

CONCEPTUAL STUDY

Are California's Charter Schools the New Separate-But-Equal "Schools of Excellence," or Are They Worse Than *Plessy*?

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Introduction

In *Plessy v. Ferguson* (1896), the Supreme Court ruled that the separate-but-equal doctrine did not violate the Equal Protection Clause. However, with respect to education, the term "separate-but-equal" was a misnomer: Southern school districts provided segregated education and unequal funding to those schools that were educating black children (Green, Baker, & Oluwole, 2008; Margo, 1985). Still, despite these shortcomings, there were several examples of "schools of excellence" during the separate-but-equal era (Joyner, 2013, p. 162; Jones, 1981; Jones, 1982; Siddle Walker, 1996; Sowell, 1976). These schools were characterized by: (a) high-quality teachers and administrators; (b) educators who were determined to prepare students for the racism they would face as adults in a segregated society; (c) a stern but caring educational environment; and (d) a partnership with their communities to overcome the deprivations caused by the unequal funding (Jones, 1981; Joyner, 2013; Siddle Walker 1996; Sowell, 1974; Sowell, 1976).

Black and Latino public-school students in California are presently experiencing segregated and unequal education similar to the conditions experienced in the separate-but-equal era (Oakes & Lipton, 2004; Orfield & Ee, 2014). Some of their parents have responded to this predicament by enrolling their children in charter schools (Gross, 2017; Koran 2016; Koran, 2017; Tillotson, 2016). Charter schools are often defined "as public schools that are given considerable latitude from state rules and regulations that apply to traditional public schools while being held accountable for student achievement" (Green, Baker, Oluwole, & Mead, 2015, p. 783).

Charter schools provide California's black and Latino communities the opportunity to create modern separate-but-equal schools of excellence.

However, they also pose a danger. Outside entities that prioritize financial gain are also seeking to offer charter schools to black and Latino communities. Unfettered charter school expansion spearheaded by these groups could further drain educational resources, thus creating a situation that would be even worse than *Plessy*.

Section I: The Separate-but-Equal Doctrine

The Supreme Court ruled in *Plessy v. Ferguson* (1896) that a state law requiring separate-but-equal passenger train coaches for blacks and whites did not violate the Equal Protection Clause. Although states had the prerogative to separate the races, the Court maintained that they were constitutionally obligated to provide equality. However, in *Cumming v. Richmond County Board of Education* (1899), the Court ruled that the closing of the county's one black school while maintaining the school that white school children attended did not violate the separate-but-equal doctrine.

As the *Cumming* case suggests, the term "separate-but-equal" was inaccurate with respect to black schools. Southern states failed to provide equal resources to these schools after the *Plessy* and *Cumming* decisions (Green, Baker, & Oluwole, 2008; Margo, 1985). Table 1 presents an example of this disparity. This table provides estimates of black and white expenditures on per-pupil teacher salaries in average daily attendance (in 1890 dollars). As this table shows, between 1890 and 1910, blacks experienced a decrease in per-pupil expenditures and lost ground relative to whites in the length of the school year.

State	WEXP	BEXP	Ratio	WLT	BLT	Ratio
Alabama						
1890	3.14	3.10	1.01	70.4	75.1	0.94
1910	10.07	2.69	3.74	131.3	97.3	1.35
Florida						
1890	9.42	4.63	2.03	99.7	99.8	0.99
1910	11.58	3.11	3.72	112.4	90.8	1.24
Louisiana						
1890	5.85	2.92	2.00	86.8	89.5	0.97
1910	11.54	2.07	5.57	153.1	75.1	2.04
N. Carolina						
1890	2.71	2.74	0.99	60.5	62.6	0.97
1910	5.20	2.52	2.06	107.0	96.0	1.11
Virginia						
1890	7.08	4.93	1.44	115.1	123.7	0.93
1910	11.59	4.10	2.83	139.1	123.8	1.12

Source: Margo (1985, p. 9).

Note: Figures are weighted averages of county data. Weight = Average daily attendance in county/Total average daily attendance in state. Price index used to deflate expenditures is Burgess Consumer Index.

a. 1893-94 school year.

WEXP: expenditures on teacher salaries in white schools, per pupil in average daily attendance (1890 dollars).

BEXP: expenditures on teacher salaries in black schools, per pupil in average daily attendance (1890 dollars).

WLT: length of school year in days, white schools.

BLT: length of school year in days, black schools.

Southern states used a variety of strategies to create this inequality. At the beginning of the twentieth century, state aid was usually distributed to counties according to their total school population. County and school boards were then given complete discretion to disburse this aid to school districts. These boards used this discretion to fund black schools in an inequitable fashion (Bond, 1934; Harlan, 1968). For example, in 1896, a South Carolina statute declared that state funds to each district be distributed by a school's board of trustees. Harlan (1968) observed that this law

gave considerable latitude to district trustees, and the "judgment" of the white trustees of black counties – those with Negro majorities – was not color-blind. Acting "for the best interests of the school district," they gave the white schools a large and increasing proportion of the district's share of the county school fund. The same "judgment" prompted them to use their Negro numbers to get their district a large and increasing proportion of the school funds of the county (p. 175).

Southern states also created racial funding inequity by using dual salary schedules, which explicitly paid black teachers less than whites (Baker, 1995). In the mid-1930s, the average black teacher earned 61% of the average white teacher (Baker, 1995). Although school authorities justified dual salary schedules on the ground that black teachers were not as well trained as white teachers, wage discrimination accounted for 80% of the salary difference between these racial groups (Baker, 1995).

For Latino students attending schools in the Southwest, separate-but-equal education came in the form of "Mexican schools" and segregated classrooms within white schools (Alvarez, 1986; Salinas, 2005; Valencia, 2005; Valencia, 2010). School officials not only justified this segregation because of their English deficiencies, but also because: (a) Latinos needed to be "Americanized" before being educated with white children; and (b) integration would impede the progress of white students (Alvarez, 1986). As was the case with black schools, segregated Mexican schools also received unequal resources. Valencia (2010) summarized several studies documenting the inferior conditions of Mexican schools. One such study contrasted the Mexican and white schools for Santa Paula, California that were built in the mid-1920s:

The Mexican school enrolled nearly 1,000 students in a schoolhouse with eight classrooms (grades K-8) and contained two bathrooms and one administrative office. On the other hand, the Anglo school enrolled seven hundred students and contained twenty-one classrooms, a cafeteria, a training shop, and several administrative offices. In short, the Mexican school had a much higher student- per-classroom ratio and inferior facilities than the Anglo school (pp. 9-10).

Just like their black counterparts, Latino families challenged the separate-but-equal doctrine in the courts. In *Romo v. Laird* (1925), for example, a Mexican-American rancher who lived near Phoenix, Arizona sued to have his children attend a school designated for white children instead of the local Mexican school. The rancher claimed that Mexican school was inferior because it did not have certified teachers. Applying the separate-but-equal doctrine, the court agreed with the rancher and ordered his children to be enrolled in the white school (*Romo v. Laird*, 1925). However, this decision did not result in full-fledged desegregation of the students in the school because the school board responded by hiring certified teachers for the Latino school. In fact, the school board continued to segregate Latino children until the 1950s (Muñoz, 2001).

In *Alvarez v. Owen* (1931), a case popularly known as the Lemon Grove incident, Latino immigrants living in San Diego successfully challenged the implementation of the separate-but-equal doctrine. Prior to the incident, Mexican-American students had attended the elementary school in the Lemon Grove school district along with white students. In January 1931, the school's principal refused to allow the Mexican-American children to enter into the white school. Instead, he directed the children to a two-room building constructed to educate them. The parents organized a boycott because of the poor condition of the school, which they dubbed "La Caballeriza" (the barnyard) (Alvarez, 1986). The court ruled in favor of the children on the ground that state law did not permit the segregation of Mexican-American children.

By contrast, in *Independent School District v. Salvatierra* (1930-1931), a Texas court upheld a school district's segregation of Latino students in a Mexican school. Although the court agreed that the district could segregate the students "merely or solely because they were Mexican," the court upheld the segregation because of the students' language deficiencies (*Independent School District v. Salvatierra*, 1930). The Supreme Court refused to hear the case on appeal (*Independent School District v. Salvatierra*, 1931).

Section II: Black and Latino Education in California: Separate and Unequal

California's black and Latino students are experiencing an education similar to that provided during the separate-but-equal era. In *Westminster School District of Orange County v. Mendez* (1947), seven years before *Brown v. Board of Education of Topeka, Kansas* (1954), the United States Court of Appeal for the Ninth Circuit ruled that the education of Mexican American children in Mexican schools violated the Equal Protection Clause. *Mendez* had little impact on the segregation of Latino students because it only addressed the segregation of students who lived in the attendance areas of white schools. *Mendez* did not apply to "the rapid spread of de facto segregated Latino schools that were mushrooming as the Mexican American community" (Orfield & Ee, 2014, p. 11). The *Brown* decision also had little impact on school segregation in the state because it applied only to those states with laws requiring the segregation of black students (Orfield & Ee, 2014). The impact of *Brown* did not reach California until the 1970s when the Supreme Court applied its holding to Latinos in *Keyes v. School District No. 1, Denver* (1973). *Keyes* was still not significantly implemented because

of opposition from President Richard Nixon and Ronald Reagan, who was the governor of California at the time (Orfield & Ee, 2014).

For a time, California's attorneys were more successful in state courts because of a state supreme court decision ruling that segregation violated the state constitution (Orfield & Ee, 2014). During the 1960s and 1970s, a few school districts implemented their own voluntary desegregation plans (Orfield & Ee, 2014). However, in 1979, the state's voters put an end to efforts to desegregate public schools through state law by passing Proposition 1, a state constitutional amendment that placed no obligation on school boards to go beyond the requirements of the Equal Protection Clause of the Fourteenth Amendment (California Constitution article I, section 7).

Consequently, California's black and Latino students are presently attending public schools that are both racially segregated and poor. The typical Latino student in California attends a school that is 84% nonwhite; three-quarters of the student's classmates are poor (Orfield & Ee, 2014). Black students on average attend schools that have more than 2.5 times as many Latinos as blacks, "thus making them a minority within a school dominated by another disadvantaged group" (p. 4).

The plight of black and Latino students in California is also similar to the separate-but-equal era in that their schools are receiving unequal resources (Oakes & Lipton, 2004). In *Serrano v. Priest* (1977), the California Supreme Court held that the school finance system violated the state's constitution by relying too much on local property taxation. In 1978, the state's voters responded by passing Proposition 13, a constitutional amendment that dramatically limited the ability of school districts to raise taxation for education (Fischel, 1996). Among other things, Proposition 13 limited the property tax rate to 1% of the property's assessed value and restricted annual increases to 2%. The amendment also required a two-thirds majority vote for any new tax increases (California Constitution article XIII).

As a result of Proposition 13, the state assumed the responsibility of financing education (*Campaign for Quality Education v. California*, 2016). In *Williams v. California* (2004), the plaintiffs alleged that the state had failed to provide poor school districts serving black and Latino students with "basic educational necessities," such as qualified teachers, appropriate facilities, and adequate facilities. This lawsuit led to a nearly \$1 billion settlement in which the state was required to provide more funding for educational resources and facilities (*Williams v. California*, 2004).

In *Robles-Wong v. California* (2011), the plaintiffs claimed that California had failed to provide students a constitutionally adequate education as measured by state accountability standards. The plaintiffs alleged that the state's failure to satisfy its constitutional duties had an even greater impact on its black and Latino students. In 2008-09, 50% of the state's students were proficient in English/Language Arts; only 37% of California's black students, and 36% of Latinos achieved this level (Complaint for Declaratory and Injunctive Relief, 2010). While 46% of the state's students reached proficiency in math, only 30% of black students and 36% of Latinos were proficient (Complaint for Declaratory and Injunctive Relief, 2010). However, the state supreme court upheld an appellate court's holding that the state constitution did not guarantee a right to an education of "some quality" (*Campaign for Quality Education v. State*, 2016).

In 2013, the state Legislature addressed its highly inequitable funding system by enacting the Local Funding Control Formula (LCFF) (California Education Code § 42238.02, 2018). The LCFF provides a supplemental grant to districts based on their population of English learners and low-income students. The LCFF also provides a concentration grant to school districts with more than 55% of these students. When the LCFF is fully funded by the 2019 fiscal year, California will have increased K-12 funding by \$18 billion (Johnson & Tanner, 2018). Johnson and Tanner (2018) found that these increases in district revenue have had significant impacts. A \$1,000 increase in per-pupil revenue for grades 10-12 resulted in a 5.3% increase in high school graduation rates. Similarly, this \$1,000 increase in state revenue led to a 5.3% increase for black children and a 4.5% increase in Latino children. The authors of this study also found that a \$1,000 increase in per-pupil revenue resulted in particularly strong gains in mathematics achievement for low-income students. This latter finding is significant for black and Latino students because they tend to be educated in schools with high concentrations of poor students (Orfield & Ee, 2014).

Section III: Can California's Charter Schools Become the New "Separate-But-Equal" Schools of Excellence?

The previous section explained how California's black and Latino children have for generations attended public schools that are both segregated and unequal. By implementing the LCFF, the state might finally address the inequality issues experienced by these students. Charter schools have also been touted as

a vehicle for improving the education of the state's black and Latino students (Moreno, 2016; Tillotson, 2016). In 2017, there were 1,275 charter schools in the state educating about 630,000 students (California Charter Schools Association, n.d.). The racial composition of black and Latino students in charter schools appears to be similar, on average, to traditional public-school districts. According to the California Charter Schools Association (n.d.), black students made up 8% of the state's charter school enrollment and 5% of the state's traditional public-school enrollment in the 2016-17 school year. Latino students comprised 51% of the charter school population as compared to 55% in the state's traditional public-school districts (California Charter School Association, n.d.). A nationwide analysis of charter school segregation conducted by the Associated Press (AP) corroborates this finding. The AP found that the racial composition of California's charter schools reflected that of the state's traditional public schools (KPCC, 2017).

Hale (2017) argues that black support of charter schools has its roots in black people's struggle for quality schooling during the separate-but-equal era. He states that "[e]ducation history suggests that current privatization of charter-school laws allow for communities to gain control of public schools much like the civic leaders were forced to do during the era of segregation" (Hale, 2017). Black parents who are supporting charter schools are acting in a manner similar to the movement for community-controlled schools during the separate-but-equal era: they are seeking "a quality education through self-determination" (Hale, 2017). Many Latinos share a frustration with traditional public schools and see charter schools as a way to take control of their education (Yanar, 2016).

Charter schools might also enable black and Latino parents and communities to create successful schools that overcome the obstacles of segregation and funding inequality. In fact, scholars have identified several examples of black schools that achieved this feat during the separate-but-equal era (Joyner, 2013, p. 162; Jones, 1981; Jones, 1982; Siddle Walker, 1996; Sowell, 1976). For example, Sowell (1974) documented the case of Dunbar High School, an academically elite, all-black public high school in Washington, DC. During an 85-year period (1870-1955), most of the school's graduates went to college at a time when most Americans did not do so. Dunbar graduates attended such prestigious colleges as Harvard, Amherst, and Oberlin – many attaining academic honors. Dunbar attained this impressive record even though substantial numbers

of its students came from low-income backgrounds, and the school “was part of a segregated system, administered by whites at the top and perennially starved for funds” (p. 9).

Jones (1981, 1982) chronicled the success of another Dunbar High School, which was the only black public high school in Little Rock, Arkansas from 1930 to 1955. She estimated that 30% of the school’s graduates earned bachelor’s degrees in the early 1950s. By contrast, according to the 1960 U.S. Census – which would have included Dunbar’s last graduating class – only 4.1% of blacks and 11.9% of whites had earned a four-year college degree (Jones, 1982).

These separate-but-equal schools of excellence had several defining characteristics. First, they had high-quality teachers and administrators (Joyner, 2013; Siddle Walker, 1996; Sowell, 1976). Because of segregation, there were few options for black professionals. As a result, these schools attracted administrators and teachers from prestigious schools like Amherst, Columbia, Dartmouth, and Harvard (Joyner, 2013; Siddle Walker, 1996; Sowell, 1976). Second, the teachers and administrators of these schools viewed their role as doing more than merely imparting subject matter. They also assumed the responsibility of preparing students for the racism and discrimination that they would experience as adults in a segregated society (Joyner, 2013; Siddle Walker, 1996).

Third, the schools’ educators created a strict but caring learning environment for their students (Siddle Walker, 1996; Sowell, 1976). They were strict disciplinarians who made sure that students stayed focused on the task of learning. This approach was necessary because of the large class sizes. However, teachers took the time to check in with students who were disengaged to make sure they developed a positive attitude toward learning (Siddle Walker, 1996). Teachers and administrators also made themselves available outside of class (Jones, 1981; Siddle Walker, 1996). For instance, they provided counseling when students had problems at home (Jones, 1981; Siddle Walker, 1996). Teachers and administrators drove students to cultural events and helped them develop an interest in community involvement (Jones, 1981; Siddle Walker, 1996; Sowell, 1976). They even provided clothing and money to poor students who were short on money for lunch or supplies and worked to get students scholarships to attend college (Siddle Walker, 1996; Sowell, 1976).

Finally, these schools and their communities had a shared sense of duty between the school and the community. This communal spirit usually came in

the form of fundraising. Fundraising was necessary because there would be no schools, facilities, books, or other materials in its absence (Anderson, 1988; Siddle Walker, 1996; Sowell, 1976). Teachers and administrators worked primarily with parent teacher associations (PTAs) to meet the resource needs of these schools (Joyner, 2013; Siddle Walker, 1996).

Charter schools might provide black and Latino parents, community members, and educators a mechanism through which they can work together to recreate the exemplary schools of the separate-but-equal era. In California, the West Oakland Community School (WOCS) shows how this process could work. This Afrocentric school, which opened in 1999, focused on college preparation, community building, and leadership development (Stuhlberg, 2015). The founding group for this school – which was almost entirely black – consisted of teachers, administrators, youth program founders, researchers, parents and community advocates (Stuhlberg, 2015). Tillotson (2016), one of the founders of the school captured the shared educational commitment of the school’s creators in the following quote:

These were a bunch of Black folks and some honorary Black folks sitting around tables in West Oakland trying to figure out how we can save our kids in the face of a system that was failing them (Tillotson, 2016).

Section IV: How Might California’s Charter Schools Create an Educational Environment That Is Worse Than Plessy?

Although charter schools provide California’s black and Latino communities the opportunity to create new separate-but-equal schools of excellence, they also have the potential of creating an educational environment for these communities that would be even worse than *Plessy*. During the separate-but-equal era, schools and communities worked together to provide an education to their students. By contrast, outside entities are now seeking to authorize or operate charter schools in California’s black and Latino communities. Some of these entities place financial gain above providing a quality education. If these outside organizations are allowed to develop charter schools without any restrictions, they may create a parallel system of schools that drain the resources from the traditional public-school systems that serve black and Latino communities – which are already underfunded (Black, 2017).

In 2017, the California Supreme Court appeared to close one route that outside entities used to establish

charter schools in black and Latino communities at the expense of their traditional public-school systems: resource centers for non-classroom based independent study programs (*Anderson Union High School District v. Shasta Secondary Home School*, 2016-2017). In 2016, there were more than 275 such charter schools throughout the state; 46% of their students were black or Latino (Magee, 2016). These schools were frequently located in “office buildings, strip malls, and even former liquor stores” (Strauss, 2016a). Urban districts objected to the proliferation of resource centers in their borders because they made it difficult for district administrators to plan and budget (Deerfield, 2017).

Rural school districts fueled the growth of these resource centers to generate revenue for themselves from the authorization fees, even though the students were not in the authorizers’ districts (Strauss, 2016b). In turn, these authorizers hired education management organizations (EMOs), which are nonprofit or for-profit entities that provide educational services to charter schools, to manage these resource centers (Strauss, 2016a). The authorizers and the EMOs often did a poor job managing these charter schools. Desert Sands Charter School, a resource center with an enrollment of 2,000 students, is an example. The graduation rate of this almost all-Latino school was abysmal. In 2015, the four-year graduation rate of this school was only 11.5%. Even worse, more than 42% of the students who should have graduated that year completely dropped out of school (Strauss, 2016b). In 2016, a state appellate court ruled that the establishment of resource centers outside of the boundaries of the authorizing district violated the charter school law – a decision which the state supreme court declined to review (*Anderson Union High School District v. Shasta Secondary Home District*, 2016-2017).

EMOs are also engaging in another scheme – which is legal – that might deleteriously impact the resources available to the traditional public-school districts that educate black and Latino school children: the use of public funding to purchase charter school buildings (Lafer, 2017). Thus far, charter schools have received more than \$2.5 billion in tax dollars and subsidies to lease, build, or buy school buildings through the Charter School Facility Grant Program. This program permits charter schools to be reimbursed up to 75% for facilities (4 California Code of Regulations § 10170.4(d), 2018; Lafer, 2017). Charter schools qualify for this grant if at least 55% of the school’s student body qualifies for free or reduced-price meals (4 California Code of Regulations § 10170.3(d), 2018).

The charter school facilities financing program could negatively impact the education that EMOs provide for their students. This concern arises from the concern that EMOs and their related entities can enter into leasing agreements with their charter schools, which are paid through public funds (Green, Baker, & Oluwole, 2017). Charter schools in other states have spent up to 40% of their public funding on rent, which creates tight budgets for educational necessities such as textbooks (Green, Baker, & Oluwole, 2017). The regulations for the Charter School Facility Grant Program do not include requirements that charter schools be charged fair market rates (Lafer, 2017).

Charter school construction financing can also weaken the quality of education provided to black and Latino children by causing too many schools to be opened in their school districts (Lafer, 2017). Traditional public-school districts have to establish a need for additional class space before they can qualify for construction funding. By contrast, charter schools do not have this restriction. As a result, EMOs have frequently built charter schools in districts that already have enough seats for their student population (Lafer, 2017). This practice is disturbing because school funding is provided on a per-pupil basis. Lafer (2017) explains the danger in the following manner:

[W]hen there are too many schools for the student population, many schools may lack the funding to support building and administrative costs. In extreme cases, unregulated charter school growth can create a destructive climate where financially insecure schools raid each other for students and funding (p. 19).

The authors of this article would also assert that charter school construction financing has the potential of creating a situation for California’s black and Latino students that would be worse than *Plessy*. During the separate-but-equal era, the black community did not have to deal with an unregulated system of EMO-operated charter schools that were not concerned with the communities’ needs. Even worse, as the *Robles-Wong* case suggests, the state has failed to provide an adequate education to their black and Latino students. While the LCFF provides some promise for poor school districts, there is no guarantee that this funding will continue. Unfettered charter school construction runs the risk of making this situation even more dire.

Conclusion

This article has argued that California's black and Latino children are being educated in public schools that are both segregated and unequal. In that respect, their experience is similar to the one received by black students in the aftermath of the *Plessy* case. If handled correctly, charter schools could provide a tool for the state's black and Latino children to create schools of excellence in this setting – just like in the separate-but-equal era. However, their unregulated nature could enable outside entities such as EMOs to create schools that drain resources from the traditional public-school systems, thus creating a situation that would be even worse than *Plessy*.

Because of this analysis of California's charter schools, the authors suggest that states enact the following safeguards to protect black and Latino communities. First, states should permit only school districts to be charter school authorizers. As the resource-center debacle shows, authorizers that are not under the control of black and Latino communities might be more interested in financial gain than in serving the educational needs of the students whom they are serving. Second, states should seriously consider banning EMOs from operating charter schools because of this same concern. Finally, states should allow school districts to base chartering decisions on the proposed schools economic impact on the districts' ability to serve all of their students. Communities that serve black and Latino communities already have limited resources. California's experience with charter school construction financing suggests that if districts do not have the power to accept or reject charter schools, they might proliferate in ways that will further financially compromise these districts.

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