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Rich Schools Poor Schools the Promise of Equal Educational Opportunity; Quality of Inequality Urban and Suburban Public Schools

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BOOK REVIEWS

Rich Schools, Poor Schools: The Promise of Equal Educational Opportunity. ARTHUR E. WISE. Chicago and London: University of Chicago Press. 1968. Pp. xiv, 228. $9.00; and

The Quality of Inequality: Urban and Suburban Public Schools. CHARLES U. DALY (ED.). Chicago: University of Chicago Press. 1968. Pp. 160. $2.45.

"Once loosed, the idea of Equality is not easily cabined."[1]

> Almost nobody really wants to make America an egalitarian society. Ours is a competitive society, in which some people do extremely well and others do equally badly, and most people are willing to keep it that way. . . . [D]espite a lot of pious rhetoric about equality of opportunity in this competition, most parents want their children to have a more than equal chance of success.[2]

Of all the wounds that fester in urban areas throughout the United States, none surpasses the inability of big city school systems to prepare minority-group youngsters for the battle of life. A disproportionate number of minority-group youths do not succeed in life, in part because our urban schools are not educating them adequately—a fact reflected by inferior achievement test scores and high dropout rates.[3] The imposition of a disadvantaged educational position on Negroes and other minority groups is hypocritical and debilitating, for the schools are traditionally thought to be the vehicle for social and economic mobility for the poor. One who obtains an adequate education can cast the ballot rationally and responsibly. Perhaps equally important, the substantial inequities of life encountered by the individual are countenanced more readily if the conditions for competition are established fairly.[4]

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1 Cox, *Foreword: Constitutional Adjudication and the Promotion of Human Rights*, in *The Supreme Court, 1965 Term*, 80 HARV. L. REV. 91 (1966).

2 Jencks, *Is the Public School Obsolete?*, THE PUB. INTEREST, Winter 1966, at 18, 20.

3 *See* K. CLARK, DARK GHETTO 124-25 (2d ed. 1967); *cf.* HEW, EQUALITY OF EDUCATIONAL OPPORTUNITY (1966) [hereinafter cited as COLEMAN REPORT].

4 The importance of education was recognized by the Supreme Court in Brown v. Board of Educ., 347 U.S. 483 (1954), where it said:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any

The struggle to remedy the failure of urban education has focused on two problems. Concentration on the first, racial segregation, produced an attempt to implement *Brown v. Board of Education*'s admonition against "separate but equal" schools. This approach was unsuccessful, however, in part because in the North segregation is de facto rather than de jure.[5] The second problem, with which the two books reviewed here are primarily concerned, is that public expenditure per pupil varies substantially from one school district to another. Inequality in school resources is not a purely urban problem. Rather, because most school districts are heavily dependent upon the local property tax to finance education,[6] it affects every district that is comparatively poor in real estate. The happenstance of whether a large factory is located inside the school district boundaries gives that district a significant financial advantage over its neighbors, and this phenomenon is not restricted to the cities. Nonetheless, disparities in educational resources are particularly troublesome in the cities, since an urban school board requires far more resources to adequately educate its disadvantaged, culturally deprived youngsters and yet receives less money than the more affluent suburban boards with their white, well-to-do residents.

The problems of the ghetto are more substantial than those of the suburbs; it is in the urban areas that one finds the "social dynamite," of which James Conant forewarned us,[7] building up. One would think that a society responsive to injustice would allocate more resources to that sector. Yet such reallocation is not taking place nor, politically speaking, does it seem to be in the cards. Do

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child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

Id. at 493.

5 *Cf.* Deal v. Cincinnati Bd. of Educ., 369 F.2d 55 (6th Cir. 1966), *cert. denied*, 389 U.S. 847 (1967); Downs v. Board of Educ., 336 F.2d 988 (10th Cir. 1964), *cert. denied*, 380 U.S. 914 (1965); Bell v. School City, 324 F.2d 209 (7th Cir. 1963), *cert. denied*, 377 U.S. 924 (1964). *Contra*, Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), *aff'd sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969); Barksdale v. Springfield School Comm., 237 F. Supp. 543 (D. Mass.), *vacated*, 348 F.2d 261 (1st Cir. 1965); Blocker v. Board of Educ., 226 F. Supp. 208, *remedy considered on rehearing*, 229 F. Supp. 709 (E.D.N.Y. 1964); Branche v. Board of Educ., 204 F. Supp. 150 (E.D.N.Y. 1962). Some of the better law review discussions of the de facto issue are Fiss, *Racial Imbalance in the Public Schools: The Constitutional Concepts*, 78 HARV. L. REV. 564 (1965); Wright, *Public School Desegregation: Legal Remedies for De Facto Segregation*, 40 N.Y.U.L. REV. 285 (1965). For an extensive analysis see U.S. COMM'N ON CIVIL RIGHTS, RACIAL ISOLATION IN THE PUBLIC SCHOOLS (1967). *See also* United States v. School Dist. 151, 404 F.2d 1125 (7th Cir. 1968).

6 *See, e.g.*, Grant, *Public Schools Feel the Money Pinch*, COMMONWEAL, Apr. 25, 1969, at 167.

7 *See* J. CONANT, SLUMS AND SUBURBS (1961).

disparities in school district expenditures for education present constitutional violations appropriately remedied by the judiciary? The question is still an open one, almost as free from precedent as the de facto segregation issue.[8] *Rich Schools, Poor Schools* seems generally sympathetic to the notion that present school finance law offends the Constitution. But Professor Kurland, a long-time critic of the Court's constitutional behavior,[9] answers the question negatively in *The Quality of Inequality: Urban and Suburban Public Schools.*[10]

I

The constitutional attack on school finance law in *Rich Schools, Poor Schools* is derived from the equal protection clause of the fourteenth amendment.[11] In the reapportionment cases,[12] where the Court enjoined any dilution of the citizen's right to vote, the proposition that one's right to vote cannot depend upon the geographical section of the state in which he resides was established. Although one might argue persuasively that schemes other than the "one man, one vote" approach are rationally related to the viability of the democratic process, the Court has endorsed a strict standard of review where a crucial right, such as the vote, is involved. Is it then possi-

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8 *But see* McInnis v. Ogilvie, 394 U.S. 322 (1969). *See also* Horowitz and Neitring, *Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs from Place to Place within a State,* 15 U.C.L.A.L. REV. 787 (1968); Horowitz, *Unseparate But Unequal—The Emerging Fourteenth Amendment Issue in Public School Education,* 13 U.C.L.A.L. REV. 1147 (1966); Kirp, *The Poor, the Schools, and Equal Protection,* 38 HARV. EDUC. REV. 635 (1968); Address by Zwerdling, Nat'l Educ. Ass'n 12th Nat'l Conf. on School Finance, Mar. 24, 1969; Note, *Hobson v. Hansen: Judicial Supervision of the Color-Blind School Board,* 81 HARV. L. REV. 1511 (1968). There is precedent for a judicial examination of the adequacy of school resources in the pre-*Brown* segregation cases. McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950); Sweatt v. Painter, 339 U.S. 629 (1950).

9 *See, e.g.,* Kurland, *Foreword: "Equal in Origin and Equal in Title to the Legislative and Executive Branches of the Government,"* in *The Supreme Court, 1963 Term,* 78 HARV. L. REV. 143 (1964).

10 Kurland, *Equal Educational Opportunity or The Limits of Constitutional Jurisprudence Undefined,* in THE QUALITY OF INEQUALITY: URBAN AND SUBURBAN PUBLIC SCHOOLS 47 (C. Daly ed. 1968).

11 No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*

U.S. CONST. amend. XIV, § 1 (emphasis added).

12 Lucas v. Forty-Fourth Gen. Assembly, 377 U.S. 713 (1964); Reynolds v. Sims, 377 U.S. 533 (1964); Baker v. Carr, 369 U.S. 186 (1962).

ble to dilute the quality of education received because the resident lives in a particular area of the state?

The second part of the constitutional attack is grounded in *Harper v. Board of Elections*[13] and *Griffin v. Illinois*.[14] In *Harper* the Supreme Court held the poll tax incompatible with the requirements of equal protection. Said the Court:

> Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored. . . . To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant.[15]

In *Griffin*, relied upon in *Harper*, it was held that a stenographic transcript from a criminal trial, available to defendants for appeal purposes, must be provided to an indigent defendant without cost. Thus both *Griffin* and *Harper* make clear that the Court will not tolerate, in the electoral and criminal processes, discrimination that makes their exercise depend upon the amount of money that a man possesses.

Two features of *Harper* and *Griffin* are significant. The first is their articulation of the Court's view that improper legislative motivation, or hostility toward a particular race or class, is not a prerequisite for finding a constitutional violation. Judges are to focus upon the effect of the particular practice and not its origin. The second is the Court's constitutional definition of discrimination. In *Griffin*—and to some extent in *Harper*—an individual is not required to pay the cost of the service performed. This is because "the ability to pay costs in advance bears no rational relationship to a defendant's guilt or innocence and could not be used as an excuse to deprive a defendant of a fair trial."[16] The state—or at least that particular arm of the state involved in the criminal proceedings—was not shown to have caused or contributed to the defendant's economic plight. Nevertheless, the Court imposed an affirmative obligation upon the state to remedy the individual's disadvantage when he comes into contact with a public institution and the consequences of the contact are serious for him.[17]

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13 383 U.S. 663 (1966). *Cf.* Note, *Equal Protection*, 82 HARV. L. REV. 1065 (1969); Gould, Book Review, COMMONWEAL, Apr. 25, 1969, at 176.

14 351 U.S. 12 (1956).

15 383 U.S. at 668.

16 Griffin v. Illinois, 351 U.S. 12, 17 (1956).

17 It is interesting to note that most states provide special benefits for the physically handicapped whom the state has not harmed and to whom it is not obligated. While the

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Whether these cases imply that inequality in school finances violates equal protection depends initially upon whether education, like voting and the criminal process, is a critical personal right where a disproportionately heavy burden upon Negroes and the poor is constitutionally suspect.[18]

In American life today there is little more essential to the individual and society than education, and the Court has emphasized the importance of education and its availability on equal terms in both *Brown* and *Griffin v. County School Board.*[19] If the state provides effective education, other critical personal rights are served. Presumably, the vote is used more intelligently and contact with the criminal process should be less frequent. Moreover, the Court has shown sensitivity to racial classifications having a discriminatory impact. One cannot separate the racial implications of school finance legislation that penalizes impoverished school districts from the purely economic implications of the system; although a majority of the poor are white, existing school finance legislation harms Negroes proportionately to a much greater extent than whites. School finance law discriminates against both the poor as an economic class and Negroes as a race.

But does the amount of expenditure have anything to do with the quality of education that the student receives? This is one of two large hurdles that must be jumped by future plaintiffs. The *Coleman Report*[20] concludes that educational performance is attributable to socio-economic class and not the resources that are made available by financing, for example, libraries and curricula. The data relied upon by this study are under attack from some quarters.[21] But in any case, one glaring exception to the *Coleman Report*'s judgment, by its own admission, is that the quality of teachers has something to do with achievement,[22] and that good teachers cost money.

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state may not have intentionally, or at least affirmatively, caused the discrimination suffered by poor school districts and their students, society would seem to have a greater duty to them than to the physically handicapped. *Cf.* Skinner v. Oklahoma, 316 U.S. 535 (1942). For a comprehensive approach to shifting the responsibility of education to the state and away from the local property tax, see REPORT OF THE GOVERNOR'S COMMISSION ON EDUCATIONAL REFORM (1969); N.Y. Times, Oct. 1, 1969, at 1, col. 3.

18 *See* Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), *aff'd sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969).

19 377 U.S. 218 (1964).

20 *See* note 3 *supra.*

21 *See* S. BOWLES & H. LEVIN, THE DETERMINANTS OF SCHOLASTIC ACHIEVEMENT: AN APPRAISAL OF SOME RECENT EVIDENCE (1968).

22 COLEMAN REPORT at 22, 125, 130-41, 147.

Another formidable obstacle is the practicability of the remedy. In this connection, it is appropriate to consider the criteria that Professor Kurland regards as prerequisites to success in equal protection clause cases: (*1*) the constitutional standard to be followed must be simple; (*2*) the judgment must have an adequate means of enforcement; and (*3*) there must be an absence of great public opposition or, at least, public acquiescence.[23] These criteria may account for the small amount of integration that has taken place since *Brown*;[24] although integration is a relatively clear standard, the other two criteria do not appear to be met in that field.

In the area of school finance, one encounters problems on all three counts. Since absolute equality in per-pupil expenditures does not meet the needs of urban ghettos, the constitutional standard must be more fluid and difficult of judicial supervision than were the standards in the integration or reapportionment cases. Perhaps it is this that leads Mr. Wise to suggest that the remedy ought to be a rough dollar equity.[25] Yet clearly that will not do. Nothing less than a complete reversal in spending priorities will have any chance of remedying the disadvantages suffered by the ghetto youngster because of his early environment. The affluent have the advantages and accordingly require less assistance.

The relatively well-to-do, white, suburban districts—although many find themselves in increasing financial difficulty—will not, however, willingly yield their preferred position or any portion of the advantage which they now hold. Even though tensions in our inner cities threaten the entire community, the wealthy districts wish their students to have more than an equal chance. There must, therefore, be some limitations placed on what the wealthy local district can raise and spend itself. Most probably, this would require the elimination of the local property tax and a provision for some form of state-wide revenue. Without such limitations on local autonomy, there will be constant pressure from the wealthy districts to hold down state-wide expenditures that benefit the poor at the expense of the rich.

CONCLUSION

The times may not be right for a revision of public education

23 Kurland, *supra* note 10, at 58.

24 *Cf.* Bigart, *Black Believes Warren Phrase Slowed Integration*, N.Y. Times, Dec. 4, 1968, at 1, col. 2; Herbers, *School Segregation a Live Issue 15 Years After High Court Ban, id.* May 17, 1969, at 1, col. 7.

25 See his discussion at 199-206.

finance. The Court has thus far avoided a detailed confrontation with the issue of whether school finance laws violate equal protection by affirming per curiam an Illinois district court's dismissal of a suit seeking to void that state's school finance statute.[26] It may be that President Nixon's election in a campaign filled with criticism of the "liberal" views of the Court bodes ill for an extension of the principle that geography and wealth are constitutionally irrelevant when one utilizes important public institutions. The Court may act cautiously and its ideological composition may become more conservative.

Moreover, it is possible that achieving equality in public education expenditure would ultimately not be beneficial. In the event of a Supreme Court decision requiring equality in public education, fierce resistance to the egalitarian approach to school finance might lead to the abandonment of the public school system by the affluent. Such a possibility has not deterred the Court from moving vigorously against "separate but equal" in the South. But in the school finance area it is possible that, if the affluent abandon the system, a new and strong lobby with a vested interest against public school taxes will emerge. Public schools would become the exclusive preserve of the poor. The result would be further deterioration in education. In short, the urban-suburban inequality would become public-private.

If these observations are accurate—and it is not entirely clear that they are—supporters of equality in public school finance may have to give greater attention to ridding the system of its unattractive, bureaucratic features which some attribute to the monopolistic position in which most school boards and the state find themselves. If choice and competition were provided the taxpayer, it might be possible for us to have both the public school system and some measure of equality. But, whatever the structure for education, it is clear that a system so arbitrary and inequitable as is education today cannot remain intact for long.

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26 McInnis v. Ogilvie, 394 U.S. 322 (1969).

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