Public School Finance in Indiana: A Critique

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Concern with the relationship between wealth and equal educational opportunity was confined to academic and government circles until the California Supreme Court decision in *Serrano v. Priest*¹ attracted nationwide attention. This decision and its progeny² have caused the debate over equal educational opportunity to focus on the equal protection clause of the fourteenth amendment. *Serrano* concluded that (1) the quality of public education may not be a function of wealth, (2) education is a fundamental interest, (3) classification by wealth for purposes of education is suspect, and (4) there is no compelling state interest to justify intrastate disparities in the amount of wealth behind each child.³ Although *Serrano* utilized the “strict scrutiny” test other cases have noted that such intrastate disparities may violate the less severe “reasonable basis” test.

This Court does not conclude that the allegation that an invidious legislative classification has been made on the basis of wealth requires consideration of such legislation under the strict scrutiny test. If such a claim can proved, relief is available in a suit brought under the equal protection clause in which the reasonable basis test is the standard of review.⁴

¹ Member of the Indiana Bar.
Two suits seeking declaratory and injunctive relief have recently been filed in Indiana state courts. Both suits allege that Indiana's present school finance system violates the state and federal constitutions because the school financial structure makes the quality of education for children in the public schools of Indiana a function of the wealth of the children's parents and neighbors, and of the amount of property located in the school corporation or district, without any educational justification.

On the assumption that these complaints will be sustained, this comment undertakes to examine the current Indiana law of public school finance and to consider an alternative to the present system. Whether a *Serrano* strict scrutiny or reasonable basis test is applied, there is considerable room for any number of constitutionally acceptable formulas for school finance if judicial review remains limited and flexible. Both law and common sense dictate that ultimate responsibility for the actual design of school finance systems rest with the legislative branch, which is best equipped to design a comprehensive structure in harmony with the many related interests and considerations. As Professor Oldman has stated, the courts, despite the California [*Serrano*] decision, are not likely to provide the solution to the general problem. Legislative solutions, particularly at the state level, will be required if there is to be timely change in adequate amount.

Certain assumptions must be made in an analysis of this nature. First, it is assumed that there is a positive, if imperfect and uncertain, correlation between dollars spent and the quality of education made available. Although government studies seriously qualify this principal assumption.

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2. Jensen v. State Bd. of Tax Comm’rs, Civil No. 24,474 (Ind. Cir. Ct., Johnson County, filed June 16, 1971); Perry v. Whitcomb, Civil No. C-71-1228 (Ind. Cir. Ct., Marion County, filed Nov. 19, 1971).

3. Complaint at 6, Jensen v. State Bd. of Tax Comm’rs, Civil No. 24,474 (Ind. Cir. Ct., Marion County, filed June 16, 1971).

4. "To the extent that [the] California system does in fact violate the fourteenth amendment to the United States Constitution, Indiana's system will also violate it." C. JOHNSON, MEMORANDUM TO THE HOUSE WAYS AND MEANS COMMITTEE OF THE INDIANA GENERAL ASSEMBLY 2 (1971) (on file in the offices of the Indiana Law Journal) [hereinafter cited as MEMORANDUM].

tion, the extent to which most states have provided for some "equalization" of dollars spent per pupil between school districts suggests that the correlation is widely acknowledged.

The second assumption concerns the state's interest in maintaining and encouraging local responsibility for schools. The Serrano court recognized two elements of local control, administrative and fiscal, and treated them separately. With regard to administration, the court found that:

> even assuming arguendo that local administrative control may be a compelling state interest, the present financial system cannot be considered necessary to further this interest. No matter how the state decides to finance its system of public education, it can still leave this decision-making power in the hands of local districts.\(^9\)

But the court declined to determine whether California had a compelling state interest in local fiscal decision-making, "since under the present [California] financing system, such fiscal freewill is a cruel illusion for the poor school districts."\(^10\) This analysis assumes that, however important local control may be as a political issue, it is essentially a legal makeweight which does not deserve constitutional stature. As the Advisory Commission on Intergovernmental Relations has observed:

> State assumption of complete responsibility for financing of education should leave ample room for local initiative and innovation in the field of public education.\(^11\)

### The Present Systems: An Examination

Article 8, § 1 of the Indiana Constitution describes the State's responsibility for public school education:

> Common Schools.—... it shall be the duty of the General Assembly to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.

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10. 5 Cal. 3d at 610, 487 P.2d at 1260, 96 Cal. Rptr. at 620.

11. Id. at 611, 487 P.2d at 1260, 96 Cal. Rptr. at 620.

This section merely requires that the state legislature establish a statutory structure under which tuition-free public school education is made equally available to all children. It has not been construed to command a state-wide uniformity of equal protection dimensions. In interpreting the prescription for a “general and uniform system” of public schools, state courts have applied the same standard of uniformity as that applied to property taxation generally, namely, that the tax for a given purpose, including school finance, must be uniform and equal only throughout the relevant taxing jurisdiction.

It may be laid down as a general proposition that, under a constitutional limitation like that embodied in article 10, section 1, of the Constitution of this State, requiring uniformity and equality of taxation, a tax for a State purpose must be uniform and equal throughout the State, a tax for a county purpose must be uniform and equal throughout the county, and a tax for a township purpose must be uniform and equal throughout the township.

In applying this standard the Indiana Supreme Court has concluded that inequalities in school tax rates and, by implication, differences in the amount of revenue derived from identical rates, are to be tolerated. The delegation of school finance responsibility to local units denotes that school tax levies are for a “local” rather than for a “state” purpose and thus precludes application of a statewide standard of uniformity and equality:

A perfect and equal system of taxation throughout an entire state will remain an unattainable good... as long as counties, townships or other political divisions are unequal in wealth or of unequal size.

At the same time, the constitutional restriction against the enactment of local or special laws is not violated because state law is uniform in

13. “Assessment and taxation.—The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation;” Ind. Const. art. 10, § 1.
16. Local or special laws forbidden.—The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: ... [13] Providing for supporting common schools, and for the preservation of school funds.
Ind. Const. art. 4, § 22.
application if not in effect.\textsuperscript{17}

Indiana has delegated the major part of its responsibility for public school finance and administration to 312 independent school corporations. Through local property tax levies these corporations provided about two-thirds of the total revenue for elementary and secondary schools.\textsuperscript{18} In 1971 these corporations had an assessed valuation per pupil in grades one through twelve (1-12) in average daily attendance (ADA) ranging from $2,850 to $39,232.\textsuperscript{19} This inequality takes on constitutional dimensions when the duty of the State and the rights of its citizens created by Article 8, § 1, are read together with the state\textsuperscript{20} and federal equal protection clauses.

\textbf{State Foundation Program}

The 1969 Indiana General Assembly adopted a school distribution formula which significantly increased the state foundation level and raised the minimum local tax rate required to activate state support.\textsuperscript{21} Under the new formula, the amount of state aid available has increased for all but the wealthiest school corporations, and the required local tax rate needed to sustain the same per pupil expenditure has therefore diminished. Despite these improvements, the current distribution formula, like its predecessors, perpetuates a state foundation program which by its own terms precludes approximation of "perfect" or "full" equalization.

The minimum guaranteed foundation program is set by statute and is known as "[t]he allowance for general fund purposes."\textsuperscript{122} In 1972,

\begin{itemize}
  \item 17. The current constitutional interpretation of uniformity requires only that a school finance statute operate "uniformly in all areas where the same circumstances and conditions exist" and apply "equally to all who come within its provisions," but uniformity throughout the state is not required. School City of Gary v. State, 253 Ind. 697, 700, 256 N.E.2d 909, 911 (1970).
  \item 18. ADVISORY COMMISSION, supra note 11, at 54.
  \item 19. Record at ——, Jensen v. State Bd. of Tax Comm'rs, Civil No. 24,474 (Ind. Cir. Ct., Johnson County, filed June 16, 1971).
  \item 20. Privileges and immunities.—The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens. IND. CONST. art. 1, § 23.
\end{itemize}
the program guarantees an expenditure of 435 dollars per pupil.\textsuperscript{23} The actual state contribution is determined by (1) multiplying this 435 dollar allowance (adjusted by a tuition factor)\textsuperscript{24} by the number of pupils in grades kindergarten through twelve (K-12) in ADA; and (2) subtracting from this product the revenue generated by the local tax levy at the minimum or "chargeable" rate.\textsuperscript{25} To activate the program, the local school corporation must levy at a property tax rate not less than $2.15 per $100 of adjusted assessed valuation (AAV).\textsuperscript{26}

The 1972 school distribution formula is illustrated below as it functions in two hypothetical school districts, one district having 50 per cent more resources available per pupil, but both districts spending an identical (and low) 600 dollars per pupil.

<table>
<thead>
<tr>
<th>District I</th>
<th>Adjusted Assessed Valuation per Pupil = $8,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>$8000 (AAV) x $2.15 \hspace{1cm} = \hspace{1cm} $172/pupil at qualifying rate \hspace{1cm} (Min. rate)</td>
<td></td>
</tr>
<tr>
<td>$435 - $172 (foundation level) \hspace{1cm} = \hspace{1cm} $263/pupil from state (44%)</td>
<td></td>
</tr>
<tr>
<td>$600 - $263 \hspace{1cm} = \hspace{1cm} $377/pupil to be raised locally</td>
<td></td>
</tr>
<tr>
<td>$337/$8000 \hspace{1cm} = \hspace{1cm} $4.21/$100 AAV local rate required</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>District II</th>
<th>Adjusted Assessed Valuation per Pupil = $12,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>$12,000 \times $2.15 \hspace{1cm} = \hspace{1cm} $258/pupil at qualifying rate</td>
<td></td>
</tr>
<tr>
<td>$435 - $258 \hspace{1cm} = \hspace{1cm} $177/pupil from state (30%)</td>
<td></td>
</tr>
<tr>
<td>$600 - $177 \hspace{1cm} = \hspace{1cm} $423/pupil to be raised locally</td>
<td></td>
</tr>
<tr>
<td>$423/$12,000 \hspace{1cm} = \hspace{1cm} $3.53/$100 AAV local rate required</td>
<td></td>
</tr>
</tbody>
</table>

To obtain the same 600 dollar expenditure per pupil without the equalization benefits of the foundation program, District I would have to levy a tax of $7.50/$100 AAV, while District II would require a levy of only $5.00/$100 AAV. Thus, the equalization effect can be seen in that the poorer district must tax at only 19 per cent more than the wealthier dis-


trict, whereas without the state foundation program, the poorer district would have to tax at 50 per cent more. In 1973 that discrepancy will diminish to 13 per cent as the foundation level is raised to 445 dollars per pupil.

Whatever merits the foundation program may have, it still remains unrealistically low and does not approach the actual cost of education. In 1969 Indiana ranked twenty-second among the states in combined state and local tax effort (ratio of school revenues to personal income) expended for public school education, but the effective state effort, taken alone, placed the state thirty-fifth. In 1969 the average expenditure per pupil in ADA was 635 dollars but that figure is expected to increase to one thousand dollars by the school year 1974-75. Projections through 1974-75 show school costs increasing at a rate greater than twice the rate of income and placing substantial additional demands on an already overworked and relatively unresponsive property tax base.

To reach an acceptable per pupil expenditure, local school corporations must tax beyond the $2.15 minimum required to trigger state aid. However, state law prohibits them from having a total school tax rate of greater than $4.95/$100 AAV. Several Indiana school corporations currently taxing at this maximum rate cannot meet costs and are on the verge of closing or sharply cutting back their operations. While Indiana has no provision for a "tax override" referendum to raise school tax levies above the statutory ceiling, financially unsound school corporations can obtain emergency state relief if they are unable to operate "an efficient and adequate educational system." However, the five million dollar per biennium currently allocated to the Distressed School Fund is grossly insufficient to meet the need and hardly calculated to provide permanent relief.

Flat Grants as a Function of Pupils in Average Daily Attendance

In addition to the foundation program, the state allocates to each school corporation a flat grant in an amount determined by the number of

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28. Id. at 9.
29. Id. at 3.
30. Id., table 8.
33. Id.
PUBLIC SCHOOL FINANCE

students in ADA. These funds are distributed to corporations regardless of local wealth, and therefore work against equalization. The Indiana flat grant is less onerous, however, than the California "basic state aid" formula examined in Serrano. Unlike those in California, Indiana flat grants do not enter into the foundation program calculation, but are a separate budget item funded by the State ADA Flat Grant Distribution Account. Thus, for fiscal 1972 and 1973, Indiana school corporations will receive grants of forty dollars per pupil beyond any state aid received through the foundation programs. The total appropriation for the 1971-73 biennium amounts to about 93 million dollars, or roughly 14 per cent of total state aid to local schools. Since flat grants work against equalization, this percentage compares favorably with California where one-half of state aid is in this form.

School Property Tax Assessment and Adjustment: The Wealth Factor

The State Board of Tax Commissioners is required to conduct an annual study to determine the ratio of assessed to actual value of property within each school corporation. Since the initial responsibility for assessment rests with local officials, significant variations in assessment practices occur throughout the state. The purpose of the study is, therefore, to avoid over-allocation of state funds to local school districts which may be underassessed.

In computing each ratio, the Board is directed to examine a representative sample of "all classes of taxable real and personal property within the school district." The ratio is then determined by comparing the local assessed value of each class of property to its actual value if assessed according to law.

35. The Serrano court described the California flat grant program as "essentially meaningless." 5 Cal. 3d at 595, 487 P.2d at 1248, 96 Cal. Rptr. at 608. The California system adds a 125 dollar per pupil flat grant to a local property tax figure derived by applying a hypothetical $1/$100 AAV tax levy. This sum is then subtracted from the 335 dollar per pupil foundation level and any difference is made up by the foundation program. CAL. EDUC. CODE §§ 17901, 17902 (West 1969).
37. Id.
38. Id.
39. See 5 Cal. 3d at 594, 487 P.2d at 1248, 96 Cal. Rptr. at 608.
its relative importance within the district. In the same manner, a "state-wide weighted average assessment ratio" is calculated which, when divided by the ratio for each school corporation, will determine the "adjustment factor" for each corporation. This adjustment factor is then applied to the assessed valuation of property within the school corporation to determine the AAV. By application of the adjustment factor all districts are ostensibly placed on an equal assessment footing since any differences among districts in the ratio of assessed to actual value will be neutralized. The distribution of state funds under the foundation program is calculated on the basis of each district's AAV.

This involved procedure amounts to statutory recognition of the shortcomings implicit in the current localized system of property tax assessment and illustrates one authority's observation that "the property tax still stands out in too many States as the classic example of the conflict between State assessment law and local administrative practice." Apart from this general indictment of property tax administration, the question remains whether the procedure fairly measures the property wealth available for each school corporation. The inescapable conclusion appears that, adjustments notwithstanding, as long as the vagaries of local assessment practices rest untouched, the room for error and distortion is considerable. Even under the best of conditions, property tax assessment is not an exact science. Cooper states the problem concisely when he says that "property value as a measure of wealth for purpose of [school finance] equalization has all of the problems inherent in the property tax itself." As long as the state persists in an equalization model as distinct from a full state funding approach to public school finance, this problem of measuring local district wealth will persist. Only a comprehensive system of state-directed property tax assessment and administration of the kind advocated by the Advisory Commission on Intergovernmental Relations could resolve this dilemma. Even that approach would still leave untouched the fundamental question whether property, even if correctly valued, should be the measure of wealth for school tax purposes.

44. Id.
46. Id.
A PERCENTAGE EQUALIZING ALTERNATIVE

The State Superintendent of Public Instruction has considered several alternative school distribution formulas based on a percentage equalizing model and designed to meet anticipated constitutional objections to the present system. These formulas would, up to a point, provide state aid in inverse proportion to the local district wealth relative to a hypothetical district of average AAV. Moreover, under the new plans the state would assume a significantly greater proportion of school costs, and property tax relief would thereby be provided.

One typical new plan would change the current system of state fund allocation under the foundation program, but retain the present method for determining AAV for each school corporation.⁵⁰ The keystone of the new system would be the “state average assessed valuation per ADA,” to be computed by dividing the statewide aggregate AAV by the total number of pupils in ADA in all school corporations.⁵¹ On the basis of current data, this new figure would amount to 10,500 dollars AAV.⁵² For the hypothetical district with this AAV per pupil figure the state share of support would be set by statute at 62 per cent.⁵³ A ratio would then be established for each school corporation as follows:

<table>
<thead>
<tr>
<th>State Average Assessed Valuation Per Pupil in ADA</th>
<th>54</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Average Assessed Valuation Per Pupil in ADA for School Corporation</td>
<td></td>
</tr>
</tbody>
</table>

The state percentage share for each school corporation would be greater or less than 62 per cent and would be calculated (1) by multiplying the complement (38 per cent) by the ratio for each district, and (2) by adding this product to the statutory base of 62 per cent.⁵⁵ In the first or base year of the plan, the state would pay 62 per cent of the previous year's local budget appropriations in ADA plus 35 dollars per pupil.⁵⁶ After the

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⁵⁰ See Proposed Ind. Code §§ 21-3-1.5-1 to 21-3-1.5-12 (on file in the offices of the Indiana Law Journal). If adopted, the proposed legislation would have repealed Ind. Code §§ 21-3-1-1 to 21-3-1-9, 21-3-2-1 to 21-3-2-5, 21-3-4-1 to 21-3-4-5 (1971). Proposed Ind. Code § 21-3-1.5-12. However, the proposed legislation was never acted upon by the Indiana General Assembly. See note 68 infra.

⁵¹ Proposed Ind. Code § 21-3-1.5-2.

⁵² This was the figure used by the House Ways and Means Committee of the Indiana General Assembly. Memorandum, supra note 7, at 4.

⁵³ Proposed Ind. Code § 21-3-1.5-3.

⁵⁴ Id. § 21-3-1.5-2. In a wealthy district, with a high AAV, this ratio could conceivably be a negative figure.

⁵⁵ Proposed Ind. Code § 21-3-1.5-3.

⁵⁶ Id.
new formula became operative, the state would continue to pay the 35 dollar flat grant. These state financed increases would be cumulative from year to year and would work against equalization.

Application of this new formula is illustrated below as it would operate in the hypothetical districts used previously. District I falls below and District II falls above the hypothetical statutory district with 10,500 dollars AAV per pupil.

District I Adjusted Assessed Valuation per Pupil = $8,000

\[
\frac{10,500 - 8,000}{10,500} \times 0.38 = 0.090
\]

\[
0.620 + 0.090 = 0.710 \text{ state aid factor}
\]

\[
$600 \times 71\% = $476 \text{ state share}
\]

\[
$600 - $476 = $174 \text{ local share}
\]

\[
\frac{$174}{8,000} = 0.0218 \text{ local tax rate required}
\]

District II Adjusted Assessed Valuation per Pupil = $12,000

\[
\frac{10,500 - 12,000}{10,500} \times 0.39 = -0.054
\]

\[
0.620 + (-0.054) = 0.566 \text{ state aid factor}
\]

\[
$600 \times 56.6\% = $339 \text{ state share}
\]

\[
$600 - $339 = $261 \text{ local share}
\]

\[
\frac{$261}{12,000} = 0.0218 \text{ local tax rate required}
\]

Thus, identical district tax rates yield equal dollars per pupil regardless of district wealth.

As with the current foundation program, the new formula would contain a tuition factor to be applied against the state percentage share. Unlike the present program, however, the new formula would include a weighted ADA factor to help compensate for the uneven penetration of education dollars as applied to different students. Despite its merits, in

57. Id.
58. Id.
59. Id. § 21-3-1.5-5.
a number of respects the proposed system works against "perfect" equalization. First, although the statute does not expressly guarantee a minimum level of state aid, its practical effect would be to make some state aid available to virtually every district, including the wealthiest ones. Second, while there is no ceiling on the state percentage share to poorer districts, there is a limit on the amount which a district may budget for school finance. Under this provision, a school corporation would be eligible for state aid only if its budget appropriations do not increase more than 35 dollars per year, per pupil in ADA. This single absolute dollar limitation, while designed to protect the state from dramatic increases in district spending, has the adverse effect of locking in present inequities.

Under the proposed system no school corporation would be allowed to levy a school tax rate in excess of $3.25/$100 AAV. With over one-half of the districts currently taxing at the present statutory limit of $4.95/$100 AAV, the new law would provide considerable property tax relief. However, the actual school tax rate still remains a matter of local discretion up to the $3.25 limit. Some commentators maintain that once the wealth factor has been removed, the amount spent per pupil becomes a function exclusively of "local interest in public education," and that whatever disparities remain among districts should be beyond the scope of judicial review. It is here that they would draw the line between equal protection of the laws and majority rule on the local level. This approach ignores the variety of less obvious "wealth factors" outside the formula which directly influence the amount of per pupil expenditures in each district. The amount spent per pupil would be a function exclusively of "local interest in public education" only if every school district were sufficiently wealthy to set a school tax rate free from other fiscal constraints.

Even if the community priority for education is high, other factors may interfere with the amount of effort that the community can make. "Municipal overburden," those competing needs for police, fire, welfare, etc., may reduce the ability of the city resident and of his district to make the effort they otherwise would for education. . . . Therefore, any district power equalizing scheme must adjust for the troublesome recognition that the

60. Id. §§ 21-3-1.5-3, 21-3-1.5-9.
ability to express interest [in education] in some communities is greater than in others.\textsuperscript{62}

What the Serrano court observed about the effect of variations in assessed valuation on “fiscal freewill” also applies, albeit with less force, to a percentage equalized system which does not account for other demands on local wealth:

[P]erhaps the most accurate reflection of a community’s commitment to education is the rate at which its citizens are willing to tax themselves to support their schools. . . . [But] only a district with a large tax base will be truly able to decide how much it really cares about education.\textsuperscript{63}

It is true that the proposed formula does not mandate inequality in that differences among districts in per pupil expenditures do not follow as a necessary consequence from the formula. Differences do result, however, and the question becomes whether the constitutional line properly may be drawn between (1) affirmative state action embodied in a formula where wealth is a factor, and (2) state inaction via a formula neutral as to wealth but from which disparities due to wealth naturally and inevitably result. As long as there is local discretion to set the school tax rate, and unless there are adjustment factors which compensate for the uneven demands on property tax resources in any given district, the amount of money “available” per pupil will, to some extent, remain a function of local wealth rather than exclusively a function of the wealth of the state as a whole.\textsuperscript{64}

The proposed Indiana formula does not adjust for relative wealth considerations other than the assessed value of property available per pupil. In lowering the maximum permissible school tax rate by 34 per cent to $3.25, the legislature would restrict somewhat the inherently greater capacity of wealthier districts to express “local interest,” but some poorer districts—poorer in assessed valuation or in wealth “available” given other demands on the tax dollar—may still find it difficult to levy at that rate.

This variation among school districts in the actual, as distinct from


\textsuperscript{63.} 5 Cal. 3d at 611, 487 P.2d at 1260, 96 Cal. Rptr. at 620.

\textsuperscript{64.} Professor Michelman suggests that what is needed is a “disposable income denominator,” which would allow for municipal overburden, rather than an “absolute income denominator.” Frank I. Michelman, Lecture in Local Government Law, Harvard Law School, Mar. 31, 1972.
the formula, capacity to levy school taxes is one significant illustration of
the intrastate fiscal disparities which characterize Indiana's tax structure.
Naturally, a substantial increase in the state's percentage share of educa-
tional costs works to diminish these disparities. For example, under the
proposed formula the state would pay 26 per cent more to hypothetical
District I than under the current foundation program, and the required
local school tax rate would be reduced by $2.03 or 48 per cent. Still, this
patchwork compensation would be unnecessary were there not a funda-
mental statewide incongruence between school needs and resources. What
the Massachusetts Master Tax Plan Commission has observed about the
effect of excessive reliance on property taxation applies with particular
force to school finance:

Even more unsound as a matter of fiscal policy [than the op-
pressive nature of the property tax] is the fact that the spending
needs of the cities and towns vary widely and with no relation
to differences in the tax base.65

It has been suggested that external factors which bear on wealth
available for education are part of the "general problem of marginal
utilities,"66 which fall beyond the narrow fourteenth amendment defini-
tion of "wealth" as a function only of assessed valuation. This distinc-
tion, however, views public school finance in a property tax vacuum,
almost as if the school tax levy had a pre-emptive claim on unlimited
local resources. But, of course, this approach is designed to fashion a
constitutional standard acceptable to the courts and ultimately to the
United States Supreme Court.

From an equal protection standpoint the courts are obviously limited
by the difficulties implicit in accounting for and measuring all the wealth
factors which bear on local school tax rate decisions. Even though courts
are prevented by considerations of justiciability from looking beyond the
formula itself to the total fiscal chemistry of a local district, the legislature
is not. If no stricter constitutional standard is required than that a school
finance formula be neutral on its face as to wealth, then the next step will
have to be taken by the state legislature as a matter both of equity and of
sound fiscal administration. Conceivably, full equalization formulas can
be developed which take into account all relevant factors necessary to
provide equal educational opportunity. But as one authority notes,

65. SPECIAL COMMISSION TO DEVELOP A MASTER TAX PLAN AND PROGRAM FOR
TAXATION WITHIN THE COMMONWEALTH OF MASSACHUSETTS, TENTATIVE
successful application [of such formulas] is dependent upon sophisticated techniques which we are far from having developed, viz: the measurement of wealth and the measurement of need.\textsuperscript{67}

Thus, to pursue the full equalization approach is to build a school finance system on two functionally interdependent variables, both difficult to quantify. Although the alternative system examined above purports to measure and equalize the wealth factor, the property tax still remains the single index of wealth available; variations in local demands on the property tax dollar are not accounted for; and a number of the plan's provisions cut against the equal-dollars-for-equal-effort thrust of the basic formula. In addition, the provision for a weighted pupil factor is only a rudimentary attempt to account for variations in pupil need. Ascertaining and accounting for the need factor will remain conceptually difficult under any system. Managing the wealth factor, however, becomes significantly more plausible in the context of a full state funding solution. As the Commission on State Tax and Financing Policy has recommended to the General Assembly:

The State of Indiana should assume an increased relative share of the financial responsibility for public primary and secondary schools with the increased participation funded from increases in state levied and collected broad-based taxes.\textsuperscript{68}

This recommendation deserves support because the present full equalization model assumes a degree of precision and fairness which cannot honestly be attributed to it.

**Conclusion**

This comment has attempted to show that Indiana is still a considerable distance from designing a school finance system which will assure

\textsuperscript{67} Cooper, \textit{supra} note 48, at 349.

\textsuperscript{68} \textit{COMMISSION ON STATE TAX AND FINANCING POLICY, STEPS TO TAX REFORM IN INDIANA} 8 (1970). The Commission has indicated that an additional 300 million dollars per year at current 1971-73 spending levels would be required if the state assumed two-thirds of current school operating costs. \textit{Id.} at 9. This is approximately the same amount as that which would be required under the proposed school distribution formula discussed previously.

It should be noted that any discussion of Indiana public school finance must account for the fact that tax policy has been and remains the state's principal political issue. Thus far the state has not succeeded in accomplishing the comprehensive tax reform required to alter fundamentally the current system of education finance. For this reason the proposed school distribution formula discussed previously, see notes 50-60 \textit{supra} & text accompanying, was never seriously considered by the 1972 Indiana General Assembly.
equal educational opportunity. The current foundation program is probably unconstitutional. While the proposed distribution formula appears to satisfy the fourteenth amendment, it still rests on the local property tax and is hedged with qualifications which dull its equalization impact.

The proposed formula is also conceptually deficient in several significant respects. First, there is a danger in over-emphasizing the constitutional aspects of school finance. Equal protection of the laws and equal educational opportunity are not identical. Thus, Cooper misstates the problem when he says:

The issue is whether or not children may be denied the equal protection of the laws. The issue is equality of educational opportunity.\(^{69}\)

They are plainly not the same. Cooper is correct, however, when he contends that "the basic issue is moral rather than fiscal."\(^{70}\) Once past a constitutional standard limited by traditional notions of equal protection, the moral question becomes a matter of public policy which can be given effect only through appropriate fiscal ordering.

The second major conceptual shortcoming is the view of school finance as operating in fiscal isolation from other local government services. Simply put, one cannot fairly attribute equality to a school finance system unless adjustment is made for all the demands on the property tax dollar. The Constitution may be satisfied by making "the money raising game a fair one,"\(^{71}\) but here the law and economics easily part company. Fiscal equity demands a stricter standard.

Finally, we must avoid a narrow preoccupation with school finance to the exclusion of tax policy generally. The interrelationship is fundamental. Intrastate fiscal disparities will continue as long as education is funded from the local property tax. Any school finance solution must, therefore, be considered as it affects the entire state system of taxation. Ironically, it seems that just as school finance reform is contingent on a general tax reorganization, the political impasse over state tax reforms may be broken by the increasingly powerful forces at work in the school finance arena. Court action invalidating the current system may not only help the schools but may also prepare the way for a major fiscal overhaul.

\(^{69}\) Cooper, \textit{supra} note 48, at 337.

\(^{70}\) \textit{Id.}

\(^{71}\) Coons, \textit{supra} note 3, at 321.
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