

Equally Mediocre

The ineptitude of court-driven school reform

Final Test: The Battle for Adequacy in America's Schools

By Peter Schrag

New Press, 2003, \$25.95; 288 pgs.

Reviewed by William A. Fischel

Peter Schrag's *Final Test* describes how judicial rulings in state courts are transforming the way American public schools are financed. The pioneer in the brave new world of school finance was the California Supreme Court, which in the 1971 *Serrano* decision found that local property taxation was an inequitable means of funding public schools. The court ordered the state to simultaneously equalize tax bases and spending per pupil. Implementation of this idea was furthered in 1978 by Proposition 13, which, by capping property-tax rates and assessments, forced California to use statewide taxes to finance local schools.

California thus produced an "equitable" system at a comparatively low level of spending. As a consequence, Schrag argues, California's achievement levels are now similar to Mississippi's. To avoid this outcome, a new wave of school-finance litigation has instead endorsed an "adequacy" claim based on state constitutional clauses that exhort the legislature to provide for a "thorough and efficient" (or similar language) system of education. The current method of financing public education, plaintiffs argue, has left poor and minority students with inadequate schools. The goal is to "level up" the poorer schools by focusing on standards as well as the fairness of local taxation.

Final Test takes readers on a tour of states in which the adequacy approach



has had some success. Schrag, formerly the editor of the *Sacramento Bee's* opinion page, puts his journalistic talent to good use. Readers learn about not only the courtroom action but also the events leading up to the cases and what happened afterward. Schrag is to be commended for his willingness to describe how the

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sausage meat of school-finance litigation is manufactured.

The problem for some readers will be Schrag's open enthusiasm for this movement. He goes admirably beyond trial transcripts and news stories by interviewing participants in the litigation and its implementation. His sources, however, are heavily weighted toward the plaintiff side, and his most caustic comments are reserved for gov-

ernors who hire lawyers who actually want to defend their school systems.

Schrag offers extensive coverage of cases in California, Kentucky, New Jersey, Ohio, Alabama, North Carolina, Maryland, and New York. California's latest litigation, *Williams v. California*, is still under way, and Schrag devotes his opening chapter to its proceedings. The strategy of the plaintiff's lawyers in this and other cases might be abbreviated "TTT," for "Trailing the Terminex Truck." The lawyers actively look for school conditions like toilets that do not work and vermin in the basement that will "shock the conscience" of the judge trying the case.

To his credit, Schrag raises the validity of the TTT strategy with lawyers for the California plaintiffs. The lawyers admit that the conditions are not really the central issue, but they use them nonetheless because they believe that (in a quote attributed to "someone") "dumbing things down for judges" is necessary to get their attention.

This puts into sharp relief the issue of why school reform has been channeled through the courts. State supreme court judges are hardly philosopher kings. They usually know considerably less about public schools than state legislators, who are at least in touch with their local constituents and who sometimes start their political careers on a local school board.

A more profound problem with using the judiciary as a vehicle for school-finance reform is the inherently undemocratic nature of the courts. Schrag has little patience, though, with judicial deference. His ideal process is what lawyers call a "friendly suit," in which both sides actually want the same outcome. He most admires Kentucky, where establishment politicians

organized the litigation, the state deliberately put up a weak defense in which the governor actually switched to the plaintiff's side, and the legislature responded to the court's sweeping demand to restructure the entire system with a 20 percent increase in the sales tax rate.

There's one party absent from this happy picture of democracy's insti-

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tutions' joining hands to fix things: the voters. Now this may be no loss for Schrag, who is skeptical of their capacities, but it does make one wonder who is being served by all this. If the voters really wanted sweeping school reform, their duly elected representatives could have given it to them without the court having ordered it. Voters' approval, of course, is not the same as the "right thing to do," but if government is spending the voters' money, it seems reasonable to ask their permission. Feeding the poor may be the right thing to do, but its rectitude is compromised if one takes food from the farmers without asking their permission.

Written in Stone

The practical problem with using the courts to bypass the voters is that judges have to ground their rulings in state constitutions, whose hortatory education clauses are the basis for their intervention. The decisions thus chart a particular approach to education that cannot be changed without constitu-

tional amendment or reversal by a later court. Had these reforms emerged from purely legislative initiatives, they could be reversed easily if it became evident that they were not working as planned or if a better approach had been discovered in later years.

A sad example is California's *Serrano* decision. It enshrined as constitutional doctrine the idea that local property-tax bases were to be the common property of the state, not the locality, for funding education. Implementation of tax-base sharing was soon shown to penalize a majority of the state's poor and African-American students, who are concentrated in large urban districts where the property wealth is higher than the state average. Had this huge error been grounded solely in legislation, it could have been easily remedied. However, having enshrined tax-base equalization as constitutional principle, California and numerous other states that have invoked it will be stuck with it for a long time.

Schrag's keenest insight is that any individual court decision is merely a way station on a cycle of litigation, legislation, and litigation yet again. For instance, New York's highest court threw out an equity suit in 1982, but the plaintiffs later regrouped around the adequacy principle. They prevailed at the trial level but were reversed on intermediate appeal. After *Final Test* was published, the New York Court of Appeals (the state's highest court) ruled for the plaintiffs.

Rest assured that the last decision has not been made in New York. And Schrag finds little to lament in this. What others call judicial tyranny he calls dialogue, and he is not entirely wrong about that. It is an odd way, though, for an allegedly self-governing people to manage their schools.

Schrag's weakest point is his grasp of social-science methodology. He does cite the leading economist in this area, Eric Hanushek, at considerable length. The gravamen of Hanushek's 30 years

of research is that public schools are notoriously inefficient at converting additional dollars into improved student learning. Nonetheless, Schrag concludes from far less reliable sources that the additional money that adequacy litigation brings will help public education.

Competition Needed

Schrag's dismissal of Hanushek's findings is not entirely gratuitous. Hanushek has not attempted to explain *why* additional funds have so little effect on student outcomes. But Harvard's Caroline Hoxby (who is not cited in this book) has a decade's worth of research that provides an answer. Hoxby finds that education is not much different from other industries. If there is competition among many public school districts and private schools in a given geographic area, the schools will offer better services at a lower cost. Even students in the poorest districts appear to do better in a competitive system, as exists in the Boston area, than they do in areas in which one or two districts dominate a metropolitan area, like Miami.

Hoxby's attention to market struc-

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ture may offer an explanation for the apparent ineffectiveness of increased spending on education. Since the early 1970s, much additional funding for education has come from state rather than local sources. Increases in state funds usually come with strings that

hamper the ability of an individual district to hire better teachers, adopt new technology, and respond to parental demands. Thus even in situations where the number of competing districts is great, the districts' ability to behave like suppliers in a competitive market is hobbled by the additional regulations that inevitably arrive with the new subsidies.

A related problem is that school-finance cases often require the state to send more money to schools that already hold a monopolistic position. The most troubled schools, as Schrag demonstrates, are those in the largest districts. They are essentially governed by entrenched bureaucracies and teacher unions. The quality of the schools suffers as a result. By steering funds to the least effective districts, school-finance litigation may have added to Hanushek's evidence that additional money is ineffective in improving education.

What is effective then? Competition, whether it comes from vouchers, independent private schools, public charter schools, or the breaking up of oversize districts, is the tonic to which Hoxby's work most clearly points. In smaller school districts and in private schools, parents have more say about curriculum and the evaluation of teachers. Administrators will listen to them in competitive situations because if they don't, the parents can move their child to another school or another district. Hoxby's evidence indicates that competition would meet the demands of state constitutions for a "thorough and efficient" education system better than the lawyer-engineered, centralized outcomes that are so eagerly sought by the advocates of adequacy.

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Quality Curricula

The timeless technology

The Flickering Mind: The False Promise of Technology in the Classroom and How Learning Can Be Saved

By Todd Oppenheimer

Random House, 2003, \$26.95; 512 pgs.

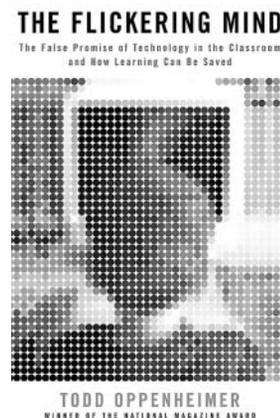
Reviewed by Brian Nelson

In 1997 Todd Oppenheimer published a widely read *Atlantic Monthly* article, "The Computer Delusion," that painted a provocative portrait of technology's failure to improve education thus far. The article outlined a long history of high expectations and underwhelming results and made Oppenheimer a well known if controversial figure in the field of education.

In *The Flickering Mind*, Oppenheimer amplifies his earlier theme by visiting schools around the country to get a firsthand glimpse of how technology is or is not working in schools. In general, Oppenheimer does not like what he sees. *The Flickering Mind* offers a grim image not only of educational technology but also of modern schooling altogether. Oppenheimer denounces a cast of anti-heroes who he claims, through duplicity or stupidity, are destroying education.

The lead villains in *The Flickering Mind* are the hardware and software companies that hawk their products to schools. Corporations such as Apple, IBM, and Microsoft are portrayed as "self-interested manipulators" out to swindle "naïve" administrators and "gullible" teachers by foisting worthless technology on them.

To Oppenheimer, the central crime perpetrated by these businesses seems to be the very fact that they are businesses; they charge something for their



products. Oppenheimer frequently juxtaposes the marketing slogans—improved learning! students who love school!—against the costs of implementing and maintaining classroom technology. The implication is that because businesses have a financial interest in selling technology, their claims regarding the educational value of their products cannot be trusted. No doubt technology firms, primarily interested in earning a buck, can sometimes make overblown claims. Most, however, probably believe in their products and hope to make a positive difference.

Nevertheless, Oppenheimer does an excellent job of highlighting the futility of simply throwing money at a problem. In case after case, he finds that schools have spent huge sums on technology at the expense of more pressing needs. He ruefully recounts tales of gleaming computer labs in crumbling buildings, purchased with funds that could have gone to art, music, shop, and teachers' salaries.

Oppenheimer derides schools that blow the budget on late-model computers and software with no thought to maintaining them or training teach-