

EDUCATION-AS-INHERITANCE CROWDS OUT EDUCATION-AS-OPPORTUNITY

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INTRODUCTION

“Whereas of old, wealth transmission from parents to children tended to center upon major items of patrimony such as the family farm or the family firm, today for the broad middle classes, wealth transmission centers on a radically different kind of asset: *the investment in skills.*”

John H. Langbein¹

In today’s knowledge economy,² education and economic well-being are linked. Over the past half-century, the average inflation-adjusted income has risen by about 50% for those with a four-year college degree and by about 80% for those with a professional or graduate degree.³ Over the same period, in contrast, incomes for those with a high school degree or less have remained relatively constant.⁴ Currently, the average earnings premium for having a four-year college degree is almost \$20,000 annually.⁵

Education is also linked to social mobility. While most adult children’s income exceeds their parents’ income in absolute terms, the children’s success

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1. John H. Langbein, *The Twentieth-Century Revolution in Family Wealth Transmission*, 86 MICH. L. REV. 722, 723 (1988).

2. Lester C. Thurow, *Globalization: The Product of a Knowledge-Based Economy*, 570 ANNALS AM. ACAD. POL. & SOC. SCI. 19, 20 (2000).

3. Ron Haskins, *Education and Economic Mobility*, in GETTING AHEAD OR LOSING GROUND: ECONOMIC MOBILITY IN AMERICA 91, 91 & fig.1 (2008) [hereinafter Haskins, *Education*], available at http://www.brookings.edu/~media/research/files/reports/2008/2/economic%20mobility%20sawhill/02_economic_mobility_sawhill.pdf.

4. *See id.*

5. *College Graduation: Weighing the Cost . . . and the Payoff*, PEW RES. CTR. (May 17, 2012), <http://www.pewresearch.org/2012/05/17/college-graduation-weighing-the-cost-and-the-payoff/> [hereinafter *Weighing the Cost*].

is significantly greater if they earn a college degree.⁶ With education, children can rise out of poverty. For children from the bottom quintile of parental income, only 10% of those with a college degree remain there as adults, while 47% of non-college-graduates do so.⁷ At the other end of the socioeconomic spectrum, well-off children who acquire an education are more likely to remain so as adults. For children from the top parental quintile, 51% remain there as adults if they earn a college degree, but only 25% remain if they do not.⁸ Educational attainment has a significant buoyant effect on children's prospects; lack of education weights children's progress.

We in the United States value equal opportunity and the social mobility of democracy.⁹ Our law provides individuals with opportunities to develop the human capital that will help them attain success. Education, perhaps the preeminent means to this end, has been an articulated good since the nation's founding.¹⁰ Our law embodies this value in the provision of public education: All fifty states provide for free universal public education in their state constitutions,¹¹ and all fifty states provide and subsidize higher education.¹²

At the same time that we value opportunity and mobility, however, we also value private property rights, including the right to direct one's property at death: "freedom of testation." With a few exceptions, notably certain protections for spouses,¹³ testators are free to leave their property as they wish.¹⁴ And, although parent-testators may generally exclude their children

6. PEW CHARITABLE TRUSTS, PURSUING THE AMERICAN DREAM: ECONOMIC MOBILITY ACROSS GENERATIONS 23 (July 2012), available at http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/economic_mobility/PursuingAmericanDreampdf.pdf.

7. *Id.* at 25.

8. *Id.*

9. Robert K. Miller, Jr. & Stephen J. McNamee, *The Inheritance of Wealth in America*, in INHERITANCE AND WEALTH IN AMERICA 1, 1 (Robert K. Miller, Jr. & Stephen J. McNamee eds., 1998).

10. Palma Joy Strand, *Is Brown Holding Us Back? Moving Forward, Six Decades Later; Visionary States, Civic Locals, and Trusted Schools and Teachers*, 23 KAN. J.L. & PUB. POL'Y 283, 298 (2013) [hereinafter Strand, *Brown*].

11. Molly A. Hunter, *State Constitution Education Clause Language*, EDUC. LAW CTR. (Nov. 1, 2014, 11:44 PM), <http://pabarcr.org/pdf/Molly%20Hunter%20Article.pdf>.

12. CAROLYN WALLER ET AL., GOVERNANCE AND COORDINATION OF PUBLIC HIGHER EDUCATION IN ALL 50 STATES, at vii–xi (2000), available at <http://www.nccppr.org/drupal/content/researchreport/121/governance-and-coordination-of-public-higher-education-in-all-50-states> (follow "Governance and Coordination of Public Higher Education in All 50 States" hyperlink).

13. See, e.g., JESSE DUKEMINIER & ROBERT SITKOFF, WILLS, TRUSTS, AND ESTATES 511–49 (9th ed. 2013) (discussing restrictions on freedom of disposition as a means of protecting surviving spouses).

14. Palma Joy Strand, *Inheriting Inequality: Wealth, Race, and the Laws of Succession*, 89 OR. L. REV. 453, 464 (2010) [hereinafter Strand, *Inheriting Inequality*].

from inheriting their property as a legal matter,¹⁵ most parents, in fact, pass their property to their immediate families.¹⁶ Our facially neutral inheritance laws thus operate to reproduce our social system over time,¹⁷ which means that historical distributions of wealth and patterns of inequality persist.¹⁸

A generation ago, Professor John Langbein diagnosed a shift in the predominant mode of transmission of middle-class family wealth from one generation to the next. Overall, he asserted, wealth no longer passes to the next generation primarily at death; instead, it passes while the older generation is still alive via two main avenues.¹⁹ In this Article, I examine Langbein's first avenue—intergenerational wealth transmission in the form of parents investing in their children's human capital by paying for their education—through a critical lens. My primary inquiry is whether education-as-inheritance undermines, or “crowds out,” education-as-opportunity.

From a societal perspective, education has traditionally operated—or been seen as operating—to create opportunity. In this view, education engenders less rather than more rigidity in the existing socioeconomic hierarchy. If this understanding of the role of education is misconceived or if the role has changed, then that is an important issue to acknowledge, consider, and address via public policy initiatives.

In Part I, I assess the validity of Langbein's observation that education is an important mode of wealth transmission and find substantial support for his conclusion. In Part II, I approach the question from another perspective, access to quality education, and find significant disparities depending on the socioeconomic status of a child's family of origin. Finally, in Part III, I identify progressive investment in public education as a crucial strategy for countering

15. J. Thomas Oldham, *What Does the U.S. System Regarding Inheritance Rights of Children Reveal About American Families?*, 33 FAM. L.Q. 265, 266 (1999). The exception is Louisiana, a civil code jurisdiction. *Id.* at 266–67. See also DUKEMINIER & SITKOFF, *supra* note 13, at 556–57.

16. Strand, *Inheriting Inequality*, *supra* note 14, at 465.

17. Lawrence M. Friedman, *The Law of Succession in Social Perspective*, in DEATH, TAXES AND FAMILY PROPERTY: ESSAYS AND AMERICAN ASSEMBLY REPORT 9, 14 (Edward C. Halbach Jr. ed., 1977)

18. See Strand, *Inheriting Inequality*, *supra* note 14, at 461–68, 473–77 (describing how current racial wealth disparities resulting from centuries of economic discrimination are reinforced by intergenerational wealth transmission and how historical distributions of wealth persist due to direct wealth transmission in the form of inheritance).

19. Langbein, *supra* note 1, at 727–36, 739–46. Along with this shift, Langbein discerned a “serious decline” in “[t]he ancient field of trust-and-estate law,” and “the precipitous decline of the middle-class market.” *Id.* at 721, 751. Although there has been an enormous rise in the nonprobate transfer of property not requiring legal assistance, *id.* at 748–49, there has also been a shift to nonprobate transfers such as revocable trusts, which do call for the participation of trusts-and-estate lawyers. My interest here, however, is not the effects of the shift Langbein described on the trust-and-estate bar but the sociological implications of the shift more broadly.

the wealth transmission effects of education and for increasing both equity in socioeconomic opportunity and overall social mobility.

I. LANGBEIN'S DIAGNOSIS: THE RISE OF EDUCATION-AS-INHERITANCE

A. *Intergenerational Wealth Transmission*

Langbein's overarching diagnosis was of a shift in the predominant mode by which middle-class wealth is transmitted to the next generation. According to Langbein, two distinct vehicles had come to enable *inter vivos* intergenerational wealth transfers. First, parents transmit wealth by investing in the development of their children's human capital, primarily through education.²⁰ Second, parents transmit wealth by providing for their own old age through pensions, which relieves their children of the economic burden of caring for them as they age: "In propertied families, today's elderly no longer expect much financial support from their children."²¹

Understanding Langbein's diagnosis starts with the relationship between wealth and income. Wealth and income are distinct but intertwined aspects of economic well-being. Income represents resources that arrive over time, frequently in the form of earnings. For most people, most income goes to meet living expenses. Unspent and saved income, however, gives rise to wealth. Wealth represents amassed resources that may generate income and that, importantly, provide an economic cushion to meet unexpected contingencies such as sickness or lost employment or a reserve to cover anticipated major expenditures such as a college education or the purchase of a home.²²

Framing Langbein's diagnosis in terms of wealth and income, one generation can transfer economic value to the next in various ways. Traditional bequests transfer either lump-sum wealth or wealth in the form of income streams from one generation to the next. Under Langbein's first alternative mode, parents can subsidize the development of their children's human capital by paying for the younger generation's education, which facilitates earning higher income and, in turn, greater ability to build wealth.²³ And under Langbein's second way of transmitting wealth, pensions or retirement savings, which represent income streams or income-generating wealth, both constitute an economic benefit conferred by a senior to a junior generation: If the senior

20. Langbein, *supra* note 1, at 730. See also YUVAL ELMELECH, TRANSMITTING INEQUALITY: WEALTH AND THE AMERICAN FAMILY 102 (2008) (75.5% of families strongly approve of parental investment in their children's education while only 20.4% of families strongly assert the importance of bequeathing property to their children).

21. Langbein, *supra* note 1, at 743.

22. Strand, *Inheriting Inequality*, *supra* note 14, at 458.

23. Langbein, *supra* note 1, at 730-33; CLAUDIA GOLDIN & LAWRENCE F. KATZ, THE RACE BETWEEN EDUCATION AND TECHNOLOGY 1-2 (2008).

generation funds its own care as its members age, the junior generation is relieved of paying for that care and experiences an increase in net income—and wealth. Langbein’s insight was that all of these constitute economic transfers from an older to a younger generation.

The second pension-related aspect of Langbein’s asserted shift has faded substantially since he proclaimed it. At the time Langbein was writing, most pensions were annuitized, which left little value on the death of the pensioner to be bequeathed in the traditional mode.²⁴ Over the past quarter-century, however, middle-class retirement wealth has migrated decisively away from defined-benefit (annuitized) pensions toward defined-contribution plans and lump-sum payments.²⁵ This latter type of pension wealth may well result in assets remaining at the death of the pensioned generation—assets that can and will pass via traditional inheritance.²⁶ Though increased longevity among the parents of the “Baby Boomer” generation (Boomers) may result in the Boomers not receiving traditional asset bequests until they are *older* than inheritance beneficiaries in the past,²⁷ the generation appears poised, contrary to Langbein’s second assertion, to inherit a substantial amount of wealth. One recent study, for example, estimates that two-thirds of all Boomers will eventually receive a bequest and that the total amount passing to that generation will be some \$8.4 trillion.²⁸

The first, education-related aspect of Langbein’s asserted shift in the mode of wealth transfer, however, merits additional exploration. With the economic significance of education and with increased longevity, intergenerational transmission of wealth through education has come to be of particular importance in terms of the actual conditions of people’s lives. Compare this lifetime effect of education with the effects of traditional inheritance and relief from financial responsibility for parents in their final years. The latter are certainly benefits, but as they are likely to accrue later in life, their effect on the receiving generation’s economic well-being may well be temporally limited. Further, while the tangible economic benefits of education are felt throughout life, education is not always identified or quantified as a wealth

24. Langbein, *supra* note 1, at 745–46.

25. Alicia H. Munnell et al., *The Impact of Defined Contribution Plans on Bequests*, in DEATH AND DOLLARS: THE ROLE OF GIFTS AND BEQUESTS IN AMERICA 265, 265, 268–72 (Alicia H. Munnell & Annika Sundén eds., 2003); CTR. FOR RET. RES., BOS. COLL., THE METLIFE STUDY OF INHERITANCE AND WEALTH TRANSFER TO BABY BOOMERS: A STUDY BY THE CENTER FOR RETIREMENT RESEARCH AT BOSTON COLLEGE FOR THE METLIFE MATURE MARKET INSTITUTE 14 (Dec. 2010) [hereinafter CENTER FOR RETIREMENT RESEARCH], available at <https://www.metlife.com/assets/cao/mmi/publications/studies/2010/mmi-inheritance-wealth-transfer-baby-boomers.pdf>.

26. Munnell et al., *supra* note 25, at 296.

27. CENTER FOR RETIREMENT RESEARCH, *supra* note 25, at 19.

28. *Id.* at 2, 5–6.

transfer.²⁹ Yet, with rising recognition of the societal effects of economic inequality³⁰ and the importance of intergenerational social mobility,³¹ a complete picture of the ways in which wealth is held and transmitted through generations becomes increasingly crucial.

B. *Intergenerational Elasticities*

When economists consider equality of economic opportunity or social mobility, they actually measure its opposite using an indicator called “intergenerational elasticity,” which refers to the degree to which the relative economic status of a child reflects the relative economic status of his or her parents.³² When intergenerational elasticity is relatively *high*, social mobility is relatively *low*: The child’s economic status, in a sense, “bounces back” to the status of his or her parents.

Intergenerational elasticities between 0.4 and 0.5, meaning that close to half of the relative economic status of the child can be predicted by knowing the relative economic status of the parent, are considered high.³³ In the U.S., intergenerational *income* elasticity is generally calculated to fall between 0.4 and 0.6.³⁴ These levels of *income* elasticity exceed values in most developed

29. *Id.* at 8 (“Neither recipients nor transferors are asked specifically about college tuition payments. It seems likely that this type of transfer will be substantially under-reported by both recipients and transferors.”).

30. See JOSEPH STIGLITZ, *THE PRICE OF INEQUALITY*, at xii (2012) (describing the social ramifications of rising economic inequality). See also Timothy Noah, *The United States of Inequality*, SLATE (Sept. 3, 2010, 3:06 PM), http://www.slate.com/articles/news_and_politics/the_great_divergence/features/2010/the_united_states_of_inequality/introducing_the_great_divergence.html (recognizing the societal importance of income inequality).

31. See Raj Chetty et al., *Is the United States Still a Land of Opportunity? Recent Trends in Intergenerational Mobility* 1, 10 (Nat’l Bureau of Econ. Research, Working Paper No. 19844, 2014) [hereinafter Chetty et al., *Trends*], available at <http://eml.berkeley.edu/~saez/chettyetalAERPP2014.pdf> (concluding that U.S. social mobility has remained stagnant over the past generation, though significantly lower social mobility persists for some regions of the U.S. vis-à-vis other developed countries). See also John Cassidy, *Social Mobility Hasn’t Fallen: What It Means and Doesn’t Mean*, NEW YORKER (Jan. 23, 2014), <http://www.newyorker.com/online/blogs/johncassidy/2014/01/social-mobility-hasnt-fallen-what-it-means-and-doesnt-mean.html> (describing recent and historical studies of intergenerational mobility).

32. TOM HERTZ, UNDERSTANDING MOBILITY IN AMERICA 2 & fig.2 (2006), available at http://cdn.americanprogress.org/wp-content/uploads/issues/2006/04/Hertz_MobilityAnalysis.pdf.

33. *Id.* at 2. See also Haskins, *Education*, *supra* note 3, at 53 fig.2.

34. Kerwin Kofi Charles & Erik Hurst, *The Correlation of Wealth Across Generations*, 111 J. POL. ECON. 1155, 1158 (2003) (finding intergenerational elasticity “between 0.4 and 0.6”); Bhashkar Mazumder, *Fortunate Sons: New Estimates of Intergenerational Mobility in the United States Using Social Security Earnings Data*, 87 REV. ECON. & STAT. 235, 253 (2005) (estimating intergenerational elasticity at 0.6%); HERTZ, *supra* note 32, at 2 fig.2 (finding intergenerational elasticity of earnings between fathers and sons in the U.S. to be 0.47).

countries,³⁵ which means that social mobility is lower here than in those countries.³⁶ U.S. *wealth* elasticity is also calculated to be relatively high, with a 1997 study deriving family *wealth* elasticity between 0.4 and 0.5.³⁷

The high overall values for both income elasticity and wealth elasticity in the U.S. may reflect a certain “stickiness”³⁸ at the top and bottom ends of the economic spectrum combined with more mobility in the middle.³⁹ With respect to *income*, for example, 43% of children from the bottom quintile stay there as adults and 70% remain below the middle of the economic distribution. Similarly, 40% of children from the top quintile stay there as adults and 63% remain above the middle.⁴⁰ As to *wealth*, 66% of children from the bottom quintile remain in one of the two bottom quintiles, while 66% of those from the top quintile remain in one of the top two quintiles.⁴¹ In contrast, “those raised in the middle income quintile come closer to experiencing mathematically perfect mobility, in which they are equally likely to end up in each quintile of the distribution.”⁴²

35. See HERTZ, *supra* note 32, at 2 fig.2. See also John Ermisch et al., *Advantage in Comparative Perspective*, in FROM PARENTS TO CHILDREN: THE INTERGENERATIONAL TRANSMISSION OF ADVANTAGE 3, 5 fig.1.1 (John Ermisch et al. eds., 2012) (showing income elasticity plotted for 11 developed nations with the U.S. exceeding most of the plotted countries).

36. An important qualification of the observation of low overall U.S. social mobility is a significant degree of geographical variation. See Raj Chetty et al., *Where Is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States* app. tbl.IV (Nat'l Bureau of Econ. Research, Working Paper No. 19843, 2014), available at http://obs.rc.fas.harvard.edu/chetty/mobility_geo.pdf. Factors identified as contributing to geographical variability include: “(1) residential segregation, (2) income inequality, (3) school quality, (4) social capital, and (5) family structure.” *Id.* at 42. See also Mike Bostock et al., *In Climbing Income Ladder, Location Matters*, N.Y. TIMES (July 22, 2013), http://www.nytimes.com/2013/07/22/business/in-climbing-income-ladder-location-matters.html?pagewanted=all&_r=3&#map-search_ (depicting geographical variation across the U.S.).

37. CASEY B. MULLIGAN, PARENTAL PRIORITIES AND ECONOMIC INEQUALITY 210 tbl.7.7 (1997). “IV” indicates the “use [of] instrumental variable[] techniques to correct for measurement error.” *Id.* at 203. See also Charles & Hurst, *supra* note 34, at 1156 (finding pre-bequest wealth elasticity of 0.37).

38. Ron Haskins, *Wealth and Economic Mobility*, in GETTING AHEAD OR LOSING GROUND: ECONOMIC MOBILITY IN AMERICA 47, 54 (Julia B. Isaacs et al. eds., 2008); Julia B. Isaacs, *Economic Mobility of Families Across Generations*, in GETTING AHEAD OR LOSING GROUND: ECONOMIC MOBILITY IN AMERICA 15, 19 (Julia B. Isaacs et al. eds., 2008) [hereinafter Isaacs, *Economic Mobility of Families*].

39. Isaacs, *Economic Mobility of Families*, *supra* note 38, at 19–20; see also Chetty et al., *Trends*, *supra* note 31, at 1–2 (explaining increased U.S. inequality has not led to decreased social mobility because of high concentrations of wealth in the “extreme upper tail” of the income distribution).

40. PEW CHARITABLE TRUSTS, *supra* note 6, at 6.

41. *Id.* at 15.

42. *Id.* at 6.

There is also an independent racial effect on income mobility. A disproportionately high number of Blacks⁴³ compared to the overall distribution of the population start at the bottom of the economic spectrum, and it is harder for them to escape upward. They are also more likely to fall down the economic ladder than Whites.⁴⁴ These effects may relate to racial wealth disparities: Black households have less economic “cushion” than White households.⁴⁵ Race in and of itself is thus still a salient social characteristic vis-à-vis the ability to succeed—and to avoid failure—economically.

Most relevant to the inquiry of this Article, education contributes significantly to elasticity. One revealing 2003 study derived a *wealth* elasticity value of 0.37 before any transfers via bequests,⁴⁶ indicating that substantial wealth is transmitted intergenerationally, independent of traditional inheritance. This study attributed half of the *wealth* elasticity derived to the similarity of parent-child *incomes*.⁴⁷ In non-economics-speak, these results indicate that when succeeding generations have similar levels of *income* (*income* elasticity), they have similar levels of *wealth* even without or before bequests from their parents. Since, with increased longevity, more and more people do not receive bequests until later in life,⁴⁸ this means that a person’s own *income*—which correlates to parental income—is a predominant determinant of that person’s *wealth* throughout much of his or her life.

Further, though estimates vary, the contribution of education to *income* elasticity appears to hover between a third and a half.⁴⁹ Education is thus a

43. The racial terminology I use in this Article, except when quoting another source, is “Black” and “White.” See Strand, *Inheriting Inequality*, *supra* note 14, at 455 n.12.

44. PEW CHARITABLE TRUSTS, *supra* note 6, at 20; see also Melissa S. Kearney, *Intergenerational Mobility for Women and Minorities in the United States*, FUTURE CHILDREN, Fall 2006, at 44, 48–49 (identifying lack of educational access as contributing to the racial effect on income mobility).

45. See Strand, *Inheriting Inequality*, *supra* note 14, at 469, 472 n.106. Pre-Recession data of the late 2000s revealed a more than 10-to-1 White-to-Black wealth disparity, with the prospect of further concentration of White wealth through inheritance. *Id.* at 461–68. Post-Recession data indicate that the disparity essentially doubled to 20-to-1, largely because most Black wealth is held in the form of home equity. RAKESH KOCHHAR ET AL., PEW RESEARCH CENTER, TWENTY-TO-ONE: WEALTH GAPS RISE TO RECORD HIGHS BETWEEN WHITES, BLACKS AND HISPANICS 1, 5 (2011), available at http://www.pewsocialtrends.org/files/2011/07/SDT-Wealth-Report_7-26-11_FINAL.pdf.

46. Charles & Hurst, *supra* note 34, at 1156.

47. *Id.* at 1170.

48. See *supra* text accompanying note 27.

49. One study attributes 30% of income elasticity to education as a result of “the fact that parental income predicts the child’s education, and that of his or her spouse, which in turn predict the child’s family income as an adult.” HERTZ, *supra* note 32, at 10. Another analysis, which explores the contribution of income to wealth elasticity and, in turn, the various components of the income contribution, concludes that about one-half of income elasticity correlates to education. Charles & Hurst, *supra* note 34, at 1169 tbl.4.

significant component of *income* elasticity. And, because *income* elasticity is a significant contributor to *wealth* elasticity,⁵⁰ education makes a significant contribution to *wealth* elasticity.

These analyses corroborate Langbein's education-as-inheritance insight: Education today is an important way to transfer wealth intergenerationally. High socioeconomic elasticity—revealing a comparative lack of social mobility—exists between U.S. generations, especially at the extremes of the socioeconomic spectrum.⁵¹ Education, through income, contributes significantly to both income and wealth elasticities.

II. THE EDUCATION-AS-OPPORTUNITY MALAISE

A. *The Overall Picture*

Statistics on college graduation rates confirm the link described in Part I between education, income elasticity, and intergenerational wealth transmission. While only 11% of children from the bottom quintile earn a college degree, 53% of those from the top quintile do so.⁵² The middle quintiles are stair steps that prove the relationship: 20% of the children from the second quintile, 25% of those from the middle quintile, and 38% of those from the fourth quintile earn a college degree.⁵³ The net result of our current educational system is reproduction of the existing social order.⁵⁴

These stark numbers on college degrees represent the tip of the educational iceberg. While college graduation is increasingly the standard for measuring educational attainment and likely economic success, completing a four-year degree represents only the capstone of a long process. Further, private contributions to education are by no means limited to the costs of college,

50. See *supra* text accompanying note 47.

51. In this Article, I use the term and focus on “socioeconomics” or “socioeconomic status” rather than “class” for two reasons. First, I separate out the group of “class”-related indicia that often correlate to and are interwoven with socioeconomic status, including race, education, and occupation. See BELL HOOKS, *WHERE WE STAND: CLASS MATTERS* 146, 148 (2000) (discussing divergence and convergence of “class” with other social demarcations). Second, I reserve “class” for social categorizations that create qualitative and non-permeable separation of social groups (as compared to the quantitative but permeable differences created by income and/or wealth alone). In the U.S., race has historically been “class” in this sense.

52. Haskins, *Education*, *supra* note 3, at 96 fig.7.

53. *Id.*

54. Gosta Esping-Andersen, *Unequal Opportunities and the Mechanisms of Social Inheritance*, in *GENERATIONAL INCOME MOBILITY IN NORTH AMERICA AND EUROPE* 289, 310 (Miles Corak ed., 2004); Isabel Sawhill, *Opportunity in America: The Role of Education*, *FUTURE CHILDREN*, Fall 2006, at 1, 3; see also John Ermisch et al., *What Have We Learned?*, in *FROM PARENTS TO CHILDREN: THE INTERGENERATIONAL TRANSMISSION OF ADVANTAGE* 463, 476 (John Ermisch et al. eds., 2012) (“At best, education systems may be offsetting existing processes of cumulative advantage . . .”).

though those costs may have the highest current political profile—perhaps because other costs are largely within the reach of middle-class families.

Years of educational grounding support a college degree. College graduates must have applied to, been accepted at, enrolled in, financed, and succeeded academically at a four-year university or college. To achieve this, they must have graduated from high school, received a K–12 education with sufficient academic rigor to support successful college work, and have developed adequate study habits for collegiate success. K–12 success, in turn, rests on a solid preschool base. At each stage of this pyramid, greater parental wealth or income makes possible the investment that is necessary for children to receive a quality education.

B. Unequal Educational Opportunity—Birth Through College

At birth, “there is almost no difference in cognitive ability between high and low-income individuals.”⁵⁵ Yet by age four, high-income children (top quintile) score on average at the sixty-ninth percentile on literacy and mathematics tests. Low-income children (bottom quintile), by contrast, fall at the thirty-fourth and thirty-second percentiles.⁵⁶ One set of researchers found “differences in cognitive development [that appear] to be more strongly linked to disparities in parental resources in the United States than in [Australia, Canada, or the United Kingdom], with the difference driven by a particularly large advantage of high-SES [socioeconomic-status] children relative to those in the middle.”⁵⁷ The researchers hypothesized that this gap relates to low support in the U.S. for middle-income families in terms of public provision of health care and preschool and to high levels of income inequality.⁵⁸

Increasingly, preschool is recognized as important for providing children—especially those from low- and middle-income families—with the cognitive and socio-emotional foundation that enables them to arrive in kindergarten ready to learn.⁵⁹ Only about half of U.S. children, however, currently attend preschool, and preschool is available to an even lower proportion of low-

55. MICHAEL GREENSTONE ET AL., THIRTEEN ECONOMIC FACTS ABOUT SOCIAL MOBILITY AND THE ROLE OF EDUCATION, HAMILTON PROJECT 1, 8 (2013), available at www.brookings.edu/~media/research/files/reports/2013/06/13%20facts%20higher%20education/thp_13econfacts_final.pdf.

56. *Id.* at 8.

57. Bruce Bradbury et al., *Inequality in Early Childhood Outcomes*, in FROM PARENTS TO CHILDREN 113 (John Ermisch et al. eds., 2012).

58. *Id.* at 113–14; see STIGLITZ, *supra* note 30, at 4 (describing current levels of U.S. economic inequality).

59. Guang Guo & Kathleen Mullan Harris, *The Mechanisms Mediating the Effects of Poverty on Children’s Intellectual Development*, 37 DEMOGRAPHY 431, 442–43 (2000); Haskins, *Education and Economic Mobility*, *supra* note 3, at 97–98; James E. Ryan, *A Constitutional Right to Preschool?*, 94 CALIF. L. REV. 49, 55–57, 63–64 (2006).

income children—those who are most likely to benefit.⁶⁰ Head Start, the federal needs-based preschool program initiated in 1965, has never been fully funded.⁶¹ More recent state programs aimed at children in need also do not reach all those who qualify.⁶²

Public K–12 schooling is universally provided in the U.S., though the quality of that education varies radically between states, districts, schools, and even within classrooms.⁶³ At the district level, differences in per-student expenditures arising from *ad valorem* property tax funding of schools have been equalized to a noticeable degree since the Supreme Court upheld disproportionate funding against an Equal Protection challenge in *San Antonio Independent School District v. Rodriguez* in 1973.⁶⁴ Nevertheless, the continued operation of schools with concentrated poverty perpetuates low academic achievement among students attending those schools.⁶⁵

In high-poverty schools, substandard facilities, less experienced teachers, and lower funding relative to student needs continue to adversely affect educational outcomes.⁶⁶ A substantial achievement gap between high- and low-socioeconomic-status students now exists—a gap that has grown to exceed the Black-White achievement gap.⁶⁷ This regressive K–12 public education

60. Ryan, *supra* note 59, at 49.

61. NANCY FOLBRE, *THE INVISIBLE HEART: ECONOMICS AND FAMILY VALUES* 131 (2001).

62. Ryan, *supra* note 59, at 55; *see also* Strand, *Brown, supra* note 10, at 311–13 (describing limited funding and restricted eligibility as reasons for public preschool programs failing to serve significant proportion of U.S. children).

63. Though much focus has historically been on funding inequalities between districts within states, there are even greater funding disparities between states. *See* Camille Walsh, *Erasing Race, Dismissing Class: San Antonio Independent School District v. Rodriguez*, 21 *BERKELEY LA RAZA L.J.* 133, 167 (2011). Further, even when children attend the same school they may not be receiving the same education. *See* JEANNIE OAKES, *KEEPING TRACK: HOW SCHOOLS STRUCTURE INEQUALITY* 2–3 (1985) (discussing how tracking, the process of dividing students within the same grade into academically similar groups, leads to educational inequalities). *See also* ROBERT G. SMITH ET AL., *GAINING ON THE GAP: CHANGING HEARTS, MINDS, AND PRACTICE* 29–30, 63–74 (2011) (ascribing achievement gaps based on race, in part, to individual interactions, including student-teacher interactions within classrooms).

64. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 62 (1973). *See also* Sean Corcoran et al., *The Changing Distribution of Education Finance, 1972 to 1997*, in *SOCIAL INEQUALITY* 433, 445 (Kathryn M. Neckerman ed., 2004); Jeffrey S. Sutton, *San Antonio Independent School District v. Rodriguez and Its Aftermath*, 94 *VA. L. REV.* 1963, 1974 (2008).

65. POVERTY & RACE RES. ACTION COUNCIL, *ANNOTATED BIBLIOGRAPHY: THE IMPACT OF SCHOOL-BASED CONCENTRATION ON ACADEMIC ACHIEVEMENT & STUDENT OUTCOMES* 1 (2010), available at http://www.prrac.org/pdf/annotated_bibliography_on_school_poverty_concentration.pdf.

66. Corcoran et al., *supra* note 64, at 452–54, 456.

67. Sean F. Reardon, *The Widening Academic Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations*, in *WHITHER OPPORTUNITY? RISING INEQUALITY, SCHOOLS, AND CHILDREN'S LIFE CHANCES* 91, 93 (Greg J. Duncan & Richard J. Murnane eds., 2011).

system is, as Langbein points out, subsidized by U.S. tax policy, which allows income tax deductions for local real estate taxes with greater deductions for parents who can afford the purchase price premium to buy a home in a neighborhood with quality public schools.⁶⁸ Children of parents who cannot afford the housing premium to live in such neighborhoods are at an educational disadvantage. In this way, K–12 public education is both regressive and partially privatized in that purchasing a home has a substantial effect on the quality of schools one’s children attend.

Though “94% [of parents] who have at least one child under 18 say they expect their child to attend college . . . most young adults in this country still do not attend a four-year college.”⁶⁹ There are substantial leaks in the educational pipeline as it passes through high school. Earning a high school diploma is by no means the only “ticket” necessary to enter the college sweepstakes. Students must take and succeed in college prep courses; develop necessary study skills and work habits; take standardized tests and achieve at a certain level; identify, apply to, and be accepted at colleges; and seek and secure adequate financial support.⁷⁰

Even students with college-educated parents who can guide them (or pay for guidance) and provide a college-bound peer group find the college-prep journey daunting. Students who do not have these “softer” assets at home may not find them at their public high school. A number of non-profits seek to fill this need,⁷¹ but these initiatives cannot reach all students in need. The pre-college process is, like K–12 education, both regressive and privatized to a significant degree.

Finally, and perhaps most brightly spotlighted today, four-year colleges and universities are less financially accessible to students from low- and middle-income families.⁷² At the 146 top-tier colleges and universities, only

68. Langbein, *supra* note 1, at 733–34 (“[T]he distinction between private and public schools is far less meaningful than might appear at first glance. Many of those distinguished suburban school districts that represent the high-water mark of quality in our public school tradition are in truth better understood as private schools with tax-deductible tuition—the tuition taking the form of relatively high real estate taxes that are deductible against income taxes.”).

69. *Weighing the Cost*, *supra* note 5. The Pew Research Center concludes that “[t]he main barrier is financial.” *Id.* As discussed here, I view that as only one of a number of significant barriers.

70. Robert Haveman & Timothy Smeeding, *The Role of Higher Education in Social Mobility*, FUTURE CHILDREN, Fall 2006, at 125, 136–38.

71. See AVENUE SCHOLARS FOUND., <http://www.avescholars.org/> (last visited Jan. 10, 2015). The Avenue Scholars Foundation of Omaha, NE supports low-income high school students through post-secondary education and provides transitional support into the workforce. See also POSSE FOUND., <http://www.possefoundation.org/> (last visited Jan. 10, 2015). The Posse Foundation sponsors cohort support groups at participating colleges throughout the country.

72. See Suzanne Mettler, *Equalizers No More: Politics Thwart Colleges’ Role in Upward Mobility*, CHRONICLE HIGHER EDUC. (Mar. 3, 2014), <http://chronicle.com/article/Equalizers-No->

3% of students hail from the bottom quartile of family income, while 74% come from the top quartile.⁷³ For public four-year universities, “the real price of attending” increased 126% between 1980 and 2005.⁷⁴ Between the academic years 1998–99 and 2008–09, the cost of public colleges and universities rose 4.5% per year “over and above the rate of inflation.”⁷⁵ Student loans increased from an average balance of \$8700 in 1989 to \$21,500 in 2007,⁷⁶ and in 2012 “71% of all students graduating from four-year colleges had student loan debts.”⁷⁷

In recent decades, rising costs have strained middle-class access to college; those same rising costs have had even more devastating effects on college access for low-income students.⁷⁸ Even if low- or middle-income students have access to college, the ability of students from wealthier families to take advantage of unpaid internships, their access to valuable social networks, and the overall safety net they enjoy facilitate their success.⁷⁹ Further, students from high-income families are “relatively protected from student loan debt relative to their less advantaged counterparts,”⁸⁰ with middle-class students especially vulnerable to incurring significant debt.⁸¹ The pattern of low and

More/144999/ (overviewing the decline in accessibility of higher education since the 1980s due to politics).

73. Haveman & Smeeding, *supra* note 70, at 130. See also Jordan Weissmann, *Does It Matter Where You Go to College?*, ATLANTIC (May 17, 2012, 3:06 AM), <http://www.theatlantic.com/business/archive/2012/05/does-it-matter-where-you-go-to-college/257227/> (showing students with degrees from elite universities earn 20% more than students from other four-year institutions).

74. Michael Mumper & Melissa L. Freeman, *The Causes and Consequences of Public College Tuition Inflation*, in HIGHER EDUCATION: HANDBOOK OF THEORY AND RESEARCH, VOL. XX, at 307, 355 (John C. Smart ed., 2005); see also Strand, *Brown*, *supra* note 10, at 315.

75. NANCY FOLBRE, *SAVING STATE U: WHY WE MUST FIX PUBLIC HIGHER EDUCATION* 47 (2010); see also WILLIAM ELLIOTT & MELINDA LEWIS, *STUDENT LOANS ARE WIDENING THE WEALTH GAP: TIME TO FOCUS ON EQUITY* 13 (2013) (estimating a 4.8% rise in tuition at in-state, public four-year colleges from 2011–2012 to 2012–2013).

76. *Weighing the Cost*, *supra* note 5, at 4 (showing both balances in 2007 dollars).

77. QUICK FACTS ABOUT STUDENT DEBT, INST. COLL. ACCESS & SUCCESS (Mar. 2014), http://projectonstudentdebt.org/files/pub/Debt_Facts_and_Sources.pdf. Sixty-six percent of 2012 graduates from public colleges, 75% of graduates from private nonprofit colleges, and 88% of graduates from private for-profit colleges had student loan debt. *Id.* Moreover, the average loan debt for public college graduates was \$25,550; for private nonprofit graduates \$32,300; and for private for-profit graduates \$39,950. *Id.*

78. Haveman & Smeeding, *supra* note 70, at 137; Mumper & Freeman, *supra* note 74, at 345.

79. Chuck Collins, *The Wealthy Kids Are All Right*, AM. PROSPECT (May 28, 2013), <http://prospect.org/article/wealthy-kids-are-all-right>.

80. Jason N. Houle, *Disparities in Debt: Parents' Socioeconomic Resources and Young Adult Student Loan Debt*, 87 SOC. EDUC. 53, 62 (2013).

81. *Id.* at 63.

regressive public investment in conjunction with private investment by those with means may not be linear, but it is apparent.⁸²

C. Regressive Public Education and Private Augmentation

At every level of the U.S. educational system, incomplete and/or regressive public provision of education invites private augmentation. All parents accept this invitation, but high-income parents are able to respond with far greater largesse than are low-income parents. Top-quintile parents, for example, spend nearly \$9000 per year on enrichment expenditures per child compared to about \$1300 per year per child for bottom-quintile parents.⁸³ And this financial investment is paralleled by the investment of parents spending time with their children: “On average, mothers with a college degree spend 4.5 more hours each week engaging with their children than mothers with only a high school diploma or less.”⁸⁴

The cumulative result of an incomplete system of preschool, public K–12 schools of widely varying quality, orders-of-magnitude differentials in direct parental enrichment expenditures and support, uneven availability of college prep, and tenuous financial access to college is worse education for children from lower-income families and better education for children from higher-income families. The former receive incomplete, lower-quality, less extensive, and predominantly public education. The latter receive comprehensive, higher quality, more extensive, and mixed public and private education. At all educational levels—preschool, K–12, college prep, and university—private investment by parents in the development of their children’s human capital makes a real difference in the education provided.

Private investment by financially able parents in their children’s education—at all stages—constitutes a real *inter vivos* intergenerational wealth transfer. Private investment leads to better educational outcomes for those children. Better educational outcomes lead to more robust incomes in the receiving generation. More robust incomes lead to greater wealth, which represents higher elasticity manifesting as lower social *downward* mobility. Concurrently, the inability of less financially able parents to invest in the education of their children at all stages leads to lower income and wealth,

82. Some who have investigated current student debt practices have found less cause for alarm. See BETH AKERS & MATTHEW M. CHINGOS, IS A STUDENT LOAN CRISIS ON THE HORIZON? 4 (2014), available at <http://www.brookings.edu> (search “Is a Student Loan Crisis on the Horizon”; follow “Is a Student Loan Crisis on the Horizon” hyperlink) (“[A]lthough there are surely individual borrowers facing financial hardship due in part to their student loans, the overall health of the student loan market is not nearly as dire as many popular narratives seem to suggest.”).

83. GREENSTONE ET AL., *supra* note 55, at 9.

84. *Id.*

which again represents higher elasticity, but now manifesting as lower social *upward* mobility. At all stages, the reality of education-as-opportunity falls short of the rhetoric.

III. PUBLIC VERSUS PRIVATE FUNDING: THE EDUCATIONAL FULCRUM

A. *The Interaction of Public and Private Funding of Education*

Economist Gary Solon has developed a mathematical model of intergenerational income elasticity that posits predictable consequences of the relative availability and progressivity of public education.⁸⁵ According to Solon, this is a “simple model in which optimizing behavior by families” feeds into a “straightforward function” for intergenerational income elasticity based on “four key factors”:

the strength of the ‘mechanical’ (for example, genetic) transmission of income-generating traits, the efficacy of investment in children’s human capital, the earnings return to human capital, and the progressivity of public investment in children’s human capital.⁸⁶

Solon’s model captures the observations above that link education, social mobility, and socioeconomic success.⁸⁷ “[T]he efficacy of investment in children’s human capital” in Solon’s model translates to money spent on

85. As noted previously, income elasticity contributes to wealth elasticity. *See supra* text accompanying notes 46–48.

86. Gary Solon, *A Model of Intergenerational Mobility Variation over Time and Place*, in *GENERATIONAL INCOME MOBILITY IN NORTH AMERICA AND EUROPE* 38, 46 (Miles Corak ed., 2004).

87. Solon’s model also accounts for the transmission of wealth in the form of genetic or cultural capital. *Id.* at 46. As to this component of Solon’s model, the disentangling of “nature” and “nurture” may be both technically challenging and fraught with social expectations and/or stereotypes. On the topic of the intergenerational transmission of genetic or cultural capital relevant to education or socioeconomic status, see Anders Bjorklund et al., *Nature and Nurture in the Intergenerational Transmission of Socioeconomic Status: Evidence from Swedish Children and Their Biological and Rearing Parents*, 7 *B.E. J. ECON. ANALYSIS & POL’Y*, no. 2, 2007, at 1–2, 13 (concluding that both nature and nurture contribute to the relationship between socioeconomic status of parents and children); Walter J. Blum & Harry Kalven, Jr., *The Uneasy Case for Progressive Taxation*, 19 *U. CHI. L. REV.* 417, 504 (1952) (characterizing the source of inequality of opportunity as “cultural inheritance” and not economic); Cecilia Elena Rouse & Lisa Barrow, *U.S. Elementary and Secondary Schools: Equalizing Opportunity or Replicating the Status Quo?*, *FUTURE CHILDREN*, Fall 2006, at 99, 101–04 (discussing studies on genetic contribution to educational attainment). On the related topic of the effects of poverty itself on the cognitive development of children, see Guo & Harris, *supra* note 59, at 431; on the unexpected potency of poverty, see Laura M. Betancourt et al., *Adolescents With and Without Gestational Cocaine Exposure: Longitudinal Analysis of Inhibitory Control, Memory and Receptive Language*, 33 *NEUROTOXICOL TERATOL.*, 2011, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3052975/>.

education leading to better educational outcomes.⁸⁸ “[T]he earnings return to human capital” in Solon’s model translates to greater education leading to increased income.⁸⁹

Solon’s model also predicts that the effects of private investment are diminished by more progressive investment in public education, essentially because “parents are more inclined to invest in their children’s human capital when the payoff is higher.”⁹⁰ The payoff is higher when public investment is lower. According to Solon, “*higher public investment in a child’s human capital partly crowds out the parent’s private investment.*”⁹¹ In other words, widespread progressive public education offsets the value and thus the amount of private investment in education, diminishes the viability of education as a mode of wealth transfer, and decreases intergenerational elasticity—which increases social mobility.

On a societal scale, Solon concludes that “an era of rising returns to human capital or declining progressivity in public human capital investment is also an era of declining intergenerational mobility.”⁹² As to Solon’s first criterion of being in “an era of rising returns to human capital,” today’s knowledge economy has rendered access to a quality education increasingly important. As to his second criterion of “declining progressivity in public human capital investment,” while pioneering, broad-based investments in public K–12 education led to widespread and relatively egalitarian U.S. prosperity in the “Twentieth ‘Human Capital’ Century.”⁹³ Substantial disparities existed then and continue today.⁹⁴

B. *The Importance of Progressive Public Education*

Solon’s model encapsulates the two opposite-cutting edges of education. Education protects equal opportunity and the social mobility of democracy, *and* education protects private property and inheritance and the existing social structure. “[T]he main role of education is to promote social mobility; but at the same time a majority of what social reproduction there is transmitted through education, so education is also the main vehicle of social reproduction.”⁹⁵

88. See *supra* text accompanying notes 6–8, 55–82.

89. See *supra* text accompanying notes 2–5.

90. Solon, *supra* note 86, at 41.

91. *Id.* (emphasis added).

92. *Id.* at 46.

93. GOLDIN & KATZ, *supra* note 23, at 17.

94. Strand, *Brown*, *supra* note 10, at 324–25 (discussing racial and regional disparities).

95. Harry B. G. Ganzeboom et al., *Comparative Intergenerational Stratification Research: Three Generations and Beyond*, 17 ANN. REV. OF SOC. 277, 284 (1991).

On the seesaw that rests on this educational fulcrum, effective and progressive *public* education on one end counteracts inherited relative wealth and privilege. On the other end, *privatized* education operates to transmit socioeconomic status (wealth) from one generation to the next. An essential question regarding education in terms of its effects on intergenerational elasticity and social mobility is now revealed: What are the relative weights of public education-as-opportunity and private education-as-inheritance?

There is evidence that the opportunity-inheritance educational seesaw has been tipping away from opportunity.⁹⁶ A stark example of this is that over the past couple of decades, college graduation rates have risen dramatically for children from high-income families (36% to 54% for the top quartile) but much less for children from low-income families (5% to 9% for the bottom quartile).⁹⁷ In Solon's terms, public provision of education is failing to "crowd[] out" private funding.⁹⁸

The U.S. has traditionally balanced the competing values of social mobility and social reproduction through the disparate socio-legal institutions of public education and private inheritance. With the rise of intergenerational wealth transmission through education, these institutions have become intertwined. Through education, wealthier parents have an additional vehicle for passing wealth to their children—a vehicle that is not only untaxed but tax-supported.⁹⁹ Poorer parents have a more difficult time saving to provide the necessary support for their children's success.¹⁰⁰

The status quo of uneven public provision of education with significant private investment at all educational levels allows for intergenerational wealth transmission through education that counters education's traditional

96. See Bhashkar Mazumder, *Is Intergenerational Economic Mobility Lower Now Than in the Past?*, CHI. FED. LETTER (Fed. Reserve Bank of Chi., Chi.) April 2012, at 1 (pointing to rising gap in achievement based on socioeconomic status as cause for concern with respect to social mobility). *But see* Chetty et al., *Trends*, *supra* note 31 (finding no overall decrease in social mobility in recent decades).

97. Martha J. Bailey & Susan M. Dynarski, *Gains and Gaps: Changing Inequality in U.S. College Entry and Completion* 26 fig.3 (Nat'l Bureau of Econ. Research, Working Paper No.17633, 2011) (comparing college graduation rates for 1961–64 and 1979–82 birth cohorts), available at <http://www.nber.org/papers/w17633>.

98. Solon, *supra* note 86, at 41.

99. See *supra* note 68 and accompanying text. In addition to tax deductions for real estate taxes paid on high-value homes in quality school districts, higher-income parents saving for their children's college education enjoy tax deferral and forgiveness. See *Did You Know?*, COLL. SAV. PLANS NETWORK 59–60, <http://www.collegesavings.org/didYouKnow.aspx> (last visited, Nov. 7, 2014).

100. See ELLIOTT & LEWIS, *supra* note 75, at 60–61.

opportunity-creating role. This dampens social mobility. This shift, moreover, may be intertwined with high or increasing levels of economic inequality.¹⁰¹

More equitable public investment in education at all levels is essential to reverse the decline of education-as-opportunity and the rise of education-as-inheritance. This avenue, however, is extremely politically challenging. In an anti-tax environment, older White voters especially may be reluctant to fund schooling for cohorts of children and youth that are increasingly minority.¹⁰² States with growing fiscal demands and budget constraints find higher education a relatively easy place to cut funding.¹⁰³ The federal government is excused from responsibility by virtue of the fact that public education is the legal responsibility of the states.¹⁰⁴ Parent needs and demands for supports such as preschool may be muffled due to deep-seated patriarchal family arrangements.¹⁰⁵

Perhaps most challenging, politicians are generally unresponsive to the needs of their poorer constituents.¹⁰⁶ A pertinent example is the way in which government support for college has shifted away from poorer students toward middle-class families over the past generation. As college costs have risen in recent decades, middle-income as well as low-income families have found covering those costs challenging. The result has been increased government aid to middle-class students: aid which responds to real needs and the political voice of middle-class families but which has crowded out greater need by poorer students whose families have less voice.¹⁰⁷ In 1979–80, the maximum

101. See Dan Andrews & Andrew Leigh, *More Inequality, Less Social Mobility*, at ii (The Australian Nat'l Univ. Centre for Econ. Pol'y Res., Discussion Paper No. 566, 2008) (discussing how the social mobility is lower in countries with higher economic inequality); GREENSTONE ET AL., *supra* note 55, at 5 (cross-national comparison of economic inequality); Sawhill, *supra* note 54, at 2 (stating greater inequality dampens mobility, especially at the extremes); STIGLITZ, *supra* note 30, at 4–8 (describing rise in economic inequality since the mid-1970s); *but see*, Esping-Andersen, *supra* note 54, at 306 (describing the danger of generalizing that “very inegalitarian societies beget” less mobility).

102. Palma Joy Strand, *Do We Value Our Cars More Than Our Kids? The Conundrum of Care for Children*, 19 DUKE J. GENDER L. & POL'Y 1, 9 (2011) [hereinafter Strand, *Care for Children*]; Teresa Wiltz, *Racial Generation Gap Looms Large for States*, PEW CHARITABLE TRUSTS (Jan. 16, 2015), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/1/16/racial-generation-gap-looms-large-for-states>.

103. Mumper & Freeman, *supra* note 74, at 323–26.

104. Strand, *Brown*, *supra* note 10, at 294–95.

105. Strand, *Care for Children*, *supra* note 102, at 28–29.

106. Larry M. Bartels, *Economic Inequality and Political Representation*, PRINCETON U. 1 (Aug. 2005), <http://www.princeton.edu/~bartels/economic.pdf>; Miller & McNamee, *supra* note 9, at 194, 203; Mettler, *supra* note 72.

107. Haveman & Smeeding, *supra* note 70, at 137–38.

Pell grant for low-income college students covered about 77% of costs; “by 2007 it covered only 36[%].”¹⁰⁸

IV. CONCLUSION

Langbein’s described shift in the mode of intergenerational wealth transfer is all too real. It is, further, likely a symptom that represents a hardening of the intergenerational social arteries, especially at the top and bottom of the socioeconomic distribution.¹⁰⁹ There are compelling reasons to recalibrate away from education-as-inheritance and toward education-as-opportunity.

The value of education-as-opportunity lies not only in the value to individuals of both succeeding economically and of developing their own human capabilities. The value to us as a society of investing in all of our children—who represent the future of our nation—cannot be overstated. Today’s children are tomorrow’s adults, and leaving their development to chance, to the happenstance of family socioeconomics, both imperils national security and our very humanity.¹¹⁰

Educational recalibration toward greater opportunity calls for more progressive public investment at all educational levels. Quality preschool must be provided for all children, not only those whose parents can afford to purchase it. Challenging K–12 public schools must be the nationwide norm and not accessible only to those children whose parents can afford homes in well-funded school districts. Enrichment and support for college application and preparation must be available to all youth, not merely those whose parents can give them the leg up they need to be prepared. And, finally, college must not remain beyond the reach of young adults whose parents do not have the wealth to shoulder the costs of tuition and more.

108. FOLBRE, *supra* note 75, at 48.

109. Langbein’s diagnosis of education-as-inheritance embraced the “broad middle classes.” Langbein, *supra* note 1. Many of the data cited in this Article, which apply broadly, support this conclusion. Some data also support the conclusion that poorer families are “stuck,” and well-off families are insulated from downward economic tumbles. During Langbein’s time, economic inequality was at lower levels than today. Further exploration of the interaction of today’s levels of inequality with the phenomena described in this Article is necessary.

110. Strand, *Brown*, *supra* note 10, at 323 & n.308; Strand, *Care for Children*, *supra* note 102, at 18.

