



JIM RYAN 

Opening the Schoolhouse Door

JIM RYAN'S INTEREST IN EDUCATION LAW is both intellectual and personal. Neither of his parents attended college, but both recognized the value of education and urged their children to take full advantage of it. As Ryan puts it, "education has transformed my life, and my own experience has made me intensely interested in figuring out ways to allow others disadvantaged by our current educational system to have an experience more like my own."

Law school honed Ryan's interest in law and education. Two Supreme Court cases in particular fascinated him: *San Antonio v. Rodriguez* (1973), which declared that education is not a fundamental right and declined to require equal funding across school districts, and *Milliken v. Bradley* (1974), which held that district courts could not include suburban schools in metropolitan desegregation plans. *Rodriguez* did not end litigation over school finance, but shifted the battle to state courts, where it has raged ever since. Most law schools did not offer courses that looked in depth at school-finance litigation in state courts— despite the fact that such cases are often among the most momentous decided by a state's highest court. Fortunately, however, Ryan got the opportunity to learn about school-finance litigation first hand when he was awarded a prestigious Gibbons Fellowship, which provided the opportunity to work on public-interest liti-

gation at a New Jersey law firm. During the fellowship, Ryan worked on the New Jersey school-finance litigation.

Upon entering teaching in 1998, Ryan turned immediately to law and education and quickly established himself as the top young scholar in the field. His first three publications explored the relationship between school desegregation and school-finance reform, two different ways of attempting to equalize educational opportunities for minority and poor students. In “*Sheff*, School Finance Reform, and School Finance Litigation,” 74 *N.Y.U. L. Rev.* 529 (1999), Ryan used a recent decision by the Connecticut Supreme Court to explore both the limits and possibilities of school-finance reform and began to examine the relationship between school finance and desegregation. He argued that school “finance” litigation need not, and perhaps should not, be solely about money. The Connecticut experience indicated that school-finance reform may not be the most effective strategy for improving education in urban schools. At the same time, the *Sheff* decision demonstrated that the underlying right recognized in school-finance cases—the right to an equal or adequate education—need not be defined solely in financial terms, but could also support alternative remedies like racial and socioeconomic integration and school choice.

In “Schools, Race, and Money,” 109 *Yale L.J.* 249 (1999), Ryan continued to explore the intersections between school finance and desegregation, noting that the current trend in litigation and legislation is away from school desegregation and toward a focus on school-finance reform. He argued against this trend, relying on social-science evidence suggesting that school desegregation—especially along socioeconomic lines—may be more effective than school-finance reform in improving the academic achievement of disadvantaged students. Recognizing that mandatory busing to achieve desegregation is politically implausible at present, the article explored alternative methods to achieve integration along racial and socioeconomic lines, including expanding opportunities for school choice.

In “The Influence of Race on School Finance Reform,” 98 *Mich. L. Rev.* 432 (1999), Ryan asked whether—even assuming that greater funding will boost achievement in predominantly poor and minority school districts—those districts are likely to

receive the necessary resources. To answer that question, Ryan examined the demographics of districts that had been involved in school-finance litigation in the forty or so states where school funding systems had been challenged. He discovered that predominantly minority districts, as plaintiffs, won far fewer school-finance cases than predominantly white districts. In the few cases they won, moreover, minority school districts faced legislative recalcitrance more intense and long-lasting than that faced by their predominantly white, peers. This evidence at least suggests that minority students face an uphill battle in securing additional funding. This, he argued, casts doubt on the notion that school funding, rather than school integration, is the best strategy for equalizing educational opportunities.

Expanding his work on law and educational opportunity, Ryan examined the issue of school choice in an article co-authored with Michael Heise, “The Political Economy of School Choice,” 111 *Yale L.J.* 2043 (2002). The article places school choice within the broader context of education reform. Using school desegregation and school-finance reform as the main examples, it asserts that suburban districts have successfully resisted education reforms that threaten the physical or financial independence of suburban schools. Desegregation was mostly halted at the urban-suburban boundary, and school-finance reform typically leaves suburban districts free to spend more money on their own schools than other districts can afford.

Ryan and Heise argue that the same dynamic will shape choice plans. In their view, suburban homeowners are the most important stakeholders in the school-choice debate, and they have self-interested reasons to oppose most choice plans. Suburban parents are generally satisfied with their schools and desire to keep them operationally and financially independent, especially independent of urban schools. Given this reality, it is unlikely to see robust school choice plans, either public or private, because such plans could threaten suburban autonomy. Thus, Ryan and Heise argue, the landscape will continue to consist principally of small, targeted choice programs, including vouchers and charter schools, mostly confined to urban school districts or failing schools. Contrary to the grand claims of

choice proponents and the dire predictions of choice opponents, school choice will have a limited impact on achievement, competition among schools, and racial and socioeconomic segregation. The article explores ways to make choice more politically attractive, including expanding access to preschool, which is usually not organized on the neighborhood school model. Ryan and Heise hypothesize that allowing more parents to send their young children to a non-neighborhood preschool might make them more willing to endorse school choice for grade school.

Ryan explains that three common objectives unify these articles. “First, I have tried to make some sense of what social science research teaches us about effective educational reforms in an effort to understand in which direction, ideally, education reform should be headed. Second, I have tried to pay attention to the practical and political obstacles to expanding educational opportunities and to explore ways to overcome those obstacles. Third, I have tried to ignore the pull of ideology in assessing both the social science evidence and various strategies for reform.” This has put Ryan in the position of advocating strategies—such as voucher programs—typically associated with conservative commentators, to achieve ends—the use of education policy to increase racial and socioeconomic integration—typically associated with more liberal commentators. Ryan notes that this can open a scholar to criticism from all sides: “there is usually something in my work that disappoints or disturbs those who have ideological commitments to one strategy or another.”

Although Ryan’s main focus has been on law and educational opportunity, his writings explore other topics within the broad subject of law and education. In “The Supreme Court and Public Schools,” 86 *Va. L. Rev.* 101 (2000), Ryan tried to make sense of what one might call the Supreme Court’s public schools jurisprudence. Analyzing cases involving student rights, Ryan discovered that sometimes the Court relaxes constitutional protections in order to take account of the special context of public schools. Thus, students’ Fourth Amendment and free speech rights are weaker inside the public schools than they are outside the schoolhouse door. With regard to other rights, however, the Court does not water down the protections available to stu-

dents. Thus, a student’s equal-protection rights and right to be free from the “establishment” of religion are as robust, if not more so, in school than outside it. Ryan argues that one way to make sense of the cases is to recognize that schools perform both academic and social functions, and the Court is more willing to defer to school officials when schools are performing their core academic functions.

In his most recent article, The “Perverse Incentives of the No Child Left Behind Act,” 79 *N.Y.U. L. Rev.* 932 (2004), Ryan takes a hard look at the No Child Left Behind Act, arguably the most important piece of federal education legislation ever. The article argues that the Act creates incentives that conflict with its stated goal of bringing all children rapidly to high levels of academic achievement. In Ryan’s view, the Act creates strong incentives for states to reduce academic standards and increase segregation by race and class. In addition, it increases teachers’ existing incentives to choose schools that are already successful and avoid schools that educate disadvantaged students. Taken together, these perverse incentives may make it harder, not easier, for schools to bring all students to reasonable levels of achievement. The article argues that schools should not be judged based on an absolute level of achievement, thereby confusing school quality with student quality. Instead, they should be judged based on the achievement growth of their students, which would reveal how much value the school has added each year to a student’s knowledge and abilities. Looking to achievement growth rather than absolute achievement levels, Ryan contends, would provide a more accurate picture of school quality and dampen the perverse incentives he identifies.

An article he wrote with Dean John C. Jeffries, Jr., “A Political History of the Establishment Clause,” 100 *Mich. L. Rev.* 279 (2001), brings Ryan’s knowledge of education law to bear on our understanding of the Establishment Clause. The article contends that the Supreme Court’s Establishment Clause jurisprudence is best understood by treating decisions as if they were the products of political contests among various interest groups regarding the proper relation of church and state. It thus sets the political and doctrinal histories of church-state separation side-by-side and asserts that there is a telling correlation between

them. The article devotes considerable attention to the way the Establishment Clause has shaped the government's ability to aid private, religious schools and promote religion within public schools. In particular, Jeffries and Ryan note that the Court's decision in *Brown* helped transform church-state politics in a way that created a favorable environment for the Court's recent, and seemingly unrelated, decision upholding the use of vouchers at religious schools.

Ryan observes that although *Brown* and school desegregation may be the most heavily explored topic in legal theory, the more general topic of law and education remains surprisingly underdeveloped. He therefore describes his scholarly agenda as "writing about any and all issues in law and education that seem important and interesting, both from a historical and contemporary perspective." Ryan's ability to bring careful analysis and an appreciation for social science research to the field have made him, at a stage in his career when many academics are just hitting their stride, the country's leading scholar of education law. ↔

EXCERPT FROM:

Schools, Race, and Money

Jim Ryan

109 Yale L.J. 249 (1999)

IT SEEMS UNFASHIONABLE THESE DAYS, if not atavistic, to talk seriously about ways to increase racial integration. To be sure, one still encounters attempts to spark conversations about improving race relations and promoting integration, but a strong sense of fatigue seems to accompany such attempts. A distinct trend in academic and popular commentary, from the left and the right, is to seek ways to move beyond racial integration as an issue. Conservative critics of racially based policies, especially desegregation and affirmative action, argue that such policies have achieved about as much as they ever will, and that whites and minorities would be better off if the government reentered a period of "benign neglect" regarding issues of race. Critics on the left seem equally ready to abandon integration as a good idea gone bad, as they either promote or excuse racial separatism. The Supreme Court has joined and at times led this trend by ruling that policies benefiting African-Americans are generally as impermissible as policies discriminating against them, and by strongly implying that it is time for federal courts to get out of the business of school desegregation.

School finance litigation fits nicely within this prevailing mood. The goal of school finance litigation, generally speaking, is to increase the amount and equalize the distribution of educational resources and, in so doing, to improve the academic opportunities and performance of students disadvantaged by existing finance schemes. Such litigation is not targeted to assist only minority students, but rather is designed to assist all "poor" students.⁸ School finance litigation is thus often depicted both as a means of moving beyond race as the salient issue in education reform and as an effective way to achieve educational equity and

adequacy for disadvantaged students from all racial and ethnic backgrounds. Concomitantly, from its inception thirty years ago to the present, such litigation has been seen as either a supplement to or a substitute for desegregation litigation.

School finance litigation began in the late 1960s, at a time when civil rights advocates were growing disillusioned with the pace and progress of desegregation. Those involved in early school finance cases believed that such litigation could accomplish a goal—improving the educational opportunities available to poor and minority students—that desegregation was only fitfully attaining. Similarly, those who are currently dissatisfied with desegregation—an ecumenical and ever-growing group composed of both liberals and conservatives, blacks and whites—believe that reform efforts should be directed solely at improving the education that minority students receive, regardless of whether those students are in integrated or segregated schools. More and more, one hears calls from courts, advocates, and academics alike that desegregation is not the answer, that the NAACP may have erred in pushing for integration rather than for equalization of facilities and programs, and that poor, urban, minority schools would succeed if only reform x, y, or z were adopted.¹³ Most of these reforms require funding, often funding above and beyond current levels, which naturally increases the importance of school finance schemes. School finance litigation, meanwhile, continues apace. Nearly twenty state supreme courts have declared their states' systems of school financing unconstitutional, with five of these decisions issued within the last two years. Indeed, while desegregation is entering its twilight phase, school finance litigation shows no signs of abating.

It thus seems an appropriate time to consider school finance litigation and desegregation in tandem and to compare, before we turn our backs completely on desegregation, the relative benefits of school finance reform and desegregation. Surprisingly, such an examination has rarely occurred: Very little scholarly attention has been devoted to the relationship between school finance and desegregation or to the role that race plays in school finance reform. This relative lack of attention is odd not only because each topic has separately received intense scrutiny, but both

academic and popular, but because the two reform efforts share a long, interwoven history as well as the overlapping goal of improving the educational opportunities and achievement of poor minority students. They also share the failure to realize fully that goal and thus shoulder some of the responsibility for the continued existence of numerous schools in metropolitan areas that are both separate and unequal. To understand why such schools exist in something of a pre-*Plessy* world, one must pay attention to both school finance litigation and school desegregation.

This article is part of a larger project that seeks to do just that: to pay attention to and explore the relationship between school finance litigation and school desegregation. I hope to show that one cannot fully understand the dynamics and limitations of school finance reform without considering the dynamics of race in general and school desegregation in particular. Indeed, the central contention of this article is that, far from moving beyond race, school finance reform has been and will continue to be hamstrung by the obstacles created by poor race relations and the Court's desegregation jurisprudence.

Specifically, I describe how residential segregation and the limited reach of school desegregation have helped to create and maintain schools that are isolated not simply by race but also by socioeconomic status. The effects of racial and socioeconomic isolation, this article suggests, cannot be adequately addressed by school finance reform, because students in schools with high concentrations of poverty need more than increased funding to improve their achievement. Increasing expenditures in racially isolated schools, moreover, cannot replicate the social benefits of racially integrated schools. By helping to isolate not simply minority students, but poor minority students, race has played a critical role in creating and maintaining schools that appear to be beyond the reach of school finance reform.

To put the argument simply: Although it is possible that school finance reform could have been a helpful supplement to desegregation, it is a poor substitute. Despite the hopes of early school finance advocates, we should not expect school finance reform to solve the problems created by the failure to desegregate many urban schools. Indeed, this article suggests not only

that school finance reform has done little to improve the academic performance of students in predominantly minority districts, but also that it may be a costly distraction from the more productive policy of racial and socioeconomic integration. ❖

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