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**Universal Access to Education as a Human Right: International
Law Standards versus United States National Policy**

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Dedication and Acknowledgements

This paper is dedicated to all those who are doing the tireless work of educating the children of our world - especially those who do so without the proper support or tools, and forge ahead anyway. I would also like to dedicate this to my family who has done everything in their power to give me the opportunities that I enjoy today.

I would like to thank my family, my parents, grandparents, aunts, uncles, cousins, and little brother. They have all helped to shape me and make me who I am today. I would especially like to thank my parents, who always raised us with love, and with a focus on education. My mom spent almost her entire adult life raising us, always prioritized reading with us, and helped encourage us along the way. My dad came to the United States with nothing and built us a life where we could have all of the opportunities he never did. Although he never had the opportunity to study, he always emphasized the importance of education, and pushed us to reach for more. Our parents truly believe that we can do anything, and have made it possible for us to live our dreams. Thank you, Mommy and Daddy.

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Thank you to all of my professors, who spent their time teaching us valuable information, and always made time to answer our questions. Especially thank you to Professor Zaikos for your guidance and support throughout this process - I truly appreciate you.

Abstract:

Universal Access to Education as a Human Right: International Law Standards versus United States National Policy

International Law provides a framework within which all nations should operate with regards to the education of their citizens and residents. This paper examines the compliance of the United States with international law and norms regarding education policy and practice. This paper focuses specifically on access to education, which is arguably the most important issue that allows a free and equal society. Educational equity is generally recognized as a vital commonality on an international level– which is why it is addressed in many international conventions and treaties. Furthermore, this paper specifically explores to what extent the United States measures up to international standards on educational rights; as the United States, although not signatory to many international treaties regarding education, generally considers itself to be the standard-bearer for upholding human and civil rights.

Lists of: Abbreviations/ Acronyms

Key Terms:

- Primary and Secondary Education - Considering the public education provided to a child; primary is generally considered preschool through 6th grade, which is between four years-old and twelve years-old; secondary is 7th through 12th grade, or from 13 years-old to 18 years-old or graduation.
- K-12 Education - Shortened abbreviation for Kindergarten through 12th grade; The United States' public primary and secondary education system is commonly referred to as the 'K-12 system' or 'K-12 education' as it spans the grade levels of Kindergarten to 12th grade; Synonymous with the totality of primary and secondary education

- Higher Education - Any postsecondary education, including colleges, universities, or technical or vocational training
- IHE - Institute of Higher Education; Another term for college or university
- Undocumented: Term commonly used in the United States to politely refer to persons who do not possess the necessary documentation to live and work within the United States, also called irregular migrants in international discourse

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The undersigned hereby declares that this thesis is entirely my own work and it has been submitted to the Department of International and European Studies in partial fulfillment of the requirements for the degree of Master of Arts in International Public Administration. I declare that I respected the Academic Integrity and Research Ethics and I avoided any action that constitutes plagiarism. I know that plagiarism can be punished with revocation of my master's degree.

A handwritten signature in black ink, appearing to read 'Mina Potamoussi', written in a cursive style.

Introduction and explanation of topic and research

International law is a term that describes a series of treaties or rules by which countries promise to adhere. There is no international governing body that creates or enforces international law. Rather, international law is created via voluntary agreements between nations, with the only real options for enforcement being sanctions or military actions agreed upon by other states who are party to a given agreement. Such agreements may be entered into via bilateral treaties, which are agreements between two nations, or multilateral treaties, which are agreements between three or more nations. Today, hundreds of multilateral treaties exist in the United Nations (UN) depositary that address issues ranging from human rights, maritime borders, environmental protection, nuclear proliferation, and many other subjects. Such treaties set international standards that nations should operate from, and also help to govern disagreements between nations when they arise.

This paper examines the compliance of the United States with international law and norms regarding education policy and practice. This paper focuses specifically on access to education, which is arguably the most important issue that allows a free and equal society. Educational equity is generally recognized on an international level– which is why it is addressed in many international conventions and treaties. Furthermore, this paper specifically explores to what extent the United States measures up to international standards on educational rights, as the United States, although not signatory to many international treaties regarding education, generally considers itself to be the standard-bearer for upholding human and civil rights.

This thesis will detail the educational rights that are guaranteed to everyone under international law, and how the law is generally applied across the world. It will then describe some of the difficulties that vulnerable populations face when attempting to access an equitable

education. Finally, it will explore the functional education policies of the United States to determine to what level certain populations residing in the U.S. have access to these rights, and will provide some recommendations for changes to help U.S. law to better align with the letter and intent of international law.

Why focus on education?

“Education then, beyond all other devices of human origin, is the great equalizer of the conditions of men, the balance-wheel of the social machinery.” –Horace Mann

Horace Mann, who many credit as being the father of the United States’ public school system, said that “education is the great equalizer,” a statement which I have found proves itself to be true more and more as I work in the field of education. The U.S. prides itself on its public school system, as the majority of most states’ intake of property and sales taxes are allocated for the purpose of educating any primary or secondary-aged child (generally 5- 18) that lives within its boundaries. According to a study conducted by the Federal Bank of St. Louis, “the relationship between education and income is strong...In general, those with more education earn higher incomes” (Wolla & Sullivan, 2017). Equitable access to education for all means that all have a chance of affording at least a comfortable lifestyle.

Education is the single most important factor to societal integration. This is true both for foreign-born and native populations of any society— allowing students to learn about and feel that they are part of the common history of a nation, teaching them to function using the preferred language(s) of the state, and generally setting forth and helping to prepare students for what a society expects of its members. When certain groups or sectors of a society are denied meaningful access to the education that the rest of its members are receiving, it creates both economic and social marginalization, an increased incidence of poverty, and ultimately a continued lack of integration and cycle of oppression. For example, although Kindergarten

through 12th grade, usually when children are ages 5-18, are a guaranteed right in the U.S., preschool education is not. Therefore, the implementation of preschool, for children ages 3-5, varies greatly from state to state. Even though a critical time in a child's life, which research shows 90% of the brain is formed by the age of five, Indiana is one of a handful of the 50 states that does not implement a statewide preschool program and for the children it does, immigrant children without legal status in the state are barred from attending. Federal law in the U.S. is vital in protecting the rights of children no matter the state they live in, but since preschool is not considered part of elementary and secondary education in our country, then states can implement discriminatory policies of limiting access to immigrant children who are most likely to need the services. This is all done in the name of saving tax money whereas the state is missing out on vital returns on investment that education contributes to society, which studies have shown are as much as 1:11. This exhibits the power, or lack thereof, of education especially on underprivileged families.

For the five years prior to entering this master's program and also at present, I work for a federal U.S. education program, called the Migrant Education Program, in my home state of Indiana. This program identifies and provides supplemental educational services to the children of migratory agricultural workers. The migratory nature of these families—often moving several times per year, changing schools and often states each time— can make it especially difficult for these children to perform on the same academic level with their non-migratory peers. Compounding these issues, many of these children have additional risk factors that can make learning more difficult, such as having a native language other than English or not speaking English at all, being from a lower socioeconomic background and having less access to technology, having to work to help provide for their families, being undocumented, or having other special educational needs. The basic needs required of most students to succeed in school, such as adequate housing and food, are not a guarantee due to the substandard

housing and wages offered to immigrant families and children themselves. Children as young as fourteen, despite the compulsory age of attendance being sixteen, will drop out of school to work in the fields as their limited academic and language skills cause this hard, manual labor to appear to be their best option of a future.

The federal government in the U.S., located on the east coast in Washington D.C., often creates programs that are then administered by each of the 50 states and additional territories. The premise is that individuals closer to the populations who are served by the program will have a better understanding of the needs of the area and methods to deliver the program most effectively. Even though the migrant education program is a federal program, its administration is dependent upon decisions made at the state level and how those states work together. Indiana, my home state, is known as the “Crossroads of America,” as it is located in the center of the country, and is not usually a destination, but rather somewhere people just pass through. However, it is a prime location for farming, low-cost housing, and a reasonable cost for standard of living for items such as groceries, utilities, transportation, and more. This has caused Indiana to see an influx of immigrants, refugees, migrants, and a more diverse population living in the area in the past two decades.

According to the U.S. Department of Education, Indiana saw a rise of 400% in the number of students who spoke a native language other than English, from 1995-2005. Although language is not a sole predictor of immigration status, it is a common one due to the assimilation of families speaking only English over time in the U.S. Unfortunately, the U.S. does not emphasize multilingualism and caters to English-only speakers, such as an English-only education provided in most schools. This then makes recent immigrant families, neighborhoods, and areas more visible. As the rise of immigration in the U.S. causes state and national level leaders to assess their education policies, families here now must navigate the myriad of experiences that occur due to limited knowledge, implementation, and enforcement of existing

international treaties to ensure equitable treatment of all children, whether or not they are citizens, nationals, or native-born individuals.

Despite facing such daunting obstacles, the migrant families in Indiana place a great importance on education for their children, which they view as a way out of the hardships of the migratory lifestyle, and we have many students make a successful transition to college and skilled employment. This importance is exhibited by families agreeing to send their children to school year-round, whereas a typical calendar for a child in the U.S. is August through May. Parental involvement, which federal law in the U.S. requires schools to attempt to engage families to come to the school and interact with educators, is an area in which most schools struggle. However, schools with high numbers of immigrant families, despite the language barrier and general lack of knowledge of how school works in the U.S., will attend parent meetings in high numbers. A recent school that I visited in a high-poverty area of Indianapolis, Indiana's biggest and capital city, has a high number of first, second, and third generation families from Mexico and other Latin American countries. The parent events, as reported by the building principal, are usually held in the library but due to the high number of parents, grandparents, aunts and uncles, the event was moved to the gym to accommodate everyone. This is not uncommon as families know that language and academic skills are needed to get ahead in the U.S. This is why the existence of laws that protect vulnerable groups, like our migratory students, work to ensure that all children have access to the great equalizer, and the opportunity to live a life of their own choosing.

International Law Regarding Educational Rights

There are many international treaties regarding educational rights which are widely accepted and form the basis for international law on this subject. Those treaties that will be explored in this paper are the 1989 UN Convention on the Rights of the Child (UNCRC), the 1960 Convention Against Discrimination in Education (CADiE), and the 1976 International Covenant on Economic, Social and Cultural Rights (ICESCR).

The most widely ratified and impactful treaty that sets forth the international legal standards regarding educational rights is the United Nations Convention on the Rights of the Child, which was signed on 20 November 1989, and entered into effect on 2 September 1990. Referred to as the “most widely ratified treaty in human rights’ history, there are one hundred and ninety-six (196) parties to this treaty. This means that it has been accepted by all eligible states except two—the newly created state of South Sudan and the United States.

The Convention on the Rights of the Child defines who is a “child,” namely anyone under the age of 18, and protects children from involvement in conflict, sale, child pornography, and other violations. It also sets forth the basic educational rights in which all children are entitled. According to the treaty, states must ensure free and accessible primary education; ensure reasonable access to secondary education, with the eventual goal of making this free as well; and provide for equal accessibility to higher education (“UN Convention on the Rights of the Child”).

Another important treaty regarding educational rights is the UNESCO Convention against Discrimination in Education, which was adopted on 14 December 1960, and entered into force on 22 May 1962. The aim of this Convention is to combat discrimination and racial segregation in education, defining discrimination as “any distinction, exclusion, limitation or preference which, being based on race, color, sex, language, religion, political or other opinion, national or

social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education.

Although it is not as widely accepted as the Convention on the Rights of the Child, this treaty does have a significant number of ratifications, with one hundred and three (103) parties, and is referenced in many other treaties, such as the International Convention on the Elimination of All Forms of Racial Discrimination and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Once again, the United States is not a party to this treaty. An excerpt from this treaty is included below:

1. For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular: (a) Of depriving any person or group of persons of access to education of any type or at any level; (b) Of limiting any person or group of persons to education of an inferior standard; (c) Subject to the provisions of Article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or (d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

2. For the purposes of this Convention, the term 'education' refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

The Convention specifies several distinct scenarios under which separate educational institutions may exist that do not necessarily constitute discrimination in and of themselves. Three examples are specifically provided in the convention: operating two systems of education that are separated by gender; having systems that are separated by religion or language; and operating private schools. Although the text of the convention allows states to maintain separate institutions under certain scenarios, there are some requirements set forth in the convention to ensure that education systems are not discriminatory.

Still another treaty reaffirming the educational rights of all individuals without discrimination is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been accepted by one hundred and sixty-six (166) states and entered into force on 3 January 1976. According to the ICESCR, states must work toward granting economic, cultural and social rights, labor rights, right to health, education, and adequate standard of living. It is also included as part of the International Bill of Human Rights, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights.

Article 13 of ICESCR affirms the educational rights of all people within a territory, and reiterates the obligations set forth in the UN Convention on the Rights of the Child for a state to guarantee free primary education to all, and equal access to secondary and higher education. Section 1 of Article 13 reads as follows:

The States Parties to the present Covenant 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. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all

racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Article 2 of the treaty also ensures that these educational rights be guaranteed to all persons in the state, reading “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (“International Covenant on Economic, Social and Cultural Rights”). General comment #13, an addendum to the treaty, seeks to further clarify certain aspects of the ICESCR regarding the accessibility, stating that “education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds” (“General Comments on the International Covenant on Economic, Social and Cultural Rights”).

All of these rights are also enshrined in the Universal Declaration of Human Rights (UDHR), which states that:

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children. (The United Nations, 1948.)

In addition to the aforementioned UN treaties, there are multiple Organization of American States (OAS) treaties that mention educational rights in some form. The Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance states that countries must eliminate “all acts and manifestations of racism, racial discrimination, and related forms of intolerance, including: ... xi. Denying access to public or private education, to fellowships, or to educational loan programs, based on any of the criteria set forth in Article 1.1 of this Convention.” (“OAS :: SLA :: Department of International Law (DIL) :: Inter-American Treaties”, 2013). The Inter-American Convention Against All Forms of Discrimination and Intolerance further states that, “The States Parties undertake to formulate and implement policies the purpose of which is to provide equitable treatment and generate equal opportunity for all persons in accordance with the scope of this Convention, including policies of an educational nature, labor or social measures, or any other kind of promotional policies and the dissemination of legislation on the subject by all possible means, including the mass media and the Internet.” (“OAS :: SLA :: Department of International Law (DIL) :: Inter-American Treaties”, 2013).

The most widely ratified of the OAS treaties regarding education is the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, also known as the “Protocol of San Salvador.” This treaty reaffirms the educational rights inscribed in international law via UN treaties, such as the right to free and accessible primary and secondary education, equal access to higher education, and protection against labor that prevents children from attending school. (“ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA

OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS "PROTOCOL OF SAN SALVADOR", 1988). All three of these treaties, none of which have been signed or ratified by the United States, support the educational rights of students free from discrimination in any form.

The educational protections afforded under International Law can be summed up as follows: all children have the right to free primary education, the right to accessible secondary and higher education, and the guarantee of equal protection and treatment under the law, regardless of race, gender, religion, national origin, legal status, political opinion, or any other protected status. These fundamental rights have been affirmed by the aforementioned treaties reviewed in this essay, but also are referred to in many other treaties and international agreements. Although some parties to these treaties have sought to provide for discriminatory exclusions for themselves, and still others have declined to ratify the treaties altogether, the basic principles of educational rights and the obligations of states to guarantee and protect these rights remains clear.

U.S. domestic law regarding education

While the United States has not ratified any of the abovementioned treaties, it generally considers itself to be a leader and international standard bearer for human rights (Thorsett and Kiley, 2017), with its delegation often taking the lead on drafting major treaties. Although the U.S. is not legally bound to abide by the terms of these agreements, it is worth considering whether it meets the standards that it largely advocated for inclusion in final drafts. In certain areas, such as free and accessible primary and secondary education, the United States easily meets these standards, while in others - such as equal access to higher education - it falls short of the standards necessary to protect all students. The following is a review of U.S. practices as they relate to international standards.

One area in which the United States meets international law standards regarding education is in its public primary and secondary education system, which in the U.S. includes grades Kindergarten to 12th grade. Although the United States does not have a centralized federal education system, leaving education to the states, every state in the U.S. offers free access to primary and secondary education for all children within their territories. This is an area in which the U.S. excels, with 98% of all children ages 6-17 enrolled in school (USED, 2005). One reason that the United States has such a successful model of K-12 attendance is that it practices compulsory attendance for students aged 6-17, meaning that it is illegal for students in these age ranges not to be receiving some form of education. There are exceptions for home schooling and religious exemptions (for example, the Amish religious group does not believe in educating children past the 8th grade, and this is allowed for these students), but as the data shows, this has resulted in the vast majority of American children attending school.

Merely having schools that are open and available for children to attend is not sufficient to ensure that children's rights to access education are protected, as documented by the UN Commission on Human Rights (McCowan, 2013). In fact, the first UN Special Rapporteur on the right to education, Katarina Tomasevski, identified four areas that must be met in order for children to have meaningful access to education. These four areas are: availability - that a school exists at all and has teachers ready to instruct students; accessibility - the removal of obstacles that may prevent students from accessing school; acceptability - that the education provided to students be appropriate for their needs (example: instruction given in a language that students understand); and adaptability - the way in which the educational system adapts itself to the changing needs of the students it serves (McCowan, 2013). Generally speaking, this means that not only do people have the right to merely be physically present in a school. they have the right to actually gain meaningful knowledge from this process (Beiter, 2006).

For this reason, it is important that compulsory education be accompanied by many accommodations to ensure that all children are able to access their local schools - including by placing the responsibility for transporting children to and from school on local school districts. Virtually all American territory is part of one school district or another - even when those districts are expansive. For example, the state of Alaska - which is the largest in size, but has one of the smallest populations among U.S. states - considers all of its territory as part of one mega-sized school district¹. All school districts in the United States are legally obligated to enroll all children residing within their physical boundaries, regardless of race, physical or other ability, language, legal status, or any other factor, and must continue to serve them until they graduate or obtain the equivalency of a high school diploma. The right of all persons to a free and accessible primary education is assured in the United States through legislation and subsequent court cases, as described below.

The United States Elementary and Secondary Education Act (ESEA) is a prime example of a law meant to protect and serve the most vulnerable persons in a given nation. Enacted in 1965 under President Lyndon B. Johnson, this law was created to provide protection for and assistance to vulnerable student groups in the K-12 education system on the federal level. This massive federal involvement in education was deliberately created in defiance of the prior system of leaving education policy up to each U.S. state— a system which saw massive disparities between states in protections for these students, and had up until only a few years prior (upon federal intervention) seen systemic segregation of black and white students in southern states. This law provided for the protection of students on a level previously unseen in the United States, which more appropriately aligns with international law, and which is still providing protections to vulnerable students today. In fact, this law is cited by the UN Human Rights Council in its review of the United States' adherence to human rights law as an indicator

¹ See Figure 3 for size reference.

of its commitment to equitable educational access within the country ("Universal Periodic Review - United States of America", 2020).

President Johnson, being from the state of Texas which borders Mexico and has a majority population of minority children of Mexican-American descent, knew firsthand the power of poverty and lack of opportunity that determined future outcomes for children. Johnson was assigned to a segregated school for Mexican-Americans, which despite the U.S. Supreme Court case of *Plessy v. Ferguson 1896* that made segregation legal if the facilities and experience were equal, was woefully underfunded. Johnson described his experience as having a long-term impact on himself, as "Somehow you never forget what poverty and hatred can do when you see its scars on the hopeful face of a young child."

Johnson's presidency was instrumental in the passage of the Civil Rights Act of 1964, passed a year prior to the ESEA, as well as the Voting Rights Act of 1965. Martin Luther King Jr., a civil rights patriot for all races and backgrounds, actively lobbied the Johnson administration to push for these changes within the government. These landmark legislations ensure that all individuals had the right to vote, and make an impact upon decision makers that determined the resources, rights, and responsibilities of children. The Civil Rights Act also played a vital role in protecting several rights for children, including through subsequent lawsuits focused upon children not treated equally due to race, ethnicity, ability, and so on.

Although the ESEA was enacted with little consideration for international law regarding the educational rights of children, it specifically provides protections for students in poverty, immigrant and minority students, and other students who require protection due to their inclusion in a non-majority group, in addition to sending money to states to help create a more equitable educational system for these children. Key tenants of this federal law include legal protection and accountability to achieve success and benchmarks for, students with disabilities,

students of all Race/ethnicity groups, Foster children (who have been placed in other homes due to the parents unable, unwilling, or unfit to care for their children), children of military parents, migratory children whose parents work in temporary seasonal agriculture, children who are learning English, and children who are homeless, to name a few. For example, the ESEA in its most current form, known as ESSA (the Every Student Succeeds Act), provides funding to the following programs:

- Title I: Programs for disadvantaged students, student assessment, migratory students, and neglected and delinquent students.
- Title II: Programs for teachers, principals, and school leaders; literacy; and American history and civics education.
- Title III: Programs to support English language acquisition for English learners.
- Title IV, A: Programs to support a well-rounded education, safe and healthy students, and technology; after-school instruction and care; charter schools; magnet schools; family engagement in education; and various national activities.
- Title IV, B: Programs to support out-of-school time learning and develop community learning centers to involve the community in the education of its children
- Title V: Programs to support rural education.
- Title VI: Programs for Indian education, Native Hawaiian education, and Alaska Native education.
- Title VII: Impact Aid programs that target areas impacted by natural disasters.

As previously stated, in the United States, the states primarily make their own decisions regarding educational policy - how schools are funded, what programs must be offered, the qualifications of teachers, the structure of the school day and schedule, and other considerations. These decisions are sometimes even pushed down to the local level, whereas

the main educational decisions are determined by a city or a county. Although the federal government considers education to be a state responsibility, that is that each of the fifty (50) states, District of Columbia, and incorporated areas can operate differently, they each must ensure minimum standards are met if the states want the federal government's help in paying for the education.

The federal government is able to control certain aspects of education throughout the nation through its allocation of this federal education funding. This is additional money that is given to the states for distribution to local school districts. In order to receive this additional funding - which most districts need to operate- the states and local districts must agree to abide by federal education law. For example, in Indiana, the state budget for education is about \$7 billion dollars for over 1.1 million children, but provides a higher percentage of funds for children who are in poverty. Contrast this to a state like Arizona, which provides very little variance in the funding per child based upon specific characteristics like poverty, and only funds 4.5 billion for roughly the same number of children (Arizona, 2020). These processes at the macro-level vary quite significantly, but both are considered as meeting the states' minimum level of efforts required by the federal level, and therefore can benefit from the additional funding to support children in poverty, nutritional programs, and telecommunication grants.

This structure follows along similarly to other systems, like the criminal justice system or transportation systems. Each state has its own laws regarding what is considered a crime, or the responsibility of maintaining its own state and local roads, whereas the federal government ensures overarching compliance, and in doing so, provides additional support. Federal highways are built to interconnect states, as does the federal education system to ensure that if a child moves from Florida to California, then basic educational needs are provided in each state to provide a common expectation of teaching and learning. When the United States was first founded, the concept of a decentralized federal government that was limited in power was

developed to not infringe upon states' rights. Anything not explicitly stated in the government's founding papers, which was considered the Articles of Confederation, were explicitly left to the states. Even a couple decades later, when the stronger, more centralized government was formed through the Constitution, education was still left out of this document. Therefore, up to the states. However, the federal government finds its way to regulate states' rights by dangling funding. If you want the money, you must play by our rules. When the money is great enough, then states will follow along.

Currently, the federal government makes up about ten percent of most states' education funding, with the remaining ninety percent all coming from the local and state budgets. This may sound like an insignificant figure, but when the total figure is billions of dollars, most local and state systems believe they cannot operate without the additional federal money. For example, when the most recent federal law was passed in 2015, known as the Every Student Succeeds Act (ESSA), each state was required to submit its state plan to demonstrate its compliance with federal expectations, such as equity for children of all races and ethnicities, responsibility to meet children's special education needs, and to ensure that schools offer high-quality programming for migrant, homeless, and foster children. All fifty (50) states, plus unincorporated areas like Puerto Rico and the District of Columbia, submitted a plan that was subsequently approved by the federal government. Without the submission and approval of this plan, no funding from the federal government. This method allows the federal government to ensure that those basic expectations are met, despite the varying differences in state law. For example, in Indiana, there is no state law that specifically speaks to the responsibility of providing additional services to immigrant children so that the barriers of a new language can be overcome. However, the federal government does have a law regarding this. So Indiana is then held to these higher standards if it wants the federal government's money.

The concept of public education in the United States was founded well before the area became a country. The first-known public school in America was founded in Boston, Massachusetts in 1637, whereas the country was not formally founded until 1776. Many cities, colonies, and states, slowly began adopting the creation of public schools, as a more educated society provided a better standard of living for all. This began primarily with the white, male population of the dominant protestant Christian religion, but slowly expanded to include other genders, religions, races, and ethnicities. Until the era of Horace Mann in the mid-1800s, who is known as the “Father of American Public Education”, the field of education was not considered professionalized, and the standards for teachers were very limited. Horace Mann promoted universal education that would not be sectarian in nature, but rather presented so that it benefitted all children no matter the background. Horace Mann encouraged states to provide tax-supported education, so that all individuals could attend rather than solely the wealthy. Although not all of Mann’s reforms held up to today’s standards, such as his statement that education is a feminine field and that only women could properly teach or that children do not need to learn the names and sounds of the alphabet but rather can focus upon memorizing whole words, his ideas were influential in professionalizing the training that teachers received and providing uniformity so that all social ranks of children could learn together.

For example, the Migrant Education Program that I work for is funded through the ESEA as well, as listed above under Title I programs. In order to receive Title I funding, which is by far the largest share of federal money available, states must agree to administer a Migrant Education Program to identify and serve migratory children within their geographic area. Then once a state has agreed to have a Migrant Program, they must also meet all of the legal requirements to provide migrant students with the supplemental support that they need to be able to achieve at the same level as their non-migratory peers. If a state does not effectively administer their Migrant Education Program, misuses migrant funding, or does not provide

educational support on the highest level of their ability, then that state risks losing not only their migrant funding, but the federal government can withhold any or all of their Title I funds until the situation is rectified. Thus, states are forced to provide satisfactory quality in their migrant programming in order to continue to receive all of their federal funding - which is a substantially large amount of leverage for the U.S. Education Department to hold.

The main emphasis of the ESEA is upon the success of protected classes, such as our migrant students, and all student groups with specific legal protections. Another way that the ESEA forces states and local districts to act in the best interest of all children is that it requires that each state include in the aforementioned plan how they will address the needs of their special populations, and must report data regarding the performance of these specific groups of students. For example, our Indiana education law primarily focuses upon the success of a school body as a whole - all students lumped together in one group. A school within the state of Indiana could receive a very high passing grade if, say, 80% of its students passed the exams and other accountability metrics. This does not account for the demographics of the students who passed or did not pass. If in the example school with 80% of its students passing, all of the students who did not pass were black, while the white children did pass, then federal law would identify this school as in need of improvement.

In addition to federal law and the ability of the federal government to withhold relied-upon funds from states that refuse to comply with federal mandates, there have been multiple Supreme Court rulings regarding education which have affirmed the requirement to adhere to some of the principles of international education law. Most countries have some kind of a bill of rights, or basic human rights law; U.S. is no different – and when U.S. law has not kept up with the principles of international law and what is basic and descent for human rights, laws preventing the protections or equal treatment of others are challenged in the court system on the basis that a person or group of persons are having their constitutional rights violated. Below

is a list of Supreme Court rulings that have positively impacted the reality of the U.S. educational system, and brought it closer to realizing the ideals enshrined in international law.

Brown v Board of Education (1954)

Prior to the 1950's, the United States operated a segregated system of education, where children only attended schools with other children of their own race. This was justified under the "separate but equal" clause, stating that children could be segregated by race, but only if all schools were of the same quality for all races (similar to the way that international law allows for states to maintain separate schools for different genders, as long as they are of the same quality). Of course the reality was that schools for black children and white children were vastly different in opportunity and quality, with black children receiving a substandard education. The Brown v. Board decision struck down this provision, with the Justices writing, "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. . ." (U.S. Courts, History, n.d.). States that maintained segregated schools were forced to submit a plan for integration, and ultimately to abandon school segregation.

Plyler v Doe (1975)

In 1975, the state of Texas passed a law barring students who were not legal residents of the state from attending public schools, arguing that the cost of educating the "illegal" students was too great of a strain on their resources. Representatives of undocumented students challenged the case in court, until the case reached the U.S. Supreme Court. The Court decided that the Texas law barring undocumented students from attending public schools violated the Equal Protection Clause of the Fourteenth Amendment of the Consitution. This case was a landmark, providing the legal basis for the requirement that all schools enroll all

students residing within their physical boundaries (U.S. Courts, Access to Education, n.d.), and is in keeping with the general findings of the Committee on Economic Social and Cultural Rights that all children have a right to education no matter their residency status within a state (Beiter, 2006).

Lau V. Nichols (1974)

This case was decided in regards to the provision of supplemental language support to students who are not proficient in English. In 1971, the San Francisco school system, which previously had maintained separate schools for English-speaking and Chinese-speaking students, desegregated its students into one system. However, it failed to provide any additional support to the thousands of students of Chinese descent, and the case eventually reached the Supreme Court. The Court decided that the district violated the 1964 Civil Rights Act by failing to provide additional support to its non-English proficient students, thus providing the foundation for requiring all schools to provide English-language support to students who are not yet proficient in English - a major step to ensuring that English learners have equitable access to the U.S. education system. (U.S. Education Department, n.d.)

All of the abovementioned court decisions, working in conjunction with federal legislation, have advanced the cause of equity in the United States education system, bringing it closer to the standards upheld in international law. The federal Education Department of the United States is then able to leverage their massive funds against these court decisions and laws to uphold the rights of all students. While this system is not perfect, it does have a positive impact on the K-12 system in the U.S., and helps it to generally meet international law standards regarding primary and secondary education.

WHERE THE US FALLS SHORT OF INTERNATIONAL LAW STANDARDS

Despite a nation's best efforts to align national law with international law and human rights standards, there are instances in which the law is not carried out effectively, is carried out in a way that in contrary to the intent of the law, or in which ignorance or opposition to the law causes it to be ignored by those with authority to realize its aims. While the United States does have laws and court rulings ensuring discrimination-free access to primary and secondary education for all people, there are areas in which the United States fails to live up to the principles set forth in International Law.

For example, despite the *Brown v Board* decision ordering the official desegregation of schools in the United States, segregation now in many U.S. cities is worse than prior to *Brown v. Board*. If you are a minority in the U.S., you are more likely to be in a school where the majority of students are minorities, and if not segregated by race, they are very likely segregated by income (Meatto, 2019). Gerrymandering is a common concept for elections, whereas maps are very oddly drawn in order to favor one party over another to retain a political seat. However, the analysis of school boundaries so that schools are equitably representative of the entire community rather than allowing "poor neighborhoods" or the "other side of the train tracks" determining where children of color and race predominantly attend (Meatto, 2019).

If the resources and experience these children encounter were relatively equal, then much attention would not be paid. However, children of color, immigrants, and poverty are less likely to have qualified teachers, rigorous coursework, enrichment programs that expose children to other careers, new and innovative learning spaces, adequate curriculum materials, and more (Wiener, 2007). How can this occur when U.S. law requires full integration? This is able to occur because education is primarily a responsibility of the state, and most states drive funding through systems that depend upon local property taxes. If a community is poor, has few businesses, and high crime, then the economy in this area will drive fewer dollars into the

educational systems, resulting in massive discrepancies between the schools in the lower-income communities and those in areas that tend to attract wealthier families.

For example, in order to combat this issue, the state of Indiana shifted the responsibility to fund public tuition for each student from local to the state level in order to equalize the funding levels across all communities. However, many affluent communities, who are predominantly white, have decided that the state-determined figure is not sufficient, and have collaborated locally to raise property taxes to better fund their schools. In lower-income communities, many schools have not even tried to replicate this as they know the likelihood of passing is low, or in many cases, the referenda have failed when attempted. This allows affluent communities to voluntarily better support their schools, while less-affluent communities are unable to afford the same level of improvements even if they wanted to fund them (Fittes, 2019). This leads to scenarios where more affluent districts, such as Center Grove High School, in Greenwood, Indiana - which is located in an affluent suburb of the capital city of Indianapolis - are able to build a student activity center of \$10 million dollars that offers flexible athletic space for its students. Contrast this to another district, Gary Community Schools, home of one of the most dangerous cities in America, which cannot find buyers for 24 former schools that are abandoned and have become targets for crime and drug use (Lanich, 2020). One community is able to afford to spend its funds on building new spaces to support students, whereas another is forced to spend its funds on tearing down old spaces that are no longer used for learning, even while the current buildings have constant issues - such as the heating boilers becoming so ineffective that learning occurs in garage bays designed for storage of cars rather than spaces for learning (Lanich, State board, 2019).

Studies have additionally shown that internalized racism is present in multiple aspects of schools today - teachers tend to expect less of their minority students, minority students are more likely to be underrepresented in high ability programs and overrepresented in special

education programs, and minority students are on average more likely to receive education-disruptive punishments such as out-of-school-suspension than their white peers.

Using the example of educational rights regarding undocumented students in the United States, there are many anecdotal instances in which the law is not carried out effectively. As detailed previously, per the Supreme Court decision in *Plyer v Doe*, all children residing in the U.S. have the right to access the same free public education, regardless of their immigration status or lack thereof. As this is a federal interpretation of the U.S. constitution, it supersedes any U.S. state legislation that may exist in contrast to the federal law. U.S. public schools are effectively unable to deny enrollment to students residing within their geographical boundaries for any reason. This means that even if a student or their parents are undocumented or do not have all of the paperwork that a public school requests for enrollment, they are still entitled to enroll in and attend the public school that corresponds to their residence.

Despite this clear directive by the Supreme Court, there are instances in which lack of understanding of the law, lack of proper training, or willful contradiction of the law take place—excluding countless unknown children from the free equitable public education to which they are entitled. Anecdotally, when I worked for the education agency in my U.S. state overseeing the education of migratory students, we heard many stories of students denied enrollment in local schools—sometimes through complaints from parents, but most often when we discovered that a school-aged child was not enrolled in any school and inquired as to the reason. We heard reasons such as, “the school told me that I didn’t have anything to prove my residency” or “the school said that my child cannot enroll because he or she does not speak any English and they do not have enough staff to help them learn.” Most of the time, a short call to the school administration officials to report the incidents were sufficient to ensure that students would be enrolled and attending school the following day. Administration officials in general seemed to be aware that these statements or practices were contrary to the law, but this awareness or

knowledge was not communicated to staff members who interact with the community or potential enrollees to the school.

Access to Higher Education in the United States

While the United States has been largely successful in allowing open access to its primary and secondary education system (what would be known as K-12 in the U.S.), one area in which it has failed to provide nationwide protection to access is in higher education. Several factors converge to make higher education virtually inaccessible for large swaths of the population— including ever-increasing costs at ‘public’ institutions, state law designed to restrict access to certain groups of students, and the lack of any federal mandate that ensures access to higher education for students regardless of the state in which they happen to reside.

One factor which greatly reduces the ability of students to access higher education in the United States is simply the cost. In contrast to other countries, in the U.S. private colleges and universities are more difficult for a student to gain admission in terms of academics, and the costs of these institutions is often two to three times higher than a public institution. These institutions are often attended by wealthier students or students whose prior academic performance is spectacular enough for the institutions themselves to offer free tuition and housing for them in order to have the prestige of having such high-achieving students in attendance. One who is unfamiliar with the U.S. education system might presume then, that public colleges and universities are low-cost or tuition-free. However, this is not the case. According to the latest figures available from the U.S. Department of Education, the average cost per year at a four-year undergraduate institution in the United States is \$16,757 (United States Education Department, 2018), bringing the total cost for a four-year degree at such an institution to an average of \$67,028 (roughly €60,000).

According to the U.S. Census Bureau income and poverty statistics, more than half of American families make \$50,000 per year or less, meaning that these families would have to use a minimum of a third of their income to support each student in their family in their undergraduate pursuits. For the one-third of American families making \$20,000 or less a year, the cost of one year of higher education is at a minimum nearly all of their annual income. High costs of living mean that those students who are not lucky enough to be granted a scholarship or who do not have the money to pay for their education outright are forced to either forgo higher education or to take on some or all of this cost in student loans— which many students subsequently must spend a significant portion of their lives paying back. According to Pew Research Center data, over a third of Americans under 30 hold student loan debt, beginning their adult lives with anywhere between \$10,000 and \$45,000 (Figures 1 & 2).

Within the United States, the system of higher education is complex and confusing. Although there are public and private universities, just like public and private K-12 schools, the public universities are far from free. Within Indiana, which has relatively low cost of living and one would associate lower costs of attending higher education, there is a wide variance in cost among even public universities alone. Learn More Indiana, which is a technical assistance website that supports individuals in college endeavors, identifies eight different types of colleges:

- Two-year college (leads to Associate's Degree)
- Four-year college (leads to a Bachelor's Degree, opportunity for a Master's or Doctorate's)
- Public college
- Private college
- Research institution
- For-profit college

- Online schools
- Special-focus college

According to collegecalc.org, a non-profit organization focused upon providing cost information to students and parents seeking college pricing data, the average annual in-state college tuition in Indiana was \$17,626 for the 2018-2019 school year, which is \$3,219 higher than the U.S. average and 12th out of 50 most expensive state to attend college. In-state tuition is an option offered at all types of universities, whereas the state government will provide public funding to lower the costs charged to students who live within that state. For example, Indiana's first four-year degree institution was created by the General Assembly in 1820, and was appropriately named Indiana University. Students who establish permanent residency in Indiana, and therefore are eligible for in-state tuition rates, must still pay \$9,382 annually in tuition. This does not present the true overall cost of college, as most students need to acquire campus housing, transportation, books, supplies, and more, which are 62% more than tuition alone. The system within the U.S. and in most states (although some, like Tennessee, do provide entirely free college to eligible students) places higher-learning opportunities out of reach for many students.

Decades ago, students in the U.S. could hold a part-time job and be able to afford tuition rates in order to graduate from college or university debt-free. However, the rate of college inflation has continued to rise twice as fast as the national average for inflation in general. The federal government does attempt to offset the cost of attendance through Pell Grants, and other financial aid opportunities. But for very low and middle-income families, these grants alone are not enough to cover the entire cost of attendance. Or the family earns just enough to not benefit from any financial aid, but still not able to provide much money to offset the costs for their children. Children, and sometimes parents who choose to take on the vast amounts of debt on

behalf of their children, begin their careers post-college attendance with tens of thousands of dollars in debt, which often depresses their economic potential and purchasing power for decades.

Who is left out of higher education in the U.S.

When you analyze this concept for middle-class families, which America offers as the “Dream” for many immigrant and minority families, the ability to afford college is even worse. For example, the U.S. has a system of Historically Black Colleges and Universities (HBCUs), which disproportionately offer degrees in fields that do not lead to high incomes, like teaching and social work. This leads even well-educated families to not have a large cash reserve to be able to outright pay for college for their children. Many of these families subsequently make too much money to qualify for most financial aid, and are effectively penalized for doing well, but not well enough to need to forego all types of assistance. (ZALOOM, 2019)

The chilling effect of these high costs on college enrollment among students from lower-income backgrounds is clear. While the United States does have a relatively high percentage of students who attend some form of post-secondary, this rate is not equal across income ranges. Even when making comparisons just among higher achieving students (which allows us to disaggregate a bit along racial and income-level lines), students who are high achieving but poor are no more likely to attend college than students who are low achieving but wealthy (McPherson, M., & Schapiro, M., 2021). It is clear that the difference between these two groups is the relative affordability of higher education to both.

Furthermore, even if you save enough to be able to pay these public tuition rates, the public universities within your state may not accept you. Purdue University, a public four-year research institution located in the state of Indiana that has a reputation for math and the sciences (several NASA astronauts have graduated from this school), only accepted 50.3%

Indiana students as part of its 8,000 student incoming freshman class for the 2019-2020 school year (Nickel, 2019). That means that the remaining nearly 50% were able to attend despite not living within the state and must be able to afford the much higher out-of-state tuition of \$28,794 rather than the \$9,992 which is charged to Indiana residents. The university is incentivized financially to accept out-of-state students who pay a larger tuition fee, which can ultimately lead to in-state students having no place left to attend.

Another major way in which the United States falls short of the intent of international law regarding education is that the federal government has thus far failed to pass legislation that prohibits states from enacting state and local rules that effectively shut an entire group out of higher education altogether. This group is undocumented students—students who are considered unlawfully present in the United States (sometimes known as irregular migrants in international discourse). Currently, there are three U.S. states, including Indiana, which require that public institutions of higher education charge undocumented students out-of-state tuition. This means that instead of paying the normal yearly average of \$19,000, these states are requiring undocumented students to pay the average yearly cost for out-of-state tuition, which is \$28,000. (Nces.ed.gov, 2019). Furthermore, federal law prohibits undocumented students from receiving federal financial aid, which is the largest source of financial aid for students. Some of the country's best and brightest, like Daniela Lopez who was the 2017 Valedictorian of her graduating class at Arsenal Tech High School in Indianapolis, are left with few options to attend college due to no aid and the much higher rates of tuition due to her undocumented status (Indianapolis Public Schools, 2017). The inequality between race, ethnicity, and class further widens due to damaging policies, in which the U.S is not fulfilling its obligations under international law.

In contrast to federal case law that protects the rights of students to access K-12 education (*Plyler v Doe*), no such federal law exists which prohibits the ability of states to

effectively (or outright) shut out undocumented students from the higher education system. Technically, students forced to pay out-of-state tuition still *could* access higher education, but the reality is that most families who are undocumented (and most families in general) do not have the financial resources to fund out-of-state tuition for their students. There are currently 19 states which allow undocumented students to pay in-state tuition - including seven who allow undocumented students to access state financial aid programs. While this can greatly alleviate the financial burden for students and their families, undocumented students continue to be ineligible for federal student aid. For this reason, it is all the more unacceptable for the three states who force students to pay out-of-state tuition - knowing that they will not be able to afford to attend school.

Even worse, there are two states, Alabama and South Carolina, which actually prohibit undocumented students from attending any higher education at all in their states ("Undocumented Student Tuition: Overview", 2019). Such state laws are in direct contrast to the Convention on the Rights of the Child and the ICESCR, which demand equal access to higher education for all people within a country. Students who live in these states would still have the option to attend university in a neighboring state, but then the out-of-state tuition issue arises again effectively prohibiting them from obtaining higher education.

Similar to the U.S. court case of *Brown v. Board of Education*, a determination must be made, either through legislation or affirmation by the courts, that all persons within the United States who desire to attain higher education are legally permitted to attend any IHE of their choice, and must be subject to the same eligibility criteria that all other students are subject to. For example, if one state requires a student to reside in its state for 3 years prior to beginning college in order to qualify for in-state tuition, then this same requirement should apply to all students, rather than arbitrarily excluding undocumented students. If an undocumented student has physically resided in the state for those three years, then they must receive in-state tuition.

This is not a request for special treatment, such as the ability to ignore residency requirements and receive in-state tuition in a state in which a student has never resided, but merely a request for equal protection under the law - which is guaranteed by the 14th Amendment of the United States' own Constitution. As the U.S. Supreme Court has consistently upheld that the 14th Amendment applies to all persons on U.S. soil, regardless of immigration status, a legal argument can be made that the banning of undocumented students from attending a state's colleges and universities, as well as the unequal treatment of their physical residency, violates their constitutional right to equal protection under the law.

Most or all countries have some underlying national law regarding human rights or basic rights afforded to all of their citizens. Almost all developed nations offer a robust universally free primary and secondary education system to their residents. Many developed nations do offer free access to higher education as well, with countries such as Norway, Sweden, Germany, and Greece able to offer free tuition for public higher education for those who qualify under certain standards (OECD, 2011). In a nation with virtually universal primary and secondary education, equal access to higher education is the next logical step to ensure a more just society. Indeed, access to higher education may be one of the most important factors affecting the perpetuation of income inequality in the United States today. According to studies done by the U.S. Social Security Administration, American students who obtain a bachelor's degree can earn up to \$900,000 more in their lifetime than students who complete high school only (SSA, 2021. - Figure 4).

A multitude of studies have been conducted analyzing the effects of higher education attainment on economic outcomes in the United States, concluding time after time that a great chasm in income and quality of life exists between those with higher education degrees and those with a high school diploma or less. In addition to gaps in income, the standard of living for

persons who do not have a higher education degree is declining, and is expected to continue to decline further in the years to come (Carlson & McChesney, 2014). Due to the great disparity that exists in income and quality of life between those who attain higher education and those who do not, it has become imperative for the sake of equity and inclusion in modern society that nations provide some type of meaningful access to higher education for all of its residents.

International law on education does not presume that states can or will instantaneously change entire educational systems and practices, but emphasizes the need for constant gradual improvement towards the goals outlined therein. In order for the United States to meet international law standards, it does not have to have a perfect system. Instead it must be in the process of making meaningful changes to its existing educational system that moves towards the ideals of international law. Indeed, there are a growing number of U.S. states that have begun to offer free tuition to public IHEs, and have state laws protecting the attendance of all students. However, in order to ensure equal access across state lines, the federal government should implement legislation to make these practices mandatory for all states. There have been many times throughout history in which the U.S. federal government has had to play a heavy hand in the affairs of state and local governments to eliminate discriminatory policies immediately. The current system in the United States ensures access to K-12 education for everyone, but generally higher education is considered more of a luxury - something that is an afterthought to those with means, but not necessarily attainable to all. This is what needs to change substantially in order to bring the U.S. into alignment with international law on these issues.

Conclusion

While the United States is not legally obligated to meet the standards set forth in any of the treaties discussed, it generally considers itself to be a standard-bearer for human rights in the world. Therefore, it is fair to examine its educational system against international norms and standards. In some regards, such as universal access to primary and secondary education, the United States meets and even exceeds international educational law standards. Despite a rocky history in terms of providing equal access to all students, the U.S. has progressed to the point that all children are legally entitled to a free and equal public education within its territory. Federal law provides protections to all students regardless of race, religion, ability, economic status, or national origin.

The main area on which the United States must focus on progress in the future is in its higher education system. Many developed countries offer students the ability to access higher education at little to no cost to themselves. However, the United States continues to maintain a for-profit system where even public colleges and universities are able to charge exorbitant amounts of money - effectively shutting out large swaths of the potential student population based on ability to pay alone. As has been outlined in this paper, these practices enable the cycle of poverty to continue within the same groups of people, and widening societal income inequality within the nation. The U.S. should also ratify many more international treaties that contend with educational law, and uphold the standards set forth within them. These measures should be undertaken if the United States endeavors to meet international standards regarding education.

Limitations of this paper and need for further research

This examination of the law in regards to education has been qualitative in nature. It is a synthesis of available research and data with the author's analysis. While this paper did not independently create evidence-based research on the true effects of implementing the provisions enshrined in international law - such as universal access to primary and secondary education, equal access to higher education, and lack of discrimination in education - on life outcomes, the effects of these policies are a clear benefit to citizens and society as a whole. There also likely exist differing views and opinions on how well the United States measures up to the principles of international law in regards to education, but the views of the author are based in data and have hopefully been well-explained.

Arguments could also be made that because the United States has not ratified any of the treaties mentioned that make up the body of international law on education issues, that it is unnecessary to compare its progress towards goals that it never agreed to work towards. However, it cannot be argued that the United States does not hold a place as a world leader, and tries to set itself apart as an example of a just and fair society for all - the so-called "city on a hill" (Palmadessa, 2017). Therefore, a comprehensive examination of its performance in any issues relating to the rights of its residents is worthwhile and fair.

While the ultimate aim of educational law is to help build a more equitable system and a more just society overall, there is no perfect system or body of laws that ensures a utopian-like society where everyone has equal opportunity. For example, it is not a guarantee that allowing free access to higher education will ensure that there is minimal income inequality in a society. In fact, there are several developed nations with free higher education that have great income inequality, and a low percentage of students that take advantage of the opportunity to further

their education. However, all states can do is continuously analyze and adjust their practices to improve conditions for as many of their people as possible. Future research might focus on the continuously changing legal landscape for education in the United States and any or all other nations.

Sources:

Arizona, S. (2020). State of Arizona Executive Budget. Retrieved from

<https://www.azospb.gov/Documents/2020/FY%202021%20Summary%20Book.pdf>

Beiter, K. (2006). *The Protection of the Right to Education by International Law*. Leiden: Martinus Nijhoff Publishers.

Carlson, R., & McChesney, C. (2014). Income Sustainability through Educational Attainment. *Journal Of Education And Training Studies*, 3(1). doi: 10.11114/jets.v3i1.508

Convention on the Rights of the Child. (1991). New York: United Nations.

UN Educational, Scientific and Cultural Organisation (UNESCO), Convention Against Discrimination in Education, 14 December 1960, available at:

<https://www.refworld.org/docid/3ae6b3880.html> [accessed 5 February 2019]

Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

Education, U. (2005). Education in the United States: A Brief Overview. Retrieved 1 August 2019, from <https://www2.ed.gov/about/offices/list/ous/international/edus/overview.doc>

Fittes, E. (2019). 5 things to know about school referendums in Indiana. Retrieved from <https://in.chalkbeat.org/2019/10/24/21109135/5-things-to-know-about-school-referendums-in-indiana>

Indianapolis Public Schools. (2017). Congratulations, 2017 IPS Graduates - Indianapolis Public Schools. Retrieved 23 June 2019, from <https://myips.org/blog/district/congratulations-2017-ips-graduates/>

Lanich, C. (2020). Gary school district looks to sell 24 properties amid mayor's call for demolitions. Retrieved 30 April 2020, from https://www.nwitimes.com/news/education/gary-school-district-looks-to-sell-properties-amid-mayor-s/article_ab6aff09-75b7-560d-9402-0a8bf8fc456e.html

McCowan, T. (2013). *Education as a Human Right: Principles for a Universal Entitlement for Learning*. London: Bloomsbury Academic.

McPherson, M., & Schapiro, M. (2021). The Promise and Perils of Universal Higher Education | Forum for the Future of Higher Education. Retrieved from <http://forum.mit.edu/articles/the-promise-and-perils-of-universal-higher-education/>

Meatto, K. (2019). Still Separate, Still Unequal: Teaching about School Segregation and Educational Inequality (Published 2019). Retrieved 27 March 2019, from <https://www.nytimes.com/2019/05/02/learning/lesson-plans/still-separate-still-unequal-teaching-about-school-segregation-and-educational-inequality.html>

Nickel, A. (2019). More students than ever choose Purdue for quality, affordable education. Retrieved 4 December 2020, from <https://www.purdue.edu/newsroom/releases/2019/Q3/more-students-than-ever-choose-purdue-for-quality,-affordable-education.html>

ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS "PROTOCOL OF SAN SALVADOR". (1988). Retrieved 16 May 2021, from <http://www.oas.org/juridico/english/treaties/a-52.html>

OAS :: SLA :: Department of International Law (DIL) :: Inter-American Treaties. (2013). Retrieved 17 May 2021, from http://www.oas.org/en/sla/dil/inter_american_treaties_A-68_racism.asp

OAS :: SLA :: Department of International Law (DIL) :: Inter-American Treaties. (2013). Retrieved 17 May 2021, from http://www.oas.org/en/sla/dil/inter_american_treaties_A-69_discrimination_intolerance.asp

Palmadessa, A. (2017). American National Identity, Policy Paradigms, and Higher Education. New York: Palgrave MacMillan.

Undocumented Student Tuition: Overview. (2019). Retrieved from <https://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx>

The United Nations. (1948). Universal **Declaration of Human Rights**.

Universal Periodic Review - United States of America. (2020). Retrieved 20 May 2021, from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/204/16/PDF/G2020416.pdf?OpenElement>

U.S. Courts. Access to Education - Rule of Law. Retrieved 27 November 2019, from <https://www.uscourts.gov/educational-resources/educational-activities/access-education-rule-law>

U.S. Courts. History - Brown v. Board of Education Re-enactment. Retrieved from <https://www.uscourts.gov/educational-resources/educational-activities/history-brown-v-board-education-re-enactment>

U.S. Education Department. Developing ELL Programs: Lau v. Nichols. Retrieved 24 October 2020, from <https://www2.ed.gov/about/offices/list/ocr/ell/lau.html>

US Social Security Administration. (2021). Research Summary: Education and Lifetime Earnings. Retrieved 9 June 2020, from <https://www.ssa.gov/policy/docs/research-summaries/education-earnings.html>

Thorsett, L. and Kiley, J., 2017. *U.S. is among world's greatest countries, say most Americans*. [online] Pew Research Center. Available at: <https://www.pewresearch.org/fact-tank/2017/06/30/most-americans-say-the-u-s-is-among-the-greatest-countries-in-the-world/> [Accessed 8 February 2021].

Wiener, R. (2007). Opportunity Gaps: The Injustice Underneath Achievement Gaps in Our Public Schools. *North Carolina Law Review*, 85, 1315.

Wolla, S., & Sullivan, J. (2017). Education Income And Wealth | St. Louis Fed. Retrieved from <https://research.stlouisfed.org/publications/page1-econ/2017/01/03/education-income-and-wealth/#:~:text=The%20relationship%20between%20education%20and%20income%20is%20strong.&text=In%20general%2C%20those%20with%20more,premium%20has%20grown%20over%20time>

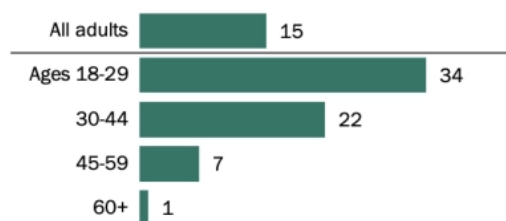
ZALOOM, C. (2019). *INDEBTED: How Families Make College Work at any Cost*. [S.I.]: PRINCETON UNIVERSITY PRESS.

Charts and Figures:

Provision	Treaty	U.S. Signatory	U.S. Practice
Free and accessible primary education	Convention on the Rights of the Child / Covenant on Economic, Social and Cultural Rights (ICESCR)	Signed, not ratified	Meets Convention standards, could improve
Reasonable access to secondary education, eventually free access	Convention on the Rights of the Child / Covenant on Economic, Social and Cultural Rights (ICESCR)	Signed, not ratified	Meets Convention standards, could improve
Equal access to higher education	Convention on the Rights of the Child / Covenant on Economic, Social and Cultural Rights (ICESCR) - eventually free	Signed, not ratified	Does not meet convention standards
Development to a child’s fullest potential	Convention on the Rights of the Child	Signed, not ratified	Meets convention standards
No discrimination in admission to educational institutions	Convention Against Discrimination in Education Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance	Not signed or ratified	Meets convention standards
No discrimination in school fees, scholarships, and assistance on the basis of nationality	Convention Against Discrimination in Education	Not ratified	Meets Convention standards for primary and secondary, does not meet for postsecondary

About one-third of those ages 18 to 29 currently have student loan debt

% of adults saying they currently have outstanding student loan debt for their own education



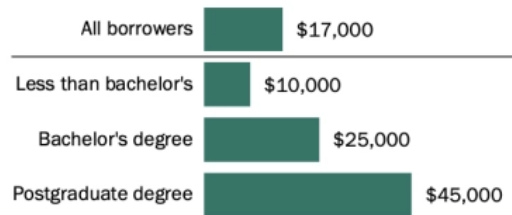
Source: Pew Research Center analysis of Federal Reserve Board’s 2018 Survey of Household Economics and Decisionmaking.

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Figure 1

Median amount of outstanding student debt varies widely by education level

Median reported outstanding student loan debt in 2016, among those with student loan debt, by educational attainment



Source: Pew Research Center analysis of Federal Reserve Board's 2016 Survey of Household Economics and Decisionmaking.

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Figure 2



Figure 3

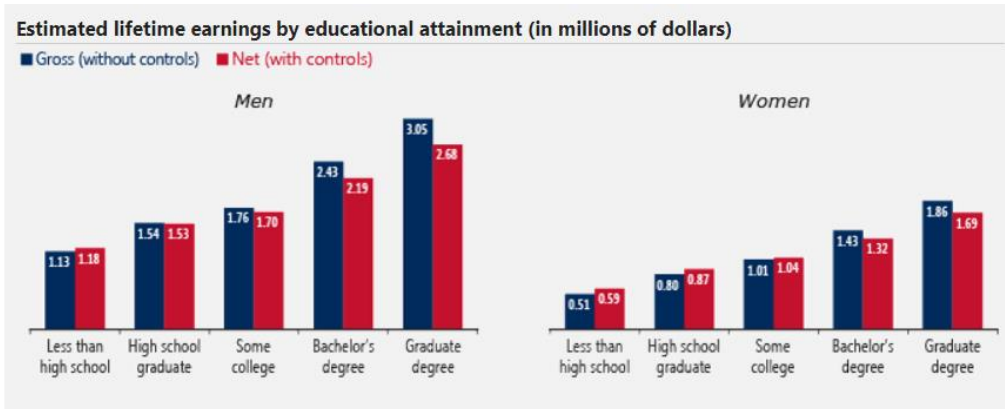


Figure 4