

Education as an Investment:

Why the United States Desperately Needs a Constitutional Right to a Minimally
Adequate Education

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Introduction

In this paper I will argue that there is a dire need for a Constitutional right to a minimally adequate education, and that the lack of such a right is an extreme detriment to both the individual and to society in general. I will present empirical evidence of the many benefits of a quality education, especially those of early education, preschool, and childhood intervention programs. Deficits to the individual and to society caused by the lack of such an education will be presented. A minimally adequate education will be defined to include an equitable funding system that includes a much greater emphasis on early education. Finally, I will also argue that there is no practical way to achieve an equitable education system without a Constitutional right to a minimal level of education, and that such a right is already implied by the Constitution and has been suggested by the Supreme Court on multiple occasions.

Education: The Best Investment Taxes Can Buy

The most important thing to understand about education is that it gives enormous benefits not only to the individual who receives it, but to the society as a whole in which that person resides. A quality education will allow a person to be a more productive member of society in every way. Statistically, a better educated person will get a higher paying job, have better health, and be less likely to participate in violence or other criminal acts.

The exact value per person of an education is arguable, but the fact that education is beneficial to society in general has overwhelming supporting evidence. In 2005 MIT created a study focusing on the importance of education and reported that several prominent economists, including Rob Grunewald and Art Rolnick, both of the Federal Reserve Bank of Minneapolis, and Nobel Prize winner and University of Chicago Professor James Heckman, have evaluated

the public “return on investment,” and concluded that, viewed purely as an economic development strategy, the return on investment to the public of early childhood development programs “far exceeds the return on most projects that are currently funded as economic development,” such as building sports stadiums or relocating businesses.^[8]

Some of the research that MIT study included was a High/Scope Perry preschool study that followed at-risk children for over 40 years with the only difference being that some were randomly selected to attend a preschool program. The study found that for every dollar spent on preschool education the public gained \$12.90.^[9] The study explained this was because those children were more likely to graduate from high school, be employed, had significantly higher earnings, a higher percentage of home-owners, and had fewer lifetime arrests. The “Abecedarian” study was very similar, randomly selecting children whose family situations put them at risk of poor development for participation in a preschool program. These students had higher IQs and test scores, were less likely to repeat grades or be placed into special education, and more likely to graduate high school and attend college.^[10] All of these produce real savings to taxpayers. However, the Abecedarian study also looked at the parents of those children who had been enrolled and found that they too had increased earnings.^[10]

In 1997, The Correctional Education Association conducted “The Three State Recidivism Study” for the United States Department of Education which involved inmates and looked at participation in education. Translated into savings, every dollar spent on education returned more than two dollars to the citizens in reduced prison costs.”^[7] Another study by the University of Wisconsin found that every dollar spent on high-quality early education saves the taxpayer \$7.00 in future costs in education, crime, healthcare, and delinquency costs.^[1]

Evidence like this is staggering, and even if the exact number is less than the research has found, the fact is that spending on quality early education is an investment that pays dividends as those children age. Two Harvard economists, Lawrence F. Katz and Claudia Goldin, studied the effects of the increase in educational attainment in the United States from 1915 to 1999. They found that the increase in education received by the country's youth created 10% of the growth of the country's GDP during that time. ^[2] Among the reasons they claimed, they said that the United States' move to a universal high school education expanded the education of the work force far more rapidly than at any other time in the nation's history, creating economic benefits that extended well into the remainder of the century. ^[2] Not only did this put the U.S. far ahead of other countries at the time, but it helped to create our higher education system that historically placed the U.S. at the top of the education ladder. However, today not only are other countries increasing their education systems and educating more of their workforce, the United States' education system is in decline.

Inequality in Education: Why All of Society Suffers as a Result

The second most important thing to understand about the education system is how it operates. All education systems are empowered by the State, since this was not a power granted to the federal government by the Constitution. The Supreme Court spoke about this system and the importance of education in *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972) and said that, "providing public schools ranks at the very apex of the functions of the state." However, this means that each state has the option to set its own standards and to decide how to fund that education.

While the federal government has attempted to put standards on schools by giving funding to States and withholding funding to those who do not meet standards, the States are not required to follow those standards if they choose to forego the extra funding. The only exception is when the school is violating a Constitutional right. What this means is that school systems vary wildly from State to State. What this also means, is that there is nothing requiring the States to provide equitable funding to its districts, since as of today there is no Constitutional right to education. While some may view this as a good thing, this has become perhaps the largest problem facing the educational system in the U.S. In fact, the average public school today is more segregated than it has been in the past 60 years^[5], and more children than ever before are dropping out of school. ^[3] The overall average graduation rate is only 70%, but the urban districts which hold the greatest number of students have the lowest graduation rates. ^[3] In New York City, that rate was only 38.9% in 2006, and that same year in Detroit it was 21.7%. ^[3]

According to many studies, less education leads to higher crime rates, poorer health, and less lifetime earnings. All of these are drains on the taxpayer, and this helps explain why those studies outlining the benefits of education. What can be taken from those studies, is that the dollar estimates they give for return on investment are being lost for every dollar that the education system loses, or is underfunded by. When thinking about the problem this way, it is no wonder that the areas with the poorest school districts also have the highest crime rates.

Because of that cycle of inadequate education and higher crime rates, many children who live in the poorest communities, or who have more of those factors which qualify them as “at-risk” for educational hardships, have many things to deal with outside of education funding which might hinder their learning ability. Perhaps that is why South Carolina Circuit Court Judge Thomas Cooper ruled that students in South Carolina "are denied the opportunity to receive a

minimally adequate education because of the lack of effective and adequately funded early childhood intervention programs designed to address the impact of poverty on their educational abilities and achievements." [6] The court looked at many of the same factors as the studies listed above and concluded that quality education must come from multiple sources and address many issues.

All of this raises the important question; if it is known that spending on quality early education reduces the amount the taxpayer spends overall, then why isn't the government trying to maximize its savings and society's production by focusing on providing a quality education to all? Part of the answer to this problem, and so many of the problems today, is short-term thinking. Many politicians and voters like to see savings today, even if that means more spending long term, and even when there is substantial evidence to prove it. Another part of the problem is that with so many voters receiving an inadequate education, many of those voters won't be able to make the most educated decision on the problems society faces.

What people seem to be forgetting is that it was the United States' investment in education, along with many other social programs, that helped build the country which largely dominated the global economy for the better part of the 20th century. Education is an essential component in building any society, and this country has enjoyed the benefits of a strong education system for decades. However that beneficial system is threatened by inequality, lack of funding, and lack of support.

The Real Issue: The Funding Disparity

Perhaps the biggest of those threats to the education system is inequality. While the exact amount has not been determined, many education experts, legal scholars, and politicians have

argued that there is a minimal amount of spending per child on education that creates a minimally adequate education. It is also generally accepted that the poorest schools, and most students in public schools, do not receive that minimum amount spent or that minimally adequate education. A short visit to a few of those schools mentioned above that have extremely low graduation rates would help illuminate just how desperate most of those schools are for funding. However, this is not entirely because of a lack of funding. The actual issue is that there is a huge and increasing disparity between the amount spent per child in the wealthier districts and the poorer districts. There are a variety of causes for this, the biggest of which is how schools are funded. Children who live in wealthier districts with higher home values will have higher property taxes to fund their schools, and the opposite will be true for those who live in poorer areas. Some States have attempted to rectify this problem by creating a system which pools some of the taxes to be distributed evenly. However, even those States have not achieved an equitable education system or one that provides a minimally adequate education, and these are the States that recognize the importance of education and are trying to rectify the inadequacies of their current systems. Again, the problem is short-term thinking. Many politicians and voters would not agree with the idea of spending more now, even though there is solid evidence to say this will actually save money in the long term. Likewise, even progressive politicians might refrain from introducing methods to make the education system equitable, fearing the backlash from powerful voters in the wealthier districts that want to keep their resources in their own districts or who simply want to be taxed as little as possible, regardless of the benefits that would likely be derived from those taxes.

Clearly what is needed is a broader understanding by the population in general the education is good for society as a whole. However even with that understanding, the political

process would likely still stand in the way of an equitable education system, and attaining such an understanding by the people would require a monumental effort. All of which wouldn't be necessary if the education system provided a minimally adequate education to start with. Since the States have been unable or unwilling to create an equitable education system, even where efforts have been made, it is obvious that something else must be done.

A Right to Education: Ensuring an Investment and Equitable Education

A solution to the problem of unequal spending by the states on education would be if education were considered a fundamental right granted by the Constitution. A Constitutional right to education would mean that states would face the strict scrutiny standard when courts evaluated why their education system was unevenly funded or when standards were inequitably applied. Not only would this right create an equitable funding system, but it would have to define what a minimally adequate education is. This would also clear the way for politicians who favor expanding the education system, but who fear political repercussions, to act with the shield of the Court's decision..

The Supreme Court has said that no such right exists, but it has left many possible doors to the realization of such a right. In *Brown v. Board of Education* 347 U.S. 483 (1954) the Supreme Court said that,

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

The *Brown* decision was a landmark case that prohibited segregation in educational facilities that had implications for many years. However, the courts no longer enforce mandatory

desegregation. As a result, schools are now even more segregated today that they were during the civil rights movement, according to a report by the UCLA civil rights project. ^[5]

In addition, it is possible that the Constitution grants an implied right to education, since education is necessary to fully enjoy many of the other rights it grants. This would be similar to the right to privacy, which did not exist before 1965 when *Griswold v. Connecticut* was decided. This case granted the right to privacy, including the right to use contraceptives, which many people today would consider a natural right. That right to privacy, and the concept that what one does in one's own home should not be regulated, has become a cornerstone of society in the United States. However, this was not always the case. Prior to the *Griswold* case, it had been well established that it was within each State's authority to regulate people's conduct even inside their own homes. The Constitution actually makes no mention of privacy at all, and the Tenth Amendment provides that "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."

While the Constitution does not specifically grant a right to privacy, the Supreme Court found that some of the other rights granted by the Constitution required a right to privacy for their use or enjoyment, and thus said that the Constitution had an implied right to privacy. The Supreme Court Justices in the *Griswold* case said that, "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance." ^[4] It was decided that since other Constitutional rights require a right to privacy to be fully utilized, then the Constitution also grants a right to privacy without specifically mentioning such a right. That same argument can be made for education.

Many rights granted by the Constitution require an education to fully utilize and enjoy those rights effectively, such as the right to free speech or the right to vote. Supreme Court

Justices Marshall and Douglas said in their dissenting opinion of *San Antonio Independent School District v. Rodriguez* 411 U.S. 1 (1973) that,

Education directly affects the ability of a child to exercise his First Amendment rights, both as a source and as a receiver of information and ideas, whatever interests he may pursue in life.

It is because education is required to use certain constitutional guarantees, that the same thinking used to create the right to privacy will also create a right to a minimally adequate education. However, a more conservative court has since spoken about the right to education laying in the penumbras of other rights in *San Antonio Independent School District v. Rodriguez* 411 U.S. 1 (1973) and said that,

The Court has long afforded zealous protection against unjustifiable governmental interference with the individual's rights to speak and to vote. Yet we have never presumed to possess either the ability or the authority to guarantee to the citizenry the most effective speech or the most informed electoral choice.

That quote came from the majority opinion in that case, and that case was a landmark case in education law. However, the dissent in that case said of the majority's position that,

This serves only to blur what is in fact at stake. With due respect, the issue is neither provision of the most effective speech, nor of the most informed vote. Appellees do not now seek the best education Texas might provide. They do seek, however, an end to state discrimination resulting from the unequal distribution of taxable district property wealth that directly impairs the ability of some districts to provide the same educational opportunity that other districts can provide.

This dissenting opinion reflects the importance that the court has placed on education in many previous cases, and highlights the real issue that many of those cases dealt with. The real issue is that all current state systems have some level of inequality in their education funding schemes, while many states have gross disparities in that funding. This has led to many children

receiving less than adequate education, and the areas in which those children live have suffered as a result.

Conclusion

When looking at all of the evidence of the vast benefits of a good education, the detriment of not receiving one, the funding disparity between districts, and the increased segregation of schools since the Supreme Court's decision to not protect education as a right, it may begin to seem as if there is little hope for improving the education system. This must be considered in combination with the fact that states vary drastically in their standards and average achievement due to the lack of a national standard. All of these factors would be substantially improved, if not definitely cured by a constitutional right to a minimally adequate education. Such a right would force states to provide equitable funding between the districts, solving at least the problems caused by the severe funding disparities that currently exist. A definition of a minimally adequate education that included a greater concentration on early education and preschool, as well as early childhood intervention programs, would help to maximize the benefits of education to the individual and to society later in life. These benefits have been shown by many studies to substantially outweigh the costs of the programs, and provide the added benefit of a more educated and productive society.

The Supreme Court has left open several paths to argue for the establishment of a right to education; however it has also said that establishing such a right would be beyond its proper role. The increasingly disparate and segregated public school system, the political unpopularity that discourages legislators from making real progress on the education problem, and the evidence for the importance of education should all be used in conjunction with the pathways left by the Supreme Court to make the argument that a right to education is essential for the individual to

exercise his rights, and for society in general to thrive. When the benefits of education are analyzed, and it is acknowledged that several Constitutional rights require an education to fully utilize, a strong argument can be right for the establishment of a right to a minimally adequate education.

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