

EDITORIAL INTRODUCTION

## Reflections on the Fiftieth Anniversary of *San Antonio v. Rodriguez*

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In 1968, Demetrio P. Rodriguez and a group of other San Antonio parents filed a class-action suit against the State of Texas. As they saw it, the state's school finance system created inequitable opportunities for low-income and racially marginalized students. A federal district court ruled in their favor, finding Texas in violation of the equal-protection clause of the Fourteenth Amendment.

Texas appealed. And in 1973, the Supreme Court handed down its 5-4 decision in *San Antonio vs. Rodriguez*. Texas *couldn't* be in violation of the Fourteenth Amendment, the court ruled, because access to education isn't actually protected by it. "Though education is one of the most important services performed by the State," Justice Lewis F. Powell Jr. wrote on behalf of the majority, "it is not within the limited category of rights recognized by this Court as guaranteed by the Constitution."<sup>1</sup>

Nearly two decades after the court's 1954 decision in *Brown v. Board of Education*, and after a long run of legislative and judicial victories on behalf of low-income children and children of color, *Rodriguez* was a jarring reminder that entrenched inequality would not be easily unmade. The arc of the moral universe would not be bent toward justice without ongoing struggle.

In his dissent, Justice Thurgood Marshall wrote that "the Court today decides, in effect, that a State may constitutionally vary the quality of education which it offers its children in accordance with the amount of taxable wealth located in the school districts within which they reside." It was, he argued, "a retreat from our historic commitment to equality of educational opportunity" and an "unsupportable acquiescence in a system which deprives children in their earliest years of the chance to reach their full potential as citizens."<sup>2</sup> As legal scholar Steve Shiffrin observed decades later, "By permitting funds for children in schools to be distributed on the basis of neighborhood

<sup>1</sup>San Antonio Independent School District et al. v. Demetrio P. Rodriguez et al., 411 U.S. 1 (1973), 2.

<sup>2</sup>*San Antonio v. Rodriguez*, 70–71.

wealth instead of educational needs, [Rodriguez] has permitted millions of children to be imprisoned in a system of educational inequality.”<sup>3</sup>

Despite the court’s ruling, the fight for educational equity continued. Across the past half century, activists and policymakers have made progress in advancing policies and programs aimed at narrowing gaps in both resources and opportunities. Yet *Rodriguez* also prompts us to consider what might have been. In a counterfactual history, in which a federal right to education was recognized by the court, how might the past five decades have unfolded?

This issue of *History of Education Quarterly* includes articles that explore the roots and branches of this landmark case. The articles highlight understudied sources, establish new connections between existing bodies of literature, and generate essential historical contexts—all of which tease potential answers to the “What might have unfolded?” question. Researchers familiar with *Rodriguez* and the evolution of US school finance law and policy will appreciate the reexamination of well-known cases. Those with less exposure to this area of education history will value the accessible storylines these articles offer. Collectively, they not only shed light on the past but also respond to white-hot debates occurring today by expanding the evidentiary base for such contested topics as critical legal studies and critical race theory. By now, we should have long put to bed any doubt that race shaped the political and legal parameters of school funding—and, by extension, equal opportunity, social mobility, and access to the American dream. But those with lingering uncertainty should find this issue a welcome tonic.

Rather than summarize the fine work that appears in this issue, the editors wish to call attention to a state that merits further investigation in light of *Rodriguez*. It’s one that does not always make an appearance in school finance history, policy, and law studies. That state is South Carolina.

South Carolina, like the rest of the South, faced logistical and ideological challenges in establishing a system of public education before the Civil War. A lack of population density outside urban centers and an abundance of anti-tax sentiment worked against the expansive dreams of reformers.<sup>4</sup> It also didn’t help that tax-supported public schooling first appeared in New England during the antebellum period, alongside industrialization, women’s rights movements, and efforts to abolish slavery. Guilt by association created suspicions about public schooling among southern elites who outlawed literacy for slaves and depended on an agrarian cultural order. As one southern observer put it, public schools in the North spread “evil impressions,” “attacks from the demagogue,” and “every phase of political doctrine”—all aimed against southern slaveholding society. “The diffusion of education in New England,” as such, “will likely effect the dissolution of the Union.”<sup>5</sup> During the Civil War, southerners learned of the Union army’s involvement with public education. A long trail of school buildings, largely for

<sup>3</sup> Andrea Sachs, “The Worst Supreme Court Decisions since 1960,” *Time*, Oct. 6, 2015, <https://time.com/4056051/worst-supreme-court-decisions/>.

<sup>4</sup> On reforms that succeeded, see Sarah L. Hyde, *Schooling in the Antebellum South: The Rise of Public and Private Education in Louisiana, Mississippi, and Alabama* (Baton Rouge: LSU Press, 2016).

<sup>5</sup> James Simmons, “Address Delivered at the Opening of the Free School in Charleston. June 26, 1852,” *Southern Quarterly Review* 6, no. 12 (Oct. 1852), 468.

emancipated slaves, appeared on the heels of each bloody conquest.<sup>6</sup> And after the Civil War, Black political leaders and their allies made the insertion of public education clauses in state constitutions a requirement for readmission to the United States.<sup>7</sup>

For these reasons, advances made on behalf of public education in places like South Carolina had to overcome lingering associations with threats to White southern life, culture, and values. And if Henry Louis Gates Jr.'s theory of cultural geneticism teaches us anything, it's that dispositions and values have strong staying power from one generation to the next.<sup>8</sup> One of many inherited legacies of the Civil War in South Carolina is a long-standing resistance to investing in public education for all. It's part of the state's social and political DNA. There are few better case examples of this than *Abbeville v. South Carolina* and Act 388.

The case of *Abbeville v. South Carolina* began in 1993. Plaintiffs representing some of the poorest school districts along the I-95 corridor—now infamously called the “Corridor of Shame”—claimed that the state had failed to provide a “minimally adequate” education, as mandated by the state's constitution. School children in the corridor took hundreds of pictures of their schools, and the overwhelming evidence they and others produced painted a damning picture: crumbling facilities, electrical wiring hazards, faulty sewage plumbing, and inadequate staffing and supplies.<sup>9</sup>

In 2014, *Abbeville's* tortuous legal journey appeared to come to an end. The South Carolina Supreme Court ruled in favor of the plaintiffs, faulting the state's school funding formula for failing to provide the plaintiffs a minimally adequate education. The court claimed jurisdiction and required remedies from the state's General Assembly. According to the plaintiffs, the remedies that were implemented failed to address the inequities identified in the 2014 decision.

In a return to the South Carolina Supreme Court, however, the justices reversed course by 180 degrees. A new majority viewed the previous ruling as gross judicial overreach, and they relinquished jurisdiction on the grounds of separation of powers. Despite mounting evidence of extreme racial inequalities in school funding and outcomes, the court sided with the status quo in its 3-2 final judgment in 2017.<sup>10</sup>

<sup>6</sup>John W. Blassingame, “The Union Army as an Educational Institution for Negroes, 1862-1865,” *Journal of Negro Education* 34, no. 2 (Spring 1965), 152–59.

<sup>7</sup>David Tyack and Robert Lowe, “The Constitutional Moment: Reconstruction and Black Education in the South,” *American Journal of Education* 94, no. 2 (Feb. 1986), 236–56.

<sup>8</sup>Henry Louis Gates Jr., “African American Studies in the 21st Century,” *Black Scholar* 22, no. 3 (Summer 1993), 5.

<sup>9</sup>*Corridor of Shame: The Neglect of South Carolina's Rural Schools*, directed by Bud Ferillo (Ferillo & Associates, 2005); Jennifer L. Fogle, “*Abbeville County School District v. State*: The Right to a Minimally Adequate Education in South Carolina,” *South Carolina Law Review* 51, no. 4 (Summer 2000), 781–806; Kayla Louis, “State Constitutional Law—Minimally Adequate Education—Qualitative Education Standards in the South Carolina Constitution—*Abbeville County School District v. State*, 767 S.E.2D 157 (S.C. 2014),” *Rutgers University Law Review* 69, no. 4 (Summer 2017), 1457–74; Henry Tran et al., “Of Coalition and Resistance in *Abbeville v. South Carolina*: A Policy Regimes Analysis,” *Educational Studies* 58, no. 3 (2022): 279–99.

<sup>10</sup>See, for instance, Stacey Patton, “The State of Racial Disparities in Charleston County, South Carolina, 2000-2015,” Avery Research Center for African American History and Culture (Charleston, SC: College of Charleston, 2017); *Abbeville County School District et al. v. State of South Carolina et al.*, 410 S.C. 619, 767 S.E.2d (2017).

The lone dissenter, Justice Don Beatty, lamented the final ruling in *Abbeville*, a case that had languished in the courts for twenty-four years. To his mind, the South Carolina Supreme Court “lost the will to do even the minimal amount necessary to avoid becoming complicit actors in the deprivation of a minimally adequate education to South Carolina’s children.” He dissented because he could not “stand idly by” as the state made “unfulfilled promises” to “reform the education system and remedy the constitutional violation.”<sup>11</sup>

South Carolina’s Act 388, meanwhile, began as an idea in the mind of real estate developer Emerson B. Read Sr. in the 1990s. The self-described “Grandfather of Charleston Real Estate” helped organize grassroots campaigns to eliminate school-supporting property taxes. As chair of the “No Home Tax” coalition, Read Sr. reached peak political influence with passage of Act 388 in 2006.<sup>12</sup> The intent of the act was to shift the burden of school funding from a property tax system to a 1 percent sales tax.<sup>13</sup>

When Governor Mark Sanford signed Act 388 into law in 2006, advocates claimed a victory for all property owners. In recognition of his anti-tax efforts, Governor Sanford awarded Read Sr. South Carolina’s highest civilian honor—the Order of the Palmetto. Critics, however, pointed to early estimates showing that taxes on homes valued at \$100,000 actually increased, while those worth \$1 million saw a windfall of more than \$6,000 per year.<sup>14</sup> John Rainey, chair of South Carolina’s Board of Economic Advisors, in 2009 also noted a key flaw in relying on sales taxes: variability. “We traded the most unpopular but most stable tax, the property tax,” he argued, “for the least unpopular but most unstable tax, the sales tax.”<sup>15</sup>

South Carolina made a commitment to replenish any lost funds to school districts negatively affected by the new sales tax regime.<sup>16</sup> But by 2008, it became clear the state could not deliver on the promise. The global economic downturn depressed anticipated sales tax revenues, and the windfall enjoyed largely by the state’s wealthiest resulted in a \$700 million cut in education spending from 2008 to 2010.<sup>17</sup> Schools across the

<sup>11</sup> *Abbeville County School District v. State of South Carolina*, 4.

<sup>12</sup> Read & Read, Inc., “Emerson B. Read, Sr., GRI, ABR,” <http://readrealtors.com/emerson-b-read-sr-gri-abr-74.html>; “Emerson Brackett Read, Sr., Obituary,” *Charleston Post and Courier*, Nov. 25–27, 2016, <https://obits.postandcourier.com/us/obituaries/charleston/name/emerson-read-obituary?id=9643723>; No Home Tax, “About NoHomeTax.org,” <https://nohometax.org/about-us/>.

<sup>13</sup> Donald L. Schunk, “South Carolina’s Tax Changes: What Will They Mean?,” *Business & Economic Review* 54, no. 1 (2007), 8; Sharda Jackson Smith, David G. Martínez, and Henry Tran, “South Carolina’s Act 388: Exploring the Relationship of Tiered Reimbursement on School District Revenue,” *eJournal of Education Policy* 23, no. 1 (2022), <https://in.nau.edu/wp-content/uploads/sites/135/2022/03/Smith.pdf>.

<sup>14</sup> Robert W. Dalton, “Tax Relief Turned Out to Be Tax Hike for Most Homeowners: \$1M Spartanburg Homes See Big Property Tax Cut,” *Spartanburg Herald-Journal*, Aug. 6, 2009, <https://www.goupstate.com/story/news/2009/08/06/tax-relief-turned-out-to-be-tax-hike-for-most-homeowners/29787493007/>.

<sup>15</sup> David Slade, “S.C. Paying Piper for Act 388 Tax Cuts,” *Charleston Post and Courier*, Jan. 10, 2009, [https://www.postandcourier.com/news/special\\_reports/s-c-paying-piper-for-act-388-tax-cuts/article\\_85569c5b-59a3-532a-ab9e-9f469344ca64.html](https://www.postandcourier.com/news/special_reports/s-c-paying-piper-for-act-388-tax-cuts/article_85569c5b-59a3-532a-ab9e-9f469344ca64.html).

<sup>16</sup> South Carolina Legislature, South Carolina Code of Laws Unannotated §11-11-155, <https://www.sctatehouse.gov/code/t11c011.php>.

<sup>17</sup> Brian Hicks, “Schools Already on Ropes,” *Charleston Post and Courier*, April 8, 2010, [https://www.postandcourier.com/staff/brian\\_hicks/schools-already-on-ropes/article\\_a26f51a3-bc1c-5906-ac45-ffb0054bf4c8.html](https://www.postandcourier.com/staff/brian_hicks/schools-already-on-ropes/article_a26f51a3-bc1c-5906-ac45-ffb0054bf4c8.html).

state lost approximately one thousand teachers in a single year, and education officials expected school closures, the end of sports and arts programs, and skyrocketing class sizes in the near future. As Doug Cooper, chair of the Berkeley County School Board, declared, “We’re essentially out of business.”<sup>18</sup>

South Carolina’s citizens have been hardly alone in facing a precipice in terms of school funding. To varying degrees, their experiences share important commonalities with other cases throughout the US. But unlike the usual suspects in school finance history—such as California (*Serrano*), Texas (*Rodriguez*), New Jersey (*Robinson* and *Abbott*), Kentucky (*Rose*), Ohio (*DeRolph*), Kansas (*Montoy*), Washington State (*McCleary*), and North Carolina (*Leandro*)—South Carolina’s *Abbeville* and Act 388 have yet to appear with the same frequency. This brief *Rodriguez*-related reflection offers a case for school finance scholars to take a closer look at the compelling story South Carolina has to tell.

In the meantime, this issue offers an exploration of *Rodriguez* and its legacy in terms of constitutional change, state budget politics, and the roots of inequality in school politics. It closes with a Policy Dialogue between the University of Miami’s Bruce Baker, widely recognized as the nation’s leading scholar on equitable educational financing, and David Hinojosa of the Lawyers’ Committee for Civil Rights Under Law. Hinojosa has special insight into the case. He went to school in San Antonio and was enrolled there as the *Rodriguez* case wound its way through the courts. He comes to this Policy Dialogue as both a leading civil rights litigator and as someone with deep personal history with the case.

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<sup>18</sup>Bo Petersen, “Outlook for Schools Seen as Dire,” *Charleston Post and Courier*, April 6, 2010, [https://www.postandcourier.com/politics/outlook-for-schools-seen-as-dire/article\\_c2081763-0180-5281-9646-a3bb6c37d8d9.html](https://www.postandcourier.com/politics/outlook-for-schools-seen-as-dire/article_c2081763-0180-5281-9646-a3bb6c37d8d9.html).