

ACHIEVING
HIGH
EDUCATIONAL
STANDARDS
FOR ALL

CONFERENCE SUMMARY

Division of Behavioral and Social Sciences and Education

Timothy Ready, Christopher Edley, Jr., and Catherine E. Snow, Editors

National Research Council

Educational Adequacy, Democracy, and the Courts

Michael A. Rebell

The U.S. Supreme Court's 1973 holding in *San Antonio Independent School District v. Rodriguez*¹ that education was not a fundamental interest under the federal constitution has led to an unprecedented era of constitutional activity by the state courts in rectifying inequities in state education finance systems. Over the past three decades, litigations have been brought in 44 of the 50 states. This paper reviews the history of these litigations and focuses on the significance of the emergence in recent years of a core constitutional concept of students' right to the opportunity for an adequate education.

The emphasis on adequacy has involved the courts in a significant dialogue with state legislatures and state education departments. Emerging from this dialogue are reinvigorated claims for increased resources for students in underfunded school districts as well as a new focus on the purposes of education and the states' obligation to ensure that students actually develop the cognitive skills they need to succeed in the workplace and to be effective citizens in the modern world.

The paper begins with a brief retrospective review of *Rodriguez*. It then provides an overview of the state education finance cases. Although plaintiffs prevailed in the early litigations, by the early 1980s, defendants were winning most of these cases, primarily because the courts had great difficulty in devising solutions for the problems of funding inequities. Beginning in 1989, however, the pendulum again shifted: plaintiffs have won about two-thirds of the recent cases, mainly because the focus has shifted from equal protection claims to provisions of state constitutions

that guarantee some substantive level of adequate education to all students. Instead of dealing with equal funding concepts and complex property tax reforms, the adequacy approach allows courts to focus on the concrete issues of what resources are needed to provide the opportunity for an adequate education to all students and the extent to which those resources are actually being provided.

The third section analyzes the new state court adequacy litigations. It considers the link between the standards-based reform movement, which is now being implemented in virtually all of the states, and the courts' recent emphasis on adequacy. It describes how standards-based reforms have provided the courts with "judicially manageable" tools that allow them to devise effective remedial orders in these cases. It also discusses a core constitutional definition of adequacy that has emerged from these cases in recent years. Forged through an implicit standards dialogue with legislatures and state education departments, this core constitutional concept defines the purpose of an adequate education in terms of preparation for civic participation and for the competitive job market; emphasizes the importance of relating constitutional requirements to contemporary needs; is pegged at a "more than minimal level"; and guarantees educational opportunities rather than specific educational outcomes.

The final section considers the implications of this emerging definition of an adequate education for the education system—and for a democratic society. Describing testimony and evidence submitted in the recently completed trial in the New York adequacy litigation, it demonstrates the critical link between mastery of the skills required under standards-based reforms and the constitutional requirements for an adequate education. Consideration of the specific skills that students need to be effective voters and jurors and economic competitors—an issue that was finessed rather than faced in years past—demonstrates that the standards-based reform movement cannot be considered merely aspirational. Actual fulfillment of the stated goals of standards-based reform (the development of high-level cognitive skills in virtually *all* American high school students) may, in fact, be a *sine qua non* for the survival of American democracy in the 21st century.

RODRIGUEZ IN RETROSPECT

The significance of *Rodriguez* can be understood only in the context of the implementation of the U.S. Supreme Court's earlier landmark civil rights ruling, *Brown v. Board of Education*.² Emphasizing that today "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity for an education,"³ the Court held in *Brown* that "[s]eparate educational facilities are inherently unequal."⁴ The Supreme

Court's dramatic declaration of the unconstitutionality of school segregation was followed, however, by a decade of minuscule progress in actually integrating Southern schools. During the 1963-1964 school year, barely 1 percent of black children attended school with white children in 11 Southern states.⁵ It was not until the late 1960s, after the Supreme Court announced in *Green v. County School Board*⁶ that Southern school boards must develop desegregation plans that promise "realistically to work now,"⁷ that substantial desegregation began to take place. The *Green* ruling, together with the passage of the Civil Rights Act of 1964, which held out a credible threat of a loss of federal funds, finally led to a substantial dismantling in many parts of the South of "freedom of choice" plans and other devices that were intentionally created by state and local officials to limit progress toward desegregation. By 1972 over 90 percent of black students in the deep South and over 75 percent in the border states attended school with at least some whites.⁸

Two of the major Supreme Court decisions of the early 1970s, however, precluded the possibility of large numbers of black and other minority students attending integrated schools in the North and the West. In *Keyes v. School District No.1*,⁹ the Court held that *Brown's* mandate did not require desegregation of school systems that were segregated de facto because of housing patterns rather than intentional state actions. Then, in *Milliken v. Bradley*,¹⁰ the Court held that predominantly white suburbs would not be required to participate in metropolitan-area desegregation schemes, in the absence of evidence that these districts had, in the past, intentionally discriminated against minority students. Taken together, these rulings meant that the vast majority of black and other minority students in the United States would continue to attend segregated schools with inadequate educational resources. Thus, at the present time, more than two-thirds of the black and Hispanic students in the United States attend segregated schools in which most students are also poor.¹¹

Soon after the glow began to fade from *Brown's* initial luster, education reformers saw the need to devise political and legal methods for ensuring the provision of adequate resources to the large numbers of poor and minority students who would continue to attend segregated schools. Funding for remedial education programs became a major component of desegregation decrees, especially in Northern and Western cities where metropolitan-area remedies could no longer be pursued or where opposition to busing was intense. Following the Supreme Court's reversal of its metropolitan-area desegregation remedy, for example, the U.S. District Court in Michigan approved a "Detroit only" remedial plan, which involved about \$12 million worth of compensatory education programs, guidance and counseling programs, and inservice training programs for teachers.¹²

Reformers also noted early on that the core problem behind the lack of equal education opportunity for many poor and minority students was the inequitable system of education finance that existed in almost every state. Rooted in the traditional pattern of local control of schooling in America, most state systems required much of the funding for public schools to be obtained from local property taxes, a method that inherently disadvantaged students who attended schools in areas that had low property wealth. Responding to this problem, several legal scholars developed constitutional theories that sought to equalize the funding capacity of all local school districts.¹³ These theories were tested in a number of state and federal litigations beginning in the late 1960s.

One of these cases, *Rodriguez v. San Antonio Independent School District*, which challenged the extreme inequities created by the Texas education finance system, reached the U.S. Supreme Court in 1973. It seemed at the time an ideal vehicle for establishing a new legal doctrine to make good on *Brown's* promise of equal educational opportunity. Given the strong emphasis the Supreme Court had placed on the preeminent role of education in modern society in *Brown*,¹⁴ and the prior precedent of the legislative reapportionment cases¹⁵ that had invalidated differential opportunities for citizens of different political subdivisions of a state, there was much expectation among civil rights advocates that the Court would respond favorably to a case calling for reform of inequitable school funding formulae.¹⁶

Rodriguez was initiated by parents whose children attended elementary and secondary schools in the Edgewood Independent School District, one of seven public school districts in the metropolitan San Antonio area. Edgewood's students were approximately 90 percent Mexican-American and approximately 6 percent black. The district's average assessed property value per student was so low that even with a relatively high local tax rate and supplemental state and federal state education aid, the district had only \$356 per student to support education programs. By way of contrast, neighboring Alamo Heights, a predominantly "Anglo" school district, had such high property wealth that it could tax itself at a rate 20 percent below that of its poorer neighbor and still have nearly \$600 available to spend on each of its students. Even when the largely minority citizens in the Edgewood district taxed themselves at a substantially higher rate, they were able to provide their students only about half the resources that were available to the more advantaged students in Alamo Heights.

Although the three-judge district court had held that the Texas education finance system violated the federal equal protection clause,¹⁷ the U.S. Supreme Court reversed.¹⁸ Closely parsing each of the equal protection arguments put forward by the plaintiffs, the Court held that neither the

poverty of the plaintiffs nor the importance of education would justify applying strict scrutiny to its review of the Texas education finance system. Justice Powell's decision for the majority first dealt with the wealth discrimination issue by questioning whether in Texas or anywhere else "poor" persons necessarily lived in the poorest school districts. He also noted that the Supreme Court's previous wealth discrimination cases had dealt with situations involving an "absolute" deprivation of the right at issue, rather than the type of "relative" deprivation at issue here.¹⁹ Next, although not denying the importance of education in modern society, the Court emphasized the absence of any specific reference to education in the federal constitution and rejected the argument that education is essential to the effective exercise of First Amendment freedoms like the right to vote. Justice Powell set forth a "slippery slope" argument, noting that if some level of education were to be considered a sine qua non for the exercise of political rights under the federal constitution, similar arguments could be made that "the ill-fed, ill-clothed, and ill-housed are among the most ineffective participants in the political process."²⁰

Having denied the plaintiffs' calls for strict scrutiny based on the poverty of the plaintiffs and the fundamentality of education, the Court held that the Texas funding scheme was "rationally related" to the legitimate governmental interest of achieving a "large measure of participation in and control of each district's schools at the local level."²¹ Rejecting the dissent's argument that lack of funding precluded poor districts from exercising any meaningful local control, the majority held that "some inequality" in the ability of local residents to make educational choices affecting their children "is not alone a sufficient basis for striking down the entire system."²²

Justice Powell's decision was supported by only a 5-4 majority. Justice Marshall was the most vociferous of the four dissenters. He rebuked the majority for setting aside the district court's finding that poor and minority group members tend to live in property-poor districts on the basis of a law review note of doubtful methodological validity.²³ Justice Marshall also argued that the "close nexus between education and our established constitutional values with respect to freedom of speech and participation in the political process"²⁴ compelled the Court to recognize that education and participation in the political process constitute a fundamental constitutional interest.

Justice Powell, writing for the majority, accepted this constitutional connection between education and political participation:

Exercise of the franchise, it is contended, cannot be divorced from the educational foundation of the voter. The electoral process, if reality is to conform to the democratic ideal, depends on an informed electorate: a

voter cannot cast his ballot intelligently unless his reading skills and thought processes have been adequately developed.

We need not dispute any of these propositions.²⁵

Justice Powell ruled, however, that the Court did not have to fully consider the implications of this constitutional connection in the present case because:

The State repeatedly asserted in its briefs . . . that it now assures "every child in every school district an adequate education." No proof was offered at trial persuasively discrediting or refuting the State's assertion.

Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right, we have no indication that the present levels of educational expenditure in Texas provide an education that falls short. . . . [No] charge fairly could be made [in the present case] that the system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process.²⁶

Thus, the majority decision implicitly left open the possibility of reconsidering this issue and taking some remedial action if, in a future case, it were to be established that students were being deprived of the type of "basic minimum" education the Court assumed that every Texas child was receiving. In fact, the Court went out of its way to reiterate this point in a later case when it stated that it still had not "definitively settled the questions whether a minimally adequate education is a fundamental right and whether a statute alleged to discriminatorily infringe that right should be accorded heightened equal protection review."²⁷

Despite its denial of relief to the plaintiffs in *Rodriguez*, the majority also noted the apparent need for reform of an education finance system that "may well have relied too long and too heavily on the local property tax," and it went out of its way to state that "this Court's action today is not to be viewed as placing its judicial imprimatur on the status quo."²⁸ The Court clearly hoped that both scholars "and the legislatures in the various states" would come up with "ultimate solutions"²⁹ to these complex problems.

Justice Powell's evident sympathy for the plaintiffs' plight and the majority's implicit recognition that *Brown's* vision of equal educational opportunity could not be realized without fundamental reform of the education funding system raise the question of why the Court did not remand the case for a trial to determine whether Texas was, in fact, providing a minimally adequate education to the plaintiff children under the challenged funding scheme. The Court's quick acceptance of the state's

passing reference to the adequacy of the current system without any proof being presented on this critical issue leads one to speculate that other implicit concerns may have led one or more of the justices who sided with the majority to conclude that, despite the gravity of the plaintiffs' claims, fiscal equity reform was not a feasible reform route for the Court to pursue at that time.

Justice Powell, in fact, seemed to allude to such underlying concerns when he stated that upholding the lower court's decision for the plaintiffs would lead to "an unparalleled upheaval in public education" and that there was no way of predicting "the consequences of massive change in the financing and control of public education."³⁰ He and the other members of the Court majority were apparently deeply concerned about the dearth of clear solutions and the lack of judicially manageable standards for navigating this rough policy terrain:

This case also involves the most persistent and difficult questions of educational policy, another area in which this Court's lack of specialized knowledge and experience counsels against premature interference with the informed judgment made at the state and local levels. . . . On even the most basic questions in this area the scholars and educational experts are divided. . . . Equally unsettled [is the] controversy as to the proper goals of the system of public education. . . . In such circumstances, the judiciary is well advised to refrain from imposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions.³¹

The Court's awareness of the difficulties of formulating judicially manageable standards in this area did not, in fact, originate with *Rodriguez*. Four years earlier, it had reviewed a fiscal equity litigation involving disadvantaged urban students in *McInnis v. Shapiro*.³² Plaintiffs in that case had argued that the state's education finance system, based on a minimum foundation level of \$400 per student, was inadequate to meet their educational needs. They argued that there was a federal constitutional right to a "financing system which apportions public funds according to the educational needs of the students. . . ." ³³ The lower court dismissed their complaint, holding that the controversy was nonjusticiable because "there are no discoverable and manageable standards by which a court can determine when the Constitution is satisfied and when it is violated."³⁴

The *McInnis* plaintiffs seemed unable to help the court out of this dilemma. They suggested two alternative remedies: either that all students receive the same dollar appropriation or that the state, in effect,

