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Thirteenth Annual *Brown* Lecture in Education Research: Public Education and the Social Contract: Restoring the Promise in an Age of Diversity and Division

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Abstract

Building on the premise that closing achievement gaps is an economic imperative both to regain international educational supremacy and to maintain global economic competitiveness, I ask whether it is possible to rewrite the social contract so that education is a fundamental right—a statutory guarantee—that is both uniform across states and federally enforceable. I argue that the federal government was complicit in aggravating educational inequality by not guaranteeing free, public education as a basic right during propitious political moments; by enabling the creation of a segregated public higher education system; by relegating the Department of Education and its predecessors to a secondary status in the federal administration, thereby compromising its enforcement capability; and by proliferating incremental reforms while ignoring the unequal institutional arrangements that undermine equal opportunity to learn. History shows that a strong federal role can potentially strengthen the educational social contract.

Keywords

achievement gap; educational policy; educational reform; policy analysis

Since the beginning of the 19th century, the United States led the world in literacy and through the end of World War II also ranked first in the percentage of school-age youth enrolled in school (Black & Sokoloff, 2006). Compulsory school attendance laws were ubiquitous before 1920. In addition to becoming the first nation to offer universal high school education to its residents (Goldin, 2001; Goldin & Katz, 1999a), the United States broadened access to higher education by establishing a system of publicly funded universities that laid the groundwork for innovation in science and technological change and boosted college attendance among broad swaths of the class structure (American Academy of Arts & Sciences [AAAS], 2016c; National Research Council [NRC], 1995). Postsecondary enrollment quintupled between 1890 and 1940 (Goldin & Katz, 1999b), and between 1950 and 2000, the college-educated share of the U.S. population ages 25 and older quadrupled. These developments catapulted the United States to first place in college degree attainment in 2000 (Cox & Alm, 2004). But today, the United States ranks 12th among 34 industrial peers in college completion rates (Will, 2014).

Figure 1 illustrates the erosion of the United States' relative standing in postsecondary attainment for a subset of industrialized countries. The cohort comparison illustrates how much today's 25- to 34-year-olds have advanced in college completion relative to seniors, who were in their mid-20s to mid-30s in 1980. The convergence of the triangles and squares indexing attainment of younger and older cohorts reveals the stagnation of postsecondary degree attainment. Over the same period, the share of college-educated 25- to 34-year-olds in the United Kingdom and Japan rose and now match the U.S. college completion rate. The college attainment rates of South Korea, Canada, and Russia now exceed the U.S. average.

Postsecondary attainment trends in Canada, South Korea, and Israel are instructive because these nations present circumstances often used as excuses for the slippage of the United States—namely population heterogeneity and aging. Yet, neither condition undermined these countries' sustained educational investments (Carlson, 2016). Korea's educational ascendance is particularly noteworthy. If economic development and national self-improvement following a devastating war provided the initial impetus for outsized investments in schools and universities, what remains today that still serves the national interest is a sociopolitical commitment to an *ethic of education*—one that promotes both individual and societal goals (Pearson, 2012). Both Canada and Israel have much larger foreign-born population shares than the United States, yet their college attainment rates rose even as population heterogeneity increased. Moreover, unlike the United States, which was one of only six countries to cut public spending on education in the aftermath of the Great Recession (Will, 2014), the Korean government did not trade expenditures on schools for spending on aging programs for its growing senior population. I return to this point in my concluding comments.

Although the United States ranks near the top in per student spending, returns to that investment pale by comparison to our industrialized peers because funds have been distributed unfairly both across and within states, and because resources have been used ineffectively (Odden, Monk, Nakib, & Picus, 1995, p. 162). In fact, the most recent results of the Program for International Student Assessment show that in math and science performance, the nation lags behind its industrial peers as well as some middle-income countries: In 2012 fewer than 10% of U.S. students qualified as top math performers, compared with nearly one third of Korean, 16% of Canadian, and 12% of British students (Table 1). In response to stinging media coverage of the nation's eroding educational standing, the states led an effort to develop Common Core State Standards that detailed grade-specific mathematics and English language arts achievement goals. Huge resource disparities across districts that perpetuate scholastic underperformance has stymied achievement of the Common Core standards.

That family income remains one of the most significant and persistent predictors of scholastic achievement is troubling because U.S. income inequality rose appreciably over the past 40 years (Autor, 2014). Since 1970 the test score gap widened 40% between students at the 10th and 90th percentiles of the income distribution, which is comparable to an achievement gap between eighth and fourth graders (Greenstone, Looney, Patashnik, & Yu, 2013). Behind the dismal U.S. academic performance, I believe, is a growing tolerance

for inequality along income and ethnic lines, which is clearly evident in the contemporary contours of school segregation.

Notwithstanding the profound social and legal significance of the landmark 1954 *Brown* ruling that dismantled de jure segregation (*Brown v. Board of Education*, 1954), currently 1 in 6 students in the K–12 system attend highly segregated, underresourced schools that are staffed with less experienced teachers and fail to offer advanced coursework (Kooragayala, 2016; U.S. Government Accountability Office [GAO], 2016). What’s more, school segregation is rising: Between 2001 and 2014, the percentage of K–12 schools in which 75% of students were both low income and Hispanic or Black rose 7 percentage points (GAO, 2016). De facto segregation has proven resilient to legal challenges (Southern Education Foundation, 2009; Thompson, 2016).

The nation’s educational slippage on the international stage coupled with rising school segregation is deeply rooted in systems of local control, which often collide with the philosophical goal of equal opportunity (Gamson, 2007; Wolfensberger, 2005). Achieving educational excellence and equity remains a formidable challenge given the nation’s social, economic and regional diversity, which adds strength and vitality on the one hand, but provides ready-made fault lines for divisions in educational opportunity on the other (Lewis & Cantor, 2016). I argue that the federal government has been complicit in aggravating educational inequality by not guaranteeing free, public education as a basic right during propitious political moments; by enabling the creation of a segregated public higher education system; by relegating the Department of Education and its predecessors to a secondary status in the federal administration, thereby compromising its enforcement capability; and by proliferating incremental reforms while ignoring the unequal institutional arrangements that undermine equal opportunity to learn. History shows that a strong federal role can potentially strengthen the educational social contract, and it offers important lessons going forward.

The Right to Education

During the early 19th century, the United States revealed an unusually high inclination to invest in education. Providing free access to education financed by local taxes was historically and remains today an impressive achievement for an economically emergent nation (Black & Sokoloff, 2006). The country’s formidable investments in public education powered economic growth, and rising attainment levels fostered social mobility and individual prosperity through most of the 20th century (AAAS, 2015b; Goldin & Katz, 2008). Massachusetts led the way in passing compulsory education laws in the middle of the 19th century, and by the end of World War I, all states had enacted legislation requiring school enrollment. Compulsory school attendance laws, I erroneously assumed, implied that public education was a right guaranteed to all citizens—at least through secondary school.

The expansion of public higher education during the 1960s and 1970s, coupled with affirmative action policies, broadened college access to historically underrepresented ethnic and income groups (Gumport, Iannozzi, Shaman, & Zemsky, 1997); however, race preferences in admissions were subsequently challenged in the courts. Legal decisions

invoking the Equal Protection Clause of the 14th Amendment to the U.S. Constitution to support college access further reinforced my misunderstanding about public education as a constitutional guarantee. Even before the historic *Brown* decision, Herman Sweatt sued the University of Texas after he was denied admission to the law school (Goldstone, 2006; Lavergne, 2010; *Sweatt v. Painter*, 1950).¹ The Supreme Court ruled in his favor because he was refused admission on the basis of race, which requires the highest standard of scrutiny to pass muster with the court. Even though education was the contested issue, *Sweatt v. Painter* (1950) was actually about racial classifications and what is constitutionally permissible.

In fact, the U.S. Constitution neither guarantees the right to public education nor requires substantive equality.² The men who penned the historic document made *no* provision for a federal role in educating the citizenry presumed essential for a democracy to flourish. How could they possibly contemplate equal educational opportunity operating under a system of ascriptive democracy that only recognized free, white men? In fact, the terms *equal* and *equality* are only mentioned in Articles I, II, and V of the U.S. Constitution in reference to equal representation of the states in the Congress. The “unspecified personal rights” guaranteed by the 9th Amendment are fundamental only by analogy but are protected from infringement by the federal government. Although the U.S. Constitution makes no *explicit* provision for the right to or financing of public education, it does not forbid the federal government from doing so. In fact, Congress can use its constitutional authority under the Taxing and Spending Clause, which authorizes Congress to levy taxes for national defense or to advance the welfare of the country, to pass legislation financing public education. In practice, states invoked the 10th Amendment to exercise discretion in the design, delivery, and financing of public education, effectively lodging children’s so-called right to education in 50 state constitutions (Corcoran & Evans, 2007).³ Rather, on several occasions, Congress used the defense rationale to justify federal investments in public education.

Whether the right to a public education is rooted in the U.S. Constitution or 50 state constitutions would be inconsequential if all states imposed uniform achievement and mastery standards. In fact, as discussed below, both historically and now, opportunities to learn remain highly unequal. Lurie (2013) points out that all countries that currently outrank the United States in educational achievement either have a statutory guarantee to a free education or an independent statute guaranteeing education as a basic right. The lack of a federal guarantee to education lays bare a vital question for the nation: What would it take to galvanize the United States around the goal of reclaiming its educational supremacy? More specifically, what insights about the conditions that favored broadened access to schooling can be gleaned from the historical record? I consider these issues below.

¹Rather than establish a separate law school at Texas A&M’s Prairie View campus, which proved unworkable (Lavergne, 2010, p. 104), the university established a makeshift institution, the Texas State University for Negroes, which was initially located in a leased basement behind the State Capitol and staffed with three part-time faculty affiliated with the University of Texas Law School (Goldstone, 2006, p. 22). Separate facilities were permissible until the *Brown* decision established that de jure segregation is neither equal nor lawful.

²In their 1973 *San Antonio Independent School District v. Rodriguez* ruling, the Supreme Court opined that the state’s interest in education is not “fundamental” for purposes of equal protection.

³“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Legacies of Local Control: From the Purse to the Courts

Even without a constitutional or even federal statutory right to education, the decentralized U.S. educational framework served the nation well through the 19th and early 20th centuries. Several historians of education have adroitly chronicled the common school movement, highlighting the early move to local public funding, high investments relative to the nation's economic prosperity, an emphasis on core curricula, and broad access to working class and poor students—except Blacks (Black & Sokoloff, 2006; Gamson, 2007; Goldin & Katz, 2008; Kaestle, 2016; Persky, 2015). These curricular and financing innovations were achieved before matters of access to quality education became contested terrain. The coincidence of the common school movement with industrialization and urbanization facilitated the expansion of public primary and secondary schools, albeit unevenly between the northern and western states on the one hand and the southern states on the other. That legacy persists today.

Despite varied levels of resistance to levying taxes for establishing and operating public schools, local control allowed counties and townships to determine the curriculum. Even during the early phases of the Common School Movement, population homogeneity helped communities overcome collective action problems because, according to Black and Sokoloff (2006, p. 102), “populations understood that their taxes provide benefits they shared with their neighbors . . . especially when those neighbors were very much like them.” Support for urban public schools waned as immigration streams shifted from northern and western Europe to southern and eastern Europe during the late 19th and early 20th centuries (Tienda, 2002). Nevertheless, until the post-WWII suburbanization movement, rural–urban funding disparities favored cities. Historical evidence showing an association between population heterogeneity, economic inequality, and support for public education, although not causal, are worrisome in light of rising population diversification and residential segregation during the second half of the 20th century and continuing to the present day (Carlson, 2016; Lewis & Cantor, 2016).

Initially, the decentralized U.S. educational authority benefitted from the weak federal apparatus to regulate and fund schools, but the long-term benefits of decentralization are decidedly mixed. On the one hand, local control of public education facilitated acceptance of local taxation and encouraged pedagogical experimentation; on the other hand, it engendered and gradually cemented resistance to federal interference and much less regulation of state public educational systems (Gamson, 2007; Goldin, 2001). This does not imply a total absence of federal involvement in public education, however. Beginning in the late 18th century, the federal government set aside land to help townships finance local schools; importantly, however, taxation rates and curricula were locally controlled (Black & Sokoloff, 2006; Gamson, 2007; Goldin, 2001).

The history of the Department of Education instantiates the long-standing tension between the states and the central government to regulate both instructional content and tax levies for schools. Following a transitory existence in the aftermath of the Civil War, the federal Department of Education was demoted to an office within the Department of Interior and, like a child in foster care, subsequently shuffled across agencies within the Interior and

Defense Departments until the middle of the 20th century when it became part of the Department of Health, Education, and Welfare. Thus, between 1869 and 1953—vital years for the expansion of public education—there was limited federal oversight of state and local school systems. That progressive reformers repeatedly tried to create a stand-alone education department had the unintended consequence of strengthening systems of local control. Locating education within a tripartite department that included health and human services virtually guaranteed limited power over state education departments—except as warranted by national security or during unique historical moments, as discussed below. It was not until the Carter administration that education became a stand-alone agency and its secretary became part of the president’s cabinet; however, the department lacks power to shape curricula, set degree requirements, or dictate state education standards. The official mission is to “promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access” (U.S. Department of Education, 2010, p. 1).

Enabled by decentralized governance and decades of weak federal oversight, the U.S. public education system evolved from a system focused on broad access and common curricula to one that offered unequal opportunities to learn. The legacies of local control are clearly evident in (a) the evolution of interstate public school funding disparities, which heavily impacted the South; (b) contemporary intrastate funding disparities between affluent and poor districts; and (c) the growth of litigation to redress school financing systems grounded in local property taxes. I elaborate on these points below.

Evolution of Interstate Funding Disparities

School finance systems enshrined in norms of local control were nurtured in the absence of a strong regulatory apparatus at the state or federal level. Higher levels of public school funding between 1880 and 1930 accompanied the nation’s rising economic prosperity, which in turn facilitated smaller interstate disparities in per pupil expenditures, as illustrated in Table 2. For ease of comparison, the average expenditures are reported in constant 2012 dollars. Not only did the cross-state ratio of the minimum and maximum per pupil expenditure drop from 11.7 to 9.5, but the coefficient of variation, which is a distribution-free measure of dispersion around the mean, also fell 10 points. Interstate variation in public school funding levels dropped further over the next 30 years, which endured the Great Depression and World War II. By 1960, the coefficient of variation was nearly halved relative to its 1880 level, yet over the next 30 years, interstate school funding gaps stagnated. From 1990 to 2012, the coefficient of variation in per pupil expenditures rose 6 points as states and districts balanced their budgets by slashing revenues for schools.

Over the 125-year period reported in Table 2, the correlation between state per pupil expenditures and the percentage of Black population fell from -0.64 to less than -0.1 , presumably enabled by the dismantling of de jure segregation after the historic *Brown* decision. That would be heartening news were it not for the fact that today, the correlation between per pupil expenditure and percentage poor is strong and negative; at -0.60 , it mimics the association between race composition and average student expenditure in 1880, except that class appears to be the driver of school funding disparities in the post-*Brown*

legal environment. This is a troubling development against the backdrop of rising income inequality (Autor, 2014).

Figure 2 illustrates how the narrowing of interstate per pupil funding inequities evolved over the past 125 years by identifying the states with per pupil expenditures at least one standard deviation above or below the national average. For expository convenience, I refer to these as high- and low-expenditure states. Temporal changes in these states partly reflect regional variations in economic prosperity that accompanied industrialization and also regional and community differences in population heterogeneity and commitment to public education (Black & Sokoloff, 2006; Goldin & Katz, 2000). As early as 1880, the high-expenditure states included representatives of both coasts, the Southwest, and the heartland, but not the Deep South. California spent over double the national average and nearly 12 times North Carolina's average expenditure per student (Southern Education Foundation, 2009).

Over the next 50 years, average per pupil spending more than quadrupled as dispersion around the mean lessened. In 1930, states with expanding industrial economies, notably, New York, New Jersey, and Michigan, joined California among the high-expenditure group. Per student expenditures rose a whopping 228% between 1930 and 1960 but stagnated thereafter, increasing a meager 5.5% between 1990 and 2012, owing to deep cuts in state education budgets in the aftermath of the Great Recession (Leachman & Mai, 2014). Alaska, New York, and New Jersey remained among the handful of states making above-average educational expenditures since 1960, but California has not appeared on the list since 1930.

Decentralization exacted the largest toll in the South, where segregation exacerbated funding disparities between schools serving White and Black students. In 1880, for example, nine of the 10 low-expenditure states were in the South. That year, North Carolina featured the lowest per pupil expenditure—a meager 18.4% of the national average. With per pupil education outlays 75% below the national average, Georgia ranked last in 1930. Mississippi and Arkansas shortchanged students with below-average educational investments throughout the period, and four additional states—Alabama, Tennessee, Georgia, and Kentucky—did so in four out of the five periods reported. The number of low-expenditure states fell to eight in 1990 and five in 2012, and since 1960, no state committed less than 58% of the per pupil national average to public education. Partly this is due to federal subsidies authorized by the Elementary and Secondary Education Act (ESEA).

Intrastate Disparities: From Equity to Adequacy

Local control of school systems gave state legislatures considerable latitude in allocating public revenues to school districts that produced sizeable resource gaps both within and between districts. Although the instructional share of the education dollar is remarkably consistent across districts (Odden, Monk, Nakib, & Picus, 1995, p. 167), huge resource gaps across schools compromise districts' ability to deliver a minimally adequate basic education (GAO, 2016).

In response to widening expenditure gaps between affluent and tax-constrained districts, states designed *foundation programs* that set K–12 expenditure guidelines based on a mix of revenues from state coffers and property taxes (Picus & Blair, 2004). The alleged goal of

foundation programs is to provide sufficient funding to offer students a basic education; however, the lack of uniformity both in the formulas used to set local revenue shares and in the minimum thresholds across states virtually ensured the perpetuation of large per pupil expenditure disparities (Picus & Blair, 2004). In 2016, only 40% of students attended schools in districts that spend at least the national average per pupil—approximately \$12,000—and only in seven states did *all* students attend schools that spend at or above the national average (Education Week, 2016).

Table 3 summarizes per pupil funding disparities between high- and low-minority districts and between high- and low-poverty districts among the five low-expenditure states in 2012 (National Center for Educational Statistics, 2012). Average per pupil expenditures were 15.6% *lower* in high-poverty compared with low-poverty districts but only 4.4% lower in districts serving large minority populations. This is consistent with claims that social class disparities are more salient than race-linked inequities in the post-*Brown* education era. Among four of the five low-expenditure states in 2012, per pupil spending favors districts serving large minority populations; however, the funding advantages are modest to trivial. Furthermore, expenditure disparities between high-poverty and high-minority districts do not vary in a consistent manner across the five low-expenditure states. Per student outlays in the southern states were 2 to 4 percentage points higher in the poorest compared with the richest districts, but the dollar amounts are minimal—less than \$250 per student. For example, in Mississippi, where nearly one third of students are poor, low-income districts spent a meager \$123 more per student, on average, compared with the state’s high-income districts. Utah, the state with the lowest per pupil expenditures, invested equal amounts in high- and low-poverty districts; however, Utah’s per pupil expenditures were over \$600 higher in districts serving large minority populations.

Except for Wyoming and Alaska, all of the high-expenditure states are in the Northeast corridor, including several states that implemented school finance reform laws in response to lawsuits (Corcoran & Evans, 2007; Rebell, 2002). Per pupil spending gaps in these states exceed those of the low-expenditure states; moreover, the pattern of disparities is more mixed according to school poverty status and minority composition (see Table 4). In Massachusetts and Vermont, for example, per pupil expenditures were between 17% and 20% higher in districts serving large minority populations compared with more ethnically homogeneous districts. In Rhode Island’s high-minority districts, per student spending was 10% below those of districts serving ethnically homogeneous students. Partly due to court-ordered revision in school-financing plans, New York invested \$1,450 more per pupil in its high-minority districts compared with those serving less diverse students; however, the state allocated \$2,000 *less* per pupil in high- versus low-poverty districts. Connecticut and Rhode Island also shortchanged students attending high-poverty districts by an average of \$1,276 and \$1,526, respectively, per pupil.

Bridgeport, Connecticut, provides a dramatic recent example of a high-expenditure state where affluent and poor districts reside in close proximity but face huge resource disparities (Nix, 2016; Semuels, 2016). According to the 2015 National Assessment of Educational Progress report, poor students in 40 other states, including Mississippi and Arkansas, fare better than poor students in Connecticut (Harris, 2016). In ruling on the long-standing

lawsuit challenging the state’s school finance system, State Superior Court Judge Moukawsher concluded that “Connecticut is defaulting on its constitutional duty” to distribute education funding in a way that provides adequate educational opportunities (Harris & Hussey, 2016). Supporting his indictment of Connecticut’s school finance system allowing “rich school districts to flourish and poor school districts to flounder” (Harris, 2016), Judge Moukawsher’s ruling criticized the legislature’s decision to cut school aid for poor districts while increasing revenue for wealthy districts. Rather than offer a narrow remedy tailored to the Bridgeport district by allowing the state to pour money into the problem, the decision requested a full revamping of the entire state school financing plan.⁴

Relief in the Courts

The Connecticut lawsuit is one of several seeking remedies for egregious disparities in school funding. In fact, such legal skirmishes began well before the *Brown* litigation. In the Southwest, for example, several districts faced lawsuits challenging segregation of Mexican Americans in the 1920s and 1930s (Aguirre, 2005; Soltero, 2006). None of the suits gained legal traction because Mexicans were classified as White by law, even if not in practice. The 1947 *Méndez* litigation (*Méndez v. Westminster School District*, 1947) in Orange County, California, laid bare the administration’s racial biases because school officials alleged Mexicans’ inferior “hygiene, ability, and economic outlook” to justify de facto segregation (Aguirre, 2005, p. 325). California law did not explicitly designate Mexicans as a racial group for purposes of de jure segregation—only Native Americans, Japanese, Chinese or Mongolians. Although the Ninth Circuit Court upheld the district court decision permitting de facto segregation, by introducing expert scientific testimony about the pernicious social costs of school segregation, *Mendez* set legal precedent for the *Brown* litigation based on de jure racial segregation.⁵ Since the mid-1970s, litigation about unequal educational opportunity shifted from its prior focus on racial segregation to inequitable school finance systems (Corcoran & Evans, 2007; Rebell, 2002).

San Antonio Independent School District v. Rodriguez (1973), an early case that made its way to the Supreme Court, maintained that the system of school finance rooted in property values violated the Equal Protection Clause. In overturning the lower court decision (*Rodriguez v. San Antonio Independent School District*), the Supreme Court ruled that education is *not* a fundamental right both because the U.S. Constitution delegates that right to the states and because the Equal Protection Clause does not apply to instances of *relative deprivation*—including those based on admittedly large funding disparities between districts and schools. Justice Powell, who 5 years later would pen the 1978 *Bakke* decision recognizing the educational benefits of a diverse student body, supported the state’s claim that every child received a *minimally adequate* education (Aguirre, 2005; *Regents of the University of California v. Bakke*, 1978; Soltero, 2006). Dissenting Judge Marshall characterized the decision as “a retreat from our historic commitment to equality of

⁴At this writing, the case has been appealed to the state supreme court, largely because of his ruling on issues that do not directly involve funding, such as teacher evaluation, graduation requirements, and special education.

⁵As governor of California when the *Mendez* case was argued, Earl Warren witnessed the injustices undergirding segregation of schools and public facilities. Not surprisingly, there are many parallels between the language used in the *Mendez* and *Brown* decisions regarding the benefits of integration as a compelling state interest, how segregation suggests inferiority, and why equal protections cannot be served by unequal facilities (see Aguirre, 2005).

educational opportunity.” In redirecting subsequent school finance cases to state courts (Aguirre, 2005; Corcoran & Evans, 2007), *Rodriguez* exposed the need for strong data establishing links between resource disparities and student achievement gaps or, more generally, the ability of schools and districts to deliver an *adequate* education.

Post-*Rodriguez*, school funding litigation shifted from issues of equity per se to concerns about educational adequacy—a development facilitated by improvements in scholastic achievement measures (Gamson, 2007). Virtually all states have sustained legal challenges to their district and school finance plans, and most invoke claims about shortfalls in educational adequacy (Corcoran & Evans, 2007). For example, in 1990, the New Jersey Supreme Court ordered the legislature to increase funding for poor districts because the funding disparities between rich and poor districts violated the state constitutional guarantee of an adequate education. Pennsylvania, Texas, Kansas, California, and most recently, Michigan are among the states currently facing litigation for inadequate funding to poor districts. The Detroit public schools, where facilities are in extreme disrepair and illiteracy is the norm, are among the worst in the nation. The Detroit lawsuit is of interest both because the complaint invokes the concept of educational adequacy and because relief is sought under the federal Equal Protection Clause rather than the state constitution, which harkens back to the 1973 *Rodriguez* case. The Supreme Court never addressed whether funding disparities would be constitutionally permissible if they preclude a state from providing students the opportunity to acquire basic minimal skills (Stone, 2016).

In retrospect, the silver lining in *Rodriguez* is both in directing complaints about unfair school finance systems to the state courts and in shifting future litigation away from fairness as a normative principle to the resources required to deliver an adequate education (Gamson, 2007; Rebell, 2002). The seemingly simple concept of *educational adequacy*, which presaged the rise of standards in educational assessments, gained considerable traction after the release of the 1983 report *A Nation at Risk*, which traced the nation’s eroding educational performance vis-à-vis industrialized peers to inadequacies in both the content and delivery of education. Although the minimal adequacy of education was not at issue in *San Antonio Independent School District v. Rodriguez*, it will be in the Detroit litigation, where large majorities of students qualify as functionally illiterate (Stone, 2016).

Expanded Federal Involvement in Education

Despite the long-standing tensions between state and local control of schools, there have been several propitious opportunities to strengthen the federal role in public education beyond mere supplementation of state initiatives, so that equal educational opportunity would approximate a constitutionally protected right. These include the Morrill Acts of 1862 and 1890, the National Defense Education Act of 1958, and the Education and Secondary Education Act, which has been reauthorized several times since initially enacted in 1965. Each offers an opportunity for strengthening the educational social contract, restoring equal educational opportunity for the working classes, and reclaiming the nation’s international prominence in education.

The Land Grant Legacy

The expansion of publically funded higher education in the latter third of the 19th century is a notable development because it occurred during the Civil War, and the federal government had a direct hand in creating a public good that enhanced the welfare of the entire nation (AAAS, 2016a; NRC, 1995). The Morrill Act of 1862 donated public land to states for establishing at least one college dedicated to teaching agricultural and mechanical arts (NRC, 1995), and the Morrill Act of 1890 forged a unique partnership with the states by appropriating matching funds for the public colleges, contingent on not denying emancipated Blacks admission, hence the birth of the so-called 1890 institutions. By permitting the creation of a parallel higher education system for Blacks in order to circumvent the discrimination proviso, the federal government was complicit in sanctioning racial segregation at the postsecondary level. For purposes of public higher education, federal legislation authorized two social contracts—one for Whites and one for Blacks.

Thanks to federal involvement, what started as a system of colleges to educate the industrial class evolved into a nationwide system of excellent public research and comprehensive universities that ultimately powered the innovation economy (AAAS, 2015b) and promoted social mobility by expanding college opportunities beyond the elite. State spending on public higher education also rose appreciably through most of the 20th century, albeit unevenly across states.⁶ Demand for workers with advanced technical and professional skills also stimulated college enrollment, a development enabled by affordable postsecondary education. In addition to fueling productivity increases and economic growth, the nation's rising human capital stock tempered the rise of income inequality through the mid-1970s.

There is at least one land-grant institution in every state and territory, including the District of Columbia, and today public research universities educate about 20% of all postsecondary students (, 2016b). As with K–12 schooling, the imprint of federalism is clearly evident in the uneven state commitments to public higher education. Unfortunately, the very institutions that catapulted the United States to international economic preeminence today face unprecedented funding pressures. Although the land-grant institutions initially charged no tuition, unlike K–12 schooling, access to public higher education was never guaranteed by the states (AAAS, 2015a).⁷ Institutions initially set tuition rates low, raising rates gradually over many years but more substantially as an offset to declining state outlays.⁸ In 1990, state and local appropriations constituted over one third of operating revenue for public institutions, but this share fell to 20% in 2010 (Henry, Pagano, Puckett, & Wilson, 2014; see Figure 3). Currently, higher education is the third priority in general fund states' budgets, behind K–12 education and the state's portion of Medicaid (Edelstein, Hahn, Isaacs, Steele, & Steuerle, 2016). Following the huge funding cuts to higher education in the wake of the Great Recession, tuition became a principle revenue source for many public

⁶Goldin and Katz (Aguirre, 2005; Soltero, 2006) show that states that entered the union earliest had lower public college enrollments and lower state subsidies for higher education, a condition that persists to the present day. In part, this is because states in the Northeast and mid-Atlantic region had a robust system of private higher education institutions prior to the expansion of the public higher education system.

⁷California offered free tuition to in-state students until the 1970s.

⁸The reduction of state funding for higher education has tolled particularly hard on the 1890 institutions that are less successful securing federal grants and other revenue streams (Lee & Keys, 2013).

postsecondary institutions (AAAS, 2016c; Carlson, 2016). Between 2000 and 2012, for example, state appropriations declined by a whopping 34% per full-time equivalent student (AAAS, 2016c).

The twin pressures of falling state and local appropriations and rising tuition requires families to shoulder a large share of college costs. In the 1970s, when state appropriations covered 60% of the cost of attending a public university, families were responsible for 33% of college costs, on average; today, families' out-of-pocket share is 50% of a much higher tuition bill. To make up for reduced state appropriations, public universities have also intensified recruitment of out-of-state students, thus rendering public education more of a private good (AAAS, 2015a; Carlson, 2016; Henry et al., 2014). Underinvestment in higher education not only weakens the social contract but also compromises economic growth and curtails social and economic mobility for decades to come. Lessons from the Cold War bring this point into sharp relief.

National Defense and the Schools

A second propitious moment for strengthening the educational social contract occurred in the context of the Cold War, when Russia's launch of Sputnik 1, the world's first artificial satellite, triggered a crisis of confidence (Gamson, 2007). Seen as evidence that the Soviet schools offered better training in math and science, within a year Congress passed the National Defense Education Act (NDEA), authorizing nearly \$1 billion over 4 years to improve the capacity of American schools to fulfill the nation's security needs. NDEA successfully used the defense rationale to increase states' receptivity to federal involvement in education because of perceptions of Russian superiority in the space race, a symbol of military power during the Cold War (Wolfensberger, 2005). In the quest to advance the nation's math and science capabilities, the Eisenhower administration missed a propitious opportunity to use the defense rationale to guarantee that federal appropriations would be deployed in ways that provide all students an adequate education. Instead, the NDEA legislation gave states great discretion in determining how best to use federal funds to bolster math and science curricula. Moreover, the newly created multipurpose cabinet-level department Health, Education, and Welfare lacked the requisite enforcement capability to monitor the heavy infusion of federal funds into state education agencies.

Gamson (2007) correctly questions whether the NDEA unintentionally fomented the achievement gaps. He suggests that the hastily drafted legislation also missed a critical opportunity to foster a national conversation about academic ability and performance on the one hand and to critically examine whether the highly unequal systems of local control were compatible with notions of equal educational opportunity on the other hand. Although perhaps unintended, two pernicious consequences of NDEA were the shift to IQ testing as a way of identifying the gifted and talented and the creation of ability groups as a way of maximizing efficiency in rationing federal funds. Neither testing nor tracking brought clarity to the important distinction between equal opportunity to learn and equal achievement outcomes. If flexible general aid with limited accountability facilitated creativity and innovation, the infusion of federal funding across highly unequal and segregated state school systems virtually guaranteed even larger achievement gaps. Of course, NDEA was not

designed to equalize educational opportunity; however, the requirement of 50% funding matches gave affluent districts a decided advantage and maintained or widened resource disparities across districts and schools. Intentional or not, this NDEA provision also exacerbated achievement disparities.

Education and the War on Poverty

Favorable historical conditions again facilitated federal intrusion into state and local control of public education during the Johnson administration. As the postwar baby boom tested the ability of states to manage overcrowded facilities, entrenched norms of local control softened—at least enough to accept federal aid. President Johnson—a master statesman and political strategist—made school aid a centerpiece of the Great Society Programs, not by using the defense rationale as Lincoln and Eisenhower had done but instead under the umbrella of the War on Poverty (Kaestle, 2016; Wolfensberger, 2005). Appealing to the nation’s sense of fairness and shame during a period of national mourning, Johnson signed the Elementary and Secondary Education Act (ESEA). Considering the long-standing resistance to federal involvement in state and local affairs, ESEA represents a formidable legislative accomplishment. Although ESEA has been renewed several times since its enactment, albeit under different names, reauthorization is not guaranteed; neither is the corresponding appropriation to ensure federal funding.⁹

Despite targeting districts serving low-income students in the interest of equalizing educational opportunity, ESEA did not advance the cause of making education approximate a fundamental right; perhaps the time to do so expired with the end of the Cold War. That said, ESEA represents an important turning point enlisting the federal government as a full partner in the mission of eliminating achievement disparities (Wolfensberger, 2005). To that end, Title I of the ESEA targeted federal funds to schools serving large numbers of poor children as a supplement—not replacement—for state and local revenues. In practice, however, Title I appropriations tend to reward wealthier states because the funding formulas, which multiply the number of eligible students by average per pupil spending, favor high-expenditure states (Liu, 2006; Ushomirsky & Williams, 2015). In the short run, this glaring weakness in the allocation of Title I funds can be mitigated by revising formulas to target the number of poor students per state, not expenditure per student (Liu, 2006; Ushomirsky & Williams, 2015). Title I can be further strengthened by providing incentives for low-expenditure states to equalize per student investments across districts, provided that such investments actually improve *both* the content and delivery of education—the two weaknesses identified in the 1983 *Nation at Risk* report. This change in Title I funding can go some way toward strengthening the educational social contract by focusing *directly* on educational adequacy.

Restoring the Educational Social Contract

Notwithstanding popular assertions that an educated citizenry is the backbone of democracy, today millions of U.S. children are denied equal opportunities to learn and to obtain an

⁹Recent name changes include No Child Left Behind, authorized by the Bush administration, and Every Student Succeeds Act, authorized by the Obama administration. The Elementary and Secondary Education Act remains a civil rights law.

adequate education. In large measure, this is because the U.S. system of local control limits the hands of federal policy makers to guarantee an adequate, much less an excellent, education. No amount of goal setting and metric-driven assessment schemes can supplant a steadfast commitment to unwind the economic and residential segregation that continues to undermine scholastic achievement. Restoring the United States to educational preeminence is more than a lofty social goal; it is mission critical to sustain the nation's economic competitiveness in a globalized world, particularly as the outsized baby boom cohorts continue to retire. Replenishing their formidable human capital stock requires a renewed and vigorous commitment to the nation's youth that must begin by restoring educational opportunities that have been eroded through rising income segregation, large interstate and intrastate gaps in school investments, and shrinking appropriations for institutions of higher education.

It is no secret that the United States lost its first-place position as an education innovator. So, what would it take to summon a call to action comparable to that in response to Sputnik 1 or a reality check comparable to *A Nation at Risk*? There are challenges in the road ahead, but none insurmountable given a steadfast commitment to public education, as occurred during the Common School Movement and through the human capital century that drove U.S. economic growth and social prosperity (Goldin, 2001). Interstate disparities in school expenditures, which narrowed through the 1970s, have been on the rise, enshrining unequal educational opportunity to learn as a defining feature of U.S. school systems and producing large numbers of graduates ill prepared for the workforce of the 21st century. Decades of underinvestment in primary, secondary, and higher education not only slowed the nation's rate of human capital accumulation, but by lagging the evolution of skill-biased technological change, it also fomented income inequality (Autor, 2014). Odden et al. (1995) argued that infusion of money in poor districts would raise scholastic achievement if directed to the regular education curriculum—a premise supported by recent studies (Corcoran & Evans, 2007; Lafortune, Rothstein, & Schanzenbach, 2016).

Moral arguments that high levels of inequality are unjustified in the world's richest country gain little traction because the nation seems to have lost its moral compass on matters of social justice and a shared commitment to the next generation. Balancing state education budgets on the shoulders of future generations, as occurred during the Great Recession, is not only terrible social policy, but it is also a recipe to compromise future economic competitiveness both by slowing social mobility and undermining productivity. All of the nations that outperform the United States in math, science, and college completion have much lower levels of economic and social inequality and enjoy higher rates of social mobility (Russell Sage Foundation, 2016).

There are some hopeful signs about the prospects of improving U.S. educational attainment. For example, it is encouraging that college enrollment rates rose for all segments of the family income distribution since 1965 (Cahalan & Perna, 2015). The bad news, however, is that the college attainment gap between the highest and lowest family income quartiles doubled over the last 50 years because the completion rate of low-income students barely budged, whereas that of high-income students nearly doubled (Cahalan & Perna, 2015). College affordability is part of the problem and, unfortunately, most financial aid programs

concentrate risk in the lower income groups. This, too, can be fixed, but more than affordability, lack of political will is the binding constraint. Rising educational and income inequality is also bad news for seniors because their Social Security and Medicare benefits depend on the earnings of younger generations. Fortunately, these trends are reversible, but they require an unwavering commitment to restore state support for public postsecondary institutions. Total spending on public schools has fallen since the end of the Great Recession, and as of 2013, total education spending per student has remained below prerecession levels (Isaacs, 2016).

It is reasonable to set standards of public education funding and academic quality *below which no school should fall*, irrespective of the state in which it is located or the social background of students served. There is federal precedent for strengthening the nation's educational social contract. Presidents Franklin Roosevelt and Lyndon Johnson rewrote the social contract for retirees and seniors when they championed, respectively, Social Security and Medicare—two programs that have been highly effective in reducing or preventing poverty among seniors. Although initially unpopular, the socially transformative legislation did not require constitutional amendments. That both programs are federally funded as entitlement programs protects them against cost cutting during fiscal downturns because the federal government can run a deficit, unlike states and localities. As federally funded social insurance programs, de facto if not de jure, Social Security and Medicare are analogous to fundamental rights for seniors. What's more, AARP has become a powerful watchdog for seniors' rights, effectively lobbying for the social, medical, and economic interests of this growing demographic. By contrast, most federal programs serving young people fall into the discretionary part of the federal budget, are programs subject to annual appropriations (e.g., such Head Start), or have no unified public advocate like AARP (Hahn, Isaacs, & Steuerle, 2016; see Figure 4). Public education is largely state funded and thus subject to balanced-budget constraints.

A comparison of the federal outlays for seniors and children illustrates how population aging changed the composition of federal spending on children and seniors. Before Johnson's historic ESEA legislation, 3.2% of federal spending was targeted to children and a respectable 11% to seniors. Johnson's legacy program for seniors, Medicare, is contingent on qualifying for Social Security benefits. By 2015, 45% of federal spending was for programs enjoyed by seniors, compared with less than 10% for programs targeted to children, including education (Edelstein et al., 2016, Figure 7). In hindsight, it is clear that temporal myopia associated with baby boom pressures on educational systems led to underestimates of the long-term funding commitments baked into Medicare. As more baby boomers claim their entitlements, their share of the federal budget increases. By contrast, ESEA is subject to the vagaries of annual appropriations, and Title I provisions are not strategically targeted to ensure that the federal funds maximally reduce achievement gaps. Budget projections indicate that relative expenditures on children will decline even further as successive baby boom cohorts become eligible for Medicare and Social Security.

At the K–12 level, the goal of promoting equal educational opportunity under a highly decentralized educational finance system has proven challenging (Gamson, 2007). Fortunately, there is new evidence that low-performing schools and districts can be improved

with sustained infusion of resources (Lafortune et al., 2016). District-by-district legal skirmishes will never rectify the enormous interstate disparities in educational opportunity nurtured over decades of local control. Considering the economic stakes for the nation, acquiescing is not an option.

What would it take to renew the educational social contract such that it guarantees all children an adequate education so they can recharge the economic productivity of the nation and also replenish the Social Security coffers? Put differently, what balance of social policy and social advocacy is required to ensure that delivery of quality education is an entitlement for all youth? After all, youth have little voice because they do not vote and cannot lobby Congress to reauthorize funding for public education, much less to insist on an equitable distribution of resources. Just as Social Security establishes a lower income threshold for seniors, the federal government can and should require states to provide all students an equal opportunity to obtain an adequate (preferably an excellent) education.

Let me be provocative. To give youth a voice in matters that govern their future, youth advocates should consider a functional equivalent of AARP for youth—the American Association for Young People. As the designated champion for promoting a youth-centric policy agenda, ideally the organization would first and foremost ensure that the 50 social contracts undergirding unequal educational opportunity are not abrogated, and second, muster the political will to guarantee that federal funds are used strategically and efficiently to reduce interdistrict and intradistrict disparities in educational opportunities. Given its historic leadership in educational innovation and its rich philanthropic legacies, the nation should be up to the challenge.

The United States is overdue for major upgrades in the way it delivers public education because today we face formidable competition with China, a nation with 4 times the population of the United States. China has made massive investments in education, but currently the United States still has a comparative advantage, which is ours to lose by tolerating unequal educational opportunities to proliferate. The biggest challenge is finding the political will to restore the educational social contract so that it truly broadens equal educational opportunity. Nothing short of an astute politician with the courage and political adeptness of Lyndon Johnson or Franklin Roosevelt is needed to champion education policy that genuinely serves all youth.

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Biography

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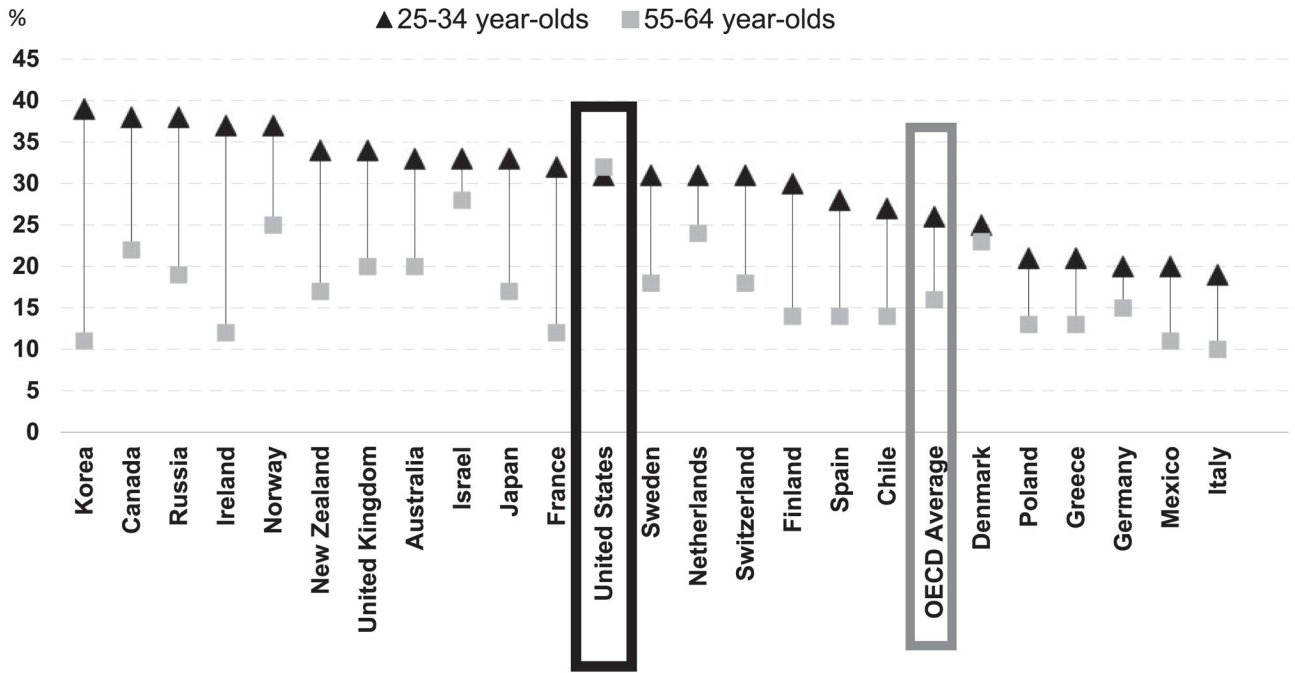


FIGURE 1. Population ages 25 to 34 with a bachelor's degree or higher, 2010 (percentages)
Data from Organisation for Economic Co-operation and Development (2012, Table A1.3a).

CA				NY	
CO				AK	
MA	CA	AK		NJ	
NV	NV	NY		CT	
SD	NJ	AZ	AK	WY	
MT	NY	NJ	NJ	VT	
AZ	MI	DE	NY	RI	
NM	LA	OR	CT	MA	
TN	KY	VA	TN	MD	
MS	TN	WV	OK	NH	
AR	MS	GA	KY	MS	
KY	SC	AL	AR	OK	
FL	AL	TN	AL	AR	
SC	AR	NC	ID	ID	
AL	GA	KY	MS	UT	
GA		AR	UT		
NC		SC			
		MS			
Year	1880	1930	1960	1990	2012
Mean	\$190	\$956	\$2779	\$9109	\$9614

FIGURE 2. States with above- and below-average per pupil education expenditures, 1880–2012 (2012 dollars)
 Data from National Center for Education Statistics (2012) Southern Education Foundation (2009).

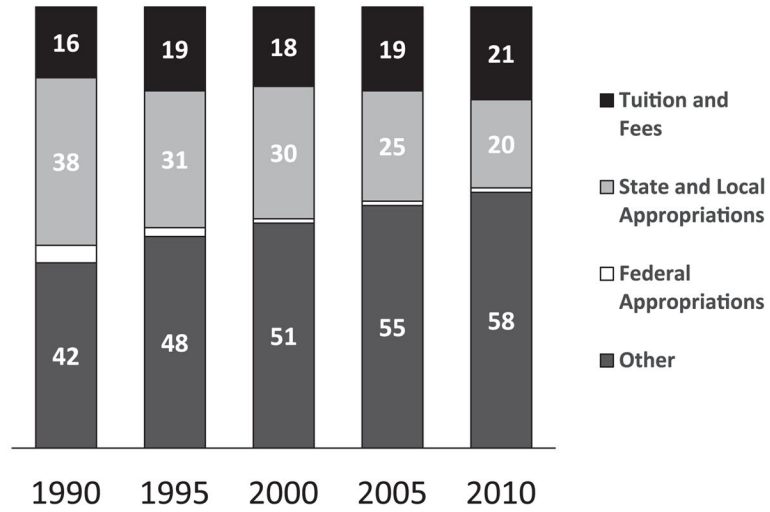


FIGURE 3. Funding sources for public 4-year colleges and universities: 1990–2010

Source. Henry, Pagano, Puckett, and Wilson (2014). Reprinted with permission from The Boston Consulting Group.

Note. Except for 1990, local appropriations account for less than 1% of higher education budgets. *Other* includes government grants and contracts, private gifts, investment income, and other sources that are not for capital expenditures.

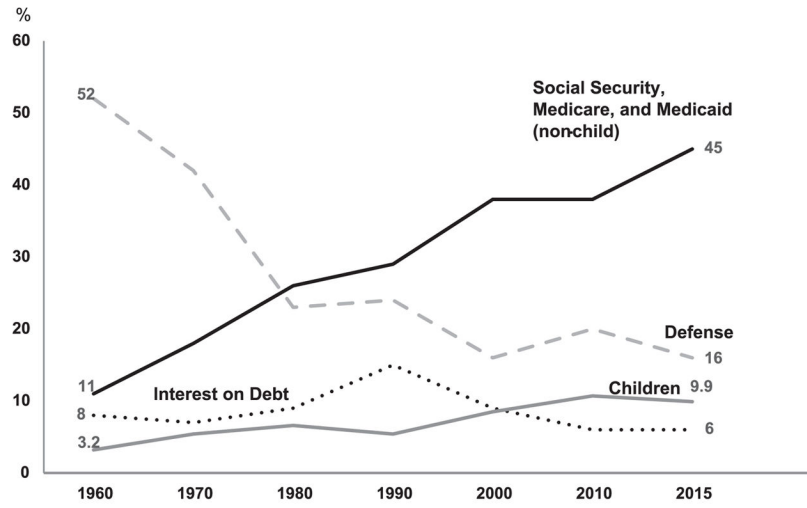


FIGURE 4. Percentage of federal budget outlays for children and other items: Selected years, 1960–2015

Data from Edelstein, Hahn, Isaacs, Steele, and Steuerle (2016).

Table 1

Performance in Mathematics and Science: Selected Countries, 2012 (means or percentages)

Country	Math Score (<i>M</i>)	Low Math Achievers (%)	Top Math Performers (%)	Science Score (<i>M</i>)
Shanghai, China	613	3.8	55.4	580
Hong Kong, China	561	8.5	33.7	555
South Korea	554	9.1	30.9	538
Canada	518	13.8	16.4	525
United Kingdom	494	21.8	11.8	514
OECD average	494	23.0	12.6	501
United States	481	25.8	8.8	497

Note. Data from Organisation for Economic Co-operation and Development (OECD; 2014).

Table 2

Per Pupil Expenditures, Selected Years 1880–2012 (2012 Dollars)

Year	Number of States	Mean (\$)	Standard Deviation	Min (\$)	Max (\$)	Coefficient of Variation
1880	46	190	102	35	410	54
1930	48	956	424	238	2,274	44
1960	50	2,779	630	1,597	4,234	23
1990	50	9,109	2,175	5,264	15,270	24
2012	50	9,614	2,877	5,446	18,097	30

Note. Data from National Center for Education Statistics (2012) and Southern Education Foundation (2009).

Table 3

Per Pupil District Funding Disparities: Low-Expenditure States, 2012

State	Average Per Pupil Expenditure (2012 Dollars)	High- Versus Low- Minority Districts (% Point Difference)	High- Versus Low-Poverty Districts (% Point Difference)	Children in Poverty (%)
United States	9,210	-4.4	-15.6	21
Arkansas	7,860	12.6	2.5	27
Mississippi	6,545	2.6	1.9	31
Oklahoma	6,421	1.5	3.7	22
Idaho	5,685	-7.1	-3.9	18
Utah	5,446	10.6	0.1	13

Note. Data from Kids Count Data Center (2017), National Center for Education Statistics (2012, Tables A-1, C-1).

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Table 4

Per Pupil District Funding Disparities: High-Expenditure States, 2012

State	Average Per Pupil Expenditure (2012 Dollars)	High- Versus Low-Minority Districts (% Point Difference)	High- Versus Low-Poverty Districts (% Point Difference)	Children in Poverty (%)
United States	9,210	-4.4	-15.6	21
New York	18,097	8.0	-11.8	22
Alaska	15,705	21.9	4.7	15
New Jersey	15,589	9.6	8.9	16
Connecticut	15,190	-5.7	-8.7	15
Wyoming	14,518	-3.9	-1.6	13
Vermont	13,342	19.8	-18.1	13
Rhode Island	13,164	-9.6	-10.4	19
Massachusetts	12,910	16.6	7.3	15
Maryland	12,634	5.7	-4.9	13
New Hampshire	12,611	-6.1	1.4	11

Note. Data from Kids Count Data Center (2017), National Center for Education Statistics (2012, Tables A-1, C-1).

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