

Foreword

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Knowledge is the new currency of success in today's global economy. How to improve our nation's schools to effectively prepare all young Americans for that competition is the subject of this Symposium, *Education: Equality of Opportunity*.

I am honored to present this issue for three reasons. First, like many Americans, I have reacted with a mix of concern, disbelief, and resolve as scholars and pundits have debated intensely whether America's power relative to China and other emerging nations is in decline.¹ The United States, the story goes, cannot keep pace with China because, in addition to a fast-growing population, robust GDP growth, and an expanding military, China is producing more well-educated young people who are capable of understanding and working with the technologies of the twenty-first century.² Throwing salt on the wound are international rankings that place the United States firmly in the "middle of the pack" among developed nations for student achievement.³ Worse still, the very idea that America is the land where anything is possible, a nation of unprecedented upward mobility, has been called into question.⁴ Whether these predictions come to pass or simply represent a temporary fit of national anxiety remains to be seen. But there is no question that America's economic strength will increasingly depend on its ability to produce a well-educated workforce. Ensuring that all students,

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¹ The debate appears consistent with popular sentiment about America's global standing. The Second Annual State of the American Dream Survey, conducted in March 2011 by Xavier University's Center for the Study of the American Dream, found that sixty-five percent of Americans believe America is in decline, and fifty-two percent named China as the country the world increasingly looks to for leadership. CTR. FOR THE STUDY OF THE AM. DREAM, SECOND ANNUAL STATE OF THE AMERICAN DREAM SURVEY 23, 25 (2011), <http://www.xavier.edu/americandream/programs/documents/Final-American-Dream-Survey-PowerPoint.pdf>.

² See Arvind Subramanian, *The Inevitable Superpower: Why China's Dominance Is a Sure Thing*, FOREIGN AFF., Sept./Oct. 2011, at 66–67.

³ The most high-profile set of rankings is the Programme for International Assessment, which is conducted every three years by the Organization for Economic Cooperation and Development (OECD), and the most recent rankings are based on 2009 data. OECD, PISA 2009 RESULTS: EXECUTIVE SUMMARY (2010), <http://www.oecd.org/dataoecd/34/60/46619703.pdf>. Among thirty-four OECD partner countries, the United States ranked fourteenth in reading, seventeenth in science and twenty-fifth in mathematics. See also MCKINSEY & CO., HOW THE WORLD'S BEST-PERFORMING SCHOOL SYSTEMS COME OUT ON TOP (2007), http://www.mckinseysociety.com/downloads/reports/Education/Worlds_School_Systems_Final.pdf. See also Tim Walker, *PISA 2009: U.S. Students in the Middle of the Pack*, NEA TODAY, Dec. 7, 2010, <http://neatoday.org/2010/12/07/pisa2009> (on file with the Harvard Law School Library).

⁴ See, e.g., ISABEL SAWHILL & JOHN E. MORTON, ECON. MOBILITY PROJECT, ECONOMIC MOBILITY: IS THE AMERICAN DREAM ALIVE AND WELL? 4–5 (2007), <http://www.economic-mobility.org/assets/pdfs/EMP%20American%20Dream%20Report.pdf> ("There is little available evidence that the United States has more relative mobility than other advanced nations. If anything, the data seem to suggest the opposite.").

regardless of their background, have access to a good education, the opportunity to reach for the American Dream, and the skills to keep America competitive must be a national priority.

Second, governing our nation's seventh-largest city provides me a front-row seat to the challenges our urban centers face in creating an educated workforce sufficient to attract high-paying, knowledge-economy jobs and to grow them from within. Today, seventy percent of San Antonio's 1.3 million residents are Latino or African-American, and more than three-quarters of its public school students are minority students.⁵ San Antonio is quite a bellwether in this regard, offering a peek at America's tomorrow. The extent to which San Antonio and similar communities can succeed in boosting student achievement in traditionally low-income, disadvantaged neighborhoods will accelerate or hamper America's success in the years to come.

Finally, I began my education in the Edgewood Independent School District and later graduated from the San Antonio Independent School District (SAISD), ground zero in the fight for equal funding for the education of low-income, minority children. Edgewood and SAISD sit in San Antonio's heavily Latino Westside, and for decades both districts have faced high drop-out rates, aging infrastructure, and student achievement below state and national averages. In 1968, Demetrio Rodriguez and a group of Edgewood parents challenged Texas' method of financing public education as violative of the Equal Protection Clause because the state's reliance on district-specific ad valorem taxation revenues provided more funding to districts in affluent areas than in low-income, "property poor" neighborhoods.⁶ Five years later, in *San Antonio Independent School District v. Rodriguez*, the Supreme Court upheld Texas' school funding formula as constitutional, resisting the correlation between poverty and district per-pupil expenditures and refusing to recognize education as a fundamental right.⁷ I count myself as one of many who benefitted from progress made since *Rodriguez* to ensure equal opportunity in public education, but as the articles in this Symposium highlight, much more progress is necessary.

In mid-January 2009, as Americans prepared to witness the historic inauguration of the nation's first African-American President, a Reuters headline sounded an alarming note, *U.S. School Segregation on the Rise: Report*.⁸ The report at issue, published by the Civil Rights Project of the University of California at Los Angeles, analyzed the racial and ethnic makeup of America's public schools through the 2006–2007 academic year

⁵ SPRING W. LEE ET AL., TEX. EDUC. AGENCY, ENROLLMENT IN TEXAS PUBLIC SCHOOLS 2010-11 40 (Christine Whalen et al. eds., 2011).

⁶ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35–38 (1973).

⁷ *Id.* Although the San Antonio Independent School District was originally one of seven San Antonio-area school districts named as defendants, the district court dismissed it from the case, and the School District subsequently joined the plaintiff's challenge and filed a supportive amicus brief to the Supreme Court. *Id.* at 5 n.2.

⁸ Matthew Bigg, *U.S. School Segregation on the Rise: Report*, REUTERS, Jan. 14, 2009, <http://www.reuters.com/article/2009/01/14/us-usa-segregation-idUSTRE50D7CY20090114> (on file with the Harvard Law School Library).

and found “a continuing surge in minority students, yet another increase in racial segregation of African American and Latino students, the extremely large proportion of American students who are growing up in poverty, and the development of multiracial schools in many parts of the country.”⁹ Fully forty percent of Latinos and nearly thirty-nine percent of African-Americans were found to attend schools with a student body that was at least ninety percent minority students.¹⁰ These racially isolated schools serve as a striking reminder that the “separate” education addressed by the Court in *Brown v. Board of Education*¹¹ remains a fact of life for many minority students. Although the Court attempted in *Brown* to combat racial segregation, the case only marked the beginning of a series of Court decisions, legislative and administrative actions aimed at addressing lingering unequal educational experiences encountered by minorities.

In this Symposium, Lia Epperson argues that Congress can and should do more to reduce racial isolation in public education.¹² Epperson finds support for legislative action within recent cases interpreting Congressional authority under Section 5 of the Fourteenth Amendment. Epperson offers three guiding principles for crafting such legislation, suggesting that lawmakers mirror the integration language in fair housing statutes, collect data to support their legislation, and implement corrective legislation with an eye toward “shared burden.”

In recent years, as concern over structural inequities has sharpened, tremendous attention has turned to the question of how each participant within the education ecosystem—teachers, administrators, policymakers, parents, and students themselves—can better contribute to higher student achievement. A generation of education “reformers” has emerged to challenge the status quo. Reformers generally embrace policies that vest administrators with greater latitude in hiring, evaluating, compensating, and dismissing teachers, and they point to the success of charter schools like those of the Knowledge Is Power Program (KIPP) to challenge the notion that poverty is destiny for low-income students. No one personifies the reform movement more than Michelle Rhee, who served as chancellor of the Washington, D.C., public schools from 2007 through 2010. During her tenure, Rhee initiated a series of bold changes that significantly increased student achievement and earned her the praise of many in the reform movement nationwide but drew substantial criticism from teachers’ unions. In her Symposium article, Rhee lays out a “Students First” prescription for improving student achievement that includes, *inter alia*, a value-added teacher assessment model, a tenure system that prioritizes performance over experience, the

⁹ GARY ORFIELD, THE CIVIL RIGHTS PROJECT, REVIVING THE GOAL OF AN INTEGRATED SOCIETY: A 21ST CENTURY CHALLENGE 7 (2009), <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/reviving-the-goal-of-an-integrated-society-a-21st-century-challenge/orfield-reviving-the-goal-mlk-2009.pdf>.

¹⁰ *Id.* at 12.

¹¹ 347 U.S. 483 (1954).

¹² Lia Epperson, *Legislating Inclusion*, 6 HARV. L. & POL’Y REV. 91 (2012).

elimination of last-in, first-out (LIFO) policies that govern layoffs, and higher pay for high performing teachers.¹³

Offering a counterpoint to Rhee is Randi Weingarten, President of the American Federation of Teachers.¹⁴ Weingarten's article challenges the notion that teachers are recalcitrant toward reform. Instead, she argues, teachers are willing collaborators in reform whose voices are essential in crafting successful policy changes for improving teacher and student performance. Weingarten also seeks to debunk the notion of teachers' unions as incompatible with a high quality education system, pointing to some of the very same nations that reformers have hailed as success stories—Finland, Singapore and South Korea—whose teachers are overwhelmingly unionized. Finally, Weingarten offers several examples of American school districts that have instituted significant reforms through a collaborative effort among policy-makers, administrators, teachers, and the community-at-large.

In his contribution to the Symposium, William S. Koski focuses on the “teacher quality gap” in public schools that serve low-performing, often disadvantaged children—the pattern of lower teacher pay, higher turnover, and lower teacher experience levels that has hurt students.¹⁵ Two ideas underpin Koski's analysis. First, Koski posits that the district-teacher relationship is fundamentally a negotiable, employer-employee relationship. Second, because the relationship significantly impacts students, their families, and other stakeholders, policy proposals to alter the district-teacher relationship must be scrutinized from the vantage point of multiple local stakeholders. While Koski agrees with reformers that policy changes are needed to improve teacher quality, he argues that reform must be pursued incrementally and collaboratively. Koski is wary of reform that emanates from federal or state government and embraces a local approach to formulating new policies on teacher hiring, evaluation, compensation, and classroom assignment.

Finally, in her Symposium piece, Rosemary C. Salomone addresses the unique challenges facing millions of students in our public schools who are not native English speakers.¹⁶ Since the passage of the Bilingual Education Act of 1968, education policymakers and practitioners have debated the underlying rationale for and best pedagogic approach to instruction of English language learners (ELL). Reviewing the development of the law and policy surrounding dual language instruction, Salomone critiques the policy approaches of both bilingual education skeptics and dual language advocates. Salomone argues that in today's increasingly diverse world, understanding a language in addition to English is an asset, and America has an opportunity to capitalize on dual language students. She calls for a plan of action for

¹³ Michelle Rhee, *What It Takes to Fix Our Schools: Lessons Learned in Washington, D.C.*, 6 HARV. L. & POL'Y REV. 39 (2012).

¹⁴ Randi Weingarten, *The Role of Teachers in School Improvement: Lessons From the Field*, 6 HARV. L. & POL'Y REV. 9 (2012).

¹⁵ William S. Koski, *Teacher Collective Bargaining, Teacher Quality, and the Teacher Quality Gap: Toward a Policy Analytic Framework*, 6 HARV. L. & POL'Y REV. 67 (2012).

¹⁶ Rosemary C. Salomone, *Reframing the Debate Over English Language Learners: Reconciling Bilingualism and Accountability*, 6 HARV. L. & POL'Y REV. 115 (2012).

dual language instruction that strikes a balance between respect for native language and English instruction and an accountability model more tailored to the needs of ELL students.

From my own vantage point—as a big-city mayor and the product of a racially-isolated school district—I am convinced that communities tackling failing public schools must heed the oft-cited African proverb that “it takes a village to raise a child.” Any attempt to reform our public schools must be approached with an open mind by all participants, and with the understanding that more will be expected from everyone, including teachers, administrators, policymakers, taxpayers, parents, and students. A careful reading of Rhee’s and Weingarten’s articles suggests there is more agreement than one might expect. Both authors recognize that changes to our schools are necessary to drive improvement and are willing to go beyond traditional solutions to achieve it, and both expect multiple parties in the education ecosystem to work together, though they view the optimal process for achieving change and its pace differently. Finding common ground is essential to success. Often, the difference between a successful strategy and a failed one is how well the strategy is executed by those charged with implementing it. Without question, it makes sense to be inclusive on the front end.

On the day I turned twenty-two, I found myself back in a high school classroom, this time as a “permanent sub,” tasked with teaching three classes of ninth and tenth graders whose teacher had taken leave. I had no training, and I looked like I belonged in class myself. All three classes had more than thirty students, many of them eager to test a novice teacher. On my third day in the classroom, I turned to write something on the blackboard and got hit by a paper ball. Teaching was not nearly as easy as I thought it would be. I quickly learned that it is a craft. It requires good training, subject-matter mastery, and more than a little bit of patience. As Weingarten and Koski note in their articles, much of the attention on how to fix public schools has focused on how to improve teacher quality. This is a well-founded starting point. Study after study has found that high-quality teaching is a significant factor in student achievement.¹⁷

Great teachers can make a profound difference in students’ lives. A few years ago, I was asked to write a letter of support for one of my junior high teachers who had been nominated for a local teaching award. It gave me the opportunity to reflect on the impact of the many teachers whose classrooms I had sat in from kindergarten through my third year of law school—119, to be exact. I remembered my first grade teacher, Ms. Pigeon. I do not remember much about the details of her classroom, her teaching style, or the particulars of her instruction. What I do remember is that one day, just as class was wrapping up, Ms. Pigeon pulled me aside. She told me how well I was doing in class. She said she thought I could handle doing more than the daily assignment. And she asked me to take my workbook home and to “do

¹⁷ See Koski, *supra* note 15, at 67 n.1 (citing analyses of teacher quality effect on student achievement).

up to page fifty-seven.” I am convinced that that moment changed my life. Ms. Pigeon’s belief in me made me believe in myself. I was set on a trajectory of academic accomplishment.

America’s schools are filled with many excellent teachers who impact students in that same way every day, but the quality of teaching is often uneven within a school district and even within the same school. Over the years, I have encountered more than a few teachers who had either given up on inspiring their students or never knew how to in the first place and, more basically, who did not effectively convey knowledge to their students. A more engaged evaluation process and better training and support for teachers make sense, but it also strikes me as quite reasonable that policymakers, teachers, and community members should devise ways to reward great teachers for doing great work, evaluate teachers based in part on whether a student actually learns in their classroom, and be able to retain teachers in the face of budget challenges based not exclusively on their seniority but on their performance as well.

During my brief time teaching, I also learned that good teachers cannot do it alone. They need support from those outside the classroom, including policymakers. State and federal legislators must be bold enough to make the investments necessary to scale up best practices from high-performing American public, charter, and private schools, and from education systems abroad. For example, KIPP and a few other renowned charter schools have successfully asked more from their teachers, students, and parents. They have paid teachers higher salaries, implemented longer school hours, added days to the academic calendar, required teachers to be on call during evenings and weekends, and expected parents to be engaged in their child’s education.¹⁸ To the extent these practices are scalable, most of them require more money. State fiscal woes and political pressures often thwart even the best-intentioned policymakers from pushing for greater investment, particularly during these times of diminishing government revenues.

Finally, mayors have a powerful role to play in improving America’s schools. Over the past two decades, Boston, Chicago, New York, and Washington, D.C., have asserted mayoral control over their schools, prompting other cities large and small to follow their lead.¹⁹ Supporters of mayoral control argue that urban schools are in crisis and placing decision-making authority in the hands of a mayor, instead of a school board, offers the opportunity to make necessary, sweeping changes more rapidly. Detractors contend that mayoral control is fundamentally anti-democratic because it takes power away from voters. Results are mixed on whether mayoral con-

¹⁸ See JAY MATHEWS, *WORK HARD. BE NICE.: HOW TWO INSPIRING TEACHERS CREATED THE MOST PROMISING SCHOOLS IN AMERICA* 88–91 (2009).

¹⁹ See Joy Resmovits, *Taking Schools Into Their Own Hands: More Mayors Seek Control as Washington Presses for Action on Failing Institutions; Setting an Example in Rochester*, WALL ST. J., Aug. 16, 2010, at A3.

trol leads to improved academic performance in schools.²⁰ As a mayor, I can certainly understand the allure of mayoral control. As worthwhile as this debate may be from a long-term policy planning perspective, however, the fact is that most American mayors do not have control of their local schools and will not in the foreseeable future. But this should not discourage them from getting involved. Mayors have a powerful bully pulpit and the benefit of an outsider's perspective. Especially in big cities that do not have a single, unified school district, the need and opportunity for singular leadership from mayors is great because the fractured nature of local policymaking creates a diffusion of responsibility vis-à-vis educational improvement for the city as a whole.²¹ Mayors can and should fill this void by challenging schools to meet community-wide goals for academic performance, aligning city services with school services, and lobbying federal and state governments for resources on behalf of school districts.

As mayor, I often get to visit with local students. I always begin my remarks by asking them to tell me what their dreams are. Their hands shoot up. They want to be doctors, lawyers, engineers, software developers. Reaching their dreams will require a lot of hard work on their part. The rest of us, wherever we fall in the education ecosystem, must also work hard to challenge old conventions, collaborate even when we vehemently disagree, and treat education as an investment in our nation's future, not just another budget line item, as we seek to ensure that every child has the opportunity to get a good education. Whether this generation of Americans is educated well enough to reach their dreams in an increasingly complex, globally competitive world will say as much about us as it does about them.

²⁰ See Resmovits, *supra* note 19; RUTH MOSCOVITCH ET AL., THE INST. ON EDUC. LAW & POLICY, GOVERNANCE AND URBAN SCHOOL IMPROVEMENT: LESSONS FOR NEW JERSEY FROM NINE CITIES 2 (2010), <http://ielp.rutgers.edu/docs/MC%20Final.pdf> (“[W]e were unable to establish conclusively that the change in governance had any causal relationship to improved performance . . . or that, using nationally-normed test data, our cities had greater improvements than anywhere else.”).

²¹ Phoenix and San Antonio, the nation's fifth and seventh most populous cities, are good examples of cities with fractured governance. Both cities are comprised of more than a dozen independent school districts within their municipal boundaries.