

## INEQUITIES IN THE BENEFITS AND BURDENS OF PUBLIC EDUCATION

Arthur E. Wise

It had long been believed by many that there was something fundamentally wrong with the way we finance public education in the United States. In 1965 I first proposed that our system of public school finance could be challenged under the United States Constitution.<sup>1</sup> In arriving at this conclusion I made a number of observations:

1. While there was and is a question as to the *adequacy* of educational resources, the question applies to individual school districts with unequal force.
2. While there was and is a question as to the *efficiency* with which educational resources are employed, that question has been critical for only some school districts.
3. Most state constitutions place the responsibility for education with the state legislature. Generally the language of the article related to the establishment of schools requires the legislature to establish and maintain a thorough and uniform system of free public schools throughout the state. Thus, the question of educational equity may be examined in statewide perspective.
4. Most state courts which have had to deal with questions of school finance have ruled that school taxes, whether collected by the state or by the localities, are state taxes. Consequently, it seems appropriate to examine questions of equity in taxation and of equity in resource allocation from a statewide perspective.

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<sup>1</sup>Arthur E. Wise, "Is Denial of Equal Educational Opportunity Constitutional?" *Administrator's Notebook*, February, 1965, pp. 1-4.

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5. The equal protection clause of the fourteenth amendment to the Constitution of the United States asserts that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The equal protection clause can, in theory, be applied to virtually every state law, including school finance legislation.
6. All states have recognized their obligation for the equalization of educational opportunity through the development of state aid plans.<sup>2</sup>

These observations led me to examine the subject of school finance from a statewide perspective and to raise the question of the constitutionality of our system of public school finance.

### *Financial Inequities*

Inequities in school finance have long been a part of our system in the United States. One school finance expert has said:

...the present plans in use for the apportionment of school funds in fully three-fourths of the states of the union are in need of careful revision. And there is likewise need for more careful study of the problem than has been given it so far by most of the states if it is desired that future evolution shall take place along more intelligent lines than has been the case in the past.<sup>3</sup>

That expert was Ellwood P. Cubberley, describing the situation as he saw it in 1905.

Today, from school district to school district within nearly every state, substantial differences in educational expenditures per student continue. It is not uncommon to find some school districts spending three or four times as much as others. Of course, the high educational expenditures are to be found in the wealthy areas of the state and the low in the poor areas. Thus, those who are supposed by many to have greater educational needs have fewer educational opportunities. And, it turns out, not only do the poor receive less but they pay more. Generally, poor school districts have higher tax rates than do rich school districts.

<sup>2</sup>Observations 3-6 are discussed in Arthur E. Wise, *Rich Schools, Poor Schools: The Promise of Equal Educational Opportunity*, Chicago: University of Chicago Press, 1968.

<sup>3</sup>Ellwood P. Cubberley, *School Funds and Their Apportionment*, quoted in James W. Guthrie, George B. Kleindorfer, Henry M. Levin, and Robert T. Stout, *Schools and Inequality*, Cambridge: Massachusetts Institute of Technology Press, 1971.

The California Supreme Court in its recent decision described the effect of that state's school finance system on two districts. The Baldwin Park school district expended only \$577.49 to educate each of its pupils in 1968-69, while the Beverly Hills school district, in the same county, expended \$1,231.72 per pupil. The principal source of this inequity was the difference in local assessed property valuation per child: in Baldwin Park the figure was \$3,706 per child, while in Beverly Hills it was \$50,885 — a ratio of 1 to 13. Furthermore, Baldwin Park citizens paid a school tax of \$5.48 per \$100 assessed valuation, while Beverly Hills residents paid only \$2.38 per \$100 — a ratio of more than 2 to 1.<sup>4</sup>

The situation in New England is no different. Writing in the *New England Economic Review* in 1970, Steven J. Weiss characterized the situation as follows:

Since school systems in most states rely heavily on local tax revenues, school expenditures are closely related to local wealth, or the size of the available property tax base.

This close tie between the property tax and school spending often yields strikingly inequitable results: "rich" districts are able to afford high levels of school spending at moderate tax rates while less affluent communities exert a greater tax effort and still spend less per pupil on schools. State governments assist localities by providing aid in varying degrees and according to a complex variety of allocation procedures. Unfortunately, even when state school aid is intended to "equalize" local tax burdens and school spending levels, the results in practice are generally rather ineffective, and large disparities persist.<sup>5</sup>

Weiss gathered data from the six New England States.

In analyzing his data, he arranged school districts in each state according to the equalized valuation per pupil, the basic school tax rate in mills, and current expenditures per pupil. He then compared the 90th and 10th percentile school districts in terms of each of these dimensions. In Massachusetts, he found that the 90th percentile school district had an assessed valuation of \$45,200 per pupil while the 10th percentile school district had an assessed valuation of

<sup>4</sup>Serrano v. Priest, 5 Cal. 3d 584, 1971.

<sup>5</sup>Steven J. Weiss, "The Need for Change in State Public School Finance Systems," *New England Economic Review*, January/February, 1970, p. 3. See also the paper by Steven J. Weiss and Deborah Driscoll in this volume.

### STATISTICAL MEASURES OF EXISTING DISPARITIES IN PUBLIC SCHOOL FINANCE, NEW ENGLAND STATES

|   | Maine | Mass. | Vermont | N. H. | R. I. | Conn. |
|---|-------|-------|---------|-------|-------|-------|
| A. Equalized Valuation per Pupil: (\$ thous.) |       |       |         |       |       |       |
| Mean  | 12.2  | 28.8  | 33.6    | 29.3  | 33.1  | 32.2  |
| Median  | 7.8   | 22.3  | 25.9    | 22.6  | 28.9  | 29.5  |
| 10th Percentile Level                         | 3.6   | 15.5  | 16.0    | 13.7  | 23.1  | 19.3  |
| 90th Percentile Level                         | 25.6  | 45.2  | 57.4    | 56.2  | 42.5  | 46.8  |
| Ratio of 90th to 10th Percentile Level        | 7.1   | 2.9   | 3.6     | 4.1   | 1.8   | 2.4   |
| B. "Basic" School Tax Rate (Mills)            |       |       |         |       |       |       |
| Mean  | 30.8  | 21.9  | 12.2    | 18.6  | 11.4  | 14.7  |
| Median  | 28.9  | 22.4  | 12.3    | 18.8  | 11.8  | 14.0  |
| 10th Percentile Level                         | 16.8  | 13.2  | 6.8     | 10.2  | 7.3   | 9.9   |
| 90th Percentile Level                         | 47.8  | 30.6  | 18.1    | 25.5  | 14.2  | 20.8  |
| Ratio of 90th to 10th Percentile Level        | 2.8   | 2.3   | 2.7     | 2.5   | 1.9   | 2.1   |
| C. Current Expenditures per Pupil (\$):       |       |       |         |       |       |       |
| Mean  | 428   | 684   | 577     | 534   | 574   | 640   |
| Median  | 394   | 666   | 568     | 509   | 564   | 631   |
| 10th Percentile Level                         | 320   | 547   | 471     | 417   | 499   | 511   |
| 90th Percentile Level                         | 555   | 858   | 689     | 679   | 670   | 801   |
| Ratio of 90th to 10th Percentile Level        | 1.7   | 1.6   | 1.5     | 1.6   | 1.3   | 1.6   |

Source: Steven J. Weiss, "The Need for Change in State Public School Finance Systems," *New England Economic Review*, January/February, 1970, p. 9.



\$15,500 per pupil — a ratio of 2.9 to 1. The 90th percentile school district had a basic school tax rate of 30.6 mills while the 10th percentile school district had a basic school tax rate of 13.2 mills — a ratio of 2.3 to 1. The 90th percentile school district had a current expenditure per pupil of \$858 while the 10th percentile school district had a current expenditure per pupil of \$547 — a ratio of 1.6 to 1. The situation is comparable in the other New England states. According to Weiss:

The data reveal clearly that large intrastate disparities exist in local wealth, school tax effort and levels of school spending. The most extreme variation appears in equalized valuation per pupil — the measure of local ability to pay for schools. Variation in tax rates is also quite high, and it is least severe in spending levels. That is, of course, as would be expected, since state school aid distributions and other factors tend to compensate partially for local wealth disparities. Even so, tax rates and spending results vary over a wide range. . . .

The evidence from this study supports the conclusion that wealth is the most important single factor affecting expenditures for education. There is a consistent positive relationship between equalized valuation per pupil and current expenditures per pupil, and a strong inverse correlation between equalized valuation per pupil and “basic” tax rates. The disparities in local school tax effort and spending levels are largely attributable to the heavy reliance on the local property tax in these states.<sup>6</sup>

### *Educational Inequities*

Thus far we have spoken only of dollar disparities. But what are the characteristics of these dollar disparities which lead to a conclusion of inequality of educational opportunity? This question has been recently addressed in an important and provocative study by Guthrie, Kleindorfer, Levin, and Stout. Their study was prepared in support of a suit filed by the Detroit Board of Education and has been published as *Schools and Inequality*. The study analyzed the complex relations among socioeconomic status, school services, pupil performance, and postschool opportunity in the State of Michigan. Guthrie et al. put forth the defended five propositions in a systematic way. These are:

A. *Socioeconomic Status and School Services*. The quality of school services provided to a pupil is related to his socioeconomic status,

<sup>6</sup>Weiss, “The Need for Change in State Public School Finance Systems,” p. 8.

and that relationship is such that lower-quality school services are associated with a pupil’s being from a lower socioeconomic stratum.

- B. *School Services and Pupil Achievement*. A relationship exists between the quality of school services provided to a pupil and his academic achievement, and that relationship is such that higher-quality school services are associated with higher levels of achievement.
- C. *Pupil Achievement and Postschool Opportunity*. The postschool opportunities of a pupil are related to his achievement in school, and that relationship is such that higher achievement is associated with “success” and lower achievement is associated with lack of “success.”
- D. *Socioeconomic Status and the Level of Available Resources*. The total level of resources made available as a result of state arrangements for support of schools is related to the socioeconomic status of pupils, and that relationship is such that lower levels of resources are associated with a pupil’s being from a lower socioeconomic status household.
- E. *Level of Available Resources and Quality of School Services*. The total level of resources provided for the support of schools is related to the quality of school services delivered, and that relationship is such that lower levels of resources are associated with lower-quality school services.<sup>7</sup>

Of these, proposition B, postulating a relationship between school services and pupil achievement, is the most provocative because it contradicts the most well-known conclusion of the Equality of Educational Opportunity Survey, more popularly known as the Coleman Report. That conclusion was:

Taking all these results together, one implication stands out above all: That schools bring little influence to bear upon a child’s achievement that is independent of his background and general social context; and that this very lack of independent effect means that the inequalities imposed upon children by their home, neighborhood, and peer environment are carried along to become the inequalities with which they confront adult life at the end of school.<sup>8</sup>

Guthrie et al. contend that this conclusion is not necessarily warranted because of the inadequacy of the measurements utilized, the

<sup>7</sup>Guthrie et al., pp. 7, 111.

<sup>8</sup>James S. Coleman et al., *Equality of Educational Opportunity*, quoted in Guthrie et al., p. 60.



imprecise manipulation of those measures, and the inappropriate statistical techniques.

Guthrie et al. re-analyzed the Michigan sample in the Coleman Survey in a new test of school service effectiveness. The study "controlled" for social environment or background and related 12 school service components to tests of reading ability, mathematics understanding, and verbal facility. Each of the following was found to be positively associated with at least one set of test scores at the .05 level of statistical significance: school site size, library volumes per student, classrooms per 1,000 students, teachers' experience, teachers' attitudes, and teachers' verbal ability. The following were found to be negatively associated: building age, percentage of make-shift classrooms, and size of school enrollment. In short, the quality and quantity of school services influence what children learn.

Defining equality of educational opportunity is very difficult. Defining inequality of educational opportunity is less difficult. *A system which allocates school services on the basis of socioeconomic status would appear to be denying equality of educational opportunity.*

#### *Equality of Educational Opportunity*

It seemed eminently reasonable in the decade of the 1960s to view these inequities in the light of the then prevailing egalitarian thrust of the U.S. Supreme Court. The Court, under Chief Justice Earl Warren, had been embarked on a course of guaranteeing fundamental rights to dispossessed minorities and had precipitated broad social change. In 1954 the Supreme Court declared that, at least as far as race is concerned, public education is a right that must be made available equally. Beginning in 1956 the Court began to attack discrimination based on wealth in a series of cases concerned with rights of defendants in criminal cases. In 1962 the Court moved to eliminate geographic discrimination by requiring legislative reapportionment. By 1966 the wealth discrimination argument had been extended to voting rights in a case that eliminated the poll tax.

In the context of this historic trend, a constitutional attack on inequities in educational finance seemed eminently feasible. Many parallels among the rights at stake were possible. More important, perhaps, was the fact that the Warren Court had demonstrated a willingness to guarantee individual rights when legislatures failed to act. State legislatures had been struggling with miserly state school finance equalization formulas for at least as long as they had failed to reapportion themselves.

But now it is 1972 and the Warren Court is gone. And recent personnel changes on the Court have vitiated the confident prediction that inequitable school finance systems would ultimately be declared unconstitutional.

The constitutional question which I had posed was whether the equal protection clause compels a state to afford equal educational opportunity to all students attending the public schools within that state. The correct proposition, I believed and continue to believe, is that the quality of a child's education may not be a function of the wealth of his parents, neighbors, or school district, or I hasten to add, of their willingness to tax themselves for educational purposes. The focus is upon the child, upon equal protection for the child, and upon equality of educational opportunity for all of a state's children. Consequently, I proceeded to develop a legal theory which was consistent with the notion of the rights of the individual. After all, in the other areas in which the "fundamental interest theory" had been held to apply — the rights of defendants in criminal cases and the right to vote — it was the rights of individuals which were to be protected. It therefore seemed reasonable that if the equal protection clause were held to apply to educational opportunity, it would apply to individual children.

Looked at another way, a state's school finance statutes embody a de facto classification of the students in the state on the basis of the school district where they happen to reside. This classification, explicitly on the basis of school districts and implicitly on the basis of local assessed valuation per pupil, largely determines the quality of educational opportunity the student is to receive.

The United States Constitution allows states to classify. Generally, however, the Supreme Court has ruled that a classification to be reasonable must be related to the purpose of the law. The question becomes: Is the classification of students according to the tax base where they live sufficiently related to the purpose of the law to be considered reasonable? If the source of educational funds is not to determine the quality of the students' education, then what non-educational factors can?

If our equal educational opportunity principle were adopted by a court, what would it mean? It would, first of all, eliminate the foundation program and similar mechanisms. It would end our current system of allocating educational resources according to social class. It would assert that the opportunity of an education is a right which must be made available to all on equal terms. The principle is limited in that it says nothing about the revenue raising function. It speaks



only to the distribution of educational resources from a statewide perspective. It is an open principle which asserts only that the quality of a child's education may not be a function of the wealth of his parents, neighbors, or school district. It permits a variety of resource allocation schemes which are related to the characteristics of children.

#### *Fiscal Neutrality*

Enter at this point a competing proposition vying for constitutional status — the “fiscal neutrality” or “no-wealth” principle of public school finance: the quality of public education may not be a function of wealth other than the wealth of the state as a whole. This is the proposition put forth by Coons, Clune, and Sugarman in their important book on this subject.<sup>9</sup> For them the crucial malady of the current system is the unequal tax burden which communities must bear for any given level of educational expenditures. Bear in mind that for this author the crucial defect is unequal expenditures related to social class. It is perhaps not too much of an oversimplification to say that I am concerned with unequal expenditures while they are concerned with unequal tax rates.

What would the no-wealth principle mean? It insists appropriately that educational quality not be made a product of local wealth differentials. However, it would continue to permit educational quality to vary from school district to school district. In fact, it would permit the very situation that exists today. Of course, Coons et al. do not mean to continue the status quo. They would have the Supreme Court create the conditions wherein state legislatures could experiment with new systems, hopefully their own.

To get a clearer picture of their objectives, one must examine their specific proposal for a “power-equalizing” system of public school finance. The total receipts of a state's education taxes would be equally available to all public school children, and ultimate responsibility for school finance would be placed with the state. School districts, through the taxing mechanism, would be free to choose various amounts of the state's wealth by deciding how steeply they are willing to tax themselves. The system would leave school districts — rich and poor alike — free to select levels of spending for education while giving each district equal power to do so. Thus, for example, a

<sup>9</sup>John E. Coons, William H. Clune III, and Stephen D. Sugarman, *Private Wealth and Public Education*, Cambridge: Harvard University Press, 1970.

community that chose to tax itself at the rate of 1 percent might have available \$400 per student, irrespective of the wealth of that community. A community that chose to tax itself at the rate of 2 percent might have available \$800 per student, again irrespective of the wealth of that community. The state in this scheme commits itself to the specified level of expenditures per student regardless of what is raised by the local tax. The state gives aid in exactly the amount that local resources are insufficient to reach the specified expenditure.

What the system equalizes is the burden that a community must bear for any given level of educational spending. It most certainly does not equalize educational resources for all students in a state, much less provide equal educational opportunity. The quality of a child's education continues to be subjected to a vote of his neighbors. And, in a power-equalized state, what is to prevent the rich from valuing education more highly than the poor?

Coons et al. analyze the corpus of equal protection cases concerned with education, criminal justice, voting, race, poverty, and geography. Their principal difficulty as they wend their way through these powerful decisions is to find a way to forbid discrimination by wealth and to permit discrimination by geography or, more precisely, by the vote of a child's neighbors. There must be less onerous alternatives.

Should the Supreme Court ever give a full review to a school finance case, it would not or could not stop at the point that Coons, Clune, and Sugarman would have it. Having reviewed the corpus of equal protection law, the Court would have to find it anomalous that there be equality of opportunity unless a child's neighbors vote it away.

#### *Serrano v. Priest*

So much for theory. Except for two ill-conceived and abortive efforts at court tests of the constitutionality of school finance legislation, the first landmark is the California Supreme Court's decision in *Serrano v. Priest*. Bear in mind that we have uncovered at least three kinds of inequities in school finance — inequities in assessed valuation, inequities in school tax rates, and inequities in per pupil expenditures, with the last highly correlated with socioeconomic status. To which of these does *Serrano* apply? The Court's opinion exhibits the heavy influence of Coons, Clune, and Sugarman who had prepared *amicus* briefs for the case; much of the opinion reads from the pages of their book *Private Wealth and Public Education*. The



first and clear interpretation of *Serrano* is consistent with the proposition that the quality of public education may not be a function of wealth other than the wealth of the state as a whole. This proposition would permit educational quality to vary from school district to school district so long as each district had an equal capacity to raise funds for education.

We can do no better than cite the summary statement of the California Supreme Court:

The California public school financing system, as presented to us by plaintiffs' complaint supplemented by matters judicially noticed, since it deals intimately with education, obviously touches upon a fundamental interest. For the reasons we have explained in detail, this system conditions the full entitlement to such interest on wealth, classifies its recipients on the basis of their collective affluence and makes the quality of a child's education depend upon the resources of his school district and ultimately upon the pocketbook of his parents. We find that such financing system as presently constituted is not necessary to the attainment of any compelling state interest. Since it does not withstand the requisite "strict scrutiny," it denies to the plaintiffs and others similarly situated the equal protection of the laws.

The fiscal neutrality interpretation of *Serrano* would remove variations in local wealth as a factor in determining how much is to be spent on the education of a child. The capacity of each school district to raise funds would be equalized. However, local school districts would be permitted to decide how heavily they are willing to tax themselves and, consequently, how much they wish to spend on the education of their children. The fiscal neutrality interpretation focuses rather more on taxpayer equity and rather less on educational equity.

All of this seems rather weak in the light of some of the powerful statements made by the Court in support of the concept of education as a fundamental interest.

First, education is essential in maintaining... 'free enterprise democracy.' . . .

Second, education is universally relevant. . . .

Third, public education continues over a lengthy period of life. . . .

Fourth, education is unmatched in the extent to which it molds the personality of the youth of society. . . .

Finally, education is so important that the state has made it compulsory. . . .

Indeed, in several places the Court seems to assert that the quality of education must be equalized. As I have already noted, the Court invalidated the financing system *because* it makes the "quality of a child's education depend upon the resources of his school district and ultimately upon the pocketbook of his parents." And in the penultimate paragraph of the opinion: "By our holding today we further the cherished idea of American education that in a democratic society free public schools shall make available to all children equally the abundant gifts of learning."

All of which is to say that there may be another interpretation of *Serrano* — consistent with my proposition that the quality of a child's education may not be a function of where a student lives, what his parental circumstances are, or how highly his neighbors value education. This proposition would prohibit variations in the number of dollars spent on any child by virtue of his place of residence. It would permit variations based on educationally relevant characteristics of the child. It would also permit variations based on such extra-educational factors as differences in price levels and economies of scale.

You should be aware that I may stand alone in this interpretation but I urge you to hear the words of the Court. In the course of the opinion, the Court disposed of an argument "that territorial uniformity in respect to the present financing system is not constitutionally required; . . . where fundamental rights or suspect classifications are at stake," said the Court, "a state's general freedom to discriminate on a geographical basis will be significantly curtailed by the equal protection clause." In support of this interpretation, the Court first relied upon the school closing cases in which the U.S. Supreme Court invalidated efforts to shut schools in one part of a state while schools in other areas continued to operate. Secondly, the Court relied upon the reapportionment cases in which the U.S. Supreme Court held that accidents of geography and arbitrary boundary lines of local government can afford no ground for discrimination among a state's citizens. "If a voter's address may not determine the weight to which his ballot is entitled, surely it should not determine the quality of his child's education." Consequently, it would appear that school finance plans cannot have different effects solely because of geography. In other words, neither wealth nor geography is a permissible basis for classifying children for the purpose of determining how much is to be spent on their education.

The equal educational opportunity interpretation of *Serrano* would require that educational resource allocation not depend upon



where a student lives, what his parental circumstances are, or how highly his neighbors value education. One point which remains unclear in the opinion is whether the equal protection clause has been held to apply to children, to taxpayers, or to school districts. If it is children who are entitled to equal protection, then it is difficult to understand how the quality of a child's education could be subjected to a vote of his neighbors. The equal educational opportunity interpretation would permit a variety of educational resource allocation standards. For example, the minimum attainment standard would require that educational resources be allocated to every student until he reaches a specified level of attainment. The leveling standard would require that resources be allocated in inverse proportion to students' ability; the competition standard would require their allocation in direct proportion. The equal dollars per pupil standard would assume that ability is an illegitimate basis for differentiating among students. The classification standard would require that what is regarded as a "suitable" level of support for a student of specified characteristics is suitable for that student wherever he lives within the state.<sup>10</sup> The point is that these rules for allocating educational resources are related to the characteristics of the child and not to the characteristics of his school district.

#### *A Model Legislative Response*

The specific plan which I will outline was designed for the State of Maryland. The principles seem consistent with the second interpretation of *Serrano* and not inconsistent with the first interpretation of *Serrano* as discussed earlier. The principles may be feasible for many states. The proposal, in its detail, is surely not applicable to other states without modification. Major differences between Maryland and many other states are the fact that Maryland has only 24 school districts and the fact that expenditure variations among them are relatively moderate.

We begin with a definition of full state funding which grows out of our second reading of *Serrano*. Our concept calls for a school finance system which brings to bear all of a state's educational tax base on the education of all children in the public schools of that state. It provides for equity both in educational taxation and in educational resource allocation. It requires that educational resource allocation

<sup>10</sup>For a detailed analysis, see Wise, *Rich Schools, Poor Schools*, Chapter 8.

not depend upon where a student lives, what his parental circumstances are, or how highly his neighbors value education. It avoids the specious state-local distinction in the generation of educational revenues, for all taxes raised for education are, in fact, state taxes. The definition clearly accommodates a variety of educational resource allocation schemes and systems for educational taxation. Its only essential characteristic is that there be equity in the benefits and burdens of education. The concept is compatible with the present system of local school control. A version of full state funding is explained in the recommendations which follow:

1. It is recommended that the state assume financial responsibility for all public schools.
2. It is recommended that over a period of three years per pupil expenditures from state and local funds be equalized.
3. It is recommended that the equalized level of per pupil expenditures in three years be set at the level of the highest-spending school district in 1971-72.
4. It is recommended that, in order to allow for differences in economies of scale, the per pupil expenditure in any school may vary 5 percent in either direction from the equalized level.
5. It is recommended that, in order to allow for regional price-level differences, the per pupil expenditure in any school district may vary 5 percent in either direction from the equalized level.
6. It is recommended that certain types of Federal aid, notably Title I of the Elementary and Secondary Education Act (assistance for educationally deprived children), be allocated in addition to the equalized level of per pupil expenditure.
7. It is recommended that certain types of Federal aid, notably school assistance in Federally affected areas, not be allocated in addition to the equalized level of per pupil expenditure.
8. It is recommended for education purposes that a uniform statewide tax on property or mandated uniform locally-imposed tax on property be instituted. It is further recommended that additional revenues for education be generated by other statewide taxes, preferably the income tax.
9. Assuming the institution of these recommendations in 1972-73, the state will have achieved an equalized level of per pupil expenditure by 1974-75. At that point the state legislature can begin to set levels of educational spending in competition with its assessment of needs for other public services.

As was stated at the outset, what *Serrano* mandates is not clear. The model satisfies both interpretations of *Serrano*. The model satis-



fies the interpretation that the capacity of school districts to raise funds be equalized. It also satisfies the interpretation that all educational funds be made available to students on an equitable basis. If only the first interpretation is correct, then the model goes further than the California Supreme Court intended. If the Court did not intend the second interpretation, then the opinion is concerned with taxpayer equity and not equality of educational opportunity.<sup>11</sup>

### Conclusions

The prognosis for *Serrano* is unclear. Moreover, what *Serrano* in its pristine interpretation would achieve by way of reform is extremely limited.

However, casting school finance problems in a constitutional law framework has, I believe, already had salubrious consequences. The years since the legal theories were developed have seen an unprecedented level of school finance activity on the part of political bodies. While other factors have undoubtedly played a part, the threat of impending lawsuits may have served as an impetus to action in an area that has been characterized by legislative intransigence.

The concept of "full state funding" has entered the vocabulary of education. President Nixon has appointed a Commission on School Finance and is reported to be "deeply conscious of the inequities and the inadequacies of the property tax as the principal source of support at the local level for the cost of education." The Advisory Commission on Intergovernmental Relations has recommended that the states assume "substantially all" of the responsibility for financing local schools in order to grant property tax relief and ensure equal educational opportunity. Governor William Milliken of Michigan has been endeavoring to achieve broad reform in educational finance in that state for the last two years. Reportedly, the Fleischmann Commission in New York State will recommend full state assumption of the costs of education, imposition of a state-wide property tax, stabilization of spending in wealthy school districts, and ultimately greater spending in districts with poor disadvantaged youth.

<sup>11</sup>The model is described more fully in Arthur E. Wise, "School Finance Equalization Lawsuits: A Model Legislative Response," *Yale Review of Law and Social Action*, Winter, 1972.

Moreover, I believe the level of dialogue concerning equality of educational opportunity has improved among school finance specialists. In the past, the analyses of such specialists have given rhetorical notice to the concept of equality of educational opportunity; their specific recommendations have, however, usually not called for substantial change. In contrast, the recently issued recommendations of the National Educational Finance Project illustrate a fundamental reorientation to change. The language of the NEFP's brochure "Future Directions for School Financing" is quite strong:

THE NUMBER OF DOLLARS SPENT ON EDUCATION SHOULD BE BASED ON THE EDUCATIONAL NEEDS OF THE CHILDREN RATHER THAN THE WEALTH OF THE SCHOOL DISTRICT . . . .

Among the courses open to the state:

It can eliminate the local district's authority to levy regressive property taxes, providing the district instead with the entire cost of its program from state and federal sources which are derived principally from income and consumer taxes.

If it chooses to retain the existing system it can, as most states do at the present time, reduce inequities in fiscal capacity by providing more state funds per pupil to the districts of less wealth than to the districts of greater wealth or it could entirely eliminate inequities by distributing whatever amounts of state school aid are required to eliminate the differences in local wealth per pupil.

It can reorganize local districts to increase their efficiency and reduce variations in wealth.

It can provide for the extra costs of special education programs and the specialized services needed by some pupils and schools.<sup>12</sup>

Thus, whether school finance reform is achieved through the courts is less important than that reform take place. Casting school finance problems in legal terms may have helped to highlight the need for reform. I am of the opinion that it would be far better for state legislatures to undertake reform at their own initiative.

<sup>12</sup>National Educational Finance Project, "Future Directions for School Financing," Gainesville, Fla.: 1971, pp. 8, 31-32.