From *Brown* to *Rodriguez*: Race, Residence, and the Limits of "Equal Protection," 1954-1973

A Thesis Submitted in Partial Fulfillment of the Requirements for a Bachelor of Arts Degree with Honors in History

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April 2019

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Acknowledgments

I would first like to thank Professor Molly Michelmore for encouraging me to write this thesis, helping me with my topic, and assisting me every step of the way throughout the whole process. I would never even have considered writing a thesis if it were not for her, and I am so grateful for the support that I constantly received throughout the whole process.

Thank you also to my second reader, Professor Ted DeLaney. I am so happy that I got to know you and take a class with you in my final semester here, and I enjoyed it so much.

Additionally, I could not have made it through this project without my five roommates who constantly listened to me talk about my thesis. And more importantly, thank you to all of you for putting up with the stacks of library books all over our living room for the entire year. I am so grateful for this year with all of you.

Lastly, thank you so much to my parents. I am so appreciative that you both encouraged me to pursue what I was interested in and major in history, and I am so thankful for all of your support over the last four years.

Introduction

Demetrio Rodriguez was the father of three boys who attended Edgewood Elementary School in San Antonio in 1968. Edgewood Elementary School was a part of Edgewood Independent School District, a district that served an area with very low property values. At the time, Edgewood Elementary School did not receive nearly enough funding to provide its students with the resources they needed to succeed. The physical facilities of the school were in terrible shape, the classrooms did not have the basic supplies needed in an elementary school, and almost half of the teachers in the school were not certified and working on emergency permits.[1] Compared to a neighboring school district, Alamo Heights Independent School District, Edgewood had one-third as many library books, one-fourth as many guidance counselors, and classes that were 50 percent more crowded. More than 90 percent of the students who attended Edgewood Elementary School were Hispanic, and 6 percent were African American, while Alamo Heights was a majority non-Hispanic white district.[2] The inadequate school conditions worried Demetrio Rodriguez and other Edgewood Elementary parents, so they filed a class action lawsuit against state and local officials in Texas.[3] The parents knew very little about school finance, but they did know that they overwhelmingly voted in favor of giving more money to schools when they had the chance. Despite high tax rates, however, their schools were substandard.

The concerned parents approached Arthur Gochman, a University of Texas Law School graduate known for his work defending civil rights, for help with the school finance case. Gochman informed the group that the issue causing the disparities in school conditions in San

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[1] Camille Walsh, "Erasing Race, Dismissing Class: *San Antonio Independent School District v. Rodriguez*," *Berkeley La Raza Law Journal* 21 (2011): 143, EBSCOhost.
[2] Walsh, "Erasing Race," 143.
[3] Camille Walsh, *Racial Taxation: Schools, Segregation, and Taxpayer Citizenship, 1869-1973* (Chapel Hill, NC: University of North Carolina Press, 2018), 143.

Antonio was the state financing system, which put them at a disadvantage due to the low property values in the Edgewood District. Gochman helped the parents file a lawsuit on the basis of three central claims: first, that poverty was a suspect class under the Fourteenth Amendment, second, that education was a fundamental right implicitly guaranteed by the Constitution, and third, that the discrimination against the Mexican-American plaintiffs was on the basis of race as well as wealth. Gochman intentionally picked Rodriguez as the named plaintiff in the case, with the hope that the Latino name would highlight the racial issues at stake.[4]

Five years later, in 1973, the U.S. Supreme Court ruled in *San Antonio Independent School District v. Rodriguez* that the property tax-based school finance system in Texas did not violate the equal protection clause of the Fourteenth Amendment. Because education was not a fundamental right explicitly guaranteed by the Constitution, the Court argued that the wealth discrimination created by the state's local property tax-based financing system did not violate students' constitutional rights. With this decision, the Court essentially decided that the underprivileged, majority Mexican American children receiving an insufficient education because of their impoverished school district were not entitled to protection and access to an equal education.[5] The decision marked an important end to the court's experiment with desegregation. The case, and the decision, also tied together three key areas – race, wealth, and politics – in a way other education cases of the era did not. As such, it provides a way to think about the history and limits of the Civil Rights revolution, the roots of *de facto* segregation, and the significance and "stickiness" of the color line in 20th century America.

The decision in *Rodriguez* came almost twenty years after the landmark decision in *Brown v. Board of Education* (1954). In *Brown*, the Court declared the fundamental importance of education and ruled that the separate but equal standard established in *Plessy v. Ferguson*

[4] Walsh, *Racial Taxation*, 144.
[5] Walsh, "Erasing Race," 134.

(1896) was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment, claiming that students could not be denied equal education opportunities because of their race.[6] The decision in *Brown* established education as "perhaps the most important function of state and local government."[7] Access to education potentially provides opportunities for children from every financial background, and the *Rodriguez* decision denied students the necessary education to succeed.[8]

In *Brown*, the Court addressed only segregation required by state constitutions or statutes. This *de jure* segregation was different, according to the Court, than the *de facto* racial segregation produced by the facially non-racial financing scheme in Texas. The justices on the Supreme Court between 1954 and 1973 were less inclined to handle cases of *de facto* segregation, and that affected how the Court made its decision in *Rodriguez*. The Court dealt with many cases prior to 1973 that handled segregation and inequality, but it usually "focused on remedying only the formal system of racial segregation, leaving the inequality of school resources and property tax funding to the side," as was the case in *Rodriguez*.[9]

The decision in *Rodriguez* was a "practical invalidation of *Brown*" because of the claim that education was not a fundamental right guaranteed by the Constitution and the failure to protect disadvantaged groups.[10] *Brown* and *Rodriguez* then might be seen as bookends to the era of desegregation. In this period, the Court also took up a series of "welfare" cases that raised the issue of wealth discrimination and wealth as a suspect class, which were important parts of the plaintiffs' case in *Rodriguez*. The first chapter of this thesis looks at education and welfare cases

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[6] Walsh, *Racial Taxation*, 111, 134.
[7] *San Antonio Independent School District v. Rodriguez.* Supreme Court Case Files Collection. Box 8. Powell Papers. Lewis F. Powell Jr. Archives, Washington & Lee University School of Law, Virginia.
[8] Magda Derisma, "The Divide in Public Education Funding - Property Tax Revenue," *Children's Legal Rights Journal* 34, no. 1 (Winter 2013): 123, HeinOnline Law Journal.
[9] Walsh, *Racial Taxation*, 110.
[10] Jonathan Kozol, "Romance of the Ghetto School," *The Nation*, May 23, 1994, 703.

decided by the Supreme Court between 1954 and 1973 to see what the Court was willing to change and what it was not willing to change with regard to racial and wealth discrimination, how that related to *Rodriguez* later.

The segregation of school districts in Texas that resulted in the inequality between schools was rooted in a history of residential segregation and racial taxation. The inequalities involved in *Rodriguez* reflected the historical segregation of metropolitan areas across the country. The second chapter of this thesis examines the history of residential segregation and the consequences of this segregation for public education. In Texas, as in many other states – Southern and non-Southern alike – school district lines were drawn around neighborhoods that already existed, ensuring that even if schools were not segregated by law, they were segregated in practice.[11] During the 20th century, the U.S. government implemented policies that led to the segregation of every metropolitan area in the country.[12] Essentially, U.S. government-sponsored housing agencies and housing projects, along with loan and tax policies, allowed for and even encouraged segregation, even if the segregation was not explicitly required by law. This racial segregation, promoted and subsidized by public housing and tax policy, led not only to segregated schools, but also to the unequal distribution of wealth within metropolitan areas.

After World War II, the U.S. government subsidized suburbanization that resulted in racially segregated school districts. As people resettled after World War II, the government approved lease, rental, and lending restrictions that encouraged the development of racially segregated cities and suburbs.[13] Many white families took advantage of federally-subsidized mortgage programs – offered by the FHA and the VA – to create white "suburban enclaves" and

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[11] Paul A. Sracic, *San Antonio v. Rodriguez and the Pursuit of Equal Education: The Debate over Discrimination and School Funding* (Lawrence, KS: University Press of Kansas, 2006), 10.
[12] Richard Rothstein, *The Forgotten History of How Our Government Segregated America* (New York, NY: Liveright Publishing, 2017), VIII.
[13] R. Brahinsky, "Race and the City: The (Re)development of Urban Identity," *Geography Compass* 5, no. 3 (March 2011): 144, EBSCOhost.

escape the "costs" of desegregation.[14] That racial minorities were often concentrated in the poorest districts in metropolitan areas, as was the case in San Antonio, was a feature not a bug of the postwar housing system.[15]

Richard Nixon's 1968 election signaled a rightward turn in American politics. Between 1968 and 1973, Nixon successfully nominated four Supreme Court justices. Each of his appointments voted to uphold the school financing system in Texas.[16] Justice Lewis Powell, a former education official on both the Richmond School Board and the Virginia Board of Education, wrote the majority opinion for *Rodriguez.* Due to this experience in school politics, Powell had a significant interest in cases involving education and his background provided him with considerably more knowledge about how schools functioned than any of the other justices had.[17] In the *Rodriguez* decision, Powell argued that the right to education was not mentioned anywhere in the United States Constitution, and therefore was not protected by the Fourteenth Amendment. Powell justified this by further claiming that the Equal Protection Clause of the Fourteenth Amendment did not require absolute equality in every sense.[18]

The Court's decision in *Rodriguez* also reflected the influence of the Cold War and the rising political power of business. The Court feared that if they acknowledged wealth inequality as unjust it would undermine American democracy.[19] While recognizing some forms of racial inequality could be used by the U.S. as a weapon in the Cold War, the same could not be said for economic inequality.[20] Before Powell was nominated to the Supreme Court he wrote a memorandum, often referred to as the "Powell Memorandum" which defended the American

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[14] Brahinsky, "Race and the City," 148.
[15] Kozol, "Romance of the Ghetto," 704.
[16] Sracic, *San Antonio*, 10.
[17] Paul Sracic, "The Brown Decisions Other Legacy: Civic Education and the Rodriguez Case," *Political Science and Politics* 37, no. 2 (2004): 216, JSTOR.
[18] Kozol, "Romance of the Ghetto," 703.
[19] Walsh, *Racial Taxation*, 148.
[20] Walsh, *Racial Taxation*, 148.

Free Enterprise System, and expressed his fear of potential left-wing attacks on the economic system in the U.S. Although this was written before Powell was on the Supreme Court, it was not leaked until later.[21]

The third chapter of this thesis will focus on *Rodriguez* itself. What makes *Rodriguez* so interesting is how the Supreme Court understood the relationship between education, politics, wealth, and race. In the ruling, the Court basically ignored the claims of racial discrimination and dismissed wealth as a suspect class. The Court also failed to see the intersection of the two types of discrimination.[22] By looking at the Supreme Court cases that preceded it, and the history of residential segregation and racial taxation, this thesis will set the scene for the decision in *Rodriguez*, and then look at the case specifically to argue that the Court failed to protect the rights of both minority students and lower-class families, as well as failed to acknowledge the intersection between the two.

[21] Walsh, *Racial Taxation*, 149-150.
[22] Walsh, "Erasing Race," 134.

Chapter 1: From *Brown* to *Rodriguez* -- The Supreme Court, Race, and Wealth

Introduction

In a 5-4 decision in *San Antonio Independent School District v. Rodriguez*, the Supreme Court determined that education was not a fundamental right, and wealth was not a suspect class, and therefore that the property-tax based school funding system in Texas was not unconstitutional. The Supreme Court's ruling in *Rodriguez* came at the end of a two-decade long period of judicial activism in the name of educational equity, class amelioration, and racial justice. Between *Brown v. Board of Education* (1954) and *Rodriguez* (1973) a number of cases approached the issues of race, education policy, welfare, and wealth discrimination. In these decisions, the high court either failed to protect the rights of minority groups and the poor or failed to establish lasting national, and constitutionally grounded, changes in these areas. With respect to race, the Court often condemned *de jure* segregation, but was less inclined to act when faced with *de facto* segregation, as was the case in *Rodriguez*. The Court also refused to acknowledge fully the persisting relationship between race and class.[1] As the country moved toward formal racial equality in the mid-1960s, racial discrimination often manifested as economic discrimination, a form the Courts were less willing, and less equipped, to address.

In 1969, Warren Burger became Chief Justice of the Supreme Court, bringing an end to the Warren Court era. Earl Warren's Court had focused on equality in many cases, ruling *de jure* segregation unconstitutional in *Brown* and making some progress toward establishing a Fourteenth Amendment prohibition on wealth discrimination. The activism of the Warren Court made the Supreme Court a target for politicians, including Richard Nixon, who pledged to appoint justices who would strictly adhere to the Constitution during his 1968 campaign for

[1] Mario L. Barnes and Erwin Chemerinsky, "The Disparate Treatment of Race and Class in Constitutional Jurisprudence," *Law and Contemporary Problems* 72, no. 4 (Fall 2009): 126, JSTOR.

president.[2] Warren Burger was chosen as Chief Justice in part to bring about a "rightward turn in the War on Poverty" from the Court.[3] As the Court moved to the right, the open discussion of poverty as a suspect class that deserved constitutional attention began to disappear.[4] Between *Brown* and *Rodriguez* the country moved from explicit Jim Crow segregation to "more oblique and opaque forms of racial discrimination," and the Court proved less willing to address class discrimination and *de facto* segregation.[5][6] The decisions made by the Warren Court had focused on equality, but the specific implementation of equality, especially with regard to school desegregation, was left up to the Burger Court.[7] The Warren Court's narrowly constructed set of Fourteenth Amendment Civil Rights protections enabled the Burger Court to decide not to protect certain groups, including those affected by *de facto* segregation.

Rooting out Formal Discrimination after *Brown*

When the Warren Court decided *Brown v. Board of Education* in 1954, it overturned the precedent established in *Plessy v. Ferguson* (1896) and found that "separate but equal" public schools were inherently unequal and therefore violated the Equal Protection Clause of the Fourteenth Amendment.[8] In *Brown,* the Court emphasized the importance of education by saying that "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."[9] However, even though *Brown* determined that school segregation violated the Constitution and that equal education was a basic necessity, the Court did not dictate

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[2] Michael J. Graetz and Linda Greenhouse, *The Burger Court and the Rise of the Judicial Right* (New York, NY: Simon & Schuster, 2016), 3.
[3] Camille Walsh, "Erasing Race, Dismissing Class: San Antonio Independent School District v. Rodriguez," *Berkeley La Raza Law Journal* 21 (2011): 141, EBSCOhost.
[4] Camille Walsh, *Racial Taxation: Schools, Segregation, and Taxpayer Citizenship, 1869-1973* (Chapel Hill, NC: University of North Carolina Press, 2018), 116.
[5] Walsh, *Racial Taxation*, 130.
[6] Graetz and Greenhouse, *The Burger*, 7.
[7] Graetz and Greenhouse, *The Burger*, 8.
[8] "Brown v. Board of Education of Topeka (1)," Oyez.
[9] *Brown v. Board of Ed. Of Topeka*, 347 U.S. 483 (1954).

at once the means by which school districts should end segregation. As such, *Brown* "solidified a formal racial discrimination narrative," and failed to establish an effective way to end the widespread practice of segregated public schooling in the U.S.[10]

The next year, the Supreme Court attempted to provide some guidance to the states for the desegregation process. The 1955 ruling, referred to as *Brown II,* directed the states to desegregate with "all deliberate speed," once again leaving schools segregated in many areas of the country.[11] As Michael Graetz and Linda Greenhouse rightly note, the Court clearly "failed to foresee just how intransigent the problem of school segregation would be."[12] Even after *Brown II,* it was easy for those who opposed desegregation to resist it due to the lack of specificity in the Court decisions and the wide variety of school segregation situations that existed as a result of drastic differences among school districts. Potential differences included the size of districts and the level and nature of residential segregation in different areas. For example, school districts in areas with significant residential segregation had an easier time avoiding desegregation because they could defend the appearance of a dual system as a result of where people chose to live, rather than as a result of intentional discrimination.

In the decade following the *Brown* and *Brown II* decisions, "education equality appeared to be nothing more than an empty promise." [13] The Supreme Court left the school segregation issue to the lower courts and did not find a way to effect more immediate change. The decision's opponents reluctantly admitted that the Court would not reverse itself, but that the states could take action to minimize *Brown's* implications.[14] Equally consequential, by failing to set a hard

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[10] Walsh, "Erasing Race," 140.
[11] "Brown v. Board of Education of Topeka (2)," Oyez.
[12] Graetz and Greenhouse, *The Burger*, 81.
[13] Benjamin Michael Superfine, *Equality in Education Law and Policy, 1954-2010* (New York, NY: Cambridge University Press, 2013), 38.
[14] Justin Driver, *The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind* (New York, NY: Pantheon Books, 2018), 242.

deadline for compliance, the Warren Court ceded control of desegregation to its successor.[15] During the first few years that Warren Burger served as Chief Justice, the Court ruled on a variety of cases involving both educational equity and wealth discrimination. These decisions had long-term consequences for the U.S. school system, and together made possible, or perhaps even inevitable, the process of "re-segregation" in the 1980s and beyond.

In the major education cases in the two decades following *Brown*, the Court "consistently focused on remedying only the formal system of segregation, leaving the inequality of school resources and property tax funding to the side."[16] The Court routinely opposed formal racial discrimination, but stopped well short of requiring that all segregated school systems be desegregated. The Court also stopped well short of establishing a robust wealth discrimination doctrine. The decision in *Rodriguez* brought together both strains of jurisprudence and foreclosed juridical avenues toward educational justice and equity.

The last major desegregation case of the Warren era was *Green v. County School Board of New Kent County*[17] This 1968 case involved the public-school system in a rural Virginia county. New Kent County had two public schools at the time that taught elementary through high school students, New Kent School and George W. Watkins. The students at New Kent School were all white, while George W. Watkins was entirely black. Not only were the student bodies of these schools segregated, but the schools also had segregated faculties, staffs, facilities, and methods of transportation.[18] The schools in New Kent County remained segregated long after the *Brown* and *Brown II* decisions due to laws enacted in Virginia to resist desegregation.[19] Unlike many major metropolitan areas in the U.S., rural New Kent County had almost no residential

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[15] Graetz and Greenhouse, *The Burger*, 8.
[16] Walsh, *Racial Taxation*, 110.
[17] "*Green v. County School Board of New Kent County*," Oyez.
[18] *Green v. County School Board of New Kent Count*, Va., 391 U.S. 430 (1968).
[19] Superfine, *Equality in Education*, 53.

segregation, but nonetheless had a segregated school system.[20] To receive federal aid in 1965, the school district implemented a "freedom of choice" plan by which students in the county could choose to attend either of county's schools, regardless of race. Students who did not choose a school were assigned to the school they previously attended.[21] Even after establishing the "freedom of choice" plan, New Kent County still essentially operated a dual system because no white students chose to attend George W. Watkins, and very few black students transferred to New Kent School. African-American parents and students in New Kent County first brought this case to the district court, arguing that the "freedom of choice" plan did not sufficiently desegregate the schools, and therefore violated the Fourteenth Amendment.[22]

In *Green*, the district court held upheld the "freedom of choice" plan, and so did the U.S. Court of Appeals for the Fourth Circuit, although the Court of Appeals determined that there needed to be a more specific plan regarding the desegregation of teachers in New Kent County. The Supreme Court, however, found that the "freedom of choice" plan was not sufficient for desegregating the school district.[23] According to the Court, the "freedom of choice" plan was only a first step towards abolishing the dual system. Expressing frustration with the slow pace of progress, the unanimous majority also noted that "this first step did not come until some 11 years after the Court decided *Brown I,* and 10 years after *Brown II* directed the making of a 'prompt and reasonable start.'"[24] The Court did not find the "freedom of choice" plan itself unconstitutional, but rather ruled that the plan was insufficient to achieve desegregation in this particular case.[25] "Freedom of choice" plans, the court was quick to point out, might be acceptable in some situations.

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[20] *Green v. County School Board of New Kent Count, Va.*, 391 U.S. 430 (1968).
[21] Superfine, *Equality in Education*, 53.
[22] "*Green v. County*," Oyez.
[23] "*Green v. County*," Oyez.
[24] *Green v. County School Board of New Kent Count*, *Va.*, 391 U.S. 430 (1968).
[25] *Green v. County School Board of New Kent Count*, *Va.*, 391 U.S. 430 (1968).

The implications of the ruling in *Green* were relatively limited and did not provide a precedent for addressing *de facto* segregation in other school districts. *Green* was the last major education case of the Warren Court and of the 1960s, so it set the tone for the transition from the Warren Court to the Burger Court. The majority opinion, written by Justice William Brennan, exposed the Court's "commitment to remedying *de jure* segregation and its refusal to declare *de facto* segregation unconstitutional."[26] The Court focused on the difference between desegregation and integration in *Green,* and showed a commitment to ending segregation, but not necessarily to promoting integration.[27] Claiming that "there is no universal answer to complex problems of desegregation," the Court concluded that "there is obviously no one plan that will do the job in every case."[28] The Court also said that if they found a school board "to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system," then the plan would be considered effective.[29] These parts of the opinion implied that the Court was not looking to find a solution to school segregation that would lead to the end of dual systems all across the country.

Wealth Discrimination and the Court

In addition to segregation in schools, *Rodriguez* handled wealth discrimination within the school system in San Antonio. Prior to *Rodriguez*, the Warren Court made steps towards equality not only involving race but involving wealth as well. These wealth discrimination rulings helped launch the welfare rights movement of the mid to late-1960s.[30] However, Nixon's election and

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[26] Vincent Blasi, *The Burger Court: The Counter Revolution That Wasn't* (New Haven, CT: Yale University Press, 1983), 115.
[27] Superfine, *Equality in Education*, 53.
[28] *Green v. County School Board of New Kent Count*, *Va.*, 391 U.S. 430 (1968).
[29] *Green v. County School Board of New Kent Count*, *Va.*, 391 U.S. 430 (1968).
[30] Elizabeth Bussiere, *(Dis)Entitling the Poor: The Warren Court, Welfare Rights, and the American Political Tradition* (University Park, PA: Pennsylvania State University Press, 1997), 84.

Burger's elevation to Chief Justice changed the treatment of wealth-related cases. Even while the Warren Court made steps towards wealth equality, the Court often refused to recognize the important relationship between race and class.

To make lasting progress in both racial and wealth equality, the Court needed to recognize the "powerful link between the social debilitation conferred by minority racial status and that conferred by poor socioeconomic background."[31] As Barnes and Chemerinsky have pointed out, socioeconomic status "can create significant, added disadvantage within minority racial groups," meaning that minorities are often affected disproportionately by policies that affect those of a lower socioeconomic class.[32] Because of the relationship between race and class in the U.S., decisions by the government and the courts that involve the poor almost always affect racial minorities significantly more than they affect white Americans. The Court has often acted as if class and race are completely separate, but this is really not the case, and the Court refused to acknowledge the link between the two in the wealth discrimination cases between 1954 and 1973.[33]

The Warren Court confronted wealth discrimination in *Griffin v. Illinois* (1956). *Griffin* involved the effects of disparities in wealth within the criminal justice system. In this case, two men were indicted for a robbery in Illinois and could not afford the usual cost for the transcript of their trial proceedings. Without a transcript, the defendants did not have the right to file for an appeal in their case. The men requested to receive the transcript without the typical cost in order to have a fair trial but were denied the transcript without the fee. The lower court did not hear evidence and dismissed the request of the two indicted men.[34]

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[31] Barnes and Chemerinsky, "The Disparate," 127.
[32] Barnes and Chemerinsky, "The Disparate," 127.
[33] Barnes and Chemerinsky, "The Disparate," 129.
[34] *Griffin v. Illinois*, 351 U.S. 12 (1956).

In a 5-4 decision, the Supreme Court decided that denying poor defendants the right to an appeal was equivalent to denying them a trial, and therefore their inability to pay for a transcript violated both their Due Process and Equal Protection rights.[35] The majority opinion, written by Justice Hugo Black, said that "there can be no equal justice when the kind of trial a man gets depends on the amount of money he has."[36] Justice Black also emphasized how "providing justice for the poor and rich, weak and powerful alike is an age-old problem" that the Supreme Court had not yet managed to solve.[37] By making the decision to change the criminal justice system, the Court implicitly acknowledged that wealth was a 'suspect class,' as they had already done with race.[38] This seemed promising for those who were in favor of the Court recognizing the poor as a group who needed extra protection. However, close to twenty years later the Court would deny that wealth was a 'suspect class' in the *Rodriguez* decision.

Griffin was "the first time in a nonrace case the Supreme Court declared unconstitutional a law that accorded *formal* equality to all persons," meaning that the transcript fee applied to everyone, not just to those of one race or class.[39] Before *Griffin*, decisions by the Court upheld statutes that led to disparities between classes as long as they did not have obvious discriminatory purposes.[40] Even though the Constitution nowhere required that the state provide appellate courts, the Court determined that denying someone the opportunity to an appeal based on their economic status was unconstitutional.[41]

Harper v. Virginia Board of Election Commissioners (1966) was another wealth discrimination case. *Harper* involved a poll tax in Virginia state elections. A Virginia resident,

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[35] *Griffin v. Illinois*, 351 U.S. 12 (1956).
[36] *Griffin v. Illinois*, 351 U.S. 12 (1956).
[37] *Griffin v. Illinois*, 351 U.S. 12 (1956).
[38] Bussiere, *(Dis)Entitling the Poor*, 87.
[39] Bussiere, *(Dis)Entitling the Poor*, 87.
[40] Bussiere, *(Dis)Entitling the Poor*, 87.
[41] *Griffin v. Illinois*, 351 U.S. 12 (1956).

Annie Harper, was unable to pay the poll tax of $1.50, and filed suit claiming that this violated the Equal Protection Clause.[42] Harper and the other plaintiffs argued that "the tax had a disproportionate impact on African Americans due to the large percentage of the poor who were black."[43] This claim explicitly linked race and wealth discrimination, a connection that the Court previously ignored. The federal district court first ignored Harper's claim, using *Breedlove v. Settles,* a 1937 Supreme Court decision that ruled that the states had power over poll taxes, as precedent.[44]

When *Harper* made it to the Supreme Court, the Court overturned the decision of the district court and ruled to abolish the poll tax. In the opinion, Justice William Douglas described the poll tax as a "financial hurdle to voting" that created "invidious discrimination" based on wealth.[45] The Court determined that using "the affluence of the voter" as an electoral standard violated the Equal Protection Clause.[46] In a 6-3 decision, "the majority reasoned that the eligibility to vote has no rational connection to the wealth of an individual," and therefore a tax that excluded people from voting violated the rights of those who could not pay it.[47] The opinion concluded by saying that "the right to vote is too precious, too fundamental to be so burdened or conditioned."[48]

Harper was an especially remarkable case for the Warren Court because it was "the first case in which the Court *explicitly* singled out indigence as an Equal Protection category," something that the Court would not stick to in later decisions.[49] The existence of a poll tax in Virginia preserved anachronistic and racist assumptions that the ability to vote was related to

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[42] "*Harper v. Virgini*a," Oyez.
[43] Walsh, *Racial Taxation*, 113.
[44] "*Harper v. Virgini*a," Oyez.
[45] *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966).
[46] *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966).
[47] "*Harper v. Virginia*," Oyez.
[48] *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966).
[49] Bussiere, *(Dis)Entitling the Poor*, 89.

property ownership, and therefore the Court got rid of a barrier to voting that was both racist and discriminatory towards the poor.[50] Even though the poll tax clearly had racial implications, the majority opinion only discussed wealth-based discrimination, and did not address the claim that race and wealth discrimination were related, similarly to *Rodriguez*.[51] In *Harper*, the Court treated wealth discrimination comparably to racial discrimination, which was an important change in a Supreme Court ruling. However, the Court still refused to recognize the link between class and race.

While the Warren Court "ruled in favor of poor people in several different cases" throughout the 1950s and 1960s, the Burger Court took a different route regarding wealth, both in *Rodriguez* and in earlier cases.[52] Even though the Court did not recognize the obvious link between race and class discrimination, *Griffin* and *Harper* hinted that the Court would begin to treat discrimination against the poor with a higher level of scrutiny, but that did not last.[53] In 1970, the Burger Court decided *Dandridge v. Williams* and "abruptly ended th[e] momentum toward equal constitutional protection of poor people," setting the stage for what was to come in *Rodriguez*.[54] *Dandridge v. Williams* involved the Aid to Families with Dependent Children (AFDC) Program, which was created by the Social Security Act of 1935, and funded by both state and federal governments.[55] The purpose of the AFDC Program was to provide money for children whose families had little or no income. Under this program, each state was given the responsibility to compute a "standard of need" for families within their state. In Maryland, the standard of need increased for additional family members, but by a smaller amount for each

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[50] Bussiere, *(Dis)Entitling the Poor*, 89.
[51] Walsh, "Erasing Race," 141.
[52] Marie A. Failinger and Ezra Rosser, eds., *The Poverty Law Canon: Exploring the Major Cases* (Ann Arbor, MI: University of Michigan Press, 2016), 129.
[53] Barnes and Chemerinsky, "The Disparate," 123.
[54] Failinger and Rosser, *The Poverty*, 130.
[55] "*Dandridge v. Williams*," Oyez.

additional person, and with a limit of $250 per family per month.[56] The plaintiffs in *Dandridge* asserted that the way that Maryland computed the standard of need violated the Equal Protection Clause and the Social Security Act of 1935 since large families did not continue to receive aid for each child they had.

A single mother and a married couple who each had eight children brought this case forward. These parents claimed that Maryland's system discriminated against larger families who struggled financially, and therefore violated the Equal Protection Clause, and conflicted "with the stated purpose of the program as laid out by the Social Security Act."[57] The concerned parents filed suit against the Chairman of the Maryland State Board of Public Welfare, as well as other public officials in Maryland. The parents claimed that the "maximum grant limitation operates to discriminate against them merely because of the size of their families," and that they should be entitled to increased welfare benefits to support their larger families.[58] Originally, a federal district court ruled that the system in Maryland violated both the Equal Protection Clause and the Social Security Act, but the court reconsidered and changed its ruling.[59]

In a 5-3 decision, the Burger Court ruled that the system in Maryland violated neither the Equal Protection Clause nor the Social Security Act. The Court's decision in *Dandridge* "began to curb the potentially limitless reach of substantive equal protection."[60] Even though the welfare system in Maryland negatively affected large struggling families, the Court determined that the Constitution did not include welfare benefits as a fundamental right.[61] In the decision, the Court emphasized "the states' undisputed power" to determine the standard of need.[62] The Court also

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[56] "*Dandridge v. Williams*," Oyez.
[57] "*Dandridge v. Williams*," Oyez.
[58] *Dandridge v. Williams*, 397 U.S. 471 (1970).
[59] "*Dandridge v. Williams*," Oyez.
[60] Tinsley E. Yarbrough, *The Burger Court: Justices, Rulings, and Legacy* (Santa Barbara, CA: ABC-CLIO, 2000), 136-137.
[61] Yarbrough, *The Burger*, 137.
[62] *Dandridge v. Williams*, 397 U.S. 471 (1970).

noted that all children in Maryland received some aid, even if it were not a large amount due to the size of the family, so it did not violate the Equal Protection Clause.[63] Additionally, the state wanted to encourage work and equalize incomes between workers and those receiving welfare, and the limit to the welfare amounts helped with these goals.[64] The majority opinion made it clear that "the intractable economic, social, and even philosophical problems presented by public welfare assistance programs [were] not the business" of the Court.[65] In *Dandridge*, the Court moved away from "substantive questions of distributive justice," and instead focused on "procedural issues."[66] By failing to protect the rights of the poor, the decision in *Dandridge* led to what was to come with the later decision in *Rodriguez* and exposed the "frailty of the Warren Court's Equal Protection doctrines in the economic domain of distributive politics."[67]

The dissenting Justices in *Dandridge* believed that the Court denied members of these larger families access to basic human rights. Justices Marshall and Brennan referenced the United Nations Declaration of Human Rights in their dissenting opinion to emphasize how "all individuals are members of the human family," and that the Court failed to provide all classes and groups of people with the protection that they deserved under the Constitution.[68] *Rodriguez* resulted in a similar conclusion to *Dandridge* because the Burger Court failed to recognize the poor students in Edgewood School District as a suspect class, and therefore did not require that any changes be made in the school system.

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[63] *Dandridge v. Williams*, 397 U.S. 471 (1970).
[64] Yarbrough, *The Burger*, 137.
[65] Failinger and Rosser, *The Poverty*, 129.
[66] Elizabeth Bussiere, "The Failure of Constitutional Welfare Rights in the Warren Court," *Political Science Quarterly* 109, no. 1 (Spring 1994): 124.
[67] Bussiere, *(Dis)Entitling the Poor*, 111.
[68] *Dandridge v. Williams*, 397 U.S. 471 (1970).

Civil Rights Outside of the Courts

Civil Rights, of course, was not just confined to the Courts in the decades following *Brown*, but rather pervaded and indeed defined American politics. While the Supreme Court faced a series of cases involving segregation, other branches of the American government dealt with the issues of racism and segregation in the United States as well. Lyndon Johnson became president in 1963 and immediately began to tackle the issue of civil rights more aggressively than his predecessor John F. Kennedy had before. The day after Kennedy's assassination Johnson told his top advisers that he was going to pass Kennedy's civil rights bill "without changing a single comma or a word."[69] Johnson was not only devoted to civil rights, but also wanted to "push through a transformative body of laws that would constitute nothing less than a Second New Deal" once he became president, a task that proved to be difficult.[70] Johnson displayed his devotion to civil rights in a 1964 speech to the Georgia state legislature where he said "we must protect the constitutional rights of all of our citizens, regardless of race, religion, or the color of their skin."[71] Johnson also built a relationship with civil rights leaders including Martin Luther King Jr., and he emphasized to them how he wanted to make significant strides in segregation, as well as resolve the "multiple factors that perpetuated racial inequality," specifically meaning the economic aspect of racial inequality.[72]

Although Johnson devoted much of his time to enacting significant change and passing legislation that liberals had discussed for years, Congress at the time made this a difficult task.

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[69] Julian E. Zelizer, *The Fierce Urgency of Now: Lyndon Johnson, Congress, and the Battle for the Great Society* (New York, NY: Penguin Press, 2015), 1-2.
[70] Zelizer, *The Fierce*, 2.
[71] Sydney M. Milkis, Daniel J. Tichenor, and Laura Blessing, "'Rallying Force': The Modern Presidency, Social Movements, and the Transformation of American Politics," *Presidential Studies Quarterly* 43, no. 3 (September 2013): 645.
[72] Zelizer, *The Fierce*, 93-94.

With a significant number of Southern Democrats and Republicans, Congress was set on blocking Johnson from passing substantial racial legislation.[73] Johnson persisted, and after the longest filibuster in Senate history, Congress finally passed the Civil Rights Act of 1964. When Johnson heard that the filibuster ended, he said "we are going ahead in our country to bring an end to poverty and racial injustice."[74] The passage of the Civil Rights Act successfully gave the U.S. government the ability to enforce school desegregation, but this only applied to *de jure* segregation.[75] Even though the Civil Rights Act of 1964 was an important milestone in the movement towards racial equality, it still left many aspects of American society, including schools, to continue in the difficult struggle for equal conditions for all people. The process of reaching equality was slow-moving even after the passage of the Civil Rights Act, and the election of Richard Nixon in 1968 and the rightward turn in American politics around this time made the fight for civil rights, especially in the case of *de facto* segregation, even more difficult.

Busing as a Possible Solution to School Segregation?

In 1971, the Burger Court unanimously ruled in favor of desegregation in *Swann v. Charlotte-Mecklenburg Board of Education*. More than fifteen years after *Brown*, around 14,000 students in the Charlotte-Mecklenburg school system still attended schools that were entirely black, or more than 99 percent black. After the 1968 decision in *Green*, concerned families petitioned for change in the Charlotte school system. In April 1969, the district court determined that the school board needed to find a way to implement the desegregation of both students and faculty in the Charlotte-Mecklenburg School District.[76]

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[73] Zelizer, *The Fierce*, 4.
[74] Zelizer, *The Fierce*, 128.
[75]Robert D. Loevy, *To End All Segregation: The Politics of the Passage of the Civil Rights Act of 1964* (Lantham, MD: University Press of America, 1990), 332.
[76] *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1 (1971).

The district court found that many of the issues with the school system in Charlotte stemmed from "residential patterns in the city and county" that "resulted in part from federal, state, and local government action other than school board decisions."[77] The district court's acknowledgement of government action leading to segregation showed its recognition of the *de jure* roots of *de facto* segregation. As school desegregation became a more and more pressing issue by the late 1960s, residential segregation persisted across much of the country, resulting in segregated public schools.[78] Because of residential segregation (discussed in following chapter), both in Charlotte and other cities, busing became relevant as a possible solution for racial imbalances in schools. When people of the same race lived near each other, it often created segregated schools due to location, so students had to be bused to different schools in order to achieve desegregation. Proponents of busing argued that it was a necessary solution in order to enact change where residential segregation existed, but opponents claimed that it was going too far to bus students across cities.[79]

After the school board came up with a desegregation plan, the district court found it to be insufficient, and chose to appoint an expert to help. The district court approved the plan that the board created with the help of the expert, but the Court of Appeals did not approve the portion of the plan involving elementary schools, which would bus black students to outlying white schools and bus white students to inner city black schools. The Court of Appeals decided that the plan to desegregate elementary schools "would unreasonably burden the pupils and the board," and that busing was not an acceptable solution for elementary-aged children.[80] The Supreme Court reversed the Court of Appeals, and "restored the district court's order in its entirety" on the

[77] *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1 (1971).
[78] Superfine, *Equality in Education*, 55.
[79] Superfine, *Equality in Education*, 55.
[80] *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1 (1971).

grounds that the modifications made by the Court of Appeals would make it difficult, if not impossible, to create a unified school system in Charlotte.[81]

In a unanimous decision, the Supreme Court upheld ruling of the district court in *Swann.* The Court found busing to be "a legitimate means of eliminating illegal segregation in the nation's public schools."[82] Busing sparked serious controversy and criticism throughout Charlotte as many people expressed strong opposition to the use of busing.[83] Despite the controversy, the ruling was relatively narrow. Although the Court upheld busing in Charlotte, it did not establish a judicial standard that would effect change in *de facto* segregated schools across the country.[84] Chief Justice Burger's opinion left out some important elements that might have led to further desegregation in *de facto* jurisdictions in other metropolitan areas throughout the country, writing the *Swann* opinion "in as minimalist a fashion as possible to uphold the Charlotte decree."[85] The narrowness of the decision later allowed the Court to reject arguments for cross-district busing as a remedy for segregated schools.[86] The Supreme Court's decision in *Swann* seemed promising at first to desegregation advocates, but in the long-term the decision furthered "the troubling distinction between *de facto* and *de jure* segregation."[87]

Milliken v. Bradley (1974) quickly revealed the consequences of *Swann's* narrow framing. The decision in *Milliken* came after *Rodriguez,* but it proved the Court's continuing unwillingness to act when faced with *de facto* segregation in schools. While the Court upheld the busing plan in Charlotte, it did not do the same in the many school districts in and surrounding Detroit. Detroit's schools were highly segregated at the time, with a mostly black urban school

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[81] *Swann v. Charlotte-Mecklenburg Bd. of Ed*., 402 U.S. 1 (1971).
[82] Bart Barnes, "Charlotte 'Survives' Busing," *The Washington Post, Times Herald* (Washington, D.C.), November 19, 1972, ProQuest Historical Newspapers.
[83] Barnes, "Charlotte 'Survives'."
[84] Justin Driver, *The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind* (New York, NY: Pantheon Books, 2018), 265.
[85] Driver, *The Schoolhouse*, 264.
[86] Driver, *The Schoolhouse*, 264.
[87] Driver, *The Schoolhouse*, 264.

district inside of the city limits, and many mostly white school districts in the suburbs surrounding the city. The issue at stake in *Milliken* was whether or not a federal judge had the power to implement a system of busing across school district lines. The district court found that the segregation in the Detroit school system was a major issue, and ordered a busing plan that included Detroit, as well as fifty-three school districts in the surrounding suburban areas.[88] A plan for desegregation that included only the majority black urban district would not have been effective due to the residential segregation in Detroit, so the district court decided that the surrounding suburban areas had to be included in the plan.[89]

The Supreme Court, in a 5-4 decision, reversed the district court's conclusion, claiming that busing between school districts could be required only when unequal racial distribution within schools could be tied directly to official and intentional discrimination. Busing was inappropriate, the Court found, when dual school systems were the by-product of residential segregation. Chief Justice Burger wrote for the majority, saying "it must be shown that racially discriminatory acts of the state or local districts, or of a single school district have been a substantial cause of the interdistrict segregation" in order for busing to be an acceptable solution.[90] In reaching this conclusion, Burger had to ignore the long history of government sponsored housing discrimination in the city of Detroit in the majority opinion.[91] The Supreme Court argued that there was no intentional gerrymandering by race in Detroit, and rather that people just chose to live with others of the same race, which then led to segregated schools.[92]

By ignoring the forced racial patterns of Detroit and the surrounding areas, the Supreme Court left the link between residential discrimination and school segregation in metropolitan

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[88] Shirley Redwine, "Busing across District Lines: The Ambiguous Legacy of Milliken v. Bradley," *Houston Law Review* 18, no. 3 (March 1981): 591, HeinOnline Law Journal Library.
[89] Redwine, "Busing across," 594-595.
[90] *Milliken v. Bradley*, 418 U.S. 717 (1974).
[91] Redwine, "Busing across," 597.
[92] Blasi, *The Burger*, 120.

areas like Detroit unresolved.[93] The *Milliken* decision ended "any realistic hope of meaningful integration in metropolitan areas during an era when many whites fled for suburbia."[94] Justice Thurgood Marshall hinted at the increasing issue of white flight in his dissent by saying that in the long run, white flight and racial exclusion in cities will make things worse.[95] The majority opinion also once again emphasized how "there is no universal answer to complex problems" in school desegregation, and continued to stress the importance of local control of school districts.[96]

While the Court chose not to recognize the residential segregation in Detroit and surrounding areas to be a result of *de jure* segregation and official policy, this was hardly the case. As the next chapter will show, between the 1920s and the 1940s restrictive covenants existed all across the United States that excluded African Americans and other minorities from buying property in desirable areas.[97] Although the Supreme Court declared these restrictive covenants to be unconstitutional in 1948, the Federal Housing Administration incentivized residential segregation in other ways. U.S. housing policy played a key role in the creation of sharply segregated metropolitan areas that directly resulted in segregation in schools not just based on people of different races choosing to live near each other, as the Court often insisted was the case in their decisions.

Conclusion

Between 1954 and 1974 the Supreme Court faced a series of cases involving both race and wealth discrimination. The Supreme Court was willing to acknowledge *de jure* segregation in schools and make significant changes when explicit, intentional segregation existed. However,

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[93] Redwine, "Busing across," 604.
[94] Driver, *The Schoolhouse*, 264.
[95] Yarbrough, *The Burger*, 154.
[96] *Milliken v. Bradley*, 418 U.S. 717 (1974).
[97] Zelizer, *The Fierce*, 232.

when school segregation was *de facto*, created by circumstances such as residential segregation rather than by intentional discrimination, the Court was less likely to act. Even when the Court did enforce changes where *de facto* segregation existed, such remedies were situational and never implemented widespread change that would apply to all school districts. In the wealth discrimination cases between 1954 and 1974, the Court became less and less willing to acknowledge the poor as a suspect class and to make accommodations to help them as such. The transition to the Burger Court and the appointment of four Justices by Nixon solidified this unwillingness to handle discrimination towards the poor. Race and wealth were almost always linked in these discrimination cases that the Supreme Court handled, but the Court consistently acted as if "only one category of equal protection could exist at a time," and refused to accept that lack of wealth was often a result of racial policies.[98]

The decisions in these earlier cases led up to *Rodriguez*, a case which represented a turning point in American law.[99] The *Rodriguez* plaintiffs and their supporters hoped that the Court would recognize both the class and racial discrimination and acknowledge the ties between the two forms of discrimination. However, considering that the Court failed to even recognize the connection between race and poverty between 1954 and 1973, it was unlikely that they would do so in a case involving *de facto* segregation of schools.[100]

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[98] Walsh, "Erasing Race," 134.
[99] Ian Millhiser, "What Happens to a Dream Deferred? Cleansing the Taint of San Antonio Independent School District v. Rodriguez," *Duke Law Journal* 55, no. 2 (November 1, 2005): 406, JSTOR.
[100] Walsh, "Erasing Race," 134.

Chapter 2: *De Jure* Roots of *De Facto* Segregation

Introduction

In his *Milliken* dissent, Justice Thurgood Marshall emphasized how the Court's decisions continued to deprive minority children of equal educational opportunities. "In the short run," Marshall concluded, "it may seem to be the easier course to allow our great metropolitan areas to be divided up each into two cities – one white, the other black – but it is a course, I predict, our people will ultimately regret."[1] Marshall, unlike the Court's majority, understood both the consequences and origins of residential segregation in the United States. Marshall recognized what the Court refused to acknowledge, making it clear that both residential and school segregation were wrong and would have negative effects on society in the long run. The Court, Marshall correctly pointed out, chose to ignore entirely how the federal government backed residential segregation and acted as though it existed as a result of personal choice, rather than as a result of actions by the State. The issues in *Milliken* provided an example of the consequences of urban decay and white flight, both of which were encouraged and allowed by the federal government.[2]

In the decades following *Brown*, the Court proved unwilling to act when faced with what it termed *de facto* segregation in schools. The Court condemned intentional discrimination at the time, but in reality, much of the school segregation that was considered *de facto* in the era after *Brown* had *de jure* roots due to government policy that began in the earlier half of the twentieth century. Even when the Court did act when faced with *de facto* segregation, the decisions did not create lasting change that would lead to desegregated schools across the country. *Rodriguez* revealed the limits of the Court's Equal Protection jurisprudence and its commitment to rooting

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[1] *Milliken v. Bradley*, 418 U.S. 717 (1974).
[2] Kevin M. Kruse and Julian E. Zelizer, *Fault Lines: A History of the United States since 1974* (New York, NY: W.W. Norton & Company, 2019), 58-59.

out educational segregation. The school segregation in question in *Rodriguez* was the product of the residential segregation in San Antonio, which, like residential segregation across the United States was a direct result of "unhidden public policy that explicitly segregated every metropolitan area in the United States."[3] Although this type of segregation may be presented as *de facto* in nature, it was rooted in *de jure* segregation because direct government action created it.[4] Residential segregation was not only an issue in the South, but rather was a product of government action across the whole nation.

History of Government Sponsored Residential Segregation

The United States has a long history of discrimination in the housing market, primarily against African Americans, but against other minorities as well. Zoning ordinances proved a powerful tool to maintain neighborhood homogeneity. The use of zoning ordinances became common practice in cities starting in the 1910s. As many African Americans moved out of rural southern areas to meet World War I era labor demand in urban areas, local officials turned to zoning ordinances to maintain segregated neighborhoods.[5] These zoning ordinances often created neighborhoods where only single-family homes could be built for the explicit purpose of excluding minorities from neighborhoods occupied by white families.[6] Zoning excluded not only African Americans, but also targeted certain European immigrants and Mexican Americans in some parts of the country as well.[7] Purported to protect the value of properties in certain areas, zoning often involved race because properties in mixed neighborhoods would have lower

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[3] Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York, NY: Liveright Publishing, 2017), viii.
[4] Rothstein, *The Color*, viii.
[5] Patricia Sullivan, *Lift Every Voice: The NAACP and the Making of the Civil Rights Movement* (New York, NY: New Press, 2009), 61-65.
[6] Rothstein, *The Color*, 48.
[7] Teron McGrew, "The History of Residential Segregation in the United States and Title VIII," *The Black Scholar* 27, no. 2 (Summer 1997): 24, JSTOR.

values.[8] The Supreme Court prohibited explicit racial zoning with its decision in *Buchanan v. Warley* (1917), but this did not stop the prevention of "the creation of housing likely to be used by minority groups" in white neighborhoods.[9] Instead, white families found many ways to uphold neighborhood segregation without resorting to explicit racial zoning. Such methods included neighborhood associations, realtors, and restrictive covenants.[10]

After the *Buchanan* decision, one way to avoid integrated neighborhoods was through the use of restrictive covenants. Restrictive covenants were clauses in property deeds that outlined the obligations for new property owners.[11] During the first half of the twentieth century, these deeds often included promises never to rent or sell properties to African Americans, as well as other racial and religious minorities. Discriminatory covenants were not always effective in specific house deeds, so they began to be implemented as contracts between all homeowners within a single neighborhood. This allowed for neighbors to sue if restricted minorities purchased a home in their area.[12] Additionally, many new subdivisions created community associations that were mandatory to join in order to own a home in the area, and these associations usually had bylaws with white-only clauses. Racially restrictive covenants existed across all parts of the country, and in cities like San Antonio, often excluded minorities including Mexican Americans.[13]

In addition to private groups implementing restrictive covenants, all levels of the government promoted and enforced these racist agreements. Courts across the country ruled to evict minorities from homes they had purchased where these covenants were in place and

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[8] David M. P. Freund, *Colored Property: State Policy and White Racial Politics in Suburban America* (Chicago, IL: University of Chicago Press, 2007), 53.
[9] Gregory D. Squires, ed., *The Fight for Fair Housing: Causes, Consequences, and Future Implications of the 1968 Federal Fair Housing Act* (New York, NY: Routledge, 2018), 171.
[10] Patricia Sullivan, *Lift Every Voice: The NAACP and the Making of the Civil Rights Movement* (New York, NY: New Press, 2009), 72.
[11] Rothstein, *The Color*, 78.
[12] Rothstein, *The Color*, 79.
[13] Rothstein, *The Color*, 79-81.

justified doing so with the claim that there was no constitutional violation involved since they were private agreements. In 1926, the Supreme Court upheld the use of restrictive covenants in *Corrigan v. Buckley*, also on the basis that they were voluntary private contracts.[14]

The Origins of White Flight

Beginning in the Depression years, working and middle-class Americans of all races faced a housing shortage. The Home Owners' Loan Corporation Act, passed by Congress in 1933 as part of the New Deal Legislation, created the Home Owners' Loan Corporation (HOLC). The purpose of the HOLC was to resolve the mortgage crisis created by Depression. During the 1920s, an increase in residential construction transformed the residential mortgage loan industry. The rapid income growth and urban population expansion of the 1920s led to the increase in construction of homes.[15] Along with the construction boom came an increase in mortgage loans, and the creation of a variety of new types of mortgage loans. As the Great Depression began, incomes and property values fell, and many new homeowners defaulted on their loan payments and their lenders foreclosed on them.[16] The Great Depression created a "deeply troubled" housing market, and hundreds of thousands of homeowners suffered from foreclosures during the first half of the 1930s.[17]

Congress enacted the Home Owners' Loan Corporation Act to meet the foreclosure crisis. Between 1933 and 1936, the HOLC "purchased 1,017,821 distressed home mortgage loans from private lenders, wrote new loans for the borrowers, and then held and serviced the loans."[18] The HOLC allowed working and middle-class homeowners to "gradually gain equity

[14] Rothstein, *The Color*, 82-83.
[15] Price Fishback, Jonathan Rose, and Kenneth Snowden, *Well Worth Saving: How the New Deal Safeguarded Home Ownership* (Chicago, IL: University of Chicago Press, 2013), 5.
[16] Fishback, Rose, and Snowden, *Well Worth*, 19.
[17] Fishback, Rose, and Snowden, *Well Worth*, 5.
[18] Fishback, Rose, and Snowden, *Well Worth*, 54.

while their properties were still mortgaged."[19] To assess the risk of their loans, the HOLC created a system of color-coding neighborhoods in cities across the nation. Any neighborhoods where African Americans or other minorities resided were colored red, which meant that they were the highest risk neighborhoods. The HOLC even colored middle-class neighborhoods full of single-family homes red if any African American families lived in the area.[20] The HOLC itself did not discriminate against minority homeowners, but it applied "notions of ethnic and racial worth to real-estate appraising on an unprecedented scale."[21] The HOLC hurt minority families because of "the influence of its appraisal system on the financial decisions of other institutions."[22] In the long run, the appraisal maps helped create a system in which the category of quality assigned to a neighborhood had meaning to investors, resulting in a system that discriminated against minorities and essentially prevented them from purchasing homes in more desirable neighborhoods.[23]

Following the establishment of the HOLC, Congress and President Roosevelt created the Federal Housing Administration (FHA) in 1934 to generate jobs and help middle-class renters buy single-family homes. By insuring residential loans for middle-class families, the FHA created a need for more homes, and therefore generated jobs for those who built the homes.[24] The FHA initiated its system of property appraisal in order to define eligibility for their mortgage insurance program, but the HOLC influenced the FHA's system. The FHA's *Underwriting Manual* maintained that for "a neighborhood to retain stability, it is necessary that properties

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[19] Rothstein, *The Color*, 63-64.
[20] Rothstein, *The Color*, 64.
[21] Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York, NY: Oxford University Press, 1985), 199.
[22] Jackson, *Crabgrass Frontier*, 203.
[23] Jackson, *Crabgrass Frontier*, 197.
[24] Kevin Fox Gotham, "Racialization and the State: The Housing Act of 1934 and the Creation of the Federal Housing Administration," *Sociological Perspectives* 43, no. 2 (Summer 2000): 300, JSTOR.

shall continue to be occupied by the same social and racial classes."[25] The FHA feared that any level of racial integration could cause an entire area to lose its value, so they encouraged segregation.[26] In addition to the appraisal methods that were clearly racist, the FHA also compiled detailed reports and maps that included the likely future locations of minority families.[27] Through such appraisal methods, the federal government officially sponsored and underwrote racial segregation across the country.[28] The FHA also told banks that they should not give out any loans in urban neighborhoods, but rather should just focus on newer suburbs. The FHA programs contributed to the decline of urban neighborhoods within cities by providing ways for middle class families to move out of these areas and into suburbs.[29] The FHA justified its policies by claiming that the presence of African Americans in or around white neighborhoods would almost certainly result in declining property values. If this happened, "white property owners in the neighborhood would be more likely to default on their mortgages," and the FHA would experience higher losses.[30]

In the postwar period, the FHA assisted the increasing residential segregation by financing new subdivisions in "racially exclusive white enclaves" in the suburbs.[31] In 1944, the GI Bill created the Veterans Administration (VA) to help World War II Veterans purchase homes.[32] The VA worked with the FHA in order to back loans in neighborhoods that were rated well through the appraisal system.[33] By 1950, the VA and the FHA insured half of all new mortgages across the country. One of these new subdivisions was Levittown, which was a

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[25] Melvin L. Oliver and Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* (New York, NY: Routledge, 2006), 18.
[26] Jackson, *Crabgrass Frontier*, 208.
[27] Jackson, *Crabgrass Frontier*, 208.
[28] Rothstein, *The Color*, 64-65.
[29] Jackson, *Crabgrass Frontier*, 206.
[30] Rothstein, *The Color*, 93.
[31] Rothstein, *The Color*, 70.
[32] Jackson, *Crabgrass Frontier*, 204.
[33] Julian E. Zelizer, *The Fierce Urgency of Now: Lyndon Johnson, Congress, and the Battle for the Great Society* (New York, NY: Penguin Press, 2015), 232.

development of 17,500 homes outside of cities like Philadelphia and New York City specifically created to help the housing shortage. The FHA insured mortgages for these new subdivisions, which maintained a strict "commitment not to sell to African-Americans."[34] The FHA even went as far as to reject applications if there were African Americans in nearby neighborhoods who might move.[35] Levittown was one of the largest examples of an FHA financed development that excluded minorities, but these subdivisions developed all across the country in the decades after World War II.[36]

The FHA also expressed a specific concern with the prevention of school desegregation, which would be a direct result of residential desegregation.[37] In the *Underwriting Manual,* the FHA said that if children "are compelled to attend school where the majority or a considerable number of the pupils represent a far lower level of society or an incompatible racial element, the neighborhood under consideration will prove far less stable and desirable than if this condition did not exist."[38] This policy, not surprisingly, led to creation of almost entirely white schools in suburban areas with high ratings from the FHA.

Public Housing and Urban Slums

At the same time that the U.S. government created new all-white suburbs, federal policy effectively segregated African Americans into declining urban areas. The public housing programs created by the United States led to the concentration of racial minorities in urban, inner city neighborhoods."[39] New Deal legislation authorized the Public Works Administration (PWA)

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[34] Rothstein, *The Color*, 70-71.
[35] Rothstein, *The Color*, 71.
[36] Rothstein, *The Color*, 71.
[37] Rothstein, *The Color*, 65.
[38] Federal Housing Administration, *Underwriting Manual: Underwriting and Valuation Procedure under Title II of the National Housing Act*, 113, Revised February 1938.
[39] Jackson, *Crabgrass Frontier*, 219.

to begin building public housing in 1933. The leader of the PWA, Harold Ickes, implemented a "neighborhood composition rule," that required that public housing "preserve the racial composition of neighborhoods where it was placed."[40] The result of this rule was the placement of all-black projects in neighborhoods that were already almost entirely black. This policy reinforced and deepened metropolitan segregation. The PWA also promoted residential segregation by building segregated projects in areas that were integrated prior to its intervention.[41] The housing projects that the government developed throughout the twentieth century created segregated neighborhoods, and the racial character of these neighborhoods was long lasting.[42]

Congress enacted the United States Housing Act, also known as the Wagner-Steagall act, in 1937. This was the first time that the federal government officially took on the responsibility of building low-cost housing.[43] This law gave the United States Housing Authority (USHA) the ability to develop public housing projects. In some ways, the public housing program was remarkably successful. The USHA sponsored 130,000 new housing units across the country by 1941, providing housing for many people who could not otherwise afford it.[44] However, application for federal housing permits was voluntary, and every community was able to decide on its own if a need for public housing existed. This meant that suburbs could simply refuse to participate because they wanted to maintain the exclusivity of their community. Because of this, most low-income federal housing ended up in the middle of cities.[45] To make matters worse, for a federal housing unit to be built, one slum unit had to be eliminated, so "only localities with

[40] Richard Rothstein, "What We Have--De Facto Racial Isolation or De Jure Segregation," *Human Rights* 40, no. 3 (August 2014): 9, JSTOR.
[41] Rothstein, *The Color*, 21.
[42] Rothstein, *The Color*, 37.
[43] Jackson, *Crabgrass Frontier*, 224.
[44] Jackson, *Crabgrass Frontier*, 224.
[45] Jackson, *Crabgrass Frontier*, 225.

significant numbers of inadequate dwellings could receive assistance."[46] The public housing built after the 1937 Housing Act led to an increased concentration of poor, often minority, groups in city centers, and "reinforced the image of suburbia as a place of refuge from the social pathologies of the disadvantaged."[47]

The Supreme Court and Residential Segregation

In 1926, the Supreme Court upheld the constitutionality of restrictive covenants in *Corrigan v. Buckley*. Twenty-two years later, the Court reversed itself. In *Shelley v. Kraemer* (1948) the Supreme Court ruled that "racially restrictive covenants were unenforceable."[48] The Court found that racial covenants violated the Fourteenth Amendment because the judicial enforcement of these covenants constituted state action.[49] Even though the Court ruled that racially restrictive covenants were unenforceable, private parties were still able to voluntarily enter into these covenants, and the federal government was able to maintain them as a "requirement for securing the most favorable terms on federally insured mortgage loans."[50] This was a landmark decision for the Court, but it did not effectively end the practice of residential segregation. Racially restrictive covenants had been enforced for too long, and the *Shelley* decision came too late to effectively reverse the segregation that these covenants implemented.[51]

The *Shelley* decision was met with massive resistance, and this resistance mostly came from federal agencies. The FHA commissioner at the time responded to *Shelley* with a statement saying that the decision would "in no way affect the programs of this agency."[52] Even after racial

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[46] Jackson, *Crabgrass Frontier*, 226.
[47] Jackson, *Crabgrass Frontier*, 227.
[48] Squires, *The Fight*, 20.
[49] Martha Biondi, *To Stand and Fight: The Struggle for Civil Rights in Postwar New York City* (Cambridge, MA: Harvard University Press, 2003), 121.
[50] Squires, *The Fight*, 273.
[51] Christopher Ramos, "Educational Legacy of Racially Restrictive Covenants: Their Long Term Impact on Mexican Americans," *The Scholar* 4, no. 149 (2001): 166, HeinOnline Law Journal Library.
[52] Rothstein, *The Color*, 86.

covenants were deemed unconstitutional, property deeds continued to include variations of them. The *Shelley* decision also led to increased white flight as a way of creating segregated cities.[53] In these ways, *Shelley* revealed "a gap between emerging legal norms against discrimination," and "common homeowner attitudes favoring segregated neighborhoods."[54]

After the Court ruled against the use of restrictive covenants, the FHA, Real Estate Agents, and local homeowners' associations still found ways to exclude minorities from growing suburban areas. The FHA continued to provide help purchasing homes only to non-minority families in suburban areas; Many of these new neighborhoods had homeowners' associations that restricted minority membership, and therefore minority homeownership. Additionally, blockbusting real estate agents convinced white families that their property values would soon fall because their neighborhoods were becoming integrated slums. These agents then would purchase the homes of the panicked white families for very low prices, and rent or sell them to African American families at inflated prices.[55]

Beyond Formal Equality: Residential Segregation and Policies in the 1960s

After the passage of both the Civil Rights Act of 1964 and the Voting Rights Act of 1965, civil rights advocates began to fight for legislation to ensure equal access to housing. Residential segregation was pervasive all across the country at this point, and a law concerning fair housing was necessary in order to begin to create significant change.[56] Martin Luther King's Northern strategy, which focused above all on the importance of fair housing in cities, helped bring this issue to the attention of lawmakers. After King's success with the Southern Christian Leadership

[53] Richard R.W. Brooks and Carol M. Rose, *Saving the Neighborhood: Racially Restrictive Covenants, Law, and Social Norms* (Cambridge, MA: Harvard University Press, 2013), 3-5.
[54] Brooks and Rose, *Saving the Neighborhood*, 170.
[55] Rothstein, *The Color*, 95.
[56] Squires, *The Fight*, 28.

Conference (SCLC) in Selma, as well as the passage of the Voting Rights Act (1965), the group decided to move its efforts North.[57] In 1965, Martin Luther King said, "I don't feel that the Civil Rights Act has gone far enough in some of its coverage," and emphasized the need for a "strongly enforced fair housing section."[58] In July of 1965 King led a march in downtown Chicago to help bring attention to school segregation in the city, as well as to help begin the fight for fair housing. King and the SCLC returned to Chicago in January of 1966, and the group met with the Coordinating Council of Community Organizations (CCCO). The two groups formed the Chicago Freedom Movement (CFM) to lead the fight for fair housing. King aimed for progress on the federal, state, and local levels, and on the federal level the goal was to "get the kind of comprehensive legislation which would meet the problems of slum life across the nation."[59]

President Lyndon Johnson pushed for a housing anti-discrimination bill in 1966, but the Senate killed this first attempt. This bill included an "across-the-board ban on racial and religious discrimination in the sale, rental, financing, and listing of residential housing."[60] Although Johnson supported this bill in 1966, he did not push for it in the way he had for the Civil Rights Act and the Voting Rights Act.[61] Additionally, 1966 was an election year so Congress was unlikely to take on an issue as controversial as fair housing, even though it was the same Congress who had passed the Voting Rights Act one year earlier.[62] The aim of Johnson's

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[57] Ronald E. Shaw, "A Final Push for National Legislation: The Chicago Freedom Movement," *Journal of the Illinois State Historical Society* 94, no. 3 (Fall 2001): 317, JSTOR.
[58] Mary Lou Finley et al., eds., *The Chicago Freedom Movement: Martin Luther King Jr. and Civil Rights Activism in the North* (Lexington, KY: University Press of Kentucky, 2016), 115.
[59] Shaw, "A Final," 317-318.
[60] "Johnson Sends Congress a Civil Rights Bill That Includes a Ban on Bias in All Housing," *Wall Street Journal* (New York, NY), April 29, 1966, ProQuest Historical Newspapers.
[61] Leonard S. Rubinowitz and Kathryn Shelton, "Non-Violent Direct Action and the Legislative Process: The Chicago Freedom Movement and the Federal Fair Housing Act," *Indiana Law Review* 41, no. 3 (Summer 2008): 692, HeinOnline Law Journal Library.
[62] Rubinowitz and Shelton, "Non-Violent Direct," 686.

proposal was to speed up the process of desegregation, but the bill did not make it out of Congress and progress remained slow.[63]

Johnson had reached a difficult time in his presidency by 1968. The increasing unpopularity of the war in Vietnam split the liberals who had supported Johnson's Great Society legislation. Cold War liberals pushed Johnson to be more aggressive in Vietnam, while groups on the left criticized him for engaging in what they deemed an unjust and unwinnable war.[64] Johnson also faced disapproval from conservatives who worried about the expansion of federal power during the early years of Johnson's presidency. Republicans gained forty-seven House seats and three Senate seats in the 1966 midterm elections, which limited the power of Johnson and the Democratic Party.[65]

Congress finally passed the Fair Housing Act in 1968, and the "government endorsed the rights of African Americans to reside wherever they chose and could afford."[66] The Fair Housing Act banned racial covenants as one way to end residential segregation, going further than the *Shelley* decision by making it "illegal to create racial covenants or even to let existing racial restrictions be mentioned so as to influence real estate transactions."[67] Even though the Fair Housing Act passed, residential segregation did not change much.

Lyndon Johnson chartered the Kerner Commission, or the National Advisory Commission on Civil Disorders, in 1968 to produce a study analyzing the causes of urban riots that took place in 1967. Violent riots took place in cities across the United States during the summer of 1967 and in the "long hot summers" before. These riots marked a change in the civil

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[63] Monroe W. Karmin, "Race and Residence: Segregation in Housing Seen Persisting Despite New Effort to Curb It," *Wall Street Journal* (New York, NY), June 13, 1966, ProQuest Historical Newspapers.
[64] Steven M. Gillon, *Separate and Unequal: The Kerner Commission and the Unraveling of American Liberalism* (New York, NY: Hachette Book Group, 2018), 21-22.
[65] Gillon, *Separate and Unequal*, 24.
[66] Rothstein, *The Color*, 177-178.
[67] Brooks and Rose, *Saving the Neighborhood*, 207.

rights movement, a movement that had long been characterized by peaceful protests throughout the South. The move towards violence "shattered the coalition that had just a few years earlier won passage of two monumental civil rights laws."[68] The Kerner Commission studied racial conditions in cities across the U.S. over a period of seven months to come up with its findings, and made some profound critiques about institutional racism in the U.S. and all of the problems it caused, as well as identifying racial inequality and oppression as the main causes of the uprisings. [69] The commissioners argued that the racial inequality and oppression in American cities existed as a direct result of institutional forces, one of which was racial housing discrimination, and concluded that "racism was literally embedded into American life."[70] In the report, the Commission said that the creation of racial ghettos was destructive for minority families, but that "white institutions created it, white institutions maintain it, and white society condones it."[71]

Throughout the report the Commission emphasized the "corrosive and degrading effects" of excluding African Americans from employment, housing, and schools, and also noted the negative effects of "the massive and growing concentration of impoverished Negroes in our major cities" while the white middle class continued to move to the suburbs.[72] The Commission also talked about how white Americans prospered more than ever before in the years leading up to 1968, at the expense of their African American counterparts. One of the important recommendations of the Commission was to end *de facto* segregation in schools in all regions of the country.[73] The Commission brought up important issues involving race in American society

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[68] Gillon, *Separate and Unequal*, ix.
[69] Julian E. Zelizer, "Introduction to the 2016 Edition," introduction to *The Kerner Report* (Princeton, NJ: Princeton University Press, 2016), xiii.
[70] Zelizer, "Introduction to the 2016," introduction, xxvii.
[71] Zelizer, "Introduction to the 2016," introduction, xiii.
[72] The National Advisory Commission on Civil Disorders, *The Kerner Report* (1968), 207.
[73] "Two Americas, Many Americas," *The Washington Post* (Washington, D.C.), October 22, 1978, ProQuest Historical Newspapers.

and made strong recommendations for change. However, its warnings about two societies fell on deaf ears. Congress "ignored its call for new programs for urban areas at unprecedented levels of funding."[74] The Kerner Commission Report proved that residential segregation directly resulted from public policy, and that it created all sorts of issues in American cities, including serious violence and riots, and the Kerner Commission was all but ignored.

Segregation After 1968

Residential segregation did not end with the passage of the Fair Housing Act in 1968. Suburban flight accelerated, and these suburbs were still almost entirely white. A *New York Times* article from 1971 emphasized the importance of opening the suburbs to people of all races, saying that it would "reduce race and class tensions" and "bring economic gains to all our people."[75] The article argued that opening the suburbs to people of all races would bring economic gains by allowing better use of the resources that suburbs have to offer – including land for housing, access to a better public education, job opportunities, and increased tax revenue.[76]

The passage of the Fair Housing Act "prohibited future discrimination," but minorities still found themselves locked out of primarily white suburbs.[77] The passage of a law that allowed minority groups to live anywhere could not create significant change due to the lack of affordability in the mostly white areas.[78] The end of *de jure* residential segregation required undoing past actions, many of which were in some ways irreversible without intentional,

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[74] "New Riots, New Responses," *The New York Times* (New York, NY), August 3, 1968, ProQuest Historical Newspapers.
[75] Linda Davidoff, Paul Davidoff, and Neil N. Gold, "The Suburbs Have to Open Their Gates," *The New York Times* (New York, NY), November 7, 1971, ProQuest Historical Newspapers.
[76] Davidoff, Davidoff, and Gold, "The Suburbs."
[77] Rothstein, *The Color*, 183.
[78] Rothstein, *The Color*, 183.

concerted, and affirmative action taken. Residential segregation proved much more difficult to undo through legislation than other forms of segregation, insofar as "moving from an urban apartment to a suburban home" was much harder than registering to vote or going to a restaurant that had previously been designated for whites only.[79]

Residential Segregation and Property Tax School Funding

Rodriguez aimed to address shortcomings and inequalities in San Antonio's public-school system. Edgewood Independent School District suffered from inadequate funding due to low property tax levels. In 1973, the student body at Edgewood Elementary School was more than 90 percent Hispanic and 6 percent African American.[80] A neighboring district, Alamo Heights, was almost entirely white. The makeup of these schools was a direct result of the segregation present in neighborhoods in San Antonio.

Restrictive covenants existed in San Antonio and the state enforced these covenants. During the 1940s, Mexican Americans had been all but barred from purchasing homes in the nicer northern part of the city, and had been forced into the neighborhoods on the west side of the city.[81] The restrictive covenants in San Antonio prevented the sale of homes in wealthy neighborhoods to Mexican Americans.[82] White families in San Antonio tended to move out of the poorer neighborhoods throughout the twentieth century, but the deed restrictions in many areas made Mexican Americans, African Americans, and Native Americans unable to purchase properties in such neighborhoods. Mexican Americans in San Antonio were essentially forced to

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[79] Rothstein, *The Color*, 179.
[80] Camille Walsh, "Erasing Race, Dismissing Class: San Antonio Independent School District v. Rodriguez," *Berkeley La Raza Law Journal* 21 (2011): 143, EBSCOhost.
[81] Christopher Ramos, "Educational Legacy of Racially Restrictive Covenants: Their Long Term Impact on Mexican Americans," *The Scholar* 4, no. 149 (2001): 157-158, HeinOnline Law Journal Library.
[82] Paul A. Sracic, *San Antonio v. Rodriguez and the Pursuit of Equal Education: The Debate over Discrimination and School Funding* (Lawrence, KS: University Press of Kansas, 2006), 60.

stay in the poor neighborhoods and were guaranteed a substandard education due to the link between district wealth and school quality.[83]

When racial minorities moved into neighborhoods, the values of the homes in the neighborhoods often fell. Lenders only wanted to provide mortgages that involved very little risk, and race played an important part in determining that risk. In the mid-twentieth century, mortgage programs sponsored by the federal government disinvested in minority communities.[84] By withholding mortgage capital, the federal government made it very hard for areas where minorities lived to maintain higher property values.[85] The racialized mortgage market resulted in declining property values and a shrinking tax base. Neighborhoods where it was hard to obtain decent mortgages typically suffered from sub-standard schooling due to the low tax base.[86]

The connection between taxpayer citizenship and the right to a quality education played a role in *Rodriguez* as well. Many segregationists in the 1960s erroneously argued that since white people generally paid more in taxes, they were entitled to a higher level of benefits from the state. Some argued that desegregation violated "their 'taxpaying citizen' rights to well-resourced local schools."[87] In reality, minorities were forced to live in areas with low property values due to their race, and they deserved access to well-funded schools even if they were not paying as much in property taxes as wealthy white homeowners were, and in some cases were paying taxes at much higher rates to help make up for smaller taxable bases.

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[83] Sracic, *San Antonio*, 11.
[84] Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge, MA: Harvard University Press, 1993), 58.
[85] William Julius Wilson, "The Political and Economic Forces Shaping Concentrated Poverty," *Political Science Quarterly* 123, no. 4 (Winter 2008-2009): 557, JSTOR.
[86] Wilson, "The Political," 567.
[87] Camille Walsh, *Racial Taxation: Schools, Segregation, and Taxpayer Citizenship, 1869-1973* (Chapel Hill, NC: University of North Carolina Press, 2018), 96.

Conclusion

Residential segregation increased over the course of the twentieth century in every city in the U.S., and it was a direct product of federal and local government actions and policies. Federal policy led to segregated cities that persisted throughout the century, and still exist today. The federal government consistently reinforced residential segregation rather than trying to build integrated cities across the country.[88]

The Supreme Court ignored this history when faced with *de facto* segregation of schools in the decades following *Brown*. The Court claimed that if the segregation was not the direct result of laws or policies with explicit discriminatory intent, then they did not need to deem it unconstitutional. However, the *de facto* school segregation of the 1960s and 1970s was rooted in the *de jure* residential segregation created by the government in earlier decades.

[88] Rothstein, *The Color*, 216.

Chapter 3: *Rodriguez* -- The Intersection of Race and Wealth Discrimination

Introduction

By the late 1960s, Demetrio Rodriguez and other parents from the Edgewood Independent School District in San Antonio had grown dissatisfied with the conditions of the schools that their children attended. The schools in the Edgewood area, an area that was over 90 percent Mexican American, had crumbling buildings, lacked basic supplies necessary for successful schools, and did not have adequate teachers. The worried parents decided that it was time to take action and formed the Edgewood District Concerned Parents Association to approach the issues their schools faced. The group contacted a lawyer, Arthur Gochman, to determine what caused the conditions in the schools that their children attended. In 1968, Gochman filed suit with a district court in Texas to help the parents fight for better conditions in schools for their children.[1]

The United States Supreme Court took up Gochman and Rodriguez's case in 1972, and after a year of deliberation ruled that the property tax-based school financing system in Texas did not violate the Equal Protection Clause of the Fourteenth Amendment. The plaintiffs in *Rodriguez* had argued that the Edgewood Independent School District, one of the seven public school districts in the San Antonio metropolitan area, was dramatically unequal when compared to other school districts in the area.[2] The students in Edgewood Independent School district almost all came from low-income families of color, while districts in wealthier areas of the city were almost entirely white.[3]

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[1] Camille Walsh, "Erasing Race, Dismissing Class: San Antonio Independent School District v. Rodriguez," *Berkeley La Raza Law Journal* 21 (2011): 143, EBSCOhost.
[2] *San Antonio Independent School District v. Rodriguez.* Supreme Court Case Files Collection. Box 8. Powell Papers. Lewis F. Powell Jr. Archives, Washington & Lee University School of Law, Virginia.
[3] Walsh, "Erasing Race," 133.

Rodriguez did not address education by itself, but rather tackled education, politics, wealth, and race, as well as the way in which these four topics interacted. *Rodriguez* is a landmark case because of how the Supreme Court interpreted the interactions between the relevant topics.[4] The failure of the Supreme Court to acknowledge wealth as a suspect class, education as a fundamental right, or the role of race in the case led to a decision that hurt children from low-income, often minority families who received a substandard education.

Residential Segregation and *Rodriguez*

By the time of *Rodriguez*, Edgewood was almost entirely Mexican American, thanks in part to deed restrictions that prevented nonwhite racial groups, including Mexican Americans, from buying housing in wealthier neighborhoods. Before 1948, deed restrictions and the building of new subdivisions with restrictive covenants based on race and ethnicity as well as property value preserved neighborhood segregation in San Antonio. These covenants effectively segregated the population of San Antonio along both wealth and ethnic/racial lines.[5] Due to the restrictions on certain neighborhoods in San Antonio, the majority of the Mexican American population ended up living on the west side of the city, which included the Edgewood area. Over time, white families had moved out of Edgewood, but the Mexican American population of San Antonio did not have the same opportunities, as was the case across most of the country.[6]

In the 1920s, neighborhood planning began on the North side of San Antonio, outside of the city limits. One of these neighborhoods was Alamo Heights, a neighborhood that included zoning and building requirements saying that houses in the area must not cost “less than ten

[4] Paul A. Sracic, *San Antonio v. Rodriguez and the Pursuit of Equal Education: The Debate over Discrimination and School Funding* (Lawrence, KS: University Press of Kansas, 2006), 2.
[5] Christine M. Drennon, "Social Relations Spatially Fixed: Construction and Maintenance of School Districts in San Antonio, Texas," *Geographical Review* 96, no. 4 (October 2006): 575, JSTOR.
[6] Sracic, *San Antonio*, 10-11.

thousand and no/100 dollars," and could not be "sold or leased to one not of the Caucasian race."[7] In 1923, the Alamo Heights Independent School District removed itself from the countywide school system to exclude minorities and those of lower class status.[8] Because of this, Mexican Americans in San Antonio never had the opportunity to purchase property in the wealthier areas of the city, and they were excluded from the well-funded schools.

The U.S. Air Force expanded the Kelly Field Air Force Base in 1940, and increased hiring to build the new base. Mexican Americans were restricted from the better paid jobs at the base, including airplane and engine repair, but were nevertheless able to get relatively well-paying jobs. With the expansion of the base came housing that "reflected and reinforced the social divisions already in place."[9] Neighborhood segregation in San Antonio increased even more with the development of the Alazan-Apache Courts, a public housing complex built by the San Antonio Housing Authority in 1939. This development displaced 200 Mexican American families, and a majority of these families moved to the Edgewood area, a suburban area to the west of the city.[10] By 1950, property values in Edgewood were lower than anywhere else in the metropolitan area. This was a direct result of "decades of housing restrictions and other barriers in the rest of the city that effectively pushed the poorer population westward into Edgewood."[11]

People throughout Texas, and specifically in San Antonio, became more aware of inequalities between school districts by the 1960s. The Governor's Committee on Public School Education issued *A Tale of Two Districts* in 1968, comparing two anonymous school districts, one in an inner-city district and one in a wealthy suburban area. Even though the districts were anonymous, it was widely known that the comparison was based on the differences between

[7] Drennon, "Social Relations," 580.
[8] Drennon, "Social Relations," 580.
[9] Drennon, "Social Relations," 583.
[10] Drennon, "Social Relations," 583.
[11] Drennon, "Social Relations," 584.

Edgewood and Alamo Heights. This report indicated "the degree to which administrators, lawmakers, and the general public had come to understand the districts as separate, independent entities" by 1968.[12]

The *Rodriguez* case pointed to the inherent weakness of the property-tax financing system. The Edgewood district had comparatively high property tax rates. Due to low property values in the area, however, the district was only able to raise $26 per child enrolled in the schools. Neighboring Alamo Heights, however, had lower tax rates and was still able to raise $333 per child thanks to the significantly higher property values in the area.[13] Even with help from federal funds and the state foundation program, the difference in funding per student between Edgewood and Alamo Heights was still around $250. The average property value in Edgewood was $5,960, and the median family income was $4,686. Only ten percent of the properties in the Edgewood district were valued at more than $10,000, producing low property tax yields – the lowest in the metropolitan area.[14] In addition to low residential property values, the Edgewood District had almost no commercial or industrial property, which contributed to the low amount of money generated by property taxes.[15] The average property value in Alamo Heights, on the other hand, was over $49,000.[16]

The schools in the Edgewood District clearly suffered from the lack of funding. The school buildings were falling apart, they lacked basic supplies, and many teachers were working on emergency permits because they could not support enough certified teachers.[17] Compared to Alamo Heights, Edgewood had "one-third as many library books, one-fourth as many guidance

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[12] Drennon, "Social Relations," 586.
[13] Walsh, "Erasing Race," 143-144.
[14] Sracic, *San Antonio*, 22.
[15] Matthew Saleh, "Modernizing 'San Antonio Independent School District v. Rodriguez': How Evolving Supreme Court Jurisprudence Changes the Face of Education Finance Litigation," *Journal of Education Finance* 37, no. 2 (2011): 104, JSTOR.
[16] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[17] Walsh, "Erasing Race," 143.

counselors, and classes that were fifty percent more crowded."[18] Conditions were so bad that there was even one floor of Edgewood High School that was known to have a bat infestation.[19] Teacher quality too paled in comparison. As Justice Thurgood Marshall pointed out in his dissent, in the 1968-1969 school year all of the teachers in Alamo Heights had college degrees, while only 80.02 percent of teachers in Edgewood had college degrees. This disparity in level of education of the teachers was due to the money available for teacher salaries.[20] The conditions in Edgewood illustrated "the effects of education deprivation flowing from the accident of birth and residence."[21]

The Case

Demetrio Rodriguez, the named plaintiff in the case, was a Mexican American father from a migrant worker family who moved to San Antonio in search of better opportunities. Decades after moving to San Antonio, Rodriguez grew concerned with the opportunities denied to his children because of their inadequate education.[22] Rodriguez was a member of the Edgewood District Concerned Parents Association, which formed in 1968, and he had been involved with Mexican American civil rights in the past, as a member of both the American GI Forum and the League of United Latin American Citizens (LULAC). Additionally, Rodriguez had traveled around Texas after the *Brown* decision in order to help enact desegregation across the state.[23] By the late 1960s, the Mexican American civil rights movement moved from "an addendum to civil rights for African Americans" to its own movement with federal programs and

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[18] Walsh, "Erasing Race," 143.
[19] Sracic, *San Antonio*, 20.
[20] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[21] "Tale of Two Schools," *The New York Times* (New York, NY), December 25, 1971, ProQuest Historical Newspapers.
[22] Walsh, "Erasing Race," 133.
[23] Sracic, *San Antonio*, 20-21.

"an independent rationale."[24] Many Mexican Americans resisted being grouped with African Americans regarding civil rights issues, and Mexican American organizations often used an "other white" strategy to fight against racial segregation. LULAC and the American GI Forum were two organizations that fought for the rights of Mexican Americans throughout the civil rights era.[25] During the years leading up to and following the *Brown* decision, both LULAC and the American GI Forum fought hard against school segregation for Mexican Americans. These two groups filed lawsuits against local and state officials, filed complaints against school systems, and organized studies involving the failure of school systems to comply with court rulings.[26]

In May of 1968 a group of students organized a walk-out due to their frustration with the conditions of the Edgewood schools. This walk-out brought together four hundred parents and students who marched from Edgewood High School to the main offices of the school district in order to protest the inequalities in the school system. The walk-out at Edgewood High School inspired the creation of the Edgewood District Concerned Parents Association.[27] The group organized in hopes of changing conditions in the Edgewood schools, but they knew very little about school finance. The parents worried simply that a local school board member was stealing money meant to help fund the schools.[28] Since this would have been breaking the law, the parents decided to hire a lawyer. The parents approached Arthur Gochman, a lawyer known for defending civil rights, with their concerns about the school district. Gochman informed them that the issue was not individual malfeasance but the way that the state financed public schools.[29]

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[24] Craig A. Kaplowitz, "A Distinct Minority: LULAC, Mexican American Identity, and Presidential Policymaking, 1965-1972," *Journal of Policy History* 15, no. 2 (2003): 192, Project MUSE.
[25] Kaplowitz, "A Distinct," 193.
[26] Guadalupe San Miguel, Jr., "The Impact of Brown on Mexican American Desegregation Litigation, 1950s to 1980s," *Journal of Latinos and Education* 4, no. 4 (October 1, 2005): 222, EBSCOhost.
[27] J. Steven Farr and Mark Trachtenberg, "The Edgewood Drama: An Epic Quest for Education Equality," *Yale Law and Policy Review* 17, no. 2 (1998): 608.
[28] Sracic, *San Antonio*, 21.
[29] Walsh, "Erasing Race," 143.

Gochman filed the case in the federal district court for the Western District of Texas on June 30, 1968.[30] The three central claims of the lawsuit were that poverty was a suspect class, education was a fundamental right implicitly guaranteed by the Constitution, and discrimination against the Mexican-American plaintiffs was on the basis of race as well as wealth.[31]

In 1969, the district court delayed the proceedings of the case to allow the Texas legislature to first address the school finance problem on its own. The Texas legislature made no progress on the school financing issue, so the district court's proceedings moved forward.[32] In 1971, a three-judge federal district court found that the disparities in school resources caused by the funding system in Texas violated the Equal Protection Clause.[33] This court ruled that the state funding system created a suspect class, and that this suspect class was not fairly treated.[34] The court's decision noted that the "10 districts with a market value of taxable property per pupil above $100,000 enjoyed an equalized tax rate per $100 of only 31 cents" while 4 of the poorest districts "were burdened with a rate of 70 cents."[35] Even with tax rates that were more than double, the disparities in funding were substantial. The district court also ruled that education was a "fundamental interest," and "struck down the existing scheme in Texas."[36] The court explained why they found it to be unacceptable, but did not instruct Texas on how to correct the state's school financing system.[37] That court did not focus the racial issues raised, but did note

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[30] Sracic, *San Antonio*, 36.
[31] Camille Walsh, *Racial Taxation: Schools, Segregation, and Taxpayer Citizenship, 1869-1973* (Chapel Hill, NC: University of North Carolina Press, 2018), 144.
[32] Mark G. Yudof and Daniel C. Morgan, "Texas: Rodriguez v. San Antonio Independent School District: Gathering the Ayes of Texas: The Politics of School Finance Reform," *Law and Contemporary Problems* 38, no. 3 (Winter/Spring 1974): 392, JSTOR.
[33] Michael J. Graetz and Linda Greenhouse, *The Burger Court and the Rise of the Judicial Right* (New York, NY: Simon & Schuster, 2016), 91.
[34] Jonathan Kozol, "Romance of the Ghetto School," *The Nation*, May 23, 1994, 703.
[35] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[36] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[37] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.

that the richest school districts only had around 8 percent minority students, while the poorest districts had around 79 percent minority students, and said this was "as might be expected."[38] This aside implied that the judges acknowledged the ways that race and class discrimination were tied together in the case.

Officials from the state of Texas filed an appeal with the Supreme Court on April 17, 1972. Because the case had been heard in a three-judge district court, it went directly to the Supreme Court on appeal. Arthur Gochman had wanted the case to be heard by a three-judge court because he was confident that the case would be decided in favor of the plaintiffs in the Supreme Court due to the makeup of the Court at the time. Additionally, the third judge that heard the case was a judge from the Court of Appeals for the Fifth Circuit which had a good record regarding school desegregation in the years following *Brown,* and Gochman thought that having this judge take part in the initial review of the case would increase the likelihood of a good outcome.[39] However, during the delay, the Court composition changed substantially and several education cases across the country resulted in unfavorable outcomes. One such case was *McInnis v. Shapiro,* which a three-judge district court in Illinois decided on November 15, 1968. Students in Cook County, Illinois claimed that the education funding system violated the Fourteenth Amendment, similar to the *Rodriguez* case. The district court unanimously ruled against the students on the basis that "the Supreme Court had never interpreted the Equal Protection Clause to prohibit states from passing laws that resulted in some inequality of treatment."[40] In 1969, the Supreme Court upheld the decision of the district court, and this decision posed new challenges for *Rodriguez.* However, Gochman maintained hope for *Rodriguez* because *McInnis* did not involve a racial element.[41] The Supreme Court announced

[38] Walsh, "Erasing Race," 148.
[39] Sracic, *San Antonio*, 37.
[40] Sracic, *San Antonio*, 38-39.
[41] Sracic, *San Antonio*, 39.

that it would hear *Rodriguez* in June of 1972.[42] By this time, Nixon had nominated four justices to the Court and completely changed its composition and attitude towards desegregation.[43]

Supreme Court

In its 5-4 *Rodriguez* decision written by Justice Lewis Powell, the Supreme Court held that poverty was not a suspect class and education was not a fundamental right, effectively denying underprivileged minority children a right to a sufficient education.[44] Powell held that because every child in Texas was receiving some level of education, the system was not unconstitutional and it was not up to the Court to change the system.[45] In the *Rodriguez* decision the Court "turned its back on the idea of a right to equal educational opportunity," as it had established in *Brown*.[46]

In the case, the Supreme Court needed to decide "whether the Texas system of financing public education operate[d] to the disadvantage of some suspect class implicitly protected by the Constitution, thereby requiring strict judicial scrutiny."[47] In the 1950s, the Supreme Court had developed a two-tier approach for cases that were challenged on the basis of the Equal Protection Clause. The Warren Court established this two-tier approach when handling discriminatory laws that potentially violated the Equal Protection Clause.[48] Under this system, the Court applied either the strict scrutiny test or the rational basis test to determine whether the Equal Protection Clause had been violated. The strict scrutiny test "places the burden of proof on the government

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[42] Sracic, *San Antonio*, 62-63.
[43] Sracic, *San Antonio*, 62-63.
[44] Ian Millhiser, "What Happens to a Dream Deferred? Cleansing the Taint of San Antonio Independent School District v. Rodriguez," *Duke Law Journal* 55, no. 2 (November 1, 2005): 405-408, JSTOR.
[45] Yudof and Morgan, "Texas: Rodriguez," 402.
[46] Charles J. Ogletree, Jr. et al., "Rodriguez Reconsidered: Is There a Federal Constitutional Right to Education?" *Education Next* 17, no. 2 (Spring 2017): 72.
[47] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[48] Tinsley E. Yarbrough, *The Burger Court: Justices, Rulings, and Legacy* (Santa Barbara, CA: ABC-CLIO, 2000), 146.

in certain cases where there has been an alleged violation of the Equal Protection Clause."[49] The use of this test questions whether the ends that the state pursues are "compelling." In other words, the burden of proof is on the state to prove that the discrimination is necessary. The other test, the rational basis test, "asks only that the ends or interests pursued by a government policy or action be 'legitimate.'"[50] The rational basis test gives states far more latitude, so the *Rodriguez* plaintiffs hoped for the application of the strict scrutiny test. Indeed, because of the significant differences between the two standards, it is often possible to predict the outcome of a case depending on which tier of review the Court selected.[51] The two-tier approach "reached maturity in the mid-1960s," as the Warren Court relied on this approach "to strike down a wide array of statutory classifications that limited the rights of one or another group."[52]

The *Rodriguez* plaintiffs were likely heartened by some of the developments at the state court level. In *Serrano v. Priest*, a 1971 case in the California Supreme Court, the justices decided that "U.S. Supreme Court precedents mandated strict scrutiny in cases involving wealth-based discrimination."[53] The three-judge district court in *Rodriguez* agreed that the California Supreme Court had correctly applied strict scrutiny to identify wealth as a suspect classification. The district court went even further by arguing that there was no evidence that Texas could even pass the rational basis test.[54] Because of this, the district court ordered the state of Texas to create a new school funding plan that ensured that the quality of the public education system was a function of the wealth of the state, rather than the wealth of local districts.[55]

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[49] Sracic, *San Antonio*, 31.
[50] Sracic, *San Antonio*, 32.
[51] Sracic, *San Antonio*, 32.
[52] Leslie Friedman Goldstein, "Between the Tiers: The New[est] Equal Protection and Bush v. Gore," *University of Pennsylvania Journal of Constitutional Law* 4, no. 2 (January 2002): 373, HeinOnline Law Journal Library.
[53] Sracic, *San Antonio*, 44.
[54] Sracic, *San Antonio*, 60.
[55] Charles J. Ogletree, Jr., "The Legacy and Implications of San Antonio Independent School District v. Rodriguez," *Richmond Journal of Law and the Public Interest* 17, no. 2 (Winter 2014): 519, HeinOnline Law Journal.

The district court did not place much emphasis on race but did acknowledge that the link between wealth and race in *Rodriguez* was expected.[56] The Supreme Court chose to ignore the plaintiff's race-based arguments entirely. In *Brown*, the Supreme Court implemented a "relentless categorizing process" and "formalistic construction of race" that allowed the Court to erase race from consideration in *Rodriguez*.[57] Because the property-tax school financing system in question was facially race-neutral, the Court did not have to act. The way that the Supreme Court handled *Rodriguez "*solidified the separation of race and class as categories of constitutional analysis."[58] By ignoring the issue of race discrimination, the Court refused to acknowledge the intersection of race and class discrimination, and therefore "doomed the claim of poverty discrimination."[59] Through this, the Court protected racial inequalities within the public school system.[60]

The majority used the fact that the school financing law in question in *Rodriguez* was seemingly race-neutral to ignore the racial issues present, treating race as completely separate from economics, and ignoring the racial identity of the children of the plaintiffs in the case.[61] Race was relevant in the creation of separate and unequal schools in San Antonio, as it was across the country, but since race was not explicitly included in the tax-funding structure, the Court was able to ignore it as an issue.[62] The Court also disregarded the relevant relationship between low property values and minority status in the decision.[63]

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[56] Walsh, "Erasing Race," 148.
[57] Camille Walsh, *Racial Taxation: Schools, Segregation, and Taxpayer Citizenship, 1869-1973* (Chapel Hill, NC: University of North Carolina Press, 2018), 143.
[58] Walsh, "Erasing Race," 133.
[59] Walsh, "Erasing Race," 134.
[60] Walsh, "Erasing Race," 134.
[61] Walsh, "Erasing Race," 135.
[62] Walsh, "Erasing Race," 137.
[63] Michael J. Graetz and Linda Greenhouse, *The Burger Court and the Rise of the Judicial Right* (New York, NY: Simon & Schuster, 2016), 92.

Justice Lewis Powell

In a 5-4 decision, the Supreme Court decided that the school financing system in Texas did not violate the Equal Protection Clause of the Fourteenth Amendment. Justice Lewis F. Powell, Jr. wrote the majority opinion for *Rodriguez*. Powell noticed *Rodriguez* very quickly because of his interest in education, and he immediately wrote to his clerks telling them to put it on their summer list to study.[64] Richard Nixon nominated Powell to the Supreme Court in 1971, and Powell had a long history of involvement in education policy and politics.[65] Powell himself attended only private schools, but he was very involved in the public-school system throughout his life, and as such knew more about the education system than anyone else on the Court at the time.[66] Most notably, Powell served as head of both the Richmond School Board and the Virginia School Board for two decades.[67] The schools in Richmond remained segregated for most of the time that Powell served on the board. Black children were admitted to white schools in Richmond for the first time in 1960, when Powell was almost done with his time on the board. During this time, he claimed that the school board did not have the authority to end the segregation of schools in Richmond, suggesting his unwillingness to fight hard to end discrimination in the public-school system. [68] In 1963, the U.S. Court of Appeals for the Fourth Circuit found that some of the decisions made by the Richmond School Board under the leadership of Powell led to the continuation of segregation in the city.[69]

Due to his experience on the Richmond School Board, Powell strongly opposed centralized control of schools, and prioritized maintaining local control over desegregation.

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[64] Sracic, *San Antonio*, 65.
[65] Victoria J. Dodd, "The Education Justice: The Honorable Lewis Franklin Powell, Jr.," *Fordham Urban Law Journal* 29, no. 2: 683, HeinOnline Law Journal.
[66] Paul Sracic, "The Brown Decisions Other Legacy: Civic Education and the Rodriguez Case," *Political Science and Politics* 37, no. 2 (2004): 216, JSTOR.
[67] Graetz and Greenhouse, *The Burger*, 84.
[68] John C. Jeffries, Jr., *Justice Lewis F. Powell, Jr.* (New York, NY: Charles Scribner's Sons, 1994), 140.
[69] Yarbrough, *The Burger*, 91.

Powell saw *Rodriguez* as a "case about centralized control of the schools," and that influenced his decision and opinion.[70] If the funding system were to be changed, he feared local districts would lose influence and freedom over their own education policies.[71] Powell believed that the local school board was a "unique American institution," and that it "played a vital role in the development of our public school system."[72] School boards, according to Powell, were especially helpful in generating local support to finance public schools. In his eyes, getting rid of a property-tax based financing system would destroy the local school board, thus destroying the American public-school system as it was. Powell defended the American system of education by saying "few other countries assure twelve years of public education for every child who will take it," and emphasized that the local school board was the most important factor in contributing to the effectiveness of public schools in America.[73]

Powell also opposed centralized control of schools because of his fear of communism. Before Nixon nominated Powell to the Supreme Court, he had written a confidential memorandum, referred to as the "Powell Memo," about his fear of left-wing attacks on the U.S. economic system. The memo began by saying "no thoughtful person can question that the American economic system is under broad attack."[74] One of Powell's concerns was how socialist ideas could affect the education system. If the property tax based financing system was overturned, he worried it would result in "national control of education."[75] Powell consistently talked of the "basic soundness of the American public school system," and its superiority over other school systems, especially that of the Soviet Union.[76] In the Cold War context, many felt

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[70] Sracic, "The Brown," 216.
[71] Graetz and Greenhouse, *The Burger*, 92.
[72] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[73] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[74] Lewis F. Powell Jr., "The Memo" (1971). Powell Memorandum: Attack On American Free Enterprise System, 1.
[75] Walsh, *Racial Taxation*, 149-150.
[76] Sracic, *San Antonio*, 65.

that claims of wealth discrimination needed to be portrayed as a "logical by-product of capitalism."[77] The American education system, Powell believed, needed to focus on the promotion of freedom and democracy, and if the education system were centralized this would not be the case.[78] Powell's fear of communism influenced his decision in *Rodriguez*, and eventually proved to be more important to him than racial and economic equality in public schools.

The Majority Opinion

Unlike the district court, the Supreme Court found "neither the suspect classification nor the fundamental interest analysis persuasive."[79] The majority opinion criticized the district court for failing to consider the complexity of the constitutional questions posed in the case and took issue with the district court's decision to apply strict judicial scrutiny, therefore determining that wealth was a suspect class. The Supreme Court found that *Rodriguez* could not "be so neatly fitted into the conventional mosaic of constitutional analysis under the Equal Protection Clause."[80]

The majority opinion first addressed the issue of wealth as a suspect class. The Supreme Court determined that the district court used "a simplistic process of analysis," and that the issue needed to be analyzed more closely.[81] Powell's opinion declared that the wealth discrimination in *Rodriguez* was not similar to wealth discrimination in any other case decided by the Supreme Court, and that there were hard questions that the Court needed to address to make the decision.

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[77] Walsh, *Racial Taxation*, 149.
[78] Sracic, *San Antonio*, 66.
[79] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[80] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[81] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.

One of the important questions that the majority opinion addressed was whether "the relative – rather than absolute – nature of the asserted deprivation [was] of significant consequence."[82] The Supreme Court repeatedly emphasized that because there was no absolute deprivation of education in Texas, there was no violation of the Constitution. Where wealth is involved, the Court concluded, "the Equal Protection Clause does not require absolute equality or precisely equal advantages."[83] Because the financing system did not discriminate against a "definable category of poor people," and also did not absolutely deprive anyone of an education, then there was no identifiable disadvantaged class.[84] To differentiate *Rodriguez* from other wealth discrimination cases, Powell compared it to *Griffin v. Illinois*. In *Griffin*, the Court "invalidated state laws that prevented an indigent criminal defendant from acquiring a transcript, or an adequate substitute for a transcript."[85] Powell believed the Court made the correct decision in *Griffin* because the criminals had been absolutely deprived of a benefit, however, if "the State had provided some 'adequate substitute' for a full stenographic transcript," then the Court would not have recognized a violation of the Constitution.[86] By this logic, there was no constitutional violation in *Rodriguez* because there was no absolute deprivation of access to education. The state provided some level of education to every child in Texas, and in the majority's view this was sufficient, and it was "the right of local districts to enrich beyond the guaranteed level" if they had the means to do so.[87]

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[82] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[83] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[84] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[85] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[86] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[87] Yudof and Morgan, "Texas: Rodriguez," 402.

With regard to the fundamental right to education, Powell referenced the *Brown* decision's acknowledgement that "education is perhaps the most important function of state and local government" in the opinion.[88] Insisting that the Supreme Court still agreed with this statement, Powell nevertheless argued that "the importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause."[89] Additionally, even if some minimal level of education was necessary to carry out basic civic duties, there was no way to determine whether or not the education provided in poorer school districts was insufficient in this regard. Even though the children in districts like Edgewood did not receive a high-quality education, they did receive an education that was potentially sufficient to carry out basic duties. Powell also did not find that a sufficient link between funding and quality of schools had ever been made, and therefore there was no identifiable way to fix the quality of the Edgewood schools.[90]

Powell believed that it was not "the province of the Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws."[91] Rather, the Court only needed to determine whether education was implicitly or explicitly guaranteed by the Constitution, which the majority determined it was not. The Supreme Court majority also worried that upholding the district court's decision would lead to unparalleled changes in the education system all across the country.[92]

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[88] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[89] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[90] Sracic, *San Antonio*, 67.
[91] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[92] Sracic, *San Antonio*, 116.

In conclusion, the majority in the Supreme Court decided that "the Texas system [did] not operate to the peculiar disadvantage of any suspect class."[93] Contrary to the district court and the California Supreme Court, Powell found that this was clearly not a case in which "the challenged state action must be subjected to the searching judicial scrutiny," and also that the decision did not rest "solely on the inappropriateness of the strict scrutiny test."[94] Powell and the majority also emphasized that they did not have the expertise needed to act on the local problems in San Antonio, and therefore could not determine that change needed to occur in the state's school financing system.

Winning the 5-4 Majority

All four of President Richard Nixon's nominees to the bench, along with Potter Stewart, voted to overturn the district court's decision in *Rodriguez.* Nixon's first Supreme Court nominee was Chief Justice Warren Burger, and when he presented Burger as his nominee, he said "I think it could be fairly said that our history tells us that our chief justices had probably more profound and lasting influence on their times and on the direction of the nation than most presidents have had."[95] Following the nomination of Warren Burger, Nixon nominated Harry Blackmun, Lewis Powell, and William Rehnquist to the Court.

Powell did not immediately gain the majority support in *Rodriguez*, and he had to work to win Justice Potter Stewart's support.[96] Stewart, who had been nominated by Eisenhower in 1958, was the only justice in the *Rodriguez* majority not nominated by Nixon, and he was known to be

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[93] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[94] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[95] Graetz and Greenhouse, *The Burger*, 4-5.
[96] Graetz and Greenhouse, *The Burger*, 92.

a swing justice during his tenure.[97] During his time on the Court, Stewart generally joined opinions that "objected to extensions of the 'fundamental rights' branch of modern equal protection doctrine."[98] Stewart did not disagree with the outcome in the decision, but rather disagreed with the reasoning behind it. Stewart expressed these concerns to Powell in a memorandum sent on February 8, 1973. In his memo, Stewart communicated concern with the idea that there are "two separate alternative tests under the Equal Protection Clause, and that the necessary first step in any equal protection case is to decide which test to apply, and therefore first whether a 'fundamental interest' is affected."[99] Stewart explained that "application of the so-called 'compelling state interest' test automatically results, of course, in striking down the state statute under attack."[100] While Stewart did find the funding system in Texas to be "chaotic and unjust," he did not find it to be unconstitutional, and therefore believed the Court should overturn the district court's decision.[101] Powell's response to Stewart emphasized how he saw "little of substance" that separated the two of them.[102] Even though Powell did not accept all of Stewart's suggestions, Stewart joined Powell after the draft recirculated on February 23rd, 1973, leading to the 5-4 majority to overturn the ruling of the district court.

Justice Thurgood Marshall was one of the four dissenters in the *Rodriguez* decision. Marshall challenged Powell in his powerful dissenting opinion and argued that the financing system violated the Equal Protection Clause of the Fourteenth Amendment. Marshall contended

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[97] Charles M. Lamb and Stephen C. Halpern, eds., *The Burger Court: Political and Judicial Profiles* (Chicago, IL: University of Illinois Press, 1991), 375.
[98] Lamb and Halpern, *The Burger*, 389.
[99] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[100] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[101] Yudof and Morgan, "Texas: Rodriguez," 402.
[102] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.

that the purpose of the Equal Protection Clause was to ensure that equality existed for everyone, and that receiving a minimal education was not sufficient under this clause.[103]

In his dissent, Marshall maintained that "the majority's holding can only be seen as a retreat from our historic commitment to equality of educational opportunity."[104] Marshall argued that the financing system in Texas was unconstitutional, and that no effort by the state to equalize the resources that schools received could solve the issues present under this funding scheme. The inability to provide equal resources deprived "children in their earliest years of the chance to reach their full potential as citizens."[105] Marshall criticized the majority for its continued emphasis on how property poor districts in Texas received state aid in recent years, saying that they failed to acknowledge the "cruel irony of how much more state aid is being given to property rich Texas school districts," resulting in increased disparities in funding.[106]

Marshall condemned the Court for deciding that there was no disadvantaged class created by the Texas financing system. It was indisputable, he wrote, that "the school children of property poor districts constitute a sufficient class for our purposes."[107] The district court had rightly concluded that the financing scheme discriminated from a constitutional perspective based on the amount of money raised from property taxes within districts, in Marshall's opinion.[108] The dissenting opinion by Marshall also approached the issue of education as a fundamental right, with Marshall claiming that "the fundamental importance of education is amply indicated by the prior decisions of this Court," and therefore should be considered a

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[103] Kozol, "Romance of the Ghetto," 704.
[104] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[105] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[106] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[107] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[108] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.

fundamental right.[109] The other dissenters in *Rodriguez* were Justices William Douglas, William Brennan, and Byron White.

Marshall summarized his position in *Rodriguez* by saying "the right of every American to an equal start in life, so far as the provision of a state service as important as education is concerned, is far too vital to permit state discrimination on grounds as tenuous as those presented by this record."[110] He therefore believed that the Texas financing system violated the Equal Protection Clause and affirmed the judgement of the district court.

Following the Court's decision in *Rodriguez*, various groups and individuals reached out to Powell to express their disagreement with the conclusion the Court had come to. M.L. Rudee, an Associate Professor at Rice University, wrote to Powell about his own experience as a recruiter who had visited schools in both the Edgewood and Alamo Heights districts, and he claimed that "the comparison is so profound that any person of goodwill would disagree with your decision."[111] Rudee went so far as to say that given the decision, he "found it very difficult to use the pro forma title of Justice" in the salutation of his letter to Powell.[112] Another critic wrote to Powell saying that the decision was "exceeded in meanness of spirit only by the *Dred Scott* decision," and that the cumulative effect of the decision "will be explosive."[113] Yet another critic claimed that "those who are poor, disadvantaged, Black, Mexican or Indian are penalized by people like you who fail to acquaint themselves, 'acquire expertise', and familiarize

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[109] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[110] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[111] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[112] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[113] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.

themselves with their problems."[114] Each of these critics pointed out different aspects of the Court's decision that they found to be deeply wrong and unjust for underprivileged Americans affected by property-tax school financing.

Criticism also came from various newspapers across the country. One *New York Times* article recognized the potential issues with "complete homogenizing of all school expenditures," but claimed it was hypocritical "for states to hide behind the principle of local control, while ignoring their responsibility to devise acceptable equalization formulas."[115]

The decision made in *Rodriguez* had far reaching effects for the public education system in the United States, and the Court essentially ensured that public school resources would remain wholly unequal across the country.[116] Powell's majority opinion in the case limited the reach of the Fourteenth Amendment, and the limits created by this case still exist today.[117]

Serrano v. Priest, the California case, also challenged a property-tax based school financing system. However, *Serrano* was different from *Rodriguez* because it did not include a race discrimination claim, but instead only argued that poverty was a suspect class and education was a fundamental right. The California Supreme Court declared the financing system to be unconstitutional, saying "affluent districts can have their cake and eat it too; they can provide a high quality education for their children while paying lower taxes," but poor districts on the other hand "have no cake at all."[118] Even though the California Supreme Court recognized poverty as a suspect class and education as a fundamental right, *Rodriguez* reached the Supreme Court first, and therefore determined the fate of *Serrano*.[119] *Serrano* provides one example of the far-

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[114] *San Antonio Independent School District v. Rodriguez.* Lewis F. Powell Jr. Archives. Washington and Lee University School of Law, Virginia.
[115] "Tale of Two Schools," *The New York Times*.
[116] Graetz and Greenhouse, *The Burger*, 93.
[117] Sracic, "The Brown," 216.
[118] Walsh, *Racial Taxation*, 133.
[119] Walsh, *Racial Taxation*, 133.

reaching effects that the *Rodriguez* decision had on discrimination in education finance across the country.

Conclusion

The Supreme Court's 5-4 decision in *Rodriguez* did not acknowledge wealth as a suspect class, decided education was not a fundamental right, and chose not to consider the issue of race. By reversing the decision of the district court, the Supreme Court failed to protect the underprivileged, mostly minority children both in San Antonio and across the country. In addition to the negative impact that *Rodriguez* had on low income children, it marked an important philosophical shift in the jurisprudence of the Supreme Court.[120]

Access to education is an essential part of American life, and the ability to receive a high-quality education is especially important for those who come from struggling financial backgrounds. In order to improve their opportunities, children from low-class families deserve the ability to receive more than an inadequate education.[121] By declaring that education was not a fundamental right, *Rodriguez* acted as "the practical invalidation of *Brown v. Board*."[122] Additionally, *Rodriguez* essentially eliminated the federal courts as a way to reform school finance.[123]

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[120] Millhiser, "What Happens," 406.
[121] Magda Derisma, "The Divide in Public Education Funding - Property Tax Revenue," *Children's Legal Rights Journal* 34, no. 1 (Winter 2013): 123, HeinOnline Law Journal.
[122] Kozol, "Romance of the Ghetto," 703.
[123] Richard R. Valencia, *Chicano Students and the Courts: The Mexican American Legal Struggle for Educational Equality* (New York, NY: New York University Press, 2008), 92.

Epilogue: Resegregation After *Rodriguez*

San Antonio Independent School District v. Rodriguez had lasting effects on education inequality and segregation. In its 1973 decision, the Court turned its back on the education progress made in the *Brown* decision nineteen years earlier.[1] By permitting a funding system that tolerated serious disparities in education quality to continue, the Court effectively defeated "the notion that in America every person has a fair chance to succeed."[2] Critics of *Rodriguez* have gone so far as to argue that the decision "will one day be considered as erroneous as the Court's approval of the 'separate but equal' doctrine in *Plessy v. Ferguson.*"[3] In denying some students access to excellent schools, the court relegated low-income minority students to second class status, and left many students without the education they would need to effectively participate in American life.[4]

The Court's decision in *Rodriguez* removed the possibility of federal intervention in the funding of public schools and left the issue up to individual states. In his dissent, Thurgood Marshall pointed out that the Court's decision should not "inhibit further review of state education funding schemes under state constitutional provisions," emphasizing that it was important for states to continue to fight for equality.[5] This has added to the confusion, as state courts have "come down squarely on both sides of the funding issue in their application of state constitutional law" since the *Rodriguez* decision.[6] Cases challenging the property-tax based

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[1] Ian Millhiser, "What Happens to a Dream Deferred? Cleansing the Taint of San Antonio Independent School District v. Rodriguez," *Duke Law Journal* 55, no. 2 (November 1, 2005): 405, JSTOR.
[2] Geoffrey R. Stone, "How a 1973 Supreme Court Decision Has Contributed to Our Inequality," *The Daily Beast* (New York, NY), May 15, 2014.
[3] Charles J. Ogletree, Jr. et al., "Rodriguez Reconsidered: Is There a Federal Constitutional Right to Education?," *Education Next* 17, no. 2 (Spring 2017): 72.
[4] Ogletree et al., "Rodriguez Reconsidered," 72-74.
[5] Jeffrey S. Sutton, "San Antonio Independent School District v. Rodriguez and Its Aftermath," *Virginia Law Review* 94, no. 8 (December 1, 2008): 1971, JSTOR.
[6] Frank J. Macchiaarola and Joseph G. Diaz, "Disorder in the Courts: The Aftermath of San Antonio Independent School District v. Rodriguez in the State Courts," *Valparaiso University Law Review* 30, no. 2 (Spring 1996): 552, HeinOnline Law Journal Library.

financing system have been filed in almost every state since the *Rodriguez* decision, but significant inequality and segregation still exists in schools across the country.[7] Leaving the school funding issue up to state courts resulted in a "confusing patchwork" of rulings, and even when courts have ordered changes in allocation of money there has been "widespread noncompliance."[8]

In 1989, the Texas Supreme Court approached the continuing issue of school finance in the state of Texas. In *Edgewood Independent School District v. Kirby (Edgewood I),* the state court decided that the current financing system violated the state constitution due to the inequities it created between school districts. This was the first of a long series of decisions involving Texas school financing. Even though Texas provided state aid to property-poor districts, these districts still did not receive nearly as much funding as the property-rich districts did.[9] Under the Texas Constitution, the "Legislature of the State" has the obligation to "to establish and make suitable provision for the support and maintenance of an efficient system of public free schools" in order to achieve "a general diffusion of knowledge." [10] In *Edgewood I,* the court argued that the current school financing system was not efficient, and the state legislature needed to reform the system.

Although *Edgewood I* had significant consequences in Texas, it "was a genuinely unremarkable opinion when viewed against legal developments in other states."[11] In this decision, the court required fiscal neutrality, which meant that expenditures on education had to be a function of the wealth of the state as a whole. The court, however, did not require complete

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[7] Camille Walsh, *Racial Taxation: Schools, Segregation, and Taxpayer Citizenship, 1869-1973* (Chapel Hill, NC: University of North Carolina Press, 2018), 161.
[8] Dianne Piche et al., "Remedying Disparate Impact in Education," *Human Rights* 38, no. 4 (2011): 15, JSTOR.
[9] Donald S. Yarab, "Edgewood Independent School District v. Kirby: An Education in School Finance Reform," *Case Western Reserve Law Review* 40, no. 3 (1989): 889-891, HeinOnline Law Journal Library.
[10] Yarab, "Edgewood Independent," 893.
[11] Mark Yudof, "School Finance Reform in Texas: The Edgewood Saga," *Harvard Journal on Legislation* 28, no. 2 (Summer 1998): 499, HeinOnline Law Journal Library.

or perfect fiscal neutrality. Instead, the court said that districts must have "substantially" equal amounts of money available for their schools.[12] The court's decision preserved the existing multi-tiered financing system, as well as establishing nearly $1 billion in new state funds and new taxes. Although the first *Edgewood* decisions improved the equity of the Texas education system, the last four *Edgewood* decisions ended up hurting the property-poor districts in Texas. In the first *Edgewood* decisions the Texas Supreme Court created "clear and enforceable standards," but the later decisions retreated from this and implemented a "murky and unenforceable standard of little utility to policymakers and future courts."[13]

Vermont is one state that has made significant changes to their education funding system since the *Rodriguez* decision. Until the 1990s, Vermont funded their schools the same way that pretty much every other state did. Rich towns in Vermont were able to raise money for their schools easily, and towns without high-valued properties struggled. The superintendent of a tiny town in Vermont, the ACLU, and others, sued the state in *Brigham v. Vermont*. In February 1997, the Vermont Supreme Court decided that the way the state funded schools was unconstitutional under the Vermont State Constitution but did not provide a solution for how to make schools equal.[14]

The Vermont state legislature had to find a way to make schools equal, and they created a way of funding schools that was different from how every other state did it. The state legislature passed Act 60 and Act 68 in 1997 to create the new school funding plan. Under this new plan, school districts approve a budget that includes how much they plan to spend per student per year, and then all districts pay into a pool. Richer communities pay into this pool at a higher rate, and

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[12] Yudof, "School Finance," 499-500.
[13] Albert H. Kauffman, "The Texas School Finance Litigation Saga: Great Progress, then Near Death by a Thousand Cuts," *St. Mary's Law Journal* 40, no. 2 (Winter 2008): 514, HeinOnline Law Journal Library.
[14] Byrd Pinkerton, "Lawsuits and Slashed Tires: Vermont's School Funding Battle," *The Impact*, podcast audio, November 26, 2018.

poorer communities pay at a lower rate, but the plan makes the same proportional dent in everyone's wallet. This plan created a system of rich "sending towns" and poorer "receiving towns" so that all districts were able to sufficiently fund their schools.[15] Although this plan led to increased equality in schools, it did not make everyone in the state happy. Richer districts in Vermont faced tax increases, and saw their tax money leaving their communities, which angered many people. Additionally, some people, even in poorer towns, were not happy about a fix for school conditions coming from the state government and were in favor of retaining local control in Vermont.[16] The change to school funding in Vermont provides an example of one way to make school finance more equitable, but it was not easy change and did not come without controversy.

The Court's failure to recognize the constitutional right to education in 1973 resulted in significant resegregation of schools today. Since the 1980s, racial segregation has continued to increase in most of the largest school districts across the country. In many cases, the level of racial segregation in schools now is comparable to the level of segregation in the year before the Court decided *Brown.*[17] In the 2009-2010 school year, more than 40 percent of Black and Latino students attended schools that were 90 to 100 percent minority, reflecting a significant amount of segregation in schools across the country.[18] Additionally, predominantly white school districts today receive $23 billion more than those that serve mostly students of color, or about $2,226 per student enrolled. High-poverty districts with mostly students of color in their schools receive about $1,600 less than the national average, while school districts that are poor but predominantly white receive about $130 less than the national average.[19] These disparities exist

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[15] Pinkerton, "Lawsuits and Slashed."
[16] Pinkerton, "Lawsuits and Slashed."
[17] Walsh, *Racial Taxation*, 161.
[18] Dana N. Thompson Dorsey, "Segregation 2.0: The New Generation of School Segregation in the 21st Century," *Education and Urban Society* 45, no. 5 (September 2013): 534, SAGE Journals Online.
[19] Clare Lombardo, "Why White School Districts Have So Much More Money," *NPR*, February 26, 2019.

because school funding systems across the country rely on geography, and therefore the system "has inherited all of the historical ills of where we have forced and incentivized people to live."[20] Because of the *Rodriguez* ruling, residence continues to determine the quality of education that students receive, often resulting in unequal funding and racially segregated schools.[21]

Even though most states have reformed their education funding systems in some capacity since the *Rodriguez* decision, school finance systems still continue to hurt urban schools in areas with low property values.[22] On average, the federal government today funds less than 10 percent of public-school education, leaving the rest to local and state sources.[23] In the past forty years, cities in the U.S. have become increasingly segregated, leading to increased segregation in schools. In 2013, "the median white family held 13 times as much net wealth as the median black family," and "10 times as much wealth as the median Latino family."[24] The school funding systems in the U.S. cannot make up for these wealth disparities, and therefore these minorities that often live in segregated, property-poor areas receive substandard educations.

If the Supreme Court had upheld the decision of the district court in *Rodriguez*, school segregation and funding today might look very different. However, the Supreme Court's failure to recognize the fundamental right to education or establish wealth as a suspect class led to the increased segregation of schools today. The Supreme Court turned its back on the *Brown* decision in *Rodriguez* and failed to provide equality for underprivileged students of color.

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[20] Lombardo, "Why White".
[21] Jamel K. Donnor and Adrienne D. Dixson, eds., *The Resegregation of Schools: Education and Race in the Twenty-First Century* (New York, NY: Routledge, 2013), 21.
[22] Wayne Batchis, "Urban Sprawl and the Constitution: Educational Inequality as an Impetus to Low Density Living," *The Urban Lawyer* 42, no. 1 (Winter 2010): 104, JSTOR.
[23] Lombardo, "Why White".
[24] Christopher Petrella, "The Resegregation of America," *NBC News*, December 3, 2017.

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