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Is It Possible to Reconcile Economic Expansion, Altruism, and Effective Participatory Public Education Through Tax Systems?

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What are the greatest injustices in our neighborhoods and what can we do about them? How can attempts to do justice lead to injustice? How can the law best be used to promote the ideals of Justice?

I believe that one of the greatest injustices in our neighborhoods is our inadequate response to public education that too often profoundly disserves school children leaving them unable to provide for themselves as well as those who would be dependent upon them. As Justice Warren wrote in the 1954 decision *Brown v. Board of Education,* "[education] 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 child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. In short, equal access to opportunity through well-crafted and effectively-funded channels for public education is critically important." That reasoning has, if anything, become even more compelling.

Government's role in the context of public education should be straightforward. It should be to build and maintain revenue systems that will support effective schools that will, in turn, produce well-educated children able to live fully into Chief Justice Warren's vision regardless of residential address. Because of the sheer magnitude of the undertaking, this responsibility cuts across all levels of government: federal, state, and local.

The tax system is intentionally (sometimes haphazardly) structured to, within the same body of rules, both generate revenue and provide incentives (occasionally disincentives) for targeted behaviors. This dual focus can cause the system to be at war with itself, for these dual objectives do not always align. This is especially the case where governments opt to provide tax cuts as incentives for business behaviors that are intended to enhance collections over the longer term as the economy grows in response to more expansive business activity. This practice can be problematic on two levels. In the short term, tax cuts will limit and may even depress revenues currently; over the longer term, the incentives may result in enhanced but skewed collection increases (i.e., more to state but not local governments) or simply not work at all if the incentivized behaviors come to naught.

The existence and risks of these practices is nowhere more evident than in provision of support for k-12 public education. On the local level, revenue from property taxes continues to provide almost ½ of the base supporting public education. Yet, the base (property value) is now routinely constrained across the states through tax relief practices that forgive liability entirely (primarily for residential property owners) or economic initiatives featuring relief from property tax liability for some pre-determined period in the hope that short-term forgiveness will lead to long-term enhanced collections. States currently provide roughly 50% of funding for public schools. States continuously struggle with budgetary difficulties unique to their own set of services. States' current incentive practices compromise their own revenue expectations as well of the local governments over which they have financial oversight and control. Finally, the federal government has historically provided relatively limited direct funding for public schools – in the vicinity of 10% overall – and then for targeted programs. Federal tax practices, however, may through tax preferences affect both individual and entity decisions in ways that have a direct impact upon expectations for local collections as well as policy formulation.

Economic incentives targeting businesses are now in place in every state. These programs focus both on nurturing intra-state initiatives as well as incentives for relocation. Incentives may provide relief from either state or local taxes or both. Further,subnational governments may make expenditures that are intended to facilitate the targeted activity. Much research suggests that these initiatives have all too often proven economically ineffective. In their wake, revenue is foregone and public services in general --school programs in particular -- that might have been more expansively supported are penalized. Further, the level of deprivation may be multiplied when businesses are simply "churned," moving from one state to another. When churning occurs, there is both a loss of support for the area from which the business is exiting and no concomitant increase in revenues available at the new location.

General Electric's (GE) recently announced decision to move its headquarters from Fairfield, Connecticut to Boston, Massachusetts beginning in the summer of 2016 provides an excellent case in point. Boston won out over a number of other cities that were competing to become GE's new hometown. Boston sealed the deal by offering a "massive package of tax breaks and incentives" that included "$120 million from the state through grants and other programs and up to $25 million in property tax relief from the city." Fairfield, on the other hand, reports that the move will have a significant impact on the area's financial fortunes. In short, the tax incentive package will not provide an immediate financial boost to Massachusetts and the city of Boston – the schools included – and there will be a corresponding decrease in collections in Connecticut and Fairfield. Of particular interest, GE indicated that the tax package was not the key reason for GE's choice of location.

Similar though more nuanced factors are in play in the income tax system. Both individuals and corporate entities take deductions as appropriate for charitable contributions. (Indeed, corporate entities may enjoy a range of tax preferences that reduce overall liability.) Importantly, since most states align their income tax systems with the federal system, state deductions are mirror images of federal deductions. Pursuant to entities' efforts to be "good neighbors," frequent beneficiaries of tax deductible contributions are programs targeting public education in some form. These practices will not necessarily restore revenues foregone. Deductions reduce income taxes that would have been paid and the shift from formulation of policy in the public sector for which these taxes would pay (through elected officials or governmental agencies) to formulation of policy through organizations likely to have less expansive outreach (a more restricted mission as through unelected non-profit boards or foundations) may have an unintended consequence. The effect of the shift to private support and attendant control may be to deny voice to or thwart input from children and parents. A quick hypothetical illustrates how these factors may coalesce: Entity X has its headquarters and a significant fiscal presence in State A. State B offers X a package that includes relief from property tax liability as well as state sales tax liability for 10 years should X relocate its headquarters from A to B. X does so. Both states are financial losers. Further, X contributes significantly to a tax-exempt entity in its new home district that has as its mission expanding STEM opportunities for the youngsters enrolled in those programs in the local schools. The contribution, which may also result in board presence for the entity, is of course tax deductible and may prove effective. In the meantime, however, a significant percentage of children enrolled in area schools (particularly those in urban areas) continue to struggle to master basic skills and generally perform comparatively on a sub-par level.

Might it be preferable to realign incentives to reach and maintain a higher level of support for public education through traditional channels? Can this realignment be accomplished while preserving privately supported (through deductible contributions) incentives to experiment with alternative educational models? From the corporate standpoint, can government provide or limit tax incentives that force the market to pursue long-term welfare enhancement objectives (more reasonably shared benefits of government – more reliably supported k-12 education) rather than short-term profit maximization -- at least in this context? In the paper that I envision and with public education as the context, I intend to explore these questions and to begin the process of suggesting ways in which what have all too often been conflicting objectives might be reconciled.