By Emily Cherry

In 1973, the Supreme Court of the United States held that the U.S. Constitution does not guarantee a right to education. Richmond Law faculty and students continue to explore the ramifications of *San Antonio Independent School District v. Rodriguez*, a case brought by Mexican-American parents who challenged funding disparities in a neighboring school district.

At the 2015 Allen Chair Symposium, *The University of Richmond Law Review* brought together leading scholars to discuss and debate issues of education equality in the U.S. In his introductory remarks, University President Ronald Crutcher provided some context: “As a society, through our laws and policies, we have decided that some school inequality is acceptable — or, at least, that we will look the other way when it happens. These historical and collective decisions have profound repercussions, not just for access to higher education, but for employment, housing, criminal justice, and health care.”

Headlines quickly follow major Supreme Court decisions and then fade, but the impacts of these decisions often play out for decades or longer. Such has been the case with the Burger court’s 1973 *Rodriguez* decision, whose effect remains strong in today’s debates over the funding of the nation’s public schools.

**Rodriguez**

MORE THAN 40 YEARS LATER
Q&A
Symposium organizer and Richmond Law professor Kimberly Robinson is co-editor, with Charles Ogletree, of The Enduring Legacy of Rodriguez: Creating New Pathways to Equal Education.

What made you and professor Charles Ogletree decide to take on this project of co-editing a book about the enduring legacy of Rodriguez?
The issue the plaintiffs brought to the court’s attention remains an issue today. There were substantial funding disparities between districts, and these funding disparities caused disparities in educational opportunity. What we wanted to do was focus on how Rodriguez closed the federal courthouse door to addressing these disparities, but also get scholars and advocates to think about new law and policy solutions that could close the educational opportunity gap.

Why are these issues of education inequality so important for students in the United States?
Closing the educational opportunity gap will be essential for the United States to remain competitive internationally. The labor market has become an international one. We have people who have more exposure to a variety of fields such as STEM (science, technology, engineering, math) classes coming to this country because we don’t adequately train enough students in those disciplines yet to fill the jobs that we have. So if we’re going to remain competitive, we are going to have to ensure that we effectively educate all children for tomorrow’s workforce.

Tell us about your new approach to federal-level educational reform that you outline in the book.
I analyze the balance of federal and state power over education and how our longstanding approach to this balance really limits what the federal government can do in education. So many feel that this is appropriate because there is not a federal constitutional power given to Congress over education. And the 10th Amendment reserves to the states everything not given to Congress. Therefore, we have a long history in the United States that says states and localities should run education, and the federal government should have a limited role, if any.

I argue that this approach prevents us from taking full advantage of the strengths of federal education policymaking. State efforts to address inequality have been inadequate and ineffective. We need targeted federal support and intervention to ensure equal access to an excellent education for all children.

What do you think are the strengths of federal policymaking?
First, prioritizing equity as a goal in education. The federal government has a much stronger track record than state and local governments do. It took the federal government to hand down the Brown v. Board decision and then put federal money behind enforcing it. It took the federal government to require equality for women and girls in education. It took the federal government to require disabled children to get an equal education. So there’s a long history there of the federal government saying equality is one of our bedrock national principles, and when the states don’t honor it, we will demand it.

The federal government is also really good at providing research and technical assistance to help states and localities adopt equitable principles for schools. They also

EXCERPTS FROM THE
2015 ALLEN CHAIR SYMPOSIUM
“...There are some charter schools that are doing truly innovative things, and we are learning from and seeing their successes. One of my favorites is the Teacher Equity Project in Manhattan, which has said, ”We’re going to do something revolutionary. We’re going to educate students in trailers, but we’re going to pay every teacher $250,000 starting salary. And we’re therefore going to attract the best teachers.” Teachers flocked to this school from different states who applied, and [the project] had [its] pick of the litter, and [it] chose excellent teachers, and the results are quite telling. ... It works to have excellent teachers and to pay them well and to treat them like professionals.”
— Jerusha Conner, associate professor, Villanova University

“A high school laboratory science course was required to graduate from high school in New York state, but 13 high schools in New York City had no science lab. In Kansas, the school districts with the most minority students, the most low-income students, and the most students with disabilities were actually getting the least per-pupil funding from the state. In South Carolina, in eight rural, mostly minority districts, teacher turnover rates exceeded 20 percent each and every year, and graduation rates ranged between 33 percent and 57 percent. Given these kinds of facts, it’s not the least bit surprising that right now, there are 14 states defending themselves in cases claiming that their school finance systems are unconstitutional under their own state constitutions. These facts, these inequities and inadequacies underlay the poor outcomes that we see because they really restrict the opportunities.”
— Molly Hunter, director for education justice, Education Law Center

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have a greater ability to distribute financial assistance to help pay for changes that are needed to create equitable schools. Although the track record is more mixed, the federal government has the capacity to hold states accountable for providing equal educational opportunity.

**Do you think states and the general public are ready for that level of federal intervention?**

Different states partner with the federal government at different levels. Virginia has a long, proud history of saying no to the federal government when we don’t like what the federal government wants us to do. However, this also can leave the commonwealth without the support that the federal government can offer to help the children of the commonwealth who really aren’t so concerned about our history of saying no to the federal government and really just want a great education.

**When lots of people think of federal educational reform, they think of No Child Left Behind. Where does that factor into this discussion?**

No Child Left Behind is a heavily criticized statute because it was seen as punishing schools when they were failing rather than helping them, but I think the statute gets far too little credit for what it accomplished. First, it required schools and districts to disaggregate test scores by race, disability, English language learner status, and poverty, so you could no longer show a school is high achieving just because “on average” students were doing well. That helped identify who was being left behind. Second, so often we allow schools to fail year after year and do nothing. No Child Left Behind said that’s just not acceptable anymore. So it required schools and districts to take a variety of interventions if students were not making adequate yearly progress on state standards.

The challenge with that was that the interventions were seen as punishments rather than needed interventions. Also, all states and localities did not possess the capacity and understanding of how to reform failing schools.

**What do you see as the path forward for disparities in educational opportunities?**

First, people need to know disparities exist and understand their impact. When I teach classes about this issue, so many of my students say, “I didn’t know.” We need a public campaign to help people understand that we are not giving all children equal access to a great education. Then, the question is what to do about it, and that’s going to be multi-layered. There will need to be federal support for reform, as well as state and local reforms, and the smartest way to go about this is to draw upon what each level of government does well. The feds are very good about prioritizing equity and providing financial, research, and technical assistance. When challenged to do so, some states are effective at coming up with approaches that work for that state. We don’t need a top-down approach that says, “Here’s the goal, and here’s the one way to get there.” Instead, we still need the laboratories of the states to figure out how to get there, but we need a federal push to say we must get there. Our nation cannot prosper unless we get there. Our democracy cannot prosper unless we get there.

And then, finally, it will take local will, influence, and commitment to make equity a reality. It will require some uncomfortable conversations, including an acknowledgment that, too often, we have not wanted to invest in other people’s children. We must replace this with a new commitment to invest in all children.
“Restorative justice in education is a movement, it’s a philosophy, and it’s a set of practices. And the intent of restorative practices in education is to really help move the system away from an exclusionary and punitive model to a relational model — to the idea [that] how we influence each other, how we matter to each other, how we are in fact interdependent with one another in a school, on a campus, becomes the basis for which we attempt to impact students rather than using fear as a way to motivate change.”
— Marilyn Armour, professor, University of Texas at Austin School of Social Work

“Our kids are hearing the message loud and clear when we don’t prepare them in school, when we don’t offer them schools that send them the message that we expect them to succeed, that we love them, that we believe in them, that we will teach them and will be ready for them. They get the message that we don’t believe in them, that we’re not ready for them, and that there is no value in civic engagement, that there is no point in participating productively in their communities. That is exactly the wrong message that we are sending to our kids in school. That is exactly contrary to our vision for what public education is supposed to be.”
— Catherine Lhamon, assistant secretary, U.S. Department of Education for Civil Rights

“Multiple empirical studies demonstrate that, for the most part, we don’t see a huge range in terms of misbehavior. So we have multiple studies that document that even though African-American students are not overacting in schools … they’re still being disproportionately disciplined in terms of the numbers and also with severity. So what is going on? And I think this is a very complicated question, especially if you believe, like I do, that most public educators are acting in good faith. They don’t go into the system to try to discriminate. They don’t go into the system to try to make the lives of the students miserable. So what is going on here? … Many researchers are tending to agree now that one of the driving factors of that is something that’s called implicit bias.”
— Jason Nance, associate professor of law, University of Florida Levin College of Law