

Dollars, Scholars and Constitution

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In the last fourteen months, courts in seven states have declared the basic state systems of school finance to be unconstitutional. One of these decisions—striking down the Texas system—awaits argument before the United States Supreme Court this month. The resolution of this and of the many other pending cases will have national implications; so far, however, the meaning of these cases has been widely misunderstood.

The California Supreme Court lit the fuse in August 1971 with its decision in *Serrano v. Priest*. The case presented the judges with a problem that exists in nearly every state. It can be exemplified by schoolchildren of two families living in Los Angeles County. Freddie lives in the West Covina school district, where the public schools spend \$650 per child; his father pays more than \$400 in local school taxes on his \$30,000 house. Susan lives in the Burbank district which spends \$800 per child; her father also owns a \$30,000 house, but pays only \$270 in school taxes—a lower tax rate produces higher spending per student.

The reason for this anomaly is that in California the bulk of the money for schools comes from local taxes on real property located within the school district. The West Covina district has much less real property per pupil to tax than does Burbank. Each district sets and levies a tax on its homes, apartments, stores, manufacturing plants and farms; the tax rates vary widely. The 1,100 school districts in California also vary enormously in the value per pupil of the taxable real property within their boundaries. Grants from the state help the poor districts only a little. Spending in the California schools ranges from \$600 to more than \$3,000 per child, and the high spending districts tend to have the low tax rates.

The California system does not differ fundamentally from that of the other states, with the exception of Hawaii, where school districts impose no local taxes except for transportation, and all public schools are financed entirely by the state government. Hence, the West Covina-Burbank comparison can be repeated in nearly every state. Indeed, the Fleischmann Commission, which recently released its report on elementary and high school education in New York, documented the same pattern among school districts on Long Island. Great Neck, for example, in 1968-69 managed to spend \$2,077 per pupil with a tax rate of \$2.72 on its super-rich tax base, while Levittown with precisely the same tax rate spent \$1,189.

Rejecting this systematic discrimination against poor

districts, the California court held 6 to 1 that the level of spending for a child's public education may not be affected by the wealth of his school district. In October 1971, the same result was reached by a single federal district judge in Minnesota. In December, a three-judge federal panel in Texas held the state's school finance system unconstitutional and approved the *Serrano* principle without qualification. Other courts have followed suit.

The legal argument accepted in each of these cases rests on the Equal Protection clause of the Fourteenth Amendment of the U.S. Constitution: "No State shall . . . deny to any person . . . the equal protection of the laws." In applying this broad language to specific instances of discrimination, the U.S. Supreme Court has been especially concerned to protect a limited set of activities—for example voting and interstate travel—which it has labeled "fundamental." It has also identified a number of "suspect classifications"—such as race and wealth—to which it applies special and often unfriendly scrutiny. In *Serrano* the plaintiffs argued both that education is fundamental and that school district wealth is a suspect classification. The California court agreed and stated that the present system must fall unless the state demonstrates that it has some very important objective which can be carried out only by continuing the fiscal discrimination.

The states have tried to justify the discrimination by arguing that the present system advances the important objective of local control. The difficulty is that historically the states' commitment to local control has been a hoax except for the wealthier districts. As the federal district court put it in the Minnesota case, "To promote such an erratic dispersal of privilege and burden on a theory of local control of spending would be quite impossible." For most districts *Serrano* cannot threaten local control, because local control has never existed. In fact, as we shall see, *Serrano* should help to make local control a reality for the first time for all districts.

The attitude of the U.S. Supreme Court is difficult to predict. An answer may be forthcoming soon, since the Texas case (*Rodriguez v. San Antonio Independent School District*) is moving swiftly to argument and decision. Ways are open to the highest Court to limit the scope of the decision if it wishes to let the issue ripen. However, the best guess is that it will tackle the question head-on. If the Justices adopt the *Serrano* principle, it will become the norm for the nation. The alleged conservative complexion of the present Court is no indication how the decision will go. The principle at stake does not divide protagonists along traditional lines.

The point of *Serrano* is very limited. Indeed, to many who understand the idea it appears excessively conservative, and any impending tax (or other) revolution as a direct result of the decisions they dismiss as an artifact of the media. Early newspaper reports of the *Serrano* decision even suggested that the property tax itself had been made invalid. However, the objection of the plain-

tiffs was never to the property tax itself but only to the current inability of that tax to raise an equal amount of money from an equal tax rate.

A second, and massive, misunderstanding involves the legality of differences in spending from district to district. District variations in dollars spent are not forbidden under *Serrano* unless those differences are the consequences of one school district having more taxable wealth per pupil than another. Any district that wants to improve the education of its children by imposing a higher rate of tax on its property is free to do so. Further, if the state (or a district) chooses, it may properly spend more on gifted children, disadvantaged children, high school pupils, or children living in districts which are willing to bear higher tax rates for schools. But a district may not spend more per child at the same tax rate *simply* because its greater wealth makes that rate produce more tax dollars. Put another way, districts can spend different amounts so long as they are equally rich—and, as we shall see, there are ways to make school districts equally rich. If this sounds like “leveling,” remember that it is governments—school districts—whose wealth concerns us, not persons. *Serrano* does not threaten private privilege, only privilege bestowed by the state.

A third misunderstanding relates to *Serrano*'s impact upon minorities, the poor and the city dweller. Those who imagine that all discrimination burdens those three classes were quick to hail *Serrano* as a glorious victory in the war on poverty. The reality is more complex. Consider first the effect upon cities. If cities were poor in taxable wealth compared to the state average, *Serrano* would come as an urban blessing; but the national pattern of big-city property wealth is chaotic. Some cities such as New York and San Francisco are “rich” in taxable property and can be said actually to benefit from the present system. However, San Diego, Newark, Wichita and many others are “poor.” Moreover, even cities that are still “rich” compared to the state average are poor when compared to their more elegant suburbs. These suburbs not only have greater school wealth but can tax their property at a higher rate, since they are not burdening the same property with all the higher government costs that afflict the cities. The short of it is that *Serrano* by itself operates indifferently among urban centers. Whether particular cities will be helped or hurt depends largely upon what happens in the state legislatures in the years ahead. *Serrano* neither precludes nor guarantees consideration of special urban needs, and it can be predicted that the cities will lobby strenuously for strong urban preferences in the new systems.

The potential effect upon minority children is equally confused. In some states (Texas is apparently one) black and Chicano families tend to be found in tax-poor districts; in California a slender majority of blacks, Chicanos and Orientals live in districts slightly richer than average. The national pattern is a crazy quilt.

The poor, like the minorities they often represent, may be found in districts rich or poor in taxable property. Demographers are confident that, overall, poor people live in poor districts, but only figures yet to come from the 1970 census will tell for sure, and there are highly

visible exceptions to this pattern. Thus poor families sometimes dwell in industrial tax havens whose clustered factories swell the taxable wealth of the district. Such districts tend to be very small in resident population and have disproportionately few children to educate. On the whole it is expected that the poor will benefit from *Serrano*. In any case, the most poignant victim of the present system is the child of the poor family living in a district of low wealth. Unable by his circumstances to escape to private school, he is locked into an institution that is undersupported, ill-housed, overcrowded, and staffed by marginally employable teachers.

Still another misperception of *Serrano* appears in the occasional suggestion of commentators that the rule applies to interstate differences. The analogy is appealing—Mississippi's poverty and California's wealth are a striking counterpart to the pattern of school districts within individual states—but the fact is that the Constitution does not hold out the slenderest hope for a “national *Serrano*.” Congress does not create and control states as the states do their school districts. Hence the variance in state resources for public education is constitutionally of no consequence. *Serrano* is no liberal's prescription for a national educational utopia.

If the *Serrano* principle does survive review by the U.S. Supreme Court, its immediate, and perhaps most important, effect will be to pry open the political-legislative process for a fundamental examination of educational policy within the states. It is here that the limited nature of the judicial intrusion is most apparent. The present systems must be reformed or abolished, but it is the legislature, not the courts, which must and will reshape them.

Two issues will tend to dominate the legislative debates—local control of spending levels and total cost to the state. Both issues may be settled simply and directly in some states by what has come to be called “full state assumption.” This approach was endorsed in early 1972 by both the Fleischmann Commission and President Nixon's Commission on School Finance. Under this plan, locally imposed school property taxes (indeed all local school taxes) would be abolished, and all revenue for schools would come from the state (plus the federal government). This state revenue might be raised by one or a combination of statewide taxes (one hopes progressive) levied on property, income, sales, cigarettes, etc. The recipients of the revenue would probably be school districts, as now; on the other hand the dollars could be funneled, in whole or part, to larger units serving special purposes or smaller units such as schools. It could even go in the form of vouchers to parents or pupils.

In a full state assumption system the amount per pupil available to a district would be fixed by the legislature. However, that does not necessarily mean that each district would receive the same amount per pupil. Indeed, the opposite is more likely and would be more sensible. The needs of children and the general cost of providing appropriate education differ widely from district to district within most states. It would be plausible, therefore, for a state of moderate wealth to establish a basic payment level of, say, \$700 per elementary student, but to increase that amount substantially for a district's handi-

capped, disadvantaged and vocational students. Also the state might give extra money for transportation in rural areas, and for the generally higher cost of buildings, goods and services in the city.

If the state provides the money, will it also direct how it shall be spent by the districts? Critics assume so, but no one can predict. A study by the Urban Institute found little or no relation between the proportion of state funds and the rigidity of state controls on teachers and curriculum. The Fleischmann Commission report, while recommending full state assumption, has also urged mechanisms for increasing local control.

Full state assumption is unlikely to be the choice in every state. The history of local government in this country and the local perception of political self-interest are both against it. Many citizens are simply unwilling to surrender their vote at the school district level on the dubious assurance that they can continue to influence the state legislature. Nor is self-interest the only justification for local control of spending levels. Many believe that small-unit government tends on the whole to be more responsive to individual needs; and where the issue is how much to spend, there is much to be said for deciding it in relation to the needs felt by local citizens for parks, police and other public services—all of which compete with education. Further, the fact that some districts would spend more for schools than others is thought by many to be a positive benefit; it both permits local self-expression and assures that “light house” schools need not be “leveled down” to the state average. It also permits districts to differ on the difficult question of how much each additional dollar buys in quality of education.

But can local choice of expenditure levels be permitted if *Serrano* is the law? Clearly yes, but only on condition that all districts have the same *capacity* to spend. If the Constitution requires the elimination of the influence of wealth differences, one way to comply is to make all districts equal in wealth through “power equalizing.” A hypothetical case will illustrate. Suppose the state first provides each district with \$600 per pupil. To this the state, perhaps with federal help, adds extra money for special extra-cost or extra-need circumstances of various districts—high transportation costs, concentrations of underachievers, etc.—just as under full state assumption. In addition to these centrally determined expenditures, each district that wishes to spend more may be permitted to do so by imposing an additional *local* property tax (a local income tax would be even better). However, the added amount of spending permitted any district would depend solely upon the tax *rate* chosen by the district, not upon its wealth. If local collections exceeded the permitted level of spending, at a given tax rate, the excess would be recaptured by the state; any shortfall would be made up by subsidies.

The overall effect would be that every district otherwise similar and choosing the same local tax rate would be able to spend at the same level. Local control would have become a reality for all, since all districts could now express their own choice of spending level on the same economic terms. Such a system has been recommended for California by the staff of a state Senate select committee charged with considering responses to *Serrano*.

Serrano's invitation to increase local control in this manner may indirectly accelerate the movement toward smaller “community” school districts in urban areas. Previous experiments with community control, for example, the Ocean Hill-Brownsville subdistrict in New York City, have been hampered by economic dependence upon the larger district. If the community is poor in taxable property, it cannot be truly autonomous under the existing system. However, as seen above, it is quite possible to give all districts equal capacity and let them make their own choices concerning spending. Hence it is for the first time practical to consider the fragmentation of huge urban districts into community districts as small and autonomous as Scarsdale. To some observers such Balkanization promises cultural and educational diversity; others view it as unacceptably divisive. It clearly would make integration somewhat more difficult.

Promoters of community control have spoken so far only of neighborhoods—geographical communities which would become school districts with all the normal political apparatus of such little governments. There is, however, another model of community available—the community of choice in which like-minded families freely choose a school because they are attracted by its style or curriculum. Such a system could be funded by the use of educational vouchers in a manner satisfying *Serrano*.

One of the most interesting aspects of the coming dialogue will be the confrontation between defenders of traditional public education and those seeking to expand the opportunity for variety and choice within a mixed system of public and private schools, all funded by state grants to individuals. Voucher systems can be pernicious, aggravating racial and economic separation. However, models have been designed which may offer a truly free choice of schools to all families, irrespective of wealth or race. Many feel that such systems may do more in the long run for racial and economic integration than can be expected from the Judiciary. At present the OEO seems determined to sponsor some “voucher” experiments with federal funds; under its guidance a voucher plan, involving only public schools at the start, is getting under way in the Alum Rock School District near San Jose, Calif.

Education is not the only public service tied to the varying taxable wealth of local authorities. Will the financing of police, fire, welfare and other services also fall under judicial displeasure? Some litigants now seek that end, but the courts are unlikely to go further than schools. Education is constitutionally distinguishable from other services because of its interconnections with speech and the political process, and courts will be content to limit their reach.

However, some indirect effect upon the financing of other public services is inevitable, and much for the better. Public and legislative awareness of the absurdity of all our local finance systems is being given a massive boost by *Serrano*. As a consequence, legislatures in the next decade may well begin on their own to reconsider the fairness of the present scene. Equity is not around the corner, but at least we have ceased blindly to tolerate the notion that government dishes out privilege and misery as it pleases. □

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