

STARTING FROM THE BOTTOM

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Two questions: Does it matter if we have a fundamental right to education? What kind of public-education system should we have in our communities? There are many reasons why Americans should care about whether the U.S. Constitution implies a fundamental right to education or, at the very least, why they should seek a statutory guarantee of such right. Our public-education system has been consistently ranked below that of numerous other developed countries. In 2014, Pearson, a company that publishes textbooks and develops education policies with governments, released its latest Global Index of Cognitive Skills and Educational Attainment. On that list, the United States sits at number fourteen, below countries like South Korea, Singapore, Canada, the United Kingdom, and Russia. Comparisons to other countries can easily slip into tired rationalizations for American exceptionalism and a culture of competition. Here, though, the U.S. stands to learn something from how other countries regard education. The countries that surpass America in the rankings have a key element in common: they guarantee the right to education.

Each of these countries has elevated education to the status of a fundamental right of citizenship. In fact, more than ninety per cent of nations in the world guarantee the right to education. Sixty-two of them have constitutions that go further by guaranteeing a right to “equal access” to education. Some countries without constitutional guarantees for education have nevertheless secured the right through statute or by ratifying the United Nations’ Convention on the Rights of the Child. The United States, however, has done neither. Notably, we are one of only three countries in the world that has yet to ratify the Convention. Priorities like American sovereignty and parental autonomy have been the vocalized reasons for not ratifying the Convention, which would require support from the President and two-thirds of the Senate, the same standard for amending the Constitution. Some suspect, though, that the opposition runs deeper: one provision of the Convention would require us to stop jailing minors for life without parole.

In 1973, the Supreme Court refuted the proposition that education is a fundamental constitutional right in *San Antonio Independent School District v. Rodriguez*. The Court reviewed Texas’s public-education-funding system under rational

basis review, which is the most lenient type of review that courts will engage in. The Court held that Texas’s funding mechanism satisfied this simple standard despite the stark differences in funding between low-income districts (\$356 per pupil) and affluent districts (\$594 per pupil).

The Court further held that the funding mechanism bore a rational relationship to the legitimate state purpose of encouraging participation and significant local control of public education. Essentially, the Court was willing to overlook the vast inequity in funding based on the bland excuse that Texas has a right to delegate control of public education to its localities. The Court prioritized local control over adequate and free education for all children.

Taking a closer look at the inequities between and within states illustrates how complicated the education-funding models in America are. For instance, some of the higher-ranked states in terms of the overall adequacy of their public-education systems, like Wyoming, don’t guarantee the right to education in their constitutions or laws. On the other hand, some states that do guarantee such a right, like Florida, rank low in public-education outcomes. New York, which does not provide a guaranteed right to public education, is the second-highest spender on public education while also being one of the most unfair distributors of funding. One of the reasons for this disparity is that rich school districts in New York can supplement their state aid with local property taxes, but the state does not give any additional aid to poorer districts that cannot do the same. The problem is manifold, and, perhaps, the solution is, too.

Many communities are already taking action toward better state public-education systems. Last fall, Mississippi’s Ballot Initiative sought to amend the state’s constitution to require that Mississippi fund an adequate public-education system through the twelfth grade. The initiative failed in the November vote. Massachusetts and Maryland have established foundation-funded models based on statistical evidence of need and consultation from the community, students, and education experts.

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