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ETHICS AND THE LEGITIMATION OF THE PURSUIT OF EQUITY IN SCHOOL FINANCE

JAMES GORDON WARD*

I. INTRODUCTION

The distribution of state funds for public education has been a contentious issue in public policy for almost two centuries, with most of the early litigation occurring at the state court level. This issue reached the federal courts as an equal protection issue in the late 1960s.¹ The culminating federal case, decided in 1973, was *San Antonio Independent School District v. Rodriguez*, in which the United States Supreme Court held that the tremendous revenue disparities per pupil that existed among Texas public school districts did not violate the Equal Protection Clause of the Fourteenth Amendment.² The *Rodriguez* case is still good law, never having been overturned by the nation's highest court.³ Similar cases, usually based on alleged violations of the equal protection clause or education clause of an individual state's constitution, have been brought in a large share of states with mixed results. Where education is considered a fundamental constitutional right, plaintiffs have prevailed in their attempts to overturn the state school finance system. Where education is not a fundamental right, the state governments tend to prevail in court.⁴ It is fair to say that no new legal ground has been broken in this category of cases for quite some time. It is also safe to say that the judicial attempts to reduce inequities in school revenue per pupil, for the most part, have been stalled. This is not to

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1. KERN ALEXANDER & M. DAVID ALEXANDER, *AMERICAN PUBLIC SCHOOL LAW* 888 (5th ed. 2001).

2. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 54-55 (1973).

3. See ALEXANDER & ALEXANDER, *supra* note 1, at 894 (although two subsequent cases "suggest that *Rodriguez* is not a complete foreclosure of further federal litigation," the basic position of the Supreme Court "has not changed").

4. See William E. Sparkman, *School Finance Challenges in State Courts*, in *THE IMPACTS OF LITIGATION AND LEGISLATION ON PUBLIC SCHOOL FINANCE: ADEQUACY, EQUITY, AND EXCELLENCE* 203-04 (Julie K. Underwood & Deborah A. Verstegen eds., 1990).

say that there has been no activity in recent years, but rather that most activity has been on the margins of the issue.

The purposes of this paper are to explore the normative aspects of the issue and the ethics of the quest for school finance equity in the desire to construct an ethical case that could bolster the argument for more equal funding in the political arena. This paper will begin with a review of school finance theory and proceed to an application of the ethical theory pertaining to this issue. It may be a naïve assumption, but the basis of this paper is that the citizenry and elected representatives may be more open to moral arguments than the courts. It also may be a fatalistic view of what has transpired in the courts over the last three decades, but this paper is predicated on a view that current efforts have not brought success and that a new view of the issues might be in order.

II. SCHOOL FINANCE THEORY

A. *The Early Theorists*

Ellwood P. Cubberley presented fundamental theory in school finance in the United States almost a century ago in his now classic doctoral dissertation.⁵ Cubberley wrote:

Theoretically, all the children of the state are equally important and are entitled to have the same advantages; practically this can never be quite true. The duty of the state is to secure for all as high a minimum of good instruction as is possible, but not to reduce all to this minimum; to equalize the advantages to all as nearly as can be done with the resources at hand; to place a premium on those local efforts which will enable communities to rise above the legal minimum as far as possible; and to encourage communities to extend their educational energies to new and desirable undertakings.⁶

If Cubberley's guidelines are followed, there is little else to advance as school finance guidelines.

We begin with the premise that all children are equal, a reminder of our fundamental national organic documents, and that they therefore deserve equal treatment in schools or, at least, are entitled to have the same advantages.⁷ Children are equal unless there is a valid reason to treat them unequally. School finance reform litigators argue that children are treated unequally based on the residence of the children's parents or legal guardians. Where children reside is a significant determinant in the amount of funds available for their education. A high correlation exists between low levels of funding and communities in which there are significant proportions of low income or racial

5. ELLWOOD P. CUBBERLEY, *SCHOOL FUNDS AND THEIR APPORTIONMENT* 3 (1905).

6. *Id.* at 17.

7. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 493 (1954).

minority populations.⁸ As the original plaintiffs in *Rodriguez* argued, there are poor children in poor school districts that receive a level of education far below that of other children.⁹ Cubberley conceded that the equality of all children is not possible to maintain in a public school system.¹⁰ However, he stated that the state has a duty to maintain the highest level of instruction possible for all children.¹¹ The term “duty” seems to imply a fairly high level of moral obligation in Cubberley’s writing. That is, the state is to equalize the advantages of all children within the limitations of the current resource level.¹² He does not suggest that the state may ignore equalizing revenues if insufficient funds are available but that advantages (or services) should be equalized.¹³ Most states have twisted this concept to say that if resources are not sufficient — and they almost never are — then a wide variety of funding levels are acceptable, thereby establishing a considerably diminished standard of care.¹⁴

Cubberley also stated that local communities should make local efforts both to exceed the minimum levels of education as far as possible and to be innovative in providing educational services.¹⁵ Cubberley’s recommendation to states was that they needed to develop state school finance systems that compensated local districts for unequal local fiscal capacity to support public education.¹⁶ In these state systems, local school districts with lower local tax capacity per pupil were to receive higher state subventions per pupil, and school districts with higher per pupil capacity would receive lower state aid.¹⁷ This theoretical model of Cubberley’s was operationalized in the 1920s in the foundation system of school finance, which is still the fundamental basis of many state school finance systems.¹⁸ If foundation systems had been constructed and funded the way Cubberley visualized, then they would have

8. See, e.g., Joseph S. Patt, *School Finance Battles: Survey Says? It’s All Just a Change in Attitudes*, 34 HARV. C.R.-C.L. L. REV. 547, 549 (1999).

9. *Rodriguez*, 411 U.S. at 23.

10. CUBBERLEY, *supra* note 5, at 16-17.

11. *Id.* at 17.

12. *Id.* at 18.

13. *Id.* at 20.

14. See, e.g., Joseph B. Harrington, *Current Developments in the Law: A Survey of Cases Affecting Public Education*, 4 B.U. PUB. INT. L.J. 171, 172 (1994) (describing plaintiff’s argument in *McDuffy v. Sec’y of the Executive Office of Educ.*, 615 N.E.2d 516 (Mass. 1993), that the state system resulted in wide disparity in school funding among towns and was insufficient to compensate for shortfalls in local revenues).

15. CUBBERLEY, *supra* note 5, at 17-18.

16. *Id.* at 27.

17. *Id.* at 252-53.

18. R. CRAIG WOOD & DAVID C. THOMPSON, *EDUCATIONAL FINANCE LAW: CONSTITUTIONAL CHALLENGES TO STATE AID PLANS – AN ANALYSIS OF STRATEGIES* 6 (1993).

achieved Cubberley's goal of having the states treating all children as if they were equal.¹⁹ No state, however, has been willing to incur the cost of doing so.

The second significant contribution to school finance theory was the work of Henry Morrison at the University of Chicago during the late 1920s and early 1930s.²⁰ His direct response to Cubberley's scheme was the question, "[i]s there money enough to support any such school system as Americans have conceived?"²¹ Morrison reviewed the system that had been developed to fund local schools, based on Cubberley's ideas and their practical manifestations, and asked:

Can moneys in the possession of the state government be so distributed among districts of varying fiscal ability as to establish everywhere equivalent schools capable of carrying out the essential purpose of adequately educating and training the childhood and youth of the state, and at the same time be so distributed as to make the burden of taxation equal in all districts?²²

Morrison presented his readers with a summary set of conditions and invited the reader to answer the question he posed.²³ He presented the facts in such a way that the answer was an unmistakable "no."²⁴ Morrison moved toward his conclusion that:

Our extended analysis of the nature of the state school as a civil institution, of its economic and financial foundations, of the requirements of a fiscal and political structure founded on the school district in its various territorial forms, leads us unerringly to the conclusion that the several states themselves are the appropriate fiscal and administrative units in support and conduct of citizenship schools which has long been held to be the cornerstone of our policy as a self-governing State.²⁵

Morrison emphasized that the local school district, even with intricate state systems of finance, cannot achieve Cubberley's goal of all children being treated equally and argued that equality can only be achieved through the state as the fiscal and administrative unit for schooling, not local districts.²⁶ Morrison anticipated the objections to his proposed system but argued that:

The objection to taxation for purposes which are in principal and reality state or national, merely because certain taxables have become concentrated in cities or in a few states, is, of course, equivalent to an objection on the part of rich families to be taxed on their ability to pay taxes, lest they should thereby be made to carry the burdens of other people. The point is fundamental in the

19. CUBBERLEY, *supra* note 5, at 17.

20. HENRY C. MORRISON, *SCHOOL REVENUE* vi (1930).

21. *Id.* at v.

22. *Id.* at 202.

23. *Id.* at 202-03.

24. *See id.* at 203-04.

25. MORRISON, *supra* note 20, at 214.

26. *Id.* at 230.

whole theory of the individual's relation to civil society When the purpose is inherently a state purpose, as is the case with public schools, it matters not where the taxables are concentrated, assuming no uneconomic use of the taxing power is made. Even though 90 percent of the taxables are in a single city, the obligation rests as heavily on the taxpayers of that city as local obligations which are related to municipal purposes pure and simple.²⁷

Morrison made it quite clear that public education is a state function and needs to be supported financially at the state level through a state system of public education.²⁸ If one substitutes the term "suburb" for the term "city" in Morrison's statements, his words have a very contemporary ring. When these words were published in 1930, they were ignored by policymakers for at least two reasons.²⁹ First, the nation was in the depths of the Great Depression, and there were no funds available to move in this direction. Secondly, the political climate was not conducive to the arguments and conclusions put forth by Morrison.³⁰

By 1930, three basic elements were clear. First, there is no civil reason to discriminate among children in the quality of public schooling; all children are equal. Second, state intergovernmental systems, which leave administrative and fiscal control with local school districts, do not provide equity. Third, state constitutional responsibility for public education in a civil society likely requires state systems of education with administrative and fiscal responsibility resting at the state level.

B. *Later School Finance Theorists*

The issue of ending unequal treatment of children in financing public schools received less attention during the period of the Great Depression, national and international crises of the Second World War, and the return to peace and rapid growth of the public schools in the late 1940s and early 1950s. Attention to equal treatment and equal opportunities returned in the mid-1950s, symbolized by the U.S. Supreme Court's 1954 decision of *Brown v. Board of Education*.³¹ Many legal scholars and educational researchers view the logic of *Brown* as a possible avenue for school finance equity.³²

One such scholar, Arthur Wise, delved into the research in legal theory in order to construct an argument that might convince the courts that Cubberley's ideal of all children being equal might not be congruent with the fundamental

27. *Id.* at 220-21.

28. *Id.* at 214.

29. WOOD & THOMPSON, *supra* note 18, at 9.

30. *See id.*

31. *Brown*, 347 U.S. at 493.

32. *See* ARTHUR E. WISE, RICH SCHOOLS POOR SCHOOLS: THE PROMISE OF EQUAL EDUCATIONAL OPPORTUNITIES 174 (1968).

law of the nation.³³ Wise published his findings as *Rich Schools, Poor Schools: The Promise of Equal Educational Opportunity*.³⁴ According to Wise, "[t]he purpose of this study is, then, to determine whether the absence of equal educational opportunity within a state, as evidenced by unequal per-pupil expenditures, many constitute a denial by the state of the equal protection of its laws."³⁵ The study went well beyond education law and looked at criminal law as a possible template for education cases to combat unequal educational opportunity. Wise found that:

Educational inequality facilitated by a system of local financing exists because of a combination of at least three factors: the self-interest of the privileged, their tendency to reside apart from the lower class, and the inability of the average person to assess the quality of education available to his child, much less know what is available elsewhere.³⁶

Wise then suggested that the solution of this problem belongs in the federal courts because, like school desegregation, this issue involves a federal Equal Protection Clause violation, and the states have been politically unable to successfully deal with the issues involved.³⁷ In an interesting fashion, Wise concluded his study by stating that the issue fundamentally rests on values and cites some of the conflicting values expressed on the issue of how to provide equal educational opportunity.³⁸ This matter will be revisited below.

In their comprehensive study of the issue of unequal educational opportunity, John Coons, William Clune, and Stephen Sugarman began with a discussion of values.³⁹ They also provided a historical overview of the development of state school finance systems and a survey of the current system characteristics.⁴⁰ Coons and his colleagues provided the following conclusions:

Various children do in fact get the worst offerings, and as to those with the worst offerings we are sufficiently confident that (1) although the impact of district effort on this plight could be more than previously thought, wealth is still the significant factor and (2) for whatever it is worth, most of them are children of poor families.⁴¹

Coons and his colleagues also considered a variety of financing systems to rectify the situation they identified and a full state funding system, not

33. *Id.* at 4.

34. *Id.*

35. *Id.*

36. *Id.* at 197.

37. WISE, *supra* note 32, at 197-98.

38. *Id.* at 209-12.

39. See JOHN E. COONS ET AL., PRIVATE WEALTH AND PUBLIC EDUCATION 1 (1970).

40. *Id.*

41. *Id.* at 160.

dissimilar to the solution proposed by Morrison, was one of the options.⁴² They also proposed a power equalizing state aid system for subventions to local school districts that would have substantially the same effect.⁴³ The legal researchers plead that “[l]egal and political strategies must be developed to give practical meaning to the theories offered here. Many approaches are possible, and we do not intend to be exhaustive, prediction is difficult and tactics are peculiarly a matter of time and place.”⁴⁴ Time and place do matter, and the politics are difficult. However, between Wise and Coons and his colleagues, a legal theory had been developed which supplemented and complemented the school finance theories developed by Cubberley and Morrison.

C. *Theory into Practice*

It is not the intention of this article to review the litigation that arose from the development of these theoretical approaches. Suffice it to say, as a result of the *Rodriguez* case cited previously, the federal courts remain closed to challenges of unequal spending and unequal educational opportunities because the nation’s highest court has not found such funding disparities to be violative of the U.S. Constitution.⁴⁵ The pattern of state high court decisions has been mixed regarding equal protection, and where most plaintiffs have won their cases, it has been on the basis of the state’s education articles or clauses.⁴⁶ More importantly, there is little evidence to show that after more than three decades of litigation in this field, the spending disparities per child in the states have been substantially reduced because of the litigation.⁴⁷ As Cubberley hinted, and as Morrison and Wise have stated, there are political factors that have been barriers.⁴⁸ The politics of self-interest and privilege have dominated. Any program of meaningful equalization of school funding would require massive shifts in funding from the affluent to the poor. Without belaboring the point, this has not yet been possible.

42. *See id.* at 201-02.

43. *Id.* at 200-42.

44. COONS, *supra* note 39, at 435.

45. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 54-56 (1973).

46. WOOD & THOMPSON, *supra* note 18, at 179 (1993).

47. *See Douglas S. Reed, Twenty-Five Years After Rodriguez: School Finance Litigation & the Impact of the New Judicial Federalism*, 32 L. & SOC’Y REV. 175, 177 (1998).

48. CUBBERLEY, *supra* note 5; MORRISON, *supra* note 20; WISE, *supra* note 32.

III. ETHICAL THEORY

A. *Foundations of Ethics*

Ethics is about making choices. Ethics relating to school finance is about making funding choices among alternatives in terms of who gets what, when, and how.⁴⁹ A number of the school finance theorists have talked about values in school finance.⁵⁰ The courts have considered the constitutional value of equal protection of the law.⁵¹ Ethics is fundamentally about values.

Ethics is about moral choices. It is about the values that lie behind them, the reasons people give for them, and the language they use to describe them. It is about innocence and guilt, right and wrong, and what it means to live a good or bad life. It is about the dilemmas of life, death, sex, violence, and money.⁵²

Ethics as it relates to school finance is, of course, about money. Plato held that justice in society was not just the interest of the strongest, or the most affluent, but that reason should prevail and that civic questions in society should be answered rationally, with a strong degree of disinterest.⁵³ Jeremy Bentham argued for an utilitarian ethics that provided the greatest good for the greatest number in society.⁵⁴ Therefore, it would seem that an ethical approach to school finance would involve some rational determination of what would produce the greatest good for the greatest number in a system of financing public schools.

Immanuel Kant carried this argument forward with his concept of the "Categorical Imperative."⁵⁵ To understand Kant's position, we start with the "universalization" test: "what if everyone did that?"⁵⁶ What if everyone voted to provide greater funding for the education of their own children and less for the funding for the education of other children? Clearly, under those circumstances, the affluent and powerful would have more money available for the education of their children than would the poor, not unlike the situation we now have in the United States. Kant also believed that the purpose of education is, in the words of one commentary, "to develop a human being with a sense of dignity and duty."⁵⁷ For Kant, a person's duty is to act as if the consequences of his actions are what everyone else will do. In other words, act

49. WOOD & THOMPSON, *supra* note 18, at 53.

50. See, e.g., COONS, *supra* note 39; CUBBERLEY, *supra* note 5; WISE, *supra* note 32.

51. See, e.g., *Rodriguez*, 411 U.S. at 1.

52. MEL THOMPSON, *ETHICS* 5 (1994).

53. *Id.* at 153-54.

54. *Id.* at 88-92.

55. SIMON BLACKBURN, *BEING GOOD* 116-24 (2001).

56. *Id.* at 117.

57. ROBERT S. BRUMBAUGH & NATHANIEL M. LAWRENCE, *PHILOSOPHERS ON EDUCATION: SIX ESSAYS ON THE FOUNDATIONS OF WESTERN THOUGHT* 102 (1963).

as if your actions will be universalized. This is the Formula of Universal Law in his Categorical Imperative.⁵⁸ This translates into our dealings with others and our show of respect for others. Robert Blackburn stated that this “takes Kant to the Formula of Humanity: ‘So act that you use humanity, whether in your own person or the person of any other, always at the same time as an end, never merely as a means.’”⁵⁹

John Rawls extended this argument with his “veil of ignorance,” which argued that because we do not know what role in society we will end up occupying, we should act as if we might occupy any role and strive for a justice that treats all fairly.⁶⁰ This would require a fair and equal distribution of funds for public education.

From this foundation in ethics, one could argue that Cubberley’s ideal that “all the children of the state are equally important and are entitled to have the same advantages” can be considered a Categorical Imperative and one that needs to be the result of any valid school finance policy. A brief consideration of the foundations of ethics destroys any ethical argument that the affluent should have more funds available for the education of their children than do the poor or less powerful. School finance reform would seem to be an ethical issue as well as a legal issue.

B. Ethics and Public Policy

The literature in the public policy arena that deals with ethics provides little additional hope of an ethical approach to legitimate school finance reform. Dwight Waldo, in a classic work in the field of public administration, argued that much of modern political science and public administration theory strives to be scientific and rational and eschews the ethical approach that dominated in the Gilded Age and during the Progressive Movement.⁶¹ He further stated that now the field sees morality as irrelevant.⁶² Louis Gawthrop also saw a lack of focus on moral values in the public sector and found morality to be at least second to pragmatic considerations.⁶³ Gawthrop found that the public sector used a shield of procedural ethics to block it from having to consider issues of justice.⁶⁴ George Frederickson also had advanced these notions, arguing that controversial issues involving ethics in the public sector tend to be pushed toward the legislative arena, with some being resolved by the

58. BLACKBURN, *supra* note 55, at 120.

59. *Id.* at 124.

60. JOHN RAWLS, A THEORY OF JUSTICE 136-42 (1971).

61. DWIGHT WALDO, THE ADMINISTRATIVE STATE 24-25 (2d ed. 1984).

62. *Id.*

63. LOUIS C. GAWTHROP, PUBLIC SERVICE AND DEMOCRACY: ETHICAL IMPERATIVES FOR THE 21ST CENTURY 89 (1998).

64. *Id.* at 157.

judiciary.⁶⁵ These voices from public sector ethics all seem to converge to an opinion that current moral sensitivities in the public sector would favor a continuation of the status quo, with the legislative branch not dealing with school finance reform because of the difficulties of redistributive policies, and the judicial branch failing to act by shifting responsibility to the executive branch. Moral issues seem to be in the background.

C. *Postmodern Ethics*

The ethical views discussed so far are clearly products of the Age of Reason, which intellectual historians and philosophers call “modernity,” a period and worldview that holds “rationality” to be a fundamental value.⁶⁶ We have now slipped into a period of “postmodernity” where the worldview and values have changed. Philosopher Richard Rorty discussed how the ethical views based on Kant are predicated on trying to find the commonalities in civic society, trying to find the big things that we agree upon.⁶⁷ Pragmatic philosophy in this postmodern era focuses more on reconciling small differences in community than the big differences in humanity.⁶⁸ This would suggest a stronger interest in dealing with ethical issues in ordinary life than in the realm of public policy.

This same theme was developed in David Harvey’s *The Condition of Postmodernity*.⁶⁹ Harvey saw the modern period as characterized by ethics, state intervention, regulation, and state welfarism, whereas the postmodern period is characterized by aesthetics, laissez-faire, deregulation, and neo-conservatism, all suggesting that the opportunities for equal educational opportunity through political or legal means may be diminished.⁷⁰ Diarmuid O’Murchu provided a similar analysis by seeing modernism as more focused on institutions, hierarchy, systems and structures, the importance of the end product, and change from outside the system to a postmodern culture with primacy of relationships, equality, interdependence and mutuality, the importance of the interactions, and change evolving from within.⁷¹ The point is that Kant’s universality principle seems to have less salience in the postmodern period, and this likely reduces the ethical pressures for school finance reform.

This assessment was echoed by Immanuel Wallerstein, who provided an analysis of the shifting world-system by arguing that a period of stability in

65. H. GEORGE FREDERICKSON, *THE SPIRIT OF PUBLIC ADMINISTRATION* 175 (1997).

66. See DAVID HARVEY, *THE CONDITION OF POSTMODERNITY* 9-12 (1990).

67. RICHARD RORTY, *PHILOSOPHY AND SOCIAL HOPE* 86 (1999).

68. *Id.* at 86-87.

69. See HARVEY, *supra* note 66, at 9-14.

70. *Id.* at 9-10.

71. See generally, DIARMUID O’MURCHU, *OUR WORLD IN TRANSITION* (2000).

classic liberal politics and economic capitalism since the French Revolution, which others would call modernism, has come to an end with the world-wide social revolutions of 1968, end of the Pax Americana in the 1970s, and the fall of the Soviet Union in the late 1980s.⁷² Wallerstein described the recent past as a period where:

[p]opular antistatism was ambivalent. On the one hand, it implied a general delegitimation of state structures, and a turn to extrastate institutions of moral solidarity and pragmatic self-protection. The revived conservative movement sought to use this sentiment to dismantle welfare state provisions, and met much resistance by popular strata seeking to hold on to acquired benefits and opposed measures that would, in reality, diminish their real incomes further . . . [t]here is no enthusiasm. The absence of hope, and of faith, remains pervasive and corrosive.⁷³

This presents a pessimistic picture for any significant policy change through the current political system that would involve redistribution of resources from the affluent to the poor. Wallerstein's mention of "pragmatic self-protection" is consistent with Rorty's notion of the reconciliation of small differences and the hesitancy for the body politic to take on large issues that involve state intervention or state regulation. The welfare state is being dismantled, not augmented. Wallerstein further stated that:

Far from representing the triumph of liberalism, and even less of renewed conservatism, this pervasive antistatism, by delegitimizing the state structures, has undermined an essential pillar of the modern world-system, the states system, a pillar without which the endless accumulation of capital is not possible. The ideological celebration of so-called globalization is in reality the swansong of our historical system.⁷⁴

The postmodern world has moved toward antistatism, individualism, a delegitimation of major social institutions, and a reinforcement of self-protection and protection of privilege.⁷⁵ All of this is working in the opposite direction of an ethical approach to school finance reform or a legitimation of reform. At the end of his analysis, Wallerstein mused:

Will people in power just yield their privilege? Of course not; they never do. Sometimes they concede parts of it, but only as a tactic retain most of it. People in power have never been as powerful as they are in the contemporary world. And people out of power (or at least many of them) have never been as badly off, certainly relatively, and to a considerable extent, absolutely. So

72. IMMANEUL WALLERSTEIN, *UTOPISTICS* 30-31(1998).

73. *Id.* at 32.

74. *Id.*

75. *Id.* at 46-50.

polarization is the greatest it has ever been which means that noble renunciation of privilege is the least likely outcome.⁷⁶

This is a sobering reflection for those interested in school finance reform either on a legal basis or on an ethical basis.

VI. ANALYSIS AND CONCLUSIONS

Several conclusions can be drawn from an analysis of this situation. School finance theory and ethical theory would seem to support strongly the equal treatment of all children in the financing of public schools and undergird efforts to ensure equal educational opportunity. There does not seem to be any valid ethical reason for the state not to consider all children to be equal. However, such arguments have never been widely accepted in the public policy arena. The tugs of self-interest and the protection of the privilege of the affluent seem to be too strong for the moral issues to prevail. While various scholars have developed the basis in legal theory to move toward school finance reform, the courts have not accepted this view and, in general, have not invalidated state systems of school finance on equal protection grounds.⁷⁷ From the perspective of the judiciary, children are not considered to be equal when school funding is involved. Legal theory, as accepted by the courts, is not congruent with school finance theory and ethical theory.

Any possibilities of rectifying this incongruity to achieve legitimate school finance reform seems to be less as we have left a worldview rooted in modernism and moved to a post-modern environment. Modernism seemed more open to the arguments of school finance theorists and ethicists. Therefore, the door on reform may have closed.

This analysis suggests that the opportunities for school finance reform may be past and that the current cultural and political environments are not conducive to the policy context that currently exists. While I do not find this argument pleasant to make, I invite the engagement of other scholars on the issues.

76. *Id.* at 89.

77. See William S. Koski, *Of Fuzzy Standards and Institutional Constraints: A Re-Examination of the Jurisprudential History of Education Finance Reform Litigation*, 43 SANTA CLARA L. REV. 1185, 1223 (discussing *Rodriguez* as the end of federal equal protection litigation).