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## SELF-EVALUATION QUESTIONS

1. What are the main components of, and the relationships within, the service delivery framework suggested for guiding the selection of indicators?
2. Define service resources, activities, results.
3. What is the definition of service impacts? Why are impact indicators difficult to identify and use?
4. Define and identify routine services, protection services, developmental services, and social minimum services?
5. How are categories of indicators related to conceptions of equity? Cite some examples.
6. Why are citizen surveys useful for some services? What services are citizen surveys particularly useful in analyzing? Are the indicators obtained in this way likely to be indicators of resources, activities, or results?

## CHAPTER 5. LEGAL ISSUES OF URBAN SERVICE DISTRIBUTION

Challenges to the legality of urban service distribution patterns primarily can be brought on three legal foundations. One basis is the equal protection clause of the 14th Amendment to the U.S. Constitution. A second is the Voting Rights Act of 1965. A third foundation is revenue sharing legislation • principally the State and Local Assistance Act of 1972 but also the Housing and Community Development Act of 1974. These three legal foundations make every community potentially vulnerable to having its service distribution patterns scrutinized by the federal courts.

The cases decided thus far have demonstrated that residents have standing to sue local officials to compel changes in their actions as public officials. They have demonstrated further that the courts can mandate specific **performance--**down to dictating the number and location of street lights and the size and locations of sewers--after a finding of unconstitutional past actions by local officials in distributing public services. They have demonstrated that the courts can halt the use of federal revenue sharing funds, pending correction of a discriminatory practice found to violate nondiscriminatory provisions of the general revenue sharing statute. They have demonstrated that findings of disparities in service distribution can be used by the courts as partial support for an order requiring changes in local elections, such as changing an at-large council election system to a district election system.

### The Constitutional Framework

Local governments traditionally have been accorded wide discretion by the courts in allocating services.<sup>1</sup> The landmark case of Hawkins v. Town of Shaw (1971)<sup>2</sup> established some limits under the equal protection clause. The equal protection clause provides that: "No state shall make or enforce any laws which shall abridge the privileges or immunities of citizens in the United States. . .nor deny to any person within its jurisdiction the equal protection of the laws." Hawkins was decided by the U.S. Court of Appeals for the 5th Circuit. The norm has been for lower federal courts to adopt the majority's reasoning in Hawkins. The U.S. Supreme Court has not ruled on an urban service distribution case. However, on June 7, 1976, in Washington v. Davis<sup>3</sup>, the court criticized an important aspect of the Hawkins decision. We will discuss this criticism after analyzing Hawkins.

One needs to know the facts of Hawkins in order to interpret the decision's implications. **Residential segregation** in the Town of Shaw was nearly total. Ninety-seven percent of the blacks resided in all-black neighborhoods. Disparities in the provision of some public

facilities were related to racially segregated neighborhoods. For example, 97 percent of all persons living in homes fronting on unpaved streets in Shaw were black. Although many mercury vapor street lamps had been installed in white neighborhoods, none had been installed in black neighborhoods. Two black areas of **Shaw**, containing 63 percent of the black population, had the lowest water pressure in the town. No black homes fronted on streets with underground storm water sewers, although this service was provided for 51 percent of white homes. Other less striking statistical disparities were noted for sanitary sewers, drainage ditches, and fire hydrants.<sup>4</sup>

The court decided that this statistical information about paved streets, water pressure, street lights, sewers, and the like, constituted evidence of a prima facie case of racial discrimination. In the court's terms, if a group is classified by race, by statute, or by administrative action, such a classification is "suspect" within the meaning of the equal protection clause. Suspect classifications provide a **permissible** basis for governmental acts, only if a compelling state interest can sustain them.<sup>6</sup> In many instances, laws do classify people. Some people have been exempted from the military draft; some are eligible for welfare, medicaid, and food stamps. Race, however, is not a permissible way of classifying people.

The determination by the court of the existence of a prima facie case of racial discrimination in the Hawkins case had several implications. It meant that the residents who filed the suit need not demonstrate any ill intent or motive on the part of the **defendants**<sup>6</sup>, instead needing only to demonstrate the existence of a substantial statistical disparity. It meant that the scope of the 14th Amendment equal protection clause was extended to routine local services, like water and sewers, because a "**suspect** classification" was involved even though the court did not consider them constitutionally protected "fundamental rights." The right to vote and the right **to a** fair trial are examples of rights that are considered "fundamental" by the Supreme Court. The court's determination that a prima facie case of racial discrimination existed meant that the burden of proof shifted from the citizen plaintiffs to the public officials who were the defendants. And it meant that the defendants needed to demonstrate that service disparities were caused by trying to achieve some "compelling state interest," instead of needing to meet the less stringent test of showing only that there was a "rational relationship" between the service disparities and some legitimate state purpose.

In Washington v. Davis (1976)<sup>8</sup> the U.S. Supreme Court dealt extensively with the **question** of whether racially discriminatory intent must be proven before effects of public action, or inaction, are **determined** to be unconstitutional. In doing so, the Court modified the interpretation of the Court of Appeals in Hawkins, and, in fact, cited Hawkins in a list of cases in which it believed excessive weight had been given to effects rather than to intent. The distinction between effects and intent, however, often is obscure in practice. The question becomes one of how intent is demonstrated. Intent often is demonstrated through the effects of action or inaction. Consequently, the Court's decision at first appears to sharply increase the burden of proof on

the plaintiffs in municipal services equalization cases. Other language in Washington v. Davis seems to indicate that the increased burden of proof may not be great. One thing that is clear is that since the rule of law cannot be stated unambiguously, the facts of a particular case and the persuasiveness with which they can be marshalled are likely to weigh **heavily** in the courts' interpretation of whether a violation of equal protection has occurred.

The importance of Washington v. Davis warrants quoting passages here from the majority's seven to two opinion. In addition, passages are quoted from a separate concurring opinion by Justice Stevens.

The majority in Washington v. Davis stated:

. . . our cases have not embraced the proposition **that a** law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional solely because it has a racially disproportionate impact. . . .

This is not to say . . . that a law's disproportionate impact is irrelevant in cases involving **Constitution-** based claims of racial discrimination. . . . Necessarily, an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another. It is also not infrequently true that the discriminatory impact . . . may for all practical purposes demonstrate unconstitutionality because in various circumstances the discrimination is very difficult to explain on nonracial grounds. . . .

. . . various Courts of Appeals have held in several **contexts**, . . . that the substantially disproportionate racial **impact of** a statute of official practice standing alone and without regard to discriminatory purpose, suffices to prove racial discrimination violating the Equal Protection Clause absent some justification going substantially beyond what would be necessary to validate most other legislative classifications. **[Here** the Court cited Hawkins v. Town of Shaw and cases involving employment, housing, zoning, and urban renewal.] The cases impressively demonstrate that there is another side to the issue; but with all due respect, to the extent that those cases rested on or expressed the view that proof of discriminatory racial purpose is unnecessary in making out an equal protection violation, we are in disagreement.<sup>9</sup>

In his concurring opinion, Justice Stevens took a middle position between the Supreme Court and the Court of Appeals' decisions it criticized, on the question of how unconstitutional discrimination is demonstrated:

Frequently the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor. For normally the actor is presumed to have intended the natural consequences of his deeds. . . .

My point in making this observation is to suggest that the line **between** discriminatory purpose and discriminatory impact is not nearly as bright, and perhaps not quite as critical, as the reader of the Court's opinion might assume. Therefore, although I accept the statement of the general rule in the Court's opinion, I am not yet prepared to indicate how that standard should be applied in the many cases which have formulated the governing standard in different language.<sup>10</sup>

In the Village of Arlington Heights v. Metropolitan Housing Development Corporation (1977), the Supreme Court elaborated on how intent to discriminate might be **demonstrated**. The decision in this case does not concern us, because it involved issues of zoning and racially-mixed low income housing development. **The** Court's reasoning about how to demonstrate discriminatory purpose, however, is relevant here. The Court said:

The historical background of the **decision** is one evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes. . . . The specific sequence of events leading up to the challenged decision also may shed some light on the decision-maker's purposes. . . . Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role. Substantive departures too may be relevant, particularly if the factors usually considered important by the **decision-maker** strongly favor a decision contrary to the one reached. The legislative or administrative history may be highly relevant, especially where there are contemporary statements by members of the decision-making body, minutes of its meetings, or reports.<sup>11</sup>

Therefore, it seems reasonable to infer that:

1. The demonstration of intent to discriminate will be more difficult than letting the facts speak for themselves.
2. There may be less tendency for the courts to apply a compelling state interest test and a greater tendency to apply a rational relationship standard.

These changes will make proof of an equal protection violation more difficult to demonstrate. Despite these changes, it is not clear how

they would have affected the decision in Hawkins v. Town of Shaw, nor how they might have modified some of the other decisions to be described below.

In light of the Hawkins v. Town of Shaw decision, what situations are brought within the scope of **the** 14th Amendment equal protection clause?

When a single local government distributes services so that there are gross service disparities, readily amenable to statistical measurement, which can be related to "suspect classifications," such as racially segregated neighborhoods, then recourse to the courts under the mantle of the equal protection clause will almost certainly be successful.

However, the extreme conditions in the Town of Shaw raise doubts about where the courts will draw the line. For example, there is little guidance in Hawkins v. Town of Shaw as to the following:

1. How racially segregated a neighborhood must be to constitute a 'suspect classification'?
2. How great the service disparities must be to call for a judicial remedy?
3. How defendants might demonstrate that a "compelling state interest" justified a pattern of service disparities, and how such a demonstration would differ from showing that there was a "rational relationship" between service patterns and a legitimate state **purpose?**<sup>12</sup>

Administrators' legal position will be well-served by their providing either an equal distribution of services or an unequal distribution based on reasonable criteria. The courts are most likely to stress indicators of resources in evaluating service distribution patterns. Resource indicators have been emphasized in the court decisions made thus far. The courts are least likely to rely on indicators of results. Result **incicators** involve interpretation of complex issues, including causal relationships between service resources and results and equity judgments about how much inequality of resources may be required to achieve equality of results. Attention to resource indicators by the courts establishes a minimum **threshold** of methodological sophistication that administrators would-do well to cross. In this regard, administrators should set higher standards for themselves than the courts are likely to impose.

### Additional Constitutional Issues

There are other aspects of public service equalization issues which the courts have confronted. An examination of these issues **will help** to show how the courts, prior to the Supreme Court's decision in Washington v. Davis, have limited their intervention. The issues we will examine **are input** equality vs. equality of conditions, the need for services, wealth as a "suspect classification," special assessment financing and inter-jurisdictional equality.

## Resource Input Equality vs. Equality of Resource Conditions

In Beal v. Lindsay (1972)<sup>13</sup>, the complaint dealt with unequal resource conditions in four parks in the Bronx in New York City. The plaintiffs, who were black and Puerto Rican, argued that the park nearest their residences had more trash, broken glass, and inoperable facilities than three other Bronx parks in the neighborhoods where a **higher** percentage of whites lived. City officials argued that their input of resources in expenditures and personnel in the plaintiff's neighborhood park was equal to, or greater than, their input of resources into the three comparison parks. City officials blamed vandalism for the unequal conditions. The court held that equal conditions were not required, "when, as here, the factor requiring added effort is not the result of past illegal action. Nothing in Hawkins v. Town of Shaw suggests that if the town had installed modern **street lamps** in the black quarter and these were repeatedly vandalized, the town must go on and on, even though this would mean a greater unit expenditure than in other **areas**."<sup>14</sup>

### Need for Services

The need for services by a particular classification of people, such as a neighborhood, a racial group, or a group of poor people, is an area of the law which the courts have begun to chart.

One of the first challenges to unequal **local** public school **expenditures**<sup>15</sup> lost in federal district court, primarily because the court found the concept of "educational needs" unmanageable. The plaintiffs argued that "educational needs" provided the sole legitimate basis for making public school expenditures and that for expenditures to reflect local school districts' financial strength was unconstitutional. The court's response was:

**We** conclude that no cause of action is stated for two principal reasons: 1) the Fourteenth Amendment does not require that public school expenditures be made only on the basis of pupils' educational needs, and 2) the lack of judicially manageable standards makes this controversy **nonjusticiable**.<sup>16</sup>

The court also noted that "while the complaining students repeatedly **emphasize** the importance of pupils' 'educational needs,' they do not offer a definition of this nebulous **concept**."<sup>17</sup>

In rejecting the "educational needs" standard, the courts refused to become embroiled in assessing how program cost and content were related to the needs of different individuals, measurements of those educational needs, or tests of whether those **needs** were being met. In Serrano v. Priest in California<sup>18</sup> and San Antonio Independent School District v. Rodriguez in Texas<sup>19</sup>, the courts were asked to hold only that public **school finance** must be "fiscally neutral." That is, the courts were asked to rule on unequal resources rather than unequal results or unequal educational needs.<sup>20</sup> This argument offered the courts a standard that was more judicially manageable than was the "educational needs" standard. The school finance cases will be discussed further below.



On the other hand, in some instances the courts have asked for evidence that needs for services were similar enough to justify equal resources. In Hawkins v. Town of Shaw, the plaintiffs argued that the characteristics of **black and white** neighborhoods were not so dissimilar as to warrant grossly dissimilar public facilities. One of the defendant's responses was to offer varying "need standards" to justify administrative actions. For example, with respect to street paving, town officials alleged that "the paving actually done in the municipality was on the basis of general usage, traffic needs and other objective **criteria**."<sup>21</sup> The Court of Appeals did not conclusively reject this argument. Instead it said that "even if we assume that such criteria as traffic usage, need and width constitute compelling state interest §2, they were not applied equally to both black and white neighborhoods."<sup>22</sup> This language could be important. It does not make clear how the court would have ruled had street paving been implemented evenhandedly using criteria involving traffic usage and need. Thus, we cannot be sure the court would have ruled that evenhanded administration of the standard would have failed to meet the "compelling state interest" test.

However, some cases suggest that where there has been a history of illegal action, added effort on behalf of the disadvantaged neighborhood to achieve equal results would be called for. Thus the 5th Circuit Court of Appeals stated in Henry v. Clarksdale School District (1971) that a "relationship otherwise rational may be insufficient in itself to meet constitutional standards--if its effect is to freeze in past discrimination."<sup>23</sup> In Hawkins v. Town of Shaw, the court held that even if the Town in recent years had been extending sanitary sewers into new areas "in a non-discriminatory manner, [this] is not sufficient when the effect of such a policy is to 'freeze in' the results of past discrimination."<sup>24</sup> And in Selmont Improvement Association v. Dallas County Commission (1972), the federal district court ruled that discrimination in street paving in a subdivision that occurred prior to 1954 would be "frozen in" unconstitutionally unless action were taken. Therefore, even though there was no evidence of discrimination in service distribution in the 18 years between the discriminatory acts and the court decision, the court ruled that the county's evenhandedness since 1954 did not meet the compelling state interest test.<sup>25</sup> This may be an example of a case that could have been decided differently had the Supreme Court's decision in Washington v. Davis been in effect concerning the need to demonstrate purposeful intent.

### Wealth as a "Suspect Classification"

Wealth has been held to be a "suspect classification" in cases involving "fundamental rights," such as the right to vote. For example, poll taxes have been struck down on this ground.<sup>26</sup> In federal district court, the original plaintiffs in San Antonio v. Rodriguez (1973) had sought to convince the court that education is a "fundamental right" by establishing a close nexus between quality education and sound exercise of freedom of speech and the right to vote.<sup>27</sup> Similar arguments has persuaded the California State Supreme Court in Serrano v. Priest (1971).<sup>28</sup>

As a "fundamental right," it was argued that public education would need to be financed in ways that were not overly dependent on classifications

by wealth. This would tend to rule out financing schools from local school districts with substantially unequal taxable resources. A state would need to show a "compelling state interest" in a particular financing method were that method to result in excessively unequal fiscal resources per pupil.

In San Antonio v. Rodriguez, the Supreme Court rejected these arguments. First, it found that "education . . . is not among the rights afforded explicit protection under our Federal Constitution."<sup>29</sup> Second, "even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right (of speech and voting), we have no indication that the present levels of educational expenditure in Texas provide an education that falls short. . . . No charge fairly could be made that the system (in the present case) fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process. . . . We have never presumed to possess either the ability or the authority to guarantee the citizenry the most effective speech or the most informed electoral choice."<sup>30</sup>

San Antonio v. Rodriguez, therefore, prevented using the equal protection clause to bar unequal distribution, on the basis of wealth differences, of most public services.

### Special Assessment Financing

When special assessment financing is employed, facilities of specified types, such as sewers, sidewalks, and paved streets, are installed only upon payment of all or part of the cost by appropriately located property owners, usually by those fronting on the location of the proposed public facilities. When service distribution is a function of ability and willingness to pay, as with special assessment financing, unequal distribution is to be expected. This circumstance was confronted in a service equalization case one year before the Hawkins v. Town of Shaw Circuit Court decision. The case, Hadnott v. City of Prattville (1970),<sup>31</sup> was noteworthy in that the federal district court ruled that the equal protection clause was violated because of the existence of park inequalities.

Street paving, water lines, and sewer lines, however, were financed by special assessments. The judge ruled that "this Court is clear . . . that under the evidence in this case the responsibility for initiating a paving or sewerage or water line assessment and for paying for same is a reasonable attribute of property ownership. . . . This difference in the paving of streets and the establishment of sewerage and water lines does not constitute racially discriminatory inequality."<sup>32</sup> The effect of special assessments is to classify on the basis of wealth. Classification by wealth confronts the problem as in San Antonio v. Rodriguez that wealth is not a suspect classification under the equal protection clause for services that are not considered fundamental rights.<sup>33</sup>

Prattville was a place where, in the judge's opinion, the special assessment requirement- had been administered evenhandedly: **There** are other fact situations in which the constitutionality of special assessments may be questionable. For example, if services were financed from the general fund in white areas and from special assessments in black areas, a suspect classification would seem to be in use **wh**ich **perhaps** would require a compelling state interest to sustain it. <sup>34</sup> There also may be a variety of fact situations in which special assessment financing could be challenged under state statutory requirements for public service corporations to serve applicants on equal **terms** and without **discrimination**. <sup>35</sup>

### Interjurisdictional Inequality

Attempts to have interjurisdictional unequal service distribution declared unconstitutional by the courts face several obstacles. These obstacles are the problems of identifying suspect classifications, ascertaining that the services at issue qualify as fundamental rights, and persuading the court that the compelling state interest test is applicable. Failing in **this**, the less stringent rational relationship test is employed and the burden of proof rests with the plaintiffs.

The **public school** finance cases are the most prominent ones which have confronted interjurisdictional inequality in service distribution. It was noted above that the U.S. Supreme Court in San Antonio v. Rodriguez had concluded that education was not a fundamental right within the scope of the equal **protection** clause. In addition, the **Court** refused to accept disparities in taxable wealth as evidence of a suspect classification. The Court said:

However described, it is clear that **appellees'** suit asks this Court to extend its most exacting scrutiny to review a system that allegedly discriminates against a large, diverse, and amorphous class, unified only by the **common** factor of residence in districts that happen to have less taxable wealth than other districts. The system of alleged discrimination and the class it defines have none of the traditional indicia of **suspectness**: The class is not saddled **with** such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process. <sup>36</sup>

Refusing to apply the compelling state interest standard, the Supreme Court then asked whether the Texas system of public education finance "bears some rational relationship to a legitimate state purpose."<sup>37</sup> The Court reasoned that the Texas system "was designed to provide an adequate minimum educational offering in every school in the State," and made it possible that "each district **would** have some ability to provide a more enriched educational program."<sup>38</sup> The Court concluded that it was rational to call on local governments to play a role in providing

educational services.

The New Jersey State Supreme Court took **cognizance** of these arguments in overturning that state's means of financing public education in 1973. The reasons cited by the U.S. Supreme Court were among those **which** deterred the New Jersey judges from basing their decision on the Fourteenth Amendment equal **protection** clause. Instead, the court relied upon a provision in the New Jersey State Constitution which required that:

The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years. 39

Interpreting the meaning of this requirement, the court said:

The Constitution's guarantee must be understood to embrace that educational opportunity which is needed in the contemporary setting to equip a child for his **role** as a citizen and as a **competitor** in the labor market. . . . The trial court found that the constitutional demand had not been met and did so *on* the basis of **discrepancies** in dollar input per pupil. We agreed. We deal with the problem in those terms because dollar input is plainly relevant and because we have been shown no other viable criterion for measuring compliance with the constitutional mandate. The **constitutional** mandate could not be said to be satisfied unless we were to suppose the unlikely proposition that the lowest level of dollar performance happensto coincide with the constitutional mandate and that all efforts beyond the lowest level are attributable to local **decisions** to do more than the state was obliged to **do**.<sup>40</sup>

An additional reason why the New Jersey Supreme Court rejected **reliance** on the Fourteenth Amendment equal protection clause was that had it not done so, **it** saw great **difficulty** in drawing a line *short* of requiring equal **statewide expenditures** among **jurisdictions** for all services, thus nullifying much of the traditional role of local government. In deciding 'such an **option** would go farther than warranted by the case before it, the court again **cited** the U.S. Supreme Court decision in San Antonio v. Rodriguez:

. . . any scheme of local **taxation--indeed** the very **existence** of identifiable local governmental **units--** requires the establishment of **jurisdictional** boundaries that are inevitably arbitrary. It **is** equally inevitable that some localities are going to be blessed with more taxable assets than others. Nor is local wealth a static quantity. Changes in the

level of taxable wealth within any district may result from any number of events, some of which local residents can and do influence. . .

Moreover, if local taxation for local expenditures is an unconstitutional method of providing for education then it can be an equally impermissible means of providing other necessary services customarily financed largely from local property taxes, including local police and fire protection, public health and hospitals, and public utility facilities of various kinds. We perceive no justification for such a severe denigration of **local** property taxation and control as would follow from appellees' contentions. It has simply never been within the constitutional prerogative of this court to nullify statewide measures for financing public services merely because the burdens or benefits thereof fall unevenly depending upon the relative wealth of the political subdivisions in which the citizens live.<sup>41</sup>

The U.S. Supreme Court went on to say that matters of state taxation and education were appropriately left to the states under the federal system.<sup>42</sup> The New Jersey Supreme Court then considered whether its state constitutional equal protection of the laws mandate should be invoked. The court decided it should not. The **reason** was that "the equal protection clause may be unmanageable. . ."<sup>43</sup> **But** no sooner had the court slammed the door, than it was opened again, at least a crack, when the court said:

The equal protection proposition potentially implicates the basic tenet of local government that there be local authority with concomitant fiscal responsibility. The case now before us was not tried or argued in **terms** that local government as a political institution denies equal protection in New Jersey because unequal demands upon unequal tax bases result in statewide inequality as to benefits or as to tax burden. In these circumstances we will not pursue the equal protection issue in the limited context of public education.

Nor do we consider a question that the parties have not projected, whether, apart from the equal protection guarantee, there is an implicit premise in the concept of local government that the State may not distribute its fiscal responsibility through that vehicle if substantial inequality will result. It may well be that at one time there was a rough correlation between the needs of an area and the local resources to meet them so that there was no conspicuous unfairness in assigning State obligations to the local units of government. Surely that

is not true today in our state. Problems are now mobile. They have settled intensively in limited areas. Statewide there is no correlation between the local tax base and the number of pupils to be educated, or the number of the poor to be housed and clothed and fed, or the incidence of crime and juvenile delinquency, or the cost of police or fire protection, or the demands of the judicial process. Problems which are in no sense local in origin have become the special burden of those who cannot find a haven elsewhere.

We need hardly suggest the convulsive implications if home rule is vulnerable upon either of the grounds to which we have referred. Nor need we expound the difficulties of management or judicial solutions if the problem must be met by the courts. We point to the dimensions of the subject to explain why we should not deal with it on the record of this case.<sup>44</sup>

Thus, the court decided to stay out of this political thicket.

### Summary

The following observations summarize some of the most important **re-**  
**sults** of litigation involving public service distribution:

1. Federal courts have invalidated unequal **inputs** of resources for services by local governments to groups which were made on the basis of suspect classifications. But they have refused to invalidate unequal conditions that were not caused directly by unequal resource inputs, such as unequal conditions caused by vandalism. Nor have the courts ruled that needs must be met if needs are unequal. However, they have asked for evidence that needs are reasonably similar in cases in which they have **ruled** that inputs must be equal. The courts have required, in some cases, that inputs of resources be equalized, but they have not ruled that activities, results, or impacts must be equalized. These decisions directing that resources be equalized have been by federal district courts and courts of appeal, not by the Supreme Court.

2. The courts have not provided guidance, nor have they been asked to rule, on whether and when administrative rules, such as basing inputs on street width, library or park usage, crime rates, and the like, might meet the requirement to demonstrate that a compelling state interest justifies unequal distribution of public services. However, courts have said that evenhanded administration for a number of years does not justify disparities resulting from a prior history of discrimination.

3. The public services involved in the equalization cases emanating from Hawkins and Serrano have not been ruled to be fundamental rights.

4. Suspect classifications, such as racial classifications, must be established, before the courts will invoke the equal protection clause to

force equalization of public services.

5. Wealth has not been ruled to be a suspect classification in cases that have not involved fundamental rights. Therefore, special assessment financing has not been barred. Interjurisdictional disparities of wealth and inputs of resources thus far have survived federal equal protection clause challenges.

6. The courts' desire has been to abstain, to leave the service distribution arena to the political process, intervening only when inequalities are clear and present for certain groups, such as racial minorities. The U.S. Supreme Court's criticism of the standard of proof used in Hawkins v. Town of Shaw, which was referred to in its 1976 decision in Washington v. Davis, raises additional questions about which of the **equalization cases** that were decided for the plaintiffs might not **have been** so decided had the plaintiffs needed, however indirectly, to demonstrate purposeful intent to discriminate.

### Statutory Alternatives

In Washington v. Davis, the U.S. Supreme Court said that some legislative statutes impose stricter standards of non-discrimination than does the U.S. Constitution. An example, the Court said, was the standard imposed by Title VII of the Civil Rights Act of 1964 on issues of employment discrimination. In Washington v. Davis, the plaintiffs had based their argument on the due process clause of the Fifth Amendment to the Constitution. They argued that a written personnel test by which applicants were screened for the Washington, D.C. Police Department was **un-**constitutional because blacks failed at a much higher rate than whites and because the administrators of the test had not *shown* that success on the test was related to successful performance *on the job*. The Supreme Court noted that such a **relationship** (between the test and job **performance**) was required under Title VII of the Civil Rights Act of 1964 but not under the Constitution. Since the case had been brought on **constitutional** grounds, the Title VII requirement did not apply.<sup>45</sup>

It seems plausible that local governments will be held to a standard of non-discrimination under some federal legislation that is stricter than is required, in the Supreme Court's interpretation, under the equal protection clause of the Fourteenth Amendment. One such provision could be Title VI of the Civil Rights Act of 1964. Section 601 of Title VI states:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Title VI has not been invoked in municipal **equalization** cases, such as those discussed in the first part of this chapter. One reason for that concerns the source of funding for the services, the distribution of which was being challenged. In general, the services challenged were

those financed solely, or primarily, from local, or perhaps in some instances from state, rather than from federal funds.

In recent years, a more potent statutory source on which to base attacks on municipal service distribution patterns has been enacted. The State and Local Fiscal Assistance Act of 1972 as amended in 1976 (general revenue sharing) contains explicit nondiscrimination requirements. Subtitle B, Administrative Provisions, Sec. 122, states that:

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State government or unit of local government, which government or unit receives funds made available under subtitle A.<sup>46</sup>

Under the act, funds can be used for capital expenditures and for operating expenditures for the following: public safety, environmental protection, transportation, health, recreation, libraries, social services for the poor or aged, and financial administration. Thus, a wide range of services potentially fall within the rubric of the nondiscrimination requirements. The administrative regulations implementing the 1972 Act expanded on the non-discrimination requirement stated in Sec. 122. For example, a recipient government may not "provide any service or other benefit which is different, or is provided in a different form from that provided to others under the program or activity" (31 C.F.R. Sec. 51.32 (b) (1) (ii)), "restrict in any way the enjoyment of any advantage or privilege enjoyed by other receiving any service or benefit under the program or activity" (31 C.F.R. Sec. 41.32 (b) (1) (iv)), "deny an opportunity to participate in a program or activity as an employee" (31 C.F.R. Sec. 51.32 (b) (1) (vi)), or discriminate "in determining the site of location of facilities" (31 C.F.R. Sec. 51.32 (b) (3)). In addition, the regulations authorize action "to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to overcome prior discriminatory practice or usage" (31 C.F.R. Sec. 51.32 (4)).

Suits relying on statutory provisions and administrative regulations have been brought challenging the expenditure of general revenue funds. Chicago was enjoined on December 18, 1974, and again on November 13, 1975, from spending general revenue sharing funds as a result of a charge of discrimination in the Chicago Police Department. In this instance, Chicago allocated 75 percent of its revenue sharing funds to the police.<sup>47</sup> Several cases were brought in 1975 by the Lawyers' Committee for Civil Rights Under Law against communities in Mississippi. In January 1976, federal district courts froze general revenue sharing funds for Greenwood, Aberdeen, Okolona, and Ackerman, pending trial on the merits.

Civil rights groups have criticized the Office of Revenue Sharing in the Department of the Treasury, for not being vigilant in carrying out its responsibilities to prevent discrimination in the use of the funds provided under the legislation.<sup>48</sup> One of the dilemmas in enforcing the



nondiscrimination provisions concerns the problem of identifying the activities for which general revenue sharing funds are spent. Recipients are required to file a report stating that funds were used for certain services and projects from among those eligible. In practice, general revenue sharing moneys go into the general fund, and city officials can claim to have spent funds on services and projects for which they are less subject to criticism for discrimination than if they had reported expenditures for other services and projects. The General Accounting Office, in testimony before the Senate Subcommittee on Intergovernmental Relations, suggested these categories were meaningless. Comptroller General Elmer Staats urged that the Revenue Sharing Act be modified to provide that "a government receiving revenue sharing could not discriminate in any of its programs or activities regardless of the source of funding, and revenue sharing funds would be withheld, after due process, pending acceptable actions to correct discriminatory practices." 49

The Housing and Community Development Act of 1974, though not as sweeping as the State and Local Fiscal Assistance Act of 1972, also has important implications for the distribution of local public services. Although the emphasis in the legislation is on housing and related aspects of physical development, the range of eligible projects is substantial. Sec. 105 (a) (2) of the legislation identifies some of the eligible projects in this way:

the acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements - including neighborhood facilities, senior centers, historic properties, utilities, streets, street lights, water and sewer facilities, foundations and platforms for air rights sites, pedestrian malls and walkways, and parks, playgrounds, and recreation facilities, flood and drainage facilities. . . . , and parking facilities, solid waste disposal facilities, and fire protection services and facilities which are located in or which serve designated community development areas. 50

The potential locations of these facilities are not confined to the poorest sections of communities. However, "the primary objective of this title is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income (Sec. 101 (c) )." Thus, the thrust of the act is to serve poor people rather than better-off people. Therefore, the act is explicitly redistributive as regards the facilities for which the funds can be used.

Furthermore, the act to some extent is intended to facilitate redistribution of population. Sec. 101 (c) (6) establishes the goal of "the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income." Whether this will mean any substantial population

redistribution in practice remains to be seen. Certainly there is reason to doubt that much mobility will result from the implementation of the act. The principal exploration of this aspect of the law revolves around a lawsuit in the Hartford, Connecticut metropolitan area. In it, a federal district court ruled that the Hartford suburbs would have to plan for some housing for low income persons in order to qualify for funds that the communities could use for other purposes. 51

The Hartford case involved a metropolitan, intergovernmental issue. While important, it does not address the issue of legality of various patterns of distribution of facilities with HCDA funds within a given community. It will not be surprising if challenges to facility distribution using HCDA funds are brought in the future.

Service distribution also is one aspect of the facts considered by the courts in deciding whether local election systems deprive blacks from effective participation. The most sweeping decision of this type was made in late 1976 by a federal district court. The court ordered that Mobile, Alabama's system of electing three commissioners in city-wide elections be scrapped. In its place, the judge ordered that a mayor be elected city-wide with nine council members elected from districts. The decision was based primarily on the inability of Mobile's 35 percent black population to elect a representative to city government under the at-large voting system. Referring to service distributions, the judge found no "overt gross discrimination" in city services. However, he noted that there were "significant differences and sluggishness" in responding to service needs in black neighborhoods in comparison with the response to white neighborhoods. The case was appealed to the Court of Appeals. A decision was not expected until late 1977. 52

### Conclusion

The value placed by administrators on progressive management and the inherent obligation all public officials have to be fair in discharging their public responsibilities are sufficient motivation for public officials to give greater attention to equity in service distribution. The interventionist role of the courts provides an added incentive. Court-decisions have gone to the heart of local governance-to the pattern of service distribution, to the use of public funds, and to the structure of the election system. Due respect for the wisdom of preventive medicine should bring administrators' attention to bear on equity. A crash program of data gathering and analysis to prepare a legal defense is more expensive and less productive than advance preparation carried out for one's own positive purposes. The development of positive purposes in service distribution should include self-conscious attention to decision rules and implicit conceptions of equity. An investment should be made in executing a methodology of data gathering and analysis sufficient for administrators to decide whether they are achieving a reasonable proportion of their purposes. If administrators can justify the pattern of service resources, activities, and results to themselves, they probably will be able to satisfy a court that their actions have been reasonable. The court decisions analyzed here provide administrators with some basis for estimating how the courts might rule. 53

## FOOTNOTES

1. Gowan v. Smith, 157 Mich. 443, 473. 122 N.W. 286, 297 (1909); Riss v. City of New York, 22 N.Y. 2d 579, 240 N.W. 2d 860, 293 N.Y.S. 2d 897 (1968); 2E. McQuillin, The Law of Municipal Corporations, 10.33 (3rd ed. rev. vol. 1966).
2. 437 F.2d 1286 (5th Cir. 1971).
3. Washington v. Davis, The United States Law Week, 44 LW 4789-4801, June 8, 1976.
4. 437 F.2d 1286, 1289-1297 (5th Cir. 1971).
5. McLaughlin v. Florida, 379 U.S. -184 (1964); Hunter v. Erickson, 393 U.S. 385 (1969); Loving v. Virginia, 388 U.S. 1 (1967).
6. Norwalk CORE v. Norwalk Redevelopment Agency, 395 F. 2d 920, 929 (2d Cir. 1968).
7. 437 F. 2d 1286, 1287-1299 (5th Cir. 1971); Jonathon Shapiro - A Manual for Lawyers on Litigation for Equalization of Municipal' Services, (New York: NAACP Legal Defense and Educational Fund, 1973), pp. 2-10; Jackson v. Godwin, 400 F.2d 529, 537, (5th Cir. 1968), Kennedy Park Homes Association v. Lackawanna, 436 F.2d 108, 114-115 (2nd Cir. 1970); Southern Alameda Spanish Speaking Organization v. City of Union City, California, 424 F.2d 291, 295-296 & n. 9 (9th Cir. 1970).
8. Washington v. Davis, supra 4789-4801.
9. Id. at 4792-4794.
10. Id. at 4800.
11. Village of Arlinton Heights v. Metropolitan Housing Development Corporation, 97 S. Ct. 555.
12. Shapiro, op. cit., pp. 10-15 and 25-38.
13. 468 F. 2d 287 (1972).
14. Id. at 290. .
15. McInnis v. Shapiro, 293 F. Supp. 327 (1968), aff'd 89 S. Ct. 1197 (1969).
16. 293 F. Supp. 327, 329 (1968).
17. Id. at 329, also see Burruss v. Wilkerson, 310 F. Supp. 572 (W. O. Va. 1969), aff's mem., 397 U.S. 44 (1970).
18. 5 Ca. 3d 584, 96 Ca. Rptr. 601, 487 p. 2d 1241 (Sup. Ct. 1971).

19. 93 S. Ct. 1278 (1973).
20. Paul L. Tractenberg, "The Lessons of **School** Finance Equalization." Trinity Parish Conference on Public Service **Qualization**, New York City, May 16, 1974, p. 4.
21. 437 F. 2d 1286, 1291 (5th Cir. 1971).
22. Id. at 1292.
23. 409 F. 2d 682, 688 (5th Cir. 1969).
24. 437 F. 2d 1286, 1294 (5th Cir. 1971).
25. 399 F. Supp. 477 (1972).
26. Hammer v. Blumstein, Virginia Board of Elections, 330, 92 S. 383 Ct. U.S. 995, 663, **999-1003** 86 S. Ct. 1079, (1966); McLaughlin v. Florida, 379 U.S. 184, 85 S. Ct. 283 (1964); Douglas v. California, 372 U.S. 353, 83 S. Ct. 814 (1963).
27. San Antonio Independent School District v. Rodriguez, supra, 93 S. Ct. 1278, 1298 (1973).
28. Supra, 5 Cal, 3d 584, 96 Ca. Rptr. 601, 487 p. 2d 1241 (Sup. ct. 1971).
29. 93 S. Ct. 1278, at 1297.
30. Id. at 1298-1299.
31. Hadnott v. City of Prattville, 309 F. Supp. 967 (1970).
32. Id. at 970-971.
33. Also see Oove v. Bumbers, 364 F. Supp: 407 (1973), and Citizens for Underground Equality v. Seattle, 6 Wash. Appl 338 (1972).
34. For a **variation** on such a fact situation see Selmont Improvement Association v. Dallas County Commission, supra, 339 F. Supp 477 (1972).
35. Fran& I. Michelman, "Obtaining a Fair Share of Municipal Services through Legal Proceedings," in Jonathon Shapiro, op. cit. pp. 392-400.
36. 93 S. Ct. at 1294.
37. Id. at 1302.
38. Id. at 1303.
39. Robinson v. Cahill, 62 N.J. 478, 496 (1973).

40. Id. at 515-516.
41. 93 S. Ct. at 1307.
42. 62 N.J. 478, 492 (1973).
43. Id. at 499-501. Also see Bonnett v. State, 126 N.J. Super 239 (1974).
44. Id. at 500-501.
45. Washington v. Davis, supra, 4789-4801.
46. Text of Title I of the State and Local Fiscal Assistance Amendments of 1976, reprinted in Richard P. Nathan and Charles F. Adams, Jr. Revenue Sharing: The Second Round, (Washington, D.C.: The Brookings Institution, 1977), p. 243.
47. United States v. City of Chicano, 405 F. Supp. 48' (1975).
48. New York Times, January 21, 1975.
49. New York Times, July 24, 1975.
50. 42 U.S.C. 5301.
51. City of Hartford v. Carla Hills (complete with F. Supp. citation from January, 1976).
52. New York Times, November 13, 1976.
53. For a useful discussion of some of these issues, see Astrid E. Merget and William M. Wolff, Jr., "The Law and Municipal Services: Implementing Equity," Public Management, August, 1976, pp. 2-8.

## Questions About Legal Issues of Service Distribution

(See Answers on next page)

1. What is a "suspect classification"? How does it differ from a nonsuspect classification?
2. What are some of the ways in which courts have drawn lines in equalization cases, denying requests for modifications in service distribution patterns?
3. How have the courts dealt with arguments about the need for services?
4. What is the difference between the standard of proof used by the Court of Appeals in Hawkins v. Town of Shaw and the standard used by the U.S. Supreme Court in Washington v. Davis?
5. How might a **purposeful** intention to discriminate be shown other than by showing the effects of official action or inaction?
6. What legislation offers the greatest potential for court suits to increase equality of service distribution?

## Answers to Questions about Legal Issues of Service Distribution

1. A "suspect classification" is one which classifies people by some invidious, constitutionally illegitimate criterion. Examples are race, nationality, and religion. In service **distribution** cases, the **important** 'suspect **classification**' is race.

A **nonsuspect classification** is any criterion for classifying people that has a reasonable relationship to some legitimate public purpose.

2. Special assessment financing justifies unequal service distribution; unequal conditions may be justified if they result from private action after an equal effort is made by public officials; inequalities in service provision and financing that occur in metropolitan areas or in different parts of states are immune from attack under the equal protection clause; and wealth is not a suspect classification and, therefore, poor people need not be given services equal to those of better off people unless the poor people also are minorities. In **particular**, the courts are reluctant to consider any equality other than equality of resources.

3. The courts have insisted that plaintiffs in equalization cases demonstrate that they are sufficiently similarly situated in comparison with other people that they should be treated more-or-less the same as these other people. However, the courts have refused to acknowledge the constitutional merit of arguments **that** dissimilarities between people are sufficiently significant to warrant unequal treatment in favor of those having greater need for service. An example of cases in which this "need" argument was rejected is the school finance cases. In an early case, the argument was made that minority and poor children have a greater need for education services. Therefore, it was argued, they should receive a greater share of available education resources than other children received. The court did not accept this argument.

4. In Hawkins, the Court of Appeals held that the statistical disparity in resource distribution was large enough to constitute a prima facie case of discrimination. Therefore, no proof of intent to discriminate was required. In Washington, the Supreme Court **criticized** the standard used in Hawkins and said that, in general, some evidence of intent to discriminate should be required. The Supreme Court's language in Washington was ambiguous, however, because the Court also stated that **in** some instances the factual consequences, such as dramatically unequal service **distribution** one can infer, may themselves be taken as evidence of intent to discriminate. The implication of Washington is that demonstrating unconstitutionally unequal **service** distribution will be more difficult to **achieve** than under the Hawkins standard. How the line will be drawn between permissible and **impermissible inequalities** remains difficult to anticipate.

5. Perhaps there is a record of explicit requests for **service**, and for equal treatment, which city officials have failed to respond to favorably. Perhaps it can be shown that requests for **service** made later by whites in white sections were rewarded with official action sooner

than similar requests from blacks similarly situated in black sections. Perhaps these requests for service by blacks followed a statistical showing by them that their neighborhood(s) did not receive service equal to that of whites in white neighborhoods. It seems unlikely that there would be explicit discrimination written into ordinances or appearing in the minutes of official meetings. Rather it would seem that the effects of official action or inaction standing alone or combined with a pattern of requests, evidence, and denial would be sufficient to support well-documented cases of unequal service distribution on the basis of suspect (racial) classifications. Also see the Supreme Court's suggestions in Village of Arlington Heights v. Metropolitan Housing Development Corporation.

6. State and Local Fiscal Assistance Act of 1972, and Amendments of 1976, and the Housing and **Community** Development Act of 1974.



## CHAPTER 6. MANAGEMENT STRATEGIES

What should be done with the concepts of equity and decision rules and the methods of distributional analysis? Why are they important? Who should use them and how should they be used? These questions have been addressed to some extent in preceding chapters. Here we will examine them, stressing the action contexts in which decisions should be made. This final chapter will be organized to cover the following topics:

What should the roles of local government generalists and department officials be?

How can distributional analysis be used in setting goals?

Which equity concepts should be used for distributing each service?

What decision-making sequence should city managers and mayors engage in to evaluate the equity of service distribution in their communities?

How can decision rules and service indicators be selected to facilitate implementation of specific equity concepts for each service?

### Roles of Government Generalists and Department Officials

In interviewing local officials in the cities of Atlanta, Boston, Charlotte, Cleveland, Hartford, Houston, New York City, Pittsburgh, Richmond, and Rochester, and in Fairfax County, we found very little systematic attention to equity and service distribution decisions. We found considerable interest and concern. We found recurring emphasis on attempts to be responsive to wishes of the public. But we found very little systematic data about service distribution. Most important, we found no signs that generalists and department officials had established a system of considering conceptions of equity, decision rules, and service distribution analysis as elements in a decision-making framework.

Government generalists (mayors and council members, city managers, chief administrative officers, planners, and budgeters) tend to have lesser roles than department officials in making service distribution decisions. Generalists' roles increase with capital projects. These are one-time decisions, often involving sizable amounts of money. They are easier to scrutinize and are more visible to constituents than are routine operating expenditures. Still, the initiative tends to rest with department officials in proposing capital projects. Planners may make recommendations about priorities, based on local planning standards. Mayors and managers usually will decide whether to accept or reject proposals. Council members may be particularly sensitive to how many

benefits are accruing to the constituents of their districts. Operating decisions, however, are almost entirely the province of department officials. Rarely do generalists get involved except to establish budgetary ceilings, to choose among initiatives proposed by departments, and to participate in the broadest operating decisions having major budget impacts, such as how frequently refuse will be collected.

Why does this separation between department officials and generalists exist? There are many reasons, including division of labor to conserve time and to make use of expertise and the force of custom and tradition that protects departmental self-interest in insulation and autonomy. But other reasons involve the shortage of conceptual development, the absence of a vocabulary for talking about equity, the difficulty of getting a handle on a slippery subject. And then there is the lack of distributional information, the absence of which enfeebles even systematic analysis of equity concepts and decision rules, and the presence of which would enable generalists to participate more actively, just as it would enrich the grasp of department officials' understanding of decision rules' consequences.

There are gains to be made by all the government participants in decisions, and by the public, by making analysis of equity and service distribution more systematic:

Goals can be reexamined and established on a sounder basis.

Evaluation of service effectiveness will be more meaningful.

There is greater potential for public information and access to decision-making.

Explicit attention to who should get what can be institutionalized.

The cumulative effects of different services in specific neighborhoods can be discerned.

A base of understanding and information can be established that will be useful in a wide range of planning, budgeting, and operating decisions.

How services should be distributed among neighborhoods is a political as well as an administrative question. Generalists should play an important role in this process. They usually do not. This lack of significant involvement in decision-making about service distribution will not defer or postpone the question of what is equitable. If generalists do not share in deciding the equity question, decisions about what is fair will be made by default. The administrator has responsibility for a number of operational functions of his department, ranging from purchasing, planning, and personnel to budgeting, administration, and training. He also has responsibility for the distribution of services. In the absence of guidance from generalists, he is required to develop his own standard operating procedures to determine how resources should be distributed, how activities should be programmed, and what results should be achieved. It is not sufficient to maintain that the administrator is uniquely qualified to make these decisions by virtue of his specialized training, technical expertise, access to information, and experience.

Decisions about who should benefit and why from the resources available to city governments are explicitly political. Broad policy guidelines for their deliberation and resolution should be established by generalists.

One of the norms of the city management profession, and of public service generally, is to be equitable in the delivery of services to citizens. That alone is sufficient reason to pay systematic attention to implementation of equity concepts. Local government generalists, whether they are mayors or council members, city managers, budget officers, or planners, have a need to know what the operating departments in their communities are doing. They need information in order to exercise a measure of influence and control.

The essence of control lies in decision rules. It is decision rules that determine outcomes. Decision rules should reflect deliberate choices that have been made about which equity concept or concepts to employ. They should be formulated with an understanding of their distributional consequences. The heart of the process, however, is the formulation and use of the decision rules themselves. Generalists should focus their attention on **decision** rules and use equity concepts and distributional analysis to aid them in shaping these decision rules.

### Setting Goals

Establishing goals is one of the most difficult tasks that government administrators face. One occasion when this difficulty becomes apparent is when administrators try to analyze the effectiveness of public services. Even if indicators of effectiveness can be agreed upon, the problem of how much of a particular indicator is a sign of satisfactory performance is perplexing. How many arrests per 100 crimes reported are enough? How many acres **of parks** per 1000 residents are enough? How fast should fire response time be? What should be the water pressure at the tap? How many library books should be available per 1000 residents? Should these issues be decided with the aid of national standards? Can they be related to citizen preferences and satisfaction? Is the standard related to objective performance, such as fire response time fast enough to reduce fire losses some identifiable amount?

Reference to standards set outside the community may be helpful in some instances. But reference to standards determined inside the community is essential. One basis for establishing standards is an equity and service distribution perspective. Public officials should decide the extent to which services should move toward, or away from, equal distribution among neighborhoods. If there is to be variation among neighborhoods, how much should there be? Why should variation be tolerated, accepted, or sought?

General distributional goals can be established without systematic data analysis. But specific goals should be based on analysis of the distribution pattern. Public officials should determine who is getting how much of what. They should decide whether the variation that exists is **acceptable** or not and then set goals for reducing the variation or

for perpetuating it. Is a 50 percent variation in arrest rates among police districts acceptable? What should be done to reduce it? Is a 25 percent variation in fire response time acceptable? What changes in fire station **location**, equipment, and manpower would reduce the variation? Is the variation acceptable in the number of residents in different neighborhoods who are more than one-half mile from a neighborhood park? How should priorities for locating new parks be established?

Goals of this type are useful in a system of management by objectives. If a management by objectives system is going to be useful, objectives need to be established in terms that lend themselves to identifying policies and procedures that will help achieve the objectives. Objectives that will lead to a different pattern of service distribution lend themselves to the selection of policies and procedures that will achieve the objectives. Evaluation of effectiveness in achieving distributional objectives also is feasible. Gathering and analyzing data to describe the service distribution pattern, establishing management objectives, and evaluating effectiveness in achieving objectives are parts of a management strategy.

It is not sufficient to declare that the goal of the police department is to reduce crime. It is not adequate to maintain that the goals of the parks and library departments are to provide recreational opportunities and free books for all citizens. These goals are of little value because they are too vague to permit precise measurement and evaluation. They do not permit the public official to answer the following questions:

1. Do some neighborhoods receive more services than other neighborhoods?
2. Do the poor receive more than the rich? Do whites receive more than blacks?
3. If some neighborhoods receive more services than other neighborhoods, is this pattern justified? Why?
4. Does an increase in crime disproportionately burden some neighborhoods? Does a decrease disproportionately benefit other neighborhoods?
5. Do all citizens have an equal opportunity to take advantage of public recreation services?
6. Are some services not being used by some citizens because these services are not responsive to neighborhood preferences?
7. Are services distributed on the basis of equality (resources, activities, results), need, demand, preference, or willingness-to-pay? Why? Is this pattern equitable?
8. Where should the next new park or branch library be located? Why?
9. Should a budget increase for police be spent to hire more investigators or to provide more patrolmen to handle routine calls for assistance?

10. Should additional funds for the parks department be spent for a new park site in order to equalize travel-time by auto from each neighborhood, or should facilities at an existing park be expanded in order to meet citizen preferences?

Distributional analysis of service patterns can help provide answers to these and many other questions. The information can be used to guide budget preparations and to make changes in departmental operations,

### Data Gathering Priorities

Although the data gathering process will be most efficient if data are gathered to serve several purposes, in some instances administrators may gather data solely to analyze service distribution equity. What should trigger this decision? When should administrators decide to gather and analyze data for the purpose of evaluating service equity?

The most important situations in which administrators should gather and analyze data to evaluate the equity of services distribution are:

1. When they believe that an important aspect of a service may be distributed in ways which they consider inequitable, but they are not sufficiently confident of their position.
2. When they believe there is a reasonable chance that a change can be brought about, if their beliefs about service inequities prove to be accurate.
3. When a substantial number of complaints have been made about allegedly inequitable service delivery.
4. When they believe one or more neighborhoods may be the victims of many inequities in service distribution.

When any of these four conditions exist, administrators should consider having data about the relevant aspects of service distribution gathered and analyzed. Data analysis decisions should be based on the following considerations:

1. Which data items are most directly focused on resolving the beliefs of administrators about possible service inequities.
2. Which data items can be gathered at least cost.
3. Which data items will aid the most in meeting related policy-making needs, such as needs for capital programming, evaluation of service effectiveness, and management by objectives.

The first consideration usually will be met best by including at least one indicator each of resources, activities, and results to provide information about these three aspects of the service system. The second consideration tends toward selecting few indicators. But the third consideration tends toward selecting a larger number of indicators to achieve

a larger number of policy-making objectives. The development of an information system that is adequate to evaluate service distribution equity can best be achieved if equity analysis is integrated with other types of policy-making analysis.

### Which Equity Concepts Should Be Relied Upon For Each Service?

Equity judgments are value judgments. Guidelines can be suggested, but ultimately each individual must decide. The discussion of alternative equity concepts and the implications of applying these concepts to urban services in Chapter 2 was intended to aid administrators in broadening and deepening their thinking about these issues. Here we will suggest which equity concepts to apply to a number of urban services. In doing so we caution readers not to interpret these suggestions as constituting a formula to apply to all situations, nor to conclude that the use of other equity concepts is necessarily "wrong." Furthermore, each service is complex, consisting of many parts, each having a past, present, and future. The equity concepts which one might wish to apply to a service may vary as the service evolves. Still, there are substantial arguments for concentrating on the application of certain equity concepts to each service.

What are our suggestions based on? First, they are based on the general objectives of each service. The first step to take in considering equity concepts to apply is to ask how their application will aid in achieving service objectives. Second, these suggestions are based on **common** practices in cities. In Chapter 3 on decision rules, we noted that there is variation in the decision rules used in different cities and that the consequences of these decision rules for service distribution also vary. Not enough research has been conducted for anyone to be confident about which decision rules are used more frequently. However, our research has enabled us to determine that the suggestions for selection of equity concepts that we make below are consistent with the practice in a number of major cities. Third, our suggestions reflect our own value judgments. One of our values is that equity concepts should be applied so as to minimize spillover effects -consequences from the behavior of individuals that harm their neighbors. While we believe there is a certain logic to our suggestions, we do not pretend to have overcome our own biases nor to have avoided all misconceptions.

The organization of our suggestions makes use of the conceptual framework presented earlier for analyzing equity implications and for categorizing services.

#### Routine Services

For routine services, demand is the basic equity concept to rely upon, but equality and need also have some scope. Routine services are services like water supply, solid waste collection, and streets. They are either used every day or people expect them to be available to use every day if they wish. The use of the services constitutes a demand for it. The objective of each of these services includes being available within

reasonable limits on demand. If people make reasonable demands for them, the demands should be responded to. For example, turning on a water faucet constitutes a demand that water be supplied. Placing refuse at the curb constitutes a demand that it be collected. Driving a car on a street constitutes a demand that the street be passable and safe.

Neighborhoods also should be equal in one sense of equality. At least an acceptable minimum level of service, or greater, should be provided in every neighborhood, regardless of demands that are made. Need also should play a role where there are spillover effects. With solid waste collection, the debris in front of one house affects the quality of life for neighbors. Greater attention may be warranted in these instances to those with greater need for service, even though they may not demand it.

### Protection Services

In distributing protection services, like police and fire protection, administrators should stress the equity concepts need and demand. These services are intended to deal with crises and violent conflicts. The events which constitute the crises are the manifestation of need for the service. Usually these crises or conflicts are accompanied by explicit demands for service.

The location of facilities, equipment, and personnel should be based primarily on need. Placing police where crimes occur frequently and locating fire stations and personnel where the risk of fire is great clearly relates resource deployment appropriately to the achievement of service objectives. They are in a state of readiness to respond when needed. At the same time, their deployment in this way may reduce the frequency with which crises arise.

These services also should be responsive to demands. Demands are the immediate signals that residents want the service provided for them. The response then should be at an acceptable speed with an appropriate array of personnel and equipment.

The norm of equality also should be considered. Each neighborhood needs protection at least up to an acceptable minimum standard. However, the difference between the lowest and highest service levels may be substantial, because neighborhood differences in the occurrence of crimes and fires are so great.

### Developmental Services

We have classified libraries and parks as developmental services. They are related to the social and physical development and enjoyment of individuals. Their objective is to facilitate that development and enjoyment. The key characteristic that sets them apart is that use of them is discretionary and at the leisure of residents. Residents choose, at their discretion, to use them or not to use them.

The equity concepts equality, need, and demand each should be used in distributing these services. The distribution of libraries and parks should be equal in the sense that an acceptable minimum or greater level of service should be provided to the residents of every neighborhood. But one of the main conditions which affects the extent to which these facilities are used is their accessibility to residents. Accessibility varies with distance and with the transportation options of residents. It is more difficult for low income residents to travel long distances, since they have fewer transportation resources. Moreover, low income residents can afford fewer alternatives to park and library services that are provided by the private sector. Low income and a shortage of transportation resources are evidence of greater need, in this instance. The objectives of the services to facilitate social and physical development and enjoyment will be achieved more satisfactorily if need is recognized in the distribution of library and park facilities.

Demand also has a worthwhile role, however, because some facilities are used more heavily than other facilities. Therefore, it may be reasonable to provide more equipment and materials in libraries and parks that are used heavily than would be warranted based on the criteria of equality and need. The distinction here is that facilities should be more responsive to need in location decisions, while equipment and materials probably should be more responsive to demand.

#### Preference and Willingness-to-Pay

Preference and willingness-to-pay have more specialized application. Preferences usually are too costly to discover, if they are not expressed as demands. Their primary use is to provide suggestions for facilities, equipment, and programs to be made available in parks and for materials and programs to be **available** in libraries. Willingness-to-pay is administratively impractical or contrary to the objectives of many services. It should be applied primarily to special services, golf courses, recreation programs, and the like, which serve a limited portion of the population.

#### Spillover Effects

The equity concept need deserves special consideration when spillover effects are substantial. Protection services are the clearest example. Demand deserves special consideration when spillover effects are modest and when demand varies significantly. Equality comes into play in that an acceptable minimum or greater level of service should be provided.

#### Decision-Making Sequence

When an administrator wants to involve himself in distributional issues, he must do so in a sequence of actions. While sequences will vary some from situation to situation, the steps described below are a reasonable sequence to follow.



1. Determine the decision rules that are used to distribute the service.
  - a. Obtain written statements from department officials detailing the decision rules that are used.

Example: Police patrol officers are deployed so that at least 90 percent of the time a patrol car is available to respond to calls for service.

- b. If a particular aspect of service distribution, such as a decision about where to locate a neighborhood park, is influenced by more than one decision rule, then obtain a statement from department officials in which they rank the rules that influence the decision in the order of their importance.

Example: The first decision rule is to give priority to areas deficient in park acreage based on distance and density criteria. The second decision rule is to give priority to those areas eligible on the first criteria where requests also are numerous.

- c. Obtain supplementary statements, if necessary, explaining why and under what circumstances other factors may influence decisions or circumstances when the rank order of decision rules may be different.

Example: If a private property owner will donate land for a park, then the distance and demand criteria referred to in 1.b. usually will be overridden and the donated land will be accepted and developed.

2. Evaluate the implications of using these decision rules.

- a. What conception, or conceptions, of equity do the decision rules reflect?

Example: The decision rule about deploying police patrol officers so that a patrol car is available for response to 90 percent or more of requests for service reflects a demand concept of equity. The emphasis is on response to all calls, rather than establishing priorities.

- b. Estimate who tends to benefit from the use of these decision rules based on:

-General tendencies that the use of this conception of equity has, drawing on the discussion in Chapter 2 about the implications of equity concepts.

Example: If police patrol officers are distributed based on FBI index crime rates, one can expect that more police will be assigned to low income areas because crime rates usually are higher there.

- Specific tendencies which seem to apply to the distribution of a particular service in this specific community.

Example: The specific pattern that will occur by basing police patrol officer distribution on FBI index crime rates can be known only by knowing the specific distribution of crime in a community.

- c. Potential beneficiaries should be estimated in terms of areas (sections, neighborhoods, blocks) and types of people (age, income, and racial groupings).

Example: Potential beneficiaries from relying on requests for neighborhood parks to supplement priorities derived from areas experiencing density and distance deficiencies will depend upon analyzing the characteristics of the residents in high request areas where acreage deficiencies exist. General knowledge cannot provide this answer. Specific data must be obtained.

3. Decide whether you disagree with, or doubt the appropriateness of, the decision rules that are used, by considering:
  - a. Which conception, or conceptions, of equity you believe should generally be applied to this service.
  - b. Whether the decision rules are consistent with this conception of equity.
  - c. Whether you believe the consequences of using the decision rules are desirable.
4. If you question the appropriateness of the decision rules, discuss your concerns with your staff and with department officials. Discuss:
  - a. Whether your concerns are justified.
  - b. What additional steps to take, such as adopting new decision rules, identifying decision rules used in other communities, and gathering and analyzing data about service distribution in your community.
5. If you are convinced that changes should be made, adopt revised decision rules, after:
  - a. Deciding which conception, or conceptions of equity should be applied.
  - b. Deciding what general distribution of benefits is appropriate.
  - c. Deciding what decision rules would best achieve the distribution sought.

- d. Reviewing the implications of the proposed decision rules for total cost, unit cost, service effectiveness, administrative practicality, and political ramifications.

An additional optional step would be to consider the decision rules that are used in other communities, by referring to the discussion of decision rules in an earlier chapter, and/or by contacting officials in other **communities**.

At this point, no funds have been spent on data gathering and analysis. There are several reasons for spending money on and analyzing data about service distribution independently of considering changes in decision rules. These reasons apply in particular to capital projects. Decisions about where to locate, improve and repair facilities- parks, libraries, fire stations, street lights, streets, sidewalks, water and sewer lines-will be made with much greater perspective, if accurate data describing their distribution are available. With regard to operations, some services depend on accurate data about the phenomena they are concerned with in order to distribute their resources. Police and fire protection are specific examples. Some communities also may be gathering data for some services as part of a routine service monitoring procedure to aid evaluation of service effectiveness.

However, many data may not be available that would be useful for these purposes. In addition, other data may be needed to assess the distributional consequences of current decision rules.

This decision-making sequence also can be reversed.

If resources permit, a systematic data gathering and analysis program can be launched. After service distribution is analyzed, equity concepts and decision rules can be evaluated in the perspective of the findings about service distribution. The goal of evaluating service equity should be related to such goals as capital programming, service effectiveness evaluation, and management by objectives, when decisions are made about which data to gather and analyze. The data gathering and analysis system should be designed to serve **more** than one purpose. The selection of indicators will be targeted better, if simultaneously, or previously, **considerable** attention is paid to deliberations about current decision rules, their implications, and possibilities for changing them. The equity analysis system is valuable, whether it is pursued incrementally and ad hoc or comprehensively and systematically. Most administrators will be more convinced of the value of evaluating service equity, however, if they begin by focusing on a subject of special concern to them.

#### Selecting Decision Rules to Implement, and Indicators to Monitor, Equity Concepts for Services

The discussion of a suggested decision-making sequence makes clear the value of carefully integrating use of equity concepts, decision rules, and service indicators. The value of this approach can be illustrated in another way. For the sake of illustration, suppose that the equity concepts one wishes to apply to an aspect of a service have been selected.

Decision rules to implement those equity concepts then can be identified. The indicators of service distribution that will facilitate judgment about the appropriateness of the implementation of the equity concept also are rather readily discerned. Two examples, one for police and one for parks, will illustrate.

### A Police Example

Let us say that police services will be distributed on the basis of the equity concepts of need and demand. What decision rules will implement both of these equity concepts in a reasonable way? Though not the only possibilities, the following decision rules would be reasonable ones to use in implementing these two equity concepts.

1. Distribute police patrol officers roughly in proportion to crime rates for FBI index crimes (need).
2. Respond to all calls for service (demand).
3. Distribute investigators roughly in proportion to FBI index crime rates, or, when available, distribute investigators in proportion to FBI index victimization rates (need).

These three decision rules probably are the most important influences on the distribution of police services. They provide that demands (requests for service) will be responded to, but they provide more police services per capita in high crime (need) areas. Investigators are supposed to develop evidence sufficient to make arrests. These personnel would be distributed in proportion to reported crime rates, or, if available, in proportion to actual victimization rates.

The following decision rules would enable administrators to evaluate whether the service distribution pattern that resulted would be compatible with their intentions.

1. Police patrol officers per 100 annual FBI index crimes per service district (resource indicator).
2. Investigators per 100 annual FBI index crimes per service district (resource indicator).
3. Average response time per service district and range of response times by percent distributions per service district (activity indicators).
4. Arrest rates for FBI index crimes per service district (result indicator).
5. Complaints about response time and response quality per service district (result indicator).

These five indicators would enable administrators to determine how patrol officer and investigator distribution corresponded to crime rates, and, if available, victimization rates. From the response time and complaint data, one can evaluate whether calls are being responded to rapidly enough. From the arrest rate data, one can evaluate whether the quality of police work and the results of that police work are proportionate to the crime rates. Thus, the data enable administrators to assess whether the equity concepts of need and demand are being implemented in ways they believe to be appropriate. Administrators will need to decide how much variation among **service districts** is acceptable. There is no formula for this judgment. National professional organizations have not proposed guidelines.

### A Parks Example

How should funds be distributed for new facilities and equipment in existing neighborhood parks? It has been decided, we will presume, that the equity concepts of need and demand will be used to distribute services. Why? Lower income persons are less able to afford private recreation. They also **may have** less nearby park space because of greater density in low income areas. Therefore, it is reasonable to give priority to low income areas in dispensing facility and equipment funds to existing neighborhood parks.

Demand helps limit potential excessive emphasis on need. If parks in a low income neighborhood are not used, then they should be given lower priority than they would merit on the basis of need alone. Conversely, more heavily used parks could be given higher priority than would be warranted on the basis of need alone.

The following decision rules would be useful in implementing the concepts of need and demand:

1. From a list of neighborhood park facilities and equipment needing repair or replacement, initial priorities will be selected based on the income characteristics of the neighborhood served, low income ranking first and high income ranking last.
2. This priority list will be modified based on information from park records and park personnel about the usage of these parks and their facilities and equipment, low usage being moved down the priority list.
3. Additions to neighborhood park facilities and equipment will be based, first, on need (income characteristics of the neighborhood), modified, second, by usage of the park to shift priorities established by the first criterion.
4. Replacement and repair of facilities will be given priority over additions, replacement and repair also being considered a manifestation of demand (**heavy use**). Administrators also should consider whether replacement and repair is caused by vandalism and make judgments whether the risk of recurrence warrants the cost of replacement or repair.

Although the above decision rules are based on the characteristics of the service area, for example, persons within one-half mile of each park, the characteristics of persons outside the service area, but who lack a park within the community's specified acceptable distance, should be assigned to the nearest accessible park in developing a ranking system. Thus, it is important to include numbers of persons outside the service radius but unserved by another park in developing the ranking system. This is another reason why demand should modify need. Presumably these persons outside the service area will be using the park, or parks, nearest to them, increasing use above what would occur from the population within the service **radius**.

Indicators that would be useful in determining whether the need and demand concepts of equity are being implemented **satisfactorily** include the following:

Facilities needing repair or replacement per 1,000 persons in service area (and unserved adjacent area).

Equipment needing repair or replacement per 1,000 persons in service area (and unserved adjacent area).

Cost of facilities needing repair or replacement per 1,000 persons in service area (and unserved adjacent areas)

Cost of equipment needing repair or replacement per 1,000 persons in service area (and unserved adjacent area)

The indicator problems associated with the decision rules for these conceptions of equity for distributing facilities and equipment to existing neighborhood parks primarily involve problems of gathering data about the population. Besides gathering data inside the service radius, data will be needed for the area outside the service radius. These data should identify the number of persons. Income data for census tracts or enumeration districts will be difficult to relate accurately to service district boundaries. A substitute method probably will be needed, such as using housing value data available in U.S. Bureau of the Census Block Statistics. Data about park facility and equipment usage also will be needed, or the judgments of park personnel must be relied upon.

The point is, however, that once the subject of concern is clearly identified, such as how to distribute funds to existing parks, the data useful for making that decision also can be identified clearly. The linkages between concepts of equity, decision rules, and indicators of service and population characteristics can be identified by careful thought and systematic attention. **What** looks like a complex, even esoteric subject when examined abstractly, becomes readily manageable when specific decisions are confronted.

## How to Relate Service Indicators to Equity Concepts

The most useful equity perspectives **are equality**, need, and demand. Most of the same service indicators can be used to evaluate whether each equity concept is being met satisfactorily. What each service indicator should be compared with changes for each equity concept. In Tables 1 and 2 below, examples are given of comparisons that will aid in evaluating the achievement of equality, need, and demand for police and park services.

To evaluate equality, police indicators should be compared with population measures. To evaluate need, police service indicators should be compared with crime rates. To evaluate demand, police service indicators should be compared with calls for service.

### Table 1. Relating Police Service Indicators to Equity Concepts

#### Equality

Patrolmen (**investigators**)/1,000 residents<sup>1</sup>  
Mean response time/district  
Arrest (clearance) rate/district  
Percent stolen property recovered/district  
Crime rate/district

#### Need

Patrolmen (**investigators**)/100 Part 1 FBI index crimes (or other crime rate indicator, such as victimization rate)  
Number of arrests (cases **cleared**)/100 Part 1 FBI index crimes (or other crime rate indicator)  
Property value recovered/value of property stolen

#### Demand

Patrolmen/100 calls for service  
Mean response **time**/100 calls for service (and for different types of calls)

<sup>1</sup>Data should be reported for service districts and/or beats.

For parks, the three most useful equity concepts also are equality, need, and demand. To make judgments about equality, park service indicators should be compared with population indicators (per capita, per 100 and per 1,000 residents) and age indicators (persons under age 18, for example). To make judgments about need, service indicators should be compared with general need indicators such as mean housing value or income. To make judgments about demand, service indicators should be compared with use data. These relationships are illustrated below in Table 2.

Table 2. Relating Park Service Indicators to Equity Concepts

Equality

Acres of community-serving park land/1,000 residents<sup>1</sup>  
 Number of residents by neighborhood more than 1/2 mile from a neighborhood park  
 Number of facilities (by type)/1,000 residents  
 Operating expenditures/1,000 residents  
 Citizen reasons for non-use of the park nearest their residence

Need

Acres of community-serving park land/index that includes mean housing value or income as one variable<sup>2</sup>  
 Number of residents by neighborhood more than 1/2 mile from a neighborhood park/mean housing value or income  
 Number of facilities (by type)/index that includes mean housing value or income as one variable  
 Operating expenditures/index that includes mean housing value or income as one variable  
 Citizen reasons for non-use of the park nearest their residence/mean housing value or income

Demand

Acres of community-serving park land/1,000 users  
 Number of facilities (by type)/1,000 users  
 Operating expenditures/1,000 users  
 Number of users of community-serving parks/1,000 residents<sup>3</sup>

<sup>1</sup>These relationships also can be described for persons under age 18. Calculations can be made per 1,000 residents or per 100 residents. If residents live within the service area or more than one park, assign them to only one park, the park closest to them unless separated by a barrier. Do not count residents twice; double counting will invalidate all the calculations.

<sup>2</sup>The index also probably should include a population and age variable. For examples of how to construct indices, see Chapter 6 Management Strategies in William H. Lucy and Kenneth Mladenka, A Handbook on Analyzing the Distribution of Park Services, (Washington, D.C.: National Training and Development Service, 1978).

<sup>3</sup>If data about all types of users of parks are not available, limit the analysis to users of programs and facilities where counts of users are made.



These examples for police and parks illustrate that the key to evaluating equality, need, and demand is to select appropriate indicators with which to compare service indicators. These indicators must stress population to evaluate equality. To aid in evaluating need, they must be relevant to need, either by assessing the phenomenon directly, as with police services, or by selecting appropriate socio-economic indicators, as with park services. To aid in evaluating demand, indicators of use of services and requests for services are essential.

### A Final Word

Why bother with evaluating the equity of urban service distribution?

The distribution of services is the principal determinant of who receives the benefits of local government activities. That is ample reason to analyze and evaluate service distribution.

Generalist administrators have additional reasons to be concerned. City managers, mayors, budgeters, and planners often have only a modest role in influencing important aspects of service distribution. Generalists should have a larger role. They need to know what operating departments are doing, why they are doing it, and what the consequences of departmental decisions are.

Obtaining more information is one method of increasing influence and control. Other steps are helpful. Equity concepts should be understood. The purpose of the methodological framework for selecting indicators needs to be grasped.

Decision rules constitute the heart of the process of influence and control. Service distribution consequences are determined by decision rules. Administrators who want to evaluate service equity and who want to increase their influence over service distribution consequences should focus their attention on decision rules.