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ADDRESSING EDUCATIONAL INEQUALITY IN THE UNITED STATES: A COMPARATIVE APPROACH TO THE EUROPEAN SYSTEM

By: Yi-Sheng Liu*

ABSTRACT

This study compares educational inequality in the U.S. and Europe. Utilizing a comparative approach based on the Positive Obligations of the European Convention on Human Rights and the Fourteenth Amendment to the U.S. Constitution, we expand on social contexts and objective facts to address how the U.S. responds to educational inequality issues in contemporary constitutional interpretation (digital transformation and disparity, for example). We examine emerging issues in social change and expectations and discuss the rationale for constitutional legal norms to explain how these contribute to constitutional change. We suggest that the nation's confrontation with educational inequality should be guided by a positive obligation rationale based on the affordability of quality education, highlighting current problems facing the U.S. and proposing practical suggestions for the right to equality in education.

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INTRODUCTION

In the 1950s, constitutional lawsuits forced public schools in the U.S. to abolish the so-called “separate but equal” segregation policy¹. This action moved the U.S. toward creating equal educational environments for all ethnic groups. However, disparities in educational outcomes between ethnic groups are still evident today. Research has shown that the Black-White Economic Divide, the educational attainment gap between Black and White people in the U.S., affects the socioeconomic mobility between the two groups².

The average post-degree student in the U.S. carried a 22% increase in student loan debt in 2021 compared to their counterparts from 2009³. President Biden’s recently proposed student loan relief program is facing a legal challenge, and the policy is currently under review by the federal Supreme Court, which has suspended the program’s implementation⁴. The extent to which the U.S. executive branch has the authority to intervene in issues of college tuition and graduate affordability, and the extent and manner of its involvement, all affect how democracies view the right to education.

Social classes are inevitable in actual societies and the legal system also plays a vital role in forming them. Countries with greater economic freedom generally have higher quality education, and citizens in more economically liberal countries support education more⁵. However, these studies do not consider the affordability of education and the educational inequalities that arise from differences in economic status within countries. This study explores how educational inequality is a social problem that governments must

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¹ CONSTITUTIONAL LAW 693-94 (Noah R. Feldman et al. eds., 21st ed. 2022).

² Thomas Shapiro et al., *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide*, INST. ON ASSETS & SOC. POL’Y 4, 5-6 (Feb. 2013), <https://davisvanguard.org/wp-content/uploads/2013/07/racialwealthgapbrief.pdf> [<https://perma.cc/VF5S-LFJR>].

³ Sarah Wood, *How Much Student Loan Debt Does the Average College Graduate Have?*, U.S. News & World Rep. (Sept. 22, 2023), <https://www.usnews.com/education/best-colleges/paying-for-college/articles/see-how-student-loan-borrowing-has-changed> [<https://perma.cc/5SY7-M6SS>].

⁴ Eric Beech and Steve Gorman, *U.S. Appeals Court Temporarily Blocks Biden’s Student Loan Forgiveness Plan*, REUTERS (Oct. 22, 2022), <https://www.reuters.com/markets/us/us-appeals-court-temporarily-blocks-bidens-student-loan-forgiveness-plan-2022-10-21>.

⁵ Horst Feldmann, *Economic Freedom and People’s Regard for Education*, 154 SOC. INDICATORS RSCH. 235, 235, 247 (2021), <https://doi.org/10.1007/s11205-020-02555-w> [<https://perma.cc/5CVR-59LH>].

address. In a free market economy, social policy aims to help the disadvantaged and correct imbalances in economic development.

Considerable variation exists in the way education resources are allocated across countries. Government-provided primary education is inexpensive or even free in most developed countries. In the case of higher education, Europe maintains predominantly government-funded higher education, while the U.S. has many top-tier private educational institutions. This difference has implications for equality of opportunity in the U.S. Research indicates that intergenerational social mobility is higher in European countries⁶.

Investigation is required to determine whether the legal system facilitates social class mobility, and what role it can play. Eidlin and McCarthy (2020) argue that digital inequality scholarship has shown persistent socioeconomic inequality in internet access and use:

"[C]lass and other forms of social difference should not be studied primarily as traits embodied in individuals, but rather with respect to how these differences are organized in relation to each other within a framework shaped by the dynamics of capitalist development"⁷.

From this point of view, this study further argues that law helps determine the function of social institutions in advancing the development of capitalism. Deakin et al. (2017) argue that law is part of the structure of social power and is the primary means of exercising that power; in the same article, they point out that modern societies proclaim equality before the law. However, differential access to education, lawmakers, and law enforcement creates an uneven playing field. Thus, in focusing on the impact of law on the constitutive role of law in capitalist societies, it is essential to examine the impact of the authoritative nature of the law on the aforementioned social inequality issues. Hudson (2018) is more explicit and states that:

Law is not an accidental by-product of capitalism or a distinct social system operating in parallel with its economics. Instead, the law is central to capitalism. Law is how capitalism gets its work done⁸.

⁶ Simon Marginson, *Higher Education and Inequality in Anglo-American Societies, in STUDENT EQUITY IN AUSTRALIAN HIGHER EDUC.: TWENTY-FIVE YEARS OF A FAIR CHANCE FOR ALL* 165, 174 (Andrew Harvey, Catherine Burnheim, and Matthew Brett eds., 2016), <http://ndl.ethernet.edu.et/bitstream/123456789/41479/1/581.Andrew%20Harvey.pdf#page=176> [<https://perma.cc/82H5-EP8Q>].

⁷ Barry Eidlin & Michael A. McCarthy, *Introducing Rethinking Class and Social Difference: A Dynamic Asymmetry Approach, in RETHINKING CLASS AND SOCIAL DIFFERENCE* 1, 1 (Barry Eidlin & Michael A. McCarthy eds., 2020).

⁸ Alastair Hudson, *Law as Capitalist Technique*, 29 KING'S LAW J. 58, 58 (2018), <https://heinonline.org/HOL/P?h=hein.journals/kingsclj29&i=59> [<https://perma.cc/S7JY-JYHS>].

Chetty et al. (2018) used extensive data from the U.S. National Bureau of Statistics to study the impact of childhood upbringing on adult earnings, noting the following in their study:

"If a child growing up in a low-income family were to move at birth from a neighborhood at the 25th percentile of the distribution of upward mobility within his county to a neighborhood at the 75th percentile, his higher earnings would lead to approximately a \$40,000 increase in federal income tax revenues over his lifetime."⁹

They also argue that social policy improves the areas in which children grow up and, in turn, their social mobility. Legal norms can significantly affect whether governments can implement social policies. In particular, the value trade-offs in the Constitution determine how government power will be used. Thus, interpreting the Constitution and applying the law will decide whether social policies that address social inequalities can be implemented and play an essential role in social class issues. Due to this, this study argues that a thorough analysis of the values and principles that the Constitution adopts for social policy should be conducted to promote the government's positive role in addressing social inequalities.

I. THE STATE'S OBLIGATION TO THE RIGHT TO EQUALITY

Since the establishment of the European welfare state after World War II, there has been much discussion on the state's obligation to the right to equality. The Constitution reveals significant differences between Europe and the U.S. Article 14 of the European Convention on Human Rights (ECHR), which regulates the right to equality and differs from the Fourteenth Amendment to the U.S. Constitution. Article 14 of ECHR's norms states that: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status."¹⁰

These norms recognize the positive obligation of the state to protect the right to equality in the context of human rights protection. Some scholars have argued that the Inter-American Commission on Human Rights has used and interpreted positive obligations in cases

⁹ Raj Chetty et al., *The Opportunity Atlas: Mapping the Childhood Roots of Social Mobility* (NAT'L BUREAU OF ECON. RSCH., Working Paper No. 25147, 2018), https://www.nber.org/system/files/working_papers/w25147/w25147.pdf [<https://perma.cc/V5PX-8NXW>].

¹⁰ The European Convention on Human Rights art. 14, 1 Aug. 2021, C.E.T.S. 213, https://www.echr.coe.int/documents/d/echr/Convention_ENG [<https://perma.cc/FVZ2-L7L3>].

where the Inter-American Commission has found the U.S. to violate international treaties protecting women's rights:

A *positive obligation* requires a state to act affirmatively. In contrast, a *negative obligation* means only that a state must refrain from infringing on a particular right. As Jessica Lenahan (*Gonzales*) v. United States makes clear, international human rights law imposes affirmative obligations. A state must act with due diligence when an affirmative obligation exists. In *Lenahan*, the Inter-American Commission on Human Rights (Commission) examined whether customary international law norms were binding on the United States and, if so, whether a duty of due diligence was attached. The Commission answered yes to both questions and located the obligations in the American Declaration Article II, which provides that "[a]ll people are equal before the Law and have the rights and duties enshrined in this declaration without distinction of ... sex."¹¹

However, the previous case did not change domestic law, and the U.S. applies only its own legal norms in the human rights context. U.S. domestic law does not expressly address positive state obligations. Some scholars have commented on the Fourteenth Amendment:

This position contrasts with the Equal Protection Clause in the Fourteenth Amendment to the U.S. Constitution, which provides that no state "shall [...] deny to any person within its jurisdiction the equal protection of the laws."¹² "The operative word of ['']deny[''] has translated to the U.S. Courts narrowly construing the Fourteenth Amendment as solely being a protection of people from the State, without a corresponding positive obligation for the State to protect individuals from each other.¹³

There are significant differences between U.S. and European law in this regard. The ECHR was designed as a supranational human rights norm to prevent human rights protection obligations from being overridden in national political disputes.¹⁴ Thus, the Convention authorizes individuals to bring actions against state inaction before the ECHR. In the ECHR, positive obligations establish state responsibility for inaction.¹⁵

¹¹ Caroline Raines Greenfield, *The Right of Women to Child Care in the United States*, 63 BOS. COLL. L. REV. E. SUPP. I-13, I-18 (2022).

¹² U.S. Const. amend. XIV, § 1.

¹³ Daron Tan, *Demarcating the Margin: Positive Obligations Under Article 14 of the European Convention on Human Rights*, COLUM. J. EUR. L.: PRELIMINARY REFERENCE BLOG (March 14, 2018), <http://cjel.law.columbia.edu/preliminary-reference/2018/demarcating-the-margin-positive-obligations-under-article-14-of-the-european-convention-on-human-rights/> [https://perma.cc/B7YE-UQAT].

¹⁴ Andrew Moravcsik, *Explaining International Human Rights Regimes: Liberal Theory and Western Europe*, 1 EUR. J. INT'L RELS. 157, 178 (1995).

¹⁵ Tania Schriwer, *Establishing an Affirmative Governmental Duty to Protect Children's Rights: The European Court of Human Rights as a Model for the United States Supreme Court*, 34 U.S.F.L. REV. 379, 383 (1999).

"In *Petrovic v. Austria*, the Court held that unless the State could justify the exclusion of fathers from the right to a parental leave allowance available to mothers, it would be under a positive duty to provide the allowance to fathers and not solely to mothers."¹⁶

Furthermore, in the case of gender equality, when considering the issue of substantive inequality, the ECHR required the state to implement protection measures that compensate for substantive inequality to prevent domestic violence. Otherwise, the state would violate its positive obligation to protect human rights and be liable to the victim. For example:

In *Valiuliene v. Lithuania*, the concurring opinion of Judge Pinto de Albuquerque pointed out that the "full *effet utile* of the [ECHR] can only be achieved with a gender-sensitive interpretation and application of [the ECHR's] provisions which takes into account the factual inequalities between women and men and the way they impact on women's lives." This approach is also consistent with the UN's approach, where domestic violence is recognized as a form of gender-based discrimination. States "may be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."¹⁷

U.S. law focuses on equal protection. Therefore, removing a state's infringement of human rights through litigation based on unequal treatment is legitimate [Legal Information Institute, n.d.(a)], but only to the extent that U.S. domestic law is adequate. The lack of positive obligations in the human rights provisions of the U.S. Constitution has led to a difference in the understanding of the right to equality between Europe and the U.S.

The U.S. is one of the wealthiest countries in the world. However, educational inequality resulting from socioeconomic disparities remains a persistent social problem.¹⁸ As the Constitution does not regulate the state's responsibility for inaction, the issue of social security has repeatedly returned to its political nature. This predicament involves a battle between the American political left and right wings, a bipartisan difference of opinion between big and small governments.

The Constitution and laws limit the powers of the U.S. federal government, and many social inequities must be addressed through constitutional and statutory authority. Section 5 of the Fourteenth Amendment provides that Congress shall have the power to enforce this article's provisions by appropriate legislation [Legal Information Institute, n.d.(b)]. Thus, the constitutionality of the legislative power of Congress and the derivative constitutional controversies still

¹⁶ Tan, *supra* note 12.

¹⁷ *Id.*

¹⁸ Gary N. Marks et al., *Explaining Socioeconomic Inequalities in Student Achievement: The Role of Home and School Factors*, 12 EDUC. RSCH. EVALUATION 105, 105-106 (2006).

return to the judicial interpretation of this article of the Constitution. Therefore, the fundamental question remains one of constitutional authority. Judicially, the U.S. federal courts have long been conservative in interpreting the Constitution, unlike the European courts, which generally have a constitutional principle of imposing positive obligations on the state. As a result, intervening in many long-standing issues of inequality, such as race, housing, and education, is difficult, because the government lacks the authority to do so.

In addition, the recently introduced Bill of Rights in the UK is known as the *Rights Removal Bill*¹⁹, mainly because the legislation limits the use of positive obligations by the courts. It is worth noting that the UK Parliament's rationale for this Bill was to prohibit the courts' interference with the government's obligations without a democratic mandate.²⁰ However, as a state party to the ECHR, the UK must comply with the ECHR. If passed, the Bill could create obstacles to using the ECHR provisions by the UK courts to require the UK government to meet its human rights protection obligations.

This controversy raises the question of how the division between legislative and judicial powers should be applied to implementing the Human Rights Clause. More importantly, however, the U.S. Constitution lacks a direct mandate of positive obligation, leaving the courts without the power to intervene directly in cases of biased textual interpretation.

In practical terms, the federal government limits the U.S. federal structure. Even so, it can act if Congress and the courts agree on the interpretation of the Constitution. This system protects human rights in a democracy by using the legislator and the judiciary to decide. It ignores the individual's right to petition the state for inaction. In human rights protection, individual citizens must invoke human rights provisions to prosecute for protecting their rights and to guide the state in implementing related policies through litigation. However, such avenues are difficult to pursue when there is an absence of a positive state duty to authorize them in the Constitution.

If a positive state obligation is to be added to the U.S. legal system, as it is in the European legal system, then the lack of a democratic mandate for the judiciary itself in the British experience must also be considered, and the justification for judicial intervention must be sought in the case. Therefore, an in-depth study of Europe

¹⁹ Lily Lewis, *The "Bill of Rights" Will Strip Away Vital Protections*, GARDEN CT. N. CHAMBERS (June 24, 2022), <https://www.gcnchambers.co.uk/bill-of-rights-positive-obligations/>.

²⁰ Bill of Rights Bill 2022 (UK), <https://www.gov.uk/government/publications/bill-of-rights-bill-documents> [<https://perma.cc/5HAX-YE9D>].

will help develop a discourse on proactive protection rights in the U.S.

This study focuses on the right to equality in education. It compares the legal systems of the U.S. and Europe, seeking to justify the inclusion of proactive state obligations in the U.S. constitutional scheme. From an in-depth understanding of the current situation and history of social inequality, we explore the roles and possibilities of the executive, legislative, and judicial branches in the institutional design of human rights protection in the U.S. Meanwhile, from the perspective of actual social needs, we can seek the jurisprudence on the obligation to protect the right to equality in education in the U.S. as a basis for the development of the discourse on the individual's right to claim. In addition, the goal is to respond to the needs of the digital age.

II. THE U.S. CONSTITUTIONAL SYSTEM AND THE CURRENT DILEMMA

The lack of a human rights protection clause has been a problem since the early years of the U.S. constitutional system. Subsequently, the U.S. Constitution was amended to include equal protection of the laws in the Fourteenth Amendment after the Due Process Clause was added. However, in *DeShaney v. Winnebago County* in 1989, the Supreme Court affirmed that the state does not have a positive obligation to use the clause, as seen here:

(...) nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors. The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security. It forbids the State itself to deprive individuals of life, liberty, or property without 'due process of law,' but its language cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means. Nor does history support such an expansive reading of the constitutional text. Like its counterpart in the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment was intended to prevent the government "from abusing [its] power, or employing it as an instrument of oppression" (...) Its purpose was to protect the people from the State, not to ensure that the State protected them

from each other. The Framers were content to leave the extent of governmental obligation in the latter area to the democratic political processes.²¹

In addition, the U.S. has a low acceptance of international human rights norms and has long emphasized the U.S.-only system of protection.²² The U.S. Constitution's human rights provisions lack coverage of socioeconomic rights. Congressional legislation has not established a legal framework that actively requires the government to take steps to protect socioeconomic rights. In recent years, many constitutional controversies, such as the long-running Obamacare lawsuit, have demonstrated that the body of knowledge in the U.S. Constitution needs to cover a broader range of social security principles to meet the needs of the times.

Much of the constitutional controversy over educational rights in the U.S. concerns removing discriminatory disparate treatment by the government. The country began as a nation wanting to create a limited constitution.²³ Within the framework of narrowly tailored laws and the principle of separation of powers, the U.S. federal judicial system is often used to test the constitutionality of the actions of the executive and the legislature. It is rarely about the inaction of the executive or legislature.

Political divisions and social conflicts in the U.S. have intensified recently, and the changing present environment has created diverse challenges. Whether the U.S. constitutional system is designed to cover the needs of contemporary society will affect whether the country can remain at the forefront of constitutional institutions and human rights protection in the face of educational inequality, the changing digital environment, and the rising cost of higher education.

The U.S. federal government is designed to be limited. It supplements instead of supplants state governmental authority.²⁴ The U.S. states are financially capable of addressing some of the social inequality problems as provided for in their state constitutions. However, some issues involve more extensive fiscal needs that require the federal government to use its resources to intervene. Addressing widespread social inequality effectively requires the government to have sufficient budgetary capacity. In the U.S., governmental authority, except for the constitutional separation of

²¹ *DeShaney v. Winnebago Cnty. Dep't Soc. Servs.*, 489 U.S. 187, 195-96 (1989).

²² Rhonda Copelon, *The Indivisible Framework of International Human Rights: A Source of Social Justice in the U.S.*, 3 N.Y. CITY L. REV. 59, 60 (1998).

²³ Walter E. Dellinger, *The Recurring Question of the "Limited" Constitutional Convention*, 88 YALE L.J. 1623, 1625 (1979).

²⁴ Lorraine M. McDonnell, *No Child Left Behind and the Federal Role in Education: Evolution or Revolution?*, 80 PEABODY J. EDUC. 19, 23 (2005).

powers mandate, is limited practically by the government's fiscal capacity.

Some scholars argue that the federal government's influence on education has increased significantly in recent years, primarily due to efforts to achieve educational equality.²⁵ An equitable educational environment has never been achieved in the U.S., where education relies heavily on the support of individual and family resources. In the past three years, online teaching has been forced upon many districts in response to the impact of COVID-19, which has garnered renewed attention on the issue of digital disparity and educational affirmative action. Research shows that during the COVID-19 pandemic, most of the inequalities created by implementing online education occurred among economically disadvantaged or vulnerable populations.²⁶ This discrepancy makes the social impact of digitization on educational equality even more concerning.

Online degrees and programs were popular long before the onset of the COVID-19 pandemic. The development of digital education has made it possible for many people to learn what they need to know through online platforms and even obtain a university degree at a lower cost of tuition and living.²⁷ The contemporary digital revolution in higher education may be due to its high cost. Thus, universities need to attract students through lower-cost digital programs. This situation has created an objective environment where digital education can flourish. However, while digitization can reduce the cost of learning for some programs, it cannot solve the problem of increasing tuition costs for most other higher education programs that rely on traditional education methods.

How the U.S. Constitution responds to the emerging challenges of the 21st century as society undergoes changes is tied to the fiscal power of the federal government. The U.S. federal government is the debtor of most American college students.²⁸ The power of the federal government to forgive student loans for college students can reduce the cost of and access to higher education for most people.

The Biden administration's student loan forgiveness program has been challenged on several grounds, including the legal argument that the federal government is not authorized to take steps

²⁵ Kimberly Jenkins Robinson, *Disrupting Education Federalism*, 92 WASH. U. L. REV. 959, 969 (2014).

²⁶ Judy Yuen-Man Siu, *Health Inequality Experienced by the Socially Disadvantaged Populations During the Outbreak of COVID-19 in Hong Kong: An Interaction with Social Inequality*, 29 HEALTH & SOC. CARE CMTY. 1522, 1528 (2021).

²⁷ Spiros Protopsaltis & Sandy Baum, *Does Online Education Live Up To Its Promise? A Look at the Evidence and Implications for Federal Policy*, (2019) (unpublished manuscript) (on file with the Center for Educational Policy Evaluation at George Mason University), <https://jesperbalslev.dk/wp-content/uploads/2020/09/OnlineEd.pdf> [<https://perma.cc/P6CD-N3CJ>].

²⁸ Patricia Somers et al., *The Federal Government as First Creditor on Student Loans: Politics and Policy*, 22 EDUC. EVALUATION & POL'Y ANALYSIS 331, 331-332 (2000).

to forgive student loans. Many oppose the measure's potential to increase the burden on American taxpayers. News reports indicate that the Biden administration claims that its authority to forgive student loans derives from section 1098bb(a)(1) of the Higher Education Relief Opportunities for Students (HEROES) Act.²⁹ A closer look at this authority's basis reveals that "...the Secretary of Education may waive or modify any statutory or regulatory provision applicable to the student financial assistance programs..."³⁰ This declaration does not explicitly state that the federal government's fiscal authority may be used to subsidize tuition costs. Debate is ongoing related to forgiving student loans without congressional funding approval and the federal government assuming its debt.

However, even with congressional consent, unconstitutional and improper use of Congress's taxation powers can be controversial. The numerous challenges to the Affordable Care Act before the Supreme Court are a clear example.³¹ Since 2010, the Affordable Care Act has faced three foundational legal challenges: *NFIB v. Sebelius*, *King v. Burwell*, and *California v. Texas*.³² Thus, the fundamental problem is that the U.S. lacks constitutional protection for the nation's social security system. Even with the accumulation of many cases on the federal government's fiscal power limits, it still does not address the fact that in the U.S. constitutional system, the social security system remains a political issue rather than the protection of a fundamental right.

The Constitution exists to set the standard of human rights protection outside the operation of political power as a wall that prevents it from going off the rails. However, the political culture in the U.S. does not favor the government doing everything it can for social welfare. Social welfare organizations play an essential role; this includes prioritizing supportive practices or acting as pressure groups to disagree and share better wisdom with legislators. The influence of individuals on politics is better compromised through the expression of group opinion.

However, a conflict exists between the status of the state, which is formed by the citizens themselves, and their status as recipients of state services. The state promotes social welfare to serve its citizens,

²⁹ Roxanne Bland, *Why Biden's Student Loan Forgiveness Plan Faces A Rocky Road*, FORBES (Sept. 26, 2022), <https://www.forbes.com/sites/taxnotes/2022/09/26/student-loan-forgiveness-can-biden-do-that/?sh=5dc82e79175f> [<https://perma.cc/6DTE-G6X6>].

³⁰ *Id.*

³¹ Steve Benen, *Affordable Care Act Survives Supreme Court Challenge (Again)*, MSNBC: MADDOWBLOG (2021), <https://www.msnbc.com/rachel-maddow-show/affordable-care-act-survives-supreme-court-challenge-again-n1271151> [<https://perma.cc/CMM4-NXGU>].

³² Josh Blackman, *California v. Texas on the Final Installment of the Obamacare Trilogy*, in SCOTUS 2021: MAJOR DECISIONS AND DEVELOPMENTS OF THE US SUPREME COURT 43, 43-44 (Morgan Marietta ed. 2022).

but it can do so only if it obtains resources from them. Citizens enjoy their rights and pay for their obligations.

Scholars believe that the U.S. Bill of Rights emphasizes individual freedoms. A universal perspective prioritizes the group instead of the individual.³³ Thus, as a social contract, the Constitution should be clear about government functions. The U.S. Bill of Rights emphasizes that the judiciary must clarify government functions.

III. THE INTERRELATEDNESS OF SOCIAL FACTORS

For a long time, social inequality in the U.S. has often been linked to social problems in three areas—race, housing, and education—all of which arise from differences in socioeconomic status. In a free economy, the Constitution needs to protect economic freedom on the one hand and the right to equality on the other. The conceptual conflict between the two is not insurmountable but is more easily seen and examined in the context of socioeconomic issues related to living conditions.

Housing provides a growing environment for children and can affect their learning. Differences in housing prices between U.S. districts are often indicative of school district quality. Therefore, understanding the caliber of the local educational environment is possible. Economically advantaged families are more likely to be able to choose a good place for their children to live and learn. Economic migration may cause housing prices in an area to rise, crowding out other economically disadvantaged people and creating a vicious cycle.

A family's financial ability affects their residential stability. The homeownership rate of a district also affects the children's learning environment. Overall, the homeownership rate in the U.S. has remained above 65% since 2000.³⁴ However, between 1960 and 2017, the homeownership rate for young adults aged 20–34 years declined by 10%; this increased by 9% for those aged 65 years and older for the same period.³⁵ In addition, racial disparities in homeownership are significant and have continued to persist since Congress passed the Fair Housing Act in 1968. Racial inequality persists, and young people's declining ability and willingness to purchase homes are symptomatic of the long-term economic disparity.

³³ Philip Hackney, *Political Justice and Tax Policy: The Social Welfare Organization Case*, 8 TEX. A&M L. REV. 271, 283 (2020).

³⁴ Mia Taylor, *Homeowner Data and Statistics 2023*, BANKRATE (July 24, 2023), <https://www.bankrate.com/insurance/homeowners-insurance/home-ownership-statistics/> [https://perma.cc/5MGN-5RFM].

³⁵ Mark Mather et al., *What the 2020 Census Will Tell Us About a Changing America*, 74 POPULATION BULL. 17 (2019), as reprinted in Mark Mather et al., *U.S. Homeownership Rates Fall Among Young Adults, African Americans*, PRB (Feb. 13, 2020), <https://www.prb.org/resources/u-s-homeownership-rates-fall-among-young-adults-african-americans/> [https://perma.cc/6SQS-JW5T].

Several empirical studies have explored the relationship between regional differences in children's educational performance and socioeconomic inequalities. Daniele's (2021) study finds that in Italy and Spain, regional PISA scores in mathematics and regional poverty rates are highly correlated ($r=-0.84$).³⁶ Many European studies depict cross-national variation in the inequality of educational opportunity among children from different social backgrounds; Bethhäuser et al. also further depict that inequality of educational opportunity varies within counties and across regions.³⁷ In the U.S., a study about the relationship between family background, college completion, and earnings for a cohort of young adults.³⁸

UNICEF is concerned about the differences in learning performance among children in the world's 41 wealthiest countries, depending on where they were born, their language, or their parents' occupation.³⁹ In 2018, UNICEF reported that children from economically disadvantaged backgrounds are less likely to attend preschool. Chzhen et al.'s data (2018) show that the rate of children attending preschool in the U.S. surpassed only Turkey, which ranked 41st out of 41 countries.⁴⁰ More than 1 million U.S. children have no preschool experience.⁴¹

At the elementary school level, 2016 data show that U.S. elementary school students' gaps in reading comprehension are also in the bottom half compared to other countries.⁴² The report also cites a tracking study in the U.S. that found that in five income groups (highest 20%, second highest 20%, mid 20%, second lowest 20%, and lowest 20%) in the country, children already have significant differences in reading scores between all five income groups at the time of entering kindergarten.⁴³

Furthermore, the report also points out that among 31 countries, including the U.S., inequalities between children arise from differences in their family background and the schools they attend.⁴⁴ The variation in the U.S. is higher than in most wealthy countries. Socioeconomic status and the differences in schooling across the U.S. significantly impact student learning outcomes.

In sum, research on educational inequality in the U.S. and other wealthy countries has often been linked to economic issues. Most

³⁶ Vittorio Daniele, *Socioeconomic Inequality and Regional Disparities in Educational Achievement: The Role of Relative Poverty*, 84 INTELLIGENCE (2021).

³⁷ Bastian A Bethhäuser, et al., *Regional Variation in Inequality of Educational Opportunity Across Europe*, 7 SOCIUS (2021).

³⁸ Russell W. Rumberger, *Education and the Reproduction of Economic Inequality in the United States: An Empirical Investigation*, 29 ECONS. EDUC. REV. (2010).

³⁹ Yekaterina Chzhen et al., *An Unfair Start: Inequality in Children's Education in Rich Countries*, INNOCENTI REP. CARD 15, U.N. Sales No. E.18.XX.2.

⁴⁰ *Id.* at 8.

⁴¹ *Id.* at 11.

⁴² *Id.* at 17.

⁴³ *Id.* at 21.

⁴⁴ *Id.* at 32.

studies above have noted the educational inequalities resulting from household economic disparities, whether the discussion of housing in the U.S. is related to homeownership rates, housing prices, and/or race. The issue of regional differences in educational inequality is also often associated with the economic status of families and their areas of residence.

In the face of these problems, limitation via jurisprudence of the scope of the right to equality to formal equality is insufficient. Achieving the right of any child to attend public school is only a fundamental requirement of formal equality. Realizing the constitutional right to equality requires a realistic understanding of social problems and requirements. To bridge the gap between legal norms and the operation of society, we must achieve a higher degree of human rights protection.

In addition to the existing formal equality of access to public schools, a higher quality education should focus on the broader issue of equality of resources. The UN's Sustainable Development Goals (SDGs) for quality education by 2030 include properly resolving educational inequalities in rich countries.⁴⁵ This issue depends not only on the adaptation of legal norms but also on the use of appropriate technologies and the promotion of education policies that work at the technical level.

Of the various educational pathways, the development of online teaching has the most significant potential for disruptive innovation. Inequalities that may arise when online teaching can be implemented include: (1) not all public schools in the U.S. have the same quality of education, and (b) emerging technological advances may impact long-standing educational inequities. As online learning replaces established educational approaches, future research must monitor whether online learning exacerbates existing inequalities in educational resources or if it can be used to improve educational inequalities due to regional disparities.

Differences in the socioeconomic status of American society, combined with a long-term education policy of dividing school districts by region, make differences in public schools in the U.S. closely related to regional housing prices. Housing prices are generally higher in school districts with excellent ratings. Thus, higher-priced areas have more educational resources than lower-priced ones. Differences in housing prices between residence places can also indicate differences in the socioeconomic status of area residents. The correlation between housing price and education quality suggests that children from families with higher economic status and living in higher-priced areas have access to more educational resources. The adequacy of educational resources, in

⁴⁵ Ellen Boeren, *Understanding Sustainable Development Goal (SDG) 4 on "Quality Education" from Micro, Meso and Macro Perspectives*, 65 INT'L REV. EDUC. 277, 278-280 (2019).

general, may also amplify its inadequacy and impact more particularly in an online teaching and learning era. However, technological advances may also allow education departments to use more ways to deliver educational content, which may help improve educational disparities.

IV. THE UNFINISHED JOURNEY OF THE LIBERAL ECONOMY

At the end of the Cold War, people had rosy ideas about the triumph and future of economic liberalism. Fukuyama (1989) considered communism and fascism to be the enemies of liberalism. After the fall of the Berlin Wall, Fukuyama thought that the liberal economy had proved victorious and that, thus, the political and ideological competition was no longer a significant problem. In modern liberalism, no problems occur that a free economy cannot solve, and the world is much less conflicted in its political systems. In his study, Lyman (1998) argues that the existence of social inequality is now a real test of national political systems:

Although Fukuyama believes that the “two major challenges to liberalism” in the Twentieth Century have been fascism and communism, in the United States institutionalized racism has been far more pervasive than either of these essentially European ideologies. “Moreover, racism, in both preachment and practice, opposes liberalism’s promise of universal individualism and equal opportunity for all; Indeed, it undermines the latter.”⁴⁶

The issue Lyman raises still rings true today. In short, the contemporary quest for an egalitarian society is rooted in the search for true freedom. From this point of view, a free economy should bring about a more egalitarian society to maintain value and meaning.

The social inequities highlighted during the massive public health crisis caused by COVID-19 were even more dramatic. The impact of socioeconomic status (SES) on children’s development became a widespread issue during the pandemic. Empirical studies have shown that SES does affect child development. Parents with low SES have less time and attention to spend on their children’s education, and they are more concerned that their health will be compromised, jeopardizing their ability to care for their children.⁴⁷ Notably, the cited studies also point out that children facing distress are often forced to make psychological adjustments without adequate intervention from the state or social security mechanisms.

⁴⁶ Stanford M. Lyman, *The Race Question and Liberalism: Casuistries in American Constitutional Law*, 5 INT’L J. POLS., CULTURE, & SOC’Y 183, 185 (1991).

⁴⁷ Sara Scrimin et al., *Effects of Socioeconomic Status, Parental Stress, and Family Support on Children’s Physical and Emotional Health During the COVID-19 Pandemic*, 31 J. CHILD & FAM. STUDS. 2215, 2223 (2022).

Children in low-income households are used to dealing with numerous sources of distress, including being indirectly exposed to parental stress. Those living in a low-SES context may put more significant effort into trying to accept stressors and adjust themselves to deal with stressful situations through different strategies.⁴⁸

Appropriate government intervention is essential to address the dangers of social inequality in public crises. Walby (2020) concludes that COVID-19 challenges how social theory addresses alternative forms of society.⁴⁹ Furthermore, the focus on the libertarian critique of authoritarianism is insufficient. The social democratic critique of neoliberalism lies at the center of the contesting responses to the COVID-19 crisis. Contemporary academia is seeking a solution to the debate between authoritarianism and democracy; focusing solely on the debate between freedom and lack thereof may be insufficient. At the same time, the law should seek a more nuanced solution so that government intervention in public issues has sufficient authority to move policy toward the complete protection of human rights.

In contrast to the U.S., where government solutions to social inequality are narrowed to the issue of government fiscal power and resource constraints are the boundary for exercising state political power, the ECHR is better at resolving human rights problems caused by state inaction. The ECHR has been more adept at addressing human rights problems caused by state inaction. A notable example is *O’Keeffe v Ireland*, in which the ECHR held the Irish government liable for failing to protect children from abuse.⁵⁰ O’Mahony and Kilkelly’s research points to a long history of public-private divisions in Irish education:

Ireland is unusual. Its primary school system, despite using the term “national school,”⁵¹ is neither national nor public. It is, in fact, a system of private schools, overwhelmingly owned and managed by religious denominations, with the small remainder owned and managed by organizations committed to providing a multi-denominational alternative. The roots of this system are historical and pre-date the 1937 Constitution of Ireland quite considerably. Indeed, they can be traced to the very beginning of the system of state-funded education in Ireland in 1833.⁵²

Many instances of child abuse occur within such an educational system, and the state has evaded its responsibility to oversee and implement effective regulatory policies. In domestic litigation, courts have adopted a narrow interpretation of government liability,

⁴⁸ *Id.*

⁴⁹ Sylvia Walby, *The COVID Pandemic and Social Theory: Social Democracy and Public Health in the Crisis*, 24 EUR. J. SOC. THEORY 22, 25 (2020).

⁵⁰ Conor O’Mahony & Ursula Kilkelly, *O’Keeffe v Ireland and the Duty of the State to Identify and Prevent Child Abuse*, 36 J. SOC. WELFARE & FAM. L. 320, 320 (2014).

⁵¹ *Id.*

⁵² *Id.*

holding that only the actions of school employees employed by the government are subject to government liability. However, the ECHR adopted a government recognizability standard and held the government liable for its inaction. In that case, the Court held that the government was responsible based on a cognizable duty for human rights violations.

The case hinged on the argument that no effective measures were in place to detect and prevent child abuse in primary schools. Had such measures been in place, the school principal would have been removed from his position far earlier, and his litany of abuse would never have been as extensive as it was.⁵³

The Irish case emphasizes the state's obligation to intervene proactively, especially in the case of child abuse, which endangers personal liberty. This paper argues that exploring the state's responsibility to care for poor and vulnerable groups in the context of equal rights is crucial.

A public crisis such as the COVID-19 pandemic reveals the inadequacies of the human rights protection system that has been in place for decades. The controversy over the expansion of government power, how the government's ability should be constitutionally bound, and how to distinguish between the government's obligations in terms of actions and omissions has given rise to many debates. In the present and future, courts will be forced to answer more questions about public crises arising from dramatic social change.

Constitutional control and involvement in policy will be reconstructed amid various legal challenges. The interpretation of the Constitution must be nuanced in response to the dramatic changes of the times. It will also include policies and laws that address social inequality. Constitutional control and involvement in policy will be reconstructed amid various legal challenges.

To properly articulate the value of equality rights in contemporary society, sociological theories of inclusive communities are also worthy of being cited and referenced by legal professionals. In many previous studies, sociologists have explored the role of the government in promoting social inclusiveness to protect human rights.⁵⁴ Moreover, the policy concept of social inclusion has been the focus of the UN's SDGs. "Social inclusiveness aims at empowering the poorest through investing in human capital and enhancing the opportunities for participation."⁵⁵ Among the SDGs, "Goals 1 and 17 seek better domestic financial resource mobilization . . . Goals 4 and

⁵³ *Id.* at 324.

⁵⁴ *About Us: Division for Inclusive Social Development (DISD)*, U.N. Dep't Econ. & Soc. Affs., (2024) <https://www.un.org/development/desa/dspd/> [<https://perma.cc/V2RT-2H4W>].

⁵⁵ Joyeeta Gupta & Courtney Vegelin, *Sustainable Development Goals and Inclusive Development*, 16 INT'L ENV'T AGREEMENTS: POLITICS, L. & ECON. 433, 436 (2016).

8 promote capacity building of teachers, scholarships for higher education in other countries, and a global strategy for youth employment."⁵⁶ In the international community, the commitment of many governments to actively take on the national obligations of sustainable development commitments is not limited to environmental protection. The goal of social inclusiveness for sustainable development encompasses pursuing and promoting an equitable society and quality education. How these policies are implemented through the constitution and laws will stimulate new thinking and even change existing frameworks and logic at a time of great social need.

The U.S. has long distanced itself from international norms in protecting human rights, pursuing a system of protection that is uniquely American. Europe, however, is in stark contrast to the U.S. in its attempts to intervene in the protection of human rights through public policy initiatives by the government. The unfinished business of the free economy is the inadequacy of institutional measures to remedy social inequalities. In the era of global competition, the government's role in the constitutional tradition is highlighted by international crises, opening a chapter of competition between Europe and the U.S.

V. AFFORDABLE QUALITY EDUCATION

In the face of the emerging challenges of the 21st century, the U.S. government's obligation to protect human rights should evolve with the times. The affordability of quality education should be one of the critical issues of educational equality in the U.S. In *Brown v. Board of Education of Topeka*, 347 US 483, 1954, the U.S. Federal Supreme Court struck down segregated education measures, overturning the legal principle of segregation. Since the verdict in 1954, educational resources in the U.S. seem to be legally available on an equal basis regardless of race.

However, the social classes created by racial differences still exist in practice. An unmistakable racial divide exists in residential areas. Public schools in regions with high housing prices generally have higher ratings. Even after legal segregation is eliminated, economic disparities still exist, resulting in considerable inequality in the prevalence of quality education. Frankenberg's (2013) analysis of the role of residential segregation in contemporary school segregation points out the following:

...efforts to address persisting housing segregation in the nation's metropolitan areas should receive renewed attention. What's more, despite the

⁵⁶ *Id.*

policy focus of the last 50 years on designing school desegregation plans, residential segregation today reflects vestiges of governmental action and should be the focus of more concerted policy efforts to both eliminate racial discrimination and affirmatively further residential integration.⁵⁷

Frankenberg's study summarized U.S. demographic data to examine the relationship between school districts and racial segregation, considering the role of residential segregation in maintaining segregated schools.⁵⁸ The study points to the relationship between school districts and racial segregation. The U.S. legal system, particularly the Fair Housing Act, is critiqued in this context.

Despite the passage of the Fair Housing Act in 1968, there have been few enforcement efforts, particularly at the federal level, even with suggestions that housing integration efforts might be more politically accepted than cross-district busing implemented after the 1971 Swann decision. This lack of attention to housing segregation in metropolitan areas, when coupled with the structure of school district boundary lines and Supreme Court decisions that largely isolated school segregation as an urban problem to address, has resulted in persistently high levels of residential segregation that has significant ramifications for the segregation existing in U.S. public schools.⁵⁹

When Congress enacted the Fair Housing Act in 1968, one of its core goals was to prohibit racial discrimination in housing sales and rentals. However, behavioral discrimination is not the real cause of inequality today; it is the inequality resulting from a genuine socioeconomic status disparity. Such substantive differences undermine the diversity of public schools and expand over generations as educational inequality accumulates. In the case of diversity, the issue of housing affordability in the area in which one lives must be addressed. Homeownership is one of many ways to live in an area with better educational resources. The economically disadvantaged can satisfy the exact requirement by renting homes.

When housing prices rise, the economically disadvantaged are harmed. For example, during the COVID-19 pandemic from 2020–2021, the housing price hotspots were typically located in more affordable suburbs, smaller cities, and areas away from high-cost, high-density urban downtowns.⁶⁰ Good school districts in the U.S.

⁵⁷ Erica Frankenberg, *The Role of Residential Segregation in Contemporary School Segregation*, 45 EDUC. & URB. SOC'Y 548, 561 (2013).

⁵⁸ *Id.* at 548.

⁵⁹ *Id.* at 549.

⁶⁰ Xinba Li & Chuanrong Zhang, *Did the COVID-19 Pandemic Crisis Affect Housing Prices Evenly in the U.S.?*, 13 SUSTAINABILITY (2021).

usually center on the city's outskirts. This discrepancy makes it more difficult for the economically disadvantaged to afford housing in such areas.

The thought-provoking question is what effect online education's popularity and widespread use can have when traditional educational channels fail to find practical breakthroughs to compensate for the uneven distribution of educational resources. Online education is not limited by time and space. Its educational content can be distributed worldwide via the Internet. Moreover, thanks to technological advances in video recording and image processing, the same content can be shown repeatedly at different times and spaces at a lower cost to reach more people. The problem is that there is a barrier to producing high-quality online educational content in many schools that do not have access to video recording and processing equipment. Educators with enough resources to leapfrog can have a more significant impact. Those with insufficient resources will have difficulty presenting and seeing their content. This inevitably affects the diversity of educational content and its effect on the dissemination of cultures, thereby leading to cultural equality.

However, concerning its application in primary education, online teaching of familiar subjects where the local government coordinates and disseminates all content with the same quality produces an improvement in formal equality. However, the drawback is that the same content may not be appropriate for the learning progress of students who are less able to learn. The flip side of the widespread dissemination of online knowledge is that it cannot be finely customized to the level of the student, which hinders achieving a standard of quality education.

Considering such issues, traditional educational pathways are still crucial in an era of widespread online education. The meaning of the Fourteenth Amendment to the U.S. Constitution is to create a flexible mechanism for equality that can be achieved through multiple pathways. The standard of equality is supposed to increase as technology advances. For example, in an era without computers, having access to school was necessary to achieve educational equality. However, in the age of computers, where the use of computers in an academic setting can enhance learning and promote learning effectiveness, the use of computers has become another necessary means of achieving educational equality. Further, online education is more than just an additional means of learning. Sometimes, it becomes an essential pathway. During the Newcastle Pneumonia epidemic, the disruption of knowledge caused by

prolonged isolation measures made online teaching a necessary pathway for many schools.⁶¹

However, when online teaching becomes necessary, the problem of uneven resources arises again. In the U.S., Internet access and infrastructure are inadequate in many communities. Limitations in Internet transmission speeds have led to ineffective online instruction in many areas. At the same time, it is common for students to live in different conditions at home, which affects the effectiveness of home learning. The point of home learning for underage students is the most difficult to assess. In terms of differences in living conditions, the problem in the U.S. is that many children do not have their own learning space at home. When many children are studying at home simultaneously, the lack of information facilities makes it difficult for students to learn. In short, many children in the world's wealthiest countries still do not live in an environment that allows them to learn at home to their full potential.

Therefore, when education is transformed into online teaching, many objective conditions need to be met to achieve the purpose of education. The achievement of educational purpose and the practice of educational equality are two sides of the same coin. The only way to achieve the purpose of education is to have an educational environment in which opportunities are equal and acceptable. Otherwise, equality of educational opportunities cannot guarantee the equality of quality in education.

VI. EXPANSION AND LIMITATION OF POWERS

Equality of opportunity in education is a judicially enforceable right to equality. In contrast, equality of quality in education is not yet a judicially enforceable right. However, more practical issues, such as the civil rights issue of racial discrimination, the digital divide between socioeconomic classes, and social problems that arise from high housing prices, may be of interest. What is certain is that the continuing development of technology and social change will force the judiciary to judge the scope of previously unimagined rights protections.

Human rights protection requires executive, legislative, and judicial action. Future judicial review will challenge the U.S. executive branch as it seeks to achieve more significant social protection goals. Regarding acts valuable in human rights protection, courts should adopt more liberal review standards, giving the executive greater power to adjust its allocation of resources at the executive level. This action would allow the U.S. to

⁶¹ Petar Jandrić et al., *Teaching in the Age of Covid-19*, 2 POSTDIGITAL SCI. & EDUC. 1069, 1070 (2020).

respond more to emerging challenges during significant change. However, the U.S. Department of Justice will have to face the challenge of whether human rights standards include positive state obligations and will have to provide a more socially responsive explanation.

The major political divisions in the U.S. today will remain in Congress is undeniable. Social security is a leftist political idea, and reaching a consensus on many issues in the U.S. Congress will be challenging. However, the nature of the education issue, which involves protecting the fundamental rights of children and students, should be more amenable to political compromise than other issues. Congress must confront the public outcry for universal access to affordable, quality education. However, the federal government may need to devote more resources to issues such as the digital divide and the increasing cost of higher education.

Digitization is an opportunity for U.S. residents to break free from regional constraints and impediments to improve the prevalence of quality education. Parliamentary politics is only one way to take advantage of or capture the changing era of digitization. The growing emphasis in contemporary politics on the executive's interpretation of legislation and the judiciary's final decision cannot be ignored. In particular, the immediate response of the executive branch of the state can have a direct impact in the face of digital change.

The traditional parliamentary supremacy of the rule of law has a particular insistence on using state power by the legislature to intervene and solve social problems through political operations.⁶² However, the emergence of the welfare state in the twentieth century made the legislative branch the main one for legitimizing political power; it became the norm to delegate a large amount of governmental authority to the executive branch through legislation, as seen in the following excerpt:

By the 1950s, " 'few could deny that ... a much more complex reality' prevailed."⁶³ First and most importantly, the vast expansion of the welfare state had significantly transformed the legislative function of parliaments. Rather than attempt to produce most norms directly in statutes, elected assemblies now, more often than not, simply delegated broad normative power to executive or administrative bodies "to make the rules via some form of subordinate legislation, subject to certain general statutory guidelines." Second, aided by a purportedly "depoliticized" and "technocratic" administrative apparatus, executives throughout the industrialized world came to exercise extensive normative authority,

⁶² *Parliamentary Sovereignty*, U.K. PARLIAMENT, <https://www.parliament.uk/site-information/glossary/parliamentary-sovereignty/> (2024).

⁶³ Peter L. Lindseth, *The Paradox of Parliamentary Supremacy: Delegation, Democracy, and Dictatorship in Germany and France, 1920s-1950s*, 113 *YALE L. J.* 1341, 1344 (2004).

whether in the production of quasi-legislative rules or in the adjudication of disputes that arose in connection with their expanding regulatory authority. "Finally, in the face of this concentration of normative power in the executive, the nature of judicial oversight also evolved, with courts and court-like jurisdictions administration now focusing on a much greater degree on the internal substantive and procedural regularity of this delegated normative power, rather than simply on whether the executive and administration were operating within the bounds of the authority conferred by the legislature in the enabling legislation."⁶⁴

As a result of this development, recent judicial review has become increasingly involved in directly examining the constitutionality of legislative mandates. Judicial involvement in the outcome of political operations is increasingly justified when it comes to human rights issues when courts cite other jurisdictions or international human rights norms and cases.⁶⁵ Such a process gradually reflects the shared responsibility of the judiciary, legislature, and executive to fulfill their constitutional obligations.⁶⁶

The U.S. Congress can solve most social problems through legislation, including the passage of legislation and budgets that promote the affordability of quality education. However, congressional decisions require political settlement and majority approval, and avoiding theoretical and practical problems of over-delegation is challenging. Therefore, effective gatekeeping by the Department of Justice and the proper use of constitutional interpretation is required.

Currently, legislation in the U.S. Congress authorizes the executive branch to address social problems by declaring a national emergency only when society faces a significant challenge, such as 9/11 or the COVID-19 pandemic. Under a national emergency, the executive branch is given greater authority to address social inequalities. The source of the law of national emergencies is section 202(d) of the National Emergencies Act,⁶⁷ which authorizes the executive branch to determine what constitutes a state of emergency. In many countries, a state of emergency is not an ordinary means of protecting national security. In the U.S., however, it has been used to address long-standing social inequalities. In this case, judicial review of the decision will inherently interfere with delineating the scope of the legislative mandate, making the executive branch's decision subject to legislative restrictions and interference from the judiciary.

⁶⁴ *Id.*

⁶⁵ Christopher McCrudden, *Common Law of Human Rights?: Transnational Judicial Conversations on Constitutional Rights*, 20 OXFORD J. LEGAL STUDS. 499, 499-500 (2000).

⁶⁶ ALEC STONE SWEET, GOVERNING WITH JUDGES: CONSTITUTIONAL POLITICS IN EUROPE 32 (2000).

⁶⁷ 50 U.S.C. § 1621(a) (2018).

In the practice of the executive branch, the Trump and Biden administrations relied on the national emergency provision to suspend student loan payments during the pandemic from March 2020 until January 2023.⁶⁸ Ensuring that the economic circumstances of certain groups are protected in a state of stress is less controversial. However, the executive order to suspend payments, which evolved into an outright waiver of repayment, has been criticized as an abuse of administrative power beyond congressional authorization.

Whether the scope of the national emergency provision should have long-term implications depends on whether the decision results in an excessive and unnecessary expansion of administrative power. However, the real issue is that education is a long-term national obligation. It is not sustainable for the U.S. executive branch to rely on a national emergency in the face of a changing social situation.

Theoretically, the legislative branch should have assumed the role of using the full power of the state to solve social problems. Nevertheless, the controversy over waiving repayment of student debt reveals legislative limitations and the unclear scope of the mandate to provide quality education as one of the state's obligations to social security. This problem could have been further clarified through legislative interpretation by Congress. The judicial power should have taken a back seat to the political decision of Congress to resolve the big or small government issue regarding objective limits on the investment of state resources.

In cases of necessity, the influence of judicial decisions that directly endorse the executive branch's legal interpretations, or even within the human rights protection framework, is undoubtedly more direct and decisive. The expansion of judicial power is justified in the dispute between the executive and legislature. Discussing the various factors that determine the importance of social security and influence its outcome from the point of view of human rights protection is essential. The introduction of the European law theory of positive state responsibility, with the courts guiding the interaction between the legislative and executive branches through case law, seems to be a reasonable solution to expanding judicial power. Such a framework operates in a well-established way in European judicial proceedings. It should also compensate for the disproportionate interference of opposing political views in implementing social security in the U.S. Through effective judicial correction, Congress and the executive branch are expected to agree on the long-term direction of constitutional interpretation of the right to equality.

⁶⁸ Bland, *supra* note 28.

CONCLUSION

A review of educational theory and principles clearly demonstrates that equality in education requires more than simply allowing all people the same right to attend the same schools. Ordinary educational resources and methods are insufficient for those who need special assistance. The government's purpose is to implement instruction in a way that bridges the differences between people. Therefore, the ways and means education is disseminated must be adjusted to the needs of students. This adaptability is critical in pluralistic and inclusive education. Therefore, while considering the constitutionality of policies to protect the right to equality in education, the judiciary should also consider the nature of education and the purposes to be achieved.

Further, in the age of digitalization, the digital disparity in economic statuses, similar to the real difference in students' learning abilities, is significant for education policy to address and improve. The rising cost of education, which makes it less affordable, is also a fundamental cause of social inequality. In primary education, the digital divide affects the learning achievement of students. The government should address the positive obligations of the differently abled to address the disparity in education caused by the digital divide. Considering the increasingly complex and changing environment, the urgency of addressing social inequalities has come to the forefront.

Furthermore, there is a constitutional dispute over whether the federal government can modify some repayment terms due to a state of national emergency or whether it has greater power to waive repayment. However, the U.S. government proposes to waive the fixed amount for all eligible individuals. This waiver would be equivalent to an actual government subsidy. Yet again, the social controversy behind the proposal encompasses much more than a demand for equal government treatment of the same matter. The scope of the dispute covers the limits and expansion of government power.

In the human rights theory, which advocates a positive obligation of the state to protect human rights, the leftist argument further requires the legislative and executive authorities to act, that is, to take the necessary measures, or more precisely, to take reasonable and appropriate steps, to protect the rights of individuals. With this interpretation, the executive branch can analyze the scope of the congressional mandate in conjunction with human rights protection obligations to propose solutions that it believes will rectify the inequality problem. The executive branch's interpretation of the law becomes a matter of value trade-offs for the courts when it reaches the judicial stage. Even if the courts do not directly answer

the question of left-right disputes, their decisions will directly affect the legitimacy of the policy and, thus, its effectiveness.

Whether equality in education should become a constitutionally guaranteed right to equality is a question that modern nations need to answer. Within this question lies the controversy over the extent of government involvement and the means through which it should be pursued. These two questions are more likely to be raised by civil society in general when faced with the challenges of social change. This study compared the roles of the judicial, legislative, and executive branches in Europe and the U.S. when faced with similar issues. Under universal human rights standards, the U.S. should draw on the European rule of law experience in addressing the issue of educational equality. Adopting a human rights protection stance of positive state obligation based on individual needs can provide a more reasonable and convincing rationale for interpreting a right to equality that aligns with the requirements of recent social changes.