
The Right to Higher Education: Key Challenges in the U.S. Context and Suggested Principles in a Global Context

By Margaret Cahalan, Pell Institute for the Study of Opportunity in Higher Education¹⁹³

This briefing paper was written for the recently launched UNESCO project on the Right to Higher Education (RTHE). The UNESCO project asked for a short paper addressing two topics: 1) Identification of the major legal, geographic, normative, societal challenges to the right to higher education (HE) within the U.S. context; and 2) Suggested guiding principles on how to uphold and advance the right to higher education that build on existing standards and are adaptable to various global contexts.¹⁹⁴

Key Challenges to the Right to Higher Education (RTHE) in the U.S. Context

- **No Direct Provision of the Right to Education in U.S. Constitution or Founding Documents.** Although the “equality” of all citizens who possess “certain inalienable rights” forms the founding principle and purpose of the U.S. government as expressed in the Declaration of Independence, education is not one of the rights specified in the U.S. Constitution or the Bill of Rights.¹⁹⁵ Recognizing this omission President Franklin Delano Roosevelt in 1944 put forth a proposal for a “Second Bill of Rights” that specified 8 additional rights including the right to “a Good Education.” However, Roosevelt’s proposal, presented in a State of the Union Address in 1944 the year before he died, was never enacted. In the U.S. courts Federal civil rights protections in education have largely come from the 14th amendment equal protection under the law guarantees.¹⁹⁶
- **U.S. Non-Ratification of Major International Articulations of the Right to Higher Education.** For example, although the U.S. President, Jimmy Carter, signed (1977) the U.N. International Covenant on Economic, Social and Cultural Rights that specifies in Article 13 the Right to Higher Education, the U.S. has not joined the 180+ countries who have ratified this Covenant.¹⁹⁷
- **Large U.S. State Geographic Variation.** Although the right to education is not found in the U.S. Constitution, most U.S. state constitutions, or other binding documents, recognize education as a basic right, mandate free k-12 education, and provide for support of higher education as a state responsibility.

¹⁹³ All views expressed in this essay are the sole responsibility of the author, and do not represent the position of the Pell Institute for the Study of Opportunity in Higher Education or the Alliance for Higher Education and Democracy of the University of Pennsylvania (PennAHEAD).

¹⁹⁴ This essay was first prepared as a briefing paper for a UNESCO Expert Consultation for North America and Europe on the Right to Higher Education (RTHE) to support the recently launched UNESCO Right to Higher Education Project. The project is being undertaken in partnership with the Open Society Foundations. The UNESCO project website is <https://www.iesalc.unesco.org/en/the-right-to-higher-education>.

¹⁹⁵ “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--,” IN CONGRESS, July 4, 1776. The unanimous Declaration of the thirteen United States of America. The eight interrelated rights from Roosevelt’s Second Bill of Rights were: 1. Employment (right to work); 2. Food, clothing, and leisure, via enough time to support them; 3. Farmers’ rights to a fair income; 4. Freedom from unfair competition and monopolies; 5. Housing; 6. Medical care; 7. Social security, and 8. Education. This Second Bill of Rights speech of FDR is available at: <https://www.youtube.com/watch?v=3EZ5bx9Ayl4>.

¹⁹⁶ Lawyer, Nicole (2018) The Right to Education in the United States and Abroad: A Comparative Analysis of Constitutional Language and Academic Achievement, Federal Lawyer [Right-to-Ed-pdf-1.pdf](#) (fedbar.org).

¹⁹⁷ Gilchrist, H. (2018) Higher Education as a Human Right, Washington University Law Review, <https://www.google.com/search?client=firefox-b-1-d&q=Higher+Education+Is+a+Human+Right+Heidi+Gilchrist+> Brennan T. (2014) Educational Rights in the States, American Bar Association, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_2_civil_rights/educational_rights_states.

However, states differ significantly in the articulations and implementations of this right, and there is a growing divide among the states, with economic and cultural implications, in bachelor's degree attainment rates. These rates range from 23 percent in the lowest state to 54 percent in the highest state in the percent of the population aged 24 to 35 with a bachelor's degree.¹⁹⁸

- **Cultural Dominance of the Paradigm of HE as a Consumer Commodity.** There is a growing emphasis on viewing HE as a *Consumer Choice* or *Human Capital Investment* with an accountable *Return on Investment (ROI)* to make both the individual and the society competitive in the global marketplace.¹⁹⁹
- **Normative Acceptance of a Highly Stratified HE system Based Upon “Merit” Criteria for Admissions and Stark Differences in Associated Educational Spending.** For example, Educational and Related (E&R) Spending ranges from \$52,000 per FTE student for the 11 percent of students enrolled in *Highly Selective Institutions* to \$15,000 for the 50 percent of students enrolled in *Broad Access Institutions*.²⁰⁰
- **Strong Barriers to Access and Completion Related to Decline of Grant Aid Relative to College Cost and Debt Burden.** There is a growing disconnect between the cost of attendance, family income and available grant aid (Federal Pell grants once covered 2/3 of average cost and now cover only 25 percent). Currently over 70 percent of all students and for example 86 percent of Black students, must take out student loans with large inequity in amounts needed to be borrowed by race/ethnicity. In addition, many students must work long hours off campus leading to low-completion rates especially among low-income students.

Suggested Principles for HE as a human right

Below are some suggested principles that could be applicable to the global context.

1. **Equity of Rights and Responsibilities Respecting Diversity.** Each person has a basic right to develop their diverse talents and interests through higher education to be full contributory participants to the society of which they are apart. Every individual also has a responsibility to the common good that accompanies the right to higher education.
2. **Implementation must be in a manner that it does not advantage one group of persons or type of individual over another without discrimination** based on race, color, national origin (including religion, language, ethnic characteristics, and immigration status), sex (including pregnancy status, family status, sexual orientation, and gender identity), disability, or age.
3. **Access to High-Quality Higher Education.** Systems of Higher Education must provide an adequate number of high-quality enrollment seats to accommodate interested students. Admissions policy and criteria must be based on giving students the opportunity to demonstrate capacity for program participation rather than “competitive merit assessment” which has been found to be highly associated with parental income and education. If places are limited, then lottery admissions should

¹⁹⁸ Dallman S. Nath, Anusha, (2020) Education Clauses in State Constitutions Across the United States, [education-clauses-in-state-constitutions-across-the-united-states.pdf](https://minneapolisfed.org/-/media/assets/research-and-data/research/ed-clauses-in-state-constitutions-across-the-united-states.pdf) (minneapolisfed.org); Cahalan MW, Addison M, Brunt, Nicole, Patel, Pooja, Perna, Laura. (2021) Indicators of Equity of Higher Education:2021 Historical Trend Report, <https://eric.ed.gov/?id=ED613170>.

¹⁹⁹ Cahalan M, Franklin K, Yamashita M (2016) Is Higher Education a Human Right or a Consumer Investment Commodity? http://pellinstitute.org/indicators/downloads/dialogues-016_essays_Cahalan_Franklin_Yamashita.pdf.

²⁰⁰ Hillman, N, (2020). Why Rich Colleges Get Richer and Poor Colleges Get Poorer: The Case for Equity-Based Funding in Higher Education. The Third Way, <https://www.thirdway.org/report/why-rich-colleges-getricher-poor-colleges-get-poorer-the-case-for-equity-based-funding-in-higher-education>.

be implemented.

4. **Debt-Free College for a High-Quality Higher Education.** Expenses for a high-quality higher education must be supported at public expense and must be free or affordable for all students regardless of a family's economic circumstance and must account not just for tuition and fees but the full college cost and living expenses. Existing student debt burden for past students should be forgiven, as its existence is incompatible with the concept of higher education as a human right.
5. **Intentional Equalization of Institutional Resources.** Public higher education agencies must equalize education and related expenditures (E&R) spending across different types of institutions. Intergenerational historical discrimination may require additional resources for those institutions serving groups that have been historically left out of higher education.
6. **Equal Access to Information Age Technology.** In the information age all students must be provided with access to up-to-date technology to complete their programs.
7. **Persistence and Completion Support.** Adequate support must be provided by the institution to ensure student **persistence in and completion** of a quality postsecondary education, such that all students who enroll will have meaningful access to all aspects of student life and the support they need to succeed. **Special support to accommodate differences in student circumstances** must be provided sometimes allowing for increased time for completion.
8. **Applicability to All Residing in a Geographic Area.** All persons, regardless of citizenship status must also be afforded rights to education including higher education.
9. **Formalized Student Input Structures.** Establish structures for obtaining student input into the rules and decisions concerning their higher education.