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and Unequal Opportunity 1970-2010**

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Stories of Civil Rights Progress and the Persistence of Inequality and  
Unequal Opportunity 1970-2010

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*Saint Louis University - School of Law*

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**Stories of Civil Rights Progress and the  
Persistence of Inequality and Unequal Opportunity  
1970-2010**

**Michael A. Wolff<sup>1</sup>**

**Introduction**

I open with a story from the heyday of the Fourteenth Amendment – the mid-1970s. The state of Minnesota had appealed a 1975 judgment ordering the state to upgrade conditions in a state-run institution for "mentally retarded" persons, including the installation of new carpeting. As a recovering Legal Services lawyer who had recently migrated to academia, I went to watch the oral arguments in St. Louis. The U.S. Court of Appeals panel included Judge J. Smith Henley, an Arkansas judge whose deep-woods accent is hard for us Yankees to

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<sup>1</sup> Judge of the Supreme Court of Missouri; distinguished visiting professor at Saint Louis University School of Law; A.B., Dartmouth College; J.D., University of Minnesota. This lecture was the keynote address for a conference commemorating the 100<sup>th</sup> anniversary of the legal aid programs in Saint Paul for low-income persons. The conference, "SMRLS (Southern Minnesota Regional Legal Services) Racial Justice, Legal Aid Staff, & Alumnae/i Roles and Opportunities – Then and Now," was held in June 2010 at the William Mitchell College of Law. Judge Wolff was a staff attorney at the predecessor to SMRLS – Legal Assistance of Ramsey County (LARC) – from 1971 to 1972. The author dedicates the lecture to the memory of Dolores "Dee" Orey, a wonderful colleague and mentor with whom I shared an office at LARC, and Alberta "Bert" Dowling, office manager/secretary at LARC whose constant admonition to "stand up straight" has stayed with me since. Dee later served as a District Judge in Hennepin County; Bert went on to serve many years as office manager of the clinical programs at William Mitchell. The author thanks law clerks, Laura Keck, Rachel Shenker and Susan Musser, and 2L student Michele Parrish for their research and editorial assistance, and Beth Riggert, communications counsel for the Supreme Court of Missouri, for editing assistance, with special thanks to Bruce Beneke, longtime SMRLS director and conference organizer, for his suggestions and encouragement.

imitate. The Minnesota assistant attorney general began by observing that the Fourteenth Amendment never was intended to require states to install carpeting. "Young man," Judge Henley interrupted in a slow deep drawl, "I have been to y'all's state capitol up there in St. Paul, Minnesota, and I have seen the paintin' of the Minnesota regiment enterin' the city of Little Rock. I just want to remind you, suh, that that Fourteenth Amendment was not our idea."

The Fourteenth Amendment has been a remarkable source of law for the advancement of human rights. Regardless of whose idea the Fourteenth Amendment might have been, the state of Minnesota lost its argument over carpeting.<sup>2</sup> I do not know whether the state still is required to keep the carpeting in repair, but it will be useful, I hope, to go back 40 or 50 years and see where we have come from and where we are.

The central question is the extent to which the legal victories for equality in our era – whether in the courts or the legislatures – survive or are overwhelmed by economic and political forces.

My starting point in this inquiry is a remarkable speech in 1965, several months following the passage of the landmark Civil Rights Act of 1964: "You do not wipe away the scars of centuries by saying: Now you are free to go where you want, do as you desire, and choose the leaders you please. You do not take a

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<sup>2</sup> *Welsch v. Likins*, 550 F.2d 1122 (8th Cir. 1977). The case was about a lot more than carpeting – conditions of confinement, staffing, and the right to decent treatment. Judge Henley wrote the opinion upholding the district court decision of Judge Earl R. Larson. Luther Granquist of the Legal Aid Society of Minneapolis represented the plaintiffs.

person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, 'You are free to compete with all the others,' and still justly believe that you have been completely fair," the speaker said. "This is the next and more profound stage of the battle for civil rights. We seek not just freedom of opportunity – not just legal equity but human ability – not just equality as a right and a theory but equality as fact and as a result."

The speaker was President Lyndon B. Johnson delivering the commencement address at Howard University in 1965.<sup>3</sup> The speech is a historical marker: It was probably the high point of the struggle for equity and equality in my lifetime. And, to a certain extent – especially in economics – you might say it has been mostly downhill from there.

### **The “War on Poverty”**

The battle for economic justice, which President Johnson called the "War on Poverty," foundered as Johnson became obsessed with – and bogged down by – the War in Vietnam. The moral denunciation of the war by Martin Luther King, Jr. and other civil rights leaders split Johnson from the civil rights movement.<sup>4</sup>

There were legislative victories, such as the Voting Rights Act of 1965 and the

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<sup>3</sup> JAMES T. PATTERSON, *FREEDOM IS NOT ENOUGH: THE MOYNIHAN REPORT AND AMERICA'S STRUGGLE OVER BLACK FAMILY LIFE FROM LBJ TO OBAMA*, at ix (2010).

<sup>4</sup> *See, e.g.*, Hampton Sides, *HELLHOUND ON HIS TRAIL: THE STALKING OF MARTIN LUTHER KING, JR. AND THE INTERNATIONAL HUNT FOR HIS ASSASSIN* 22-24 (2010).

laws against housing discrimination and age discrimination in 1968.<sup>5</sup> But the fervor to change the economic conditions that produced poverty has had few lasting remnants – the legal services program is one, of course.<sup>6</sup> If there was a victory in Vietnam, it was the defeat of the War on Poverty.

When the “War on Poverty” was fully engaged, the courts were a hope for progress in the late 1960s and early 1970s. Following the landmark school desegregation case of *Brown v. Board of Education* in 1954<sup>7</sup> and the political equality cases such as *Reynolds v. Sims*,<sup>8</sup> which struck down malapportioned legislatures, there were those in the 1960s and 1970s who believed that courts were where the action was when it came to advancing social justice.

The Economic Opportunity Act of 1965 reinvigorated Legal Services programs and brought them to a scale previously thought unimaginable. Legal Assistance of Ramsey County (LARC) received enormous increases in funding, staffing and mission from its days as a bar association-funded program for the

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<sup>5</sup> Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (2006)); Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (codified as amended at 42 U.S.C. §§ 3601-3619 (2006)); Age Discrimination in Employment Act of 1967, Pub. L. No. 90-202, 81 Stat. 602 (codified as amended at 29 U.S.C. §§ 621-34 (2006)).

<sup>6</sup> See Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378 (codified as amended at 42 U.S.C. § 2996 (2006)). See also Tom I. Romero II & Bruce A. Beneke, *100 Years Strong: Southern Minnesota Regional Legal Services and the On-Going Pursuit for Equal Rights and Equal Justice*, 31 HAMLINE J. PUB. L. & POL'Y 1, 8-17 (2009) (explaining the resources that the Office of Economic Opportunity provided to legal services organizations, including Legal Assistance of Ramsey County (LARC), beginning in 1964).

<sup>7</sup> *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).

<sup>8</sup> *Reynolds v. Sims*, 377 U.S. 533 (1964).

poor. In that same era, there came from these landmark court decisions a belief that courts should be a primary focus of what was called "law reform."<sup>9</sup>

On a more subtle and understandable level, judicial decisions were beginning to be understood better in their proper context, that is, as sparks to legislated changes. In a democracy, after all, the only way that change can endure is by coming through the legislative process. Well, "only" is perhaps a little too strong. But as we have seen in recent years, there has been a serious limit to what courts in their confined adjudicative roles can or should do to advance causes that encompass a concept of "social justice."<sup>10</sup>

### **Litigate, Legislate, or Both?**

The point was brought home to me rather forcefully, and personally, a couple of years after I left the LARC program in St. Paul, when I inherited a case at Black Hills Legal Services in Rapid City, SD, where I was director for a few years in the early 1970s. The client was a girl who wanted to play Little League baseball, and her complaint was pending before the South Dakota Human Rights Commission. I was intrigued but not overwhelmed by the case, unsure as I was of its value in enhancing the economic interests of the poor. But it was important to

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<sup>9</sup> Tom I. Romero II & Bruce A. Beneke, *100 Years Strong: Southern Minnesota Regional Legal Services and the On-Going Pursuit for Equal Rights and Equal Justice*, 31 HAMLIN J. PUB. L. & POL'Y 1, 12 (2009).

<sup>10</sup> See, e.g., Michael A. Rebell & Robert L. Hughes, *Schools, Communities, and the Courts: A Dialogic Approach to Education Reform*, 14 YALE L. & POL'Y REV. 99, 110-113 (1996) (stating that judicial intervention in education has not "resulted in meaningful reform" and noting that a majority of attorneys involved in desegregation litigation have "expressed general dissatisfaction with the results of [the] litigation").

the client, so I pursued it and won before the human rights commission. The Little League organization sought review in the circuit court, and I won again.

Expecting to be marched to the Supreme Court of South Dakota, I waited. But what I found, in short order, was that the South Dakota legislature amended the human rights statute to *exclude* voluntary youth athletic programs.<sup>11</sup> I do not remember the client's name; I think it was Megan – so call it Megan's law, if you will.<sup>12</sup> This, of course, was before anyone thought of naming a statute after a person.

The larger point is that cases inevitably have a political context. We ignore this at our peril. When I was in South Dakota I did some successful lobbying on a mental health bill, a rape shield law and a landlord tenant bill.<sup>13</sup> I had a pretty good year in 1974, before they figured out who I was and what I was up to. When I mentioned these efforts at meetings of legal services directors in the mid-1970s, the common reaction was: "What could you be thinking? How can you get your

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<sup>11</sup> The exclusion of voluntary youth athletic programs persists. *See* S.D. CODIFIED LAWS § 20-13-22 (2010).

<sup>12</sup> In a possibly related development, Governor Richard Kneip appointed me to the South Dakota Commission on the Status of Women in 1975. Officials of the department of social services asked the governor to withdraw the appointment because I frequently had sued the state on behalf of legal services clients. The controversy became moot when I left the state a couple of months later to begin teaching in St. Louis. I assume the status of women in South Dakota has proceeded in my absence.

<sup>13</sup> *See* Michael A. Wolff, *A Balancing Act: Strengthening South Dakota's Landlord-Tenant Law*, 22 S.D. LAW REV.15 (1977). The article includes my attempt to use informal legislative history, in a state that has no formal legislative history, to advance what I believed was a proper interpretation of the law. It was a youthful indiscretion: Today I believe such use of "legislative history" to be less than legitimate.



hands dirty in the political process?" Well, actually, a successful legislative effort goes a long way to making the kind of permanent change on behalf of legal services clients that we and the clients think is desirable. In fact, such changes can be so effective that, for most of its existence, the legal services corporation law has forbidden legal services lawyers from doing legislative advocacy.<sup>14</sup>

### **Limits of “Law Reform”**

*Brown v. Board of Education* and the ensuing 50 years of litigation and legislation teach us something about the limits of adjudicated law reform in a democratic society. *Brown*, of course, did spur major societal changes in an era in which the legislative branches of the federal and state governments were unable or unwilling to correct the apartheid in public education. The *Brown* decision also illustrated the evolving role of courts in (1) correcting "wrong" decisions and (2) changing legal standards to suit changing needs – a role in line with the common law understanding that the law progresses as society's views change.<sup>15</sup> That role was quite evident, for example, in the recognition of the rights of gays to marry

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<sup>14</sup> 42 U.S.C. § 2996(f) (2000). See also Rebekah Diller & Emily Savner, *Restoring Legal Aid for the Poor: A Call to End Draconian and Wasteful Restrictions*, 36 FORDHAM URB. L.J. 687, 701-702 (2009); Paula Galowitz, *Restrictions on Lobbying by Legal Services Attorneys: Redefining Professional Norms and Obligations*, 4 B.U. PUB. INT. L.J. 39, 40-41 (1994).

<sup>15</sup> See Lani Guinier, *Courting the People: Demosprudence and the Law/Politics Divide*, 89 B.U. L. REV. 539, 549-50 (2009) (noting how "*Brown* helped inspire the civil rights movement"); Linda C. McClain, *Supreme Court Justices, Empathy, and Social Change: A Comment on Lani Guinier's Demosprudence through Dissent*, 89 B.U. L. REV. 589 (2009).

that was identified in court decisions in Massachusetts,<sup>16</sup> Iowa,<sup>17</sup> Connecticut,<sup>18</sup> and earlier in Vermont,<sup>19</sup> as well as legislative changes in the latter state.<sup>20</sup> But I am getting off my point here.

The *Brown* decision produced in the south, but more particularly in border states such as Missouri, an extraordinary resistance to desegregation. *Brown's* progeny got federal courts involved in the management of schools, specifically in the assignment of pupils, the busing of students and the development of "magnet" schools to affect racial desegregation. Judge Gerald Heaney of Duluth, who died recently, probably was better known in St. Louis than in St. Paul. He wrote 27 opinions in our St. Louis desegregation case as a judge of the U.S. Court of Appeals.<sup>21</sup> Would this happen with today's Eighth Circuit? Just asking.<sup>22</sup>

The political resistance to school desegregation decisions was sufficiently strong that throughout the period of the 1970s and 1980s there were serious proposals in Congress to change the jurisdictional statute for the federal courts to

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<sup>16</sup> *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003).

<sup>17</sup> *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009).

<sup>18</sup> *Kerrigan v. Comm'r of Pub. Health*, 957 A.2d 407 (Conn. 2008).

<sup>19</sup> *Baker v. State*, 744 A.2d 864 (Vt. 1999).

<sup>20</sup> VT. STAT. ANN. tit. 15 § 8 (2009).

<sup>21</sup> Dennis Hevesi, *Gerald W. Heaney, a Judge Who Ruled for the Desegregation of Public Schools, Dies at 92*, N.Y. TIMES, June 23, 2010, at A19, available at <http://www.nytimes.com/2010/06/23/us/23heaney.html>. See *Liddell v. Bd. of Educ. of City of St. Louis*, 121 F.3d 1201 (8th Cir. 1997), for an example of one of the 27 St. Louis desegregation cases.

<sup>22</sup> JEFFREY BRANDON MORRIS, ESTABLISHING JUSTICE IN MIDDLE AMERICA: A HISTORY OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT 342 (2007) (noting the "more conservative course" of the Eighth Circuit in recent years).

exclude school desegregation cases.<sup>23</sup> Were it not for a few principled senators – some liberal, some conservative – that measure would have passed.<sup>24</sup>

But an equally large and looming problem in public education was the disparity of resources that was coming to the attention of the courts, both federal and state.<sup>25</sup> The movement in the federal court was cut off quickly by the decision of the Supreme Court of the United States in 1973 in *San Antonio School District v. Rodriguez*.<sup>26</sup> Before *Rodriguez*, the Legal Assistance of Ramsey County program had a go at economic equality in federal court. The case, *Van Dusartz v. Hatfield*,<sup>27</sup> survived the state's motion to dismiss, with an opinion that delineated some fine constitutional principles for the case if it were to go forward. At that point, we LARC lawyers decided that we did not have the money or the wits to litigate something that complicated, and so declared victory after the legislature

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<sup>23</sup> See, e.g., H.R. 160, 100th Cong. (1st Sess. 1987); H.R. 1180, 97th Cong. (1st Sess. 1981); H.R. 992, 96th Cong. (1st Sess. 1979); H.R. 4722, 95th Cong. (1st Sess. 1977); H.R. 14761, 93rd Cong. (2d Sess. 1974).

<sup>24</sup> See Max Baucus & Kenneth R. Kay, *The Court Stripping Bills: Their Impact on the Constitution, the Courts, and Congress*, 27 VILL. L. REV. 988 (1982) (outlining the various jurisdiction-stripping proposals being considered by Congress in the early 1980s). Senator Baucus argued that the proposals' constitutionality was questionable and that their passage could harm the legitimacy of the Constitution, the courts and Congress. See also Lloyd C. Anderson, *Congressional Control over the Jurisdiction of the Federal Courts: A New Threat to James Madison's Compromise*, 39 BRANDEIS L.J. 417 (2000) (noting ways opponents of the legislation argued against its passage in the 1980s).

<sup>25</sup> See generally JOHN E. COONS ET AL., PRIVATE WEALTH AND PUBLIC EDUCATION (1970).

<sup>26</sup> *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

<sup>27</sup> *Van Dusartz v. Hatfield*, 334 F. Supp. 870 (D.C. Minn. 1971).

significantly increased state funding for local school districts.<sup>28</sup> The strategy was modeled on the advice of the late Senator George Aiken of Vermont, whose strategy for ending the endless war in Vietnam in 1966 was simply to declare victory and go home.<sup>29</sup> I think of Senator Aiken now and then. Perhaps some in Washington should too. But again, I digress.

In *Rodriguez*, the Court held that there was no fundamental right to education and that the equal protection claims of the school children in San Antonio would not be recognized, despite the great disparities in spending between and among school districts in Texas.<sup>30</sup>

Contemporary justices in *Parents Involved*<sup>31</sup> are reinterpreting *Brown* to mean that the constitution is entirely color-blind and that all racial classifications violate the Equal Protection clause.<sup>32</sup> These recent decisions may tell us more about the current state of judicial activism than they do about equal protection.

### **The Discovery of State Courts**

The *Rodriguez* decision pushed advocates into the state courts. The move violated a principle I call Haydock's Avowal: When I practiced with Roger

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<sup>28</sup> See Tom I. Romero II & Bruce A. Beneke, *100 Years Strong: Southern Minnesota Regional Legal Services and the On-Going Pursuit for Equal Rights and Equal Justice*, 31 *HAMLIN J. PUB. L. & POL'Y* 1, 14 (2009).

<sup>29</sup> Richard Eder, *Aiken Suggests U.S. Say It Has Won the War*, *N.Y. TIMES*, Oct. 20, 1966, at 1.

<sup>30</sup> *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1 37, 54-55 (1973).

<sup>31</sup> *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist.*, 551 U.S. 701 (2007).

<sup>32</sup> Joel K. Goldstein, *Not Hearing History: A Critique of Chief Justice Robert's Reinterpretation of Brown*, 69 *OHIO ST. L.J.* 791 (2008) (discussing the anti-classificationist view of *Brown* as put forth by Justices Roberts, Scalia, Thomas and Alito in *Parents Involved*).

Haydock at LARC in 1971, he told me about going to state court to keep utility customers' power from being shut off without due process; the judge said: "That's a big corporation isn't it? I can't enjoin them." At that point, Roger wrote a note to himself that said "I shall never go to state court again." The opposite advice came some years later in a lecture by Justice William Brennan, who suggested that the Supreme Court of the United States was becoming a rather poor place for the adjudication of constitutional claims; the good justice advised us all to go to state courts.<sup>33</sup> And so, Haydock's Avowal was overruled by Brennan's Admonition.<sup>34</sup>

The resulting move to state courts led to the discovery of state constitutions.<sup>35</sup> In addition to state constitutional provisions about equal protection and equality, state constitutions also had requirements that the state provide a system of free public education for all children of a certain age. This became a fertile subject for litigation strategies, and there were, in fact, quite a few states in which state funding of public education was declared unconstitutional because of the gross disparities between "rich" districts and the "poor" districts. It

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<sup>33</sup> William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977).

<sup>34</sup> Roger Haydock has had a highly successful career as a professor at William Mitchell College of Law and has written many books about how to practice law, major parts of which can be useful in practicing in *state* courts. See, e.g., ROGER S. HAYDOCK ET AL., HAYDOCK, HERR AND STEMPEL'S FUNDAMENTALS OF PRETRIAL LITIGATION (7th ed. 2009); ROGER S. HAYDOCK & JOHN O. SONSTENG, HAYDOCK ADVOCACY (1994).

<sup>35</sup> See ROBERT F. WILLIAMS, STATE CONSTITUTIONAL LAW: CASES AND MATERIALS (3d ed. 1999); William J. Brennan, Jr., *The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 N.Y.U. L. REV. 535 (1986).

was in this 1970s and 1980s era that many states did adopt "equalization" formulas for distributing state aid that were intended to – but did not – eliminate disparities between rich and poor school districts. These formulas were developed with some (but not much) regard for equal protection principles. But more realistically, the legislative changes reflected political notions of fairness rather than a coherent legal doctrine of equal protection of laws.<sup>36</sup>

### **Intentional Inequality?**

The school financing system that remains in most states is pretty awful from the standpoint of disparity. I have thought deeply about this subject; recently I was the sole dissenter in a case that upheld Missouri's formula for distributing state aid to public education.<sup>37</sup> Here is my deep thought: The persistence of inequality in funding among school districts is intentional and, to an extent, perhaps a matter of political necessity.<sup>38</sup>

This is a stunningly depressing insight. But there is something we should realize: In the United States of America, local control is very important. Local control means not only control of curricular decisions – you know how those sometimes work out – but also the support that is necessary from local sources to fund public schools. Public education in most states is highly dependent on local

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<sup>36</sup> See, e.g., Jeffrey S. Sutton, *San Antonio Independent School District v. Rodriguez and Its Aftermath*, 94 VA. L. REV. 1963, 1971-73 (2008); William S. Koski & Rob Reich, *When "Adequate" Isn't: The Retreat from Equity in Educational Law and Policy and Why It Matters*, 56 EMORY L.J. 545, 554 (2006).

<sup>37</sup> *Comm. for Educ. Equal. v. State*, 294 S.W.3d 477, 495 (Mo. banc 2009) (Wolff, J., concurring in part and dissenting in part).

<sup>38</sup> *Id.* at 497.

property tax revenue, which in turn is dependent on the willingness of local taxpayers to fund public education. It's as simple as that.<sup>39</sup> In the states that have done the most at equalizing expenditures for public education, there have been some attempts at "Robin Hood" provisions – that is, requiring rich districts to contribute a certain amount of their largesse to a pool to be distributed to poor school districts that, regardless of how much tax effort they put forth at the local level, cannot raise the kind of property tax that a rich school district can.<sup>40</sup> Robin Hood dies in the end.<sup>41</sup> End of story.

### **Due Process and Employment Rights**

We should cover due process because, after all, this is what we legal services lawyers spent a good deal of our careers worrying about. In the area of public benefits, our cases were mostly about protecting the rights of individuals *vis-a-vis* government bureaucracy. The injection of due process principles into the provision of public benefits, or rather the protection against arbitrary denials of

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<sup>39</sup> Laurie Reynolds, *Uniformity of Taxation and the Preservation of Local Control in School Finance Reform*, 40 U.C. DAVIS L. REV. 1835, 1886-89 (2007). *See also* Comm. for Educ. Equal. v. State, 294 S.W.3d 477, 497 (Mo. banc 2009) (Wolff, J., concurring in part and dissenting in part) (discussing the wide disparity of district spending per pupil among Missouri school districts); Myron Orfield, *The Region and Taxation: School Finance, Cities, and the Hope for Regional Reform*, 55 BUFF. L. REV. 91, 126-33 (2007) (examining the impact on Michigan's education system once Michigan voters finally passed a property tax and school finance measure after eleven failed attempts).

<sup>40</sup> Laurie Reynolds, *Uniformity of Taxation and the Preservation of Local Control in School Finance Reform*, 40 U.C. DAVIS L. REV. 1835, 1856 n.68 (2007).

<sup>41</sup> *Robin Hoods [sic] Death and Burial*, in ROBIN HOOD: A COLLECTION OF ALL THE ANCIENT POEMS, SONGS, AND BALLADS, NOW EXTANT, RELATIVE TO THAT CELEBRATED ENGLISH OUTLAW 231, 239 (Joseph Ritson ed. 1823).

public benefits, was an important advance in terms of individual rights.<sup>42</sup> It probably does little to level the economic playing field, which I will address toward the end of this piece.

Employment discrimination cases have been a real source of vindication of individual rights. The case brought by LARC in the early 1970s alleging racial discrimination in hiring police officers had long-term effects.<sup>43</sup> These effects are recounted in a profile of John Harrington, recently retired Saint Paul police chief:

Harrington graduated from Dartmouth with a degree in East Asian studies and religion, and a minor in Chinese, and began looking for cop jobs in the big cities. No one was hiring. . . .

"New York went bankrupt," Harrington recalls. "They laid off 2,000 cops in 1975 and 1976, and everywhere I applied my senior year was flooded with New York detectives. I've got this wonderful Ivy League degree and they've got 100 collars they made last year. Guess who got the job?"

Finally Harrington found a job in St. Paul, at least in part because a Minnesota judge had ordered the department to hire more black officers. There were just six black cops on the force at the time.<sup>44</sup>

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<sup>42</sup> *Goldberg v. Kelly*, 397 U.S. 254 (1970). The St. Paul case is *Norlander v. Schleck*, 345 F. Supp. 595 (D. Minn. 1972). See also Jesse H. Choper, *Consequences of Supreme Court Decisions Upholding Individual Constitutional Rights*, 83 MICH. L. REV. 1, 146-50 (1984); Note, *Procedural Due Process in Government-Subsidized Housing*, 86 HARV. L. REV. 880, 880 (1973) (stating that *Goldberg* "has had a dramatic impact on court decisions in public housing cases").

<sup>43</sup> The case, *Warren v. Schleck*, from the U.S. District Court, is described in Tom Romero II and Bruce A. Beneke, *100 Years and Strong: Southern Minnesota Regional Legal Services and the On-Going Pursuit for Equal Rights and Equal Justice*, 31 HAMLINE J. PUB. L. & POL'Y 1, 14, n.40 (2009). Bruce Beneke, the co-author, led the efforts over many years to obtain the relief in *Warren v. Schleck* and other employment and civil rights actions in St. Paul.

<sup>44</sup> Rick Shefchik, *True Blue: John Harrington '77, St. Paul's top cop, leaves the force after three decades of service*, DARTMOUTH ALUMNI MAG., July-Aug. 2010, available at [www.dartmouthalumnimagazine.com/true-blue](http://www.dartmouthalumnimagazine.com/true-blue).



In recent years, the dominance of federal courts in civil rights litigation has ended as state courts have come to play an increasingly important role, a shift that seems counterintuitive to those who grew up thinking that courts whose judges are accountable through elections would be more reluctant to grant relief in civil rights cases than federal court judges who are appointed to serve for life. The state courts, at least in my state, recently have been much better places for such cases, interestingly enough, because state juries understand these cases.<sup>45</sup>

A word about jury trials briefly: When the Civil Rights Act of 1964 forbade employment discrimination on the basis of race, sex and so forth, the remedy was fashioned in such a way as to avoid having jury trials.<sup>46</sup> The problem as Congress correctly saw it was that juries in the South – where many of the problems were most plentiful – would not be amenable to blacks' claims of racial discrimination.<sup>47</sup> When Congress subsequently provided a claim for age

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<sup>45</sup> See, e.g., *State ex rel. Diehl v. O'Malley*, 95 S.W.3d 82 (2003). See also Erin C. Hansen, *State ex rel. Diehl v. O'Malley Breaks Down the Wall: The Right to a Jury Trial in State Court under the Missouri Human Rights Act*, 59 J. MO. B. 296, 307 (2003) (discussing the likely impact of *Diehl* on Missouri state court dockets).

<sup>46</sup> HOUSE JUDICIARY COMMITTEE, REPORT ON THE CIVIL RIGHTS ACT OF 1964, H.R. DOC. NO. 914, at 2012 (1st Sess. 1964). The original version of the Civil Rights Act provided the following remedies: injunction, reinstatement or hiring of employees, and interim earnings or amounts earnable. *Id.* Notably absent from this litany of options was a jury trial. See *id.*

<sup>47</sup> Congress was undoubtedly aware of the racial tensions in the South. See generally COMMITTEE ON EDUCATION AND LABOR, REPORT ON THE CIVIL RIGHTS ACT OF 1964, H.R. DOC. NO. 1370 (2d Sess. 1962). It can be inferred from this knowledge that racial tensions in the South were a factor in determining the appropriate remedies under this act. Scholars generally have accepted this proposition. See Christian N. Elloie, *Are Pre-Dispute Jury Trial Waivers a Bargain for Employers over Arbitration? It Depends on the Employee*, 76 DEF.

discrimination and housing discrimination, the remedies included damages and were thus eligible for jury trials.<sup>48</sup> Jurors, of course, understand age discrimination because a lot of jurors are pretty old or know someone who is. Today, race and gender rights are well established and can be vindicated in state court jury trials, and, since 1991, in federal employment discrimination cases as well.<sup>49</sup> That may be a sign of societal advancement. Who knows? It is, at the very least, a vindication of efforts to ban discrimination against blacks and women serving on juries.<sup>50</sup>

### **Mental Illness and Crime**

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COUNS. J. 91, 94 & n.25 (2009) (citing M. Isabel Medina, *A Matter of Fact: Hostile Environments and Summary Judgments*, 8 S. CAL. L. REV. & WOMEN'S STUD. 311, 357 (1999) ("[t]he legislative record for the 1964 Act reveals legislative unease with juries because they were perceived to be hostile or unfriendly to civil rights claimants. This was certainly with race discrimination, plainly the driving force behind the 1964 Act .... Federal judges would be more receptive to victims of racial discrimination ..."))).

<sup>48</sup> Frank H. Easterbrook, *The Demand for Judicial Review*, 88 NW. U. L. REV. 372, 380 (1993) (housing discrimination); Kimberlye K. Fayssoux, *The Age Discrimination in Employment Act of 1967 and Trial by Jury: Proposals for Change*, 73 VA. L. REV. 601, 602 (1987) (age discrimination). The Civil Rights Act of 1968 did not explicitly provide for the right to a jury trial, but the Supreme Court held that because damages were allowed, the right to a jury existed. See *Curtis v. Loether*, 415 U.S. 189 (1974). With the passage of the Civil Rights Act of 1991, Congress statutorily extended the right to a jury to all actions under the civil rights law. Frank H. Easterbrook, *The Demand for Judicial Review*, 88 NW. U. L. REV. 372, 380 n.27 (1993).

<sup>49</sup> M. Isabel Medina, *A Matter of Fact: Hostile Environments and Summary Judgment* 8 CAL. REV. L. & WOMEN'S STUD. 311, 312 (1999). For a critique of contemporary equal employment enforcement, see Marcia L. McCormick, *The Truth Is Out There: Revamping Federal Antidiscrimination Enforcement for the Twenty-First Century*, 30 Berkeley J. Emp. & Lab. L. 193 (2009).

<sup>50</sup> E.g., *Batson v. Kentucky*, 476 U.S. 79 (1986); *Duren v. Missouri*, 439 U.S. 357 (1979).

In the 1970s, there also was a movement to give due process to persons committed to mental hospitals who were alleged to be mentally ill and in need of treatment.<sup>51</sup> The due process movement was premised on the notion that, once patients were afforded due process rights and diverted from or released from mental institutions, they could be treated successfully and adequately in the community by the administration of the new psychotropic medicines that were doing so well at controlling psychoses of various kinds. Our belief was that the states would step up and fund community mental health centers because it was so much cheaper than maintaining mental hospitals.<sup>52</sup>

Oops. Due process got a lot of mentally ill people out of hospitals. But the patients did not take their medications, wandered the streets, committed crimes and ended up in prison.<sup>53</sup> I can draw a line that shows the declining population of mental hospitals in this country in the 1970s and the early 1980s and then draw you another line that shows the increase in population in state and federal prisons. These two lines are not disconnected – as one goes down, the other goes up. It is not quite that simple, but it is close – if you don't believe me, go to your local

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<sup>51</sup> Nancy J. Knauer, *Defining Capacity: Balancing the Competing Interests of Autonomy and Need*, 12 TEMP. POL. & CIV. RTS. L. REV. 321, 332 (2003).

<sup>52</sup> See Chris Koyanagi, Judge David L. Bazelon Center for Health Law, *Learning From History: Deinstitutionalization of People with Mental Illness as Precursor to Long-Term Care Reform* 6-7, 16 (2007), available at <http://www.kff.org/medicaid/upload/7684.pdf> (providing the history of deinstitutionalization and noting that many mental health policymakers assumed that community care provided a cheaper alternative).

<sup>53</sup> *Id.* at 12-13; Bruce A. Arrigo, *Paternalism, Civil Commitment and Illness Politics: Assessing the Current Debate and Outlining a Future Direction*, 7 J.L. & HEALTH 131, 141 (1993).

prison. Take your psychiatrist with you. He or she may estimate the number of doses of quality medications it might take to make it a happier place.

As to crime and punishment, the last 40 years have seen an interesting swing in thinking about the proper use of "prisons" or "corrections."

In the 1970s, as a result of some misguided academic studies, it became commonly believed that in the area of rehabilitation of criminals, "nothing works." As a result, punishment in prison became more common and more commonly accepted for a greater range of crimes.<sup>54</sup> Also in the same era, the superbly ineffectual and counterproductive war on drugs was launched.

As a result of these factors, as well as criminalization of previously non-criminal conduct, we have been on a binge of incarceration that was aided and abetted by an explosion of prison building in the 1990s. The results are quite remarkable. Today one in 31 persons is under correctional control, one in 100 is in prison or jail.<sup>55</sup> If you build it, they will come (to misquote a popular movie).<sup>56</sup>

The effects on minority populations have been particularly dramatic. I ask any of you who recently has been to law school or to college, to answer one question: Where are the black men? We have marginalized a lot of them by imposing felony sentences involving drugs, drug trafficking and the kinds of

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<sup>54</sup> Michael A. Wolff, *Evidence-Based Judicial Discretion: Promoting Public Safety Through State Sentencing Reform*, 83 N.Y.U. L. REV. 1389, 1402-404 (2008); see also ROGER K. WARREN, EVIDENCE-BASED PRACTICE TO REDUCE RECIDIVISM: IMPLICATIONS FOR STATE JUDICIARIES 1, 5 (2007).

<sup>55</sup> PEW CENTER ON THE STATES, ONE IN 100: BEHIND BARS IN AMERICA 1 (2008), available at [http://www.pewcenteronthestates.org/report\\_detail.aspx?id=35904](http://www.pewcenteronthestates.org/report_detail.aspx?id=35904).

<sup>56</sup> FIELD OF DREAMS (Gordon Company 1989).

things that many white people do without getting caught or getting a felony record.<sup>57</sup>

The current decade has resulted in quite a few states rethinking their rush to incarceration. At the same time, the Supreme Court of the United States has by a series of decisions made the federal sentencing guidelines – which I believe have been a source of a great deal of injustice in the criminal justice system – advisory rather than mandatory.<sup>58</sup>

I should note, and not altogether as an aside, the difference in judicial attitudes from the time when the federal sentencing guidelines became effective in 1987 and today. In 1987, judges in office had been used to having full discretion in sentencing and were quite appalled by some of the cases in which they were required to send offenders to prison under the new guidelines. This resulted in more than a few federal judges declaring the guidelines to be unconstitutional – decisions that were overturned on appeal.<sup>59</sup>

But recently, the Supreme Court of the United States said the guidelines can be only advisory; they cannot be mandatory. The effect was not immediately recognized by the current generation of judges who were used to the guidelines

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<sup>57</sup> JIM WEBB, *A TIME TO FIGHT: RECLAIMING A FAIR AND JUST AMERICA* 227-29 (2008).

<sup>58</sup> *See* *United States v. Booker*, 543 U.S. 220 (2005); *Blakely v. Washington*, 542 U.S. 296 (2004).

<sup>59</sup> *See, e.g.*, *U.S. v. Horton*, 685 F. Supp. 1479, 1488 (D. Minn. 1988); *Gubiensio-Ortiz v. Kanahale*, 857 F.2d 1245, 1268 (9th Cir. 1988). *See also* *U.S. v. Alatorre*, 207 F.3d 1078, 1079 (Iowa 2000) (Bright, J., concurring); *U.S. v. Hiveley*, 61 F.3d 1358, 1363 (Iowa 1995) (Bright, J., concurring).

and apparently did not quite know what to do without them.<sup>60</sup> That is a remarkable generational shift.

### **Overriding Economic Trends**

The developments in the law relating to equality have been countermanded by economic trends, including federal taxation policies, which seriously have widened the gap between the richest and poorest in our society. It should hardly pass without notice that in the 1950s the United States was first or second in the world in health status and longevity of its citizens. Japan, on the other hand, recovering from World War II, was far down the list. Today, the income gap in the United States has broadened significantly – and the effect of this has been to move the United States down from first or second in longevity and health status to about 30<sup>th</sup> in the world.<sup>61</sup> As income inequality soars, so do death rates, various diseases, drug use, and obesity – you name it. This most interesting research is primarily in the field of epidemiology and demonstrates the effect that income inequality has on the society as a whole.<sup>62</sup>

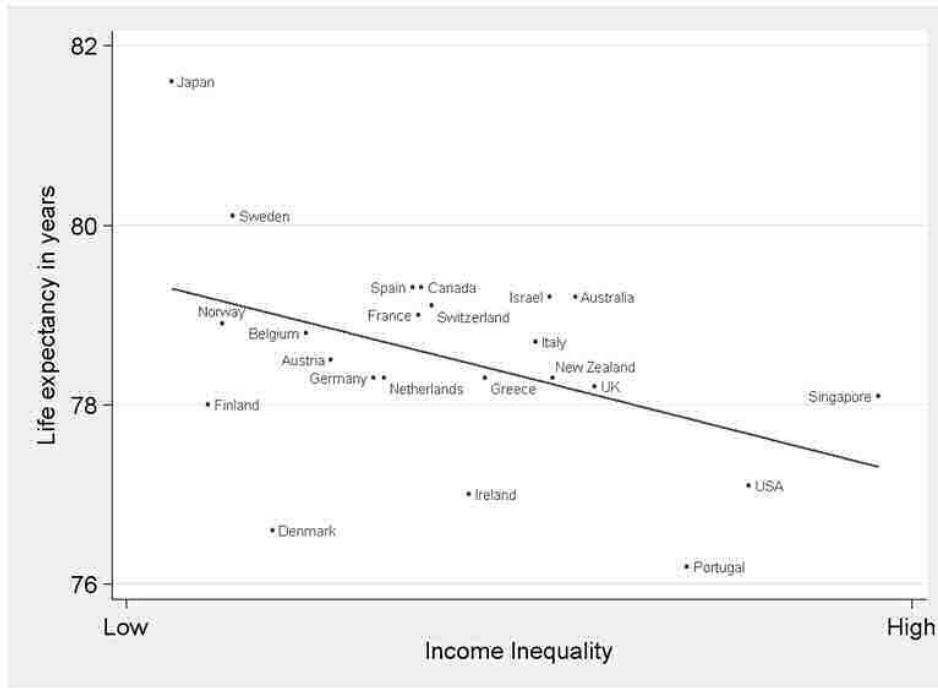
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<sup>60</sup> Nancy Gertner, *Supporting Advisory Guidelines*, 3 HARV. L. & POL'Y REV. 261, 270 (2009) (noting that even following *Booker*, the Sentencing Guidelines still received "considerable deference" as some judges "were simply no longer used to exercising discretion, and worse, they did not believe that they knew how").

<sup>61</sup> RICHARD WILKINSON & KATE PICKETT, *THE SPIRIT LEVEL: WHY GREATER EQUALITY MAKES SOCIETIES STRONGER* 73-87 (2009); MICHAEL MARMOT, *THE STATUS SYNDROME: HOW SOCIAL STANDING AFFECTS OUR HEALTH AND LONGEVITY* 61-81 (2005).

<sup>62</sup> *Id.*

## Life Expectancy is Longer in More Equal Rich Countries



Source: Wilkinson & Pickett, *The Spirit Level* (2009)

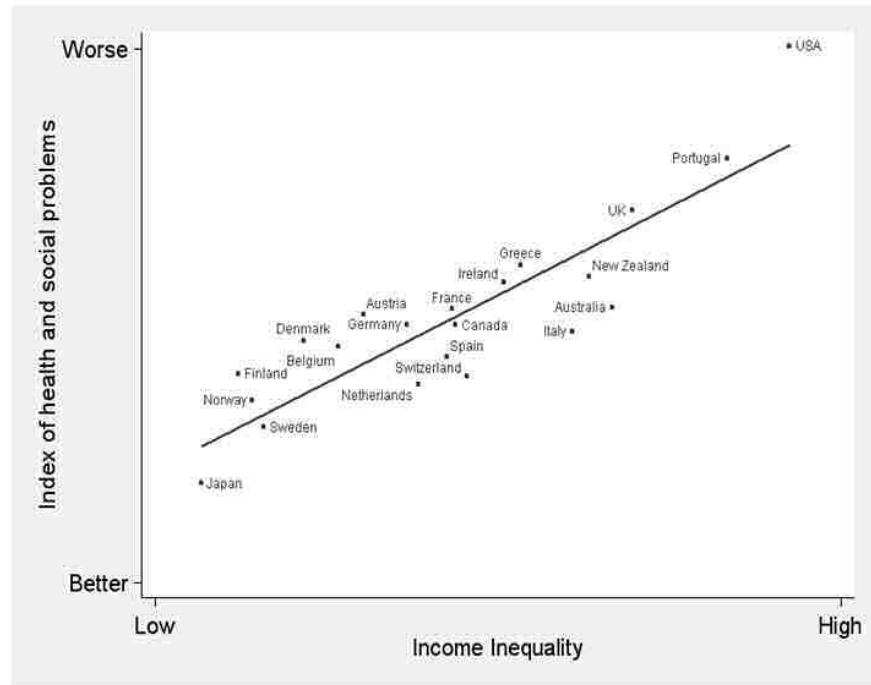
[www.equalitytrust.org.uk](http://www.equalitytrust.org.uk)

Equality Trust

(Figure 1 shows the relationship between income inequality and life expectancy. The United States, which has high income inequality, has one of the lowest life expectancies among developed countries. The charts in Figures 1-4 are reproduced from RICHARD WILKINSON & KATE PICKETT, *THE SPIRIT LEVEL: WHY GREATER EQUALITY MAKES SOCIETIES STRONGER* (2009), with permission of the authors.)

## Health and Social Problems are Worse in More Unequal Countries

- Index of:**
- Life expectancy
  - Math & Literacy
  - Infant mortality
  - Homicides
  - Imprisonment
  - Teenage births
  - Trust
  - Obesity
  - Mental illness – incl. drug & alcohol addiction
  - Social mobility



Source: Wilkinson & Pickett, *The Spirit Level* (2009)

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**(Figure 2 indicates the effect of income inequality on health and social problems. It is also an indicator of how extreme the United States' high income inequality and health and social problems are when compared to other first-world countries.)**

This trend to inequality has been enhanced by the tax code of the United States since 1980. Since 1980, there has been a massive shift of wealth to the highest income families away from the middle class. The burden of taxation, in an era of tax cutting, has been to relieve the highest brackets from their tax burden and to shift that burden disproportionately to the middle class. Alice Gresham Bullock, former dean of Howard University Law School, puts it well:

Since 1981, federal tax laws have supported and even encouraged



the creation of the extreme income gap. After helping to create this gap, these tax laws subsidize the richest Americans, thereby exacerbating income inequality.

...

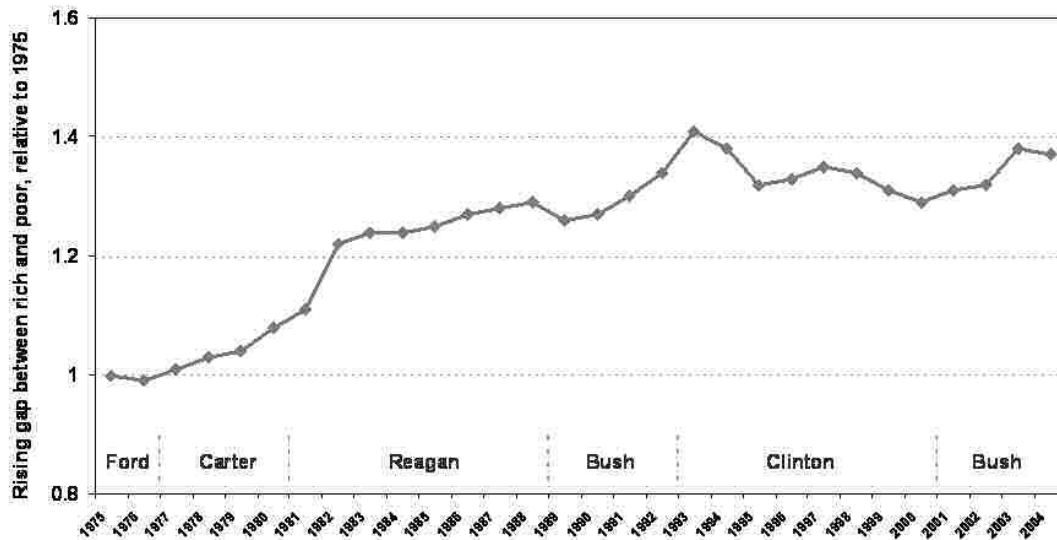
During the last three decades of the twentieth century, incomes rose for all demographic groups. Over time, however, the highest income households earned a much larger share of pre-tax income. In 1979, the bottom four quintiles (80% of taxpayers) earned 55% of pre-tax income and the top quintile earned 45%. In the late 1980s and the first half of 1990s, each group earned roughly one half of all income. By 1996, however, the top 20% moved out ahead, and the income disparity has skyrocketed ever since. The income gap that exists today is between the very richest Americans and everyone else.

There is no doubt the rich are getting richer. After adjusting for inflation, in 2002 the richest 13,400 households had more than \$5 for every dollar they had in 1970. The remaining 99% of households had only eight cents more per dollar. . . . The top 1% saw the largest increase . . . While substantial gains were being made at the top, the bottom quintiles saw their pretax incomes decline by more than 27%.<sup>63</sup>

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<sup>63</sup> Alice Gresham Bullock, *The Tax Code, the Tax Gap, and Income Inequality: The Middle Class Squeeze*, 53 HOW. L.J. 249, 250-52 (2010).

## Trends in US income inequality 1975-2005



Source: Wilkinson & Pickett, *The Spirit Level* (2009)

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Equality Trust

**(Figure 3 shows the growing income inequality between the rich and the poor by presidential administrations beginning with President Ford in 1975. The disparity steadily increased and peaked in 1993. Although the disparity decreased after 1993, it again began increasing in 2000.)**

Coupled with the growing income and wealth inequality is the notion that government is bad or that government is inept. I do not mean to reflect on this at any great length. I simply invite you to watch cable news. But not for too long.

This is a relatively recent phenomenon dating from about 1980. There were two factors, I believe, that contributed to the revolt of the taxpaying masses in the last 30 years: (1) A reaction against "welfare" for the poor, the phenomenon that often times was driven by the perception of the race of the welfare recipients; and (2) welfare for the rich, that is, the enormous tax breaks and tax incentives that

are given to corporations and wealthy citizens. In the latter category, most states have been on a drive to the bottom in terms of giving tax incentives to companies to build businesses in the communities in their states.<sup>64</sup> This goes to absurd length, where a community will give tax-incremental financing or other tax incentives to a big-box retailer, such as Wal-Mart, to build a big store that employs lots of people, but it has had the effect of driving out of business the smaller indigenous businesses in the community. The use of governmental power for corporate economic gain may be a significant impetus to the contemporary "property rights" movement.

The result of this era of government largesse is a distrust of government that is quite pervasive. In the 1980s, there was the idea that we should cut taxes because cutting taxes would produce more government revenue. How? The lower tax burden would spur innovation and investment, and the economy would grow bigger.<sup>65</sup> Closely akin, of course, was the idea that government was the problem and that taxes should be lowered to "starve the beast."<sup>66</sup>

The result of the anti-tax fervor, particularly in the middle class, is that there has been a massive disinvestment in human infrastructure, that is, education,

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<sup>64</sup> See generally Peter D. Enrich, *Saving the States from Themselves: Commerce Clause Constraints on State Tax Incentives for Business*, 110 HARV. L. REV. 373 (1996) (arguing that state tax incentives can actually harm the state's citizens and that such incentives should be restrained by the commerce clause).

<sup>65</sup> See, e.g., James M. Buchanan & Dwight R. Lee, *Politics, Time and The Laffer Curve*, 90 J. POL. ECON. 816 (1982).

<sup>66</sup> Katherine Pratt, *Deficits and the Dividend Tax Cut: Tax Policy as the Handmaiden of Budget Policy*, 41 GA. L. R. 503, 507 nn.17-18 (2007).

public health and cultural institutions that previously had been heavily dependent on public support to thrive.

There is no better illustration of this massive disinvestment than what has been happening with state-supported higher education. The state-supported law school education that I purchased in Minnesota for about \$450 per year in 1967 to 1970 was an extraordinary bargain by today's standards. Most of the law school's budget came from the Minnesota legislature; today, I believe the University of Minnesota Law School gets less than 10 percent of its budget from the state. Here is what happened: When state budgets got tight, higher education was the easiest thing to cut. The cost of higher education can be passed on from taxpayers to the tuition payers. This is made easy by the federal government's student loan programs, which banks administered. What a great business it was – the banks were getting about \$60 billion a year for administering these loan programs – the banks bore no risk because the federal government insured and guaranteed a return on the money.<sup>67</sup> So the banks got \$60 billion for doing not much at all, a practice that ended recently under the Obama administration. Perhaps that was an example of corporate welfare.

But the significance of this shift in funding from taxpayers to tuition payers has made it difficult for families of modest means to get a higher education for their children without the children having to take on massive amounts of student

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<sup>67</sup> David M. Herszenhorn, *Plan to Change Student Lending Sets Up a Fight*, N.Y. TIMES, April 13, 2009, at A1, available at [http://www.nytimes.com/2009/04/13/us/politics/13student.html?pagewanted=2&\\_r=1&partner=rss&emc=rss](http://www.nytimes.com/2009/04/13/us/politics/13student.html?pagewanted=2&_r=1&partner=rss&emc=rss).

loan debt. It is not uncommon in the law school where I now teach for students to be graduating with \$150,000 to \$200,000 in combined student loan debt from their college and law school years. I became strikingly aware of this a few years ago when a student who was a 3L in law school told me she really wanted to be a public defender, a position that had a starting salary of \$32,000 per year. When she told me that her student debt loan was \$120,000, I really was taken aback, but I said that I did not believe she could afford to be a public defender. That's just one small story about what this means and what it is doing to us in terms of the opportunities that people may have to serve in public service and other worthwhile but non-lucrative endeavors.

### **Civic Culture and the Struggle for Equality**

I end by saying there is a need for a strong civic culture whose main characteristic is a common understanding that there are certain things that we as a society need to buy collectively for a large number of our citizens who purchase them individually – education, for example. Put another way, we need a civic culture that recognizes the need for long-term investments in human infrastructure. I refer specifically to public schools at all levels, including higher education, as well as roads, parks and cultural institutions (the latter can be funded both publicly and privately). Public health, including clean water and sewage disposal as well as traditional public health measures, is another area in which we must invest collectively. All of the tax incentives for businesses to move someplace do not

mean very much if there is not an educated and healthy work force and an infrastructure of strong institutions to support that population.

Human infrastructure probably matters most when it comes to economic development of a region. There is a remarkable contrast, for example, between Minneapolis-St. Paul, on the one hand, and the St. Louis metropolitan area where I have lived during the past 35 years. In 1970, the Minneapolis-St Paul metropolitan area was 1.8 million people.<sup>68</sup> St. Louis was 2.3 million.<sup>69</sup> Today St. Louis has about 2.8 million in its metro area, which means that we have kept pace with the birth rate.<sup>70</sup> Minneapolis-St. Paul, which has a long tradition of the civic culture I am talking about, has a population in its metro area of 3.2 million.<sup>71</sup> I do not think people moved to the Twin Cities for the weather and I doubt that they moved for low taxes because Minnesota has one of the highest taxation rates in the country.<sup>72</sup> Businesses flourish where human beings have the means to be their best. The Twin Cities area has a civic culture and traditions that have supported and solidified the gains in legal rights of the past 40 years.

But this supportive environment seems fragile, and you can lose it. Perhaps you are losing it. In the past decade, both Minnesota and Missouri have

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<sup>68</sup> U.S. DEPT. OF CONGRESS, 1A 1970 CENSUS OF POPULATION, § 1, 25-44 (1972).

<sup>69</sup> *Id.* at § 2, 27-43.

<sup>70</sup> See U.S. CENSUS BUREAU: THE 2010 STATISTICAL ABSTRACT, *available at* <http://www.census.gov/compendia/statab/2010/tables/10s0020.pdf>.

<sup>71</sup> *Id.*

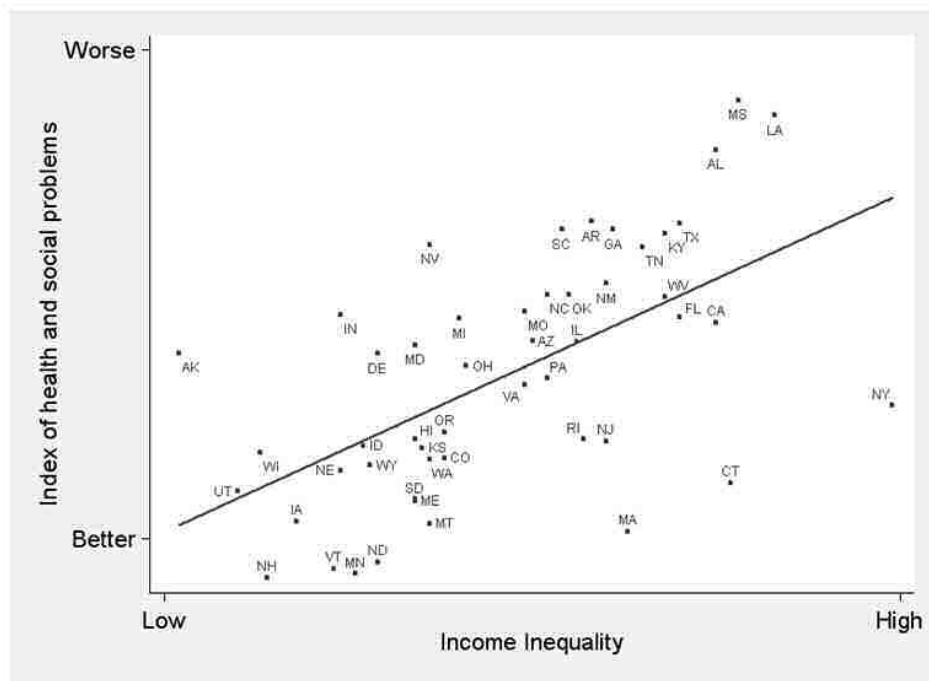
<sup>72</sup> Minnesota has one of the highest rates of taxation in the United States. FEDERATION OF TAX ADMINISTRATORS: STATE INDIVIDUAL INCOME TAX RATES, *available at* [http://www.taxadmin.org/fta/rate/ind\\_inc.pdf](http://www.taxadmin.org/fta/rate/ind_inc.pdf).

experienced declines in average household income that exceed the decline in the United States as a whole. Minnesota's economy seems to have been more resilient than Missouri's. From 1999 to 2008, Minnesota's average household income, adjusted for inflation, dropped 9.6 percent, while Missouri's drop was 14.1 percent.<sup>73</sup>

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<sup>73</sup> From 1999 to 2008, the median household income (adjusted for inflation) in the United States dropped from \$52,587 to \$50,303, a decline of 4.5 percent. Minnesota's average household income, which is well above the national average, declined 9.6 percent, from \$60,782 to \$54,925 in that period. Missouri's average household income, which was slightly above average at \$53,475 in 1999, dropped 14.1 percent to \$46,038 in 2008, well below the national average. U.S. Census Bureau, Median Household Income by State, <http://www.census.gov/hhes/www/income/data/historical/household/h08.xls> (last visited Sept. 13, 2010).

## Health and Social Problems are Worse in More Unequal US States



Source: Wilkinson & Pickett, *The Spirit Level* (2009)

[www.equalitytrust.org.uk](http://www.equalitytrust.org.uk) 

**(Figure 4 shows the effect of income inequality on the health and social problems of the 50 states. Minnesota has low income inequality in comparison with the majority of states, leading to fewer health and social problems.)**

### Conclusion

My lesson from the past 40 years: the struggle for equality, for vindication of rights, is more than just a legal struggle. Political and economic forces can erase the gains and hold back the progress of those for whom Legal Services and civil rights lawyers for low-income clients fight their legal battles. The persistence of inequality affects the health and well-being of an entire society, not just those for whom Legal Services and civil rights lawyers toil. There is no doubt that Legal



Services and civil rights lawyers have made real changes in the lives of their clients. The gains brought through the legal system take hold best when the state's culture supports these legal efforts with quality public education, public health and supportive civic institutions that can minimize economic inequality.