Chapter 5: Serrano and the California Tax Revolt

This and the next chapter offer an extensive example of how focus on homeowners’ interests affords a better account of local government than the traditional public-finance approach, which normally separates spending decisions (in this case, for schools) from taxing decisions. I start with my hypothesis of how California’s Serrano decision, which equalized school spending in the 1970s, caused Proposition 13, which dramatically cut property taxes in the state in 1978.

Causation is important for my argument because Proposition 13 is regarded by many as an example of the failure of local voters to appreciate their own interests or control local spending. If, as I argue, the median voter is really the power behind the throne in local government, why did all of those California voters rise up with pitchforks in 1978 and pass Proposition 13, which imposed a ham-handed limitation on the main source of local government revenue? I propose to rescue the median-voter model (and the reputation of California voters) by showing that the Serrano decision, which was not something desired or anticipated by elected officials and voters, made it perfectly rational for home-value-maximizing voters to jettison more than half the property tax.

The more general proposition explored in this chapter is that voters tolerate property taxes only when the public services financed by them are capitalized in home values. The spread of Serrano-like court cases around the country has, I submit, contributed to a disaffection with local property taxation. In the following chapter I apply this insight to explain why the centralization of education finance induced by the courts has produced such disappointing results.

5-1 Serrano Divorced Local Property Taxes from Schools

In August of 1971, the California Supreme Court issued a decision that has continued to reverberate in both California and the rest of the nation. Serrano v. Priest (1971) held that the then-current system of reliance on local property taxes and state aid — a system common throughout the nation — was unconstitutional if disparities in locally taxable property among school districts led to disparities in educational opportunities, which the court apparently took to mean spending per pupil.

The Court illustrated the source of its dissatisfaction with the system by pointing to two communities in Los Angeles County. Baldwin Park was a low-income, largely Hispanic city with
a meager property-tax base. Beverly Hills was, needless to say, a high-income, “property-rich” city. Although Beverly Hills’ tax rate was less than half that of Baldwin Park, it was able to spend more than twice as much per pupil. The Serrano plaintiffs had consistently used this pairing to illustrate the unfairness of the property-tax system for funding public education. (For an explanation of how Baldwin Park got to be “property poor,” see section 9-11 below.)

The 1971 court decision did not specifically find that California's system was unconstitutional as it operated, since only the legal issue, not the facts, had been argued. The California Supreme Court, though, remanded the case to a lower court with an opinion that more than implied that any variation in spending among districts was to be viewed with great skepticism. Public education was declared to be a “fundamental interest” (96 Cal. Rptr. at 608). Inequalities in public education were, as a result, subject to “strict scrutiny” by the court instead of the usually flaccid standard of “rational basis” for evaluating the legislature's actions. Education funding was by this language put on the same footing as racial discrimination, and the political branches were thus on notice that the courts would tolerate far less inequality, as the courts perceived it, than had been the norm in the past.

The California Supreme Court initially suggested several alternatives to localism in education funding, including full state assumption of funding (which was eventually adopted after Proposition 13 passed in 1978), interdistrict sharing of commercial and industrial tax bases, and a scheme called district power equalization. The last plan would equalize “only” the tax base per pupil among the districts — a sort of consolidation of tax bases without actual merger of districts — after which districts could spend more or less per pupil. The merits of these suggestions in meeting the court's demands were debated in both popular and scholarly tracts, but no one could miss the highly equalitarian rhetoric of the Court's 1971 decision.

While the subsequent trial was proceeding, the California legislature attempted to revise its aid formula to reduce the effects of local tax bases on spending. It gave more aid to the property-poor districts, and it tried, with limited success, to restrain local spending in property-rich and high-spending districts in the hope of forestalling the court from implementing a more drastic approach. Much of the state's equalization aid was undone by inflation, however, which made many districts look richer than they were, and by local voter overrides of the state's spending ceilings (Sonstelie, Brunner, and Ardon 2000, chap 3).
The legislature's efforts were to no avail. In December 1976, the California Supreme Court in *Serrano II* validated a remedial approach that had been crafted by the lower court to which the original decision had been remanded. Judge Jefferson of Los Angeles Superior Court had looked at the possible remedies and the 1971 *Serrano I* decision and concluded that whatever the state did, it had to require that no district spent more than $100 per pupil more than any other, unless the additional spending could be shown to be unrelated to differences in property tax base. Few districts could sustain the latter burden, and the 1976 *Serrano II* decision was widely, and I believe correctly, perceived as requiring essentially equal spending per pupil from all public sources throughout the state. (Lee Friedman and Michael Wiseman 1978). The only variations allowed were categorical grants, such as special education, whose categorization did not relate to tax-base per pupil.

**5-2 Serrano’s Centralizing Remedies Influenced Other Courts**

As of this writing, about seventeen other state courts have followed *Serrano's* lead in overturning their state’s school finance arrangements. I call these cases “*Serrano*-like” or “*Serrano*-inspired,” regardless of whether they cite *Serrano* as a leading precedent. For readers who lack legal training, I should point out that state courts often borrow from the decisions of other courts to find both common-law and constitutional precedents (Paul Carrington 1998; Alan Tarr 1998). The deployment of such precedents buttresses the courts' authority in that it suggests they are not making new law but are instead interpreting laws and constitutional provisions that have been around for many years. It does not explain why their judicial predecessors had overlooked the ancient constitutional provisions on which the modern courts have based their decisions.

The characteristic that unites the *Serrano*-style cases is not so much their legal and constitutional reasoning, which changes to fit local circumstances. It is the thrust of their remedies. The *Serrano*-inspired cases have moved their school systems toward more equal expenditures (Evans, Murray, and Schwab1997) and centralization of funding at the state level (Alan Hickrod et al. 1996), with reduced reliance on local property taxation (Bahl, Sjoquist, and Williams 1990).

Equalization and centralization are logically separate. States could centralize funding but distribute the money unequally, and there are schemes that tend to equalize spending but
continue to rely on local property taxation. In practice, however, the two tendencies go together. It is difficult to imagine a stable system in which states collected most of the money for public schools and distributed it in a way that systematically favored one locale over another. And, as I will show by yoking Serrano with Proposition 13, voters will not long stand for a system that ships their local property taxes to the state in order to equalize school expenditures. As a behavioral matter equalization has inevitably led to centralization.

5-3 Serrano Was Not Driven by Local Dissatisfaction with Schools

Aside from its equalizing and centralizing effects, the other important aspect of the Serrano litigation is that it was not the product of local dissatisfaction with schools in California. As James Lee and Burton Weisbrod (1978) described it, the plaintiffs were essentially stage dummies for a concerted and well-funded effort by reform-minded lawyers. John Serrano was a college-educated social worker. The public education of his son, also named John, was going well after the Serrano family moved, Tiebout-like, from East Los Angeles to a better school district. (East Los Angeles, a poor, unincorporated part of the county, was nonetheless in the enormous Los Angeles Unified School District and, as a district matter, had property values per student and expenditure per student that exceeded the state average.)

Mr. Serrano agreed for ideological reasons to be the lead plaintiff (Los Angeles Times, December 31, 1976, p. 3). Perhaps as a side benefit to those bringing the case, his Hispanic name did induce some reporters and scholars to suppose that he was a poor Chicano in a property-poor, low-spending district. School-district plaintiffs were also recruited by lawyers, who supposed that they were continuing the courageous work of the NAACP attorneys that culminated in Brown v. Board of Education in 1954 (Arthur Wise 1967; Peter Enrich 1995).

The foregoing facts are not presented to expose the public-relations spin of the litigation, though that isn't the least of my motives, either. It is important for my theory that the litigants and the California courts were not responding to popular dissatisfaction with schools and property taxes. The Serrano decision thus appears to have been a “natural experiment.”

5-4 Why “Natural Experiments” Are Important

Evidence in the social sciences (as opposed to that in the natural sciences) is often problematical because most of it is generated by events that people more or less deliberately undertake. The “con” in econometrics of which Edward Leamer (1983) complained is that his
fellow econometricians were treating these purposeful acts as if they were forces of nature. Classical statistical theory works only if variations in data occur randomly, that is, as if people had no control over them. Leamer’s explication of this problem has caused economists to look for the rare “natural experiment” in which some truly exogenous force changes the usual rules.

If equalization and centralization of school funding along Serrano II lines had been the decision of the California legislature, we should suspect that the downside of these policies had been considered and rejected by the elected representatives of voters. It would still be an interesting thing to study and explain such an event, but I could not as plausibly claim that the reform caused the tax revolt. I would have to explain why the same people who voted for legislators who enacted a centralizing school-finance bill in 1977 voted a year later for Proposition 13, which pulled the plug on half the revenue source the legislature had dedicated to school funding.

Thus the Serrano decision is the closest thing we will get to a natural experiment in education finance. It is not a pure experiment, since school finance had been centralizing since the Great Depression (David Beito 1989). Serrano also touched an equalitarian nerve in an area that even conservatives conceded was more ripe for judicial intervention than others (Ralph Winter 1972). But it is also clear that the courts have gone farther in undermining localism than almost any legislature wanted to go. In fact, Serrano was the beginning of a trend in California’s supreme court whose activism in the 1970s “left little room for doubt that it had overtaken the state legislature as the place where state policy was most likely to be made” (Paul Carrington 1998 at n. 23).

The California legislature clearly did not want to go all the way down the Serrano road. School-finance equalization had been on its agenda immediately before the first Serrano decision, but the legislature never went as far toward equalization and centralization as the Serrano II court did. School bills that verged on it were considered by the legislature prior to Serrano I in 1971 and they were rejected (Arnold Meltsner et al. 1973). Nor was there evidence that a cabal of “property-rich” districts was holding up otherwise popular reforms. In this respect, the state legislature seemed to be adhering to the median-voter model.
In opposition to my “natural experiment” view, one might argue that voters and legislators could have foreseen how the California judges would act, given the active intervention of the courts in school desegregation cases following Brown v. Board of Education in 1954. The Serrano lawyers and their counterparts in other states often invoked Brown both for its equalitarian ideals and its focus on public education. If Serrano was a politically popular progression from Brown and related desegregation decisions, the “naturalness” of the Serrano experiment is suspect.

The analogy between the civil-rights and school-finance cases, however, seems farfetched. Most African Americans outside the South live in central cities, which usually have near-average or even above-average property value and spending per student. This was conceded even by Serrano's intellectual architects, Coons, Clune, and Sugarman (1970, p. 357). It is telling that the NAACP Legal Defense Fund has not participated in the legal onslaught on education finance (Jack Greenberg 1994, p. 439).

Nor were there any serious voting-rights issues at the time of Serrano I in 1971. Equal access to the ballot at the state and local level was cemented by 1960s decisions on state legislative reapportionment (Baker v. Carr 1962) and by Congressional voting rights legislation. The Serrano litigants could not seriously claim a denial of political representation by residents of low-spending districts. Arthur Wise’s (1968) catchy “one-dollar, one-scholar” motto was easily within the reach of legislators apportioned on the “one-person, one-vote” principle. Indeed, for courts to adopt dollar/scholar equalization thwarts the equalitarian voting principle, since it was clear that most properly apportioned legislatures did not wish to equalize expenditures per pupil. (There are occasional claims that because children cannot vote, they are unrepresented, which seems right if one believes that storks drop babies down chimneys for unsuspecting and unwilling parents to raise.)

Residents of “property-poor” districts are “discrete and insular minorities” — a test that civil-rights advocates took from U.S. v. Carolene Products (1938, n. 4) to justify judicial trumping of legislative enactments — only in a numerical sense that trivializes the intellectual thrust of the Warren Court's civil rights decisions. They struggled to reconcile minority rights with the equally compelling principle of a democratic, majority-rule government (John Hart Ely 1980). In fact, as
the school-finance cases are often argued, the class of “property-poor” districts expands to include most of the population of the state. Looking at the factual and legal gulf between the desegregation decisions and the Serrano claims, it is unlikely that the California legislature, dominated in 1970s by liberal Democrats, would have thought itself at the same risk of court intervention as southern state legislators were in the heyday of civil rights.

The California Constitution likewise conveyed almost no hint that Serrano's equal-spending remedy would be forthcoming. Dissents in Serrano II point this out without any retort from the majority other than a disdainful aside about the “compendious, comprehensive, and distinctly mutable state Constitution” from which the judges supposedly derive their authority (135 Cal. Rptr. at 368). Although the constitutions of several other states do suggest special concern for education, their exhortations to the legislature to provide a “thorough and efficient” education and the like are seldom placed in the bill of rights section, whose provisions have been the source of most “fundamental rights” revealed by the courts.

Even scholars who admire state court intervention concede that there is at best a tenuous fit between a state constitution's language and history and the decisions in Serrano-inspired cases (Molly McUsic 1991; Peter Teachout 1997; Julie Underwood 1994). McUsic’s classifications of constitutional provisions that might support a Serrano-style decision were entered in an econometric study of the post-Serrano decisions (to 1992) by David Figlio, Thomas Husted, and Lawrence Kenny (2000). They found no connection between a state’s constitutional provisions and the state courts’ decisions to uphold or overturn the state’s school finance system.

5-6 Brown's Aura Forestalled Anti-Serrano Amendments

Several people have asked me why there have been no constitutional amendments to reverse Serrano. Voters and legislatures in other states have also dealt with Serrano-like decisions without changing their constitutions to restore fiscal sovereignty to the legislature. While constitutional change is more difficult than ordinary legislation, states have amended their constitutions over 5000 times (Lawrence Friedman 1988, p. 35). Several states, including California, have constitutions that can be amended by majority vote in an initiative. Indeed, Proposition 13 is an example, in that it did amend (coincidentally) Article XIII of the California Constitution. Other California initiatives have reversed specific court rulings, so it would not have been unprecedented to put an anti-Serrano amendment on the ballot. This raises the
possibility that the *Serrano* court accomplished what the legislature would have eventually done on its own.

While this is an important objection to my contention that *Serrano* is a natural experiment, I remain unpersuaded. As a broadly historical matter, public acceptance of ambitious U.S. Supreme Court rulings has always been high, and few decision have been reversed by constitutional amendments (William Ross 1994). This may be because, as surveys show, most citizens think that inventive court decisions (for example, about privacy) are supported by explicit constitutional texts (Michael Klarman 1991, p. 779). The deference that the U.S. Supreme Court gets from the electorate surely spills over to the state courts.

I think that it is here that Brown v. Board of Education has been most influential. *Brown* is now enormously popular. Rather than being seen as a long-overdue reversal of the U.S. Supreme Court’s approval of racial segregation in *Plessy v. Ferguson* (1896), *Brown* is viewed as a heroic decision. Even unsparing critics of Warren-court decisions such as Robert Bork (1990) have felt compelled to carve out an exception for the case that supposedly ended segregated schools. That it did not actually do so, as Gerald Rosenberg (1991) persuasively argues, is beside the point in the court of public opinion. The U.S. Supreme Court led the way in tearing down the mountain of segregation, serving up *Simple Justice*, as the title of Richard Kluger’s (1975) still-popular account of the ruling has it.

As a result of its popularity, *Brown* has enabled state judges to assume a cloak of moral guardianship in any matter that touches education inequalities. The problem with such clothing is that it tends to smother critical thought. For example, the Kentucky Supreme Court declared at the outset of its 1989 decision to throw out the state’s entire system of school finance:

> The goal of the framers of our constitution, and the polestar of this opinion, is eloquently and movingly stated in the landmark case of Brown v. Board of Education: "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."

(Rose v. Council, 790 S.W.2d at 190 [Ky. 1989], citing *Brown*, 347 U.S. at 493.)

The Kentucky court’s deployment of this quotation has two *non-sequitur* qualities to it. First, it implies that *Brown’s* main legacy was to elevate public schools beyond normal political
discourse. The U.S. Supreme Court focused on schools, however, primarily because they already were so important. *Brown*’s enduring legacy was its burial of the separate-but-equal doctrine as a matter of law. It reversed *Plessy*, which had upheld segregation of railroad passengers by race. *Brown* no more changed the importance of public schools than it did passenger railroads.

The other *non sequitur* of the Kentucky court was to neglect that the importance of schools was the product of legislation. The “great expenditures” that the *Brown* court invoked as evidence for education’s importance were undertaken by the *elected legislators* of “state and local governments.” Courts of law had not ordered the construction of a vast public school system against the wishes of voters and their representatives. Use of the success of the legislative branch (as suggested by *Brown*’s dicta) as a reason for the Kentucky court to order a complete overhaul of the system can only be explained by the reverential haze that *Brown* evokes.

The same passage from *Brown* that the Kentucky court deployed appears in school-funding decisions in California, Connecticut, New Jersey, Tennessee, Texas, Vermont, and Wyoming, all of which overturned school funding arrangements that had constantly been on the legislative agenda. (Other state courts that overturned school finance systems also usually cite *Brown*, but without quoting this passage.) And only the New Jersey court acknowledged the dissonance of the phrase, “most important function of state and local governments,” with plaintiff’s request for judicial intervention to supplant localism (*Robinson v. Cahill*, 303 A.2d at 284 [1973], my italics).

It is impossible to know whether judges’ deployment of *Brown* in the school-finance cases was to convince themselves of the rightness of their task or was calculated to disarm would-be constitution amenders. Judges do think about the latter possibility. “You wouldn’t reverse *Brown*, would you?” is an unanswerable retort in debates about constitutional amendments to reverse *Serrano*-style decisions.

To concede that *Serrano* was not easily reversed by explicit amendments is still consistent with the contention that normal political processes would never have produced it. As I shall demonstrate in section 5-12 below, when voters in California and other states were actually asked whether to shift school funding from the locality to the state in order to accomplish *Serrano*-style goals of equalization, they always decline. The *Serrano* court's decision still seems as close to a natural experiment as we are likely to get on a major local government issue.
5-7 Proposition 13 Challenges Median-Voter Models

Eighteen months after Serrano II was issued in December of 1976, California voters upended local financing of schools and everything else by voting in Proposition 13 in June, 1978. Proposition 13 rejected local financing of most services by capping the property tax rate at one percent and holding assessment increases well below inflation. (Proposition 13 was described in more detail in section 4-8 above.) The property tax quickly yielded less than half its previous revenue, and the yield has not drifted up with inflation because of the assessment ceilings. Because of Serrano and Proposition 13, property taxes in California are now administered as if they were statewide taxes (O’Sullivan, Sexton, and Sheffrin 1995, p. 139).

And Proposition 13 is durable, despite substantial evidence that it is responsible for the state's inadequate schools and other public ills. The ongoing damage provoked Sacramento Bee editor Peter Schrag to invoke a Miltonian lament as the title of his book, Paradise Lost: California's Experience, America's Future (1998). Yet attempts to reverse Proposition 13 get nowhere. A modest erosion of its constraints on local officials’ fiscal discretion was reversed by a 1996 initiative, Proposition 218, which now requires what were formerly classified as land-use exactions to be approved by the voters (Stacey Simon 1998). Voters in California appear to have done something horrible to themselves in 1978, and they don't show any sign of regretting it.

In a 1979 symposium on Proposition 13, Geoffrey Brennan and James Buchanan offered Proposition 13 as evidence that the median voter does not prevail in local politics. In their view, local politicians are no more likely than state or national politicians to give the voters what they really want. Proposition 13 was evidence that local governments were spending much more than the median voter actually demanded. If I am to retain any credibility for my thesis that the property tax is a preferred method of financing local schools and that majority rule is the way to look at local politics, I need to explain Proposition 13, which seems to reject all of those ideas in the nation's largest state. My story must account for why California voters were so unhappy with property taxes.

The explanation is simple. The level of property taxes in 1978 weren't what their local or state officials would have chosen without Serrano. The taxes were imposed by the state legislature acting under the gun of the California Supreme Court. Proposition 13 is popularly
compared to the Boston Tea Party, and the analogy has some validity. Both were rebellions against a tax imposed by an unelected potentate.

5-8 Homevoters Were Disfranchised by Serrano

My first explanation for Proposition 13’s appeal to the voters invoked the Tiebout model (Fischel 1989). In Serrano v. Priest, the California Supreme Court essentially threw out the connection between local property tax payments and the local schools. The California legislature's compliance with this mandate converted that half of the local property tax that went for schools into the sort of tax payment whose benefits were divorced from how much homeowners paid. Since everyone agrees that property taxes, taken in isolation, are unpleasant to pay, Californians decided en masse to cut property taxes in half.

Alan Post (1979, p. 385), the California Legislative Analyst at the time Proposition 13 passed, noted that it was not such a bad thing in one respect, since it would now require the state-funded system that was necessary to comply with Serrano. Serrano’s fiscal relation to Proposition 13 is also suggested by some strange political bedfellows. Jonathan Kozol (1991, p. 220), who is well to the left of center, noted that Serrano’s insistence on equality of spending may have provoked Proposition 13. On the other side of the political spectrum, Joel Fox, head of the Howard Jarvis Taxpayers Association, has invoked Serrano’s equalitarian goals as a reason to suppress evasions of Proposition 13’s constraints (Los Angeles Times, January 14, 1999, p. B11).

I actually thought of the Serrano connection almost as soon as Proposition 13 passed in 1978, but I did not have much evidence. The first good evidence on Proposition 13 was a study by Kenneth Rosen (1982), which was, as the reader might have guessed, a tax capitalization study. After Proposition 13 passed, Rosen proposed to use the dramatic tax cut as what he regarded as a natural experiment to see how much property values would rise when property taxes were reduced. The key to this was that local services did not change immediately after Proposition 13 because the state legislature used the state's accumulated budget surplus to bail out local governments and school districts. Thus service levels did not change, and property taxes were reduced. Rosen found that at prevailing interest rates, about half of the property tax reduction was capitalized in higher home values. (How much capitalization should be normally expected was discussed in section 3-5 above.)
Rosen's inferred capitalization rate was low, I believe, because homebuyers did not expect the bailout to last, and it did not. After the state's accumulated budget surplus was exhausted, it had to rely on existing revenues to fund schools. Its *Serrano II* response (described below) had depended on property taxes as well as the state's budget surplus to implement it. Spending on schools soon drifted downward because legislators were disinclined to raise state income and sales taxes to offset the loss in property taxes. More importantly for my story, school spending became highly equalized in order to conform to the still-binding *Serrano II* decision of 1976.

But the tax capitalization that Rosen found was still puzzling to me. In the Tiebout world that Californians seemed to have inhabited in the early 1970s, a state-mandated property tax cut should have generally reduced property values. A good number of capitalization tests confirming the Tiebout model used 1970 data from California municipalities (Gerald McDougal 1976; Sonstelie and Portney 1980a). Gutting the fiscal mainstay of municipal and school district choice should have made most people worse off and driven property values down, not up. The state’s post-Proposition 13 bailout of localities would have delayed this only by a year or two, and the homebuyers in Rosen's sample would surely have been aware of its short-term nature.

Even more peculiar was Rosen's finding that high-income communities in his Bay Area sample were especially benefited by Proposition 13. The median home values in the richest communities in Rosen's sample rose more than the average after Proposition 13 passed (Fischel 1989, p. 468). Even if most California voters had been unhappy with local property taxes, the affluent communities, with what had been good schools, seemed least likely to join the tax revolt or gain from it. Yet property values in affluent places increased much faster in Rosen's Bay Area sample after Proposition 13 passed.

The only explanation for Rosen's results that made any sense to me is that local voters in general, and voters in high-income communities in particular, had been knocked off their local Tiebout equilibrium by *Serrano*. In a Tiebout world, the taxes and housing payments they made bought them the level of local services, including schools, that were better than they could get elsewhere. But such an equilibrium had in effect been declared unconstitutional in California by the *Serrano II* court.

The erosion of the Tiebout equilibrium did not happen all at once. As the legislature tried to deal with the obviously equalitarian intent of *Serrano I* (1971), high-spending districts found it
increasingly difficult to tax themselves for their schools. The final solution for *Serrano II* (decided in December, 1976) was Assembly Bill 65, drawn up by the legislature in the summer of 1977. AB 65 would have raised average spending for the state, but it did so in a way that, for most districts, disconnected their local property tax payments from their local schools. It implemented the Coons, Clune, and Sugarman (1970) District Power Equalization formula, which meant that “property rich” districts would have to ship some of their local taxes to the state for redistribution if they wanted to spend more on their own schools. “Recapture,” this was called, as if property-rich districts had previously plundered their neighbors for tax base. 

Had AB 65 been fully implemented, the high-income districts' home values would have fallen, and to some extent, the implementation of previous reforms must have depressed home values in such districts (relative to the average district — home values everywhere were rising at the time because of national inflation). Thus the beneficial effects on housing values from Proposition 13 (as detected by Rosen) are best seen as a partial restoration of home values from the depressing effects of complying with *Serrano*.

5-9 *Serrano* Explains the Vote Swing from 1972 to 1978

My modest empirical venture into explaining Proposition 13 addressed the question of why voters had in 1972 rejected an initiative that would have done much the same thing as Jarvis's Proposition 13 did in 1978 (Fischel 1996a, pp. 616-19). The 1972 Watson initiative (named for the Los Angeles County assessor who put it together) would have cut back property taxes to a maximum of one percent, just like Proposition 13, though Watson did not propose limits on reassessments. Watson's initiative would have sent most of the fiscal responsibility for schools and welfare (the latter funded in part by counties) to the state. He in fact mentioned that it would be a good way to comply with the just-issued *Serrano I* decision.

Voters rejected Watson's initiative by a 2-1 margin in 1972, as they had rejected a similar initiative he had proposed in 1968. The legislature had in 1972 come up with an alternative that offered property tax relief, and, as Anthony Barkume (1976) found, voters in high-spending school districts were especially opposed to having the state do the financing. The Watson initiative, I submit, would have reduced the home values of at least the high-spending districts.

I looked at the “swing” in votes from the 1972 Watson initiative, which had failed by 2-1, to the 1978 Jarvis initiative (Proposition 13), which passed by 2-1. A whole lot of voters must have
changed their minds in six years, and I wanted to know if the changelings were in school districts with unusual characteristics. So I looked up the vote by city within Los Angeles County, and I selected the 29 cities whose name corresponds to a “unified” school district. (Unified districts, which enroll most students, operate schools from kindergarten through grade 12.) Most of the county's population was in my sample, even allowing for the dominance of the City of Los Angeles.

I ran a simple correlation between two variables. First was the “swing,” the change in the vote on Watson in 1972 to the vote on Jarvis (Proposition 13) in 1978. If a city had given Watson's proposal 40 percent of its votes (and, necessarily, had 60 percent opposed), but then voted for Jarvis by 70 percent, the swing to be explained was 30 percentage points. (I calculated it as a percentage of the original, so the datum here would be 30/40 or a 75 percent swing.)

The second variable was the percentage of each district’s local school expenditures that were to be financed by local property taxes in 1978. Those with the highest percentage were the “property-rich” districts (many populated by not-so-rich people) that were the stronger candidates to have at least some of their tax base “recaptured” by the state. I found an impressively high (r=.71) simple correlation between the 1972-1978 vote swing and the indicator of local property-tax reliance. (The correlation would have been much higher but for a single outlier, the city of Compton, which, alone among all Los Angeles County cities, voted against Proposition 13.) This implies that half (.71 squared=.50) of the interdistrict variation in the swing of votes from the 1972 Watson initiative to the 1978 Jarvis (Proposition 13) initiative can be explained by a single variable, the percent of school funding from local sources in 1978.

Explaining half of the variation in a single vote, say in 1972, is to admit you cannot explain much. You could flip a coin and do as well. But explaining the change in votes from 1972 to 1978 is much more difficult to do. Voter's preferences seldom change as radically as they did between the Watson and Jarvis initiatives, so most of what one gets when looking at changes in votes is random noise. Indeed, some explanations of Proposition 13 viewed it as essentially an irrational choice, a desire to get “something for nothing,” to quote the subtitle of one influential book that examined voter surveys (Sears and Citrin 1982). I was really impressed that I could explain half of the variation in the swing vote for my sample of 29 communities with but one variable. In fact, I could not (and still cannot) think of anything else to add to the determinants of the vote swing in order to undertake a multiple regression analysis.
This simple statistic fits my theory well. The property-rich, high-spending districts had much opposed Watson's 1972 initiative, as Barkume (1976) had also found. In 1972, they preferred local property taxes and local school spending to the state-funded school spending that Watson offered. (In 1972, no one knew how the 1971 Serrano I decision would work out, so I think it is reasonable to assume that the radical equalization required by Serrano II in 1976 was not anticipated by homebuyers, especially since California was the pioneer in this litigation.) But by 1978, the Serrano II remedy had left the formerly high-spending districts with even higher property taxes. These taxes now had little connection with the quality of their schools.

What in 1972 had been a tax closely tied to benefits that were capitalized in home values had by 1978 become just another tax. After Serrano II, property taxes were no more connected to home values or school quality than any other tax, and they were considerably more obnoxious to pay. So the districts that were stuck with high local property taxes in 1978 swung disproportionately to Jarvis's tax limitation, shifting the funding burden to the state. Serrano II had killed the Tiebout system for schools, so the formerly high-spending districts joined with voters who had always disliked property taxes to kill the property tax.

5-10 Serrano II Effectively Blocked Property Tax Relief

In response to some skepticism by Jack Coons when I described my first article about Serrano and Proposition 13 (Fischel 1989) in Berkeley in 1991, I undertook documentary research about how the California legislature responded to Serrano (Fischel 1996a). I found that the 1977 legislature was fully aware of the voters' rising dissatisfaction with property taxes, but legislators were hogtied by the need to respond to Serrano II. I won't go through that story again in this space, where the focus is on homeowner capitalization. The story isn't complicated — Sacramento just did not have the dollars to respond to both the tax revolt and Serrano II — but I needed to dispose of several other theories of Proposition 13 in explaining why the Serrano explanation fits best. While I do not claim to have nailed down every corner of the connection between Serrano and Proposition 13, I remain unpersuaded by alternative explanations that I have heard before and since my 1996 article. (My claims that are unaccompanied by citations in this and the next section are supported in my 1996a article.)

The easiest to dismiss are those that focus on the supposed political acumen of Howard Jarvis, the garrulous leader of the Proposition 13 movement (David Smith 1999; Robert Kuttner
His rough-and-ready manner may have had some popular appeal, but this does not explain why Jarvis’s four previous property-tax initiatives were complete failures. His post-Proposition 13 initiative in 1980 and his foray into elective politics were likewise unsuccessful. It seems most charitable to describe Jarvis as one of those perennial gadflies who just happened to have a ready-made cure when the wages of Serrano came due.

John Kenneth Galbraith described Proposition 13 as “the revolt of the rich.” This shows that he can turn an alliterative phrase better than Robert Kuttner, who subtitled his 1980 book on it, “the revolt of the haves.” Neither author explains why the “rich” did not revolt before 1978, despite being presented with plenty of fiscal initiatives that would have cut overall taxes.

The catchy characterization is misleading in any case. Although affluent voters and residents of “property-rich” districts did support Proposition 13 more than others, the initiative passed with huge majorities in nearly every community in the state. Even poor Baldwin Park, the low-income and property-poor poster child of the Serrano litigation, gave Proposition 13 a 70 percent majority. Proposition 13 was not a close vote, which is all the more remarkable given that, from 1960 to 1978, every fiscal initiative in California had failed (Rabushka and Ryan 1982, p. 14). Something had so completely changed the fiscal landscape that the usual rules did not apply. That something, I submit, was Serrano.

Another common explanation centered on a local miscalculation. The Los Angeles County tax assessor sent out huge increases in tax bills just before the Proposition 13 vote, and this is said to have swung the margin toward Jarvis's initiative (Martha West 1999, p. 305). The assessor explained — reasonably, I would say — that he did so to avoid being accused of hiding the bad news until after the election (Alexander Pope 1979). But property taxes had begun rising well before 1978, and the importance of Mr. Pope's timing seems greatly overrated. Proposition 13 passed by the same margin in Los Angeles County as in most of the state’s other counties, whose assessors were not so imprudently forthright as Mr. Pope.

Peter Schrag (1998) and Tony Downs (in a personal communication) suggested that Proposition 13 was caused by local political failures to reduce taxes in the face of assessment inflation. Schrag wonders why local school boards did not lower taxes if voters were upset, and Downs suspects that municipal officials were simply too tin-eared to hear the voters’ concerns.
I don’t know what features of California school finance at the time may have prevented local boards from reducing local expenditures and taxes. I strongly suspect that local boards were responding to rules from Sacramento rather than blithely spending local revenue that they had the power to give back to dissatisfied taxpayers. The basis for my suspicion is the complete absence of any local property tax revolts during the period. California empowers citizens of its local governments to propose initiatives. If free-spending local officials were the cause of Proposition 13, I would expect many local initiatives to try to curb them. There weren’t any in the two years before Proposition 13 passed. I looked explicitly for them in the indexes of the *Los Angeles Times* and the *San Francisco Chronicle*, both of which had good coverage of local politics. Nor were there stories of local school boards being ousted in elections for their free-spending ways. Taxpayers’ anger was directed at politicians in Sacramento, and newspaper stories at the time indicate that state, not local officials were facing the voters’ wrath.

Another indication that Proposition 13 was related to state-imposed school-finance reform rather than bloated municipal budgets comes from a list in a briefing book for the California State Assembly (1980), which analyzed the fiscal condition of the state’s 31 “No-Property-Tax Cities.” These mostly small cities had sufficiently large commercial tax bases to be able to fund all municipal expenditures from sales taxes instead of property taxes. If out-of-control municipal property taxes had been a contributing cause to Proposition 13, then voters in these 31 cities should have had less inclination to favor it. But 26 of them gave Proposition 13 a larger majority than the state as a whole. As a population-weighted group, the 31 cities voted 74 percent for Proposition 13, compared with the 65 percent for the state as a whole. The reason cannot have been municipal extravagance in property taxation, since these cities had none. Their greater support for Proposition 13 is evidence that municipal (as opposed to school) spending was not the problem.

5-11 Budget Surpluses Did Not Cause the Tax Revolt

A more sophisticated explanation for Proposition 13 is that voters were disgusted with the state legislature for allowing the state's budget surplus to pile up without giving them any property tax relief. As I found, however, the legislature was aware of the surplus and the voters' demand for tax relief, and leaders of both parties were eager to grant property tax relief. But the form of the relief was complicated by *Serrano II*'s insistence that any property taxes that were used to fund schools had to be unrelated to a given district’s spending per pupil. Some
homeowners could get property tax relief, but many others with the same complaints could not. And the amount of the state funds available for property tax relief was shrunk by AB 65 (the Serrano-II response), which was expected to spend all of the state's budget surplus on the new school funding plan.

AB 65 relied heavily on property taxes, and any substantial cut in property taxes would have made it moot (as in fact Proposition 13 did). Legislators were clearly told this by the respected Legislative Analyst, Alan Post (Los Angeles Times, August 1, 1977). As a result of not having enough money and an inability to direct it satisfactorily to constituents, the Legislature in 1977 adjourned without having passed any property tax relief. The 1978 state budget surplus turned out to be even larger than expected, and the legislature did offer an alternative to Proposition 13 that relied on it, but even that amount was no match for Proposition 13’s massive cut.

Another explanation is that AB 65, the Serrano II response, was a political miscalculation. The legislature would have had enough money to head off the tax revolt, goes this theory, if it had selected a statewide school expenditure that was closer to the existing average spending. (David Kirp said this in a phone conversation in 1992, but he would not elaborate on it.) I did not deal with this claim in my 1996 article, but I recently came across a detailed analysis of the legislative process at the time by Richard Elmore and Milbrey McLaughlin. In Reform and Retrenchment: The Politics of California School Finance Reform (1982), they concluded that the AB 65 “level-up” approach was the only way to get enough votes for passage of a bill that satisfied Serrano II (p. 162). Legislators from high-spending districts were unwilling to accept a bill that pulled them down to the preexisting mean.

“Level up” was what nearly all advocates of Serrano assumed would happen (Charles Benson 1972; Lawyers' Committee 1971). To “level down” would seem contrary to the intent of Serrano. The plaintiff’s lawyer in Serrano II reinforced this sentiment with the threat of a suit even after AB 65 was passed in 1977, thundering that the legislature, which had just committed all of its anticipated surplus to Serrano II compliance, had not done nearly enough. The notion that the legislature could have satisfied the court by spending no more than had been spent before the decision is not credible.

The non-Serrano explanation for Proposition 13 that does make some sense is that housing prices were rising more rapidly than nonresidential property from 1975 to 1978, and California
assessors were compelled by law (as they are in other states) to raise homeowners’ assessments. Thus even if tax rates had been steady, homeowners would have borne a larger share of the property tax. This shift surely did complicate the legislature's response to homeowners’ complaints, but it is not by itself a satisfactory answer. The legislature knew how to fix that problem early in 1977. It in fact did submit a constitutional amendment (Proposition 8) as an alternative to Proposition 13.

Proposition 8 would have allowed (not required) the legislature to reduce residential property tax rates below that of other property. But the bill that was a companion to this constitutional change protected homeowners' property taxes only from nonschool assessments. This suggests to me that reduction in homeowners' assessments for school purposes was ruled out either because of worries that it would conflict with Serrano or that it would take away revenues needed for the already-passed Serrano response bill, AB 65. (Proposition 8 lost by about the same margin that Proposition 13 passed.)

5-12 Voters in Other States Prefer Local Funding, Too

Several published comments that have addressed my hypothesis wonder why contemporary opinion polls did not show that voters were unhappy about school taxes because of Serrano (Peter Schrag 1998 p. 148; Daniel Smith 1999, p. 205). One response is that it takes social science insight to see the true relationships. If the test of a social science hypothesis is that its implications must be transparent to the public, why would it take any special skill to generate it? (No smart answers, please.)

The lack of evidence from opinion polls has an easier response: You don't get the right answer if you don't ask the right question. None of the polls I read made the connection between court-ordered school finance reform and property taxes. As I will show in this section, when voters in statewide referenda are asked the right question — do you want to continue local property-tax financing for education, or do you want to shift the obligation to the state? — voters almost everywhere choose localism.

The clearest and cleanest evidence comes from statewide referenda and initiatives prior to the Serrano decision. The issue of whether school financing should be shifted from the local property tax to a statewide tax was actually put on the ballot in several states. It was not an incidental test. The reformers who quickly flocked to the courts after Serrano had actually
proposed the same centralizing reforms to the voters. As Paul Carrington (1973, p. 1245) pointed out, voters rejected these proposals in 1972 in California (the “Watson Initiative” discussed in section 5-9), Colorado, Michigan and Oregon. A proposed constitutional amendment to centralize school financing was also rejected by voters in Michigan in 1971 (Elwood Hain 1974). A few years before court-ordered reform of 1979, voters in the state of Washington rejected two referenda that proposed an income tax and a corporation tax to relieve local districts of the obligation to fund schools (Diana Gale 1981, p. 149; Theobald and Hanna 1991).

Even after Serrano, referenda that asked voters to approve the taxes required by Serrano-style decisions were rejected. West Virginia voters were asked in 1984 to approve a revenue-equalization bill that responded to its court's Serrano-style decision of Pauley v. Kelly (W.Va. 1979), and the voters defeated it: “The people wanted local control of taxes,” according to an analysis by J. J. Flanigan (1989, p. 234). On May 5, 1998, Ohio voters rejected by a four-to-one margin a proposal to replace local property taxes, whose variations were found unconstitutional by the Ohio Supreme Court in Derolph v. State (1997), with a two percentage point increase in the state sales tax.

I don't claim to have checked every source, but I cannot locate a single statewide initiative or referendum in the post World-War-II era that proposed anything like Serrano — equalize school spending or taxable resources by centralizing funding — and came anywhere close to passing. This is consistent with, as I mentioned in section 4-13 above, the work of John Matsusaka (1995; 2000), who found that initiative states have had more decentralized control of government expenditures throughout the twentieth century. When they are asked about it directly, voters prefer local control.

The issue also comes up in ordinary state politics. Deborah Arnessen, a well-funded Democratic candidate for governor of New Hampshire in 1992, proposed to create a new state income tax and substitute it for local property taxes to fund schools. As Colin Campbell and I (1996) and Lisa Shapiro (1995) demonstrated, the voters rejected Ms. Arnessen primarily because of her school-funding platform. Her chief campaign advisor was also the plaintiffs' attorney in a New Hampshire school-finance case, Claremont v. Governor (N.H. 1993), which eventually mandated (Claremont II 1997) what the voters had rejected at the polls. That the New Hampshire court was not protecting a “discrete and insular minority” is suggested by the fact that
voters from four of the five the plaintiff school districts failed to give Ms. Arnessen a majority in the gubernatorial election in 1992.

5-13 Locals View the Property Tax Base as Their Own

Without an understanding of why local governments are different from state governments, it is hard to explain statewide voters' aversion to having the state equalize local property tax bases. If one just counts potential fiscal gainers, statewide taxation of property (or a similar redistributive scheme that takes from the “property-rich” and gives to everyone else) ought to win every time. Property value per student is unusually high in a few communities. Small-population communities may have resort properties that are owned by out-of-staters; they may have electric power generating plants or dams that are attractively immobile targets of taxation; or they may have been unusually successful in attracting shopping centers or industrial development. Many states have something like California's straightforwardly named City of Commerce, incorporated as tax havens and run by a small group of residents whose public needs (very broadly construed) are well taken care of (Gary Miller 1981, p. 45). Voters who reside in districts with less than the mean amount of tax-base per student easily outnumber those in the property-rich districts.

If all voters cared about was keeping their own taxes low, intercommunity property-tax transfers should be the rule rather than the exception. Yet such expropriation is hardly ever undertaken without a judicial prod when local property taxes fund the bulk of schools and other local services. In such situations, I submit that people view their property taxes as different from other taxes. They are part of their own city's or town's property. Voters are almost as loathe to grab neighboring communities' “property” as they would be to use the power of the state to take their neighbors' homes without compensation.

When Kansas, responding to Serrano-like litigation, “recaptured” the tax base of the rural town of Burlington, which has a power plant, the town and others in its situation sued the state (Unified School District No. 229 v. State [Kansas 1994]). One of the town's claims was that the state had “taken” its property without just compensation. Takings claims are normally made by individuals whose property is burdened by state actions. By invoking the takings claim (which, like all the other claims, was not successful), the community was invoking the principle that its
local tax base, unlike other tax bases to which Burlington residents contribute, was regarded as its own property.

5-14 Maine Tried and Rejected a Statewide Property Tax

Status-quo bias could have influenced the aforementioned statewide votes that rejected Serrano-style tax base sharing. People are used to local property taxation, and so their reluctance to redistribute tax base might be attributed to a more general reluctance to change long-time habits. One could, perhaps, suggest that human beings have for good reasons been reluctant to change long-standing institutions, but I don't actually have to resort to that argument. The experience of the state of Maine offers a compelling counterexample.

In 1973, the Maine legislature adopted a uniform statewide property tax designed to “recapture” taxable values in property-rich towns and transfer them to other towns and cities to pay for schools. Because only a few districts (mostly resort towns along the coast) had unusually high taxable property per resident, the net effect of Maine's statewide tax was to take property tax revenue from a small number of towns and give the proceeds to towns and cities within which a great majority of the state's population resided. The tax and the distribution scheme thus “forced some communities to support the education system in others” (Perrin and Jones 1984, p. 486).

The 1973 Maine legislation was not the product of popular dissatisfaction with schools or local property taxation. It was explicitly motivated by the school finance litigation that began with Serrano I in 1971. A Serrano-style suit had made its way to the Maine Supreme Court. At the time (1973), the U.S. Supreme Court was hearing the federal version of Serrano, which was San Antonio v. Rodriguez (1973). The Maine court specifically delayed its decision to see how the U.S. Supreme Court would rule (Norton Grubb 1974).

The Maine legislature, however, decided not to wait. It adopted the statewide property tax plan in anticipation of an adverse ruling. The U.S. Supreme Court ultimately ruled in San Antonio v. Rodriguez that states were not compelled to equalize school finance, and the Maine court, as a result, backed off (Kermit Nickerson 1973). But the Maine legislature decided to keep the law on the books. After all, it looked like a politically attractive thing to do, at least if one simply counted noses. The statewide property tax and the related school funding distribution formula allowed the state to transfer property-tax wealth from a few towns to other places in which the vast majority of the year-round population lived.
Despite the apparent fiscal benefits of the 1973 program to most Maine residents, the statewide tax and the related school funding reform were highly controversial. After four years of contentious tinkering with the distribution formula, legislators agreed to hold a statewide referendum on the tax in 1977. The vote to repeal it passed with an overwhelming majority. Although the small “property-rich” towns that bore the brunt of the statewide tax did vote disproportionately for repeal, a majority of voters in districts that supposedly benefited from the state tax also voted to repeal it (Perrin and Jones 1984).

The importance of the vote in Maine on this issue is that it started from a different status quo position. The “status quo” in 1977 was that one town's property tax base was obligated to fund schools in other towns. Four years' experience with such a regime is admittedly less of a status quo than a hundred years of experience with local taxation, which is the approximate pedigree of local taxation for schools. But Maine in 1973 did take property taxes away from local control, and it did offer a taste of statewide funding to its electorate. It may not have been as “natural” an experiment as California's, since the Maine court decision that prompted the legislation faded away, but it stands as a strong counterexample to the idea that voters would reject local funding if only they experienced its alternative.

5-15 Serrano Influenced Other States’ Behavior

I've actually convinced, I think, a good part of the local-public-finance community to take the Serrano-Proposition 13 connection seriously. Even economists who like the equalization idea behind Serrano admit that the California Supreme Court went too far in undermining local fiscal control (Fernandez and Rogerson 1999). But the usual question then is, what about other states? There have been 16 other state supreme courts that have gone in the Serrano direction (by my count, as of 1999). Did they get a Proposition 13 for their trouble? And what about other property tax revolts? Many seem to have occurred in states whose courts didn't have anything like Serrano. Fair questions.

My answer is that Serrano itself changed the national political landscape, so it is in fact difficult to chart the influence of other courts on fiscal arrangements without a detailed historical knowledge of individual states. California is such a large state — one of every seven Americans lives there — that it necessarily generates an enormous amount of litigation. So much law emanates from California that its decisions have considerable weight in other state courts.
Moreover, the litigation group that put together the *Serrano* case was well organized and well financed (Lee and Weisbrod 1978). And after Serrano v. Unruh (Cal. 1982), the lawyers didn't even need foundation financing, since the California Supreme Court ordered the state to pay the legal expenses of the victorious plaintiffs. Attorneys general in other states had good reason to advise their governors and legislatures that the seemingly novel interpretation of the hortatory education clause in their constitutions could be a license for judges to redirect the financing of education.

Their best defense might be an orderly surrender in advance to the forces of equalization and centralization. Even if elected officials succeeded in defending their system once in court, turnover of supreme court justices and creative reformulation of complaints — first “equity,” then “adequacy” — made anything less than full state control and absolute equality of expenditure a constitutionally risky path. (No state actually went that far, but that is the outcome consistent with most plaintiffs’ positions.) While the nominal complaints have varied over time, the centralizing and equalizing remedies remain essentially the same, as even the advocates of classifying them as distinct “waves” of litigation admit (Peter Enrich 1995, pp. 128-143). In other words, after *Serrano* there were no more natural experiments.

The U.S. Supreme Court's *Rodriguez* decision derailed the *Serrano* train at the federal level, and the original *Serrano* advocates were certainly disappointed by it. But the U.S. Supreme Court decided no more than that inequalities in local tax bases did not offend the U.S. Constitution's Equal Protection Clause. Perhaps because the vote in *Rodriguez* was a razor-thin 5-4, the majority opinion explicitly gave the state courts freedom to deploy their own constitutions, and even their own equal protection clauses, to do whatever they wanted to school financing.

In case the states didn't get the message, Justice William Brennan, who wrote a dissent in *Rodriguez*, went on the lecture and law review circuit to extol the virtues of an independent and expansive state court interpretation of their own constitutions (Brennan 1977). Former Connecticut Chief Justice Ellen Peters (1998) gratefully acknowledged Brennan’s influence on her and other state-court justices, specifically mentioning the school-finance decisions of her court. In closing the doors of the federal courthouse to such suits, *Rodriguez* pointed to a wide-open door in the state courts.
5-16 The Threat of Litigation Induced Legislation

The evidence for Serrano's extrajudicial influence is necessarily episodic. One can generate from Lexis and Westlaw lists of court victories and defeats, but not of legislative committee compromises and out-of-court settlements on school finance. Nonetheless, the stories that I relate in this section clearly demonstrate the immediate and persistent influence of Serrano in other state legislatures.

I am not alone in this observation. A well-traveled team of school-finance consultants observed, “Even where litigation has not occurred or has not succeeded, the prospect of litigation has prompted revisions of state funding policies” (Augenblick, Myers, and Anderson 1997, p. 63). As I described in section 5-14 above, Maine's statewide property tax legislation was the result of an anticipated state supreme court decision. The Maine legislation, which both centralized and equalized school funding until the voters revoked it, can thus be directly tied to Serrano.

- **New Mexico:** According to a history of school finance in New Mexico by David Coulton (1996), legislators there were told in 1974 that their state supreme court was about to issue a Serrano-style decision, and they responded with legislation to pre-empt it. New Mexico's school finance, already highly centralized, became almost completely so after this action. In due time, the legislature also further reduced reliance on property taxation in response to popular dissatisfaction with it. Thus New Mexico did a Serrano and a Proposition 13, but with neither a recorded court decision nor a popular tax revolt. As in California, the crucial fact is that the legislation was induced by the court, not the voters, and the subsequent property-tax cut was a logical and popular response by the legislature to the new fiscal regime.

- **Michigan:** The Michigan Supreme Court decision in Governor v. State Treasurer (1972) was clearly Serrano inspired and directed at getting the legislature to pass an equalitarian school-finance bill (Ellwood Hain 1974). The bill was passed, and its features were highly redistributive in that it took from the property-rich and gave to the property-poor districts (Paul Rothstein 1992). After the legislation was passed, the Michigan Supreme Court withdrew its decision, and so Michigan is counted as a state whose school finance arrangements have been untouched by the courts. That the original decision was intended to nudge the legislature was specifically mentioned in Justice T. E. Brennen's tart dissent (203 N.W.2d at 475): “The majority opinion…
is a political position paper, written and timed to encourage action by the state Legislature through the threat of future court intervention.”

- **Ohio:** Ohio's Serrano-style *DeRolph* decision, 78 Ohio St. 3d 193 (1997), actually mentions (at p. 218) in the majority opinion that the legislature and the court had been playing in the same fiscal sandbox for many years: “In *Walter* [a 1979 case that upheld Ohio's system], this court reviewed the constitutionality of the Equal Yield Formula for school funding and, in 1979, upheld that formula as constitutionally acceptable. There is a body of thought,” the Court coyly goes on in *DeRolph*, “that the General Assembly created the Equal Yield Formula in anticipation of the filing of the *Walter* case.”

- **Kansas:** The experience of Kansas, as related by Charles Berger (1998), shows that from 1972, when a trial court invoked Serrano-style principles, to the present the state courts have constantly set the agenda for school finance legislation. The judge in the most recent case held meetings with the governor and legislative leaders to plan the state's most recent reform. Separation of powers is not something that appears to worry this court.

**5-17 Did Serrano Cause the Massachusetts Tax Revolt?**

The Massachusetts Supreme Judicial Court, which found for the plaintiffs in McDuffy v. Secretary (1993), likewise sets out a history of legislation induced by the threat of litigation. The previous litigation was *Webby* v. Dukakis. *Webby* was brought in 1978 when the legislature was considering what Edward Morgan (1985) describes as a equalitarian and centralizing school-finance bill. The bill, which was sponsored by Governor Michael Dukakis, was having a rough time in the legislature. The lower house was balking, and the plan looked dead in the water. Then the *Webby* litigation was filed. As a Brandeis University doctoral dissertation by Bruce Perlstein (1980, p. 569) points out, “The suit was officially filed before the state's Supreme Judicial Court on May 9 [1978], on the eve of the House vote, in an attempt to influence the outcome.” The House promptly caved in and adopted the Dukakis reform, and the litigation was immediately dropped (*Boston Globe*, May 16, 1978, p. 16).

Perlstein, who was an active advocate of the Massachusetts reform as well as its most detailed chronicler, appears to be of two minds about the influence of the litigation threat. On the one hand, he notes that “the specter of possible court intervention was frequently cited by reform proponents as a major reason” for the reform vote, especially in light of Boston's wrenching
experience with court-ordered desegregation (1980, p. 571). On the other hand, Perlstein points out that the vague, seventeenth-century language in the state's constitution about “wisdom and knowledge, as well as virtue” seemed like a weak anchor for the litigation. (This did not deter the Massachusetts Court in 1993 from deploying it on behalf of a sweeping reform edict in *McDuffy*.) Moreover, the length of time it would take to get a court decision meant that “the prospect of judicial intervention therefore had only a limited credibility in the more immediate legislative effort” (Perlstein 1980, p. 571). Perlstein is more inclined to give credit for the passage of the bill to the interplay of political personalities, which he describes abundantly. But it is also clear in his thesis that the state's overall school-finance agenda was much influenced by *Serrano* and its judicially induced legislation in other states (pp. 186-215).

The 1978 school-finance bill greatly increased property taxes and centralized state spending in Massachusetts (Perlstein 1980; Avault, Ganz, and Holland 1979). It may seem a tad tendentious of me to point out that two years later, Proposition 13's most famous imitator, Proposition 2.5, was approved by the voters of Massachusetts. This property-tax revolt was not as severe as California's, but, like Proposition 13, it did most of its damage to local school spending (Herman Leonard 1992, p. 21), and it effectively gutted the equalizing legislation that was passed in the shadow of the state's *Serrano*-like litigation in 1978 (Morgan 1985).

Unlike my *Serrano*-Proposition 13 connection, I do not have a recorded political connection between Dukakis's school-finance reform bill and the tax revolt. I have found no Massachusetts analog to Alan Post telling the 1977 California legislature that their *Serrano*-response bill had eaten up all the funds for property tax relief. But the circumstances seem similar, and I have encountered no other rational explanation for why Massachusetts voters decided to shoot themselves in the foot in 1980.

I would not be surprised to find similar circumstances behind most of the other property tax revolts around the country. It might resolve a puzzle. David Figlio (1997) concluded that most property-tax revolts have damaged school quality. This seems monstrous in a nation that has always put so much stock in education. Have modern voters gone mad? Perhaps not. Maybe they are rationally responding to the alienation of local property taxes from school quality that is the chief legacy of *Serrano*. 
5-18 Conclusion: Causation and the Median Voter

The homevoter hypothesis offers an explanation for one of the most important subnational fiscal events of the twentieth century, Proposition 13. The Serrano decision caused Proposition 13 in the following sense. Without the Serrano II decision, which disconnected local property taxes from school spending, the property tax revolt would not have gotten any more steam than it had in 1968 or 1972, and the state legislature would have had a much easier time heading it off.

Trying to establish a single cause for a major event is an unfamiliar enterprise for an economist. My tribe of social scientists is most comfortable with many observations of small events, to which we can apply our refined methods of statistical analysis. Even historians have gotten less comfortable with stories of causation. (“Slavery could have had something to do with the Civil War, but we don’t have enough observations to do a cliometric study.”) I have been drawn into this enterprise because Proposition 13 is so often thrown up as evidence against all of the foundations of the homevoter hypothesis. Without Serrano as a first cause, Proposition 13 indeed does stand as an enduring contradiction of the median voter and the relative efficiency of property-tax financing of education. In the next chapter, I will explore what we know about the educational effects of the outcome desired by the Serrano litigants and their legion of successors in other states.