



# Reimagining Rights and Responsibilities in the United States: Equal Access to Public Goods and Services

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CARR CENTER FOR HUMAN RIGHTS POLICY  
HARVARD KENNEDY SCHOOL

# Equal Access to Public Goods and Services

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Reimagining Rights  
& Responsibilities  
in the U.S.

## **Reimagining Rights & Responsibilities in the United States: Equal Access to Public Goods and Services**

Carr Center for Human Rights Policy  
Harvard Kennedy School, Harvard University

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## Introduction

“Liberty,” President Franklin D. Roosevelt proclaimed during the depths of the Great Depression, “requires opportunity to make a living — a living decent according to the standard of the time, a living which gives man not only enough to live by, but something to live for.”<sup>1</sup> The same point was made in a different context 3 decades later by President Dwight D. Eisenhower who declared, “as long as we allow conditions to exist that make for second-class citizens, we make ourselves less than first-class citizens.”<sup>2</sup>

Now, as then, the United States faces an economic crisis that has lifted the veil on the inability of federal institutions to provide for the public welfare and therefore has the potential to redefine the role of government. The COVID pandemic has had a devastating impact on public health and the economy. In an era of social-distancing and mass unemployment, the national health and economic crises requires a redefinition of the responsibilities of government to provide and secure the rights of all citizens to equal access to public goods and services, such as affordable health care, quality education, adequate housing, and environmental protection. As the United States struggles to control the pandemic and stabilize the economy, the public and private sectors need to work together to create a new social contract that includes all citizens.

Long before the outbreak of the pandemic, it was clear that existing policies had failed to provide sufficient access to basic public services. After decades of public disinvestment and burgeoning inequality, many Americans were being denied access to basic public services. Now, with the economic slowdown related to the pandemic, inequality of opportunity has become increasingly visible, as many Americans struggle to maintain their livelihoods.

A right of equal access to public goods and services is not specifically provided by the Constitution, but the Declaration of Independence implicitly recognizes such a right as a prerequisite to the ideals of life, liberty, and the pursuit of happiness. Our July 2020 national poll shows that bipartisan majorities of Americans believe that equal opportunity rights to public goods and services are “very important,” and that these rights are not “secure.” Eighty-five percent believe that “the right to quality education” and “the right to clean air and water” are “very important,” while only 17% believe these rights are “secure.” A similar result (83%-10%) is shown for “the right to affordable health care.”

Yet, despite the importance of equal access to public goods and services, the United States remains in a prolonged period of governmental restraint in these areas. Since the early 1980’s, successive presidential administrations have consistently advocated against government spending and regulation. Through the prioritization of private economic activity, the federal government has largely abandoned its previous role of providing public services in areas such as education, housing, and environmental protection. But now with the nation struggling to

overcome the effects of the COVID pandemic, the stage may be set for a significant shift in how the public perceives the role of government.

The government’s ineffective response to the pandemic as well as the economic and racial crises have caused people to think differently about government responsibilities for rights. In our July 2020 poll, a supermajority of respondents (84%) report that “events in recent months have made me think differently about the role and responsibility of government to protect the rights of all Americans.” Eighty-five percent also say they now “think differently about the responsibility Americans have to our fellow citizens.”

## 1. Equal Access as the Foundation for Equality, Liberty, and Opportunity in the United States

A right of equal access to public goods and services is rooted in the rights to ‘Life, Liberty, and the pursuit of Happiness.’ With these rights, the Declaration of Independence asserts the concept of equality as a founding principle,<sup>3</sup> while nearly a century later in the nation’s “second founding” after the Civil War,<sup>4</sup> the 14<sup>th</sup> Amendment to the Constitution goes further in guaranteeing equal protection of the law. These documents create the principle from which a right of equal access is derived, including access to education, health care, housing, and environmental protection.

Throughout American history, the concepts of liberty and equality have been intertwined but have also conflicted. Liberty requires a delicate balance between the power of the state and society.<sup>5</sup> With the near collapse of the American economy during the Great Depression, the federal government undertook a significantly greater role in ensuring the core rights of liberty and equality. Emphasizing that “necessitous men are not free men,” President Franklin D. Roosevelt championed an innovative agenda for government support in ensuring economic welfare.

These policies persisted throughout the early post-war era, with collaboration between the public and private sectors aimed at enhancing public welfare. The United States was instrumental during this period in helping create the United Nations and leading the drafting of the American Declaration of the Rights of Man and the Universal Declaration of Human Rights (UDHR). The UDHR, adopted by the UN in 1948, enshrines political and social rights including the right to an adequate standard of living and the right to social security, human dignity, and development.

Current trends within public education, health care, housing, and environmental protection, however, reflect burgeoning disparities in opportunity. Public policy in recent years has centered around the promotion of macroeconomic growth but has done little to guarantee individual and societal well-being, reinforcing the focus

1. Roosevelt, Franklin D. “Re-Nomination Acceptance Speech.” 1936.

2. Remarks to the United Negro College Fund, 19 May 1953.

3. See Allen, Danielle S. *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality*. Liveright, 2014.

4. See Foner, Eric. *The Second Founding: How the Civil War and Reconstruction Remade the Constitution*. W. W. Norton & Company, 2019.

5. Acemoglu, Daron, and James A. Robinson. *The Narrow Corridor: States, Societies and the Fate of Liberty*. Viking, 2019.

of the private sector on maximizing shareholder value, often at the expense of employees and consumers. These policies have exacerbated the inequality of access to public goods and services, such as health and education, among significant portions of the population, who lack the agency and the opportunity to sustain themselves.<sup>6</sup>

The COVID-19 pandemic provides a graphic illustration of why civil and political rights are inseparable from economic, social, and cultural rights. The right to life is inseparable from the right to health, the right to food, and the right to work. Food insecurity was dire even before the pandemic, and the national food bank network now estimates that 1 in 4 children, the equivalent of 18 million minors, may need food aid in 2020.<sup>7</sup> Consistent access to nutritious food is essential for an active, healthy life and active participation in society. Therefore, it is critical that the United States responds now to the public health and economic crises by protecting liberty and equality and securing equal access to public goods and services.

The right of equal access to public goods and services is framed in this chapter through 4 interconnected values:

- Equal opportunity for human development and the basic freedom to pursue it.
- Agency to utilize equal opportunity. The government cannot guarantee “the pursuit of happiness,” but it can protect the agency of individuals to develop their capacities and provide equal opportunity for them to lead productive and fulfilling lives.
- Equal opportunity for future and present generations.
- Human dignity recognized through self-worth and security.<sup>8</sup>

## 2. Right of Equal Access

### HEALTH CARE

Since the 1930s, the United States has extensively debated the extent to which healthcare is a constitutional right of every American. This principle gained traction amid the Great Depression when President Roosevelt called for a “Second Bill of Rights” which would include “the right to adequate medical care and the opportunity to achieve and enjoy good health” in his 1944 State of the Union Address.<sup>9</sup> Yet, while healthcare has not been recognized as a guaranteed right,

the federal government has adopted an incrementalist approach in expanding access to basic healthcare services.

Through the creation of Medicare, Medicaid, the Children’s Health Insurance Program, and most recently the Affordable Care Act, the United States has taken steps to ensure low-income and otherwise vulnerable residents have access to basic health services.<sup>10</sup> These federal initiatives have been supplemented by state programs that provide additional resources for healthcare services. However, 14 states have refused to expand eligibility for Medicaid, which has left millions of low-income and chronically ill Americans without access to healthcare. With millions of uninsured Americans, many regional and local hospitals across the United States have closed or are in danger of closing due to the high cost of medical care and a high proportion of rural uninsured and underinsured people.<sup>11</sup>

These chronic inequities in access reflect the lack of a comprehensive approach guaranteeing access to basic health services. Instead, local, state, and federal institutions have adopted a piecemeal approach to expanding healthcare services, with some low-income and elderly individuals among the primary beneficiaries. However, as many Americans continue to struggle with chronic diseases, as well as the impact of COVID-19, it is critical that access to healthcare not be determined by an individual’s age or income. Rather, the series of social and economic challenges facing the United States warrant a comprehensive approach to ensuring every American has access to basic health services.

### EDUCATION

Education is a public good primarily provided by state and local institutions. While the Constitution does not explicitly guarantee each American the right to education, there are many references to education by the nation’s early leaders. For instance, Thomas Jefferson observed that “Where every man is able to read, all is safe.”<sup>12</sup> Jefferson’s statement reflects a founding belief that the vitality of American democracy depends on an educated populace.

The founders recognized the need for citizens to be educated and informed as a means to strengthen their capacity for self-government. The federal government highlighted the importance of education as early as 1787, when Congress in the Northwest Ordinance provided that “knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”<sup>13</sup> This early policy statement reflects the longstanding American ideal of supporting access to public education.

6. See generally Sen, Amartya. *Development as Freedom*. Alfred A. Knopf, 1999.

7. Hake, Monica, et al. “The Impact of the Coronavirus on Local Food Insecurity.” *Feeding America*, 19 May 2020, [https://www.feedingamerica.org/sites/default/files/2020-05/Brief\\_Local%20Impact\\_5.19.2020.pdf](https://www.feedingamerica.org/sites/default/files/2020-05/Brief_Local%20Impact_5.19.2020.pdf).

8. See Sen, Amartya. “The Ends and Means of Sustainability.” *Journal of Human Development and Capabilities*, vol. 14, no. 1, Feb. 2013, pp. 6-20.

9. “President’s Message to Congress on the State of the Union.” 11 Jan. 1944. 12 Pub. Papers 41.

10. Swendiman, Kathleen S. *Health Care: Constitutional Rights and Legislative Powers*. Congressional Research Service, 5 Apr. 2010.

11. van Dorn, Aaron, et al. “COVID-19 exacerbating inequalities in the US.” *The Lancet*, vol. 395, no. 10232, 18 Apr. 2020, [https://doi.org/10.1016/S0140-6736\(20\)30893-X](https://doi.org/10.1016/S0140-6736(20)30893-X).

12. Jefferson, Thomas. Letter to Charles Yancey. 6 Jan. 1816. Jefferson Papers, Founders Online, National Archives, <https://founders.archives.gov/documents/Jefferson/03-09-02-0209>.

13. Northwest Ordinance. Art. III, 13 July 1787, *The Avalon Project*, Yale Law School Library, [http://avalon.law.yale.edu/18th\\_century/nworder.asp](http://avalon.law.yale.edu/18th_century/nworder.asp).

The U.S. has long fallen short of this ideal, leading to inequities in access and opportunity that permeate the nation's public schools. In its landmark 1954 ruling in *Brown v. Board of Education*, the Supreme Court struck down the "separate but equal" principle that governed public education as violating the Equal Protection Clause of the 14<sup>th</sup> Amendment.<sup>14</sup> In an opinion for a unanimous Court, Chief Justice Earl Warren wrote that education "is required in the performance of our most basic public responsibilities...It is the very foundation of good citizenship" [emphasis added]. (347 U.S. at 493). The Court pointed to "compulsory school attendance laws and the great expenditures for education" as evidence of a collective "recognition of the importance of education to our democratic society."<sup>15</sup> Having recognized the link between education and democracy, the Court ruled that a state must provide education to all its students "on equal terms."<sup>16</sup>

Despite this far-reaching ruling, many American children continue to be deprived of access to basic public education in violation of their rights to equality of opportunity. Across the United States, it is clear that inequities in public schools are reinforcing racial and economic disparities. While local, state, and federal governments invest significant funds in public education, student outcomes continue to stagnate, with student performance in reading and math largely unchanged since 2000, and the achievement gap in reading continuing to widen.<sup>17</sup> With public education serving as the means by which citizens gain the ability to actively participate in American democracy, the consequences of the government's failure to provide access to quality educational opportunities severely impair democratic participation among already marginalized and underserved individuals.

## HOUSING

The federal government has historically played a role in the provision of safe, decent, and affordable housing for low-income families. In 1934, Congress responded to the Great Depression by creating the Federal Housing Administration (FHA). President Roosevelt lamented in his Second Inaugural Address that "one

third of our nation [is] ill-housed, ill-clad, and ill-nourished."<sup>18</sup>

After the end of the Second World War, FHA programs helped finance military housing for returning veterans and their families. Throughout the following decades, the FHA contributed to the production of millions of units of privately-owned apartments for elderly, handicapped, and lower-income Americans.<sup>19</sup> However, the model of high-density public housing "projects" was increasingly questioned as these became stigmatized as centers of extreme poverty, crime, and segregation. In 1974, the Housing and Community Development Act effectively ended most new construction of public housing.<sup>20</sup>

Before the passage of anti-discrimination housing legislation in the late 1960s and 70s, government and private institutions regularly engaged in the practice of "redlining." Through this form of lending discrimination, racial minorities were regularly denied the opportunity to purchase a home in certain communities<sup>21</sup>. In other instances, people of color were also denied loans on the basis of their race, which contributed to gaping wealth disparities.

In a 2019 report, the National Law Center on Homelessness and Poverty demonstrated how rising rents, stagnant wages, historically low rental vacancy rates, and the severe decline of federally subsidized housing have collectively led to a critical shortage of affordable housing units in the United States.<sup>22</sup> Here, as with education, significant disparities are apparent across the nation. Expert studies have demonstrated how historic and ongoing displacement, exclusion, and segregation continue to prevent people of color from obtaining and retaining their own homes and accessing safe, affordable housing.<sup>23</sup>

Affordable housing and anti-displacement protections are critical to individual and environmental health, societal well-being, and sustainability. Low-income residents who cannot afford to live near adequate education or health centers, transit options, or places of employment will likely be denied proper participation in the political life of their community.

14. United States, Supreme Court. *Brown v. Board of Education of Topeka*. 347 U.S. 483.

15. *Id.* at 493

16. United States, Supreme Court. *Brown v. Board of Education of Topeka*. 347 U.S. 483.

17. Goldstein, Dana. "It Just Isn't Working': PISA Test Scores Cast Doubt on U.S. Education Efforts." *The New York Times*, 5 Dec. 2019, <https://www.nytimes.com/2019/12/03/us/us-students-international-test-scores.html>

18. Roosevelt, Franklin D. "Second Inaugural Address." 20 Jan. 1937.

19. "The Federal Housing Administration (FHA)." *U.S. Department of Housing and Urban Development*, [www.hud.gov/program\\_offices/housing/fhahistory](http://www.hud.gov/program_offices/housing/fhahistory)

20. Rolnik, Raquel. *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Addendum 4*. UN Human Rights Council, 2010.

21. Brooks, Khristopher J. "Redlining's Legacy: Maps are gone, but the problem hasn't disappeared." *CBS News*, 12 June 2020, <https://www.cbsnews.com/news/redlining-what-is-history-mike-bloomberg-comments/>.

22. Bauman, Tristia, et al. *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities*. The National Law Center on Homelessness & Poverty, Dec. 2019, <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

23. See Solomon, Danyelle, et al. "Systemic Inequality: Displacement, Exclusion, and Segregation." *Center for American Progress*, 7 Aug, 2019, <https://www.americanprogress.org/issues/race/reports/2019/08/07/472617/systemic-inequality-displacement-exclusion-segregation/>; Rothstein, Richard. *The Color of Law: A Forgotten History of How Our Government Segregated America*. Liveright, 2017.; Quick, Kimberly, and Richard D. Kahlenberg. "Attacking the Black-White Opportunity Gap That Comes from Residential Segregation." *The Century Foundation*, 25 June 2019, <https://tcf.org/content/report/attacking-black-white-opportunity-gap-comes-residential-segregation/?session=1>; Smelser, Neil J., et al., editors. "Chapter 13: Residential Segregation and Neighborhood Conditions in U.S. Metropolitan Areas." *America Becoming: Racial Trends and Their Consequences*, by National Research Council., vol. 1, National Academies Press, 2001.

## ENVIRONMENT

The United States has long been a leader in developing concepts and strategies around environmental sustainability. In a 1907 address to Congress, President Theodore Roosevelt observed that ‘the conservation of our natural resources and their proper use constitute the fundamental problem which underlies almost every other problem of our national life. We must maintain for our civilization the adequate material basis without which civilization cannot exist. We must show foresight, we must look ahead.’<sup>24</sup>

The National Environmental Policy Act (NEPA) of 1969, the first major federal environmental law, committed the United States to sustainability, declaring a national policy, “to create and maintain conditions under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic and other requirements of present and future generations.”<sup>25</sup> Congress then established a statutory foundation for the United States Environmental Protection Agency (EPA), stating that it is the responsibility of the federal government to “use all practicable means... to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may fulfil the responsibilities of each generation as trustee of the environment for succeeding generations.”<sup>26</sup> The NEPA and subsequent Congressional Declarations established a broad national framework for protecting the environment.

There are numerous other federal and state environmental and sustainability laws that drive environmentally sound business and governmental practices, including the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, and the Toxic Substances Control Act. Through these statutes, the federal legal framework supports a definition of sustainability that includes economic, environmental, and social elements.

**The conservation of our natural resources and their proper use constitute the fundamental problem which underlies almost every other problem of our national life.**

24. Roosevelt, Theodore. “Seventh Annual Message to the Senate and House of Representatives.” 3 Dec. 1907. *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/index.php?pid=29548#axzz1JuA6cqEy>.

25. United States, Congress. The National Environmental Policy Act of 1969. [https://www.energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/Req-NEPA.pdf](https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/Req-NEPA.pdf)

26. United States, Congress, House. United States Code. Title 42, section 4331. *Legal Information Institute*, Cornell U Law School, <https://www.law.cornell.edu/uscode/text/42/4331>.

27. Maier, Charles S. “The Postwar Social Contract: Comment.” *International Labor and Working-Class History*, no. 50, 1996, pp. 148-156, <https://www.jstor.org/stable/27672316?seq=1>.

28. Kliff, Sarah. “Under Trump, the Number of Uninsured Americans Has Gone Up by 7 Million.” *Vox*, 23 Jan. 2019, <https://www.vox.com/2019/1/23/18194228/trump-uninsured-rate-obamacare-medicaid>.

29. “Historical.” *U.S. Centers For Medicare and Medicaid Services*, <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical>.

30. Gruber, Jonathan. “Program Report: Health Care.” *NBER The Reporter*, no. 4, Dec. 2019, <https://www.nber.org/reporter-2019-04>.

31. Skocpol, Theda. “The Rise and Resounding Demise of the Clinton Plan.” *Health Affairs*, vol. 14, no. 1, 1995, [www.healthaffairs.org/doi/full/10.1377/hlthaff.14.1.66](http://www.healthaffairs.org/doi/full/10.1377/hlthaff.14.1.66).

## 3. Policy Trends

Following the end of the Second World War, the United States maintained an implicit social contract, grounded in the legislation of the New Deal, and provided significant investments in public services that led to 3 decades of sustained economic growth.<sup>27</sup> While communities of color were intentionally deprived of access to various federal services and programs, particularly through the practice of redlining, these investments were credited with improved health outcomes, expanded access to public education, and making affordable housing a central theme of the American Middle Class. Since the early 1980s, the decline of this postwar social contract has resulted in chronic underinvestment in public education and housing, which has contributed to the growing inequality of opportunity in communities across the nation.

## HEALTHCARE

In recent decades, the political debate over the federal government’s role in healthcare policy has become polarized. As successive administrations have attempted to implement policies to control the growth of healthcare costs to families and individuals while ensuring greater access to healthcare services, millions of Americans continue to lack healthcare coverage. In 2018, approximately 13.7% of Americans did not have health insurance, many of whom are members of historically marginalized groups.<sup>28</sup> At the same time, healthcare costs have continued to rise, reaching approximately \$3.6 trillion in 2018, from \$255 billion in 1980.<sup>29</sup> When measured as a percentage of gross domestic product, spending on healthcare in the U.S. dwarfs other developed nations, as spending has grown from 8.9% of GDP in 1980 to 17.7% in 2017.<sup>30</sup>

The growth in the costs of healthcare, and the inability of millions of Americans to access it, has become a point of contentious political debate. While the Republican Party has traditionally promoted private competition to control costs, the Democratic Party along with many health experts have advocated for greater public support for those who lack private health insurance.<sup>31</sup> Yet, despite the attempts of several administrations, a comprehensive healthcare reform package did not pass Congress until 2010, with the enactment of the Affordable Care Act. Unanimously opposed by congressional Republicans, this comprehensive reform



package extended healthcare coverage to millions of Americans.<sup>32</sup>

Even with this expansion of healthcare coverage, patient outcomes in the United States continued to lag those of other developed nations.<sup>33</sup> While mortality rates fell from 1,184 per 100,000 people in 1980 to 837 in 2017, they remained above the ‘comparable country average’ of 723.<sup>34</sup> The United States also significantly lags behind other developed nations in terms of premature deaths, with the U.S. experiencing 12,282 potential years of life lost per 100,000 residents in 2017, as compared to 7,764 among comparable nations. At the same time, the United States trails other developed nations in access to physicians and has seen a 33% increase in suicide rates, compared to a global decline of 30%.<sup>35</sup>

While these disparities in access and outcomes permeate American society, they most significantly impact communities of color. Following the COVID-19 outbreak, research has shown that Black, Latinx, and tribal communities have been disproportionately impacted by the pandemic. Data from New York City in April 2020 showed that Black individuals were overrepresented among hospitalized patients, and mortality rates among Black and Latinx individuals significantly outpaced that of Whites and Asians.<sup>36</sup> These disparities in cases and mortality rates can be largely attributed to inadequate access, as Latinx individuals are 3 times more likely than Whites not to have health insurance, and Blacks twice as likely to be uninsured.<sup>37</sup> At the same time, chronic diseases continue to disproportionately burden communities of color, with Blacks experiencing higher rates of chronic disease and chronic stress from systemic inequality.<sup>38</sup>

Inequality in opportunity has long been a hallmark of the American healthcare industry. Yet, before the COVID-19 outbreak, the Trump administration sought to repeal critical provisions of the Affordable Care Act, while presenting alternatives that independent studies predicted would cause millions of Americans to lose their coverage.<sup>39</sup> After numerous failed attempts to repeal the ACA, the administration instead sought to nullify portions of the statute through separate legislation and regulation.<sup>40</sup> As part of the Tax Cuts and Jobs Act of 2017, the administration repealed the Individual Mandate, which required every American to have health insurance or be penalized.<sup>41</sup> In addition, the administration issued new rules allowing states to impose work requirements for Medicaid and stopped the reimbursement of insurance carriers that waive deductibles for low-income individuals.<sup>42</sup>

The Trump administration partly succeeded in implementing strategies to undermine the ACA. These strategies led to an increase in the percentage of Americans who lack health insurance and failed to slow the increases in healthcare costs for all Americans. Since President Trump’s election in 2016, the uninsured rate increased from 10.9% to 13.7% at the end of 2018.<sup>43</sup> In absolute terms, these policies left more than 7 million additional people without healthcare coverage, many of whom are low-income, younger individuals, and women.<sup>44</sup> About 7 in 10 Americans (69%) said reducing health care costs should be a top priority for the President and Congress.<sup>45</sup>

Across the United States, communities economically decimated by the outbreak of COVID-19 continue to face inequitable and

32. Sanger-Katz, Margot, and Quoc Trung Bui. “The Impact of Obamacare, in Four Maps.” *The New York Times*, 31 Oct. 2016, <https://www.nytimes.com/interactive/2016/10/31/upshot/up-uninsured-2016.html>.; Benen, Steve. “US Uninsured Rate Climbs in First Two Years of Trump’s Presidency.” *MSNBC*, 23 Jan. 2019, <http://www.msnbc.com/rachel-maddow-show/us-uninsured-rate-climbs-first-two-years-trumps-presidency>.

33. See “Top 7 Fiscal Charts from 2016.” *Peter G. Peterson Foundation*, 23 Dec. 2016, [www.pgpf.org/blog/2016/12/top-7-fiscal-charts-from-2016](http://www.pgpf.org/blog/2016/12/top-7-fiscal-charts-from-2016).

34. Kurani, Nisha, et al. “How Does the Quality of the U.S. Healthcare System Compare to Other Countries?” *Health System Tracker*, Peterson KFF, 28 Mar. 2019, <https://www.healthsystemtracker.org/chart-collection/quality-u-s-healthcare-system-compare-countries/#item-start>.

35. Saiidi, Uptin. “U.S. Life Expectancy has Been Declining. Here’s Why.” *CNBC*, 9 July 2019, <https://www.cnn.com/2019/07/09/us-life-expectancy-has-been-declining-heres-why.html>.

36. “Health Equity Considerations and Racial and Ethnic Minority Groups.” *Centers for Disease Control and Prevention*, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

37. *Ibid.*

38. *Ibid.*

39. Aron-Dine, Aviva, and Matt Broaddus. “Latest Republican ACA Repeal Plan Would Have Similar Harmful Impacts on Coverage and Health as All The Others.” *Center on Budget and Policy Priorities*, 20 June 2018, <https://www.cbpp.org/research/health/latest-republican-aca-repeal-plan-would-have-similar-harmful-impacts-on-coverage-and>.

40. Amadeo, Kimberly. “Donald Trump’s Health Care Policies.” *The Balance*, 20 Dec. 2019, <https://www.thebalance.com/how-could-trump-change-health-care-in-america-4111422>.

41. Fielder, Matthew. “How Did the ACA’s Individual Mandate Affect Insurance Coverage?” *USC-Brookings Schaeffer Initiative for Health Policy*, May 2018, <https://www.brookings.edu/wp-content/uploads/2018/05/coverageeffectsofmandate2018.pdf>.

42. Amadeo, Kimberly. “Donald Trump’s Health Care Policies.” *The Balance*, 20 Dec. 2019, <https://www.thebalance.com/how-could-trump-change-health-care-in-america-4111422>.

43. Kliff, Sarah. “Under Trump, the Number of Uninsured Americans Has Gone Up by 7 Million.” *Vox*, 23 Jan. 2019, <https://www.vox.com/2019/1/23/18194228/trump-uninsured-rate-obamacare-medicaid>.

44. *Ibid.*

45. Bialik, Kristen. “State of the Union 2019: How Americans see major national issues.” *Pew Research Center*. 4 Feb. 2019, <https://www.pewresearch.org/fact-tank/2019/02/04/state-of-the-union-2019-how-americans-see-major-national-issues/>.

insufficient access to healthcare services. Despite the progress made with the passage of the Affordable Care Act, current policies have resulted in significant increases in premiums and a decline in enrollment within the healthcare exchanges. These policies have exacerbated the barriers to healthcare that large portions of the nation face.

## EDUCATION

Referred to as the ‘great equalizer’ by Horace Mann, public education is now at the root of the socioeconomic inequalities that permeate the United States.<sup>46</sup> While there have long been inequalities within public schools, initiatives enacted by administrations from both parties have failed to significantly improve the quality of public education. Instead, low-income communities and communities of color have continued to experience significant barriers in accessing public schools. Despite these trends, the federal government has shown little indication that it is prepared to implement a comprehensive strategy for improving outcomes among the nation’s most disadvantaged students.

Inequalities in public education are largely rooted in the nation’s reliance on local control. Across the United States, public schools are largely overseen by local and state institutions, with school boards playing a key role in implementing the curriculum. While local control is intended to maintain proximity to communities, it has resulted in chronic inequalities in funding, which have exacerbated disparities in student outcomes. With the decentralization of public education, many communities have traditionally relied on property taxes to fund local schools. Yet, in 2019, the average White family held approximately 10 times more wealth than the average Black family.<sup>47</sup> These economic disparities have played a key role in sustaining the significant concentration of underfunded public schools in predominantly Latinx and Black communities.<sup>48</sup>

## Referred to as the ‘great equalizer’ by Horace Mann, public education is now at the root of the socioeconomic inequalities that permeate the U.S.

For several decades, the lagging performance of the nation’s public education system has drawn ire from members of both parties. With the release of ‘A Nation at Risk’ in 1983 the Reagan administration drew public attention to what the administration termed the nation’s “unilateral educational disarmament.”<sup>49</sup> Since then, various initiatives, such as ‘No Child Left Behind’ have contributed to a rapid shift toward standards-based assessment.<sup>50</sup> Yet, while intended to improve student outcomes within the nation’s historically underserved communities, the impact of these initiatives in narrowing existing disparities in student outcomes have been mixed.<sup>51</sup>

Across the United States, students continue to face inequities in academic opportunities and outcomes. These disparities impact students in every region of the nation, and they are particularly felt within communities of color. In 2016, 89% of White students completed high school, as compared to only 80% of Latinx and 78% of Black students.<sup>52</sup> At the same time, test scores among students in low-income, rural, and minority communities continued to trail those in affluent and predominantly White communities.<sup>53</sup>

Some parents and students have taken to the courts to demand equity in public education. In 2017, activists scored a key victory in New Mexico, when the courts ruled that the state was failing to meet its state constitutional mandate to provide students with a ‘sufficient’ public education.<sup>54</sup> Since then, the State of New Mexico has significantly increased spending on public education, much of which has been invested in expanding access to pre-kindergarten and supplemental instructional support for at-risk youth.<sup>55</sup>

46. Gowe, Roslin, and Paula S. Montgomery. “Educational Equity in America: Is Education the Great Equalizer?” *The Professional Educator*, vol. 25, no. 2, 2003, pp. 23-29, <https://files.eric.ed.gov/fulltext/EJ842412.pdf>.

47. McIntosh, Kriston, et al. “Examining the Black-White Wealth Gap.” *Brookings*, 27 Feb. 2020, <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/>

48. See Turner, Cory, et al. “Why America’s Schools Have A Money Problem.” *NPR*, 18 Apr. 2016, <https://www.npr.org/2016/04/18/474256366/why-americas-schools-have-a-money-problem>.

49. Graham, Edward. “A Nation at Risk Turns 30: Where Did it Take Us?” *NeaToday*, 25 Apr. 2013.

50. Dee, Thomas S., and Brian A. Jacob. “The Impact of No Child Left Behind on Students, Teachers, and Schools.” *Brookings Papers on Economic Activity*, 2010, pp. 149-207, <https://www.jstor.org/stable/41012846>.

51. *Ibid.*

52. “High School Graduation Rates.” *National Center for Education Statistics*, <https://nces.ed.gov/fastfacts/display.asp?id=805>.

53. See Rabinovitz, Jonathan. “Local Education Inequities Across U.S. Revealed in New Stanford Data.” *Stanford Graduate School of Education*, 29 Apr. 2016, <https://ed.stanford.edu/news/local-education-inequities-across-us-revealed-new-stanford-data-set>.

54. McKay, Dan, and Shelby Perea. “New Mexico Loses Education Lawsuit.” *Albuquerque Journal*, 20 July 2018, <https://www.abqjournal.com/1199185/nm-loses-landmark-education-case-ordered-to-provide-adequate-funding.html>.

55. Mullan, Dillon. “Bill Before Governor Would Mandate Details On Education Spending.” *Santa Fe New Mexican*, 25 Feb. 2020, [www.santafenewmexican.com/news/legislature/bill-before-governor-would-mandate-details-on-education-spending/article\\_b9fc80b4-5721-11ea-90f8-3bfc2afe0b9.html](http://www.santafenewmexican.com/news/legislature/bill-before-governor-would-mandate-details-on-education-spending/article_b9fc80b4-5721-11ea-90f8-3bfc2afe0b9.html).

Most recently, the movement for educational sufficiency gained further momentum with a key victory in Michigan, where a federal appeals court ruled that students have a constitutional right to literacy.<sup>56</sup> This landmark ruling came after students in Detroit challenged their school district over what they perceived to be inadequate educational resources. After years of enduring teacher shortages, deteriorating buildings, and inadequate textbooks, these students claimed they were deprived of an opportunity to acquire literacy. The federal appeals court agreed, ruling that literacy is essential to participating in a democratic society.

While these court cases have brought attention to the inequities and insufficiencies in public education, the federal government continues to fail in developing a comprehensive strategy for improving student outcomes. Over the last several years, the Trump administration has proposed a series of funding reductions in public education, beginning with a proposed 13.5% reduction to the Department of Education in its first budget proposal.<sup>57</sup> These include substantial reductions in teacher training, after-school programs, and federal programs that help prepare low-income students for college. While these initial recommendations were ultimately rejected by Congress, they were followed by a proposed 5% reduction to the Department's budget in Fiscal Year 2019, and a 12% reduction in Fiscal Year 2020.<sup>58</sup> The proposed reductions in federal support for public education came while 12 states had yet to restore spending on public education to pre-recession levels.<sup>59</sup>

Over the last several months, the disruptions in educational instruction resulting from the COVID pandemic have lifted the veil on the chronic inequities in access and opportunity throughout the nation's public schools. As local and state institutions continue to impose social distancing requirements, millions of children have been left without access to reliable internet or technological devices.<sup>60</sup> With many children in rural and low-income communities experiencing the adverse impact of the digital divide, it is clear that existing funding and political structures have failed to equitably meet the needs of all children. While disparities in access to broadband internet have long been a source of debate, the impact of COVID-19 has only amplified the need to provide students with the technological resources they

need to compete in an increasingly competitive and globalized economy.

Within communities across the United States, public schools are failing to provide their students with the opportunity to pursue an equitable, sufficient, and quality public education. While some states, such as New Mexico, are striving to invest in the academic success of their students through the expansion of innovative intervention programs, student outcomes remain largely stagnant across the United States.<sup>61</sup>

## HOUSING

Throughout the post-war era, the concept of homeownership has been a central theme of American society. For many Americans, the prospect of owning a home symbolizes entry into the middle class, and by extension, embodies the core ideals of what it means to be an American. Yet, in communities around the country, the prospect of homeownership has become increasingly out of reach, particularly with the economic disruptions caused by the COVID pandemic. With rising home prices and stagnant wages, few communities have been spared from the affordable housing crisis, with families across the United States struggling to secure adequate shelter.

The increase in home prices has significantly outpaced any increase in wages. With the growth of wages now lagging housing costs in 80% of housing markets,<sup>62</sup> an individual working full-time must now earn approximately \$17.90 per hour to afford a one-bedroom apartment.<sup>63</sup> Yet, with the federal minimum wage largely stagnant at \$7.25 per hour, many families have found themselves locked out of an increasingly competitive housing market. As 46 million Americans continue to experience poverty, the federal minimum wage has proven inadequate, with approximately 11 million Americans paying more than half of their income in housing.<sup>64</sup>

To put these challenges into perspective, an individual earning the federal minimum wage would have to work approximately 103 hours per week, on average, to afford a one-bedroom apartment

56. Goldstein, Dana. "Detroit Students have Constitutional Right to Literacy, Court Rules." *The New York Times*, 27 Apr. 2020, <https://www.nytimes.com/2020/04/27/us/detroit-literacy-lawsuit-schools.html?referringSource=articleShare>.

57. Bendix, Aria. "Trump's Education Budget Revealed." *The Atlantic*, 16 Mar. 2017, <https://www.theatlantic.com/education/archive/2017/03/trumps-education-budget-revealed/519837/>.

58. Kreighbaum, Andrew. "Trump Seeks Billions in Cuts." *Inside Higher Ed*, 12 Mar. 2019, <https://www.insidehighered.com/news/2019/03/12/white-house-wants-12-percent-cut-education-spending>.

59. Picchi, Aimee. "12 States Spend Less Now Than Before the Recession." *CBS News*, 6 Mar. 2019, <https://www.cbsnews.com/news/12-states-spend-less-on-schools-now-than-before-the-recession/>.

60. Steyer, James P. "COVID-19 Is a Wake-Up Call to Close the Digital Divide." *The Hill*, 16 Apr. 2020, <https://thehill.com/opinion/technology/492298-covid19-is-a-wake-up-call-to-close-the-digital-divide>.

61. Goldstein, Dana. "It Just Isn't Working: PISA Test Scores Cast Doubt on U.S. Education Efforts." *The New York Times*, 3 Dec. 2019, <https://www.nytimes.com/2019/12/03/us/us-students-international-test-scores.html>.

62. "The Housing Crisis is Worse than you Think." *In These Times*, 23 July 2019, <https://inthesetimes.com/article/21949/affordable-housing-crisis-rising-rent-homebuyers-market>.

63. *The Gap, A Shortage of New Homes*. National Low Income Housing Coalition, Mar. 2019, [https://reports.nlihc.org/sites/default/files/gap/Gap-Report\\_2019.pdf](https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2019.pdf).

64. *Ibid.*

at the fair market rate.<sup>65</sup> Yet, there are few alternatives for families in this situation, as only 1% of counties have a housing market that is considered affordable for those earning the minimum wage.

Shortages of affordable housing are exacerbated by existing federal policy. Decades of chronic underinvestment in renovating existing public housing, and a tepid rate of new construction, have contributed to the national shortage of 7 million affordable homes.<sup>66</sup> Rather than invest in expanding access to public housing, the federal government has decreased spending on low-income housing assistance as a percentage of GDP and non-defense discretionary spending.<sup>67</sup>

These policies have contributed to an affordable housing crisis that impacts communities across the United States. As the purchasing power of the minimum wage has steadily eroded, more Americans have been experiencing greater challenges in accessing affordable housing.<sup>68</sup> Without a comprehensive policy response from the federal government and with tepid support from local and state institutions, there are now only 37 affordable housing units for every 100 low-income households.<sup>69</sup>

While many Americans have found the prospect of homeownership increasingly out of reach, communities of color have been disproportionately burdened by the nation's affordable housing crisis. In 2018, over half a million individuals experienced homelessness on any given day.<sup>70</sup> Among these individuals, approximately 40% are Black, compared to 13% of the nation's population. At the same time, the Hispanic community represented 22% of the nation's homeless population, while only comprising 16% of the national population.<sup>71</sup> These statistics are a clear indication that policy failures at the local, state, and federal

level have not only exacerbated existing shortages of affordable housing but have also disproportionately impacted historically marginalized and underserved communities of color.

## ENVIRONMENTAL PROTECTION

Since the early 1970s, the modern environmental protection movement has drawn support from across the political spectrum. Throughout this time, various administrations have championed environmental protection through the enactment of landmark legislation and administrative actions.<sup>72</sup> Yet, in recent years, the Trump administration has adopted an aggressive strategy of rolling back existing environmental protections. In doing so, it has embraced a "business-friendly" agenda that is not only opposed by some businesses but is also detrimental to the long-term interests of the private sector.<sup>73</sup>

Under the leadership of former Administrator Scott Pruitt, the Environmental Protection Agency (EPA) partially abandoned its focus on implementing data-driven policies, and instead pursued an agenda focused largely on rolling back environmental regulations. In 2017, despite overwhelming scientific evidence supporting the existence of climate change, the Trump administration withdrew the United States from the Paris Climate Accord.<sup>74</sup> Since then, the EPA has embarked on what observers call, "an unprecedented attempt to delete or bury credible scientific information they find politically inconvenient."<sup>75</sup> Under Pruitt's leadership, the EPA removed references to terms such as 'fossil fuels,' 'greenhouse gases,' and 'global warming.'<sup>76</sup> In addition, in a step toward fulfilling President Trump's campaign promise to abolish the EPA, the administration proposed a 31% budget reduction to the agency.<sup>77</sup>

65. "NLIHC Releases 'Out of Reach 2019': National Housing Wage is Nearly \$23 Per Hour for a Modest Two-Bedroom Rental." *National Low Income Housing Coalition*, 24 June 2019, <https://nlihc.org/resource/nlihc-releases-out-reach-2019-national-housing-wage-nearly-23-hour-modest-two-bedroom>.

66. *The Gap, A Shortage of New Homes*. National Low Income Housing Coalition, Mar. 2019, [https://reports.nlihc.org/sites/default/files/gap/Gap-Report\\_2019.pdf](https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2019.pdf).

67. Rice, Douglas. "Chart Book: Cuts in Federal Assistance Have Exacerbated Families' Struggles to Afford Housing." *Center on Budget and Policy Priorities*, 12 Apr. 2016, <https://www.cbpp.org/research/housing/chart-book-cuts-in-federal-assistance-have-exacerbated-families-struggles-to-afford>.

68. Holder, Sarah. "Minimum Wage Still Can't Pay for a Two-Bedroom Apartment Anywhere." *Bloomberg CityLab*, 19 June 2019, <https://www.citylab.com/equity/2019/06/affordable-housing-minimum-wage-rent-apartment-house-rental/592024/>.

69. *The Gap, A Shortage of New Homes*. National Low Income Housing Coalition, Mar. 2019, [www.reports.nlihc.org/sites/default/files/gap/Gap-Report\\_2019.pdf](http://www.reports.nlihc.org/sites/default/files/gap/Gap-Report_2019.pdf).

70. "State of Homelessness: 2020 Edition." *National Alliance to End Homelessness*, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-report/>.

71. "Methods for Creating a Racially Equitable System." *Connecticut Coalition to End Homelessness*, <http://cceh.org/wp-content/uploads/2019/06/METHODS-FOR-CREATING-A-RACIALLY-EQUITABLE-SYSTEM.pdf>.

72. "EPA History." U.S. *Environmental Protection Agency*, <https://www.epa.gov/history#timeline>.

73. Krugman, Paul. "Trumpism is Bad for Business." *The New York Times*, 5 Sep 2019, <https://www.nytimes.com/2019/09/05/opinion/trump-economy.html>.

74. "EPA History," U.S. *Environmental Protection Agency*, <https://www.epa.gov/history#timeline>.

75. Barron, Laignee. "Here's What the EPA's Website Looks like After a Year of Climate Change Censorship." *Time*, 1 Mar. 2018, <https://time.com/5075265/epa-website-climate-change-censorship/>.

76. Ibid.

77. Green, Miranda. "Trump Proposes Slashing EPA Budget by 31 Percent." *The Hill*, 11 Mar. 2019, <https://thehill.com/policy/energy-environment/433496-white-house-proposes-dramatic-cuts-to-energy-and-environment>.

During the first three years of the Trump administration, 58 environmental rules and regulations were either relaxed or repealed entirely.<sup>78</sup> This does not include the 37 proposed rollbacks that are currently under review. While the administration has adopted a broad approach to environmental deregulation, almost half of the rollbacks it has either proposed or enacted would impact emissions or drilling standards.<sup>79</sup> If enacted, these environmental protection rollbacks will do little to mitigate greenhouse gas emissions, and could potentially lead to an acceleration in the adverse health effects derived from climate change.

These impacts are already being disproportionately felt by low-income families and communities of color. Historically, individuals in low-income and predominately minority communities have had greater exposure to toxic pollution, with Blacks being exposed to significantly higher levels of industrial air pollution than Whites.<sup>80</sup> At the same time, communities that are predominately Black also experience a greater risk of premature death from particle pollution. These disparities are rooted in socioeconomic factors, including dynamics in the housing market and disparities in access to healthcare.

As the impact of climate change continues to be felt across the world, the United States has an opportunity to transition away from fossil fuels. In doing so, it must move toward not only further regulating the extraction and consumption of fossil fuels but also simultaneously promoting the use of renewable energy. Yet, in recent years, the United States has largely failed to promote the growth of the renewable energy sector. These policies reflect the nation's current priority of promoting a short-term corporate-centered approach to environmental regulation that will ultimately not only diminish the United States' economic competitiveness but will place the health of Americans at risk.

## FISCAL POLICY

Each of the critical challenges discussed in this report requires a robust and comprehensive response from local, state, and federal institutions. With both the national debt and federal budget deficit continuing to grow, the federal government is increasingly constrained by existing fiscal policies.<sup>81</sup> These policies, which include several tax reform initiatives that largely benefited affluent individuals and large corporations, have limited the federal government's ability to significantly invest in programs that promote equal access to public goods and services. If the United States is to develop a new social contract for the 21<sup>st</sup> Century, it must ensure that federal institutions have the resources they need to meet their obligations in promoting public welfare.

Throughout the last four decades, the United States has enacted various tax reform initiatives that, while championed as tools of economic growth, have disproportionately benefited the affluent. These initiatives significantly reduced the tax burdens on corporations and high-income individuals and, through their adverse impact on the federal deficit, laid the groundwork for significant cuts to discretionary spending starting with the Reagan administration.

Among the latest tax reform packages was the passage of the Tax Cuts and Jobs Act of 2017. In fulfillment of its campaign pledge to reduce the burden on taxpayers, the Trump administration enacted significant reductions in the tax burden levied on affluent individuals and corporations. Among its most significant provisions, the tax reform package doubled the estate tax exemption, repealed the Individual Mandate, and reduced the corporate tax rate from 35% to 21%.<sup>82</sup> Before the outbreak of COVID-19, these provisions were projected to reduce federal revenue by approximately \$1 to \$2 trillion between 2018 and 2025.<sup>83</sup>

While the Trump administration has prioritized the reduction of the tax burden on individuals and corporations, it has also pursued an aggressive campaign to reduce discretionary federal spending. As detailed earlier in this chapter, the administration has proposed significant reductions in allocations to the Department of Education, and despite having failed to repeal the Affordable Care Act, has undermined various provisions of that statute through regulation. In doing so, the federal government has signaled its intention to continue pursuing a fiscal policy that places greater priority upon reducing taxation than investing in public services.

Most recently, the federal government has pursued an aggressive fiscal strategy to sustain economic activity amid the COVID-19 outbreak. In its March 2020 spending package, the federal government enacted a \$2.2 trillion economic relief program. While significant resources were allocated to support one-time payments of \$1,200 to large proportions of the population, the relief package largely prioritized the needs of large corporations. As millions of Americans continued to lose their jobs, the federal government allocated billions in grants to support the airline industry while simultaneously authorizing federal payments to hedge funds.

As the nation struggles to recover from the economic slowdown stemming from the pandemic, the federal government must pursue an aggressive strategy for promoting public welfare. In doing so, each resident of the United States must actively

78. Popovich, Nadja, et al. "95 Environmental Rules Being Rolled Back Under Trump." *The New York Times*, 21 Dec. 2019, <https://www.nytimes.com/interactive/2019/climate/trump-environment-rollbacks.html>.

79. Ibid.

80. "Disparities in the Impact of Air Pollution." *American Lung Association*, <https://www.lung.org/clean-air/outdoors/who-is-at-risk/disparities>.

81. Elis, Niv. "U.S. Debt Surpasses \$23 Trillion for First Time." *The Hill*, 1 Nov. 2019, <https://thehill.com/policy/finance/468600-us-debt-surpasses-23-trillion-for-first-time>.

82. "Briefing Book: How did the Tax Cuts and Jobs Act change personal taxes?" *Tax Policy Center*, Urban Institute and Brookings Institution, <https://www.taxpolicycenter.org/briefing-book/how-did-tax-cuts-and-jobs-act-change-personal-taxes>.

83. "Briefing Book: How did the TCJA affect the federal budget outlook?" *Tax Policy Center*, Urban Institute and Brookings Institution, <https://www.taxpolicycenter.org/briefing-book/how-did-tcja-affect-federal-budget-outlook>.

contribute to the implementation of a renewed social contract. Funding the initiatives discussed in this report will require a robust effort to alleviate the chronic tax evasion that deprives the federal government of 1 out of every 6 dollars that are owed in federal taxes. Investing in the enforcement of existing tax policies will yield significant resources for investing in public goods and services.

When analyzing the disparities in opportunity that millions of Americans face each day, there is little shortage of proposals for addressing the pressing issues facing American society. In many of these proposed solutions, the federal government plays a central role in promoting equal access. Yet, for decades, the federal government has prioritized the needs of the affluent, while simultaneously failing to uphold its contributions to the broader social contract. If the United States is to make significant progress toward restoring the ideals of equal access, the federal government must respond to the needs of its people, and in doing so, invest in enhancing society's collective quality of life.

## 4. Corporate Responsibility

### SHARED RESPONSIBILITIES OF GOVERNMENT AND THE PRIVATE SECTOR

Providing for the right of equal access to life, liberty and the pursuit of happiness requires *mutually reinforcing* public and private sector action. The private sector serves as the engine of economic growth and job creation in the United States and is therefore a crucial participant in supplying public goods and services.

Corporations have the capacity to support or fundamentally undermine the right of equal access. With the ongoing COVID crisis, the role of the private sector and the efforts taken by companies and the federal government to provide basic services and protect decent work have come under sharp focus.

Certain businesses played a critical role in responding to the pandemic, providing everything from rubber gloves and ventilators to diagnostic tools and the development of vaccines. Other companies have been accused of damaging practices including exposing staff to unnecessary health risks, refusing paid sick leave, exploiting low-wage workers, engaging in share buyback programs, and paying large shareholder dividends while firing employees and closing plants.<sup>84</sup> The majority of dividends generated from these corporate practices have gone to higher-income Americans; according to data from the Internal Revenue Service; about 69% of all dividends are paid to taxpayers with incomes over \$200,000.<sup>85</sup>

**Providing for the right of equal access to life, liberty and the pursuit of happiness requires *mutually reinforcing* public and private sector action.**

At the same time, low-wage workers bore the brunt of the impact, risking their well-being, while working to implement public health protocols, and keeping the essential industries of the economy running. Twenty-four percent of U.S. civilian workers, or roughly 33.6 million people, had no paid sick leave during the early peak of the COVID-19 pandemic, according to the federal Bureau of Labor Statistics. Of those whose wages were \$10.80 per hour or less, 69% had no paid sick leave. And only 27% of childcare workers and food preparation workers had access to paid sick leave.<sup>86</sup>

The COVID-related surge in unemployment claims exposed failures in the U.S. labor market which came at a significant human and economic cost. Job creation alone is not the answer to poverty alleviation and economic revival. The post-COVID economic response must not be built on low-wage, insecure, or informal jobs. Human development and equitable growth require *decent* jobs, where people can work in safe conditions and are paid fair wages. Work is part of daily life and is crucial to a person's dignity, well-being, and development. Hence, well-functioning and professionalized public institutions such as the Department of Labor play critical roles in regulating the private sector and preventing exploitive employment that damages both workers and consumer welfare.

The government's core role involves correcting negative and harmful externalities, such as pollution, industrial hazards, and habitat loss. The government is also responsible for the development of social goods such as public infrastructure and services. These responsibilities have translated into supplying specific needs, such as public transportation infrastructure, educational facilities, and the centers for disease control.

Business has been described as the economic organization of society.<sup>87</sup> Corporate purpose and ethical corporate cultures need to be shaped by society and the government to better reflect societal priorities. The private sector has a responsibility, parallel to that of government, to provide a platform for supporting the agency and opportunity of citizens for realizing liberty and well-being.

84. See Fox, Justin. "Critics of Stock Buybacks Will Outlast Coronavirus." *Bloomberg*, 1 Apr. 2020, <https://www.bloomberg.com/opinion/articles/2020-04-01/coronavirus-aid-ban-on-stock-buybacks-won-t-stop-criticism>.; Sainato, Michael. "Retail workers at Amazon and Whole Foods coordinate sick-out to protest Covid-19 conditions." *The Guardian*, 1 May 2020, <https://www.theguardian.com/world/2020/may/01/retail-workers-at-amazon-and-whole-foods-coordinate-sick-out-to-protest-covid-19-conditions>.

85. Whoriskey, Peter. "U.S. Companies Cut Thousands of Workers While Continuing to Reward Shareholders During Pandemic." *The Washington Post*, 5 May 2020, <https://www.washingtonpost.com/business/2020/05/05/dividends-layoffs-coronavirus/>.

86. Desilver, Drew. "As Coronavirus spreads, which U.S. workers have paid sick leave – and which don't?" *Pew Research Center*, 12 Mar. 2020, <https://www.pewresearch.org/fact-tank/2020/03/12/as-coronavirus-spreads-which-u-s-workers-have-paid-sick-leave-and-which-dont/>.

87. Merrick, Dodd E. "For Whom Are Corporate Managers Trustees?" *Harvard Law Review*, vol. 45, no. 7, May 1932, pp. 1145-1163, <https://doi.org/10.2307/1331697>.

The role of the federal government in protecting well-being is evidenced through the existence of government agencies and institutions such as the Department of Justice, the National Institutes of Health, the Federal Emergency Management Agency, and the National Science Foundation. The missions of these public institutions include administering justice and monitoring health risks, as well as providing research and education in public health, science, and engineering. Until recently, publicly funded institutions have received bipartisan support, demonstrating consensus about the need to provide for the welfare of the population through government institutions.

Delivering justice and protecting well-being requires regulation of business conduct. Government regulation is essential for preventing or minimizing negative social and environmental impacts, and ensuring that corrective remedies are provided to those harmed by unsafe working conditions. New and emerging technologies, such as the use of facial recognition software and algorithmic discrimination, which can facilitate discrimination against marginalized populations, present complex challenges for government agencies.<sup>88</sup> The government's role here is to promote, shape, and regulate the economic market activity, secure safe workplaces and consumer products, and protect against exploitive or discriminatory business practices. The government's role is to enhance human, social, and environmental sustainability by regulating the private sector.

In addition to providing jobs, goods, and services, the private sector also contributes to the tax revenues necessary to finance public infrastructure and state services that are highlighted above. However, 55% of the foreign profits of U.S. multinationals are currently booked in tax havens.<sup>89</sup> Profit centers are disconnected from where firms employ workers and produce goods and services.<sup>90</sup> As a result of this tax revenue disconnect, government agencies are now critically under-funded and largely unprepared to respond to the various social and economic challenges facing the nation.

Beyond the increasing cost of basic public services, there are also misalignments between shareholder value and public responsibility. The controversy surrounding the accident record of the Boeing 737 Max is a leading example. In the decade before the multiple accidents that resulted in numerous fatalities, Boeing

allocated significant resources to shareholder buybacks, while its investment in research and development remained relatively flat.<sup>91</sup>

The private sector has the capacity to develop innovative solutions to acute and emerging societal challenges, such as the current public health crisis. There are many business opportunities where profit-seeking and human and environmental sustainability objectives closely align.<sup>92</sup> The public and the private sectors have complementary and often overlapping roles here, and corporate responsibility is an indispensable component of securing and maintaining human wellbeing.

## WORKING POVERTY

Precarious livelihoods, lack of access to affordable healthcare, homelessness, and joblessness are growing concerns for millions of Americans. At the same time, Americans are seeing rising inequality, as increasingly large proportions of the wealth generated in the United States ultimately ends up in the hands of the wealthiest people. Since 1973, American productivity has increased by 77%, yet hourly pay has grown by only 12%. The private sector and government both have critical and interconnected roles to play in alleviating working poverty and in responding to the current social and economic crisis.

According to the U.S. Census Bureau, about 40.6 million people, or 12.7% of the nation's population, lived below the poverty level in 2016.<sup>93</sup> Of these individuals, 7.6 million were classified as the "working poor," with 3.4 million full-time wage and salary workers.<sup>94</sup> The federal minimum wage has been stagnant at \$7.25 per hour for 7 years. This is a poverty wage and has an effect on wages for millions of jobs. Overall, 58.3 million workers (43.7%) earn under \$15 per hour; 41.7 million (31.3%) earn under \$12 per hour.<sup>95</sup> Women represent less than half the workforce, but well over half of those earning under \$15 per hour, and Black and Hispanic workers are far more likely to be in low-wage jobs. Overall, 48.5% of working women (31.4 million) earn under \$15 per hour; 35.2% (25.8 million) earn under \$12 per hour for example.<sup>96</sup> New employment opportunities increasingly take the form of insecure gig work, temporary contracting, or day labor, which is less likely to provide important social benefits like health insurance.

Wealth inequality is rising in the United States. While the overall

88. *Surveillance Giants: How the Business Model of Google and Facebook Threatens Human Rights*. Amnesty International, 2019.; See also Zuboff, Shoshana. *The Age of Surveillance Capitalism: The fight for a human future at the new frontier of power*. 1<sup>st</sup> ed., Public Affairs, 2019.

89. Zucman, Gabriel. "Taxing Multinational Corporations in the 21st Century." *Economics for Inclusive Prosperity*, Feb. 2019, <https://econfip.org/policy-brief/taxing-multinational-corporations-in-the-21st-century/>.

90. Ibid.

91. On Boeing's "shareholder-first culture," see Catchpole, Dan. "Boeing's Long Descent." *Fortune*, Feb. 2020.; See also, "Why Boeing's shares have not fallen further after the 737 MAX crashes." *The Economist*, 7 Apr. 2019, <https://www.economist.com/gulliver/2019/04/07/why-boeings-shares-have-not-fallen-further-after-the-737-max-crashes>.

92. Kiron, David, et al. "The Innovation Bottom Line." *MIT Sloan Management Review*, vol. 54, no. 3, 2013.

93. *BLS Reports: A Profile of the Working Poor, 2016*. U.S. Bureau of Labor Statistics, July 2018, [https://www.bls.gov/opub/reports/working-poor/2016/home.htm#\\_edn1](https://www.bls.gov/opub/reports/working-poor/2016/home.htm#_edn1).

94. The working poor are defined by the U.S. Census Bureau as people who spent at least 27 weeks in the labor force (that is, working or looking for work) but whose incomes still fell below the poverty level.

95. "Few Rewards." *Oxfam America*, 2019. <https://policy-practice.oxfamamerica.org/work/poverty-in-the-us/low-wage-map/>.

96. Ibid.

economy has grown significantly since the 1970s, the top 10% of earners received 87% of all income growth (compared to 29% in the preceding 40 years). The top 1% received 56% of all income growth from 1975 to 2006.<sup>97</sup> Over the last 4 decades, the labor share of income declined from 66% to 58%, and the average real wage of workers declined over a period in which total income in the U.S. almost tripled.<sup>98</sup> The combination of rising income and savings rate inequality is fuelling further wealth inequality across the country.

Labor unions represent one important structural avenue that may improve the ability of the U.S. economy to create decent jobs going forward. Unions in the U.S. have historically been champions of a range of laws that apply to and protect working people, including the minimum wage, occupational health and safety, paid sick leave, and equal employment opportunities.<sup>99</sup> Labor unions equip workers with the bargaining power they need to negotiate improvements to their working conditions and protect against exploitation.

Yet, experts have highlighted continued attacks on freedom of association, and fierce opposition on the part of employers when people try to organize at their workplace in the U.S.<sup>100</sup> Right to work laws have also undermined the strength of trade unions. In 2019, the percent of wage and salary workers who were members of unions declined to 10.3%, down by 0.2 percentage points from 2018, and down from 20.1% in 1983 when the U.S. Bureau of Labor Statistics started reporting the figures.<sup>101</sup>

Finally, the U.S. has embraced automation and globalization with greater alacrity and fewer restrictions than almost any other nation. Deterioration in pay and job stability has been particularly acute in the U.S. over the past 30 years.<sup>102</sup> Displaced workers whose jobs are offshored or automated receive relatively little protection or support. Public funds should be dedicated to retraining and re-tooling workers. Firms and workers should be supported in developing skills and capacities so that they can participate in more dynamic sectors of the economy, rather than rely on low-wage, insecure jobs. Productive employment

strategies would provide individuals with dignity and agency through decent work and help revitalize the economy in more productive forms.<sup>103</sup>

## CORPORATE RESPONSIBILITY

The constitutional and legal rights of corporations are conditioned on their responsibilities to stakeholders and to the wider society in which they operate. Over the last decade, the idea that businesses have social responsibilities has re-entered mainstream discourse and is increasingly the subject of political debate at the highest levels. The major social and environmental issues of our time cannot be adequately addressed by government alone—the private sector has a critical role to play; indeed, the private sector’s own long-term success depends on its willingness and ability to take on a greater role in addressing these and other social issues.

Historically, corporations were granted protected legal status because they served a public interest as well as a private interest. Indeed, early corporations were considered to be quasi-public entities.<sup>104</sup> The 17<sup>th</sup> century legal precedent for treating a corporation as a legal ‘person’ involved a dispute over the property rights of a charitable hospital.<sup>105</sup> For hundreds of years, most corporations were created to build and manage infrastructure projects that today would be considered public goods, such as highways, bridges, and canal systems. Corporations were regarded as a form of social institution. From the New Deal era through the postwar period and into the 1970s, it was widely accepted that in addition to making money for shareholders, “the corporation has other purposes of perhaps equal dignity: the satisfaction of consumer wants, the provision of meaningful employment opportunities, and the making of a contribution to the public life of its communities.”<sup>106</sup>

A massive shift in thinking about the purpose of the corporation occurred in the early 1970s. This shift in ideology is best represented by Chicago School economist Milton Friedman’s edict that the sole social responsibility of a business was to

97. Saez, Emmanuel, and Gabriel Zucman. “Wealth Inequality in the United States since 1913: Evidence from Capitalized Income Tax Data.” *The Quarterly Journal of Economics*, vol. 131, no. 2, May 2016, pp. 519-578, <https://doi.org/10.1093/qje/qjw004>.

98. Korinek, Anton. “Labor in the Age of Automation and Artificial Intelligence.” *Economics for Inclusive Prosperity*, Feb. 2019.

99. AFL-CIO Commission on the Future of Work and Unions. AFL-CIO, 13 Sept. 2019, <https://aflcio.org/reports/afl-cio-commission-future-work-and-unions>.

100. Rosenberg, Eli. “Workers are fired up. But union participation is still on the decline, new statistics show.” *The Washington Post*, 23 Jan. 2020. <https://www.washingtonpost.com/business/2020/01/22/workers-are-fired-up-union-participation-is-still-decline-new-statistics-show/>.

101. “Union Members Summary.” *Economics News Release*, U.S. Bureau of Labor Statistics, 22 Jan. 2020, <https://www.bls.gov/news.release/union2.nr0.htm>.

102. Gawande, Atul. “Why Americans Are Dying from Despair.” *The New Yorker*, 16 Mar. 2020, <https://www.newyorker.com/magazine/2020/03/23/why-americans-are-dying-from-despair>.

103. Rodrik, Dani, and Charles Sabel. “Building a Good Jobs Economy.” *Harvard University Working Paper*, <https://j.mp/2G5tnvX>.

104. In *Industrializing English Law*, Harris notes that the turnpike trusts and river improvement corporations of early 18<sup>th</sup> Century England were considered to be “branches of local government.” See Harris, Ron. *Industrializing English law: entrepreneurship and business organization, 1720-1844*. Cambridge University Press, 2000, pp. 171.

105. *Sutton’s Hospital Case*, 10 Rep 32. 1612.; See Coke, Edward. *The Selected Writings and Speeches of Sir Edward Coke*, vol. 1, edited by Steve Shepard, Liberty Fund, 2003, [https://oll.libertyfund.org/titles/911#Coke\\_0462-01\\_622](https://oll.libertyfund.org/titles/911#Coke_0462-01_622).

106. Allen, William T. “Our Schizophrenic Conception of the Business Corporation.” *Cardozo Law Review*, vol. 14, no. 2, 2012, pp. 271.



increase profits.<sup>107</sup> Friedman's view, reflected in the mainstream opinion of the time, was that business decision-makers had an obligation (legal or otherwise) to *maximize shareholder value*. For several successive decades, the doctrine of shareholder value maximization was almost unassailable. But in the wake of the 2008-2009 financial crisis, the pendulum appeared to swing in the other direction.

Earlier moments had already called the doctrine into question. South African apartheid became an important flashpoint in debates in the United States over the social responsibility of business. For many Americans, businesses that operated or invested in South Africa were regarded as complicit in the racist and illegal (under international law) apartheid regime. Businesses that invested in South Africa became the targets of activist campaigns.<sup>108</sup> During the 1980s, over 150 universities in the United States divested from companies that had investments and carried on business in apartheid South Africa. The anti-apartheid consumer boycott gained support across the United States and around the world, ultimately colliding with the doctrine of shareholder value maximization. In the end, the apartheid regime fell.

Despite doctrinal resistance from some corporate lawyers and economists, the wider push for corporate responsibility continued through the 1990s. This tended to result in voluntary, ad-hoc, and philanthropic efforts and gestures only. It did not produce new corporate governance structures or cultures to better align with social priorities or needs. Today calls for a more genuine corporate responsibility are increasing.<sup>109</sup> Indeed, with rising inequality, climate disruption, rising health care costs, and the middle-class American Dream unattainable for many Americans, calls for greater corporate social responsibility have entered the mainstream.

The United States is a longstanding proponent of the United Nations Guiding Principles on Business and Human Rights (UNGPs), which serves as the globally accepted legal framework for preventing and addressing adverse human rights impacts that stem from business activities or relationships.<sup>110</sup> The U.S. endorsement of the UNGP framework, a set of targets for addressing inequality, public health, decent work, and climate change,<sup>111</sup> demonstrates recognition of the link between corporate responsibility and human development.

## U.S. BUSINESS ROUNDTABLE SIGNALS A SHIFT IN IDEOLOGY

A remarkable harbinger of the 'mainstreaming' of corporate responsibility occurred in the summer of 2019 when the U.S. Business Roundtable (an organization of CEOs from more than 200 firms in the US, including many of the largest companies) issued a revised statement on "the purpose of a corporation" in which they rejected Friedman's shareholder value-maximization principle and endorsed the "stakeholder" principle. In their statement, the Business Roundtable specifically referred to upholding the 'dignity' of all stakeholders, including workers and communities.<sup>112</sup> The statement included a commitment by CEOs to "lead their companies for the benefit of all stakeholders - customers, employees, suppliers, communities and shareholders." The Business Roundtable's statement has been criticized by those who raised concerns about social-responsibility managers violating their corporate fiduciary duty. On the other hand, leading corporate lawyers have spoken in support of the stakeholder approach.

At the heart of this ongoing discussion is a fundamental question about the purpose of a corporation. Corporate law should permit corporations to pursue a plurality of values, and not require businesses to 'maximize' shareholder value when it comes at the expense and detriment of the general public. Failure to properly regulate the labor market results in negative impacts and harm to individuals and communities. Reliance on voluntary, ad-hoc, and piecemeal adherence by corporations to responsible business conduct standards is insufficient to protect the public interest. The current economic crisis provides an unprecedented opportunity to re-orientate corporate purpose through governance laws and federal support to the private sector towards a more sustainable and inclusive economy.

## REFORMING FINANCE FOR SUSTAINABILITY

Achieving progress in equal access to public goods and services will require a transformation in the realm of corporate finance and financial regulation. In his book *Prosperity*, Colin Mayer argues that addressing today's problems requires taking into account human, natural, and social capital (not just financial capital).<sup>113</sup> The purpose of the financial system of the future should be "to stimulate inclusive sustainable growth, development, investment, and innovation."<sup>114</sup> Mayer calls for reforms in the way businesses are taxed: "Corporate tax systems encourage companies to adopt excessively high levels of leverage by subsidizing debt relative to equity finance."<sup>115</sup>

107. Friedman, Milton. "The Social Responsibility of Business is to Increase its Profits." *The New York Times Magazine*, 13 Sept. 1970.

108. Hauck, David, et al. *Two Decades of Debate: The Controversy Over U.S. Companies in South Africa*. Investor Responsibility Research Center, 1983.

109. Hakim, Danny. "On Wall St., More Investors Push Social Goals." *The New York Times*, 11 Feb. 2001.

110. The State Department published a National Action Plan focused on implementation of the UNGPs, and the American Bar Association has officially endorsed the framework. See Bunn, Isabella D. "Business and Human Rights: The Changing Landscape for U.S. Lawyers." *ABA Human Rights Magazine*, vol. 41, no. 2, 1 Apr. 2015, [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/2015--vol--41-/vol--41--no--2---human-rights-at-home/business-and-human-rights--the-changing-landscape-for-u-s-lawyer/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2015--vol--41-/vol--41--no--2---human-rights-at-home/business-and-human-rights--the-changing-landscape-for-u-s-lawyer/).

111. "Advancing Sustainable Development." *UN Global Compact*, <https://www.unglobalcompact.org/what-is-gc/our-work/sustainable-development>.

112. "Statement on the Purpose of a Corporation." *Business Roundtable*. 2019, <https://opportunity.businessroundtable.org/wp-content/uploads/2019/09/BRT-Statement-on-the-Purpose-of-a-Corporation-with-Signatures-1.pdf>

113. See Mayer, Colin. *Prosperity*. Oxford University Press, 2018, pp. 224.

114. Mayer, Colin. *Prosperity*. pp. 226.

115. *Ibid.*

To achieve gains in sustainability, workers must be treated as ends in themselves, rather than simply a means for generating profits for shareholders. One move in this direction is the recognition that employees are *investments* rather than *expenses*. Employees, by this approach, comprise the firm's *human capital* and ought to be managed accordingly (as a long-term capital investment, rather than an annual business expense). In 2019, the Investor Advisory Committee of the SEC recommended that the SEC require companies to disclose aspects of their "human capital management." The committee stated that "[t]oday's companies are increasingly dependent on their workforces as a source of value creation" and that, "for many of the most dynamic companies, human capital is their primary source of value."<sup>116</sup> Human capital, according to the Committee, is "increasingly conceptualized as an investable asset."

## THE RAPID RISE OF SOCIALLY RESPONSIBLE INVESTING

The shifting of the pendulum is accompanied by a shift towards socially responsible investing. Over the last decade, a rapidly growing number of investors are looking at the underlying environmental, social, and governance (ESG) factors of firms in making their investment choices. ESG factor investing considers the trio of environmental, social, and governance factors in evaluating firms for making investment decisions. The popularity of ESG factor investing has skyrocketed over the last decade.<sup>117</sup> In 2020 inflows to ESG funds were more than triple the total in 2018.<sup>118</sup> Today, the Principles for Responsible Investment (PRI) have been endorsed by over 2000 asset managers. Over the 1990s and first decade of 2000s, most of the emphasis was on corporate governance factors (the G in ESG)<sup>119</sup>, with less focus on the E and even less on the S. Over the last decade, more attention is being paid to the social factors (the S in ESG) such as decent work and their human rights practices. Different initiatives have attempted to measure and evaluate the impact on S.<sup>120</sup> The social factors in ESG investing are inextricably linked to the core sustainability issues that have been addressed in this Chapter.

Some politicians, academics, and economists regard ESG factor investing as controversial and even improper. The main point of contention is whether there is sufficient empirical evidence to support ESG factor investing in terms of "risk return" (i.e. in terms of its materiality). The Trump administration has set about to dismantle and roll back environmental protections that have been in place for many decades, as well as a host of recent advances in environmental protection regulation. Ostensibly, this has been carried out as part of the administration's business-friendly agenda; however, it is not clear that businesses uniformly approve of the rollbacks, nor is it clear that rollbacks are regarded to be in the long-run interest of American businesses.

When the Trump administration revoked the State of California's power to put in place more stringent emissions standards for cars and light trucks, California's vehicle manufacturing industry did not actually favor such rollbacks, saying the weakened car pollution and fuel efficiency regulations would hurt their bottom lines and could produce "untenable" instability.<sup>121</sup> Seventeen major automakers, including General Motors and Ford, publicly called on the federal and Californian governments to "resume discussions and to remain open to regulatory adjustments that provide the flexibility needed to meet future environmental goals and respond to consumer needs."<sup>122</sup>

While the environmental rollbacks at the Federal level continue, some institutional investors have vowed to closely monitor climate risks.<sup>123</sup> If regulations are going to be weakened, negative externalities may increase. The hypothesis is that certain investors want to make sure that they are investing in companies that are performing better on social and environmental criteria.<sup>124</sup> Larry Fink, Chair of Blackrock, the world's largest asset management firm, in his annual letter to CEOs indicated that climate change risk will be a very relevant factor in the firm's decision-making going forward immediately and increasing over the near future.<sup>125</sup> Whether this was borne out of personal conviction, a calculated

116. "Recommendations of the Investor Advisory Committee – Human Capital Management Disclosure." *U.S. Security and Exchange Commission*, 28 Mar. 2019.; The committee stated that, "As the US transitions from being an economy based almost entirely on industrial production to one that is becoming increasingly based on technology and service, it becomes more and more relevant for our corporate disclosure system to evolve and include disclosure regarding intangible assets, such as intellectual property and human capital [employees]."

117. ESG values investing is referred to as 'risk return' in the industry. It is important to distinguish 'values investing' from 'value investing.' *Values investing* aims to create some external benefit apart from shareholder value; whereas *value investing* uses ESG criteria instrumentally to grow value for shareholders.

118. Nauman, Billy. "ESG money market funds grow 15% in first half of 2019." *Financial Times*, 14 July 2019. See also Iacurci, Greg. "Money moving into environmental funds shatters previous record." *CNBC*, 14 Jan. 2020, <https://www.cnn.com/2020/01/14/esg-funds-see-record-inflows-in-2019.html>.

119. Bebchuk, Lucian, et al. "What Matters in Corporate Governance." *The Review of Financial Studies*, vol 22, no. 2, Feb. 2009, pp. 783.

120. See The Corporate Human Rights Benchmark and The Workforce Disclosure Initiative. See also: O'Connor, Casey, and Sarah Labowitz. *Putting the "S" in ESG: Measuring Human Rights Performance for Investors*. New York University Stern Center for Business and Human Rights, 2017.

121. Phillips, Anna M. "Automakers say Trump's plan to weaken pollution standards would hurt their bottom line." *Los Angeles Times*. 6 June 2019, <https://www.latimes.com/politics/la-na-pol-automakers-trump-vehicle-fuel-economy-20190606-story.html>.

122. *Ibid.*

123. See Fink, Larry. Letter to CEOs. 2019, <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>.

124. Fonda, Darren. "The Trump Bump and Sustainable Investing." *Barron's*, 23 June 2018, <https://www.barrons.com/articles/the-trump-bump-and-sustainable-investing-1529712001>.

125. See Fink, Larry. Letter to CEOs. 2019, <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>.

gamble on mitigating corporate risk, or simply as part of a public relations exercise is debatable. The overriding public message from investors, consumers, workers, and companies themselves however is that climate change is an issue that demands urgent action.

In response to the Trump administration's decision to withdraw from the Paris Climate Accord, a coalition of cities, states, tribes, businesses, universities, healthcare organizations, and faith groups was formed called "We're Still In." The signatories strongly oppose withdrawal from the Paris Climate Accord and include 2,239 businesses and investors as well as 289 cities and counties

The Trump administration has reacted skeptically to the rapid rise of ESG investing and has taken steps to narrow what is permissible under fiduciary duty rules. For instance, the Department of Labor has issued bulletins that reinforce shareholder value as the 'sole' and/or priority concern for trustees of pension funds.<sup>126</sup> Referring to the USSC in *Dudenhoeffer*, the DOL has clarified that under the Employment Retirement Income Security Act (ERISA)<sup>127</sup>, the trustees 'sole' purpose to realize financial returns for investors/pension funds. The trustee is required to 'solely' and 'exclusively' pursue 'financial benefits' for the beneficiaries of pension plans.<sup>128</sup> By this approach, trustees are not permitted to take into account the interests of other stakeholders except insofar as doing so will add value for the beneficiaries.<sup>129</sup> In March 2020, the SEC announced that it might take steps to regulate ESG factor investing. One question they will consider is whether "there should be specific requirements that funds must adhere to in order to call their investments ESG or sustainable."<sup>130</sup>

## 5. 21st Century Social Contract: Equal Access to Public Goods and Services in the U.S.

Communities across the United States continue to experience the adverse impact of chronic inequities in accessing the public goods and services that are critical to life, liberty, and the pursuit of happiness. At the same time, the COVID pandemic has caused unprecedented health and economic crises that are disproportionately burdening racial minorities and other vulnerable populations.

Protecting public health and rebuilding the economy remains, primarily, the responsibility of government institutions. However, meeting providing equal access to public goods and services and addressing the inequities documented in this chapter will require comprehensive public and private sector collaboration. The

126. "Trump Executive Order Brings Renewed Scrutiny of ESG Investing and Proxy Engagement by Pension Funds." *Baker McKenzie*, 3 May 2019, <https://www.bakermckenzie.com/en/insight/publications/2019/05/trump-executive-order>.

127. The Employment Retirement Income Security Act (ERISA). Section 403, 1974. (Federal law which mandates a 'trust' structure for most pension plans and retirement funds).

128. *Dudenhoeffer*. 134 S.Ct., 2468

129. DOL Interpretive Bulletin 2018-1, at 2 ("plan fiduciaries are not permitted to sacrifice investment returns or take on additional investment risk as a means of using plan investments to promote collateral social policy goals). Only risk-return ESG is permitted for pension/trust funds, with only some exceptions for charitable trusts or where the trust is set up for that purpose (even then, restrictions apply).

130. Bain, Benjamin. "ESG Funds Might Soon Have to Prove to SEC They're Actually ESG." *Bloomberg Green*, 2 March 2020.

131. Mayer, Colin. *Prosperity*. pp. 227.

132. Freedman, Milton. *Capitalism and Freedom*. Chicago University Press, 1962.

government must work with the private sector, trade unions, civil society actors, and communities to create initiatives that deliver long-term wealth "in human, natural, social, and material assets."<sup>131</sup>

Milton Friedman once wrote in a different context: "Only a crisis—actual or perceived—produces real change. When that crisis occurs, the actions that are taken depend on ideas to develop alternatives to existing policies, and to keep them alive and available until the politically impossible becomes politically inevitable."<sup>132</sup> With the nation reeling from a series of social and economic challenges, now is the time to implement ideas, develop alternatives to existing policies, and forge a new path aimed at securing the dignity, agency, and opportunity of all Americans. These ideas should provide the United States with the basis for a new 21<sup>st</sup> century social contract to provide equal access to the public goods and services that are essential for their life, liberty, and the pursuit of happiness.

### HOW TO REIMAGINE RIGHTS AND RESPONSIBILITIES:

- **Establish Fiscal Policy to Promote Investment in Public Goods and Services.** Enact a framework for government taxing and spending policy that promotes equality of access and opportunity in education, health care, housing, and the environment; enact tax reform that establishes graduated tax responsibility based on income and worth, with tax incentives for private sector initiatives that would complement government fiscal policy in promoting equality of access and opportunity in education, health care, housing, and the environment; enact comprehensive relief to protect the equality of access and opportunity during the COVID-19 pandemic and similar emergencies.
- **Promote Equal Access to Health Care.** Transition to a healthcare system that provides universal equal access to affordable healthcare; provide funding for health care programs targeted at minorities and low-income groups at-risk of developing COVID-19 or other chronic diseases; reduce the national shortage of physicians by expanding federal funding for residency training.
- **Promote Equal Access to Education.** Reform public education funding by disconnecting the funding of local public schools from local property taxes and expanding federal funding to eliminate disparities among school districts resulting from differential property tax bases; establish universal pre-kindergarten education; increase federal support for intervention programs that provide academic resources for at-risk youth; increase federal

funds to states that provide residents with free or substantially subsidized access to public universities and community colleges; target federal funds to high school science, technology, engineering, and mathematics (STEM) programs and students pursuing postsecondary degrees in STEM; invest in trade and technical schools.

- **Promote Equal Access to Affordable Housing.** Expand funding for low-income housing, including new construction and renovation; increase federal mortgage assistance and relief programs; expand Earned Income Tax Credit to assist low-income homebuyers and renters; develop a programmatic strategy to address homelessness.
- **Promote Equal Access to a Safe Environment.** Develop a comprehensive strategy for transitioning the nation away from fossil fuels while investing in renewable energy; promote environmental justice by protecting vulnerable populations and communities from toxic and hazardous materials and other forms of environmental degradation; prohibit private and public entities from exploiting resources for economic gain within federal and state designated public lands; invest in maintaining critical physical and digital (e.g. broadband) infrastructure.

## **Reimagining Rights & Responsibilities in the United States**

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