

In his 2019 year-end report on the federal judiciary, Chief Justice John G. Roberts Jr., focused on the state of civics education in the United States. “We have come to take democracy for granted, and civic education has fallen by the wayside,” he lamented. “In our age, when social media can instantly spread rumor and false information on a grand scale, the public’s need to understand our government, and the protections it provides, is ever more vital.”

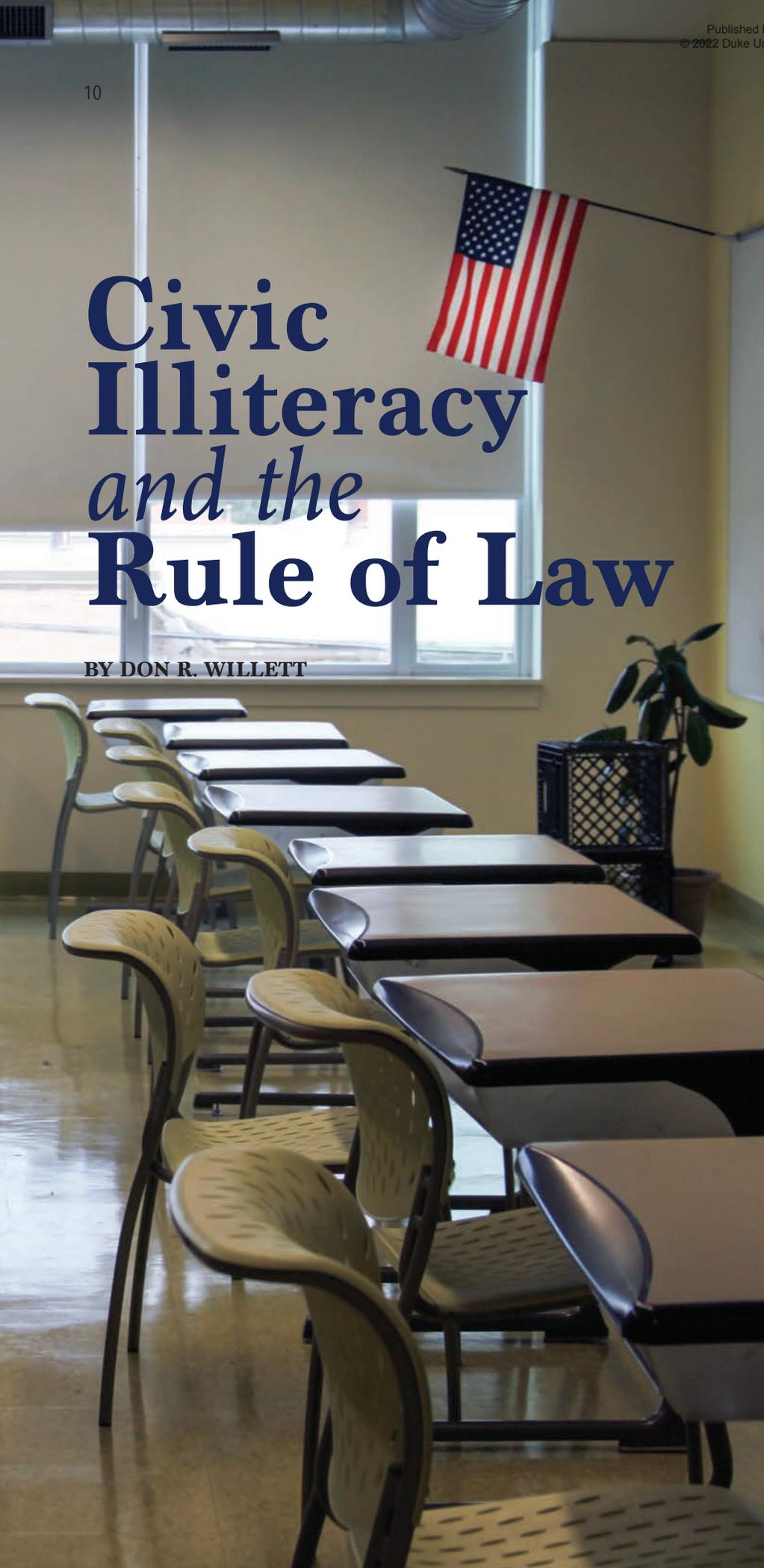
Thankfully, judges are taking up the call to improve and expand civics education — in schools, in civic organizations, and in courtrooms.

Necessarily Engaged

Roberts noted that “judges are necessarily engaged in civic education” through the process of writing and publishing opinions that explain the reasoning behind their decisions. But, as Roberts attests, judges also can do much more. In the following pages, we highlight the growing need for civics education and just a few of the innovative ways judges and courts are addressing that need.

There is much to celebrate — and much more to be done. Public faith in democratic institutions, including the judiciary, continues to decline. “Justice is not inevitable,” Roberts reminds us. “I ask my judicial colleagues to continue their efforts to promote public confidence in the judiciary, both through their rulings and through civic outreach. We should celebrate our strong and independent judiciary, a key source of national unity and stability. . . . [W]e should each resolve to do our best to maintain the public’s trust that we are faithfully discharging our solemn obligation to equal justice under law.”

—Editors



Civic Illiteracy *and the* Rule of Law

BY DON R. WILLETT

The past few years have been a wild ride, and I say that as a former rodeo cowboy. America has endured a confluence of overlapping crises: pandemic, recession, impeachment, social unrest. Arguably, the most normal part of recent times has been *Tiger King*.

But we look for silver linings where we can. According to a 2021 survey, 51 percent of American adults can now name all three branches of government — up from 39 percent in 2020 (which was previously the all-time high).¹ But truth be told, our nation still has an abysmal civics IQ.

Two hundred thirty-five years ago, a throng of Philadelphians waited outside Independence Hall. And like most Philly crowds, it was tense. Our infant nation was floundering. The former colonies had yet to coalesce into a country.

On the Constitutional Convention's final day, Benjamin Franklin delivered the last great speech of his life, urging adoption of the new constitution "with all its faults." And Franklin found plenty of faults. He wanted federal judges to be elected, for example. But Franklin, 81 years old, flexed

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his considerable diplomatic skills and implored his fellow delegates to “doubt a little of his own infallibility.” “The older I grow,” said Franklin, “the more apt I am to doubt my own Judgment, and to pay more Respect to the Judgment of others.”² We could all use a refreshing dose of that intellectual modesty today — more humility and less superiority.

We all know what happened next. A triumphant Franklin exited Independence Hall and was approached by Mrs. Elizabeth Powel, who blurted out, “Well Doctor, what have we got, a republic or a monarchy?” And Franklin delivered his sharp-witted rejoinder, “A republic, if you can keep it.”³ The survival of freedom depends on people, not parchment.

Eleven years earlier, the Declaration — our original birth announcement; the greatest breakup letter of all time — had proclaimed that we wanted government, as Lincoln put it four score

and seven years later, “of the people, by the people, for the people.”⁴

Our Founders, imperfect but inspired, aimed for something transcendent: not to enshrine a process — democracy — but to enshrine a promise — liberty.

Fast forward 200-plus years, and most Americans now say they do not trust any branch of government. The Father of the Country would be dismayed. Washington made clear in his first inaugural address that this is on us: “The preservation of the sacred fire of liberty, and the destiny of the Republican model of Government, are . . . staked on the experiment entrusted to the hands of the American people.” And frankly, Washington was pessimistic, confiding to another delegate, “I do not expect the Constitution to last for more than 20 years.”⁵ Thankfully, he was wrong.

But civic illiteracy — obliviousness to the “what” and “why” of America — accelerates disattachment. Amid today’s pandemic is something endemic: a deep misunderstanding of American self-government.

It is undeniable that at the Founding, the ideals collided with the reality, America’s original sin of slavery. One-third of the Declaration’s signers were slave owners. We were flawed and

stained at the start. America is imperfect, as all human things are.

Even so, the Declaration’s underlying ideals are timeless, and they are winning out. Lincoln would not abandon them even to avoid civil war. He described equal liberty as a gift “not alone to the people of this country, but, I hope, to the world, for all future time.”⁶ The Declaration was a linchpin argument for abolitionists, and the Supreme Court feebly tried to explain it away in *Dred Scott*.

My favorite piece of art in my chambers is an oil painting of Frederick Douglass. In his iconic speech, “What to the Slave Is the Fourth of July?,” Douglass notes that the promises of liberty and equality in the Declaration are eternal, even if America broke those promises.⁷

To be sure, there was a jarring disconnect between the commendable words of the Declaration and the condemnable deeds of those who adopted it. But those founding ideals still lay the foundation for righting wrongs, including the “new birth of freedom” wrought by our Second Founding and the Civil War amendments that belong at the center of America’s constitutional story.

The quest to live up to America’s ideals requires constant striving. Even the ►

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Popular sovereignty is a duty, not a mere theory. Shortly after the Constitution was signed, Jefferson wrote from Paris: “Wherever the people are well informed, they can be trusted with their own government.”

Fourteenth Amendment failed to fulfill its promise during its first 75 years. But the idea that “all men are created equal” set in motion an inexorable march.

Dr. King called on his fellow citizens not to tear down America’s heritage but to live up to it. He demanded not that our founding documents be changed to fit new ideals, but that our government change to fit the enduring ideals of our founding documents, which he called “a promissory note to which every American was to fall heir.”⁸

The aspirational Declaration is preserved through the architectural Constitution. The Declaration declared the purpose of government: to secure our innate, God-given rights. The Constitution erected an ingenious structure to achieve that purpose.

The Framers were not tinkers. They infused Madisonian architecture with Newtonian genius: three coequal branches locked in synchronous orbit by competing interests. “Ambition . . . counteract[ing] ambition,” as Madison put it.⁹ These three rival branches derive power from three unrivaled words, supersized on the page for all the world to see: “We the People.” In an era of kings and sultans, nothing was more radical than the idea that sovereignty resides not in government but in the governed.

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But again, We the People’s civic illiteracy is staggering:

- Seventy-one percent of Americans can’t identify the Constitution as the supreme law of the land.
- Sixty-three percent can’t name one of their state’s U.S. senators.
- Sixty-two percent can’t identify the governor of their state.¹¹

But there is a ray of hope: naturalized Americans, those who’ve risked everything to help write the next chapter of the American story. When it comes to the U.S. citizenship exam, immigrants “get the job done.” Do you know what percentage of immigrants pass the civics test their first try? Ninety percent. The same 100 multiple-choice questions were given to some American high schoolers. The passage rate: Five percent.¹² The generation with the greatest access to information is also the least informed.

But beyond education, we need engagement. Our Constitution is an exquisite charter of freedom, but freedom requires patriots, not pass-

ersby. Franklin said “if you can keep it” because he knew the secret sauce: an engaged, sleeves-rolled-up citizenry.

In 2019, the federal judiciary convened its first-ever national civics conference. Article III judges, including three Supreme Court justices, joined with law school deans, bar leaders, and others from Maine to Guam to discuss how the judiciary could help boost civics literacy.

A few weeks later, Chief Justice John G. Roberts Jr. wrote in his year-end report on the federal judiciary, “Each generation has an obligation to pass on to the next, not only a fully functioning government responsive to the needs of the people, but the tools to understand and improve it.”¹³ The habits of citizenship must be taught and learned anew by each generation.

And schoolchildren are often center stage in transforming our nation. Take Linda Brown, the schoolgirl at the center of *Brown v. Board of Education*. When the Supreme Court rejected racial segregation, it stressed the importance of education as a crucible for good citizenship. And for many students, schools may be the only place they are exposed to the American political tradition.

As Jefferson put it, education enables “every man to judge for himself what

will secure or endanger his freedom.”¹⁴ For popular sovereignty to work, education must underscore, not undermine, our common civic identity.

Judges play a role, too. As Chief Justice Roberts put it, judges, “by virtue of their judicial responsibilities . . . are necessarily engaged in civics education.”¹⁵ We explain our reasoning in written opinions, lead naturalization ceremonies, oversee mock legal proceedings, etc. The Judicial Conference of the United States recently affirmed that civics education is a core component of judicial service. And both the Administrative Office of the U.S. Courts and the National Center for State

Courts have developed terrific online resources for judges, teachers, attorneys, and parents.¹⁶

American citizenship is not a spectator sport. A republic comes with responsibility. Self-government is not self-perpetuating. This raucous republic belongs to us all, and its preservation is up to us all. Franklin told Mrs. Powel, “if you can keep it.” A quarter of a millennium later, with every tool laid at our feet, there is no longer a question of capability. There is only a question of culpability.

America boasts the oldest written national constitution on earth. What an extravagant blessing! But preserv-



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ing that inheritance requires a culture that prizes liberty and public-spirited virtue. For now, We the People are the world’s oldest constitutional republic. If we can keep it.

¹ *Amid Pandemic and Protests, Civics Survey Finds Americans Know More of Their Rights*, ANNENBERG PUB. POL’Y CTR. (Sep. 14, 2020), <https://www.annenbergpublicpolicycenter.org/pandemic-protests-2020-civics-survey-americans-know-much-more-about-their-rights/>.

² Benjamin Franklin, Final Speech at the Constitutional Convention (Sep. 17, 1787) available at https://www.pbs.org/benfranklin/pop_final-speech.html.

³ Dr. James McHenry, *Papers of Dr. James McHenry on the Federal Convention of 1787*, 3 AM. HIST. R. 11 595, 618 (Apr. 1906), available at <https://www.jstor.org/stable/pdf/1836024.pdf?refreqid=excelsior%3A9c715b5dd9fde-06356f58496a9f9c25d>.

⁴ Abraham Lincoln, The Gettysburg Address (1863), available at https://rmc.library.cornell.edu/gettysburg/good_cause/transcript.htm.

⁵ Herbert Mitgang, *New Light on 1787 and Washington’s Doubts*, N.Y. TIMES (July 4, 1987), <https://nyti.ms/3egD112>.

⁶ Abraham Lincoln, Address at Independence Hall (Feb. 22, 1861), available at <https://www.nps.gov/liho/learn/historyculture/independence-hall.htm>.

⁷ FREDERICK DOUGLASS, *The Meaning of July Fourth for the Negro* (July 5, 1852), in FREDERICK DOUGLASS: SELECTED SPEECHES AND WRITINGS 188, 204 (Philip S. Foner ed., 1999).

⁸ Martin Luther King, Jr., I Have a Dream (1963), available at <https://www.npr.org/2010/01/18/122701268/i-have-a-dream-speech-in-its-entirety>.

⁹ THE FEDERALIST NO. 51, at 289–90 (James Madison) (Clinton Rossiter ed., 1999).

¹⁰ Letter from Thomas Jefferson to Richard Price (Jan. 8, 1789), available at <https://founders.archives.gov/documents/jefferson/01-14-02-0196>.

¹¹ Michael Ford, *Civic Illiteracy: A Threat to the American Dream*, HUFFINGTON POST (June 30, 2012), https://www.huffpost.com/entry/civic-literacy_b_1457635.

¹² Robert Holland & Don Soifer, *What if Students Can’t Pass Immigrants’ Citizenship Test?*, LEXING-

TON INST. (Sep. 28, 2014), <https://www.lexington-institute.org/what-if-students-cant-pass-immigrants-citizenship-test/>.

¹³ *Chief Justice’s 2019 Year-End Report on the Federal Judiciary*, SUP. CT. OF THE U.S., at 4, <https://www.supremecourt.gov/publicinfo/year-end/2019year-endreport.pdf>.

¹⁴ Letter from Thomas Jefferson to John Tyler (May 26, 1810), available at <https://founders.archives.gov/documents/jefferson/03-02-02-0365>.

¹⁵ *Chief Justice’s 2019 Year-End Report on the Federal Judiciary*, SUP. CT. OF THE U.S., at 2, <https://www.supremecourt.gov/publicinfo/year-end/2019year-endreport.pdf>.

¹⁶ *Educational Resources*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/educational-resources>.