

DEVOTIONALS & FORUMS

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Civic Education and Civic Engagement

by
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Section 147 of the constitution of the state of North Dakota contains the following language: “A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools. . .” N. D. Const. art. VIII, sec. 147.

This language reflects a long and deeply-held American value: the notion that education for citizenship is a necessary and critical obligation of democratic government—necessary to its survival and critical for its success. The constitutions of all fifty states contain some sort of affirmative guarantee of the right to a free public education provided by the government.

The theoretical underpinnings of these state constitutional provisions derive from the fundamental idea, made explicit in North Dakota, that the cornerstone of our polity is a literate, informed, politically functional citizenry. The idea has deep roots, having played a significant role in our founding and our history.

Increasingly we are learning from historical treatments of the colonial, revolutionary and post-revolutionary

periods that “the Founding Fathers recognized that to secure the liberties and republican form of government proclaimed in the Declaration of Independence and institutionalized in the Constitution and Bill of Rights would require a widespread reorientation of public attitudes and beliefs.” M. H. Hoeflich, *Law in the Republican Classroom*, 43 U. Kan. L. Rev. 711, (1995). Men like Thomas Jefferson and Benjamin Franklin, drawing on the classical sources that were part of their own education, believed that the paradigms for educating rulers—princes—must be extended in the new republic to the children who were themselves the future rulers.

Franklin advocated the institution of a school in his home town of Philadelphia, arguing that it should “supply the succeeding Age with Men qualified to serve the Public with Honour to themselves, and to their Country...[and who would learn] the Advantages of Civil Orders and Constitutions...[,] the Advantages of Liberty, Mischiefs of Licentiousness, Benefits arising from good Laws and a due Execution of Justice....” *Id.* at 714, n. 13. Richard Brown in his 1996 book, *The Strength of a People; The Idea of an Informed Citizenry in America 1650-1870*, writes that “[t]he idea that an informed citizenry was critical to the success of the republic served as a guiding principle when [the Founders] designed American institutions,” and points out that the specific purpose of public education



was to prepare “a politically informed citizenry that knew its rights and jealously defended them.” Ryan Blaine Bennett, Note, Safeguards of the Republic: The Responsibility of the American Lawyer to Preserve the Republic Through Law-Related Education, 4 ND J. L. Ethics & Pub. Pol’y 651, notes 16 and 17, (citing Richard D. Brown, *The Strength of a People: The Idea of an Informed Citizenry in America 1650-1870* xv (1996)).

In fact, for Samuel Adams and Thomas Jefferson, the idea of access to education for all was a persistent theme. “Adams spoke with a sense of urgency, both for the present and for perpetuity: ‘No People will tamely surrender their Liberties, nor can they be easily subdued, when Knowledge is diffused and Virtue preserved.’” *Id.* at n. 18.

Jefferson, in 1779, drafted a Bill for the More General Diffusion of Knowledge for the Commonwealth of Virginia, which asserted that the only effective barrier to the rise of tyranny was ultimately an informed citizenry. Not long after Jefferson’s proposal, the new Massachusetts constitution, drafted by John Adams, reframed “the mission of government in broad republican rather than Puritan terms” and “proclaimed a comprehensive public responsibility not merely for education at all levels but also for creating an advanced, enlightened, knowledgeable, and progressive society.” *Id.* at notes 22 and 23. Noah Webster, the influential educator and lexicographer, advocated the idea that in the new United States, “every class of people should know and love the laws...by means of schools and newspapers.” *Id.* at n. 20.

Nor did the preoccupations of the founding generation with the centrality of public education in the life of the nation abate during the second half of the nineteenth century. Joseph Story, well known to legal scholars as a distinguished judge, published in 1883 a book for the use of school children entitled *Familiar Exposition of the Constitution of the United States*. It was a re-worked version of his 1834 book *The Constitutional Classbook*, also intended for the

teaching of children. One legal historian has observed: “The desire of Jefferson and Webster’s generation to inculcate republican principles into the hearts and minds of American youth through early and thorough instruction in public law particularly took on a wholly new complexion for the school textbook authors of Story’s generation. By the 1830s, the period which began to see the flowering of this genre of legal school literature, the ominous signs of political disruption and the possibility of the breakup of the Union over the slavery issue were already clear to most intelligent Americans. Story saw that one possible means of holding the Union together was to create in the minds of the nation’s youth not only a veneration for the republican ideals taught by Webster and his generation of authors, but also a veneration for the very idea of a national Union, predicated upon an adherence to the national constitution. Thus, Story’s book, and others of the post-1830 period, had a new purpose in teaching public law: preservation of the Union.” Hoeflich, *supra* at 2.

Expressive of the comprehensive view of the relationship between public education and the future of the nation is the preface to one of the most popular and best known school texts of the antebellum period, written by Andrew Young and first published in 1843: “To secure the blessings of liberty to themselves and their posterity, was the leading object of the people of the United States in ordaining and establishing the Constitution... In a few years, the destinies of this great and growing republic will be committed to those who are now receiving instruction in our public schools... A thorough knowledge of our constitutional and civic jurisprudence cannot well be too highly appreciated. Without it, we may hope in vain to perpetuate our free institutions... Children should grow up in the knowledge of our political institutions... If ever the great body of the people are to be qualified for the business of self-government, our common schools must be relied on as the principal means... Not the least important object of the author has been, to inspire our youth with a love of their country and its free institutions... An intelligent patriotism is deemed indispensable to the

health and vigor of the body politic.” Id. at 726, n. 66.

Young was so passionate about this notion that he included a proposal that was pretty radical in 1845: “The author would earnestly recommend, that the female scholars also study the work. Although they are to take no part, directly, they may exert a political influence which, though silent, shall not be the less powerful and salutary.” Id. at n. 67.

Extensive and dramatic changes in the philosophy and methods of public education have taken place in the more than a century and a half since the materials I have been describing were in common use. I am not an educational historian, and it is not my intention here to trace those changes in any detail, except to note the extent to which elements of the original vision of civic education have increasingly been marginalized in the public debates. Historian Diane Ravitch, in her book on *The Great School Wars: New York City, 1805-1973* (1974) describes two of the persistent, and competing, themes of this period. First, there is a vision of public education in which schools belong to the community, and the majority have the power and the right to determine the purpose and content of education, including religious sectarianism. This view was embraced by the Catholic Church during the common school struggle in New York City.

Then there is the vision propounded by Horace Mann and the common school reformers, that the public schools belong to the state, and their role is to “encourage inquiry, not to impose interpretations,” requiring them to teach only commonly held values and to avoid promoting specific religious or political views. Rosemary C. Salomone, *Common School, Uncommon Values: Listening to the Voices of Dissent*, 14 *Yale L. & Pol’y Rev.* 169, 178 (1996).

More recently, after the turn of the century and through the mid-1900s, under the influence of the American pragmatists led by John Dewey, the public schools became more genuinely secular and, as one historian describes it, “the religious function shaded

into the patriotic and the achievement of a broad objective of moral goodness into the nurturing of good citizens.” Id. at 178, n. 42 (citing Robert Michaelson, *Piety in the Public School*, p. 87 (1970)). Described as “progressive,” this vision of public education contemplated schools as places to promote community awareness and further community progress. This idea of “community” incorporated a recognition of cultural differences such as language, literature, ideals, moral and spiritual outlook, and religion, although Dewey disagreed with efforts to incorporate religion per se into the public school. Id. at n. 45.

Since the mid-1900s, American public educational theory and practice has seen wide swings between Dewey’s progressivism and more traditional approaches. In an excellent article in the 1996 *Yale Law and Policy Review*, law professor Rosemary Salomone summarizes fifty years of recent history: “[B]y the mid-1900s, progressive education began to fall into a cyclical disfavor alternating with more traditional approaches to education. The first shift took place in the late 1950s with the launching of Sputnik by the U.S.S.R. and the race to compete on every front with the Soviet Union. Here educators moved from teaching the whole child to a decided emphasis on excellence. Economists began to talk about education as investment in human capital for the good of society.

“By the mid-1960s, the pendulum swung back again to progressivism with the civil rights and anti-war movements and the War on Poverty which challenged both traditional assumptions of life and society and the apparent competitiveness and achievement orientation that had crept into schooling.

“By the mid-1970s, however, declining scores on standardized achievement tests, increasing dropouts rates, and student violence—all the perceived ills of American education—were laid again at Dewey’s door, blaming his theories for the permissiveness, valuelessness, and lack of academic standards in the public schools. Progressive teaching methods such as the New Math and the New Social Studies together

with the open classroom and unconventional elective courses generated a backlash and ushered in the Back to Basics movements. By the late-1970s, the influence of that movement, supported by a rising tide of religious fundamentalism, became manifest in textbooks and curricula across the country. Thus began the present era in which, on an academic level, school officials combine the best lessons learned from the two competing philosophies.

“However, on a philosophical and political level, they must constantly readjust to the cultural dissonance in the larger society and to the shifting political and constitutional views on the purposes, governance structure, and substance of education.” *Id.* Salomone goes on to observe that, for Mann and Dewey, and certainly for the generations proceeding theirs, there was such a relatively narrow range of socially and politically accepted values that consensus was viewed as possible. “In recent decades, as the United States has become more diverse in composition, controversy has developed over the values reflected in the curriculum and permitted to be voiced in the public school context. At no other time in our history have we witnessed such a direct challenge to the very premise underlying what has been called the ‘myth of the common school,’ that is, that the values promoted through public education are in fact ‘neutral, nonsectarian, and indeed obvious to any reasonable person.’” *Id.* at 179-80.

The scope and complexity of this debate of “values” is more than I can hope to treat here. At the core of the debate, of course, is the “indoctrinative function of schooling,” *Id.* at 183, the idea that both the obvious and the hidden parts of the school curriculum affect the transmission of culture along with the formation of student beliefs and their view of the world. No aspect of education is entirely value-free: not the choice of textbooks or their content, not the structures for school governance, not the extra-curricular activities offered or forbidden, not the role models provided by teachers, or the rules about behavior and dress, not the importance, substance and use of exams, or the pedagogical methods in the classroom, not even the physical design of the school

and its classrooms. The larger debate encompasses irreconcilable world views and issues of cultural identity that, whether tied to religion or based in moral or philosophical beliefs, generate conflicts about which people “feel profoundly and disagree sharply.” *Id.* at 185.

I do not, therefore, propose to enter the thicket. I would like instead to offer a modest proposal, by no means original but I think timely, that I believe would permit some degree of consensus about public education’s core mission, despite our diversity, our pluralism, and our profound differences in this country. I think of this as the “Back to the Future” part of this talk, or perhaps rather “Forward to the Past,” because I believe that an important vision of our future lies in our past.

Numerous studies, opinion polls, and editorials, not to mention large quantities of academic and popular literature, bemoan the current state of our young (and the not-so-young) when it comes to knowledge of the constitutional system we live under, and to levels of individual “civic engagement,” by which I mean a sense of personal responsibility for the condition of the republic at any given level of government—local, state, or national. You have heard the “horror” stories. Public confidence in most governmental institutions has decline dramatically in the past fifty years. A 1997 survey by the National Constitution Center revealed: “More than 90% of Americans agreed that “the U.S. Constitution is important to them” and that it “makes them proud.” Paradoxically, the Center’s surveys have shown that people have an appalling lack of knowledge of a document that impacts their daily lives. Eighty-three percent of respondents admit that they know only “some” or “very little” about the specifics of the Constitution. For example, only 6% can name four rights guaranteed by the First Amendment; 62% cannot name all three branches of the federal government; 35% believe the Constitution mandates English as the official language; and more than half of the Americans do not know the number of senators.” Bennett, *supra*, 4 at 7.

Four out of five surveyed did not know the number of

amendments to the federal Constitution, and one out of every six believed that the Constitution established America as a “Christian nation.” No one seems to have asked whether Americans understand the state constitutional sources of the basic right to a free, public education, but I would be surprised if a significant number of Americans on the street even know their states have constitutions. If the federal Constitution and the Bill of Rights were put to a vote today, pollsters tell us that they would not be adopted. One survey found that “many people not only did not recognize the Bill of Rights, but, without benefit of its title, described it as ‘Communist propaganda.’” *Id.* at n.35.

In an article last fall in the *Chronicle of Higher Education*, the director of the University of Maryland’s Center for Information and Research on Civic Learning and Engagement noted that since 1960, every significant indicator of political engagement by matriculating college freshmen has fallen by at least half. William A. Galston, *Can Patriotism Be Turned Into Civic Engagement?*, *The Chronicle of Higher Education*, B16 (November 16, 2001). He explains the reasons why the “civic detachment of today’s youth should not be regarded with equanimity,” beginning with what he calls the “truism about representative democracy” that “[p]olitical engagement is not sufficient for political effectiveness, but it is necessary.” *Id.*

“[First] the withdrawal of a cohort of citizens from public affairs disturbs the balance of public deliberation—to the detriment of those who withdraw, but of the rest of us as well.

“Second, political scientists have found that civic attitudes and patterns of behavior formed when young tend to persist throughout adult life. . . . If today’s young Americans continue to regard civic affairs as irrelevant, they are likely to abstain from political involvement throughout their lives.

“Third, the relationship between citizenship and self-development, although much debated of late among political theorists, should at least be considered. . . . There is something to the proposition that under

appropriate circumstances, political engagement helps develop important human capacities, . . . [such as] enlarged interests, a wider human sympathy, a sense of active responsibility for oneself, the skills needed to work with others toward goods that can only be obtained through collective action, and the powers of sympathetic understanding needed to build bridges of persuasive words to those with whom we must act.” *Id.*

The *Chronicle* essay goes on to observe that “the evidence of [our failure to transmit basic civil knowledge and skills to the next generation of citizens] is now incontrovertible.” *Id.*, at B17.

“In our decentralized system of public education, the closest thing we have to a national examination is the National Assessment of Educational Progress. The results of the most recent NAEP of civic knowledge administered in 1998 were discouraging. About three quarters of all students scored below the level of proficiency. Thirty-five percent of high school seniors tested below basic, indicating near-total civic ignorance. Another 39 percent were only at the basic level, a level below what they need to function competently as citizens.

“It is easy to dismiss these findings as irrelevant. Who cares whether young people master the boring content of civics courses? . . . [S]urprisingly, recent research. . . analyzed by Michael X. Delli Carpini and Scott Keeter in *What Americans Know About Politics and Why it Matters* documents important links between basic civic information and civic attitudes that we have good reason to care about. Other things being equal, civic knowledge enhances support for democratic values, promotes political participation, helps citizens to understand better the impact of public policy on their interests, gives citizens the framework they need to learn more about civic affairs, and reduces generalized mistrust and fear of public life.” *Id.*

I am convinced that we must restore the civic mission of our educational institutions in the United States. Furthermore, I believe that the judicial branch of state government has an obligation to contribute to

the restoration. Thus far, the major involvement of state judiciaries with public education has coincided only with their role as constitutional interpreters. State constitutional education provisions have served as the basis for considerable litigation in the past two to three decades concerning the quality, adequacy, and funding of public education. See e.g., Michael Heise, "State Constitutions, School Finance Litigation and the 'Third Wave': From Equity to Adequacy," 68 *Temple L. Rev.* 1151 (1995); Paul L. Trashtenburg, "The Evolution and Implementation of Educational Rights Under the New Jersey Constitution of 1947," 29 *Rutgers L. J.* 827 (1998). In the context of that litigation, however, the courts exercise only their traditional adjudicative function, addressing competing claims about the scope of constitutional rights. I believe there is a larger context in which state courts can and should function as educators, albeit in a limited sense.

The Law Related Education movement in this country is approximately 25 years old. It has had phenomenal success in developing educational materials and programs to foster in elementary and secondary students a practical understanding of the Law, the legal system, and their rights and responsibilities as citizens. In my own state, however, and in most of the states, the use of those materials and programs in the schools is entirely dependent on the energy, competence, and interest of individual classroom teachers or school administrators with responsibility for curriculum decisions. An American Bar Association report on "Law Related Education in America: Guidelines for the Future" (1975) estimated that "less than one percent of America's elementary and secondary students are currently exposed to systematic curricula in law-related studies." Bennett, *supra*, at 4, n.35.

This state of affairs coincides with a growing sense that courts need to be more concerned about public outreach and community perceptions. Known as the "Public Trust and Confidence in the Courts" phenomenon, state courts all over the country are responding to research showing that courts must actively address public service and public access

issues, and that they must also look for ways to explain themselves to their communities if they are to regain and maintain the legitimacy and respect necessary for their functional role in a representative democracy.

I believe that the needs of public education and the mission and expertise of the state courts are remarkably coincident at this time in history, and that there are opportunities for leadership and support that state courts should mark and respond to. I would like to describe a work in progress here in Utah as one model. Two years ago, a small group of judges, court administrators, lawyers and administrators from the organized bar, and leaders of the private, non-profit Law Related Education Project in our state started talking about some of the problems detailed in these remarks. We identified three significant, and inter-related, barriers to the incorporation of systematic, comprehensive civic education in our state's public schools.

First, there is no systematic inclusion of law as a fundamental part of the core curriculum, which drives everything done in the classroom. Second, and of course the reason for the first problem, law-related or civics education is not one of the "BIG THREE" subject matter areas that occupy the center of the curricular universe (reading and language arts, math and science, and social studies); it has been for a number of years, when it was considered at all, viewed as an optional sub-set of social studies, along with history, geography, environmental studies, and life skills. Thus, there are no minimum requirements, no inclusion mandates, and no testing standards associated with civic education. Finally, the burden for the individual classroom teacher to develop or acquire lessons plans, materials, and expertise is extreme; only the most interested and enterprising teachers can successfully incorporate them into classroom programs.

Our small group determined that, within the judicial branch broadly defined, we had resources that could have some impact on the problem, namely: (1) a large collection of programs and educational

materials developed in Utah and all over the country by lawyers, courts and law-related education projects. Many of these materials were “going begging” for opportunities to be used; (2) a cadre of law students, lawyers and judges who would be willing to help with the development of age-appropriate lesson materials and to volunteer in the schools themselves, both in the training of teachers and counselors and in the classroom; (3) the administrative capacity either within the courts or the state bar to train and supervise large numbers of volunteers; (4) courthouse facilities themselves, with judges and staff willing to facilitate their use as learning venues for local schools on a regular and on-going basis; and (5) the public relations and impact opportunities resulting from the interest of judges and the state court system in facilitating cooperation and partnership with the state Department of Education, run by our State Board.

When we began to have conversations with curriculum specialists and supervisors within the education system, we discovered that we were, generally, preaching to the choir. The phenomena illustrated by the public research were very much on the minds of many, and our concerns about the level of constitutional, civic, and legal “literacy” among our citizens and our students were shared by educators. Calling ourselves the “Education for Justice Project,” we eventually came to the Board of Education with a proposal for a cooperative effort. Once they found out that we weren’t asking for any up-front money, they signed off on a resolution endorsing our efforts to restore civic education to a central and systematic place in the public school curriculum. This process, of course, will be an arduous and probably very political one that we, from our position outside the educational bureaucracy, cannot control. However, we have been given to understand that our support, as the “third branch,” for such a move, is having a positive effect. Meanwhile, we have launched the following efforts, which are of course on top of everything else that our Law Related Education Project people, our courts (especially the juvenile courts), and numerous other volunteers have been doing all along.

1. Working on pilot programs in several school

districts to introduce teachers and guidance counselors to available videos and lesson plan materials, train them in use, and connect them with volunteers who can help in the classroom.

2. Working with trial court executives throughout the state to get them to organize “court-school” partnerships with local schools, conduct regular tours and “open houses” and keep their judges in regular contact with school groups.

3. Developing a “clearinghouse” of materials and staff to match requests for education related assistance with volunteers.

4. Placing a member of our “Education for Justice Project” on the core curriculum revision commission currently revising the Core Curriculum for grades 7-12.

5. Identifying this project as one of the major priorities of the state court system through its Public Outreach Committee.

6. Working on publicizing the extensive programs and materials generated by the Juvenile Courts in our state with relevance to school-age children.

All of the foregoing kinds of activities, of course, are not new or unique to our state. What is unusual about our effort, I believe, is the partnership we are working toward between the governing authority for our public education system, which controls the content and future of public education, and the Supreme Court and Judicial Council, which govern the judicial branch of state government. We are a small state, and therefore can capitalize on relatively straightforward lines of authority and, at least for now, some mutual trust and respect. The availability of such currency in other systems will vary, and in some states it may not exist at all, but I am convinced that it is a legitimate use of the credibility and expertise of the judicial branch of government. When I talked to the state Board of Education, I told them some of the things about the history of education for citizenship that I have detailed here. It was clear to me that, although old history, many of them saw it in

a new light; it was also clear that they found it a cogent argument for examining our history to discover ideas for our future.

A former law clerk, who volunteers as a Court Appointed Special Advocate (CASA) volunteer in juvenile court, recently sent me a note with this statement from Neil Postman: "Children are the living messages we send to a time we will never see." The tragic events of September 2001 generated an outpouring of patriotic sentiments and gestures from many Americans. I hope that we can find ways to turn patriotism into civic engagement by helping our children prepare to carry the fundamental values of this nation into that time we will never see.

I would like to close with John Adams' words in the first, and now the oldest functioning, written constitution in the World: the Constitution of the Commonwealth of Massachusetts: "Wisdom and knowledge, as well as virtue, diffused generally among the body of the people being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in various parts of the country, and among the different orders of the people, it shall be the duty of legislators and magistrates in all future periods of this commonwealth to cherish the interests of literature and the sciences, and all seminaries of them, especially the university at Cambridge, public schools, and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings, sincerity, good humor, and all social affections, and generous sentiments among the people." David McCullough, John Adams, p. 223 (Simon & Shuster, 2001).