From the Proxy to the Principal: Disappointments in California's Education Finance Policy and the Benefits of a Human Rights Approach

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FROM THE PROXY TO THE PRINCIPAL: 
DISAPPOINTMENTS IN CALIFORNIA'S 
EDUCATION FINANCE POLICY AND THE 
BENEFITS OF A HUMAN RIGHTS APPROACH

Elizabeth Cairns*

I. INTRODUCTION

In 1971, the California Supreme Court declared in Serrano v. Priest (Serrano I) that wealth is a suspect class, that education is a fundamental interest, and that a school financing scheme producing vast inequalities in per pupil spending was unconstitutional. In holding that the financing scheme was a violation of equal protection, the court asserted that it furthered the “cherished idea of American education” that “public schools shall make available to all children equally the abundant gifts of learning.” The court concluded its opinion by drawing on the human rights notions of education asserted by Horace Mann, a prominent education reformist in the 1800s:

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2. Id. at 1266. In a later decision, Butt v. California, the California Supreme Court affirmed that the ultimate responsibility rests with the State to provide “basic equality of educational opportunity.” Butt v. California, 842 P.2d 1240, 1251 (Cal. 1992); see also William S. Koski, Ensuring an “Adequate” Education for Our Nation’s Youth: How Can We Overcome the Barriers?, 27 B.C. THIRD WORLD L.J. 13, 37 (2007); Lisa Lopez Trifiletti, Note, The Role of Litigation in Education Reform: Holding California Responsible, While Preserving Local Control, 38 LOY. L.A. L. REV. 967, 972-73 (2004).
I believe... in the existence of a great, immortal immutable principle of natural law, or natural ethics—a principle antecedent to all human institutions, and incapable of being abrogated by any ordinance of man... which proves the absolute right to an education of every human being that comes into the world, and which, of course, proves the correlative duty of every government to see that the means of that education are provided for all.

However, almost thirty years later, the limited reach of the equal protection victory proved to be immensely unsatisfactory. In 2000, Williams v. California, a class-action suit involving mainly minority and low-income students, revealed the dire state of California’s public schools. The plaintiffs in Williams depicted the miserable conditions of facilities and the utter lack of learning instruments available at schools throughout the Golden State. Although education advocates won a battle against unequal funding in 1971, they were losing the war in providing to all children a meaningful education aimed at the full development of each child’s abilities.

In 2004, the Williams case settled. Pursuant to the settlement, the Governor of California executed five new laws that set forth standards and accountability, required the gradual abandonment of year-round, multi-track school schedules, and provided funds for instructional materials.

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4. Serrano I, 487 P.2d at 1266 (quoting HORACE MANN, THE GROUND OF THE FREE SCHOOL SYSTEM (1846), reprinted in V OLD S. LEAFLETS 177, 177-80 (Dirs. of the Old South Work 1902) (printing a passage from Mann’s Tenth Annual Report as Secretary of the Massachusetts State Board of Education)).
7. Id.
and facilities assessment. Thus, the Williams settlement resulted in many tangible benefits. Notwithstanding such benefits, the resource-focused settlement legislation insufficiently addressed important issues, such as severe overcrowding, and failed to adequately focus on providing a meaningful education to all children. Although financial backing and minimum standards are necessary, they are insufficient to relieve the government of its "duty," as Horace Mann asserted, to ensure as a matter of human right that "the means of education are provided for all."

This comment will argue that international human rights concepts can help California develop a more holistic, goal-oriented education finance policy that is consequently more likely than the current policy to achieve long-lasting equal education opportunities. In contrast to equal resource inputs, a human rights approach to evaluating public education examines directly and multi-dimensionally whether or not children are really being educated. Part II of this paper introduces two international instruments that define education based on a human rights perspective. This part also chronicles education finance policy throughout America and California, and, in particular, the change in America from an equal funding focus to an educational adequacy approach in education finance litigation. The section concludes by examining the unsatisfactory reach of the current education policy in California as manifest in the Williams v. California Complaint and its limited settlement.

Part III introduces the shortcomings of the settlement in Williams v. California to effectively address ongoing limitations to quality education in California's schools. Part

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EXPERT REPORT.

15. See infra Part II.
16. See id.
17. See id.
18. See infra Part III.
IV of this comment examines the shortcomings of the Williams settlement and how concepts from human rights instruments, particularly the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, can provide a more holistic, solution-focused educational opportunity policy in California. This analysis focuses on the areas of resource allocation, overcrowding, and, in general, the potential benefits born from the broad scope of human rights norms. Part V, then, proposes various ways how, and reasons why, to adopt international human rights norms as part of California's education policy. Finally, this comment concludes in Part VI by arguing that the approach to education policy in California should be grounded in viewing available, accessible, acceptable, and adaptable education as a human right, rather than a financial woe solved by writing a check.

II. INTERNATIONAL HUMAN RIGHTS AND DOMESTIC EDUCATION FINANCE POLICY

The International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child are international treaties that recognize education as a human right. Under both international instruments, when a country ratifies the treaty, that country agrees to acknowledge the rights asserted in the instrument. The general policy in these instruments requires more than the allotment of a minimum or equal amount of funds for education and inclusively addresses potential peripheral barriers to the realization of the asserted right to education.

19. See infra Part IV.
20. See infra Part V.
22. See infra Part VI.
23. See infra Part II.A-B.
25. See infra Part II.A-B.
In juxtaposition, the various state policies regarding public education in America have focused predominately on the funding of education. This part will first look at how the international human rights treaties generally frame the human right to education, then it will briefly examine educational policy across America, and finally conclude by discussing education finance in the context of California’s public schools.

A. The Right to Education and the International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is the human rights treaty that primarily recognizes economic, social, and cultural rights, including the right to self-determination, the right to work, and the right to education. The United States is one among a small number of nations that has not ratified the ICESCR, which was adopted in 1966. Specifically, the ICESCR recognizes the “right of everyone to education” and that education should be aimed at the “full development of the human personality and the sense of its dignity.” Further, it sets forth that education should facilitate “tolerance and friendship among . . . all racial, ethnic or religious groups.” Implementation of the rights under the ICESCR is monitored by the Committee on Economic, Social and Cultural Rights.

Article 13 of the ICESCR defines the right to education by four essential features: availability, accessibility,
acceptability, and adaptability.\textsuperscript{35} The availability component requires a sufficient quantity of functioning educational institutions within any given jurisdiction.\textsuperscript{36} The accessibility component requires that education be accessible to everyone without discrimination.\textsuperscript{37} Under this requirement, education should be especially accessible to “the most vulnerable groups, in law and fact . . .”\textsuperscript{38} Third, the form and substance of the education must be acceptable.\textsuperscript{39} The instrument indicates that “acceptable” includes relevant education, culturally appropriate education, and education of good quality.\textsuperscript{40} Finally, education must be adaptable to the needs of students in diverse social and cultural settings.\textsuperscript{41} Thus, the right to education under the ICESCR is multidimensional and reflects a focus on education itself.\textsuperscript{42} The Convention on the Rights of the Child further expands on the right to education embodied in the ICESCR in the context of a child’s education.\textsuperscript{43}

B. The Right to Education and the Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC)\textsuperscript{44} addresses a more nuanced right of education for children. The United Nations General Assembly adopted the CRC in 1989.\textsuperscript{45} The United States is the only industrialized country in the United Nations that has not ratified the CRC.\textsuperscript{46} Like

\textsuperscript{35} See The Right to Education, supra note 21, ¶ 6.
\textsuperscript{36} Id.
\textsuperscript{37} Id.
\textsuperscript{38} Id. (emphasis added).
\textsuperscript{39} Id.
\textsuperscript{40} Id.
\textsuperscript{41} See The Right to Education, supra note 21, ¶ 6.
\textsuperscript{42} See id.
\textsuperscript{43} See infra Part II.B.
\textsuperscript{46} See Yates, supra note 45 (noting that the United States is the only nation in the United Nations community, except Somalia, that has not ratified
the ICESCR, the implementation mechanism of the CRC is comprised of submitting regular reports to an international committee. Rather than penalizing non-compliance under the CRC, the reporting requirement aims to achieve compliance with treaty obligations by allowing states to request "technical assistance" from other specialized agencies if the aims embodied in the treaty are not met.

Articles 28 and 29 of the CRC pertain specifically to a child's education. Foundationally, Article 28 recognizes the right to education on the basis of equal opportunity. Then Article 29 states that the goal of education is to develop "the child's personality, talents and mental and physical abilities to their fullest potential." The CRC further expounds on the right of education recognized in Article 28 by insisting that education be child-centered, child-friendly, and empowering. Thus, the CRC, in conjunction with the ICESCR, enumerates complementary norms that help ensure that the individual can realize his or her right to education. This broad, rights-based approach differs starkly from many domestic education policies that primarily view education in terms of minimal standards and/or obliquely through equal protection.

C. School Finance Litigation in America

1. Focus on Funding

Various scholarly works by Paul Minorini and Stephen Sugarman trace school finance approaches in America from equality to adequacy. Beginning in the second half of the

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the CRC).
47. See Cohen, supra note 45, at 1451-52.
48. Id. at 1452 n.26.
49. Id.
50. CRC, supra note 44, at 53-54. Article 2 of the CRC, furthermore, sets forth an umbrella clause to ensure that all rights under the CRC are respected and ensured without discrimination. Id. at 46.
51. Id. at 53.
52. Id. at 54.
54. See infra Part II.C.D.
55. See Paul A. Minorini & Stephen D. Sugarman, Educational Adequacy and the Courts: The Promise and Problems of Moving to a New Paradigm, in EQUITY AND ADEQUACY IN EDUCATION FINANCE 175 (Helen F. Ladd et al. eds., 1999) [hereinafter Minorini & Sugarman, Educational Adequacy]; see also Paul A. Minorini & Stephen D. Sugarman, School Finance Litigation in the Name of
twentieth century, many scholars posited theories that addressed educational inequalities by focusing their attention on unequal school funding. In many states, funding for public schools comes primarily from state and local funds with only about seven percent from federal support. For example, in 1971, California state funding was comprised of a flat grant, “equalization aid” granted in inverse proportion to a district’s wealth, and “supplemental aid” granted to some impoverished school districts. Local funding, drawn primarily from local property taxes, however, was the predominant funding mechanism for school districts. Given that the primary resource for school funding came from property taxes, many schools located in poorer districts that did not generate high property tax revenue had significantly less funding.

In the words of the California Supreme Court, the financing scheme made the “quality of the child’s education a function of the wealth of his parents and neighbors.” Early advocates then attacked this problem using various theories, one of which was “wealth

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56. See Minorini & Sugarman, Educational Adequacy, supra note 55; see also Minorini & Sugarman, School Finance, supra note 55.


59. See Berne & Stiefel, supra note 57, at 9.

60. Id.


62. Id. at 1244.

63. “Horizontal equity” and “vertical equity” theories focused on de facto equalization of funds and proportional spending, respectively. The concept of “horizontal equity” in school finance rests on the notion that “all equally situated children should be treated equally.” See Berne & Stiefel, supra note 57, at 18. Arthur Wise, an advocate for “horizontal equity,” drew from both desegregation and reapportionment cases arguing that education is a fundamental right that cannot be abridged without a compelling state interest. See Minorini & Sugarman, School Finance, supra note 55, at 36. In contrast to “horizontal equity,” “vertical equity” recognized that children throughout the state have different needs and accordingly, should be treated differently. See id. (explaining that under a vertical equity theory, “equally” meeting the educational needs of both rich and poor students would require unequal spending on a needs basis in order to avoid a constitutional violation); see also Berne, supra note 57, at 20-21.
neutrality." 64

The "wealth neutrality" theory, developed in Private Wealth and Public Education, 65 was adopted by what would become known as the "Coons Team"—a law school professor at Northwestern University and his two students. 66 Under the Coons Team's strategy "fiscal neutrality" was created through reapportionment of local funds, but the approach did not stop wealthier districts from taxing themselves to an additional extent once the primary funds were reallocated. 67 The reapportionment, or "district power equalizing," theory would allow the state to "constructively equalize" the property tax revenues from the different locales, but left further decisions regarding taxing and spending on education to local control. 68 This recognition of local control was a particularly important aspect of the policy, given that the Coons Team expected that the federal courts would be apprehensive to infringe upon the traditional local control of education. 69 As in other matters such as the right to vote, the right to obtain a divorce, or the right of criminal appeal, the Coons Team sought to garner constitutional attention for the grave disparities between wealthy and poor districts under the school financing scheme. 70

Adopting the fiscal neutrality theory, the California Supreme Court in Serrano I struck down the California public school financing scheme. 71 The court held that a financing scheme based on property tax was a violation of both the Equal Protection Clause of the Federal Constitution, and the state constitution's equal protection clause. 72 Under the State's prior scheme, the "flat grant" was adjusted through

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64. See Berne & Stiefel, supra note 57, at 16.
65. Id. at 17 (citing COONS ET AL., PRIVATE WEALTH AND PUBLIC EDUCATION (Harvard University Press) (1970)).
66. See Minorini & Sugarman, Educational Adequacy, supra note 55, at 181; Minorini & Sugarman, School Finance, supra note 55, at 37.
67. See Minorini & Sugarman, School Finance, supra note 55, at 38.
68. See Minorini & Sugarman, Educational Adequacy, supra note 55, at 184-85.
69. See Minorini & Sugarman, School Finance, supra note 55, at 38.
70. See Minorini & Sugarman, Educational Adequacy, supra note 55, at 181.
72. Id. at 1249 n.11 ("The complaint also alleges that the financing system violates article I, sections 11 and 21, of the California Constitution . . . . [O]ur analysis of plaintiffs' federal equal protection contention is also applicable to their claim under these state constitutional provisions."); see infra Part I.
additional aid, yet funding for local school districts was still primarily based on local property taxes. This funding plan resulted in grave disparity. For example, in *Serrano I*, the Court juxtaposed a locality that spent $577.49 per pupil in Baldwin Hills, California with a local district that spent $1,231.72 per pupil in Beverly Hills, California. The court held that wealth was a suspect classification and asserted that the public school “funding scheme invidiously discriminate[d] against the poor because it ma[de] the quality of a child’s education a function of the wealth of his parents and neighbors.”

The court also held that education is a fundamental interest. It declared that education is integral to compete in the economic marketplace, is universally relevant, continues over a long period of time, and is influential in shaping the personality of the youth of society. Shortly after the *Serrano I* decision, Minnesota, Texas, New Jersey, Kansas, and Arizona followed suit and found their respective school financing schemes in violation of the Fourteenth Amendment of the U.S. Constitution. However, this growing model of success turned out to be transient.

In 1973, the United States Supreme Court’s *San Antonio Independent School District v. Rodriguez* decision effectively closed the door on school district finance challenges under the Fourteenth Amendment of the U.S. Constitution. Although the Court recognized “the grave significance of education both to the individual and to our society,” it held that wealth is not a suspect classification and education is not a

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73. This included both equalization aid distributed in inverse proportion to the wealth of the districts and additional supplemental aid available to subsidize particular poor school districts that were willing to make an extra local tax effort. *Serrano I*, 487 P.2d at 1247.
74. See id.
75. *Id.* at 1248.
76. *Id.* at 1244.
77. *Id.* The court characterized this “fundamental interest” by noting that “education is the lifeline of both the individual and society.” *Id.* at 1256.
81. *Id.*
82. *Id.* at 30.
fundamental interest recognized by the U.S. Constitution. Consequently, this decision foreclosed, with one possible exception, any claim under the Federal Constitution.

As a result, litigation shifted to the states and their respective constitutions. In Serrano v. Priest (Serrano II), the California Supreme Court affirmed that it relied on both the State and Federal Equal Protection Clauses in Serrano I and upheld the decision as one based on its own state constitution. Likewise, advocates in other states continued to employ the Coons Team approach under state constitutions. However, such claims required that the state choose to interpret the equal protection clauses of its state constitution similarly to the California clauses in Serrano I and II and dissimilarly to the federal clause, a decision some courts chose not to make. Accordingly, advocates began to

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83. See id. at 37-40.
84. Id. at 36-37. The potential exception indicated in the opinion reads: "Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either [the right to speak or the right to vote], we have no indication that the present levels of educational expenditures . . . provide an education that falls short . . . [N]o charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process." Id. at 37; MARK G. YUDOF ET AL., EDUCATIONAL POLICY AND THE LAW 796 (4th ed. 2002) (quoting San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973)); see also Trifiletti, supra note 2, at 981 (noting the potential right to "minimally adequate education").
86. YUDOF ET AL., supra note 84, at 798.
87. See Minorini & Sugarman, Educational Adequacy, supra note 55, at 183.
88. Id.
89. See Minorini & Sugarman, Educational Adequacy, supra note 55, at 183. Furthermore, even where litigation under equal protection claims succeeded, fundamental educational needs were still not being met through "equalization" of funding. Id. Advocates began to look at issues that:

"the earlier writings had acknowledged but had put aside: (1) some districts (especially urban districts) faced higher costs than others (for example, the higher cost of living in cities required paying higher wages to employees and higher prices for goods); (2) some districts (especially urban districts) had relatively more pupils with exceptional educational needs and so, in some sense, needed more money in order to educate them; and (3) some districts (especially urban districts) had to provide so many other local services that their tax base was not really as available to be drawn on for education as would appear from a simple calculation of local district capacity (e.g., assessed value per pupil)." Id. at 183-84.
look to the education clauses that are present in many state constitutions as grounds for a legal claim.

2. Move to an Adequacy Focus

Starting in 1989, the focus on school finance equity began to shift to a right of educational adequacy. Adequacy was an appealing, strategic approach given that it was based on direct constitutional commands, general societal agreement that students should have at least "basic" educational necessities, and avoided some of the complexities of equal protection claims. In *Rose v. Council for Better Education, Inc.*, the Kentucky Supreme Court struck down the entire State financing plan under the State Constitution, which requires the State to "provide an efficient system of common schools throughout the state." The court then outlined minimum required characteristics and educational goals in order to comport with the constitutional mandate that schooling must be "efficient."

*Abbott v. Burke* provided another landmark decision that was based on both equity and adequacy principles. Importantly, the court in *Abbott* looked at more than just money. The court evaluated disparities between the richest and poorest districts in the state, focusing on areas such as exposure to computers, science education, foreign language programs, music programs, art programs, industrial arts,

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93. *Id.* at 189.
94. *Id.* at 212-13. The court characterized an “efficient” system of common schools as free, available to all children regardless of residential or economic status, substantially uniform, monitored by the state, and funded to provide an adequate education that endeavors to attain goals of providing students with certain enumerated capacities. *Id.*
95. *Id.* at 212. In asserting that adequate education is a fundamental right under the Kentucky Constitution, the court advanced seven capacities that states should endeavor to bestow on its students, including oral and written skills to function in society, skills necessary to make informed choices, skills necessary to understand issues that affect society, sufficient self-knowledge, sufficient exposure to the arts, sufficient training to make intelligent decisions about life work and skills to compete in the job market. *Id.*
96. *Id.* at 189.
98. *Id.*
physical education, and facilities. The Abbott court indicated that “thorough and efficient” education included “the ability to participate fully in society, in the life of one’s community, the ability to appreciate music, art, and literature, and the ability to share all of that with friends.” Although the court did not require state-wide equalization efforts in an attempt to meet its aims, it did mandate that the richest and poorest districts “begin at the same starting line” with the recognition that poorer urban districts may require additional financial backing. Although major shifts to the adequacy approach took place across America, the embrace and arguable success of such an approach has not been so forthcoming in California where the Serrano decision led the State down a different path.

D. School Finance Policy in California Post-Serrano

After the California Supreme Court’s Serrano I decision, which held that the State’s property tax-based school financing system violated the state constitution’s equal protection clause, the State Legislature endeavored to remedy the violation through Senate Bill 90. The Bill allotted additional aid to districts with low property tax revenue and imposed restraints, which voters could override, on spending among wealthier districts. In Serrano II, the court not only affirmed the lower court’s finding that there was a violation of the equal protection clause under the state constitution notwithstanding the federal decision in Rodriguez, but it also made clear that the efforts under Senate Bill 90 were

99. Id. at 395-97.
100. Id. at 397.
101. Id. at 403.
102. Id. at 402 (“It is clear to us that in order to achieve the constitutional standard for the student from these poorer urban districts—the ability to function in that society entered by their relatively advantaged peers—the totality of the districts’ educational offering must contain elements over and above those found in the affluent suburban district.”). After the 1990 decision, the State Legislature and the State Supreme Court began another dialogue that culminated in the court itself setting forth various standards for the state’s education reform. Such measures ranged from safe, sanitary, and sufficient facilities to enhanced technology. See Yudof et al., supra note 84, at 836-37.
104. Id. at 610-11.
constitutionally insufficient. The court instead adopted the lower court's remedy requiring that, within six years, there must not be a disparity greater than $100 per pupil expenditure if the difference was the result of property tax.

In response to Serrano II, the California Legislature passed Assembly Bill 65, which called for more aid to property-poor districts, additional restrictions on wealthy districts, and reallocation of property-tax revenue from wealthy districts to poorer districts. Before Assembly Bill 65 could take effect, Proposition 13 passed requiring a property tax cap at one percent of the property's fair market value. In addition, tax rates could only increase at two percent per year, any "special taxes" had to be approved by a two-thirds vote of the electors, and any increase in state taxes required a two-thirds vote of each legislature. As a result of the property tax limitation, California was required to "bail out" school districts with state budget surplus. Together, the passage of (i) Senate Bill 154, which distributed revenue in proportion to prior property-tax revenue, (ii) Assembly Bill 8, which distributed aid to low-spending districts designed to equalize wealthy and poor district spending, and (iii) Proposition 4, which set forth spending limits, greatly narrowed the disparity gap in school district spending. In Serrano v. Priest (Serrano III), the court held that equalization fulfilled the mandate of Serrano II, once any shortcomings of the $100 benchmark were adjusted for inflation. However, as Professor William Fischel remarked, although the goal of equal spending was achieved, after Proposition 13, the goal was met by greatly reducing spending all together.

As adequacy lawsuits were gaining success throughout the nation, after 1986, challenges to California's financing

107. See Fischel, supra note 103; see also YUDOF ET AL., supra note 84, at 798.
108. See Fischel, supra note 103, at 611.
109. Id. at 612.
110. YUDOF ET AL., supra note 84, at 798.
111. Id.
112. See YUDOF ET AL., supra note 84, at 798; see also Lockard, supra note 12, at 390.
114. YUDOF ET AL., supra note 84, at 798-99.
115. Fischel, supra note 103, at 613.
116. See supra Part II.C.2.
system generally subsided. However, the equalization efforts under the Serrano decisions appeared to have failed to afford some students, especially minority and low-income students, access to an education equal to students living in more affluent areas throughout the state or even minimally adequate resources to attain any education. The horrific tales of the Williams plaintiffs shed valuable light on the inadequacies of the “equal” funding scheme as implemented in California.

1. The Case of Williams v. California

Plaintiffs in Williams v. California took action on May 17, 2000, the forty-sixth anniversary of Brown v. Board of Education. The Williams class action lawsuit alleged that tens of thousands of California children were being “deprived of basic educational opportunities” and were forced to attend schools that “shock the conscience.” The Complaint asserted that these schools were “overwhelmingly populated by low-income and non-white students and students who [were] still learning the English language.” The description of dramatically substandard conditions detailed in the Complaint, paired with the fact that almost all the original plaintiffs were minorities, evidence a sad conclusion: Equal funding has not succeeded in bringing many California students closer to an equal educational opportunity.

The Williams litigation focused on three primary areas of inequality and inadequacy: (i) instructional materials, (ii)
school facilities, and (iii) qualified teachers. To highlight the lack of educational resources, the plaintiffs maintained that in many cases they did not have a textbook to bring home to study and complete homework assignments, and had to "rely on illegible or incomplete photocopies" out of "science books so old that their content is now known to be false, or on social studies and economic texts describing persons long departed from politics as current American leaders." Some students were even required to pay for materials in core subjects. In at least one school, the school provided no books in fundamental subjects such as English and history. In sum, not only were materials inadequate for purposes of learning relevant and accurate information, but there were also situations where students were receiving no books at all.

Overcrowding and the "slum conditions" of the school facilities served to exacerbate California students' lack of appropriate learning materials. The plaintiffs, many of whom were required to attend school by California law, described the appalling state of the facilities of these schools at which they spent numerous hours each day. The students described situations where thirty seats were available for sixty-five students, or where classroom instruction took place in rooms shared with other classes. In one school, a total of six filthy restroom stalls served to accommodate all the females at a 2000-person school. The school facilities were overcrowded and severely dilapidated. Plaintiffs recounted instances of vermin infestation, inadequate heating and cooling, leaking roofs, and filthy bathroom facilities.

The plaintiffs also stressed the lack of qualified teachers. The plaintiffs pointed out that, according to the California

124. Id. at 8-9.
125. Id. at 8.
126. Id.
127. See FAC, supra note 6, at 9.
128. See id. at 42.
129. Id.
130. Id. at 9.
131. CAL. EDUC. CODE § 48200 (Deering 2003) (setting forth that children in California are required to attend full-time education from age six to eighteen).
132. FAC, supra note 6, at 31.
133. Id. at 10.
134. Id. at 31.
135. See generally id.
Department of Education, in at least 100 of California's schools only fifty percent of teachers had full teaching credentials. Many of these schools had largely minority and/or poor student populations. Sadly, such findings occurred at a time when the Governor of California announced that having a "first-rate teacher for every classroom, in every school, in every neighborhood" is a "vital ingredient" to "regain[ing] [California's] former prominence."

On the basis of the dismal state of California public education, particularly for those economically disadvantaged or minority students, the plaintiffs in Williams asserted violations of the equal protection and education clauses of the California Constitution. The right to equal protection asserted in the California Constitution requires that “[a] person . . . not be . . . denied equal protection of the laws” and that “[a] citizen or class of citizens . . . not be granted privileges or immunities not granted on the same terms to all citizens.” Furthermore, the California Constitution mandates that “[a]ll laws of a general nature have uniform operation.” Since California’s jurisprudence expressly recognized wealth as a suspect class and education as a fundamental interest, the plaintiffs brought their claim asserting that the stark disparities between public schools within the state, with a disproportionate number of minorities attending substandard schools, “offend[] the core
Interestingly, like many other advocates around the country in prior years, the Williams plaintiffs also argued that education is a right granted under the State constitution. The plaintiffs pointed to two education clauses of the California Constitution as the basis of their claim: article IX, sections 1 and 5. Article IX, section 1 states that “[a] general diffusion of knowledge and intelligence” is “essential to the preservation of the rights and liberties of the people.” Additionally, this section mandates that the “Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.” Section 5 mandates that the “Legislature shall provide for a system of common schools by which a free school shall be kept up and supported . . . .” Although claims in California generally have been based on the equal protection clauses as in the Serrano case, the California Supreme Court had never concluded that a fundamental right to education did not exist. Thus, the plaintiffs urged that the two clauses read together created an actionable right to education.

The plaintiffs relied on various California court decisions to bolster their contention. In particular, the plaintiffs cited a court of appeals decision, Slayton v. Pomona Unified School District, that specifically stated that “California has extended the right to an education by virtue of two constitutional provisions, one calling for legislative encouragement of education and the other requiring the [L]egislature to create a system of ‘free schools’ in each

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146. See FAC, supra note 6, at 11.
147. Id. at 70.
148. CAL. CONST. art IX, § 1.
149. Id.
150. Id.
151. CAL. CONST. art. IX, § 5.
153. See Opposition, supra note 152, at 2.
district of the state.\textsuperscript{155} Additionally, the plaintiffs juxtaposed the California Constitution with the constitutions of four other states that had very similar education clauses and under which the respective states found an actionable right to education.\textsuperscript{156}

Nevertheless, the court rejected the argument under the education clauses, holding that the clauses under article IX were not self-executing.\textsuperscript{157} Further, the court pointed out that the violation alleged by the plaintiffs was not that \textit{particular schools} were not providing adequate learning tools, but rather that the State had violated its duty of oversight and management of the public school system.\textsuperscript{158} Thus, although the court did make the determination that sections one and five are not self-executing but rather "directed on their faces to legislative action,"\textsuperscript{159} arguably a large part of its decision to dismiss the cause of action under the education clauses was based on the litigation strategy of the plaintiffs.\textsuperscript{160} Given that the case later settled, however, the validity of the plaintiffs' claim under the education clauses was not adjudicated by the California Supreme Court, and as of 2006, leaves a possible entrée for future litigation under these clauses.\textsuperscript{161} As discussed below, this avenue for litigation could prove to be a particularly helpful vehicle to integrate international human rights norms into education policy.

2. \textit{The Settlement of Williams v. California}

On August 13, 2004, over four years after the initial suit was filed, the parties to \textit{Williams v. California} announced a

\textsuperscript{155} Opposition, supra note 152, at 2.
\textsuperscript{156} See \textit{id.} at 8-9. The comparable education clauses were drawn from the state constitutions of New York, North Carolina, South Carolina and Tennessee.
\textit{Id.}
\textsuperscript{158} Order, supra note 157, at 1-2.
\textsuperscript{159} \textit{See id.} at 3.
\textsuperscript{160} \textit{See id.} at 2; see also Lockard, supra note 12.
\textsuperscript{161} See \textit{generally} Order, supra note 157; see also Lockard, supra note 12, at 414; Trifiletti, supra note 2.
Settlement Agreement. On September 29, 2004, Governor Schwarzenegger signed into law five bills implementing the legislative proposal of the Settlement Agreement. The settlement legislation includes Assembly Bill 1550, which sets forth a scheduling scheme to phase out “Track 6” year-round schools by the year 2012. Such a system results in a disjointed, off-and-on academic year that deprives students of over a full year of school instruction by the time he or she graduates from high school.

The settlement legislation also addresses the issue of teachers in Assembly Bill 3001, which generally seeks to develop the existing mechanism to establish that teachers are qualified to teach the courses they are instructing, including those assigned to teach English learners. It also encourages hiring of qualified teachers in low-performing schools and effectuates an efficient system that allows qualified teachers from out-of-state access to jobs in California public schools.

In addition, Senate Bill 550 and Assembly Bill 2727 generally include standards for minimally adequate instructional materials, school facilities, and teacher quality. Importantly, the bills in part established a “uniform complaint” system to provide a method of reporting a school’s failure to meet these standards as part of a more comprehensive monitoring scheme. Specifically, Senate

164. Id. at Exhibit A, at 2. “Track 6” year-round schools are designed to address overcrowding in schools by putting groups of students on rotating block schedules throughout the year, instead of attending classes continuously for a nine-month term. See EXPERT REPORT, supra note 10, at 10.
165. EXPERT REPORT, supra note 10, at 47 (“[O]ver the course of a 12-year public education, the loss of 17 instructional days a year results in the loss of 204 instructional days – significantly more than an entire school year.”).
166. See Order Regarding Approval, supra note 163, at Exhibit A, at 2-3.
167. Id. at Exhibit A, at 2.
168. Id.
Bill 550, as amended by Assembly Bill 831, requires that "each pupil, including English learners, has a standards-aligned textbook or instructional materials, or both, to use in class and to take home." The settlement legislation specially set aside $138 million for new instructional materials in addition to regular funding for students at schools ranked by the Academic Performance Index (API) to be in the bottom three deciles. Further, Senate Bill 6 provides for $800 million to address problems with poor facilities and $25 million proportioned to the bottom three deciles under the API for facility needs. Under the legislation, as amended by Senate Bill 607 effective January 1, 2007, schools must be in "good repair," defined as requiring that "the facility is maintained in a manner that assures that it is clean, safe, and functional." Despite the immediate benefits listed above and other unmentioned benefits of the legislation, its reach is limited in scope and sustainability.

III. PROBLEM: SHORT-TERM SOLUTION

A look at the extremely unacceptable conditions of many of California's schools, attended by a disproportionate number of minority and impoverished children, confirms that the general aims of Serrano, no doubt affected by subsequent legislation, are not presently met. The litigation in Williams ended with a settlement replete with mandatory measures promulgated to provide an "equal educational opportunity" for all students. However, even with the legislative measures taken to employ the Settlement Agreement of Williams, once the grant to low-income schools is spent and the bare minimum level of texts, teachers, and safe buildings provided,

172. Order Regarding Approval, supra note 163, at Exhibit A, at 3; see also ALLEN, supra note 11, at 10.
what will be the residual effect of the settlement? Will it appear to an outsider that California's children have "equal educational opportunities?" More importantly, will insiders actually realize "equal educational opportunities?"

There is no doubt that extra money and resources are necessary and welcome. The legislation under the settlement aimed at bolstering transparency through monitoring is particularly beneficial and promises long-term benefits.\textsuperscript{175} It is unsettling, however, that only selected variables—admittedly important for meaningful education—are addressed. The \textit{Williams} legislation's focus on specific inputs as limited indicators of "education," may in effect ignore a broader range of tools necessary to achieve equal or even adequate education. Without government measures that more comprehensively and deliberately address, through legislation and/or judicial interpretation, whether or not all students have access to a meaningful education, only time will tell how effective this legislation will be at providing an equal education to \textit{all} of California's children.

IV. ANALYSIS: HOW HUMAN RIGHTS INSTRUMENTS CAN HELP

Equalization of funding, supplemental aid, and grants are various ways to try to solve complex socioeconomic issues by writing a check. Although money is the necessary fuel of any policy implementation, the goal of education policy should remain centered on providing a child with an "education," rather than merely on spending enough, spending equally, or even providing \textit{certain} educational inputs. A \textit{quality} education should be assessed qualitatively, not quantitatively.\textsuperscript{176} Mere resource equalization, even if successful, may further result in "equally bad" public

\textsuperscript{175} See Koski, \textit{supra} note 2.

\textsuperscript{176} The National Economic and Social Rights Initiative has emphasized the qualitative nature of a rights-based approach in that it states that a "human right to education guarantees every child access to quality schools and services without discrimination . . . [and] must be aimed at developing each child's personality and abilities to his or her fullest potential . . ." National Economic & Social Rights Initiative, Human Right to Education Info Sheet no.1, http://nesri.org/fact_sheets_pubs/Right%20to%20Education.pdf (last visited Feb. 13, 2008). The National Economic and Social Rights Initiative further contends that inequities in education, opportunity, and resources reflect "systemic violations of the right to a quality education." \textit{Id.}
education\textsuperscript{177} and this problem is even more pronounced if, as some believe, children with access to additional funds opt to attend private schools.\textsuperscript{178} Subsection A will first discuss the benefits of using human rights concepts in California's education finance policy.\textsuperscript{179} Subsequently, subsection B will examine the shortcomings of the Williams legislation and will discuss how a human rights focus may better frame the problem and ultimately lead to a more effective and lasting solution.\textsuperscript{180}

A. Human Right to Education

The remedy for infringement on a human right to education is not limited to the provision of resources, but is more holistic. Particularly, under the ICESCR, and as mentioned above,\textsuperscript{181} there are four "essential features" of education: availability, accessibility, acceptability, and adaptability.\textsuperscript{182} The availability feature requires that there be enough educational facilities and course offerings for students.\textsuperscript{183} The accessibility aspect mandates that facilities and courses be offered to all and be accessible physically, economically, and without discrimination.\textsuperscript{184} The acceptability feature generally requires that the substance of education be acceptable to the student, subject to State-developed minimum educational standards.\textsuperscript{185} Finally, the adaptability characteristic entails education that is flexible and based on student needs in various settings.\textsuperscript{186} In aiming to protect a right to education, these "essential features" and other norms will likely come closer to achieving long-term, meaningful education than will measures taken to equalize funding or to provide selected inputs some believe to be representative of student education.

Although the adequacy approach taken in other U.S.

\textsuperscript{177} See Fischel, supra note 103, at 613.
\textsuperscript{178} Race, Economics, and Education Workshop, Class Discussion, Santa Clara University School of Law (Fall 2006).
\textsuperscript{179} See infra Part IV.A.
\textsuperscript{180} See infra Part IV.B.
\textsuperscript{181} See infra Part II.A.
\textsuperscript{182} See The Right to Education, supra note 21, ¶ 6(a)-(d).
\textsuperscript{183} Id. at ¶ 6(a).
\textsuperscript{184} Id. at ¶ 6(b).
\textsuperscript{185} Id. at ¶ 6(c).
\textsuperscript{186} Id. at ¶ 6(d).
jurisdictions may provide a promising opportunity to integrate human rights norms through constitutional construction and legislation to comport with "adequacy" requirements,\textsuperscript{187} the California Supreme Court has not, as of 2006, decided if there is an actionable right to adequate education under the California Constitution's education clauses.\textsuperscript{188} However, despite the absence of legal precedent under an adequacy theory, education rights advocates can look to local implementation of education policy based on human rights concepts to address issues of educational quality, equal education opportunity, and overcrowding. These issues are those that arguably the Williams legislation does not adequately address. Moreover, use of concepts from such international instruments locally can lay the foundation for more systemic changes to California's school finance policy at a state level.

B. Shortcomings of the Williams Legislation and Use of the CRC and the ICESCR

1. Instructional Resources and Facilities

The Williams settlement focuses on transparency and, in large part, the provision of resources.\textsuperscript{189} Senate Bill 550 requires that "each pupil, including English learners, has a standards-aligned textbook or instruction materials, or both, to use in class and to take home."\textsuperscript{190} Furthermore, the legislation sets up an accountability system to enforce the standards, repeals a sunset clause of annual budget funding for instructional materials, and allots $138 million for the provision of instructional materials in schools that, in 2003, ranked in the bottom two deciles on the Academic

\textsuperscript{187} Importantly, if children are found to be entitled to an adequate education under the education clauses of the California Constitution, it will be up to both California's courts to determine how "adequate" is defined through constitutional construction, and California's lawmakers to effectuate a plan to achieve such adequacy. It is at this policy-making stage that the adoption of international human rights norms can play a particularly forceful role in the future of education for California's children.

\textsuperscript{188} See generally Order, supra note 157; see also Lockard, supra note 12, at 414; Trifiletti, supra note 2.

\textsuperscript{189} See Koski, supra note 2.

\textsuperscript{190} See ALLEN, supra note 11.
Performance Index (API).\textsuperscript{191} The legislation also addresses school facilities.\textsuperscript{192} The legislation defines the standard of "good repair" as when "the facility is maintained in a manner that assures that it is clean, safe, and functional."\textsuperscript{193} Additionally, the Williams legislation provides an $800 million fund for facility repair where conditions present serious health and safety concerns and $25 million to assess the facilities needs of decile 1-3 schools.\textsuperscript{194}

Although access to education materials and facilities that are in "good repair" is essential to a child's education, more must be demanded. Access to books does not necessarily guarantee equal education in the state or a quality education for every child. Even in conjunction with instructional materials, the provision of a minimally adequate facility for children while in school does not in and of itself render the goals of education fulfilled. Thus, despite norms pertaining to books, teachers, and buildings and the settlement's funding allotments,\textsuperscript{195} which may, however, be offset by other budget cuts,\textsuperscript{196} the settlement stops short of assuring all students a meaningful education.

Human rights norms, like those asserted in the ICESCR and the CRC, will provide a more lasting, holistic framework for achieving educational opportunity by focusing on the development of the child's capabilities.\textsuperscript{197} Human rights norms would require further effort, beyond a provision of selected basic resources and allocation of funds, when the goal of providing a meaningful education demands it. For example, under the ICESCR, education policy should aim to fully develop the human personality.\textsuperscript{198} The CRC specifies that education should be aimed at developing the "child's personality" and developing the full potential of his or her

\textsuperscript{191} Id. at 10-14.
\textsuperscript{192} See id.
\textsuperscript{193} Id. at 20.
\textsuperscript{194} Id. at 10-11.
\textsuperscript{196} See Lockard, supra note 12, at 413 ("The settlement benefits are also offset by losses of other funding that education advocates claim they are owed under Proposition 98 and a deal reached with Governor Schwarzenegger in 2004.").
\textsuperscript{197} See The Aims of Education, supra note 8.
\textsuperscript{198} See ICESCR, supra note 32.
\textsuperscript{199} See CRC, supra note 44, at 54.
“talents and mental and physical abilities.” The focus under the international framework is appropriately on the child’s individual right to the development that education permits.

Resources should be only the means to realize educational opportunity for all children, not the end. Under the CRC, education “goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children . . . to develop their personalities, talents and abilities and to live a full and satisfying life within society.” The Williams settlement stresses the importance of providing textbooks, safe facilities, and qualified teachers, however, the CRC requires accessibility to the means of acquiring education and the development of “critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life.” Additionally, under the ICESCR “adaptability” feature, “education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.” Although the Williams legislation provides for select basic tools, there is no way of knowing for sure that those selected resources will be essential, or even helpful, in an increasingly hi-tech, computerized, and global world. Thus, policy born from a human rights approach would not only look to the inputs provided, but would require evaluating the quality of the education in a more nuanced, specific, and comprehensive manner.

2. Overcrowding

The Williams settlement does not do enough to cure overcrowding. Although Assembly Bill 1550 requires the phasing out of Concept 6 year-round schooling by 2012, the overcrowding problems in non-Concept 6 schools may still persist. Specifically, the Concept 6 multi-track system is a year-round school calendar that consists of “three tracks

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200. Id.
201. See The Aims of Education, supra note 8, ¶ 2.
202. See supra Part II.D.2.
204. See The Right to Education, supra note 21, ¶ 6(d).
[that] rotate throughout the school year, with two tracks in session at any given time and a third on vacation. General multi-track systems are implemented as a response to overcrowding in order to provide additional capacity. The Concept 6 school calendar differs from other multi-track school calendar systems in that it provides for the maximum amount of capacity. As a consequence of this "maximum capacity" plan, students who attend such schools over the course of their twelve-year schooling will be deprived of over a year of school.

Although the Assembly Bill requires schools using the Concept 6 calendar to develop a plan to phase out its use by 2012, it specifically upholds other multi-track calendar schemes that may not reduce overcrowding and may even result in more overcrowding. This problem is especially alarming for a child's prospects of obtaining education when an expert report for the plaintiffs in Williams indicated that overcrowding "negatively affects many classroom activities, instructional strategies, and academic performance."

Under the ICESCR framework, a child's right to education includes "availability." Under the framework, "functioning educational institutions . . . have to be available in sufficient quantity within the jurisdiction." Thus, arguably, a child's right to education demands that he or she not be forced to attend school on the piecemeal basis that the multi-track system offers because there is not enough "availability" to attend school on a regular calendar. The human rights norm that education be "available in sufficient quantity" could be used in California to mandate that having an overcrowded classroom, even short of the extreme situations in Williams, is unacceptable.

206. See EXPERT REPORT, supra note 10, at 10.
207. See id. at 2.
208. Id. at 11-12.
209. Id. at 47.
211. See EXPERT REPORT, supra note 10, at 16.
212. See id. at 17.
213. Id.
214. The Right to Education, supra note 21, ¶ 6(a).
215. Id. (emphasis added).
216. See FAC, supra note 6, at 31 (pointing out an instance where there were only thirty seats for sixty-five students).
Moreover, a broader human rights norm that demands that education be economically accessible to all without discrimination in law and fact\textsuperscript{217} could require additional monitoring of students attending overcrowded schools and additional focus on potential remedies for stark disparities inhibiting the realization of meaningful education for groups of students. The phasing out of the Concept 6 multi-track school year calendar is important; in 2006, the Los Angeles Unified School District had already proposed a plan to construct new schools and thereafter was required to submit annual reports of its progress.\textsuperscript{218} Yet, more must be done for the students who will still attend overcrowded schools that have not utilized Concept 6 programs.

V. PROPOSAL AND IMPLEMENTATION: LOCAL LAW AND POLICYMAKING GUIDELINES

Although only the Federal Government has the authority to sign treaties,\textsuperscript{219} general human rights norms embodied within the unratified CRC and ICESCR can be implemented locally. There are two important examples of local legislation that serve as valuable resources in drafting education legislation that integrate international human rights norms. First, San Francisco implemented the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) by way of city ordinance in 1998.\textsuperscript{220} Second, the New York City Human Rights Initiative has proposed, but not yet enacted, legislation that combines human rights principles from CEDAW and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) to further augment its anti-discrimination laws.\textsuperscript{221} These two examples will be particularly helpful guides in drafting local legislation in California based on concepts from both the CRC and ICESCR.

Not only are there examples from which to draw

\textsuperscript{217} The Right to Education, supra note 21, ¶ 6 (emphasis added).
\textsuperscript{218} See Order Regarding Approval, supra note 163, at Exhibit A, at 3; see also ALLEN, supra note 11, at 30.
\textsuperscript{219} U.S. CONST. art. II, § 2, cl. 2.
technical guidance in incorporating human rights policy, there are two important benefits to implementing legislation that combines the human rights principles of the CRC and ICESCR on a local level: the possibility of an immediate, positive effect on public education and its potential long-term impact on education policy. First, local adoption of concepts from the CRC and ICESCR via city ordinances arguably would be an effective tool in large, economically diverse cities. It would allow for a more comprehensive focus on whether children are actually being educated in the varying schools in the jurisdiction. Local policy constructed using concepts from international human rights treaties could also be supported by a "reporting mechanism – monitoring committee model." This model would be in addition to the other monitoring mechanisms of the Williams legislation. For example, under both the San Francisco ordinance and the proposed New York City legislation, city departments are required to undertake a human rights analysis, participate in human rights training, and establish a task force to identify and redress areas of discrimination. Likewise, in an education context, a local ordinance that combines the educational articles from the ICESCR and CRC could require a city to undertake educational analysis focusing on the human rights aims, participate in human rights training with respect to education, and establish a task force. Importantly, the task force, aided by the accountability systems already in place, would identify schools within its city limits that are failing to afford a quality education—not just particular specified inputs—to students. Furthermore, the cities would then be required to develop action plans to redress the failure of local schools to provide a quality education.

Second, local implementation of the human rights framework with respect to education may also powerfully influence policymaking at a state level. Due to the fairly centralized nature of California's general school financing

222. Cohen, supra note 45, at 1452.
223. See generally Koski, supra note 2.
system, implementation at a state level would be an important goal to which local advocates should aspire for the most effective, far-reaching results. The more local bodies adopt measures framing education as a human right, the more future legislative efforts can rest on grassroots support and/or models of effective policy. Further, if adequate education is deemed to be an actionable right under the California Constitution, widespread local adoption of human rights norms may serve as a forceful reference when constructing legislation to effectuate appropriate education policy that respects such a right.

Local use of human rights policy, however, should not be seen as useful only as a springboard for state adoption. Even without adoption at a state level, there are benefits to purely local policy, such as greater accountability and greater access to a local administrator, which will serve to ameliorate some present disappointments. Especially in larger, diverse cities, local law that recognizes education as a human right and affirmatively requires identification and redress of problem schools can be beneficial for children presently facing inadequate education within city boundaries. Thus, given the direct approach of the human rights norms in the CRC and ICESCR and the treaties' focus on the provision of education, California should look to these human rights instruments in developing an effective and enduring education policy.

VI. CONCLUSION

Over thirty years after the California Supreme Court began the State's journey towards creating equal educational opportunities using the tool of school financing, vast discrepancies still remain. The Williams Complaint and subsequent settlement illustrate this gross disparity. Importantly, however, it brings into light the deeply embedded socioeconomic issues present in unequal public education—issues that school finance policy since Serrano I has not sufficiently addressed and specific resource standards


226. See Trifiletti, supra note 2, at 1000.
and grants will likely fail to reach in the future. If education in California truly is a "fundamental interest," the state and local government should ensure that California's children are actually being educated. Such a task requires an action plan that addresses peripheral concerns and obstacles to obtaining such education. It demands that the focus of education policy be on providing education and that it not be limited by the restricted reach of resource distribution. A multi-dimensional problem calls for a multi-dimensional solution.

The international framework under the ICESCR and CRC obliges policymakers and communities to focus on providing a system that allows all children, without economic discrimination, to gain ongoing access to the quality education necessary to develop their full potential. Although the Williams settlement is surely a victory for California's children, its major focus on textbooks, facilities, and other input-based measures fails to sufficiently and thoroughly address unequal educational opportunities. By relying on proxies of equal funding and provision of resources to determine whether children are afforded equal educational opportunities, California loses sight of the principal goal: All children should have available, accessible, acceptable, and adaptable education. Recognition of human rights concepts in education policy would shift the focus from the proxy to the principal goal and require the government to work directly on effective, comprehensive, and long-term solutions to the varying problems that stand in the way of a child's access to quality education.

228. See infra Part II.A-B.
229. See Lockard, supra note 12, at 412.
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