

# Serrano II: Equal Access to School Resources and Fiscal Neutrality— A View From Washington State

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## Introduction

In recent years much attention has been accorded the concept of district power equalizing (DPE). Many hope that a system of educational subsidization based upon DPE could solve the crisis in school financing that plagues virtually every state in America. This is an understandable but ultimately vain hope.<sup>1</sup> *Serrano v. Priest*<sup>2</sup> (*Serrano I* and *Serrano II*) and similar cases grapple with the problem of distributing educational resources through the proxy of an assault upon the method of school revenue production; they offer a solution based on the premise that an equitable system of school-related taxation will, ipso facto, yield a fair distribution of educational resources. But these two separable concerns are, in fact, not so neatly correlated as the California Supreme Court assumed them to be.

A better approach to solving the school financing problem would treat separately the twin concerns of taxational and educational equity; it is the purpose of this paper to sketch the broad outlines of such an approach. Part I reviews the decision of the California Supreme Court in *Serrano I* as it relates to these concerns and the manner in which the state district court on remand (with subsequent Supreme Court approval in *Serrano II*) attempted

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1. DPE is an inadequate means of dealing with the school financing problem because, as this commentary will later show, it fails both adequately to account for variations in the educational needs of school children and to guarantee any minimum level of expenditure for those needs. See notes 55-72 and accompanying text *supra*. The inadequacies of this particular solution and those similar to it have, however, been encouraged by the rejection of earlier attacks on the school finance problem that were based on the concept of educational need. See, e.g., *McInnis v. Shapiro*, 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd per curiam sub nom. McInnis v. Ogilvie*, 394 U.S. 322 (1969) [lack of judicially manageable standards made controversy nonjusticiable].

2. *Serrano v. Priest*, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971) (*Serrano I*); *Serrano v. Priest*, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976) (*Serrano II*), *cert. denied*, 45 U.S.L.W. 3822 (U.S. June 15, 1977).

to utilize the concept of fiscal neutrality to resolve these problems. This part then concludes with a review of the unique equal protection analysis utilized in *Serrano II* and the potential impact of this analysis on school resource development. Part II provides a review and critique of the school finance schemes suggested in *Serrano II* as constitutionally acceptable alternatives to the existing system of school finance. Part III briefly discusses a suggested legislative response to *Serrano II*—the key feature of which is the separation of revenue production from distribution.

## I. *Serrano I* and *II*: An Overview

### A. *Serrano I*

The evil that John Serrano Jr. set out to cure was the conditioning of a child's access to essential public school resources upon his own wealth or that of his neighbors within that school district. The plaintiff-petitioners in *Serrano I* thus alleged that:

As a direct result of the financing scheme . . . substantial disparities in the quality and extent of availability of educational opportunities exist and are perpetuated among the several school districts of the State . . . . The educational opportunities made available to children attending public schools in the Districts, including plaintiff children, are substantially inferior to educational opportunities made available to children attending public schools in many other districts of the State . . . .<sup>3</sup>

In short, it was contended that the California school financing system discriminated among school children on the basis of wealth.

The defendants responded in three ways. They argued: (1) that the "basic aid"<sup>4</sup> portion of state-provided revenues was allocated equally among all pupils regardless of local wealth and that state "equalization aid"<sup>5</sup> afforded proportionally greater benefits to property-poor school dis-

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3. *Serrano I*, 5 Cal. 3d at 590, 487 P.2d at 1244, 96 Cal. Rptr. at 604.

4. "'Basic state aid' consists of a flat grant to each district of \$125 per pupil per year, regardless of the relative wealth of the district." *Serrano I*, 5 Cal. 3d at 593, 487 P.2d at 1247, 96 Cal. Rptr. at 607. See CAL. EDUC. CODE §§ 17751, 17801 (West Supp. 1977) (current version at CAL. EDUC. CODE §§ 41790, 41800 (West Spec. Pamph. 1976)).

5. Equalization aid is distributed in inverse proportion to a district's wealth. To determine the amount of equalization aid a district will receive, the State Superintendent of Public Instruction ascertains how much local property tax revenue would be generated if the district levied a tax of \$1 on each \$100 of assessed valuation in elementary school districts and \$.80 per \$100 in high school districts. See CAL. EDUC. CODE § 17702 (West Supp. 1977) (current version at CAL. EDUC. CODE § 41761 (West Spec. Pamph. 1976)). To that figure, the Superintendent adds \$125 per pupil basic aid grant. If the total of these two amounts is less than the foundation program minimum for that district (minimum expenditure per pupil guaranteed by the state legislature), the state contributes the difference. See CAL. EDUC. CODE §§ 17901, 17902 (West Supp. 1977) (current version at CAL. EDUC. CODE §§ 41810, 41811 (West Spec. Pamph. 1976)). Equalization funds guarantee to the poorer districts a minimum amount of support, while wealthier districts may not receive such assistance. *Serrano I*, 5 Cal. 3d at 593, 487 P.2d at 1247, 96 Cal. Rptr. at 607. After *Serrano I*, the legislature made various changes in foundation levels

tricts; (2) that neither the measure of assessed valuation per pupil nor the measure of expenditure per pupil necessarily indicated the relative wealth of school districts or their residents; and (3) that "the wealth of a school district does not necessarily reflect the wealth of the families who live there."<sup>6</sup> The court dismissed the first two contentions, observing that a substantial part of a school district's budget was derived from local property wealth and that property-poor districts could not produce as much school revenue as property-rich districts even if the former taxed themselves at much higher rates than the latter.<sup>7</sup> Because *Serrano I* was an appeal from the granting of a general demurrer to the plaintiffs' complaint in the trial court,<sup>8</sup> the state supreme court also dismissed the respondents' assertion that district real property wealth per pupil and individual student (or student family) poverty were uncorrelated. The court observed, "[t]he simple answer to this argument is that plaintiffs have alleged that there is a correlation between a district's per pupil assessed valuation and the wealth of its residents, and we treat these material facts as admitted by the demurrers."<sup>9</sup> Thus, for procedural reasons only, the court in *Serrano I* accepted as true the petitioners' original allegation that where one found a school district with a low average real property assessed valuation per pupil one would generally also find low average levels of individual wealth, and vice versa.

The court then discussed the "indispensable" role that education plays in the modern industrial state. It asserted that this role has two significant aspects: "[F]irst, education is a major determinant of an individual's chances for economic and social success in our competitive society; second, education is a unique influence on a child's development as a citizen and his participation in political and community life."<sup>10</sup> As a result of the unique importance of education in our democratic society, the court in *Serrano I* felt compelled to treat a child's right to a publicly provided education as a "fundamental interest."<sup>11</sup> Having found such an interest, the court then was required to utilize the "strict scrutiny"<sup>12</sup> standard of equal protection review, thereby shifting the burden to the state to show a compelling interest justifying the existing school finance system. Thus, the following conclusions of the supreme court were before the trial court on remand:

(1) A child's right to public education in California is a fundamental interest.

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that affected the computation of equalization aid. *See Serrano II*, 18 Cal. 3d at 742, 557 P.2d at 935, 135 Cal. Rptr. at 351.

6. *Serrano I*, 5 Cal. 3d at 600, 487 P.2d at 1252, 96 Cal. Rptr. at 612.

7. *See id.* at 611, 487 P.2d at 1260, 96 Cal. Rptr. at 620.

8. *Id.* at 591, 487 P.2d at 1245, 96 Cal. Rptr. at 605.

9. *Id.* at 600-01, 487 P.2d at 1252, 96 Cal. Rptr. at 612.

10. *Id.* at 605, 487 P.2d at 1255-56, 96 Cal. Rptr. at 615-16.

11. *Id.* at 609, 487 P.2d at 1258, 96 Cal. Rptr. at 618.

12. For a review of the developments in fundamental interests analysis, see *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973).

(2) The existing scheme for school finance in California invidiously discriminated against the poor, provided petitioner's allegations were true.

(3) The plaintiff-petitioners were entitled to prove that there was a strong positive correlation between school district real property wealth and individual wealth.<sup>13</sup>

#### B. The Proceedings on Remand: A Proxy Strategy

Yet, on remand the plaintiffs apparently made no showing of a correlation between individual student wealth and district real property wealth. The focus in the trial court in fact shifted from a concern for poor students and low-wealth districts to a concern exclusively for the comparative disadvantages of low-wealth vis-à-vis high wealth districts. The evidence would indicate, however, that in California there is no reliable correlation between school district real property wealth and personal wealth.<sup>14</sup> A study including within its data base San Francisco, Oakland, and surrounding suburbs, for example, shows that in the early 1970's nineteen percent of the families residing in the San Francisco-Oakland metropolitan area earned less than \$3,000 per year; in the surrounding suburbs, however, only fourteen percent of the families did.<sup>15</sup> These statistics indicate that the poor are where you find them, which may or may not be in a property-poor school district.<sup>16</sup> This lack of a demonstrably strong correlation between low property wealth school districts and poor families may have encouraged plaintiffs' counsel to abandon a direct attack on the original problem, the relation between a school child's access to essential public school resources and that child's wealth, and instead to adopt a proxy strategy.

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13. In order to show that the state had invidiously discriminated against the poor, there would have had to have been a showing by the petitioners that the poor were treated worse than the non-poor by California's system of school finance. A showing that some poor people lived in property-poor school districts, but were treated similarly, and that other poor people lived in property-rich districts, would not suffice to meet this evidentiary burden, absent a showing that the state prevented movement by the poor from property-poor districts to property-rich districts. Faced with a similar failure to meet the requisite burden of proof, the United States Supreme Court in *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973), stated: "For these two reasons—the absence of any evidence that the financing system discriminates against any definable category of 'poor' people or that it results in the absolute deprivation of education—the disadvantaged class is not susceptible of identification in traditional terms." *Id.* at 25 (footnote omitted).

14. Davis, *Taxpaying Ability: A Study of the Relationship Between Wealth and Income in California Counties*, in PROCEEDINGS OF NEA TENTH CONFERENCE ON SCHOOL FINANCE 199-203 (1967) [hereinafter cited as Davis]. In Kansas, to the extent that there is a relationship between real property wealth and per capita income, it seems to be an inverse one. See Ridenour & Ridenour, *Serrano v. Priest: Wealth and Kansas School Finance*, 20 U. KAN. L. REV. 213 (1972). See also Morris & Andrews, *Ample Provision for Washington's Common Schools: Northshore's Constitutional Promises to Keep*, 10 GONZ. L. REV. 19, 22 nn. 13-16 (1974).

15. Berke & Callahan, *Serrano v. Priest: Milestone or Millstone for School Finance?*, 21 J. PUB. L. 23 (1972).

16. A report prepared by the Senate Office of Research, California State Legislature, discloses the following information about the Average Daily Attendance (ADA) of students:

The central concern of the court in *Serrano II* was equality of public school resource deployment;<sup>17</sup> yet, at the urging of the plaintiffs, the court dealt with this concern indirectly through the “proxy”, or substitute, of public school revenue production.<sup>18</sup> It tacitly but erroneously assumed that a system providing equality of revenue production will necessarily provide equality of public school resource deployment. All other things being equal, property-rich school districts can raise money for school purposes more easily than property-poor school districts where state taxation of local real property is a major source of local school revenue.<sup>19</sup> It is also true that both the value of real property within a school district and the average daily

	<u>Assessed Valuation Per ADA</u>	<u>Ratio to State Aver- age of Gross In- Come Per ADA (a)</u>	<u>Percent children Below Poverty Level (b)</u>	<u>Median Assessed Value of Homes (c)</u>
State Aver- ages	\$12,424	1.00	11.80	\$ ---
Emery Unified School District	92,151	0.91	31.25	3,979
Piedmont Unified School District	14,904	2.12	1.72	11,503

- (a)—Income of families and unrelated individuals.
- (b)—Children 6-17 years old from families below poverty level.
- (c)—Single family residences.

See Senate Office of Research, *Serrano Reform: Where Will the Money Go?* 2 (1975). Thus, when only real property assessed valuation is used as the standard for determining school district wealth, the Emeryville school district, at nearly 7½ times the state average, would be considered extraordinarily wealthy. Yet, almost one-third of its students are below the poverty level. On the other hand, the Piedmont school district is less than twenty percent above the state average in property wealth but has more than twice the state average gross income per ADA; less than two percent of its school children are below the poverty level. The report summarizes its findings as follows: “There is little relationship between the AV/ADA [assessed valuation/average daily attendance] of the school districts and the presence of children six to 17 years old from families earning less than the poverty level.” *Id.* at 3-4.

17. *Serrano II*, 18 Cal. 3d at 768-69, 557 P.2d at 953, 135 Cal. Rptr. at 369 (1976).

18. An understanding of these two terms, “public school resource deployment” and “public school revenue production,” is central to an understanding of *Serrano II*. “Public school revenue production” refers to the system of taxation employed by the state to raise school revenues from taxpayers. “Public school resource deployment” refers to the system of distributing school resources (or the money necessary to obtain them) to school districts and, through those districts, to school children.

19. *Serrano II*, 18 Cal. 3d at 744-45, 557 P.2d at 937, 135 Cal. Rptr. at 353.

attendance (ADA)<sup>20</sup> of school children within that district are exogenous variables over which the district can exercise no control. Yet, because these two variables substantially determine the amount of money per ADA of a school child available to the local school district for the deployment of school resources, the plaintiffs in *Serrano* argued that the state's school financing scheme placed an unfair tax burden on property-poor districts and therefore created an inequitable distribution of school resources to such districts.<sup>21</sup> These burdens result from accidents of geography, political boundary decisions and private choices regarding real property development. All of these factors make access to public educational resources dependent upon the fortuitous aggregation of real property wealth within a given school district. The plaintiffs argued that such a classification by wealth violated the equal protection provisions of the California Constitution.<sup>22</sup>

By linking the concept of equitable taxation with that of equitable school resource deployment, the plaintiffs in *Serrano* challenged the constitutionality of the system of district revenue production as though they were attacking the true concern, public school resource deployment. Indeed, the court in *Serrano II* seemed concerned with resource deployment, not revenue production, when it stated that "the school financing system before the court fails to provide equality of treatment to all the pupils in the state."<sup>23</sup> The fairness of a system of revenue production is not, however, necessarily related to the central concern in *Serrano*, the fairness of a system of school resource deployment. But because the plaintiffs' strategy focused on the unequal burdens associated with revenue production, the role of the local school district as tax collector was given a special and undeserved prominence, and the relative real property wealth of each district became the cynosure of the litigation. This is unfortunate for a number of reasons.

First, as was discussed earlier,<sup>24</sup> poor school children do not necessarily reside in property-poor school districts. The purported correlation between property-rich districts and rich district residents seems to work well enough when, as in *Serrano*, the Baldwin Heights and Beverly Hills Unified School Districts are compared. But, the hypothesis cannot be maintained when, for example, one looks at the San Francisco Unified School District. In San Francisco, unlike Beverly Hills, the high assessed valuation of real property per ADA student is largely attributable to the presence of substantial commercial and industrial development rather than

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20. Average Daily Attendance is computed by adding together the number of students actually present on each school day and dividing that total by the number of days school was taught. *Serrano I*, 5 Cal. 3d at 592 n.4, 487 P.2d at 1246 n.4, 96 Cal. Rptr. at 606 n.4.

21. Brief for Plaintiffs at 182, *Serrano I*, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

22. CAL. CONST., art. 1, § 7(a,b); art. 4, § 16.

23. *Serrano II*, 18 Cal. 3d at 747, 557 P.2d at 939, 135 Cal. Rptr. at 355.

24. See Davis, *supra* note 13.

to that of highly assessed residential property values. By any standard, the percentage of poor students in the San Francisco public schools is much greater than that in Beverly Hills, though both districts are property-rich.<sup>25</sup> Moreover, some of the poorest people live in areas with some of the greatest property wealth, *e.g.*, next to factories or other commercial establishments. To treat those people and their school children as rich because they live in property-rich school districts and to penalize them for their unfortunate residential location, as would be done under the district power equalizing scheme advanced by the plaintiffs in *Serrano II*, would not only be unfair but would also be at cross-purposes with the fundamental concern addressed in the *Serrano* litigation, the conditioning of a school child's access to necessary public school resources upon his family's or his school district neighbors' wealth.

Second, defining wealth as real property assessed valuation fails to take into account those persons who own their own homes, but who are living on modest incomes or pensions. Such people would not ordinarily be considered rich, although they would be treated as such for the purposes of a definition that is grounded primarily on a measure of real property values. Furthermore, the plaintiffs in *Serrano*, preoccupied with inter-district wealth disparities, ignored the problem of municipal overburden<sup>26</sup> in their quest for fiscal neutrality. This problem, which *Serrano II* leaves for the legislature to solve,<sup>27</sup> would not be solved by a district power equalizing scheme.

### C. *Serrano II*: An Unique Equal Protection Analysis

As has been suggested earlier,<sup>28</sup> equal access to educational resources was held a fundamental interest by the court in *Serrano II* both because of

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25. Information in the computer data base used by the California Senate Education Committee indicates that for 1976 the San Francisco Unified School District had more than 2½ times the statewide average real property assessed valuation (AV) per average daily attendance (ADA) students, but thirty-five percent of San Francisco's students were from families below the poverty level. In contrast, in the Beverly Hills Unified School District, which had more than 2½ times the state average AV/ADA, less than one percent of the students were from families below poverty level.

26. "Municipal tax overburden refers to high property tax rates for other governmental services than education." Finding of Fact No. 174, *Serrano v. Priest*, Civ. No. 938254 (Cal. Super. Ct., Aug. 30, 1974). A convenient way to think of municipal overburden is in relation to the statewide average percent of local taxes that support local non-school governmental functions, such as police, fire and related municipal services. Normalizing a community's municipal non-school tax burden with respect to the state average provides a useful index of overburden. For example, if the statewide average percentage of total local taxes that support non-school local governmental services were fifty percent, then a school district in a community that spent fifty percent of its local taxes on non-school local governmental services would have a municipal overburden of 1.00 ( $0.50/0.50 = 1.00$ ), or none. A district that had a municipal burden of sixty percent would have a municipal overburden of 1.20 ( $0.60/0.50 = 1.20$ ); whereas, a district with a municipal burden of forty percent would have a municipal overburden of 0.80 ( $0.40/0.50 = 0.80$ ), or an *underburden* of twenty percent compared to the state average.

27. *Serrano II*, 18 Cal. 3d at 759 n.38, 557 P.2d at 946, 135 Cal. Rptr. at 362.

28. See text accompanying notes 10 & 11 *supra*.

the individual benefits produced by education and because the state equal protection clause requires the elimination of irrational and invidious legislative classifications. The proxy of school district real property wealth was used by the *Serrano* plaintiffs to show that some property-poor school districts must impose a relatively heavier tax burden on their residents in order to provide their school children with adequate educational resources. Thus, public school resource deployment was dealt with indirectly through a constitutional challenge to the method of school revenue appropriation. The present system of school finance in California was found to be unconstitutional by the state supreme court because a school child's entitlement to a public education is a "fundamental interest," and the state could show no compelling justification for wealth-based discrimination in the production of school resources.<sup>29</sup>

It is important to examine this equal protection analysis carefully. The court mandates equality of treatment because education is too vital to be restricted in an unequal way; it is both a "major determinant of an individual's chances for economic and social success,"<sup>30</sup> and also a "unique influence on a child's development as a citizen and his participation in political and community life."<sup>31</sup> This justification for the court's analysis depends upon the uniqueness and importance of what education does, upon individual value judgments concerning the private benefits to the recipient of education, and upon individual perceptions about the usefulness of education in the context of a democratic government.

Compare this analysis with that utilized by the United States Supreme Court in striking down, on equal protection grounds, a statute that allowed whites only to be seated at the front of a municipal bus.<sup>32</sup> There is nothing inherently valuable about sitting anywhere on a bus. Racial discrimination in seating was proscribed by the Court solely because equality is important *in itself*, not because of the value to which equal access is given. Similarly, the United States Supreme Court has held that no official encouragement of discrimination results from the closing of public swimming pools, because both black and white citizens are equally deprived of the use of the closed facilities.<sup>33</sup>

Underlying these decisions is the assumption that equal access to state-provided opportunities, without regard to the intrinsic value of those opportunities, must be available to all without invidious or irrational distinctions. There may be controversy in a particular case as to whether the classifications are invidious or irrational, but once courts determine that the classifications should be so characterized, then such classifications violate the principle of equal protection. But the Supreme Court has not required that

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29. *Serrano II*, 18 Cal. 3d at 776, 557 P.2d at 958, 135 Cal. Rptr. at 374.

30. *Serrano I*, 5 Cal. 3d at 605, 487 P.2d at 1255-56, 96 Cal. Rptr. at 615-16.

31. *Id.*, 487 P.2d at 1256, 96 Cal. Rptr. at 616.

32. *See Gayle v. Browder*, 352 U.S. 903 (1956).

33. *See Palmer v. Thompson*, 403 U.S. 217 (1971).



the state make available public buses and public swimming pools. Those things are not, as a matter of constitutional law, intrinsically valuable. The court has merely said that *if* they are made available by the state, *then* they must be made available to all without invidious discrimination, such as those based on race, against potential users.

*Serrano II* is different in a crucial aspect from these federal decisions. In *Serrano II* the right to an education was found to be a fundamental interest because of the intrinsic value of education. The United States Supreme Court would presumably allow California to close all public swimming pools within the state rather than allow nonwhites freely to use them. Access to public swimming pools is not safeguarded because swimming is not constitutionally protected for its intrinsic value, either to the swimmer or to society at large. But could the California legislature satisfy the mandate of *Serrano II* by enacting a district power equalizing<sup>34</sup> statute, abolishing the guaranteed basic aid<sup>35</sup> and equalization aid<sup>36</sup> and limiting the amount that could be raised with district power equalizing to \$125 per ADA of a student (the present level of basic aid) with no permitted voter override? Such a school finance scheme, rather clearly, would no longer entail "the conditioning of the availability of school revenues upon district wealth."<sup>37</sup> All districts, without regard to real property wealth, would be able to raise \$125 per ADA student with the same rate of local real property taxation. Thus, in terms of strict equal protection analysis, all ADA students wherever they attended school in California would be treated equally without regard either to their own personal wealth or to the wealth of their school district.

This hypothesized financing scheme would, in all probability, violate the mandate of the California Supreme Court because of the uniqueness and importance of education, as announced in *Serrano I*.<sup>38</sup> It would be a cruel hoax, indeed, to concede the intrinsic importance of education to individuals and to society and to invoke the "compelling state interest" test because of that importance, while simultaneously permitting the substantial deprivation of access to an education as long as *all* those affected suffer equal but not total deprivation. In fact, *Serrano II* stated that any school financing system that conditioned "the availability of school revenues upon district wealth . . . and . . . the dependency of the quality of education upon *the level of district expenditure*—must be declared invalid unless it finds justification sufficient to satisfy the applicable equal protection test."<sup>39</sup> Although this language is dictum and the issues surrounding the latter point were neither pleaded, argued nor proven at trial, this declaration clearly goes beyond the

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34. See note 1 *supra*.

35. See note 4 and accompanying text *supra*.

36. See note 5 and accompanying text *supra*.

37. *Serrano II*, 18 Cal. 3d at 756, 557 P.2d at 944, 135 Cal. Rptr. at 360.

38. "We are convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a 'fundamental interest.'" *Serrano I*, 5 Cal. 3d at 608-09, 487 P.2d at 1258, 96 Cal. Rptr. at 618.

39. *Serrano II*, 18 Cal. 3d at 756, 557 P.2d at 944, 135 Cal. Rptr. at 360 (emphasis added).

strict equal protection principles utilized by the trial court.<sup>40</sup> Because the California Supreme Court *did* at least indicate a willingness to expand strict equal protection analysis, it would appear that if a future case squarely presents the question of a constitutionally required "level of district expenditure", the court would require a *minimum* level of protection from the state.<sup>41</sup>

The California Supreme Court did not discuss the level of minimum protection that may be constitutionally required, how that level should be determined, or the nexus that must be shown to exist between school expenditures and the quality of education. These are questions that have been discussed, however, in *Seattle School District No. 1 v. Washington*.<sup>42</sup> In that case, petitioners alleged that the State of Washington was not meeting its constitutional duty to make "ample provision" for the education of its school children.<sup>43</sup> The state moved for summary judgment, claiming, *inter alia*, that there were no judicially manageable standards for determining amplex, citing *McInnis v. Shapiro*.<sup>44</sup> The motion was denied; after nine weeks of trial the court held that the issue was judicially manageable<sup>45</sup> and that the state was not meeting its constitutional duty to make "ample provision." It further declared that after July 1, 1979, the state, which was

40. The California Supreme Court noted the following statement by the trial court judge: "What the *Serrano* court imposed as a California constitutional requirement is that there must be uniformity of treatment between the children of the various school districts in the State because all the children of the State in public schools are persons similarly circumscribed. The equal-protection-of-the-laws provisions of the California Constitution mandate nothing less than that all such persons shall be treated alike. If such uniformity of treatment were to result in all children being provided a low-quality educational program, or even a clearly *inadequate* educational program, the California Constitution would be satisfied. This court does not read the *Serrano* opinion as requiring that there is any constitutional mandate for the State to provide funds for each child in the State at some magic level to produce either an adequate-quality educational program or a high-quality educational program. It is only a disparity in treatment between equals which runs afoul of the California constitutional mandate of equal protection of the laws." *Id.* at 754 n.28, 557 P.2d at 943 n.28, 135 Cal. Rptr. at 359 n.28 (quoting the trial court's memorandum opinion at 59) (emphasis in original).

41. Professor Michelman has proposed a minimum protection theory as an interpretation of the Fourteenth Amendment. The analysis logically applicable to the equal protection provision of the California Constitution. See Michelman, *On Protecting the Poor Through the Fourteenth Amendment*, 83 HARV. L. REV. 7 (1969).

42. *Seattle School Dist. No. 1 v. State*, Civ. No. 53950 (Wash. Super. Ct., Jan. 14, 1977) (memorandum of intended decision), *appeal docketed*, No. 44845 (Wash. Sup. Ct., Mar. 31, 1977).

43. *Seattle School Dist. No. 1 v. State*, Civ. No. 53950 at 1 (Wash. Super. Ct., Jan. 14, 1977) (memorandum of intended decision), *appeal docketed*, No. 44845 (Wash. Sup. Ct., Mar. 31, 1977). The Washington Constitution provides: "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, cast or sex." WASH. CONST. art. 9, § 1.

44. 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd. per curiam sub nom. McInnis v. Ogilvie*, 394 U.S. 322 (1969). *McInnis* is discussed in *Serrano I*, 5 Cal. 3d at 615-17, 487 P.2d at 1263-65, 96 Cal. Rptr. at 623-25.

45. *Seattle School Dist. No. 1 v. State*, Trial Judgment at 3, ¶ 6.

already subsidizing more than fifty-eight percent of the Seattle district's budget for the 1975-76 school year,<sup>46</sup> could no longer rely upon locally-voted revenues to support those educational programs necessary for the state to meet its constitutional duty.<sup>47</sup>

The California Supreme Court will not be required to face the question of the constitutional minimum of state-provided aid to education that arose in *Seattle* unless the complaint in some future lawsuit shows a nexus between the quality of education and the level of district expenditure.<sup>48</sup> Although full treatment of that important subject is beyond the scope of these remarks, it should be noted that the use of econometric analysis adapted to the presently inadequate standards for measuring educational effectiveness will provide scant help but no significant harm to potential plaintiffs.<sup>49</sup>

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46. FINAL BUDGET REPORT NO. F 196, SEATTLE SCHOOL DISTRICT NO. 1 (1975-76). Most of the remaining maintenance and operation revenue is obtained by annual district elections that authorize the taxing of the real property within the school district and the retention of all revenue thereby accrued to operate the schools. This process is similar to the "override" system in California.

47. In *Seattle*, the trial court filed its eighty-four page memorandum opinion on January 14, 1977. The 620 findings of fact and 67 conclusions of law and judgment were filed on March 17, 1977. Notice of appeal was filed by the State of Washington on March 31, 1977.

48. The question might arise in an action on behalf of students in a local school district with a low annual educational expenditure, but in which district power equalizing makes available to a local ADA student equal quantities of school dollars for each tax rate unit. In such a case, if the district elected to have a very low tax rate and, therefore, a very low level of district expenditure per ADA student, a lawsuit might be brought alleging that the quality of education was unconstitutionally impaired because of the low level of district expenditure.

49. The attempt to quantify and predict the relationship between educational "inputs" (e.g., student-teacher ratios, teaching techniques, student home environment, etc.) and educational "outputs" (e.g., student achievement, etc.) is a growing science. This science has borrowed research techniques from the physical and biological sciences, most particularly standard multiple or linear regression analysis. Unfortunately, the underlying assumptions (and assumptions must be made to employ this scientific technique) about the relationship between educational inputs and outputs are often stated in the simplest of mathematical expressions, even though educational researchers agree that the process of education is a complex and subtle phenomenon. This use of simplistic formulae is usually justified by educational researchers on two grounds. First, simple equations make manipulation of data easier. Second, since it is not known whether other more complex mathematical formulae are any more likely to provide correct descriptions of the education process, the simpler models are utilized. These studies (often referred to as educational production function studies) have not yet provided much that is useful either in assisting educational policy judgments or in guiding the courts or legislatures in this area. One of the major flaws in these studies is that no confidence can be placed in conclusions about the correlation or the lack of correlation between educational inputs and educational outputs. This is because the assumptions implicit in the study as to the mathematical relationship among the variables (e.g., the assumption of linearity) are unverified. For example, a showing of a low correlation between class size and student reading levels may be due to the fact that these variables were weakly correlated or because the assumed mathematical nature of the relationship was incorrect. The independent variable (class size) and the dependent variable (reading level) may, for example, be highly and positively correlated, but that correlation would never be disclosed by an educational production function study based on

## II. Alternative Financing Schemes Suggested in *Serrano II*

*Serrano II* delineated several alternatives to the present financing system that, in the court's view, represented constitutionally acceptable solutions to the California school finance crisis:

These alternative methods, which are "workable, practical and feasible," include: "(1) full state funding, with imposition of a statewide property tax; (2) consolidation of the present 1,067 school districts into about five hundred districts, with boundary realignments to equalize assessed valuations of real property among all school districts; (3) retention of the present school district boundaries but the removal of commercial and industrial property from local taxation for school purposes and taxation of such property at the state level; (4) school district power equalizing, which has as its essential ingredient the concept that school districts could choose to spend at different levels but for each level of expenditure chosen the tax effort would be the same for each school district choosing such level whether it be a high-wealth or a low-wealth district; (5) vouchers; and (6) some combination of two or more of the above."<sup>50</sup>

The alternatives of district consolidation, removal of commercial and industrial property from local taxation, and district power equalizing are unattractive solutions to the school funding crisis because they continue to treat as one problem what in fact are two separate but related problems: revenue production and public school resource deployment.<sup>51</sup>

### A. District Consolidation

Even if consolidation created districts with essentially equal ratios of real property assessed valuation per ADA student, it could not guarantee that such tax parity would continue. Not only are demographic patterns constantly changing, but real property also becomes more or less valuable as development patterns change. Today's worthless desert is tomorrow's high-valued shopping center or housing tract. While one school district experiences a declining enrollment, an adjacent district may have a burgeoning student population. Neither property values nor student population is within the control of any school district. Thus, district consolidation would be a

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an incorrect assumption about the relationship between class size and reading levels. Scientific research in education is thus relatively undeveloped. Some of its early limitations derived from the fact that the principal investigators were "educators," not scientists or mathematicians. Increasingly, however, the investigators in educational research are becoming more sophisticated in their understanding of the uses and limitations of their scientific tools. Thus, it can be predicted with confidence that future research in this important area will be more careful, more credible, and ultimately useful.

50. *Serrano II*, 18 Cal. 3d at 747, 557 P.2d at 938-39, 135 Cal. Rptr. at 354-55 (quoting the trial court's finding of fact no. 198).

51. See notes 14-27 and accompanying text *supra*.

stopgap measure at best, destined to fail in providing a lasting solution to the school finance problem. Furthermore, the periodic realigning of school district boundaries would cause considerable disruption in school attendance. A student who formerly walked to a convenient local school might find that he was assigned to a distant and inconvenient school when his block was incorporated in a new district.

The apportionment and redistricting cases decided by the Supreme Court in the 1960's<sup>52</sup> are examples of the kind of problem that can and should be avoided by the California legislature in its response to *Serrano II*. The Court has faced unending difficulties in determining how much deviation from mathematically equal representation is constitutionally permissible.<sup>53</sup> Where possible, the judiciary should be spared from having to answer this type of question because numerically specific answers (other than "zero") cannot justifiably be transformed into general and immutable principles of law. Lacking the guidance of such principles, courts necessarily decide cases in a haphazard fashion that creates more problems than it resolves.

#### B. Restructuring the Commercial Tax Base

The alternative of retaining existing school district boundaries and taxing commercial and industrial property at the state rather than at the local level presents similar difficulties. A school district with a high average assessed valuation of residential real property, such as the Beverly Hills Unified School District, still maintains a substantial tax advantage over school districts with a low average, such as the Baldwin Park Unified School District. If the state-collected property tax were used to supplement the locally-collected taxes in districts with low averages, the problem then becomes one of how much the state subsidy should be. If the state subsidizes districts so that they may all fund their programs at the level of the highest district on an ADA student basis, then the result is essentially identical to that achieved by full state funding. However, if the state subsidy is at some lower level, the legislature may have difficulty harmonizing that decision

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52. See, e.g., *Lucas v. Colorado Assembly*, 377 U.S. 713 (1964); *Roman v. Sincock*, 377 U.S. 695 (1964); *Davis v. Mann*, 377 U.S. 678 (1964); *Maryland Comm. v. Tawes*, 377 U.S. 656 (1964); *WMCA, Inc. v. Lomenzo*, 377 U.S. 633 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964).

53. A deviation from mathematically equal representation of 16.4%, we are told, "may well approach tolerable limits." *Mahan v. Howell*, 410 U.S. 315, 329 (1973). In *Gaffney v. Cummings*, 412 U.S. 735 (1973), the maximum deviation was 7.83%. While not precisely indicating the point at which a deviation from mathematical equality had to be affirmatively justified by the state, the Court announced the *de minimis* standard in *White v. Regester*, 412 U.S. 755 (1973) (maximum deviation was 9.9%). The Court in *White* said "[v]ery likely, larger differences between districts would not be tolerable without justification . . . ." 412 U.S. at 764.

with the mandate of the California constitution, particularly in light of the trial court's findings.<sup>54</sup>

### C. District Power Equalizing

#### 1. *The Implicit Hypothesis*

The alternative of district power equalizing (DPE), which the plaintiffs in *Serrano* favored, is a concept that has been most forcefully advocated in recent years by Professors Coons, Clune, and Sugarman.<sup>55</sup> It cannot, however, fulfill the requirement of optimum public school resource deployment and should be abandoned as a vehicle for determining the quality of education within the local school districts of California.

There are many laudatory things to be said about DPE, especially when it is compared with the present system of school financing in California and most other states. But notwithstanding plaintiffs' protests to the contrary,<sup>56</sup> DPE focuses essentially upon tax equity (equalization of tax burdens in regard to rate of tax assessed) and not upon the equalization of educational opportunity, the problem involved in *Serrano II*.<sup>57</sup> The hypothesis implicit in the DPE strategy is that if the property tax burden of local voters, measured in terms of the amount of money that can be raised per ADA student for each dollar of tax levied locally per one hundred dollars of assessed valuation (AV) within the school district, is the same for all voters and all school districts throughout the state (regardless of the actual ratio of AV/ADA within a school district), then the local political process and the local concern for adequate training will assure the quality of education<sup>58</sup> within the school districts.<sup>59</sup> This hypothesis is interesting, but the proposed financing system built upon it is rife with shortcomings.

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54. Among the trial court's findings of fact in *Serrano I* are the following:

"No. 214. The quality of education provided by a school district to its pupils is significantly affected and improved by any increase in per pupil expenditures.

No. 215. The level of expenditures per pupil and the ability of a district to provide a given measure of quality of school offerings are directly related.

. . . .

No. 236. The amount of money available to a school district affects the quality of education being offered because facilities, equipment, supplies and services in the form of teachers and other employees, all require expenditures and, if expenditures are restricted because of an absence of funds, the educational program in a district will necessarily be impaired."

55. See J. COONS, W. CLUNE, & S. SUGARMAN, *PRIVATE WEALTH AND PUBLIC EDUCATION* (1970).

56. See Brief for Respondents at 84-85, *Serrano II*, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976).

57. See note 23, and accompanying text *supra*.

58. See note 39, and accompanying text *supra*.

59. See Brief of The Childhood and Government Project as Amicus Curiae, *Serrano II*, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976). "The relevant wealth is always *district*

## 2. *The Shortcomings of a DPE Scheme Based on Property Values*

One major shortcoming of DPE as a mechanism for removing wealth-related disparities in per-pupil expenditures is the lack of a demonstrably strong correlation between assessed valuation of real property per ADA student and individual wealth.<sup>60</sup> More important, however, DPE simply does not take into account enough different factors to offer a feasible alternative to the evils inherent in the present system of school financing. The main evil to be eliminated is the conditioning of a school child's access to essential public school resources upon his family's or his school district neighbors' individual wealth, not just property wealth.

The assessed valuation of real property per ADA student is an important term in the calculus of a local school district's revenue production capacity, but it is not the only nor the most important term.<sup>61</sup> District power equalizing does not take into account wealth-related disparities in expenditure that are not property wealth related. It is true, for example, that under the DPE scheme advanced by the amici in *Serrano*,<sup>62</sup> all who own a residence valued at \$40,000 would receive for their local schools the same amount of money per ADA student for every dollar of tax assessed per hundred dollars of assessed valuation. But taxes are paid with *individual wealth* (usually personal income), not *property wealth*. Because there is no positive correlation in California school districts between individual wealth and real property wealth, the average ability of local taxpayers in any given district to pay the same level of tax varies widely. It is one thing, for example, to ask a family of four with an annual income of \$20,000 and a single family residence assessed at \$10,000<sup>63</sup> to pay a school tax of five

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wealth—assessed valuation per pupil. It is the right to public education that is affected, and even the richest individual cannot purchase it. The only purchaser is that state-created entity called the school district whose taxable property per pupil is, therefore, the relevant measure of wealth. Thus, *Serrano* is not a poor man's complaint. The individual poor, to be sure, are the most poignant victims of the present system because they cannot escape to private schools; but the children of families living in poor districts all suffer from under financed schools irrespective of their family's income level." *Id.* at 11 (emphasis added).

60. See notes 14 & 16 *supra*.

61. For example, in the 1970-71 school year the highest spending unified school district in the grouping of school districts with the lowest ratio of AV/ADA spent more per ADA student than the lowest spending unified school district in the grouping of school districts with the highest ratio of AV/ADA. See Defendant's Exhibit L-4, *Serrano v. Priest*, Civ. No. 938254 (Cal. Super. Ct. 1974). The significance of this statistic is that other factors, unrelated to local school district real property AV/ADA, have a significant effect on local decisions concerning school revenue production.

62. See note 55 *supra*.

63. In California, real property is assessed for tax purposes at 25% of true value. CAL. REV. & TAX CODE § 401 (West Supp. 1977). Thus, a \$40,000 lot would have an assessed valuation of \$10,000. Also, "modified assessed valuation" (MAV) rather than "assessed valuation" (AV) is the standard measure of property wealth. See CAL. EDUC. CODE §§ 41200-

dollars per hundred dollars AV, but it is quite another matter to ask a similar family with an annual income of only \$10,000 to pay the same rate and the same total tax on a \$10,000 AV residence, even when the latter is guaranteed through DPE the same revenue per ADA student as that promised to the former.<sup>64</sup>

It is elementary that a unit of wealth does not have the same value for everyone,<sup>65</sup> nor does one value the last unit of wealth to the same degree as the first. What is most troublesome about this fact in the context of school finance is not only that wealth-based choices under a DPE system would continue to influence strongly local educational resource deployment choices, but also that those most directly harmed by this continuing wealth-based decisional calculus are not the decision-makers but are rather their children.<sup>66</sup>

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41206 (West Spec. Pamph. 1976) (formerly at *id.* §§ 17261-17265 (West Supp. 1977)). The "modification" is a device to encourage, through a kind of tax penalty for noncompliance, school districts to become "unified" school districts. Because for present purposes the distinction between MAV and AV is unimportant, that distinction has been ignored in this commentary.

64. See Plaintiff's Exhibit 1 at 95, and Defendant's Exhibit L-1 at 560 and 871, *Serrano v. Priest*, Civ. No. 938254 (Cal. Super. Ct. 1974). The cited pages disclose the following data:

	MAV/ADA*	MEDIAN FAMILY INCOME
Santa Monica Unified School District	\$29,800	\$10,800
Palos Verdes Peninsula Unified School District	\$12,200	\$21,100

\* Modified assessed valuation per average daily attendance students (see note 63 *supra*).

This comparison illustrates further the extreme likelihood of continuing wealth-related disparities between school districts in per-pupil expenditures if a DPE system of school financing is adopted. If district wealth were predicated upon the assessed valuation of real property within the district, Santa Monica is nearly 2½ times as wealthy as Palos Verdes Peninsula. Yet, in terms of median family taxable income, Palos Verdes is nearly twice as wealthy as Santa Monica. Under a DPE system, one might expect the relatively richer Palos Verdes residents to be subsidized by the revenues raised at the expense of the poorer Santa Monica residents.

65. Those with greater disposable income relative to their fixed and irreducible basic expenses place a lesser value on having a relatively large number of dollars that are disposable in a discretionary way than those enjoying less disposable income. Because this is so it cannot be expected that both groups will choose to spend the same number of dollars for education, even if each dollar has the same purchasing power. In fact, the less affluent group would have to accord education a higher priority than the more affluent group in order for the former to make the commitment to spend the same amount of dollars as the latter. For the less affluent, that same amount of dollars would represent a greater percentage of their discretionary disposable income that must be spent for education.

66. Respondents commented: "Defendants would attempt to treat tax inequity in the abstract as if it can be treated separately from spending inequity but one cannot look at one without looking at the other. Wealth, tax rates, and spending are inextricably tied together. The tax rate is merely the device through which assessed wealth has its impact upon spending, for



District power equalizing, which requires majority approval of local residents to obtain a guaranteed revenue, also does not take into account the impact of important community characteristics that affect school support, such as the percentage of the electorate that is unmarried or married but childless, the educational background of the parents of school-age children, or the costs of other local government services.<sup>67</sup> A related problem of DPE is that to the extent it makes education a matter of local determination, it allows property-rich districts to escape, at least in part, the intended purpose of the financing system, *i.e.*, the removal of local property wealth from the *exclusive* use of the district in which it is found.

District power equalizing also encourages an unintended extension of the definition of education in property-poor districts, an extension subsidized by the property wealth located and taxed elsewhere. One might expect, for example, that property-rich districts would define education narrowly because a portion of the revenues raised for education therein would actually flow to other districts. To minimize this tax dollar drain, a self-serving property-rich district might exclude from its school programs all drama, art, music, physical education, interscholastic competitive sports, science clubs, and foreign language programs that are not mandated by the state and divert the money thereby saved to, for example, local community recreation and park budgets. Such a tactic would permit both local property taxation and local retention of revenues thereby raised, because only school revenues would be district power equalized. On the other hand, property-poor districts that would receive more than one dollar in value for every dollar that they taxed themselves could be expected to expand their definition of education to include more elaborate educational and related

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the lower a district's wealth, the higher its tax rate must be in order to raise a given amount of revenue." Brief for Respondents at 85, *Serrano II*, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976). In fact, tax inequity can and should be treated separately from spending inequity (resource deployment). We treat these two concerns quite separately at the federal level. For example, when the federal government is concerned with revenue production through the vehicle of the graduated net income tax the concern is with what graduation structure, what exemptions, etc., are fair for those *producing* the taxable revenue. But these concerns are not confused, as the *Serrano* plaintiffs would require, with the separate subject of how this revenue, once collected, should be distributed. It is true that wealth, tax rates, and spending are inextricably tied together but only in the ultimate sense that unless the government prints its own money, it ought not spend more than it collects.

67. In the 1970-71 school year, for example, the school districts of Berkeley, Palo Alto and Pasadena were, respectively, the fourth, eighth, and twenty-first highest spending districts per ADA student in California. Yet in rank order of their real property wealth they were, respectively, seventy-fifth, fifty-sixth, and ninety-fifth. Plaintiff's Exhibit 100 and Defendant's Exhibit H-5, *Serrano v. Priest*, Civ. No. 938254 (Cal. Super. Ct. 1974). The proximity of colleges and universities in the midst of these school districts coupled with their higher than average median family incomes probably explains their extraordinarily high school expenditures, relative to their relatively low real property wealth.

programs such as free hot breakfasts, psychological counseling, medical aid, disease inoculation, or dental hygiene. Moreover, in school districts where real property assessed valuation is high relative to the DPE neutral point but where median family income is relatively low,<sup>68</sup> more money would be generated by taxes than would be retained locally, in spite of the fact that the burden on income to raise such revenues in those districts is disproportionately large. This fact could be expected to dampen the enthusiasm in such districts for needed school programs, even to the point that local DPE tax measures might not pass at all.

### 3. *The Shortcomings of a Modified DPE Scheme*

Of course, a system of district power equalizing could be devised which is based on median family income per ADA student in a district, or a combination of an income-wealth base and a property-wealth base. But even that modification and improvement should not be used as a device for producing necessary school resources because it, like a real property-based DPE, would only become part of a patchwork solution to the overall school financing problem; school revenue appropriation would continue to be contingent upon the non-school values of local communities. Thus, in communities with a high proportion of single adults, elderly persons, and childless couples, such as San Francisco, the value placed on raising school resources would be less than that exhibited by communities with low proportions of the same demographic subgroups. An income-based DPE would also continue to permit the scope of education to be determined at the local level, and thus would encourage the same sort of definitional manipulation by both income-rich and income-poor districts that exists in a real property-based DPE system.<sup>69</sup>

### 4. *DPE and The Problem of Municipal Overburden*

Whether a DPE system used real property or income as a wealth criterion or some combination of the two, it would not deal with the serious problem of municipal overburden.<sup>70</sup> In *Serrano II* the plaintiff-respondents argued:

Appellants assert that a fiscally neutral school financing system in which districts get equal revenue for equal tax effort would be unfair to districts like San Francisco which has high property tax rates for governmental services other than education. This additional tax burden is often referred to as "municipal overburden."

Yet, again, appellants ignore the trial court finding that municipal tax overburden occurs in low wealth, low spending dis-

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68. See notes 16, 64 and 65 *supra*.

69. See text accompanying note 67 *supra*.

70. See note 26 *supra*.

tricts just as it does in high wealth, high spending districts. . . . No reason exists why San Francisco ought to have an advantage over Los Angeles or San Diego from the standpoint of municipal overburden. Both before and after S.B. 90 and A.B. 1267, high wealth, high spending districts are financially better able to address the problem of municipal tax overburden than are low wealth, low spending districts. . . . That is a complete response to appellant's argument.<sup>71</sup>

In fact, the response is less than complete. It is true that no reason exists why San Francisco ought to have an advantage over Los Angeles or San Diego with respect to municipal overburden, but it is equally true that San Francisco and other high-wealth, high municipal overburden districts should not be unduly penalized by a DPE system. Yet, unless further adjustments are made to the basic DPE model, low-wealth districts with high municipal overburden would enjoy an unfair advantage similar to that now enjoyed by high-wealth, high municipal overburden districts.

District power equalizing cannot solve the problem of municipal overburden. It can only increase the burden for high-wealth districts that already experience it, while decreasing the burden for low-wealth districts. To the extent that the poor are found in high-wealth districts, their problems are further exacerbated by this flaw in DPE. The reason why property-based DPE would intensify the municipal overburden of a high property wealth district with a high municipal overburden, such as San Francisco, is readily apparent. With fierce competition for local tax dollars among other governmental needs, a school district in a community with a high municipal overburden has a difficult struggle to raise needed educational revenues. If the high municipal overburden school district is also a property-rich district, the problem of overburden is less than that confronted in an average wealth or property-poor district because in the property-rich district a school tax of one dollar per one hundred dollars of assessed valuation will buy more resources per ADA student. All other things being equal, this means that the high property wealth district can impose a lower rate of local school tax than a low wealth district could; for this reason, other governmental services may take a disproportionately larger share of a property-rich district's local tax revenues without significantly harming its school program. In other words, being a high property wealth district partially compensates for being a district with a high municipal overburden.

Under a property-based DPE system, however, a high-wealth, high municipal overburden district could not maintain the same level of school spending per ADA student with the same tax rate it had imposed prior to DPE. Thus, in a district such as San Francisco, either total local taxes would

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71. Respondents' Brief at 84, *Serrano II*, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976).

have to be increased in an amount corresponding to the assessed valuation discount built into the DPE system, or school revenues (or other governmental revenues) would have to be reduced. On the other hand, low-wealth, high municipal overburden districts existing within a property-based DPE system would compete more favorably with other local governmental tax needs than they do at present, because a lower rate of local school tax would be sufficient to produce the same revenue per ADA student as existed before DPE. Thus, looking to the needs of both high-wealth and low-wealth districts, the serious problem of municipal overburden is not treated any more satisfactorily under a property-based DPE system than it is under the present system of school financing in California.

##### *5. DPE and the Need for Centralized Fiscal Planning*

Considered from the perspective of California state fiscal planners, DPE presents further unattractive features. Those having the responsibility for drafting the state's annual budget will be unenthusiastic about DPE because it would be very difficult to forecast how much of the program the state will have to finance from the non-school revenues in the state's general fund. Ideally, the local revenues produced by taxes in high-wealth districts that exceed the amount per local ADA student that the DPE system allows to be retained would be redistributed throughout the state to those low-wealth districts that raised insufficient revenue to meet the amount per local ADA student guaranteed under the DPE system for that tax rate. In such a situation, the state would act merely as a conduit and no additional state revenues would be called upon to meet the DPE guarantee to local school districts.

Unfortunately, California is not the fiscal planner's ideal world. It is impossible to predict from year to year the degree to which the high-wealth districts would produce revenues that could be used by the state to underwrite the shortfall in the low-wealth districts. This uncertainty could require substantial uncommitted reserves in the state general fund to underwrite the DPE program to the extent that it does not internally generate sufficient revenues of its own. Of course, state planners could set the DPE dollar guarantee per local ADA student at a very conservative level to hedge against the state's need to underwrite the DPE program from other state revenues. But such fiscal conservatism would frustrate the collective local desire to allocate resources for public education. As the burden on school revenue production increases, the capacity of taxpayers to bear that burden diminishes. If an additional onus was placed upon local school revenue production in order to hedge against the state's need to supplement the DPE guarantee from other sources, the underlying purpose of DPE would be distorted in order to diminish the large fiscal uncertainty that DPE had created at the state level.

It would be possible for the state to require all school districts to pass their local school tax measures for the succeeding fiscal year in advance, based upon the state's tentative schedule of DPE guarantees for that year. The state could then change the DPE guarantee schedule after all local school district tax rates were promulgated.<sup>72</sup> Under such an arrangement, the state could know what its underwriting costs would be in any given fiscal year before it irrevocably pledged itself to fund the program. If the costs were too great, the state could simply reduce its DPE guarantee to an acceptable level. But such a system would be inadvisable because local school districts could never be confident that their tentative DPE budgets would in fact become their actual budgets. If the state mandated a reduction of the DPE guarantee, all local school budgets would have to be reduced. Such an inherently uncertain financing system is simply impossible to administer.

#### D. Vouchers

The fifth financing alternative suggested by *Serrano II* is that of vouchers.<sup>73</sup> It is perhaps the least attractive option available to the California legislature. This is so not because it is an alternative without merit but because it would represent the most radical departure from the present system and because it is a largely untested technique in California. Legislators tend to eschew unfamiliar or untried alternatives. For these reasons, a voucher system is unlikely to be adopted.

### III. A Proposed Legislative Response to *Serrano II*

My proposed solution to the problem of school financing in California is a variant of the sixth alternative broached in *Serrano II*, namely, some combination of the other five options. It would consist of both full state funding to meet the basic educational needs of school children and a radically modified system of local power equalizing.

#### A. Full State Funding

The first alternative suggested in *Serrano II*, full state funding, has so many attractive features that it forms the basis of the school financing

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72. The state could also require all local school districts to submit to the state their proposed tax rates so that the state could commit itself irrevocably to a schedule of DPE guarantees. But such a scheme would also be unsatisfactory because there would be no way of knowing in advance which district voters would pass their tax requests and which would not.

73. Under a voucher plan, the state would give a student's parents a voucher *i.e.*, a certificate indicating that an approved school may present it to the state and collect cash in the amount shown on its face, that may be used at any designated institution for the cost of the child's education. Under a pure voucher system, schools would receive no funds from the state except those tendered to it as vouchers by parents who chose to enroll their children there. *See generally* C. JENCKS, *EDUCATION VOUCHERS* (1970); A. MORRIS, *THE CONSTITUTION AND AMERICAN EDUCATION* (1974).

system suggested here. The imposition of a statewide property tax has much to recommend it<sup>74</sup> because, unlike DPE, it allows for separate and consequently more effective treatment of the two distinct problems in school finance—revenue production and educational resource deployment. Full state funding would also provide reliable, predictable annual revenues because there would be no local voter discretion to approve or disapprove a given taxing measure. Such a financing system would also negate the importance of the location and the value of taxable real property in the state, at least for educational revenue purposes. Moreover, under a system of full funding, the state could simply levy a property tax that would produce all revenues necessary to subsidize the schools. Having collected the revenues under that procedure, the state could then distribute funds to local school districts on the sole basis of need.

Full state funding for the basic educational needs of all students also overcomes many of the other objections raised against district power equalizing. A school district that contains some pupils whose educational needs differ from the student norm in various degrees usually finds that the cost of meeting those needs is disproportionately higher on a per pupil basis than the cost incurred in educating its student population generally. If a system of full state funding were employed to meet the basic educational needs of all students, those additional intradistrict costs could be identified and compensated for in the state revenue distribution formula through which the local school district received its subsidies.<sup>75</sup> If a system for full state

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74. One of the most commonly voiced criticisms of full state funding is the fear that local control will be supplanted. It is said that if local voters cannot determine the amount of revenue produced to maintain and operate their schools, they will lose control over the content, character and requirements of the educational process. This criticism is only partially correct. One of the present political realities is that the constituencies of all school districts want strong local control. But these are the same constituencies that elect state legislators. Consequently, it seems unlikely that the state legislature would intrude significantly into the operation of local schools or allow other state agencies to do so. On the other hand, in California the state has an obligation to guarantee the fundamental interest of education and, for this reason, it might legitimately impose upon local school districts. Such an action is an intrusion upon local control, but deference to the concept of local control should not excuse the failure of a school district to provide the minimum educational program its school children need. A child's fundamental interest in an adequate education is undermined both when district voters and the state, acting upon the principle of local control, fail to provide such a program. *Serrano II* would not permit the quality of education to be impaired by the level of district expenditure even if a low expenditure level were approved by the district's electorate. *Serrano II*, 18 Cal. 3d at 755-56, 557 P.2d at 944, 135 Cal. Rptr. at 360.

75. One method by which the state might take into account the increased costs attendant to educating students with special educational needs is to "weight" students according to those special needs and provide revenue to local school districts on the basis of its total number of "weighted" students. For example, if the state recognized that students from families below the poverty level had greater educational needs than their peers, students who fit that description could be given an extra numerical weighting—say 0.5. Thus, one such child, assuming he

funding of the basic educational needs of all students were implemented in California, it would be relatively simple to take into account such important local factors as municipal overburden, regional variations in the consumer price index, differences in personnel experience and expertise,<sup>76</sup> intradistrict transportation requirements,<sup>77</sup> and economies of scale.<sup>78</sup> These factors may be easily and precisely accounted for in fairly disbursing money to a school district where full state funding is employed. Rather than being impaired by such variables, a full state financing scheme would neutralize their effect on local school resource deployment. Moreover, full state funding of basic educational needs would assure that local communities could not allow their non-educational priorities to supersede the requirement for full support of the basic educational needs of local students.<sup>79</sup>

### B. Neighborhood Power Equalizing

In addition to providing fair and reliable means for school revenue production and school resource utilization, the state has a responsibility to assure that school children are being adequately and effectively educated. Members of the local community, however, often demand the authority to fashion and administer local school programs. These two interests can be accommodated through the vehicle of neighborhood power equalizing (NPE).<sup>80</sup>

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also did not fit additional weighting categories, would count as 1.5 children for the purposes of distributing state funds to his local school district. If the state provided funding to local school districts at the rate of \$1,000 per "weighted" pupil, the school district in this example would receive \$1,500 for this one student. Another method would be to guarantee full state funding for a certain ratio of staff and nonsalary items per "weighted" student. Whatever the method used, full state funding of a student's basic educational needs would constitute the optimum technique for providing the funding adequate to fulfill the educationally diverse needs of students, wherever they are found.

76. One of the substantial fiscal burdens that urban and adjacent suburban school districts bear is the high level of experience and professional preparation of their teaching staff. In California, a teacher's salary increases proportionately with the number of years that the teacher has been teaching and the level of formal education achieved by that teacher. Because urban and suburban communities have been viewed as desirable "destination" points by teachers, they tend to retain teaching positions in those communities for durations significantly longer than the statewide average. This means that teacher and administrative salaries in urban and suburban school districts are generally higher than the statewide average.

77. The transportation requirements of school districts vary widely. Districts that are relatively compact often have minimal transportation needs. In contrast, rural and sparsely populated districts depend heavily upon busing, which can be very expensive. School districts which are racially segregated may become substantially dependent upon large scale busing.

78. The smaller and more remote the school district, the higher its per student ADA costs are likely to be. On the other hand, some districts, because they are so large, have diseconomies of scale for the reason that they cannot be managed with optimum efficiency. Each of these problems can be dealt with specifically under a full state funding scheme.

79. See note 73 *supra*.

80. Under an NPE system, each geographical area within a school district that constitutes the attendance area of a high school (and the elementary, middle, and junior high schools that

Once the basic educational needs of all students are assured through full state funding, local luxuries and nonessential programs<sup>81</sup> can be funded

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serve it) would become a separate taxing entity for the purpose of allowing voters in that area to determine whether they wish to tax themselves in order to provide desired, but nonessential, programs for their children. The underlying premise is that a smaller school district unit is better suited to achieve the twin goals of local control and local performance auditing by the state. The neighborhood high school attendance area is probably the smallest taxing district which is practical. A taxing district that separately encompassed elementary, middle, and junior high schools would be overlapped by the larger neighborhood high school serving them, causing an undesirable multiplicity of taxing entities.

The interplay between the state and the neighborhood school is not new in California. The Early Childhood Education (ECE) program in California presently operates in the early primary grades. Under this program, state money is made available to a school building within a district in order to implement some plan agreed upon by the State Department of Education, the neighborhood parents, the teachers, and the school administrators working in that local building. The state then evaluates the performance of that program to determine whether the subsidization will continue. The ECE program gives state authorities direct involvement with neighborhood school operation and allows the individual school wide latitude to implement particular educational programs while simultaneously providing the state with a direct means of influencing local school choices so as to assure more effective learning opportunities for school children.

81. Precisely what constitutes the "basic educational needs" of students as distinguished from "local luxuries and nonessential programs" is currently a matter of spirited, albeit confused, debate in the Washington state legislature, which is attempting to carry out the mandate of the trial court in the *Seattle* case. See text accompanying notes 42-47 *supra*. One definitional approach would be to classify students on the basis of their learning potential. Having decided upon appropriate broad classifications, testable substantive skills and levels of competencies that students in each of these categories could reasonably be expected to exhibit at specified grade levels and upon high school graduation could be set. Then, the public school resource deployments (as exemplified by such measures as student/teacher ratios, the number and variety of course offerings and textbooks, the presence of learning resource centers in schools, etc.) that are, on a statewide average, being utilized to foster substantive skills and optimum competency levels in students could be used by the state legislature as a basis for setting levels of funding necessary to provide for the basic educational needs of all school-children. Having determined the numbers of children fitting within each category in each district and the expense of meeting their particular needs, the state could then disburse to each district the amount of revenue necessary to provide for the basic educational requirements of all students in that district. Once the local school district received such state-provided funds, however, it should be under no obligation actually to utilize school resources in any preordained fashion. Rather, the local school district should have the freedom to experiment within its program. Accountability for the effective use of state funds could be maintained by annual state-administered student testing. As long as a local school district's students were progressing in a statistically satisfactory way in terms of their acquisition of skills and proficiency levels, the district would have fulfilled its obligation to spend its state-provided funds wisely, and no further accounting by it would be necessary. Where aggregate student progress in a district does not meet established expectations, further involvement of the state Superintendent of Public Instruction in that district's educational program could be required until student performance levels conform with the requisite criteria; at that juncture, the local district could regain total autonomy over the administration of its programs.

Local luxuries and nonessential programs would comprise those programs and school related experiences which go beyond what is necessary to provide students with the substantive skills and competency levels already established as necessary to prepare them for adult life. Such programs and experiences would, if provided, add to and enrich student education. Their



by discretionary local efforts.<sup>82</sup> These nonessential programs, if limited to a fixed percentage of the regular school program budget, can be prevented from seriously distorting the range of programs and educational opportunities offered among school districts.<sup>83</sup> The proposed NPE formula can be mathematically represented as follows:<sup>84</sup>

$$\text{ATY}_{x_n} = \text{BTY}_{s_n} \cdot \left[ \frac{1 + \frac{K_1 (\text{MO}_x - \text{MO}_s)}{\text{MO}_s} + \frac{K_2 (\text{CPI}_x - \text{CPI}_s)}{\text{CPI}_s}}{\frac{(\text{AFI}/\text{ADA})_x}{(\text{AFI}/\text{ADA})_s} \cdot \frac{(\text{MAV}/\text{ADA})_x}{(\text{MAV}/\text{ADA})_s}} \right]$$

In the context of this equation, “ATY<sub>x<sub>n</sub></sub>” means the actual tax yield in dollars per ADA student for any neighborhood “x” which votes to tax its real property at tax rate “n”. “BTY<sub>s<sub>n</sub></sub>” means the tax yield in dollars per ADA student for the average state school community, having the average state municipal overburden, the average state consumer price index, the average state family income per ADA student, the average state modified

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absence would not seriously disadvantage high school graduates as they chose from among the array of further career and life opportunities. Swahili, Swedish, ethnomusicology, calligraphy, film making, pottery, or football, for example, might be characterized as local luxuries and nonessential programs to be funded by locally-voted tax measures in an NPE system.

82. This approach assures that sufficient financial resources will be available to meet the essential educational needs of students, regardless of local sentiment concerning those needs or local desires to tax at a sufficient rate to meet those needs. Only the revenues that would be used for educational programs and services that go beyond the basic educational needs of students would be subject to local voter approval.

83. Where NPE is used, the maximum district percentage of the annual regular program budget could be the base for determining the pro rata share allocable to the neighborhood school within that district. This pro rata distribution could be based upon the ratio of the neighborhood school’s ADA students to the district ADA population, or a “weighted” ADA student ratio could be employed. A maximum NPE supplemental budget for a school district might range between ten and twenty percent of the regular district budget that is supported by full state funding.

84. The equation shown is intended merely to illustrate the concept and to show how the important wealth-related factors can be dealt with. There are other terms that could be added to the equation to refine it and make it more useful. Also, a sophisticated and more practical equation would probably employ nonlinear coefficients in place of K<sub>1</sub> and K<sub>2</sub>, where the coefficients themselves were a function of some of the variable terms in the equation.

It is true that the equation shown above relies upon the average values of independent variables and thus to some extent, like district power equalizing, does not accommodate ideally each voter who makes up those average values. But, unlike DPE, this equation takes into account the many variables that affect the calculus of voter decision-making rather than being limited to only one variable (average real property wealth). More importantly, under the system proposed, the criticisms of DPE (see text accompanying notes 60-72 *supra*), to the extent that they might apply to NPE, become de minimus because NPE-financed school programs are by definition nonessential.

assessed valuation per ADA student and taxing its real property at tax rate “n”. The term “ $MO_x$ ” refers to the municipal overburden for neighborhood “x,” expressed as the ratio of that neighborhood’s total governmental nonschool costs to total governmental costs. This ratio would be the same for each neighborhood within a given school district. “ $MO_s$ ” refers to the statewide average municipal overburden. The figure “ $CPI_x$ ” is the consumer price index for neighborhood “x”; this index figure would also be the same for each neighborhood within a given school district. Similarly, the figure “ $CPI_s$ ” is the statewide average consumer price index. “ $(AFI/ADA)_x$ ” means the average family income per average daily attendance of students in neighborhood “x” and “ $(AFI/ADA)_s$ ” is the statewide average family income per average daily attendance of students. While “ $(MAV/ADA)_x$ ” refers to the modified assessed valuation per average daily attendance of students in the neighborhood “x”, “ $(MAV/ADA)_s$ ” is the statewide average modified assessed valuation per average daily attendance. Finally, “ $K_1$ ” and “ $K_2$ ” are dimensionless constant coefficients of a numerical value to be determined in applying the NPE formula.

In this equation, a local municipal overburden greater than the state average causes the local actual tax yield to increase beyond the base tax yield; the converse is also true. This relationship between municipal overburden and actual tax yield recognizes the increased onus on districts with high municipal overburden (whether they are high-wealth or low-wealth districts) and compensates for it. It likewise compensates for variations around the state in the consumer price index, recognizing that areas with higher indices need more money to obtain the same value than areas with lower indices. Where income wealth increases as compared to the state average, the equation takes this into account by providing less than the base tax yield. This is a recognition of the fact that those communities with higher income wealth can pay higher effective taxes to obtain the locally desired benefit. Where a community has lower than average income, the equation increases the actual tax yield beyond the base tax yield. The same holds true in the case of real property assessed valuation per local ADA student. Where there is a higher than average local assessed valuation, the actual tax yield is diminished from the base tax yield and vice versa.<sup>85</sup>

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85. By way of example, suppose the Base Tax Yield for a tax rate of \$1.00/\$100 assessed valuation was \$500 ( $BTY_{sn} = \$500$ ), constant coefficients  $K_1$  and  $K_2$  had values of 2 and 3, respectively, and the remaining state-related variables had the following values:

$$\begin{aligned} MO_s &= 1.00 \\ CPI_s &= 1.00 \\ (AFI/ADA)_s &= \$5,000 \\ (MAV/ADA)_s &= \$70,000 \end{aligned}$$

A neighborhood high school taxing district “X” that voted to tax itself for school purposes at the rate of one dollar per one hundred dollars of assessed valuation would have an Actual Tax Yield ( $ATY_{x_n}$ ) of \$665.00 per ADA student (33% higher than the Base Tax Yield), if its

California could encourage improvements in the basic educational program in local school districts, which would be fully state funded, by requiring certain educational reforms in the basic program in the neighborhood school as a condition precedent to that neighborhood school's participation in supplemental programs financed by NPE. This interrelationship would achieve and perpetuate an important interchange between local administration and control of education in each school building, and state supervision of and assistance to local schools.

### Conclusion

The court in *Serrano II* failed to treat the problems of public school revenue production and public school resource deployment separately. As a result, it neglected to analyze fully the issues it faced. In addition, the alternative financing schemes announced by the trial court and adopted by the state supreme court do not, on the whole, offer a sufficient means to resolve the school financing crisis.

In responding to the mandate of *Serrano II*, the California legislature should eliminate the "inferior state school,"<sup>86</sup> provide equitable tax burdens, equitable educational opportunities and enhance local control at the most local level—the neighborhood school. These multiple goals can be best achieved by combining, with the indicated modifications, full state funding and local power equalizing. It is this proposal that offers a needed alternative to the device of district power equalizing favored by the plaintiffs in *Serrano II*.

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Municipal Overburden ( $MO_x$ ) was 1.20, its Consumer Price Index ( $CPI_x$ ) was 1.10, its ratio of Average Family Income to Average Daily Attendance ( $AFI/ADA_x$ ) was \$3,000/student, and its ratio of Modified Assessed Valuation to Average Daily Attendance ( $MAV/ADA_x$ ) was \$150,000/student. In another example, a neighborhood high school taxing district "X" that voted a \$1.00/\$100 assessed valuation tax would have an Actual Tax Yield ( $ATY_{x_s}$ ) of only \$37.50 per ADA student (7.5 percent of the Base Tax Yield) if its  $MO_x = 0.80$ ;  $CPI_x = 1.10$ ,  $(AFI/ADA)_x = \$20,000$ ; and  $(MAV/ADA)_x = \$210,000$ .

It should be stressed, however, that these two examples are provided only to demonstrate how the equation might operate to compensate for various levels and kinds of wealth in the neighborhood high school taxing district in an NPE system. The final form of the equation, the numerical values assigned to the coefficient terms, and the schedule of Base Tax Yield for various levels of tax rates could only be determined after a thorough investigation of California tax data.

86. See text accompanying note 3 *supra*.

