

*Flunking Democracy: Schools, Courts, and Civic Participation* by Michael A. Rebell. Chicago: University of Chicago Press, 2018. 288 pp., \$30.00 (paper).

Joshua E. Weishart  
*West Virginia University*

Education for citizenship. Variations on that theme persist even though the clarion call has been seemingly muted for generations—muffled by the expediency of education reform, stifled by the living and breathing tragedies of chronic public school inequalities and inadequacies. Our neglect of that faint call for an educated citizenry is not without consequence. Sensing the urgency of an imminent decline, Michael Rebell strikes ominous tones in the first sentences of *Flunking Democracy*. Our democratic culture is threatened by an uninformed, polarized, easily manipulated, and disengaged electorate. Abolishing the Electoral College, packing the Supreme Court, or regulating Facebook and Twitter will not get to the root of the problem. Our first priority, Rebell contends, must be to finally heed the clarion call for a dynamic, citizenship-education agenda that empowers public schools to fulfill their primary function to cultivate productive civic participants.

Rebell reminds us that our founders believed that the very survival of our new republic depended on developing capable, educated citizens. Even before that republic came into existence, state constitutions expressly underscored the importance of civic education to democracy. The nineteenth-century common school movement that propelled the establishment of uniform school systems likewise embraced the civic mission of public education. Rebell observes that, in the second half of the twentieth century, we began to forsake the public mission, driven by a burgeoning “market-oriented view” (32) of education as a private, positional good to be traded in a zero-sum game for a competitive edge in selective college admissions and high-paying jobs. We also ventured off course in pursuit of other policies like No Child Left Behind, which mandated high-stakes testing in math and reading and thus shifted instructional time away from courses in civics, history, and social studies.

---

JOSHUA E. WEISHART is professor of law and policy with a joint appointment in the College of Law and John D. Rockefeller IV School of Policy and Politics at West Virginia University. His research is centered on education rights, particularly on the demands of equality and adequacy under the constitutional right to education.

For permission to reuse, please contact [journalpermissions@press.uchicago.edu](mailto:journalpermissions@press.uchicago.edu).

A 2012 US Department of Education report acknowledged that “schools are pushing civics and service-learning to the sidelines, mistakenly treating education for citizenship as a distraction from preparing students for college-level mathematics, English, and other core subjects” (17). Perhaps it is little wonder then that students score so poorly on the National Assessment of Educational Progress test for civics with only 23% proficient or that less than one-third of eighth graders surveyed could identify the purpose of the Declaration of Independence. Nor should we be surprised then that so few young adults vote or otherwise engage in the democratic process. Gaps in civic knowledge and participation are even more pronounced for students of color and students living in poverty, exacerbating their disillusionment with, indifference to, and distrust of government institutions.

Building on a growing body of political theory and educational policy literature, Rebell proposes a conceptual and practical framework to reinvigorate civic knowledge, skills, experiences, and values into the curriculum. This framework would entail civics and social studies classes with more rigor and application of critical thinking and reasoning. In addition, preparing citizens to meet the challenges of today would require improving their literacy and verbal skills, including their technological skills and digital media literacy, so that they are able to engage in deliberative discussions, identify accurate sources of information, and discern fact from distortion. It would also mean exposing students to more experiential learning opportunities through extracurricular activities and community service projects. And it would demand an education that fosters certain character values and civic dispositions of tolerance, empathy, and respect for democratic ideals such as due process and the rule of law.

Rebell documents several guiding principles and best practices that align with his proposed pedagogy—for example, *Guardian of Democracy: The Civic Mission of Schools* (Campaign for the Civic Mission of Schools 2011), *The College, Career, and Civic Life (C3) Framework for Social Studies State Standards* (National Council for the Social Studies 2013), and *Civics Framework for the 2014 National Assessment of Educational Progress* (National Assessment Governing Board 2014), just to name a few. The problem, as he sees it, is not a dearth of programmatic thinking about civic education but the lack of implementation and enforcement of these standards and recommendations, prompting his own clarion call for litigation compelling federal and state courts to induce adoption of these standards and recommendations and to ensure that schools are adequately preparing their students for civic participation.

Courts will be aided in this effort by a half-century of precedent. State courts have been involved in education rights cases for decades, giving content to their state constitutions’ education clauses, many of which guarantee children a certain quality of education, such as a “thorough and efficient,” a “sound basic,” “ample,” or “high quality” education (125). Rebell observes that the highest

courts in at least 32 states have already concluded that preparation for civic participation is a primary (if not *the* primary) purpose of these education clauses. Yet the focus in most of these cases has been on the adequacy and equity of school funding schemes. Plaintiffs' attorneys have neither typically sought nor have judges been pressed to order remedies meant to enforce the civic education purposes of state education rights.

Rebell perceives that the time has come to rectify this mistake in past legal strategy—a mistake he confesses he made as a lead attorney in previous adequacy litigation. A state court case focused on the inadequacy of civic education will be relatively straightforward, Rebell surmises, given the substantial reduction in instructional time devoted to civics and social studies, the perceptible “civic empowerment gap” (21) in civic knowledge and participation hindering minority and poor students, and the historically low rates of civic participation among young adults generally.

The real test will be whether state courts can fashion an effective remedy without breaching separation of powers. Rebell thinks those boundaries can be respected by courts issuing “general remedial orders” (132) that articulate broad civic education standards but defer to the other coordinate branches to work through the policy details and implementation. Where evidence of deprivations in civic education is particularly strong, nevertheless, Rebell thinks courts will be on firm ground to issue a “specific remedial order” (134), addressing the domains of civic knowledge, skills, experiences, and values suggested by his own framework. In either event, Rebell recognizes that mitigating the civic empowerment gap will take more than a comprehensive, civics-intensive curriculum. It will require state courts to continue to make progress in enforcing constitutional guarantees of adequate and equitable school funding as well as make significant inroads in achieving more racial and socioeconomic integration.

Making a federal case out of it, even on the same evidentiary record, presents a more formidable challenge, although not necessarily due to lack of precedent. To be sure, a 5–4 Supreme Court in *Rodriguez v. San Antonio Independent School District* [411 U.S. 1 (1973)] declined to recognize that the US Constitution guarantees a fundamental right to equal educational opportunity, but the Court has consistently affirmed the constitutional-level importance of education for citizenship and democracy. And even in *Rodriguez*, the Court reserved the possibility that the US Constitution guarantees at least some basic level of education, enough for students to obtain the knowledge and skills necessary for civic participation.

The Supreme Court has never shut the door on a federal constitutional right to a basic or adequate education and Rebell is convinced that, nearly 50 years later, litigants should knock once again. This time, attorneys will be armed with decades of favorable state court precedent showing judicial enforcement is manageable and effective. Moreover, Rebell explores different constitutional

sources for a right to education that lawyers could assert this time around, perhaps even relying on originalist arguments that would be more palatable to conservatives like Justices Thomas and Kavanaugh. No matter the constitutional source or argument, Rebell maintains that the Court can best decide how to enforce a federal right to education, either through a simple declaration on the right's substance that leaves the task of implementation to Congress and the states or through specific remedial directives obligating Congress and the states to undertake certain action.

Either way, Rebell insists that it is the US Supreme Court, not Congress or the states, that must have the final say because its pronouncements on a federal right to a quality civic education "would have wide-ranging effects" (153) with the potential to galvanize a nation toward a common purpose. The Court's "rulings tend to have significant moral suasion" (154) and, thus, its "articulation and clarification of public values" can have "a substantial impact on society's attitudes and mores" (154) concerning citizenship education.

An acclaimed legal scholar and education rights litigator, Rebell can hardly be faulted for keeping his faith with the courts. His concluding chapter is a full-throated defense of the role of the courts in advancing educational justice. Rebell observes that federal courts have promoted systemic public education reforms in areas such as desegregation, bilingual education, school discipline, and special education. All the while, state court judges, who are more democratically accountable than their federal court counterparts, have been at the forefront of enforcing positive rights, such as the right to education, for decades. Rebell dismisses the criticism that courts lack the institutional capacity and competence to make educational policy decisions, positing that a colloquy among all three branches is in fact necessary to solve major societal problems. That point is worth reiterating: Rebell is not suggesting that courts alone are the answer to the problem of civic atrophy, just that they must be part of the solution.

Few would disagree that courts have a part to play, except perhaps the judges themselves, who might balk at performing even in the supporting role. Indeed, although Rebell urges courts to establish the constitutional dimensions of civic education in future litigation, many courts are failing to enforce already established state constitutional demands of equality and adequacy raised in past and present school finance litigation (Weishart 2018). After decades of protracted battles with their state legislatures in these school funding cases, most courts decline either to get involved or to specify a remedy when they do. Rebell makes a compelling case that courts have the capacity to decide and enforce civic education rights cases but leaves room for doubt that judges will have the appetite for them, much less the judicial fortitude to see them through to an effective end with general or specific remedial orders.

Judges might be especially susceptible to stage fright under the spotlight of a subject as hotly contested as education policy, tasked with constitutionalizing

an all-encompassing yet unsettled citizenship pedagogy that, in Rebell's view, should permeate the broader curriculum. Amplify that pressure in a high-stakes bid at the court of last resort provoking federalism and separation of powers concerns, and we could easily foresee the Supreme Court exiting the stage altogether, deeming such matters to be political questions ill-suited for judicial intervention.

Although skeptics are unlikely to be persuaded by Rebell's confidence in the judiciary to effectuate the kind of change he envisions necessary, they cannot fairly deny that he makes a powerful case for courts to act. As it turns out, Rebell is putting his own words into action, demanding his day in court to test the theories and arguments in his book. On behalf of a group of public school students, Rebell has filed a federal court lawsuit in Rhode Island seeking recognition of a right to education under the US Constitution, based on allegations that the state has denied these students the opportunity of a basic education that will prepare them to function productively as civic participants.<sup>1</sup>

Rebell's lawsuit may or may not prove successful, but his *Flunking Democracy* is a clear hit. As one might expect from a lawyer and professor, the book is methodical, exhaustively researched, and insightful. It is also helpfully written in plain English to be accessible to a wide audience. That is important because we all need to hear the message of this book; indeed, our democracy may very well depend on it.

## Note

1. Information about the federal lawsuit *Cook v. Raimondo* is available at <http://cookvraimondo.info>.

## References

- Campaign for the Civic Mission of the Schools. 2011. *Guardian of Democracy: The Civic Mission of Schools*. <https://www.carnegie.org/publications/guardian-of-democracy-the-civic-mission-of-schools/>.
- National Assessment Governing Board. 2014. *Civics Framework for the 2014 National Assessment of Educational Progress*. <https://www.nagb.org/publications/frameworks/civics/2014-civics-framework.html>.
- National Council for the Social Studies. 2013. *The College, Career, and Civic Life (C3) Framework for Social Studies State Standards: Guidance for Enhancing the Rigor of K–12 Civics, Economics, Geography, and History*. <https://socialstudies.org/c3>.
- Weishart, Joshua. 2018. "Aligning Education Rights and Remedies." *Kansas Journal of Law and Public Policy* 27 (3): 346–400.