

Libertarianism, Education and Equal Opportunity: Handout #7

1. What are the facts of the case?

- Texas system of school finance provides each district with resources to provide floor under educational expenditures for each child; permits districts to supplement this floor with money raised from taxes levied on property within the district; and caps the supplement by imposing maximum tax rate of 1.5%.
- Rich and poor districts fare differently: a poor district (Edgewood) is taxing itself at highest rate, but because property base is smaller its spending per pupil is much lower than in wealthier districts (Alamo Heights) that tax themselves at lower rate.

2. What is the basis of the constitutional challenge?

- Scheme is challenged under the Equal Protection Clause of the 14th Amendment, which has come to stand for the general principle that citizens have a right to be treated as equals (*Brown v. Board of Education*).
- To be treated as an equal means, among other things, not to be subjected to disadvantage on such morally irrelevant grounds as race, sex, or national origin.
- Two ways that the Texas scheme is said to fail to treat people as equals
 - ✓ By decentralizing finance, it discriminates against people in poorer districts. Some children fare better than others simply because of district wealth.
 - ✓ Education is a *fundamental good*; so the difference in treatment is a particularly intolerable kind of disadvantaging.

3. What is an equal start in life? Marshall's dissent

- Marshall starts from the starting gate idea of a "right to an equal start in life."
- Two people have equal start only if neither person suffers a disadvantage in using basic constitutional liberties as a result of their social background.
- Education is especially important to our ability to make use of basic liberties.
- So if differences of social background produce unequal access to education, then differences of social background produce unequal ability to use basic liberties: that is, an unequal start in life.

- So, there is a right to equal access to education, which is violated by large differences in spending across districts.

4. But is there really discrimination?

- No invidious wealth discrimination
 - ✓ There would be such discrimination if Texas law worked to the disadvantage of people who are absolutely indigent, but it does not.
 - ✓ Texas law disadvantages people in low-wealth districts. But this group is not a traditional target of hostility, nor does it suffer from special hurdles in defending its interests politically.
- No right to equal education
 - ✓ Education is essential to the effective exercise of other rights: more education may help to make expression more effective or votes more informed.
 - ✓ But Constitution does not establish rights to *most effective* expression or *most informed* vote. So no constitutional right to equal access to education.
 - ✓ Though Constitution does not ensure the same educational opportunity for all, It may well be mandatory for a state to ensure an *acceptable minimum* (a floor) under education for all citizens in order to ensure that they are able to effectively exercise their liberties (4417-18). But Texas law provides this.
- Concern for parental choice provides rational basis of law.

5. And what does this have to do with libertarianism?

- Marshall and majority affirm weak starting gate equality (Weak SGE): unjust when a person's ability to make effective use of his/her liberties falls below a certain threshold in virtue of his/her social background.
- Weak SGE is rejected by choice-based libertarianism: implementing it would mean restricting choices in the name of equality.
- Friedman does defend support for education on grounds of general welfare: but no individualized right to education.
- Can we find a political philosophy that incorporates SGE, and that can meet Friedman's criticism of it as "untenable" on "ethical grounds."