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Recent Decisions: Constitutional Law-Fourteenth Amendment, Equal Protection Clause-Ad Valorem Property Taxation for Public Schools Financing Violates Constitution. Rodriguez v. San Antonio Independent School District, 337 F. Supp. 280 (W.D. Tex. 1971)

spring gun or mantrap on property by the owner contemplates the presence of a trespasser and the intent to injure him. The Supreme Court of the United States, in *United Zinc & Chemical Co. v. Britt*,[25] held that liability for setting spring guns or traps arises from the fact that an owner of property has expected the trespasser and has prepared an injury that is no more justified than if the owner had held a gun and fired it.

Maryland,[26] along with a bare majority of other jurisdictions,[27] allows the defense of contributory negligence in strict liability actions based on scienter. Accordingly, in *Twigg v. Ryland*,[28] judgement in favor of the dog owner was affirmed where the injured person knew of the dog's propensities and ". . . encouraged the dog to be about her premises."[29] In *Bramble*, of course, such a defense would be inapplicable as the trespassers were not aware of the dog's nature.

The court in *Bramble* had a dual opportunity to modernize Maryland's position on a land owner's liability for injury to an inadvertent trespasser by a dog whose vicious propensities are known to the owner of the property. The court easily could have used the analogy of land near a public way, or of a dangerous device of entrapment. Instead, the *Bramble* court chose to overlook these sound positions, as supported by the Restatement of Torts, and rely instead on a position supported by a seventy-five year-old New York case and on a common law principle of questionable validity today. The Maryland court of appeals is regrettably paying homage to the rights of the long-dead feudal lords of England who were preoccupied with protecting their manors, in preference to establishing a judicial rule for the protection of society and human life. D.H. & F.S.L.

CONSTITUTIONAL LAW—FOURTEENTH AMENDMENT, EQUAL PROTECTION CLAUSE—AD VALOREM PROPERTY TAXATION FOR PUBLIC SCHOOLS FINANCING VIOLATES CONSTITUTION. *RODRIGUEZ V. SAN ANTONIO INDEPENDENT SCHOOL DISTRICT*, 337 F. Supp. 280 (W.D. Tex. 1971).

In *Rodriguez v. San Antonio Independent School District*,[1] the three-judge District Court in a *per curiam* opinion ruled that the financing of public education through an ad valorem property tax by that district[2]

25. 258 U.S. 268 (1922).
26. Twigg v. Ryland, 62 Md. 380, 50 Am. R. 226 (1884).
27. *See e.g.*, Melsheimer v. Sullivan, 1 Colo. App. 22, 27 P. 17 (1891); Ryan v. Marren, 216 Mass. 556, 104 N.E. 353 (1914).
28. 62 Md. 380, 50 Am. R. 226 (1884).
29. *Id.* at 389.
1. Rodriguez v. San Antonio Independent School Dist., 337 F. Supp. 280 (W.D. Tex. 1971); *appeal filed*, 40 U.S.L.W. 3551 (U.S. May 16, 1972); *prob. juris. noted*, 40 U.S.L.W. 3576 (U.S. June 6, 1972); *appeal docketed*, 41 U.S.L.W. 3041 (U.S. July 11, 1972).
2. Forty-nine of the fifty states use some form of ad valorem property taxation as the means

violates the fourteenth amendment. An appeal was filed in the United States Supreme Court on April 17, 1972,[3] and probable jurisdiction was noted on June 7, 1972.[4] A similar result was reached by the California Supreme Court in *Serrano v. Priest*,[5] where the court declared unconstitutional local property taxation as a method of financing schools.[6]

The Supreme Court, in *Brown v. Board of Education*,[7] first extended the protection of the fourteenth amendment to elementary and public schools,[8] and in its ruling against racially segregated schools stated:

> . . . [E]ducation is perhaps the most important function of state and local governments . . . . Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on *equal terms*.[9] (Emphasis added).

While *Brown* deals solely with racial discrimination, the above cited dictum has opened the door to court scrutiny of any denial of equal educational opportunity. *Rodriguez* and *Serrano* claim that they have been deprived of their right to equal educational opportunity as guaranteed by *Brown*.

It is now fundamental that arbitrary classifications made by the state are illegal;[10] one such classification that has come under increasingly close scrutiny is "wealth". In striking down the poll tax in *Harper v. Virginia*, the Supreme Court said, "Lines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored."[11] The

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of financing public schools. Hawaii's system of finance is centralized. Annot., 41 A.L.R. 3d 1220, 1228.

3. 40 U.S.L.W. 3551 (U.S. May 16, 1972).
4. 40 U.S.L.W. 3576 (U.S. June 6, 1972). The case was argued before the Supreme Court on October 12, 1972. As of date of publication, no decision has been reached.
5. Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971), *rev'g*, 10 Cal. App. 3d 1110, 89 Cal. Rptr. 345 (Ct. App. 1970). In illustrating the tax disparity, Serrano introduced the assessed valuations and per pupil expenditures in two areas of Los Angeles County; Baldwin Park, a poor black area in Los Angeles, spent $577.49 per year to educate each of its pupils during the 1968-1969 school year, compared to a $1,231.72 expenditure in Beverly Hills. The property valuation per assessed dollar in Baldwin Park and Beverly Hills was $3,707 and $50,885, respectively.
6. *Id.* at 618, 487 P.2d at 1250, 96 Cal. Rptr. at 626.
7. 347 U.S. 483 (1954).
8. The right to a nondiscriminatory education on the graduate level has been recognized since 1938. *See* McLaurin v. Oklahoma State Board of Regents, 339 U.S. 637 (1950); Sweatt v. Painter, 339 U.S. 629 (1950); Sipuel v. Board of Regents, 332 U.S. 631 (1948); and Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337 (1938).
9. Brown v. Board of Education, 347 U.S. 483, 493 (1954). To further illustrate how the inequities of the present system affect "education on equal terms", the following example is provided:
   > School District A, a high land value area, might have land valued on the tax rolls at a hundred million dollars compared to School District B, a slum area, which might have land valued at ten million dollars. Thus, to raise a needed five million dollars for schools, School District A need only a 5% tax rate, compared to a 50% tax rate that would be required to raise the same sum in School District B.
10. 16 AM. JUR. 2d, *Constitutional Law* § 469, at 823 (1964).
11. 383 U.S. 663, 668 (1966).

Rodriguez decision treats the classification of wealth as a criteria for determining the quality of public education under the equal protection clause of the fourteenth amendment.

The only precedent on the question of local property taxation used to finance public schools is *McInnis v. Shapiro*,[12] which was affirmed by the Supreme Court without opinion.[13] The U.S. District Court had held that it was a constitutional requirement that pupil expenditures be made only on the basis of "educational needs" of the students. The financial strength of local school districts was not considered.

McInnis, however, is not on point with *Serrano* and *Rodriguez*, as *McInnis'* holding was based on the nebulous concept of "educational needs", while the latter cases held that funding must be equal for all students within the state. While the concepts of *McInnis* are not on point with *Rodriguez*, the lower court (Court of Appeals) in *Serrano* found *McInnis* as binding precedent.[14] McInnis, therefore, may still be a major stumbling block for the court. The California Law Review described the court's affirmation of the dismissal in *McInnis* as follows:

> Probably but a temporary setback, it was the predictable consequence of an effort to force the court to precipitous and decisive action upon a novel and complex issue for which neither it nor the parties were ready.[15]

Rodriguez must overcome three other major obstacles if it is to be affirmed. The Supreme Court has yet to rule that de facto segregation (of wealth) in the schools is in violation of the fourteenth amendment. If consideration beyond the echo of *McInnis* is to be given, the plaintiffs have the task of convincing the court that the segregation arising from property tax irregularities is de jure segregation, the product of some state action (or inaction). The defense contended that the referendum which decides the amount of tax dollars to be spent on education is clearly not an action by the state, but by its citizens.[16]

Secondly, *McInnis*, *Serrano* and *Rodriguez*, all rest on the premise that a quality education is a direct function of the amount of dollars

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12. McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd sub nom.*, McInnis v. Ogilvie, 394 U.S. 322 (1969).
13. 394 U.S. 322 (1969). Mr. Justice Douglas was of the opinion that probable jurisdiction should be noted and that the case should be argued.
14. 10 Cal. App., 3d at 1116, 89 Cal. Rptr. at 349.
15. Coons, Clune, and Sugarman, *Educational Opportunity! A Workable Constitutional Test for State Financing Structures*, 57 CAL. L. REV. 305, 308 (1969).
16. Rodriguez v. San Antonio Independent School Dist., 337 F. Supp. 280, 284 (W.D. Tex. 1971). The Supreme Court recently noted the requirement of *state action* as a factor necessary to bring the state's practice within the purview of the Equal Protection Clause. Mere operation of a regulatory scheme by a state or its agencies, without a suggestion that the state's regulation intended overtly or covertly to encourage discrimination, does not establish a *state action* within the Equal Protection Clause. Moose Lodge No. 107 v. Irvis, 40 U.S.L.W. 4715 (U.S. June 13, 1972).

spent per student. A Harvard research team recently found that assumption to be erroneous.

> . . . [N]either the overall level of resources available to a school nor any specific, easily identifiable school policy has a significant effect on students' cognitive skills or educational attainments. Thus, even if we went beyond "equal opportunity" and allocated resources disproportionately to schools whose students now do worst on tests, and are least likely to acquire credentials, this would not improve these students' prospects very much. . . .
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> . . . [O]ur research suggests, however, that the character of a school's output depends largely on a single input, the characteristics of the entering children.[17]

Accordingly, if the above study is to be believed, this leaves the plaintiff the insuperable burden of showing that not only was he damaged (*i.e.*, that he has received an inferior education), but also that the unequal spending of tax dollars was the proximate cause of that injury.

The third obstacle facing a decision to affirm *Rodriguez* is that the responsibility of school financing would have to be lifted from local control and given to the states. State take-over of the financing scheme would strike hard at the philosophy of home rule; but moreover, it is difficult to envision the state assuming the financial burden of the school system without exercising excessive control over the school's operations, curricula, etc.

If the states assume this role, there may be as much of an infringement of rights of the state's residents as in the present system, inasmuch as there would then be established *fifty* degrees of quality education. Thus, New York, because of its greater wealth, would theoretically be able to offer its residents better schools than Georgia.[18] Accordingly, a true system of education open to all on *equal terms* (as required by *Brown*), could only be achieved by direct federal funding of schools.[19]

An unequivocal affirmation of *Rodriguez* might not be limited merely to unequal *educational* spending throughout the state, but might well require *all* local governmental services to be of an equal quality. Thus, police protection, library services, etc., in one community might have to be equal to the services offered in another

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17. Jencks & Bane, *The Schools and Equal Opportunity*, SATURDAY REV. OF EDUCATION, Oct. 1972, at 41.
18. DEPT. OF COMMERCE, 1970 CENSUS, GENERAL SOCIAL & ECONOMIC CHARACTERSITICS FINAL REPORT PC (1)—C34 N.Y. at 311; DEPT. OF COMMERCE, 1970 CENSUS, GENERAL SOCIAL & ECONOMIC CHARACTERISTICS FINAL REPORT PC (1)—C12 Ga. at 257 (1972).
19. For an in-depth study of the accounting procedures necessary to comply with the mandate for equal education, *see* Coons, *supra* note 15.

community, and nearly all fiscal control of local programs by local governments would be destroyed.

CONCLUSION

While the existence of inequities in the property tax system is granted, these inequities do not create an infringement of any constitutional rights, for as the Court has stated:

> To be able to find fault with a law is not to demonstrate its invalidity. It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones. . . Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void under the fourteenth amendment.[20]

Therefore, the *Rodriguez* decision disallowing property taxation for public school financing may well be reversed for three reasons: (1) the requirement of an invidious discriminatory state action is absent herein, (2) the burden of proving damage has not been met, as recent studies question the assumption that equal educational opportunity is a function of increased spending, and (3) only federal socialized education would eliminate the present inequalities at the exorbitant cost of taking control of the schools away from the local parents.

S.H.O.

CRIMINAL LAW—THE PLAIN VIEW DOCTRINE IN MARYLAND—WARRANTLESS SEARCH OF PREMISES AND SEIZURE OF EVIDENCE HELD UNCONSTITUTIONAL. *BROWN V. STATE*, 15 Md. App. 584, 292 A.2d 762 (1972).

In *Brown v. State*,[1] officers investigating a series of burglaries questioned a suspect in the street. The officers requested and were denied permission to search his residence. The officers then proceeded to the suspect's residence, a rented room in a house belonging to a Mrs. Hall, ostensibly for the purpose of obtaining a description of the place to be used in the search warrant. The investigators identified themselves and were invited in by Mrs. Hall. From the hallway outside of the suspect's room, they observed through the already open door a box containing articles easily identifiable as part of the stolen goods from the burglaries under investigation. One of the officers reached into the room, without actually stepping into it, and seized the box.

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20. Metropolis Theater Co. v. City of Chicago, 228 U.S. 61, 69-70 (1913).

1. 15 Md. App. 584, 292 A.2d 762 (1972).