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The Roots of Inequality: Texas School Politics and the Leadup to *Rodriguez*

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Abstract

Contrary to Supreme Court Justice Lewis F. Powell's majority opinion in *San Antonio Independent School District v. Rodriguez* (1973), Texas's school finance system was the result of years of legislation and state-building that gave some areas the resources and capacity to provide more educational opportunities than others. As this article demonstrates, during the century leading up to the *Rodriguez* decision, Texas political leaders developed a public school funding system reliant on the highly unequal spatial distribution of property wealth across rural/urban, class, and racial lines. There was nothing inevitable about this. In fact, the history of Texas's system reveals four pivotal eras when the state's White leaders created and maintained a school finance system reliant on local property taxes and defined by rural/urban and racial differences that cemented deep inequalities. This case study traces those changes over time and brings part of the story to life through the example of Kirbyville, Texas, and its struggle to finance a new White high school. Returning to the historical roots of school financing in Texas reveals how rural/urban, racial, and wealth inequalities have been foundational to Texas's public school finance system.

Keywords: School finance; *San Antonio ISD v. Rodriguez*; Texas; Policy history; segregation

In 1973, Supreme Court Justice Lewis F. Powell wrote the majority opinion for *San Antonio Independent School District v. Rodriguez*, a case that allowed him to weigh in on educational fiscal policy, wealth and racial discrimination, the interpretation of the Fourteenth Amendment, and the intergovernmental relationships inherent in American federalism. In a secret memo written before his appointment, Powell noted that “under our constitutional system, especially with an activist-minded Supreme Court, the judiciary may be the most important instrument for social, economic and political change,” and he worried that the “essentials” of the American free enterprise system “are threatened by inequitable taxation.”¹ In his opinion upholding Texas's

¹Powell, Lewis F. Jr. to Eugene B. Sydnor Jr., “Confidential Memorandum: Attack on American Free Enterprise System,” Aug. 23, 1971, 26, 33, <https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1000&context=powellmemo>.

system of local school financing, Powell wrote, “In an era that has witnessed a consistent trend toward centralization of the functions of government, local sharing of responsibility for public education has survived.” He demonstrated his commitment to a particular definition of local control in arguing that “in part, local control means ... the freedom to devote more money to the education of one’s children.”² Powell used the *Rodriguez* case to further his political and judicial goals, but in the process, he fundamentally misunderstood the history of Texas’s public school finance system and the prospects for its legislative reform.

Justice Powell described Texas’s school finance system as emerging from natural processes of political and social development—language he similarly deployed regarding school segregation in other cases.³ However, historians have demonstrated the historical inaccuracy of this view of residential and school segregation.⁴ All levels of American government were deeply complicit in the construction and maintenance of racial and wealth segregation, albeit in different ways, according to the extent of their political powers under American federalism. This is undoubtedly true of school finance, where local district lines reflected and hardened racial and economic inequalities, and state policies allowed regimes of local district taxation to ensure that some districts had a greater capacity to raise funds than others. Texas’s system was the result of years of concerted political battles over the different taxing authorities of urban and rural districts that gave urban areas the capacity to provide more educational opportunities than rural areas. Over time, the state of Texas reduced urban/rural inequalities by broadening all school districts’ local property taxing authority, but because the system continued to rely on these spatially demarcated units of government to provide educational services (funded through property taxes on their coterminous lands), it guaranteed that geographic inequalities of property wealth grounded in economic inequalities, racial inequalities, and ethnic inequalities would determine the quality of a community’s public education. Residential segregation by race and class intersected with school finance as politically constructed systems designed to maintain economic, racial, and ethnic inequalities.⁵

²San Antonio Independent School District et al. v. Rodriguez et al., 411 U.S. 1 (1973), 48 (hereafter *San Antonio v. Rodriguez*).

³See Powell’s concurring opinion in *Keyes v. School Dist. No. 1*, 413 U.S. 189 (1973).

⁴For just a few of the excellent works on this subject, see Walter C. Stern, *Race and Education in New Orleans: Creating the Segregated City, 1764-1960* (Baton Rouge: Louisiana State University Press, 2018); Ansley T. Erickson, *Making the Unequal Metropolis: School Desegregation and Its Limits* (Chicago: University of Chicago Press, 2016); N. D. B. Connolly, *A World More Concrete: Real Estate and the Remaking of Jim Crow South Florida* (Chicago: University of Chicago Press, 2014); Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton, NJ: Princeton University Press, 2006); Kevin Michael Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* (Princeton, NJ: Princeton University Press, 2005).

⁵For more on how this process of residential and school segregation interacted in Texas, see Christine M. Drennon, “Social Relations Spatially Fixed: Construction and Maintenance of School Districts in San Antonio, Texas,” *Geographical Review* 96, no. 4 (Oct. 2006), 567–93. Drennon shows how the development of San Antonio’s fragmented and segregated housing and schooling landscape has ensured an inequitable school finance system that ultimately reinforces class and racial segregation across the metropolitan area. While the policy history traced in this article is specific to Texas, the end result—a reliance on local property taxes for educational spending—was reproduced across the country. Jennifer L. Hochschild points out that

Rodriguez's origins date back to the years following Reconstruction and the actions of White supremacists. Texas's convoluted system of local property taxation and state support was gradually built by leaders of the Democratic Party who worked to construct a mutually reinforcing school finance system of racial and class-based inequalities and discrimination.

In the years following the end of Reconstruction, the state government set rural and urban schools on divergent paths by giving the latter—where wealthier, White families predominated—much greater latitude for local taxing and spending than the former, where Black, Mexican American, and poorer families disproportionately lived. Reformers gradually changed laws at the state level to allow localities greater fiscal capacity in education spending in an effort to create more equal educational opportunities across the state. But broadening local districts' taxing authority for schooling—the solution in the early 1900s—produced unintended consequences.

By the mid-twentieth century an unequal system, highly dependent on local property wealth, had been firmly entrenched. Despite attempts by reformers to centralize taxing and spending on education at the state level, successive reforms struggled to overcome the historical trajectory that had been constructed over decades. This historical layering set the parameters for the *Rodriguez* litigation and checked the imaginative possibilities for a more equitable school financing system.

Historical analysis of the development of Texas's school finance is important, because it fills a long-standing gap in scholarship. Much of the scholarship on *San Antonio v. Rodriguez* overlooks the historical culmination of inequalities in Texas's public school finance system. Most accounts focus either on the constitutional significance of *Rodriguez*⁶ or on the importance of *Rodriguez* to Texas's later battles over school finance.⁷ A few articles catalog school finance changes over time but struggle to create a cohesive narrative of how post-Reconstruction changes to state funding and local

“local democratic governance in the American public school system sustains racial, ethnic, and class hierarchies in the society as a whole,” and so too does local financing of education. See Hochschild, “What School Boards Can and Cannot (or Will Not) Accomplish,” in *Besieged: School Boards and the Future of Education Politics*, ed. William Howell (Washington, DC: Brookings Institution Press, 2005), 328.

⁶Justin Driver begins the story of *Rodriguez* in 1968, when the case was filed. See Driver, *The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind* (New York: Pantheon Books, 2018), 317–30. Camille Walsh addresses the legal issues in *Rodriguez* and the court's discomfort with the intersectional identities of race and class presented in the case. See Walsh, *Racial Taxation: Schools, Segregation, and Taxpayer Citizenship, 1869-1973* (Chapel Hill: University of North Carolina Press, 2018). Paul Sracic covers the history before *Rodriguez* minimally, which leaves the reader unaware of potential alternatives to Texas's funding model considered in the decades before *Rodriguez*. See Paul A. Sracic, *San Antonio v. Rodriguez and the Pursuit of Equal Education: The Debate over Discrimination and School Funding* (Lawrence: University Press of Kansas, 2006).

⁷One of the first articles post-*Rodriguez* touches on key mid-twentieth-century school finance reforms in Texas, but nothing any earlier. See Mark G. Yudof and Daniel C. Morgan, “Texas: *Rodriguez v. San Antonio Independent School District*: Gathering the Ayes of Texas—the Politics of School Finance Reform,” *Law and Contemporary Problems* 38, no. 3 (Winter 1974): 383–414. A more recent article outlines subsequent state litigation that took off in Texas after *Rodriguez* but begins the story in the same era. See J. Steven Farr and Mark Trachtenberg, “The Edgewood Drama: An Epic Quest for Education Equity,” *Yale Law & Policy Review* 17, no. 2 (1999), 607–727. For an example of an edited volume that does both, see Charles J. Ogletree Jr. and Kimberly Jenkins Robinson, eds., *The Enduring Legacy of Rodriguez: Creating New Pathways to Equal Educational Opportunity* (Cambridge, MA: Harvard Education Press, 2015).

taxation set the eventual stage for the inequalities underlying *Rodriguez*.⁸ What has been missing in this body of work is any serious analysis of *Rodriguez* as the outcome of a long battle over disparities in rural/urban taxing capacity, and how the solution to that problem doubled down on local property taxes as the primary source of public school revenue. Because Texas's geography was spatially organized by White supremacy and class discrimination, that decision guaranteed that schools would reproduce racial, ethnic, and class inequalities.

Recently, a group of scholars have begun investigating precisely these kinds of historical antecedents to explain key moments in American school finance history. Esther Cyna traces the modern implications of old fiscal practices in North Carolina designed to “loot Black people of their political power and financial resources through school finance.”⁹ Cyna's study shows that the White supremacist fiscal system constructed in the early twentieth century continues to shape the decisions of local and state school leaders today. Matthew Kelly's work on California similarly shows that changes to school funding regimes in one era become the foundation for future regimes. Kelly demonstrates that California initially relied on state funding for the bulk of its educational expenditures before switching to local property taxes after the 1910 abolition of the statewide property tax. As he points out, “Exploring the rise of California's district property tax complicates current understandings of the role local districts have historically played in school finance.”¹⁰ Michael Glass and Sean Vanatta's work on “fiscal mutualism” demonstrates that in the first half of the twentieth century, public pension systems financed the issuance of local bonds, thereby setting up a particular public-private system of development. While this system created its own inequalities, its collapse following World War II subjected local school districts to market forces without the stabilizing hand of public pensions.¹¹

This article builds on this recent scholarship to argue that the longer history of Texas school finance is essential to fully understanding the leadup to the *Rodriguez* decision. This is not to say Texas was unique in its development of an unequal school funding system. But the history of Texas school finance generated the conditions under which *Rodriguez* was argued before the US Supreme Court. More importantly, the history of Texas's Reconstruction school system as centralized, state-funded, and racially egalitarian challenges the validity of Powell's argument. Powell's majority opinion begins with an 1883 amendment to the Texas constitution that demonstrated, in his words, the state's “dual approach to the financing of its schools, relying on mutual participation by

⁸Stephen B. Thomas and Billy Don Walker, “Texas Public School Finance,” *Journal of Education Finance* 8, no. 2 (Fall 1982), 223–81; William P. Hobby Jr. and Billy D. Walker, “Legislative Reform of the Texas Public School Finance System,” *Harvard Journal on Legislation* 28, no. 2 (Summer 1991), 379–94.

⁹Esther Cyna, “Schooling the Kleptocracy: Racism and School Finance in Rural North Carolina, 1900–2018,” *Journal of American History* 108, no. 4 (March 2022), 748.

¹⁰Matthew Gardner Kelly, “‘Theoretically All Children Are Equal. Practically This Can Never Be So’: The History of the District Property Tax in California and the Choice of Inequality,” *Teachers College Record* 122, no. 2 (Feb. 2020), 2.

¹¹Michael R. Glass and Sean H. Vanatta, “The Frail Bonds of Liberalism: Pensions, Schools, and the Unraveling of Fiscal Mutualism in Postwar New York,” *Capitalism: A Journal of History and Economics* 2, no. 2 (2021), 427–72.

the local school districts and the State.”¹² Key to Powell’s argument is the lengthy history of Texas’s reliance on local districts as partners in the provision of education for the state’s schoolchildren.

Powell characterized Texas’s school financing system as “affirmative and reformatory” and therefore deserving of deference and a lower level of judicial scrutiny. In his rendition of the system’s history, “every step leading to the establishment of the system Texas utilizes today—including the decisions permitting localities to tax and expend locally, and creating and continuously expanding state aid—was implemented in an effort to *extend* public education and to improve its quality.”¹³ Powell is right in aggregate, but the crux of the *Rodriguez* case, the very constitutional issues at stake, are about discrimination. Because Texas’s school finance system relied on “localities to tax and expend locally,” the system linked each school district’s expenditures to its taxable property. If all districts had the same per-child property wealth, then per-child expenditures would be the same, but that was not the case. Disparities in property wealth, which largely mirrored differences in urbanization, race, and class, ensured that not all children were given the same quality of public education.

All of the justices writing in *Rodriguez* extolled local control, but where Justice Thurgood Marshall, in a stinging and lengthy dissent, argued that Texas’s funding model did not actually guarantee local control because property-wealthy districts had more money to spend on their educational priorities than property-poor districts, Justice Powell dismissed the inherent inequalities of local government as inevitable.¹⁴ In Powell’s opinion, “the very existence of identifiable local governmental units ... requires the establishment of jurisdictional boundaries that are inevitably arbitrary. It is equally inevitable that some localities are going to be blessed with more taxable assets than others.”¹⁵ In Powell’s characterization, local political subdivisions were either drawn at random or had been in existence since time immemorial. Justice Marshall, the chief litigant for the NAACP in *Brown v. Board of Education* (1954), knew better. Marshall pointed out that “we have no such simple *de facto* wealth discrimination here. The means for financing public education in Texas are selected and specified by the State. It is the State that has created local school districts, and tied educational funding to the local property tax and thereby to local district wealth.” In fact, successive actions by the state government had “rigidified natural trends” through “land use controls” that reinforced inequalities between school districts.¹⁶ While Marshall was correct that the state of Texas had created the organizational structure of local school districts, the state had not drawn their boundaries. That was done through gradual processes of incorporations, voter referendums, and consolidations.¹⁷ Nevertheless, Marshall’s account of the history of and responsibility for creating the state’s school finance system bore a closer resemblance to the tortuous reality of changes to Texas’s system over time.

¹² *San Antonio v. Rodriguez*, 6.

¹³ *San Antonio v. Rodriguez*, 39.

¹⁴ *San Antonio v. Rodriguez*, 126–32.

¹⁵ *San Antonio v. Rodriguez*, 54.

¹⁶ *San Antonio v. Rodriguez*, 123–24.

¹⁷ For more on this convoluted process of district creation and accretion in San Antonio, see Drennon, “Social Relations Spatially Fixed,” 567–93.

Pivotal Moments in the History of Texas Public School Funding

As this article shows, four pivotal moments in Texas's history presented junctures for rethinking the relationship of state and local public school funding. A conservative electoral majority rejected the Reconstruction era's highly centralized scheme of funding and a robust school system in the 1870s, but after Texans grew frustrated with the resulting poor educational outcomes, they turned to a highly inequitable system of local financing in the 1880s. Though this system of local school funding empowered localities to fund their schools over the objections of powerful landowners—an example of which will be charted below—it also set urban and rural school districts on divergent paths by giving urban districts greater fiscal capacities. As Texas urbanized and petroleum was discovered, inequalities between rural and urban districts ballooned. The Progressive Era solution was to give rural districts the same taxing capacities as their urban counterparts. But this reform failed to eliminate inequalities because educational expenditure depended on the property wealth within a school district's boundaries. The spatial inequality of property wealth along rural/urban, racial, ethnic, and class lines perpetuated disparities in educational spending. In the 1910s, the legislature implemented the first supplemental funds for struggling rural school districts—a path that could have eventually led to a more robust system of equalization. Instead, in the 1940s the state adopted a Minimum Foundation Program to fund schools that, as the litigants in *Rodriguez* pointed out, raised the state's overall spending on education while worsening disparities instead of leveling them. This article recovers these pivotal moments, emphasizing in particular the inevitable inequalities that resulted from the decision in the 1880s to rely on local property taxes to fund schools. Justice Powell may have been right that Texas's system was the result of careful deliberation, but it was by no means the only path to funding schools.

The 1870s: White Supremacists Destroy the Centralized System of School Funding

The first pivotal moment came in the years after the Civil War. During Reconstruction, Texas's Radical Republican government implemented a centralized, segregated public school system, one with a more robust system of taxation than Texas had ever before experienced.¹⁸ Black and White Republican political leaders set up dedicated revenue streams at the state level that would be distributed on an equal basis to each student regardless of race. All the revenue from sales of public land would go toward education, as would a new poll tax on every adult male and a set portion of the state's revenue from general taxation.¹⁹ On top of that, a system of teacher certification and school inspection was set up to ensure that every community created a free public school for the minimum school term of four months.²⁰ Republicans used

¹⁸Carl H. Moneyhon, "Public Education and Texas Reconstruction Politics, 1871-1874," *Southwestern Historical Quarterly* 92, no. 3 (Jan. 1989), 393–416; Frederick Eby, *The Development of Education in Texas* (New York: The Macmillan Company, 1925), 79–168.

¹⁹The legislature was empowered to create local school districts, and those districts could raise additional revenue locally for the purposes of building schools. Tex. Const. art. IX, sec. 3, 5, 7 (1869). See *Constitution of the State of Texas, Adopted by the Constitutional Convention* (Austin, TX: The Daily Republican Office, 1869), <http://tarlton.law.utexas.edu/constitutions/>.

²⁰"An Act to give effect to the several provisions of the Constitution concerning taxes" and "An Act to organize and maintain a system of public free schools in the State of Texas," H. P. N. Gammel, ed., *The Laws of Texas*, vol. 6, 1822-1897 (Austin, TX: The Gammel Book Company, 1898), 946, 961.

this centralized system to bypass county-level governments that were often dominated by conservative Democrats. As one Republican administrator put it, “All our money is disbursed through our office at Austin so that the system cannot be frustrated by local authorities.”²¹ In response, conservative Democrats who aimed to enforce White supremacy and take control from the Radical Republicans plotted their path back to power, marking schools as their primary target. Democrats accused the Republicans of using schools as a political vehicle for corruption, extravagance, and race mixing, in order to provoke White vitriol.²²

The Democrats’ violent campaign in 1873 placed the state back under White, conservative rule, and the new state constitution of 1876 systematically abolished key features of the Republican school system and curtailed the state’s fiscal capacity to support schools.²³ Where the Republican Constitution of 1869 had set a *floor* on the fraction of the state budget that went to schools (one-fourth of general revenues), the Democratic Constitution of 1876 set a *ceiling* (also of one-fourth of general revenues).²⁴ In the following years, Governor O. M. Roberts (a former Confederate officer) chose to eliminate the state’s deficit by dramatically reducing state spending on education, which tumbled from over \$1 million in the 1872–1873 school year to \$275,000 in 1880–1881 despite growth in the state’s population.²⁵ All the while, as the following discussion reveals, state legislators and local White officials strangled nascent Black schools by starving them of resources to an even greater extent than White schools. State politicians shifted administrative power away from the state and toward county and municipal governments while simultaneously handicapping their ability to raise additional local revenue. This toxic mix of White supremacy, fiscal retrenchment, and antipathy to centralized authority served as the foundation for what would become Texas’s highly unequal system of localized schooling.

The 1880s and 1890s: Texas Funds Public Schools with Highly Unequal Local Taxation

The second pivotal period for Texas schools came in the last two decades of the nineteenth century, when conservative Democrats endorsed an ad hoc approach to school funding that was dependent on local community initiative, tuition payments, and, for city schools, a limited degree of local taxing authority. This was the beginning of what

²¹Eugene Carlos Bartholomew to J. Fowler, July 13, 1871, 6, Letters Received, 1871–1872, Box 13, Eugene Carlos Bartholomew Papers (AR.D.007), Austin History Center, Austin Public Library, Texas.

²²Patrick G. Williams, *Beyond Redemption: Texas Democrats after Reconstruction* (College Station, TX: Texas A&M University Press, 2007).

²³The centralized state educational bureaucracy was almost entirely dismantled. See Carl H. Moneyhon, *Texas after the Civil War: The Struggle of Reconstruction* (College Station: Texas A&M University Press, 2004), 188–92.

²⁴Tex. Const. art. IX, sec. 6 (1869); Tex. Const. art. VII, sec. 3 (1876). See *Constitution of the State of Texas, Adopted by the Constitutional Convention* (Galveston, TX: Galveston News, 1876), <http://tarlton.law.utexas.edu/constitutions/>.

²⁵Williams, *Beyond Redemption*, 147–51; Office of Superintendent of Public Instruction, *Second Annual Report of the Superintendent of Public Instruction of the State of Texas, for the Year 1872* (Austin, TX: James P. Newcomb and Company, 1873), 76–77; Moneyhon, *Texas after the Civil War*, 202.

Justice Powell had termed Texas's "dual approach to the financing of its schools ... by the local school districts and the State."²⁶

The 1876 Constitution was murky on the legal status of local districts. The article on education said nothing about local districts, but the article on municipal corporations gave the legislature the power to "constitute any city or town a separate and independent school district." Once the district was incorporated, the municipal authorities could then "levy and collect a tax for the support and maintenance of a public institution of learning" as long as the tax was approved by "two-thirds of the tax-payers of such city or town."²⁷

Legislation that was passed in 1876 confirmed the special powers of these districts. A majority of property owners in a town or city could vote to form school districts and give their city council "exclusive control of the public schools within its [the town's] limits."²⁸ These "independent" districts, as they later came to be known, were given access to the state's per capita apportionment but were also given the power to levy "an additional amount" of taxes "for school purposes ... levied upon the taxable property in the limits of said town or city."²⁹ Initially, the independent districts were allowed to levy an ad valorem property tax of 0.25 percent (25 cents on \$100 of taxable property), but this rate was raised in 1879 to 0.5 percent (50 cents on \$100 of taxable property).³⁰

Instead of the formal process outlined for independent districts, the Texas Legislature created an ad hoc process for rural areas, where the vast majority of Texas's student population lived.³¹ In the leadup to each school year, "parents and guardians" would have to gather together and organize themselves into a school and present

²⁶ *San Antonio v. Rodriguez*, 6.

²⁷ Tex. Const. art. XI, sec. 10 (1876). The Constitution of 1876 was essentially a codification of a law passed in 1875 giving towns and cities the power to form school districts and levy local school taxes. "An Act to authorize the cities of Texas to maintain Public Schools," in H. P. N. Gammel, ed., *The Laws of Texas*, vol. 8, 1822-1897 (Austin, TX: The Gammel Book Company, 1898), 533-34.

²⁸ "An Act to establish and provide for the support and maintenance of an efficient system of Public Free Schools," Gammel, *The Laws of Texas*, vol. 8, 1045.

²⁹ The per capita apportionment was the mechanism by which state educational funding was distributed. State revenues set aside for schools were divided between students according to a yearly county school census. "An Act to establish ... Public Free Schools," Gammel, *The Laws of Texas*, vol. 8, 1045.

³⁰ "An Act to amend article 3785, chapter three, title seventy-eight of the Revised Civil Statutes, passed at the regular session of the Sixteenth Legislature," Gammel, *The Laws of Texas*, vol. 9, 1822-1897 (Austin, TX: The Gammel Book Company, 1898), 81. Ad valorem means "according to the value" so an ad valorem property tax refers to a tax on property based on an assessor's valuation of that property. For more on assessment, which is beyond the scope of this article but an important issue in school finance, see Tracy L. Steffes, "Assessment Matters: The Rise and Fall of the Illinois Resource Equalizer Formula," *History of Education Quarterly* 60, no. 1 (February 2020): 24-57.

³¹ The 1880 Census showed a total population in Texas of 1.5 million, and only 7.2 percent of that (roughly 115,000 people) resided in cities and towns of 4,000 inhabitants or more. US Bureau of the Census, Department of the Interior, *Statistics of the Population of the United States at the Tenth Census*, vol. 1 (Washington, DC: Government Printing Office [hereafter GPO], 1880), 408-11, 424. According to the state's incomplete data, by 1882 only around 10 percent of school-age children lived in towns or cities that had organized local school districts—a breakdown that was even more pronounced for Black children, only 8 percent of whom lived in cities with local school districts. See O. N. Hollingsworth, *Third Biennial Report of the State Board of Education for the Scholastic Years Ending August 31, 1881 and 1882* (Austin, TX: Department of Education of the State of Texas, 1883), 3, 5.

required documentation to the county authorities.³² If they followed the regulations properly, the school would be approved and state funding would be distributed on a per capita basis. The legislature termed these “school communities” or “community schools” and they were precluded from levying local taxes.³³

Thus, Texas advertently set urban and rural schools on divergent fiscal paths. The former were given the authority to raise additional funds from local sources for—in the state’s words—“the gratuitous education of all [local] children,” while the latter were consigned to private contributions, tuition payments, and the state’s meager funding.³⁴ This fiscal policy divergence disproportionately affected Black children and poor children because they were more likely to live in rural areas than their White or wealthy counterparts.³⁵

The formal requirement of segregated schooling and the ad hoc nature of school communities also guaranteed that in many of the state’s predominantly Black counties, White parents could form a school but be under no obligation to support Black parents in their quests for schooling.³⁶ Historian Carlos Blanton has pointed out that non-English-speaking ethnic minorities (Germans, Poles, Czechs, and Mexicans) were able to use the community system to run their own bilingual schools, and African Americans retained control over their community schools too.³⁷ But though community schools allowed local control and autonomy in curriculum and hiring, their reduced fiscal capacities meant that local communities were reliant on the limited state apportionment, supplemented by tuition and donations from within the community.

Disparities quickly became apparent. By 1882, the average school term was 6.5 months in independent districts and only 4.5 months in school communities. The gap in teacher salaries was even more extreme; independent districts paid nearly double what school communities could afford—and owing to racial discrimination, Black teachers were paid less than their White counterparts in independent districts and school communities alike. The uncertainty of the school community system, predicated as it was on parents’ yearly renewal of schools, was evident on the ground. In Harris County, home to Houston, community school numbers fluctuated. In 1879, forty-one White and seventeen Black community schools were organized, while in 1882 the number of schools maintained fell to thirty White and thirteen Black schools. Meanwhile, although the population of Harris County was increasing by roughly 1,000

³²“An Act to establish ... Public Free Schools,” *The Laws of Texas*, vol. 8, 1041.

³³“An Act to establish ... Public Free Schools,” *The Laws of Texas*, vol. 8, 1043.

³⁴“An Act to authorize the cities ... Public Schools,” *The Laws of Texas*, vol. 8, 533.

³⁵In addition to the demographic data from the 1880 Census cited above, data on assessed property valuations affirms the disproportionate wealth of Texas’s urban areas. Despite having less than 10 percent of the state’s population, urban areas contained approximately 20 percent of the assessed property wealth. See *Tenth Census*, vol. 12, 139–43.

³⁶Williams, *Beyond Redemption*, 132.

³⁷Carlos Kevin Blanton, *The Strange Career of Bilingual Education in Texas, 1836-1981* (College Station: Texas A&M University Press, 2004), 42–48. Philis Barragán Goetz makes a similar point on the importance of the community school system to Mexican American *escuelitas* across the state. See Barragán Goetz, *Reading, Writing, and Revolution: Escuelitas and the Emergence of a Mexican American Identity in Texas* (Austin: University of Texas Press, 2020), 22–25. Lawrence D. Rice, *The Negro in Texas, 1874-1900* (Baton Rouge: Louisiana State University Press, 1971), 214–19.

people per year, the number of children in school communities fell from 1,787 in 1879 to 1,579 in 1882. In the city of Houston, on the other hand, the number of independent schools maintained grew steadily from seven White and five Black schools in 1879 to eighteen White and eleven Black schools in 1882. Although state data do not indicate how the state's apportionment was distributed by race, later years indicate that White-dominated counties and school districts distributed the money at higher rates to White children than to Black children. The results of this were clear. Houston's independent district paid White teachers considerably more than their Black counterparts and saw an incredible divergence in illiteracy rates: 6 percent for White children but 35.5 percent for Black children.³⁸

Both types of schools were designed to prioritize local control of administration while reducing the local electorate's discretion over taxation. Texas historian Patrick Williams characterizes the conservative Democrats' goal as keeping "taxing authority firmly in the grip of a Democratic state government and out of the hands of African American majorities in old plantation counties that might be tempted to educate poor children by means of large levies on local propertyholders."³⁹ Although independent districts were given taxing authority, the high bar for levying local taxes—two-thirds of property holders had to approve—ensured that local elites would be able to exert great authority. The state's meager apportionment, independent districts' difficulty in raising revenue, and school communities' inability to do so led schools to charge tuition to make up their financial shortfalls. In 1882, independent districts charged an average monthly tuition of \$1.49 for White students and \$1.23 for Black students, while school communities charged \$1.11 for White students and an even higher \$1.32 for Black students.⁴⁰ By 1883, 24 percent of White and 19 percent of Black children were paying tuition to their school communities. Independent districts' higher costs led them to charge tuition for 65 percent of their White students and 67 percent of their Black students—despite the worse educational services provided to Black students. In community schools, illiteracy rates ran at only 2.9 percent for White students but over double that rate, 7.1 percent, for Black students, while in independent districts, illiteracy rates were 0.5 percent for White students and 1.4 percent for Black students.⁴¹

As Democrats fortified their power in the state, dissatisfaction with Texas's system of schooling gained traction. The inequalities of the system became clearer, and rural areas moved to gain more of the fiscal powers granted to independent districts in urban areas. One newspaper, the *Brenham Banner*, conceded that "public schools have become a public necessity" and called for "the school law [to] be amended so as to place school communities in the country on the same footing as towns and cities." As long as "the tax so levied would be self-imposed," the newspaper saw no problem

³⁸O. N. Hollingsworth, *Second Biennial Report of the State Board of Education for the Scholastic Years Ending August 31, 1879 and 1880* (Austin, TX: Department of Education of the State of Texas, 1881), 44, 71; Hollingsworth, *Third Biennial Report*, 3–6, 123, 258–59; *Tenth Census*, vol. 1, 443.

³⁹Williams, *Beyond Redemption*, 131.

⁴⁰Hollingsworth, *Third Biennial Report*, 4–6.

⁴¹Benjamin M. Baker, *Fourth Biennial Report of the Department of Education, for the Scholastic Years Ending August 31, 1883 and August 31, 1884* (Austin, TX: Department of Education of the State of Texas, 1884), 16–18, 20.

with broadening local tax authority.⁴² The next forty years would see repeated struggles by education reformers to give rural schools the same fiscal capacities as their urban counterparts, but this ran into the conservative goal of preserving the old system of large-landowner dominance (these had been planters in the past, but increasingly included capitalists like John Henry Kirby, who will be discussed in the next section). As the taxing and spending powers of independent districts grew, more and more towns voted to move from school communities to independent districts—even over the strenuous objections of powerful businessmen.⁴³

The resources and quality of education at each school became increasingly linked to the classification of its district and the local taxing powers and property wealth of the surrounding area. During the same era in which Texas and other southern states were building the Jim Crow system of apartheid, Texas also cemented its inequitable system of local school funding—the scheme that would be litigated in *Rodriguez* nearly a century later.

The retrenchment of the post-Reconstruction years devastated the provision of public services, particularly education. By the 1880s, a group of younger Democrats, shaped less by the political battles of the antebellum and Reconstruction years, rose to power. Under pressure from populists and fearing the power of fusion candidates, these Democrats were more interested in appealing to poor rural Whites by broadening schooling rather than limiting educational expenditures.⁴⁴ An 1883 amendment to the state's constitution codified the structure and power of community schools. The amendments and their accompanying 1884 law established a formal process for organizing rural schools into “common districts,” along the lines of the independent schools in towns and cities, and delineated their taxing powers.⁴⁵

These common districts would be created by subdividing *nearly* all the state's counties—in keeping with conservative goals of avoiding higher taxes on White property for non-White schools, counties with significant Black or Mexican American populations were exempted from local school district formation requirements. Each newly created district was given the power to levy “an additional ad valorem tax” (on top of the statewide ad valorem tax) of 0.2 percent, or 20 cents on \$100 of property, “provided, that two-thirds of the qualified property tax paying voters of the district ... shall vote such tax.”⁴⁶

⁴²Quoted in “State Press,” *Galveston Daily News*, July 8, 1882, 2.

⁴³Eby, *The Development of Education in Texas*, 178.

⁴⁴For more on the threat of populism to Democratic power in Texas, see Gregg Cantrell and D. Scott Barton, “Texas Populists and the Failure of Biracial Politics,” *Journal of Southern History* 55, no. 4 (Nov. 1989), 659–92; Gregg Cantrell, *The People's Revolt: Texas Populists and the Roots of American Liberalism* (New Haven, CT: Yale University Press, 2020). For the same in other parts of the South, see Steven Hahn, *A Nation under Our Feet: Black Political Struggles in the Rural South, from Slavery to the Great Migration* (Cambridge, MA: Belknap Press of Harvard University Press, 2003); Jane Dailey, *Before Jim Crow: The Politics of Race in Postemancipation Virginia* (Chapel Hill: University of North Carolina Press, 2000).

⁴⁵“An Act to establish and maintain a system of public free schools for the State of Texas,” Gammel, *The Laws of Texas*, vol. 9, 570–88.

⁴⁶“An Act to establish ... State of Texas,” *The Laws of Texas*, vol. 9, 570–71; *Tenth Census*, vol. 1, 408–11, 443–44.

The legislation afforded property owners more rights over the taxation of their land by limiting voting on school taxes solely to them, in contrast with the law's delineation of those eligible to vote for the school district's trustees: "all persons living in the district, qualified to vote for State and county officers."⁴⁷ Nevertheless, anti-tax property owners in rural areas could finally be circumvented with the approbation of two-thirds of all local property owners just as they could be in independent districts. Although the 1884 School Law extended to common districts some powers solely reserved to independent districts, it also vested independent districts with greater fiscal powers. Independent school districts retained their higher tax limit of 0.5 percent, or 50 cents on \$100 of property, their ability to pay teachers above the state's salary schedule, and their capacity to extend school terms beyond the state minimum of six months.⁴⁸ A pattern played out over the next forty years with common districts gaining fiscal powers roughly a decade after independent districts (see Table 1). As a result the gaps between the primarily urban independent districts and the overwhelmingly rural common districts widened.

In 1887 independent districts were allowed to issue bonds for the purposes of school building, leading to a jump in independent district formation. Nevertheless, independent districts had a difficult time finding buyers for their bonds until 1901, when the state legislature allowed the state's Permanent School Fund to invest its principle in independent districts' bonds.⁴⁹ This new market for bonds prompted independent districts to levy more local property taxes; only 52 percent of independent districts levied these taxes in 1901, but 78 percent did by 1904, while only 29 percent of common districts were levying taxes. As a result, per-capita expenditures and teacher salaries of independent districts ballooned to nearly double the levels of common districts. Independent districts' school terms were nearly double those of common districts. While school terms were lower for Black children than White children in both kinds of districts, school terms were more similar by type of district than by race.⁵⁰ In certain ways, the disparate capacities of common and independent districts in this era generated more inequalities between rural and urban students than between all Black and White students. When combined, however, racial discrimination and different fiscal capacities for rural/urban districts ensured that poorer, rural Black children received the shortest school terms.

As a result of urbanization, more children were living in independent districts than ever before, but the numbers remaining in common school districts, consigned to

⁴⁷"An Act to establish ... State of Texas," *The Laws of Texas*, vol. 9, 570–71.

⁴⁸Eby, *The Development of Education in Texas*, 207.

⁴⁹"An Act to authorize cities and towns to levy and collect taxes for the construction or purchase of public buildings ... and to issue bonds therefor," *The Laws of Texas*, vol. 9, 835–36; "An Act to amend an act passed at the Regular Session of the Twenty-sixth Legislature, approved April 20, 1899," *General Laws of the State of Texas ... Twenty-Seventh Legislature* (Austin, TX: Van Boeckmann, Schutze & Co., 1901), 312; Eby, *The Development of Education in Texas*, 215–16.

⁵⁰In 1904, school terms in independent districts averaged 166 days for White and 157 days for Black children, while in common districts they averaged 106 days for White and 97 days for Black children. Eby, *The Development of Education in Texas*, 216; Arthur Lefevre, *Fourteenth Biennial Report of the State Superintendent of Public Instruction for the Years Ending August 31, 1903, and August 31, 1904* (Austin, TX: State Department of Education, 1905), 272, 289, 327, 346.

Table 1. Type of fiscal power and date of each power's conferral by the Texas State Legislature to independent and common districts, respectively

Fiscal Power	Date Conferred	
	Independent Districts	Common Districts
Local taxation allowed with approval of 2/3 of property taxpayers (changed to a bare majority of property tax payers)	1876 (1908)	1884 (1908)
*local tax rate maximum set at 0.2%		1884
*local tax rate maximum set at 0.25%	1876	
*local tax rate maximum set at 0.5%	1879	1908
*local tax rate maximum abolished	1920	1920
Local government allowed to issue local bonds for school building	1887	1905
Texas's Permanent School Fund allowed to purchase local bonds as part of its investment portfolio	1901	1909

Sources: "An Act to establish ... Public Free Schools," Gammel, *The Laws of Texas*, vol. 8, 1045; "An Act to amend article ... Sixteenth Legislature," Gammel, *The Laws of Texas, 1822-1897*, vol. 9, 81; "An Act to establish ... State of Texas," Gammel, *The Laws of Texas, 1822-1897*, vol. 9, 570-71; "An Act to authorize cities and towns to levy and collect taxes for the construction or purchase of public buildings ... and to issue bonds therefor," Gammel, *The Laws of Texas, 1822-1897*, vol. 9, 835-36; "An Act to amend an act passed at the Regular Session of the Twenty-sixth Legislature, approved April 20, 1899," *General Laws of the State of Texas, Passed at the Regular Session of the Twenty-Seventh Legislature* (Austin, TX: Van Boeckmann, Schutze & Co., 1901), 312; "Schools—Providing for a complete system of public free schools in Texas," Gammel, *The Laws of Texas, Supplement Volume ... 1822-1897*, vol. 8, 282-84; "Taxation—Submitting Amendment to Constitution," L. T. Dashiell, ed., *General Laws of the State of Texas, Passed at the Regular Session of the Thirtieth Legislature* (Austin, TX: Van Boeckmann-Jones Co., 1907), 413-14; "An Act to amend Sections 2, 3, 4, 5, and 6 of Chapter 124 of the Acts of the Regular Session of the Twenty-ninth Legislature relating to the investment of the permanent school fund," W. B. Townsend, ed., *General Laws of the State of Texas, Passed by the Thirty-First Legislature at its Regular Session* (Austin, TX: Van Boeckmann-Jones Co., 1909), 216-19; Eby, *The Development of Education in Texas*, 233.

worse educational experiences, had only fallen from around 90 percent in 1882 to 75 percent in 1900. Surprisingly, by 1900 a larger percentage of Texas's Black children (27 percent) lived in independent districts than White children lived in them (25 percent). Enrollment, however, was lower for Black children than for White children in all types of districts but especially for independent districts, in which only 86 percent of eligible Black children enrolled—Whites actually overenrolled in independent districts as transfer students from neighboring common districts. Racial disparities in educational provision were likely important reasons for the gaps in enrollment. Just to take one example, the entire state of Texas contained only 66 school libraries for Black pupils—56 of which were in independent districts—while 610 school libraries were operating for White pupils. That meant that there were approximately 2,148 enrolled Black students for each school library compared to 952 enrolled White students for each school library.⁵¹

⁵¹Hollingsworth, *Third Biennial Report*, 3, 5; Eby, *The Development of Education in Texas*, 216; Lefevre, *Fourteenth Biennial Report*, 272, 289, 327, 346.

The first decade of the twentieth century saw repeated extensions of independent district powers to common districts. A 1905 law allowed common districts to also issue bonds for school building; a constitutional amendment passed in 1908 enhanced the fiscal powers of all districts by allowing tax votes to pass with a simple majority instead of two-thirds of taxpaying voters and it raised the ad valorem tax limit for common districts from 0.2 percent (20 cents on \$100 of property) to the 0.5 percent limit set for independent districts; and a 1909 law allowed the Permanent School Fund to invest in common district bonds just as it had independent district bonds. Finally, in 1910 the Texas Legislature eliminated the community system in the remaining thirteen counties where it was in operation.⁵²

Racial discrimination and the reduced fiscal capacities and smaller taxable property wealth of common districts ensured that Black educational experiences were worst in common districts. By 1910, Black students were slightly more likely than White students to reside in common than in independent school districts. But residing in an independent district did not result in equivalent experiences for Black and White children. Independent districts consistently had better quality schoolhouses for both races than common districts, but a far higher proportion of Black schools were rated fair or bad than White schools in both types of districts. In 1909, White attendance rates in independent districts were considerably higher than in common districts, but the rates for Black students were nearly identical, and neither the rate for Black student attendance in independent districts nor that for common districts rose to the level of White attendance in common districts.⁵³ Although Black teachers—in both common and independent districts—were more likely than their White counterparts to have graduated from a normal school or college, they were consistently paid less than their White peers.⁵⁴ In short, though education expenditures were higher in independent districts, the benefits flowed disproportionately to White students in those districts rather than Black students.

A drive by education reformers to give common districts the taxing, spending, and borrowing powers of independent districts aimed to eliminate inequalities in educational provision between rural and urban areas—though not, as noted, between Black and White children.⁵⁵ In 1907, progressive education activists formed the Conference for Education in Texas to push this agenda of reform, efficiency, and administrative

⁵²“Schools—Providing for a complete system of public free schools in Texas,” Gammel, *The Laws of Texas, Supplement Volume ...*, vol. 8, 282-84; “Taxation—Submitting Amendment to Constitution,” Dashiell, ed., *General Laws of the State of Texas ... Thirtieth Legislature*, 413-14; “An Act to amend Sections 2, 3, 4, 5, and 6 of Chapter 124 of the Acts of the Regular Session of the Twenty-ninth Legislature relating to the investment of the permanent school fund,” Townsend, ed., *General Laws of the State of Texas ... Thirty-First Legislature at its Regular Session*, 216-19; Eby, *The Development of Education in Texas*, 223-33. By 1910, only 4 percent of White schoolchildren but 8 percent of Black schoolchildren were attending community schools. See F. M. Bralley, *Seventeenth Biennial Report, State Department of Education, 1908-1910* (Austin, TX: State Department of Education, 1911), 11, 88.

⁵³Sixty-two percent of White children lived in common districts, compared with 66 percent of Black children who lived in them. Attendance rates for Whites were 82 percent in common and 93 percent in independent districts, while the Black rates were 77.5 percent in common and 78 percent in independent districts. Bralley, *Seventeenth Biennial Report*, 112, 129, 203.

⁵⁴Bralley, *Seventeenth Biennial Report*, 156, 277.

⁵⁵The racial disparities outlined above continued even after progressives succeeded in increasing local taxing powers. See S. M. N. Marrs, *Twenty-Third Biennial Report, State Department of Education, 1922-1924* (Austin, TX: State Department of Education, 1924), 291-315.

professionalization. The Conference comprised teachers, state-level education officials, a new group of education professors at the University of Texas, out-of-state philanthropists, and New South boosters.⁵⁶ In an article for the Conference's first publication, the superintendent of the state's Blind Institute in Austin (and future state superintendent of public instruction) lamented Texas's meager fiscal outlays for education. Superintendent F. M. Bralley noted that, relative to other states, Texas raised a significantly smaller portion of its educational expenditures from local sources (around 30 percent) as compared with state sources (around 70 percent). Worse yet, the overall per-student expenditure for education, as determined by the amount of state spending, was significantly below that of midwestern and western states. Because so many children lived in common districts without fiscal powers, schools funded themselves through "the unsatisfactory and antiquated plan of 'private subscription,'" meaning tuition. Bralley averred that giving local districts greater fiscal capacities would "strike the shackles from the country schools of Texas and ... give to the country people the privilege and opportunity of adequately supporting their own schools." From the later vantage point of *Rodriguez*, it is clear that in this strategy lay the foundation for future forms of inequality based in local property wealth, but at this point, reformers pushing for local funding of schools believed that it would result in "equal and exact justice to all with special privileges to none."⁵⁷

The Case of Kirbyville

The town of Kirbyville provides a helpful example of how local White communities navigated this Progressive Era shift in the taxing policy landscape and how advocates of public schooling used local fiscal powers to circumvent powerful, obstinate landowners like John Henry Kirby. The case of Kirbyville reveals that even as policymakers broadened local taxing authority, they inadvertently strengthened inequalities in schooling. Moreover, the political battles in Kirbyville centered not on improving *all* schools, but solely the White schools.

Kirby (1860-1940) grew up in Tyler, Texas, and got his start in the Piney Woods of East Texas in the lumber industry. By 1890 he owned several companies and was considered a man of substantial means. Over the next forty years he expanded into railroads and oil drilling, connecting the Piney Woods to global markets. Kirby took his position as a wealthy citizen seriously and supported numerous charitable causes, including education.⁵⁸ He represented the old style of large-landowner

⁵⁶For more on Progressive Era reforms in education, see Tracy L. Steffes, *School, Society, and State: A New Education to Govern Modern America, 1890-1940* (Chicago: University of Chicago Press, 2012). For more on the philanthropists pushing for reform of southern educational systems, see Joan Malczewski, *Building a New Educational State: Foundations, Schools, and the American South* (Chicago: University of Chicago Press, 2016).

⁵⁷F. M. Bralley, "Local Taxation for Educational Purposes in Texas," *Bulletin of the Conference for Education in Texas* 1 (Sept. 1907), 9-11, Briscoe Center for American History, University of Texas at Austin, Austin, TX.

⁵⁸George T. Morgan Jr., "The Gospel of Wealth Goes South: John Henry Kirby and Labor's Struggle for Self-Determination, 1901-1916," in *Texas Labor History*, ed. Bruce A. Glasrud and James C. Maroney (College Station: Texas A&M University Press, 2013), 142.

decision-making that had ruled Texas during the Mexican era and under slavery.⁵⁹ But changes in southern life were bringing new groups to political power. The rising middle class of White professionals, merchants, and managers became another locus of power in Texas, one that often worked in tandem with large landowners but also stressed progressive priorities, particularly public education.⁶⁰ As state policies on local school taxation changed, Kirby became more and more involved in trying to limit tax valuations on his corporate property as well as the tax rates that local districts levied.

In early 1907, an effort to build a new White school in Kirbyville appeared to be gaining steam. Kirbyville is located in Jasper County, whose population in 1908 was roughly 38 percent African American and 62 percent White.⁶¹ Despite comprising one-third of the population and with over a thousand school-age children, African Americans had only two graded schools and no high schools in the entire county.⁶² But the White citizens of Kirbyville were focused on improving the relatively privileged position of the town's White students and not the educational conditions of its Black students.

A letter from one of Kirby's trusted agents outlined the town's effort to shift from being a common to an independent school district—a move that would allow the district to issue bonds for school building and to raise the ad valorem tax rate to 0.5 percent (50 cents on \$100 of property). The worry for Kirby was twofold: (1) this shift would lead to higher tax rates, and (2) his "Kirby Lumber Company property" would be subject to a higher valuation.⁶³ Kirby hatched an alternative. In exchange for his making a significant "contribution" to the school, "the leading citizens of the town" would "guarantee me that if a school district is organized the properties of the Kirby Lumber Company shall never at any time be included therein." He told his agent not to say that the plan came from Kirby, but to instead seed it in the community, "as a suggestion from the citizens themselves in recognition of my generosity."⁶⁴

The matter remained dormant until the summer months, when the all-White Kirbyville High School's trustees communicated to Kirby "the absolute necessity of

⁵⁹Gary Clayton Anderson, *The Conquest of Texas: Ethnic Cleansing in the Promised Land, 1820-1875* (Norman: University of Oklahoma Press, 2005); Andrew J. Torget, *Seeds of Empire: Cotton, Slavery, and the Transformation of the Texas Borderlands, 1800-1850* (Chapel Hill: University of North Carolina Press, 2015); Walter L. Buenger, *Secession and the Union in Texas* (Austin: University of Texas Press, 1984); James Marten, *Texas Divided: Loyalty and Dissent in the Lone Star State, 1856-1874* (Lexington: University of Kentucky, 1990); Walter L. Buenger and Robert A. Calvert, eds., *Texas through Time: Evolving Interpretations* (College Station: Texas A&M University Press, 1991).

⁶⁰Walter L. Buenger, *The Path to a Modern South: Northeast Texas between Reconstruction and the Great Depression* (Austin: University of Texas Press, 2001).

⁶¹US Census Bureau, "Supplement for Texas," *Thirteenth Census of the United States* (Washington, DC: GPO, 1913), 624.

⁶²Kirbyville itself was home to eighty Black school-age children, and the town provided them with one graded, wood-frame schoolhouse with a single teacher. R. C. Withers, "Annual Report of R.C. Withers County Superintendent of Public Instruction of Jasper," 1907-1908, Jasper County, Box 4-23/268, Texas State Department of Education County Superintendent Records, Archives and Information Services Division, Texas State Library and Archives Commission, Austin TX.

⁶³J. A. Herndon to John H. Kirby, Feb. 20, 1907, Folder 5: Schools, 1906-1909, Box 57, John Henry Kirby Papers, Special Collections, University of Houston Libraries, Houston, TX (JHKP hereafter).

⁶⁴Kirby to J. A. Herndon, Feb. 22, 1907, Folder 5: Schools, 1906-1909, Box 57, JHKP.

building, and building at once, the needed addition to the present school building.”⁶⁵ The district needed to raise \$4,000 for the building, and the trustees were seriously considering a plan to “incorporate the district making a special [independent] school district and bond it for ... twenty years for which a special tax would be voted to liquidate the indebtedness.” By becoming an independent district, the schools could be built from the property tax revenue of the incorporated area. The townspeople recognized, however, that because “the Kirby Lumber Company owned about one-third of the taxable values of the district,” it would be good to get John Kirby’s “judgment.”⁶⁶ Kirby was unequivocal that “it was a bad thing to fasten a bonded debt on a community,” and he shared a counterplan: that “the citizens at Kirbyville raise \$2,000.00 and he would raise a like amount which would make the incorporation unnecessary.”⁶⁷ The trustees agreed that Kirby’s “most liberal offer should be accepted” but warned about community opposition to funding capital projects through donations instead of local taxes: “There are those among us who feel that this money should be raised by the levy of a special tax.”⁶⁸

What those opponents, and likely Kirby himself realized, was that a one-time donation would never rival the amount of revenue that could be raised from a higher property tax rate. Kirby seemed willing to suffer a short-term loss to avoid the higher long-term taxation he would be subject to if the locals voted to move from a common to an independent district. By the end of the summer, Kirby received “the signatures from about one hundred of [the] leading citizens of Kirbyville that they would oppose and vote against an incorporation Tax in this district for a period of twenty years.”⁶⁹ Kirby appeared to have won out. Eventually, the citizens of Kirbyville raised \$2,000, and the trustees asked Kirby for his share of the donation.⁷⁰

However, the citizenry grew increasingly concerned about Kirby’s willingness and ability to pay as the Panic of 1907 reverberated through the country. Their fears were warranted. In numerous letters Kirby’s agents worked to reduce his contributions. Instead of contributing money, the agents said they would donate the company’s lumber and hardware for the school, which the trustees accepted as better than nothing.⁷¹ But after the donation was made, the lumber and hardware only amounted to \$1,349.28, leading the School Board to request the remaining \$650.72 so that they can “finish paying off the indebtedness against the building.”⁷² Though the district did not become independent and therefore could not have issued bonds, it clearly spent money it did not have and was waiting on Kirby’s contribution to pay the “unpaid bills on the building.”⁷³ Kirby’s agents stonewalled again, after which the back-and-forth peters out in the record.⁷⁴

⁶⁵ Board of Trustees of Kirbyville to Kirby, June 28, 1907, Folder 5: Schools, 1906-1909, Box 57, JHKP.

⁶⁶ Unsigned to Kirby, June 18, 1907, Folder 5: Schools, 1906-1909, Box 57, JHKP.

⁶⁷ Unsigned to Kirby, June 18, 1907, Folder 5: Schools, 1906-1909, Box 57, JHKP.

⁶⁸ Board of Trustees of Kirbyville to Kirby, June 28, 1907, Folder 5: Schools, 1906-1909, Box 57, JHKP.

⁶⁹ S. B. Conn to Kirby, Aug. 16, 1907, Folder 5: Schools, 1906-1909, Box 57, JHKP.

⁷⁰ J. A. Herndon to Kirby, Jan. 10, 1908, Folder 5: Schools, 1906-1909, Box 57, JHKP.

⁷¹ J. A. Herndon to Kirby, May 23, 1908, Folder 5: Schools, 1906-1909, Box 57, JHKP.

⁷² C. J. Woods to Kirby, Oct. 1, 1908, Folder 5: Schools, 1906-1909, Box 57, JHKP.

⁷³ C. J. Woods to Kirby, Feb. 5, 1909, Folder 5: Schools, 1906-1909, Box 57, JHKP.

⁷⁴ Chief Clerk to C. J. Woods, Feb. 6, 1909, Folder 5: Schools, 1906-1909, Box 57, JHKP.

Changes at the state level, however, had created new options for common school districts. The state's aforementioned 1908 education law gave common districts the ability to raise their ad valorem tax rates to the independent districts' max of 0.5 percent (50 cents on \$100 of property), and it lowered the threshold for successful votes to a bare majority of property taxpayers instead of two-thirds. Shortly after the law went into effect, Kirbyville moved forward with a plan to increase taxes for "the special school levy for this district from 15 cents to 40 cents," in order to fund a longer school term and reduce class sizes.⁷⁵ But the absence of a continuing correspondence between district officials and Kirby indicates another potential reason for raising taxes: the district would no longer have to hound Kirby for the remainder of his unmet donation in order to pay off the outstanding bills on the school. Despite Kirby's best efforts, the state's changes in local school district tax policy had enabled the district to charge a higher tax rate and fund its operations and capital projects through local fiscal capacities instead of relying on the largesse of wealthy patrons.

Nevertheless, Kirby continued his efforts to reduce his tax bill across East Texas school districts. Kirby and his agents pointed out the gross unfairness, as they saw it, of state legislators allowing localities to raise taxes and property valuations. One agent relayed to Kirby that they were "doing all we could to keep down high valuations of property in this county and high taxes in general."⁷⁶ After Jasper County reassessed Kirby's property as more valuable, Kirby reacted with deep frustration. Prefacing that "I never object to paying my fair proportion of the public taxes because I recognize that it is every citizen's duty to contribute to the expenses of government according to his property," Kirby proceeded to denounce the tax valuation as onerous and inaccurate.⁷⁷ After all he had done for Jasper County, it seemed to him that "the Tax Boards go on from year to year seeking new means of burdening my industry and depriving me of the hope of future reward."⁷⁸ Kirby complained that "the public authorities" were "trying to confiscate my properties through taxation."⁷⁹ Increasingly he resorted to threats against East Texas school districts, warning that his companies "can pick up and move on short notice to any other community where the disposition of the public authorities may be more friendly."⁸⁰ In 1917, Kirbyville decided to shift from a common to an independent school district, but by that time, it had already increased its tax rate to the 0.5 percent maximum set by the state.⁸¹ Although Kirby managed to avoid property taxes for a time, the state's growing tolerance for, indeed reliance on, school district taxation allowed the town of Kirbyville to fund its educational priorities independent of the proclivities of its wealthiest landowner.

Although the state was extending new taxing powers to local districts, it was simultaneously baking in inequalities that would come to a head nearly seventy years later in *SAISD v. Rodriguez* (1973). All districts would share the same fiscal powers, but

⁷⁵ J. A. Herndon to Kirby, Mar. 23, 1909, Folder 5: Schools, 1906-1909, Box 57, JHKP.

⁷⁶ W. J. B. Adams to Kirby, Nov. 1, 1913, Folder 7: Santa Fe Townsite Co. Taxes, 1913, Box 79, JHKP.

⁷⁷ Kirby to Lucius W. Smith, June 28, 1913, Folder 7: Santa Fe Townsite Co. Taxes, 1913, Box 79, JHKP.

⁷⁸ Kirby to Judge H. C. Howell, May 30, 1913, Folder 7: Santa Fe Townsite Co. Taxes, 1913, Box 79, JHKP.

⁷⁹ John H. Kirby to James L. Kirby, June 29, 1917, Folder 13: Taxes, 1916-1987, Box 31, JHKP.

⁸⁰ John H. Kirby to James L. Kirby, Aug. 11, 1917, Folder 13: Taxes, 1916-1987, Box 31, JHKP.

⁸¹ J. W. Beeler to E. J. Eyres, July 19, 1917, Folder 13: Taxes, 1916-1987, Box 31, JHKP.

the continuation of the district system with its spatial arrangement of district boundaries and property wealth ensured that wealthier, more urbanized, and Whiter districts would have access to greater tax bases than poorer, more rural, and predominantly non-White districts. As Texas's population continued to shift to cities and suburbs, race and class discrimination would play a key role in shaping housing patterns and inequalities in school finance. In the first decades of the twentieth century, giving localities new fiscal powers seemed like the most viable path to leveling the White educational experiences between town and country, but even in the 1910s, an alternative path to greater equality in the provision of schooling became a possibility: state supplemental funding for particular districts.

The 1910s: Rural Texans Get Supplemental Funds for Rural Districts

In removing the state's constraints on common districts, progressive activists meant to reduce inequalities, but while it reduced disparities between common and independent districts, the policy's reliance on local property taxes led to a widening divergence between property-wealthy and property-poor school districts. All districts might have similar fiscal powers, but if the per-student tax base of one district was greater than that of another district, local taxation would perpetuate patterns of educational inequality. To counteract these inequalities, rural interests pushed for additional state aid to rural schools, which provided the third pivotal moment: if this aid had been broadened it could have eventually provided a path to greater equality between property-poor and property-wealthy districts—boundaries that often overlapped with White and non-White schools.

State officials tacitly condoned the inequalities resulting from a reliance on local taxation. As one official propounded, "In Texas the death knell is being sounded by a sovereign citizenship against the reign of ignorance ... through an efficient system of public education, maintained largely through the means of local taxation."⁸² The state's past approach—harmonizing the fiscal capacities of independent and common districts—would do nothing to correct for the differences in the value of districts' taxable property. In a bid to catch up with their urban counterparts, rural Texans began a concerted effort to garner disproportionately more state educational resources.

Rural Texans succeeded in 1915, when the legislature appropriated supplemental equalization funds for "country schools." Only schools with fewer than two hundred students would qualify, and they also had to "levy a local school tax of not less than fifty cents" on \$100 of property—the legally allowed maximum.⁸³ As Texas school finance historians have pointed out, the goal of this funding was "not to provide equalization in a modern sense" but to "stimulate local tax effort in rural districts."⁸⁴ Nevertheless, an important line had been crossed—the state legislature had finally broken from the

⁸²University of Texas, "Rural School Education: Lectures Delivered and Outlines of Round Tables Held During Rural School Education Week Under the Auspices of the University Summer Schools, July 15-19, 1912," Bulletin No. 251 (Austin, TX: Austin Printing Company, 1912), 65, <https://babel.hathitrust.org/cgi/pt?id=loc.ark:/13960/t0zp4gz9k&view=1up&seq=3>.

⁸³John G. McKay, ed., *General Laws of the State of Texas Passed at the First Called Session of the Thirty-Fourth Legislature* (Austin, TX: A. C. Baldwin & Sons, 1915), 22–23.

⁸⁴Thomas and Walker, "Texas Public School Finance," 235.

long tradition of equally distributing funds to districts based on student enrollment and had instead given rural districts an extra dollop of money.

The provision of rural school aid offered the third pivotal moment for rethinking the relationship between state and local funding. For the first time in the state's history, state funds had been set aside for a particular set of schools that had been deemed in need. Although the plan was still hitched to the mechanism of local taxation, it represented a new path for possible future reforms: the state could increase its aid to target and actually equalize spending across Texas's schools regardless of taxable property wealth.

Constitutional amendments passed in 1918 codified this rural school equalization aid, and also authorized the state to provide textbooks to all schools free of charge through an additional statewide property tax.⁸⁵ The following year, in the midst of the post-World War I economic slump, the Texas Legislature authorized an "emergency" general revenue appropriation to fund the state's per-capita apportionment above the one-fourth maximum allowed in the constitution.⁸⁶ Another line had been crossed, and the legislature repeatedly appropriated from the general revenue to public schools.⁸⁷ The biggest accomplishment for progressive public education advocates, such as the hard-charging state superintendent of public instruction Annie Webb Blanton, came with a 1920 constitutional amendment that entirely abolished the local tax limit for independent and common school districts alike.⁸⁸

The flurry of progressive policy changes in the first three decades of the twentieth century drove a transformation in the composition of Texas's public schools. Whereas in 1901-1902 there had been 2,500 community schools, nearly 6,000 common districts, and 288 independent districts, by 1921-1922 there were roughly 7,300 common districts and 858 independent districts, and a majority (54 percent) of children were enrolled in independent districts.⁸⁹ Simultaneously, though, rural and urban disparities in education persisted. In the 1926-1927 school year, the average term of a common district school ran for 131 days while that of an independent district ran for 153 days.⁹⁰ In the 1922-1923 school year, based on representative selections of schools of both types, median property valuation per student ranged from between \$1,000 and \$3,000 for a selection of common districts to between \$2,400 and \$5,200 for independent districts. Similarly, average tax rates diverged with a range of 22 to 53 cents on \$100 of property for common districts compared with 51 to 68 cents for independent districts.⁹¹

⁸⁵Tex. Const. art. VII, sec. 3(b) (1876).

⁸⁶George F. Howard, ed., *General Laws of the State of Texas Passed by the Thirty-Sixth Legislature at Its Regular Session* (Austin, TX: A. C. Baldwin & Sons, 1919), 135.

⁸⁷Thomas and Walker, "Texas Public School Finance," 236.

⁸⁸Howard, *General Laws of the ... Thirty-Sixth Legislature*, 356-57; Debbie Mauldin Cottrell, *Pioneer Woman Educator: The Progressive Spirit of Annie Webb Blanton* (College Station: Texas A&M University Press, 1993), 68-69.

⁸⁹Eby, *The Development of Education in Texas*, 229; Annie Webb Blanton, *Twenty-Second Biennial Report of the State Superintendent of Public Instruction, 1920-1922* (Austin, TX: State Department of Education, 1922), 166, 204.

⁹⁰S. M. N. Marrs, *Twenty-Fifth Biennial Report, State Department of Education, 1926-1928* (Austin, TX: State Department of Education, 1929), 400.

⁹¹B. F. Pittenger and George A. Works, "Texas Educational Survey Report" (Austin, TX: Texas Educational Survey Commission, 1922), 89-100. This Survey Report had multiple volumes. This data comes from Vol. 2 titled "Financial Support."

Although the state had eliminated glaring differences in the taxing capacities of local districts, the local-financing system remained tied to highly unequal local property wealth.

The disparities between common and independent districts were being reproduced within the ranks of independent districts as more and more rural communities voted to become independent. Urban and suburban independent districts increasingly contained higher property values while smaller independent districts—whether rural, majority non-White, economically disadvantaged, or some combination of all three—struggled with lower property values. As one historian explained, “A dual society emerged—one of good schools and a prosperous economy ... and one of poverty and limited educational opportunities.”⁹² A 1922 special report noted that “the wealthy district finds it possible to provide its children with a longer school year at a lower tax rate than does its less wealthy neighbor.” Deeming the rural school aid insufficient, the report harangued the Texas Legislature for making “no attempt ... to recognize the differences in wealth in the distribution of the State apportionment.”⁹³ In fact, the report pointed out, the state apportionment often *compounded* interdistrict and inter-county disparities by distributing aid based on distorted levels of locally set property assessments.⁹⁴ Criticizing these “injustices,” the report called for “the equalization of assessment rates among the counties” to ensure greater uniformity in what each school district was collecting in property taxes.⁹⁵ Despite the report’s detailed research and clear plan of action, the state legislature refrained from the sweeping overhaul called for in the report. Texas’s state funding for public schools was meant to equalize local education disparities, but in reality the state’s contributions widened them. Although Texas’s system would change in the ensuing decades, the state funding system’s continued exacerbation of local inequalities would form a central argument for the plaintiffs in *Rodriguez*.

While overall interdistrict disparities were deepening, so too were intra-district inequalities between White and Black, and White and “Mexican” pupils—within common and independent school districts alike.⁹⁶ Data from 1922 indicate that twelve dollars was apportioned from state funds for each child regardless of race or ethnicity. Despite receiving the same amounts for each student, however, local districts spent that money disproportionately on White children. A survey of twelve districts across four counties disclosed that spending on teacher salaries for White students ranged from two to seven times that for Black students, while the average school term for White students was seven months compared with five months for Black students. Another survey of twelve districts across three counties revealed even more egregious disparities between White and “Mexican” students. Spending on teacher salaries for White students ranged from 1.5 to 18.5 times that for “Mexican” students, while the

⁹²Buenger, *The Path to a Modern South*, 111.

⁹³Pittenger and Works, “Texas Educational Survey Report,” 85.

⁹⁴Pittenger and Works, “Texas Educational Survey Report,” 60.

⁹⁵Pittenger and Works, “Texas Educational Survey Report,” 69.

⁹⁶“Mexican” was the undefined term used in the report. As was common for White researchers at the time, the authors likely counted all children with Spanish-language surnames in this category regardless of nationality or self-identification.

average school term for White students was eight months compared with five months for “Mexican” children.⁹⁷

Progressive educational reformers racked up a series of important wins in the first few decades of the twentieth century. Though they supported rural Texans in their successful effort to procure supplemental aid for rural schools, the more crucial change to Texas’s school finance system was the leveling of common and independent district fiscal capacities. Progressives believed that local taxation would provide more robust funding for public education, but in the process they locked in a system that would simultaneously tie spending to local property wealth and its attendant disparities. Without greater state spending, the supplemental aid would never be able to counteract the underlying inequalities between local property tax systems. Instead of choosing a state-funded system that would equalize differences between property-wealthy and property-poor common and independent districts—a tool that could later have even been used to correct racial and ethnic inequalities—reformers and state legislators doubled down on a system of local funding tied to local property wealth.

The 1940s: The State Spends More on Education While Worsening Disparities

The next twenty years saw minimal tweaks to the school financing system.⁹⁸ As the twentieth century progressed, more and more school districts became independent and disparities between independent districts grew. Hence, in *Rodriguez*, all the original districts involved in the case were independent districts. Nevertheless, the common/independent district division broadly mapped onto the rural/urban divide until the Gilmer-Aikin reforms in the late 1940s. These reforms, the fourth pivotal moment, created a Minimum Foundation Program, which allocated a minimum amount of state funding to districts based on a complicated formula and dramatically increased the overall amount of state spending on public education. Although the Gilmer-Aikin reforms were meant to reduce inequalities, the formula ultimately exacerbated inequalities by directing larger proportions of state funding to higher-wealth school districts.

Conservatives and business interests successfully and repeatedly blocked major education reform efforts proposed by prominent commissions in 1922 and 1936.⁹⁹ An alliance of anti-tax conservatives, members of the politically connected Texas Manufacturers Association, and newly powerful oil interests banded together to fight against higher spending and tax increases in Texas (and with the rise of the New Deal, nationally).¹⁰⁰ Conservative legislators levied small excise taxes on products (such as

⁹⁷Pittenger and Works, “Texas Educational Survey Report,” 95–96.

⁹⁸The period 1930–1950 marked a resurgence of conservative power in Texas, ruled by what one historian termed “a loosely knit plutocracy ... dedicated to a regressive tax structure, low corporate taxes, antilabor laws, political, social, and economic oppression of Blacks and Mexican-Americans ... and extreme reluctance to expand state services.” George Norris Green, *The Establishment in Texas Politics: The Primitive Years, 1938–1957* (Westport, CT: Greenwood Press, 1979), 17.

⁹⁹For the 1922 report, see Pittenger and Works, “Texas Educational Survey Report.” For the 1936 report, see L. D. Stokes, *Report of the Results of the Texas Statewide School Adequacy Survey*, Works Progress Administration Project 65–66–7752 (Austin, TX: Texas State Board of Education, 1936).

¹⁰⁰Green, *The Establishment in Texas Politics*, 14–20, 117–20.

cigarettes and liquor) as well as minimal taxes on the production of oil and natural gas to better fund schools while blocking corporate tax increases or a state income tax that would have yielded significantly higher revenues. The legislature did, however, increase the amount of rural aid for qualifying schools and pushed for greater school consolidation.¹⁰¹ But inequalities continued to mount and by 1948 the Texas school system was in dire straits—the entire state apparatus was increasingly seen as unwieldy, backward, and parsimonious. Despite a full recovery from the Great Depression, by the 1947–1948 school year, Texas was actually spending a lower percentage of its total income on education than it had in 1937–1938 (a decline from 3.3 percent to 2.8 percent).¹⁰² Additionally, a wave of school consolidation sweeping the country had less success in Texas where, by 1948, 16 percent of high schools enrolled fewer than fifty students and 51 percent enrolled fewer than a hundred students. Rural areas comprised the majority of these small schools and, as a result, could not offer the accredited academic programming of which larger schools were capable.¹⁰³

The years after World War II brought a baby boom that promised to overwhelm Texas's understaffed schools and underpaid teachers. By the late 1940s, Texas, like other states in the nation, had a teacher shortage and forecasts promised it would get worse.¹⁰⁴ But Texas also had lower teacher salaries compared to the rest of the United States and teacher salary increases over the 1940s failed to keep pace with salaries of other trained professionals or the rate of inflation.¹⁰⁵ The state's White political leadership, worried about sustaining Texas's demographic and economic growth, decided that it was finally time to enact major reforms. A coalition of conservative Democrats, business interests, and educators came together to serve on a fact-finding commission from 1948–1949 known as the Gilmer-Aikin Committee, which proposed legislative overhauls to Texas's school system.

One of the biggest changes was the adoption of the Minimum Foundation Program (MFP). Other regions of the country began adopting this type of program after the publication of a famous report by researchers George Strayer and Robert Murray Haig on New York's state system of school finance. Strayer and Haig advocated allowing wealthy local districts to continue to raise revenue to meet “the satisfactory minimum offering” in terms of education, but for any poorer districts unable to raise sufficient revenue, “deficiencies would be made up by state subventions.”¹⁰⁶ New York adopted the Strayer-Haig plan in the mid-1920s by establishing a set minimum educational

¹⁰¹Thomas and Walker, “Texas Public School Finance,” 238–39; Stokes, *Report of the Results of the Texas Statewide School Adequacy Survey*, 19.

¹⁰²Council of State Governments, *The Forty-Eight State School Systems: A Study of the Organization, Administration, and Financing of Public Elementary and Secondary Education* (Chicago: Council of State Governments, 1949), 175–76.

¹⁰³Council of State Governments, *The Forty-Eight State School Systems*, 194.

¹⁰⁴Waurine Walker, “Needed within the Next Ten Years: 1,277,714 New Teachers,” *Texas Outlook* 32, no. 12 (Dec. 1948), 23.

¹⁰⁵R. H. Hughes, “We Are Cheating our Children: Let's Pay the Schoolteachers,” *Texas Outlook* 30, no. 10 (Oct. 1946), 16–17.

¹⁰⁶George D. Strayer and Robert Murray Haig, *The Financing of Education in the State of New York: A Report Reviewed and Presented by the Educational Finance Inquiry Commission* (New York: MacMillan Co., 1923), 174–75.

offering and providing the amount of funds necessary to meet that offering. By the 1940s and 1950s these foundation programs were sweeping the South as southern legislatures attempted to show progress toward the equalization of Black and White educational expenditures in order to maintain racial segregation.¹⁰⁷ The implementation of Texas's MFP was the final pivotal moment in the leadup to *Rodriguez*. The MFP was born out of a real need for educational reform but also a campaign to cement inequalities, not alleviate them. By the time of *Rodriguez* it was clear to many educational activists, including the lawyers of Demetrio Rodriguez and Supreme Court Justice Thurgood Marshall, that the MFP was exacerbating educational inequalities between property-wealthy and property-poor school districts.

But in the late 1940s, the Gilmer-Aikin Committee's work was couched in a language of greater equalization and state support. Its initial report argued that "the funds derived from local taxation for the support of the [Minimum Foundation] program should not exhaust local taxing power." Put differently, the state was tasked with "underwriting the cost above a reasonable, uniform local [tax] effort."¹⁰⁸ The committee outlined that the MFP should ideally be funded with "local taxation" for 25 percent and state funds "to provide the remaining cost."¹⁰⁹ The committee attempted to create an equalizing mechanism through a convoluted "economic index" that accounted for each "county's ability to support schools in relation to the ability of other counties in the state."¹¹⁰ The state's portion of the MFP would be doled out proportionally to each county depending on the economic index. This was meant to correct for differences in property wealth, but because state disbursements of the MFP were also tied to teacher salary schedules (which increased with teacher levels of education and years of experience), property-wealthy districts ended up receiving more money because they were more likely to employ higher-educated, more experienced teachers. The MFP also refrained from capping local district spending, allowing property-wealthy districts to continue to outspend their property-poor counterparts.

Demonstrating the all-White committee's commitment to separate but equal segregation, the Gilmer-Aikin final report stressed that "state funds should be so distributed that opportunity for having a minimum foundation program will be equal in each system and between the races."¹¹¹ The legislation specified that salary schedules for Black and White teachers must be equal and that the minimum requirements for schooling

¹⁰⁷ Paul R. Mort, *The Foundation Program in State Educational Policy: A Review of Research Studies Relating to the Financing of Schools* (Albany: University of the State of New York, 1957), 13; Wayne J. Urban, Jennings L. Wagoner, and Milton Gaither, *American Education: A History*, 6th ed. (New York: Routledge, 2019), 267. For more on the southern attempt to shore up segregation by making "separate" a bit more "equal," see Kimberley Johnson, *Reforming Jim Crow: Southern Politics and State in the Age before Brown* (Oxford: Oxford University Press, 2010), 116–43.

¹⁰⁸ Gilmer-Aikin Committee on Education, "To Have What We Must: A Digest of Proposals to Improve Public Education in Texas" (Austin, TX: Texas Legislature, Sept. 1948), 14–15.

¹⁰⁹ Gilmer-Aikin Committee on Education, "To Have What We Must," 15.

¹¹⁰ Gilmer-Aikin Committee on Education, "To Have What We Must," 17.

¹¹¹ Joint Committee, "Final Report of the Gilmer-Aikin Committee" (Austin, TX: Texas Legislature, Jan. 25, 1949), 5.

must be equivalent for Black and White students.¹¹² In these years before *Brown v. Board of Education* (1954), Black educators saw the bill as a potential wedge for future litigation efforts. The bimonthly publication of the Teachers State Association of Texas, the Black teachers' association, pointed out that the MFP "is the first legal definition we have had of racial equality in segregated education, in terms of the equitable allotment of funds." The writer of the piece continued, ominously for supporters of segregation, "It [the MFP] should simplify any legal action we may be forced to take in the future against racial discrimination in the public schools of the State." In all bold, the article concluded, "**The law is meticulous in its insistence upon 'separate equality.'**"¹¹³ The members of the Gilmer-Aikin Committee likely saw the MFP as a vital support for prolonging racial segregation, but the state's Black educators and activists saw the new funding regime as the first substantive commitment to dispensing state funds without regard to race.

Funding the MFP, however, would prove a challenge. A 1949 comparative study demonstrated that virtually all school districts would see an increase in state support. Some districts could even see a doubling or tripling of the state's contribution, and only the wealthiest districts in the Dallas and Houston suburbs or oil-rich areas would see a slight decline.¹¹⁴ The final report of the Gilmer-Aikin Committee estimated that \$180 million in annual state spending would be needed to fully cover the MFP, compared with pre-MFP state spending of around \$105 million. Unfortunately, even in the first year of the MFP's operation, the actual state appropriation was only \$140 million, a boost of nearly 50 percent, but short of the amount necessary to fully fund the MFP.¹¹⁵ The chair of the Gilmer-Aikin Committee rightfully claimed that the new system "provides better balanced and more equitable distribution of the burden for school financial support," but the state's unwillingness to fund the MFP's requirements forced local districts to take up the slack, reinforcing the preexisting disparities that the committee had been working to equalize.¹¹⁶ As other scholars noted, "The minimum funded by the state turned out to be more a function of the budgetary process in the legislature than an accurate appraisal of the costs of a minimally adequate education."¹¹⁷

Despite its shortcomings the Minimum Foundation Program remained the overarching framework for Texas's school finance system. The next attempt at changing the system came in the 1960s during an era marked by a widespread push for equality

¹¹²"Foundation School Program," 51st Leg., R.S., ch. 334 § IV-1, 1949 Tex. Gen. Laws 2922-14, in Ben Ramsey, ed., *General and Special Laws of the State of Texas, Passed by the Regular Session of the Fifty-First Legislature* (Austin, TX: The State of Texas, 1949), 632.

¹¹³Joseph J. Rhoads, "Highlights on Texas' New Public School Program," *Texas Standard* (Austin, TX), Sept.-Oct. 1949, 3.

¹¹⁴A Comparative Study of the Effect of the Foundation Program on Certain Texas Schools, Folder 1, Box 39, A. M. Aikin Jr. Papers, Special Collections Department, James G. Library, Texas A&M University at Commerce, TX

¹¹⁵Joint Committee, "Final Report of the Gilmer-Aikin Committee," 6; Texas Education Agency, *Thirty-Sixth Biennial Report, 1948-1950* (Austin, TX: Texas Education Agency, 1951), 247.

¹¹⁶Speech by A. M. Aikin Jr., 1949, "Folder 13," Box 23, A. M. Aikin Jr. Papers, Special Collections Department, James G. Library, Texas A&M University at Commerce, TX.

¹¹⁷Yudof and Morgan, "*Texas: Rodriguez v. San Antonio Independent School District*," 387.

across school district lines.¹¹⁸ Conservative Democratic governor John Connally appointed a Governor's Committee on Public School Education that offered seven broad proposals, all geared around raising the educational floor that had been set by the MFP. Most pertinent to school finance, the committee called for more money from the state for the MFP, argued for *all* state educational funds to be folded into the MFP's equalization program, and pushed for the economic index—"the imperfect index"—to be abolished in favor of a "Market Value Index," which would compute the full value of all property statewide, leveling the differences in property assessment at the local level.¹¹⁹ But Connally left the governorship shortly after the report was published, and the new governor and legislature showed little interest in the reforms. The only action taken was a big boost to teacher salaries, which eliminated any prospect for an increase in state funding of the MFP.¹²⁰ This marked the foreclosure of the last opportunity to change the MFP and chart a path to greater equality in school finance in Texas before *Rodriguez*.

Conclusion: A School Finance System That Reinforces Rural/Urban, Racial, and Class Inequalities

Across the hundred years leading up to the *Rodriguez* decision, Texas political leaders gradually constructed a public school funding system founded on local property taxes and the highly unequal spatial distribution of property wealth across rural/urban, class, and racial lines. The episode from Kirbyville reveals that even as state leaders granted similar fiscal powers to rural and urban districts and liberated them from domination by powerful landowners, they were simultaneously cementing an unequal school finance system deeply reliant on local property taxes. The fact of racial and class segregation in housing and suburban expansion guaranteed inequalities in school district expenditures. From the 1910s onward, the state took a greater hand in providing support to local schools. Funds were meant to be distributed in inverse proportion to local property wealth, but in reality, state systems like the Minimum Foundation Program exacerbated inequalities between school districts.

Justice Lewis Powell skipped over both the Reconstruction era school system and the Democrats' wholesale dismantling of it. In his act of omission, Powell erased an important moment of interracial cooperation and centralized, more equal school funding. He defended Texas's modern system by arguing that "the Texas plan for financing public education reflects what many educators for a half century have thought was an enlightened approach to a problem for which there is no perfect solution." According

¹¹⁸The most prominent book on the subject in the late 1960s was Arthur E. Wise, *Rich Schools, Poor Schools: The Promise of Equal Educational Opportunity* (Chicago: University of Chicago Press, 1968), followed closely by John E. Coons, William H. Clune III, and Stephen D. Sugarman, *Private Wealth and Public Education* (Cambridge, MA: Belknap Press of Harvard University Press, 1970).

¹¹⁹*To Make Texas a National Leader in Public Education: The Challenge and the Chance: Report of the Governor's Committee on Public School Education* (Austin, TX: The Governor's Committee on Public School Education, 1968), 59–66.

¹²⁰Yudof and Morgan, "Texas: *Rodriguez v. San Antonio Independent School District*," 388–90; Thomas and Walker, "Texas Public School Finance," 241.

to Powell, “the Texas plan is not the result of hurried, ill-conceived legislation.”¹²¹ That Texas’s school funding system was the result of lengthy deliberation is undoubtedly true—legislators spent countless hours debating school funding options over the hundred years leading up to *Rodriguez*. But Powell missed something important: Texas’s system *was* ill conceived from the standpoint of equal education spending.

Justice Thurgood Marshall’s dissent presented a more accurate picture of Texas’s school finance system, both in the present as well as historically. Quoting the lower court’s opinion, Marshall inveighed that “the current system [the MFP] tends to subsidize the rich at the expense of the poor, rather than the other way around.”¹²² The state may have been spending more to support property-poor districts than in the past, but Marshall concluded that “it is clear that the Foundation Program utterly fails to ameliorate the seriously discriminatory effects of the local property tax.”¹²³ In contrast to Powell, Marshall viewed Texas’s funding system as anything but remedial or “enlightened”: “Public education is the function of the State in Texas, and the responsibility for any defect in the financing scheme must ultimately rest with the State. It is the State’s own scheme which has caused the funding problem.”¹²⁴

Justice Marshall deemed Texas’s system of school financing “unconstitutionally discriminatory” for the gross inequalities it sanctioned and exacerbated between property-poor and property-wealthy districts.¹²⁵ Where Powell placed his abiding trust in the state legislature to continue to make Texas’s system more equal, Marshall lamented that “the strong vested interest of property-rich districts in the existing property tax scheme poses a substantial barrier to self-initiated legislative reform in educational funding.”¹²⁶ The broader history of Texas’s public school financing system affirms Marshall’s gloomy outlook. Even when reform efforts succeeded (as during the Progressive Era or after World War II), they generated new inequalities. The throughline of Texas’s school finance system—a spatial division of schooling funded by each district’s local property taxes—was born of rural/urban divides initially, but increasingly came to reinforce racial and class inequalities.

Ironically, Powell’s foreclosure of federal judicial redress did not protect local prerogative in American public education for long. Instead, advocates for school finance equalization turned to the state courts in search of just the kind of judicial force that Marshall believed would compel the state to make its system more equal. Successive waves of state-level litigation, starting in the 1980s, finally produced a

¹²¹ *San Antonio v. Rodriguez*, 55.

¹²² *San Antonio v. Rodriguez*, 81.

¹²³ *San Antonio v. Rodriguez*, 87–88.

¹²⁴ *San Antonio v. Rodriguez*, 81.

¹²⁵ *San Antonio v. Rodriguez*, 72. While Texas’s system indisputably generated disparities between property-poor and property-wealthy districts, an important point was left out of Marshall’s dissent: the distinction between what one scholar has called “rights of places and rights of people.” The problem for the challengers to Texas’s system was that only *people* have constitutional rights, not *places*. For more on this point, see Richard Schragger, “*San Antonio v. Rodriguez* and the Legal Geography of School Finance Reform,” in *Civil Rights Stories*, ed. Myriam E. Gilles and Risa L. Goluboff (New York: Foundation Press, 2008), 101–2.

¹²⁶ *San Antonio v. Rodriguez*, 71.

system that reduced interdistrict inequalities instead of worsening them.¹²⁷ The process in Texas has played out in states around the country, with similar state-level litigation prompting reforms in nearly every state—the most recent being a landmark ruling in Pennsylvania.¹²⁸ All of these state systems have their own history of school finance structures that generate inequalities in public education. Some bear a closer resemblance to Texas's story than others, but they all share the similar feature of the local funding of schools driving inequality.

Education reformers in the 1960s and 1970s saw *Rodriguez* as an opportunity to invalidate all school financing schemes—save Hawaii's unitary funding system—in one fell swoop. In this effort, Texas's funding system served as a metonym for that of every state. But critics as well as defenders of that system neglected its history, rendering it flat and unremarkable. Justice Powell's majority opinion skips over moments like Reconstruction or the appropriation of rural school equalization aid in the 1910s, neglecting the textured past of Texas school finance history and obscuring key moments when a different, more equal path was possible.

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¹²⁷For the state litigation following *Rodriguez*, see “Texas School Finance History,” Equity Center, http://equitycenter.org/sites/default/files/2018-10/Texas_School_Finance_History.pdf. For more recent protest efforts in favor of an overhaul of Texas's school finance system during the Texas Legislature's last consideration of school finance reform, see Julie Chang, “Texas Teachers Rally for Funding at Capitol,” *Austin-American Statesman*, Mar. 11, 2019, <https://www.statesman.com/story/news/local/flash-briefing/2019/03/11/hundreds-of-texas-teachers-rally-at-capitol-for-funding-against-merit-pay/5739355007/>.

¹²⁸Maddie Hanna, Kristen A. Graham, and Gillian McGoldrick, “Landmark Pa. School Funding Case Decided: The State's System is Unconstitutional,” *Philadelphia Inquirer*, Feb. 8, 2023, A1-7. For the actual case, see *William Penn School District et al. v. Pennsylvania Department of Education et al.*, 587 M.D. 2014 (Pa. Commw. Ct. 2023).

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