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## ARTICLES

### DEMOCRATIC SCHOOLS AND MORAL EDUCATION

AMY GUTMANN\*

Our earliest moral education is not by precept or reasoning, but by discipline and example. We are first educated morally by our parents. They love and nurture us, later also reward and punish, praise and blame us for our actions. For most of us, the family continues to play a large role in building our character for many years. But early in our lives, the family begins to share the task of character training with other associations: nursery schools and day-care centers, schools, churches and synagogues, civic organizations, friendship circles, and work groups. As children move outside and eventually beyond their original families, their moral character is shaped by the examples of those whom they love and respect as well as by rules regulating the association to which they belong.

But character training of this sort is only one kind of moral education, undoubtedly most effective during our childhood. At some stage in our development, we also become responsive to another kind of moral education, one that is more intellectual in its effect and rationalist in its method. We learn to think critically and hence to argue and to make decisions about moral issues. This process of moral reasoning is socially desirable because it enables us to understand, to communicate, and in some cases to resolve our moral disagreement. Without this understanding, we cannot expect widespread toleration of dissent. Nor can we expect minorities ever to convince majorities, or to be convinced by them, of their moral point of view. But quite apart from its political function, we need the capacity for independent moral deliberation in order to make hard moral choices in situations where our habits and the authorities we accept do not supply clear guidance. These two facts about our lives — that we disagree about what is moral and that we face hard moral choices as individuals even when we agree as a group

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— are the basis for an argument that democratic citizens learn to think about morality as a necessary (though by no means sufficient) condition for their being moral and sharing political sovereignty as equals.

People adept at moral reasoning who lack training in moral character are sophists of the worst sort: they use moral arguments to serve whatever ends they happen to choose for themselves. They do not take moral arguments seriously nor are they able to distinguish between the obvious demands and the agonizing dilemmas of moral life. But those who possess sturdy moral character without a developed capacity for moral reasoning are ruled only by habit and authority, and are incapable of constituting a society of political equals or of taking moral responsibility for their own actions. Moral education in character and in reasoning both are necessary, neither sufficient, for creating democratic citizens.

### I. A CASE FOR DEMOCRATIC CONTROL

What role should democratic schools play in moral education? The simple, commonly offered answer is that democratic schools should develop in all children values and character essential to democratic politics. On one formulation, their goals should be:

knowledge of the political system and how it really and ideally works, development of the skills of participation in civic life, improvement of civic competence, commitment to values compatible with the principles which underlie democratic institutions and a capacity to analyze the consequences of those values, and development of self-esteem so that all individuals feel that their participation in civic life can make a difference.<sup>1</sup>

Although such general formulations — that schools should prepare children to share the rights and responsibilities of democratic citizenship — are not incorrect, they leave all the hard problems unresolved. Citizens do not agree upon what democratic character ideally is or how schools should develop that character. Nor is there a consensus among philosophers and professional educators. Yet if we assume that schools should share responsibility for creating democratic citizens, we must find fair means of resolving the many dis-

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1. *Education for Responsible Citizenship: The Report of the National Task Force on Citizenship Education*, 9 (1977).

putes among citizens, philosophers and educators over the ends and means of moral education within school walls.

Let's begin by disposing of the "if" formulation. Should schools share this responsibility? A negative answer would quickly resolve many of the political problems of moral education. Schools would leave character development and training in moral reasoning to families and voluntary associations. An apparent attraction of this solution is that public schools would thereby rid themselves of all the political controversies now surrounding moral education. They could get on with the task of teaching cognitive skills and factual knowledge. But the only way to prevent schools from engaging in moral education is to rid society of schools, an alternative that should be rejected for many reasons not specific to moral education.<sup>2</sup>

If schools teach anything, they teach morality and shape moral character. Even if they avoid all courses that deal explicitly with morality or civic education, they still engage in moral education by virtue of their "hidden curriculum," noncurricular policies that serve to develop moral attitudes and character in students.<sup>3</sup> Schools develop moral character at the same time as they try to teach basic cognitive skills, by insisting that students sit in their seats, raise their hands before speaking, hand in their homework on time, not loiter in the halls, be good sports on the playing field, and abide by rules that help define a school's character. Some of the rules that we take most for granted contribute in unnoted ways to our moral education. We only begin to discern those ways when we consider alternative school practices. Consider a common practice in Japanese elementary schools: teachers ask students who have mastered the day's lesson to help those students who are still struggling to finish. Students take turns in serving lunch to their class; and every member (including the principal) of the school, which has no specialized janitorial staff, shares in cleaning the building. These prac-

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2. Of course, "deschooling society" would only transfer the burdens of moral education in a democracy to other social institutions. The new educational institutions that Ivan Illich describes are intended to do much more than teach cognitive skills and factual knowledge. So, the problem of moral education remains, although Illich's proposed solution is not democratic. See I. ILLICH *DESCHOOLING SOCIETY*, (1970).

3. For the source and explanation of the term "hidden curriculum," see P. JACKSON, *LIFE IN CLASSROOMS*, (1968). See also Purpel and Ryan, *It Comes With the Territory: The Inevitability of Moral Education in the Schools*, in *THE TERRITORY*, 44-54 (McCutchan, ed. 1976).

tices and many others are lessons in egalitarianism that may never need to be taught in the curriculum if they are consistently practiced in the classroom and by the school authorities.<sup>4</sup> Elementary schools in the United States teach different moral lessons, but they too engage in moral education simply by not doing what Japanese schools do. The choice facing schools therefore is not whether to engage in moral education, but what sort of moral education to engage in.

Democratic schools should serve our interests as citizens in the moral education of the future citizens. Our parental interests are to some extent independent of our role as democratic citizens, and hence the emphasis of moral education within the family is likely to be quite different from that within schools. Most parents want to create a family life that satisfies our emotional and spiritual needs, and to share our particular values with our children. However deep this concern for sharing our particular values, it need not imply an equal concern for spreading these values more generally among children. We can recognize the advantages of living in a society in which a variety of values are deeply held and parents are free to teach their values with their children. But this freedom depends on children being taught widespread and enduring tolerance for different ways of life.

The value of teaching toleration can therefore also be derived from our interest as parents in being free to pass on our own values. But were we to act as parents concerned only to maximize the moral welfare of our own children, we might not teach them tolerance of other religious or ways of life. Unless all other parents teach tolerance as well, *our* children will not benefit. And if all other parents teach their children, then we need not teach ours. Our children will still benefit and we might thereby avoid the risk of their conversion to another faith or way of life. The problem of moral education thus may be viewed as a kind of Prisoner's Dilemma for which a democratic moral education in public schools is the solution.<sup>5</sup> If everyone's child is taught toleration, we are all

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4. CUMMINGS, EDUCATION AND EQUALITY IN JAPAN, 107-132 (1980). "Egalitarian education" in Japan is a relatively recent product of the Occupation reforms and is discussed by Cummings as a promising example of how educational institutions might serve a transformative rather than conservative function in a democratic society.

5. Derek Parfit develops the idea of many person Prisoner's Dilemmas and uses the "Parent's Dilemma" as an example of the problem that comes from giving priority to certain rather than all others. *Prudence, Morality, and the Prisoner's Dilemma*, PROCEEDINGS OF THE ARISTOTELIAN SOCI-

better off than if no one's child is. But we might satisfy our own interests better if we did not teach our own child tolerance, regardless of what other parents teach their children. It is therefore in the collective but not the individual interest of parents for all schools to teach toleration to all children. But prudence alone would not lead any parent whose primary concern is to pass on her own faith to teach toleration of other faiths as an essential part of her child's moral education.

Teaching toleration is not without its risks from the perspective of parents. As children learn to respect other faiths, they may also adopt another.<sup>6</sup> The line between learning to tolerate other values and accepting them as one's own is clear in theory, but in practice the former may serve as a bridge to the latter. This is a risk that democratic citizens must be willing to take. Some parents diminish this risk by sending their children to parochial schools that teach the truths of their religion. But parents cannot entirely avoid the risk of assimilation or conversion that accompanies the lesson of toleration without also foresaking their obligation as citizens to perpetuate a democratic culture.<sup>7</sup> Even parochial schools are responsible for teaching their students to respect conflicting points of view: fairness demands that the risks and benefits of toleration be universally (but not equally) distributed.<sup>8</sup>

Because children are not the mere creatures of their parents, the problem of paternalism in education cannot be avoided "by regarding the family as the basic unit and there-

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ETV, 539-564 (November 16, 1978).

6. This is part of a larger problem of sheer exposure to competing viewpoints that also carries with it the risk of conversion. Some religious sects, the Amish for example, seek to isolate their children as much as possible from "worldly knowledge," including children of other faiths, in order to avoid the risk of corruption. See J. HOSTETLER AND G. HUNTINGTON, *CHILDREN IN AMISH SOCIETY: SOCIALIZATION AND COMMUNITY EDUCATION*, (1971), and A. KEIN, *COMPULSORY EDUCATION AND THE AMISH: THE RIGHT NOT TO BE MODERN*, (1975).

7. The risk, of course, is considerably smaller for adults than for children. But children who grow up learning the lesson of intolerance cannot suddenly be converted into tolerant adults.

8. Not equally distributed because the risks are higher and the benefits lower for some citizens than for others. Assuming any risk at all will seem unfair to parents who believe that their religion is the only path to salvation. But the alternative to distributing the burden widely is to exempt some citizens from any responsibility for supporting a good — democratic tolerance — from which everyone benefits, and wants to benefit. In some sense, a democracy compensates for this inequality by permitting parents to educate their children in parochial schools.

fore parents as responsible for their children.”<sup>9</sup> Nor can we reject public education on the grounds that “each human being [must] develop from within, self-active and free.”<sup>10</sup> Parents as well as democratic communities are bound to bias the future moral development of children by their own values, which are to a significant extent also social creations. Moral education in a democracy is thus best viewed as a shared trust of the family and the polity, mutually beneficial to all parties involved if we accept the values of both family life and democratic citizenship.

Because families are a relatively independent source of moral education, decisions regarding the means and ends of moral education within public schools are bound to be controversial. But this is not a reason for abolishing public schools any more than the fact that parents create this controversy is a reason for abolishing the family. Parents and citizens both have valuable and largely complementary roles to play in the moral education of children: the former in teaching children what it means to be committed to particular people and one way of life among many; the latter in teaching responsibilities and rights within a more heterogeneous community and expanding choices of the good life beyond those valued by their parents.

How can public schools in a democracy best perform these functions of moral education? By a significant degree of local democratic control over issues of moral education within public schools, with limits upon communal control set by the democratic principle of non-repression.<sup>11</sup> In the process of criticizing four popular alternatives to the democratic position, I defend and develop the democratic view in more detail.

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9. Friedman, *The Role of Government in Education*, 124 in (Robert A. Solo ed. 1955), Friedman admits that “such a procedure rests on expediency rather than principle,” but does not recognize the significance of our democratic responsibility for children.

10. F. FROEBEL, *THE EDUCATION OF MAN*, 13 (1887). For an intriguing discussion of the educational movement that grew out of this libertarian philosophy of education, see P. AVRICH, *THE MODERN SCHOOL MOVEMENT: ANARCHISM AND EDUCATION IN THE UNITED STATES*, (1980).

11. The principle of non-repression prevents a democratic state, and all groups within it, from restricting the consideration or pursuit of alternative conceptions of the good life.

## II. FOUR ALTERNATIVES

### A. *Liberty Neutrality*

A popular position on moral education commonly identified as liberal requires that public schools teach the capacity for independent moral reasoning and moral choice without predisposing children towards a particular conception of the good life or a particular moral character (aside from one defined by this capacity). Just as a liberal state must leave its adult citizens free to pursue their own way of life, so must its schools leave children free to choose and develop their own values. If it did predispose citizens by educating them as children, the professed neutrality of the liberal state with regard to its adult citizens would be a cover for the bias of its educational system.

The position of liberal neutrality with regard to children is articulated by proponents of the educational method known as "values clarification," which enjoys widespread use in public schools throughout the United States. Proponents of courses on values clarification identify two major purposes of moral education within schools. The first is to inform students of the diversity of moral perspectives found among their peers; the second is to help them understand and develop their own set of values. Values clarification is viewed by its proponents as the only pedagogical alternative to indoctrination by teachers:

In place of indoctrination, my associates and I are substituting a *process* approach to the entire area of dealing with values in the schools, which focuses on the process of valuing, not on the transmission of the "right" set of values. We call this approach *values clarification*, and it is based on the premise that none of us has the "right" set of values to pass on to other people's children.<sup>12</sup>

Proponents of values clarification do not deny that pedagogical neutrality itself is a value, nor that their defense of values clarification is based upon certain values:

If we urge critical thinking, then we value *rationality*. If we support moral reasoning, then we value *justice*. If we advocate divergent thinking, then we value *creativity*. If we uphold free choice, then we value *autonomy* or *freedom*. If we

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12. Simon, *Values Clarification vs. Indoctrination*, in Purpel and Ryan, *supra* note 3 at 126-135.



encourage "no-lose" conflict resolution, then we value equality. . . . Called before the committee, we can only say that values clarification is not and never has been "value-free."<sup>13</sup>

It is a *reductio ad absurdum*, commonly engaged in, to criticize the liberal position for being value laden. Proponents of values clarification can admit without fear of self-contradiction that they are morally committed to a value-laden pedagogical position: teachers should not impose their views on students. This position is based upon a belief that the process of values clarification is the most effective means to help children develop moral character. If the liberal position in moral education is problematic, it is not because it attempts and fails to be value-neutral in this general sense.

Democratic government presumes that citizens have a capacity for independent moral reasoning. Courses in values clarification are aimed at teaching children how to think, communicate and choose their values without relying directly upon the authority of their parents or teachers for answers. The method is also likely to teach the virtue of toleration. Teachers listen carefully and respond sympathetically to a variety of different moral points of view, and require students to listen and encourage them to respond on the basis of their own values. Just as the political process of democracy does not aim at political consensus but at a situation in which minorities can respect the decisions of majorities, so this pedagogical process does not aim at value consensus, but at a situation in which every student can respect the values of every other while holding his own, possibly conflicting, set of moral values. This liberal view of both democracy and moral education presumes that there is a wide range of moral issues upon which reasonable people can disagree, and that mutual respect among persons who disagree is a fundamental value.

Extending this analogy reveals what is wrong with the values clarification approach. Minorities can reasonably be asked to live with only those decisions of majorities that respect their basic civil and political rights. Political respect should be reciprocal. Why should teachers then respect — or ask their students to respect — moral points of view that deny the justice of these rights or that require intolerance of other points of view? Not every conception of the good life

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13. Kirschenbaum, *Clarifying Values Clarification: Some Theoretical Issues*, in Purpel and Ryan, *supra* note 3 at 122.

accepts the virtue of toleration or accords respect to different moral points of view. The moral character that liberals seek to foster cannot therefore be predicated upon even the limited neutrality to which proponents of values clarification are committed. The virtue of toleration and respect specifies a limited range of moral characters within the available universe: those that admit tolerance and respect for competing moral views.

Courses on values clarification violate the basic moral values of some religious fundamentalists and conflict with their view of the proper way for schools to develop good moral character. These citizens believe that the only way to create good citizens is for schools to teach children unquestioning respect for a pre-existing and absolute moral authority. On their view, those who simply clarify values mistakenly accord respect to children as if they were complete moral beings, rather than teaching them that their own worth is dependent upon their unquestioning acceptance of authority. Whether this moralistic position is correct is beside my point here: the liberal position on moral education cannot be true to its own neutrality principle and still achieve its goals of teaching children respect for the values of rationality, justice, creativity, freedom and equality.

We know that a just democracy depends on the widespread acceptance of certain values — honesty, toleration, a predisposition to nonviolence, and a belief in political equality. Even the most committed democrats will qualify their principle of toleration to prevent the intolerant from gaining political power and thereby destroying democracy. An education in democratic values, if successful, is bound to bias children against certain religious beliefs and ways of life. Because democratic education must aim at developing a strong bias in favor of democratic values, there is little reason to think that democratic schools can rely upon the process of values clarification to fulfill their goals in moral education, and there is no reason to think that they must.

### B. *Liberal Moralism*

What I call “moralist” positions on moral education share two basic premises: that there exists an ideal or appropriate moral character for any given society, and that schools should do their best to develop that character. The moralist begins where my critique of liberal neutrality leaves off, with a conception of moral education whose explicit purpose is to

inculcate moral character and with an educational program whose methods do not (nor do they claim to) value the pedagogical process as an end in itself.

There are many substantive moralist positions, each representing a different theory of moral character and of moral education suitable for that character. Liberal moralist positions identify the capacity for choice as an essential part of good character, and at some stage in education they therefore are likely to endorse nondirective teaching methods similar to those to which proponents of liberal neutrality are committed. But liberal moralists self-consciously share two basic aims with conservative moralists, which set them apart from advocates of liberal neutrality. They seek through educational methods to create a particular kind of moral character, rather than merely trying to facilitate free and informed choice. Secondly, they recognize that public schools are the appropriate institutions of moral education because moral character is a social, not just an individual or familial, good.

Liberal moralists are committed to the goal of educating "autonomous" individuals. Identifying the standards of moral autonomy is a notoriously difficult philosophical problem. Let's assume that morally autonomous people are willing and capable of making choices self-consciously, understanding the reasons for the choices they make, and accepting as moral only those actions and reasons that are consistently generalizable and acceptable by all other potentially autonomous persons. In short, autonomous people must be capable not just of choosing and acting upon their own values, but of choosing and acting upon values that are moral. Liberal moralists clearly do not presuppose that moral education must be limited to helping children understand and apply whatever values they happen to bring into the classroom.

Guided by Piaget's extensive work on the subject of moral development, John Rawls outlines a three-stage theory of liberal moralist education in Part III of *A Theory of Justice*.<sup>14</sup> Children begin to learn morality by following rules because people whom they recognize as authorities issue them. Although the "morality of authority" is only an early stage of moral development, it is essential that the authoritative commands issued to children be guided by just principles. Otherwise, the foundation of autonomy will not be sound.<sup>15</sup> The second stage of moral development, the "morality of associa-

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14. J. RAWLS, *A THEORY OF JUSTICE* (1971).

15. *Id.* at 462-467.

tion," is characterized by an acceptance of rules because they are appropriate to fulfilling the roles that individuals play within various associations.<sup>16</sup> Children learn that students, friends and citizens obey moral rules because they thereby benefit the association of which they are a part, and are benefited in turn. In a just society, the final stage of moral development, the "morality of principles," is achieved "quite naturally" through these associational experiences:

We develop a desire to apply and to act upon the principles of justice once we realize how social arrangements answering to them have promoted our good and that of those with whom we are affiliated. In due course we come to appreciate the ideal of just human cooperation.<sup>17</sup>

Rawls does not consider the role that schools must play in aiding the natural development of a morality of principle. I presume that as long as parents continue to exert a major educational influence on their children within the family, schools must insure that their influence does not preclude understanding and respect for alternative ways of life. We need not assume that the virtue of tolerance comes "naturally" even in a just society without the intervention of schooling.<sup>18</sup>

But learning the principles of justice surely does not come naturally in a less than just society, and that is where liberal moralists apply developmental theories like Rawls's in order to determine what schools must do to teach the virtues of justice to children. In non-ideal democracies, schools face the more difficult educational task of attempting to overcome the corrupting influence of unjust authorities and associations. Yet it is even more essential for them to bear the burden of moral education if they can find a legitimate means of doing so. If they can develop in children the morality of principles, schools can increase the likelihood that citizens will accept as their duty the advancement of just social institutions, a goal that is more pressing in an unjust society than in a just one.

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16. *Id.*, at 467-72.

17. *Id.*, at 474.

18. One's judgment here depends on how one defines a just society. I assume that parents in a just society may still be more concerned with passing on their own religious values to their children than with teaching them to understand and respect other ways of life. This seems consistent with Rawls' idea of a well-ordered society, and has the advantage of not defining away the major problems of moral education and public schooling that our society today faces.

But is any attempt by schools to achieve this goal in the midst of injustice bound to fail? It seems plausible that even in our society a school can help develop the morality of association by instituting rules that permit students to participate in making school policy within limits set by the school's purposes and to develop the cooperative moral sentiments — trust, impartiality, and fairness — that define the morality of association. Dewey's ideal of a school that is a "miniature community, an embryonic society" whose aim is "not the economic value of the products, but the development of social power and insight" aimed at developing such a morality.<sup>19</sup> And the internally democratic practices of schools inspired by Lawrence Kohlberg's theory of moral development — for example, the "School Within a School" in Brookline, Massachusetts — seem to contribute more to the moral development of students than schools whose internal patterns of authority are perceived to be autocratic and unfair.<sup>20</sup>

But there is no evidence that these schools succeed in developing in their students the morality of principle, nor is it clear that they can reasonably aspire to do so by curricular or noncurricular means.<sup>21</sup> One need not be skeptical of the justification for a particular set of moral principles to recognize that all such moral justifications still leave open the question of what pedagogical means are most effective in furthering acceptance of these particular principles in a way that is compatible with moral autonomy.

Although it is theoretically possible that this question has one correct answer, we have as yet found none. The leading

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19. J. DEWEY, *THE CHILD AND THE CURRICULUM AND THE SCHOOL AND SOCIETY*, (1956).

20. See Kohlberg, *The Moral Atmosphere of the School*, in *THE UNSTUDIED CURRICULUM*, 104-127 (N.V. Overley ed. 1970); and Mosher and Sullivan, *A Curriculum for Moral Education for Adolescents*, in Purpel and Ryan *supra* note 3 at 235-251.

21. According to the research of Kohlberg and his associates, schools demonstrate most success in moving students from stages one and two (roughly, the morality of authority) to stages three and five (roughly, the morality of association). But fewer than 10% of sixteen year olds reach stage six and there is no evidence to credit schools with this rare accomplishment. See Blatt and Kohlberg, *The Effects of Classroom Moral Discussion Upon Children's Level of Moral Judgment*, *JOURNAL OF MORAL EDUCATION*, 129 (1975) and Kohlberg and Turiel, *Moral Development and Moral Education*, in *PSYCHOLOGY AND EDUCATIONAL PRACTICE*, 410-465 (G. Lesser ed. 1971). Cf. John C. Gibbs, *Kohlberg's States of Moral Judgment: A Constructive Critique*, 47 *HARVARD EDUCATIONAL REVIEW*, 43-61 (1977) for reasons to doubt the "naturalness" of Kohlberg's stages 4 and 6 of moral development.

proponent of a pedagogy based on the achievement of moral autonomy, Lawrence Kohlberg, does not provide empirical evidence for his pedagogical claims that "the teaching of virtue is the asking of questions and the pointing of the way, not the giving of answers" and that "moral education is the leading of men upward, not the putting into the mind of knowledge that was not there before."<sup>22</sup> Without that evidence, Kohlberg's account of the ascent to autonomy through his method of moral education reads like a Platonic fairy tale.<sup>23</sup>

If something like Rawls' theory of moral development is correct, then many of the educational practices that proponents of liberal neutrality regard as indoctrination and some that Kohlberg criticizes as the "Boy Scout approach to moral education" may be appropriate to an early stage of moral development.<sup>24</sup> Just as children learn filial independence after they learn to love and respect their parents, so they may learn political independence after they learn to "love" their country. The standards of patriotism and loyalty, like those of love and respect for parents, change as children learn to think critically about politics and to recognize that their civic duties extend far beyond voting and obedience to laws. A liberal moralist education begins by winning the battle against amorality and egoism, and ends — if it ends at all — by struggling against uncritical acceptance of the moral habits and opinions that were the spoils of the first victory.

But there probably is no single set of school programs and curricula that guarantees the development of moral autonomy. Some programs seem to be effective in helping children move from the morality of authority to that of association, although so many other influences push children simultaneously in the same direction that even this claim must be made tentatively.

We should not be surprised to learn of the limited effectiveness of schools in educating students for moral autonomy. Since moral autonomy means doing what is right and good *because* it is right and good and not because teachers or any

22. For a concise criticism of Kohlberg's philosophical claims, see Harman, *Against Moral Relativism*, THE NEW REPUBLIC, 34-37 (February 3, 1982). Kohlberg now seems to recognize that the moral adequacy of the higher stages must be morally justified. See *A Reply to Owen Flanagan and Some Comments on the Puka-Goodpaster Exchange*, 92 ETHICS 524-528 (1982).

23. Kohlberg, *Education for Justice: A Modern Statement of the Platonic View*, in MORAL EDUCATION, (T. Sizer ed. 1970).

24. *Id.*, p. 59. See also *Indoctrination Versus Relativity in Value Education*, ZYGON, 285-310 (Spring 1972).

other authorities demand it, some of the most effective lessons in moral autonomy may result from the opportunity to disobey an authority whose commands are not perfectly just or fair.<sup>25</sup> At least, we cannot assume that moral autonomy is best taught by lessons that are planned to develop autonomy by those who teach them. Although the moralities of authority and association are "subordinate ideals" which must be "finally understood and organized into a coherent system by suitable general principles," we must reject the liberal moralist claim that Kohlberg's or any other particular programs of moral development are necessary or sufficient for a good democratic education.<sup>26</sup>

### C. *Conservative Moralism*

An increasingly popular position on moral education eschews any concern for developing moral autonomy. The aim of moral education is to teach people to behave morally. The emphasis of conservative moralism on teaching children to respect authority — whether it be religious or political — is, I suspect, rooted in a deep pessimism concerning the human disposition to be moral: left free to choose a set of principles to guide their actions, people are as likely to choose immoral as moral ones.

Conservative moralists are correct in claiming that our collective interest in moral education not only places a responsibility upon public schools to engage in moral education, it also permits citizens to bias the moral values of future citizens to perpetuate democracy.<sup>27</sup> The virtues of moral character that conservatives generally list as essential to democracy are largely unproblematic (e.g., honesty, fairness, willingness to work, disavowal of violence and respect for the democratic process), but the means by which they propose to teach these virtues are not.<sup>28</sup> Because they believe that the point of moral education is to correct and contract freedom of choice, to teach children to choose just over unjust actions and the good life over the many bad ones, it is not the process but the results of moral education, as of moral decision-

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25. Of course, schools might consider encouraging the development of moral autonomy by permitting students to protest and even disobey some general rules without penalty of expulsion.

26. J. RAWLS, *supra* note 14 at 478.

27. Oldenquist, "Indoctrination" and Societal Suicide, 63 THE PUBLIC INTEREST, 84 (1981).

28. *Id.* at 84-85.

making, that count. So conservatives are committed in theory to judging the methods of moral education used by public schools by their likely results in creating what they define as a democratic moral character.

In practice, conservative moralists defend educational programs that they assume are most likely to create this character, programs often criticized by liberals as indoctrination or at least as unduly restrictive of individual freedom: collective ritual celebrations and practices intended to instill patriotism, rules requiring students to dress appropriately and to behave like "ladies and gentlemen," strict discipline within the classroom and deference to teachers' opinions. With regard to the curriculum, conservatives wish to avoid the potentially corrupting effects of exposing children to false political and religious beliefs, examples of immoral or anti-social behavior and indecent language. Given their premises, conservatives can consistently accept the idea, anathema to most liberals, that public schools must indoctrinate the truth and moral behavior in children. They can maintain in their own defense that the "secular humanist" practices within schools that liberals support are also a form of indoctrination, which biases students against conservative values.<sup>29</sup>

Schools, I have already argued, cannot avoid biasing the choices of future citizens towards (or against) particular moral values. It follows that programs of moral education must be chosen on the basis of either a particular substantive view of what constitutes the best kind of moral education or a procedural view of what constitutes the best way of reaching social agreement. The procedural alternative is, of course, not "value-neutral." Justification of the process itself depends upon a political theory. We cannot, however, merely assume the compatibility of "substantive" and "procedural" justifications or their convergence upon a particular set of (conservative) moralist practices, as one critic does when he argues that: "we must not only justify any morality we teach, *but find it already in the consciousness of the American people*. . . . What this implies is a system of moral education that is conservative in *both form and content*."<sup>30</sup>

Even if we assume that agreement is to be found "already in the consciousness of the American people," it is still

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29. See Kleiman, *Parents' Groups Purging Schools of 'Humanist' Books and Classes*, New York Times, May 17, 1981, pp. 1, 52.

30. Oldenquist, *'Indoctrination' and Societal Suicide*, 63 THE PUBLIC INTEREST 84 (1981).



not clear what that consciousness is. Or how it is to be found. Do we discover our agreement by voting on practices of moral education? If so, democratic majorities must have the authority to produce (or at least try to produce) a *new* moral consciousness if they so desire.

Rather than supporting this potentially quite radical argument, conservative moralists suggest that there *would* be social agreement upon a conservative program of moral education were Americans not already corrupted by liberal educational practices and the culture of secular humanism. Because Americans are corrupted, we should rely on any educational authority capable of putting the correct set of moralist practices in the schools. So understood, conservative moralism is as paternalistic towards adults as any system of moral education in schools must necessarily be towards children. But on democratic grounds, non-democratic paternalism towards adults is much more problematic than democratic paternalism toward children. The former undermines the possibility of a genuinely democratic society while the latter does not.

Let us grant to the conservative moralists that by ridding public schools of secular humanism, we can produce a conservative consensus among the electorate in the United States. This consensus still would not suffice to support conservative moralism. We need a justification that is independent of the goal of achieving a conservative consensus. If we cannot find that independent justification in the Constitution or the Bible, both of which are open to reasonable liberal and conservative interpretations, then perhaps we should look to the democratic process itself, once it is stripped of artificial manipulations by unaccountable liberal elites (teachers and bureaucratic). This is a plausible but uncommon line of conservative argument. In committing themselves to a standard of democratic fairness, conservatives would open some of their educational policies to criticism on their own grounds: that the intent or effect of policies (such as book banning, which I discuss below) is to deprive a future generation of citizens of their democratic freedom by subjecting them to an ideologically repressive political education as adolescents.

#### D. *Market Control*

Instead of offering principles to decide what kind of moral education schools should provide, proponents of market control offer a principle to decide *who* should decide what

kind of moral education children receive in schools: control properly belongs to individual parents exerting publicly subsidized market pressure upon schools of their choice.

Proponents of market control are not committed to a conception of what moral education should be. They are committed to *not* having such a conception. They therefore do not propose a set of policies by which schools should build moral character or teach morality to students. Instead, they assume that parents are responsible for the moral education of their children. Parents exercise their responsibility by choosing a particular school for their children. Just as democracies do not impose one set of religious practices or beliefs upon adults, so they should not impose one philosophy or program of moral education upon children. The politically significant differences that Milton Friedman recognizes between freedom of choice in religion and in moral education is that moral education is for minors. The state may therefore properly mandate moral education in school and subsidize it to insure its universal distribution.

On the market view, the right of free choice for parents can best be ensured by a program providing "every set of parents with a voucher certificate redeemable for a specified maximum sum per child per year if spent on 'approved' educational services . . . . The educational services could be rendered by private enterprises operated for profit, or by non-profit institutions of various kinds." Efficiency is also served by this system: "here, as in other fields, competitive private enterprise is likely to be far more efficient in meeting consumer demands than either nationalized enterprises or enterprises run to serve other purposes." At the same time as it efficiently maximizes parental choice, the voucher system minimizes governmental control over schools, and hence over moral education: "The role of the government would be limited to assuring that the schools met certain minimum standards such as the inclusion of a minimum content in their programs, much as it now inspects restaurants to assure that they maintain minimum sanitary standards."<sup>31</sup>

Many critics of the market view have doubted whether vouchers would in practice increase parental choice or control over their children's schooling. They argue, quite persuasively, that many parents will not know what they are choosing, given the difficulty of judging the "product" before it is "consumed," and the likelihood that advertising will be

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31. M. FRIEDMAN, *CAPITALISM AND FREEDOM*, 89 (1962).

uninformative or misleading. Control over the education provided within the family has always been and should continue to be vast within private schools will remain largely where it is now — with church authorities, administrators, headmasters, and teachers along with an additional group of educational entrepreneurs — who may not provide more desirable alternatives but only more alluring advertising.

The major problem with the voucher proposal, however, is not that it may fail to achieve its principal purpose, but that its purpose is unacceptable in principle. If minimizing governmental control over schools means enforcing only minimum standards, then there is no reason to believe that vouchers would satisfy the legitimate interests that citizens have in developing democratic moral character through schooling. All proponents of the market view recognize that there are some externalities or “neighborhood effects” of schooling. We have an interest in how our neighbors’ children are schooled because we want to live in a society where people are literate, obey the law and respect each other’s rights without having to be forced or intimidated into doing so. So some level of cognitive and moral development through schooling is a collective interest of all citizens. But the market view assumes that these neighborhood effects of schooling can be traced to a few isolated parts of a school’s policies — courses that teach the three-Rs are most often mentioned, sometimes with a civics course thrown in. These parts of a school’s curriculum are properly subject to state regulation.

But only on a very narrow understanding of our democratic interest in moral education can that interest be satisfied by a universal literacy requirement and a required civics course. The neighborhood effects of moral education are not exhausted after my neighbors’ children learn reading, writing, arithmetic, and their constitutional rights and duties as Americans. Yet the logic of individual parental or “consumer” sovereignty over schools depends upon the assumption that the collective democratic interest in moral education is reducible to a few centrally enforceable requirements. If our collective interest implicates most aspects of our educational practices, including (perhaps above all) the way children are distributed among schools, then the realm of entrepreneurial control and consumer choice must be narrowed to the point of challenging the first principle of market control. The principled case for maximizing individual parental choice and private control over schools collapses once we re-

ject the premise that the interest in and responsibility for elementary and secondary schooling rests exclusively, or primarily, with parents.

We need not claim that society has a greater interest in the moral education of children than do parents. But parents command a domain other than schools in which they can (and should) mold the moral character of their children and teach them moral principles. The discretionary domain for moral education within a democratic society. And the existence of this domain of parental discretion provides a defense against those who claim that public schooling is a form of democratic tyranny over the mind. The risks of democratic and parental tyranny over moral education are reduced by providing two substantially separate domains of control over moral education.

With the possible exception of the mass media, public schools are the only institutions by which deliberate democratic control can be exercised over the moral development of future citizens. The case for decentralizing control over moral education is strong. Centralized control concentrates too much power in the hands of bureaucratic authority, thereby precluding effective democratic control, and underestimates the positive moral benefits of diversity among educational programs afforded by local democratic control. But the most powerful arguments in favor of diversifying moral education and limiting the power of any centralized authority are not based upon the principle of market control but rather on the value of pluralism insofar as it enriches the lives and expands the choices of citizens. To reap the benefits of diversity, however, children must be taught to understand ways of life different from their parents and to respect people with whom their parents would not (otherwise) choose to associate. The pluralism of a market in which all children are taught the gospel according to their parents is superficial. Its internal variety serves as little more than an ornament for onlookers, not as a sufficient basis on which to build a flourishing democratic society.

Some proponents of vouchers move further towards recognizing the extent of our collective democratic interest in moral education and therefore advocate tougher accrediting standards and more governmental regulation of voucher schools. John Coons and Stephen Sugarman, for example, argue that voucher schools should be required by government to be non-discriminatory in their admissions policies and they also consider, although they ultimately do not recommend, a

governmental ban on teaching racism within accredited voucher schools.<sup>32</sup> But even their maximally constrained market plan falls far short of what is democratically desirable. Governmental restrictions on voucher schools are justified in order to meet requirements — to guarantee individual rights to equal consideration, due process and other judicially protectable interests. But there is no reason to assume that these constitutional protections will satisfy the legitimate interests or preferences of a democratic community with regard to moral education within schools. Having acknowledged that there are extensive neighborhood effects of moral education within schools, voucher proponents cannot convincingly defend the principle of consumer sovereignty against that of democratic control over neighborhood schools.

Coons and Sugarman criticize the principled market defense of vouchers and argue instead that voucher plans will result in the best education for children because parents are the best protectors of the educational needs and interests of children. Giving parents more effective freedom to choose among schools will bring about the closest possible fit between the interests that democratic citizens have in the education of children, particularly in their moral education. To accept the idea that democratic societies should try to satisfy each child's particular educational needs and interest (to some degree) may commit us to providing much greater variety within or among public schools than now exists. But it is not a good reason to forsake the educational interests that democratic citizens collectively have in children. This argument against vouchers is quite independent of the more common criticism, which is in practice if not in theory unfalsifiable: that the particular educational interests of children can be served best not by expanding parental choice among private schools, but by offering a greater variety of options within and among public ones. The interests of not only children and their parents but of citizens count on a democratic view of moral education.

### III. THE LIMITS OF DEMOCRATIC CONTROL

To expose more of the theoretical ground upon which a democratic position is built, let us suppose that we have found a nondemocratically elected educational authority

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32. COONS AND SUGARMAN, *EDUCATION BY CHOICE: THE CASE FOR FAMILY CONTROL* 101-30 (1978).

committed to instituting the best available program of moral education in our schools according to the most philosophically acceptable set of moralist principles.<sup>33</sup> I shall call this authority the Moralist Teachers Union, "MTU" for short. The MTU reliably determines school policies according to what is known to be most effective in developing the highest moral character. The justification for their authority is that a well-ordered democracy requires citizens of the highest moral character.

This justification of nondemocratic control over moral education has two serious problems from a democratic perspective. First, in order to create citizens capable of democratic self-government, the MTU removes one of the most important political decisions from democratic control: how future generations of citizens will be educated in public schools. Second, by using nondemocratic means for achieving the capacity for self-government, the MTU teaches a lesson incompatible with the democratic principle upon which its authority supposedly rests: the lesson that democratic citizens cannot be relied upon to govern themselves unless they have first been governed by, and then defer to, educators who are not democratically accountable. The education of citizens who support democratic self-government thus stands as strong counter-evidence to their democratic convictions. And there is no consistent resolution of the problems raised by schools controlled by the MTU as long as one accepts the premise upon which the MTU is founded. Moralists must either dispense with the democratic rationale for moral education or with the assumption that the most legitimate educational authority is one that is most likely to implement their favored program of moral education within schools.

Let us now retain the democratic rationale and dispense with the claim that the most justified educational authority is the one most likely to implement a particular moralist program. This is not a difficult choice in any case once we drop the two implausible empirical assumptions adopted only in order to refine our criticism of moralism: (1) that educators know which program of moral education best develops moral character, and (2) that an unaccountable authority can be relied upon to institute such a program. Having dispensed with these assumptions, the democratic rationale for moralism provides a forceful critique of those who would deny the le-

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33. We must assume here also that local democratic majorities are not so committed.

gitimacy of democratic control over the practices of moral education within public schools on the grounds that these programs do not conform to their moralist standards. To deny any democratic authority over schools is to undermine the democratic goals towards which moral education ought to be directed.

Once we realize that the independent philosophical justifications of most educational programs are not sufficiently strong or determinate to override the actual disagreements among citizens or to justify excluding other programs from schools regardless of democratic choice, then conservatives and liberals alike, so long as they wish to remain democrats, have no better alternative than to endorse a fair procedure of choosing among programs of moral education. The procedure itself has educational value, and although it does not guarantee that the best educational policies in every instance, no nondemocratic authority can promise in principle or in practice better results on the whole.

The qualification of fairness in the process of democratic decisionmaking is important. It sets limits on the policies that democratic majorities can legitimately enact and thereby opens up the possibility of granting courts the authority to override majoritarian decisions in the name of democracy itself. But before claiming that a certain educational program is an illegitimate exercise of democratic authority, courts must demonstrate that the policy is (in intent or effect) politically repressive rather than simply incorrect on liberal or conservative moralist grounds.<sup>34</sup>

### A. *Banning Books*

Most liberals view the conservative policy of banning books from school libraries and classrooms as not only incorrect but also as an illegitimate use of local democratic authority. We are rightly offended by the decision by the Board of Education of Island Trees Union Free School District to remove *Soul on Ice*, *The Fixer*, *Slaughterhouse Five*, *Black Boy*, and

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34. Because the effects of educational policies are often impossible to discern and, even if possible, discernible too late, "intent" is a necessary standard for courts to apply. Because we want to rule out educational policies motivated solely by the intent to repress, it is a desirable (even if not necessary) standard as well. For a defense and clarification of proper judicial use of the standard of motivation or intent, see J. ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW*, 136-170 (1980).

other respectable literature from the school library.<sup>35</sup> We may recognize that the Board's intention is to lay the foundation of human decency and patriotism by banning these books. Yet we can still criticize their attempt to achieve this end by shielding students from understanding why some people use indecent language, hold radical political views, and break laws. These understandings constitute an important part of what it means to be a well-informed democratic citizen.

But this criticism of book banning cannot simply be translated into a political position denying local school boards the authority to ban any books of "redeeming social value." Our position on democratic control over school libraries and classrooms is not of a piece with that which properly denies majorities the right to restrict free speech for adults. The same critics who deny local school boards authority to ban books admit that librarians have the authority to select books according to what they think is most educationally suitable for students, and many also argue that children may be barred from buying pornographic books and viewing pornographic movies that adults have a constitutional right to read and see. Majorities may be unwise to pass more restrictive speech policies for children and adolescents, but they are acting within the range of legitimate discretion given our educational aims with regard to children, our incomplete knowledge of how to achieve those aims, and our commitment to democratic control over education.

The legitimacy, as distinguished from the correctness or wisdom, of book banning by local school boards ought to be judged by the principle of non-repression that protects the foundations of democratic politics. The politics by which books are banned must not restrict consideration of competing conceptions of the *good* life and the *good* society. The ban on political repression protects democracy against itself. It prevents majorities from violating the existing rules of the democratic process or from damaging the process in the future by destroying "institutions and practices that guarantee the democratic character of the popular will: assembly, debate, elections, and so on."<sup>36</sup> With regard to education, the conditions of political nonrepression include access within

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35. See *Pico v. Board of Education, Island Trees Union Free School District No. 26*, 638 F.2d 404 (1980).

36. Walzer, *Philosophy and Democracy*, 9 *POLITICAL THEORY*, 384 (1981).



schools to the spectrum of *reasonable* political views represented by the adult citizenry.<sup>37</sup>

School board decisions to ban books are thus properly overturned on the basis of the principle of nonrepression if they were made or applied in an "erratic, arbitrary and free-wheeling manner."<sup>38</sup> For example, a school board bans the books listed above and several others for "the use of profanities and obscenities, for explicit sexual allusions, depictions of deviant sex, the glorification of sex and drugs, ungrammatical usage, and excerpts offensive to racial, religious or ethnic groups." But they permit other books that fall into these categories to remain in school libraries and to be used in the classroom, thereby leaving librarians and teachers without guidelines for exercising their residual authority.

Inconsistency in applying their explicit policy against obscene literature may be partial evidence that the intent of the school board's policy is politically repressive. Additional evidence to support a change of political repression would be the fact that the selective list of banned books represents only one end of the spectrum of political ideas in the United States. Although school boards standardly deny any intention of being politically repressive, their actions often speak more reliably than their words. If they are granted the authority to ban all books that advocate or sympathetically portray a particular political point of view — whether it be communist or conservative, Democratic or Republican — then they will have the power to undermine the educational foundations of future democratic politics.

Although there are good reasons on democratic grounds for overturning some school board decisions to ban books, these reasons do not preclude the possibility of legitimate decisions to ban books so long as fair democratic procedures are used to arrive at the policies, they are consistently applied, and they do not have the intent or effect of repressing particular political ideologies. If a book banning policy against certain categories of books can meet these criteria, then we can consistently criticize a school board's decision while recognizing its democratic "right to be wrong." Kurt Vonnegut,

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37. The qualification of "reasonable" rules out any obligation of democratic schools to consider political views that lie beyond the pale of moral and intellectual respectability. But it also requires that discretion be exercised in applying the nonrepression standard such that "reasonable" is not identified with "correct," but rather with "views worthy of consideration."

38. *Pico v. Island Trees*, 638 F.2d 404, 416 (1980).

whose books are among the most commonly banned by local boards, has recognized this distinction between rightness and legitimacy:

After I have said all this, I am sure you are still ready to respond, in effect, 'Yes, yes — but it still remains our right and our responsibility to decide what books our children are going to be made to read in our community.' This is surely so. But it is also true that if you exercise that right and fulfill that responsibility in an ignorant, harsh, unAmerican manner, then people are entitled to call you bad citizens and fools. Even your own children are entitled to call you that.<sup>39</sup>

The distinction between rightness and legitimacy is important to preserve as long as we wish to defend a sphere of democratic authority over moral education on other than strictly instrumentalist grounds.

### B. *Teaching Creationism*

Can a school board legitimately mandate balanced treatment of creationism and evolution within high school biology classes? Democratic communities have a broad range of authority to determine what children learn in school. But does that authority extend to determining what theories teachers must treat as intellectually respectable within their classrooms?

Democratic authority over teachers certainly extends as far as setting their qualification for office. No single set of skills and credentials are dictated by democratic values, although some qualifications — race and religion for example — are ruled out by the principle of nondiscrimination in the distribution of office.<sup>40</sup> Once having hired teachers, school boards relinquish some control over what happens in classrooms by virtue of their contractual agreements. Contracts may guarantee "academic freedom" if teachers have a sufficiently strong and committed union to negotiate contracts guaranteeing it. But democratic principles alone do not require granting primary and secondary school teachers a right to academic freedom.<sup>41</sup> This right — to scholarly discretion

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39. *Books Into Ashes*, New York Times, Sunday, February 7, 1982, (News of the Week in Review).

40. For a democratic defense of nondiscrimination as it applies to offices generally, see M. WALZER, *SPHERES OF JUSTICE* (1983).

41. See Goldstein, *The Asserted Constitutional Right of Public School*

in teaching — should be constitutionally guaranteed within colleges and universities that are dedicated to liberal education.<sup>42</sup> But unlike liberal universities, democratic schools have as one of their primary functions the transmission of democratic, and democratically chosen, values and knowledge to future citizens.

Is it then within the legitimate authority of a democratic community to insist that biology teachers teach creationism in addition to, or instead of, evolution within their public schools? Suppose all citizens in a democracy shared a similar religious conviction against scientific knowledge, a conviction which consistently viewed all scientific theories that conflicted with divine revelation as mistaken. Teaching creationism as an alternative to evolution might be compatible with their democratic standards. Or suppose that a democratic majority in a Southern community passed a law requiring all history teachers in public schools to give balanced treatment to a "Southern" interpretation of Reconstruction (one not favored by professional historians) on the grounds that the favored theories denigrate the South and reflect a Northern intellectual bias. Again, this community might be acting within its legitimate democratic authority, although perhaps unwisely.

But the policy of balanced treatment for creationism is more problematic on democratic grounds than either of these hypothetical policies. Unlike citizens of the sectarian society, Americans do not share a similar religious conviction against accepting the canons of scientific knowledge and inquiry. Quite the contrary, our ability to agree upon what constitutes a valuable body of knowledge about the physical world to be transmitted to future generations depends in significant measure upon widespread acceptance of secular and scientific standards of inquiry, evidence and verification. The fundamentalist religions that reject evolution as a valid scien-

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*Teachers to Determine What They Teach*, 124 U. PA. L. REV. 1293, 1357 (1976); and Estreicher, *Schoolbooks, School Boards, and the Constitution*, 80 COLUM. L. REV., 1092-1124 (1980).

42. I make an argument for academic freedom in liberal universities in *Is Freedom Academic?: The Relative Autonomy of Universities in a Liberal Democracy*, in NOMOS XXV: LIBERAL DEMOCRACY, in (J. Chapman and J. Pennock eds. 1983). See also ACADEMIC FREEDOM: THE SCHOLAR'S PLACE IN MODERN SOCIETY, (H. Baade and R. Everett eds. 1964); Dobbs Ferry, N.Y.: Oceana Publications, 1964; and ACADEMIC FREEDOM AND TENURE: A HANDBOOK OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, (L. Joughin ed. 1967).

tific theory also reject (as they must) the scientific standards that clearly make evolution superior as a theory to creationism.<sup>43</sup> In doing so, they leave no common intellectual assumptions among democratic citizens about knowledge that is worthy of passing on to future citizens. So, while it is true that scientific standards are not "neutral" among all religious beliefs, they are uniquely suited in our society to promoting the democratic value of a common education for citizenship.<sup>44</sup>

Were those who believe in creationism correct in their claim that evolution is a religious tenet like their own, only a false one and falsifiable on their own religious grounds, we would lack a common intellectual ground upon which to share in collectively educating our children for citizenship. We might then open public school doors to the democratic establishment of religion within the classroom. But once those doors are open, children whose parents do not share the established religious view will leave. Or if they remain, they will be taught that their parents' religious faith (or lack thereof) is incompatible with the education of democratic citizens. So, although the immediate effects of a policy of balanced time for creationism may be innocuous, the reasoning that justifies the introduction of a controversial and essentially religious view into public school classrooms has the potential for undermining the sole, secular basis of a common democratic education.

The Southern community that disputes the professional historians' favored account of Reconstruction is also likely to provoke controversy, but the controversy over historical interpretation is not likely to be as divisive as controversies rooted in religious conviction. Democratic communities are not in principle bound to teach the "truth," although the wisest communities will strive to do so, but they must be bound *not* to teach doctrines that threaten to undermine the future prospect of a common democratic education. The constitutional prohibition against the establishment of religion creates such a negative boundary, which is subsumable under the more general democratic standard of nonrepression. To

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43. For a discussion of those standards and the grounds upon which they are rejected by proponents of creationism, see *Creationism in Schools: The Decision in McLean versus the Arkansas Board of Education*, 215 SCIENCE, 934-943 (1982).

44. Their suitability rests in part on the fact that most religious groups have found a way of reconciling the particular tenets of their faith with the more universally acceptable tenets and discoveries of scientific inquiry.

the extent it is possible, democratic majorities must be prevented from extending their idea of moral education beyond the limits compatible with a common democratic morality. This possibility decreases with the increasing insistence by fundamentalists that their conception of moral education is incompatible with scientific standards and that science therefore must be taught as religion, and religion as science.<sup>45</sup>

The logic of the fundamentalist position would permit democratic establishment of their view of creation as the true "science" or, more accurately, the true religion within public schools.<sup>46</sup> Once one accepts the view that a belief in creationism based on religious faith cannot be differentiated from a belief in evolution based upon scientific method, then one is committed to allowing majorities to decide the system of beliefs that should be taught in schools. In a religiously pluralistic society, this failure to differentiate between a sectarian and secularly based curriculum is bound to discredit public school in the eyes of those citizens whose religious views are offended by the established curriculum and to discourage the creation and perpetuation of shared intellectual standards among citizens. Our choice is between the disestablishment of religion within public schools and the *de facto*, if not *de jure*, disestablishment of democratic schools.<sup>47</sup>

### C. Levels of Control

I have argued that democratic citizens in a religiously diverse society have a legitimate interest in teaching children a common, secular social morality; that democracy is, within certain limits, the proper means for determining that morality; and public schools the major public institutions for teach-

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45. See statements by Henry Morris and Duane Gish, director and associate director of the Institute for Creation Research that neither evolution nor creationism is a science. See Lewin, *WHERE IS THE SCIENCE IN CREATION SCIENCE?*, 215 *SCIENCE*, 142-146 (1982).

46. Although their most recent demand is for balanced, not exclusive, treatment of creationism in biology classes, the arguments they use to establish their democratic right to require balanced treatment would also permit exclusive treatment were a democratic majority to demand it. For an argument rebutting the charge by creationists of the moral bias in evolutionary theory, see Stairs, *The Case Against Creationism*, 2 *QQ: REPORT FROM THE CENTER FOR PHILOSOPHY AND PUBLIC POLICY*, UNIVERSITY OF MARYLAND, 9-11 (1982).

47. For the rationale for the disestablishment of religion upon which I rely, see Thompson, *Reasoning, Religion and the Court*, in *PUBLIC POLICY*, 358-392 (1967).

ing it. But *which* democratic majority should determine school policy on moral education for a large society like the United States?

Imagine a small, democratic city-state with no political subdivisions but substantial differences of opinion among its citizens on religious and political issues. Something like a modern New England town turned into an independent city-state. This city-state has a particular identity: its own language, literacy and cultural idols, national holidays and games, honors and taboos. Part of the social identity of its citizens, an important part, is based upon this culture. Since it is a democratic culture, their national identity is shared, not exclusive to or differentiated among classes, religions, or races. Yet national identity only partially accounts for the identity of citizens. They also are members of subcultures, religious, occupational, familial and friendship groups. In short, they are people with a plurality of social identifications and identities. What do democratic standards or moral education demand in the schools of such a state?

The schools of this city-state are responsible for teaching the common culture, recognizing the value of subcultures, and encouraging the cultivation of individual identities. The common culture consists of ideas and practices particular to this city-state and ones essential to any democratic society: religious and political toleration, an obligation to obey democratically enacted laws, and a respect for the dignity of all persons. We cannot make a corresponding list of particular values and practices, but these also are democratically instituted within schools in order that they remain part of a common democratic culture.

Democratic control over public schools is the primary means by which this democratic society preserves or changes the particular ideas and practices of its culture. But there are limits upon what a democratic majority or their elected representatives on the school board may do. These limits are determined by the democratic purposes of public schools and enforced by a judicial body that reviews policies alleged to violate the democratic principle of nonrepression. Democratic politics both empowers and constrains the authority of a democratic community over moral education. In a very small city-state, one school board is responsible for all democratic decisions concerning moral education. The authority of the adult community acting democratically is final except in cases where their policies violate standards that underlie their own claim to sovereignty.

Because our imaginary city-state is so small, democratic control can be effective, and the effects of democratic decisionmaking significant. Members of the school board are held accountable for their policies by voters. Voters have relatively easy access to information about the school board's policies and how the schools are run on the basis of those policies. Policies are likely to make a difference in how schools are run.

We introduce a new set of problems when we expand the size of our imaginary democratic society and its school system beyond what one school board can effectively control and still be effectively controlled by voters. Now, in addition to asking how much control a democratic majority should have over moral education, we must also ask how democratic authority should be apportioned among national, state, county and local levels, assuming that at each level the educational authority is either democratically elected or accountable to a majority of voters through an elected official or legislature.

In our imaginary city-state, the same elected officials who set the moral standards of public schooling could also determine the programs implementing those standards, oversee their implementation and be held accountable electorally for the success or failure of their conception and programs of moral education. The lines of control over moral education must be more complex and electoral accountability more attenuated in a larger society. At one extreme, delegating to local school boards full control over moral education would reduce the United States to a collection of democratic city-states, totally neglecting our collective interest in a common moral education. At the other extreme, centralizing all control at the national level would eliminate any effective democratic control over moral education in local schools, leaving bureaucrats, administrators and teachers in *de facto* control. A national electoral majority would have a very hard time figuring out how to hold their elected representatives responsible for school policies implemented at the local level. Local democratic control has the advantages of making control more effective and permitting the content of moral education to vary, as it should, with local circumstances and local democratic preferences. And the more effective control citizens have over school policies, the more likely they are to support them. Another, general advantage from the perspective of democratic theory is that local control facilitates the participation of citizens in political activities beyond the simple act of voting.

But to make local control over moral education consistent with a common moral education, the policies of local school boards must be subject to some national standards: standards that are essential to any good democratic society and ones that serve to unite and distinguish us from other democratic societies. These are appropriately subject to democratic determination on the national level, although the former are constitutionally constrained while the latter are not. Once these standards are determined, local school boards are free to decide how to implement them and what further standards to set. Say, for example, that by federal law all schools are required to teach children the English language, American history, their constitutional rights and obligations, and to observe national holidays. States may add requirements of their own: that state holidays be celebrated, state history be taught, that one of several texts be used to teach a particular subject, and other requirements supported by a legislative majority. Local school boards are then bound to make school policies that fulfill both national and state standards as well as their own. But few of these standards dictate only one particular educational policy, nor do they together exhaust the scope of policies relevant to moral education within schools. So local school boards retain substantial control and freedom to exercise their discretion over moral education within their school districts, subject to electoral authorization and accountability. Local implementation of centrally determined democratic standards makes diversity of moral education possible without destroying the moral unity of a democratic society. To preserve the benefits of local control, school districts must be kept small enough for effective democratic control to be possible.

#### D. *Private Schools*

I have spoken so far only of moral education in public schools. What control, if any, may a democratic government exercise over moral education in private schools? An apparent tension exists between the democratic rationale for permitting private schools to exist and the justification for democratic control over moral education in public schools. We want to permit children whose parents are intensely dissatisfied with public schools to go elsewhere, but we also want to teach them a common morality. Yet despite the great distributive injustices of our present public school system, the greatest source of parental dissatisfaction with public schools is



moral education (or the perceived lack of it).<sup>48</sup> Having sanctioned a private school sector on the grounds that dissenting parents should be permitted the option of exiting from public schools, we cannot apply the same standards to private schools without taking away with one legislative hand what the other granted. But neither can we justify exempting private schools from all standards once we recognize our democratic interest in moral education. To resolve this conflict, we must find a way of combining private control over moral education with some common democratic standards.

There are no doubt several ways of institutionalizing such an accommodation. I suggest only one to indicate that the conflict between private and public conceptions of moral education can be diminished even if it may never be overcome in a pluralist democracy. Of the two sets of national standards controlling local public schools, the first set — those essential to any democratic society — should bind both public and private schools. The limits of dissent from democratic moral education are reasonably set by the moral standards that any diverse democratic society would want to teach all its citizens: tolerance, respect for the rights of others, a common language, etc. But these standards, which might be considered constitutional, would leave private schools considerably freer than public ones to devise their own programs or moral education and to respond, if they wish, to parental demand for religious or other kinds of moral education unavailable within public schools. In designing programs to implement constitutional standards, private schools are not bound by the decisions of local school boards. In addition, private schools need not be constrained by those non-constitutional standards binding all public schools. On this accommodation, private schools would be subject to fewer standards and would be freer to determine how to implement those standards to which they are subject.

What are the likely consequences of accepting this limitation upon democratic control over moral education in schools? A lot depends upon one's estimation of how many parents would choose private over public schools for their children once the educational injustices in our society are overcome. If private schools remain largely self-supporting and public schools are better and more equitably financed, it is reasonable to believe that the exit option will be less attractive than it now is. We would then expect parents who choose

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48. Survey reported in PHI DELTA KAPPA, (October 1976).

private over public schools for their children to be more critical of moral education in public schools than are parents today who use (or seek) the exit option. Committed democrats who recognize the practical as well as the moral limits of imposing majoritarian standards upon intense minorities should accept an accommodation of private schooling along these lines. Any attempt to impose the public school's standards or moral education upon children when those standards are radically at odds with what they are taught at home is more likely to galvanize opposition among parents than it is to convert children away from the intensely held moral views of their parents.

It is a short step from here to an argument in favor of exempting children who attend public schools from required practices, such as saluting the flag, that offend the fundamental religious or moral beliefs of their parents. If public schools do not permit such exemptions, they are likely to drive more parents to enroll their children in private schools, where they will be even less exposed to the common democratic standards of moral education.

This defense of accommodating moral dissent in public schools is not based upon a right of free exercise of religion or speech for dissenting parents or their children, but rather upon a consideration of the adverse consequences of nonaccommodation. One need not assume that young children have a right to demand that schools respect their moral convictions or that parents have a right to control the moral education of their children in schools to advance such an argument in favor of permitting internal dissent from many of the practices of moral education in public schools.

But as children mature, the paternalistic ground for denying them the same free exercise rights as adults gradually erodes, and then democratic schools should *as a matter of principle* respect their preferences unless they interfere with the democratic education of others or severely limit their own future opportunities as democratic citizens. The conscientious refusal to salute the flag by adolescent Jehovah's Witnesses ought to be respected by democratic schools whereas a religious claim by Amish adolescents to quit school after eighth grade might legitimately be denied. Permitting (within these limits) conscientious dissent from their practices of moral education enables public schools to offer a valuable lesson in the democratic toleration, and also helps them retain the allegiance of dissenting minorities. The private school sector provides the exit option for intense dissenters as well

as an incentive for public schools to become more tolerant of internal dissent without being (in some cases) morally or legally obligated to do so.

I have argued that parents do not have a moral right to prevent their children from being taught otherwise intellectually sound theories because they are contrary to the tenets of their religious faith. I have also suggested that our constitutional provision against the establishment of religion, at least in its application to public schooling, is essential largely because, like most democratic societies, we are deeply divided along religious lines. Were we a society with a common religion or a common denominator of religious beliefs, democratic public schools could legitimately teach them. For a large part of American history, belief in God appeared to be such a common denominator. This is no longer the case, and public schools must now respect the beliefs of nontheistic parents in order to retain their allegiance to public schooling.

Where the public school system in the United States should now draw the line in distinguishing moral from religious education is a very difficult issue. But a democratic theory of moral education does suggest that if no line is drawn, democratic schooling will be destroyed. And if the line is drawn barring all deliberate programs of moral education from public schools, an essential democratic interest in public education will be undermined. The fact that all programs of moral education are controversial is not sufficient grounds for excluding them from public schools. Democracies were designed to deal with controversial moral issues, and many of the controversial issues of moral education are properly subject to democratic control. Our collective democratic interest in the moral education of citizens is simply too great to be delegated to parents, teachers, administrators, and judges.