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STRENGTHENING EQUAL PROTECTION ANALYSIS IN MARYLAND: TERRITORIAL CLASSIFICATION AND IN RE TRADER

Until recently juveniles charged with the commission of delinquent acts in the State of Maryland were subjected to different treatment. Proceedings brought against juveniles for offenses allegedly committed in Montgomery County were regulated by the public local law embodied in §§ 4-501 to -530 of the Courts and Judicial Proceedings Article of the Maryland Annotated Code, while juveniles apprehended in connection with offenses allegedly occurring in all other subdivisions of the state were governed by the provisions set forth in §§ 3-801 to -842 of that article. Despite substantial uniformity of purpose, and general similarity of substantive and procedural provisions, significant variation in the treatment of juveniles under those statutes was evident.

That disparity, not rectified until the Governor signed legislation mandating the uniform treatment of juveniles in 1975, formed the basis for the decision in In Re Trader. In that case, the Court of Appeals of Maryland was confronted with challenges brought by four juveniles to the statutory plan differentially treating youths charged with the commission

2. The inequalities in the treatment of juveniles discussed herein were ameliorated by the passage of ch. 554, [1975] Md. Laws 2670, which will be codified in §§ 3-801 to -833 of the Courts and Judicial Proceedings Article of the Maryland Annotated Code. The special provisions relating to the handling of juveniles charged with the commission of delinquent acts in Montgomery County were repealed and numerous additions were made to the then existing statutes governing the disposition of cases against such juveniles in other parts of the state. Unless otherwise indicated, all reference to juvenile law code sections is to the statutes as they existed prior to the 1975 legislative actions (and at the time of the decision in In re Trader, 272 Md. 364, 325 A.2d 398 (1974)), which may be found at ch. 2, § 1, [1973] Md. Laws, Sp. Sess. 7, 134-68, 184-204.
3. A “delinquent act” was defined at the time of the decision in In re Trader, supra note 1, as “an act which is in violation of the State Vehicle Law, any other traffic violation, or an act which would be a crime if done by a person who is not a child.” Ch. 2, § 1, [1973] Md. Laws, Sp. Sess. 7, 136 (§ 3-801(j) of the repealed juvenile statutes). See also the definition of a delinquent child provided at Ch. 2, § 1, [1973] Md. Laws, Sp. Sess. 7, 184 (§ 4-501(e) of the repealed juvenile statutes).
6. Compare §§ 3-802 and § 4-502 of the repealed juvenile statutes. Ch. 2, § 1, [1973] Md. Laws, Sp. Sess. 7, 140-41, 185-86. Both sections emphasized the need to strengthen familial ties. Each suggested separation from family for the juvenile only if necessary to the child’s welfare or if in the state’s interest. Additionally, the creation of rehabilitative and disciplinary programs consistent with such purposes was encouraged.
8. See discussion at note 2 supra.
of delinquent acts. Although each challenge was decided separately in the lower courts, as discussed below, the Court of Appeals considered the issue in each sufficiently similar to warrant a consolidated decision.

This note will examine the nature of equal protection analysis undertaken by the Court of Appeals of Maryland, especially in instances where rights guaranteed by the fourteenth amendment were allegedly infringed by the operation of state schemes using territory as a basis for classification. It concludes that in future cases in which state statutes are challenged as violative of the equal protection clause, the Maryland Court of Appeals may strengthen the minimal scrutiny test which it has traditionally utilized to evaluate such claims. This trend to invigorate equal protection analysis in Maryland is foreshadowed in In Re Trader.

The Cases of the Juveniles

After petitions asserting that Richard Lee Trader was a delinquent child were filed, the Circuit Court of Baltimore City, Division of Juvenile Causes, granted the State's Attorney's request that jurisdiction over the juvenile be waived.\(^{10}\) Trader was later the subject of an indictment for arson and related offenses. The Criminal Court of Baltimore City held § 3-817, by which orders waiving juvenile jurisdiction were deemed interlocutory (and consequently not immediately appealable) to be unconstitutional.\(^{11}\) Noting that such orders were immediately appealable in Montgomery County, the Court of Special Appeals affirmed the decision of the lower court, holding § 3-817 unconstitutional as a violation of the equal protection clause of the Constitution of the United States. The Court of Special Appeals cited with approval the lower court opinion, which stated:

We think the denial of appeal everywhere in the State except Montgomery County to be . . . arbitrary, unreasonably discriminatory and unrelated to any legitimate State objective . . . . The child waived to criminal court in other than Montgomery County, even if ultimately acquitted or even if afforded appellate review of the waiver after conviction, has been compelled to stand trial on criminal charges as an adult, unlike the child in Montgomery County, without the opportunity of an appellate determination whether the waiver procedure met statutory and constitutional requirements.\(^{12}\)

The Court of Appeals granted certiorari.

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10. Such waiver was granted pursuant to § 3-817 of the repealed juvenile statutes, which provided:

An order waiving jurisdiction is interlocutory. If, subsequently, any minor with respect to whom the court has waived jurisdiction under this section is alleged to be a delinquent child the court may waive jurisdiction after summary review.


12. 20 Md. App. at 9, 315 A.2d at 534.
Emmit W. Stokes, a sixteen-year-old, was alleged to have committed armed robbery and was charged in the Criminal Court of Baltimore City after he was excluded from the jurisdiction of the Circuit Court of Baltimore City, Division of Juvenile Causes, by operation of § 3-808(4). No comparable provision existed in Montgomery County which authorized the exemption of juveniles above the age of sixteen charged with armed robbery. The Criminal Court of Baltimore City granted Stokes' motion to dismiss his indictment, basing its decision upon the holding of the Court of Special Appeals in In Re Trader, and held that § 3-808(4) denied Stokes the equal protection of the laws. The Court of Appeals again granted certiorari.

The State requested waiver of juvenile jurisdiction over Roger M. Faulkner after alleging him to be a delinquent child. Faulkner moved to dismiss the State's request, contending that § 3-816(b)(1) contravened

13. Section 3-808 of the repealed juvenile statutes exempted from the jurisdiction of juvenile courts in all Maryland subdivisions excepting Montgomery County:

(1) A child 14 years old or older alleged to have done an act which, if committed by an adult, would be a crime punishable by death or life imprisonment, or an associated offense, unless an order removing the proceeding to the juvenile court has been filed pursuant to § 594A of Article 27;

(2) A child 16 years old or older alleged to have done an act in violation of any provision of the state Vehicle Law or any other traffic law or ordinance except when a charge is manslaughter by automobile, possession of a stolen motor vehicle, unauthorized use or occupancy of a motor vehicle, tampering with a motor vehicle, or violation of § 11-902 of the state Vehicle Law;

(3) A child 16 years or older alleged to have done an act in violation of any provision of law, rule, or regulation governing the use or operation of a boat except when a charge of manslaughter by boat, possession of a stolen boat, tampering with a boat, or operating a boat while under the influence of intoxicating liquor or drugs.

(4) A child 16 years old or older alleged to have committed the crime of robbery with a deadly weapon, unless an order removing the proceeding to the juvenile court has been filed pursuant to § 594A of Article 27.

Ch. 2, § 1, [1973] Md. Laws, Sp. Sess. 7, 144-45. Section 594A of Article 27 enables non-juvenile courts to transfer jurisdiction over children between the ages of fourteen and eighteen who have been otherwise excluded from juvenile jurisdiction in juvenile courts if such transfers are deemed to be in the best interest of the child or society.

14. The opinion of the Criminal Court was quoted by the Court of Appeals:

"[w]henever any substantial right or privilege is granted to a juvenile in Montgomery County, all other juveniles in the State are entitled to the same right or privilege." 272 Md. at 376, 325 A.2d at 405.

15. It was charged that Faulkner had committed assault with intent to murder, had illegally used a handgun in a crime of violence, and had unlawfully broken and entered a home with intent to commit a felony. Brief of Appellant (In re Trader, 272 Md. 364, 325 A.2d 398 (1974), at 6 n.3 [hereinafter cited as Brief of Appellant].

16. Section 3-816 of the repealed juvenile statutes, entitled "Waiver of juvenile jurisdiction," provided the following:

(a) In General. — After a petition alleging delinquency is filed and before the adjudicatory hearing, but after the notice prescribed by the Maryland Rules,
the equal protection clause because it was a segment of a statutory scheme treating juveniles charged with similar offenses in different counties differently. Section 3-816 permitted waiver of juvenile jurisdiction of fourteen and fifteen-year-olds, whereas § 4-506(a),17 applicable only to Montgomery County, established a minimum age of sixteen for waiver purposes. At an evidentiary hearing, Faulkner presented numerous expert witnesses whose testimony supported his contention that no rational basis existed which would justify different treatment of fourteen and fifteen-year-old juveniles in Montgomery County from that afforded those in the rest of the state.18 The State presented no evidence to show that such a rational

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(b) Limitations of Waiver. — Anything to the contrary notwithstanding, jurisdiction may only be waived on:

(1) A child 14 years old or older; or

(2) A child who has not reached his 14th birthday, and who is charged with committing an act which, if committed by an adult, would be punishable by death or life imprisonment.

(c) Factors to be considered. — In making a determination as to waiver of jurisdiction the court shall consider the following:

(1) Age of child;

(2) Mental and physical condition of child;

(3) The child's amenability to treatment in any institution, facility, or program available to delinquents;

(4) The nature of the offense; and

(5) The public safety.

(d) Court may request study. — For the purpose of making its determination, the court may request that a study concerning the child, his family, his environment, and other matters relevant to the disposition of the case be made.

(e) Procedure when jurisdiction waived. — If the jurisdiction is waived, the court may order the child or minor held for trial under the regular procedures of the court which would have jurisdiction over the offense if committed by an adult.


17. Montgomery County juvenile courts were able to waive jurisdiction pursuant to the provisions of § 4-506 of the repealed juvenile statutes:

(a) Conditions for waiver. — After a full investigation, the court may waive jurisdiction if:

(1) A child 16 years old or older is charged with committing an act which would amount to a misdemeanor or a felony if committed by an adult; or

(2) A child under the age of 14 is charged with committing an act which would be punishable by death or life imprisonment if committed by an adult.

(b) Prosecution after waiver. — If the court waives jurisdiction under this section, he shall order the child proceeded against as an adult.


18. Among the witnesses presented by Faulkner were the Director of the Department of Juvenile Services, the Director of Child Psychiatry at Sheppard and Enoch Pratt Hospital, the Superintendent of Spring Grove Hospital; the Clinical Psychologist and Chief of the Department of Child Psychology at Sheppard and Enoch Pratt
The Circuit Court for Baltimore City, Division of Juvenile Causes dismissed the State's request for waiver, adjudging § 3-816 (b)(1) to be unconstitutional. The State subsequently appealed to the Court of Special Appeals. The matter was transferred to the Court of Appeals when it granted certiorari before a decision by the Court of Special Appeals.

The Kent County Circuit Court approved the State's motion for waiver of juvenile jurisdiction over Calvin Thomas pursuant to § 3-816 (b)(1) after it was charged that Thomas was a delinquent. Citing the unconstitutionality of § 3-816(b)(1) for the reasons argued by Faulkner, Thomas appealed to the Court of Special Appeals. The State there urged dismissal of that appeal on the basis that such waiver orders were not reviewable prior to final judgment under § 3-817. The Court of Appeals granted certiorari before a decision of the Court of Special Appeals was rendered.

Decision by the Court of Appeals

All four of the cases above were consolidated upon appeal after certiorari had been granted by the Court of Appeals.

Reversing the decisions of the Court of Special Appeals and the Baltimore City Criminal Court in the case of Richard Lee Trader, the Court of Appeals held that Trader had failed to show that § 3-817 was violative of his right to the equal protection of the laws. Judge Murphy, writing for the court, observed that the Maryland judiciary had traditionally

Witnesses were in general agreement that: (1) Fourteen and fifteen-year-olds in Montgomery County were no "more amenable to treatment," that is, no more responsive to rehabilitative programs, than their counterparts in the rest of the state; (2) such juveniles in Montgomery County would not be "less likely to commit serious offenses" than fourteen and fifteen-year-olds in other jurisdictions; (3) youngsters of fourteen and fifteen years in Montgomery County were no "less of a danger to the public safety" than were their counterparts in other Maryland jurisdictions; (4) such a class of juveniles in Montgomery County were no "less of a danger to themselves" than were fourteen and fifteen-year-olds elsewhere in the state; and (5) Montgomery County fourteen and fifteen-year-olds were not farther removed from adulthood as a result of emotional or physical immaturity than were equally young juveniles in other Maryland jurisdictions. See relevant portions of the summary of evidence made by Judge Hammerman in the lower court opinion. Brief of Appellant at 7-10.

19. 272 Md. at 402, 325 A.2d at 418.

20. Faulkner moved to dismiss the State's appeal to the Court of Appeals, arguing that the Criminal Court's order was interlocutory and that the decision not to waive juvenile jurisdiction was therefore not immediately appealable. See discussion Brief of Appellees (In re Trader, 272 Md. 364, 325 A.2d 398 (1974)) at I-IV [hereinafter cited as Brief of Appellees], and 272 Md. at 377, 325 A.2d at 405.

21. 272 Md. at 377, 325 A.2d at 405.
applied the rational basis test to evaluate the validity of claimed violations of equal protection rights arising from statutory schemes drawing territorial distinctions.\textsuperscript{22} While expressing doubt as to the wisdom of the legislative classification in question, Judge Murphy acknowledged the presumption of constitutionality which attaches to such a determination by the legislature.\textsuperscript{23} Such a presumption stands in the absence of a presentation of evidence by the party attacking the validity of the classification in question which would clearly and convincingly show that the classification was arbitrary and did not in fact rest upon any reasonable ground.\textsuperscript{24} The court held that Trader had failed to meet that burden since no evidence was presented on his behalf which would have demonstrated a lack of such reasonable basis.\textsuperscript{25} Since the classification was not otherwise "so irrational as to be invidiously discriminatory on its face,"\textsuperscript{26} Trader's mere allegation of its unconstitutionality was held by the court not to be a basis upon which a finding of a denial of equal protection guarantees could be predicated.

The court reached a conclusion in the case of Stokes similar to that in the case of Trader, since Stokes likewise failed to make the requisite showing that § 3-808 did not rest upon any reasonable basis.\textsuperscript{27} As to Thomas, the Court of Appeals noted that no evidence had been introduced by the juvenile proving the unconstitutionality of § 3-817. Consequently, the State's motion to dismiss the juvenile's appeal was granted, since § 3-817 rendered orders waiving juvenile court jurisdiction interlocutory.\textsuperscript{28}

As to Faulkner, the only case in which a result favorable to the defendant was reached by the court, the State had appealed from a juvenile court decision refusing to waive jurisdiction over Faulkner. The Court of Appeals dismissed the appeal of the State, holding the decision of the juvenile court to be interlocutory.\textsuperscript{29} The court cautioned, however, that in future cases in which evidence "tending to demonstrate that the Legislature had no rational basis" for a prescribed difference is adduced by the


\textsuperscript{23} 272 Md. at 400, 325 A.2d at 417.

\textsuperscript{24} See Prince George's County v. McBride, 268 Md. 522, 532, 302 A.2d 620, 625 (1973), where the court noted: "A cardinal rule to be observed where a violation of the Equal Protection Clause is claimed is that one who assails a legislative classification must sustain the burden of proving that it does not rest on any reasonable basis . . . ." See relevant discussion in State v. Shapiro, 131 Md. 168, 172, 101 A. 703, 705 (1917).

\textsuperscript{25} 272 Md. at 400, 325 A.2d at 417.

\textsuperscript{26} Id. at 401, 325 A.2d at 417. A similar standard was applied in McGowan v. Maryland, 366 U.S. 420, 427 (1961).

\textsuperscript{27} 272 Md. at 401-02, 325 A.2d at 418.

\textsuperscript{28} Id. at 402-03, 325 A.2d at 418.

\textsuperscript{29} Id. at 402, 325 A.2d at 418. See note 20 supra.
defendant without contradiction by the State, "[T]he juvenile courts might well conclude that no rational basis exists for the different treatment."\textsuperscript{30}

**Territorial Classification and the Equal Protection Clause**

Implicit in the court's adoption of the rational basis test to evaluate the constitutional validity of the statutory scheme challenged by the juveniles was a rejection of the State's contention that territory as a classificatory basis was not violative of the equal protection clause even in the absence of any reasonable basis.\textsuperscript{31} An adoption of such contention by the State would have permitted disparate legal standards in intrastate jurisdictions not premised upon justifiable bases.

In several instances the Supreme Court has upheld the constitutionality of state statutes involving territorial classifications. In *Missouri v. Lewis*,\textsuperscript{32} the Court was faced with a Missouri statute granting exclusive jurisdiction over appeals for St. Louis and four adjacent counties in a district appellate court. The statute at the same time placed jurisdiction over identical appeals from all other subdivisions in the state's highest court. Justice Bradley there stated:

> We might go still further, and say, with undoubted truth, that there is nothing in the Constitution to prevent any State from adopting any system of laws or judicature it sees fit for all or any part of its territory. If the State of New York, for example, should see fit to adopt the civil law and its method of procedure for New York City and the surrounding counties, and the common law and its method of procedure for the rest of the State, there is nothing in the Constitution of the United States to prevent its doing so. This would not, of itself, within the meaning of the Fourteenth Amendment, be a denial to any person of the equal protection of the laws. If every person residing or being in either portion of the State should be accorded the equal protection of the laws prevailing there, he could not justly complain of a violation of the clause referred to. For as before said, it has respect to persons and classes of persons. It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances.\textsuperscript{33}

An analogous situation confronted the Court in the decision of *Salsburg v. Maryland*.\textsuperscript{34} A Maryland statute allowed the State to admit into evidence, in the course of prosecution for some gambling offenses in the courts of Anne Arundel, Prince George's and Wicomico Counties, items obtained through illegal search and seizure. The introduction of such evidence was impermissible in all other counties within the state and

30. 272 Md. at 402, 325 A.2d at 418.
32. 101 U.S. 22 (1880).
33. Id. at 31.
34. 346 U.S. 545 (1954).
in Baltimore City. The Court, while placing great reliance upon its earlier decision in *Missouri v. Lewis*, stated that "The Equal Protection Clause relates to equality between persons as such rather than between areas." It affirmed the holding of the Maryland Court of Appeals, and adjudged the state statute to be constitutional.

In *McGowan v. Maryland*, the Supreme Court was again faced with a Maryland statute allegedly in violation of the equal protection clause. The state provisions allowed retail merchants in one county (Anne Arundel) to sell certain items on Sundays whereas similar merchants in other subdivisions were not permitted to make the same sales on that day. The Court upheld the validity of the statute in question, noting that:

> [W]e have held that the Equal Protection Clause relates to equality between persons as such, rather than between areas and that territorial uniformity is not a constitutional prerequisite. With particular reference to the State of Maryland, we have noted that the prescription of different substantive offenses in different counties is generally a matter for legislative discretion. We find no invidious discrimination here.

Other courts confronted with variances in territorial uniformity of statutes have reached similar conclusions.

The State would have had the Court of Appeals apply a broad reading of *Lewis* and *Salsburg* in *In Re Trader* in order that it might have found territorial classification to be constitutional even in the absence of any reasonable basis. Such a holding would seem to have exempted territorial classifications from constitutional limitations. Nevertheless, *Lewis*, *Salsburg*, and *McGowan* have been given such a broad interpretation in at least two instances. In *Mathis v. North Carolina*, the constitutionality of a state scheme which varied punishment for the issuance of valueless checks as between different groups of counties in the state was brought into question. After noting *Salsburg*, the federal district court upheld the validity of the statute despite a lack of an apparent or conjectural rational basis. In *Hogan v. Rosenberg*, a state statute granted all state residents except those living in the City of New York the right to trial by jury when charged with the commission of a misdemeanor. The New York court

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35. 101 U.S. 22 (1880).
37. 201 Md. 212, 94 A.2d 280 (1953).
39. Id. at 427. See discussion in 272 Md. at 388, 325 A.2d at 411.
41. 266 F. Supp. 841 (M.D.N.C. 1967).
found the statute to be constitutional, stating: "The Supreme Court has
recognized that territorial discrimination as between different States and
even as between different parts of the same State is not of itself violative of
the equal protection clause, even if the State has no reasonable basis for
making such a distinction."\textsuperscript{43}

It is clear, however, as Harold W. Horowitz and Diana L. Neitring
pointed out several years ago,\textsuperscript{44} that the \textit{Lewis} and \textit{Salsburg} cases must
be given a more limited interpretation.\textsuperscript{46} In both cases, the Supreme Court
found the established territorial classifications to be a response to a recog-
nized public concern. In \textit{Lewis}, the establishment of a separate appellate
system for the more densely populated portions of Missouri surrounding
St. Louis was justifiable in view of the benefits received from "convenience
and economy in judicial administration."\textsuperscript{46} Furthermore, the Court ob-
served that the detrimental effect of the scheme upon the individual, in
that one might be subject to different, but not unequal treatment, was not
sufficiently significant as to warrant a finding of a violation of the equal
protection clause.\textsuperscript{47} In \textit{Salsburg}, the Court recognized that the Maryland
statute was a legislative response to the especially high level of gambling
taking place in Anne Arundel, Prince George's and Wicomico Counties.
The Court therefore stated that there was a reasonable ground in light
of which the experimental measure in question might be enacted.\textsuperscript{48} The
Court additionally noted that the exclusionary rule was then "peculiarly

\textsuperscript{43} 24 N.Y.2d at 216, 247 N.E.2d at 265, 299 N.Y.S.2d at 430. The Court of
Appeals noted its awareness of the language in \textit{Hogan}, 272 Md. at 389, 325 A.2d at
411. The \textit{Hogan} court found a rational basis for the classificatory framework adopted
by the State. The differences were considered necessary in view of the immense and
burdensome caseload extant in the highly populated city of New York. 24 N.Y.2d at
217-18, 247 N.E.2d at 265, 299 N.Y.S.2d at 431. Potential flaws in the court's reason-
ing were set forth by dissenting Judges Burke and Keating. \textit{Id.} at 230-32, 247 N.E.2d
at 273-75, 299 N.Y.S.2d at 441-44.

\textsuperscript{44} Horowitz and Neitring, \textit{Equal Protection Aspects of Inequalities in Public
Education and Public Assistance Programs From Place to Place Within a State}, 15
U.C.L.A. L. Rev. 787 (1968) [hereinafter cited as Horowitz and Neitring]. The
authors comprehensively review and analyze many cases involving territorially classi-
ficatory schemes established by states, concluding that such cases:

\textit{A}ll make clear that territorial differences in the treatment of individuals under
the law within a state are subject to equal protection limitations. It is no longer
a sound generalization that equal protection requirements are satisfied if there
is a rational basis for the territorial difference. \textit{Id.} at 803-04.

\textsuperscript{45} \textit{Id.} at 790.

\textsuperscript{46} \textit{Id.} at 791. Relevant discussion may also be found in the Brief of Appellees
at 18-19.

\textsuperscript{47} 101 U.S. at 33. See discussion in Horowitz and Neitring, \textit{supra} note 44, at
790-91 and in Brief of Appellees at 18.

\textsuperscript{48} 346 U.S. at 550-53. See discussion in Horowitz and Neitring, \textit{supra} note 44,

\textit{at 791.}
discretionary with the law-making authority." Finally, any attempt to interpret McGowan broadly must be viewed together with the Supreme Court's observation:

The record is barren of any indication that this apparently reasonable basis does not exist, that the statutory distinctions are invidious, that local tradition and custom might not rationally call for this legislative treatment . . . . [T]here would appear to be many valid reasons for these exceptions, as is stated above, and no evidence to dispel them.

Any argument suggesting territorial classifications to be constitutionally valid even in the absence of a rational basis, and relying on McGowan, is weak in light of the Court's reference to and consideration of potential rational bases.

The Development of Equal Protection Analysis

When seen from this more restricted perspective, such classifications become subject to at least some degree of constitutional limitation. Although that degree of limitation has in some cases resulted in a stringent review of the classifications in question, courts have been more likely to evaluate the statutory plan utilizing a lenient standard.

Courts have regularly employed only the most minimal scrutiny in cases involving legislatively drawn classificatory schemes resulting in different treatment in several territorial subdivisions. Under such minimal

49. 346 U.S. at 550.
51. Id. Cited in 272 Md. at 387, 325 A.2d at 410-11.
53. Courts have not hesitated, however, even under minimal scrutiny, to invalidate statutes when territorial classifications resulted in discrimination violative of the equal protection clause. In Long v. Robinson, 316 F. Supp. 22 (D. Md. 1970), aff'd, 436 F.2d 1116 (4th Cir. 1971), the federal district court was faced with a statute which exempted sixteen and seventeen-year-olds arrested in Baltimore City from the jurisdiction of the juvenile courts. No such exclusion was mandated in the case of sixteen and seventeen-year-olds charged with offenses in the other state subdivisions. Evidence was presented showing a lack of any rational basis for the classification and the statute was declared unconstitutional. 316 F. Supp. at 30. In Commissioner of Public Welfare ex rel. Martinez v. Torres, 263 App. Div. 19, 22-23, 31 N.Y.S.2d 101, 105 (1941), the court was unable to discover a rational basis behind a statute which burdened defendants with the production of certain evidence supporting their claims in paternity suits in New York City, while not mandating such testimony in other intrastate jurisdictions. In Maryland Coal & Realty Co. v. Bureau of Mines, 193 Md. 627, 69 A.2d 471 (1949), the Court of Appeals refused to uphold a statute regulating strip mining operations. The Maryland statute exempted Garrett County from its regulations. Although it was applicable to all other parts of the state, strip mining was conducted only in Garrett and Allegany Counties. The court could find no basis for a classification which would have regulated operations in Allegany County but exempted operations in Garrett County.
scrutiny, such schemes were subject to invalidation only in the event that no conceivable rational basis for the difference in treatment could be found.\footnote{See, e.g., Flemming v. Nestor, 363 U.S. 603 (1960); Morey v. Doud, 354 U.S. 457 (1957); Railway Express Agency, Inc. v. New York, 336 U.S. 106 (1949); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911).}

The test was early stated in \textit{Lindsley v. Natural Carbonic Gas Co.},\footnote{220 U.S. 61 (1911). In \textit{Lindsley}, the Court held a state statute regulating underground reservoirs to be valid. The classificatory plan prohibited certain landowners from the removal, by pumping or other means, of excessive quantities of gas contained in underground reservoirs.} where the Supreme Court stated:

1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a \textit{wide scope of direction} in that regard, and avoids what is done only when it is without \textit{any} reasonable basis and therefore is purely arbitrary.

2. A classification having \textit{some} reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

3. When the classification in such a law is called in question, \textit{if any state of facts reasonably can be conceived} that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.\footnote{220 U.S. at 78 (emphasis supplied).}

Thus, when the traditional rational basis test was employed by the courts, state legislative bodies were accorded "a wide scope of discretion in enacting laws which affect some groups of citizens differently than others," the exercise of which would be considered unconstitutionally discriminatory only if based "on grounds wholly irrelevant to the achievement of the State's objective."\footnote{McGowan v. Maryland, 366 U.S. at 425. Similarly, the Court stated in Salsburg v. Maryland: The cumbersomeness of such centrally enacted legislation as compared with the variations which may result from home rule is a matter for legislative discretion, \textit{not judicial supervision}, except where there is a clear conflict with constitutional limitations. We find no such conflict here.}

Some cases have provided the courts opportunity to exercise more rigorous scrutiny of legislatively drawn classificatory schemes. Such greater intensity of review has been evidenced in cases in which state schemes have been based upon inherently "suspect" differences among persons subjected to disparate legislative treatment,\footnote{See, e.g., Graham v. Richardson, 403 U.S. 365 (1971) (alienage); Loving v. Virginia, 388 U.S. 1 (1967) (race); Douglas v. California, 372 U.S. 353 (1963) (indigency); and Takahashi v. Fish & Game Comm'n, 334 U.S. 410 (1948) (alienage).} or in cases in which the "fundamental"...
rights or interests of such persons have been adversely affected by the questioned classifications. Unless shown to be necessary to promote a compelling state interest, such state schemes have uniformly been struck down.

An Alabama legislative reapportionment statute was alleged to infringe upon rights guaranteed under the equal protection clause in Reynolds v. Sims. The Supreme Court determined that the fundamental interest of certain Alabama residents in a right to vote was “unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.” The Court felt that a more stringent standard of review than that afforded by the traditional rational-basis test was appropriate in view of the adverse impact of the reapportionment scheme upon the fundamental interest in the right to vote. “Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights,” the Court stated, “any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.” As a result, the Court held that Alabama should be required to show that the classificatory scheme drawn into question was established pursuant to clearly rational legislative objectives, and stated that “unless relevant to the permissible


60. Shapiro v. Thompson, 394 U.S. 618, 634 (1969). It is interesting to note, therefore, that in these cases, the burden of proof required to sustain the classification is shifted to the party seeking to uphold it. Compare Shapiro with Lindsley, notes 55–56 and accompanying text supra. It may also be asserted that in addition to shifting the burden of proof, courts in such cases have also increased the quantum of proof required.


62. Id. at 568.

63. Id. at 562. The Supreme Court has found the protection of the right to vote in such an “unimpaired manner” as particularly important in other circumstances. See United States v. Carolene Products Co., 304 U.S. 144 (1938), where the Court suggested, in applying the more traditional rationality test:

There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth. (citations omitted)

It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation.

304 U.S. at 152 n.4. Accord, San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 58 (1973), suggesting that remedies for per-pupil educational expenditure differentials between state established territorial subdivisions are “matters reserved for the legislative processes . . . .”

64. 377 U.S. at 562 (emphasis supplied).
purposes of legislative reapportionment" the plan would be considered invalid under the fourteenth amendment. Discerning no such relevance, the Alabama plan was deemed unconstitutional. Consequently, it may be asserted that Reynolds v. Sims held that a stringent standard of review will be used by the Court to evaluate state schemes infringing upon constitutionally protected fundamental interests.

Courts employing the "two-tiered" formula of the "rational basis" and "strict scrutiny" tests have encountered considerable difficulty in recent years. Professor Gunther has observed:

Some situations evoked the aggressive "new" equal protection, with scrutiny that was "strict" in theory and fatal in fact; in other contexts, the deferential "old" equal protection reigned, with minimal scrutiny in theory and virtually none in fact.

In an attempt to alleviate the growing dissatisfaction with the existing equal protection standards, which have been considered too inflexible in their use, the Supreme Court, beginning with the dissent of Justice Marshall in Dandridge v. Williams, has tried to develop a new test of legislative rationality capable of utilization in all equal protection cases. While not embracing the "sliding scale test" enunciated by Justice Marshall, the Court has nevertheless intensively examined the means by which legislative objectives have been achieved in classificatory schemes. This intense examination has occurred in recent cases despite the fact that the Court

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65. Id. at 565.
66. Gunther, The Supreme Court, 1971 Term — Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 Harv. L. Rev. 1 (1972) [hereinafter cited as Gunther]. Professor Gunther examined the "two-tiered" equal protection analysis utilized by the Burger Court. Id. at 12. He observed that the Burger Court was hesitant to further enlarge the number of "suspect" criteria or "fundamental" interests triggering the use of "strict scrutiny," and yet felt uneasy with the inflexibility of the "two-tiered" framework. The result, Gunther determined, was a decision by the Burger Court to employ the equal protection clause "as an interventionist tool" in a manner not utilizing the "strict scrutiny" format, thus putting "new bite" in the "old" equal protection. Id. A discussion of the equal protection tests may also be found in Developments in the Law — Equal Protection, 82 Harv. L. Rev. 1065 (1969).
67. Gunther, supra note 66, at 8.
68. 397 U.S. 471 (1970). In Dandridge, Justice Marshall noted that under the facts of the case:

[Equal protection analysis . . . [was] not appreciably advanced by the a priori definition of a "right," fundamental or otherwise. Rather, concentration must be placed upon the character of the classification in question, the relative importance to individuals in the class discriminated against of the governmental benefits that they do not receive, and the asserted state interests in support of the classification. Id. at 520. See San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973) (Marshall, J., dissenting); Vlandis v. Kline, 412 U.S. 441 (1973) (White, J., concurring); and Police Dep't v. Mosley, 408 U.S. 92, 95 (1972), where Justice Marshall described the test to be utilized as one of whether "an appropriate governmental interest [is] suitably furthered by the differential treatment."
69. Gunther, supra note 66, at 20–21.
has ostensibly employed the traditional rational basis test.\textsuperscript{70} Professor Gunther has described the new test of rationality of such legislative classifications as "[p]utting consistent new bite into the old equal protection."\textsuperscript{71} Continued utilization of such a new test, he continues:

[w]ould mean that the Court would be less willing to supply justifying rationales by exercising its imagination. It would have the Court assess the means in terms of legislative purposes that have substantial basis in actuality, not merely in conjecture. Moreover, it would have the Justices gauge the reasonableness of questionable means on the basis of materials that are offered to the Court, rather than resorting to rationalizations created by perfunctory judicial hypothesizing.

But it would be considerably less strict than the new equal protection. First, it would concern itself solely with means, not with ends . . . . The yardstick for the acceptability of the means would be the purposes chosen by the legislatures, not "constitutional" interests drawn from the value perceptions of the Justices.

Moreover, the strengthened "rationality" scrutiny would curtail the state's choice of means far less severely than the new equal protection approach.\textsuperscript{72}

\text{\ldots \ldots}

The model requires that there be an affirmative relation between means and ends — or, in more traditional equal protection terms, that there be a genuine difference in terms of the state's objective between the group within the classification, and those without. To a large extent, that is an empirical inquiry.\textsuperscript{73}

\textit{Equal Protection Analysis in Maryland}

In \textit{In Re Trader},\textsuperscript{74} the Maryland Court of Appeals manifested its discomfort with the application of its own traditional test of legislative rationality, when faced with strenuously asserted claims of infringement upon constitutionally protected personal rights.\textsuperscript{75} The court in \textit{In Re Trader} relied heavily upon the recent Supreme Court decision in \textit{San Antonio Independent School District v. Rodriguez},\textsuperscript{76} a case in which the Court continued to strengthen the minimal rationality standard by applying its new invigorated test.\textsuperscript{77}

\textsuperscript{71} Gunther, \textit{supra} note 66, at 21.
\textsuperscript{72} \textit{Id}.
\textsuperscript{73} \textit{Id. at 47} (emphasis supplied).
\textsuperscript{74} 272 Md. 364, 325 A.2d 398 (1974).
\textsuperscript{75} See discussion in text accompanying notes 10-21 \textit{supra}.
\textsuperscript{76} 411 U.S. 1 (1973).
\textsuperscript{77} The decision in \textit{Rodriguez} was significantly based upon an empirical examination, the Court having studied a great deal of evidence concerning the nature of the financing of the Texas school system presented by the State. 411 U.S. at 6-17, 44-55.
In a series of cases, decided prior to the Supreme Court decision in *Lindsley v. Natural Carbonic Gas Co.*\(^7\) in which violation of equal protection guarantees were asserted, the Maryland Court of Appeals applied a test of rationality of legislative enactments similar to that which had been utilized to evaluate other constitutional challenges.\(^7\) In *State v. Broadbelt,*\(^8\) the court stated that a classification must "be based upon reasonable grounds. It must not depend on distinctions which do not furnish any proper basis for the attempted classification."\(^8\) Similarly, in *Watson v. State,*\(^8\) the court observed:

> [T]hat if the classification is reasonable and bears *any* proper relation to the object sought to be accomplished, that object being in itself a lawful and proper purpose, it is not forbidden by the Fourteenth Amendment.\(^8\)

Since shortly after the decision of the Supreme Court in *Lindsley* the Maryland courts have consistently employed the criteria enunciated therein to evaluate equal protection challenges to legislative enactments.\(^8\)

Furthermore, rather than concern itself largely with a study of the ends of the system (the provision of education for Texas school children) or with the establishment of a new fundamental interest (the right to education), the Court scrutinized carefully the means chosen by the state to finance that school system (the established property tax scheme and additional revenues). A positive relation between the means and the ends was found by the Court, in that such a relationship existed between the financing system existing in Texas and the goal of the provision of education for Texas public school children. See the criteria for the strengthened rational basis test given by Professor Gunther at notes 71–73 *supra* and accompanying text.

78. 220 U.S. 61 (1911).

79. *See* McCulloch v. Maryland, 4 Wheat. 316, 421 (1819), a case testing the validity of a Congressional action under the Commerce Clause, where the Supreme Court stated:

> Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional.

Note the similarity to the description of the Supreme Court's new equal protection test given by Professor Gunther. "Stated most simply," he observed:

> [I]t would have the Court take seriously a constitutional requirement that has never been formally abandoned: that legislative means must substantially further legislative ends. The equal protection requirement that legislative classifications must have a substantial relationship to legislative purposes is, after all, essentially a more specific formulation of that general principle.


80. 89 Md. 565, 43 A. 771 (1899).

81. *Id.* at 581, 43 A. at 773, where the court cites with approval Gulf, Colorado and Santa Fe Ry. v. Ellis, 165 U.S. 150 (1897).

82. 105 Md. 650, 66 A. 635 (1907).

83. *Id.* at 655, 66 A. at 637 (emphasis supplied). *See* Clark v. Harford Agricultural & Breeders' Ass'n, 118 Md. 608, 85 A. 503 (1912); Mount Vernon-Woodberry Cotton Duck Co. v. Frankfort Marine Acc. & Plate Glass Ins. Co., 111 Md. 561, 75 A. 105 (1909); Storck v. Mayor & City Council, 101 Md. 476, 61 A. 330 (1905); Herbert v. County Comm'rs, 97 Md. 639, 55 A. 376 (1903).

Wampler v. LeCompte, the court directly quoted with approval the fourfold test set forth in Lindsley and applied it to a case in which a statutory discrimination against certain riparian landowners was alleged. The court held that even though the State had not advanced actual reasons for the statutory distinction, it could assume "until the contrary [was] shown, that a state of facts in respect thereto existed, which warranted the Legislature in so legislating," and held the statute to be constitutional. In Tatlebaum v. Pantex Manufacturing Corp., a provision of the Conditional Sales Act was claimed to infringe upon the equal protection clause. The appellants in Tatlebaum alleged "that the Act, by declaring unrecorded conditional contracts void as to receivers, without making them void as to trustees, create[d] an arbitrary classification" violative of the fourteenth amendment. In deciding that question, the court held:

[T]he classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

Finding that the reasons for the distinction drawn in the statute were imaginable, the court sustained the Act's validity. And in Potomac Sand & Gravel Co. v. Governor, the court considered an equal protection attack upon a portion of a public local law which prohibited anyone from dredging for and removing sand and gravel from the marshlands of Charles County. In upholding the territorial distinctions between Charles County and the rest of the state provided by the statute, the court adopted the reasoning provided in Allied American Mutual Fire Insurance Co. v. Commissioner of Motor Vehicles:

The constitutional need for equal protection does not shackle the legislature. It has the widest discretion in classifying those who are

85. 159 Md. 222, 150 A. 455 (1930).
86. Id. at 225, 150 A. at 457. The Lindsley test is set forth in the text accompanying notes 55-56 supra.
87. 159 Md. at 228, 150 A. at 458.
88. 204 Md. 360, 104 A.2d 813 (1954).
89. Id. at 369, 104 A.2d at 819.
90. Id. at 370, 104 A.2d at 819.
91. Id. at 373, 104 A.2d at 821. The court there stated:

We may presume that the reason why the Legislature did not give the same protection to creditors in a trusteeship as it did to creditors in a receivership is that it considered the fact that an assignor for the benefit of creditors acts voluntarily, chooses his trustees, assigns his entire estate to them, defines their powers and duties, and possibly even determines their compensation, and thus he might have it within his power to make an assignment immediately after he purchases property on conditional contracts, and thereby cause loss to unwary vendors.

For the reasons we have given we hold that the Act does not infringe the Equal Protection Clause of the Fourteenth Amendment.

Id. (emphasis supplied).
to be regulated and taxed. Only if the grouping is without any reasonable basis, and so entirely arbitrary, is it forbidden. Abstract symmetry or mathematical nicety are not requisites. The selection need not depend on scientific or marked differences in things or persons or their relations. If any state of facts reasonably can be conceived that would sustain a classification, the existence of that state of facts as a basis for the passage of the law must be assumed. The burden is on him who assails a classification to show that it does not rest on any reasonable basis.\textsuperscript{94}

The minimal scrutiny of the means employed by the legislature in enacting classificatory schemes that was characteristic of \textit{Wampler, Tatlebaum} and \textit{Potomac Sand & Gravel} is uniformly found in other cases in which the court has sustained the validity of such plans against equal protection attacks.\textsuperscript{95} Under the \textit{Lindsley} test, absent a showing by the party assailing the validity of a legislative classificatory enactment that no rational basis could be found for the distinctions thus drawn, the court has found itself able to dismiss the challenge perfunctorily. But even if that burden of proof has been met by the challenger, the requirements of the minimal scrutiny test have not precluded the court from finding a reason sufficient to sustain the validity of the statute questioned whether articulated or conjectural.\textsuperscript{96}

This is not to say that Maryland courts have never struck down a statute attacked on equal protection grounds under the minimal scrutiny test. In \textit{Maryland Coal & Realty Co. v. Bureau of Mines},\textsuperscript{97} for example, the court found a statute differentially regulating identical strip-mining operations in Garrett County and the rest of the state to be without any rational basis, either articulated or conjectural, since there was no "difference between the conditions in the territory selected and the conditions in the territory not affected by the statute sufficient to afford some basis, however slight, for classification."\textsuperscript{98}

\textsuperscript{94} Id. at 623, 150 A.2d at 431. The language from \textit{Allied American Mut. Fire Ins. Co.} is quoted by the court in \textit{Potomac Sand & Gravel}, and is there recognized to be a rephrasing of the \textit{Lindsley} test. 266 Md. at 376, 293 A.2d at 250-51.


\textsuperscript{96} Note that the requirements of the minimal scrutiny test are satisfied when the court is able to conceive of a reason for the classification which has been brought into question. In this manner, the validity of the classification may be upheld despite the fact that the court may not have been presented with or may not find persuasive reasons advanced by the state in support of the classification. See discussion of \textit{Lindsley} in text accompanying notes 55-56 supra.

\textsuperscript{97} 193 Md. 627, 69 A.2d 471 (1949). The facts of \textit{Maryland Coal & Realty Co.} may be found at note 53 supra.

\textsuperscript{98} Id. at 642, 69 A.2d at 477.
The Court of Appeals declared the statute violative of the equal protection clause. Likewise, in *Dasch v. Jackson*, the court invalidated, as being in contravention of fourteenth amendment guarantees, a statute regulating only those persons who were engaged as paperhangers in Baltimore City, while not imposing similar regulations upon paperhangers in other jurisdictions. The court held classificatory schemes:

[A]dopted for the purposes of the regulatory measure, must be reasonable, uniform in... operation within the class, and based upon some legitimate principle of public policy.

Measured by that standard, the act under consideration [in the case could not] be sustained as a valid exercise of legislative authority.

In both *Maryland Coal & Realty Co.* and *Dasch*, therefore, the court struck down legislative classificatory schemes which had no rational basis, either articulated or conjectural. In *Mayor & City Council of Havre de Grace v. Johnson*, the court considered an equal protection attack upon a local ordinance which forbade non-residents of Havre de Grace from operating taxicabs in the town, while permitting residents to do so. The court stated:

[W]e... cannot assume as a matter of law that the operation of an automobile hiring business by a non-resident of Havre de Grace would, because of his non-residence, constitute a greater peril to the health or welfare of that town than it would if operated by a resident. A more reasonable and probable view would be that it was intended to confer the monopoly of a profitable business upon residents of the town. But whatever its purpose may have been, there can be no doubt but that the ordinance is discriminatory and unreasonable, and that the municipality had no power to adopt it.

A similar result was reached in *Jewel Tea Co. v. Town of Bel Air* and in *Blaustein v. State Tax Commission*, where the court rejected reasons advanced to sustain legislative enactments faced with equal protection challenges as themselves being improper or unlawful efforts at discrimination between members of the same general class. In each of these cases, a state of facts reasonably could have been conceived that could have sustained the challenged legislative enactment if the *Lindsley* test were literally applied. Nonetheless, in each of the cases the court found the classifications to be arbitrary and therefore invalid.

In the 1971 decision in *Bruce v. Director, Department of Chesapeake Bay Affairs*, the court seemed to apply a more exacting standard of...
scrutiny to a legislative classificatory plan which adversely affected the "fundamental rights or interests" of a prescribed class of individuals. In doing so, the court came closest to adopting the strict scrutiny of the "new" equal protection. Challenged in Bruce was a statute which placed differing restrictions on the removal of crabs and oysters from tidal waters by residents of various counties. The court found that a rational basis existed for these differences in the direct effect of such regulations upon the livelihood of several thousand watermen. Nonetheless, the court declared the statute to be violative of the equal protection clause, holding:

While it is true in the case at bar that a rational basis exists for distinguishing between tidewater and non-tidewater counties, yet the crab and oyster resources found in the tidal waters are common property held in trust by the State for all of its citizens, no matter in which part of the state they may live. To that extent an otherwise legitimate classification of residents which may be made for many purposes, cannot be made if it affects a right (in this case to the enjoyment and use of natural resources) which, as citizens of this State, they enjoy equally.108

In Bruce, therefore, even though the court was presented with an otherwise valid rational basis which could, under the Lindsley test, sustain the legislative classification, it rejected the scheme as violative of the equal protection clause, the court invoking for that purpose the right of all citizens of Maryland to equally enjoy the use of natural resources.

In each of the cases in which the court rejected a statutory plan it evidenced a certain amount of discomfort with the test by which it invalidated the statute. The court often desired to sustain a valid claim of personal and perhaps constitutionally protected rights, but in some cases,107 was able to do so only by verging upon an expansion of the traditional scope of the Lindsley test. Such expansions were only infrequently and cautiously made because of the court's concern with its interplay with the Legislature. In no case did the court desire to appear to be a "Super-legislature,"108 evaluating both the purpose of a legislative enactment and the means by which it is achieved.

The Effect of In Re Trader

In In Re Trader, the court was presented with an opportunity to adopt the more exacting scrutiny of the "new" equal protection, having been presented with several claimed violations of allegedly fundamental rights.109

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106. Id. at 606, 276 A.2d at 211 (emphasis supplied). See discussion of Bruce in Brief of Appellees at 78-79.
107. See discussion at notes 101-06 and accompanying text infra.
108. Shapiro v. Thompson, 394 U.S. 618, 661 (1969). The court in In re Trader was aware of the Supreme Court's fear of assuming such a role. 272 Md. at 393-94, 325 A.2d at 413-14.
109. The juveniles asserted that the statute in question infringed upon several of their fundamental rights. They first argued that their right to receive equal treatment
The leap from the traditional rational basis test to that level of more exacting scrutiny would not have been drastic in view of the recent holding in *Bruce*. Nonetheless, the court rejected the contentions of the appellees that certain of their fundamental rights have been infringed, relying heavily upon the Supreme Court’s decision in *Rodrigues* that whether an interest is fundamental or not lies in “[A]ssessing whether [it] is a right . . . explicitly or implicitly guaranteed by the Constitution.”  

In adopting that language, the Maryland Court of Appeals appeared to be in agreement with the opinion of Justice Powell in *Rodrigues*, which adopted Justice Harlan’s dissenting view in *Shapiro v. Thompson*.  

In *Rodrigues*, Justice Powell stated:

> [I]f the degree of judicial scrutiny of state legislation fluctuated depending on a majority’s view of the importance of the interest affected, [the Court] would have gone “far toward making [itself] a 'superlegislature’” . . . [Such a role would be] one for which the Court lacks both authority and competence.”

Concern that the Court’s decisional role would be viewed as that of a “superlegislature” is evidenced in *Rodrigues*, *Bruce* and *In Re Trader*. In *In Re Trader*, the court therefore avowedly applied the traditional rational basis test, concerned as it was with the means employed by the legislature in enacting a classificatory plan, rather than its purpose. As a result of that application, the results reached by the Court of Appeals as to

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*at trial and in the appellate process had been affected by the operation of the statute. Citing, among others, the decisions in Griffin v. Illinois, 351 U.S. 12 (1956) and Skinner v. Oklahoma, 316 U.S. 535 (1942), the appellees argued that the Supreme Court had mandated that all persons charged with the commission of crimes must be equally treated. Brief of Appellees at 72-75. Consequently, the “right of children everywhere in the state to equal enjoyment of the same benefits and procedures under the juvenile laws . . . should be denied only for the most compelling of reasons.” Id. at 74-75. The juveniles also alleged that the classification in question infringed upon their fundamental right to vote. Id. at 75. The appellees pointed out that conviction of the offenses alleged to have been committed by them would result in a deprivation of their right to vote. “If treated as juveniles, however, disposition of these charges may not operate to impose any civil disabilities.” Id. The appellees also asserted that the state statutes infringed upon their right to privacy. Criminal trials take place in public, become a matter of public record, and stigmatize a defendant in a manner which may follow the convicted person for the remainder of his life. Juvenile proceedings, however, appellees argued, are especially geared to protect a child from “the taint of criminality . . . thereby giving added protection to the child’s right to privacy.” Id. at 76. Finally, the appellees advocated the application of the strict scrutiny test because the alleged discriminations adversely affected a class of individuals, who, because of their age, had little, if any impact upon or bargaining power within the political process. Id. at 77-79. See 272 Md. at 392, 325 A.2d at 413.

10. 411 U.S. at 33-34.
12. 411 U.S. at 31.
13. The Court of Appeals cited *Bruce* with approval for this proposition. 272 Md. at 399, 325 A.2d at 417.
Trader, Stokes and Thomas were predictable since none of the appellees in those cases presented any evidence which would tend to overcome the presumption of legislative validity of the statutes under which they were adjudicated. As to Faulkner, the court never reached the issue thus presented, although Faulkner "presented evidence plainly tending to demonstrate that the Legislature had no rational basis for treating" him as it did.\textsuperscript{114} The court dismissed the State's appeal on other grounds.\textsuperscript{115} Despite the fact that the decision in the case of Faulkner was reached on narrower grounds, the court felt it important to caution:

\begin{quote}
[S]hould the State in future cases, in the face of a record like that presented in \textit{Faulkner}, choose not to contradict the plain import of such \textit{evidence} as it bears on the \textit{Faulkner} issue, the juvenile courts might well conclude that no rational basis exists for the different treatment [provided by the statute].\textsuperscript{116}
\end{quote}

The caution provided by the court in its disposition of the case of Faulkner, especially in view of the fact that it need not have provided such, is indicative of the continuing willingness of the Court of Appeals to strengthen its equal protection analysis. That view is buttressed by the decision in \textit{Bruce}, a case which might arguably be viewed as one having involved the application of the strict scrutiny test couched in less than orthodox language.\textsuperscript{117} The validity of that characterization of \textit{Bruce}, however, is mitigated by the fact that in the course of its discussion of the interplay of legislative and judicial roles, the court relied upon \textit{Allied American}

\textsuperscript{114} \textit{Id.} at 402, 325 A.2d at 418.

\textsuperscript{115} See discussion in text accompanying notes 20 and 29 \textit{supra}.

\textsuperscript{116} 272 Md. at 402, 325 A.2d at 418. In a case decided on March 12, 1975, the Circuit Court for Prince George's County, Maryland, was confronted with a challenge by a group of juveniles charged with the commission of certain offenses in Prince George's County of the identical statute involved in the appeal by Stokes. \textit{State v. Jones}, No. 14,178 (Prince George's County Cir. March 12, 1975). After including in its opinion the summarized testimony of numerous expert witnesses presented by the juveniles to attack the constitutionality of the statute, the court concluded that "The requisite basis for the distinction was not shown. The evidence is overwhelming for testimonies of all the witnesses clearly assert this conclusion." \textit{Id.}, slip opinion at 12. The State presented no evidence to rebut the contention of the juveniles or to support the constitutionality of the statute brought into question other than statistics tending to show "that Prince George's County had a higher rate of reported crimes than Montgomery County except for the crime of larceny." \textit{Id.}, slip opinion at 11. The court noted the decision in \textit{In re Trader}, and held the statute unconstitutional since no rational basis for the classification had been established. Additionally, the court found itself "unable to hypothesize further situations tending to show a 'legitimate state objective' in distinguishing between those defendants and their counterparts in age and deed in Montgomery County." \textit{Id.}, slip opinion at 10.

\textsuperscript{117} See the test accompanying notes 105-06 \textit{supra}, suggesting that in \textit{Bruce}, the court was presented with reasons usually sufficient to sustain the legislative classification challenged therein under the traditional \textit{Lindsay} test, and the court nevertheless struck down the challenged statute as violative of the equal protection clause.
Mut. Fire Ins. Co. v. Commissioner of Motor Vehicles,\textsuperscript{118} and utilized the rational basis framework in reaching its decision. Hence, if strict scrutiny was not the measure used by the court in its resolution of Bruce, and since a rational basis was admittedly found by the court which should have satisfied the Lindsley test, it can only be concluded that the court in Bruce mirrored the admonition as to Faulkner,\textsuperscript{119} and required a greater showing of rationality. By indicating in its decision as to Faulkner that the court would not in future cases look beyond the evidence presented by the State to mere conjecture\textsuperscript{120} to supply a rational basis for the establishment of a legislative scheme, the court provided additional support to the nascent invigorated rational basis test recognizable in Bruce. While the resolution of the issues raised in the consolidated appeals presented in In Re Trader did not extend the rational basis test, the admonitions presented therein evidence the potential willingness of the Court of Appeals in a future case to formulate explicitly a stronger rational basis test.

Rodrigues is a recent decision in a series of cases in which the Supreme Court has searched for a manner of scrutinizing the means employed to implement an underlying legislative purpose, that is more exacting than that provided by the traditional rational basis test, but less apparently arbitrary than that demonstrated by the strict scrutiny test.\textsuperscript{121} The potential foreshadowed by In Re Trader exemplifies the same type of search by the Court of Appeals of Maryland.

There was little doubt that the court would have been presented with an opportunity to continue that search in later litigation if the statutory scheme had not been changed by the legislature.\textsuperscript{122} If the admonition as to Faulkner indeed foreshadowed the likely approach of the Court of Appeals in a later case, then the State's claims in In Re Trader supportive of the rationality of the questioned statutory scheme may well have been subjected to some greater amount of judicial scrutiny.

The challenged classifications involved in In Re Trader were contained in statutes describing the exclusive original jurisdiction of Maryland juvenile courts in terms of the site of the commission of the charged delinquent act.\textsuperscript{123} Thus, two distinct classes were created by the statutes involved, treating juveniles included within them disparately. One class consisted of all juveniles having committed a delinquent act in Montgomery County; the other, of all juveniles committing delinquent acts anywhere

\textsuperscript{118} 219 Md. 607, 150 A.2d 421 (1959).
\textsuperscript{119} 272 Md. at 402, 325 A.2d at 418.
\textsuperscript{120} A discussion of the traditional rational basis test, which would permit conjectural bases, may be found at note 96 and accompanying text \textit{supra}.
\textsuperscript{121} See note 77 \textit{supra}.
\textsuperscript{122} See note 2 \textit{supra}.
else in the state. Place of residence in no way affected or determined under which set of procedures an accused juvenile would be governed.\footnote{124}

Certainly a delinquent act committed in Montgomery County has the same impact upon that jurisdiction as the same delinquent act committed in any other county has upon that jurisdiction; furthermore, substantial evidence exists to support the proposition that there are no significant physical or emotional bases for concluding that juveniles committing delinquent acts in Montgomery County are in any way different than juveniles committing such acts in any other part of the state.\footnote{125} The character of juvenile acts committed in Montgomery County and in the rest of the state are similarly not distinguishable. Hence, it was likely that the only substantial difference between the juvenile system established in Montgomery County and that existing in the rest of the state derived from the differing facilities or benefits available in each to persons subjected to juvenile treatment. That contention is seemingly buttressed by the fact that the rational bases advanced by the State in \textit{In Re Trader} for the variance in statutory treatment all pertained to the inherent differences in the juvenile system of Montgomery County.\footnote{128}

It therefore becomes likely that under the admonition as to Faulkner, the standard by which the means employed by the legislature to achieve its purpose in creating the challenged state scheme must be measured are those legislative purposes advanced by the State during the course of trial litigation, and particularly those announced by the legislature itself during its passage of the plan. In light of those expressed legislative purposes it was most difficult to understand how means which absolutely deny statutory benefits to a set of juveniles in one jurisdiction, while granting those benefits to another set of identical juveniles in another jurisdiction are a rational way of achieving that legislative purpose. Such was the case in \textit{Long v. Robinson},\footnote{127} where the court was confronted with a statutory provison setting the upper age limit for juvenile jurisdiction in the courts.

\footnotesize{124. 272 Md. at 368-69, 325 A.2d at 401.  
126. 272 Md. at 378-79, 325 A.2d at 405-06. \textit{See} Brief of Appellant at 16-18. The State cited the “separate and unique development of Montgomery County’s juvenile laws and procedures,” \textit{id}. at 16 and the existence in the jurisdiction of “detention and rehabilitation facilities uniquely available to the Montgomery County juvenile offender.” \textit{id}. at 17. Furthermore, appellant contended that it might be speculated that “the General Assembly believed in trying, on an experimental basis, different procedures for handling juvenile offenders in Montgomery County that might subsequently be found to be more or less preferable and/or applicable to the remainder of the State.” \textit{id}. The court impliedly found the potential rational bases presented by the State to be insufficient when it observed that a future court might find the statutory scheme in question to be unconstitutional if confronted with a record similar to that developed by Faulkner, and if given no rebuttal evidence by the State. 272 Md. at 402, 325 A.2d at 418.  
of Baltimore City at sixteen years of age. In all other Maryland subdivisions, persons under the age of eighteen charged with the commission of delinquent acts were subject to the jurisdiction of the juvenile courts. The court found the absolute denial of juvenile treatment to sixteen and seventeen-year-old youths charged with offenses in Baltimore City to be violative of the equal protection clause.128

It was less difficult, though problematical, to reconcile a difference in legislative treatment of similar juveniles in different jurisdictions which merely results in a variance in the degree of the benefits available in such jurisdictions. In the case of Trader, orders waiving jurisdiction of the juvenile court in Montgomery County were immediately appealable, while interlocutory in the rest of the state. Absolute denial of a benefit conferred by the juvenile system could probably not have been asserted, since such an order was appealable at some point in either instance, even if such appeal might be forced to await final judgment.129 In the case of Stokes, a sixteen-year-old juvenile who was charged with robbery with a deadly weapon was exempted from the jurisdiction of the juvenile court in all parts of the state except Montgomery County, subject to a determination by the criminal court in which he was charged that the case should be waived to juvenile court. Statutes applicable to Montgomery County included no such exemption from the jurisdiction of the juvenile courts. The reverse waiver procedures contained in statutory provisions applicable in jurisdictions other than Montgomery County did not preclude, under all circumstances, a sixteen-year-old who had committed armed robbery from being treated as a juvenile. If treatment as a juvenile offender is indeed a benefit, as the court seems to indicate in In Re Trader,130 there was no absolute denial of that benefit to Stokes.131 In the cases of Faulkner and Thomas, no juvenile between the ages of fourteen and sixteen could be waived from juvenile to criminal court under any circumstances in Montgomery County, while the statutes governing juvenile proceedings in the rest of the state permitted waiver of such fourteen- and fifteen-year-olds in certain circumstances. Once again the benefits of juvenile treatment were subject to greater restriction in jurisdictions other than Montgomery County, but were never absolutely denied in such jurisdictions.

129. It is worthwhile to note, however, that as a result of the interlocutory nature of juvenile waiver orders in non-Montgomery County subdivisions, juveniles possibly faced several months of confinement in post-conviction facilities prior to an opportunity to review the denial of juvenile jurisdiction. Brief of Appellees at 52 n.76.
130. 272 Md. at 399-402, 325 A.2d at 417-18.
131. Appellees discussed the potentially harmful effects of reverse waiver. It was noted that unlike in initial waiver proceedings (held in juvenile court), reverse waiver proceedings place the burden of proof upon the offender. It is the juvenile who must meet the burden of proof required to convince the court that he should be waived to juvenile court. Furthermore, the juvenile arrested as an adult will be “booked” and confined with adult offenders. Brief of Appellees at 50-52.
The court in each of these cases was faced with a situation in which greater benefits were statutorily conferred upon members of one legislatively prescribed class than upon members of another such class, although such benefits were not absolutely denied to members of either class. The same type of situation was faced by the Supreme Court in *Rodriguez*, where greater educational benefits accrued to school children residing in some Texas counties than in others. In that case, the Supreme Court, while apparently applying an invigorated rational basis test, found that existing differentials permitted under applicable state law were supported by a positive relation between the means thus employed and the purpose designed to be achieved, on the basis of materials presented to the Court.\(^{132}\) The court in the case of *Faulkner* hints that it might require a similar showing in the future. Hence, in subsequent litigation involving the same types of issues presented in *In Re Trader*, the court might well look to the State, and not rely on its own conjecture, when faced with a sufficient quantum of evidence adduced by those challenging a statute to show its unconstitutionality.\(^ {133}\) Absent the showing of empirical evidence by the State tending to demonstrate a positive relation between the means employed and the purposes designed to be achieved, challenged classificatory schemes might be deemed violative of the equal protection clause. The application of a strengthened rational basis test to the statutory scheme attacked in *In Re Trader* was pre-empted by the action of the legislature. Its utilization by the Court of Appeals must therefore await future instances wherein state statutory classifications are alleged to deny rights guaranteed under the equal protection clause of the Constitution of the United States.

\(^{132}\) 411 U.S. at 44-55.

\(^{133}\) "[S]hould the State in future cases, in the face of a record like that presented in *Faulkner*, choose not to contradict the plain import of such evidence as it bears on the *Faulkner* issue, the juvenile courts might well conclude that no rational basis exists . . .". 272 Md at 402, 325 A.2d at 418. Note that the Supreme Court in *Rodriguez* stated that "the Texas scheme must still be examined to determine whether it rationally furthers some legitimate, articulated state purpose and therefore does not constitute an invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment." 411 U.S. at 17 (emphasis supplied). In this manner, the Court seemed to rule out a court-conceived basis.