

UVA LAW | Robinson

KIMBERLY ROBINSON: All right, so excited to talk with you all today about my talk, *We Have Only Begun to Fight*. But first, I just want to thank the law review. I can tell you, I did not ask them to choose this topic, but I was thrilled that they did. Just talk about the issues of school funding and also the inequalities that we're seeing in our school, the *Rodriguez* case as well.

But before I jump in, I just have to also give a special thanks to my husband, Gerard Robinson, without who my books and scholarship would not be possible. So I'm just thrilled that he's here today, but also so grateful for his enduring support.

AUDIENCE:

[INAUDIBLE]

KIMBERLY ROBINSON:

It is, yes. All right, so, I want to get started. So first, we've already heard some about the *Rodriguez*, but I see lots of new faces in the audience, so I just want to make sure that you understand the case. So we do have with us today the daughter of Demetrio Rodriguez. Patricia, can you raise your-- so we--

[APPLAUSE]

I'm just excited to be in the same room with her after writing so much about the case, studying it so much, teaching students, many students about this case. And so I just want to, in my talk, not only talk about what the case itself said, but also just give you a sense of still what's at stake now in the issues of school funding and school inequality.

So the case itself was focused in the Edgewood School District to focus on the disparities in funding between neighboring districts. And what's important to understand is this actually-- this case actually followed from student protests. So it was students who walked out of Edgewood High School and said, these conditions are unacceptable-- unacceptable in which we're being educated.

And so then it was Demetrius Rodriguez, who then organized parents to then hire a lawyer to bring the case. But it was really students who began this movement. And I say that to all of you because I teach so many of you. And I encourage you to just think about what impact you can have on these issues, whether it is through litigation, or through public policy, or as a law clerk, or as a judge, there's just so much impact that you can have.

So in the case, as you know, the court held that there is not a fundamental right to education. The court said, it's clearly not explicitly in the Constitution. And it is also not-- the court was not willing to imply such a right. The court said the fact that there is a close relationship between education and the exercise of free speech and our voting rights, that that was not a sufficient nexus to push the court to recognize education as a fundamental right.

The court said, we are not the experts to be deciding these issues. And the court said that, in fact, they lack the expertise to decide the complicated school funding issues that were at stake in the case. Complicated, though, only to a degree. In the sense that what was clear was that the children and the students in the Edgewood School District were getting significantly less funding than nearby schools and districts.

And so, although the court notes that it lacks that expertise, there were some clear inequities that were happening, that the court eventually, even though it says we're going to stay our hand and leave this to state legislatures, the court does recognize that there is a need for greater equality. It's simply that we trust the other branches to act on that.

The court specifically called into question the issue-- and noted the debate that was raging at the time among education scholars, which is commonly called "Does money matter?" And so the debate was, does the amount of funding and these defunding disparities that were at the heart of the case in *Rodriguez*, do they matter for what children receive in education?

And so what they had was evidence on both sides at that time. And so the focus was, does this matter for the outcome? If it doesn't matter, then there's no basis to say that there is some kind of right that's being implicated here.

Now, I can tell you since this time, this issue of does money matter has been litigated extensively in state court litigation, which is where all the litigation was then pushed after the *Rodriguez* decision was decided. And in case after case, the courts have found that money spent well matters indeed. In fact, the leading scholar who was proposing that money did not matter has admitted in deposition that money spent wisely actually can matter a great deal.

So the good news also is that has been settled, that we are clear-- and it's intuitive, but courts need you to prove it. So it's intuitive, but now well-established that money spent well matters. And it matters for all of the things that money buys. Money pays for teacher salaries. Money buys strong facilities and up-to-date facilities. It buys technology. All of those things make a big difference for education.

The court also expressed grave concern about changing the balance of federalism. So what does that mean? That means that it said, we don't want to be changing who has the authority over education. We think that this should be a state, and remain state and locally controlled, rather than stepping in and having a large federal role in education. In fact, the court notes that the problems that were being challenged by the *Rodriguez* plaintiffs were in place-- hold on-- yep, that's my pointer-- the system of public education existent in virtually every state.

So the court said the problem is so widespread that we should not intervene. I'm pausing there for a second because there's an irony to that, right? The problem is so widespread that we should not intervene, you could flip that on its head and saying, well, it seems that the political process is not addressing the problem. And thus, perhaps, maybe it is time for us to intervene. But the court felt to the contrary.

And then the court noted that there was not a claim for adequacy here. So the court specifically noted that the plaintiffs in that case-- and I was excited to hear about the history of the *Edgewood* case, where they said we're going to close any loophole that was left in the *Rodriguez* case. But they said in that initial case they did not make the allegation that students were not given the basic minimal skills to enjoy their rights of full participation in the political process and for free speech.

So why does *Rodriguez* matter? *Rodriguez* matters for a number of reasons. And I'm so excited to have many of the authors who contributed to this edited volume, that I had the privilege to do with Charles Ogletree, to whom I am greatly indebted, to think about why this case matters. Why are we here recognizing the 50th anniversary of *Rodriguez*?

And I think there are several reasons, but I feel like this table gives you one sense of that. And I'm going to show you several others that-- other slides that also show you. So what's important to understand is that we have a system of funding in the United States in which well over a majority of the states give the same or less funding to children in poverty. So children in high-poverty districts get either the same or less funding. Why does that matter?

Well, first, I've already established that scholars agree that money matters because of what you can buy. But second, scholars also agree that children who are living in poverty need far more resources to compete on a level playing field with their peers. So when you see-- the only numbers you need to focus on here are this middle line-- the flat funding and the regressive funding. So these are all states where children living in poverty are consistently disadvantaged.

The other thing to recognize-- so I can give you the sense of how many states that is. We only have-- we have 17 states that give less funding to children in districts with 30% or more poverty, 12 states give the same, and we have 19 states that give more. The important thing to understand about that 19, however, is sometimes it's just a small amount more. So you were allowed to be counted as more under the Education Law Center study, making the grade, if you gave as little as 5% more.

Now, I can tell you it is contested how much more students who live in poverty need. However, I can tell you I haven't seen studies saying it's as little as 5%. So it's likely that the disparities and concern actually also include many of these states that are currently labeled progressive. Because some scholars say, based on Title I, that it's 40% more. Some say it's twice as much. But either way, 5% is probably also not sufficient.

So what you have is an overwhelming majority of states that are not giving children who live in poverty the resources that they need to compete on a level playing field, to be prepared to be engaged citizens, and participate intelligently, and engage in our electoral process, to perform their civic duties, and also to be college and career ready.

Other data to consider. EdBuild found in a study there is a racial dimension to this problem. And what they found is that there is a \$23 billion gap between white-- predominantly white-- so 75% or more white-- districts with that population versus non-white districts. This is a recent study by EdBuild.

So what you see there is not just that they're giving children from low-income communities less funding, but they also are-- we also are still dealing with the legacy of Jim Crow and white supremacy upon our school systems because of the systematic disadvantage that many-- not all, but many children of color face in education.

All right, so why does this matter? It matters in part because of the conditions that you see in some of our schools. So this is in Druid Hills, where I first actually started my career at Emory University and I was teaching at the law school there. And what you see is-- this is a video by students at Druid Hills High School.

Now I can tell you, this is in DeKalb County. It's a suburb of Atlanta. This is not a low-income community. So it's important to understand that this is not actually even implicating the communities that are getting this low funding that I was talking about. But I just want you to watch this short clip. Because I think it's important for you to see what we're dealing with in terms of why the *Rodriguez* case really matters.

[VIDEO PLAYBACK]

- There's mold on the walls, holes in the ceiling, and a threat of electrocution. Druid Hills High School students say their building is falling apart. But the DeKalb County School board recently removed it from its priority list of renovations.

- After seeing the video they captured, you might be asking, how? Katelyn Ross spoke to students now making a passionate plea for help.

- The students who made the video say it's impossible to tell from the outside just how bad the issues that they're talking about are. That's why they wanted everyone to be able to see inside the school for themselves.

- Human waste tends to flow up, come up it, and flood this area right here, which is known as our senior picnic area.

- Druid Hills senior, Towns Purdy, worked with his classmates to expose conditions at the high school in an eight-minute video that was just released online.

- These signs right here say, do not touch the poles or the outlets, right? Because we are at risk of electrical shock when you get anywhere near them.

- Other students show crumbling bathrooms, mold on the walls, a broken elevator, and water damage throughout the building. Towns's dad says he was shocked to see all the problems inside the school.

- I knew things were bad, but seeing that video is shocking. In fact, I'm a little surprised this school is not getting shut down today.

[END PLAYBACK]

KIMBERLY ROBINSON:

So that's just one example. This is another example in an urban school district in Columbus, Ohio.

[VIDEO PLAYBACK]

- Well, months before any threat of a teacher strike, *10 Investigates* started digging into the conditions inside Columbus City Schools. Health inspectors also routinely flagged problems that threatened student safety. As chief investigative reporter Bennett Haberly uncovers, some issues took weeks to fix.

- The images taken inside various schools show flooded floors, peeling paint, stairs missing safety treads. Since March, city health inspectors have flagged problems like these in more than 30 Columbus City Schools.

What do you make of these?

- I mean obviously having a child that's about to go to a Columbus City School, it's concerning as a parent. You want your child to be safe when they're in the building. And you assume that it will be safe.

- Tina Bauer is the mother of an incoming kindergartner. Her child's school is one of 13 that will have air conditioning this fall that previously did not. The district says since 2017, it spent \$125 million in building upgrades. And this summer, spent additional federal stimulus money adding the HVAC systems.

But *10 Investigates* found despite these investments, problems in the district's aging school buildings still persist. Our investigation began back in March, months before the labor fight between the school district and the teacher's union became public.

- [CHANTING] This is what democracy looks like.

- The four teachers took to social media, posting videos like these, reportedly showing the conditions inside a CCS school. *10 Investigates'* review of Columbus Public Health records found similar problems, with leaking roofs, water damaged or missing ceiling tiles, and other issues.

[END PLAYBACK]

KIMBERLY ROBINSON:

So what's important to understand is there are a couple of things afoot here. So the video referenced teacher strikes that are happening. And if you look at this map, you can see that we are starting to see a growing number of teacher strikes. Some might mistakenly think, who are new to this issue, that this is actually a result of COVID and the conditions that were imposed upon teachers when they were asked to return to the classrooms, which in many cases felt that they were not in safe conditions.

But actually, this really goes further back than that. And we're starting to see more teacher strikes in part because we did not have any requirements when the federal government sent out stimulus funding during the Great Recession to schools, in states and districts, there was no requirement that those states that took the large check from the federal government return to the fiscal effort that they had prior to the Great Recession.

And so what we see, and what one of the prior speakers mentioned is that there was a seven-- sorry, a \$600 billion deficit that was created between 2008 to 2018. Because states didn't restore their fiscal effort to what it was prior to the Great Recession.

And so what happened when COVID hit is that there was a \$600 billion deficit that was happening in the schools. And then you imposed a crisis of unprecedented proportions that then the schools were asked to deal with. And so you can see how we get to a place where there are not the sufficient resources to address the crisis that's happening.

And teachers are finding that educating in the kind of conditions that you saw-- like you all probably, in this beautiful building, can't imagine having to learn in the type of conditions that you just saw. But that is what students in our country are asked to do every day, too often.

And so we see that teachers are starting to rise up and demand not only better salaries, but also better conditions in the schools. So it's important to understand that teacher strikes are not just about teachers making more money. They also protest the conditions within the schools and the conditions that they have to work in every day, as well as really large class sizes.

So I'm going to just turn now to talk about why we should think about recognizing federal education in the United States, how we might do that, and what it would include.

So what you see here are conditions from the Detroit Public Schools that were challenged in a case called *Gary B versus Snyder*. And what you see there is that a federal circuit court, for the first time, the Sixth Circuit, recognized that the Constitution guarantees each child a fundamental right to a basic minimum education that enables the child to attain literacy.

Why is this relevant? The case ultimately was vacated. So actually, it still does not currently have precedential value. But I point to it and make you aware of it because it's important to understand that we need the federal courts to come alongside the state courts to provide our students the education that they need.

We have made significant progress in addressing school funding disparities and inadequacies through decades of litigation since the *Rodriguez* case. However, it is also clear that state courts are not going to be able to get us all the way to the schools that we need to prepare students to be engaged citizens and to be college and career ready.

The state courts-- one, state court justices and judges are often elected. So there is definitely social science data that shows when these more progressive decisions are reached, sometimes these judges are voted out of office. And then you get a different decision when you change the composition of the court.

Another concern is that there is not robust federal legislation that requires states to give either equitable or adequate funding. So in many ways right now the federal government is actually complicit in the conditions that you saw and the inequities and inadequacies that we have.

Because the federal government gives out large amounts of money to schools, but doesn't attach the conditions that are needed to require states to provide equitable, and adequate, and high-quality schools. And so because of that, we really do not have a consistent mechanism to require states to provide equity and adequacy in schools.

And the other important thing to recognize is even though in many states, like the *Edgewood* case was quite successful and has some forward progress in Texas, you have to understand that there are numerous states who said, we aren't going to intervene in the schools in our state. This is a question solely for the legislature. And it is their province and their decision that will stand. And the courts will not reexamine that to see if students' constitutional rights are being violated.

And so when they say-- when the state courts say, this is non-justiciable, well then those students have no remedy. Because they can't go to federal court. And they can't go into the state courts. So they are left then to the whims of the legislatures.

And one of the things that has come through in much of the state litigation when it has continued, has been the revelation that school funding systems too often are not tailored to provide the funding that students need to reach state standards. So there's testimony after testimony in numerous states where state lawmakers, when they're forced, under deposition, will concede that actually the budget and the amount that we provided to education is really a political bargain that happens behind closed doors.

We decide how much we're going to fund. And then we create a formula that gets us to that amount. The challenge, of course, there is that the funding then falls short of what's needed to provide students an adequate education.

So then the question is, how might we recognize a federal right to education? It's clear that our current Supreme Court is not likely to recognize a federal right to education. And so I think the only current avenue that we have available is for Congress to recognize the right to education.

I can tell you that there is conversation currently ongoing about the recognition of a federal right to education, not just among scholars, but also among advocates, as well as people working with those on Capitol Hill to both draft and present legislation that would guarantee every child a high-quality education.

So this is very much a live debate, one that I've had a privilege to be a part of. And so those conversations are ongoing. And I make you aware of them so you can all be both watchful of them, but supportive of them. So that we can end the kind of conditions that I showed you and make sure that every child is guaranteed a high-quality education.

And finally, the question always comes up of what would we guarantee in the United States? So I can tell you, scholars really debate what should be guaranteed if we do recognize a federal right to education. Some would say it's a right to a high-quality education. Others say students should be guaranteed the right to be college and career ready. Others still say we should be preparing students to be engaged citizens.

Certainly, in our wealthy nation, we should be doing all of those things. And each student should be provided the opportunity to have an education that would accomplish those ends.

And so I'm so excited for the other panels that are going to come and continue this conversation. But it's important to understand just that we have only begun to make progress on these issues. And we have a long way to go. And so I invite all of you to be part of this push to ensure that all students receive a high-quality education.

Thank you.

[APPLAUSE]

Thank you, Professor Robinson. This is a pleasure to-- my good friend and brilliant legal mind-- two books, just to remind you-- *The Enduring Legacy of Rodriguez*, out there, you can buy it, and *A Federal Right to Education*, the new one-- two edited volumes. Incredibly productive, and, as I said, brilliant scholar. You can get them outside.

SPEAKER:

So Kimberly, I want to ask you a ton of questions, but I also want people in the audience to be able to ask questions too. So I'm going to ask a few preliminary questions and then start to raise your hands and I will acknowledge you as we go.

So the first question is, what is at stake in calling it a right? Why do we want to use the rights language? Usually that points you to a court, like the Supreme Court and we want to reverse *Rodriguez* or something like that, or the federal court, the federal circuit court wants to acknowledge a right. But if it's in Congress, what is the rights-- why the rights language as opposed to say just we just need a policy commitment to fully funding our schools across the nation?

KIMBERLY ROBINSON:

Yeah, great question, and I'm excited to start there. So the book, actually we talk extensively about this. But I can tell you there actually is a chapter in the book that also argues against recognizing a federal right to education by Eloise Pasachoff, that argues that, no, we just need a bunch of federal programs basically to advance the quality of education that students need.

But I contend that we actually need a right. And that's for several reasons. So first, rights have a certain-- is this on? It's on. OK.

Rights have a certain high and exalted place in our society. When something is a right it is then prioritized by state legislatures prioritized by Congress. And so rights are something that really push us to recognize a priority. By making something a right, it is saying as a society, this is one of our highest and most foundational bedrock values. And so that message itself is important for rights.

Second is what you briefly mentioned, which is rights then also give you access to courts. And you might think, well, if we have a right, shouldn't we then go-- won't people then go enforce it? Most of you are in law school. You know just because a right exists doesn't mean that people enforce it. It simply means that you now have a way to access the federal courts to enforce the right.

And so we need to, one, have courts involved because legislatures, unfortunately, have not shown a consistent commitment to equity and adequacy. And even when we have courts order them to provide equity and adequacy, they still drag their feet. So this is when they've been ordered by courts. It can take literally a decade for them to eventually change the funding formula in ways that the court has said.

Without that, we would have a right in name only. We would have no way to push legislatures to act. Eventually, many courts have had to hold legislatures in contempt and say, no, you will provide a right to education. But that sometimes takes decades.

So there's a recent decision in Hoke County in North Carolina that gives you this same history. It shows where the court says, OK, we found there was a violation of right in 1997. In 2004, we declared that the state was in violation. 2022 is when the court comes back and says, come on, the state is not providing this. So it took this unprecedented action and said, we're going to order you to provide the money that the expert report says is needed for education.

It took that extraordinary measure because the legislature was not otherwise moving forward. It was making incremental changes, but not the kind of robust changes we need. We have a fundamentally broken education system in far too many states. And we need a robust change. We don't need incremental change. We should really, frankly, all be in the streets protesting how bad our schools are.

I feel like we need something close to what we had for the Civil Rights movement, where there is daily coverage about how bad the schools are. And only then will we get our legislatures to act.

And then the other reason it's really important is because those who do not have a high-quality education now, who are educated in low-quality schools, they lack the political clout, influence, and, frankly, dollars to push legislatures to act on their behalf and to push against those who benefit from the current system. So the education that they are denied is the very thing that is keeping them from prevailing in state legislatures. And so because of that, we're not going to move forward unless we give aid by having the courts get involved.

SPEAKER:

Again, I invite you to raise your hand. I will keep asking questions until someone tells me to shut up. So this gets to-- so I have numerous questions after this. One of which is, is the federal government a reliable partner in this? And is Congress a reliable partner if it keeps-- if the presidency keeps switching hands, if the Congress keeps flipping? We're a very closely divided country. Should we be a little nervous about putting our eggs in federal money basket?

KIMBERLY ROBINSON:

Yeah, that's a great question. So here's the good news in our deeply divided nation at this time. There is great consensus around the desire and the interest of students having a high-quality education. So as mentioned earlier the No Child Left Behind Act, which was ushered through Congress by a Republican president, President Bush, it was the largest increase in the federal role in education since the Elementary and Secondary Education Act.

And why did that happen? It happened because there is political consensus that we need a high-quality education for every child. So the federal government is not a perfectly reliable partner, but they do have a superior track record on issues of equity and education than the states do at the moment. And, frankly, it's the best actor that we have available to move this issue forward.

But you're absolutely right. That doesn't mean it's a panacea for moving the issue forward. It's simply we need a better system and a better mechanism than we currently have to move the issue forward.

SPEAKER:

So let me ask you a question about-- because the DeKalb example was quite interesting. And you noted that looked like a suburban style school, not a traditional urban center school. You mentioned it wasn't necessarily high poverty. And so this raises a question for me, which is-- and I've seen this myself in Charlottesville and in the Albemarle County area, which again there's some poverty there, obviously in the Charlottesville schools, but generally decently funded.

There doesn't seem to be-- and this goes to the political question-- there doesn't seem to be a ton of support even in suburban school districts for fully funding schools, for replacing aging infrastructure, for actually paying teachers well. And that seems weird, right? It seems like we've seen this as, well, this is an inner city school problem versus the suburban schools. And people are buying good suburban schools and that's what they want.

But what we're seeing is declining quality in those schools too. Am I right about that? And what do you attribute that kind of weird-- that political story of declining investment in schools across the board it seems like?

KIMBERLY ROBINSON:

So I think-- so that's a great question. I think there's several things happening. So one, I just want to first address the divide you were saying between the suburbs and more urban students. So one of the reasons we have the current system that we have is because we have-- in American society, many times when we're focused on school funding there's an us versus them mentality.

In other words, we don't really want to invest in urban youth or those children. We want to have the resources for our children. So that is certainly one of the chief weaknesses of our education system. And that is driving some of the inequity that we see in the schools.

But in terms of what's happening also in the suburbs, so that was actually why I specifically chose that example was, this shows this is not just an urban city problem. I think part of what we have is a bit of complacency about-- which I think is driven in part by American exceptionalism. My husband referenced that earlier, American exceptionalism.

We have this belief that we have strong schools in the United States. And people don't know how bad it is, which is exactly what that dad said. He's like, I didn't know how bad it was until the students basically videoed how bad it was. And so one of the things is I think there's a complacency because they don't fully understand what's happening.

So, for example, just up the street, Charlottesville High School classmates who our kids know said, hey, we've seen large water-bottle sized rats go down the hall on a regular basis. That is not the conditions in which we should be educating our students. If we had rats running through this room, you guys would be quite distracted trying to keep your feet up so that we could have the conversation. Of course, young children are too.

So what we see is we don't really recognize the harm in what we're providing kids today. I think people have a lot of misplaced trust in what we're providing. And so we need a closer examination of what's being offered that brings it from inside the building out into the public light, so that people see, wait, is that what we're giving our kids?

And I will say the pandemic helped with that. So the pandemic, when it brought teaching to many living rooms and helped parents really see some of the things that were being taught and other things, parents started to say, wait a minute, is this what's happening in school? Now granted, teachers were not being given the same resources they had in the classroom. So it was a limited view of that.

But I feel like, really, what one thing that I am seeing, because they called me and asked me what they can do, is parent organized groups, who are saying, this education system is not working for us. What can we do? And so there is a growing movement to recognize that we have schools that are failing and that we need to do something different.

I think you have--

SPEAKER:

Yeah, some questions-- a question here and then there. Go ahead, Kale. I just will mention my son is a junior at Charlottesville High School and my daughter is a graduate. They've never mentioned the rats, but they have mentioned other things. And just to reflect, this is a progressive--

KIMBERLY ROBINSON:

Right, exactly.

SPEAKER:

--more wealthy community, or getting wealthier, and has been over the last two decades. And yet, there are similar structural problems in the schools here.

KIMBERLY ROBINSON:

Absolutely.

SPEAKER:

It's a small school district. It's a diverse school district. That's interesting, that you can't get the political energy even in that-- or the complacency is-- and part of that is not everybody has kids in the schools. And they only have them there for a short time. So you have to get the people who don't have kids in schools to have an incentive to invest in those. And that's politically tricky, it turns out. Anyway, sorry. Kale, go ahead.

AUDIENCE:

Yeah, I loved your talk. I'm excited to pick up [INAUDIBLE]. I find the language of rights really interesting. And I'm curious because so often the language of rights in a case it's used in a conservative context, it's the right to school choice, or the right to homeschool your children, or even the most recently, parental rights in education.

And so I'm wondering we often think of that as oppositional to the right to quality public education. But might there be some opportunity for some unusual allies in elevating the concept of rights in K through 12 education writ large, whichever path you end up choosing?

KIMBERLY ROBINSON:

Yeah, that's a great question. So the use of rights today in focusing on parental rights, there has-- the Supreme Court has recognized the right of parents to direct the education of their child in *Pierce versus Society of Sisters*. So parents do have the right to direct the education of their child. They don't-- and that's a complex web of legal protections that's provided.

But I think it's important to recognize that the use of rights today is just one way that rights have been used. We recognized a right to end separate and unequal education in *Brown versus Board of Education*. Rights very much are used as a leverage to help individuals address the overreach of government many times.

And so the panoply of rights that we have is broad. And rights should be understood as a tool that can be used for good. And it can be used to divide. And I do think that common instinct that all children should have a high-quality education is something that can unite us to push this issue forward, even as our states maintain that experimentation of how the delivery mechanism will look.

So I think that is a very fruitful partnership. And I can tell you on this legislation that is being proposed to recognize the right to education, they are seeking bipartisan support. It is not just liberal Democrats seeking to recognize a high-quality education. If you ask most parents of any political persuasion whatsoever, would you like your child to be guaranteed a high-quality education? The overwhelming answer is yes.

Now you start to get divide on what mechanisms should be used to enforce that. That's a different question. Or what does that entail? Does that include any number of different mechanisms. But that basic fundamental foundation for our society, we don't have that yet. And I think we can get bipartisan support to push for a high-quality education.

The delivery mechanisms, I think that is where federalism will be beneficial of allowing different delivery mechanisms to flourish. And I think that is fine, as long as there's some kind of umbrella under them.

No, you're calling--

SPEAKER:

Yeah, so there's a question over here. Yeah.

AUDIENCE:

So my question is related. It is to get your view on just the federal right to education is specifically a right to a public education. And if so, why would that would be the case, given there was no public school system for the first century of our nation's existence. And given the fact that for a century, parents have had a well-recognized right to direct education for their children. I think you partially addressed some of that already.

KIMBERLY ROBINSON:

Yeah, so here I'm going to just point to the wonderful scholarship of my colleague, Derek Black, who has written a great article about the constitutional compromise that led to Southern states reentering the Union. And what he explains brilliantly in his article, as his articles always are, explains that the compromise for when they were allowing the states back into the Union, after the end of the Civil War, guaranteeing public education was understood to be something that was recognized through the Constitution.

But because there was such consensus that education was fundamental to our democracy and our Union, the fight actually at the time was to-- the mechanism they used was that the states were recognizing public education in the state constitutions when they re-entered the Union. But they did not decide to recognize it in the federal Constitution because there was widespread consensus that education was going to be guaranteed and guaranteed by the states.

And so to re-enter the Union, you had to-- it was insisted upon that they recognize education in the state Constitution. And even in Virginia, that was specifically legislation that required them to do so. And so because of that, the actual fight at the time was actually on voting rights. And so we got the 15th Amendment because it was contested that the right to vote was going to be protected at the constitutional level. But education was understood to be fundamental to having our Union re-united.

And so, unfortunately, that consensus led to-- I feel like-- looking back-- a little bit of complacency. And not just stating these are the values we hold dear. Education should be a foundational right within our society. Instead, we kept it within state constitutions. But it is meant to have ultimately a protection under the federal Constitution.

SPEAKER:

Here you go.

AUDIENCE:

You mentioned that schools with low funding generally are lacking in the education that could provide some [INAUDIBLE] information for civil advocacy. How are individual educators supposed to combat this when we're having to [INAUDIBLE] schools, and books, et cetera.

KIMBERLY ROBINSON:

Yeah, so educators can be a powerful voice in the debate. So one thing is just helping students-- one of the things that Martha Minow points out in this forward to my book is there's a low percentage of the United States who just understands the three levels of government, who can name the three branches of government.

Every once in a while, I actually pop quiz our kids, like tell me the three branches of government. Because you can never fail that question. You just have to know that. And they're like, yeah, mom, we got it. We got the three branches down.

So I say that to say teachers, in providing that foundational civic knowledge of how our system works, are really critical. Because one of the things that has happened because of the standards and accountability movement is we have shifted our educational focus to reading, and math, and science, and away from civic education. And the harm that that has done-- that's not because reading and science and math aren't super important.

They are foundational to being college and career ready. But we also need civic education to make sure that students understand not just the three branches of government, but our peaceful transition of power, our understanding-- an understanding of how citizens are empowered to hold democratically elected leaders accountable, the mechanisms they have for change. And so teachers are critical in providing the foundational knowledge and skills to create eventual citizens who will start to demand these things. Yeah.

SPEAKER:

Immediately behind, go ahead.

AUDIENCE:

Yeah, thank you. I'm wondering how if we recognize a federal right to education, how that interacts with certain school [INAUDIBLE] programs. Are you thinking about vouchers? Are you thinking about [INAUDIBLE] and funding that they could use to go to private schools to get tutoring services.

Like, is there some sort of accountability that's necessary to make sure that if they're getting the state money in the form of like a voucher, they're still getting a basic right to an education that they would be getting in a public school? Or is the state able to say, we gave you \$1,000 and [INAUDIBLE] We don't care [INAUDIBLE].

KIMBERLY ROBINSON:

Yeah, so this is a great question. I have to say, when you asked this question, I'm thinking that sounds like a great *Law Review* article. What would-- what would school choice-- how would school choice operate within the realm of a federal right to education?

So honestly, that's a complex question that I would have to sit down and map out. I can tell you, I do think that a right to a high-quality education, a federal right, can coexist with school choice. In other words, the recognition that there's a floor of quality is something that does not prevent school choice programs, whether it's charters schools or vouchers, from existing. It merely would set a baseline for it.

The question that you raised, which I think is an insightful one, is would that establish some floor for private schools? Would it establish a floor particularly for religious schools? And that would ultimately be litigated if there was a right to education. In other words, if students in private schools said, we're choosing private education, but it's below the high-quality education that's guaranteed in the public schools, would they have some right?

I think a lot of courts might say, well, you can exit the system and return to the public schools. I think it would be hard to say that you're going to then move that right into the private realm. I think that would be very unlikely that any kind of floor that's established would be applied to federal-- to choice schools. In part, because you can always exit. So I think that-- so that's my preliminary answer. But I think it would be a fascinating article to examine those legal issues. That's my geeky scholar side answer. So, yeah.

SPEAKER:

Yeah, other hands. We'll go here.

AUDIENCE:

Yeah, so, earlier you kind of [INAUDIBLE] this movement [INAUDIBLE] civil rights. [INAUDIBLE] social media and videos of [INAUDIBLE] quality of the class [INAUDIBLE] teacher quality or the teachers having [INAUDIBLE]

KIMBERLY ROBINSON:

Yeah, so I can tell you that is actually the job of both scholars and advocates, many of whom are in this room. Part of our job, and part of the work that I'm continuing with others, is to make the opportunity gap, the educational opportunity gaps understood by the public. To digest what can be lengthy studies and lengthy *Law Review* articles and other things, into media clips, into helping students, helping the public understand those issues.

And that is actually something that people are-- many other scholars work on, and I am actually turning my attention to more and more, is that so we understand that these opportunity gaps exist, but many people, the studies show, don't that they exist. There's one poll, not too long ago, that said 81% of white parents think that children of color get the same education as their children. And that is just factually inaccurate.

And so if you look-- in many instances-- it's not-- I'm talking nationwide. It doesn't mean in any one particular school, but I'm saying if you look writ large, that's not true that overall they get the same education.

And so bringing those facts to bear and to light is something that is the work of scholars and advocates, and any of you, who can help to push that fight to help people understand these disparities. Yeah.

SPEAKER:

Yes.

AUDIENCE:

[INAUDIBLE] I noticed that [INAUDIBLE] didn't necessarily [INAUDIBLE] those states who haven't [INAUDIBLE] So I'm just wondering how we should think about the fact that success or failure [INAUDIBLE] state level to not necessarily [INAUDIBLE] funding and whether that should inform [INAUDIBLE]

KIMBERLY ROBINSON:

Yeah, this is a great question. So one of the challenges of showing a table like that is that it's a snapshot. It just gives you one year. So I can tell you one of the difficulties with these school funding cases is when you do finally push the legislature to act, you often do see real change.

So, for example, one of the states that has had successful litigation for some time is New Jersey. They generally-- if you look at the school funding distribution, favorably show that they are investing in low-income communities. That is directly a result of their litigation.

So what you see is, sometimes this litigation, you see a significant movement for some time. But then the deep roots of the system are to favor wealthier families. And so the system, unless you keep applying pressure, reverts back to its origins. And so one of the reasons we need a consistent federal right is to have a mechanism to continue to hold states' feet to the fire, that they have to provide a high-quality education for all students.

In other words, the state court litigation, what we've learned is that once the courts release jurisdiction, you often see a regression of the steps that they've made. So what you-- it would be much more complicated than I could do in a presentation like this. But what you would want to do is take each state, track the litigation and the dates, and see how things have changed.

You do see change, real movement-- and research confirms that-- when you have school funding victories. The question is how long, and how broad, and wide are they? And that is actually deeply contested. And one of the reasons we need a floor to litigate-- that litigation will likely continue, but it's just not going to go-- we have a rotten floor right now. It's trying to raise the floor. And then that litigation might continue above that, but at least we wouldn't have the rotting, moldy floor.

SPEAKER:

You.

KIMBERLY ROBINSON:

One last question.

SPEAKER:

Go ahead. OK.

AUDIENCE:

Yeah. To add to the [INAUDIBLE] talk about all these state court decisions are only as good as enforcement, and as we look for a federal role, do you see a way that the federal government can get involved in actually enforcing the actions that these state courts do, or do you see federalism issues with that [INAUDIBLE]?

KIMBERLY ROBINSON:

I think it's unlikely that the current court would permit state federal courts to help enforce state court judgment. I just think that the federalism issues would be too broad. I think this current court would strike that down if a federal court tried to do it. If we had a different Supreme Court, I think could argue for some equal protection rights that could help to enforce the state requirements. In other words, the federal government is not setting-- this is, again, one of Derek's arguments-- Derek Black's arguments.

The federal government's not setting the floor. They're just saying once the state sets a floor, equal protection requires you to enforce that floor. However, our current court is quite right of center. And so I would be interested to see such a case before the court now, to say would that prevail. I feel like where we are now, we don't really want much of this to get into the hands of our current court, whatever theory it is for our federal right to education.

SPEAKER:

So, we're out of time. But thank you, Professor Robinson. This was excellent.

[APPLAUSE]