Introduction

Social justice is a paramount concern in public education (Carol, 2003; Gorard, 2000; Griffiths & Baillon, 2003). Accordingly, education practitioners and scholars have been actively engaged in efforts to make public education socially just. In doing so, they seek equitable resources and outcomes for traditionally marginalized students representing diverse groups. They are guided by questions such as “[H]ow can education best serve all individuals and the society they live in?” (Griffiths & Baillon, 2003). In many ways, this focus is part of fulfilling the promises of public education made in Brown v. Board of Education and embedded in all fifty state constitutions.

Despite this strong emphasis on social justice, it remains a developing idea. First, the concept is interdisciplinary in nature, drawing from sociology, philosophy, and curriculum theory, among others. With a variety of disciplines claiming some jurisdiction, it is not surprising that social justice scholarship continues to evolve. In addition, the term is frequently employed for different purposes, and, as a result, the term has “as many meanings as actors on the scene” (Cambron-McCabe & McCarthy, 2005, p. 201). At a minimum, social justice is the proverbial “work in progress,” and there has been considerable discourse regarding how it translates within public education (MacDonald, 2005). In sum, social justice remains “undertheorized” (North, 2006), underdeveloped, and debated.

As this exchange continues, one subject has largely been overlooked. The extant discourse omits a comprehensive discussion relating fundamental legal principles (as expressed
in “the law”¹) and social justice in education (Dyches & Boyd, 2017; Shirley, 2017). The omission is striking. Social justice in education (and, in general) is deeply rooted in the Supreme Court’s *Brown v. Board of Education*. Indeed, *Brown* is often the departure for education social justice scholarship and with good reason. As a legal matter, *Brown* ruled segregated schools unconstitutional under the Equal Protection Clause of the U.S. Constitution. As an education matter, it sparked decades of policy, scholarship, litigation, and debate about how to create “equal educational opportunity” for students of all backgrounds, not just race.

But *Brown* is only one of many examples illustrating the bond between law and social justice in education. Others are found in federal and state constitutions, statutes, and court cases. For instance, the educational rights of students with disabilities were established by way of a federal court case, *Mills v. Board of Education* (1972), that subsequently triggered the passage of the Individuals with Disabilities Education Act (commonly referred to as “special education law”) (Individuals with Disabilities Act, 1997). The quest for equity, equal opportunity, and fair treatment of marginalized groups -- the very concerns that motivate social justice scholarship -- finds expression in these cases and statutes. Respectfully, we suggest these links deserve an intellectual excavation.

To the extent the law enters social justice in education scholarship, it is generally viewed as a regulatory force, with some notable exceptions (e.g., Eckes, 2017; Umpstead, 2011). For example, the National Educational Leadership Practice (NELP) standards reference law in terms of compliance (NPBEA, n.d.). Compliance is important, but the law in education should be viewed as much more than just a checklist to avoid a lawsuit (Schimmel & Militello, 2007). The

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¹ We define law to mean sources of legal authority. These include federal and state constitutions, state statutes and regulations, as well as local school board policies.
law and social justice share certain connective tissue along topics such as civil rights, equality, and fundamental fairness, that deserves a comprehensive exploration.

This paper argues that the law is a natural conduit for a deeper discussion about social justice in education. It should be part of the continuing conversation regarding social justice in public education. Toward this end, we highlight the similarities between the two areas, demonstrate how the law can play an essential role in creating socially just schools, and offer suggestions about furthering this connection. The first step is making explicit the connection between two disciplines, and that is this paper’s purpose. Surely the discipline that brought us Brown warrants a seat at the table to advance the cause of social justice in public schools.

To be sure, the argument here may be in opposition to those who (rightly) criticize the legal system as biased. Yet, overlooking the law in this conversation would be to engage in a purely academic exercise. In continuing to do so, we would fail to utilize its power as the most influential tool to change educational policy.

In the 1950s, desegregation advocates could have condemned legal institutions as inherently biased and foregone any analysis to see how the law may advance social justice. Instead Linda Brown and a team of advocates sought relief through the law and convinced the Supreme Court that segregated schools violated a guarantee of “equal educational opportunity” under the Equal Protection Clause of the Constitution. Brown did not resolve the problems of gross disparities in educational opportunities, of course. We do not suggest that the law is a panacea. Brown, however, does reflect the law’s power as part of an answer to social inequality. Further, the social justice advocates that fought for Brown also were critical in the establishment of the core federal education statutes, the Elementary and Secondary Education Act of 1965 and
the Education for All Handicapped Children Act of 1975 that continue to serve as foundational mechanisms that promote social justice.

This paper proceeds as follows: Part I identifies commonalities across the education, legal, and social justice scholarship. Toward this end, it highlights the general themes that frame social justice literature, the limited (but important) treatment so far of the law in education social justice scholarship, and legal scholarship addressing social justice in education; Part II engages in a more granular and comprehensive analysis of the relationship between social justice and the law as found in constitutions, cases, and statutes. Part III provides practical implications of such questions and analysis as well as suggestions for future research.

**Part I: Social Justice**

**Social Justice Literature in General: Brief Overview**

Several common themes regarding social justice in education emerge from the existing literature. First, and importantly, there is no universally accepted definition of “social justice” (Sturman, 1997). In fact, scholarship continues to grapple with refining a theory of social justice, and this is a source of considerable debate (e.g., North, 2006; Gerwitz, 2006). A comprehensive review of that debate is beyond the scope of this paper, but it is important to note that a line of scholarship continues to explore the meaning of the term.

Generally speaking, refining social justice revolves around two theoretical concepts of the term. Some scholars have suggested that social justice is (or should be) concerned with *redistribution* of goods. Rawls (1972) frames social justice as preoccupied with “…the basic structure of society, or more exactly, the way in which the major social institutions … distribute fundamental rights and duties and determine the distribution of advantages from social
co-operation.” (p. 7). Others have echoed and built upon this theory, which is largely based on concerns for groups that are marginalized economically (Howe, 1997; Fraser, 2003), and sees injustice remedied when individuals have sufficient resources to pursue the “good life” (Fraser, 2003; Cochran-Smith, 2006).

Another perspective posits social justice as an ongoing struggle for recognition of marginalized groups (e.g., Young, 1990). In this light, social justice addresses issues of oppression against classes of people that are typically excluded because of race, gender, religion, nationality, and sexual orientation. This vein of thought can be linked to social movements in the 1960s and 1970s, such as feminism and black liberation, where relatively powerless groups demanded recognition and voice in their institutions and social structures (Cochran-Smith, 2006).

Some scholars have suggested that these two principles of social justice -- redistribution and recognition -- are in tension. A redistributive view is individualistic in nature, with an aim to provide individuals the resources they need to pursue their vision of the “good life.” In contrast, recognition focuses more on a sense of group identity and equalizing power imbalances that disfavor minority groups. These seemingly competing notions have been addressed in the literature resulting in various theories of social justice (e.g., Young, 1990; Fraser, 2003; North, 2006). The intricacies of this discussion are vast, and a thorough treatment of this literature can be found elsewhere (e.g., Gerwitz, & Cribb, 2002). Relevant for this discussion are the two general principles of redistribution and recognition that anchor social justice concerns.

Notwithstanding a vigorous intellectual debate concerning social justice, common threads have emerged. Scholars recognize social justice is a sophisticated idea (Gerwitz, 2006; North,
2006; Cochran-Smith, 2006) making a clear, singular theory elusive. Despite this, there is a shared concern to identify and remediate inequality. While this may be quantified in different terms (a distributive view sees inequality of resources, while recognition views its relation to social or institutional structures), social justice is preoccupied with principles of fairness. A shared tenet is seeing citizens as free and equal persons “merits celebration and protection” (North, 2006). As we note later, these themes appear frequently in the law through cases, constitutions, or statutes.

**Education Scholarship Treatment of Law: An Underdeveloped Subset**

As noted, a definitive attempt to embed the law as part of a broader social justice discussion in education is lacking, which forms the central concern of this work. Yet, social justice scholars have not overlooked the law entirely. To be sure, a small subset of social justice scholarship exists in this area. These bodies of scholarship can be categorized as adopting four approaches to understanding the law and social justice: (1) segregation and resegregation in relation to two important Supreme Court decisions, (2) the law in relationship to marginalized groups not related to racial classifications, (3) the impact of court decisions or statutes on marginalized groups, and (4) the ability of law both to preserve the status quo and create big social change. These contributions reflect the potential for the deeper conversations and connections.

First, a body of research focuses heavily on segregation and resegregation in relation to two important Supreme Court decisions, *Brown v. Board* (1954) and *Parents Involved* (2007). (See, also McDermott & Frankenberg, 2014; Green, Mead, & Oluwole, 2011). Both cases have had a significant impact on the demographic composition of schools making them particularly
ripe for justice scholarship focused on race. Brown, of course, prohibited state segregation of schools, but it left open the question of remedy. Consequently, critical social justice scholarship has formed around understanding school composition in the aftermath of Brown. Parents Involved (2007), struck down school districts’ plans that used race as a factor. In the wake of Parents a thread of scholarship has assessed the decision’s contribution to resegregation of schools and, like Brown, is concerned with racial injustice.

Second, and related to the above point, existing work has considered the law in relationship to educational concerns of marginalized groups (outside of racial classifications). Studies have assessed legal rights of students with disabilities (e.g., Umpstead, 2011; Mead & Paige, 2008). Still others have examined civil rights laws as they relate to the rights of gay and transgender students (e.g., McCarthy & Eckes, 2006) and gender (Ducker, 2007). Since Lau v. Nichols (1974), the relationship between the law, language instruction, and educational opportunity have formed the basis of considerable work (e.g., Gandara, 2015). Constitutional rights political or religious minority students are established lines of inquiry (DeMitchell, McCarthy, etc) with close linkages to seminal Supreme Court cases (e.g., Tinker v. Des Moines). The rights of economically disadvantaged students has been addressed by the Elementary and Secondary Education Act of 1965 for over fifty years.

Third, the existing scholarship reflects an empirical rather than theoretical focus. More specifically, researchers have attempted to assess the impact of court decisions or statutes on marginalized groups (e.g., Gandara, & Orfield, 2012; Richards, Stroub, Vasquez Heilig, & Volonnino, 2012). The empirical nature of this research is intended to be part of a larger social justice advocacy effort aimed at changing education policy or law considered detrimental to
minority rights. For instance, The Civil Rights Project is explicit in its mission to conduct research on the impact of legal issues so as to advocate for civil rights of students. (The Civil Rights Project, 2010).

Finally, existing literature implicitly recognizes both the power of the law to preserve the status quo and, also, usher in significant social change. Certain cases and statutes have, without doubt, exacerbated inequality (Vasquez-Heilig, 2012). Arguably, social justice literature, *writ large*, presents the law as an institution that reflects bias and inequality and is an obstacle to change (e.g., Critical Race Theory in Law). Education scholars cite the No Child Left Behind Act of 2001 as an example in this regard.

On the other hand, the law is also used as a lever for change, and, in particular, in addressing underrepresented groups’ educational needs. This more opportunistic view is reflected in recent comments concerning the Every Student Succeeds Act of 2015 (which reauthorized the Elementary and Secondary Education Act of 1965). Cook-Harvey et al. concluded that this law:

[<i>C</i>ontains a number of new provisions that can be used to advance equity and excellence throughout our nation’s schools for students of color, low-income students, English learners, students with disabilities, and those who are homeless or in foster care. (p. v).]

Similarly, the law has been viewed as a means to remedy inequities as they relate to segregation of marginalized students (Vasquez Heilig, Holme, LeClair, Redd, & Ward, 2016).

Taken together, the existing work is important, although just a small fraction of the larger body of social justice scholarship education. Indeed, as we argue, what remains is an explicit claim that there are themes common to “justice” as that term is understood under the law and social justice. Building the bridge between the two disciplines is a central task of this paper.
Toward this effort, the paper now highlights the ways in which themes repeated in social justice literature above (equality, redistribution, and recognition) appear in legal scholarship.

**Legal Scholarship: Shared Themes with Social Justice**

Legal scholars have discussed the law with reference to themes that commonly underpin the work of social justice scholars examining public education, the redistribution of goods and recognition of under-represented groups. More importantly, this work identifies with one of the core tenets of social justice advocacy: equality.[3]

These links, however, are not explicit or intentional. Indeed, legal and social justice scholars operate in different disciplinary silos. Legal scholarship assesses the law, a discipline with its own “language,” doctrines, and methods of argument. The goal is to advance new legal theories that ultimately find expression in a legal action, such as a lawsuit or statutory change. In contrast, social science scholarship has its unique “language,” theoretical debates, and methodology. In the end, it is concerned with advancing ideas to impact the broader norms of learning communities. Both disciplines, play by different rules and address different audiences.

Yet, as we point out, there are distinct similarities in terms of the nature of their underlying concerns. And, given that social justice is inherently an interdisciplinary endeavor, a more explicit union between the ideas is warranted, especially in the context of public education. This section discusses certain social justice themes of redistribution and recognition that appear in legal scholarship.

**Part II: Law and Social Justice**

When discussing the law and social justice, it is useful to carefully examine how important laws have played a role in both the recognition and redistribution aspects of social
justice. This section explores two lines of legal precedent: (1) the rights of students with disabilities, and (2) the various iterations of ESEA.

The Rights of Students with Disabilities

When the Education for All Handicapped Children Act (EHA) was enacted in 1975 in response to the marginalization of this group of students, students with disabilities were provided the right of access to a free appropriate public education (FAPE) through an individualized education program (IEP) that was designed to meet the unique needs of each child and result in an educational benefit. The law required schools to provide education and related services to the child in the least restrictive environment (LRE). The law’s vision of equity, as evidenced by its Child Find and zero reject policies was one of equal access to education (McLaughlin, 2010). This law has been reauthorized three times since its initial passage: in 1990, 1997, and in 2004. In 1990, it became known as the Individuals with Disabilities Education Act (IDEA) of 1990. The foundational principles of EHA remain much the same as they were originally enacted, as the purpose of the Individuals with Disabilities Education Act (2004) is still “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living” (33 U.S.C. § 1400(d)(1)(A)).

The case of Board of Education of the Hendrick Hudson Central Sch. Dist. v. Rowley (1982), provided the first major clarification of the rights of students with disabilities after the enactment of EHA. In it, the U.S. Supreme Court explained that schools did not need to “maximize the potential of each handicapped child commensurate with the opportunity provided
nonhandicapped children” (p. 198), rather schools must provide “access to specialized instruction and related services which are individually designed to provide educational benefit” to the child (p. 201). The school had done this for Amy Rowley, a first grade student with residual hearing loss who performed better than an average child in her class with the use of an FM hearing aid, received pass grades, and advanced to the next grade level, and therefore, she did not need the sign-language interpreter requested by her parents. The Court explained that this conception of educational equality was consistent with Congress’s original intentions of “equal access” (p. 200; 203).

The Supreme Court provided a second interpretation of the substantive right to an education for students with disabilities who are not educated in the regular classroom environment in the case of *Endrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1* (2017). Endrew’s parents requested that his local public school reimburse them for the costs of placing him in Firefly Autism House, a private school for children with autism, in fifth grade arguing that the IEP offered by the school, which was essentially the same from year to year, did not permit him to advance academically due to behavioral challenges that were not being adequately addressed. Focusing on the legal standard rather than the child’s specific IEP, a unanimous Supreme Court rejected the lower court’s interpretation of FAPE that an IEP was sufficient as long is it was “reasonably calculated to enable [him] to make some progress” that was more than “de minimus” (p. 997). Instead, the Court explained that the unique circumstances of the child are a crucial consideration in the sufficiency of their IEP, and that it must be “appropriately ambitious” so that each child has “the chance to meet challenging objectives” (p.
Ultimately, IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” (1001).

Thus, although retaining its original standard for FAPE, the Court clarified Rowley as rejecting an access only *de minimus* standard of equal opportunity (Seligmann, 2017, p. 488). Instead, *Endrew F.* (2017) relied on a broader reading of IDEA’s provisions (p. 494), to describe a higher substantive standard: an IEP that is appropriately ambitious and reasonably calculated to allow educational progress towards challenging objectives, but not an ideal education, in light of each child’s unique circumstances (p. 488-89).

IDEA and the key cases interpreting its FAPE requirement illustrate both the recognition and distributive justice principles. The social justice principle of recognition is present in the origin of the Education for All Handicapped Children Act (1975) because it was enacted in response to individuals with disabilities being excluded or inadequately educated prior to the law (20 U.S.C. §1401). This stated purpose and concept of educational access is still present in the most recent version of the law (Individuals with Disabilities Education Act, 2004, 20 U.S.C. §1401). The *Rowley* (1982) case also emphasized students’ with disabilities need for access to an education. Distributive justice, in the sense of marginalization and material deprivation is also implicated. Students with disabilities’ continual struggle with exclusion from typical classrooms (Bunch, 2011), and the denial of the resources needed to allow them to gain an appropriate educational benefit is evident through both the case law and its commentary.

**Elementary and Secondary Education Act**

The Every Student Succeeds Act (ESSA) of 2015 is the latest reauthorization of the Elementary and Secondary Education Act (ESEA) of 1965. ESEA was enacted as part of
President Lyndon Baines Johnson’s “War on Poverty” to address the special educational needs of students from low income families by providing additional federal funds to state educational systems (Bishop & Jackson, 2015; ESEA, 1965). Johnson “believed that ‘full educational opportunity’ should be ‘our first national goal’” (ED, n.d., para. 7). ESEA is the primary vehicle through which the federal government has promoted its commitment to equal opportunity for all students (ED, n.d.). It rests on the premise that underserved student populations need additional resources and services to receive equal educational opportunities (Young, Winn, & Reedy, 2017).

Congress reauthorized ESEA several times since its inception. Each time Congress sought to improve on its efforts to achieve the elusive goal of equal educational opportunity. Its 1988 reauthorization began a shift from states having free reign with federal compensatory funds to a time of stricter federal control in which states were scrutinized for both their fiscal and educational results. The Hawkins Stafford Elementary and Secondary School Improvement Act of 1988 encouraged schools to develop higher order thinking skills in disadvantaged student populations and promote more parental involvement in response to little progress in educational advancement of these students as evidenced by large achievement gaps (Passow, 1992). This strong federal presence and educational accountability continued through the 1994 reauthorization, culminating into what became known as the No Child Left Behind Act of 2001 (NCLB). In this reauthorization, the federal government sought to hold states accountable for the learning of economically disadvantaged students, students with limited English proficiency, students who were racial/ethnic minorities, and students with disabilities (Wardlow, 2016). Unfortunately, some commentators noted that NCLB was implemented by states in a way that
undermined accountability by hiding rather than highlighting differences in achievement among
groups of students (Smith & Lowery, 2017).

ESSA continues the Federal Government’s attempt to promote equity among all of the
children in the U.S. as its explicit purpose is “to provide all children significant opportunity to
receive a fair, equitable, and high-quality education, and to close education gaps” (20 U.S.C.A. §
6301). The law allocates specific monies for the education of children under the age of 21 “who
are failing or most at risk of failing” to meet their State’s challenging academic standards (20
U.S.C.A. § 6315(1)(A)-(B)). The special populations of children eligible for services include
those who are “economically disadvantaged, children with disabilities, migrant children or
English learners” (20 U.S.C.A. § 6315(2)(A)). Children who participated in head start, who have
been neglected or delinquent, or who are homeless also have special status under the law. Like
the previous reauthorization of ESEA, ESSA requires that the student achievement data schools
report to be disaggregated by major racial and ethnic groups, economically disadvantaged
students, children with disability, English proficiency status, gender, and migrant status. This
structure demonstrates a belief that states can improve the educational achievement of all
students through accountability systems (Smith & Lowery, 2017).

The aims of ESEA have always been to promote both recognitional and distributive
justice for children being educated in the U.S. ESEA began with a basic recognition of the
groups of students who were not benefiting from education in the ways their peers who did not
come from disadvantaged backgrounds were. Although ESEA has never been about respecting
the cultures and ways of life of others, it has encouraged a special recognition and respect for
students from certain disadvantaged backgrounds. It also encourages a different distribution of
educational resources. This redistribution of material resources is a foundational principle in distributive justice. Incorporating Young’s thesis that distributive justice must go beyond its basic principles to capture educational opportunity because of the complex social environment in which it takes place (Young, 1990), ESEA fits well within this conceptualization as it never asked for just an equal distribution of material resources; it has always promoted a vision of equity in which disadvantaged students were given additional material and relational services to improve their educational outcomes. Despite its grounding in theories of justice, its ideals have not yet been achieved. After 50 years of effort, there remains a large achievement gap for the groups of students who are specially supported by the law (Bishop & Jackson, 2015).

Part III: Practical Implications and Future Research

Viewing the law and social justice within a shared framework has a variety of practical implications and raises a number of questions for future research. This section provides a brief overview of several of these implications and suggestions for future inquiries.

Practical Implications

An effort to link more tightly the conventions and conversations of law and social justice would lead to a number of practical implications, both at the policy and school level, within public schools. Even without major policy or normative changes, a linking of the legal and social justice traditions may carry a number of near term benefits.

First, those whose passions are fueled by promoting equity and social justice may find the law a more useful tool to achieve even near term goals. The Equal Protection Clause of the Constitution, for instance, provides a mechanism upon which to ask school districts to consider their practices that are detrimental to particular groups of students. Even when a detrimental
policy does not impact a protected class directly, asking a school district or state education
department to articulate the rational basis by which such discrimination has been justified can
provide a moment for the people in these systems to consider and justify the impact of their
actions. In our experience, school system leaders do not frequently contemplate the full impact of
many of our norms-based practices and providing a legal request that they do so may at
minimum cause a conversation around such traditions.

Beyond the rational basis test of the Equal Protection Clause and other more well-known
federal ideals, a wide variety of state and local laws can be mechanisms to open social justice
conversations. These laws are much less well known by everyone, including school systems.
Local social justice leaders who are familiar with these local legal structures are inevitably better
positioned to be successful advocates for students. Local policies concerning student assignment,
promotion and retention, student discipline, and many others provide within them structural
opportunities to advance social justice. While lawsuits resulting from these policies are
occasionally necessary, in our experience raising these policies in discussions concerning social
justice approaches can frequently help school system leaders consider alternatives. One legal
route that is not frequently used, but can be very powerful, is to ask a the state Attorney
General’s office to issue clarifications on state policies aimed at understanding whether a local
application fits within the state statute or regulation.

Over the long term, legal remedies from lawsuits to regulations are routes by which large
changes can occur in society. Brown v. Board (1954), was the result of legally skilled social
justice advocates, led by Charles Hamilton Houston and Thurgood Marshall amongst others
(McNeil, 1983), leading long-term legal campaigns to eliminate structural inequities in law.
While such grand and well-known social justice legal victories might be rare in our consciousness, a long string of successful social justice legal challenges permeate our education landscape. Organizations such as Children’s Law Center and a host of others continue to merge the ideas of education and equity. State-specific organizations such as the Education Law Center from Pennsylvania advance the work of ensuring equal educations for vulnerable populations. These long-term efforts to advance educational equity, largely through the courts, are making a big difference presently and could be even more impactful if the conversations between law and social justice deepen.

Second, the opposite is also true in that those whose passions are fueled by legal conversations and actions would benefit greatly by embracing the conversations of social justice and equity in schooling. These conversations are deep, nuanced, and highly practical. The everyday experience of school for tens of millions of children in America is contained therein. In particular, legal scholars would benefit from this depth of knowledge as legal opportunities to improve schools are far more prevalent at the local level than within the Halls of Congress or at the steps at the Supreme Court. We think of *Brown v. Board* (1954), as a once in a generation decision because it was. But, even *Brown* left a complex social justice legacy that continues to reverberate across classrooms. School assignment maps, course availability, teacher placement, AP programs, school discipline practices, and other local policies continue to serve as tools that exacerbate segregation.

The fabulous work of the National Education Policy Center’s Schools of Opportunity program provides insight into the potential of practical collaborations of social justice and legal scholars (see SchoolsofOpportunity.org). The program makes tangible the best practices in
promoting educational equity by not only rewarding schools who exhibit such characteristics presently, but, perhaps more importantly, provides schools clear directions for improving their own equity practices. The program was linked to a book project that was a collaboration between scholars from sociologists, economists, policy experts, and attorneys (Carter & Welner, 2013). The Schools of Opportunity example shows how such collaborations can make direct improvements both in policy and practice for disadvantaged students.

Third, some parts of schooling simply receive too little attention from either social justice or legal scholars. This is particularly true for local legal questions. At the micro-level, definitions of law and policy begin to intermingle and for many it is not clearly whether a local rule is a law, a policy, a practice, a norm, or all of the above. Such rules have the structure and function of laws but are often referred to as policies. This question is only compounded at the school-level for bylaws, discipline codes, and other rule-based documents that carry the weight of law but receive very little attention at all, even from the school administrators that may hastily draft such documents or simply copy from their neighbors. Perhaps because these policies, bylaws, codes, and other documents are not traditionally considered laws, outside of school board attorneys employed to craft such laws, they generally receive little legal attention and even less scholarly attention. On the other hand, because they are ultimately legal in nature, social justice advocates may hesitate to engage in either the formation or operation of these policies. Yet, to the individual child, these policies may have much more bearing on their everyday experience of school than federal or state statutes. More of how we define the structure and experience of school are contained in these local rules than in statutes. Thus, if a shared goal of social justice
advocates and legal scholars is to improve the structure and experience of school, our attention must shift to working together to find more equitable approaches at the local policy level.

Finally, embracing the shared vision of social amongst law and equity scholars can improve the preparation of teachers and leaders in educator preparation programs. Including instruction in both legal topics and the practice of promoting social justice within schools should be a minimum expectation of all preparation programs as legal knowledge, especially through improvement of local policies, can be a key tool in advancing equity. However, preparation programs can also go further to provide direct instruction as to how teachers and leaders can be advocates for social justice through a deeper knowledge of the social justice foundations of American public school law from Constitutional ideals to local policies.

Future Research

The existing research cited in this article has laid a wonderful foundation upon which to extend inquiries and conversations that link the broader narratives and traditions of the legal and social justice fields.

First, additional legal scholarship may provide a deeper sense of the social justice foundations inherent in existing school law. Analysis of case law, legislative history, and even statutory language can reveal the social justice foundations underpinning many existing educational laws. For instance, the very first section of the Individuals with Disabilities Education Act still resonates the core intent of the law:

Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring
equality of opportunity, full participation, independent living, and economic
self-sufficiency for individuals with disabilities. (Individuals with Disabilities Act, 20
U.S.C. 1400)

Whether these social justice foundations behind statutes have been fulfilled is worthy
both of legal and social science research.

Next, while many legal scholars are researching legal impacts on marginalized groups
and many social justice scholars are researching the social impacts of laws, a broader theoretical
narrative linking the two scholarly lines of inquiry is worth further examination. Deep
investigations of the existing literature with a particular focus on theoretical underpinnings may
help to provide clarity on the common understandings. Some of the existing scholarship within
these direct intersections (Carter & Welner, 2013) has already proven to be powerful drivers of
improvement narratives, such as the Schools of Opportunity project. When such intersections are
explored directly, powerful organizations can result. The founding vision of The Civil Rights
Project (2007) called for an organization “committed to building a network of collaborating legal
and social science scholars across the nation”. Such investigations and collaborations may
provide new insights in which both traditions can utilize to advance society.

Additionally, as has been argued by others (Schimmel & Militello, 2007) more research
is needed to know whether the social justice foundations of Constitutional Amendments are well
understood by educational practitioners. A single school law course is all school administrators
receive throughout their careers in many states. For instance, whether, and to what extent, the
Equal Protection Clause is even covered in such courses is not well understood. As
Cambron-McCabe and McCarthy (2005) argue, it is vital that school leaders are provided social
justice foundations that are grounded within the broader common legal frameworks by which marginalized groups are protected in the United States. Such foundational ideals provide a social justice foundation to everyday decision-making by school leaders.

Beyond national laws, school administrator knowledge of local laws in their various forms is largely a mystery. From state statutes to local school board policies, more research is needed to understand how legally literate school administrators are within the micro-contexts of local school districts. School leaders ability to lead structural change at local levels depends on an intimate understanding of the legal context within with schools operate.

These future inquiries are especially important to determine how local school administrators view the law. Determining whether administrators view the law primarily as a compliance responsibility to maintain the status quo or whether administrators view the law as a tool to promote social justice in schools may provide insight into why schools struggle to make largely known equity promoting choices. Ultimately, if schools are to engage the difficult work of making more equitable and just schools, they must be well grounded in both legal and social justice traditions.


