THE IMPACT OF SAN ANTONIO INDEPENDENT SCHOOL DISTRICT V. RODRIGUEZ UPON THE STATE AND FEDERAL COURTS

THESIS

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This investigation is concerned with determining the impact of the United States Supreme Court's *Rodriguez* decision upon the state and federal courts. The first chapter discusses the background behind the 1973 decision and outlines the basic issues. The second chapter examines the decision's impact upon opinions in the federal courts and concludes that *Rodriguez* has become a significant precedent.

While school finance reform is dormant in the federal tribunals as a result of the decision, the third chapter concludes that reform is still possible in the state courts. However, there has been a deceleration in the rate of cases overturning school funding statutes since 1973. The final chapter examines some of the state legislatures and concludes that statutory reform is not necessarily linked to action in the courts.
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CHAPTER I

INTRODUCTION

On May 12, 1969, a chain of events began in United States District Court, San Antonio, Texas, which was to have broad ramifications for school children and parents all over the United States. On that date, action began in the federal courts to challenge the method by which the State of Texas collected and distributed tax dollars to the local school districts. Demetrio P. Rodriguez and other Mexican-Americans living in San Antonio claimed that the funding methods used by Texas discriminated against those who lived in property-poor areas and violated the United States Constitution by denying them equal protection of the laws. The action initiated by Rodriguez culminated in San Antonio Independent School District v. Rodriguez,¹ a landmark decision by the United States Supreme Court, almost four years after the original complaint in San Antonio.


Rodriguez: Background

Simply stated, the Rodriguez decision upheld the Constitutionality of the Texas public school financing system. The system had been challenged due to the inequities in the
allocation of funds between rich and poor school districts. The original class action suit was brought on behalf of school children residing in those districts with a low property tax base, and directly attacked the reliance of Texas upon the property tax for the financing of its school system. The suit was initiated by those Mexican-American parents whose children attended the schools of the Edgewood Independent School District in San Antonio.² The defendants in the first step of the adjudication were various State and local education officials and the Attorney General of Texas.

In Federal District Court No. 68-175 in San Antonio, the plaintiffs were successful in convincing that court to hold that the current system of financing public education in Texas discriminates on the basis of wealth by allowing citizens of wealthy districts to provide a higher quality education for their children while even sometimes paying lower taxes. The three-judge court felt that the plaintiffs were being denied equal protection of the laws under the United States Constitution and also their full benefits under the Education Code of the Texas Constitution.³ In answer to the suggestion that judges should stay out of such matters, the court cited similar cases throughout the country and added, "While defendants are correct in their suggestion that this Court cannot act as a

³Ibid.
'super legislature,' the judiciary can always determine that an act of the legislature is violative of the Constitution." Accordingly, the District Court held the Texas system unconstitutional and gave the Legislature two years to restructure its financing and taxing system to insure that school funding was not made a function of wealth, other than the wealth of the State as a whole.

The State of Texas appealed the decision to the Supreme Court and obtained a reversal shortly after a year later. But before the Supreme Court's reasoning can be explained, it must be understood that litigation challenging state systems of financing education was not unique to Texas. Perhaps the first substantive victory for those who wanted to reform the inequities of state systems occurred in California, almost two years before Rodriguez was reported by the Supreme Court. In Serrano v. Priest, the California Supreme Court advanced what has come to be known as the principle of "fiscal neutrality," which holds that the quality of a child's education should not be a "function of the wealth of parents and neighbors." In following that principle, the court determined that the California system discriminated against the poor and was, therefore, unconstitutional. This new theory, first advanced by three of the leading scholars in the field

5 Ibid., p. 286.  
7 Ibid., p. 1244.
of school finance reform, became the new standard in the legal attack on such systems in many other states.

The path of school finance litigation in the state and federal courts prior to and after Rodriguez will be discussed in more detail later, but within eighteen months after the Serrano decision, many similar cases were adjudicated all over the country. Among these court actions was the Texas case in San Antonio, which also used the "fiscal neutrality" principle as originally set forth in Serrano. That California case was clearly the beginning of the flood-tide of school finance litigation which culminated in the Supreme Court's landmark reversal of the trend in 1973. Serrano had been hailed as "potentially . . . the most far-reaching court ruling on schooling since Brown v. Board of Education in 1954. . . ."10

The Texas case reached the Supreme Court for argument on October 12, 1972. According to Mark G. Yudof and Daniel C.


10Time, September 13, 1971, p. 47.
Morgan, lawyers who were both involved in the litigation and present at the oral argument, the State of Texas had not been prepared for the lower court decision which shook its entire educational and political system.\textsuperscript{11} By the time the case found its way to the Supreme Court, however, Texas had secured top lawyers and was well prepared. "The basic strategy of the State was to demonstrate the lack of constitutional support for the proposition that education was a fundamental interest and poverty a suspect classification" of people.\textsuperscript{12} Another point of contention which was advanced concerned whether the poor were "uniquely injured" by the system. The State felt that discrimination against poor districts was not the same as discrimination against poor people.\textsuperscript{13} Yudof and Morgan's account of the proceedings on that day is worth repeating, because it delineates the issues as presented to the Court.

The Court responded to the oral arguments with a great number of questions. Chief Justice Burger appeared concerned with the difficulties in limiting the fiscal neutrality doctrine to education, fearing that the Court would become enmeshed with a whole array of services. Justice Rehnquist expanded on this point by asking how education could be distinguished from welfare, declared in Dandridge \textit{v.} Williams not to be constitutionally fundamental. If the State had no constitutional obligation to feed and clothe children in accordance with their needs or with some standard of equality, how could it be held so responsible with respect to their education?


\textsuperscript{12}\textit{Ibid.}, p. 400.

\textsuperscript{13}\textit{Ibid.}
Justice Blackmun challenged the asserted correlation between district poverty and personal poverty, citing examples in his own state of Minnesota of poor children living in affluent districts with great mineral deposits.

Justices Brennan and White seemed quite concerned with the constitutionality of district power equalizing under the standard proposed by the plaintiffs. If each school district were guaranteed the same revenues at each level of taxation, districts which placed a high value on education might choose to spend more money on public schools than other districts. Why should the preferences of the adult population of a district be a more legitimate criterion for distributing education funds than its wealth?

Justice Douglas asked only one question, relating to the impact of the Texas plan on Mexican-Americans. Justices Stewart and Powell, widely perceived as the decisive votes, largely remained silent. Justice Marshall was absent for the oral argument, but reserved the right to participate in the final decision.

Whatever the significance of the oral argument cited above, the best way to begin to understand Rodriguez is to examine the written opinion as reported by the Court. The "fiscal neutrality" principle, as borrowed from Serrano and applied by the District Court in Texas was not affirmed by the final Rodriguez decision. The Supreme Court voted five to four to uphold the Texas system and reject the Serrano rationale, expressing its disapproval of the District Court's attempts to hold wealth as a suspect classification of people. Cases which had used the wealth classification to strike down financing systems were cited as too "simplistic" in Justice

14 Ibid., p. 401.
Powell's majority opinion. The lower court had, according to the majority, ignored two important details. First, there was the difficulty of determining whom to include in the classification of people suffering from the discrimination. In other words the "poor" had not been properly identified. Second, if there was discrimination to be protected against by the Fourteenth Amendment, the nature and extent of that discrimination must be determined, and the lower court had failed to do so.

The Court suggested three ways that the Texas system could legally be construed as being discriminatory: If it discriminated against (1) indigents, (2) those who were relatively poorer than others, or (3) those who reside in school districts with low property value. Since there was no evidence presented which proved that the poorest people lived in the poorest districts and since the Constitution did not demand that all people have equal advantages in all matters, the claim of discrimination must be rejected. In doing so, it refused to apply what has been called the "strict scrutiny" test, which would have required the state to justify any discrimination which affects constitutionally fundamental interests, by showing a "compelling state interest" which makes that discrimination necessary. Instead, the Court relied

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16 Ibid.  
17 Ibid., pp. 19-20.  
18 Ibid., p. 24
upon the "traditional standard of review, which requires only that the State's system be shown to bear some rational relationship to legitimate state purposes."19

Evidently, there were several reasons why the Court chose not to intrude into this particular area of state business. The Court's lack of expertise, the paucity of alternatives presented to the Court, and the complexities of the federal system itself, are thought by some scholars to be among the factors which prevented judicial intervention.20 However, the economic issues involved were considered and studied by the Court, and the majority and dissenting opinions contained abundant statistical data and the Texas system itself was described in great detail.

The method of financing the public schools in Texas is similar in many respects to that of other states. It relies heavily upon ad valorem taxes based upon the assessed wealth of property within each school district.21 This method of support for the local districts results in wide differences between the amount of money spent per pupil in the wealthy districts and the poorer districts. Criticism of such systems

19Ibid., p. 40.


began shortly after World War II, with the new emphasis on the importance of public education.

Variations in property tax base per pupil are immense. Ratios of four or five to one among areas in the amount of property per pupil are not at all unusual. The local property tax, therefore, makes it four or five times easier for some districts to raise a given amount of money from their own resources than it is for others.22

It was such criticism which led to the litigation culminating in Rodriguez. The Court recognized the inequities in the Texas method, and even discussed in some detail the contrast between the poorest district in San Antonio (Edgewood), and the most affluent district (Alamo Heights).23 It even was revealed that Texas had admitted in its argument that "its historically rooted dual system of financing education could not withstand the strict judicial scrutiny"24 which the Court had utilized in reviewing some other statutes. At one point, Justice Powell expressed obvious distaste for the extensive use of the property tax to finance public schools. "We hardly need add that this Court's action today is not to be viewed as placing its judicial imprimatur on the status quo. The need is apparent for reform in tax systems which may well have relied too long . . . on the tax."25

24Ibid., p. 16.  
25Ibid., p. 58.
In spite of such misgivings or reluctance to give judicial blessing to the Texas system, that, in effect was at least the immediate outcome of Rodriguez. It was decided that, while it may be unfair, it is not unconstitutional, and therefore is the problem of the state legislatures and not the courts. This was, more or less, the sentiment expressed not only in the majority opinion but in Justice Stewart's concurring opinion as well. Hence, regardless of the inequities, the path of judicial intervention was clearly avoided and those who sought relief through federal litigation suffered a serious setback. "The Supreme Court majority simply accepted the unadorned assertion that the state had provided an adequate education."27

The Rodriguez case contains three dissenting opinions which demonstrate the complexity and controversial nature of the decision. Furthermore, these dissents have been cited often by lower federal courts and, therefore, may have had some impact of their own.28 Justice Marshall's dissent is no

26 Ibid., p. 59, "The method of financing public schools in Texas, as in almost every other state, has resulted in a system of public education that can fairly be described as chaotic and unjust. It does not follow, however, and I cannot find, that this system violates the Constitution of the United States."


doubt the most lucid, and the most comprehensive, but the opinions of Justices Brennan and White (Justice Douglas wrote no opinion but joined in the dissent) are worth noting. Justice Brennan took the majority to task primarily for its assertion that rights are only "fundamental" and therefore protected by the Equal Protection Clause if they are explicitly or implicitly part of the Constitution. He felt that public education was part of the right to participate in the electoral process and also the First Amendment right to free speech and association. This had been part of the contention made by the District Court in San Antonio and many other school finance cases based upon the United States Constitution. The argument holds that one's basic rights (speech, press, vote, etc.) are hampered by the inadequate education provided by the poorer schools.

Justice White was much more concerned in his dissent about the statistical complexities of the Texas system. The inequities between the Edgewood and Alamo Heights districts were used as a focal point in maintaining that local control, while important, does not allow the same freedom to the poor districts that it does to the more affluent. In other words, if the purpose of local control of education is to allow more


opportunity for flexibility and freedom, such opportunity is obviously not available to the poorer districts.

Perhaps the majority believes that the major disparity in revenues provided and permitted by the Texas system is inconsequential. I cannot agree, however, that the difference in the magnitude appearing in this case can sensibly be ignored, to provide opportunities to exceed the minimum state educational expenditures.32

As previously mentioned, the dissent by Justice Marshall was by far the most comprehensive, and the most often quoted. It attacked the reasoning of the majority on all counts—local control, fundamental rights, and equal protection, and used both statistical data and logical criticism. The Justice seemed especially upset about the question of whether it makes any difference in the education of a child if there are fewer dollars spent in that child's school district. The "cost-quality" controversy has attracted a great deal of attention in recent years,33 and was mentioned by the majority to support its position. Justice Marshall commented, however, "We sit . . . not to resolve disputes over educational theory but to enforce our Constitution."34

Perhaps more significant was the portion of the dissent dealing with equal protection. Justice Marshall was critical of the majority's arbitrary interpretation of the appropriate

32 Ibid., p. 69.

33 See, e.g., D. P. Moynihan, "Equalizing Education: in Whose Benefit?" Public Interest XXIX (Fall, 1972), 69-89.

standard of review, and stated that such a position was contradictory to previous decisions. Cases were cited to show other human activities which had been afforded protection by the Court through the years, and he contended that education should be included among these other rights which are not mentioned in the Constitution.

Thus, it cannot be denied that interests such as procreation, the . . . franchise, and access to criminal appellate processes are not fully guaranteed to the citizen by our Constitution. But these interests have nonetheless been afforded special judicial consideration in the face of discrimination because they are, to some extent, interrelated with Constitutional guarantees.

Hence the majority should have (in Justice Marshall's opinion) regarded education to be just as important constitutionally as the other interests and demanded a more equitable system.

The Study of Impact

In order to understand the significance of a Supreme Court decision such as Rodriguez, it must be considered within the context of its impact upon those who have been affected by it. Because the case dealt with public school finance, it has concerned the students, parents, teachers and administrators within the educational system as well as the taxpayers and politicians who provide the necessary financial and governmental inputs. Because it also involves specifically the property tax system which is used to finance a large part of education in the United States, it concerns tax lawyers,
property owners, and local governments in addition to the school districts which rely heavily upon that tax. Naturally, because the case dealt with Constitutional questions involving the Fourteenth Amendment, federalism, and "fundamental" rights, it has concerned the legal profession. And finally, because it involves public policy outputs and judicial behavior, the discipline of political science also has an interest.

Impact studies have been common and varied over the past twenty years, but still appear to have only begun to explore the possibilities for research. In the past, Supreme Court decisions had often been regarded by many as commands which are obeyed in a perfunctory manner by the lower federal and state judges, other public officials, and the community as a whole. Political scientists have begun, however, to examine this process systematically, and have found that the policy process often begins rather than ends with the announcement of a decision by the Supreme Court. As Glendon Schubert points out, the Court itself must also be concerned with consequences and the anticipation of public reaction. "The Supreme Court's most difficult function . . . is to attempt to legitimize its own acts; this is why the robes and ritual, the formality of oral argument and opinion reading, the secrecy of discussion, and, especially, the writing and content of opinions are so important in the Court's decision-making process."37

Whatever the reasons for the new attention which has been directed by political scientists toward the study of impact, it is clear that such investigations tend to emphasize civil liberties decisions. There is also a heavy abundance of studies dealing with school desegregation. This is worth noting because these types of decisions have attracted the most attention and have been the most controversial. It would seem likely that the impact of such court rulings would be less difficult to measure than many others, especially if one is attempting to locate patterns of non-compliance or evasion. It is also significant to note that impact studies have often involved those issues which deal with "symbolic" values, such as school prayer. These types of controversial decisions made by the Supreme Court, especially during the Warren Court years in the 1950's and 1960's, ran parallel with the research done which attempted to measure the consequences of those decisions. "Their (the researchers) concern with noncompliance led to the study of areas where the phenomenon seemed greatest." It would be impossible to outline here all the impact studies which have been conducted in the last two decades.

38See Stephen L. Wasby, The Impact of the United States Supreme Court: Some Perspectives, (Homewood, 1970), Ch. 2.


Perhaps it would be more fitting to further explore some of the general areas to which such research has been dedicated. One of the few books by a single author dealing specifically with impact is by Stephen L. Wasby. He has surveyed the literature and grouped it into "issue-areas", such as economic regulation, reapportionment, church-state relations, obscenity, criminal procedure, and school desegregation. There is another method used by Wasby and others, most notably Theodore L. Becker in a collection of readings. This approach examines impact upon various political arenas, whether it be Congress, the lower courts, or the local communities.

One of the most popular areas for researchers has been criminal procedure, which also appears to be one of the most difficult. Warren Court cases dealing with these matters were abundant and students of politics and law were quick to attempt to measure their effects. The inherent problem with such research lies in the obvious difficulty of information-gathering.

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41 See note 38.
42 Ibid., Ch. 4, 5.
The goal of studies which attempt to measure the impact of a single decision upon actual police behavior, for example, is to quantify the actual effects at the community level, where it is no doubt most important. Supreme Court decisions which profess to protect the rights of individuals in criminal matters are now studied not only for their legal reasoning, but for their practical effect as well, in spite of the methodological problems which may exist.

The only "issue-area" which could be linked at all to a case such as Rodriguez and which has received a great deal of attention by political scientists has been school desegregation. Perhaps the classic study of the impact of Brown v. Board in 1954 upon the lower federal courts was a book by Jack Peltason, suitably titled Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation. His examination is a good example of the common discovery that lower federal court judges often exercise a great deal of discretion in interpreting and implementing Supreme Court decisions. It should be emphasized that practically all impact studies have attempted to measure noncompliance with decisions which have upset the status quo. School desegregation studies are no exception; they differ only in methodology and the particular political or social

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arena under investigation. The task in measuring the effects of Rodriguez is different in nature, however, due to its affirmation of the practice in question, rather than a judicial negation of the established order.

The other common method used in impact literature is to examine a particular political arena and its reaction to a decision by the Supreme Court. These studies also have emphasized the reaction to Warren Court decisions and often concentrate on the extent of noncompliance. Perhaps the most popular arenas investigated have been the lower federal and state courts. Also plentiful are impact studies emphasizing the Supreme Court's effect upon Congress. Other arenas are less often analyzed: this may be due to the relative availability of outputs by the courts, Congress, and the state legislatures when compared with the obvious problems of getting information about local communities. To survey the content of all the


47See, e.g. Walter F. Murphy, "Lower Court Checks on Supreme Court Power," American Political Science Review LIII, (December, 1959), 1017-1031.

impact studies themselves would be too ambitious a project for this study, but the literature on the Supreme Court's impact has been prevalent in both law and political science books and periodicals. In recent years, there have even been numerous scholarly examinations of court impact in other nations.49

Measuring the Impact of Rodriguez

Since the Rodriguez decision upheld the Constitutionality of the school financing system of the State of Texas, its impact would appear to be impossible to quantify in the same manner as other decisions which have been analyzed. Clearly, the State was not going to defy a court order which gave its blessing to the practice which had been challenged. Therefore, a study of the frequency or extent of direct noncompliance is not germane to a decision of this nature, as it had been in measuring, say, a Warren Court edict which overturned an established tradition. Hence, a different methodology is needed, which can determine the trends in both federal and state courts since Rodriguez was announced in March of 1973.

In the federal courts, the approach will be one which has been used and recommended by some lawyers and political scientists. The opinions as reported in the United States Courts of Appeal and the United States District Courts can be searched to find references, discussion and citations

49 For a good sample of foreign impact studies see the entire edition of Notre Dame Lawyer IL (June, 1974).
concerning *Rodriguez* for a reasonable period of time following the decision. As Stephen Wasby comments, one method of measuring impact "might be the frequency with which a court decision is mentioned." Since *Rodriguez* was a case not only involving school finance, but also the interpretation of the Equal Protection Clause of the Fourteenth Amendment, it is mentioned frequently in the opinions of the lower federal courts. It must be emphasized that this study is not attempting to measure the motivations of the individual judges or their voting patterns in other cases. It is admitted that a mere citation or discussion of *Rodriguez* as precedent by a judge does not mean that the case determined the outcome of another case. Thus, more accurately, the attempt here will be to measure the effect the Supreme Court's reasoning has had as expressed in the opinions of the federal judiciary. Furthermore, only those opinions which adequately discuss, rather than merely cite, *Rodriguez* will be analyzed. The time period for this investigation will be approximately the two years immediately following the announcement of the Supreme Court's decision in 1973. This should be an adequate space of time to observe any trends in the use of *Rodriguez* as precedent in the federal courts.

In the state courts, an obvious way to measure the effects of the Supreme Court's decision is to shift the emphasis to

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cases dealing specifically with school finance. As Justice Marshall in his dissenting opinion points out, "Of course, nothing in the Court's opinion today should inhibit further review of state educational funding schemes under state constitutional provisions." 51 Rodriguez, of course, was based upon interpretation of the United States Constitution and did not overturn any state court rulings based on their own statutory or constitutional provisions. Nevertheless, many state officials look to the Supreme Court for guidelines, making it necessary to examine the school finance litigation in the states before and since Rodriguez to determine if the Supreme Court's decision had the effect of retarding or accelerating successful challenges to school financing systems which display the same type of inequities found in San Antonio. The political and social environment varies greatly among the states, not to mention their constitutions and statutes. These factors no doubt influence judicial output as much or more than one Supreme Court decision. But at least it can be determined how school finance reform in the state courts has changed, if at all, since Rodriguez.

CHAPTER II

RODRIGUEZ AND THE FEDERAL COURT SYSTEM

In the last twenty years, political scientists have begun to concentrate heavily on the impact that particular Supreme Court decisions have had upon the lower federal courts. These studies have greatly altered our conception of the federal judiciary. It is no longer assumed, for instance, that the hierarchy automatically follows the decisions which emanate from above.¹ "In point of fact, present day observers . . . are now convinced that many factors must converge before rules, orders, edicts, fiats, commands, and the like are obeyed with strict or even substantially close adherence to the manifest intent of the man on top." ² If this is true, then the impact of Rodriguez, or any other case for that matter, must be analyzed over a substantial period of time, by carefully observing subsequent decisions and opinions in the Courts of Appeal and the District Courts as well. The litigation which follows a decision does not necessarily pursue only one tangent, as Jack Peltason has observed:


Defeated by the Supreme Court, the adversely affected interests can regain victory in the lower courts. . . . It is . . . (the) trial judges who have to interpret and apply the Supreme Court decisions, and they can do so in order to minimize the significance of their superior's orders.3

There is no doubt about the Constitutional subordinance of the lower federal courts,4 nor of the historical importance of the United States Supreme Court in its role as "court of last resort." Judges in the lower federal courts are expected to follow precedents.5 What if the decision issued by the Supreme Court is unclear on certain important points of law? Court opinions are often ambiguous, especially those of recent decades as social and governmental problems have reached new levels of complexity. However, even if an individual decision itself is clear, lower courts are often trapped into situations which require much speculation and anticipation of the future. " . . . there is no rule to tell a lower-court judge which strategy to use"6 to avoid reversal or predict future trends which will be set from above.

There has been a pattern to most of the popular "impact" studies made thus far. They have tended to deal with those

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4U. S. Constitution, Art. III.

5Wasby, The Impact of the United States Supreme Court, p. 188.

6Ibid.
decisions which have altered the status quo; naturally, "impact" is more conducive to measurement when the anticipated change is drastic or has far reaching implications. Whether the studies have dealt with rulings on race relations, church-state matters, or criminal procedure, the objective has frequently been to measure "compliance" with controversial, often inconoclastic Supreme Court decisions. With the end of the Warren Court, however, these types of decisions have been less frequent. Some scholars see Rodriguez as an example of such restraint. "Rodriguez may well portend a general judicial retreat from broad equal protection decisions." 

Federal courts have less latitude than the state courts in the application and interpretation of Supreme Court decisions. It has often been suggested that federal judges are more "insulated" from political pressure due to their life tenure, while state judges are, by the same standard, less susceptible to federal influence because their jobs


11Walter P. Murphy, "Lower Court Checks on Supreme Court Power," in Becker, The Impact of Supreme Court Decisions, p. 66.
depend upon either the voters in their state, or other state politicians. However, "Under its power as supervisor of the administration of federal justice, the Supreme Court can set more exacting standards for lower courts of the United States than for state tribunals." The federal courts, unlike their state counterparts, have all but completely stopped accepting litigation dealing with the constitutionality of school finance systems since the Rodriguez decision in 1973. However, the decision's impact upon other types of litigation can be investigated and measured.

The Supreme Court and Equal Protection

Since Rodriguez was a case involving the Equal Protection Clause of the Fourteenth Amendment, it is worthwhile to briefly mention some of the ways that clause has been interpreted by the Supreme Court prior to 1973. The history of equal protection is often thought mainly to be told in the landmark decisions of the Warren Court years. But some application of the Fourteenth Amendment did take place before the arrival of Chief Justice Warren. In the area of higher education, for instance, there were some important decisions made before the turbulent cases of the 1950's, most of them involving racial matters. Nevertheless, these efforts seem modest when

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12Ibid., p. 69.
13Ibid.
compared to the Warren Court's promotion of equal protection, not only in desegregation litigation, but other extensions of equality as well. In the 1950's and 1960's, indigent criminal suspects,\textsuperscript{15} illegitimate children,\textsuperscript{16} the disfranchised,\textsuperscript{17} and applicants for state welfare\textsuperscript{18} are but a few of the categories of people in addition to Blacks, who were brought under the umbrella of the Fourteenth Amendment by the Supreme Court.\textsuperscript{19}

The Court has developed standards in reviewing cases which allege a denial of equal protection. Most of the time the Court employs the "traditional standard," which seeks to determine whether there is a rational relationship between the statute in question and its purpose.\textsuperscript{20} The Court allows a presumption of constitutionality to the legislation, placing the burden of proof on those who are challenging the statute. However, when the statute employs a classification of people which is inherently "suspect" or affects a "fundamental interest," the court has used a different standard for review. This "strict judicial scrutiny" test denies the ordinary presumption of constitutionality and the burden of justification

\textsuperscript{15}Griffin v. Illinois, 351 U. S. 12 (1956).
\textsuperscript{18}Shapiro v. Thompson, 394 U. S. 618 (1969).
is placed upon the state to show a "compelling state interest" which was made necessary by the classification.\textsuperscript{21} Several classifications are now recognized as being suspect, such as race,\textsuperscript{22} nationality,\textsuperscript{23} and alienage,\textsuperscript{24} and the Court has consistently ruled that legislation based on these classifications violates the Fourteenth Amendment.

Another classification which has met with disfavor has been the wealth of the individual. The specific categories which indicate this classification involve either the indigency of the affected person,\textsuperscript{25} or the inability to pay a fee.\textsuperscript{26} These decisions can be interpreted to mean different things. They tend to be unclear as to whether wealth per se is a suspect classification. Wealth is much more difficult to identify as a category due to its relativity and low level of visibility. The other classifications mentioned above are

\begin{itemize}
\item \textsuperscript{21}Ibid., pp. 1087-1088.
\item \textsuperscript{22}Loving \textit{v.} Virginia, 388 U. S. 1 (1967); MacLaughlin \textit{v.} Florida, 379 U. S. 184 (1964); \textit{Brown v. Board}, 347 U. S. 483 (1954).
\item \textsuperscript{23}Oyama \textit{v.} California, 332 U. S. 633 (1948); Korematsu \textit{v.} United States, 323 U. S. 214 (1944); Hirabayashi \textit{v.} United States, 320 U. S. 81 (1943). In Korematsu and Hirabayashi, the Court ruled in favor of the government because it was able to demonstrate a compelling state interest which justified the classification.
\item \textsuperscript{24}Graham \textit{v.} Richardson, 403 U. S. 365 (1971).
\item \textsuperscript{25}Douglas \textit{v.} California, 372 U. S. 353 (1903); Griffin \textit{v.} Illinois, 351 U. S. 12 (1956).
\item \textsuperscript{26}Bullock \textit{v.} Carter, 405 U. S. 134 (1972); Harper \textit{v.} Virginia Board of Elections, 383 U. S. 663 (1966).
\end{itemize}
easily identifiable because they are much more tangible and less illusive than "wealth". There is also the difficulty raised by Rodriguez concerning whether one can quantify the wealth of an individual, such as an indigent. There is little doubt, at least in the minds of many observers, that the ambiguity of the wealth classification precludes it from being analogous to the other categories.27

Other statutes which have consistently been declared unconstitutional have been those which have been determined to infringe upon an individual's fundamental rights or interests. "Fundamental-interests" have included voting,28 procreation,29 and interstate travel,30 among other things. However, the Court has never advanced a formula whereby the fundamental interests can be determined and therefore protected under the Fourteenth Amendment. This difficulty is especially acute when one considers the rather odd position that public education, for instance, holds in American society, and in the history of the Supreme Court.31 It is regarded as being extremely


31See Rodriguez, 411 U. S. 1, pp. 29-31 (Justice Powell's Opinion). "Nothing this Court holds today in any way detracts from our historic dedication to public education."
important by virtually all courts and judges, but it is not explicitly guaranteed by the Constitution. It is, therefore, a matter which has traditionally been left up to the states and localities. Due to their precarious position in the federal system, it becomes difficult to legally distinguish between the public schools and other "local functions," such as sewage treatment or utility regulation. Unless another classification or interest becomes involved, such as race in the Brown v. Board decision, for example, the federal courts have been precluded from much intervention.

Rodriguez, of course, signaled the end of relief by the federal courts under the Fourteenth Amendment from inequitable school financing systems in the states, but in addition, it also has had considerable impact upon subsequent interpretation. Certain elements in the majority opinion have lent themselves to supporting a variety of other claims. For example, the Court had criticized the way the Federal District Court in Texas had interpreted wealth to be a suspect classification. Justice Powell felt that the "poor" in cases such as this was not an identifiable category. "This case comes to us with no definitive description of the classifying facts or delineation of the disfavored class."32 Hence, there was a difference between a definite category of people, such as

32Ibid., p. 19.
indigents who could not afford a lawyer, and the "poor" school children in San Antonio.

The Court maintained that those who had claimed and proved discrimination in those precedents which were used by the District Court were different than this case.

The individuals or groups of individuals who constituted the class discriminated against in our prior cases shared two distinguishing characteristics: because of their impecunity, they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit. 33

The Court continued by attacking the "Serrano rationale" (that inequities in the school financing system discriminate against the poor). A Connecticut study was cited 34 to show that the "poor" were actually located in those school districts with the greatest taxable wealth, i.e. industrial areas. Furthermore, since the Constitution does not require absolute equality of opportunity, 35 there could be little doubt that there had been no violation of the Equal Protection Clause.

33 Ibid., p. 20. The Court cited Griffin (note 25) which ruled as unconstitutional state laws which denied criminal defendants a transcript of proceedings during the appellate process, and Douglas (note 25), which established an indigent defendant's right to a court-appointed lawyer on direct appeal. These cases, the Court contended, do not apply because they protected only those who were totally unable to pay and did not deal with the problem of relative wealth, i.e. the fact that the quality of counsel will vary with the ability to pay (pp. 20-22).


In the original suit the district court had used the suspect classifications argument in declaring the Texas system to be unconstitutional. But it had also argued that education was a fundamental right, that the full protection of that right had been denied to the children in San Antonio, and that such an infringement also violated the Fourteenth Amendment. Justice Powell dealt with this question after first declaring that education was indeed significant in our society. However,

Education, of course is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying that is implicitly so protected. As we have said, the undisputed importance of education will not alone cause this court to depart from the usual standard for reviewing a State's social and economic legislation.

Justice Powell also quickly dispensed with the argument that the lack of an adequate education deprived one of First Amendment rights to free speech. He also found little merit to the contention that the right to vote intelligently was also damaged by the Texas system of financing the public schools. It was not denied that a voter could not make an adequate decision unless he was well-informed and that schooling was an integral part of this process. However, there was a difference in the Court's view, between having the right to vote, and having the capacity to use that vote effectively. Pressing the logic of the education-voting connection a step further, Justice Powell stated that

36 See Note 31.  
37 Rodriguez, p. 35.
Empirical examination might well buttress an assumption that the ill-fed, ill-clothed, and ill-housed are among the most ineffective participants in the political process and that they derive the least enjoyment from the benefits of the First Amendment.38

But one is not entitled to such necessities as a matter of law, regardless of their importance. And education is analogous to these and other non-protected needs, in the view of the Supreme Court.

One other aspect of the opinion must be mentioned because of its profound significance in the way that the federal courts used Rodriguez in subsequent decisions. For lack of a better term, this factor can be called the "local control-judicial restraint" element. While local control and judicial restraint can often be separate and distinct notions, they are often found together, not only in the Rodriguez opinion, but also in decisions of the lower federal courts. And so these two elements are combined for the purposes of this study, not only for convenience, but also as a further example of the much-heralded "retreat" from the activism and liberalism of the Warren Court.

37Ibid., p. 37. Here the Court cited Dandridge v. Williams, 397 U.S. 471 (1970), and Lindsey v. Normet, 405 U.S. 56 (1972) as precedents in determining that there was no fundamental right to food or shelter. The Court felt that to decide that education was a protected right would undermine the authority of these two decisions.
Needless to say, the Supreme Court in *Rodriguez* refrained from interference into the affairs of the State of Texas. Several reasons were given for this attitude, including a lack of expertise in the matter of educational policy, "another area in which this Court's lack of specialized knowledge and experience counsels against premature interference with the informed judgements made at the state and local levels." Many scholars were cited to show that "On the most basic questions in this area the scholars and educational experts are divided." Such reluctance has been interpreted by Mark G. Yudof, one of the many lawyers who often comment on equal protection and school financing, to be a symptom of a retreat from the empiricism of the 1960's.

In a sense, the Supreme Court is a victim of the new age of empiricism. When *Brown* was decided, the court could reassure itself that its wisdom was consistent with both a constitutional morality and the tid-bits of scholarly research then available. When *Rodriguez* arose, the simple truths of prior days had yielded to a morass of conflicting studies and reports impervious to sound generalizations. As a result, the social sciences no longer played a supportive role; instead, they led to a decisional paralysis in which the issues seemed so complex and unclear that the Court saw no choice but to reaffirm the status quo.

There were several reasons whether stated or implicit in the Court's opinion, for not intruding into the domain of the San Antonio schools or the State of Texas. One reason is the

lack of expertise already mentioned, along with the lack of clear alternatives to the present school financing system. Also, Justice Powell clearly felt that the issue of federalism is inherent in all equal protection cases.\textsuperscript{42} Obviously, the Court opted for the more conservative view of federalism, which demands that the courts stay out of many of the affairs of state and local government.

The lower federal courts have taken \textit{Rodriguez} at face value. According to the National Education Association, the \textit{Rodriguez} decision ended twenty-seven pending federal suits, but did not affect twenty-five which were then pending in the state courts.\textsuperscript{43} Clearly, from an inspection of the federal courts from 1973 to 1975, if there is to be relief in the area of property tax or school financing, it must come from the state tribunals, as many have suggested.\textsuperscript{44}

While it is true that the federal courts have refrained from much activity in the school finance-property tax area since \textit{Rodriguez}, there have been some exceptions. But even when the District Courts have been engaged in such litigation, the end result, as expected, has been rulings in favor of the

\textsuperscript{42}\textit{Rodriguez}, p. 44.


local or state statute in question. In the case of *LaFayette Steel Company v. City of Dearborn*, decided just three months after *Rodriguez* in a Federal District Court in Michigan, there was a direct challenge to that State's method of financing public schools. It was in many ways similar to *Rodriguez* (plaintiffs alleged violations of the Equal Protection Clause) except that the suit was initiated by property owners and not school children or parents. The plaintiffs claimed that they were required to pay taxes at a higher rate than others in districts with fewer children. The court, however, ruled in favor of the school district and the financing system.

The important element about the *LaFayette* case for this study is its extensive commentary on the meaning of the *Rodriguez* decision. As expected, the Supreme Court's decision, especially the opinion by Justice Powell, was frequently cited and discussed. *Rodriguez* was given as an example of the Supreme Court's recognition of the "merit of local control" and was used to counter the argument made by the plaintiffs that the case had not application to the Michigan system. "In assessing the interests involved in a suit dealing with property taxation for schools, *Rodriguez* is helpful."

Almost a year and a half later, another school finance case was adjudicated in Federal District Court in Chicago.

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47 Ibid.
In the case of Brown v. Board of Education of Chicago, the plaintiffs contended that the Board arbitrarily allocated the City's education money in a way which discriminated against non-Caucasians and poor children. The court held that the eight per-cent variance between white and non-white schools established a case of racial discrimination, but refused to grant an injunction due to the progress that had been made in "affirmative action" programs. Rodriguez was cited often in this case, especially to illustrate the difference between race and wealth as suspect classifications in the eyes of the Supreme Court. Classifications based on the former are clearly suspect while those based on the latter are entitled to a certain degree of autonomy. "The Supreme Court would have held the Texas system of school financing unconstitutional if it had involved a suspect classification." These two school finance cases in the lower federal courts were the closest examples that could be found in which the Rodriguez' case was discussed and which dealt directly with the constitutionality of school finance systems. Needless to say, there are other cases which could have been added, depending upon how inclusive the "school finance" or "property tax" categories are delineated. Nevertheless, it can safely be stated that school finance relief is dead in the federal courts. It appears as if potential litigants have avoided

49Ibid., p. 123, n. 7.
50Ibid.
the district courts and the emphasis in school finance reform has shifted to other arenas, most notably the state courts and legislatures.

Types and Areas of Impact

When one looks at the Rodriguez case in a much broader sense, i.e. as a significant decision dealing not only with school finance, but the Equal Protection Clause as well, the impact upon the federal courts has been profound. From 1973 to 1975, the case was cited by the Supreme Court, the Courts of Appeal, and the District Courts almost two hundred-fifty times. It must be remembered, however, that many times a case is cited in name only, with little clue as to how the decision is interpreted. Therefore, in the following analysis, only those opinions which not only mention Rodriguez, but also discuss it in some detail, will be examined. In this manner, interpretations can be categorized and trends can be studied to see exactly how the 1973 decision has been used as precedent in the federal courts.

Rodriguez has had an impact upon three general areas of jurisprudence. These areas or categories can be given the following labels: (1) suspect classifications, (2) education and fundamental rights, and (3) local control-judicial restraint. Obviously, these "issue areas" overlap to some extent,

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but, nevertheless, when the federal courts discuss Rodriguez, it is within the context of one of these areas. Justice Powell's opinion, already discussed above, also delineated the issues into these three elements.

Suspect Classifications

As might be expected, many of these cases deal with wealth as a suspect class, and most of them use Rodriguez to further the argument that such a statutory classification of people is not in violation of the Equal Protection Clause. Each level of the federal court system has used the doctrine of Rodriguez in the first two years after that decision was announced.

The Supreme Court handed down two decisions in 1974 which can illustrate the direction that "suspect classifications" has taken. In Memorial Hospital v. Maricopa County, Justice Marshall, who had written the caustic dissent in the Texas case, found himself in the majority. The Court held that an Arizona statute requiring a one year residency requirement to receive non-emergency medical care violated the Equal Protection Clause. Justice Marshall felt that no state could "fence out" indigents in this manner. Justice Douglas agreed in a separate opinion and his words are perhaps more important for this study. He spoke of Rodriguez in bitter terms, in spite of the fact that the case was not even


53 Ibid., p. 264.

54 Ibid., p. 271.
mentioned in the majority opinion. Oddly enough, the Maricopa
decision not only found Justices Marshall and Douglas in the
majority, but also in a case where the group of those included
in suspect classifications (non-resident indigents) was some-
what enlarged. This decision was not typical of the federal
decisions found in the years 1973-1975. More typical of the
Supreme Court decisions in this period was Ross v. Moffitt,55
where Rodriguez was cited by Justice Rehnquist in the majority
opinion, to the effect that it was quite permissible for the
state to give the affluent more advantages than others.56 The
Court held that the Fourteenth Amendment did not require North
Carolina to provide an indigent with counsel on his appeal to
the State Supreme Court.

The U. S. Courts of Appeal were looking ahead to the
possible impact of the Rodriguez case, months before that
decision was handed down. In the District of Columbia Circuit,
the court gave an anticipatory suggestion that the Supreme
Court's decision in the school finance case would have far-
reaching results. In "Americans United," Inc. v. Walters,57
the Circuit Judge said:

The Court's decision in that case should prove
most instructive in an area of concern before us--
'discrimination' of this type as within the 'wealth'

57477 F. 2d 1169 (1973). This case dealt with an "edu-
cational corporation" engaged in lobbying and propaganda, which
had received an unfavorable ruling by the IRS challenging its
tax-free status.
category, and the status of 'wealth' as giving rise
to the compelling interest test.58

There seems little doubt that the judge was quite correct.
However, there were some limits to the reach of Rodriguez
into the suspect classifications area. In Bridgeport Guard,
Inc. v. Members of the Bridgeport Civil Service Commission,59
the Second Circuit Court cited the case, but only to show its
limits. "We do not consider Rodriguez in point."60 It is
significant to note that the decision here involved race as
the suspect classification, which has been much more firmly
established than the wealth category.61

There is further evidence that a classification based
upon wealth has a much better chance of standing up to federal
court scrutiny than one based upon race. A group of farm
workers in one case had sought relief from a municipal ordi-
nance which excluded their housing project from the city's
water and sewage systems.62 They based their argument upon
racial discrimination and not wealth and received a favorable
verdict. Rodriguez was discussed to show that "... while
the law with regard ... to classifications based upon wealth

60Ibid., p. 1336. The Court here ruled in favor of Blacks
and Mexican-Americans who had alleged that a merit exam used
for promotions in the police department was discriminatory and
therefore unconstitutional.
61See Note 22.
62United Farm of Fla. H. Proj., Inc. v. City of Delray
Beach, 493 F. 2d 799.
may still be in flux, it cannot now be doubted that under our Constitution distinctions in treatment based on race are inherently suspect. 63 Another Appeals Court in New York City treated the issue in a similar manner, but with a different result. In a case involving alleged discrimination against the poor in housing regulations, the court held in favor of the city. Rodriguez was cited to show that "while race has long been recognized as a suspect classification, low-income status has not been so recognized."64

Two other cases in the Courts of Appeal illustrate the reluctance of federal judges to accept wealth by itself as a suspect classification. In the case of Berkelmen v. San Francisco Unified School District,65 there was a challenge to the district's policy of using achievement test scores as a standard for admittance to a college-prep high school. Those who challenged the regulation maintained that it discriminated against low-income families. The Ninth Circuit Court seemed to dismiss the wealth argument out-of-hand. Rodriguez was cited to maintain that "Low income persons have no greater status under the equal protection clause of the Fourteenth Amendment than members of racial minorities."66

Another case in the same Circuit quoted the entire formula

63 Ibid., p. 808.
66 Ibid., p. 1268.
for wealth discrimination as expressed by Justice Powell in the Rodriguez decision, and then added that the zoning ordinance in question (allowing only large lots in a certain area) was well within that formula.67 There are other cases involving suspect classifications in the Courts of Appeal, but the ones which discuss Rodriguez in any detail certainly interpret that case to command a greater amount of freedom for legislatures and city fathers from judicial scrutiny.

In the Federal District Courts, the number of cases which have discussed Rodriguez, even in the relatively narrow area of suspect classifications, is naturally greater than in the Courts of Appeal, and they tend to reflect the same pattern as that described in the higher federal courts. Three months after the Supreme Court's decision, a District Court in Connecticut cited Rodriguez to argue that a lobbying fee did not violate the Equal Protection Clause by discriminating against those who could not afford to pay.68 Oddly enough, the fee was ruled unconstitutional, not on equal protection grounds, but on the basis of the First Amendment. This could be an example of the further separation of the wealth classification from the protection of the Fourteenth Amendment.


Most of the cases which discussed Rodriguez and suspect classes had nothing to do with the public schools. This fact, in itself, testifies to its broader significance. The case of Cielicza v. Johnson is fairly typical. This was an action by a veteran who claimed that the only reason he could not prove disability at the time of his discharge was his financial condition, which kept him from getting the necessary medical evidence. The court held that the requiring of medical examinations was not a violation of the Constitution. "The wealth criterion per se has never been unequivocally condemned by the Court, and when squarely presented with the issue in . . . (Rodriguez) . . ., it declined to so hold." Some judges interpret the Supreme Court to mean that all claims of wealth discrimination are out of the question. In Wisconsin a District Court ruled against some welfare recipients who claimed that the method of distributing payments according to property values in the counties was discriminating against the poorest counties. "We find that whatever merit their (the plaintiff's) position has in logic and formerly may have had in law has been severely undercut . . . in . . . (Rodriguez)."

The method of jury selection of Los Angeles was the issue in another litigation involving wealth as a suspect class.


70Ibid., p. 456.


Rodriguez was treated in this case as the model precedent in determining when a category of people is suspect, in any type of court action involving alleged discrimination. The court held that the county practice was permissible, in spite of claims by the plaintiffs that the selection method diminished the chances of people in some areas from serving. "It would therefore appear that . . . a 'suspect' class . . . according to Rodriguez, is lacking."73 In Wright v. Mallory,74 Vermont's requirement of a security deposit for retaining a driver's license was challenged. The District Judge, with the help of the school finance precedent, was able to dismiss the arguments of the challengers quite easily. " . . . a classification by wealth, unlike one by race, lineage, and alienage will not trigger the 'strict scrutiny' of a statute by the courts."75 In Texas, there was a challenge to the method of jury selection which was similar to the Bradley case mentioned above, and with the same results.76 Here, the judge elaborated somewhat on his interpretation of the Supreme Court's instructions in Rodriguez.

The Supreme Court has recently pointed out . . . that not every classification based on wealth can automatically be assumed to be suspect. Rather, the Court cautions lower court judges to focus on the unique features of alleged discrimination.77

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73 Ibid., p. 32.  
75 Ibid., p. 1019.  
77 Ibid., p. 377.
The Federal District Courts continued the same pattern into 1975. There were many challenges to rules and statutes which were alleged to be discriminatory against a certain economic category of people, but the judges consistently ruled them permissible in the light of Rodriguez. In one case, poor college athletes were denied the option of making money during the off-season. In another, the constitutionality of a zoning ordinance was upheld, which had allegedly precluded low and moderate-income people from owning lots. Some of the cases which cited or discussed Rodriguez actually did have something to do with schools or education. In Husbands v. Commonwealth of Pennsylvania, a very complicated case, the plaintiffs had claimed that the county and state boards of education had created governmental units which violated the Fourteenth Amendment because they had different resources and tax rates. Rodriguez, of course, was the main bulwark against such reasoning. In another education-related matter, "emotionally handicapped" was deemed not to be a suspect classification by a district court in New Hampshire.

Making generalizations about the impact of Rodriguez upon suspect classifications cases is difficult because it is,
of course, impossible to tell if that decision actually caused any particular attitude to display itself in the federal courts. But a few things are quite obvious. Court challenges to discriminatory statutes or rules have little chance of favorable treatment, if they are based upon an economic category, such as the "poor". This can be seen not only in the court opinions, but also in the tendency of some plaintiffs to base their claims upon race or other more established suspect class. And *Rodriguez* is perhaps cited as often as any other Supreme Court decision in these matters, especially when a court upholds a statute or rule which treats one economic category of people differently from another.

**Education and Fundamental Rights**

The next "issue area" deals mainly with the status of public education within the legal terminology of rights. The *Rodriguez* decision has been used as precedent in the federal courts to defend the assumption that education is not a constitutionally protected "fundamental" right. The impact of that case upon such thinking has been quite extensive since 1973. The Courts of Appeals and the District Courts have often discussed *Rodriguez* in the context of such arguments.

As might be expected, the Circuit Courts were bombarded with a great amount of appellate action on behalf of those who felt they had been denied access to a protected right under the law. Many of the cases, predictably, dealt with
student suspensions. In Oklahoma, Pawnee Indian students brought a suit challenging hair code regulations in their school, and the Appeals Court subsequently ruled against the students and in favor of the regulation. In spite of the fact that the argument here involved First Amendment interpretation and not equal protection, the Circuit Judge was quick to quote Rodriguez, which was then only two months old. The case was repeatedly cited to argue that education was not a right and that all people did not have to be treated equally in all matters. Surprisingly, the decision has even been used in upholding eligibility rules for athletes at the college level.

One case in the Fifth Circuit put some verbal limitations on its interpretation of the Supreme Court's school finance case. The Court ruled in favor of some people challenging a school regulation. The schools had argued that since Rodriguez, it was settled that the right to a public education was not protected by the Constitution, and therefore, to expel students from school did not deprive them of a right. The court, however, rejected this argument.


84 St. Ann v. Palisi, 495 F. 2d 423 (1974). The case was a challenge to a New Orleans school regulation which allowed some children to be suspended because their mother struck an assistant school principal.

85 Ibid., p. 426.
This syllogism is, of course, irrelevant and erroneous and must be rejected . . . . The appellees are in error if they regard San Antonio as granting the states the power to arbitrarily deny individuals the right to a public education. Finding that education was not a right explicitly or implicitly protected by the Constitution was merely the Court's analysis of why education is not regarded as fundamental for purposes of 'strict scrutiny' under the equal protection clause.\footnote{86}

In spite of such variety in the way the Supreme Court has been interpreted, Rodriguez is mainly used to defend the status quo, as can be shown with further inspection of the court opinions and citations.

The federal courts have dealt with a variety of other human activities which some have regarded over the years to be "fundamental rights" besides education. And Rodriguez has been used to not only prevent education from being legally accepted as, for instance, the right to vote,\footnote{87} but also to prevent other rights from being added to the list of those protected by the Constitution. A good example is Goldstein \textit{v. City of Chicago},\footnote{88} where Rodriguez was used to argue that the right to public garbage collection is not fundamental. "Although he (Justice Powell) was speaking about education, we think that it is similarly applicable to garbage collection."\footnote{89}

\footnote{86}Ibid., p. 427. \footnote{87}See Note 28. \footnote{88}504 F. 2d 989 (1974). The owners of some condominiums claimed that the Fourteenth Amendment was violated by the city by its refusal to provide dwelling units with garbage removal services. \footnote{89}Ibid., p. 992.
In another case, some college students were contending that there was a fundamental right to live where one wants. The South Dakota court ruled against them, often citing Rodriguez to help support the position that the interest in living wherever one wants was similar in one respect to education--it was not a fundamental right. A very recent case in the Tenth Circuit used the Supreme Court precedent to put down the argument that minority students were entitled to an education tailored to meet their unique cultural needs.

In the District Courts as well, there are numerous examples of the "education as non-right" philosophy as well as ample use of the Supreme Court's opinion to argue against including other rights. In an early citation of Rodriguez, only a month after that decision was announced, a Pennsylvania District Judge ruled in favor of a statute which denied persons under twenty-one access to alcoholic beverages. The Supreme Court was cited as listing those rights which were fundamental and drinking alcohol was not among them. In a totally unrelated case in New York, there was a long discussion of the Supreme Court's decision in connection with whether the State was required to provide the mentally retarded with a

certain level of education.\textsuperscript{93} \textit{Rodriguez} was used to argue that "alleged denial of a public education does not infringe a fundamental right."\textsuperscript{94}

In Texas, a group of students challenged on equal protection grounds the out-of-state tuition statues as unconstitutional.\textsuperscript{95} "Suffice it to say that the recent case, \textit{San Antonio} . . . has put such a notion (access to equal education) to rest for the present."\textsuperscript{96} School officials in Georgia had denied a fifteen-year old unwed mother readmission to school as a regular daytime student, saying that she could attend night school. The District Court there held in favor of the school rules, saying "The Supreme Court has recently declared . . . that education is not a fundamental right or liberty. Therefore, plaintiff's contention . . . is without merit."\textsuperscript{97} The District Court in Philadelphia interpreted \textit{Rodriguez} in the same manner, ruling against some students at a private orphanage who had claimed that the differences in fund allocations between public and private schools denied them their rights.\textsuperscript{98}


\textsuperscript{94}\textit{Ibid.}, p. 753.


\textsuperscript{96}\textit{Ibid.}, p. 1109.


Such cases in the federal courts as those listed above clearly illustrate the trend set by the Supreme Court in 1973. But there are examples of ways that the Rodriguez decision's impact upon the "fundamental rights" debate has been circumvented. In a celebrated "student suspension" case, the District Court found a new angle:

The Supreme Court's holding that the right to an education is not explicitly or implicitly guaranteed by the Constitution does not affect the determination of whether it is a liberty or property which cannot be interfered with by the State without the protection of due procedural safeguards. The court alluded to education as possibly being analogous to property, which would place it in a category protected not by the Equal Protection Clause, but by the Due Process Clause. The Supreme Court's argument that education is not a right was undercut in a similar fashion by another suspension case in Puerto Rico:

While the Court in Rodriguez . . . held that education is not a fundamental right requiring strict equal protection scrutiny . . . , that question is not determinative of the issue here. As the Court has repeatedly made clear, a private interest need not be of constitutional origin to be worthy of procedural protection.

99 Lopez v. Williams, 372 F. Supp. 1279 (1974). This decision was later affirmed by the Supreme Court.

100 Ibid., p. 1298.


The significance of such decisions appears to be that some litigants who claim that they have been denied an education may be able to find relief through the Due Process Clause rather than by claiming a denial of equal protection.

Students have also found relief in the courts by showing that they were members of a "suspect class," as discussed earlier. Such an argument has been persuasive in some district courts to counter the "education as non-right" contention. Alien college students, for example, who had been required to pay higher tuition, had little difficulty in circumventing the impact of *Rodriguez* in this area. In another case, a rule which did not allow girls to participate in the cross-country athletic program was challenged as discriminatory. The Supreme Court's position on education was used by the athletic association to defend the discrimination, but the court rejected the argument. Obviously the Supreme Court decision has not frozen all avenues in this issue-area.

In spite of the above tendencies, *Rodriguez* must still be regarded as a major obstacle in preventing litigants from obtaining a right to education, especially on equal protection grounds. More recent cases suggest that the impact of this argument has not subsided. The federal courts,

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in dealing with matters from tuition grants for ex-felons,\textsuperscript{105} to extra state funds for "exceptional children" in private schools,\textsuperscript{106} have not been hesitant to deny equal protection relief.

Local Control--Judicial Restraint

In examining the impact of \textit{Rodriguez} in the federal courts, another factor emerges besides the rather narrow "suspect class" or "fundamental rights" categories. Within a relatively short period, the Supreme Court found itself using \textit{Rodriguez} in three cases involving school finance, but not the property tax. Less than two weeks after that decision was announced, the Court again ruled in favor of a state statute, this time one dealing with the payment of subsidies to non-public church schools.\textsuperscript{107} \textit{Rodriguez} was used to support the argument that "when there are no fixed and clear constitutional precedents, the choice is essentially one of political discretion."\textsuperscript{108} In other words, just as the Texas statute had earlier been


\textsuperscript{106}Halderman \textit{v. Pittenger}, 391 F. Supp. 872 (1975). \textit{Rodriguez} was used here as authority to deny the funds.

\textsuperscript{107}Lemon \textit{v. Kurtzman}, 411 U. S. 192 (1973). Justice Douglas in a dissent stated flatly that there should never be any subsidies to church schools under the First Amendment.

\textsuperscript{108}ibid., p. 1473.
presumed constitutional, so must this one in Pennsylvania. Two months later, the Court used the same precedent to uphold a statute which did not provide for free textbooks for private schools in Mississippi.\(^{109}\)

Perhaps the most illustrative of the Supreme Court's philosophy in these matters is *Milliken v. Bradley*,\(^{110}\) the celebrated "cross-district busing" case of 1974. The Court ruled in favor of the Detroit public schools and determined that it would be improper to impose a busing plan there, which would amount to a multi-district remedy for a single-district problem. *Rodriguez* was cited by the majority to emphasize the legal basis for local control over the educational process. Justice Burger's opinion applauds the "social benefits" of such local control,\(^{111}\) in holding that there was not constitutional wrong which required any inter-district busing. The dissent by Justice Douglas is even more significant for this study. He stated that Blacks in inner Detroit are more likely to be poor, just like the Mexican-Americans in *Rodriguez*, and that the Court had allowed the states to let the poor "pay their own way."\(^{112}\) He also added,

> Today's decision given *Rodriguez* means that there is no violation of the Equal Protection Clause though the schools are segregated by race and the Black


\(^{111}\) Ibid., p. 3126.

\(^{112}\) Ibid., p. 3135.
schools are not only 'separate' but 'inferior'. . . . So far as equal protection is concerned we are now in a dramatic retreat from the 8 to 1 decision in 1896 that Blacks could be segregated in public facilities provided they received equal treatment.113

The first use of the "local control" doctrine from Rodriguez in the United States Courts of Appeal is found in a dissenting opinion. In *Boraas v. Village of Belle Terre*,114 the dissenting judge felt that the Supreme Court's recent action surely meant that more freedom should be given to states and localities in managing their own affairs.115 He felt that a housing ordinance should have been left alone, in light of the Texas case. The impact of Rodriguez was also evident in *Wilkerson v. City of Coralville*,116 where the Eighth Circuit Court held that "it is not the province of this court to create substantial Constitutional rights in the name of guaranteeing equal protection of the laws."117 This case dealt with the problem of whether or not a city in Iowa could refuse to annex an outlying area because of the poverty of

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113 *Ibid.*, Justice Douglas was referring to *Plessy v. Ferguson*, 163 U. S. 537 (1896), which held that separate facilities were not unconstitutional as long as they were equal. This decision was overturned by *Brown v. Board of Education* 347 U. S. 483 (1954).

114 476 F. 2d 806 (1973).

115 *Ibid.*, p. 827. The Court had overturned a local ordinance dealing with multi-occupancy dwellings. In the dissent, Judge Timbers felt that because of Rodriguez, the case would surely be overturned by the Supreme Court.


the area and the cost involved in incorporation. The Third Circuit Court used Rodriguez to carry the local control argument even further, in granting a utility company more discretion in denying services to customers:

We must be alert to the fact that in granting a federal remedy to what is essentially a state problem, there is a further extension of the power of the central government. Intervention is justified in some instances, and indeed may be an absolute necessity at times, but such action should not be taken without recognizing the effect there may be upon the concept espoused by the framers of the Constitution . . . 118

In the Circuit Courts, Rodriguez was often used to defend state statutes and regulations of all sorts, most of which did not involve school financing at all. One court used the case to further the well-known argument that all a state was legally obligated to do was show some legitimate purpose to the questionable action.119 This logic and precedent were later used to uphold a city ordinance which did not allow hot dog vendors to operate in a certain section of New Orleans, if they detracted from the aesthetic environment.120 Other cases were perhaps less peculiar, but nonetheless discussed Rodriguez in the same legal context. One Appeals Court ruled in favor of a police regulation which allegedly discriminated

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118Jackson v. Metropolitan Edison Co., 483 F. 2d 754 (1973). Here the Third Circuit Court held that the right of a customer to receive utility service pending resolution of a dispute between customer and company is not protected by the Constitution.


against Blacks in hiring,\textsuperscript{121} while another upheld a statute which restricted the avenues of appeal for criminal defendants.\textsuperscript{122}

In the District Courts, the precedents which had been established were used frequently. One early case involved a familiar issue--property taxes, and the \textit{Rodriguez} rationale was followed explicitly to argue that it is best for the courts to stay out of these matters, or all tax systems would be subject to litigation.\textsuperscript{123} Another court also observed that "more recent cases . . . (\textit{Rodriguez}) . . . suggest that the rationale relationship test is alive and well."\textsuperscript{124} When a Georgia District Court held a campaign fund disclosure Act to be constitutional, it also commented on the Texas case and its implications. "Even if the Act is imperfect in some or many ways, it is our duty only to determine if the classification bears a reasonable relationship to some state purpose."\textsuperscript{125} A similar philosophy is evident in the most recent cases which fall into this category, whether the court was upholding a State's compulsory school attendance statutes,\textsuperscript{126}

\begin{itemize}
  \item \textsuperscript{121} \textit{NAACP v. Allen}, 493 F. 2d 614 (1974).
  \item \textsuperscript{122} \textit{Bell v. Hongisto}, 501 F. 2d 346 (1974).
  \item \textsuperscript{124} \textit{Henry v. White}, 359 F. Supp. 969 (1973), p. 971.
  \item \textsuperscript{126} \textit{Scoma v. Chicago Bd. of Ed.}, 391 F. Supp. 452.
\end{itemize}
or ruling in favor of prison regulations which deny those in solitary confinement equal dental care.\textsuperscript{127}

From the preceding analysis, it appears the local control--judicial restraint element offers trends which are less clear than those in the other two categories. This is probably due to the inherent ambiguity of such a classification of cases. But there is little doubt that Rodriguez has become an important precedent in preventing relief from statutes, ordinances, or regulations which are felt by some to be unconstitutional.

CHAPTER III

RODRIGUEZ AND SCHOOL FINANCE IN THE STATES

In spite of recent participation by the federal government, most notably the Elementary and Secondary Education Act of 1965,¹ public school financing is, by and large, a function of the states and localities. This tradition of local control is perhaps the most important factor to be remembered when one attempts to analyze the effect of one Supreme Court decision upon any financing system. The states historically have been reluctant to modify their institutions, even when ordered to do so by the federal courts. It could easily be assumed given this fact, that a case such as Rodriguez, which actually upheld the status quo, would clearly portend the death of school finance reform in the courts.

But such an assumption ignores the complexities of the federal system. It shall be demonstrated in this chapter that the Rodriguez decision by no means stopped school finance reform in the state courts, in spite of its manifest chilling effect on such litigation in the federal tribunals.

Federal-state relations, especially since *McCulloch v. Maryland*, have been characterized by what has become known as the "doctrine of national supremacy," which is of course based directly on the Sixth Article of the Constitution, which provides that

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State notwithstanding.

But from the beginning, states have argued their right to legislate for the health, welfare, morals, and safety of their citizens, and in 1829 Chief Justice Marshall and his Court agreed that this "police power" was a reserved power of the state, so long as such laws were not contrary to the Constitution, valid federal laws, or treaties. From that time to this, constant argument has continued as to where the local control of such measures (now including education and social welfare services) ends, and where national control begins. While in modern times hard-pressed school districts are most anxious to obtain desperately needed federal funds, those funds usually carried much-dreaded federal regulations and controls as a condition of their being granted. State judicial reactions to federal regulations and federal court opinions are much colored by local attitudes and opinions reflected through popularly elected state and local judges' decisions. As Stephen Wasby illustrates, the state judges enjoy more institutional independence from the

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2 *Wheaton* 316 (1819).

decisions handed down by the United States Supreme Court.

. . . The highest state courts, while supposedly subordinate to the U. S. Supreme Court because of the 'supremacy clause' of the Constitution, are the highest courts in their own jurisdictions, with greater expertise in understanding and interpreting the laws of the state constitution . . . 4

If this is true, then it should not be too surprising to find a wide variety of opinions by state judges in litigation since the Rodriguez decision of 1973.

Actions that are taken by state judges will also be affected by their individual constitutions. While every state constitution has a requirement for some sort of free public school system, many require their schools to be "general and uniform," or have similar provisions.5 "State constitutions almost invariably have a provision which requires a uniform criteria for the assessment function. There is an equality, therefore, built into the state constitutions long before anybody thought to bring a case . . . ."6 This verbal equity, however, was not reflected in the usual method of financing public education--the ad valorem property tax.

There is little doubt that if the local school districts had a more flexible method of paying the costs of schooling, there would be less difficulty in correcting the inequities.


6Ralph Nader, Hearings, Senate Select Committee on Equal Educational Opportunity (September 30, 1971).
Due to the nature of this method of taxation, raising revenues to meet rising costs has become increasingly difficult.

Tax peaks caused by simultaneous capital improvements by various local governmental units frequently produce taxpayers' revolts against all bond issues or property tax increases. Simply put, the property tax today is inadequate to finance a satisfactory level of government service. Because of the fiscal gap between citizens' demands for services and revenues available, local governments have been forced to seek new revenues either in the form of authorization to levy nonproperty taxes or as increases in aid from both the state and federal governments.7

Because sales and income taxes (the principle alternative methods of taxation) are generally reserved to states and the national government, additional money inevitably includes an increase in the state or federal control that always accompanies the state or federal grants. The issue of school finance inequities, then, invariably involves questions of federalism and local control, since almost all proposed plans for the correction of those inequities include a further broadening of the scope of power to the state and national arenas. When that broadening occurs, the controversy becomes more acute and multi-dimensional.

School Finance Litigation

Before Rodriguez

The importance of Serrano v. Priest,8 already discussed to some degree in Chapter One, cannot be overemphasized. Simply stated, the California Supreme Court held that their school financing plan violated both the State and United States


8487 P.2d 1241 (1971).
Constitutions. The specific details of the case need not be explained here, but its significance for this study must be briefly outlined. Before *Serrano* in 1971, there had been only minimal success in all the states to correct the disparities in expenditures. Several years before, there had been efforts in the federal courts, but these court actions failed soundly by the time they reached the Supreme Court. The primary difference between *Serrano* and the earlier attempts at reform in the courts was that the former relied less upon the equal protection clause of the United States Constitution than the latter. The California Constitution was a main point of argument in *Serrano*. That case is rightly the point of departure for any discussion of the legal aspects of modern school finance.

Fiscal neutrality (the concept outlined in *Serrano* which maintains that educational quality should not depend upon wealth other than the wealth of the state as a whole) was, as mentioned earlier, first articulated by Coons, Clune, and Sugarman in a book called *Private Wealth and Public Education*. That standard, also understandably called the "Serrano rationale," became the new hope, especially for

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reformers who sought relief in the federal courts. These tribunals had historically been more receptive to efforts to help the disadvantaged. Those who wanted relief from the state courts also often adopted the standard and hoped that its fairness and logic could be persuasive in those arenas as well.

When the Rodriguez case was decided by the three-judge panel in Texas, the decision was based on equal protection grounds, but observers noted that the panel also relied heavily on the fiscal neutrality standard. It was one of many post-Serrano decisions by the state and federal courts which gave school finance reformers reason to be optimistic about their chances for judicial relief. In Texas, the political mechanisms went into operation. One of many "study groups" dispatched was one in the Texas Senate, ordered by Lieutenant Governor Ben Barnes to study the school finance problem. A comment from the introduction of that report illustrates the sense of apprehension caused by the three-judge court in San Antonio: "While the Rodriguez case is currently under appeal to the U.S. Supreme Court, there is substantial belief on the part of educators, legislators, taxpayers, and others throughout the State that the current school finance plan needs significant improvement regardless of the outcome. . . ."12


12Joint Senate Interim Committee to Study Public School Finance, Oscar Mauzy, Chairman (reported March 30, 1973).
Another of the several post-Serrano cases occurred in Minnesota, at approximately the same time as the Texas case. In *Van Dusartz v. Hatfield*, a United States District Court in Minnesota held that the state school financing system was unconstitutional. The judges used both the logic of the fiscal neutrality principle and the "education is a fundamental right" prescript in a decision that is fairly typical of those leading up to the Supreme Court's final action. "The reasoning of the California court on this point is completely persuasive and this Court adopts it as its own." In spite of similarities between the Minnesota and California decisions, there is at least one important difference. The *Serrano* decision had maintained that the wealth of individual students is inextricably linked to the wealth of the school district as a whole. To put it simply, that court had held that discrimination on the basis of the wealth of a district, without any regard for the relative wealth of individuals within that district is unconstitutional. This proposition, while praised by many reformers, was nonetheless regarded as being inflexible and legally vulnerable by some scholars. At any rate, Van

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14Ibid., p. 877.

FEDERAL AND STATE CASES REVIEWING PUBLIC SCHOOL FINANCING SYSTEMS IN THE PERIOD BETWEEN SERRANO (1971) AND RODRIGUEZ (1973)

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<td>Spano v. Bd. of Education</td>
<td>New York</td>
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*later reversed by Arizona Supreme Court
Dusartz did not contend that there was such a link, and therefore was probably more palatable than Serrano.

An interesting decision occurred in a State District Court in Johnson County, Kansas. Caldwell v. Kansas\(^\text{16}\) was a case evidently very similar to the others, except that it involved court action at the local level. It was a class-action suit on behalf of school children and parents who resided in all districts except the wealthiest. The plaintiffs argued that the federal and state constitutions required a fiscally neutral school system.\(^\text{17}\) In addition to this contention, there was a challenge to Kansas' "tax lid" provision which actually limited local school expenditure increases to five per cent. The plaintiffs maintained that this effectively prevented any increase in benefits, even if the districts could raise the money.\(^\text{18}\) The Johnson County Court held the entire Kansas system to be unconstitutional, using the Serrano rationale almost exactly. As a matter of fact, the Kansas school finance system was remarkably similar to California's, and when Serrano was first announced at least a few scholars noticed that similarity and the opportunity for reform.\(^\text{19}\)

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\(^\text{17}\)Ibid.

\(^\text{18}\)Ibid.

The Kansas case did not receive much publicity, probably due to the fact that the case was not even appealed, but it is significant for one primary reason. It involved an interpretation of its state constitution and therefore, like Serrano, was not significantly damaged when Rodriguez was announced by the Supreme Court.

It should be noted that none of these decisions, state or federal, attempted to completely abolish the property tax. In addition, from Serrano to Rodriguez and beyond, the usual tactic of the courts was to rule upon the relative merits or unfairness of the specific state taxing and distribution systems. Then the state legislatures were typically given the primary responsibility of complying with the court's decision. At times, some courts were very specific about what it would take to correct the inequities, while others merely commanded the lawmakers to remedy the situation within a specified period of time, without instructions on how to do it. For this reason, it is impossible to comment here about the eventual outcome of the decisions in each state. It should be understood that the policy process often begins rather than ends with the announcement of a decision by a judge. Those legislative results which are available will be discussed in the concluding chapter to see if these early decisions were implemented, discarded, or modified after the announcement of Rodriguez.
The Wyoming Supreme Court handed down a decision which contained similarities to *Serrano*, only a few weeks following that ruling in California. In *Sweetwater Planning Commission for Organization of School Districts v. Hinkle*, the Wyoming Court examined a plan which that state had been using to correct its disparities in funding. There had been an attempt to reform the system by pairing wealthy school districts with poor ones to minimize the inequities. But the court found this new system inadequate when applying the fiscal neutrality philosophy, specifically mentioning *Serrano* as the authority for its conclusions. This reasoning was also bolstered by the Wyoming Constitution itself, which contains a provision that all taxes must be equal and uniform. The opinion of the court was mainly advisory; it gave some gentle prodding to the legislature, without issuing harsh directives or time limits. "While we do not mean to encroach upon the prerogatives of the legislature, we think it might be helpful if we could suggest a possible method. . . ." A rather complicated but significant series of court actions took place in Arizona during the post-*Serrano* period.

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20 491 P. 2d 1234 (1971).


In a county court case, *Hollins v. Shofstall*, the judge ruled in favor of some taxpayer-plaintiffs who claimed that the system of school financing unconstitutionally discriminated against them, violating both the federal and state constitutions. The reasoning was very similar to the California case, in spite of the fact that the systems were evidently quite dissimilar. The decision was appealed and later reversed by the Supreme Court of Arizona a month after the final school finance decision was announced by the United States Supreme Court. Would this reversal have happened if *Rodriguez* had not been decided? Whether it would or not, the early decisions gave more impetus to claims of fiscal neutrality and school finance reform.

Michigan offered a further example for reformers. However, in *Milliken v. Green*, the pattern was completely different from the start. The plaintiffs in most school finance cases are usually parents, students or taxpayers; the defendants are usually state officials concerned with education. In this case, the Governor and the Attorney General

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27 *Ibid.*, p. 592. *Rodriguez* was cited by the Court, in spite of the small amount of time between the two decisions.

28 203 N.W. 2d 457 (1972).
initiated the suit, acting on behalf of all the people of Michigan, against the State Treasurer and three wealthy school districts. In a four to three, hotly argued opinion, the Supreme Court of Michigan found, on the basis of the state constitution, that its school finance system denied some children their fundamental interest, an adequate education. Since the court action actually only asked for declaratory relief, the court did not offer remedies, nor did it require blanket equality in all districts.

The ruling in this opinion, for example, should not be misinterpreted to require absolute equality in the distribution of state educational resources in all cases with no recognition of reasonable classifications. . . . Furthermore, this opinion does not relate to 'local control', (but) . . . only to the State's obligation to 'maintain and support' public schools financially under (the Constitution).29

One significant aspect of this opinion is its refusal to accept "local control" as an argument for non-intervention. At least one scholar sees this position as being similar to the dissent by Justice White in the final Rodriguez case, to be handed down less than two months later.30

It is interesting to note that in Michigan a year later the same court decided that the first case should not even have been heard, and it vacated its earlier decision.31 Did

29Ibid., p. 472.


31212 N.W. 2d 711 (1973).
the Supreme Court help the Michigan Supreme Court to change its mind? Perhaps, although there is little doubt that this was at least partially due to action which had been taken by the legislature which corrected some of the problems.

The court seems to have recognized that the legislature, set in motion partly by the court's earlier decision, had moved as far and as fast as the court could reasonably have expected. The case had become moot, and for some reason the court was unwilling to so rule. . . . Understood in this light, the court stumbled a bit in its formal justification, but skillfully avoided either political credit or blame for a result achieved through forces the court had helped to set in motion.32

These technicalities illustrate two points about school finance litigation. First, it must be remembered that the ultimate goal for the reformers can only be realized by legislative enactment. And second, the end result is often too confusing to determine whether one side or the other succeeded or failed. "It is impossible to say who won and who lost in the Michigan school finance litigation."33

Next to Serrano and Rodriguez, perhaps the case which has attracted the most attention in the school finance area has been Robinson v. Cahill34 in the State of New Jersey. Technically, Robinson was not a pre-Rodriguez decision (it was decided one month afterwards), but it fits the pattern


33Ibid., p. 364.

of post-Serrano litigation and was based mainly on interpretation of the State constitution. This case is particularly significant since it can help bridge the gap between those cases handed down by state and federal courts before Rodriguez and those which have been adjudicated since that decision. In addition, since Robinson is regarded by many authorities as a prototype of school finance reform litigation, it must be more thoroughly examined than the other cases.

The judicial process in the Robinson case spanned approximately three years. The plaintiffs included local officials from five property-poor New Jersey cities, as well as a student and a tax-payer. The defendants were various state officials, including the Governor. The reasoning advanced by the plaintiffs was very similar to the Serrano rationale and they asked that the court order a complete restructuring of the financing system. Paul Tractenberg, lawyer for the Newark Chapter of the National Association for the Advancement of Colored People and the American Civil Liberties Union of New Jersey, amici in the Robinson case, pointed out one main difference from Serrano:

The second count of the original Robinson complaint advanced a different argument—that the New Jersey Constitution's 'thorough and efficient' education clause required the state to afford each child 'at least such instruction as is necessary to fit it for the ordinary duties of citizenship' and to 'provide the minimum

education to all children . . . so that they may be able to read, write, and function in a political environment.' Plaintiffs alleged that the state had failed to do so and, thereby, had violated the education clause of the state constitution and the equal protection clause of the United States Constitution.36

Political Scientist Jack Walker postulated a theory which seems relevant in analyzing the significance of Robinson and perhaps other state-wide cases as well. He maintained that states often get "cues" or ideas from other states when attempting to change a policy or enact a new program. "In fact, I am arguing that this process of competition and emulation, or cue-taking is an important phenomenon which determines in large part the pace and direction of social and political change in the American states."37 It appears as if the Robinson case in New Jersey has acted as a "cue" to other states who find themselves in similar circumstances. Paul Tractenberg's article, titled, "Robinson v. Cahill Points the Way,"38 could indicate future possibilities for future school finance litigation, even in the post-Rodriguez era. Such a theory is beyond the scope of this study, but it does


38 See note 35 supra.
appear that Robinson had at least some effect upon the thinking of a Texas Senate Committee while it was under pressure to come up with some solutions during the period between the two Rodriguez cases:

The New Jersey case, Robinson v. Cahill should provide a certain amount of guidance to those individuals preparing revised school finance plans. In this case, the court held that even though the current financing plan, if fully implemented, could provide substantially equal funding, it would be constitutionally unacceptable because poorer districts would have to tax at higher rates than richer districts to reap the same benefits.

The court's decision in the New Jersey case indicates that a revised school finance plan should provide both equity in taxation and equity in educational opportunity (level of dollar support). It also emphasizes the fact that courts stand ready to act where legislatures are reluctant.39

The post-Serrano, pre-Rodriguez cases in Texas, Minnesota, Kansas, Arizona, Michigan, Wyoming, and New Jersey all, at least temporarily, invalidated their school funding statutes by holding them in violation of either their own constitution, or that of the United States. But there were at least two fairly important decisions during this period which decided against plaintiffs who initiated litigation. In Spano v. Board of Education of Lakeland Central School District,40 a taxpayer and parent charged that the New York school finance system discriminated against taxpayers in poor districts. The


suit was based completely on the equal protection clause of the United States Constitution, which could have contributed to its failure since the Supreme Court had shown no sign that such a claim could be accepted. The trial court dismissed the complaint and no appeal was made.41 In Indiana, similar plaintiffs met the same fate in Jenson v. State Board of Tax Commissioners,42 which was a Serrano-type challenge to taxable wealth being used there to determine the amount of money spent on education. The school children and their parents, from tax-poor districts, did not appeal after losing at the trial court level.

In spite of these setbacks in New York and Indiana, there appeared to be much reason for optimism among reformers from 1971 through the first part of 1973. With Serrano as the model, it was demonstrated that judicial relief was at least possible, if not certain, for the inequities that existed in the school funding systems in the states. But amidst all the understandable optimism, there were many who were not convinced the end result of all this litigation would be beneficial, especially when the United States Supreme Court agreed to hear the Texas case. Coons, Clune, and Sugarman, the early proponents of fiscal neutrality in California, were among the

41 Ibid.

skeptics. "... judicial review in this instance can take many forms, some of them clearly destructive." They further added, "The Court still takes a great deal of convincing, and recent changes in personnel increase the risks of prediction." An article in the Yale Law Journal, sub-titled "On Winning Battles and Losing Wars," expressed similar sentiments.

Perhaps the decisions to date, even if reversed by the Supreme Court, have sensitized the public to present inequities and reform will occur without further judicial coercion. ... But it seems equally likely that century-old systems of local finance will not be fundamentally altered without judicial intervention.

And it seems even more likely that reversal by the Supreme Court--even on a ground of non-justiciability--will be taken as an endorsement of the inequitable status quo.

School Finance Litigation Since Rodriguez

The New Jersey case of Robinson v. Cahill has already been discussed and evaluated as characteristic of the post-Serrano


44 Ibid., p. 303. Appointments by President Nixon completely changed the complexion of the Supreme Court. After 1968, Justices Fortas and Warren were replaced by Blackmun and Burger, and after 1971, Justices Black and Harlan were replaced by Powell and Rehnquist. Three of the four members of the Warren Court replaced by Nixon had voted at very high levels of affirmative agreement on equal protection cases, while all four of the Nixon appointees have a very low level of voting affirmatively in such cases. This can lead to speculation as to whether the outcome of Rodriguez would have been different, had the case reached the Court a few years earlier, during the Warren Court period. For a thorough examination of the differences between the Warren and Burger Courts, see Richard E. Johnston, "Supreme Court Voting Behavior: A Comparison of the Warren and Burger Courts," Cases in American Politics, edited by Robert L. Peabody, (New York, 1976), pp. 71-110.
cases which held against state school financing systems. It must be remembered, however, that Robinson was handed down two weeks after the United States Supreme Court announced the Rodriguez decision. Thus, it may also be included in the series of cases which have been litigated since March, 1973 and can even be given the status of the prototype of modern school finance reform litigation. "The decision in Robinson has paved the way for a new approach to the financing of education. As an alternative to an equal protection attack, Robinson has shown that existing systems can be condemned as violative of a state constitution's education clause." In other words, the decision in New Jersey may indicate that the federal courts were only one avenue for reform, and the effect of Rodriguez could be reduced. As will be shown, "The opening Robinson began to create, in a tentative fashion, is thus being widened. Whether it will be widened further or ultimately closed is unclear..." 

Even though Robinson was announced a mere two weeks after Rodriguez, the New Jersey court extensively evaluated

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the Supreme Court's decision in the opinion.\textsuperscript{48} Basically, the court was able to contradict the reasoning of the Supreme Court because of jurisdictional differences, and held that the state's system of funding education violated the state constitution. And so the Robinson decision fits well in the post-Rodriguez world and demonstrates the possibilities available in the other states for reformers of school finance. Justice Marshall, in his dissenting opinion in Rodriguez, had expressed hope that reform could still be available in the states: "Of course, nothing in the court's decision today should inhibit further review of state educational funding schemes under state constitutional provisions."\textsuperscript{49}

If the Robinson case in New Jersey ended happily for reformers, the Shofstall\textsuperscript{50} case in Arizona had the opposite effect. This was the case earlier discussed as a post-Serrano determination that the Arizona system of school funding violated the equal protection clause of the state constitution. A trial court had ruled in favor of some taxpayer-plaintiffs, but when the case reached the State Supreme Court, only one month after the United States Supreme Court's action in Rodriguez, the decision was reversed. The court basically rejected the Serrano rationale, and also determined that the

\textsuperscript{48} 303 A.2d 273, pp. 279-282.

\textsuperscript{49} San Antonio Independent School District v. Rodriguez; 411 U.S. 1, p. 133, n. 100.

SCHOOL FINANCE CASES TERMINATED
IN LIGHT OF RODRIGUEZ*

Case Name and Citation                        State
Milligan v. Yarborough                          Arkansas
Belan Allen v. County of Otero                 Connecticut
C.A. No. 9911, D.C.                            Florida
Jelliffe v. Berdon                              Georgia
C.A. No. 14821, U.S.D.C.                       Indiana
School Bd. of Orange County v.                Kansas
State Bd. of Ed.                               Maine
C.A. No. 243, ORL-CIV                           Maryland
Dunn v. Hendricks                              Missouri
C.A. No. 16900, U.S.D.C.                       Missouri
Perry v. Whitcomb                              Missouri
Circuit Court of Marion County                Nebraska
Hergenreter v. Kansas                          New Hampshire
U.S.D.C., Dist. of Kan.                        New Hampshire
Lahave v. Maine                                New Hampshire
Super. Ct., C.D. No. 927
Parker v. Mandel                               New Hampshire
C.A. No. 71-089, D.C.                          New Hampshire
Spencer v. Mallory                             New Hampshire
C.A. No. 20058-2, U.S.D.C.                     New Hampshire
Starr v. Mallory                               New Hampshire
C.A. 753-356 (Jackson County)                New Hampshire
Troch v. Robinson                              New Hampshire
C.A. 753-355                                   New Hampshire
Rupert v. Exon                                 New Hampshire
C.A. 72-0-142, D.C., Neb.                     New Hampshire
Birch v. New Hampshire                         New Hampshire
C.A. No. 72-13, D.C.N.H.
Case Name and Citation

Thompson v. State Univ. of New York 72 Civ. 3279, D.C.S.D.; N.Y.

Ohio Education Ass'n v. Gilligan C.A. 71-359, D.C.S.C.

Ohio Farmers Union v. Gilligan C-72-146


Doorley v. Rhode Island C.A. 4881, D.C.D., R.I.


State
New York
Ohio
Ohio
Pennsylvania
Rhode Island
Wisconsin

property tax is adequate for education in the same manner as it is for other social services.\(^{51}\) *Rodriguez* was cited and quoted elaborately to illustrate this point of law; it was one of only a few cases cited in the court's opinion.\(^{52}\) This illustrates, that despite some success, the Supreme Court's action may have had some impact, even in state cases such as *Shofstall* in Arizona.

As in *Shofstall*, most state courts are generally reluctant to expand the meaning of their state equal protection clauses beyond the interpretation which the United States Supreme Court is willing to give to the equal protection clause of the fourteenth amendment. Still another avenue remains, however, for an attack on present school finance inequities—the education clauses of specific state constitutions.\(^{53}\)

The Supreme Court of Illinois handed down a decision, accompanied by a short opinion, which illustrates not only the complexities involved, but also the variety with which state constitutions can be interpreted. In *Blase v. State of Illinois*,\(^{54}\) the court attempted to interpret the clause of the 1970 constitution which reads, "The State has the primary responsibility for financing the system of public education."\(^{55}\) The plaintiffs contended that this clause required the state to provide no less than fifty per cent of the funds necessary to maintain the public school system.

in the state. The court rejected this contention, by searching the debates in the constitutional convention for the intent of the framers, and then determined that the sentence was merely a statement of general purpose, and not a specific imperative. It is understandable that Rodriguez, Serrano, or no other school finance case was mentioned in the Illinois litigation, even though the matter was decided in September of 1973. The court treated the issue as a rather narrow technicality. Nevertheless, the case demonstrates the fact that, even with a modern state constitution, judges have a great amount of discretion available to them in passing judgement upon their school funding schemes.

In Connecticut, a decision which could give more hope to reformers was Horton v. Meskill. The plaintiffs in the original suit had included the mayor and other citizens of the city of Hartford. They contended that the state's school finance provisions worked to the disadvantage of the municipal areas, since they had a higher number of economically disadvantaged persons, a shrinking tax base and high tax rates. In their view, these disadvantages limited the city's ability to provide the necessary services, including public education, especially when compared to the more affluent suburban areas. The Connecticut Superior Court held that the system violated the state constitution by not giving due credit to the

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56 Ibid. 57 332 A.2d 113 (1974).
"fundamental right" of education. It is interesting that the original complaint had alleged violation of the Fourteenth Amendment to the United States Constitution. Needless to say, that claim became futile after the Rodriguez case and the emphasis was shifted to the Connecticut Constitution. It was determined that the wide disparity in the system resulting from the property tax did not violate the federal constitution, but did offend the equal protection clause of the State document. Thus, the courts can still be receptive to challenges based on the state constitutions, even in the post-Rodriguez world. There seems little doubt that a great deal depends upon the nature of the alleged infraction, and the wording of the constitution in question, as well perhaps, as the predisposition of state judges.

There is some evidence that the actual words found in the state constitutions may not be of all that much importance. In the case of Hootch v. Alaska State-Operated School System, the Supreme Court of that state gave itself the task of interpreting the education article of its constitution. Included in that document is the provision that the legislature was obliged to establish and maintain public schools which shall be "open to all children of the state," a much more definitive

58Ibid.
60332 A.2d 113 (1974).
61536 P.2d 793 (1975).
62Ibid., pp. 801-802.
clause than that found in many other states. The case involved a complaint by Eskimo children that they had to leave their villages to attend boarding schools, because the state did not provide schools unless there was a minimum number of potential students. Regardless of the wording of its constitution, the court held that the state's system of funding was not in violation of the intent of the framers. Without speculating on the merits of this particular issue, caution must be used in placing much emphasis on the wording of state constitutions, when considering the potential for reform.

There are two decisions which have perhaps attracted the most attention in the area of school finance since the Robinson decision of 1973. The State Supreme Courts of Washington and Idaho ruled upon matters which are exactly the issues raised by the other major school finance decisions.

School funding in the state of Washington is very similar to that found in the other states. The individual school districts were allowed special additions to supplement the state base of support, producing a system which many people felt was unfair to the poorer districts who could not produce the supplemental funds. Plaintiffs in Northshore School District No. 417 v. Kinnear charged three issues:

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64 Ibid., p. 873.

(1) that the state had not met its, 'paramount duty' under Article IX, section 1 to make 'ample provision for the education of all children residing within its borders without distinction or preference on account of race, color, caste, or sex';

(2) that the system for distributing educational resources in the state was not 'general and uniform,' as required by Article IX, section 2; and

(3) that the financing system denied taxpayers and public school children privileges and immunities guaranteed by Article I, section 12. . . .

The Supreme Court of Washington was badly split in its decision in a manner reminiscent of the United State Supreme Court's action in Rodriguez. An abundance of statistical data was used to determine that the state funding scheme was fully constitutional and did not deprive the plaintiffs of their rights. As a matter of fact, the Rodriguez decision itself was cited as a precedent: "... it (the state system) meets the standard of the latest legislative word on the subject as stated in San Antonio Independent School District v. Rodriguez." A majority of the Washington Supreme Court had agreed that the plaintiffs had failed to prove their case. However, two of the majority judges, in a separate opinion, refused to accept that part of the majority opinion which suggested that the state was currently providing an ample education for all its children. It has been suggested that,

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68 Ibid., p. 203. "There is too much public opinion to the contrary and too many facts of which the members of this court are inescapably aware to justify such a conclusion."
Because only three justices explicitly found the existing system of funding education to be constitutional and because the author of the majority opinion has since retired from the bench, it is possible that future cases in Washington will be decided in accordance with the dissent's finding that the existing system of financing education is unconstitutional.69

The dissent pointed out the constitutional differences between the Washington and Texas systems, and maintained that such a distinction ruled out the use of *Rodriguez* as precedent.70 In spite of all the conflicting opinions, "one troublesome thread runs through them all: All the justices insisted upon analyzing the issue of 'ample education' in broadly substantive terms."71 In other words, there is a definite problem when any court attempts to measure how much education is considered "ample." Some maintain that this judicial insistence on substantive matters limits the choices available to legislators.72

The *Northshore* case in Washington is significant for two reasons. First, it was a case based wholly on the state constitution, which illustrates at least one obvious trend in the post-*Rodriguez* courts. Second, regardless of the jurisdiction, the United States Supreme Court's action in 1973 was used to help formulate the opinion. Unfortunately, the eventual

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70 530 P.2d 178, p. 215.


72 Ibid., p. 897.
relevance of Northshore cannot be determined, and thus cannot be placed in any category of victory or defeat by school finance reformers. For all practical purposes, the decision in Washington is probably an unreliable index of any future tendencies in the state courts.

One of the most recent state-wide school finance cases was adjudicated in Idaho by that state's Supreme Court in May, 1975. Thompson v. Engelking73 was a case on appeal from a lower court, where the public school financing system had been declared unconstitutional. The plaintiffs claimed that the funding scheme deprived them of equal protection of the laws under the United States and Idaho Constitutions. The lower court had noted that the Idaho document, in its education article, required the legislature to "establish and maintain a general, uniform and thorough system of public, free common schools."74 This education clause had been the main thrust of the lower court's argument. The Idaho Supreme Court rejected the notion that absolute equality in dollars per pupil was required, and previous cases (Robinson, Rodriguez, Northshore) which had also rejected this idea were duly cited throughout the opinion.75 The majority clearly interpreted the only real issue to be whether or not equality of expenditures was required.

73 537 P.2d 635 (1975).
74 Ibid., p. 641.
75 Ibid., p. 652.
### CASES REVIEWING STATE PUBLIC SCHOOL FINANCING
### SYSTEMS SINCE *RODRIGUEZ* (1973)

<table>
<thead>
<tr>
<th>Case</th>
<th>State</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robinson <em>v.</em> Cahill</td>
<td>New Jersey</td>
<td>System held unconstitutional</td>
</tr>
<tr>
<td>Shotstall <em>v.</em> Hollins</td>
<td>Arizona</td>
<td>System upheld</td>
</tr>
<tr>
<td>Blase <em>v.</em> State*</td>
<td>Illinois</td>
<td>System upheld</td>
</tr>
<tr>
<td>Horton <em>v.</em> Meskill</td>
<td>Connecticut</td>
<td>System held unconstitutional</td>
</tr>
<tr>
<td>Hootch <em>v.</em> Alaska</td>
<td>Alaska</td>
<td>System upheld</td>
</tr>
<tr>
<td>State-operated school systems*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northshore School District <em>v.</em> Kinnear</td>
<td>Washington</td>
<td>System upheld</td>
</tr>
<tr>
<td>Thompson <em>v.</em> Engelking</td>
<td>Idaho</td>
<td>System upheld</td>
</tr>
</tbody>
</table>

*These cases dealt with more narrow questions than the inequitable distribution of funds, and perhaps should not be given equal weight with the others.*
The dissenting opinion perceived the problem differently. Absolute equality in expenditures was not mandatory, but the judges felt the Constitution did require the State to provide a system that was not so dependent upon variable property wealth.76 Cases ranging from Brown v. Board to Serrano were quoted liberally to protest the majority's refusal to order the system modified. Some scholars have found the dissenters in this case more persuasive. "A general, uniform, and thorough system of education is not necessarily one that requires equal dollars per pupil, but it must be one which does not have any inherent biases favoring one group over another. Disparities in taxable property wealth is just such a bias."77

Summary

The National Education Association reports that fourteen states have experienced litigation declaring their systems of funding education unconstitutional,78 due to their dependence upon district-wealth as the determinant of dollars spent. Since Serrano, the fiscal neutrality principle has experienced periods of great success, but also great failure. There is little doubt that Rodriguez has had some effect upon even the

76Ibid., p. 670.


state courts. The Lawyers' Committee for Civil Rights Under Law made this comment:

Rodriguez has had significant effect on school finance litigation. Nearly 50 suits have been disposed of in Rodriguez's wake, most terminated voluntarily by the plaintiffs. . . . Despite this apparent setback, the overwhelming number of dismissals in school finance cases should not be interpreted as the demise of school finance reform litigation.79

Despite such optimism, this study has shown that, while the fiscal neutrality principle is still very much alive, there simply have not been significant numbers of state-wide cases which have overturned their financing systems. Although the time period is relatively short, it does appear that the rate and content of the reform movement has been slowed since Rodriguez, especially if one leaves out the New Jersey case of Robinson v. Cahill, decided almost immediately after the Texas decision. But whatever the numerical count since 1973, there has been much less activity in both the state and federal courts than there was before that year, in the flurry of cases in the wake of Serrano. This could be due to a large number of factors, but certainly one of those was the Rodriguez decision.
CHAPTER IV

CONCLUSIONS

Several general statements can be advanced based upon the information gathered in the previous two chapters. First of all, there is little doubt that school finance reform is dormant in the federal courts, at least in the sense that there has been no significant challenge to state funding schemes since Rodriguez. For all practical purposes, the arena for reformers has shifted to the states. That they have not been all that successful in the courts there has been demonstrated in Chapter Three. The fiscal neutrality principle, first made popular by Serrano and its legacy in other states, is still very much alive, but has not brought about the significant change that some had hoped.

It can be argued that courts are perhaps the wrong forum for the school finance debate in the first place. One reason for this attitude is obvious; money matters inevitably are decided by legislatures who have control of the purse strings in the states. The relativity inherent in the economic variables of this issue-area is probably enough to discourage many judges, not to mention the "cost-quality" debate, which suggests that the trauma may not make that much difference
anyway. One critic of court action in the school finance area is Mark Yudof of the University of Texas. "While the judiciary can bring about some equity in the distribution of education resources and services and help redress racial discrimination, it should not adjudicate rights in terms of schooling outcomes." Apparently, according to Yudof, the courts should also stay out because of the "vulnerability of relevant social science data," which makes judgement based upon evidence extremely difficult. Whether or not the courts should be involved in school finance is not the question to be decided here. The fact remains that a great deal of the emphasis has shifted to the state legislatures. Some have been ordered by the courts to act, while others may have succumbed to political pressure from interest groups. Rodriguez has definitely helped make the legislative approach more attractive, if for no other reason than the fact that it is the only alternative left. "While it remains to be seen whether the state legislatures will voluntarily reform their

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1Daniel Patrick Moynihan, "Equalizing education: in Whose Benefit?" Public Interest XXIX (Fall, 1972), 69-89. Moynihan suggests that, after a point, school programs do not seem to have any noticeable influence on the achievement of students.


3Ibid.
financing system, there is no longer any doubt that it is a job solely for them."\(^4\)

In recent years, the politics of public education has attracted more attention as a separate policy-area for study.\(^5\) The different approaches to its study are too numerous and varied to discuss in detail here. However, the "systems" approach to politics has been especially useful because it utilizes a model which can demonstrate the policy process. This approach was first developed by David Easton,\(^6\) but varieties of it have been used extensively in all areas of public policy. One sample of the systems model, as used by Easton and others, adapted for the politics of public education is found in Figure 1. This model is particularly useful because the state legislatures are, as mentioned, evidently the new locations of school finance reform, if it is to take place at all. The various court decisions can be viewed as inputs, but only along with other inputs, whether it be group action, the tax base, public opinion, or other aspects of the political, economic, or social environment. In other words, the educational programs which are enacted by

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\(^6\) David Easton, \textit{The Political System} (New York, 1953).
state legislatures are certainly the products of the entire "system" and not just a single court decision, unless perhaps, it was a direct order with specific instructions for reform.

Fig. 1—An example of the systems approach to educational policies as shown in Harmon Zeigler and Karl F. Johnson, The Politics of Education in the States (Indianapolis, 1972), p. 9.

Whatever the pressure involved in recent court decisions, they were not the first agencies or institutions to recommend that the states should play a much larger role in the financing of education. Although there were many "study groups" during the 1960's and early 1970's, there are perhaps two which received more attention than any others. The largest and most extensive was the President's Commission on School Finance,7 which put together a massive compilation of reports, documents, and statistics which even included a volume on "What State Legislators Think About School Finance."8 Another


extensive treatment of the topic was The Fleischmann Report\(^9\) in New York, published in 1973. Without itemizing all the specific recommendations of such groups, it is correct to say that all of them tend to be convinced that the states, and even the federal government, should assume a more substantial role in paying the bills for education. The reluctance on the part of the state legislatures to modify their systems can probably be accounted for, at least in part, by the "local control" phenomenon, which was especially strong during the times when the majority of the lawmakers were from rural areas. Another explanation no doubt lies in the common attitude among schoolmen that there should be "no politics" in public education.\(^10\)

In spite of this reluctance, there is enough information available to illustrate the level of activity in these arenas, and to show that Rodriguez has certainly not prevented legislatures from school funding reform, even though many states have not yet changed their system at all. "It remains to be seen whether the (Rodriguez) opinion will undermine the


impetus to legislative reform by removing the threat of intervention by the federal judiciary . . . ."11

The National Education Association reports, that since 1971, fourteen states have "substantially" changed their school financing systems.12 Inspection of these states (Page 98) reveals that less than half of them were directly ordered to do so by the courts (see Chapter Three). These "reform states" have increased the state share of the cost as a whole from forty-three per cent to fifty-one per cent.13 Evidently, the only discernible trend appears to be a switch from the "minimum foundation" plans (used in most states) to "power equalization" plans which are more equitable, but still rely upon local property taxes to some extent.14

It is clear that the courts have only provided a beginning, and not an answer. "The remedies for the unfairness and the irrationality of educational financing in America have been coming from the cooperative, and sometimes competitive, interaction of executives, legislatures, and interest groups."15 While full state assumption has not been adopted anywhere,

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13Ibid.

14Ibid.

# States Revising Their School Finance Systems from 1971-1975

<table>
<thead>
<tr>
<th>State</th>
<th>Ordered by Court</th>
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<tbody>
<tr>
<td>Arizona</td>
<td>Yes*</td>
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<tr>
<td>California</td>
<td>Yes</td>
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<tr>
<td>Colorado</td>
<td>No</td>
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<tr>
<td>Connecticut</td>
<td>Yes</td>
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<tr>
<td>Florida</td>
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<tr>
<td>Kansas</td>
<td>Yes</td>
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<td>Maine</td>
<td>No</td>
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<tr>
<td>Michigan</td>
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<tr>
<td>Montana</td>
<td>Yes</td>
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<tr>
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<td>No</td>
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<tr>
<td>North Dakota</td>
<td>No</td>
</tr>
<tr>
<td>Utah</td>
<td>No</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>No</td>
</tr>
</tbody>
</table>

Yes = 6
No = 8

*Later reversed by State Supreme Court.

**Source:** National Education Association, Committee on Educational Finance Research Report (1975), p. 40.
Many states have increased their share during the past few legislative seasons. By 1975, some of the trends could be seen:

The legislative session now ending in the states (1975) produced no bumper crop of education laws. Some of what it did yield, however, augurs well for the future interplay of education and politics. For while 1975's 'depression scare' exacted a psychic toll in both quarters, a closer analysis suggests positive developments that take the edge off hard times.

The Education Commission of the States reports that the year did provide some surprises. New Jersey, site of Robinson v. Cahill, the alleged new leader of school finance reform litigation, found problems implementing the court's mandate. Governor Brendan Byrne, a staunch advocate of reform, had recommended an income tax for the state to help correct the court's objections to the system. This proposal was soundly rejected by the legislature and the Governor was forced to make drastic budget cuts including 180 million dollars in state aid to education.

There is irony in the news from New Jersey. The court's decision in that state, the first one after Rodriguez, produced more optimism than litigation in any other state. Reformers were convinced that plaintiffs could still seek relief

16 Ibid.


19 James, "A Hopeful Session," p. 3.

20 Ibid.
in the state courts, in spite of the Supreme Court's decision. The sub-title of an article in the Rutgers Law Review demonstrates this optimism: "Robinson v. Cahill Points the Way." The end result of all that energy in the courts, was failure in the legislature, and this fact illustrates a fundamental point. Non-compliance with court rulings may be especially acute when huge sums of money are involved. At the very least, it is important to understand that victory is not assured for reformers when a favorable judicial decision is garnered in the state courts.

During the same legislative season when New Jersey ultimately rejected reform proposals, Texas, to the surprise of many, adopted them, at least to some degree. It is important to remember that it was the Texas system which was upheld in Rodriguez. Joel S. Berke, one of the leading advocates of reform in school finance, has called the earlier system in Texas, "... a model of inequity and discrimination." His further comments on that system are worth repeating.

Discrimination against the poor is not limited to poverty as measured by property valuation. The quality of school services in school districts with lower median family incomes suffers. School systems with the highest average income have the highest school expenditures; districts with the lowest average income have the lowest school expenditures.

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21 Tractenberg, "Reforming School Finance Through State Constitutions."

22 Berke, Answers to Inequity, p. 32.
Racial discrimination is also readily apparent in Texas educational finance. There is a clear pattern of higher quality education in districts with the highest proportions of Anglos, and lower quality education in districts with the lowest proportions of Anglos. In short, the more Negroes and Mexican-Americans in the school population of a district, the lower its revenues for education.

Here is a rather odd set of circumstances, when considered in retrospect. New Jersey faltered in its legislative attempt after being ordered by the State Supreme Court to take action there. In addition, the reform movement had the aid and support of the Governor. In Texas, the system was given endorsement, if not support, by the United States Supreme Court and then two years later, reforms were made anyway, although the circumstances were somewhat unusual.

Due to unusually huge revenues produced by the unprecedented rise in oil and gas prices in 1973-1975, Texas found itself in 1975 with a one billion dollar revenue surplus, and the legislature in June of that year infused more than 650 million into the education system of the State. The much-debated "H.B. 1126" was passed by the Sixty-fourth Legislature in an atmosphere which included the direct expression of public opinion.

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23 Ibid.

24 James, "A Hopeful Session," p. 3.

25 General and Special Laws of the State of Texas, 64th Legislature, Regular Session, Chapter 334, pp. 877-899.
A massive rally, organized around the theme, 'Now or Never', drew 35,000 educators to Austin to express their opinion on a matter before the Legislature', as one state senator put it. Of 23 speakers, 11 were legislators who eventually voted for the bill.26

Whatever the political climate, the bill which was ultimately adopted contained a great many of the reforms which had been urged in the courts of various states. Some disagree over whether or not the bill actually corrected the inequities, but "the sheer magnitude of the Texas appropriation makes it a major event for education in the states."27 The purpose of this study is not to comment upon the effect of H.B. 1126, but to evaluate its significance vis-a-vis the courts. The activity in the states of New Jersey and Texas point out one conclusive fact of life concerning educational finance reform: The courts are severely limited in their impact in this area. Certainly, the indebtedness of one state and the affluence of the other contributed much more to outputs (or lack of them) in the state legislatures, than court decisions.

There is one possibility which may help explain the Texas phenomenon, besides the budget surplus and the political climate. As mentioned in Chapter Three, the political mechanisms went into operation in Texas after the first Rodriguez decision

26James, "A Hopeful Session," p. 3. It must be pointed out that the rally in Austin was not in support of H.B. 1126, but for school finance reform in general and teacher pay raises in particular.

27Ibid.
by the federal district court in San Antonio in 1971. This activity can be further illustrated by another "study group" which issued a report, including a chapter entitled, "A Legislative Strategy."²⁸ In that chapter, there was much speculation, but it appeared as if this group was resigned to the fact that the Legislature had to act soon. "It is not known, of course, when the final decision in the Rodriguez case will be handed down or whether the District Court decision will be upheld. Until the Supreme Court rules, however, the Legislature will have to proceed as if the lower court decision had been affirmed."²⁹ This does not suggest that H.B. 1126 was the result of the myriad of "study groups" assigned to investigate and report on the problem. But it is possible that the publicity and attention given to the school finance issue because of Rodriguez, despite the outcome in the Supreme Court, had a definite influence upon the action taken by the Legislature.

The passage of H.B. 1126 does not mean that the funding scheme has been "reformed." Many have especially objected to the "local enrichment" portions of the system which still allow affluent communities to offer programs and opportunities

²⁹Ibid., p. 23.
that poorer districts cannot.\textsuperscript{30} It is also important to note that politicians in Texas cannot be expected to lead any effort to further reform the financing system, regardless of the size of a future surplus. Governor Dolph Briscoe told the Associated Press at the Tenth Annual Governor's Conference on Intergovernmental Relations and Regional Planning that large increases in money for schools would bankrupt the State and do little for education. "We continue to invest more and more when most of the indicators appear to reflect that in many instances, we are getting less and less."\textsuperscript{31} At the same conference, State Senator Peyton McKnight spoke of an "education binge."\textsuperscript{32} The leadership in Texas is clearly against any efforts which may include higher levels of spending at the state level. Poorer districts are free to search other places for relief as well as the Legislature, but ultimately, of course, much of the money must come from local taxes as New Jersey discovered.

Between the two extremes of New Jersey and Texas, other states have found their own particular ways of dealing with funding inequities and budgetary problems. While full state assumption of the responsibility for education has not been

\textsuperscript{30}\textquote{Local maintenance funds in excess of the amount assigned to a district may be expended for any lawful school purpose or carried over to the next school year.} Vernons Texas Codes Annotated: Education Code, Vol. 1, section 16, 253.

\textsuperscript{31}Texas Outlook (January, 1976), p. 18.

\textsuperscript{32}Ibid.
adopted anywhere, states such as Kansas and Maine have recently greatly increased their share.\textsuperscript{33} Utah and Florida have also modified their systems (without court commandments to do so) and have adopted the popular "weighted pupil" plan, which gives a higher percentage of benefits to vocational and handicapped children.\textsuperscript{34} All of these plans "have at least one common purpose: to recognize that education in districts with high proportions of pupils who need higher inputs of educational resources is going to cost more."\textsuperscript{35} Lawmakers in Minnesota enacted an omnibus tax bill in 1973, which attempted to shift much of the tax load from property to sales and income taxes.\textsuperscript{36} This reform greatly affected the school finance issue, but was not a direct result of the \textit{Van Dusartz}\textsuperscript{37} decision, which ordered the legislature to come up with a more equitable system. Governor Andersen is given the credit by many for reform in Minnesota, and not the State Supreme Court. "While the \textit{Van Dusartz} decision came less than a month before the new education finance law, reform in Minnesota was clearly not simply a response to judicial mandate."\textsuperscript{38}

\textsuperscript{33}Berke, \textit{Answers to Inequity}, p. 112.
\textsuperscript{34}Ibid., p. 113. \hspace{0.5cm} \textsuperscript{35}Ibid., p. 114.
\textsuperscript{36}From \textit{The State Capitals: Taxes-Property Report (July 1, 1973)}, p. 3.
\textsuperscript{37}334 F. Supp 870 (1971).
\textsuperscript{38}Berke, \textit{Answers to Inequity}, p. 119.
The efforts of more states need to be further investigated, to see how they have responded in the post-Rodriguez atmosphere. Perhaps it would be instructive, but it seems clear that as yet there is no manifest pattern or trend in the state legislatures. While some states may have dutifully followed court instructions, litigation is not a prerequisite for legislative reform. Neither does a court decision guarantee that the mandated changes will take place. Whether or not school finance reform happens depends upon other variables in the political and economic environment, only one of which is court action. Inputs from the environment must be multi-dimensional, if the reformers are going to achieve their desired result in the legislatures of the states.
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