

A Human and Constitutional Right to a Quality Public Education: Looking ahead in the Struggle for the Rights of Teachers, Parents, and Students

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I. Introduction

During the past few years, public sector unions have engaged in innovative organizing strategies that go far beyond the traditional demands of a union contract fight: wages, benefits, grievance process, and the like. Drawing on these efforts, and following the teacher strikes and protests of 2018, the United Teachers of Los Angeles (UTLA) strike exemplified this significant shift in union strategies that holds profound implications for the future of organized labor and the relationship of unions to working-class communities.

From the traditional labor dispute framework, some may conclude that the UTLA strike was a failure because it did not add any worker benefits beyond a six-percent raise for teachers, which the LA School Board had offered prior to the walkout. But the strike was indeed a major win because UTLA fought hard and won concessions that went far beyond salary and benefits. UTLA organizers framed their negotiating strategy from a position of “bargaining for the common good” to build power across a diverse constituency group.^[1] Through building strong community coalitions over the course of many years and implementing innovative tactics, UTLA secured major gains for public education and working-class families in Los Angeles. UTLA and their community partners won a significant commitment from the school district to reduce class sizes by four students by 2021, increase resources for public schools, instate full-time nurses and librarians for each school, decrease standardized testing and eliminate random searches of students, and create a hotline for immigrant families seeking assistance. The contract also included impressive memoranda of understanding with budgets to implement a community school program, increased school green space, and charter school co-location monitoring.^[2]

The union succeeded in shaping the message from the picket lines and protests. Part of that message was in sync with the nationwide Red-for-Ed movement,^[3] which in 2018 swept across West Virginia, Oklahoma and Arizona. They publicized how much teachers are underpaid and struggle to survive economically. They also revealed the broad public support for education.

The Los Angeles strike also raised the volume on complaints about charter schools. Teachers unions were effective at educating the public and lawmakers about the impact of charter schools on public education and how they take away significant resources from local and state budgets. As with many issues, from immigration to climate change, California is now leading the way in the national dialogue about public education. In recent times, the state has become the battlefield between teachers’ unions and public education advocates versus the supporters and champions of charter schools. California has more charter schools and more students enrolled in them than any other state. Twenty percent of the students who live within Los Angeles Unified School District’s boundaries attend the city’s 249 charter schools.

In this article we propose two arguments as this newly energized movement for “bargaining for the common good” for a quality public education moves forward. First, we will lay out a case on why it is important to begin looking at this movement from the perspective of the Universal Declaration of Human Rights. Secondly, we will argue that because several states have created an implied right to a quality education in their respective constitutions, we must embrace this growing movement as an opportunity to revisit the legal argument of whether or not a right to a quality public education is embedded within the U.S. Constitution. While we are aware that these arguments would require significant legal and theoretical analysis, our hope is that this piece will spark an interest to continue to explore them.

II. Access to a Quality Public Education as a Human Right

The UTLA strike and other teacher strikes across the county have set the stage for educators, legal scholars, community organizers, and labor advocates to consider a critical position that has been overshadowed and little discussed: that of public education and teacher labor protections as human rights. It may serve us well to re-examine the Universal Declaration of Human Rights and its principles that set forth comprehensive global standards for the “inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.”[4] Article 26 of the Declaration speaks profoundly about education serving as the foundation for the “full development of the human personality” as well as the promotion of “understanding, tolerance and friendship among all nations, racial or religious groups and shall further the activities of the United Nations for the maintenance of peace.”[5] Moreover, in Article 23, the declaration clearly advances the right to just and favorable work conditions free from discrimination, the right to equal pay for equal work and the right to just and favorable remuneration as part of a universal social contract.[6] Finally, this article underscores the universal right to form and to join trade unions for the protection of workers’ interests.[7]

A framework of universal human rights offers educators, unions, and schools districts across the U.S. a distinct language that directly speaks to the experiences of the majority of urban public school learners and their families: first- and second-generation immigrants, largely from Latinx backgrounds, African Americans, and other historically marginalized communities of color. Many of these households are familiar with universal human rights doctrines from direct experiences in their countries of origin or through other civil and social struggles they have participated in. An alternative discourse that addresses the universal right to quality public education investments and dignified conditions for teachers and students could amplify the “bargaining for a common good” strategy. Given the growing economic and racial segregation and ever fewer school resources available in poor urban public schools today, parents, teachers and youth can build progressive agendas, connections and solidarity across global issues like quality public school justice for all.[8] In addition to our local efforts to support all school children’s right to a quality public education, we should consider bringing in a universal human rights perspective along with its important history to further shift the current debate.

Since education is not specifically mentioned in the U.S. Constitution as a right or a power of the federal government, Congress leaves this authority directly to individual states and to the people. These powers present critical opportunities to compliment the strategy set out by many organizations around bargaining for the common good. Currently, the federal government allocates approximately 8 to 9 percent of its budget toward K-12 support nationally, with the 1965 enactment of the Elementary and Secondary Education Act (ESEA) directing specific funding to low-income families, school materials and professional development.[9] State governments, on the other hand, contribute the majority of public funds at an average of 45 percent of school budgets.[10] The rest of public school funding comes from local governments. As we know from the flurry of reports and media coverage, states, like California, have dramatically reduced their per pupil spending over the decades. Much of this disparity in funding is linked to the structure of states’ school finance systems. A recent EdBuild report estimated a \$23 billion spending gap between majority white and majority student of color schools.[11] This funding inequality is at the heart of what teachers and parents are fighting for. Without a well-funded school district that provides quality public education for every student, not just to those schools that have a more favorable tax-base, student achievement will continue to decline.[12]

The principles that the Universal Declaration of Human Rights and the international right to an education activism espouse offer the evolving U.S. public education movement powerful tools to challenge these inequitable structures.[13] At the same time, this human rights lens provides socially and culturally relevant models to continue to organize and develop leaders amongst the current demographic of school-based parents and youth.

III. Right to a Quality Public Education under the U.S. and State Constitutions

The teachers strike during the past two years highlight the discontent and frustrations with how state governments have violated their state constitutions by disinvesting in their respective public education systems. Teachers have been stepping up to challenge state legislatures that have been neglecting their duty to comply with the right to education embedded in their state constitutions.

The absence of an explicit right to education in the Constitution is a result of the country’s system of federalism. Public

schooling is not in the domain of the federal government, but rather of the states. This decentralized approach has its benefits with local governments having control over their local schools and parents having better access to influence local policies than they could on a national level. One consequence, however, is that school funding has varied greatly from state to state and region to region, with the pupils who have the greatest need getting the least. A child's zip code has become the criteria of the quality of her schooling.

Many people assume the Supreme Court found a federal right to education in *Brown v. Board of Education*.^[14] The Supreme Court majority in this historic decision never held that all students had a right to an education. It held only that where a state makes public education available, it cannot withhold access to education based on race. Further, the Court did suggest the possibility of an individual right to an education, stating:

Education is perhaps the most important function of state and local governments . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.^[15]

In *San Antonio Independent School District v. Rodriguez*,^[16] a group of low-income, largely Latino parents from the San Antonio, Texas area argued that the glaring disparities in the funding of their school district versus that of the wealthy, predominantly white community nearby amounted to an infringement on their equal-protection rights under the Constitution. In a contentious 5–4 decision, the Court in *Rodriguez* ruled that the equal protection clause couldn't be used to challenge school financing formulas. The Court struck down the case, arguing that education was not a guaranteed, fundamental right under the U.S. constitution and that Texas's school finance system did not violate any protected rights. According to legal scholars, the high court has since avoided educational rights cases altogether. Since then, the legal battles over school funding have shifted to state courts.

All fifty state constitutions entitle children to a quality education. For decades, many state courts enforced that right, striking down school funding schemes as inequitable and inadequate. Today, educational equity is the most active area of litigation regarding state constitutions in state courts. Such suits have been brought in pretty much every state, more than half of which—60 percent—have resulted in a finding that there is a right to a high-quality education under the respective state constitution. In *Campaign for Fiscal Equity v. State of New York*,^[17] for example, plaintiffs successfully argued that in underfunding New York City's schools, the state's school-spending system had been denying New York City children their right to a "sound, basic education," which the New York Court of Appeals said was guaranteed by the state's constitution.

During the Great Recession, many states used strained budgets and economic decline as the justification to cut spending on public education. We are still feeling the devastating effects of these policy decisions today. General funding per student remains below pre-2008 levels in at least twelve states. In total, twenty-nine states provided less overall state funding per student in 2015 than in 2008. California was in a similar situation in 2015 with state school funding down 11 percent. The majority of state courts have opted to retreat by deferring to their state legislatures to devise a remedy. The constitutional right to education in many states has thus become unenforceable in a court of law. Amid this crisis of judicial confidence, striking teachers have appealed directly to the court of last resort: the court of public opinion.

The #55 United movement in West Virginia transformed into an empowering pro-education crusade that spread to Oklahoma, Kentucky, and beyond. Teachers went beyond fighting for better wages and benefits. These teacher-led public campaigns attempted to vindicate the constitutional rights of children in perhaps the only viable forum left. The West Virginia teacher strike proves that strategy can work. What teachers in West Virginia and Oklahoma accomplished in a matter of days might have taken years of protracted litigation for a court to order, only then to be resisted at every turn by the legislature. The battleground is now with local governments and statewide legislatures. We also need to for state courts to re-engage in this struggle. Most importantly, however, we need teachers, parents and students to continue to rise up and demand compliance with the state constitutional right to an education.

Although the U.S. Supreme Court has not yet recognized a federal constitutional right to an education, there are some theoretical arguments to be made for one. There are Equal Protection Clause arguments relating to providing less than

a quality education for a particular group of students compared to others. Another theory may be arguing for the implied constitutional right to an education within the framework of explicit constitutional rights. For example, how can people meaningfully exercise their First Amendment rights to free speech and association unless they have sufficient education to understand issues and gather information independently?[18]

Although these arguments have yet to prevail with the Supreme Court, the crisis with our public education system today mandates that we continue to push ahead with them. After all, the Fourteenth Amendment guarantees the rights of citizenship. It is worth arguing that since individuals need a minimal level of education to be effective citizens, this benefit should be recognized as a federal right.[19]

IV. Conclusion

The UTLA teachers' strike last January followed many others around the country during the previous year. In February 2018, roughly 20,000 teachers in all of West Virginia's fifty-five counties walked out. Teachers in Oklahoma boycotted their classrooms. Kentucky's educators staged their own strike in early April, as did their counterparts in Arizona a few weeks later. Later, a one-day rally by teachers in North Carolina forced numerous school districts to cancel classes. And last December, unionized educators in one of Chicago's largest networks of charter schools walked off the job—the first strike of its kind in the country's history. These strikes collectively created a large unprecedented wave of teacher activism. Over the past several decades up to this time, instances of teachers going on strike have been sporadic and rare. Arguably, this has not happened since 1968, when large-scale walkouts occurred in Florida, Pennsylvania, Oklahoma, and New York City, along with smaller-scale ones in cities such as Cincinnati and Albuquerque.[20]

The six-day UTLA labor action already has had an impact beyond Southern California, one that is only expected to grow. It brought to the forefront a critical public conversation about how education is paid for and the impact of charter schools on struggling districts. The strike sparked a debate about the deteriorating conditions in overcrowded classrooms and why we all need to provide resources for teachers and students. Aside from sparking renewed energy in the fight for a quality public education throughout the country, the UTLA strike opened the doors to new perspectives about the path forward. In this piece, we present what we perceive as two innovative path forwards in taking on this important issue. By discussing the fight for a quality public education through the framework of the Universal Declaration of Human Rights and the U.S. Constitution, we hope to influence other scholars and activists to expand our analysis and foster new approaches. The opportunity is now to create new innovations and bring justice into the classroom for our teachers, parents and students.

[1] Betty Hung & Kent Wong, *Bargaining for the Common Good: An Analysis of the Los Angeles Teachers' Strike*, UCLA Inst. for Res. on Lab. and Emp. (Mar. 1, 2019), <https://irle.ucla.edu/2019/03/01/bargaining-for-the-common-good-an-analysis-of-the-los-angeles-teachers-strike/>[<https://perma.cc/PSF6-7Y2Y>].

[2] Reclaim Our Schools LA., *Building the Power to Reclaim Our Schools* (July, 2019), http://reclaimourschoolsla.org/wp-content/uploads/2019/07/0719-Reclaim-our-Schools-Case-Study.Report-pg_p-002.pdf[<https://perma.cc/NPQ8-VQJT>].

[3] Howard Blume & Sonali Kohli, *The Nation's Wave of Teacher Strikes May Hit L.A. This Week. But Here's How Ours is Different*, L.A. Times (Jan. 6, 2019), <https://www.latimes.com/local/education/la-me-edu-los-angeles-teachers-strike-national-context-20190106-story.html>[<https://perma.cc/K432-LEVV>].

[4] G.A. Res. 217 (III) A, Universal Declaration of Human Rights, (Dec. 10, 1948).

[5] *Id.* art. 26.

[6] *Id.* art. 23.

[7] *Id.*

[8] Jane Boschma & Ronald Brownstein, *The Concentration of Poverty in American Schools*, Atlantic (Feb. 29, 2016), <https://www.theatlantic.com/education/archive/2016/02/concentration-poverty-american->

[9]Michael Leachman, Kathleen Masterson & Eric Figueroa, A *Punishing Decade for School Funding*, Ctr. on Budget Pol'y and Priorities(Nov. 29, 2017),<https://www.cbpp.org/research/state-budget-and-tax/a-punishing-decade-for-school-funding>[\[https://perma.cc/6UM8-KKLT\]](https://perma.cc/6UM8-KKLT); *10 Facts About K-12 Education*, U.S. Dept of Educ.,<https://www2.ed.gov/about/overview/fed/10facts/index.html>[\[https://perma.cc/A4RK-A8WB\]](https://perma.cc/A4RK-A8WB).

[10]*Nonwhite School Districts Get \$23 Billion Less than White Districts Despite Serving the Same Number of Students*, EdBuild , <https://edbuild.org/content/23-billion>[\[https://perma.cc/PT2J-6HT2\]](https://perma.cc/PT2J-6HT2).

[11]*Id.* See Clare Lombardo, *Why White School Districts Have So Much More Money*, NPR (Feb. 26, 2019), <https://www.npr.org/2019/02/26/696794821/why-white-school-districts-have-so-much-more-money>[\[https://perma.cc/FU8R-QH9Y\]](https://perma.cc/FU8R-QH9Y); Carmel Martin, et al., *A Quality Approach to School Funding*, Center for American Progress(Nov. 13, 2018), <https://www.americanprogress.org/issues/education-k-12/reports/2018/11/13/460397/quality-approach-school-funding/>[\[https://perma.cc/KW8E-ZANP\]](https://perma.cc/KW8E-ZANP).

[12]Jesse Rothstein, et al., *Can School Finance Reforms Improve Student Achievement?*, Washington Center for Equitable Growth(Mar. 16, 2016), <https://equitablegrowth.org/can-school-finance-reforms-improve-student-achievement/>[\[https://perma.cc/VQG3-FD3A\]](https://perma.cc/VQG3-FD3A).

[13]Right to Educ., *Understanding Education as a Right*(2018), <https://www.right-to-education.org/page/understanding-education-right>[\[https://perma.cc/2R9E-GHFB\]](https://perma.cc/2R9E-GHFB).

[14]347 U.S. 483 (1954).

[15]*Id.* at 493.

[16]411 U.S. 1 (1973).

[17]801 N.E.2d 326 (N.Y. 2003).

[18]Julie Underwood, *Education as An American Right?*, Under the Law(Jan. 22, 2018), <https://www.kapponline.org/underwood-education-american-right/>[\[https://perma.cc/5JEF-FCLG\]](https://perma.cc/5JEF-FCLG).

[19]*Id.*

[20]Zachary B. Wolf, *Why Teacher Strikes Are Touching Every Part of America*, CNN Politics (Feb. 23, 2019), <https://www.cnn.com/2019/02/23/politics/teacher-strikes-politics/index.html>[\[https://perma.cc/2DXX-PKBG\]](https://perma.cc/2DXX-PKBG).

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