Just Schools

Pursuing Equality in Societies of Difference

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Russell Sage Foundation
New York, New York

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WE'RE ALL FOR EQUALITY IN U.S. SCHOOL REFORMS: BUT WHAT DOES IT MEAN?

Martha Minow

When a group of parents sought to include their religious holiday in the set of public school holidays, the school board voted ten to zero against the proposal. When an applicant asked the Board of School Examiners to offer the examination required for public school teaching applicants on a day other than her religious Sabbath, the Board refused her request and prevailed in court over her legal objection. The outcomes were similar, but the two events, both in the United States, are separated by one hundred years. It was Ida Cohn, an Orthodox Jewish applicant, who failed in her challenge to the Saturday exams for public school teachers in Buffalo, New York, in 1905 (*Cohn v. Townsend* 1905), while it was a group of Muslim parents who failed to convince the school board in Baltimore, Maryland, to add Eid el-Fitr, the end of Ramadan, to the school holiday calendar in 2005 ("Parents Push Public Schools to Be More Muslim-Friendly,"*Associated Press*, December 5, 2005; "Religion and Ethics," *BBC*, September 30, 2005).

Each event arose in the midst of unprecedented levels of immigration to the United States (Suárez-Orozco and Qin-Hilliard 2004), and each reflected debates over how the nation should respond to national, ethnic, religious, and racial differences, so their parallels are not perhaps too surprising. Nor, perhaps, are the results surprising given the pressures toward assimilation and the conscious and unconscious fears of long-term residents about the newcomers. Yet during the intervening time, social movements and legal advocates in the United States have tackled issues of race. Other social movements and legal advocates have addressed similar (and different) issues of language, gender, and disability. Following the lead taken by the civil-rights movement on behalf of African Americans, diverse advocates pushed for accommodations for members of minority religions, immigrants, students learning English, and students with disabilities. Converging around the idea of equal opportunity as an organizing framework for schooling, there are disagreements among advocates, school administrators, and other commu-

nity members about what precisely "equal opportunity" does and should mean.

Yet rather than simply fight over this question time after time, current advocates, school administrators, parents, and students now have greater chances to install their own vision due to the proliferating options of schooling in America. These options include innovations within public school systems, such as magnet and pilot schools, that offer specialized programs and permit parents and students to elect particular school assignments. Charter schools offer another source of innovation and variety. These are funded by the public but created and governed by entrepreneurial groups—whether composed of teachers, parents, corporations, or religious groups—who propose and manage new schools. Still more options come within reach for many families as communities, with the Supreme Court's blessing, experiment with publicly financed vouchers to pay for private school tuition. This new era of diversification in education allows parents and students to express their preferences among many options. Through innovation and competition, communities are developing a range of schools; some offer a science and math curriculum, and others offer a focus on the arts. Still others invite students to sort themselves by ethnicity, or gender, or even sexual orientation, as the schools offer specialized programs in Arabic studies or English immersion for new immigrants; some promote themselves by creating all-female classrooms. New York has created the Harvey Milk School, a high school that offers a safe space for gay, lesbian, and transgendered youth who have faced harassment in the mainstream schools.[1]

The legacy, or ghost, of *Brown v. Board of Education of Topeka*'s (1954) constitutional prohibition of legally mandated racial segregation in schooling as a denial of equal protection of the law hangs over these innovations. Equality has become the overarching concern in the design and evaluation of school programs, but people with opposite visions lay claim to the legacy of the *Brown* decision. Hence, people supporting the expansion of the Harvey Milk School claimed to be heirs of *Brown* in pursuing equal educational opportunity for students who had been denied their chances in the past. Yet protestors who mobilized against the school's expansion named it a "separate but equal" solution and claimed it abandoned the integrative vision of *Brown* ("Protests Mar Opening of Expanded Harvey Milk School," *New York Times*, September 9, 2003, B3; Minow 2004). Four members of the U.S. Supreme Court asserted in 2007 that "color-blindness" is the mandate of *Brown v. Board of Education of Topeka* (*Parents Involved in Community Schools v. Seattle Public School Dist. No. 1* 2007),[2] while four other justices pointed to the decades of Supreme Court decisions directing explicit use of racial school assignments in order to desegregate schools.[3] The ninth justice, Anthony Kennedy, sought a middle ground in retaining the possibility of race-conscious policies to remedy racial isolation in schools, while making it the last

resort to use the specific assignment of individual students to schools based on their race.[4]

Hence, sophisticated people disagree over the implications of the commitment to equality. Some hold that it calls for color-blindness (and hence, official indifference to the racial, ethnic, religious, gender, linguistic, and disability characteristics of individual children) to avoid stereotyping and reducing individuals to group traits. Others say that it inspires measures to ensure integration across these lines of difference in order to overcome prejudices and build school communities that prepare students for a multicultural world.

Disagreements over these visions reach beyond the context of race, where the demographic facts require more complex analysis of multiple racial and ethnic groups than the common focus on two or three categories. Even if there was no disagreement over whether integration remains an attractive and lawful ideal, it is difficult to analyze whether a school bringing together Mexican American, Puerto Rican American, Caribbean American, Chinese Asian, Vietnamese American, Indian American, Pakistani American, African American, and African immigrant students should be deemed "integrated," or if integration requires a palpable presence of white students. The situation is complicated if the white students are themselves primarily recent immigrants from Eastern Europe. Is integration primarily an ideal directed at overcoming the legacies of slavery in this country; overcoming misconceptions about racial, ethnic, and religious differences; or socializing all students to conceptions of citizenship, academic achievement, and career aspirations that have been associated with middle and upper class communities?

Beyond the idea of undoing state-ordered separation of students of different races, the scope of educational integration as an ideal and as a lawful practice remains unclear and contested. Does it permit deliberate public efforts to mix students of different backgrounds? Does it require integration, or does it permit separate instruction along the lines of gender, immigration, language, disability, and religion? Is integration along any of these lines an end in itself, or is it only a means for achieving the fundamental goal of equal opportunity? In an era of school choice and reform, sharp disagreements over precisely what "equality" requires fuels fights in existing and new school programs and policies.

All of these debates reflect the times in which they unfold. Thus, it is important to pause for reflection on one more pair of historical events that frames this discussion. In this comparison, the two events—9/11 and World War II—are more different than the same. After 9/11, although schools witnessed outbreaks of anti-Muslim expression, school officials, nongovernmental organizations, and even the federal government mobilized to combat negative responses to Muslim, Arab, and other immigrant students.[5] During World War II, Japanese American students were removed from their homes

and schools and sent to internment camps. That experience is now taught in American public schools as a warning lesson about fear and prejudice.[6] If we pay attention to the impact of the past on how the present is understood, we may better understand both the continuity and change in the fights over schooling and the treatment of students' differences (Glenn 1996).[7]

Race

In the United States, the treatment of race is central to the legal and political treatment of any other form of "difference," and the struggle over racial equality in schooling is the inevitable touchstone for the treatment of immigrant students and indeed any other student group marked by a socially significant difference. Racial history in the United States is of course deeply entwined with the history of slavery. At its founding, the United States not only permitted slavery and protected the rights of slaveholders to their "property," but the new nation also allowed states to apply criminal sanctions to anyone who taught a slave to read.[8] After the Civil War, the Reconstruction Amendments declared equal protection of the laws to all persons and extending suffrage to men regardless of race, yet schooling remained scarce or inadequate for African American students. Jim Crow laws excluded southern black children from schools attended by white children and confined black students to schools with minimal resources. Rural schools lacked resources, and urban schools for African Americans were severely overcrowded (Patterson 2001). Some northern philanthropists invested in schools run for and by African Americans. However, even with these efforts, whites had access to at least three times the educational resources available to African Americans.[9]

The Supreme Court's 1896 decision in *Plessy v. Ferguson* explicitly upheld racial segregation in the context of public transportation under the principle of "separate but equal." This meant that the Court condoned segregated schooling as well. As southern blacks moved north, new practices of segregation in schooling and housing, combined with the tradition of local finance for schooling, exacerbated differences in the opportunities available to white and nonwhite students (Douglas 2005; Watras 1999; Hirsch 1983; Formisano 1991).

Efforts to improve schooling for African Americans preoccupied reformers for decades. Some of their work addressed the financing of schools, which laid the ground for litigation over school finance that persists to this day (McUsic 1999; National Conference of State Legislatures 2007). Although the ideal of the "common school" focused more on reaching immigrant and poor children than African Americans—and it reflected preoccupations with Catholic and Jewish immigrants who threatened white Protestant conceptions of America (Brumberg 1986)—it offered an ideology that assisted reformers who were committed to racial uplift and later to racial equality

(Kaestle 1983).[10] The strategy of the National Association for the Advancement of Colored People (NAACP) exposed the failure of southern states to provide equal, if separate, educational facilities. They did so first in higher-education settings where the separate black schools were either nonexistent or a sham, and then in elementary and high school settings given the obvious disparity of resources between black and white schools. The U.S. Supreme Court became the focal point for this struggle. Some reformers hoped for a racially integrated society, with schools as a vehicle, while others focused on securing comparable resources for black students. The two approaches converged with the recognition that "green follows white": the dollar follows the white children, and white voters could not keep resources away from black children if they were seated next to white students in the same schools (Ryan 1999a, 1999b).[11]

With Supreme Court precedents in these areas built up like stepping stones, there were many precedents to cite when, in 1954, the Court announced its landmark decision *Brown v. Board of Education of Topeka*.[12] After years of challenging disparate funding for black schools, the NAACP argued further that the sheer fact of state-mandated segregation in schools produced inequality both by signaling inferiority and by depriving minority children of access to the resources and networks available to whites. The advocates also pointed to emerging work in social science that addressed the psychological experiences created for black students by segregation.[13] The Court agreed unanimously.

The Court reasoned that, "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." Further, even if the tangible factors of school resources are comparable, racially segregated education deprives students of equal opportunity by enforcing a racial hierarchy. This can create a sense of inferiority among African American children and can impair their opportunity to learn. Moreover, segregation deprives students of the chance to interact with others and learn from them. The decision rejected the use of official state power in separating students by race, deeming it unconstitutional. The Court declared that the doctrine of "separate but equal" could no longer satisfy the demands of equal protection of the law, at least in the context of public schooling. Widely understood to equate integration with equality of educational opportunity, the *Brown* decision also elevated public awareness of schools as a central symbol of national treatment of difference: would that treatment take the form of subordination or equal regard?

The massive and at times violent white resistance to desegregation in schooling, mass transportation, public swimming pools, and elsewhere (Wilkinson 1979) inspired desegregation supporters to mobilize the March on

Washington in 1963. They pushed for national civil-rights legislation and federal involvement in both implementing desegregation and investing in schooling. The U.S. Department of Education describes the results in this way:

> The anti-poverty and civil rights laws of the 1960s and 1970s brought about a dramatic emergence of the Department's equal access mission. The passage of laws such as Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973 which prohibited discrimination based on race, sex, and disability, respectively made civil rights enforcement a fundamental and long-lasting focus of the Department of Education. In 1965, the Elementary and Secondary Education Act launched a comprehensive set of programs, including the Title I program of Federal aid to disadvantaged children to address the problems of poor urban and rural areas. And in that same year, the Higher Education Act authorized assistance for postsecondary education, including financial aid programs for needy college students. (U.S. Department of Education 2006)

Yet over time the ideal of integration diverged from the ideal of educational opportunity. During the 1970s and 1980s, school desegregation continued to face political and then legal resistance. The courts began to distinguish those schools that were segregated due to explicit official action from those schools in which segregation resulted from complex patterns of residential segregation, economic-class differences, and the district lines between cities and suburbs. In response, more public attention turned to African American voices mourning the loss of the autonomy and community strength which could be found at least in some segregated black schools (Bell, Jr. 1987a).[14] Indeed, as early as the late 1960s, the Black Power movement and related articulations of community pride reclaimed minority-dominated schools as sites of self-determination and community control. A predominantly minority school can be staffed by teachers who look like the students, hold high expectations for the students, and involve families and community (Bell, Jr. 1987b; Edmonds 1980).[15]

Ongoing work in the social sciences exposed continuing damage to minority members from the stereotyped thinking as well as impairments of minority students' self-esteem who associated their identities with inferiority—whether in segregated or desegregated settings.[16] Recent studies suggest that desegregation without improvement of educational services may do little to improve the achievement of minority students (Hansen 1993; Brown 1990; Davis 1989). Researchers and politicians, as well as white, black, Latino, and Asian families, have united to question whether integration is the solution to unequal educational opportunities.[17]

Yet some continue to stress the importance of integration in giving minority-group members access to social networks and economic mobility (Ward Schofield and Sagar 1983; Stuart Wells 2001; Bowen and Bok 1998; Roithmry

2004). The data suggest that going to an integrated school increases the likelihood that a black student will finish high school and score higher on standardized tests (Liebman 1990a, 1990b). Many studies seem to confirm the common-sense view that students of color do not succeed in an environment that puts them down or degrades them, regardless if it is segregated or integrated. Yet integrated settings, if designed to be genuinely supportive, open up avenues for greater success and narrow the gaps in achievement otherwise prevailing for white and nonwhite students, including Asians and Hispanics.[18]

The courts do not, however, develop doctrinal treatments of desegregation by keeping up with social-science developments. Political resistance, the flight of white families from urban public schools, and frustration with long-standing court supervision of school districts have all contributed to judicial disengagement with school desegregation by the turn of the twenty-first century. That disengagement by the courts in turn reflected and reinforced disillusionment over *Brown*'s promise of equality (Irons 2002; Orfield 1999). From the 1980s to the present, judicial, legislative, and administrative initiatives sought less to integrate than to redistribute resources and improve inadequate schools, serving predominantly nonwhite students. However, these initiatives have had at best mixed results (Cashin 2005; Henig et al. 2001; Orfield 2001). The conjunction of schooling, identity-based social movements, legal strategies, and equality provided a template for the country's treatment of minority groups even though integration no longer serves as the gold standard or even a universally desired ideal.

Nonetheless, some school boards convinced by the social-science research or moved by the vision of an integrated society have enacted voluntary desegregation plans, usually combining aspects of parental and student choice among district schools with guidelines or goals to produce diverse enrollments across the system. When the majority of the Supreme Court, in a hotly contested decision, rejected even these voluntary approaches in two instances, the Court opposed official school efforts to maintain racial balance goals where they could deny a student his or her preferred school assignment. Justice Anthony Kennedy's separate opinion, supplying the crucial vote rejecting the programs in Seattle and Louisville, differed from the plurality and found diversity to be a potentially compelling interest, justifying official measures other than assigning individual students to schools based on their racial classification. The four dissenting justices emphatically defend integration as an ideal (*Parents Involved in Community Schools v. Seattle Public School Dist. No. 1* 2007).

The lessons are ambiguous: Should integration or community control be the ideal? Is equality of opportunity better advanced by equality of resources, by common side-by-side schooling,[19] or by identity-based schools, organized and run by leaders of each community? These and other alternatives reflect the struggle over racial equality in schools. As *Brown*'s legacy alongside the assumption that equal opportunity is the central goal for American schools.

This assumption in turn carries the inchoate tension over the relative importance of cultural accommodations, resource reallocations, and integration of diverse students in achieving equal opportunity. These three ideas organize *the politics of recognition*, *the politics of redistribution,* and *the politics of integration.*[20]

The politics of recognition tends to refer to the struggle over public respect and accommodation for the experiences, privations, and goals of a particular group (Taylor 1992).[21] Given the historic struggles against slavery and racism, the politics of recognition for African Americans in the United States involve demands for attention to the legacies of slavery and racial segregation as well as their contribution to the continuing racial gap in school achievement. For those who do not speak English at home, the politics of recognition calls for sufficient use of alternative languages, such as Spanish, in schools to make the setting welcoming and to ensure no disadvantage to students who are not yet fluent in English. Yet, the politics of recognition can converge with the politics of redistribution. Redistribution usually involves reallocating economic and other resources to produce equal chances for student success, which may call for spending more on those who are disadvantaged. Whether defined in terms of equal starting points or similar results, equality as a goal in schooling involves parents, teachers, politicians, and judges in debates over funding schemes, teacher salaries, test scores, and programs and strategies to redress continuing achievement gaps between white and nonwhite children. The politics of recognition emphasizes group identity even more than the politics of redistribution, for the very identity of the group organizes the arguments for recognition, respect, and accommodation.

Redistribution in contrast requires attention to group membership in keeping track of the effects of policies, but it permits a greater focus on individual achievement. The politics of redistribution involves not only monetary resources, but also less tangible elements of political and classroom attention. Inevitably, the redistribution project asks whether disadvantaged students—and the groups with whom they identify—do better with more funding. Empirical studies point in different directions and no doubt reflect in part the intense ideological and political issues behind economic redistribution.[22] Redistribution could involve a more explicit focus on academic achievement and less attention paid to identity issues, as in the No Child Left Behind Act, the major education reform put forth by President George W. Bush, for it requires each participating state to generate high standards and devise accountability measures to keep track of student achievement—with specific attention to students sorted by race and ethnicity in order to reduce the achievement gap.

Redistributive efforts thus could shift more intensive resources for students with disadvantages. But it could instead demand deliberate efforts to create comfortable and recognizable communities and culturally responsive instructions, so that disadvantaged students—notably, students of color, poor

students, and immigrant students—have role models, peers, reading materials, and an entire educational environment that creates a sense of belonging and ownership (Banks, chapter 8, this volume).

What may be most striking, though, is the elimination of integration as a strategy or goal from the search for equality. *Brown v. Board of Education* itself implied that redistribution and recognition would converge through racial integration. By sharing the same classrooms, white and African American students would each be recognized as equal participants; economic and cultural resources available to white students would be shared with African American students. Most fundamentally, however, the integrational ideal called for redistributing the "resource" of the student relationships so that white and African American students would interact and learn from and with one another.

It appears that the widespread failure of court-ordered desegregation has put integration largely out of the picture, and made either recognition (in the sense of instruction mirroring the students' identity) or redistribution more salient solutions (McUsic 1999; Rebell 1998). Redistribution themes may appear more dominant in legal strategies, while recognition efforts—engaging minority communities in embracing their heritages and identities—permeate day-to-day school programs and administration.[23] Some communities have pursued voluntary racial-integration strategies, combined with school choice and school improvement, but court challenges put even these strategies in jeopardy ("Brown v. Board of Education, Second Round," *New York Times*, December 10, 2006, 4:1; *Parents Involved in Community Schools v. Seattle Public School Dist. No. 1* 2007). Yet the missing option of integration resurfaces in the subsequent struggles over schooling and many other lines of group difference.

Language, Gender, Disability, and Religion

Brown v. Board of Education enshrined equal opportunity as the aspiration, if not the given, for students whose primary language is not English; immigrants; girls as girls and boys as boys; students with disabilities; students from impoverished neighborhoods; gay, lesbian, and transgendered students; and religious students. The racial-justice initiative expanded to include all of these groups of students. Today, American public schools are preoccupied with the aspiration of equality and the language of inclusion. Educational experts address what kinds of instruction actually promote equal opportunities for all children, while the contrast between integration and homogeneous instruction recurs as both a policy choice and political hot potato.

Propelled by the 1963 March on Washington—and pushed through Congress by the masterful President Lyndon Johnson after the assassination of President John F. Kennedy—the 1964 Civil Rights Act included "national origin" in its scope of protection. It quickly became a vehicle for addressing immigrant children whose primary language is not English. The Department

of Health, Education, and Welfare exercised its authority under the Civil Rights Act to issue guidelines governing bilingual education and students learning English.

In 1974, the Supreme Court found the San Francisco school district in violation of those regulations because it failed to develop programs specifically addressing the needs of Chinese-speaking students (*Lau v. Nichols* 1974). Here, the problem was not segregation but integration without modified instruction. Including the Chinese-speaking students in the mainstream classroom without accommodation amounted to discrimination on the basis of national origin, which is forbidden to a school district receiving federal financial assistance. The Court found that the Chinese-speaking students received fewer benefits than the English-speaking majority. Here, impact rather than intention became the measure of illicit discrimination, and integration without accommodation became unacceptable. This opened the door to instruction tailored for a specific group, and hence separated them from others (Minow 1990).

Advocates persuaded Congress to adopt further legislation in 1974, requiring recipient schools to take appropriate action "to overcome language barriers that impeded equal participation by its students in its instructional programs" (U.S. Congress 1974b), extending some federal aid to schools offering bilingual education (U.S. Congress 1974a). Advocates also pursued bilingual-education programming in court and before local school boards (Ryan 2002), but some decision makers rejected bilingual education as the sole, desired, or required means for achieving equal educational opportunity.[24] Empirical evidence strongly suggests that the quality of the teachers is a more significant factor in student achievement than the choice between bilingual instruction and English-immersion (Felton 1999). This kind of insight led some to defend continuing experiments with bilingual education on the grounds that it has never been given a fair chance, while it led others to emphasize that separate instruction will never be equal, practically or symbolically.[25]

Intense political pressures on both sides of the debate over bilingual education affect the quality and perception of evaluation efforts. They have fueled both a movement to legally ban bilingual education and judicial challenges to those bans (Chandrasekhar 2003).[26] Both sides claim to represent the ideal of equal educational opportunity with performance on standardized tests and mastery of English as goals. But the bilingual education advocates also emphasize cultural preservation and preparation for global citizenship, which exhibits a politics of recognition (Chandrasekhar 2003; Mora 2002).

A civil-rights framework also came to dominate schooling for females, although single-sex education, if voluntary, could persist alongside coeducation options. The 1964 Civil Rights Act (Title VII) included gender as a forbidden ground of discrimination, and the 1972 Education Amendments (Title IX) extended that norm.[27] Yet the analogy between race and gender has always been disputed. Especially contested is whether separate can ever be equal in the gender context, despite the rejection of "separate but equal" in the context of race (Littleton 1987). Partly because the historic ideology surrounding gender accorded women—or at least white privileged women—a special place in home and family as a separate sphere, the inclusion of women in male settings has at times seemed to involve a loss of privilege or protection (Littleton 1987; Brown et al. 1971; Minow 1985). Nonetheless, the analogy to *Brown* inspired advocates for women's rights to challenge single-sex education. Requiring gender desegregation, in some settings, this also would demand redistribution, and open up to girls educational resources—such as the previously all-male exam school within a public high school system—previously available only to boys. This effort generated mixed results and ongoing debates, while elevating equality and civil rights as organizing frameworks (DeBare 2005).

Thus, the Supreme Court has rejected single-sex education in nursing, a traditional women's field (*Mississippi University for Women v. Hogan* 1982), and in military training, a field in which women were historically excluded (*U.S. v. Virginia* 1996). Yet the Supreme Court could not reach a majority view about single-sex public schools in which enrollment is voluntary and the program is "substantially equal" with other schools (*Vorchheimer v. School District of Philadelphia* 1977). Depending on the variations in the design of schools—and different interpretations of these decisions—single-sex education could be constitutional or it could be unconstitutional. This may depend on whether the schools seem effective in remedying educational disadvantage (Jenkins 2006; Levit 2005; Morgan 1999). The decision of an appellate court—*Vorchheimer v. School District of Philadelphia* (1976), which permitted sex-separated secondary schools—remains the leading but inconclusive case in this area. The Court of Appeals for the Third Circuit distinguished race and gender for purposes of separate education by asserting that real differences remain by gender but not by race, and by emphasizing the value of local control and family choice (*Vorchheimer v. School District of Philadelphia* 1976).

The effect of this decision has been to permit reforms admitting females in all-male schools where no comparable opportunities exist, while preserving existing all-female schools and promoting new all-female schools through a combination of tradition, informal policy, and "success in warding off the handful of boys who express interest" ("Planners of a New Public School for Girls Look to Two Cities," *New York Times,* July 22, 1996, B1; Salomone 2003).[28] Although Title IX of the Education Amendments of 1972 and its regulations forbid discrimination on the basis of gender in any educational program that receives federal funds except under very limited circumstances, in 2005, the Department of Education issued a rule announcing new flexibility, allowing more room for single-sex instruction and schools (Office for Civil Rights 2005).[29]

This shift toward single-sex schools reveals the ambiguous meanings of equality. As part of his push for standards in K–12 education, President George W. Bush included statutory language permitting the use of federal funds in "same-gender schools and classrooms (consistent with federal law)." Then, in 2002, the U.S. Department of Education—perhaps as part of a campaign year strategy—issued a proposed rule to open up more opportunities for single-sex instruction (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance 2002).[30] Four years went by with no final rule adopted. The government seemed to devise the proposed rule, without proceeding to a final rule, in order to encourage experimentation with single-sex schools before issuing a final rule that could be challenged in court (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance 2004; National Association of State Boards of Education 1997; Beaucar Vlahos 2004).

Then, in October 2006, the Department of Education announced its final rule permitting instruction in single-sex classrooms and schools (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance 2006; "Federal Rules Back Single-Sex Public Education," *New York Times*, October 25, 2006, A1). Now, instead of forbidding single-sex instruction with public dollars other than in exceptional circumstances, the federal government permits such instruction to increase diversity of educational options and to meet specific needs of students (69 Fed. Reg. at 11,276). The school system does not have to provide a similar option for members of the other gender (71 Fed. Reg., at 62,534). The Department of Education rejected objections that single-sex instruction would reinforce negative stereotypes (71 Fed. Reg. at 62,533). With the focus on improving educational outcomes, justifiable diversity should apply to the types of educational options, not merely to the characteristics of the members of a particular class (71 Fed. Reg. at 62,534-35). Whether in coed or single-sex settings, the watchwords for girls' education are *equal opportunity* and *choice*. Advocates increasingly also call attention to boys' learning needs and educational difficulties while using the language of equal opportunity.[31] Such arguments might reduce the chances of success for court challenges to the final rule.

Students with disabilities comprise one more group triggering a civil-rights conception in schooling, though again, both separate and integrated instruction persist as avenues for pursuing equal opportunity. Prior to the 1970s, only seven states provided education for more than half of their children with disabilities (Zettel and Ballard 1982). Those children with physical and mental disabilities who did receive educational programming did so largely in classrooms or schools removed from their peers. Parents and educators pressed for both more funding and for experiments placing students

with disabilities in regular educational settings (Hughes and Rebell 1996). Two landmark decisions produced orders in 1972 requiring free public educational programs for students with disabilities (*Pennsylvania Association for Retarded Children v. Pennsylvania* 1971, 1972), and Congress followed with legislation shifting the framework for dealing with people with disabilities from care for dependents to enforcement of rights (20 U.S.C. sections 1400-1490 2006; Rothstein 2000).

From the start, the federal law recognized both the benefits of specialized instruction, tailored for the individual child's need, and the value of integration—known in this context as *mainstreaming* or *inclusion*. Thus, the federal law called for appropriate education, based on individualized assessment of the child's need, but also established that, to the maximum extent feasible, the school system place the child with disabilities in the "least restrictive environment" (20 U.S.C. 1412 (a)(5) 2006), while still meeting the needs of the individual child (Section 1412 (5); 34 C.F.R. section 104.33(b)(1)(i) 1973). The statutory scheme promotes identification of students who could well have gone undetected in the past—and protections against faulty identification, which could produce stigma, and misallocation of resources.[32] The law offers participating states money in exchange for plans to ensure appropriate education as well as related services and administrative procedures for creating individualized education plans with parental participation and opportunities for review (20 U.S.C. sect. 1401, 1414, 1415 2006).

Before the adoption of the law, nearly 70 percent of children with disabilities who received education did so in separate classrooms or separate schools (Hughes and Rebell 1996). With implementation of the law, supported by the advocacy and related changes in educational philosophy that it represents, by 1996 over 70 percent of students with disabilities spent at least part of their day in the regular classroom with other students.[33] Nearly half (47 percent) of students with disabilities now spend all their time in the mainstream classroom.[34] Courts initially ordered mainstreaming only if it was shown to be beneficial, but over time judges began to read the statutory call for mainstreaming to "the maximum extent appropriate" (20 U.S.C. sec. 1412(5)(B) 2006).

Here, integration is an explicit goal; redistribution is also at stake, as students with disabilities seek both access to mainstream classrooms and additional resources to assist their learning in those classrooms and in substantially separate settings. Some disability groups—most notably, the deaf and hearing impaired—pursue recognition and affirmation of their distinctiveness (Ohna 2003; Young 1999), but the fights over special education more commonly focus on redistribution and integration.

Perhaps the most surprising echo of *Brown v. Board of Education* in American schooling appears in the treatment of religion. Yet in both the context of public aid to religious schools and in the treatment of religion in public

schools, concerns about equality have reframed preoccupations with separating church and state. Inspired by scholarship and led by a litigation initiative in the courts, the movement for equal treatment of religious students is especially noteworthy because it reframes the issue as one of civil rights for individuals rather than separation of church and state (McConnell 1992, 2000, 1990a).[35] The relevant legal doctrines pertain to the First Amendment's prohibition against state establishment of religion and the First Amendment's prohibition against restrictions on freedom of speech, rather than the Fourteenth Amendment's guarantee of equal protection of the law.

Thus, advocates persuaded the Supreme Court to focus on how it looks when a university denies funding to a student publication that is religious but grants funding to other student publications (*Rosenberger v. University of Virginia* 1995). Characterized as an act of impermissible viewpoint discrimination, that discrimination involved restrictions that subsidized some but not other student speech. Although operating with the doctrine of freedom of expression, the Court's viewpoint discrimination analysis addressed exclusion of students when others, similarly situated, received public resources. Thus the analysis resonates with the harm addressed in *Brown v. Board of Education*. Because the issue is governmental funding of speech, and the framework is the First Amendment's freedom of expression, the Court concluded that the denial of funding amounted to viewpoint discrimination; it rejected the defense that public funding of a religious publication would amount to establishment of religion (Edelstein 2004).

The Court similarly pursued an equal treatment approach when it rejected the decision by a public elementary school to deny a religious program use of the public school facilities for an after-school program as illegal viewpoint discrimination (*Good News Club v. Milford Central School* 2001). The Court again reasoned that concerns to avoid unconstitutionally aiding or endorsing religion would provide no defense, and treated the establishment clause itself as a ground for neutral—and equal—treatment of religious and nonreligious groups. In the same spirit, congress adopted the Boy Scouts of America Equal Access Act (20 U.S. C. Sect. 7905 2006) to ensure that students who want to use school space and time for religious activities are treated the same as students who want to pursue other activities at school.[36]

These developments eased the path toward a shift in the judicial treatment of religion in public schools. Between 1960 and 1990, the courts had pursued a notion of the wall between religion and state as the means for implementing the establishment clause. This included forbidding school-led prayers (*School District of Abington Township v. Schempp* 1963).[37] With some pressing by religious families, students have secured accommodations for their religious practices in many public school settings through, for example, adjustments of school dress codes and permission to use spaces for prayer during the school day ("U.S. Takes Opposite Tack from France in Head Scarf Debate," *International Herald Tribune,* April 3, 2004, 8; "Schools Loosen Limits on Prayers," *Washington Times*, September 4, 2005, accessed at http://www.washingtontimes.com/national/20050903_100052_4381r.htm).

Even when it comes to public financial support for parochial schools, lawyers have ably shifted the legal framework from the establishment clause to the framework of equality defined as neutral treatment: religious and nonreligious programs should be treated the same (Green 2004; Laycock 1997; Marshall 2000; Volokh 1999; McConnell 1986). Reversing prior concerns about public dollars aiding private religious schools, in 2002 the Court approved Cleveland's use of public funds in the form of vouchers that low-income parents can use to select religious schools for their children (*Zelman v. Simmons-Harris* 2002; Carlton Smith 2003). The Justices in the Court's majority used the occasion to further abandon a previous effort to separate government and religion, and to replace it with a concern for ensuring neutrality by government, neither favoring nor disfavoring religion. As a result, prior decisions banning direct public subsidies for religious indoctrination fade in importance; indeed, a neutrality criterion might even find constitutional defect in a school-voucher scheme that explicitly excludes only religious private schools (Minow forthcoming). The Court also emphasized that private individual decisions to use public resources break the chain between government and religion, and parental decisions to elect religious programming insulate children from alleged governmentally sponsored coercion or pressure, even when those programs make use of public resources.

Fundamentally, Chief Justice William Rehnquist's 2002 opinion for the majority approved the voucher scheme in Cleveland as neutral because it permitted public funding not only of religious schools but also traditional public schools, other private schools, conventional public schools, new charter or "community schools," and specialized magnet schools comprising the choice options within the public school system. This set of choices, in the Court's view, ensured government neutrality; the city neither favored nor disfavored religion, but instead it treated religious choices by parents the same as choices for nonreligious schools. The Court also found that any worrisome tie between government and religion was avoided in the voucher scheme, which involved parents in choosing how to use the vouchers.

The majority opinion seemed remarkably untroubled by practicalities, such as the fact that 96 percent of the parents elected religious schools with the vouchers. The dissenting justices worried about the kind of neutrality or private choice that could be involved if the choices resulted in religious-school selection for 96 percent of those using the vouchers. The dissenters also warned about new kinds of divisiveness as different religious groups come to compete for public resources and socialize children in potentially less than universalistic values.

Justice Clarence Thomas, who took both Justice Thurgood Marshall's seat

and place as the sole African American on the Court, wrote his own concurring opinion. He stressed that *Brown*'s promise remained distant because of the deterioration and continuing segregation of urban schools. Justice Clarence Thomas acknowledged the irony that although vouchers seemed a tool to promote white flight at the time of *Brown*, nearly fifty years later vouchers could open quality instruction for students otherwise trapped in failing public schools (*Zelman v. Simmons-Harris* 2002).

Practically, the voucher movement opens up religious schools to many poor and nonwhite urban students.[38] No doubt the recognition of widespread failures in American urban schools and limited opportunities for poor and nonwhite children contributed to both the launch and judicial approval of voucher experiments. As a matter of internal legal analysis, the changes in judicial interpretation of the establishment clause that permitted public vouchers for religious schools in turn reflected at least in part the success of an equality framework for both the treatment of private speech (the government cannot discriminate on the basis of viewpoint) and the treatment of religion by government (the government can neither favor nor disfavor religion). These developments led the Court to overcome previous constitutional rulings forbidding the use of public dollars to aid religious schools, religious students, and religious ideas (*Rosenberger v. University of Virginia* 1995). In this respect, religious schools in the United States for the first time in over a century have access to large-scale public funding—precisely at a time when the demands of Muslims to be eligible, like Christians and Jews, for government funding for schools has triggered second thoughts in Great Britain (Parker-Jenkins 1999; Ansari 2004). The experiments with vouchers for private religious schools proceeding in the United States thus make the United States less different than it has been in the past when it comes to the separation of religion and publicly funded education, although few communities have not followed Cleveland's lead.

As a result, religious students and their families thus join the pluralist, multicultural arguments for assuring equal treatment in the model created by *Brown* and its advocates. An experiment with school vouchers in Milwaukee, Wisconsin, has sustained religious schools that otherwise would not be financially viable ("Inside Choice Schools: 15 Years of Vouchers," *Milwaukee Journal Sentinel,* June 15, 2005, A1).[39] According to this article in the *Milwaukee Journal Sentinel* on June 15, 2005, approximately two-thirds of the students attending Catholic and Lutheran schools in the city do so through the voucher program. The voucher program has also stimulated the development of twenty Christian schools run by African Americans and serving nearly all African American student bodies.

Schooling in America remains a complex enterprise, including public and private institutions that are subject to local governance, funding, and state and federal regulation. Yet this complex system falls now under the aspiration of equal opportunity, with the multiple routes and latitude for the politics of

recognition, or what many call "identity politics" (Rosen 1996; Calhoun 1994; Gitlin 1996; Young 1990). People with very different goals and preoccupations join in arguing for equal opportunity in education—but they disagree about what that does or should mean.

During the more than fifty years since *Brown v. Board of Education*, integration across race, gender, disability, and religion has declined as either a constitutional requirement or a political commitment, but equal opportunity for each individual has become firmly entrenched, especially in education, as a symbol of community and national commitment. Hence, recent trends have severed the easy equation between integration and equality present in *Brown*. Equality may involve access to the same curriculum but not to the same classroom (see notes 32 to 34, which discuss the Individuals with Disabilities Education Act), or it may involve choice in the selection of schools but not participation in identical programs (see endnotes 38 and 39, which discuss voucher programs).

In some instances, as with accommodations for students with disabilities and religious students, the commitment to equal treatment also produces greater attention and sensitivity within traditional public schools. In other instances, increasing avenues for separate instruction (for example, by gender) implement the equality commitment. Decisions over how best to achieve that commitment continually generate intense political and legal disputes.[40] Across the categories of race, language, gender, disability, sexual orientation, and religion, people have contested whether integration or separate instruction best achieves equality in each of these settings. Many educators emphasize that a clear and focused mission, shared by teachers and parents, is crucial to student achievement, and varied missions can each promote enhanced student performance (Bryk, Lee, and Holland 1993; Willinger 1994; Campbell and Wahl 1997). Given the apparent decline of the ideal of racial integration and the emergence of school choice, there is more support politically and substantively for the once controversial claims, epitomized in the work of legal scholar Derrick Bell, Jr. that *Brown v. Board of Education* required more spending for black schools, not desegregation. (Bell, Jr. 1987a, 1981, 1980, 1999, 1976; Harris 1993; Kennedy 2000).[41] But the frame for debate over such claims has increasingly been overshadowed in the United States by a larger school-reform debate, pursuing more dramatic redesign of the institutions for delivering schooling.

Institutional Reforms

Widespread perceptions that American schools are failing fueled a major nationwide movement for school reform over the past few decades. At the forefront have been business leaders, worried about American competitiveness and the qualifications of the workforce for jobs requiring increasing technical skills. They brought conceptions of competition and innovation to the school

reform initiatives. Also central to the movement have been parents, teachers, and mayors, who have sought more control. Challenging established school bureaucracies and political arrangements, these reformers have pushed for performance standards, voucher systems to promote competition and consumer choices, site-based management, and other opportunities for innovation at the level of the individual school rather than the district or statewide system.

One of the key themes pursued by a range of parents, teachers, business leaders, and other advocates as a motor for reform is parental choice.[42] That concept combines a market-style consumer-sovereignty idea with notions of personal liberty. Parental choice stimulates competition among providers. It offers parents the role of consumers with power and opportunities for self-expression and self-definition. It pushes for transparent benchmarks for assessing school quality. As a result, states and localities have initiated institutional innovations.[43] These include magnet schools—schools drawing students from an entire district by offering a special focus or high-quality curriculum. Vouchers permit poor students to use public funds to pay tuition in private schools. Charter schools allow groups of teachers, parents, or others to propose their own ideas for running an individual public school and securing public aid to do so.[44]

With the prod of federal legislation, states developed first voluntary and now mandatory testing of public school students to monitor their attainment of mastery especially in math and reading comprehension.[45] The No Child Left Behind Act calls for annual testing of students in grades three through eight, according to plans developed by each state. It pushes for responses to schools that do not demonstrate progress on these measures (see note 55, which discusses NCLB). Such testing is intended both to motivate individuals and schools, and to produce measures that permit comparison—and competition—among schools and even among states. The idea, not yet realized in practice, is that with multiple competing schooling options and information from standardized tests results, individual parents can make more informed choices about their children's education. Funders, both public and private, can decide the best use of their educational dollars. Failing schools are then expected to close or change their methods.

Critics charge that the focus on limited math and reading tests narrows instruction in ways that disserve genuine learning and critical thought ("Editorial," *Washington Post*, August 29, 2006, A14). Inadequate funding—for teachers, tutoring, and other supports—undermines the act's goals and violates the rule against unfunded federal mandates (National Education Association n.d.). Other critics fault the Act for focusing on meeting a threshold score for passing the required tests rather than on students' progress ("Editorial: No Child Left Behind Applied Behind Bars," *Baltimore Sun*, December 9, 2006, 1A). Critics also charge that the Act confuses state and federal standards, producing waste and undermining intended accountability ("Ranking

Confusion: Schools Can Pass and Fail," *Indianapolis Star*, August 10, 2006, 1). Yet even with these many problems, the push for national accountability in education has advanced the proliferation of school settings and educational strategies.

Given the development of explicit performance measures and outcome goals, everyone concerned with schooling can propose alternative ways to achieve them and can advocate competition among the alternatives as a strategy for overall success. Hence, as paradoxical as it may seem, the increasing federal role in education represented by the No Child Left Behind Act supports rather than displaces the plural and diverse approaches emerging within local and regional school systems through magnet and charter school initiatives and vouchers for private education. These options can engage parents and students in the very process of selecting schools and thereby promote greater family involvement, which is a strong factor in student achievement. The pluralist framework can also attract talented people who otherwise would not have pursued teaching or educational administration.

Besides offering multiple avenues to pursue school-achievement goals, this pluralist framework offers new avenues for the politics of recognition. Individual schools can offer programs intended to appeal to particular subcommunities or to advance particular visions of education. Even when they couple these special identities with commitments to excellence and educational achievement, the result may well be more segregation and homogeneity in classes and schools.

Thus, in 2001, Minneapolis and St. Paul established two new schools, the Twin Cities International Elementary and the Twin Cities International Middle School ("An Oasis for Learning," *Minneapolis Star Tribune*, February 2, 2003, 1E). One account reports, "ELOM International Academy will promote a learning environment based on West African culture which embraces and accelerates our students as respectful leaders through academic and social discipline" (accessed at http://www.elomacademy.org/mission.php). Drawing students mainly from the large Somali immigrant population in the area, the schools serve halal food (appropriate for their largely Muslim student population) and the schools also teach Arabic (both because of the students' background and to prepare all students to live in a global society).[46] The dress code permits head coverings and all girls pictured in the schools' materials wear scarves or hijabs.

It is hard to imagine anything like this occurring in 1905, when Ida Cohn lost her bid to gain access to the public school teachers' examination. Then, public schools in the United States explicitly pursued the goal of assimilating all students, especially new immigrants, to American culture, language, and values (Brumberg 1986). Schools and even states tried to forbid the use of and instruction in languages other than English, and they did not allow any room for parents or community leaders in the schools (Brumberg 1986).

Since that time, however, the U.S. Supreme Court construed the U.S. Constitution to protect the right of parents to select schools other than state-run schools in order to satisfy the compulsory-schooling requirement. It is hardly a coincidence that one of the plaintiffs in that landmark decision was the Society of Sisters, who ran a Catholic school (*Pierce v. Society of Sisters* 1925). The Catholic school movement was in large measure a direct response by Catholic immigrants to the Protestant culture and anti-Catholic sentiment in many public school systems (Bryk, Lee, and Holland 1993).[47] Yet that 1925 vindication of pluralism still put the burden on the minority community to establish and finance their alternate schools.

A further legal step had to occur to permit public sponsorship of the Twin Cities International Schools in Minneapolis. This step came with the charter-school initiative; this institutional innovation authorized groups of teachers, parents, or community members to create individual schools with their own defined mission and character while receiving the same per-pupil public sector expenditures as traditional public schools. Legislatively authorized, the charter-school process elicits proposals by parents, teachers, business people, or other community members for specific schools that receive charters—essentially, performance contracts—from the public school system. The charter-school movement itself started in Minneapolis officially in 1991 and quickly spread; by 2003, forty states, plus the District of Columbia and Puerto Rico, had enacted legislation authorizing charter schools. In the 2004 to 2005 school year, three thousand charter schools enrolled seven hundred thousand students. Some charter schools offer a particular focus, such as technology or the arts; others emphasize ambitious academic goals (Green and Mead 2004).

In some charter-school programs, universities have been key players in authorizing and monitoring charter schools.[48] Some states require a sponsor, such as a school board or a university; others do not.[49] All states demand that charter schools must be nonsectarian; they must be open to all and free for all students. Although often exempt from systemwide rules governing textbook adoptions and even unionization, charter schools operate as public schools. They also must be academically and fiscally accountable to the public school system as well as to the parents who choose to send their children there.

Charter schools combine elements of alternative schools, site-based management, privatization, magnet schools, and parental choice.[50] Diverse supporters wanted to increase accountability by individual schools for student achievement. Parents, teachers, community groups, religious organizations, and business leaders can obtain greater control of schooling while pursuing diverse academic programs and school missions (Minow 1999). In many states, the charter-school process also allows groups to bypass teacher unions and traditional political channels such as school boards. When Hurricane Katrina devastated New Orleans, the federal government used the occasion to subsidize the already failing local schools with an infusion of charter-school aid ("U.S. Gives Charter Schools a Big Push in New Orleans," *New York Times*, June 13, 2006, A5). States and localities are still considering ways to improve monitoring and accountability, given the innovations in governance represented by charter schools (Callahan, Sandovnik, and Visconti 2002).

Many schools target particular populations, such as low-income children of color, English-language learners, or students with learning disabilities; they offer a program designed with those students in mind (U.S. Charter Schools 2007).[51] For example, El-Hajj Malik El-Shabazz Academy in Lansing, Michigan, offers an Afrocentric curriculum (U.S. Department of Education 2006). In this school, 97 percent of the students are African American and 3 percent are Hispanic, while other schools in the same city schools enroll 42 percent African American, 16 percent Hispanic, and 36 percent white students. In a field of such schools, the Arabic-language Twin Cities International Schools do not seem unusual, but instead they take their place in the menu of different schools designed for different kinds of students. In this sense, charter schools embody both the commitment to variety and choice in education, while also permitting schools to specialize in mission and tone in ways closely tied to students' identities.[52]

With charter schools, specialized magnet schools run by the public system, and publicly funded voucher systems for private schools, equality may still be the overarching framework, but universal and shared experiences—the ideal of the common school—are no longer the means. Along with magnet schools and private schools, charter schools allow communities to pursue multiple pathways for educating children in a diverse society. Absent commitments to ensure diversity within each school, the self-selection process and differentiation offered by these varied school settings can contribute to more homogeneity and segregation, rather than the integrationist ideal of the civil-rights movement.

New kinds of inequalities can occur in the new world of school choices. Different families and communities have different abilities to navigate the emerging system of choice in education. Making sense of the options; getting in line for the charter schools, the voucher program, or the magnet schools; and knowing how to get off the waiting list are abilities that are not equally distributed in a population that includes new immigrants working three jobs, parents who never completed high school, and others who lack higher education or time to invest in learning about the school choices. The charter process could well draw the most talented and motivated teachers away from traditional public schools, leaving less imaginative and motivated teachers to teach the children of the parents who are also less able to navigate the system.

In addition, the competition among schools that is the desired effect of

charters may well produce schools with diverging goals, methods, and identities. The very existence of charter- and magnet-school programs may skim the most active, motivated, and informed parents, or those most alienated from the dominant schools, away from the mainstream public schools. Different charter schools draw different kinds of students and parents. The process that generates charter schools may also produce schools of varying quality, undermining the goal of equal opportunity.

Other forms of inequality may emerge because of segregation, even when it arises in voluntary or "recommended" placements (Malakidis 2006). Special schools designed for new immigrants may take a less voluntary form, however. Some districts have founded "newcomer schools" that offer separate facilities for recent immigrants. These schools are intended to provide a comfortable transitional environment, and they include bilingual and bicultural education while offering support for students who previously had little schooling or literacy instruction in any language ("Schools to Open Special Program: Newcomer's Academy Will Help Hispanics with Language Barrier," *Winston-Salem Journal*, April 22, 2003, A1). Reformers creating these schools are especially worried about the probability that enrollment in regular schools will frustrate adolescent immigrant children and lead them to drop out.

By design, these schools separate immigrants from other students for at least a year and sometimes longer, in order to provide tailored instruction and supportive environment. Yet questions remain: How can such programs avoid stigmatizing the students? Do they provide inferior resources and instruction? Does integration work any better when it does occur—and does it actually occur or do students drop out? Concentrating recent immigrants in particular schools may have counterproductive effects; it may worsen the sense of distance that these students already feel from the country and their nonimmigrant peers; and it may worsen the prejudices and misinformation about the new immigrants in both their peer groups and the broader community. A concentration of immigrants in separate schools may also produce new problems, such as tensions among rival Cambodian gangs, appearing, for example, in recent years in Lowell, Massachusetts.[53] Yet conventional public schools also pose problems for new immigrant groups if the communities do not quickly develop cultural and linguistic competence (Kellar 2005).

Many school officials remain worried about the moment when English-language learners must be counted within schoolwide English assessments for their scores and push for exemption from such tests at least during the first year of schooling in the United States.[54] Some school officials indicate that inclusion of recent immigrants who do not know English would distort what the schools actually are achieving both with these students and with the students who already speak English. Yet exclusion of those students may undermine the effort to focus on these students and their learning. Under the No Child Left Behind Act, costly remedial efforts as well as stigmatizing sanctions are attached to schools with low performance scores. Backlash against the law has led states to seriously consider opting out of the funding that attaches the assessment obligations.[55] As noted earlier, critics charge that the law focuses too much on testing while skimping on learning, produces one-size-fits all approaches (including single-test measures rather than multiple measures of success), causes insensitivity to the situations of students with special needs or students learning English, and results in the use of impossible standards designed to produce too much student failure and too much blame for teachers (Jehlen 2006). The Act may in some contexts exacerbate inequalities by spotlighting failing schools without providing resources to assist them. The template of equality, recast to encompass pluralism, multiculturalism, and school choice, may suppress deeper questions about how best to address the needs of immigrant students in the United States.

Where Are We Now?

School reforms in the United States over the past sixty years reflect contrasting frameworks, although each can be understood as a means for pursuing equality. Even the standards movement, devoted to raising expectations for and achievement of students, depends on a fundamental commitment to include all students in these high expectations. The focus on integrating students with different backgrounds and races within the same schools animated at least some version of the common-school movement during the nineteenth century and a large element of the civil rights strategy from the 1930s through the 1970s.

A contrasting theme emphasized the development of schools with distinctive missions, tailored to students with particular identities and needs; this view, captured to some degree by the politics of recognition, animates public and private single-sex schools; private religious schools; schools for "newcomers"; schools for students with an interest in particular languages; and a school for gay, lesbian, and transgendered youth. These schools make the bet that there is not only no trade-off between academic achievement and cultural pluralism, but there may actually be opportunities for enhanced achievement in schools with specialized missions that are aimed at students who share much in common, even though the emerging schools have little claim to heterogeneity or integration. The proliferation of choice—across public and private schooling and within each system—tilts toward this pluralist framework and reflects the rise of market rhetoric and concepts throughout society. Of course, within the plural array of schools, some schools could and do continue to feature heterogeneous student bodies—racially integrated, coed, inclusive of students with disabilities, and inclusive of immigrant students. But not many of the newly forming schools are advertised with this as a leading feature.[56]

Quite apart from their potentially segregating effect, some specialized schools prompt controversy. An Arabic-language public school in New York City provoked opposition by some who feared it would sponsor terrorism. According to a September 14, 2005, article in the *New York Sun*, a comment by the designated principal led to her ouster—and her replacement by a Jewish principal—before the school opened ("Jewish Woman Taking Over at Arabic-Language school," 1). Yet the general trend toward plural options, distinctive missions, and parental choice itself is largely well-received and shows no signs of abating.

If the focus is entirely on student achievement, measured by test scores, college graduation, and job success later in life, the choice between integrated or homogenous schools may be far less significant than the creation and maintenance of schools with a strong sense of mission and commitment to all the students who attend them. Yet the choice among these kinds of schools could have a larger importance for the character of the polity and the sense of mobility and identity experienced by individual students over time. On that dimension, we need to pay serious attention not only to the American experience, but also contrasting approaches to schooling in other diverse democracies (Banks and Lynch 1986; Glenn 1996).

Notes

1. More information is available at "The Harvey Milk School," at About Gay Life (accessed at http://gaylife.about.com/cs/comingout/a/harveymilk.htm).
2. The plurality opinion in this case included the following argument:

> In *Brown v. Board of Education*, 347 U. S. 483 (1954) (*Brown I*), the Court held that segregation deprived black children of equal educational opportunities regardless of whether school facilities and other tangible factors were equal, because government classification and separation on grounds of race themselves denoted inferiority. Id., at 493–494. It was not the inequality of the facilities but the fact of legally separating children on the basis of race on which the Court relied to find a constitutional violation in 1954. See id., at 494 (" 'The impact [of segregation] is greater when it has the sanction of the law' "). The next Term, we accordingly stated that "full compliance" with *Brown I* required school districts "to achieve a system of determining admission to the public schools *on a nonracial basis* [author's emphasis]." (*Brown II,* 349 U. S., at 300–301)

3. The dissenting opinion in *Parents Involved in Community Schools v. Seattle Public School Dist. No. 1* (2007) includes the following argument:

> In dozens of subsequent cases, this Court told school districts previously segregated by law what they must do at a minimum to comply with *Brown*'s constitutional holding. The measures required by those cases often included race-conscious practices, such as mandatory busing and race-based restrictions on voluntary transfers. See, *e.g.*, *Columbus Bd. of Ed.* v. *Penick*, 443 U. S. 449 , n. 3 (1979); *Davis* v. *Board of School Comm'rs of Mobile Cty.*, 402 U. S. 33, 37–38 (1971) ; *Green* v. *School Bd. of New Kent Cty.*, 391 U. S. 430, 441–442 (1968). . . . The compelling interest at issue here, then, includes an effort to eradicate the remnants, not of general "societal discrimination," *ante*, at 23 (plurality opinion), but of primary and secondary school segregation, see *supra*, at 7, 14; it includes an effort to create school environments that provide better educational opportunities for all children; it includes an effort to help create citizens better prepared to know, to understand, and to work with people of all races and backgrounds, thereby furthering the kind of democratic government our Constitution foresees. If an educational interest that combines these three elements is not "compelling," what is? . . . [S]ince this Court's decision in *Brown*, the law has consistently and unequivocally approved of both voluntary and compulsory race-conscious measures to combat segregated schools. The Equal Protection Clause, ratified following the Civil War, has always distinguished in practice between state action that excludes and thereby subordinates racial minorities and state action that seeks to bring together people of all races. From *Swann* to *Grutter*, this Court's decisions have emphasized this distinction, recognizing that the fate of race relations in this country depends upon unity among our children, "for unless our children begin to learn together, there is little hope that our people will ever learn to live together" (*Milliken*, 418 U. S., at 783 (Marshall, Thurgood, dissenting).

Also, see an 1849 article by Charles Sumner, which states, "The law contemplates not only that all be taught, but that all shall be taught together" (327, 371).

Also, in the dissenting opinion in *Parents Involved in Community Schools v. Seattle Public School Dist. No. 1* (2007), Justice Stevens wrote,

> There is a cruel irony in The Chief Justice's reliance on our decision in *Brown* v. *Board of Education,* 349 U. S. 294 (1955). The first sentence in the concluding paragraph of his opinion states: "Before *Brown,* schoolchildren were told where they could and could not go to school based on the color of their skin." *Ante,* at 40. This sentence reminds me of Anatole France's observation: "[T]he majestic equality of the la[w], forbid[s] rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread."1 The Chief Justice fails to note that it was only black schoolchildren who were so ordered; indeed, the history books do not tell stories of white children struggling to attend black schools. In this and other ways, The Chief Justice rewrites the history of one of this Court's most important decisions. Compare *ante,* at 39 ("history will be heard"), with *Brewer* v. *Quarterman,* 550 U. S. (2007) (slip op., at 11) (Roberts, John G., dissenting) ("It is a familiar adage that history is written by the victors").

4. Justice Anthony Kennedy's opinion in *Parents Involved in Community Schools v. Seattle Public School Dist. No. 1* (2007) included the following argument:

> Parts of the opinion by The Chief Justice imply an all-too-unyielding insistence that race cannot be a factor in instances when, in my view, it may be taken into account. The plurality opinion is too dismissive of the legitimate interest government has in ensuring all people have equal opportunity regardless of their race. The plurality's postulate that '[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race,' *ante*, at 40–41, is not sufficient to decide these cases. Fifty years of experience since *Brown v. Board of Education,* 347 U. S. 483 (1954), should teach us that the problem before us defies so easy a solution. School districts can seek to reach *Brown*'s objective of equal educational opportunity. The plurality opinion is at least open to the interpretation that the Constitution requires school districts to ignore the problem of *de facto* resegregation in schooling. I cannot endorse that conclusion. To the extent the plurality opinion suggests the Constitution mandates that state and local school authorities must accept the status quo of racial isolation in schools, it is, in my view, profoundly mistaken. . . . School boards may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race. These mechanisms are race conscious but do not lead to different treatment based on a classification that tells each student he or she is to be defined by race, so it is unlikely any of them would demand strict scrutiny to be found permissible.

5. For more information, see "Arab-American Anti-Discrimination Committee," at http://adc.org/hatecrimes/education.htm.
6. Some states require instruction in preparation for history standards tests; others provide for a day of remembrance about the internment and promote instruction in that context. More information is available from the National Japanese American Historical Society (2006). For a sample curriculum, see http://www.pbs.org/kqed/fillmore/classroom/internment.html.
7. For more information on the treatment of students who are immigrants or members of racial, ethnic, or religion minorities in other countries, see chapter 7 of this volume.
8. The U.S. Constitution's enumeration clause apportioned representatives for each state, based on its population. As a compromise between northern and southern views, it counted slaves (described as "other persons") as three-fifths of a whole person. Another compromise (Article 1, Section 9) allowed the slave trade to continue at least for twenty years. It limited Congress from prohibiting the "importation" of slaves before 1808. (Congress did prohibit importing slaves in 1808, but by that time sufficient numbers of slaves were already living in the nation for slaveholders to benefit from their reproduction.)

   The Fugitive Slave Clause expressly required Free states to deliver an escaped slave back to the home state upon the claim of the owner.

   Meantime, provisions in the states indicated the special laws governing slaves (see, for example, Slave Code of the State of Georgia, 1848, 11). Punishment for teaching slaves or free persons of color to read: "If any slave, Negro, or free person of color, or any white person, shall teach any other slave, Negro, or free person of color, to read or write either written or printed characters, the said free person of color or slave shall be punished by fine and whipping, or fine or whipping, at the discretion of the court."
9. John D. Rockefeller and Andrew Carnegie contributed, but the biggest contributor was Julius Rosenwald, who made his fortune in the Sears, Roebuck and Company. He contributed $4.3 million, and African Americans in the South raised $4.7 million. Together these funds supported more than 5300 schools. Rosenwald Schools Initiative, (accessed July 13, 2006 at http://www.rosenwaldschools.com/#Peter); Diane Granat, "Saving the Rosenwald Schools" (accessed July 13, 2006 at http://www.aliciapatterson.org/APF2004/Granat/Granat.html.
10. Horace Mann articulated the common school ideal that inspired state-level reforms throughout the country from the 1840s to 1900 (Tozer, Violas, and Sense 1995; Reuben 2005). Yet in the South and some parts of the North, African American children were not part of the vision of common schooling. There were exceptions: racial integration did become part of the common school movement in some places. Ironically, given the locus of *Brown v. Board of Education*, one of those places was Kansas. This can be seen in the opinion in *Board of Education, City of Ottawa v. Tinnon* (1881), which says that school boards lack state statutory authority to exclude black children from public schools: "The tendency of the time is, and has been for several years, to abolish all conditions on account of race, or color . . . and to make all persons absolutely equal before the law . . . At the common school, where both sexes and all kinds of children mingle together, we have the great world in miniature; there they may learn human nature in all its phases, with all its emotions, passions, and feelings, its loves and hates, its hopes and fears . . . But on the other hand, persons by isolation may become strangers even in their own country; and by being strangers, will be of but little benefit either to themselves or to society."
11. As James E. Coleman, Jr. writes in the case of whites hostile to minority students, "the only way to ensure an equal opportunity in that circumstance is to force the majority to educate their children in the same institution in which the minority students are being educated" (1996).
12. The Court postponed announcing a remedy for another year (*Brown v. Board of Education of Topeka* 1955), and actual implementation by local districts took more than a decade. For detailed background behind the cases, see work by Richard Klugar (1975) and Leon Friedman (1969).
13. In footnote 11 of the opinion in *Brown v. Board of Education*, the Court relied on studies that had been cited and in some instances sponsored by the NAACP. Thus, footnote 11 cited, "K. B. Clark, Effect of Prejudice and Discrimination on Personality Development (Midcentury White House Conference on Children and Youth, 1950); Witmer and Kotinsky, Personality in the Making (1952); Deutscher and Chein, The Psychological Effects of Enforced Segrega-

tion: A Survey of Social Science Opinion, 26 J. Psychol. 259 (1948); Chein, What are the Psychological Effects of Segregation Under Conditions of Equal Facilities?, 3 Int. J. Opinion and Attitude Res. 229 (1949); Brameld, Educational Costs, in Discrimination and National Welfare (MacIver, ed., (1949), 44-48; Frazier, The Negro in the United States (1949), 674-681. And see generally Myrdal, An American Dilemma (1944)."

Subsequent work cast doubt on the particular findings of some of those studies. See work by Sara Lightfoot (1980), Edgar Epps (1978, 1975), Morris Rosenberg (1986), and Janet Ward Schofield (1995). One enduring legacy of *Brown v. Board of Education* is the judicial turn to social science, including debates over social scientific evidence (Heise 2005).

14. Justice Clarence Thomas also struck this note in his challenge to the presumption that a school with a black majority could not provide an excellent education. (*Missouri v. Jenkins* 1995). For concern over the risk of losing other black-dominated settings, see articles by Sheryl Cashin (2001) and Lorne Fienberg (1992).
15. For criticisms of Ronald Edmonds, see the article by James Comer, Norris Haynes, and Muriel Hamilton-Lee (1989).
16. Among the most sophisticated is the study of stereotype threat. This work indicates how stereotypes operate in social interactions and shape outcomes consistent with the stereotypes (Markus, chapter 3, this volume; Steele and Aronson 1998; Steele 1997).
17. Derrick Bell, Jr. was one of the first to question whether integration, as opposed to educational improvement, should be the solution to racial segregation (Bell, Jr. 1976). Some have returned to the *Brown* decision itself to question even the theory of stigma used by the Court to support desegregation (Brown 1992).
18. For more information, see the Civil Rights Project (2002). Asian American students, diverse among themselves, present a different profile that is not meant to be summarized in the discussion in this chapter. Asian American students have successfully challenged some school desegregation plans which disadvantaged them (*Ho v. San Francisco* 1997; Liu 1998; Bowman 2001). Legal recognition of the potentially different interests of different minority groups distinctly complicates the prospects for desegregation plans (Levine 2003; Shaw 2004) and political approaches to civil rights (Gee 2001; Iijima 1998).
19. In the context of gender, efforts to overcome group boundaries seem to reduce female students' internalized sense of inferiority (Rosenthal and Crisp 2006).
20. For philosophic debate over these concepts, see work by Nancy Fraser and Axel Honneth (2003).
21. For critiques of this idea, see work by Anthony Appiah (2004) and Amartya Sen (2006).
22. See work by James S. Coleman (1966), which doubts a link between funding and student achievement given the greater impact of parental class); Eric Hanushek (1996), which finds no positive relationship between finances and student outcomes; and David Card and Alan Krueger (1996). Also, see work by Julian Betts (1996), which critiques the study by David Card and Alan Krueger, doubting link between funding and achievement. Studies of the effects of resources on student achievement may neglect to distinguish wise and unwise allocations of the funds (Ferguson 1998; Laine et al. 1996). The important impact of racial and socioeconomic integration on school results also complicates efforts to disentangle funding from other influences on student achievement (Ryan 1999b).
23. Thanks to Kimberly Jenkins Robinson for this observation.
24. The case *Castaneda v. Pickard* (1981) directed that school districts be evaluated in terms of adoption and implementation of a pedagogically sound approach for meeting the needs of limited English proficiency students.
25. Both options may remain inadequate due to other factors, such as the economic class of the affected students and neighborhoods. See infra (discussing school finance and adequacy litigation).
26. California still allows parents to elect either bilingual education or immersion under certain circumstances. For a critical view of the California reform, see work by Jill Kerpmer Mora (2002). For the legal status of bilingual education as articulated by courts, compare the decision in *Castenada v. Pickard* (1981) with *Valeria G.* (1998).
27. For more information, see work by Barbara Whalen and Charles Whalen (1985). Also see a statement of Congresswoman Edith Green in 1964 (110 Cong. Rec. 2581) suggesting that Representative Howard W. Smith proposed to insert *sex* to prevent the passage of Title VII. For a more optimistic view, see work by Jo Freeman (1991) and Robert Bird (1997).
28. Commentators cast more doubt on the constitutional basis for all-male schools, given the historical advantage of males in education (Levit 2005). Yet growing trends indicate risks of underachievement by boys and men ("Women Outpacing Men on U.S. College Campuses," *Chicago Tribune*, July 12, 2006, C3; "What Girls Ought to Learn from Boys in 'Crisis,'" *New York Times*, July 12, 2006, A1). However, there is also pushback on this issue ("The Myth of 'The Boy Crisis,'" *Washington Post*, April 9, 2006, B1; "A More Nuanced Look at Men, Women and College." *New York Times*, July 12, 2006, B1).
29. See http://www.ed.gov/about/offices/list/ocr/t9-guidelines-ss.html for the current administration's interpretation of the law.
30. Proposing a rule and leaving it in that proposed state may reflect a political strategy. The administration gains points from supporters for pursuing this policy, avoids court challenge to it, and generates potential support from both experimentation and research efforts that could bolster the policy if it does reach a final rule and subsequent court challenge.
31. On athletics, some courts have entertained arguments that girls need to be protected from the risks of injury in male contact sports (*Force v. Pierce City R-VI School District* 1983), and federal law leaves this as a local question (34 C.F.R. section 106.41 (b)). But the courts are tending to allow girls to try out for competitive, contact sports (*Barnett v. Texas Wrestling Association* 1998; *Adams v. Baker* 1996). Yet the courts also accept exclusion of boys from girls' teams in order to preserve opportunities for girls (*Clark v. Arizona Interscholastic Association* 1982).
32. Millions of students are currently identified as having a disability—and there has been a 30 percent increase in such identifications over the past ten years (National Education Association 2006).
33. As of 1996, 34.9 percent of disabled children were placed in regular classrooms

full-time, and 36.3 percent were in part-time programs in regular classrooms; 23.5 percent were in separate classrooms, 3.9 percent were in separate schools, 0.9 percent were in residential facilities, and 0.5 percent were in hospitals or visiting programs in the students' homes (Hughes and Rebell 1996).

34. In the 1998 to 1999 school year, the states reported that 47 percent of these students spent at least 80 percent of the school day in regular classrooms, which is a notable increase over the 31 percent of such students who did so in 1978.
35. This view should be distinguished from the conception that religion should never be treated differently from other personal views or commitments. The legal scholars Christopher Eisgruber and Lawrence Sager argue that equality would forbid the government from treating religion differently from any other category, even if that difference takes the form of a preference or accommodation (Eisgruber and Sager 1994). In contrast, Michael McConnell would still support accommodations for religious exercise that would not require comparable institutional adjustments for secular activities (McConnell 1990b).
36. Under defined conditions, schools cannot deny equal access to students who wish to conduct a meeting if the basis for the denial is the content of the speech at such meetings (20 U.S.C. sec. 4071(a)). The Supreme Court gave a broad interpretation of this act and found it applicable to any extracurricular group (*Westside Community School v. Mergens* 1990).
37. For a contemporary defense of the decision, see work by Robert Alley (1996).
38. Participating in a voucher scheme is likely to subject a religious school to more state supervision than it would otherwise face (Minow 2002). Engagement with the secular society can involve a religious group in at least outwardly modifying its activities and status to fit in with the secular community (Stone 2002).
39. According to this 2005 article in the *Milwaukee Journal Sentinel*, thirty-five of the participating schools are Catholic, twelve are Lutheran, twenty-two are other Christian denominations, three are Muslim, and one is Jewish. The article cites critics as charging that some of these schools lack adequate teachers and resources; some will not teach anything that departs from a literal interpretation of the Bible. For series on Milwaukee school voucher system, see http://www.jsonline.com/news/choice.
40. Practical and even financial concerns arise. For example, a public school in Dearborn, Michigan, asked its Muslim students in 1997 to postpone observance of a holiday because if too many students missed school that day, and attendance fell below the legally mandated 75 percent minimum, and the school would lose $340,000 in funds (Sarroub 2005).
41. Derrick Bell, Jr.'s position often suggests a belief that blacks will never attain equal status in the United States (Bell, Jr. 1992), even though he has also refrained from treating *Brown* and its principles as "wrong," (Bell, Jr. 1987a; Tushnet 1987).
42. Perhaps the most extreme version of parental choice appears in the burgeoning home-schooling movement. Still small as a percentage of the entire population, it nonetheless is among the fastest growing sector of American K–12 education (National Center for Educational Statistics 2003).
43. Notably, however, the use of the racial identity of students to meet targets for enrollments or as a tiebreaker for oversubscribed schools was barred by the Supreme Court in *Parents Involved in Community Schools v. Seattle Public School Dist. No. 1* (2007) ("Supreme Court to Hear Seattle schools Race Case," *Seattle Post Intelligencer*, June 6, 2006). For further discussion, see notes 1 to 4.
44. The Massachusetts Department of Education website explains: "Charter schools are independent public schools designed to encourage innovative educational practices. Charter schools are funded by tuition charges assessed against the school districts where the students reside. The state provides partial reimbursement to the sending districts for the tuition costs incurred (Massachusetts Department of Education n.d.). Utah similarly describes its funding method for charter schools: "Charter schools are funded on the principle that state funds follow the student. Charter schools also receive appropriate portions of local money from the school districts in which the charter school students reside. Charter schools may also apply for state and federal start-up funds. A charter school may not charge tuition or require students or parents to make donations, and it is subject to the same rules regarding school fees as other public schools" (Utah State Office of Education n.d.; last update for website listed as November 2, 2005, but no date attached to mission statement). Some states fund charter schools at a lower level than conventional public schools. Thus, "Minnesota charters only receive the state portion (about 75 percent of a district school's total per-pupil allocation); charters in New Jersey and Colorado also receive less than 100 percent of the per-pupil funding. In other states, charters must negotiate their funding in their charter contract, often below the level of funding of their district counterparts. In Arizona, charter students are funded at about 80 percent of their district peers" (Center for Educational Reform 2006).
45. A key moment in recognizing the need to foster accountability testing came in response to the publication of *A Nation at Risk* by a national commission in 1983. At a meeting of governors in 1989, President George H. W. Bush joined the governors in articulating a set of broad performance goals for American schools, and in 1991, President Bush proposed voluntary national testing tied to standards. In 1994 President Clinton signed into law Goals 2000, which provided grants to help states develop academic standards. George W. Bush campaigned for presidency in no small measure on a proposal to enact school reform premised on testing in relation to national standards, and his major domestic accomplishment is the enactment of the No Child Left Behind Act in 2001 (Rudalevige 2003).
46. According to the 2000 Census, the immigrant population in Minnesota included 125,000 Hispanics; 60,000 Hmong; 20,000 non-Hmong Southeast Asians; 11,151 Somalis; 6,000 Russians; 2,500 West Africans; 2,000 East Africans (not Somali); 1,600 Yugoslavians; and 500 Tibetans (University of Minnesota 2007).
47. Also, see work by Kurt Lash (1995), who examines the pro-Protestant and anti-Catholic dimensions of the Blaine Amendment and related policy debates during the nineteenth century.
48. For example, look at the case of New York as of 2007. "There are currently 96 public charter schools in New York. Of those 96 schools, 43 were authorized by the State University trustees" (accessed at http://www.newyorkcharters.org/documents/newschools/Approved10-26-07.pdf).

49. Minnesota requires a school board, university, or other nonprofit sponsor (Minnesota's Charter School Law 2005). Further legislation setting parameters for Charter School Advisory Councils implemented in 2007 (1240.10 MN Statutes).
50. For information about the history of charter schools, see the website for US Charter Schools (accessed at http://www.uscharterschools.org/pub/uscs_docs/o/history.htm). Also, see the January 7, 2003, article in the *Christian Science Monitor*, "Charter Schools Build on a Decade of Experimentation." A center for the study of charter schools, housed at the University of Washington, issues regular reports on the performance and status of charter schools (Lake and Hill 2005).
51. US Charter Schools (accessed at http://www.uscharterschools.org/pub/uscs_docs/scs/toc.htm).
52. One study indicates that a larger percentage of minority and low-income students attend charter schools than traditional public schools (Lake and Hill 2005). Aggregated by state, student enrollment in charter schools shows a racial mix, but this does not indicate the degree of integration that occurs at the school level (National Center for Education Statistics 2002). Some local reports indicate that charter and voucher programs produce schools that are more homogenous because the schools attract subgroups within the community ("Michigan Has More Segregated Schools: Charters That Draw Students from Mostly Black Schools Drive Up Numbers," *Grand Rapids Press*, February 15, 2006, 1; "Minority Students Continue Minneapolis Schools Exodus," *Minneapolis Star Tribune*, February 22, 2006, 3B; Schnaiberg 2000).
53. More information on this and related issues is available on a website that describes the documentary film *Monkey Dance* (2004). Also, see the website for the United Teen Equality Center (2007).
54. The federal government has authorized a one-year exemption for new immigrants with regard to the English tests but not the math tests ("New Immigrants get Break on MCAS Test," *Boston Globe*, February 21, 2004, B1).
55. For more information, see the article in the *Salt Lake Tribune* on May 13, 2006, entitled "State Might Ignore Federal Education Guide and Follow Its Own." This article explains how Utah considered rejecting federal mandate regarding teacher qualifications. Also, see the article in the *Kiplinger Business Forecasts* on September 13, 2005, entitled "States Pushing for Changes to Education Law." It reports that more than forty states are questioning or opposing No Child Left Behind. In the November 14, 2005, article in the *Pittsburgh Post-Gazette* entitled "State of Rebellion," (B7), George Will reports that forty-seven states have challenged some version of No Child Left Behind's federal supervision of K through 12 education. An article in the *Sunday Times* on November 20, 2005 ("Testing Times in American Schools," business section, 1) describes the frustration of many states, summed up by Connecticut's legal challenge "arguing that implementing NCLB [No Child Left Behind] means it has less money to spend on books and other classroom essentials, and that the new tests are no more useful than the ones it has in place." An editorial in the *Christian Science Monitor* on July 15, 2005 (8) reported that fifteen states are considering withdrawing from No Child Left Behind; Utah is leading the fight. Furthermore, the National Education Association filed a suit challenging the No Child Left Behind Act as an unfunded mandate that could not require compliance. The federal district court dismissed the suit, and a similar suit brought by Connecticut (see *Connecticut v. Spellings* 2006), but a similar suit brought by school districts and education associations in Michigan succeeded in convincing the Federal Court of Appeals that the Act violates the spending clause of the U.S. Constitution (*School District of the City of Pontiac v. Secretary of the United States Department of Education* 2006). The Chancellor of the New York City schools defends No Child Left Behind as an important tool in improving schools ("Klein Gives Powerful 'No Child' Defense," *New York Post*, May 10, 2006, 2). On the Act's effects in reducing the achievement gap, see http://www.ed.gov/nclb/accountability/achieve/report-card.html.
56. Will schools cultivate abstract tolerance but also eager appreciation of the diversity of the society that globalized work worlds and complex democracies seem to demand? For more information on this topic, see work by Howard Gardner (2006). This may not always been the most comfortable lesson, but creating the taste and desire for important lessons is the mission of education. As Howard Gardner quoted Plato, "Through education, we need to help students find pleasure in what they have to learn" (2006, 41).

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