

rooted in public and private terror and intimidation. Digging it out, excavating it, is proving to be an extraordinary undertaking in the face of creative, flexible and determined resistance from within the white community. The struggle is now further complicated by the evolution within the white community of a new generation of white public officials and business leaders who are more than willing to say all the politically correct things about race and education, while pursuing education policies and budget strategies that continue to thwart the development of a quality, first-rate education for children of color and low-wealth.

We start from a premise that there has been, and continues to be, a substantial disparity in both the educational outcomes and the educational opportunities accorded to black and white children in Mississippi. If we freeze the playing field and thereafter only give to all students the “same”, then the disparity is preserved. Ending the disparity in *educational outcomes* (rather than merely providing “educational opportunities”) is a valid goal, notwithstanding that it flies in the face of the first principles, and on-the-ground strategies, of those fighting to maintain the foundations of racism. “Equal education”, in the current historical context is not a particularly clarifying or useful concept. It has become a rubric (a legalistic one, if you will) for the limitation of the scope of remedies for past discrimination and current deprivations. “Fairness” and “justice”, as we define those terms, are more expansive as moral foundations for the construction of education policy at the state and local school district levels.

Off into the future (perhaps a long way off), if and when the essential educational disparities between communities of color and white communities, between low-wealth and high wealth communities, have been overcome, then the concept of “equal education” may become useful again. Our conceptions of “fairness” and “justice” require that education policies, including the funding of education, be adopted and implemented with the objective and in a manner to *eliminate* the disparity. Now that’s an *outcome*.

It is in this respect that Southern Echo has a core problem with the concepts of “equitable” and “adequate.” Echo finds these concepts useful *only* if they include within their meaning that it is necessary to remedy the impact of past deprivations so that “catch up and keep up” is real, not illusory. The problem with “adequacy” as a matter of policy touches the core question for stakeholders: For what purpose are we educating children?

Historically, the Mississippi establishment has sought to educate black students to become workers for white business owners.³ At the same time, however, white children of the middle and upper classes have been targeted to become entrepreneurs and community leaders in every facet of the culture.

So – “adequate” has always meant different things to different communities *at the same time* – depending on the status of the child -- in a society still substantially segregated in terms of the delivery of education. Therefore, there needs to be a clarification of terminology that focuses the challenge for policymakers in terms of providing “quality, first-rate education” to all students as a foundation for fulfilling justice and promoting democracy. We do not need working concepts that have the effect of sustaining existing disparities rooted in competing racial, class and gender interests.

A similar concept, “sufficient” (as in sufficient resources, sufficient curriculum, etc.) brings us to the same kind of crossroads in policy terms. It depends on what is meant by “sufficient.” Often, this is where people fall apart depending on whether they mean “only the minimum required by existing law” or they mean, “whatever it takes to remedy past deprivations.” The differences among competing interests on this point will be as small or large as the differences in their underlying agendas. People tend to hear and see reality, and then analyze the implications, from the special perspective that their underlying agenda tends to require. That is why it is essential to understand the context when people use such terms as “sufficient”, “adequate”, “equitable”, “fair” and “just” to describe goals and policies.

If conceptual clarity is not achieved up front, it can get very rough when it comes time to make complex policy decisions that implicate the underlying agenda. Unfortunately, that is why many policy makers, especially in the education field, prefer to have only people in the room who already agree on *their* vision and purpose of education when it comes to making policy decisions. It’s a lot easier to do business when you do not have to negotiate the underlying agenda *before* you can decide on which policies to use to implement the agenda. But it is also inherently less democratic.

³ During September 2004 former Mississippi Democratic Governor William Winter, an attorney, and Jack Reid, a businessman who is a former head of the state’s Republican Party and a former head of the Delta Council, which is the research and policy arm of the state’s plantation owners, launched a petition drive in support of full funding for public education. Their justification for full funding focused on and was limited to the necessity to train Mississippi students to be workers in the evolving Mississippi job market.

When shorthand terminology or concepts are being used, without clarity on the underlying agenda or long-term goals, misunderstanding and miscalculation can result among people who have thought all along that they are working toward the same ends. Allies may come to understand, for example, that they are not traveling the same path when a string of tough decisions or policy choices have to be made on which the allies become increasingly aware that they do not agree. Unfortunately, at this point the allies are often heavily invested politically and emotionally in the strategies and program of work, and may ultimately wind up blaming each other for the misunderstanding and miscalculation. This can result in bitter disappointment and harsh recrimination among allies about abandonment and betrayal when the chips are down. This can impair future communications and undermine the possibility of finding common ground as a basis for working together in the future. Ultimately, this may weaken the capacity of the community to bring about needed change in education policy. Stated differently, it may be more helpful in the long run to go into battle understanding what constitutes the common ground among allies, and the areas of disagreement, than it is to discover the significant differences in the heat of battle.

The values set forth in the concept of *justice funding* for which we are fighting should not be compromised. This concept needs to be further developed, refined and improved through extensive discussions and negotiations within communities of color and low-wealth. But, we do not accept that the ultimate vision of *justice funding* is *negotiable*, in the sense of settling for less under pressure from those portions of the entire community that have historically fought tooth and nail to deny an effective, quality education for students of color or low-wealth. This is not arrogance, nor is it impractical. Only in this way can communities of color and low-wealth set a standard of value against which all policy developments can be measured and tested to evaluate their strengths and weaknesses. We recognize that as a matter of day-to-day politics that we will need to negotiate policies with the entire community and that we will not get all at once everything that we need to have. But our ultimate goals that guide our strategies should not be compromised. Only the day-to-day policy choices that are adopted and implemented in the course of our fight are subject to compromise, based on the degree of capacity that we have at the time to impact policy.

As the African proverb says, “If you don’t know where you are going, any road will take you there!” The white establishment has been in control of education policy, such as it has existed, for 400 years. They have fought hard to retain all control and they have declined to share it voluntarily. So they can take full responsibility for the problems and dilemmas they created and which now confound those who seek to create a quality, first-rate education for all children.

It is for these reasons that we want to lift up and experiment with the concept of “justice funding” as a means through which to clarify our goals as a foundation for our policy choices.

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