several voting cases in which restrictions were voided, and the doctrine was asserted in other cases.[1429]

Although no opinion of the Court attempted to delineate the process by which certain "fundamental" rights were differentiated from others,[1430] it was evident from the cases that the right to vote,[1431] the right of interstate travel,[1432] the right to be free of wealth distinctions in the criminal process,[1433] and the right of procreation [1434] were at least some of those interests that triggered active review when *de jure* or *de facto* official distinctions were made with respect to them. In *Rodriguez*,[1435] the Court also sought to rationalize and restrict this branch of active review, as that case involved both a claim that *de facto* wealth classifications should be suspect and a claim that education was a fundamental interest, so that providing less of it to people because they were poor triggered a compelling state interest standard. The Court readily agreed that education was an important value in our society. "But the importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause. . . . [T]he answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution." [1436] A right to education is not expressly protected by the Constitution, continued the Court, and it was unwilling to find an implied right because of its undoubted importance.

But just as *Rodriguez* did not ultimately prevent the Court's adoption of a "three-tier" or "sliding-tier" standard of review, Justice Powell's admonition that only interests expressly or impliedly protected by the Constitution should be considered "fundamental" did not prevent the expansion of the list of such interests. The difficulty was that Court decisions on the right to vote, the right to travel, the right to procreate, as well as other rights, premise the constitutional violation to be of the Equal Protection Clause, which does not itself guarantee the right but prevents the differential govern-

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[1429] Kramer v. Union Free School Dist., 395 U.S. 621 (1969); Cipriano v. City of Houma, 395 U.S. 701 (1969); City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970); Dunn v. Blumstein, 405 U.S. 330 (1972).

[1430] This indefiniteness has been a recurring theme in dissents. *E.g.*, Shapiro v. Thompson, 394 U.S. 618, 655 (1969) (Justice Harlan); Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 177 (1972) (Justice Rehnquist).

[1431] *E.g.*, Dunn v. Blumstein, 405 U.S. 330 (1972).

[1432] *E.g.*, Shapiro v. Thompson, 394 U.S. 618 (1969).

[1433] *E.g.*, Tate v. Short, 401 U.S. 395 (1971).

[1434] Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942).

[1435] San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1 (1973).

[1436] 411 U.S. at 30, 33–34. *But see* id. at 62 (Justice Brennan dissenting), 70, 110–17 (Justices Marshall and Douglas dissenting).