Seton Hall Law Review

Vol. 5 Fall 1973 No. 1

EDUCATIONAL FINANCING IN NEW JERSEY: *ROBINSON V. CAHILL* AND BEYOND

*Harold J. Ruvoldt, Jr.**

These matters merit the continued attention of the scholars who already have contributed much by their challenges. But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.[1]

With these words, Justice Powell writing in *San Antonio Independent School District v. Rodriguez*,[2] rejected a challenge to the present method of funding public education in the state of Texas. The primary argument advanced was that the existing financing system, based on local property taxes, was violative of the equal protection clause of the United States Constitution.[3] But even before the commentators had an opportunity to analyze this long awaited decision, the Supreme Court of New Jersey struck down a similar tax scheme in *Robinson v. Cahill*.[4] Although superficially, the decisions appear to conflict, the rationale for rejecting the financing system in *Robinson* emerges from a state constitutional mandate "for the maintenance and support of a thorough and efficient system of free public schools,"[5] and not from the federal equal protection provision rejected in *Rodriguez*.

I. INTRODUCTION

Robinson was the culmination of a movement which had its inception in *Brown v. Board of Education*.[6] In *Brown*, the Supreme

* A.B., St. Peter's College; J.D., Seton Hall University; Member, New Jersey Bar. Mr. Ruvoldt represented the plaintiffs in *Robinson v. Cahill*.

1 San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 58-59 (1973) (emphasis added).

2 411 U.S. 1 (1973).

3 *Id.* at 17.

4 118 N.J. Super. 223, 287 A.2d 187, *supplemented*, 119 N.J. Super. 40, 289 A.2d 569 (L. Div. 1972), *aff'd as modified*, 62 N.J. 473, 303 A.2d 273, *supplemented*, 63 N.J. 196, 306 A.2d 65, *cert. denied*, 42 U.S.L.W. 3246 (U.S. Oct. 23, 1973).

5 N.J. CONST. art. 8, § 4, ¶ 1.

6 347 U.S. 483 (1954).

Court found that a racially segregated school system provided educational facilities to participating students which were, by their very nature, inherently unequal.[7]

In the years since *Brown*, the civil rights movement was concerned primarily with the establishment of a unitary system of public education and did not foster challenges against educational deprivation based on other classifications. Therefore, it was not until 1968 that public attention was focused in this new direction.

The first such challenge was launched in Michigan, but the suit was dismissed by a county court for lack of prosecution.[8] Shortly thereafter, in *McInnis v. Shapiro*,[9] the existing system of school financing was challenged in Illinois. *McInnis* advanced the argument that the equal protection and due process clauses of the United States Constitution require that monies allocated to public education be dispensed on the criterion of educational needs.[10] More specifically, it was urged that the Illinois system of financing schools, which depended heavily on local property valuations and locally determined tax rates, was irrational, and that potential alternatives would better serve the purposes of the legislation.[11] The federal district court found that the "need" standard espoused by plaintiff was not judicially manageable because the court could not provide the empirical data and consultation necessary for intelligent educational planning.[12] The

---

7 *Id.* at 495.

8 Board of Educ. v. Michigan, No. 103342 (Wayne County Ct., filed Feb. 2, 1968). Despite the dismissal for failure to prosecute, Governor Milliken ultimately brought a successful suit on an identical issue in Milliken v. Green, 389 Mich. 1, 203 N.W.2d 457 (1972), *rehearing granted*, Jan. 30, 1973. The Michigan legislature has enacted, and the Governor has signed into law, Pub. Act No. 101 (Aug. 14, 1973) which deals with school district financing. The promulgation of this law may render *Milliken* moot.

9 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd per curiam sub nom.* McInnis v. Ogilvie, 394 U.S. 322 (1969).

10 293 F. Supp. at 329 & n.4. Educational need is a term of art depicting the interrelationship of such factors as teacher quality and experience, student potential and prior education, parental background and education, and the physical environment including the tangible educational plant. *Id.* at 329 n.4.

11 *Id.* at 331.

12 *Id.* at 335-36. Educational need is an attractive standard because it is qualitative and is therefore more related to scholastic success than the quantitative financial standard. It also obviates the doubts associated with the cost-quality ratios and other inputs used as measures of quality raised in Coleman, *The Concept of Equality of Educational Opportunity*, 38 HARV. EDUC. REV. 7, 18-19 (1968). Such a standard would not conflict with the compensatory education concept. *See, e.g.*, Hobson v. Hansen, 269 F. Supp. 401, 469-73 (D.D.C. 1967), *remanded sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969).

The principal problem with utilizing the need standard is the difficulty of determining the level at which the school system will be constitutionally compelled to

court was also of the opinion that if these sweeping changes were to be made, the proper branch of government to do so would be the legislature.[13]

Following the unsuccessful *McInnis* challenge, a group of plaintiffs filed a similar suit in Virginia entitled *Burruss v. Wilkerson*.[14] In order to circumvent the pitfalls encountered in *McInnis*, these plaintiffs opted for an equally novel, but more manageable standard for determining financial contributions to education. They argued that equal instructional and physical facilities should be afforded each child attending the state's public school system.[15] Although sympathetic to this approach, the court found this "scarcely distinguishable" from the *McInnis* argument, and that outlays for one group of school children were not invidiously greater than that of any other.[16] The suit was dismissed, the court indicating that a state legislative remedy would undoubtedly be forthcoming to alleviate the admitted scholastic inequalities.[17]

Until 1969, most meaningful litigation in this area had been

remedy an inadequate need situation. *See* Alexander & Jordan, *Constitutional Alternatives for State School Support*, in FINANCING EDUCATION 470, 491-93 (R. Johns, K. Alexander & F. Jordan ed. 1972). Fiscal neutrality, or equal educational dollars per pupil, appears more palatable to scholars. *See* Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures*, 57 CALIF. L. REV. 305, 394-95 (1969). However, the fiscal neutrality approach does not promise an equal education from the scholastic achievement standpoint. It is the author's view that the use of some viable qualitative standard is necessary to assure equal opportunity in public education, be it mandated through a specific state constitutional provision, or by implication as suggested in Michelman, *Forward: On Protecting the Poor Through the Fourteenth Amendment, The Supreme Court, 1968 Term*, 83 HARV. L. REV. 7, 57-59 (1969).

13 293 F. Supp. at 336-37.

14 310 F. Supp. 572 (W.D. Va. 1969), *aff'd per curiam*, 397 U.S. 44 (1970).

15 310 F. Supp. at 574. The concept of "equal facilities" encompasses more than the physical plant, but includes equality in all the tangibles recognized by the courts in the traditional educational segregation context. *See* United States v. Board of Educ., 372 F.2d 836, 845-46 (5th Cir. 1966) (footnote omitted).

> The United States Constitution, as construed in *Brown*, requires public school systems to integrate students, faculties, facilities, and activities.

Equal facilities provide a realistic legislative or judical standard because it is susceptible to measurement. *Compare* Bowles & Levin, *The Determinants of Scholastic Achievement—An Appraisal of Some Recent Evidence*, 3 J. HUMAN RES. 3, 7-17 (1968) *with* Hirsch, *Determinants of Public Education Expenditures*, 13 NAT'L TAX J. 29, 36 (1960). It is obvious that there is a direct relationship between the provision of educational facilities and the dollars allocated and spent for their acquisition. Even when ignoring operating expenditures, capital costs alone can present enormous problems to low ratable communities. *See* C. BENSON, THE ECONOMICS OF PUBLIC EDUCATION 235-36, 241 (2d ed. 1968).

16 310 F. Supp. at 574.

17 *Id.*

argued in the federal courts. The only notable exception was the California challenge of *Serrano v. Priest.*[18] Initially, the suit was dismissed at the trial level for failure to state a claim upon which relief could be granted.[19] On appeal, the California supreme court reversed, holding that public school financing which creates disparities among individual school districts in the amount of revenue available for education, violates the equal protection provisions of both the federal and state constitutions.[20]

II. The New Jersey Trial Strategy

During the pendency of the *Serrano* appeal, a similar suit attacking the method of funding public education was filed in New Jersey. The New Jersey plaintiffs had a decided advantage in their choice of forum. The state supreme court had recognized "the education of children to be of supreme importance,"[21] and that "the State's duty to educate children is a matter of constitutional demand."[22] The New Jersey constitution contains a specific directive that:

> The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.[23]

Cognizant of the special position that education occupies in New Jersey, and of the constitutional requirement of the provision of a "thorough and efficient" education, the plaintiffs were able to formulate their manner of attack. They realized that fundamental constitutional law dictates that a constitutional challenge in a state court exposes to review, constitutional issues of both state and federal dimension. Therefore, if the federal attack in the state court system failed, the state challenge could still succeed. Also, a similar suit heard in a federal court might be hampered by the doctrine of federal abstention, if state constitutional issues had not yet been resolved by that state's courts.[24] In order to avoid the unfavorable results of prior educational

18 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

19 10 Cal. App. 3d 1110, 89 Cal. Rptr. 345 (Dist. Ct. App. 1970).

20 5 Cal. 3d at 596 & n.11, 619, 487 P.2d at 1249 & n.11, 1266, 96 Cal. Rptr. at 609 & n.11, 626.

21 Pingry Corp. v. Township of Hillside, 46 N.J. 457, 460, 217 A.2d 868, 870 (1966) (action by private school seeking tax exemption); State v. Vaughn, 44 N.J. 142, 145, 207 A.2d 537, 539 (1965) (disorderly person's prosecution brought against parent for failure to send child to school).

22 46 N.J. at 461, 217 A.2d at 870.

23 N.J. Const. art. 8, § 4, ¶ 1.

24 *See generally* C. Wright, Federal Courts § 52, at 196-97 (2d ed. 1970).

litigation, it was decided to utilize a series of alternate constitutional attacks upon the existing school funding system rather than to rely on a singular approach.[25]

Choice of party plaintiffs was then resolved. Kenneth Robinson, a youngster from Jersey City, represented the pupils of the state's public schools.[26] Educational administrators were included because of their responsibilities for delivering the public educational offering. Local taxpayers were added because educational funding is derived primarily through municipal realty taxes. Each plaintiff was named both as an individual and as a representative of his respective class.[27] This approach enabled all persons affected by educational finance and its delivery to be represented in some capacity. Every state official and official body involved with the state educational system and its delivery of services was named as a defendant.[28] Since a new governor had taken office shortly before the suit was filed, the litigation took his name, and the case was captioned *Robinson v. Cahill*.[29]

In the complaint, the students challenged the constitutionality of the present educational financing system as a denial of equal protection. They alleged that under the existing law they were being discriminated against because of their race and their economic status.[30]

---

25 The permissibility of alternative and inconsistent pleadings for relief as provided by N.J.R. 4:5-2, 4:5-6 was a necessity in a suit of *Robinson's* nature. As with alternative counts in an indictment, such pleading prevents the evil being attacked from eluding capture due to an error in legal theory at the outset.

26 Robinson possessed the essential characteristics necessary to properly test the school funding issue. He was a bright child attending a school which was severely overcrowded and grossly under-equipped.

27 Plaintiffs' Amended Complaint at 1-8, Robinson v. Cahill, 118 N.J. Super. 223, 287 A.2d 187 (L. Div. 1972) [hereinafter cited as Plaintiffs' Amended Complaint]. The class action approach was adopted so that the entire system of funding education throughout the state could be attacked, rather than the system of any one individual district. Also, since plaintiffs anticipated a long period of litigation, the class action forestalled any issue of mootness upon the graduation of the named plaintiff.

28 Education in New Jersey is regulated by N.J. STAT. ANN. § 18A:1-1 *et seq.* (1968). While education has an independent basis of power, and a separate corporate existence, its powers and financing are intimately interwoven with municipal government; thus there was a need for an exhaustive listing of plaintiffs and defendants.

The litigation was essentially non-partisan, as the two cities that were initial plaintiffs (Jersey City and Paterson) were at the outset of the litigation, governed by a Democrat and by a Republican, respectively. Both Plainfield and East Orange which subsequently joined the litigation, were also governed by opposing political parties.

29 118 N.J. Super. 223, 287 A.2d 187, *supplemented*, 119 N.J. Super. 40, 289 A.2d 569 (L. Div. 1972), *aff'd as modified*, 62 N.J. 473, 303 A.2d 273, *supplemented*, 63 N.J. 196, 306 A.2d 65, *cert. denied*, 42 U.S.L.W. 3246 (U.S. Oct. 23, 1973).

30 Plaintiffs' Amended Complaint, *supra* note 27, at 14. Plaintiffs took a voluntary dismissal on the racial issues of the complaint, rather than combine white-black tensions with the already volatile rich-poor, urban-suburban dichotomies. Subsequent to the

The students further claimed that the state constitutional guarantee of a "thorough and efficient education" had not been met.[31]

The theory of the taxpayers was also denial of equal protection, as well as a denial of state affirmative tax guarantees. Taxpayers in various districts were being taxed unequally for the common state purpose of education.[32] They also alleged that an ad valorem property tax as a method of public school financing was confiscatory, denying the taxpayers the right to select a tax base proportionate to the importance which they placed upon their children's educational experience.[33]

The educational administrators attacking the system of school funding used a different tactic. They maintained that the present system of local control of education constituted an improper delegation of a state legislative duty, in the absence of standards properly limiting the power granted to local communities.[34]

Plaintiffs demanded both declaratory and injunctive relief. They sought orders compelling educational restructuring and redistricting, as well as the enjoinment of the existing tax law—at least until a reapportionment of the tax proceeds could be exacted. Additionally, the plaintiffs sought such other relief as the court deemed appropriate.[35] Thus, the court could find the system unconstitutional, and yet permit its operation until it had been restructured.

The arguments advanced by plaintiffs were predicated upon the assumption that there is a direct correlation between the amount spent on education, and the educational benefits afforded a student. While this cost-quality relationship had long been accepted by educators, it was necessary for the *Robinson* plaintiffs to prove it judicially.[36]

---

institution of the suit, the United States Supreme Court rejected the Mexican-American racial discrimination argument raised in *Rodriguez*. 411 U.S. at 57 & n.113.

31 Plaintiffs' Amended Complaint, *supra* note 27, at 37.

32 *Id.* at 33-35.

33 *Id.* at 43, 53-54, 57-58.

34 *Id.* at 21-22.

35 *Id.* at 15-64.

36 J. GUTHRIE, G. KLEINDORFER, H. LEVIN & R. STOUT, SCHOOLS AND INEQUALITY 92-99, 210-17 (1969); Coons, Clune & Sugarman, *supra* note 12, at 310-11 & n.16.

However, a recent study conducted by the International Association for the Evaluation of Educational Achievements indicated that discrepancies in school performance may be more directly related to student home environment than school quality. The study also indicated that the child may be a product of his entire past, *i.e.*, his own, his parents', and his teachers'. This factor may have a greater influence on total student achievement than any other. The students' past may play more of a role in reading, literature, and civics, while the school environment may have more of an impact in science and foreign languages. N.Y. Times, Nov. 18, 1973, at 59, col. 1.

For studies which question the validity of the cost-quality relationship in educational opportunity, see Carrington, *On Egalitarian Overzeal: A Polemic Against the Local*

It was not difficult to establish that gross deficiencies exist in educational opportunities. Statistics indicate that statewide per year in the late 1960's, 70,000 children with little or no English-speaking ability attended English-speaking schools, that at least 12,000 children dropped out of school each year, and that 37,000 or more children were "educated" in substandard classrooms.[37] Even more pertinent were the facts that 30,000 New Jersey children of school age suffered from a mental or physical handicap, and that 180,000 school children lived in an environment describable only as financially deprived.[38]

The more difficult task was to prove convincingly, through competent evidence, the more subtle deprivations inherent in the existing system: the inadequate capital facilities, the extreme shortage of library facilities, and the general lack of special education personnel. All of these, plaintiffs argued, were contributing reasons for the totally deficient education offered to various school children, resulting in their becoming what has been called "functional illiterates."[39]

Initially plaintiffs planned to impress upon the court the severity of these conditions. They attempted to achieve this by citing examples and statistics of known educational deprivations. Realizing the impact of strategically selected raw data on the court, plaintiffs solicited expert testimony.[40] These experts introduced into evidence vast amounts of factual data, which transformed into stark reality, a telling portrait of educational deprivation. The data presented by these experts, although not specifically obtained in New Jersey, was relevant because of its

---

School Property Tax Cases, 1972 U. ILL. L.F. 232, 239-41; Schoettle, *The Equal Protection Clause in Public Education*, 71 COLUM. L. REV. 1355, 1378-81, 1387-88 (1971); OFFICE OF EDUCATION, U.S. DEP'T OF HEALTH, EDUCATION & WELFARE, EQUALITY OF EDUCATIONAL OPPORTUNITY 296 (1966).

37 Brief of Plaintiffs-Respondents at 34-35, Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973) [hereinafter cited as Brief for Respondents].

38 *Id.* at 35.

39 The term has been developed in a 1962 UNESCO definition:

> A person is literate when he has acquired the essential knowledge and skills which enable him to engage in all those activities in which literacy is required for effective functioning in his group and community, and whose attainments in reading, writing and arithmetic make it possible for him to continue to use these skills towards his own and the community's development.

Harman, *Illiteracy: An Overview*, 40 HARV. EDUC. REV. 226, 227 (1970) (footnote omitted). Both the United States Bureau of the Census, and the United States Army have set a fifth-grade equivalency to distinguish functional literates. *Id.*

40 *Robinson* experts, Doctors Henry M. Levin and James W. Guthrie, participated in a 1969 study of socio-economic status and educational opportunity, which took as its starting point the school system of the state of Michigan. Their report substantiated the *Robinson* plaintiffs' cost-quality theory. J. GUTHRIE, G. KLEINDORFER, H. LEVIN & R. STOUT, *supra* note 36, at 176, 210-17.

broad implications for the educational system in the entire nation, and was therefore susceptible to application in this state.[41]

The oral testimony of plaintiffs' experts was buttressed by the admission into evidence of various reports of governmental agencies and commissions.[42] These studies included the evaluation of the educational systems of cities of such varied geographic and economic character as Auburn, Alabama; New York, New York; Terre Haute, Indiana; and Oakland, California. These reports substantiated plaintiffs' theory that additional dollars injected into an educational system would tend to upgrade the achievement of students participating within it.[43] Several New Jersey studies were also offered into evidence which compared schools with various levels of funding per pupil.[44] This data substantially corresponded with the cost-quality correlation indicated in the national reports.

Another proof that plaintiffs considered necessary to their cause was the ability to establish a realistic standard of educational output which could provide a basis for comparison of various school districts and their relative success in providing quality education. Plaintiffs chose a series of studies of New Jersey school districts which demonstrated a positive correlation between the land wealth of a district and the percentage of college-bound students within it, as well as their

41 The impact of teacher-pupil ratio class size, teaching staff size, experience and attitudes of teachers, and the age and condition of the school's physical plant on the effectiveness of school services has been the subject of studies throughout the country. *See, e.g.*, J. GUTHRIE, G. KLEINDORFER, H. LEVIN & R. STOUT, *supra* note 36, at 92-145. These same factors are demonstrably present in New Jersey. This research, indicating that these schools' service components do make a difference in determining the quality of a child's education, was relevant to plaintiffs' claimed absence of a thorough and efficient education.

42 These studies were conducted in various cities and towns throughout the country by independent researchers under contract with the Office of Education, United States Department of Health, Education and Welfare. The published reports covered preschool programs in compensatory education, elementary programs in compensatory education, elementary-secondary programs in compensatory education, and secondary programs in compensatory education. These reports are known as the "IT WORKS" series published by the Office of Education, U.S. Dep't of Health, Education & Welfare, during 1969-70.

43 These studies indicated a significant improvement in the educational attainment of disadvantaged children participating in the specially funded compensatory education programs. *See, e.g.*, U.S. DEP'T OF HEALTH, EDUCATION & WELFARE, THE AMELIORATIVE PRESCHOOL PROGRAM, CHAMPAIGN, ILLINOIS 5-6 (It Works Series No. 1, 1969); HOMEWORK HELPER PROGRAM, NEW YORK CITY 10-14 (It Works Series No. 3, 1970).

44 *See, e.g.*, Report of the State Committee to Study the Next Steps of Regionalization and Consolidation in the School Districts of New Jersey App. B (State of New Jersey, Department of Education, April 2, 1969) (citing Engelhardt, Engelhardt & Legget, Pilot Study of School District Reorganization, State of New Jersey 28-44 (Committee to Study the Next Steps of Regionalization and Consolidation in the School Districts of New Jersey, Jan., 1968)).

relative achievement on the scholastic aptitude tests.[45] This evidence demonstrated the relationship between the number of dollars spent for education and its quality. Moreover, it indicated that the dollar theory propounded by plaintiffs was not unique to a specific type of school district, but rather was universal to cities, rural areas, and suburban communities alike.[46]

Having established the fundamental relationship between educational cost and quality, the next task was to demonstrate the correlation between parent or, in the aggregate, community wealth and the amount of funds available for public education. It was not difficult to substantiate that monies derived from the so-called "Bateman formula,"[47] New Jersey's plan of state funding of education, represented the sole source of state revenue.

The espoused purpose of the Bateman Commission, a group created to recommend school financing legislative reform, was to develop a plan which would bring individual district spending to a point where a basic minimum of funds would be provided for educational functions.[48] The formula as adopted, utilized several complex calculations which attempted to enable a school district to spend at least a minimum amount of funds per pupil, regardless of district wealth.[49] These calculations purported to take into consideration such factors as student grade levels, as well as socio-economic levels, in determining the dollars needed to supply this desired minimal level of education.[50]

The formula also included a provision for encouraging individual districts to contribute additional local funds in order to provide for an improved educational offering. The district was permitted to raise these extra dollars by fixing a higher local property tax rate to be paid by the district's residents.[51] The plan provided that a wealthy district,

---

45 The performance of students from Millburn, Princeton, Englewood, Bloomfield, and Belleville were compared with those of Newark, Trenton, Camden, Jersey City, and Paterson. The results indicated that top achievers came from those school districts which spent more dollars. Significantly, these dollars were obtained with a lower tax rate as a consequence of those districts' high valued ratables. Brief for Respondents, Appendix, *supra* note 37, at 115a-23a (Analysis of Educational Testing Service Studies).

46 62 N.J. at 481, 303 A.2d at 277. Although the *Robinson* court accepted the cost-quality theory, it is clear that the *Rodriguez* Court was not convinced that such a relationship exists. 411 U.S. at 42-43 & n.86.

47 N.J. STAT. ANN. § 18A:58-1 *et seq.* (Supp. 1973-74). This statute is officially entitled the "State School Incentive Equalization Aid Law."

48 A State School Support Program for New Jersey 5 (State of New Jersey, State Aid to School Districts Study Commission, Dec. 19, 1968).

49 N.J. STAT. ANN. § 18A:58-5 (Supp. 1973-74).

50 N.J. STAT. ANN. § 18A:58-2 (Supp. 1973-74).

51 N.J. STAT. ANN. § 18A:58-5(b)(2) (Supp. 1973-74).

one which could easily raise the required dollar per pupil expenditure through property taxation, would receive only a minimum state-aid grant.[52] However, a poorer district, one which could not so easily raise the required dollars per pupil, would receive the minimum state-aid grant as well as an additional state stipend to compensate for the deficiency.[53]

As enacted, an additional factor in the plan was its "save harmless" provision. This clause provided that any district receiving more money under the previous state funding program would continue to get that higher figure over the first year of Bateman's implementation.[54]

The Bateman formula was funded at a 20 per cent level at the time of its implementation in 1970-71. That percentage was to be increased at the rate of an additional 20 per cent per year.[55] Fully funded, the plan would have provided that the state contribute 40 per cent, the federal government 5 per cent, and local government 55 per cent of the total cost of public education in the 1971-72 academic year.[56] However, without full funding, during the 1971-72 academic year, the state actually contributed 28 per cent, the federal government 5 per cent, and local government contributed a full 67 per cent of the total.[57]

In an effort to persuasively illustrate the actual impact of the Bateman formula, the *Robinson* plaintiffs offered into evidence an exhibit indicating conditions in grossly disparate school districts.[58] The exhibit, which demonstrated some of the inherent inequalities in the formula, made a comparison between Jersey City, a low to moderate income urban community, and Millburn, an affluent suburban community. For example, in order to permit an expenditure of $969 per pupil in Jersey City, that city would have to tax its residents at the rate of $2.28 per $100 of assessed valuation, whereas Millburn's tax rate need only be $1.41 per $100 of assessed valuation to permit a per pupil expenditure of $1,610.[59]

Additional exhibits were admitted which included data on local educational expenditures and tax rates which illustrated the inevitability of unequal educational opportunities resulting from heavy reliance

---

52 N.J. STAT. ANN. § 18A:58-5(b)(1) (Supp. 1973-74).

53 N.J. STAT. ANN. § 18A:58-5(b)(2) (Supp. 1973-74).

54 N.J. STAT. ANN. § 18A:58-18.1 (Supp. 1973-74).

55 N.J. STAT. ANN. § 18A:58-18.1 (Supp. 1972-73), *as amended*, N.J. STAT. ANN. § 18A:58-18.1 (Supp. 1973-74).

56 62 N.J. at 517, 303 A.2d at 296; 118 N.J. Super. at 231, 287 A.2d at 191.

57 118 N.J. Super. at 231, 287 A.2d at 191.

58 Brief for Respondents, *supra* note 37, at 29-30.

59 *Id.*

on local property tax revenues.[60] The necessity for offering an acceptable educational opportunity to students was made clear through a state educational survey.[61] The report concluded that:

> If the graduates of our school systems are to survive in this society, they must be able to read well, think well, and work well. These are skills which, traditionally, are provided in large part by the public schools. These skills are not being provided for a large enough proportion of Camden's students.
>
> Not only are most students behind the national norms in reading, but some students are illiterate.
>
> Not only are some students unable to obtain meaningful employment upon graduation, but many never graduate.[62]

Affidavits of educators employed by various urban educational systems were offered to substantiate the general applicability of the report's conclusion. These affiants courageously admitted that their respective schools were providing an unsatisfactory education to participating students and each concluded that the inability of the community to eradicate these inadequacies constituted a serious educational deprivation to many students.[63]

The evidence concerning the cost-quality relationship supported the proposition that the dollar amount available for a pupil's education is dictated to a large degree by his socio-economic status. This financial factor affects not only the quality of the school, but also the pupil's school achievement and his socio-economic status after graduation. A seemingly unalterable cycle is created when the graduated pupil procreates a new generation of students who bear the same socio-economic characteristics of their parents, and who then are precluded from achieving upward social mobility by their lack of educational opportunities.[64]

Upon consideration of this evidence, the trial court in *Robinson* determined that the present system of financing schools was violative of both state and federal equal protection guarantees.[65] In addition, it concluded that the state constitutional directive of supplying a "thorough and efficient education" to school children had not been met.[66]

---

60 *Id.*, Appendix, at 10a-33a.

61 A Survey of the Camden City Public Schools (New Jersey Department of Education, November, 1969).

62 *Id.*, Part One, at II-5.

63 Brief of Defendants-Appellants, Appendix, at 186a-213a, 235a-47a, 351a-58a, Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973).

64 J. GUTHRIE, G. KLEINDORFER, H. LEVIN & R. STOUT, *supra* note 36, at 174-76.

65 118 N.J. Super. at 275, 287 A.2d at 214.

66 *Id.* at 270, 287 A.2d at 211.

On appeal, the Supreme Court of New Jersey affirmed but modified the trial court's decision, limiting the holding of unconstitutionality to the state's failure to satisfy the "thorough and efficient" guarantee.[67]

III. Equal Protection and Equal Education

In determining whether a statute is unconstitutional on equal protection grounds, the courts have exercised restraint based upon the traditional judicial presumption of the constitutionality of the legislative action.[68] Normally, when the court is able to find a rational basis for the statute's resultant unequal treatment or classification, the statute will withstand attack. Approximately 70 years after the Supreme Court initially construed the equal protection clause,[69] it determined that a further inquiry into the character of the interest invaded by the statute was a proper judicial exercise.[70] While the Court continued to apply the rational basis test in most instances, it applied a more stringent standard to justify the state's action where a fundamental right was infringed.[71] The Court required a showing of a "compelling state interest" where there was a denial of such a right. This approach was utilized not only in conjunction with those rights enumerated in the Constitution, it also found application to those interests which were implicitly guaranteed as well.[72] In the nearly 30

---

67 62 N.J. at 490, 499-500, 515-16, 303 A.2d at 281-82, 286-87, 295.

68 *See* Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78-79 (1911). The Court in this case set down the guidelines to which the judiciary should adhere when determining whether a statute was violative of the equal protection clause. *Id.* It further recognized a presumption in favor of reasonableness of legislative classifications. If any state of facts can reasonably be construed to justify the classification, the Court will assume such facts to be the basis for the classification, and thus uphold the statute. *Id.* at 78.

69 Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 81 (1873).

70 *See* Skinner v. Oklahoma, 316 U.S. 535, 541 (1942). The Court struck down an Oklahoma statute which authorized the sterilization of habitual criminals because it was written in a manner that promoted inequality of treatment between persons in the habitual criminal classification. *Id.* at 537-38. This was the first case to discuss the concept of fundamental rights (*i.e.*, the right of marriage and procreation).

71 *Id.* at 541. *See also* Kramer v. Union Free School Dist., 395 U.S. 621, 625-30 (1969), wherein the Court held invalid a law purporting to restrict the right to vote in a local school district election to those who had children attending local schools, or who owned or leased a property in the school district.

72 *See, e.g.*, Shapiro v. Thompson, 394 U.S. 618, 630 (1969). The Court held unconstitutional a Connecticut statute which denied welfare assistance to residents of the state who had not resided within its jurisdiction for at least one year immediately prior to applying for benefits. *Id.* at 621-22. Justice Brennan found that the statute abridged the fundamental right of persons to move freely from state to state. *Id.* at 629-31. The Court also held that where a classification is based on suspect criteria or involves a fundamental right, it must not only meet the standard of reasonableness, but must further be shown necessary to promote a compelling state interest. *Id.* at 634. *See also* Hunter v. Erickson, 393 U.S. 385, 392 (1969); Williams v. Rhodes, 393 U.S. 23, 31 (1968).

years since the acceptance of this "compelling state interest" approach, the criterion triggering its application has been expanded from interference with fundamental interests to include "suspect classifications," *e.g.*, race,[73] alienage,[74] or national origin.[75] Thus, an attack on an educational funding system as a denial of equal protection would require a determination that education is a fundamental interest, or that the quality of education dispensed by the state was determined on the basis of a suspect classification.

Discrimination on the basis of wealth has increasingly received the treatment accorded previously determined suspect classifications.[76] Closer scrutiny can be justified because classifications based upon affluence or indigency may be grounded upon capricious and irrelevant factors. The quality of education is clearly related to the funds available for its delivery. Where a funding system is based upon local real property taxes, the educational quality received (as measured by dollar input) is determined on the basis of the wealth of the district. The result is an educational system founded on the capricious criteria inherent in a classification based on wealth.

Such classifications have been found to constitute a denial of equal protection both in the contexts of voting rights[77] and criminal indigency.[78] These are now firmly established areas of fundamental inter-

---

73 Loving v. Virginia, 388 U.S. 1, 11 (1967) (the Court voided a Virginia statute that prohibited interracial marriages). *See also* McLaughlin v. Florida, 379 U.S. 184, 191-92 (1964) (the Court invalidated a Florida statute prohibiting interracial nighttime cohabitation between unmarried couples while not restricting cohabitation between other unmarried couples).

74 Graham v. Richardson, 403 U.S. 365, 371-72 (1971). The case concerned an Arizona statute which sought to limit welfare benefits to its citizens, and exclude resident aliens. *Id.* at 367. The Court held that the preservation of fiscal integrity is not a compelling state interest that could justify a classification which was inherently suspect. *See also In re* Griffiths, 413 U.S. —, 93 S. Ct. 2851, 2854-55 (1973) (Connecticut court rule excluding resident aliens from admission to bar unconstitutional); Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 419-20 (1948).

75 Oyama v. California, 332 U.S. 633, 644-46 (1948). The Court held that California's Alien Land Law, as applied in this case, unconstitutionally discriminated against an American minor citizen of Japanese ancestry. *See also* Korematsu v. United States, 323 U.S. 214, 216 (1944); Hirabayashi v. United States, 320 U.S. 81, 100 (1943).

76 *See, e.g.*, Tate v. Short, 401 U.S. 395, 397-98 (1971) (imposition of jail sentence in lieu of payment of fine); Harper v. Virginia Bd. of Elections, 383 U.S. 663, 666, 668 (1966) (invalidating state poll tax); Douglas v. California, 372 U.S. 353, 357 (1963) (denial of counsel on appeal); Griffin v. Illinois, 351 U.S. 12, 17-19 (1956) (denial of trial transcript on appeal). *See generally* Boddie v. Connecticut, 401 U.S. 371, 380-81 (1971) (requiring payment of court fees by indigents before being permitted access to court for a divorce held denial of due process). *But see* United States v. Kras, 409 U.S. 434, 446 (1973) (filing fee requirement for indigent's voluntary petition in bankruptcy not violative of equal protection).

77 Harper v. Virginia Bd. of Elections, 383 U.S. 663, 666, 668 (1966).

78 *See* cases cited note 76 *supra*.

ests. The status of education as a fundamental right is not so clear.[79] However, the importance of education to the individual in modern society is indisputable since the quality of education is an important determinant of one's chances for economic and social success. Moreover, the influence of education on the citizen's participation and effectiveness as part of the democratic process demonstrates its value to society at large. Voting, recognized as a fundamental interest, is directly affected by the citizen's educational level and his concomitant ability to understand and deal intelligently with public issues. Unequal education may produce a citizen less likely to maximize his potential in leading a productive and creative life. Such factors suggest that education should be a fundamental right of the individual.[80]

The suspect classification of wealth, and the fundamental interest in education overlap where an educational system is financed through local property taxes. The question presented is whether the right to learn is less precious than the right to vote, or the right of access to the judicial system.

In *Rodriguez,* the Supreme Court of the United States rejected the argument that education is entitled to strict scrutiny under the federal equal protection clause.[81] It concluded that there were no grounds for finding discrimination based on wealth in this case, and that education is not a "fundamental right."[82] The Supreme Court of New Jersey agreed in *Robinson* that *Rodriguez* precluded their finding that federal equal protection guarantees had been violated,[83] but expressly left open the question of whether state equal protection guar-

---

79 Until *Rodriguez,* the Supreme Court had never squarely faced the issue of whether education was a fundamental right. In Brown v. Board of Educ., 347 U.S. 483, 493 (1954), the Court recognized that:

> Today, education is perhaps the most important function of state and local governments. . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

The *Rodriguez* Court rejected the lower court's holding that education is a fundamental right:

> We have carefully considered each of the arguments supportive of the District Court's finding that education is a fundamental right or liberty and have found those arguments unpersuasive.

411 U.S. at 37.

80 The Supreme Court of California in *Serrano,* had concluded that education was deserving of protection as a fundamental interest. 5 Cal. 3d at 604-10, 487 P.2d at 1255-59, 96 Cal. Rptr. at 615-19. The *Rodriguez* Court rejected this finding, at least for federal equal protection purposes. *See* note 79 *supra.*

81 411 U.S. at 40.

82 *Id.* at 28, 37.

83 62 N.J. at 490, 303 A.2d at 281-82.

antees had been met,[84] indicating that state guarantees may be more demanding than those of the federal constitution.[85] Therefore, it would seem that the state equal protection argument could provide a valid basis for attacking school financing systems, and that a federal attack might succeed if it were found that some children within a state were not receiving an "adequate" education.[86]

IV. A Spectrum of Analysis

A fuller understanding of the holding and significance of *Robinson v. Cahill* can be achieved by comparing it with the two other leading decisions on educational funding: *Rodriguez v. San Antonio Independent School District*[87] and *Serrano v. Priest.*[88] Collectively, these three cases illustrate the full breadth and scope of approach and analysis which a court may follow. They are also indicative of the problems and complexities that litigation of this nature involves.

At one end of the "spectrum" is *Rodriguez.* The complaint was filed in a federal district court alleging that the quality of public education in Texas suffered because the present system of financing schools discriminated against the economically poorer school districts.[89] The plaintiffs claimed that this discrimination constituted a violation of the equal protection clause of the United States Constitution. The critical characteristic of *Rodriguez* is that the equal protection claims of the plaintiffs arose solely out of the United States Constitution.[90]

---

84 *Id.* at 500, 303 A.2d at 287. "In these circumstances we will not pursue the equal protection issue in the limited context of public education." *Id.*

85 *Id.* at 490, 303 A.2d at 282. The court reasoned that all essential municipal services such as police and fire protection might be affected by this state equal protection analysis. *Id.* at 495-98, 303 A.2d at 284-86.

86 The *Rodriguez* plaintiffs never effectively rebutted defendant's assertions that children within the state were receiving an adequate education. 411 U.S. at 24. This may have been fatal to their success in the suit. The Court indicated that an inadequate education might be constitutionally impermissible. *Id.* at 36-37. Therefore, if it can be proved in future litigation that some minimal quantum of education is not being received by complaining students, a federal equal protection argument might prevail.

87 411 U.S. 1 (1973).

88 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

89 411 U.S. at 4-6.

90 *Id.* at 17. Conceivably, there is an independent state constitutional ground upon which a challenge to the Texas financing scheme could have been brought. Such a suit would be similar in nature to the qualitative guarantee in New Jersey's constitution upon which *Robinson* was argued. The Texas provision, Tex. Const. art. 7, § 1, states:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Other explicit qualitative educational guarantees are contained in at least fourteen

Additionally, the plaintiffs failed to discredit or refute the state's assertion that virtually all children attending public schools in Texas were receiving adequate educations.[91]

The *Rodriguez* plaintiffs sued as individuals and as a class representing Mexican-American school children who were members of low-income families.[92] The trial strategy consisted of an attempt to draw comparisons between the available dollar input of the school districts which plaintiffs attended, and the Alamo Heights Independent School District, which was characterized as the most affluent district in the San Antonio area.[93] The strategy failed.

Justice Powell, writing for the Court, held that the Texas system of funding public education, albeit imperfect, bore a rational relationship to the legitimate state purpose of providing education to resident children of school age.[94] The Court declined to apply the strict scrutiny test to the funding plan, finding that the present system did "not operate to the peculiar disadvantage of any suspect class."[95] It concluded that the present system provided "no basis for finding an interference with fundamental rights."[96] Consequently, the Court applied the less stringent rational basis test in assessing the Texas

other state constitutions. ARK. CONST. art. 14, § 1; COLO. CONST. art. IX, § 2; DEL. CONST. art. 10, § 1; GA. CONST. art. VIII, § 2-6401; IDAHO CONST. art. 9, § 1; ILL. CONST. art. 10, § 1; KY. CONST. § 183; MD. CONST. art. VIII, § 1; N.M. CONST. art. XII, § 1; OHIO CONST. art. VI, § 2; PA. CONST. art. 3, § 14; VA. CONST. art. VIII, § 1; W. VA. CONST. art. 12, § 1.

Thirteen other state constitutions contain provisions which indicate either a need for quality education, or the importance of a uniform educational system. ARIZ. CONST. art. XI, § 1; FLA. CONST. art. 12, § 1; IND. CONST. art. 8, § 1; MINN. CONST. art. VIII, § 1; MONT. CONST. art. 10, § 1; NEV. CONST. art. 11, § 2; N.C. CONST. art. IX, § 2; ORE. CONST. art. VIII, § 3; S.D. CONST. art. VIII, § 1; UTAH CONST. art. X, § 1; WASH. CONST. art. 9, § 2; WIS. CONST. art. X, § 3; WYO. CONST. art. 7, § 1.

Twenty-two state constitutions have no guarantee as to the quality of education. ALA. CONST. art. 14, § 256; ALAS. CONST. art. VII, § 1; CAL. CONST. art. 9, § 5; CONN. CONST. art. 8, § 1; HAWAII CONST. art. IX, § 1; IOWA CONST. art. 9, § 12; KAN. CONST. art. 6, § 1; LA. CONST. art. 12, § 1; ME. CONST. art. VIII, § 1; MASS. CONST. chap. V, § 91; MICH. CONST. art. 8, § 2; MISS. CONST. art. 8, § 201; MO. CONST. art. 9, § 1(a); NEB. CONST. art. VII, § 6; N.H. CONST. pt. 2, art. 83; N.Y. CONST. art. 11, § 1; N.D. CONST. art. VIII, § 147; OKLA. CONST. art. 13, § 1; R.I. CONST. art. 12, § 1; S.C. CONST. art. 11; TENN. CONST. art. 11, § 12; VT. CONST. art. ch. II, § 64.

91 411 U.S. at 24.

92 *Id.* at 4-5.

93 *Id.* at 11-13. Comparing the least with the most affluent districts in San Antonio served to illustrate both the manner in which a dual system of finance operates, and the extent to which substantial disparities exist despite the state's impressive progress in recent years. In the predominantly Mexican-American Edgewood District, the average assessed property value per pupil was $5,960, as compared with $49,000 in the Alamo Heights District. *Id.*

94 *Id.* at 54-55.

95 *Id.* at 28.

96 *Id.* at 37.

funding scheme, and upheld the constitutionality of the plan.[97] The Court found the problem of educational financial reform to be *sui generis*, and thus not easily subjected to conventional constitutional analysis.[98] However, the Court in rejecting a strict scrutiny approach, concluded that it was "unwilling to assume for [itself] a level of wisdom superior to that of . . . educational authorities in 50 States."[99]

> [T]he Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues.[100]

While the Court rejected the application of strict scrutiny under the equal protection clause of the federal constitution, it did not foreclose the issues that could be raised in a state where the funding of public education was found to inherently deprive children of an "adequate" education.[101] Moreover, the Court recognized that a total denial of education might be actionable while a relative exclusion would not.[102]

The first significant state educational funding case, *Serrano v. Priest*,[103] stands between *Rodriguez* and *Robinson* both in terms of analysis and disposition. In reversing a dismissal for failure to state a claim,[104] the Supreme Court of California considered public school financing in the light of both federal and state constitutional principles.[105]

While rejecting the contention that the state constitutional provision of "a system of common schools"[106] required equal educational financing, the court concluded that there may be both state and federal equal protection denials resulting from financing schools through property tax income.[107]

The court held education so "crucial to participation in, and the functioning of, a democracy"[108] that it merited treatment as a

---

97 *Id.* at 40, 55.

98 *Id.* at 18.

99 *Id.* at 55.

100 *Id.* at 41.

101 *Id.* at 36-37.

102 *Id.*

103 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

104 *Id.* at 619, 487 P.2d at 1266, 96 Cal. Rptr. at 626.

105 *Id.* at 597 & n.11, 487 P.2d at 1249 & n.11, 96 Cal. Rptr. at 609 & n.11.

106 *Id.* at 596, 487 P.2d at 1249, 96 Cal. Rptr. at 609. *See* CAL. CONST. art. 9, § 5.

107 5 Cal. 3d at 597 n.11, 618-19, 487 P.2d at 1249 n.11, 1265-66, 96 Cal. Rptr. at 609 n.11, 625-26.

108 *Id.* at 607, 487 P.2d at 1258, 96 Cal. Rptr. at 618.

fundamental interest.[109] It also found that the system of financing education through the ad valorem property tax was based on the suspect classification of wealth. Consequently, the state was required to show a compelling interest to justify its present system of school financing.[110]

The *Serrano* decision was based upon both state and federal constitutional grounds. However, that part of the opinion concerning the federal equal protection analysis was nullified by the Supreme Court's subsequent decision in *Rodriguez*. The viability of the state equal protection argument remained unscathed by that decision. *Rodriguez* necessitated that *Robinson v. Cahill* be decided on grounds other than federal equal protection.

The education clause of New Jersey's constitution provided an alternative to the federal equal protection arguments. In 1875, New Jersey adopted a constitutional amendment providing for the legislative establishment and maintenance of a "thorough and efficient" system of public schools.[111] This provision was enacted as a consequence of the same political pressure which had resulted in the passage of the state's first free public school law in 1871.[112] The adoption of this constitutional amendment occurred at a time when public education was principally funded by a statewide tax on realty, coupled with the opportunity of unrestricted local contribution.[113] As late as 1910, the state was paying 67 per cent of the public schools' current expenses.[114]

The New Jersey courts had an opportunity to interpret this constitutional provision in *Landis v. Ashworth*.[115] In this case, the court dealt with the power of local districts to supplement the state's level of educational expenditures. Although the concept of equal facilities for all school children was rejected,[116] the court recognized that the purpose of the 1875 amendment was

> to impose on the legislature a duty of providing for a thorough and efficient system of free schools, capable of affording to every child such instruction as is necessary to fit it for the ordinary duties of citizenship . . . .[117]

---

109 *Id.* at 608-09, 487 P.2d at 1258, 96 Cal. Rptr. at 618.

110 *Id.* at 614-15, 487 P.2d at 1263, 96 Cal. Rptr. at 623.

111 N.J. CONST. art. 8, § 4, ¶ 1.

112 A State School Support Program for New Jersey 13 (State of New Jersey, State Aid to School Districts Study Commission, Dec. 19, 1968).

113 62 N.J. at 506, 303 A.2d at 290 (citing 1 MYERS, THE STORY OF NEW JERSEY 458-60 (1945)).

114 118 N.J. Super. at 267, 287 A.2d at 210.

115 57 N.J.L. 509, 31 A. 1017 (Sup. Ct. 1895).

116 *Id.* at 512, 31 A. at 1018.

117 *Id.*

Thus, at the inception of the *Robinson* complaint, there existed an independent state constitutional basis upon which a claim for equal educational opportunity could be based regardless of the interpretation of the federal equal protection clause.

At the trial level, *Robinson v. Cahill* constituted a challenge of both state and federal constitutional dimensions. The Supreme Court of New Jersey, however, influenced both by *Rodriguez's* rejection of the federal equal protection approach and the potential public policy ramifications of a decision based on a state equal protection theory, instead chose narrower grounds upon which to decide the case. The court based its decision upon an analysis of the state constitutional requirement that the legislature provide for the "maintenance and support of a thorough and efficient system of free public schools."[118] It found that this mandate had not been met.[119] In so doing, the supreme court based its decision on this state constitutional mandate rather than grappling with such other issues as state equal protection, which had been discussed at the trial level. This approach, based upon a constitutionally mandated qualitative standard, emphasized the difference in legal analysis between *Rodriguez* and *Serrano* vis-à-vis *Robinson*. To deny the *Robinson* plaintiffs relief would not simply condemn property owners to higher tax rates. Instead, such a denial of relief would have given judicial sanction to the continued existence of inadequate facilities which were not only less than thorough and efficient, but in fact dangerous to student health and safety.

The court's conclusion that the constitutional requirement for a thorough and efficient educational system had not been met was based on the actual discrepancies in dollar input per pupil and its resultant educational impact.[120] The problem was considered in these terms because expenditures proved to be the most visible criterion for measuring compliance by the state with the constitutional mandate.

In summary, *Robinson* stands for the proposition that the state's obligation is to adopt a system of funding public education to insure that the constitutional mandate of a thorough and efficient education is met for every child attending public school. In so doing, the court specifically left open for future resolution, the question of whether the

---

118 N.J. CONST. art. 8, § 4, ¶ 1.

119 62 N.J. at 515, 303 A.2d at 295.

120 *Id.* at 515-16, 303 A.2d at 295. The *Robinson* court recognized that the exact meaning of the constitution's "thorough and efficient" mandate has never been ascertained. It directed the legislature to define the state's educational obligation and to "*compel* the local school districts to raise the money necessary to provide that opportunity." *Id.* at 519, 303 A.2d at 297 (emphasis in original).

equal protection guarantee of the New Jersey constitution would require all municipal services to be provided on an equal basis.[121]

In spite of the diverse results and judicial reasoning in *Rodriguez, Serrano,* and *Robinson,*[122] these decisions are consistent from a jurisprudential point of view. Each, in effect, has thrust responsibility on the state legislatures to enforce state educational guarantees, even when such compliance would necessitate thorough legislative reform of the existing methods of financing and delivery of essential educational services.

V. Suggestions for a Legislative Proposal

"Full state funding" is a system of school financing which *could* comply with the court's order in *Robinson.* This approach requires the state to adopt as its basic educational objective, the assumption of all fiscal responsibilities for public education.[123] Moreover, the opportunity for limited additional local funding of public education is not prohibited by this system. While it is obvious that local leeway could re-introduce the inequities of the present system, by instituting such safeguards as a limit of the local optional contribution, this danger would be minimal.[124]

The success of full state funding as a means of eliminating educational deprivation and equalizing educational opportunity depends upon the level at which the state actually provides funds. Several variations of the plan have received consideration. A recently proposed Maryland plan would guarantee a continuation of expenditures at the

---

121 *Id.* at 499-501, 303 A.2d at 286-87. "We point to the dimensions of the subject to explain why we should not deal with it on the record of this case." *Id.* at 501, 303 A.2d at 287. The court, however, recognized that "[c]onceivably a State Constitution could be more demanding." *Id.* at 490, 303 A.2d at 282. Thus, the state constitution's equal protection guarantees may be a valuable ground upon which future litigation in this area may rest. See note 85 *supra.*

122 It is important to note the present status of the *Robinson* case. The Supreme Court of New Jersey, on August 2, 1973, refused to grant three legislative officials leave to extend time to file a petition for rehearing. Consequently, these legislators filed a petition for certiorari with the Supreme Court of the United States which has since been denied. 42 U.S.L.W. 3246 (U.S. Oct. 23, 1973). The Attorney General and Governor of New Jersey, as well as the state education officials named as defendants in *Robinson,* are not parties to the Supreme Court petition. In view of the case's judicial finality, it is reasonable to expect that the New Jersey legislature will attempt compliance with *Robinson.*

123 Levin, *Alternatives to the Present System of School Finance: Their Problems and Prospects,* 61 Geo. L.J. 879, 914-18 (1973); Education Comm'n of the States, A Legislator's Guide to School Finance 26-27 (Rep. No. 31, Feb., 1973).

124 New Jersey Tax Policy Comm., Report of the New Jersey Tax Policy Committee, Part III, *Service Levels and State Aids* 44-45 (Feb. 23, 1972) [hereinafter cited as Sears Report, Part III].

level of the highest spending school district of the preceding year,[125] with a cost of living allowance of 5 per cent where area conditions warrant.[126] In place of local property taxes, Maryland's proposed revenue sources consist of corporate franchise taxes, a progressive individual and corporate income tax, and a statewide property tax.[127] Full state funding is the method also favored by New York's Fleischmann Commission.[128] However, the New York plan would allow a greater variance in expenditures. The level of funding of the lowest spending districts would be raised to the spending level of the upper 65th percentile of the ranking districts, rather than adopting Maryland's test of a 5 per cent variation from the expenditures of the highest spending district.[129] New Jersey's Sears Tax Policy Commission has also endorsed substantial state funding,[130] together with the promulgation by the Commissioner of Education of a minimum standard of educational quality.[131]

Another proposed system which could be in harmony with the *Robinson* mandate follows the power equalizing approach.[132] Under this plan, the state would guarantee a given tax levy in a given tax district to produce a set tax yield. Alternatively the state could set the rate, set the tax yield, or establish a guaranteed level of funding for each unit of need in a district. Under any of these proposals wealthier districts would still produce greater revenue than poorer ones. However, according to the provisions of the power equalizing plan, the excess would be distributed through a central state fund to the poorer districts.[133]

---

125 A Responsible Plan for the Financing, Governance and Evaluation of Maryland's Public Schools 71-72 (Citizens Comm'n on Maryland Gov't, Nov., 1971).

126 *Id.* at 79.

127 *Id.* at 80-81. The state of Maryland has recently enacted legislation which differs in significant respects with that of the Committee's recommendations. The new statute (Chapter 360, May 21, 1973) relies primarily upon a local property tax at the county level for the state's county-wide school districts, and a net taxable income of each county to finance public education. The plan calls for a state contribution to assure a minimal education to all, and utilizes a power equalizing approach to achieve the desired level of state funding contributions. 3 LAWS OF MD. 798-809 (1973).

128 1 NEW YORK STATE COMM'N ON THE QUALITY, COST, AND FINANCING OF ELEMENTARY AND SECONDARY EDUC., THE FLEISCHMANN REPORT 62 (1973).

129 *Id.* at 65.

130 SEARS REPORT, Part III, *supra* note 124, at 44.

131 *Id.*

132 For an analysis of power equalization see Report of the Citizens Union Comm. on Educ. Fin., *Financing Public Education in New York State: An Analysis of the Fleischmann Commission Report*, 48 N.Y.U.L. REV. 6, 13-15 (1973).

133 EDUCATION COMM'N OF THE STATES, A LEGISLATOR'S GUIDE TO SCHOOL FINANCE 29-30 (Rep. No. 31, Feb., 1973).

Full state funding and power equalization are the most appropriate financing programs presently available because they espouse the *Robinson* and *Serrano* principle of fiscal equity. However, the most politically attractive plan might consist of a combination of several proposals. In accord with the power equalization approach, the wealthier districts would contribute more money to the statewide equalization percentages. Then, based on these percentages, these monies would be allocated to those districts not capable of raising the funds required to attain the thorough and efficient standard of educational quality. A realistic educational program could be established, with the cost secured, while at the same time preserving local control. Local leeway in the form of add-ons, unless equalized by the state, would be closely scrutinized or eliminated. In this manner the plan would closely approach the full state funding concept. Dollar equality in educational financing could alternatively be achieved either by the state's assumption of educational costs, or through a state funded program permitting a limited amount of local add-ons.

Unquestionably, a financing system compatible with *Robinson* must assure a thorough and efficient system of free public schools. This requires reconsideration of the need standards rejected in *McInnis v. Shapiro.*[134] The need criteria can be ascertained by assigning children a basic weight or value according to grade levels and socio-economic background. These weights would be converted into financial requirements to be supplied to the local school district. This process, called weighted pupil-evaluation, is essential to reaching the *Robinson* goals.[135]

---

134 293 F. Supp. 327, 329 & n.4 (N.D. Ill. 1968). *See* notes 10 & 12 *supra* and accompanying text.

135 Weighted pupil evaluation recognizes that educational costs vary with the type of program offered, and the type of student involved in the program. The Bateman Plan used weights primarily based on increased costs as a child advances through school grade levels. The only other factor the Plan recognized was a weighting for each child whose family received AFDC assistance for dependant children. N.J. STAT. ANN. § 18A:58-2 (Supp. 1973-74); A State School Support Program for New Jersey 4-5 (State of New Jersey, State Aid to School Districts Study Commission, Dec. 19, 1968). To arrive at the number of weighted pupils, the total number of resident pupils in each category is multiplied by the assigned weighting factor. This quantity is used in determining the amount of state aid a school district will receive. N.J. STAT. ANN. § 18A:58-2 (Supp. 1973-74); A State School Support Program for New Jersey, *supra* at 43-45.

A determination of weighted pupils measures educational need equitably. However, to comply with the *Robinson* mandate, the number of factors which are weighted must be expanded. Greater consideration must be given to the educational needs of children from the lower socio-economic levels, those with English language difficulties, those with physical handicaps, and those suffering from mental retardation and emotional disturbance. These children start from a disadvantage. Consequently, it will cost more to provide them with the adequate education required by the state constitution. *See* notes 37 & 38 *supra* and accompanying text.

Success in upgrading the quality of education is as difficult to measure as is equity in taxation. Since the thorough and efficient guarantee is qualitative, any plan which only directs increased educational expenditures to the poorer districts, without simultaneously improving the educational services, would miss the mark. Uniformity of expenditures is not the goal. Achievement of a thorough and efficient educational system depends on the peculiar needs of the students. This, in turn, may require unequal dollar allocations.[136] Consequently, the degree of local control and participation permissible is of great importance. Careful attention must be given to establishing criteria for determining legitimate local educational discretion.

With continued control and participation by the local districts, there should be district accountability for any funds allocated to local use. Without such accountability, any plan for a more equitable distribution of funds would not effectively guarantee substantially equal distribution of educational quality. Conversely, efficient local use of allocated educational dollars is necessary to insure the successful implementation of any statewide system of funding public education.

Realizing that present systems of state financing were not optimal, and that suggestions for basic restructuring of state tax policies were necessary, Governor Cahill of New Jersey issued an executive order creating the New Jersey Tax Policy Committee.[137] This non-partisan study group, known as the Sears Commission, was directed to conduct an in-depth study of all levels of taxation in New Jersey, which included the financing of public education.[138]

Upon completing its investigation and research, the Commission issued a report, a portion of which made specific recommendations for the state financing of schools.[139] These recommendations, however, were made before the culmination of the *Robinson* litigation. This author believes that the proposed plan neither meets the requirements of the *Robinson* court, nor takes into account the preceding considerations which are imperative to effective and constitutional school funding.

The basic premise underlying the Sears Commission's recommendations is that "the State assume responsibility for all of the operating costs of a standard quality education."[140] According to the proposed plan, the Commissioner of Education is to make an annual determination of the educational cost per pupil. Each school district would then

136 Robinson v. Cahill, 62 N.J. 473, 520, 303 A.2d 273, 297-98 (1973).

137 Exec. Order No. 5, 1 LAWS OF N.J. 1234-37 (1970).

138 *Id.*

139 SEARS REPORT, Part III, *supra* note 124, at 30-49.

140 *Id.* at 44.

receive a sum equal to these costs with this amount multiplied by the number of weighted pupils in that district. Any regional cost differences are added to that figure.[141] Local spending, known as leeway, would be permitted. However, the issue of local leeway must first be submitted to, and approved by, the district's voters by referendum. Money for these added expenditures would then be procured by raising the local property tax.[142] The Commission has devised a formula by which the ability of a district to provide these extra funds would not be heavily dependent upon the wealth of that district. The formula takes into account the average district wealth per pupil and then computes a state contribution to the local leeway funds in relation to that average.[143] The per pupil expenditure would be established by each district, but any substantial increase from one year to the next would be reviewable by the Commissioner of Education.[144] Any district that was spending more per pupil before the passage of the plan than the expense-per-pupil level as thereafter established, would be permitted to continue spending at that level without local voter approval.[145] The Commissioner of Education would have the further responsibility of developing a system to measure and evaluate the effectiveness of individual school districts and of publishing the results. If a district continually failed to achieve sufficient educational progress, the Commissioner would then have authority to promulgate recommendations to rectify the situation.[146]

The funds to finance the plan would be obtained through a bifurcated taxing scheme. One source would be a uniform state property tax; the other would consist of a state income tax and an expansion of the sales tax.[147] Several reasons were advanced by the Commission for the retention of some form of property tax funding. These include: (1) the fiscal stability of a property tax; (2) the avoidance of "tax havens;" (3) the avoidance of "business windfalls" which would otherwise be realized by businesses presently paying property taxes; (4) the possibility of using the funds raised through property taxes to reduce the rates of non-property taxes; and (5) the anticipation of increased federal contribution to school funding which might facilitate

---

141 *Id.*

142 *Id.* at 44-45.

143 *Id.* at 45.

144 *Id.* at 44-45.

145 *Id.* at 45.

146 *Id.* at 47-49.

147 *Id.* at 46-47; SEARS REPORT, Part V, *Non-Property Taxes in a Fair and Equitable Tax System, supra* note 124, at 67-68, 78-80.

the reduction or elimination of the property tax.[148] The principal argument raised in opposition to retaining the property tax was that such a tax would impose a serious burden on the real property owners which would inevitably be increased by the legislature.[149]

The Sears Commission recommendations also alluded to the advantages of a system of state financing of local school costs. These included: (1) elimination of wasteful competition between school districts; (2) reduction of "ratables zoning," which, in effect, keeps people out of specified school districts; (3) increased support to state housing policies encouraging growth of housing developments; (4) facilitation of a balanced use of property and non-property taxes; (5) elimination of unearned tax shelters in wealthy districts; (6) assurance of adequate educational expenditures by all local school districts; (7) encouragement of a constructive reorganization of contiguous school districts; (8) encouragement of greater urban-suburban balance of state population; and (9) assurance of equalization of educational opportunity.[150]

Since the Sears Commission proceeded under the assumption that state funding would eliminate local control over such issues as teachers' salaries, it advocated establishing regional systems of collective bargaining where regional representatives of the state would have jurisdiction over questions of salary and fringe benefits.[151] However, the Commission urged the continued retention of local control over most other administrative and planning functions.[152]

The Sears Commission recommendations have called for a dramatic departure from the manner in which New Jersey has historically financed its system of public education. The Committee's work should be commended for its recognition of the state's basic responsibility to assume the operating cost of public education.[153] While in this regard, the author believes that the Commission's recommendations represent a significant step forward, they fail however, to meet the constitutional demands that *Robinson* makes on the state's educational system. The Sears Commission would guarantee only a "standard quality" education.[154] Such a qualitative standard would merely provide students

148 SEARS REPORT, Part III, *supra* note 124, at 46-47.

149 *Id.* at 46.

150 *Id.* at 43.

151 *Id.* at 46.

152 *Id.*

153 *Id.* at 44.

154 *Id.* A proposed bill would amend N.J. STAT. ANN. § 18A:58-4 (Supp. 1973-74). The bill would require consideration of the constitution's qualitative standard in determining annual expenses per pupil. The bill states in pertinent part:

with equal programs to achieve such basic skills, as reading, writing, and arithmetic, as measured against the average existing in the educational community at large. To the *Robinson* trial court, the "thorough and efficient" concept connoted "completeness with attention to detail."[155] Thus, when the "thorough and efficient" standard is attained, all ascertainable measures of educational value and quality will have been met.

Tested against this far-reaching mandate, the Sears Commission recommendations fall short of the mark, since it is the thorough and efficient standard that must be met by legislative enactment. As a consequence of this standard's far-reaching ramifications, it will be continually tested and further defined in both administrative hearings and in judicial actions, as the state's educational system becomes increasingly committed to the fulfillment of human potential. Thus, a standard quality education will simply not suffice.[156]

Moreover, in advocating restrictions of expenditures by school districts from one year to the next, the Sears Commission effectively restricts growth of educational systems and permits the perpetuation of present inequities. Educational costs advance at such a rapid pace that a 20 per cent annual increase would not allow for a meaningful upgrading of program offerings. Instead, all districts should be permitted to increase their spending to a level which would provide for a thorough and efficient education, and not be restricted to a maximum percentage increase from year to year. At the same time, however, that recommendation of the Sears Commission which would permit a wealthier district to continue spending above the level established by a state supported program together with permissible add-ons should be deleted. As proposed, the permitted local leeway, which would allow expenditures up to one-third beyond the state funded portion of the program, would only bid-up the cost of education, thus assuring the continuation of the same inequities that exist today. Local leeway should be kept to a power equalized 10 per cent

---

> The State board shall annually determine, prior to September 1, a current expense cost per pupil unit sufficient to support a *thorough and efficient educational program* . . . .

N.J. Assembly Proposed Comm. Substitute for Assembly, No. 1272, at 6 (1972) (emphasis added).

155 118 N.J. Super. at 268, 287 A.2d at 211.

156 For a discussion of possible approaches to defining equal educational opportunity see, A. WISE, RICH SCHOOLS POOR SCHOOLS 143-59 (1968). The definition chosen would have a direct bearing upon the resource allocation system utilized, as discussed in notes 123-33 *supra* and accompanying text. *See generally* Kirp, *The Poor, the Schools, and Equal Protection*, 38 HARV. EDUC. REV. 635, 642-52 (1968).

level and limited solely to the express purpose of local experimentation. If leeway is not controlled in this manner, a wealthy district would have license to maintain a qualitatively superior school system without contributing toward the development of a thorough and efficient educational system for all school districts.

To achieve *Robinson's* mandate, a total abandonment of the Bateman Plan's system of weighted state contribution is necessary.[157] These weights, which are based upon historical spending patterns, attempt to account for the basic differences in educational costs, and consequently are prejudiced in favor of those districts which have traditionally had more money, and therefore have provided a superior education. A fresh study of relevant factors which affect educational needs and achievements must be undertaken and new weights established accordingly.

In addition, the Sears Commission blissfully ignored the problems of capital expenditure programs to which *Robinson* addressed itself.[158] After a reading of the supreme court's opinion, it is the author's opinion that the state must first assume all bonded indebtedness of school districts, and then establish a list of capital priorities which it must fully fund.

Supplementing the responsibilities assigned by the Sears Commission to local boards of education would be the task of devising pre-kindergarten programs, which would then be fully funded by the state upon application by the local board. Such pre-school programs are especially necessary if a thorough and efficient education is to be provided to students who come from disadvantaged environments.

While the above recommendations have considered only the revenue distribution formulas, the important area of revenue raising

157 The weighted pupil concept is one of several methods that have been proposed to allocate resources to individual school districts. *See* note 135 *supra*. Other methods include: (1) state categorical aid grants targeted to students with various learning handicaps; (2) determinations based on an evaluation of a district's socio-economic characteristics; (3) determinations which vary with a district's ability to tax or with its taxing effort; (4) determinations based upon educational needs established by the administering of standardized scholastic achievement-type tests to all students within the school system. *See* EDUCATION COMM'N OF THE STATES, A LEGISLATOR'S GUIDE TO SCHOOL FINANCE 25-26 (Rep. No. 31, Feb., 1973); 1 NEW YORK STATE COMM'N ON THE QUALITY, COST, AND FINANCING OF ELEMENTARY AND SECONDARY EDUC., THE FLEISCHMANN REPORT 67-69 (1973). *See generally* Note, *Equal Educational Opportunity: A Case for the Children*, 46 ST. JOHN'S L. REV. 280, 312-18 (1971).

158 62 N.J. at 520, 303 A.2d at 297. The court stated that "[t]he State's obligation includes as well the capital expenditures without which the required educational opportunity could not be provided." *Id.* For a discussion of the importance of capital outlay necessary for educational delivery and the lack of judicial attention thereto, see Levin, *supra* note 123, at 907 & n.130.

has not yet been discussed. However, a constitutionally acceptable formula in conformity with *Robinson* should not be difficult to devise.

Preliminarily, it would seem that a statewide property tax is not advisable. Such a tax is regressive.[159] It would place a heavy burden on those who can least support it. The poorer districts struggle to raise a tax yield sufficient to furnish a modicum of municipal and county services, while the wealthier districts raise more tax revenues with greater ease. A statewide property tax at the same percentage rates would provide the wealthier districts with a better return in relation to their tax valuation. The tax, in effect, would not be levied at a uniform rate.[160]

In addition, while dictum in *Robinson* indicates that a statewide real property tax is constitutional,[161] such a conclusion is contrary to the intent and language of the 1947 New Jersey constitution. That document directs that the proceeds of a realty tax are to be spent exclusively for the use of the taxing district in which they are raised.[162]

The major alternative to a property tax is, of course, a statewide personal income tax. Such a tax, at graduated rates of from 2 per cent to a maximum of 14 per cent would have produced, according to projections, at least one billion dollars in 1972.[163] This projection in-

---

159 *See* Moon & Moon, *The Property Tax, Governmental Services, and Equal Protection: A Rational Analysis*, 18 VILL. L. REV. 527, 545-46 (1973).

The Governor's Blue Ribbon Commission which studied the causes of Newark's civil disorders concluded:

> The heavy reliance on property taxes to fund most governmental services in New Jersey probably results in the most regressive tax system in the country.

GOVERNOR'S SELECT COMMISSION ON CIVIL DISORDER, STATE OF NEW JERSEY, REPORT FOR ACTION 52 (February, 1968).

Economists, however, disagree on the issue. For an opposing point of view see Mieszkowski, *On the Theory of Tax Incidence*, 75 J. POL. ECON. 250, 259-60 (1967).

160 A statewide property tax, although undesirable, could be made more palatable if "circuit breaker" provisions were incorporated within the plan. The legislature would decide at which point the property tax burden was excessive, and that excess would be recovered by the taxpayer either by way of credit on his state income tax return, or by a direct cash rebate. For a more complete analysis of such a system see Levin, *supra* note 123, at 923 (referring to ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, A CIRCUIT-BREAKER ON PROPERTY TAX OVERLOAD (1971)).

161 62 N.J. at 502-05, 303 A.2d at 288-90.

162 N.J. CONST. art. 8, § 1, ¶ 1(a), provides in pertinent part:

> Property shall be assessed for taxation under general laws and by uniform rules. All real property . . . shall be assessed according to the same standard of value . . . such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, *for the use of such taxing district.*

(emphasis added).

163 A Program for Progressive and Equitable Taxation 4 (New Jersey Coalition for the Reordering of Priorities, Feb., 1972).

cludes a total tax exclusion for families earning under $5,000 a year.[164] The net effect of the proposed statewide personal income tax would be to substantially reduce the amount of property taxes paid by homeowners by approximately 60 per cent.[165] Relieved of primary responsibility for the funding of education, property owners should be required to pass along the benefits of their reduced taxes to tenants in the form of reduced rents. Reduced property tax liability would also have the beneficial effect of freeing funds for capital improvements in apartment buildings. Moreover, single family dwellings would become more desirable economically as a consequence of reduced property taxes to owners.

In the absence of a property tax, the state should also provide for a corporate recapture tax. Such a levy would raise, through business taxation, some $434,000,000 presently spent on real estate taxes by business and industry which would otherwise be lost to the tax coffers.[166] This tax would not be levied on all businesses at the same levels, but instead would be adjusted to encourage industrial and commercial development in hard-need areas.

VI. Conclusion

With New Jersey in the vanguard, the promise of educational equality and opportunity first enunciated in *Brown* moves closer to fulfillment. That promise, long denied many children because of their place of residence or their socio-economic status, will no longer go unheeded. Educational opportunity, which has been disseminated on a grossly unequal basis as a consequence of local property values, will no longer be constitutionally tolerated. *Robinson v. Cahill*[167] recognized that educational output is related to dollar input.[168] It swept away the unequal dispensation of a system of public education which had as its basis, private wealth as reflected in local property taxes. The *Robinson* court recognized the state's responsibility in the educational process. That obligation is nothing less than that which the state constitution mandates—a thorough and efficient education for every child in the state's system of public schools.

Robinson's effect will be far reaching in its impact. Educational dollars will become more readily available for such less advantaged areas as Newark and Jersey City, with a consequent upgrading and

164 *Id.*
165 *Id.*
166 *Id.*
167 62 N.J. 473, 303 A.2d 273 (1973).
168 *Id.* at 481, 303 A.2d at 277.

improvement of quality in those locales. Since the state has the obligation of providing a thorough and efficient education to every child, regardless of residence, more affluent communities will stand alongside their less advantaged neighbors in raising these funds to reach this standard. While the likelihood of disparities in quality because of privilege and local wealth will thus be minimized, the affluent communities can be assured that their children will continue to receive a thorough and efficient education to which they too are entitled. The possibility, in fact the need, for cooperation and communication among the urban, suburban, and rural communities of the state will be enhanced. There will be a mingling of ideas and forces dedicated to the actualization of human potential.

The importance of an intelligent and educated populace is self-evident. Education has a direct influence on one's capacity to effectively participate in the democratic process. It is necessary to insure the maintenance of society's values. It is essential for the attainment of the individual's prospects for a full and rewarding life.[169] The legislature must respond swiftly to the needs and demands of educational funding. Unnecessary delay can only result in continued misapplication of important resources. More importantly, further delay deprives this state's school children of their constitutional right to a thorough and efficient education, which in contemporary society is a prerequisite if one is to achieve a full measure of ability.

The *Robinson* decision mandates that the state fulfill the constitutional requirement of a thorough and efficient education. The state must embark upon an ongoing quest for both excellence and quality in education. The legislature must now address itself to the realization of this goal. Hopefully, New Jersey as well as those other states with a qualitative guarantee for public education,[170] will press forward toward the full realization of the human potential inherent in this mandate.

169 Kirp, *supra* note 156, at 642.

170 See note 90 *supra* for a listing of those states with constitutionally mandated qualitative guarantees.