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## ABSTRACT

Citizenship education is a major purpose of schools. What this entails, however, is highly disputable. Recently scholars have suggested that schools should teach and model citizenship values and principles that emphasize freedom of expression, the exclusion of religion from public spheres, and equal protection. These scholars support their conclusions with opinions written by the Supreme Court. This paper addresses the lack of balance these scholars bring to the debate about democratic values evinced in the United States Constitution and Supreme Court opinions. The paper suggests that educators should be wary of teaching one set of values to the neglect of others. More importantly, it argues that citizenship education is not about teaching the "right" values but about teaching the totality of democratic values and the conflicting and competing nature of these values along with the knowledge and attitudes citizenship participation entails. Contains 22 references. (Author/BT)

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Conceptions of Democratic Citizenship in Supreme Court Cases

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### Abstract

Citizenship education is a major purpose of schools. What this entails, however, is highly disputable. Recent scholars have suggested that schools should teach and model citizenship values and principles which emphasize freedom of expression, the exclusion of religion from public spheres, and equal protection. These scholars support their conclusions with opinions written by the Supreme Court. This paper addresses the lack of balance these authors bring to the debate about democratic values evinced in the U.S. Constitution and Supreme Court opinions. It suggests that educators should be wary of teaching one set of values to the neglect of others. More importantly, it argues that citizenship education is not about teaching the "right" values but about teaching the totality of democratic values and the conflicting and competing nature of these values along with the knowledge and attitudes citizenship participation entails.

### Conceptions of Democratic Citizenship in Supreme Court Cases

This paper examines how the Supreme Court has addressed Constitutional values and principles and applied them in cases of conflict over school practices. By relying on the Court's opinions, we do not suggest that it should be the final arbiter of the "right balance" of opinions on democratic values in society. A review of decisions such as Scott v. Sandford (1857) or Plessy v. Ferguson (1896) and their arguments would quickly disabuse anyone of that notion. Rather, the Court's majority and dissenting arguments illuminate and emphasize the conflicting nature of Constitutional value claims made by some of America's most erudite and articulate citizens.

Dayton and Glickman (1994) suggested that "[i]ndividuals are not born with an understanding of the values of democracy. [And thus, e]ducation in democratic ideals and processes is required" (p. 64). Interest in citizenship education has been noted by other scholars (Connell & McKenzie, 1995; Kaltsounis, 1994; Lendler, 1995; Sears, 1994; Yankelovich, 1991). Indeed, for centuries educational philosophers have advocated training in citizenship as an appropriate purpose of education. In Saunders (trans., 1981) for example, Aristotle described education as the "most important" safeguard "to maintain constitutional stability" whether in democracies or oligarchies (p. 331); and Dewey's classical treatment, Democracy and Education, is relevant for citizenship education in American public schools. Moreover, more research and rationale building in citizenship education by Donald Oliver and his students have added immensely to our understanding of what citizenship education should entail and informs our conclusion here about what and how to teach democratic values and principles.

Dayton and Glickman (1994) adjure educators to teach, model, and practice democratic principles in public schools. Round this point, however, the debate enlivens as to the nature of the revered democratic principles and values which must be inculcated and how this is to be accomplished. This paper seeks to illuminate these issues, using Dayton's and Glickman's (1994) discussion as a point of departure, by focusing on selected

Supreme Court opinions. A sampling of Court cases considered include: Minersville School District v. Gobitis (1940); West Virginia State Board of Education v. Barnette (1943); Tinker v. Des Moines School District (1969); Bethel School District v. Frazer (1986); and Hazelwood v. Kuhlmeier (1988). An analysis of these selected Supreme Court decisions suggest that some highly desirable democratic values and principles were unattended by Dayton and Glickman, and thus were excluded from their discussion of appropriate citizenship education in our democratic society.

This paper highlights characteristics of American democracy that were not included in Dayton and Glickman's analysis. Initially, substantive Constitutional values and principles, freedom of religion and expression and equal protection, are discussed. Next, structural Constitutional values and principles such as the separation of powers and federalism are identified. Then, the importance of presenting a balanced view of the historical underpinnings of the Constitutional ideals and its relationship to citizenship understanding and practice is elaborated. Finally, a new conception of what citizenship education might include is offered.

#### Identifying Democratic Values and Principles: Lessons from the Court

The fact that our nation's earliest documents espouse the ideals of free expression, religious liberty, and equality is indisputable. The First and Fourteenth amendments to the Constitution as well as Jefferson's writings in the Declaration of Independence are explicit on these subjects. What is not as clear, however, is the degree to which the advocates of these democratic values and principles should predominate in the struggle with proponents of other competing, highly esteemed democratic values and principles in public school practices. Thus, an overriding concern with particular democratic notions precludes a more comprehensive evaluation of what public schools must teach, practice, and model to inculcate good citizenship.

Dayton and Glickman (1994) review three Constitutional principles: free expression, religious liberty, and equal protection. They point to specific Supreme Court opinions

which help to guide us in understanding what these ideals have come to mean for school practices. In the area of religious liberty for instance, the Court's opinions suggest that our public schools should be neutral towards religion and protect our "rights of religion" in the "private sphere" (p. 69). In practice, these assertions prohibit government from involvement in religion.

Religious Liberty Claims

A careful examination of Barnette (1943), however, demonstrates the fuzzy zone between public and private spheres of government intervention and the values implicit in public school requirements. Along with noting a Court precedent which allowed states to subject "dissidents to the general requirement of saluting the flag, as a measure conducive to the training of children in good citizenship", Justice Frankfurter dissenting in West Virginia State Board of Education v. Barnette (1943), described other majority opinions of the Court which exacted obedience to general rules of public approbation--in contravention to citizens' "deep religious scruples" (p. 655). These examples ranged from public schools' compulsory vaccination rules to the regulation of food inspections, arms bearing duties, obligations to testify, and mandatory medical aid (p. 655). Subjecting a student to a mandatory needle in the arm, one may presume, would rightly be identified as lying within the private sphere; the other examples, no less so.

The values implicit in these decisions are also Constitutionally sanctioned--promoting the general welfare, insuring domestic tranquillity, and providing for the common defense. These phrases should have a familiar ring; they are stated as ultimate goals of the American people in the preamble to the Constitution. While neglected in Dayton's and Glickman's piece, these values rank above those of religious liberty and tolerance of religious diversity, at least as applied in these cases. The more general point is that no Constitutional values, principles, or practices reign, in an absolute sense, above the others in any given situation, and that *the essence of citizenship education in our democracy is to*

*understand the nature of their competing claims to predominate in any one case and to embrace this inherent conflict as healthy.*

With this understanding in mind, students should learn to anticipate encountering disagreement with others and come to know that this is natural, and in fact inevitable as part of our democratic culture. Moreover, students will learn that active participation, at times, will most likely involve a certain level of conflict, debate, and compromise with other citizens. Thus, students should also learn that democratic participation will result in some measure of satisfaction and dissatisfaction but that both outcomes are legitimate in the constant interplay of conflicting value claims. This democratic citizenship orientation also eschews the pitfalls of idolizing either the Founder's writings or their personal motives and character, yet provides the knowledge and attitudes to realize the potential for achieving common purpose and goals in a democratic community. Furthermore, it should illuminate the role that different conceptions of the public good play in determining values claimed, proving a more realistic context in which to view Constitutional ideals and how they are applied in practice.

Free Expression Claims

In a Supreme Court decision requiring a student to salute the American flag, in spite of his religious convictions--and desired expression--the Court's majority upheld the Pennsylvania law (*Minersville School District v. Gobitis*, 1940). In writing for the majority, Justice Frankfurter asserted that the salute was a school practice meant to promote national cohesion; and furthermore, that national cohesion or unity, in turn, is the foundation for national security--"an interest inferior to none in the hierarchy of legal values" (p. 595). The American flag, the Court reasoned, is the symbol of all the democratic notions we cherish, for example "an emblem of freedom resting on consent of the governed...or the safety for free institutions against foreign aggression" (p. 596). The Court maintained that the flag, thus, "transcends all internal differences, however large, within the framework of the Constitution" (p. 596). A later Court ruling (*Barnette*, 1943)

overturned this decision, highlighting the volatility of value claims and their resolution in American democracy and the need for citizens to understand the continuous conflict inherent in them and to be equipped to meet the challenges this struggle entails.

Justice Black has also elaborated democratic values and principles which override free expression claims. He noted in *Tinker* (1969) that "[i]t is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases. Our court has decided precisely the opposite." (p. 522). He asserts that schools are employed by taxpayers to teach a particular curriculum which is not to be discarded at the whim of teachers or students. "A teacher is not paid to go into school and teach subjects the State does not hire him to teach as a part of its selected curriculum[; n]or are public school students to broadcast political or any other views to educate and inform the public" (p. 522). These admonitions encompass democratic values of respect for law, order, and discipline, and for the legitimacy of proper spheres of government control in accomplishing public purposes. Justice Black alludes to examples of student "rioting, property seizures, general destruction, school picketing, and student attacks on others, that have wrecked havoc at schools throughout the nation based on the controversy that surrounds the Vietnam War" (p. 525). These examples highlight that different, conflicting values such as achieving tranquillity or promoting the general welfare may reign above freedom of expression--if even in a minority of the Court's opinion. Furthermore, they describe a different context in which training to be a good citizen occurs--where school discipline and peaceful environs are paramount (p. 524).

Contrary to Dayton's and Glickman's emphasis, the Court's majority in *Bethel* (1986), speaking through Justice Burger, condemned free expression bereft of social acceptability. Emphasizing the general welfare of students at such a tender age, the Court declared that "[n]othing in the Constitution prohibits the states [public schools] from insisting that certain modes of expression are inappropriate and subject to sanction. The inculcation of these values is truly the 'work of the schools'" (p. 683). If the Constitution does not

prohibit such public school acts and the court extols their virtue, one may safely presume them to be revered above those explicitly stated and protected rights in the Bill of Rights, in various circumstances. The majority opinion in *Bethel* (1986) also described other precedents which exalted the Constitutional value of the general welfare (of American children) over free expression: removing books from public school libraries; precluding the sale of "sexually oriented material to the young"; and circumscribing indecent language in radio broadcasts "at a time when children were undoubtedly in the audience" (p. 685). The Court in this latter case opined that the "interest in order and morality" clearly outweigh the form of speech (p. 685). Finally, the Supreme Court in *Hazelwood* (1987) heralded Constitutional values and principles which stand in stark contrast to those of free expression. Justice White, writing for the majority, identified democratic values of or Constitutional protections against invasion of privacy, shielding young students from vulgar language, and the need to curb speech "that advocates drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with shared values of a civilized social order" (p. 272). The Court also maintained that citizens have the right to be confronted with charges--even made in a high school newspaper--for rebuttal, safeguarding the Constitutionally sanctioned value and principle of procedural due process fairness.

These Court pronouncements are weighty value claims against proponents of an expansive view of free expression--Congress [and the states after the passage of the Fourteenth Amendment and the establishment of the doctrine of selective incorporation] shall make no law...abridging the freedom of speech.... Clearly, free expression in many instances is not granted the most coveted position in school practice that Dayton and Glickman (1994) avidly propose. These Supreme Court opinions suggest that the role of public schools in teaching, modeling, and practicing democratic values and principles--citizenship education--may be to clarify the spectrum of Constitutional values and principles, to teach their inherent conflicting nature, and to instill in our young children a decent respect for the different purposes they serve.

Equal Protection Claims

Dayton and Glickman (1994) also extol Jefferson's dictum that "all men are created equal" and possess "unalienable rights to life, liberty and the pursuit of happiness" and the Constitution's principle of equal protection of the laws (p. 70-71). Citing the Court's decision in *Brown* (1954) that "public school segregation based on race denied children the equal protection of the laws" (p. 71), these scholars contend that the Court is especially wary of government action that affects "fundamental rights or suspect classes". Though the Court has not acknowledged education as a fundamental right (*Kadramas v. Dickinson Public Schools*, 487 U.S. 450 [1988] cited in La Morte, 1993, p. 82), African-Americans are a group the Court recognizes as having been accorded unequal treatment in the past. Thus, as a disadvantaged "similarly situated" group, they receive heightened Constitutional protections.

Interestingly however, children in our nation's schools do not receive similar status. Though they are "similarly situated" with respect to their political powerlessness, and at times mistreatment, children are not accorded the highest levels of Constitutional protection--equal protection of the laws applied with the strictest scrutiny. Equal protection of the law encompasses First Amendment free expression and religious liberty claims, and the Court has spoken to the precarious position of children with respect to these democratic ideals. Children's claims over public school policies and practices to free expression and religious liberty through the Fourteenth Amendment's equal protection clause have many times been subservient to other Constitutional value claims. As discussed earlier, Supreme Court decisions in *Gobitis* (1939), *Bethel* (1985), and *Hazelwood* (1987), have all exalted other Constitutional values and principles over these liberty claims--allegiance to country, national cohesion, a well ordered society, "attachment to the institutions" of democracy, respect for others' "sensibilities", rights to privacy, protection of children, and fair procedural due process. To emphasize otherwise,

is once again, to ignore Constitutional principles promoting the general welfare, insuring domestic tranquillity, or providing for the common defense.

The Tinker (1968) decision's aphorism that neither "teachers [n]or students shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (p. 506) may be true in some instances, but exceptions to this rule are omnipresent. These decisions demonstrate that no value claims are absolute nor are they applied absolutely. Our nation's young need to learn these lessons. Value conflict is the only absolute certainty in our Constitutional constellation of principles. Students must come to understand this notion to be effective citizens in American democracy and to orient themselves for the struggles that democratic living entails.

Constitutional Structures As Values and Principles

One of the most serious omissions in Dayton's and Glickman's propositions is the lack of attention afforded Constitutional structural principles and values. The well-known Constitutional principles of separation of powers and federalism are rooted in democratic values that many times oppose expansive views of free expression, religious liberty, or equal protection. The addition of the Bill of Rights, itself, was a compromise between cherished American values: local control over and protection from a too distant, central government against the need for a strong overarching authority and some degree of uniformity. Moreover, Constitutional structural principles have underlying values that oppose one another. For example, the preeminent position of the legislature, a bastion to protect the principle of majority rule and the value of majority sentiment, is countered by the courts, whose many roles encompass that of safeguarding minority interests in the name of the Constitution. And the role of the executive to promote administrative efficiency, itself a revered Constitutional value, conflicts with other's such as procedural fairness or deliberation. Furthermore, a federalist structure with national and state governments with separate spheres of influence and predominance, provides parochial

interests some measure of local control and greater flexibility and efficiency in administration..

Supreme Court cases are rife with examples of the conflicting nature of these principles and values and the lack of a clearly defined hierarchy of values to apply to any one case or all decisions in general. Justice Frankfurter (Gobitis, 1939) acknowledged the value of respecting local standards to promote national cohesion in public schools. Writing for the majority, he penned "[t]he precise issue...is whether the legislatures of the various states and the authorities in a thousand counties and school districts of this country are barred from determining the appropriateness of various means to evoke that unifying sentiment without which there can ultimately be no liberties, civil or religious" (p. 597). The Court's conclusion was that such decisions of "educational policy" were not theirs to make (p. 598). To hold otherwise, one might suspect, would usurp the power granted by the Constitution to the states in the Tenth Amendment.

In the same opinion, the Court suggested that "to the legislature no less than the courts is committed the guardianship of deeply-cherished liberties" (p. 600). And again, exalting yet another value, the consent of the governed, Frankfurter wrote that debating "the wise use of legislative authority in the forum of public opinion and before the legislative assemblies rather than to transfer such a contest to the judicial arena, seems to vindicate the self confidence of a free people" (p. 600).

These three examples illustrate highly revered Constitutional structural values and principles, which at times, conflict with those of free expression, religious liberty, and equal protection. Federalism, the separation of powers, legislative capacity for deliberation, and debate among the people ("a decent respect to the opinions of mankind"), all compete with other value and principle claims. If demonstrating these points from one case may not convince the reader of the veracity of the argument, then one need only turn to several others.

In *Bethel* (1986), Chief Justice Burger writing for the majority, exclaimed that "[n]othing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions" (p. 683). But in dissent, Justice Stevens asserted that the public schools punitive actions against the petitioner's speech were unconstitutional in light of the protections afforded by the First Amendment and the principles of fairness provided in the Due Process Clause of the Fourteenth Amendment (p. 693). In *Hazelwood* (1987), the Court's majority heralded the principle of federalism and the value of local control in stating that "the determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board...rather than with the federal courts" (p. 267). In this case too, the First Amendment claims were relegated to a status less prominent than other Constitutional values and principles.

*La Morte* (1993) identifies conflicting value claims within different states concerning the fees charged by public schools for relevant instructional purposes. He notes that "[a]lthough decisions in several states have denied the charging of fees for textbooks and for supplies, decisions in other states have taken an opposite view" (p. 81). California courts, for instance, declared the practice unconstitutional (*Hartzell v. Connell* 35 Cal. 3d 899 [1984]) while in North Dakota, federal courts upheld fees charged (pp. 81-82). Although the substance at issue in these cases is different, California's expansive interpretation of their state constitution's protections implied that North Dakota's transportation fees would not be acceptable in that state.

The evidence abounds in these cases to suggest that no particular Constitutional values, principles, or school practices are sacrosanct. All are subject to the competing claims made on them by well respected Constitutional adherents, and this is quite consistent with America's complex and conflict ridden system of Constitutional ideals. These lessons must be taught as part of an effective citizenship education.

### Recognizing Benefits and Costs in Constitutional Values and Principles

Dayton and Glickman (1994) identify positive "utilitarian, ethical, and egalitarian" consequences of adhering to Constitutional values, principles, and practices of religious neutrality, free expression, and equal protection. These scholars note the historical problems manifested when governments join with religion e.g., destruction of government, degradation of religion, civil unrest and wars, persecutions, and majority tyranny (p. 72). But a less apprehensive accommodation of all religions might result in greater mutual understanding among Americans, an acknowledgment of and respect for divergent belief systems, and a lessened level of distrust which government neutrality denies.

Interestingly, the utilitarian benefits some scholars associate with an open exchange of ideas--free expression--are thought to sidestep all the negative ramifications of government accommodations toward religion. According to Glickman and Dayton (1994), schools which hold an expansive view of free expression help our society avoid "political and creative stagnation"; promote "political, intellectual, and cultural advancement"; and provide "the best protections against threats to democracy" (p. 73). The Court has concluded, however, that this approach to free expression can also do much damage to the cherished Constitutional values of school discipline, safety, respect for others, national cohesion, and patriotism. Espousing the virtues of free expression and ignoring the same potential in providing a supportive environment for sharing religious convictions, while highlighting the vices of the latter and not the former does little to inform curriculum developers or to inculcate a healthy attitude toward citizenship in the minds of school children.

Moreover, a curriculum which promotes the principle of equal protection as ideal based on the goals of economic efficiency--creating more productive workers--or on that of personal gains in individual self concept, does little to illuminate conflicting but legitimate value claims. Proponents of economic efficiency might just as well suggest that busing students to schools across town, as a practice to achieve equal protection, costs

considerable sums of money and thus, reduces school administrative efficiency. Furthermore, the practice of busing to achieve racial equity may come at the personal cost of destroying communities within neighborhood schools or in geographic areas. The value of local control may also be sacrificed, as in the Brown (1954) decision's implementation, when the Supreme Court and federal courts required local school systems to develop redistricting plans commensurate with racial balance and with greater funding equity. Presenting students with a balanced view of benefits and costs associated with all revered Constitutional principles and practices is necessary to promote independent, thoughtful, and responsible citizenship.

#### Revisionist Interpretations of the Founders' and Constitutional Ideals

Much like an unbalanced promotion of the nature and sanctity of particular Constitutional values and principles, an overly idealistic historical appeal to these same ideals as well as to the motives of their founders, serves only to obscure the more accurate portrayal of events of the times and the interests involved. Scholars have suggested that the ideals articulated in the Constitution were not borne principally of utopian notions of liberty or idyllic purposes of "the people" (Bailyn, 1967; Beard, 1913; Szatmary, 1980;). In fact, some historians have labeled it the second revolution--a reaction to the licentious liberty of the first and the threat to property by mobocracy.

Beard (1913) concluded that economic interests of the founders as well as others at least partly motivated the process. Certainly, Shays's Rebellion provided evidence that the political, economic, and social order under the Articles of Confederation and unstable state regimes stimulated reformers to redress the balance necessary between democratic impulses and rights to liberty against the prerogatives of order, safety, and financial stability (Freer, 1988). Thus, teaching students particular values, without regard to the panoply of interests that lay behind them, while ignoring others which conflict with them does little to inculcate in children an appropriate or comprehensive citizenship education. A respectful yet accurate description of the multiplicity of motives and interests that lay

behind the adoption of America's Constitution and the Bill of Rights is a necessary component to nurse children towards the proper knowledge, skills, and attitudes toward democratic participation.

A "Time, Place, and Manner" for Conflict, Deliberation, and Public Judgment in  
Citizenship Education and Public Schools

Dayton and Glickman (1994) urge public schools to "model and promote the highest ideals of our Constitution and [to] inculcate these values of American democracy for the safe protection of succeeding generations" (p. 78). They celebrate, in particular, several of the most cherished in America's constitutional constellation: free expression, religious tolerance, and equal protection. The authors of this paper also have a bias toward the fullest expression of each of these values in our public schools and in our society. Our society recognizes, however, that proponents of these values and principles compete with other citizens who oftentimes promote equally accepted and highly desirable constitutional values and principles which are in conflict with the former. The task for public schools, then, is to infuse its curriculum with practices which inform students of the various conflicting and competing constitutional values and principles and to build lessons and activities around how those competing claims are appropriately dealt with and negotiated in our democracy.

Extolling a certain set of values or principles that are cherished above all others is not to educate children in the complexity and conflict democracy embodies nor the type of effective citizenship participation it requires. It is, rather, to indoctrinate students to embrace an unrealistic and inaccurate hierarchy of constitutional values and principles based on illusory democratic idealism. Engle (1968) elaborates this type of curriculum as one of three which informs the field of citizenship education. He concludes that this school of thought "conceives the social studies as that content (including myth as well as fact) by which budding young citizens may be indoctrinated with the "right" beliefs and attitudes believed to be necessary for the unity of the nation and the loyalty of her citizens" (p. 46).

While Engle was writing specifically to the efforts of groups such as the American Legion to inculcate in children the "right values" and the "right facts", and quite likely values and facts quite different from those that Dayton and Glickman (1994) suggest, the point is nonetheless applicable: "[t]he objective [in this perspective] of the social studies is to teach the student what to value, not how to choose from competing values" (p. 49).

Oliver (1968) has identified a dualistic curriculum approach that would both recognize the competing claims that our democratic heritage encompasses and yet impress students with a semblance of historical continuity, patriotism, and national unity. The first level he identifies would require students to "verbalize the general values in the American Creed and to experience a sense of identification with the nation that holds these values"

(p. 106). He suggests that this level would be most appropriately achieved in the elementary grades and contain "personalized narrative history of America, written by literary artists" (p. 107). The second level, presumably taught beyond the elementary years, would encompass controversial topics that would be open to debate, what Oliver (1968) describes as the "jurisprudential approach to citizenship education" (p. 109).

Oliver further describes this final stage as one which is characteristic of "the earnest use of free speech and open debate...not...in an atmosphere of academic calm, but rather in the midst of that heat and pressure which characterize fundamental societal disputes." (p. 110)

Providing an environment within public schools where students are required to identify competing constitutional value claims, argue for those they cherish, and understand the grounds upon which all claims are made is to inculcate what citizenship participation entails. It is also an opportunity to introduce competing value claims in a time, place, and manner conducive to deliberation and resolution.

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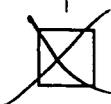
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