

12-31-2020

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Recommended Citation

Kleven, Thomas (2020) "Toward a More Democratic America," *Seattle Journal for Social Justice*: Vol. 19: Iss. 1, Article 9.

Available at: <https://digitalcommons.law.seattleu.edu/sjsj/vol19/iss1/9>

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Toward a More Democratic America

Thomas Kleven*

We are at a crucial moment in the history of democracy. Democracy is at risk, as shown by two ominous trends that are challenging democracy both in the United States and throughout the world. First, while most Americans profess to believe in democracy and view the United States as a democratic society, a great many believe the system is not working well and are losing faith in democracy.¹ Particularly disturbing are studies that show sharply lower support for democracy among younger generations than older generations in the United States and other Western nations.²

The second trend is the rise in the US, and elsewhere, of so-called populist (but more properly seen as nationalist) movements. These movements have deeply undemocratic and authoritarian features, including: attacks on minorities and immigrants; efforts to limit the right to vote and

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¹ *The Public, the Political System and American Democracy*, PEW RSCH. CTR. (2018), <https://www.people-press.org/2018/04/26/the-public-the-political-system-and-american-democracy> [https://perma.cc/78LB-LAE4].

² In the US, for example, about 60% of those born between 1940-1950 say it is essential to live in a democratic country, while only about 40% of those born between 1960-1980 and only about 30% of millennials say so. Roberto Stefan Foa & Yascha Mounk, *The Signs of Deconsolidation*, 28 J. DEMOCRACY 5, 6 (2017), <https://www.journalofdemocracy.org/article/signs-deconsolidation> [https://perma.cc/C5CG-PG9F] [hereinafter *The Signs of Deconsolidation*]. Close to 25% of Americans between the ages of sixteen and thirty-four say that having a democratic political system is a bad or very bad way to run the country. Roberto Stefan Foa & Yascha Mounk, *The Danger of Deconsolidation: The Democratic Disconnect*, 27 J. DEMOCRACY 5, 9 (2016), <https://www.journalofdemocracy.org/article/danger-deconsolidation-democratic-disconnect> [https://perma.cc/P326-4VTk]. And in countries throughout the world increasing numbers of people over the past twenty years, including about 30% now in the US, say that having a strong leader who does not have to bother with elections or legislatures would be a good idea. *The Signs of Deconsolidation*, *supra* note 2, at 7.

undermine the electoral process; attempts to stifle a free press; and outright lies as a means to manipulate public opinion. We may not have quite reached the point of being told that slavery is freedom and war is peace, but we are heading in that direction.

There are, and will likely always be, disagreements over what it means to be a democratic society, and democracy will always be a work in progress. But as long as people can agree on some basic democratic principles—like a political process that fairly reflects the views of the people and the protection of fundamental values like freedom of speech—and as long as people feel they are fairly benefiting from their society, then it may be possible to sustain democracy. It may be possible for people to understand and accept that democracy requires compromise, that they benefit overall from living in a democracy even though things do not always go their way, that change can happen in a democracy when enough people want it, and that the only alternative is to abandon democracy for something more authoritarian.

But I say only that it may be possible to sustain democracy because, while the world as a whole has become relatively more democratic over the past few centuries and while strong majorities still profess democratic values in the US and elsewhere,³ democracy's continued existence is far from assured. Historically, democracy has been the exception and not the rule, and there are many examples of failed democracies. Even those of ancient Athens and Rome, imperfect as they were, only lasted for a few hundred years. If we want democracy to endure, we must engage with our fellow citizens about what it entails, we must promote democratic values, and we must work together to put democracy into practice and to counter the powerful anti-democratic forces currently at play.

³ RICHARD WIKE ET AL., PEW RSCH. CTR., REPORT GLOBALLY, BROAD SUPPORT FOR REPRESENTATIVE AND DIRECT DEMOCRACY (2017), <https://www.pewresearch.org/global/2017/10/16/globally-broad-support-for-representative-and-direct-democracy> [<https://perma.cc/LVG6-CHJ3>].

The following sections first discuss the meaning of democracy, the contributions America has made to democratic thinking and practice, and the contradictions within and deficiencies of American democracy. Then, the article examines reforms that would move the country in a more democratic direction. These reforms include changes to the electoral process, in particular remedying partisan gerrymandering and instituting mandatory voting. And they include measures that would more equitably share the society's benefits, in particular equalizing educational opportunity through federal financing of elementary and secondary schools and free universal college education, and equalizing employment opportunity by guaranteeing a job at a living wage to all who are willing and able to work.

I. THE MEANING OF DEMOCRACY

Human beings are inherently social animals. From the cave dwellers of prehistoric times to today's great nation states and burgeoning world community, human beings have always lived in concert. All the benefits of social life are a result of people working together to create those benefits. Our individual well-being and our very survival as a species depend on cooperating with others for our mutual well-being. More so than ever before, our destinies are intertwined.

But why democracy as a means of organizing social life? Because, as expressed in the Declaration of Independence, all men, meaning all people, are created equal.⁴ This is the foundation, the basic belief, on which democracy rests. This does not mean that all humans are alike. Quite the opposite is true: each of us is different; each of us is unique. So, what "all

⁴ We need not debate here whether in using the term "all men are created equal" the signers of the Declaration of Independence meant to exclude women and people of color. If so, if they meant that women and people of color are less than equal, this would greatly diminish the worthiness of the term as America's founding principle. Whatever they meant, maintaining the Declaration as society's cornerstone demands that we read it today as saying something far more profound than that, namely that all human beings are created equal.

are created equal” means is that we are all inherently worthy as human beings, that none of us are inherently superior to our fellow humans, and that we are all entitled to be treated with respect and dignity. This same sentiment is expressed in the Golden Rule, some version of which is central to most if not all religions, and which directs us to do unto others as we would have them do unto us. It is a core principle as well of moral philosophy, as in Emmanuel Kant’s moral imperative that we not treat others solely as means to our own ends but as ends in themselves.

Two things follow from the notion that all are created equal. The first is that we all have the right to self-determination, the right to pursue our own destinies—what the Declaration of Independence calls the pursuit of happiness. This does not mean that we have the right to do whatever we want whenever we want. Because we are all inherently equal, we are morally obligated while pursuing our own destinies to respect other people’s equal right to pursue their destinies. So, democracy requires that we agree to impose some limits on our freedom of action, so that all people have a comparable opportunity to engage in self-determination.

Thus, one of government’s functions in a democratic society is to establish ground rules for people’s interactions in the private sphere of social life, so as to ensure that people treat each other as equals in those interactions. For example, the law of contracts refuses to enforce so-called unconscionable agreements where one party uses its excessive bargaining power to extract unfair concessions from another. Similarly, the National Labor Relations Act requires business owners to allow their workers to form unions if they so choose, and to bargain with unions in good faith regarding the terms and conditions of employment. The purpose of the law, in recognition of the fact that workers’ destinies are at stake, is to democratize the workplace to some degree and to equalize to some extent the bargaining power of management and workers.

Second, since as equals we are all inherently worthy, it follows that all the benefits and burdens of the societies we form to work together for our

mutual well-being must be fairly distributed among all society's members. I call this concept equitable sharing.⁵

Government plays a prominent role in promoting equitable sharing in a democratic society. One of the government's roles is to guarantee to everyone those individual freedoms deemed essential to self-determination, freedoms which, as inherent equals, everyone is entitled to and with which society as a whole must not interfere. Many contemporary issues, such as same-sex marriage and even gun control, entail debates about what these essential freedoms are. A second role of government is to furnish services for its people. In fact, everything that government does is a type of service provision. In a democracy, the government and the private market, rather than being the antagonists they are sometimes portrayed as, are simply alternative means of providing services that people want and pay for either as taxpayers or consumers. Many contemporary issues have to do with whether some services are better or more appropriately provided privately or publicly. In a democracy, the guiding principle in making that determination must be to adopt the approach which best promotes equitable sharing.

The debate over health care is an example. We could choose to treat health care as a strictly private matter, meaning that everyone would have to provide for their own health needs in the private market either out of pocket at the time of service or through insurance policies they purchase in advance. Or we could provide health care publicly through a fully socialized system financed through taxation and run by government employees. Or we could do something in between a strictly private and a fully socialized system, which is in fact what we do today.

Why have we chosen not to fully privatize health care and instead to require some of us to contribute as taxpayers to the health needs of others?

⁵ THOMAS KLEVEN, *EQUITABLE SHARING: DISTRIBUTING THE BENEFITS AND DETRIMENTS OF DEMOCRATIC SOCIETY* (2014).

Why, despite the current setbacks, are we likely on the path toward universal coverage in the not too distant future? The concept of equitable sharing helps explain why. First of all, health care is a basic human need, essential to being able to enjoy a full and dignified life, and to which all people should be entitled when society is capable of providing it. Secondly, because all of us have contributed in some way to building a society in which universal access is possible, then we all should be entitled to our fair share of the fruits of our collective effort. Nevertheless, I realize that access to health care is currently a controversial issue and that there are those who oppose universal coverage. This controversy is democracy at play. For as long as democracy exists, such debates about what democracy requires will persist.

II. DEMOCRACY IN THE UNITED STATES OF AMERICA

The American Revolution was a signal event in the development of the type of democracy that pervades much of the world today, namely, countries governed by public officials chosen by the people in at least relatively free elections. Prior to the Revolution, very few countries practiced what we now recognize as democracy, and since the Revolution many countries have looked to the United States for guidance in designing their democracies.

The United States has made three great contributions to democratic thinking and practice. First, it has demonstrated that governance by the people is possible. Second, it has established democracy in a highly diverse society, a society open to differing races, religions, nationalities, and ways of thinking. Third, it has been a land of opportunity, where through hard work and determination many have been able to advance based on merit and not be limited by class or status. The society's openness and opportunity have attracted people to come here from throughout the world. As a result, the country has grown from a population of less than five

million at its founding to over 300 million today, and it has become the world's leading nation.

But as in all human affairs, there have been contradictions. The United States has not always lived up to its democratic ideals, and we face challenges today in continuing to form the more perfect union that the Constitution asserts as its principal purpose.

For one, while the founders truly believed they were establishing a democratic government, they still harbored doubts about the people's ability to govern. So, in fact, the democracy they established was quite limited. For the most part, the right to vote was restricted to white male property owners.⁶ The great majority of the people lacked the most fundamental of all democratic rights: the right to participate in governance. It was not really a democracy of all the people, but of a small minority.

Over the course of its history, however, the country has gradually moved in a more democratic direction, so that the right to vote is now almost universal. Nevertheless, the right to vote is under attack. Numerous states have passed laws making it more difficult for people to register and to vote.⁷ State legislatures, who have the primary responsibility to draw district lines for federal and state elections, have gerrymandered election districts to favor the party in power and incumbents, thereby making it more difficult for the electorate to express its will.⁸ And moneyed interests have

⁶ ALEXANDER KEYSER, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN AMERICA* 2 (rev. ed. 2009).

⁷ *New Voting Restrictions in America*, BRENNAN CTR. FOR JUST. (2019), <https://www.brennancenter.org/new-voting-restrictions-america> [<https://perma.cc/Q2BX-UFCY>]; Jordan Lebeau, *A State-by-State Guide to Voter Restriction Laws*, FORBES (Nov. 7, 2016), <https://www.forbes.com/sites/jordanlebeau/2016/11/07/a-state-by-state-guide-to-voter-restriction-laws/#4f13e07375cc> [<https://perma.cc/U6CF-36GX>].

⁸ Although both major parties have engaged in gerrymandering, the process currently favors the Republican Party, which has a disproportionate number of seats in the US House of Representatives and in many state legislatures relative to its share of the vote. Michael Li & Laura Royden, *Extreme Maps*, BRENNAN CTR. FOR JUST. (2017), <https://www.brennancenter.org/publication/extreme-maps> [<https://perma.cc/G5ZJ-FTGY>]; J. GERALD HEBERT & RUTH GREENWOOD, CAMPAIGN LEGAL CTR., *MAKE*

used their enormous wealth to dominate the political process and drown out the voices of the masses of the people. Due to all these factors, voter turnout rates in the United States are low, ranging over the past forty years between roughly 50%-60% of eligible voters in presidential years and averaging around 40% in the mid-terms, significantly lower rates than in most other advanced democracies.⁹

DEMOCRACY COUNT: ENDING PARTISAN GERRYMANDERING 10 (2016), https://campaignlegal.org/sites/default/files/CLC_PartisanGerrymandering_Report_FINAL.pdf [https://perma.cc/G2FS-7CGY]. The disproportionate electoral power of the Republican Party in the US House of Representatives is compounded by the fact that the Senate disproportionately empowers the smaller states, in which the Republican Party currently predominates, due to the Constitution's allocation of two Senators to each state—although there is some disagreement over the extent to which the Senate's small state-bias favors Republicans. Dylan Matthews, *The Senate is Undemocratic and it Matters*, VOX (Jan. 6, 2015), <https://www.vox.com/2015/1/6/7500935/trende-senate-vote-share>; Sean Trende, *The Myth of the Democrats' 20-Million-Vote Majority*, REAL CLEAR POL. (Jan. 5, 2015), https://www.realclearpolitics.com/articles/2015/01/05/the_myth_of_democrats_20-million-vote_majority_125145.html [https://perma.cc/9RFB-T226]. The Electoral College has a built-in, though less significant, small-state bias in that each state gets two electoral votes for its Senators in addition to the votes for its Representatives—although the only election in which the small-state bias affected the outcome was George W. Bush's victory over Al Gore in 2000, whereas Donald Trump's victory over Hilary Clinton, despite losing the popular vote, was due to his narrowly winning Michigan, Pennsylvania, and Wisconsin while she scored large majorities in California and New York. Nate Cohn, *The Electoral College's Real Problem: It's Biased Toward the Big Battlegrounds*, N.Y. TIMES (Mar. 22, 2019), <https://www.nytimes.com/2019/03/22/upshot/electoral-college-votes-states.html> [https://perma.cc/B5Z9-5UWF].

⁹ *Voter Turnout*, FAIR VOTE, https://www.fairvote.org/voter_turnout#voter_turnout_101 [https://perma.cc/2JN9-LBXF]; Drew DeSilver, *US Trails Most Developed Countries in Voter Turnout*, PEW RSCH. CTR. (May 21, 2018), <https://www.pewresearch.org/fact-tank/2018/05/21/u-s-voter-turnout-trails-most-developed-countries> [https://perma.cc/7SCD-YAWG]. The turnout rate for the 2020 national election, about two-thirds of eligible voters, is the highest in over 100 years. It remains to be seen whether this increased participation will continue or reflects the peculiarities of this election cycle. Olivia B. Waxman, *The 2020 Election Set a Record for Voter Turnout. But Why Is it Normal for So Many Americans to Sit Out Elections?*, TIME (Nov. 5, 2020), <https://time.com/5907062/record-turnout-history/> [https://perma.cc/6BFL-47Z7].

Second, while the founders professed that all are created equal, there have been glaring violations of that self-evident truth in the course of our history. The country's development devastated the Native American civilizations that preceded it, and confined those who survived to reservations located on the least productive land where many still reside.¹⁰ The Constitution itself sanctioned slavery, following which African Americans were subjected to a system of forced segregation that was upheld by the Supreme Court despite constitutional amendments prohibiting slavery and mandating the equal protection of the laws. The legacy of that history lives on in the entrenched racial inequalities resulting from it.¹¹ For much of our history women were denied the right to vote and other opportunities reserved mostly for men,¹² and women still earn far less than men and are far underrepresented in positions of power in government and in the private sector.¹³

¹⁰ See generally DEE BROWN, *BURY MY HEART AT WOUNDED KNEE: AN INDIAN HISTORY OF THE AMERICAN WEST* (4th ed. 2007); DAVID E. STANNARD, *AMERICAN HOLOCAUST: THE CONQUEST OF THE NEW WORLD* x (1992) (characterizing the European conquest of the Americas as "far and away, the most massive act of genocide in the history of the world.").

¹¹ See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN AN AGE OF COLORBLINDNESS* (2012); DALTON CONLEY, *BEING BLACK, LIVING IN THE RED: RACE, WEALTH, AND SOCIAL POLICY IN AMERICA* (2010); Thomas Kleven, *Systemic Classism, Systemic Racism: Are Social and Racial Justice Achievable in the United States?*, 8 CONN. PUB. INT. L.J. 207, 212 (2009).

¹² See ELEANOR FLEXNER & ELLEN FITZPATRICK, *CENTURY OF STRUGGLE: THE WOMAN'S RIGHTS MOVEMENT IN THE UNITED STATES* (enlarged ed. 1996) (a history of the struggle for women's right to vote). As recently as 1970, women comprised less than 10% of the country's lawyers. Jennifer Cheeseman Day, *More Than 1 in 3 Lawyers Are Women*, U.S. CENSUS BUREAU (May 8, 2018), <https://www.census.gov/library/stories/2018/05/women-lawyers.html> [<https://perma.cc/MG6K-WQSW>]. As recently as 1985, only 14% of physicians were women. REGINA MORANTZ-SANCHEZ, *SYMPATHY AND SCIENCE: WOMEN PHYSICIANS IN AMERICAN MEDICINE* ix (2000).

¹³ As of 2020, the median salary of women was 81% of that of men, although for women and men with similar qualifications performing similar work the figure was 98%. *The State of the Gender Pay Gap 2020*, Payscale (2020), <https://www.payscale.com/data/gender-pay-gap> [<https://perma.cc/5PLP-5KP7>]. Prior to the 2020 election, 26% of US Senators and 23.2% of US Congresspeople were women.

Third, while Americans have always supported the concept of equal opportunity,¹⁴ over the past several decades social mobility has declined as the wealth and income of the well-to-do has increased substantially, the middle class has stagnated, and the poor have fallen further behind.¹⁵ This is inconsistent with one of the main purposes of forming a democracy: to promote the general welfare, the well-being of all. And it is a major cause of the current high level of dissatisfaction with the political process and of the persistence of racism and sexism.

Because I believe that the current dissatisfaction with the direction of the country relates to a sense that the benefits and burdens of social life are not being equitably shared, I want to offer some thoughts about what I think needs to be done to help restore confidence that the system is working for everyone's benefit and win back those who have begun to lose faith in democracy. I will focus on what I consider to be two of the most important aspects of democracy: how to design the political process, and how to share the goods society produces, particularly with regard to access to education and employment.

Women in the U.S. Congress 2020, CTR. FOR AM. WOMEN & POL., <https://www.cawp.rutgers.edu/women-us-congress-2020> [https://perma.cc/B757-FRJF]. As of 2019, women were 6.3% of the CEOs of Fortune 500 companies. Claire Zillman, *The Fortune 500 Has More Female CEOs than Ever Before*, FORTUNE (May 16, 2019), <https://fortune.com/2019/05/16/fortune-500-female-ceos> [https://perma.cc/S4UH-UWDL].

¹⁴ PEW RSCH. CTR., THE PUBLIC, THE POLITICAL SYSTEM AND AMERICAN DEMOCRACY 23 (2018), <https://www.pewresearch.org/politics/2018/04/26/2-views-of-american-democratic-values-and-principles/> [https://perma.cc/3VWR-9X2E] [hereinafter THE PUBLIC, THE POLITICAL SYSTEM AND AMERICAN DEMOCRACY]; PEW RSCH. CTR., TRENDS IN AMERICAN VALUES: 1987-2012 104 (2012), <https://www.pewresearch.org/wp-content/uploads/sites/4/legacy-pdf/06-04-12-Values-Release.pdf> [https://perma.cc/K9NV-H789] [hereinafter TRENDS IN AMERICAN VALUES: 1987-2012].

¹⁵ *Wealth Inequality in the United States*, INEQUALITY.ORG, <https://inequality.org/facts/wealth-inequality> [https://perma.cc/H5P4-SKT9]; *Income Inequality in the United States*, INEQUALITY.ORG, <https://inequality.org/facts/income-inequality> [https://perma.cc/4KN8-R4DD].

III. REFORMING THE POLITICAL PROCESS

An equitable sharing of political power is essential to democracy. It is through the political process that we practice self-governance, the process through which we engage as inherent equals in collective self-determination. Democracy requires, therefore, a relatively equal distribution of political power. Without that, those with disproportionate political power will have greater influence over society's destiny and over the destinies of their fellow citizens. Here, I suggest two measures to equalize political power: combatting gerrymandering and mandatory voting.

There are examples of societies with the trappings of democracy that in practice are dictatorial, where elections are held but are rigged in various ways to ensure that a ruling elite retains power perpetually, where law makers respond not to the will and best interest of the people as a whole but to the ruling elite to whom they are beholden. While it may not be fair to characterize the political process in the United States as such a total sham, aspects of the process offer grounds for concern.

Although the right to vote is now nearly universal in the United States, this has not guaranteed a fair distribution of political power. Money speaks very loudly in politics, and that fact has enabled a moneyed elite possessing enormous wealth to dominate the political process, so much so that a number of studies have concluded that the poor have little political power in their ability to influence who gets elected or in the law-making process.¹⁶ This may help explain why people with less money turn out to vote in lower percentages, because they recognize that in some sense their vote really does not matter much. The moneyed elite may disagree among themselves over the direction the society should take. But they have one interest in common, namely the protection of their privileged status, and they use their

¹⁶ See generally LARRY M. BARTELS, *UNEQUAL DEMOCRACY: THE POLITICAL ECONOMY OF THE NEW GILDED AGE* (2008); MARTIN GILENS, *AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA* (2012).

disproportionate political power to channel debates over public policy so as to drown out options that might threaten that status.

But the moneyed elite are not all-powerful, and their disproportionate political power can be countered when people are well organized and turn out in large numbers. This helps explain the efforts of those in power to suppress voting in recent years. Despite a lack of evidence of significant voter fraud, a number of states have adopted restrictive voting laws and practices, including, for example: onerous proof of eligibility requirements, the curtailment of early voting, reducing the number of polling sites, improperly purging people from the voting rolls, and impeding mail-in voting.¹⁷ These measures tend to hurt most the less-well-off in our society, who are most in need of government services and most likely to vote against moneyed interests.

To make the political process more democratic, it is necessary to curtail the disproportionate influence of moneyed interests. That might be done through limitations on campaign contributions and expenditures, public financing of elections, and the regulation of lobbying. However, the Supreme Court has severely undermined the ability of legislatures to adopt such measures on the ground that they infringe the freedom of speech.¹⁸ But

¹⁷ Danielle Root & Liz Kennedy, *Voter Purges Prevent Eligible Americans from Voting*, CTR. FOR AM. PROGRESS (Jan. 4, 2018), <https://www.americanprogress.org/issues/democracy/reports/2018/01/04/444536/voter-purges-prevent-eligible-americans-voting> [https://perma.cc/7V6B-PLGQ]; Matt Vasilogambros, *Polling Places Remain a Target Ahead of November Elections*, PEW CHARITABLE TRS. (Sept. 4, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/09/04/polling-places-remain-a-target-ahead-of-november-elections> [https://perma.cc/3CV7-VN5J]; Jon Ward, *Republicans Win Court Battles as They Go After Drop Boxes in Key States*, YAHOO! NEWS (Oct. 14, 2020), <https://www.yahoo.com/news/republicans-win-court-battles-as-they-go-after-drop-boxes-in-key-states-152934509.html> [https://perma.cc/EG3B-4DCK].

¹⁸ *Buckley v. Valeo*, 424 U.S. 1, 17 (1976) (upholding limits on campaign contributions for the purpose of preventing corruption or the appearance of corruption, but holding that purpose insufficient to support expenditure limits by or on behalf of candidates; and holding that the aim of “equalizing the relative ability of all voters to affect electoral outcomes” is insufficient to justify limits on campaign expenditures); *Citizens United v.*

even with such measures, unless wealth inequality itself is addressed, moneyed interests will likely be able to unduly influence the political process by using their wealth to impact the society's culture and people's ways of thinking—as, for example, through ownership of the mass media and financing universities, think tanks, and other institutions that promote their views.

Nevertheless, some reforms that could help equalize political power are possible. One is to remedy the partisan gerrymandering of districts for elections to the House of Representatives and state legislatures.¹⁹ Gerrymandering advantages moneyed interests because it impedes the ability of representatives of the disadvantaged to attain office and freezes in office politicians who are beholden to moneyed interests and who wield more power in the legislative process due to their longevity. Unfortunately, the Supreme Court has declared partisan gerrymandering to be a political question,²⁰ thereby shirking its duty to protect the fundamental right to vote when legislators behave undemocratically. This leaves the solution to other actors.

One possibility is to attack gerrymandering in state courts as violating state laws or constitutions. So far three such challenges have succeeded in Florida, North Carolina, and Pennsylvania.²¹

FEC, 558 U.S. 310 (2010) (striking down an act of Congress limiting corporate and union expenditures relating to candidates for federal office within several weeks preceding primary and general elections); *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721 (2011) (striking down a state public financing statute that increased the funding of publicly financed candidates to match the funds raised by or spent on their privately financed opponents).

¹⁹ See Alan S. Lowenthal, *The Ills of Gerrymandering and Independent Redistricting Commissions as the Solution*, 56 HARV. J. ON LEGIS. 1 (2019).

²⁰ *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506 (2019).

²¹ *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015) (striking down the Florida legislature's 2012 redistricting map for the U.S. House of Representatives as violating the state constitution's Fair Districts Amendment prohibiting the drawing of district lines with the "intent to favor or disfavor a political party or an incumbent"); *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584 (N.C. Super. Ct. 2019) (striking down North Carolina legislature's 2017 redistricting plans for

A second possibility to combat gerrymandering is the passage of state statutes or constitutional amendments to reform partisan gerrymandering either through the legislative process or through voter initiatives in those states that allow them. Already, about a third of the states have some form of independent or bipartisan redistricting commission that controls or participates in the drawing of district lines for the state legislature and the House of Representatives.²² And about a third of the states have constitutional provisions or statutes prohibiting intentionally favoring or disfavoring incumbents, candidates, or parties or using partisan data in the districting process.²³

Third, Congress could curtail gerrymandering by requiring that district lines for the House of Representatives be drawn in a non-partisan fashion pursuant to its power under the Constitution to regulate the time and manner of the election of Senators and Representatives.²⁴ A number of such bills have been filed, though to date without success.²⁵ However, in light of

the State General Assembly as violating the state constitution's Free Elections, Equal Protection, Freedom of Speech and Freedom of Assembly Clauses); *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018) (striking down the Pennsylvania legislature's 2011 redistricting map for the U.S. House of Representatives as violating the state constitution's Free and Equal Elections Clause requirement that "Elections shall be free and equal," which the court interpreted as mandating that "all voters have an equal opportunity to translate their votes into representation.").

²² *Redistricting Commissions: Congressional Plans*, NAT'L CONF. OF STATE LEGISLATURES (Apr. 18, 2019) <http://www.ncsl.org/research/redistricting/redistricting-commissions-congressional-plans.aspx> [<https://perma.cc/N3NP-9F2X>]; *Creation of Redistricting Commissions*, NAT'L CONF. OF STATE LEGISLATURES (Aug. 1, 2020), <http://www.ncsl.org/research/redistricting/creation-of-redistricting-commissions.aspx> [<https://perma.cc/45US-V2KX>].

²³ *Redistricting Criteria*, NAT'L CONF. OF STATE LEGISLATURES (Apr. 23, 2019), <http://www.ncsl.org/research/redistricting/redistricting-criteria.aspx> [<https://perma.cc/3NVJ-JBP9>].

²⁴ U.S. CONST. art. I, § 4.

²⁵ *Congressional Redistricting Bills—116th Congress*, BRENNAN CTR. FOR JUST. (Apr. 19, 2019), <https://www.brennancenter.org/analysis/congressional-redistricting-bills-116th-congress> [<https://perma.cc/8PFR-FADE>]; *Congressional Redistricting Bills—115th Congress*, BRENNAN CTR. FOR JUST. (Dec. 18, 2018),

strong public opposition to partisan gerrymandering across party lines,²⁶ more state and federal legislators might at some point be moved to tackle the issue even at the risk of modifications to their safe districts. For them, the adverse impact of losing a safe district might be countered through the support they receive for upholding democratic principles and the will of the people.

As a second measure to further democratize the electoral process, voting could, and in my opinion should, be made mandatory for all who are eligible. Numerous democratic countries mandate voting and as a result have much higher voter turnout rates than in the United States.²⁷ Two prominent examples include Australia and Belgium, where turnout rates average better than 90% in national elections.²⁸ The main argument against mandatory voting is that people should be free to vote or not vote as they see fit. However, this concern can be addressed by affording voters the option of voting for “none of the above.” Indeed, choosing the option of “none of the above” is the most effective way for people to express their dissatisfaction with the political process—far more effective than not voting at all, which allows elected officials to simply ignore non-voters rather than having to earn their vote.

The main argument for mandatory voting is that it should be a civic duty of citizens in a democratic society. As citizens we already have certain civic

<https://www.brennancenter.org/analysis/redistricting-reform-tracker-congressional-bills> [<https://perma.cc/ML4E-NKYL>].

²⁶ *Americans Are United Against Partisan Gerrymandering*, BRENNAN CTR. FOR JUST. (Mar. 15, 2019), <https://www.brennancenter.org/our-work/research-reports/americans-are-united-against-partisan-gerrymandering> [<https://perma.cc/9AAP-5E6Z>].

²⁷ *Compulsory Voting*, INT’L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE, <https://www.idea.int/data-tools/data/voter-turnout/compulsory-voting> [<https://perma.cc/GVG3-GDFL>].

²⁸ AUSTRALIAN ELECTORAL COMM’N, VOTER TURNOUT: 2016 HOUSE OF REPRESENTATIVES AND SENATE ELECTIONS (2016), https://www.aec.gov.au/About_AEC/research/files/voter-turnout-2016.pdf [<https://perma.cc/R763-39U5>]; *Kingdom of Belgium*, ELECTION GUIDE, <http://www.electionguide.org/countries/id/22> [<https://perma.cc/M8ES-PZNY>].

duties. One is the obligation to serve on juries to ensure the right of people accused of crimes to a trial by their peers. Another is the obligation to serve in the military in times of crisis and even to risk one's life in defense of the country. Voting is no less crucial than those obligations for a thriving democracy. Mandatory voting will require legislatures to make it easier to register and vote, and should induce people to become better informed about public issues. And the higher turnout rates should reduce the ability of moneyed interests to dominate the political process and should impel legislators to be more responsive to the interests of all—especially to the interests of the less-well-off.²⁹

IV. SHARING THE SOCIETY'S BENEFITS

To restore confidence in American democracy, we need to better address how to share the benefits the society produces. Over the past forty years or so, and despite the Great Recession of the early 2000s, the US has become richer—at least as measured in dollars and cents.³⁰ But during this time economic disparities have widened, with most of the growth in wealth and income going to the top 10%, while the middle class has stagnated and the

²⁹ Several studies have found that compulsory voting tends to increase support for progressive policies benefiting the less-well-off. Michael M. Bechtel et al., *Does Compulsory Voting Increase Support for Leftist Policy?* 60 AM. J. POL. SCI. 752, 752–67 (2015); see Alberto Chong & Mauricio Olivera, *Does Compulsory Voting Help Equalize Incomes?*, 20 ECON. & POL. 391, 391–415 (2008); see also Anthony Fowler, *Electoral and Policy Consequences of Voter Turnout: Evidence from Compulsory Voting in Australia*, 8 Q. J. POL. SCI. 159, 159–82 (2013); see generally Navid Sabet, *Turning Out for Redistribution: The Effects of Voter Turnout on Top Marginal Tax Rates* (Univ. of Munich, Working Paper No. 2016-13, 2016); contra Mitchell Hoffman et al., *Compulsory Voting, Turnout, and Government Spending: Evidence from Austria* 103–15 (Nat'l Bureau of Econ. Res., Working Paper No. w.22221, 2016).

³⁰ H. Plecher, *Gross Domestic Product (GDP) of the United States at Current Prices from 1984 to 2021*, STATISTA (May 27, 2020), <https://www.statista.com/statistics/263591/gross-domestic-product-gdp-of-the-united-states> [<https://perma.cc/B7WC-JZ6Z>].

status of the poor has deteriorated.³¹ Economic disparities are now as great as or greater than they have been at any point in the country's history.³² A number of studies show an increasingly rigid social structure and decreasing mobility within people's lifetimes and from generation to generation.³³ By way of contrast, during the post-World-War-II economic boom between the mid 1940s and mid 1970s, economic disparities in the US declined as the less-well-off saw their incomes rise faster than that of those who were better-off.³⁴

These facts likely explain much of the increased dissatisfaction with the country's general direction over the past twenty-five years.³⁵ This dissatisfaction is justified given what it means to be a member of a democracy. Equitable sharing of the benefits of social life requires an equal opportunity to get ahead in life—a value that, as noted above, the vast

³¹ *Wealth Inequality in the United States*, INEQUALITY.ORG, <https://inequality.org/facts/wealth-inequality> [<https://perma.cc/62DX-NUNG>]; *Income Inequality in the United States*, INEQUALITY.ORG, <https://inequality.org/facts/income-inequality> [<https://perma.cc/924T-EW9D>].

³² *Id.*

³³ Michael Hout, *Americans' Occupational Status Reflects the Status of Both of Their Parents*, 115 PROC. NAT'L ACAD. SCIS. 9527, 9527–9532 (2018), <https://www.pnas.org/content/115/38/9527> [<https://perma.cc/5CU6-GSY7>]; see Richard V. Reeves & Eleanor Krause, *Raj Chetty in 14 Charts: Big Findings on Opportunity and Mobility We Should All Know*, BROOKINGS (Jan. 11, 2018), <https://www.brookings.edu/blog/social-mobility-memos/2018/01/11/raj-chetty-in-14-charts-big-findings-on-opportunity-and-mobility-we-should-know/> [<https://perma.cc/8SSW-R4NY>]; see also Michael D. Carr & Emily E. Wiemers, *The Decline in Lifetime Earnings Mobility in the U.S.: Evidence from Survey-Linked Administrative Data* (Wash. Ctr. for Equitable Growth, Working Paper, 2016), <https://equitablegrowth.org/working-papers/the-decline-in-lifetime-earnings-mobility-in-the-u-s-evidence-from-survey-linked-administrative-data/> [<https://perma.cc/26BR-JFZL>].

³⁴ Claudia Goldin & Lawrence F. Katz, *Long-Run Changes in the Wage Structure: Narrowing, Widening, Polarizing*, 2 BROOKINGS PAPERS ON ECON. ACTIVITY 135–67 (2007), https://www.brookings.edu/wp-content/uploads/2007/09/2007b_bpea_goldin.pdf [<https://perma.cc/G45B-LYZB>].

³⁵ *Direction of the Country*, POLLINGREPORT.COM (2020), <https://www.pollingreport.com/right.htm> [<https://perma.cc/FJ38-BZJG>].

majority of Americans support.³⁶ An increasingly rigid and unequal social structure is inconsistent with this value. Equal opportunity demands not only the opportunity to compete for grossly unequal rewards, but also an opportunity to actually enjoy one's fair share of the fruits of social life. The increased wealth of the US over the past couple of generations is the result of the collective effort of us all to grow the economy. Equitable sharing is not served when almost all of the gains go to those at the very top. To address these inequalities, we need reforms to the educational system and access to gainful employment.

V. EQUALIZING EDUCATIONAL OPPORTUNITY

In a society committed to equal opportunity, nothing is more important than education as a means to level the playing field for all, so that when entering adult life people have comparable chances to succeed. This is truer today than ever before, as shown by the enormous discrepancies in access to employment and earning potential based on one's level of education.³⁷ While prior to COVID-19 the unemployment rate was low, it was almost twice as high for high school graduates as for college graduates and almost two and a half times higher for non-high-school graduates than for college graduates.³⁸ In 2019, college graduates had 67% higher earnings than high school graduates and more than double the earnings of non-graduates, while those with professional degrees earned 49% more than college graduates.³⁹ These disparities are probably even greater under the current near-

³⁶ See THE PUBLIC, THE POLITICAL SYSTEM AND AMERICAN DEMOCRACY, *supra* note 14; TRENDS IN AMERICAN VALUES, *supra* note 14.

³⁷ *Unemployment Rates and Earnings by Educational Attainment*, U.S. BUREAU OF LAB. STAT. (Sept. 4 2019), <https://www.bls.gov/emp/chart-unemployment-earnings-education.htm> [<https://perma.cc/8K9A-5H59>].

³⁸ *Id.*

³⁹ *Id.*

Depression level of unemployment, and are likely to persist as the economy recovers.⁴⁰

Although access to education has historically contributed to upward mobility in the United States, as currently structured the educational system is highly stratified to the advantage of the better-off.⁴¹ Rather than equalizing the opportunity to succeed in life, the educational system is contributing to an increasingly rigid class structure.

At least two measures are needed to equalize educational opportunity in the United States. First, the federal government should assume the responsibility for funding public education at the elementary and secondary levels, while leaving the administration of public schools to the state and local governments.⁴² The merit of local administration is that local officials are likely to be more responsive to the diverse needs of different locales and to be more accessible and accountable to parents and others who wish to participate in the educational process. But as a result of state and local financing, educational opportunity is not equal. Rather, the better-off receive far better elementary and secondary education than the less-well-off.⁴³ Consequently, and because they can better afford it, the better-off

⁴⁰ Jeff Stein, *Coronavirus Fallout Will Haunt US Economy for Years, Costing it \$8 Trillion Through 2030, CBO Says*, WASH. POST (June 1, 2020), <https://www.bostonglobe.com/business/2020/06/01/coronavirus-fallout-will-haunt-economy-for-years-costing-trillion-through-cbo-says/Q3yNmVIW0E1XVwSx5XIS3L/story.html> [<https://perma.cc/C8QL-3A5L>].

⁴¹ MICHAEL GREENSTONE ET AL., THE HAMILTON PROJECT, THIRTEEN ECONOMIC FACTS ABOUT SOCIAL MOBILITY AND THE ROLE OF EDUCATION (2013), https://www.brookings.edu/wp-content/uploads/2016/06/thp_13econfacts_final.pdf [<https://perma.cc/AUC6-E2W7>].

⁴² Thomas Kleven, *Federalizing Public Education*, 55 VILL. L. REV. 369 (2010).

⁴³ U.S. DEP'T EDUC. OFF. FOR C.R., ISSUE BRIEF NO. 3, CIVIL RIGHTS DATA COLLECTION: DATA SNAPSHOT: COLLEGE AND CAREER READINESS (2014), <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-college-and-career-readiness-snapshot.pdf> [<https://perma.cc/2B8L-PUWR>]; see also Ary Spatig-Amerikaner, *Unequal Education: Federal Loophole Enables Lower Spending on Students of Color*, CTR. FOR AM. PROGRESS (Aug. 22, 2012), <https://www.americanprogress.org/issues/education-k-12/reports/2012/08/22/29002/unequal-education/> [<https://perma.cc/N84S-CGPG>].

have greater access to college, especially to elite schools, than the less-well-off.⁴⁴

Currently, the federal government provides less than ten percent of the funds for elementary and secondary education, while about half of the remaining ninety plus percent comes from state taxes and about half from local taxes.⁴⁵ Many well-off people have insulated themselves in suburban communities that are able to spend more on their children's education than less-well-off communities.⁴⁶ Some state courts have found this means of financing public education to violate their constitutions and have ordered states to come up with more equitable financing schemes.⁴⁷ But due to the remedial constraints courts face, the reforms have been modest and have fallen far short of equalizing the educational opportunity of less-well-off children.⁴⁸

Federal financing of public schools will help equalize educational opportunities in several ways, all of which will help to restore the central role education plays in a democratic society of leveling the playing field for

⁴⁴ Drew DeSilver, *College Enrollment Among Low-Income Students Still Trails Richer Groups*, PEW RSCH. CTR. (Jan. 15, 2014), <https://www.pewresearch.org/fact-tank/2014/01/15/college-enrollment-among-low-income-students-still-trails-richer-groups/> [<https://perma.cc/6ZSQ-P6R8>]; see generally SARA GOLDRICK-RAB, *PAYING THE PRICE: COLLEGE COSTS, FINANCIAL AID, AND THE BETRAYAL OF THE AMERICAN DREAM* (2016); see also JOSEPH A. SOARES, *THE POWER OF PRIVILEGE: YALE AND AMERICA'S ELITE COLLEGES* (2007).

⁴⁵ NAT'L CTR. FOR EDUC. STAT., U.S. DEP'T OF EDUC., *THE CONDITION OF EDUCATION 2020: PUBLIC SCHOOL REVENUE SOURCES* (Apr. 2020), https://nces.ed.gov/programs/coe/indicator_cma.asp [<https://perma.cc/T48V-3U3Q>].

⁴⁶ JAMES E. RYAN, *FIVE MILES AWAY, A WORLD APART: ONE CITY, TWO SCHOOLS, AND THE STORY OF EDUCATIONAL OPPORTUNITY IN MODERN AMERICA* (2010).

⁴⁷ See generally Laurie Reynolds, *Uniformity of Taxation and the Preservation of Local Control in School Finance Reform*, 40 U.C. DAVIS L. REV. 1835 (2007); see James E. Ryan, *Standards, Testing, and School Finance Litigation*, 86 TEX. L. REV. 1223 (2008).

⁴⁸ *Id.* Nevertheless, some commentators believe the courts can contribute to school finance reform despite the remedial constraints. See generally MICHAEL PARIS, *FRAMING EQUAL OPPORTUNITY: LAW AND THE POLITICS OF SCHOOL FINANCE REFORM* (2009); see also DOUGLAS S. REED, *ON EQUAL TERMS: THE CONSTITUTIONAL POLITICS OF EDUCATIONAL OPPORTUNITY* (rev. ed. 2003).

all. First, because the federal government is somewhat removed from the political pressures that impede the ability of state officials to devise more equitable school financing schemes, it can more easily equalize expenditures between richer and poorer school districts. Second, federal financing will contribute to a more equitable financing of public education between richer and poorer states. This will particularly benefit the South, which is the poorest region of the country, spends the least in educating its children, and has the lowest level of educational attainment.⁴⁹ Third, federal financing per the progressive income tax will require the well-off to bear a greater share of the costs than the more regressive state and local taxes. Fourth, federal financing will likely lead to an increase in expenditures on public education, both because the federal government can maintain the funding level more easily than the states during periods of economic downturn and because the federal government will then bear greater

⁴⁹ In the 2013-2017 American Community Survey 5-Year Estimates, of the eleven former Confederate states, all but two were in the bottom half of median household income and six were in the bottom ten. *Median Household Income*, U.S. CENSUS BUREAU (2018), https://www.census.gov/search-results.html?q=family+income+by+state&page=1&stateGeo=none&searchtype=web&cs=SERP&_charset_=UTF-8 [<https://perma.cc/EP9C-3JZG>]. In 2017, all eleven states were in the bottom half in per pupil expenditure, and six were in the bottom ten. *See 2017 Public Elementary-Secondary Education Finance Data*, U.S. CENSUS BUREAU (2017), <https://www.census.gov/data/tables/2017/econ/school-finances/secondary-education-finance.html> [<https://perma.cc/6SA8-QRUG>]. In 2009, all but two were in the bottom half of eighth grade reading proficiency and five were in the bottom ten, and all but one were in the bottom half of eighth grade mathematics proficiency and seven were in the bottom ten. NAT'L ASSESSMENT OF EDUC. PROGRESS, U.S. DEP'T OF EDUC., *MAPPING STATE PROFICIENCY STANDARDS ONTO THE NAEP SCALES: VARIATION AND CHANGE IN STATE STANDARDS FOR READING AND MATHEMATICS, 2005-2009* (2009), <https://nces.ed.gov/nationsreportcard/pdf/studies/2011458.pdf> [<https://perma.cc/RSC8-R5L7>]. In 2009, all but one were in the bottom half in percentage of twenty-five to thirty-four-year-olds with some postsecondary education degree, and five were in the bottom ten. Press Release, U.S. Dept. of Educ., *New State-By-State College Attainment Numbers Show Progress Towards 2020 Goal* (July 12, 2020), <https://www.ed.gov/news/press-releases/new-state-state-college-attainment-numbers-show-progress-toward-2020-goal> [<https://perma.cc/TQ7N-6UA4>].

responsibility for matching the educational performance of the many other countries in the world whose students outperform ours.⁵⁰

Second, to equalize educational opportunity, college should be free and universal, meaning there must be an available slot for everyone who wants a college education. More than twenty countries throughout the world already provide tuition-free higher education at public schools or charge fees so low that they are within the means of most everyone.⁵¹ In the United States, New York has recently made attendance at state colleges tuition-free for families with incomes under \$125,000.⁵² Whether college should be free for all or only for those below a certain income, whether it should only cover tuition or should also cover living and other expenses, whether it should include graduate as well as undergraduate study, and whether it should be tied to required public service are details to be worked out that fall beyond the scope of this article.

Universality is a more novel but essential component of free college education. Without universality, the better-off applicants, due to the benefit of having more well-to-do and highly educated parents, are likely to be advantaged over the less-well-off in competing for a limited number of enrollment slots. Also, universality would likely lead to a far higher number of college graduates, as only slightly more than one-third of individuals of college age are now receiving bachelor's degrees.⁵³ An increase in the numbers of those with college degrees should contribute to the general

⁵⁰ Drew DeSilver, *U.S. Students' Academic Achievement Still Lags that of Their Peers in Many Other Countries*, PEW RSCH. CTR. (Feb. 15, 2017), <https://www.pewresearch.org/fact-tank/2017/02/15/u-s-students-internationally-math-science/> [https://perma.cc/5YBY-868B].

⁵¹ *Countries with Free College 2020*, WORLD POPULATION REV., <https://worldpopulationreview.com/country-rankings/countries-with-free-college> [https://perma.cc/U77J-5C5F].

⁵² *Tuition-Free Degree Program: The Excelsior Scholarship*, N.Y. STATE, <https://www.ny.gov/programs/tuition-free-degree-program-excelsior-scholarship> [https://perma.cc/4ETB-9UPR].

⁵³ *Fast Facts: Educational Attainment*, NAT'L CTR. FOR EDUC. STAT., U.S. DEP'T OF EDUC., <https://nces.ed.gov/fastfacts/display.asp?id=27> [https://perma.cc/9AHD-YN4R].

population's understanding of public and political issues and should make it more difficult for charlatans to fool so many people all or some of the time. Universality should also help reduce the earnings differential between college graduates and non-graduates by decreasing the pay for jobs requiring a college degree due to a greater supply of workers capable of doing those jobs.

Common justifications for the higher earnings of those with college and graduate degrees include the financial investment they have had to incur to obtain their degrees and the assertedly greater contribution to society of jobs requiring a degree. Without the financial justification, which will be resolved by free education, all that is left to question is the relative benefit to society of mental versus manual labor. Does a law professor really contribute more to society than a trash collector? If not, if their contributions are comparable, then equitable sharing suggests that their earnings should be comparable.

A third measure that may be needed to equalize educational opportunity is to require all elementary and secondary students to attend public schools.⁵⁴ This is even more controversial than federal financing and free college, and it would require the reversal of a long-standing Supreme Court ruling affirming the right of parents to place their children in private schools.⁵⁵ But the existence of private schools contributes to the under-resourcing of public schools. Many better-off parents desirous of providing their children with a superior education, particularly those living in central cities unable to afford the higher quality education of the more affluent suburbs, have opted for private schools for their children.⁵⁶ This

⁵⁴ Thomas Kleven, *Mandating Public School Attendance: A Proposal for Achieving Racial and Class Integration*, 34 T. MARSHALL L. REV. 109 (2008).

⁵⁵ *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

⁵⁶ Richard J. Murnane et al., *Who Goes to Private School?*, 18 EDUC. NEXT 59 (2018). While only about 8% of elementary and secondary school students attend private schools, about 16% of children from high income families do so and in urban areas the figure is about 24%. In addition, about 3% of children are home schooled, and disproportionate

disproportionately relegates less-well-off children to public schools, as is illustrated by the fact that more than half of all public school children qualify for the free or reduced price lunch program.⁵⁷ Because the better-off with children in private schools still have to pay taxes to support public schools their children do not attend, they have an incentive to keep those taxes as low as possible, thereby perpetuating the lower quality of the public school system. As a result, we are moving toward a dual system of education with higher quality private schools for those who can afford them and lower quality public schools for those who cannot.

Due to the impact of private schools, along with demographic factors like residential segregation and an increasingly non-white share of the population, segregation by ethnicity and class in public schools is growing.⁵⁸ Numerous studies show that children who attend schools with high concentrations of underrepresented and less-well-off students suffer educationally, and that underrepresented children perform better when schools are integrated by ethnicity and class, without causing the performance of better-off children to decline.⁵⁹ The choice of better-off

numbers of them are from higher income families and have parents with college degrees. MEGHAN MCQUIGGAN & MAHI MEGRA, U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STAT., PARENT AND FAMILY INVOLVEMENT IN EDUCATION: RESULTS FROM THE NATIONAL HOUSEHOLD EDUCATION SURVEYS PROGRAM OF 2016 (2017), <https://nces.ed.gov/pubs2017/2017102.pdf> [<https://perma.cc/KZG9-UPXW>]; see also Brian D. Ray, *Academic Achievement and Demographic Traits of Homeschool Students: A National Study*, 8 ACAD. LEADERSHIP (2010).

⁵⁷ In 2012–13 just over 50% of public school students were eligible, an increase of 12% over the 38% who were eligible in 2000–2001. Tom Snyder & Lauren Musu-Gillete, *Free or Reduced Price Lunch: A Proxy for Poverty?*, NAT'L. CTR. FOR EDUC. STAT. BLOG (Apr. 16, 2015), <https://nces.ed.gov/blogs/nces/post/free-or-reduced-price-lunch-a-proxy-for-poverty> [<https://perma.cc/L4DL-4JLY>].

⁵⁸ ERICA FRANKENBERG ET AL., C.R. PROJECT, HARMING OUR COMMON FUTURE: AMERICA'S SEGREGATED SCHOOLS 65 YEARS AFTER *BROWN* (2019), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/harming-our-common-future-americas-segregated-schools-65-years-after-brown> [<https://perma.cc/PAA3-LWGD>].

⁵⁹ See generally RUCKER C. JOHNSON & ALEXANDER NAZARYAN, CHILDREN OF THE DREAM: WHY INTEGRATION WORKS (2019); COMM. ON SOC. SCI. RSCH. EVIDENCE ON

whites and ethnic minorities living in central cities to place their children in private schools prevents integrative measures and is one of the main factors underlying the United States' entrenched racial and class inequalities. Requiring all children to attend public school could help integrate public schools and equalize educational opportunities. But perhaps that requirement will not be needed if, through federal financing, central city school districts have sufficient funds to provide a quality education, thereby inducing the better-off to opt for public schools rather than paying for both private schools for their children and public schools for the children of others.

VI. EQUALIZING EMPLOYMENT OPPORTUNITY

Equal educational opportunity is insufficient by itself to guarantee everyone a fair share of the society's benefits where, as in the United States, the ability to acquire many of the goods of social life depends on access to a well-paying job. In fact, a well-paying job is not available to all in the United States. The private-market system has a built-in rate of unemployment even in the best of times, and in times of economic downturn the unemployment rate soars.⁶⁰ Further, the private market does not ensure that all workers can earn a living wage, as shown by the fact that many full-time workers earn below the poverty line.⁶¹

RACIAL DIVERSITY IN SCHS., NAT'L ACAD. OF EDUC., RACE-CONSCIOUS POLICIES FOR ASSIGNING STUDENTS TO SCHOOLS: SOCIAL SCIENCE RESEARCH AND THE SUPREME COURT CASES (Robert L. Linn & Kevin G. Welner eds., 2017).

⁶⁰ Mathew Forstater, *Full Employment Policies Must Consider Effective Demand and Structural and Technological Change: A Prime Point of Pasinetti's Political Economy*, in *A POST KEYNESIAN PERSPECTIVE ON 21ST CENTURY ECONOMIC PROBLEMS* 195 (Paul Davidson ed., 2002) (arguing that involuntary unemployment "is endemic to capitalism"); PAUL KRUGMAN, *PEDDLING PROSPERITY: ECONOMIC SENSE AND NONSENSE IN THE AGE OF DIMINISHED EXPECTATIONS* 115 (1994) ("In practice, the U.S. economy probably cannot go below 5 percent unemployment without overheating and developing a bad case of accelerating inflation.").

⁶¹ David Cooper, *One in Nine U.S. Workers Are Paid Wages that Can Leave them in Poverty, Even When Working Full Time*, ECON. POL'Y INST. (June 15, 2018),

This is inconsistent with democratic values in a society like ours that has the capacity to design its economy in a manner that ensures a decent life for all its members. Democracy is a joint venture for the purpose of creating a society that benefits all. A successful joint venture requires that all its participants contribute to the venture to the best of their abilities, in return for which they are entitled to a fair share of the fruits of the venture. That has not happened in the United States, where some earn less than the poverty level or cannot find work at all, where most everyone else receives a living wage or better, and where a select few amass incredible wealth made possible through the efforts of all. The way to ensure access to gainful employment in a largely private-market economy is for the government to guarantee a job with a living wage to all who are willing and able to work.

The ideal of work for all, of truly full employment, can be found in the Universal Declaration of Human Rights' proclamation that "everyone has the right to work . . . and protection against unemployment," and that "everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection."⁶² Similarly, President Franklin D. Roosevelt advocated, in his next to last State of the Union Address, "a second Bill of Rights under which a new basis of security and prosperity can be established for all," and including "the right to a useful and remunerative job" and "the right to earn enough to provide adequate food and clothing and recreation."⁶³

<https://www.epi.org/publication/one-in-nine-u-s-workers-are-paid-wages-that-can-leave-them-in-poverty-even-when-working-full-time> [<https://perma.cc/DC8Q/VEAR>].

⁶² G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 23 (Dec. 10, 1948).

⁶³ President Franklin D. Roosevelt, State of the Union Address (Jan. 11, 1944), http://www.fdrlibrary.marist.edu/archives/address_text.html [<https://perma.cc/JK7B-HUVD>].

Versions of guaranteed employment have been tried in other countries with some success, notably India and Argentina.⁶⁴ And it has been regularly proposed in Congress over the years, and was a component of the platforms this past cycle of several presidential candidates.⁶⁵ But business interests in the United States have been successful in blocking a guaranteed job measure, fearing that it would force them to pay higher wages and adversely affect their bottom lines—which it might well do because the very point of the government’s paying guaranteed-jobs workers a living wage is to induce private employers to do so as well.⁶⁶

If we could achieve it, guaranteed employment at a living wage would benefit the country in several ways. It would substantially eliminate poverty. It would substantially reduce welfare programs since people now receiving government subsidies for doing nothing would be paid to contribute to the society’s development. It would provide workers for many needed public services, such as maintaining the country’s deteriorating infrastructure. It would encourage private employers to pay higher wages and treat their workers better. It would reduce crime, since people would not have to resort to that to secure their livelihood. It would reduce racial and other tensions within the working class that result from the competition for scarce jobs. Finally, guaranteed employment at a living wage would

⁶⁴ See generally Karthik Muralidharan et. al., *General Equilibrium Effects of (Improving) Public Employment Programs: Experimental Evidence from India* (Nat’l Bureau of Econ. Rsch., Working Paper No. 23838, 2017), https://www.nber.org/papers/w23838?utm_campaign=ntw&utm_medium=email&utm_source=ntw [<https://perma.cc/9EAU-X2Y9>]; see also Pavlina R. Tcherneva & L. Randall Wray, *Is Jefes de Hogar an Employer of Last Resort Program? An Assessment of Argentina’s Ability to Deliver the Promise of Full Employment and Price Stability* (Working Paper No. 43, 2005), <https://ssrn.com/abstract=1009618> [<https://perma.cc/N9V6-ENZM>].

⁶⁵ Dylan Matthews, *Job Guarantees, Explained*, VOX (Apr. 24, 2018), <https://www.vox.com/policy-and-politics/2017/9/6/16036942/job-guarantee-explained> [<https://perma.cc/3PBH-6VZF>].

⁶⁶ PHILIP HARVEY, *SECURING THE RIGHT TO EMPLOYMENT: SOCIAL WELFARE POLICY AND THE UNEMPLOYED IN THE UNITED STATES* (1989).

help satisfy the innate human desire to be productive and to contribute to one's society.

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None of these proposals for reforming the electoral process and improving access to equal educational and employment opportunities, nor alternative and perhaps better proposals to enhance our democracy, will come about without a mass grassroots political movement to make them happen. Such movements have happened in the past, as with the union, women's rights, and civil rights movements. We are seeing the beginnings of a contemporary grassroots movement with groups like Occupy Wall Street, Black Lives Matter, and the Poor People's Campaign. Those of us who believe in democracy and want it to survive and to thrive must lend whatever skills we have to the effort.

Ronald Reagan made famous the saying that a rising tide lifts all boats.⁶⁷ He aimed to promote tax cuts for the wealthy on the ground that they would invest their wealth so as to benefit everyone. In fact, however, most of the economic gains since then, and over the past fifty years of lowering taxes on the well-to-do, have mainly benefitted the rich. The tide rose for them, but not for everyone else. But, then, the metaphor must be wrong because this is not how water flows. A more accurate metaphor is that there is only one ship, that if the ship sinks we all drown, that a successful voyage requires everyone to pull an oar, and that in return everyone is entitled to a fair share of the fruits of the voyage. We are all on the voyage together in this society, and the sooner we understand that, the better off we will be and the more we will be able to achieve the democratic ideals in which we profess to believe.

⁶⁷ *Reagan's "Rising Tide,"* TEACHINGHISTORY.ORG, <https://www.teachinghistory.org/history-content/ask-a-historian/23935> [<https://perma.cc/Q84F-9283>].