

# The Right to Education in the United States and Abroad: A Comparative Analysis of Constitutional Language and Academic Achievement

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**T**his article analyzes the right to education in the United States and around the world while addressing the potential correlation of constitutional language to academic achievement. Although the United States does not recognize a right to education in the federal constitution, states do recognize a right to education in their individual constitutions. We'll compare four countries, each of which have established a right to education in their national constitutions. Two of these countries are classified as high academic achievers and the other two are classified as low academic achievers when assessing reading literacy, mathematics literacy, and science literacy. With this as a backdrop, we'll explore recommendations for constitutional changes at the federal and state levels in the United States. The article concludes by asserting that although a right to education is not directly correlated to academic achievement, such a right serves to bolster a culture supportive of education and gives citizens a legal foundation to focus their litigation on when seeking to establish more effective and equal education policies.

## The Constitutional Right to Education in the United States

When the U.S. Constitution and subsequent Bill of Rights were drafted in the late 1700s, the framers did not codify a constitutional right to education and such a right has not been added in the 200-plus years of our nation's existence.<sup>1</sup> Moreover, the Constitution does not explicitly empower Congress to legislate on education. Instead most federal legislation related to education is enacted under the Spending Clause as a subject under the umbrella of "general welfare."<sup>2</sup> Further, constitutional interpretation dictates that the Tenth Amendment shifts the responsibility of education to the states and that the Fourteenth Amendment must be applied to ensure equality. The Supreme Court, in accordance with this interpretation, has denied the establishment of a fundamental right to education under the U.S. Constitution.

The two leading Supreme Court cases addressing the right to education in the United States are *Brown v. Board of Education*<sup>3</sup> and *San Antonio Independent School District v. Rodriguez*.<sup>4</sup> In *Brown*, the Supreme Court, in a unanimous opinion, held that "separate educational facilities are inherently unequal," that education is a public service "that must be made available to all on equal terms," and that the plaintiffs bringing suit were "deprived of equal protection of the laws guaranteed by the Fourteenth Amendment."<sup>5</sup> In this opinion, the Court also discussed the value of education, generally stating that "education is perhaps the most important function of state and local governments" and that "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."<sup>6</sup> Although the Court recognized the significance and value of a right to education, the Court stopped short of establishing education as a fundamental right. Without defining education as a fundamental right, education litigation was made vulnerable to varied constitutional interpretations and shifting political goals and priorities.<sup>7</sup> Such an effect was illustrated 19 years after *Brown* when the Supreme Court heard its second landmark education case—*San Antonio Independent School District v. Rodriguez*.

In *San Antonio*, a school finance case originating out of Texas, the Supreme Court had an opportunity to solidify the right to education within the United States and to ensure the equality of that right's administration. In a 5-4 decision, the Court found that, "the Texas system (of school finance) does not operate to the peculiar disadvantage of any suspect class" and that education "is not among the rights afforded explicit protection under our federal constitution. Nor do we find any basis for saying it is implicitly so protected."<sup>8</sup> The plaintiffs argued that the disparity among overall public revenue and per pupil spending between school districts like Edgewood and Alamo Heights, two districts with vast differences in wealth, was unconstitutional.<sup>9</sup> The plaintiffs asserted that education is a fundamental right and that wealth is a suspect class in the hopes of triggering strict scrutiny under the Fourteenth Amendment.<sup>10</sup> The Court denied both of these assertions. Although the Court acknowledged the "undisputed importance" of education, it held that the "importance of education will not alone cause this Court to depart from the usual standard for reviewing a state's social and economic legislation (i.e., rational basis review)."<sup>11</sup> Justice Lewis Powell Jr., writing for the majority, argued that individuals do not have fundamental rights to government benefits simply because these benefits may be important or essential.<sup>12</sup> After the *San Antonio* decision was handed down, a federal pathway for education

litigation seemed futile. Instead the legal strategies behind these suits shifted to the state courts, since at that time nearly all 50 states guaranteed a right to education in their state constitutions. Currently, all 50 states do guarantee a right to education. These rights vary along a spectrum of weak to strong, broad to specific, and have been enforced through litigation in a variety of ways.

## The Right to Education in International Law

There are three main documents governing the right to education in international law—the Universal Declaration of Human Rights; the Convention on the Rights of the Child; and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The Universal Declaration of Human Rights is widely regarded as representing customary international law.<sup>13</sup> The United States was one of the 48 countries to sign the document the day it was adopted in 1948.<sup>14</sup> Specifically, Article 26 of the declaration addresses education. This article states that, "everyone has the right to education," that "education shall be free, at least in the elementary and fundamental stages," and that "elementary education shall be compulsory."<sup>15</sup> Although these provisions may not be legally binding as a treaty would be, the United States is held to these standards by the international community through customary international law and the declaration's weight of authority within the United Nations. Whether the United States has fulfilled the obligations regarding education in the declaration are debatable. While every state constitution does recognize a blanket right to education, whether every child has access to that right in its fullest sense without racial or economic discrimination is hardly settled.<sup>16</sup>

A second document of importance in this field is the Convention on the Rights of the Child. The United States signed the convention on Feb. 16, 1995, but is the only country not to have ratified it.<sup>17</sup> Specifically, Articles 28-29 and 31-32 discuss education. Articles 28-29 are comparable to Article 26 in the Universal Declaration of Human Rights, but offer a more extended version of those standards. These articles state, among an array of other provisions, that primary education should be compulsory and free to all and that education should be directed to develop children's personalities and to foster the "respect for human rights and fundamental freedoms."<sup>18</sup> Article 28 sets additional requirements for secondary and higher education.<sup>19</sup> Articles 31-32 touch on a child's right to rest and leisure, including the arts and recreational activities, and a child's right "to be protected from economic exploitation . . . that is likely to be hazardous or to interfere with the child's education."<sup>20</sup> Because the United States has not ratified this treaty, it is not legally bound to follow it. Nevertheless, being the only country not to have ratified this treaty speaks volumes in the international community regarding the United States' commitment to human rights and the right to education. Concerns regarding the treaty's implications on U.S. law, U.S. sovereignty, and federalism have held back ratification, but these concerns are controversial, many scholars argue them to be unfounded, while others support their validity.<sup>21</sup>

Finally, ICESCR is also significant. This treaty gives direct legal force to many of the standards dictated and concepts discussed in the Universal Declaration of Human Rights.<sup>22</sup> The United States signed this treaty on Oct. 5, 1977, but again has chosen not to ratify it.<sup>23</sup> Articles 13 and 14 of the ICESCR directly discuss education and reflect the two documents discussed above. Article 13 states that the parties "recognize the right of everyone to education. They

agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.”<sup>24</sup>

Taken together, these documents firmly establish a right to education in international law and highlight the importance the international community has placed on this right. The United States, as demonstrated by its lack of commitment to these treaties, is an outlier in this field. The United States not only does not have a constitutional right to education in the federal constitution, but the country also does not support the right to education in international law. As this analysis develops it will become apparent that the United States falls below par when it comes to valuing and establishing a legal right to education in comparison to other countries around the world, the vast majority of which recognize a right to education in their national constitutions and have ratified the treaties discussed above. As an article in *The Atlantic* states, “A real solution [for the United States], as international precedent and common sense suggest, is to finally promote education as a national value through a constitutional amendment.”<sup>25</sup>

### The Constitutional Right to Education Around the World

According to “The Learning Curve,” an index created by the Pearson Publishing Company to evaluate academic achievement worldwide, the United States ranks 14th out of the 40 countries evaluated, sitting behind Finland, South Korea, China, Ireland, the Netherlands, the United Kingdom, Russia, and Canada to name a few (the Pearson Publishing Company is a British-owned education publishing and assessment service company).<sup>26</sup> Each of the countries ahead of the United States in this index recognize a right to education either in constitutional provisions or statutory guarantees.<sup>27</sup> These commitments in national constitutions and federal statutes, “establish baseline requirements that set the frame for policy and judicial challenges,” a crucial foundation that does not exist in the United States and that accordingly has hindered plaintiffs seeking to initiate impact litigation and nationwide policy change.<sup>28</sup> The Pearson report stresses that these legal guarantees contribute to a culture of education in each of these countries, where “the cultural assumptions and values surrounding an education system do more to support . . . it than the system can do on its own.”<sup>29</sup> This support is also emphasized by the vast majority of countries’ commitment to international human rights treaties such as the Convention on the Rights of the Child and the ICESCR.

Markedly, the U.S. Constitution, unlike many other national constitutions, declares only negative rights—“those that grant citizens protection against unnecessary government intrusions”—not positive rights like the right to education or the right to health care, which oblige action on behalf of the state.<sup>30</sup> The Constitute Project, a database developed by the authors of the Comparative Constitutions Project at the University of Texas at Austin and funded with seed money from Google Ideas (now Jigsaw), compiles the world’s constitutions in one place.<sup>31</sup> As detailed in *The Atlantic* article, a search of this database in 2013 for the keyword “education” returned 174 results.<sup>32</sup> As of Jan. 8, 2018, that result was up to 185 of the 192 total constitutions in the database. Specifically, the database found that 136 national constitutions require the state to provide education free of charge, 120 national constitutions require children to attend school, and 63 national constitutions go as far as guaranteeing individuals access to higher education.<sup>33</sup> Additionally, the WORLD Policy Analysis Center has compiled data on the right to education in national constitutions.

WORLD breaks down the right to education into five categories: not granted, aspirational, guaranteed, guaranteed compulsory or free, and guaranteed compulsory and free.<sup>34</sup> The category of “not granted” includes countries that only guarantee the right to education to specific groups of citizens versus all citizens equally.<sup>35</sup> Further, “aspirational” language is defined as follows: “the constitution protects the general right to education . . . but does not use language strong enough to be considered a guarantee,” an example being “aims to protect the right to education.”<sup>36</sup> There are only 33 countries that fall under the “not granted” category and only 12 countries that fall under the “aspirational” category.<sup>37</sup> Of the 33 countries that fall under the “not granted” category, five touch on education under other rights provisions within their national constitutions, four vest the right to education with the states/provinces of their nation, and one has currently proposed a new constitution that would include a right to education.<sup>38</sup> The vast majority of the 23 countries that remain have provisions of religious freedom and non-discrimination that include education in their scope, and all of these countries—with the exception of the United States—are located in Africa, Asia, South/Central America, the Caribbean, or the Pacific.<sup>39</sup> Hence, it is clear that the United States is an outlier when it comes to choosing not to recognize a right to education in its federal constitution.

To analyze this area further, I focus exclusively on states that recognize the right to education and will divide the selected countries into two categories—countries with high academic achievement and countries with low academic achievement. These categories are based on scores compiled by the Program for International Student Achievement (PISA) in the fields of mathematics literacy, science literacy, and reading literacy. All of the high achievement countries rank higher than the United States in these scores and all of the low achievement countries rank lower than the United States in these scores. According to 2012 PISA scores, the United States ranks 36th of 64 countries in mathematics literacy, 28th of 64 countries in science literacy, and 24th of 64 countries in reading literacy.<sup>40</sup> Specifically, I will examine the constitutional language of Finland and Japan under the high academic achievement category and the constitutional language of Argentina and Colombia under the low academic achievement category. Notably, China, India, and Russia were not chosen as countries for the high academic achievement category due to their stark differences in political culture in comparison to the United States. Further, Middle Eastern countries ranking near the bottom of PISA’s rankings were not examined for similar reasons.

### High Academic Achievement

#### Finland

The Constitution of Finland of 1999 establishes the right to education in § 16. Section 16 is a short and succinct article that states, “Everyone has the right to basic education free of charge.”<sup>41</sup> This article falls under WORLD’s category of “guaranteed compulsory or free,” and in this case the Finnish Constitution guarantees that education is free.<sup>42</sup> The article also goes on to guarantee an equal opportunity to receive an education regardless of special needs or economic hardship and to guarantee “the freedom of science, the arts, and higher education.”<sup>43</sup> This article is much shorter than many of the other countries that are examined in this section; however, it illustrates that even concise language, language that would be easier to achieve a consensus on, deserves a place in the discussion of potential constitutional changes.

According to 2012 PISA scores on 64 countries, Finland ranks 12th in mathematics literacy, fifth in science literacy, and sixth in reading literacy.<sup>44</sup> Moreover, the country ranks fifth in Pearson's index of academic achievement.<sup>45</sup>

## Japan

The Nov. 3, 1946, Constitution of Japan establishes the right to education in Article 26, which states that "all people shall have the right to receive an equal education correspondent to their ability ... compulsory education shall be free."<sup>46</sup> This article falls under WORLD's category of "guaranteed compulsory and free."<sup>47</sup> Other articles relevant to education in the Japanese Constitution are Articles 20 and 84, which establish freedom of religion and the separation of church and state, and Article 14, which establishes a principle of nondiscrimination.<sup>48</sup>

Markedly, the idea of correlating the right to education to intellectual ability is a somewhat rare standard, especially in light of the idea of educational equality, which is based in the same constitutional provision. Akito Okada addresses this apparent discrepancy in his book *Education Policy and Equal Opportunity in Japan*. He states that in the post-World War II Japan, "the ideological emphasis was placed upon equality rather than meritocracy or efficiency," whereas before the war students were sent to different secondary schools based on their potential to increase national prosperity.<sup>49</sup> Specifically he notes that in the 1950s, progressive reformers insisted that "correspondent to their ability" should be interpreted as "correspondent to their developmental need" versus a statement supporting a conservative meritocratic position.<sup>50</sup> Since 1950 the debate on exactly what this provision means and the equality versus meritocracy conversation has shifted between liberal and conservative inclinations and today the constitutional language and educational policy goals of Japan remain without consensus.<sup>51</sup> A provision of this nature would be radical for the United States and unlikely to find much if any support among moderate-leaning and liberal citizens. Additionally, the decades of struggle that Japan has faced in interpreting this provision and implementing policy supporting an interpretation of it illustrates how unworkable and difficult this standard is in practice. Notably, Korea also has a similar provision and offers various levels of high school and university education based on ability.<sup>52</sup>

According to 2012 PISA scores Japan is seventh of 64 countries in mathematics literacy, fifth in science literacy, and fourth in reading literacy.<sup>53</sup> Moreover, the country ranks second in Pearson's index of academic achievement.<sup>54</sup>

## Low Academic Achievement

### Argentina

The Aug. 22, 1994, Constitution of Argentina establishes the right to education in § 14, which states that "all inhabitants of the nation are entitled to the following rights ... to teach and to learn."<sup>55</sup> This article falls under WORLD's category of "guaranteed."<sup>56</sup> Furthermore, § 75 establishes that the Argentine Congress shall have the power "to guarantee respect for ... [indigenous peoples'] identity and their right to bilingual and intercultural education," the power "to pass laws ... which guarantee the principles of free and equitable public education by the state," and the ability to establish autonomous national universities.<sup>57</sup> Additionally, in 1994 under § 75, Argentina incorporated and ranked as constitutional the Universal Declaration of Human Rights, the ICESCR, and the Convention on the Rights of the Child stating, "in the full force of their provisions, they have constitutional

hierarchy."<sup>58</sup> Although Argentina's decision to incorporate international treaties as constitutional law may have seemed appropriate to the Argentinian government, this decision contradicts United States legal principles and the supremacy of constitutional law and would not be an option for the American government.<sup>59</sup>

According to 2012 PISA scores, Argentina is tied for 58th of 64 countries in mathematics literacy and places 56th in science literacy and 60th in reading literacy.<sup>60</sup> Moreover, the country ranks 37th in Pearson's index of academic achievement.<sup>61</sup>

### Colombia

The 1991 Constitution of Colombia establishes the right to education in Article 67, which states that "education is an individual right and a public service that has a social function ... which will be mandatory between the ages of 5 and 15 ... education will be free of charge in state institutions, without prejudices to those who can afford to defray the costs."<sup>62</sup> This article falls under WORLD's category of "guaranteed compulsory and free."<sup>63</sup> Moreover, Article 27 guarantees the freedom of teaching; Article 41 makes mandatory the study of the Colombian Constitution and civics at all educational institutions (public and private); Article 64 makes it a duty of the state to promote access to education for agricultural workers "with the purpose of improving the incomes and quality of life of the peasants"; and Article 68 embodies educational provisions such as the establishment of parental choice, the cultural education of ethnic groups, the eradication of illiteracy, and the establishment of special education.<sup>64</sup> Additionally, Article 10, Article 43, and Article 69 touch on education. Article 10 states that Spanish is the official language of Colombia, but that schools in territories with other official languages and dialects will provide bilingual education.<sup>65</sup> Article 43 states that "women and men have equal rights and opportunities" and that "the state will support the female head of household in a special way."<sup>66</sup> Lastly, Article 69 discusses universities' autonomy, a special regime for state universities, and the promotion of scientific research in universities.<sup>67</sup> Several of these articles are unique to Colombia, namely: Article 41 mandating the study of the constitution; Article 64 regarding the state's duty to promoting access to education among peasants in an effort to uplift them; and Article 69 regarding the support of female households.

By comparison, in the United States, certain states require civics courses to graduate high school, but this is a fairly detailed requirement that is left to state discretion and not a particularly suitable proposal for federal constitutional language. Further, a provision regarding peasants or agricultural workers in the United States seems inapplicable. If anything, the provision would morph into discussing students living under the poverty line in all circumstances, but such a provision seems far too progressive for a country that does not even recognize a basic right to education. Additionally, a provision specifically supporting the development of female heads of households seems out of character for the United States since the Equal Rights Amendment, which has been advocated for since 1923, has yet to pass.<sup>68</sup>

According to 2012 PISA scores, Colombia places 61st of 64 countries in mathematics literacy, 58th in science literacy, and 55th in reading literacy.<sup>69</sup> Moreover, the country ranks 36th in Pearson's index of academic achievement.<sup>70</sup>

## Potential Constitutional Changes in the United States

### Potential Change at the Federal Level

When considering a constitutional right to education at the federal

level, the United States is starting with a constitutional blank slate colored by a history of hostile and unfavorable court decisions. Accordingly, detailed, verbose provisions with ambitious goals and a lot of hortatory language, such as those in the Latin American countries discussed above, are not ideal. Not only are these provisions too drastic of a step forward, but they would also appear out of place in the U.S. Constitution, which is overall rather conservative in length. Instead short provisions establishing a right to education and guaranteeing that right as free, equal, and potentially compulsory, similar to Finland's constitutional provision, would be more ideal. These provisions not only stand a better chance at consensus, but also leave discretion to the states to define the details of the right. Thus, the best recommendation for a constitutional amendment establishing the right to education would be an amendment guaranteeing the right to education as free, equal, and compulsory.

Aside from a new constitutional amendment establishing a right to education generally, which may be difficult to pass, there are other options for constitutional changes at the federal level. One such option is seen in Canada's Constitution Act of 1867, which does not provide for a right to education, but does provide that: "In and for each province, the legislature may exclusively make laws in relation to education."<sup>71</sup> Under the current constitutional structure in the United States, such power is permissively granted to the states under the Tenth Amendment; however, solidifying the power and at least mentioning the word "education" in the federal constitution could stand to bolster the U.S. commitment to the right throughout all 50 states. The Canadian provision exclusively designates this power to the provinces, limiting any federal involvement and legislation, and while that does not seem workable for the United States considering the existence of the Department of Education and federal education legislation, the concept of delegating power to the states via the federal constitution is worthy of consideration. Currently, the U.S. Constitution does not enumerate state powers; however, the right to education is a particularly important right and an area of weakness for the United States within the international community.

Another option would be to establish a nondiscrimination provision in the U.S. Constitution specifically related to education, which would act as an extension of the Fourteenth Amendment and a codification of the principles of *Brown v. Board of Education*. Singapore does not recognize a federal right to education, but has a nondiscrimination provision in their constitution, which reads: "There shall be no discrimination against any citizen of Singapore on the grounds only of religion, race, descent, or place of birth ... in the administration of any educational institution maintained by a public authority."<sup>72</sup> This provision relates to religious, racial, and ethnic discrimination. Any considerations of including socio-economic classes or wealth in a nondiscrimination provision in the United States would be difficult (*San Antonio v. Rodriguez* illustrates this point). Although it would be atypical for the U.S. Constitution to single out a particular arena within an overarching constitutional principle such as equal protection, the right to education is a unique right and foundational to the country's success and future prosperity.

### Potential Change at the State Level

While change at the federal level may be too ambitious, change at the state level is well within reach. Each state already has established a constitutional provision addressing education and, thus, has a basis to build off of. The states can gain guidance by analyzing and assess-

ing the workability of education-based constitutional provisions from around the world. As discussed above, many of the provisions in Latin American constitutions are too specific for federal implementation, but these provisions are perfect for instructing states on options to bolster their current constitutional language. Possible elements of a model state provision, according to the Hamilton Fish Institute's *Review of State Constitutions: Education Clauses*, include: a preamble and statement of purpose, a guarantee of free and public schools (types of schools, scope of education, age requirements), a reference to funding (uniformity, equity, source), a statement of nonsectarian control, a definition of requirements of local agencies, an establishment of a safe and secure educational environment, an establishment of the right to education, compulsory attendance provisions, and a statement of nondiscrimination.<sup>73</sup> Many of the international constitutions examined above touch on these elements and offer guidance to states seeking to amend their current educational provisions.

Hence, while federal change may be out of reach, state constitutional change is not and states can serve to learn from other countries' constitutional language regarding education. States can implement stronger educational provisions within their constitutions and bolster what already exists by pulling useable bits and pieces out of provisions from constitutions worldwide. As a result, citizens will have stronger statements to grasp onto, to remind state legislatures and local governments of their responsibilities, and to initiate litigation to ensure equal and quality education for every child.

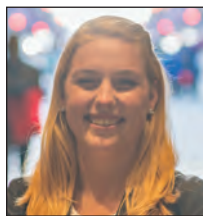
### Conclusion

In conclusion, although constitutional language establishing a right to education is not directly correlated to academic achievement, such a right holds value for citizens seeking to implement more effective and equal education policies through the legislative and judicial branches and bolsters a culture supportive of education. A culture supportive of education is crucial to establishing an effective and equal public education system, and the United States neither supports a right to education at the federal level nor acknowledges one at the international level.<sup>74</sup> While this article considers the constitutional language of a variety of countries, it does not consider other factors such as economic stability, culture, political stability, and level of economic development and is, thus, limited in application.

A study conducted by professors at the University of California Los Angeles examined the lack of a correlation between constitutional language establishing the right to education and academic success.<sup>75</sup> One of the major conclusions from this study was that the enforcement of constitutional provisions regarding social rights is difficult and that countries who manage to enforce these rights well are the most successful academically.<sup>76</sup> The study noted that individual citizen enforcement through the judicial branch is crucial to the success of educational rights around the world.<sup>77</sup> Thus, although some constitutional language may be weaker than others, the ability of citizens to utilize the language to bring litigation is crucial. The ability of citizens to judicially enforce constitutional rights thrives in the United States, especially in comparison to developing countries, and this ability illustrates that a constitutional right to education would be useful in the United States. By establishing a federal right to education, the United States would be giving every citizen the opportunity to enforce that right in the federal courts and the opportunity to fight for every child's right to succeed. As Chief Justice Earl

Warren stated so long ago in *Brown v. Board of Education*, “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”<sup>78</sup>

Finally, although this analysis does not provide a final solution for constitutional change in the United States, it does demonstrate that many countries around the world have addressed a right to education constitutionally while the United States has chosen to deny recognition of this right. The United States can no longer stand by as inequality wreaks havoc on the public school systems across the 50 states. The responsibility to act is long overdue. A basic provision establishing a free, equal, and potentially compulsory right to education in the U.S. Constitution would be ideal. But if such change is impractical, states have a responsibility to learn from other nations and to bolster their rights to education to fit the needs of their specific communities. ©



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## Endnotes

<sup>1</sup>*The Constitution: How Did It Happen?*, NAT'L ARCHIVES, <https://www.archives.gov/founding-docs/constitution/how-did-it-happen> (last visited Jan. 8, 2018).

<sup>2</sup>Alfred A. Lindseth, *Constitutional Requirements Governing American Education*, STATEUNIVERSITY.COM, <http://education.stateuniversity.com/pages/1882/Constitutional-Requirements-Governing-American-Education.html> (last visited Jan. 8, 2018).

<sup>3</sup>*Brown v. Board of Educ. of Topeka*, 347 U.S. 483 (1954).

<sup>4</sup>*San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973).

<sup>5</sup>*Brown*, 347 at 487-95.

<sup>6</sup>*Id.* at 493.

<sup>7</sup>H. Slessarev-Jamir, *The Status of the “Right To Education” in the United States*, ACADEMIA (July 2011), [http://www.academia.edu/873422/The\\_Status\\_of\\_the\\_Right\\_to\\_Education\\_in\\_the\\_United\\_States](http://www.academia.edu/873422/The_Status_of_the_Right_to_Education_in_the_United_States).

<sup>8</sup>*San Antonio Indep. Sch. Dist.*, 411 U.S. at 35.

<sup>9</sup>Jeffrey S. Sutton, *San Antonio Independent School District v. Rodriguez and Its Aftermath*, 94 VA. L. REV. 1963, 1964-65, (2008).

<sup>10</sup>*Id.*

<sup>11</sup>*San Antonio Indep. Sch. Dist.*, 411 U.S. at 35.

<sup>12</sup>Sutton, *supra* note 9, at 1969.

<sup>13</sup>*Digital Record of the UDHR*, U.N. HUM. RIGHTS OFF. HIGH COMM'R (Feb. 2009), <http://www.ohchr.org/EN/NEWSEVENTS/Pages/DigitalrecordoftheUDHR.aspx>; *Universal Declaration of Human Rights Signatories*, ETHIOPIABLOG (Apr. 21, 2014), <https://unethiopia.org/universal-declaration-of-human-rights-signatories>.

<sup>14</sup>*Universal Declaration of Human Rights Signatories*, *id.*

<sup>15</sup>G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 26, U.N. Doc. A/810 at 71 (Dec. 10, 1948).

<sup>16</sup>See Krysten Urchick, U.S. Education Law: Is the Right to Education in the U.S. in compliance with International Human Rights Standards? (spring 2007) (unpublished thesis, King Scholar

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<sup>17</sup>Sarah Mehta, *There's Only One Country That Hasn't Ratified the Convention on Children's Rights: US*, AM. CIVIL LIBERTIES UNION (Nov. 20, 2015, 1:30 PM), <https://www.aclu.org/blog/speak-freely/theres-only-one-country-hasnt-ratified-convention-childrens-rights-us>.

<sup>18</sup>Convention on the Rights of the Child, arts. 28-29, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>19</sup>*Id.* at art. 28.

<sup>20</sup>*Id.* at arts. 31-32.

<sup>21</sup>Mehta, *supra* note 17; S.C., *Why Won't America Ratify the UN Convention on Children's Rights?*, ECONOMIST (Oct. 6, 2013, 11:50 PM), <http://www.economist.com/blogs/economist-explains/2013/10/economist-explains-2>.

<sup>22</sup>*International Convention on Economic, Social and Cultural Rights*, EQUALITY & HUMAN RIGHTS COMM'N, <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> (last visited Dec. 17, 2016).

<sup>23</sup>*Id.*

<sup>24</sup>International Covenant on Economic, Social and Cultural Rights, art. 13, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

<sup>25</sup>Stephen Lurie, *Why Doesn't the Constitution Guarantee the Right to Education?*, ATLANTIC (Oct. 16, 2013).

<sup>26</sup>*Index—Which Countries Have the Best Schools?*, PEARSON PUBL'G Co. (updated Jan. 2014), <http://thelearningcurve.pearson.com/index/index-ranking/overall-score-highest> [hereinafter Pearson Index].

<sup>27</sup>Lurie, *supra* note 25.

<sup>28</sup>*Id.*

<sup>29</sup>*Id.* (citing Pearson Index, *supra* note 26).

<sup>30</sup>Slessarev-Jamir, *supra* note 7.

<sup>31</sup>CONSTITUTE PROJECT, <https://www.constituteproject.org> (last visited Jan. 8, 2018).

<sup>32</sup>Lurie, *supra* note 25.

<sup>33</sup>CONSTITUTE PROJECT, *supra* note 31.

<sup>34</sup>*Does the Constitution Guarantee Citizens the Right to Education or a Specific Constitutional Right to Primary Education?*, WORLD POL'Y ANALYSIS CTR., <http://www.worldpolicycenter.org/policies/does-the-constitution-guarantee-citizens-the-right-to-education-or-a-specific-constitutional-right-to-primary-education> (last visited Jan. 8, 2018).

<sup>35</sup>*Id.*

<sup>36</sup>*Id.*

<sup>37</sup>*Id.*

<sup>38</sup>*Id.*; *Global Database on the Right to Education*, U.N. EDUC., SCI., & CULTURAL ORG., <http://www.unesco.org/education/edurights/index.php?action=countries&lng=en> (last visited Jan. 8, 2018).

<sup>39</sup>*Id.*

<sup>40</sup>*Trends in Student Performance: International Trends in Average Scores*, NAT'L CTR. FOR EDUC. STAT., [https://nces.ed.gov/surveys/pisa/pisa2012/pisa2012highlights\\_6a.asp](https://nces.ed.gov/surveys/pisa/pisa2012/pisa2012highlights_6a.asp) (last visited Jan. 8, 2018).

<sup>41</sup>Fin. Const. § 16.

<sup>42</sup>*Does the Constitution Guarantee Citizens the Right to Education ... ?*, *supra* note 34.

<sup>43</sup>Fin. Const. § 16.

<sup>44</sup>*Trends in Student Performance*, *supra* note 40.

<sup>45</sup>Pearson Index, *supra* note 26.

<sup>46</sup>Japan Const. art. 26.

<sup>47</sup>*Does the Constitution Guarantee Citizens the Right to Education ... ?*, *supra* note 34.

<sup>48</sup>Japan Const. arts. 14, 20, 84.

<sup>49</sup>AKITO OKADA, EDUCATION POLICY AND EQUAL OPPORTUNITY IN JAPAN 162 (2011).

<sup>50</sup>*Id.* at 162-63.

<sup>51</sup>*Id.* at 168.

<sup>52</sup>*South Korea Instructional Systems*, NAT'L CTR. ON EDUC. & ECON., <http://ncee.org/what-we-do/center-on-international-education-benchmarking/top-performing-countries/south-korea-overview/south-korea-instructional-systems> (last visited Jan. 8, 2018).

<sup>53</sup>*Trends in Student Performance*, *supra* note 40.

<sup>54</sup>Pearson Index, *supra* note 26.

<sup>55</sup>Arg. Const. § 14.

<sup>56</sup>*Does the Constitution Guarantee Citizens the Right to Education ... ?*, *supra* note 34.

<sup>57</sup>Arg. Const. § 75.

<sup>58</sup>*Id.*

<sup>59</sup>*See Reid v. Covert*, 354 U.S. 1 (1956).

<sup>60</sup>*Trends in Student Performance*, *supra* note 40.

<sup>61</sup>Pearson Index, *supra* note 26.

<sup>62</sup>Colom. Const. art. 67.

<sup>63</sup>*Does the Constitution Guarantee Citizens the Right to Education ... ?*, *supra* note 34.

<sup>64</sup>Colom. Const. arts. 27, 41, 64, 68.

<sup>65</sup>*Id.* at art. 10.

<sup>66</sup>*Id.* at art. 43.

<sup>67</sup>*Id.* at art. 69.

<sup>68</sup>Tabby Biddle, *Wait, Women Don't Have Equal Rights in the United States?*, HUFFINGTON POST (Nov. 4, 2014, 2:05 AM), [http://www.huffingtonpost.com/tabby-biddle/wait-women-dont-have-equa\\_b\\_6098120.html](http://www.huffingtonpost.com/tabby-biddle/wait-women-dont-have-equa_b_6098120.html).

<sup>69</sup>*Trends in Student Performance*, *supra* note 40.

<sup>70</sup>Pearson Index, *supra* note 26.

<sup>71</sup>Can. Const. Act § 93.

<sup>72</sup>Sing. Const. part IV, § 16.

<sup>73</sup>Tractenberg, *supra* note 18, at 25 (citing Kirk A. Bailey, *Summary-Education Clauses in State Constitutions 2*, (Oct. 31, 2000) in conjunction with Hamilton Fish Institute, *Review of State Constitutions: Education Clauses* (Oct. 31, 2000)).

<sup>74</sup>Lurie, *supra* note 25.

<sup>75</sup>Sebastian Edwards & Alvaro Garcia Marin, *Education and Constitutional Rights: An International Comparative Study*, Vox (Jan. 2, 2015), <http://voxeu.org/article/education-and-constitutional-rights-international-comparative-study>.

<sup>76</sup>*Id.*

<sup>77</sup>*Id.*

<sup>78</sup>*Brown*, 347 U.S. at 493.

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## Hilton Profile *continued from page 25*

in civil trials and increased pressure to include technological displays during trials. Both trends are somewhat disappointing for Hilton, but for different reasons. While the decline in civil litigation controls the costs of litigation and avoids aggrandizing lawyers at their clients' expense, it provides fewer opportunities for lawyers to interact. Increased use of technology lacks any upside to Hilton. "If there's a good use for it, I'm open to [technology in the courtroom]," Hilton said. But, "I have never known why a jury needs to rely on technological displays." Complex cases existed well before computers, Hilton noted, and juries were able to rely on their common sense in understanding lawyers' arguments. Technology, Hilton explains, becomes a crutch for the lawyers—absolving them of any need to distill their case to an argument that resonates with the citizens sitting on the jury. The job of a lawyer, Hilton said, "is to articulate an argument." How can that occur when technological demonstratives are the ones making a case?

Even as the court's size, civil docket, and nature of trials have changed since Hilton joined the bench, those who know him well delight in his tranquil routines. Golfing still happens in the spring and summer, while duck hunting occurs in the fall and winter. Lunch is every day at noon. If one of his male law clerks is in need of sartorial splendor, Hilton's long-standing knowledge of men's clothes can give a recent law school graduate the same quality training in style that a Hilton clerkship provides in legal substance; suits should have natural shoulders and pocket squares. Coffee is brewed in chambers and is bought at Costco, while the courthouse café is the lunch of choice

during trials. On nice days, you take in the beauty of Old Town Alexandria with cigar walks outside.

Another constant is Judge Hilton's family and his friends. Judge Hilton enjoys an especially close relationship with his grandson. He is a bright spot in Judge Hilton's life—even scheduling a haircut with him when he and his parents returned from a trip. Hilton's family and friends often make chambers visits, accompany the judge and his clerks at lunch, and join Judge Hilton at his beach house in the Outer Banks. The judge's community begins in his neighborhood, in a house he's lived in for decades, and extends throughout Northern Virginia—as his frequent trips and celebrations at the Washington Golf Country Club attest.

In these and so many other ways, Judge Hilton has personified the institutional legacy his career shepherds—a consistent, true, and strong example of how Alexis de Tocqueville described lawyers: the "connecting link" between the government and the governed; one that has the interest of the people at heart while possessing the virtues that have stood the test of time. Judge Hilton's career is an excellent guide to all those who see a stewardship in the law, and his future example looks as bright as the gold illuminating his courtroom. ☺

## Endnote

<sup>1</sup>Richard A. Posner, *The Bluebook Blues*, 120 YALE L.J. 852, 860 (2011).

<sup>2</sup>*Id.*