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ABSTRACT

Local funding and the resultant limited access to quality programs have created disparities in school funding because of disparities in local wealth. Two issues that control policies of New Jersey's school finance are addressed in this paper. The first is the behavior of government, specifically the responses of elected officials and bureaucrats to judicial directives, in the context of political economy. The second issue is the interaction of state economic environment and educational finance policymaking, particularly in a time of economic downturn and scarce resources. In the context of these two issues, the paper narrows the discussion of complex education finance issues to New Jersey's "Abbott v. Burke" case and the legislative response--the Quality Education Act (QEA). Attention is given to the constructs in political economic thought that may be applied to an analysis of the environment within which the discussion of educational finance takes place. The case study of New Jersey's "Abbott v. Burke" decision and the QEA elaborates on the background, history, decision, special needs districts, government response, and economic factors. In conclusion, a synthesis of the political economy constructs is provided in order to frame the case in the wider political issues. (22 references) (RR)

ABBOTT v. BURKE vs. NEW JERSEY: Policy, Politics and Political Economy

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Introduction

There are a number of issues in the United States that may be discussed in the context of education finance. In addition to the place of education in the national fabric, and its perceived importance to the function of a democratic society, there are considerations of economic importance as well. Although the nation desires primary economic power in the world, local funding and the resultant limited access to quality programs have created disparities in school funding and programs because of disparities in local wealth. These disparities have in turn created costs in undereducated, unskilled and alienated human capital. Children in particular jurisdictions are undereducated because of the poor quality of the schools and the limited resources available.

A question that arises from the persistence of disparities is whether we should privatize educational gain by allowing only wealthier communities the access to superior schools when we have to socialize the results of the uneven and unequal educational experiences -- welfare, unemployment, and crime that result from inferior schools? How much of an individual's human capital is his/her own, and how much is the society's, or is that the appropriate way to frame the question? At a more ethical and philosophical level, can a nation that names itself a democracy and documents a commitment to equality of opportunity for every citizen, legally or morally base the educational opportunities afforded to children on the economic situations of their parents? I do not intend to answer these questions within the scope of this paper, but include them to indicate the complexity of the issues. We can also look to the place of education in the minds of citizens to determine if their

level of concern gives some insight into their responses to school finance policy.

Periodically, state court decisions stir more than paper. Occasional decrees have important social, political, and/or economic consequences that create strong emotional reactions. Equalizing school finance has the distinction of embracing the nexus of two issues that create emotional reactions: taxes and children.

Henry Levin (1989) writes

> Economics addresses a central social dilemma, how to allocate a scarcity of resources to a multiplicity of competing ends. Whatever the available resources of a society, there are always greater demands on those resources than can be satisfied. Education competes for resources with such other social priorities as health, transportation, defense, criminal justice, and private consumption. (p.13)

Issues of human capital and an adequately trained labor force, efficient allocation of scarce resources, education as a public vs. a private good, social responsibility, and equality of opportunity vie among themselves and with others in a constant conversation among educators, philosophers, politicians, scholars, etc., most of whom play multiple roles in the drama; that is as parents, taxpayers, citizens, neighbors, students, etc. School is a pervasive part of our lives that involves all people and demands resources of many stripes.

There are many issues that control policies of school finance. I would like to address two. The first is the behavior of government, specifically the responses of elected officials and bureaucrats to judicial directives, in the context of state political economy. Entangled in any discussion of court policy with respect to education are the questions of whether and how the legislature, the executive, and the state agencies will respond to court decisions. Will they comply and in what manner? Courts have no power to

raise funds, and little power to enforce their decisions. To what extent will the perceived legitimacy of the court be powerful enough to evoke compliance behavior among government branches?

The second issue is the interaction of state economic environment and educational finance policy making, particularly in a time of economic downturn and scarce resources. How much and in what ways will the legislative response to a court decision be affected by political and economic factors? How will policies that mandate new expenditures and redistribution of wealth fare in a time of economic shortages? How will the public respond to changes, and how will public response shape the development and redevelopment of finance policies?

This paper will narrow the discussion of complex education finance issues to New Jersey's Abbott v. Burke case and legislative response, the Quality Education Act (QEA) in the context of these two issues. That is, the paper will address the behavior of New Jersey government agencies in response to the Supreme Court decision in Abbott, and the interaction of the legislative changes in the school funding formula with the economy and politics of the state.

Political Economy of Education and Education Finance

Political economy is the field of political science concerned with the interaction of politics, or the practice of power and influence, with economics, or the distribution of wealth. Scholars in the field (Dahl & Lindblom, 1953; Lindblom, 1977; etc.) discuss the interaction vis a vis historic impacts, and look at political and economic impacts on government policies at every level.

There are several constructs in political economic thought which may be applied to an analysis of the environment within which the discussion of education finance takes place. While they are not applied to educational finance ordinarily, they are useful for understanding the environment we are considering. I frame them here in terms of conflicts or tensions between two opposing arguments about similar constructs. They are: economics determining politics versus politics determining economics; pluralism versus state interests where "state" is a generic political entity rather than a specific province of the United States; education as a private good versus education as a public good; education as a command system versus education as a demand or market system. I will explain each set of arguments individually. A class-based argument is also appropriate to discuss in the context of education finance.

The Relationship between Economics and Politics. Economics and politics are interdependent. Economics shapes politics and politics shapes economics. The relationship becomes more narrowly focused when it is applied to the state economic environment, and its connection to the policy making structure -- especially the governor and the legislature. Economics will shape what the governor and the legislature do and the governor and the legislature shape the economy. What we will consider here are how political factors shape what are considered to be essentially economic policies. In this case it is school finance, within the broader context of the state economic environment.

Some of the economic factors that will interact with the political environment when the issue of school finance is addressed are changing demographics and a changing economic situation. For example accelerated growth in either the senior citizen population, the number of distressed

persons, or both will probably have some impact on the behavior of the state. When senior citizens on fixed incomes with no children in the schools become a major population group, school budgets and general state spending become targets for people frustrated by the exigencies of living on limited resources while the costs of housing and food continue to rise. New taxes are often the last straw. The group has become increasingly vocal and well organized recently, and so a political force to reckon with.

Distressed persons, those living below the poverty line, with high cost diseases such as AIDS, with little or no English language skills, unemployed, and/or other problems, require high cost emergency interventions by state programs. Increasing crime levels create pressure for more police protection, higher arrest levels, tougher sentences, and larger prisons. Crime, disease, and other social problems place severe strains on state and municipal budgets. Economic growth or decline, or changes in the economic structure have impacts also.

Political factors have impacts on the economy. An ideological change in the makeup of the elected officials, the agenda with respect to the business environment, the position the government takes with respect to recruiting business or raising revenues, on provisions for training or retraining the work force, all change the economic environment.

Pluralism and the State. Pluralist arguments (Truman, 1951; Dahl & Lindblom, 1953; Lowi, 1969) take the position that government and governing are the free play of individual and group interests that compete for their share of economic and political benefits. Pluralists suggest that because everyone has access to the inner reaches of government in a democracy, this is a legitimate practice of individual freedom, and inherently democratic.

Lobbying, legislative campaign contributions, submitting legislation to sympathetic legislators, assisting committee members with writing legislation, expressing policy preferences and pressing to get them on the agenda, and other activities are all practices found in a pluralist system. Pluralists also posit that policy and government interest ar shaped within and reflective of this arena. Schattschneider (1975) states that when individuals and groups see themselves as politically disadvantaged, they will take their 'fight' into the public arena to galvanize more support. We will see that the New Jersey Education Association used pluralist strategies in its fight against the Quality Education Act.

Statist (Skocpol, 1985) arguments take the position that the state -- again, the state as a generic political governing entity -- has an organizing interest of its own that is sensitive to the pressures of interest groups and the electorate, but not wholly formed by them. Regardless of the preferences of outside interests, the state will respond in ways that reflect the interest of the state first. Such interests may be raising sufficient revenues to conduct its business, a balanced budget, responding to court orders, addressing budget gaps caused by economic decline, responding to social and economic conditions, reelection interests, satisfying perceived needs of citizens, satisfying constitutional and procedural requirements, recruiting intellectual capacity to solve government problems, and others. We will see that the state of New Jersey, as represented by the Supreme Court, the Governor and the Legislature, acted in its own interest in the <u>Abbott</u> decision and the passing of the Quality Education Act, very strongly with little regard for high visibility i- rest group activity at first, then with more

sensitivity to interest group activity later, but still not completely in accord with interest group wishes.

Education as a Public versus a Private Good. The question raised by this conception is whether the benefits of education accrue solely to the educated person, or whether the benefits accrue to the entire society. The traditional perception, at least in the rhetoric, has been that the viability of a free society depends on an educated citizenry. The view that education is a public good (Friedman, 1962) holds that the society gains from a more educated, highly skilled, professional citizenry. The society needs engineers, educators, health care professionals, economists, etc. whose education has developed their intellectual capacities. Such a citizenry will help to develop and maintain a society that is better fed and housed, and will be able to work together to help solve the problems of society. They will also be able to teach a new generation of citizens. Thomas Jefferson was probably the most articulate of the constitutional framers in his discussions of the need for intellectual capacity to maintain a free society. Common school advocates such as Horace Mann gave ringing speeches and endless energies to the cause of free education for all children. Holding to this perception, states have maintained systems of free public schools, with increasingly longer compulsory attendance requirements, and public finance of the system.

In the view that education is a private good, presented implicitly and explicitly most recently by the Reagan Administration, education is of benefit to the person who has it. Because a graduate will earn more from his or her education, s/he should have the most responsibility for providing it. Education is considered a private good by parents who understand clearly the

relationship between the level and quality of their children's education and the social and economic benefits that will accrue to their children.

A third conception put forward by Kindleberger (1981) perceives education as both public and private in that individuals do realize increased personal economic advantage and enjoyment from education, but capacities for citizenship and economic productivity are also increased and accrue benefits to the public welfare. We will see from public reaction in New Jersey that education for children in poor districts is not considered a public good, and that education for children in wealthy suburban districts is a private good that sustains great advantage.

Divisible and Indivisible Goods. Economics gives us the constructs of divisible and indivisible goods. Divisible goods are those which are divided up individually among beneficiaries. Each one receives some finite share of the total of resources. The only way that anyone may receive more is if the total resource is expanded or if one or more others receive less. The total resource available is dependent on the perceived priority of the good or service. If a state is experiencing a crisis such as riots in the inner cities, it will direct scarce resources to those riots and possibly offer social programs to pacify participants, but once the riots are over, the emergency and the programs lose priority, and the state will direct scarce resources to other, more emergent situations. Given a finite state budget, the amount of money which is appropriated for education as a ratio of the total, will depend on the perceived priority of education compared to other goods and services such as human services, transportation, law enforcement,

Indivisible goods are those which cannot be divided up individually and are available to everyone. While funds for education are divisible goods and

limited resources, the social benefits of education -- that is, a better educated, healthier, more committed and more prosperous citizenry -- are indivisible. They accrue to everyone and cannot be denied to anyone unless they are somehow separated from the rest of the population. However because funds for education are divisible -- in a system of essentially finite public resources where the most common way to expand funds is to raise taxes -- when some students get funds, others get less. Or else, everyone's share is diminished.

Command vs. Demand (Market-based) Economies. A command economy implies central planning, with prices set by the central planning body. Command economies were characterized by the socialist economies of the Soviet Union and Eastern Europe. Demand economies are those that are ruled by the preferences and pocketbooks of users -- that is by the market. I use these constructs to illustrate the operation of public education in the United States.

Formally, public schools operate in a rough approximation of a command economy in the United States. Since the time of the Common School they have been centrally planned, and price is set centrally. Consumers pay nothing directly. Costs are distributed among a large number of people and commercial enterprises, through property and income taxes, regardless of whether they have children in the schools. Education is considered a social and economic good necessary to the adequate function of the society. All children are required to attend, and attendance zones are set by central planning which may be local district or state-based.

Demand systems are based on markets that respond at some level to the preferences and pocketbooks of consumers. Prices are set based on the

hypothetical intersection of supply and demand curves, that is at the point where supply of a good is in equilibrium with the demand for that good. If there is greater supply then the price will fall, if there is greater demand then price will rise.

Informally, education in the United States operates as a demand service. Parents decide what school district offers the level of education they want for their children, then, if they are able to afford the real estate prices and taxes, buy a home in that school district. Many parents who are unable to buy real estate in districts with good reputations will sacrifice to send their children to private and parochial schools. Supply of good school districts is insufficient to meet demand and therefore prices of real estate in desired districts are higher than real estate in other districts.

Private schools lack the subsidies that public schools have, so in order to remain competitive with free public schools, they often subsidize tuition by paying teachers very low wages but balance the undesirability of low wages with the desirability of better working conditions and more motivated students and parents. Parents are willing to commit significant resources to good education for their children, but there is an upper limit that private schools can charge and still enroll sufficient numbers of children to stay in business.

Relative Advantage Arguments. Relative advantage arguments (Bowles & Gintis, 1976) hold that there are fundamental positions of wealth and poverty that are always in direct opposition to each other. The relative advantage argument holds that if some have access to economic resources others are necessarily excluded. These arguments take the further position that wealth has a continuing advantage over poverty that cannot be overcome under the

present system. The economic advantage of wealth translates into a power advantage that continues to expand economic advantage. In Olson's (1982) terms, the exclusivity of wealth translates into barriers of entry that limit opportunities for merit-based advancement. In the class-based argument, wealth should be redistributed so as to make its benefits more accessible to all. For purposes of our discussion the class conflict will be translated to mean conflict between wealthy districts and poor districts.

The Economics of School Finance

There is disagreement about the mechanisms of financing education. Smith (1937), Friedman (1962) and others believe that consumers should pay for their own education so that they have the choice and their choices will stimulate quality through competition. Others perceive school finance as a wholly public affair because of its importance to and integration with the social fabric as a whole (Walzer, 1991; Thurow, 1970). The present system of public finance of schools has persisted because of a traditional belief that education is so important to the social welfare of the nation that its acquisition cannot be left to individual decisions. Whichever conception is adopted, school finance is highly interdependent with the economic environment, but particularly so when it is publicly funded. This paper is primarily concerned with public funding of schools.

Level of finance is also a controversial subject. Hanushek (1989), among others, writes that no consistent causal or even correlational relationship has ever been established between level of school expenditure and student performance, even though students who come from poor districts are uniformly outperformed by those who come from wealthy districts. The difference according to some researchers must be found in the differing socio-

economic status of the students. There is agreement, however, that there is a basic level of necessary finance beneath which a program is non-functional. Parents in wealthy districts pale when they believe that their schools will lose some funding. They believe that the level of funding in their schools is absolutely fundamental to the adequate education of their children.

There is no doubt that schools in poor districts are less well equipped, have fewer experienced and well-qualified teachers, offer weaker programs and fewer extracurricular possibilities, and have worse facilities than those in wealthier districts. These conditions contribute to an undereducated, often illiterate, unskilled, unemployed and alienated subpopulation. The implications for industry's ability to hire literate, skilled, committed labor are serious.

A strong case could be made that unequal school finance has powerful racial overtones as well. African-American and Hispanic students are a majority in most large urban school districts, and those districts contain some of the poorest schools in the nation. Many of the schools in those districts are underfunded because of the shrinking wealth base resulting from the flight of affluent whites to the suburbs, and municipal overburden resulting from the problems of an economically distressed population, which places heavy demands on the scarce funds.

Political factors also have tremendous impact on educational economics. At a state policy making level in the present publicly funded, nominally universal access model, political and economic factors raise specific questions for the educational policy agenda. States must make decisions about their economic commitment to education. They must decide how much redistribution of wealth for education is fair or possible when there are

severe inequalities among state residents and communities. They must decide what the justifications are for fragmented and very small municipally-based school systems that are administratively expensive, and what are fair tax burdens for citizens to bear on behalf of children who are not their own.

States and their agencies decide the answers to these questions in different ways. The New Jersey Supreme Court had a particular kind of answer in its decision in the Abbott v. Burke case which states that finance was inadequate and therefore inadequate for a limited number of districts. Courts in other cases and actors in equalization struggles that are active or being planned in other states had or will have others. For example, the Kentucky Supreme Court, in the Rose decision, declared the entire educational system -- that is instructional practices, governance arrangements, etc. -- unconstitutional, not just the way it is financed (Rose v. Council for Better Education, Inc, Ky., No. 88-SC-804-TG, Sept. 28, 1989). Their reasoning was that money alone could not solve the systemic problems. The New Jersey legislature had another response, a statewide redistribution of funds, which will be discussed below.

Further complications cloud the environment when economic hard times develop. Wirt and Harman (1986) in their discussion of the effects of recession on educational policy making write

> Faced with a recession, national leaders could alter the decisional processes of school government. There could be changes in those processes among national agencies of government, between central and peripheral governments, between or among political parties, and among the roles of educational professions and political leaders. Or again, buffered against external constraints like a recession, a nation's decisional processes could be unaffected. (p. 5)

They continue by stating the possibility that national educational values could change in times of economic hardship. Education could be pushed lower

on the priority list. In addition, triage could be undertaken by governments, as seems to have happened in New Jersey under Chapter 212 -- the legislative response to a previous court case, Robinson v. Cahill 62 N.J. 473 (1973). When faced with insufficient state funding, the legislature chose to continue sending minimum aid to wealthy districts and curtail equalization aid for poor districts. This triage was probably influenced by political considerations. The wealthy districts carry much more clout traditionally than do the poorer ones.

In economic hard times, governors and legislators are faced with cutting programs, raising taxes or both, choices that are unpopular and politically dangerous. Agencies generally face cuts which hamper their ability to interpret and implement policy. The civil service status of most agency employees insulates them politically from the electoral wrath of the public, but their jobs are not insulated from budget cuts.

All of these constructs are useful in understanding the environment in which school finance issues and policies are managed. In the next section I will present the case study of New Jersey's Abbott v. Burke Supreme Court decision, and the Quality Education Act, which was the New Jersey gubernatorial/legislative response. Following the presentation of the case, I will apply political economy constructs to the case to frame it in wider political and economic issues.

New Jersey and Abbott v. Burke

Background

The Abbott v. Burke case is one of those court cases that was the catalyst for a firestorm. New Jersey has been the site of significant activity with regard to equalizing school finance. The state constitution

guarantees a "thorough and efficient education" for all students. In 1973 the state Supreme Court had ruled the school finance formula unconstitutional in Robinson v. Cahill. In 1976 the Court decreed a shutdown of the state's schools to wrest compliance behavior from a conflicted and irresolute state legislature. The legislature was finally forced to pass an income tax, but had the Court decision to hide behind.

The legislative response to Robinson, Chapter 212, was long in coming because of the political resistance to redistribution. The legislature settled on a guaranteed tax base formula. However, in order to satisfy the wealthy districts and receive the votes of their senators and assemblypersons, minimum aid for all districts regardless of wealth was attached to the bill[1]. In addition, the prior year funding mechanism of Chapter 212 left districts to cover new programs for the first year. The mechanism discriminated against districts with insufficient capital to cover new programs and against districts with growing populations. That profile matched the large urban centers. Prior year funding favored districts that had sufficient capital to cover new ventures, and decreasing populations. That profile matched the wealthy suburbs.

The state also paid retirement benefits for teachers. This practice is considered to be counter-equalizing because wealthy suburban districts are able to pay higher salaries than poorer districts and in consequence the teachers' retirement packages are larger[2]. Exacerbating inherently counter-

1 That aid, in the 1990-91 budget, was a $ 148 million item in the New Jersey education budget of $ 3.5 billion. $2.56 billion went for equalization aid.

2 Presently the New Jersey Education Association is collecting data to compare the actual costs of retirement benefits for teachers in poorer districts to those in wealthy districts. Their contention

equalizing factors was the fact that Chapter 212 was funded fully only two years from its inception to 1988. By 1981, disparities between districts were again growing yearly. Guaranteed Tax Base, which should have given poor districts with high tax rates an advantage, only accounted for 50% of the total finance package. Categorical aid was distributed with no differential for poor districts, and minimum aid was not distributed to them at all. Most poor districts were not able to spend up to cap because of the prior year funding mechanism, and they continued to fall behind wealthier districts that could. By 1989, the lowest spending district in the state had a per pupil expenditure of $1500, while the highest spending district had a per pupil expenditure of $11,000. The average difference between the 30 special needs districts and the wealthiest districts was about $2000. That difference, in an average class of 28 students, meant that $56,000 more was available for a class in the wealthiest districts, enough to pay another teacher and buy more supplies. In fact, with this significant differential, wealthier districts were able to provide much smaller classes.

Even before these disparities became so dramatic, the Education Law Center of Newark decided to bring suit.

History of the Case

Abbott v. Burke was originally filed in Superior Court, Chancery Division, Mercer County on February 5, 1981 by the Education Law Center. (Plaintiffs-Appellants' Brief on Appeal, Supreme Court of New Jersey Docket No. 30433) The plaintiffs were students from Camden, East Orange, Jersey City and Irvington, four very poor and mainly minority school districts. At the

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is that retirement benefits are more complex than monthly subsidies, and that health benefits and other aspects may make the actual amounts less disparate than is thought presently.

time of the case, Raymond Abbott, the plaintiff whose name was first, was an elementary school student in the Camden schools. Fred Burke was the Commissioner of Education. In November 1983, the Superior Court dismissed the case on the ground that the plaintiffs had failed to exhaust their administrative remedy (Goertz, 1991). The Appellate Court reversed the decision, and on appeal the Supreme Court remanded the case to the Office of Administrative Law to conduct a thorough hearing.

On August 25, 1988, after many years of expert testimony by witnesses from such institutions as Educational Testing Service, and the Bureau of Government Research at Rutgers University, and from district superintendents, eminent researchers, etc., Judge Steven Lefelt, Administrative Law Judge, ruled the New Jersey system as embodied in Chapter 212 violative of the "thorough and efficient" provision of the New Jersey State Constitution. (OAL Dkt. No. EDU 5581-85, Agency Dkt. No. 307-8/85) In a 600-page decision, Judge Lefelt ruled that students in the poorest districts were being deprived of their constitutional right to a "thorough and efficient Education," and developed a model high foundation formula that he expected would address the disparities he had found unconstitutional.

On February 22, 1989, the-then Commissioner of Education, Saul Cooperman, rejected Judge Lefelt's ruling, stating that plaintiffs had failed to prove systemic educational inequities. He also stated that because of the state's system of monitoring, "plaintiffs and other similarly situated students are receiving an effective educational program." (Weiss, 1989) The State Board of Education concurred with the Commissioner in the final agency decision on April 13, 1989.

Neither the Commissioner nor the State Board of Education denied that there were disparities in funding, only that the disparities were crucial in determining quality of educational experience. Their decisions included recommendations to the legislature to make procedural changes in the way the formula was funded, and to give priority to equalization aid over minimum aid when funds are scarce. (Weiss, 1989)

The plaintiffs were unsatisfied with the commissioner's response and appealed the case to the New Jersey Supreme Court.

The Decision

The Supreme Court's addition to the body of education finance decisions, Abbott v. Burke, (119 N.J. 287 1990) was handed down on June 5, 1990. The Court found that while the New Jersey school finance formula fashioned in 1976 by Chapter 212 had exacerbated the severe inequalities between rich and poor districts ruled unconstitutional by the 1973 NJ Supreme Court decision Robinson v. Cahill (62 N.J. 473 1973), the system was only unconstitutional for thirty especially disadvantaged "special needs" districts. In those districts, the court found that a combination of factors, including inadequate state support and an improperly implemented formula, had created deficient schools that were denying students the "thorough and efficient" education guaranteed by the state constitution. The Court took the unusual step of ordering that the state raise the level of spending in the thirty districts to the average level of spending in the state's wealthiest districts. The Court also determined that the minimum aid that had been distributed to the wealthiest districts through Chapter 212 was counter-equalizing, therefore unconstitutional, and must be stopped. Further, the decision mentioned the possible unconstitutionality of the counter-equalizing effects of state

funding for teachers' pensions but did not render a final decision on that subject.

The Court found that while the special needs districts were for the most part taxing themselves at rates well above those of wealthy districts, the poor property base yielded insufficient funds. In addition many of the districts were located in areas that were experiencing municipal overburden; that is the poor economic condition of the community was incapable of producing sufficient funds to manage the pressure on all municipal services. This condition further compromised the ability of districts to raise sufficient funds for schools. The Court found the buildings in many of the districts to be seriously deteriorated and unsafe, and the educational programs to be pale copies of those found in property rich suburban districts. While students in Princeton had one computer for every eight children, East Orange, a property poor district, had one computer for every 52 children. The high school laboratory facilities in the special needs districts were extremely poor, some built in the 1920s and 1930s and many with facilities in disrepair, while laboratory facilities in the affluent districts were usually state of the art. Art, gym and music classes were overcrowded or non-existent in special needs districts, while in affluent districts they were well-staffed with excellent teachers and provided with excellent resources. The Court ruled that these conditions left the children of the special needs districts unable to compete economically or socially with the students from wealthier districts, and that the resulting educational disadvantage could not be tolerated any longer.

The Court determined that students from poorer districts are as capable as other children, but that the programs found in poor districts did not

overcome the handicaps the children brought with them from their impoverished neighborhoods. The decision stated that the program deficiencies were especially harmful since the children in poor districts depend on the schools for the vast majority of their educational needs because their parents are inadequately educated and struggling with economic pressures, while children in affluent districts depend on the schools for a much smaller measure of their educational needs because their parents are able to provide more outside stimulation.

The Abbott decision concluded that although the state monitored the districts, the monitoring instrument was inadequate for measuring educational outcomes sufficiently to determine whether the schools were in fact offering a thorough and efficient education. The Court found further that the education being offered by schools that did not have sufficient resources was not adequate to prepare children for full participation as citizens in community life. The decision rejected state contentions that students in poorer districts could not benefit from the range of programs in wealthy districts. Compared to affluent districts, said the Court, poorer urban districts were unable to offer adequate science, foreign-language, advanced placement, music, art, and physical education programs. Buildings in wealthier districts were cleaner, safer, and more spacious. Teachers in wealthier districts had smaller classes and were more experienced. These advantages cost money to reproduce and the Court ordered the state to provide those resources to special needs districts in the amounts that wealthy districts were able to spend, but it specified that the higher level of spending must not depend on the ability of the special needs districts to raise tax levels.

At the time of the decision, Raymond Abbott, now an adult and a high school dropout, was in prison.

Special Needs Districts. All districts in New Jersey are classified in an administrative category known as a District Factor Grouping. The groupings (DFGs) reflect certain characteristics of the community in which the district is located, including percent of population in urban areas, and the educational and occupational background, per capita income, and mobility of residents. The over 500 functioning districts in New Jersey are divided into 10 District Factor Groupings, with the poorest districts assigned to DFGs A and B, and the most affluent assigned to DFGs I and J. With one exception, the special needs districts are in DFGs A and B[3]. The 30 districts include the largest urban districts, and they account for 25% of school children in the state, but fewer than 22% of all the teachers. Considering the number of special needs programs that are found in large urban schools, the percentage of teachers is even more unbalanced than it appears.

While the state as a whole boasts the second highest per capita income, and the highest average per pupil expenditure in the country, these districts have income levels that are well below national averages. Four of the special needs districts -- Camden, Paterson, Newark and East Orange -- are located in cities that are among the top twenty most distressed cities in the country. While major cities in most other states have independent resources based on their position in the economy of the state, New Jersey's major cities are mostly satellites of major cities in other states -- that is New York and

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3 The exception, Plainfield, was assigned to DFG C when the assignments were made, but has more recently become more urban and distressed. The Court, informed of Plainfield's changed condition, added the district to the list after the original decision.

Philadelphia -- and have no independent position. Per pupil expenditures in most special needs districts are well below the state average, even while tax rates in most are well above it. While the per pupil expenditures (PPEs) in some of these districts are high in comparison to some in other states, the cost of living in New Jersey is well above the national average.

Government Response

While the Court had to force the legislature to act in response to Robinson in 1976, Governor Jim Florio and the legislature acted in anticipation of the Abbott decision. To close a massive revenue deficit and address the need for funds for school finance, Florio pushed a $2.8 billion tax package through the legislature, expecting to use the political capital he had amassed during the 1989 election (he won by a 70% vote). Florio introduced the Quality Education Act (QEA) in May of 1990. Before the Court decision was announced, the state legislature and the Governor's office had crafted the QEA to meet what they anticipated would be the Court's requirements. The Act adopted a foundation formula, but with a fair share determined using both equalized property valuation and personal income. The foundation formula was similar to that suggested by the Administrative Law Judge in his recommendation of 1988 that had been rejected by Commissioner Cooperman.

One month after the Supreme Court decision, in July 1990, the legislature passed the Quality Education Act and a record high tax package, the largest tax increase among many around the country, to fund it. The legislation

> changed the formula for distributing state education aid to local school districts, redefined the wealth measure used to allocate aid, eliminated the payment of minimum aid to wealthy school districts, made the payment of teacher pension costs the responsibility of local school districts,

and increased state aid to education by approximately $1.1 billion. (Goertz, 1991, p.1)

The foundation formula set a base figure that was above the average per pupil expenditure in the most affluent districts, with multipliers for special needs, high school and vocational school. This first QEA formula would have provided additional state aid to 362 districts. According to the QEA, the districts would be required to meet their fair share in order to receive the expanded state funding. The state formula allotted five years for districts to reach their maximum formula. The Act also imposed a cap of maximum 9% for wealthy districts, while special needs districts were allowed a cap of up to 20% to reduce the risk that wealthy districts would again outspend poorer districts and create new disparities. This particular segment of the Act was a protection for the state. The Court had not said that wealthy districts were to be held back, only that the spending for poor districts must keep pace.

The Act made other changes to existing state practice. It transferred responsibility for funding teachers' retirement packages to the districts, although the Abbott decision had referred to it but not ordered it. It made provisions to slowly reduce minimum aid to affluent districts over a five-year period. It also changed aid for remedial education to aid for at-risk education, and folded federal and state funds into a line that changed eligibility requirements from performance criteria to economic criteria.

In most state foundation formulas the tax rate to determine fair share is equal for each district. In New Jersey, however, the rate varies from district to district because it is based on income as well as equalized valuation. For this reason some of the special needs districts would have to

raise property taxes in order to qualify for state money, a condition that was forbidden by the Court decision.

Interactions of Political and Economic Factors with QEA

Public Response

Prior to the legislative vote, resistance was high to the Act, the tax package and to the funds designated for the 30 special needs districts named in the Abbott decision. The New Jersey Education Association was furious about the transfer of responsibility for pensions. They believed privately that their bargaining position would be weakened if districts had the responsibility for both salaries and pensions because the districts would have to be more mindful of the size of salary increases. However, their public position was that the pension funds were jeopardized by such a move even though the state guaranteed them. Prior to the vote the NJEA mounted an extremely visible and vocal campaign to stop its passage. One of their protest strategies was to mobilize retired teachers by telling them that their pensions were at risk. Retired teachers became a ubiquitous presence at legislative hearings. No mention was made about the large increases that many districts would receive, nor about the better working conditions for teachers in poor districts that could result from the Act.

A citizen action group called "Hands Across New Jersey" protested the $2.8 billion tax package all across the state. Before the tax package and the education bill could be passed, legislative leaders and the Governor's aides brought significant pressure to bear on wavering assembly members who did not want to face their constituents if they voted 'yes.' The vote was cast completely along party lines. Not one Republican in either house voted for

the package. The few Democrats that voted against the Assembly package were treated as pariahs.

Adding to growing anger about new taxes was the perception that the money would be wasted. New Jerseyans expressed strong suspicions that money had been poured into the special needs districts for years with no resulting improvement. Widespread stories of corruption were supported by the state takeover of the Jersey City School District that had rocked the state in the previous year. The stories caused great apprehension among public and legislature alike that more tax dollars would come out of their pockets and be thrown down what they considered to be a sewer inhabited by political hacks and educational charlatans. Citizen reaction to the Quality Education Act and to the tax package was swift and furious. For the most part, the protesters were white.

A taxpayers' revolt was threatened and 'Impeach Florio' bumper stickers were ubiquitous. Toilet paper rolls -- a reference to the new tax on household paper products -- festooned many automobile radio antennas. The Governor's Chief of Staff was transferred to the office that monitors casinos, and word was widespread that the change was a response to the dangerous political climate and the failure of the top aide to foretell the extent of the backlash. Attempts to place referenda on the November ballot were brought to court, and most were struck down as unconstitutional since New Jersey does not have a constitutional referendum. But some were allowed to stand on technicalities. It took the Middle East crisis to lower the volume on the outcry, but the higher oil prices occasioned by the crisis added to a general economic decline and to citizen dismay.

The tax package made the political fortunes of New Jersey legislators who voted for the package precarious. While the income tax increase was progressive, affecting single taxpayers with incomes above $35,000 and married households with incomes above $70,000, about 10% of the population, the increase in sales tax, the imposition of sales taxes on household paper products, beer and liquor, and other regressive taxes created a huge backlash. Even the political fortunes of national candidates from the state were affected. Senator Bill Bradley received a serious scare from Christine Whitman, an unknown previous to the campaign, because he refused to renounce the Florio legislation.

African-American citizens were quiet. They were unrepresented at the legislative sessions when the QEA was originally passed, and only later began to attend the legislative hearings when it appeared that the votes would be there to deplete the package. One African-American leader from New Brunswick may have given some insight into the silence. His concern is that the Abbott decision was a response similar to the 19th Century Plessy v. Ferguson United States Supreme Court decision that declared "separate but equal" an acceptable constitutional construct. He believes that by making funding of New Jersey's poor urban districts the same level as wealthy suburban districts without changing attendance patterns, the state is bypassing the issue of desegregation. Others expressed their fear that pressure from a large urban protest group would be dangerous for the bill; that a further backlash would result. As the legislative pressure to divert funds from the original QEA formula to tax relief grew, however, the pressure from the African-American community increased. The NJEA also changed its position from non-support of the Act to support.

It is important to see this response in the context of New Jersey priorities for education. Of those responding to a recent Star Ledger/Eagleton (1991) poll, eight percent believed that education was the most important issue facing the state of New Jersey. In an election year poll in 1989, education was listed as the fourteenth most important issue in the state; automobile insurance was the first.

State Responses to Political Pressure

The Governor made appearances around the state and on television to defend his program. The new Commissioner of Education also toured the state speaking to educators' meetings on behalf of Gov. Florio. The Department of Education began to prepare special needs districts for new influxes of funding. In response to concern that the districts would not spend the money wisely, the DOE sent evaluation teams into each district to assess programs. The teams spent time in the schools and spoke with various district personnel, then sent reports to the Commissioner about what they had found.

The entire monitoring package was rewritten and promises of quick and effective assistance and oversight were promised for troubled districts. An Assistant Commissioner for Urban Education was appointed to work with special needs districts to develop programs that were acceptable to the state. One of the requirements was that the districts redesign their curricular and instructional programs based on nationally-recognized programs that had been shown to be effective in urban districts. Districts were also required to submit plans for spending the additional funds they were to receive.

After Bradley's scare, the Governor opened the door to changes in policy. In the face of voter outrage and economic decline, the president of the state Senate and one sponsor of the original bill introduced a newer bill

to redirect almost 1/3 of the QEA money into property tax relief. In fact, they used the term 'skim' in their press conference. The first bill was voted positively out of committee, but failed to make it to the floor because a senator who had been a key vote died.

An assembly package was also developed, but its provisions called for a smaller 'skim' of the original package. In order to develop a bill that both houses would pass, the governor and the legislative leadership met for a weekend to hammer out a compromise. The compromise amendments to the original QEA, including $360 million in tax relief and the return of the teachers' pensions to the state for two years, passed the Senate on March 5 and the Assembly on March 11, 1991. The director of the Education Law Center, frustrated by the behavior of the legislature, announced her intentions at a Senate hearing to begin preparing her return to Court.

The districts, meanwhile, were upset because of the delays. Some of them believed they would have to raise taxes, but they couldn't get definitive answers about how much aid they would receive for Fall, 1991. New Jersey districts submit their budgets to community vote. If budgets are rejected, the district must work out a new budget in conjunction with local government. Budgets are then certified by the state. Without final figures about how much aid they would have, districts could not submit their budgets to the public, nor plan for the coming year.

Economic Factors

The economic condition of the state may be threatened by the size of the tax package. Business and the housing market had been declining slowly after booming for almost a decade. Banks were beginning to totter on the brink of failure. Some were being seized already. The former governor, Thomas Kean,

left office promising a revenue surplus. In fact the surplus turned out to be a massive deficit which worsened when income sources declined as the state followed the nation into a recession. Economists expressed fears that the record tax package would act as a brake on the system -- hastening the descent of the economic train.

The Political Economy of Abbott

How has a redistributive school finance court decision fared in New Jersey? Clearly politics and economics were intertwined in this case. The shortage of revenues caused by the economic downturn in the state, coupled with the Court decision, created the need for the state to either cut other state programs or raise significant new monies. The new governor's political base was more deeply tied to urban working-class areas than the former governor, whose constituency came from wealthier suburbs, and so he was more inclined to policies favoring poor urban districts. Riding on his popularity, he attempted to use his political capital to both raise new taxes in a state that had relatively low taxes, and to develop what he saw as a badly needed change in the school finance formula. However, soon after the passage of the tax bill and QEA, his approval rating had plummeted to between 20 and 30%. That and the message sent by Senator Bradley's close call caused him to reconsider the original bill. The Senate amendments elicited more protest from educators, but tax relief is a popular concept, and legislators looking at probable defeat in 1991 elections were convinced to support them.

The NJEA as the most powerful lobby in the state was not able to shape the original policy to its own interest. NJEA originally opposed the QEA altogether. The original legislation placed the teachers' pensions with the local districts, and NJEA refused to comment on any other part of the bill

until pensions were given back to the state. The association lobbied heavily to defeat the bill, and a huge crowd turned out on the night of the final Assembly vote. On the other hand, the special needs districts and others who stood to gain from the bill were not represented in the state capital at the time the original bill came up for passage. The pensions stayed in the bill and it was passed even in the face of NJEA pressure and the lack of urban pressure. In this case the bill reflected the interest of the state to respond to the Court, to deal with social concerns in the state, and to raise additional resources.

The amendments passed in 1991, however, were clearly a response to the public outcry, as well as reelection concerns of the legislators. The property tax relief promised in the shift of funds was a response to taxpayer anger. The NJEA had come out strongly opposed to the amendments, changing its message to support for the QEA assistance to school districts. Reportedly the Association and the Legislature had come to terms on the pension and the Association, prepared to consider aspects of the QEA that were positive for the membership, came out against the diversion of funds. The amendments were passed in spite of NJEA resistance, but they did win one fight. Responsibility for payment of pensions was returned to the state for two years. The tax package was revisited, but the only change was taxes on heavy trucks. The state held firm on other counts.

School finance is a divisible good in New Jersey as it is in most states. As it is presently structured the available funds are limited. If one district wins then others lose. In particular, wealthy districts view finance from the perspective that if the poor districts get state money there is less for them, and their children lose the advantage they have, rather than

from the perspective that if the students in the poor districts are better educated the society is better for everyone. If the resource-poor districts are beggared, that is not the concern of districts which are more fortunate. While the Court attempted by its decision to expand the funds available to the special needs districts by tying their state funding to the average Per Pupil Expenditures of the wealthiest districts, the state moved to limit the total amount the wealthiest districts could spend, thus limiting the total amount available and leveling down the wealthy districts.

Resource-poor New Jersey districts, as represented by the Abbott v. Burke case, view the situation from a class-conflict position. They contend that wealthy New Jersey districts can afford superior schools, which gives students in those districts a continuing advantage that cannot be overcome. They get a superior education, allowing them advantages of access to better higher education, and then superior jobs. The superior jobs enhance their economic situation, which then allows them to live in districts that have superior schools. Conversely, students in New Jersey's resource-poor districts, by virtue of their lack of resources, get a much poorer education. The poverty of their family situations and their neighborhoods puts them at-risk for receiving any education. If they graduate from school, they have inferior life and educational skills which puts them at a disadvantage in the labor market and for additional education. They cannot command good salaries, and so the cycle of disadvantage continues. The Supreme Court upheld this argument in its decision.

In the policy arena, certain factors shaped the final legislation. The original bill was obviously developed using the model that Judge Lefelt included in his decision. Government officials also report that the bill was

developed early because the Governor's office needed to plan for the decision early. Knowing it would entail new expenditures of large additional funds, the Governor wanted to prepare for its budgetary impact. Because the QEA was written and submitted in advance, it did not take into account some of the provisions made by the justices, and some parts of it had to be rewritten. In particular, account had to be made of the additional funding the Court demanded for the special needs districts.

The size of the tax increase, the redistributive nature of the increase, and the targeting of the highest amounts to urban districts, were factors in the intensity of the protest, although the low level of concern for education in the state suggests that even in the best of conditions taxes for education would not be popular. Many people in New Jersey do not appear to hold that education is a public good that benefits everyone, but that it is a private good for the benefit of individual children. Those that have them want the best schools for their own children. Some believe that schools in the special needs districts have as much money as they need, and that children in those districts are being cheated not by their poverty of resources, but by a poverty of administrative talent and commitment on the part of school officials. Some superintendents from wealthy districts also stated in assembly and senate hearings that students in special needs districts could not benefit from enriched programs. In the minds of many, education is a divisible good just as funds are. They believe that the advantages their children receive from good schools will be diminished if other children receive them as well.

New Jersey school districts operate in an informal demand market just as they do in other states. Real estate costs in good districts are quite high,

and parents shop for schools using SAT scores, college attendance statistics, and reputational inquiries to determine where to spend their real estate dollars Realtors maintain information about the schools in their communities. Private and parochial schools are well attended and highly competitive.

Demographics play a large part in considerations about school finance in New Jersey just as they do in other parts of the United States. Senior citizen populations are growing much faster than school populations. In the Spring prior to the Abbott decision and QEA a record number of school budgets, 50%, had been defeated, often by senior citizens who believe that they should not have to pay higher taxes for schools that they do not use any longer. While many of them may believe that good schools make good neighborhoods, they also believe that school personnel make entirely too much money, that the programs in the schools are much more extravagant than any they or their children experienced, and that they should not have to pay for these extravagant salaries and programs. In addition, with largely fixed incomes they are especially hard pressed by tax increases. The 1980s saw many double indemnity tax increases. That is, the value of housing was reassessed upwards to reflect the skyrocketing real estate values, and the tax rate was also increased. In resource-poor districts with higher than average taxes, senior citizens are even more burdened. Their frustration is manifest in their political activity. They comprise a large minority of voters, they are organized, and their votes are powerful.

CONCLUSIONS

We have seen that educational finance, an economic issue on its face, has clear and powerful political implications as well. Policies for financing

schools are shaped as strongly by political as by economic factors. When the New Jersey Supreme Court ordered redistribution of funds because of perceived disparities, many legislators and the governor believed that there were serious disparities, and passed legislation, even in advance of the Supreme Court decision. The concerns of interest groups in the state and concerns for the economic viability of the state were important factors in the continuing development of the legislative response. The state responded originally to state interest in opposition to public interests. However, when the issue became emotionally charged in opposition to the state's action, the state interest was reshaped by public response. Voters in general, and powerful groups specifically, forced changes in legislation when they become agitated and felt their economic situation threatened. New Jersey's popular governor lost support overwhelmingly when he attempted to address school funding disparities with new taxes. The school funding legislation was amended months after it was passed, with significant concessions to the demands of taxpayers and special interest groups. It is significant that there was no change in the original tax package. The original intent to collect additional state revenues was not modified. It is too soon to tell if pessimism about the economic impacts of the new taxes is accurate, but it is not unwarranted given the declines in revenue and bank instability. It is also too soon to tell whether the tax relief amendments will restore the electoral viability of legislative actors.

Courts, with very little formal power, have to rely on the legitimacy accorded to them by the system. In New Jersey's case, the economic and political situation in the state has lowered the overall influence of the decision. While anticipation of the decision, and later the provisions of the

decision, shaped the original legislation, the legislature responded much more profoundly to the exigencies of the political environment than to the legal force of the Court's pronouncements. It remains to be seen how the Court will respond to the QEA. If it declares QEA unconstitutional, the question remains whether its override will carry any potency. Meanwhile the schools and the children that the Court found to be so in need of massive financial assistance are continuing to wait to receive it.

If national fabric is served by economically viable people who contribute to the national economy, how are we to overcome disparities in educational quality which are exacerbated if not wholly caused by disparities in educational finance? The most sensible answer appears to be total state funding, but given the huge outcry occasioned by New Jersey's essentially modestly redistributive QEA, the likelihood of such massive redistribution appears almost inconceivable. There is not sufficient evidence to indicate whether, in fact, total state assumption is desirable.

In addition, it is not absolutely certain that additional funds will yield significant additional quality. The administrative, instructional and counseling skills of people who work with educationally deprived and socially troubled children will have to be vastly upgraded. Everyone in these districts, educators as well as students, needs help, and such massive assistance requires economic resources which do not seem to be available. There are many students in these districts who are socially and intellectually viable whose talents are not being developed. Smart children do not always "get it" as the common lore has it. The waste of human potential has consequences for our economy, our culture, and our lives. The national economy is served by economically viable people who contribute to and believe

in the national purposes. No nation can survive unless it is economically viable. People must be fed, housed, clothed, and safe. They must be healthy. Third World conditions are being recreated in our cities as capital flight follows and is followed by deteriorating schools and deteriorating educational and skill levels. Unskilled labor in this high tech society is an inherently exploitative concept, and we cannot continue, without serious consequences to the social and economic fabric of the country, to continue producing it at such high levels in substandard schools.

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