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# It Takes More than “Broad Ownership” to Reform Schools

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“*Broad Ownership*” of *Public Schools: An Analysis of the “T-Formation” Process Model for Achieving Educational Adequacy and Its Implications for Contemporary School Reform Efforts*, by Tomiko Brown-Nagin,<sup>1</sup> makes a number of claims regarding South Carolina’s school reform process and its outcomes. Based on its analysis of the South Carolina experience, *Broad Ownership* draws several interesting conclusions about educational and social reform generally. If its major claims, conclusions, and generalizations were justified, this article would be extremely important. Unfortunately, however, the case is built on a foundation of unproven premises and faulty reasoning. Thus, while *Broad Ownership* raises some provocative issues, it does little to resolve them.

Although somewhat clouded, *Broad Ownership*’s basic argument comprises the following assertions:

1. Historically, South Carolina had one of the worst school systems in the country, and even in the Southeast.
2. Court-ordered change could not succeed in South Carolina for historical, legal, and social reasons.
3. A nonadjudicative process involving not just lawyers, but also a variety of the state’s prominent citizens, educational and other professionals, and even just plain folk, resulted in a major program of school reform.
4. As a result of the reform effort, South Carolina’s schools improved a lot.
5. Therefore, the nonadjudicative process was effective.
6. Therefore, other places (especially those that are resistant to court-ordered change) should use a process like South Carolina’s if they want to improve their schools.

Let us examine each of these assertions.

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1. 27 J.L. & Educ. 343 (1998).

1. *Broad Ownership* begins with the claim that the historical weakness of South Carolina's schools is "undeniable." As the word "undeniable" suggests, this assertion functions more as an assumption than as a premise to be justified. Historically, it has been true, as *Broad Ownership* states, that the southeastern states have been comparatively low in both educational inputs (per pupil expenditures) and outputs (test scores) and that South Carolina has been among the lowest on these measures. However, most of *Broad Ownership's* discussion of the pre-reform condition of South Carolina's schools points to the state's traditions of racism, ruralism, and poverty as proof of the weakness of the schools. It is not clear whether the claim is that the schools were weak because the state was racist, rural, and poor or that the existence of these conditions was a consequence of, and therefore proof of, the weakness of the schools. The former claim suggests that social reform (i.e., ending racism, ruralism, and poverty) is the key to educational reform, while the latter suggests that social changes would be a consequence of successful educational reform. Either claim suggests that part of the proof that South Carolina's schools have improved, as a result, will be less racism, poverty, or ruralism.

In any case, the reputed relationship between South Carolina's social and demographic conditions and its educational weakness raises the issue of disaggregation. It is an unfortunate fact that demographics are highly correlated with educational outcomes throughout the United States. Many urban areas in even the highest spending and performing states overall consist of high performing suburban districts of mostly wealthy, white pupils surrounding low performing districts of mostly poor, minority pupils. To prove that one state's educational system is worse than others, it is necessary to control for factors such as race and wealth. Thus, the assertion that South Carolina's schools were among the weakest in the nation would be stronger if evidence were presented showing that the poor, black students of South Carolina had lower test scores than the poor, black students of other states, that the wealthy, white students of South Carolina had lower test scores than the wealthy, white students of other states, and so forth. In the absence of any such disaggregated data, the case becomes much weaker. Maybe some or all of the perceived weakness of South Carolina's schools was a consequence of having a higher percentage of the categories of poor, black, and rural students, who tend not to do as well on test scores anywhere in the nation. In any case, I raise these issues, not to dispute the claim that South Carolina had weak schools, but to point out that *Broad Ownership* has taken a simplistic approach to evaluating the quality of South Carolina's schools, both before and after reform.

2. *Broad Ownership* contends that there is something unusual about South Carolina that makes change through litigation less likely than in other states. This contention takes two very different forms, which the article treats as if they were one. The first claim is that the people of South Carolina are somehow more resistant to court-ordered change or more willing or able to resist

court-ordered change than the people of other states. To support this claim, *Broad Ownership* points out that there was much resistance to and defiance of court-ordered desegregation in South Carolina. However, no evidence is offered to show that this resistance was any greater in South Carolina than in other states—for example, in some of the northern states, where the vast majority of city whites “flew” from the public schools, in part to avoid desegregation. *Broad Ownership* admits that school desegregation ultimately occurred in South Carolina as a result of litigation. By contrast, large amounts of judicial activism have not succeeded in desegregating, except in a technical sense, the schools of many northern cities, as a result of the quiet resistance of a high percentage of whites.

It is not too farfetched to assert that no one anywhere likes being told by a court to do something they don't want to do and that the level of defiance and resistance will usually be related to the degree of distaste for the court-ordered action. Even if South Carolinians were vehement in their resistance to *federal* court-ordered desegregation, this does not prove that they would have been equally vehement in their resistance to *state* court-ordered school improvement. Presumably, those who viewed themselves as personally damaged by desegregation opposed it, while those who expected to benefit were in favor. Presumably, those who expected to benefit from a hypothetical, court-ordered school reform would have been in favor as well. In any case, is there any reason to believe that South Carolinians, or anyone else, are less resistant to being told by the state legislature, than by a court, to do something they don't want to do? None is given in the article, nor can I think of any.

*Broad Ownership's* second, very different, claim is that school reform in South Carolina could not have been accomplished through litigation because South Carolina courts would not have ordered school reform. The evidence is that the education article of the South Carolina constitution is not very strong, that South Carolina courts have traditionally deferred to the legislature in matters of education, and that recent litigation objecting to the post-reform system of education in South Carolina has not fared well. This analysis may well be correct. However, it is highly speculative. The fact that South Carolina courts have deferred to the legislature on matters of education now that (if *Broad Ownership* is correct) the worst deficiencies of the system have been corrected, does not mean that litigation could not have succeeded pre-reform. Moreover, if the analysis is correct, it trivializes the article's main conclusions. Of course, it was better to use a nonadjudicative process to achieve reform if the courts were completely unsympathetic to reform litigation. In some states, and at some times, it is probably easier to effect change through the legislature, and at others through the courts. My children know that there are some requests you make to Mom, and some you make to Dad.

3. *Broad Ownership* describes an elaborate process, dubbed the “T-formation,” designed to muster support for the adoption and implementation of

reform. The T-formation consisted of three prongs: two "blue ribbon" committees on the horizontal prong, one of "elite" business and political leaders, and one of educators and civic leaders, and on the vertical prong, "common citizens." That the process was primarily an effort at public relations seems apparent from the description of its activities (as well as from its football appellation). The elite committee functioned as an "ego reinforcing mechanism that doubtlessly bred loyalty to the governor and the cause of educational reform."<sup>2</sup> Citizen participation consisted of a series of "town hall meetings that were convened in various venues around the state to educate the citizenry about South Carolina's need for school reform."<sup>3</sup>

The elite committee did select the six basic aims for the program, such standard fare as "improve student performance . . . , strengthen the teaching of basic skills . . . , improve leadership and efficiency . . . , and create more effective links among schools, parents and community and business leaders."<sup>4</sup> However, the legislation that created the reform programs was authored by Terry Peterson, Governor Riley's educational policy advisor, based primarily on reports and recommendations of the Southern Regional Education Board, the Education Commission of the States, and other educational and political policy groups. These groups were in turn influenced by the then recently released *A Nation at Risk* report. *Broad Ownership* makes a plausible case that the reform bills might not have passed the legislature had it not been for the T-formation, although I wonder if the elite committee, alone, might not have sufficed. However, *Broad Ownership* gives little reason to believe that South Carolina's reform program would have been much different, substantively, if the T-formation had never entered the game.

4. The key premise in *Broad Ownership's* argument is that the schools of South Carolina improved a lot as a result of the reform effort. A small amount of evidence is offered to support this conclusion, mostly in the form of increased rates of participation in advanced courses and higher education and higher test scores. The article makes no systematic attempt to independently evaluate the available evidence, but instead uncritically cites the findings of such interested groups as the South Carolina Department of Education and the South Carolina Business-Education Subcommittee. The latter group came about as a result of the reform under discussion. While some of the evidence does seem promising, it is by no means conclusive.<sup>5</sup> Test scores sometimes rise or fall for reasons that have little to do with overall education quality, for

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2. *Id.* at 365.

3. *Id.*

4. *Id.* at 386.

5. There is also some independent evidence of modest achievement gains early in the program that *Broad Ownership* does not cite. Craig E. Richards & Tian Ming Sheu, *The South Carolina School Incentive Reward Program: A Policy Analysis*, 11 *ECON. EDUC. REV.* 71 (1992).

example, because of changing demographics or increased emphasis on preparing for standardized tests. Furthermore, with so many test scores and statistics available it is not hard to find some to support the contention that a school or school system is improving.

Nor is it hard to find statistics to suggest that a school or school system is weak. A few minutes before writing this Counterpoint, I randomly opened to a page in the National Assessment of Educational Progress report (*The Nation's Report Card*) for 1996.<sup>6</sup> I found that South Carolina was one of only six of forty states listed whose eighth graders scored below 140 on the physical science, earth science, and life science assessments. The national average was 149, and the Southeast average was 141. Some states averaged above 160. The only states that South Carolina beat on all three tests were Alabama, Hawaii, Louisiana, and Mississippi. Of course, I am not claiming that these test scores prove that South Carolina's schools are weak, but they do show how easy it is to select data to support a contention of educational quality.

*Broad Ownership's* title suggests that as a result of educational reform, South Carolina's schools have achieved "educational adequacy." Although the notion of adequacy has received much attention in recent years from judges and policy makers, no consensus exists as to its meaning. Nor, to paraphrase Justice Stewart out of context, do we know what it is when we see it. *Broad Ownership* makes no attempt to offer or even to adopt a definition of adequacy. Instead, the article's basic argument seems to be that South Carolina's schools are now adequate because they are better than they were before. *Broad Ownership* admits that South Carolina's schools continue to lag behind most other states, more than fifteen years after adopting what it terms "the best-conceived state education reform,"<sup>7</sup> but makes no attempt to explain why this should be so. Even granting that some improvement seems to have occurred, there has been no demonstration of adequacy. If South Carolina's schools are adequate, one wonders why more than 40% of the state's school districts have spent much of the past decade suing the state—despite great odds against success—in *Abbeville County v. South Carolina*. The claim of the plaintiffs is that the schools of South Carolina are not adequate. One further wonders why, as *Broad Ownership* states, "South Carolina's Secretary of Education . . . has been waging a battle with the legislature for years over some of the very issues raised in *Abbeville County*."<sup>8</sup>

5. *Broad Ownership's* conclusion that the "T-formation process" was an effective way to reform education in South Carolina follows from the claims

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6. National Center for Educational Statistics, *National Assessment of Educational Progress (NAEP), SCIENCE ASSESSMENT (1996)*.

7. Brown-Nagin, *supra* note 1, at 345, citing Professor Michael Kinst.

8. *Id.* at 397.

that (1) reform was successful and (2) other methods would not have worked. I do not doubt that consensus-building is important to the passage of any educational reform initiative—in fact, of any costly state social program. However, much of the T-formation process comes across as little more than window dressing and public relations. The one committee that included educators “conceived and implemented many useful ideas for rallying public support” for reform,<sup>9</sup> but they seem not to have contributed anything of substance to the program itself. Citizens around the state were paraded out to “demonstrate that public opinion was supportive of school reform,” but we are never told what effect, if any, “grassroots” views had on the design of the reform.<sup>10</sup>

The only prong of the T-formation that appears to have significantly affected the reform is the elite panel of business and political leaders, and even they seem mostly to have embraced the goals and program that Governor Riley and his assistant had in mind all along. Not surprisingly, given the influence of the elite panel, *Broad Ownership* acknowledges that a disproportionate share of the benefits of the program seem to have gone to the state’s already relatively advantaged school districts. Perhaps a program that had been designed in a truly, as opposed to symbolically, grassroots manner would not have led to the current high level of dissatisfaction, which *Broad Ownership* acknowledged, within the state’s historically disadvantaged districts.

*Broad Ownership* claims that one of the strengths of South Carolina’s efforts was the participation of educators in the development of the reform. Teacher participation and support are generally considered crucial to the success of any educational reform effort. Yet, based on surveys of teachers and principals around the state, Ginsberg and Berry concluded that educators viewed South Carolina’s reforms as too prescriptive and top-down.<sup>11</sup> Teacher morale had been negatively affected by the burdens of the reform effort and burnout rates were high. “[T]eachers,” wrote the authors, “are tired and frustrated and they feel that much of the joy of teaching is gone. Principals report similar feelings. . . . One can only guess how much longer they will be able to cope with all these demands before students are affected negatively by the state’s stressed out teacher[s]. . . .”<sup>12</sup>

It may well be true that litigation could not have produced the same results as the T-formation, but might another process that allowed local educators a

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9. *Id.* at 365.

10. *Id.*

11. Rick Ginsberg & Barnett Berry, *Experiencing School Reform: The View from South Carolina*, 71 PHI DELTA KAPPAN 549 (1990).

12. *Id.* at 552.

greater say in designing their own programs have been even more effective?<sup>13</sup> After all, most states passed reform initiatives with similar goals to South Carolina's in the wake of *A Nation at Risk*. With so much dissatisfaction with the status quo and a governor so strongly in favor of reform, it is not at all apparent that the elaborate and costly T-formation process was necessary for passage of educational reform.

6. The great potential significance of *Broad Ownership* is reflected in the last part of its title, *Implications for Contemporary School Reform Efforts*. Despite occasional caveats about the uniqueness of South Carolina's situation, which the article itself fails to heed, *Broad Ownership* concludes that other states could take a lesson from South Carolina's experience with school reform. The lesson seems to be that litigation is not the way to reform schools, but that something like the T-formation process is.

In a sense, the first part of this point is well taken. Who, but perhaps an overzealous public interest lawyer, could believe that litigation is the preferred method for changing schools? Litigation is expensive, time consuming, and even when successful, often easily flouted, although it is not undemocratic, as *Broad Ownership* seems to believe. Moreover, who could disagree with *Broad Ownership's* contention that lawyers are not the ones to make educational policy? Educational policy making is a complex undertaking requiring skills and experience that most lawyers and judges—and most state legislators, governors, and business leaders—lack.

Litigation should be avoided whenever possible because it is a poor method for achieving educational and social goals. Thus, *Broad Ownership* has it backwards when it says that nonadjudicative means of reform should be used in states like South Carolina where litigation cannot succeed. The principle should be that litigation should be employed only when political strategies cannot work. Unfortunately, this is too often the case; for example, in situations where a majority of the state legislature has a political or personal stake in maintaining a school system that violates basic constitutional values. De jure segregated schools are the best historical example, and state educational systems that provide some pupils with far better schools than others are the best current examples.

However, neither *Broad Ownership*, nor the experience of the past decade, indicate that the T-formation is any more or less likely than judicial or legislative processes to result in successful reform. There are about a dozen states where significant state-level reform seems to have been achieved through

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13. See Michael Imber, *Increased Decision Making Involvement for Teachers: Ethical and Practical Considerations*, 17 J. EDUC. THOUGHT 36 (1983).



litigation.<sup>14</sup> Based on an analysis of voter behavior, Campbell and Fischel have concluded that there are a number of states whose legislatures are more favorable to equity reform in education than are the voters.<sup>15</sup> Citizen participation is by no means a guarantee of support for educational reform.

Kansas is another state whose ad hoc nonadjudicative process of school reform has been hailed by commentators as a great success.<sup>16</sup> The goal of Kansas' reform effort was to create an educational system that was both equitable and adequate. Yet, a recent data based analysis of the current state of education in Kansas indicates that the state has made little, if any, progress in achieving educational equity and that, if anything, adequacy is more in question now than it was pre-reform.<sup>17</sup> *Broad Ownership* is correct that many of the attempts at reforming education through litigation have had disappointing outcomes. Courts are not set up to create, much less to implement, effective programs of educational reform. However, the legislative and "grassroots" efforts have similarly failed. The overall lesson of the past two decades is not that we need more T-formations, but that schools will not change unless the majority of people want them to and are willing to reach deeper in their pockets to make it happen. Neither courts, nor politicians, nor T-formations can change that.

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14. Of course, there are a number of states in which successful litigation has not really led to improvement. See Deborah A. Verstegen, *Judicial Analysis During the New Wave of School Finance Litigation: The New Adequacy in Education*, 24 J. EDUC. FINANCE 51 (1998).

15. Colin D. Campbell & William A. Fischel, *Preferences for School Finance Systems: Voters Versus Judges*, 49 NAT'L TAX J. (1996).

16. Charles Berger, *Equity Without Adjudication: Kansas School Finance Reform and the 1992 School District Finance and Quality Performance Act*, 27 J.L. & EDUC. 1 (1998).

17. Bruce Baker & Michael Imber, "Rational Educational Explanation" or Politics as Usual? *Evaluating the Outcome of Educational Finance Litigation in Kansas*, 25 J. EDUC. FINANCE (1999).