
Robert R. Verchick
ENGAGING THE SPECTRUM: CIVIC VIRTUE AND THE PROTECTION OF STUDENT VOICE IN SCHOOL-SPONSORED FORUMS

ROBERT R. VERCHICK

Listen:

— Slaughterhouse-Five

East Hazelwood High's school newspaper is not what it used to be. In 1988, the Supreme Court held that East Hazelwood's principal could excise two pages from Spectrum, the school newspaper, without violating the student reporters' rights of free speech. The censored pages included an article describing students' experiences with pregnancy and another article discussing the impact of divorce on East Hazelwood students. Although Spectrum's faculty adviser approved the stories, the principal feared they might invade the privacy of students and parents. He also believed the stories were "inappropriate" for student readers in their early teens. In a surprisingly broad holding, the Court announced that school authorities could exercise editorial control over the style and content of school-sponsored expressive activities as long as their actions were "reasonably related to pedagogical concerns."

The Hazelwood decision sent a disturbing message to high school students. By explicitly granting less constitutional protection in forums where students are most likely to have the attention of administrators, teachers and other students, the Court discouraged them from joining with one another to explore relevant social issues. Because classroom curricula are also "school-sponsored," the decision appeared to condone the existing trend of diminishing

* Associate Attorney, Riddell, Williams, Bullitt & Walkinshaw in Seattle, Washington; J.D. 1989, Harvard Law School; A.B. 1986, Stanford University. Many thanks to Martha Minow for her advice and encouragement on this article.

3. Id. at 263-64.
4. Id.
5. Id. at 273.
the range of ideas in student coursework through book censorship.\(^6\)

The broad mandate of Hazelwood has already sent a ripple effect through the public school systems. According to People of the American Way, a citizens' group committed to free speech, school censorship is on the rise. In 1989, the group reported 172 incidents of school censorship in 42 states.\(^7\) Federal courts have been asked to apply Hazelwood to resolve controversies involving textbook bans,\(^8\) underground newspapers,\(^9\) and even the choice of recruiters at a school's "Career Day."\(^10\)

In January, the war in the Persian Gulf sparked several new conflicts between student activities and school officials at home. At one high school outside of Pittsburgh, 150 students were suspended after walking out of classes to protest what they saw as their school's lack of attention to the war.\(^11\)

One way to see Hazelwood is as a shift in political tides. The Court's decision rose on a wave of popular support for a return to discipline, respect, and singular values in the classroom.\(^12\) But seen another way, the Hazelwood standard flows from a legal debate ill-suited for the protection of student speech or inquiry that occurs in group forums. While defenders of the school administration are willing to trade free inquiry and group discussion for symbols of order and tradition, proponents of student speech too often focus only on the right of an individual to flourish through self-examination and self-expression. Those who argue that encouraging individual free speech and inquiry prepares students for group democracy,\(^13\) appear more interested in developing tools for per-

---


10. Searcey v. Harris, 888 F.2d 1314 (11th Cir. 1989).


sonal deduction than on creating moments of group deliberation. Such justifications of student speech are bound in current conceptions of pluralist democracy.

This essay suggests a new justification for protecting student speech that specifically addresses the need for free expression and inquiry in school-sponsored forums. Starting with the proposition that student speech prepares one for self-government, I suggest we re-define the kind of self-government to which we ask students to aspire. By recasting our conception of democracy in a way that highlights universal participation and group transformation, we will find a theory of government much closer to the values of group discovery and social reform.

In order to teach students to grow as more civic-minded individuals — that is to say, people more devoted to improving society for all members — schools must treat speech differently. They must provide opportunities for students to examine issues together, to engage the spectrum of voices in their community, and to transcend individual understandings of any one issue. While encouraging students to exercise their voice, school officials must also learn to listen to the contributions they are encouraging their students to make. Schools, I suggest, can only promote civic virtue if they protect student communication within school-sponsored forums.

In Part I of this essay, I argue that the Supreme Court has traditionally viewed student speech cases as conflicts between the autonomy of an individual student and the authority of a community-based school. Tracing the evolution of the Court’s student speech doctrine, I suggest that the majority and dissenting opinions in these cases fall into one of two educational paradigms — what I call the Autonomy and Authority models. As a means of protecting student interests in communication and of promoting democratic education, neither model proves sufficient. Supporters of the Autonomy view concentrate too much on speech as a means to individual self-inquiry. They underemphasize the communal side of student development. Supporters of Authority do not give students enough room to explore the bounds of freedom and responsibility necessary in democratic society.

Part II offers an alternate way of interpreting student speech, which I call the Engagement model. This new perspective draws from the educational work of John Dewey, the more radical approaches of Henry Giroux and Peter McLaren, and from the newly revived political theories of civic republicanism. According to the Engagement view, student speech is the mechanism for group discovery and social transformation. As a means to these ends, student speech must include deliberative dialogue among students, teachers, and administrators.
In Part III, I examine the Supreme Court's most recent student speech case, *Hazelwood*, in view of the previous discussion. I suggest that *Hazelwood*'s sweeping treatment of school-sponsored speech indirectly results from the Court's method of balancing individual autonomy against community authority. I point out that, from the perspective of the Engagement model, the *Hazelwood* opinion threatens to undercut the kinds of student dialogue most important to democratic education. In the last section of Part III, I discuss what kinds of school restrictions on speech the Engagement model might permit, and suggest a more constructive way of resolving future disputes between schools and students.

I. AUTONOMY V. AUTHORITY

*The widow Douglas, she took me for her son and allowed that she would civlize me; but it was rough living in the house all the time... and so when I couldn't stand it no longer, I lit out.*

— The Adventures of Huckleberry Finn

It is, perhaps, very American to view disagreement with the social order as a conflict between individual autonomy and civilized authority. In *West Virginia State Board of Education v. Barnette*, Justice Jackson etched this dichotomy between autonomy and authority into the foundation stone of all future speech cases. Deciding whether the West Virginia State Board of Education could require a student to salute the flag against his religious beliefs, Jackson wrote, "[t]he sole conflict [in this case] is between the authority [of the state] and rights of the individual." On one hand, he weighed the interests of a school system endowed with the "important, delicate, and highly discretionary functions" of teaching young people. On the other hand, he recognized an individual student's right to be free from official prescriptions of political or religious orthodoxy. Holding the actions of the state board of education to a heightened standard of scrutiny, Justice Jackson, with the majority, sided with the student.

In the forty-seven years since *Barnette*, students and their parents have challenged a number of school policies that affect student speech, including a ban of student political protest, the removal of

15. 319 U.S. 624 (1943).
16. *Id.* at 630.
17. *Id.* at 637.
18. *Id.* at 642.
19. *Id.*
books from a school library,\textsuperscript{21} the punishment of student speech at a school assembly,\textsuperscript{22} and the censorship of a student-run school newspaper.\textsuperscript{23} In all of these controversies, the Court justified its results by appealing either to the interests of the individual or of the community. These appeals fall into two fairly well-defined categories, which I refer to as the Autonomy and Authority models. An examination of each reveals the shortcomings of the Court's current dialectic approach and suggests an alternate way of viewing free-speech disputes in the public schools.

\begin{enumerate}
\item[A. Autonomy]

At the heart of the Supreme Court's doctrine against school orthodoxy rests a strong presumption for individual autonomy. Often drawing from theories first developed in "adult" constitutional law, protectors of student rights in the orthodoxy cases gradually defined a student's interest in personal expression as an individual and fundamental right that is essential to democratic self-rule.

This conception of student autonomy developed in stages. The Supreme Court first protected students from orthodoxy in the early 1920s, just as the Court was beginning to recognize a relationship between individual autonomy and the ability to express ideas.\textsuperscript{24} In \textit{Meyer v. Nebraska}\textsuperscript{25} and \textit{Pierce v. Society of Sisters,}\textsuperscript{26} the Court struck down school policies that threatened to instill a system of common belief among students. The majority in \textit{Meyer} warned against unconstitutional attempts to "foster a homogeneous people."\textsuperscript{27} The Court in \textit{Pierce} emphasized the parents' interest in raising their young and warned that a child is not a "creature of the State."\textsuperscript{28} Both opinions relied exclusively on the "liberties" clause of the fourteenth amendment; yet the specific "liberty" protected

Vietnam War where conduct does not threaten material disruption of the educational mission).

\begin{itemize}
\item[21.] Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico, 457 U.S. 853 (1982) [hereinafter \textit{Pico}] (school may not remove books from school library simply because it dislikes the ideas such books contain).
\item[22.] Bethel School Dist. No. 403 v. Fraser, 478 U.S. 672 (1986) (upholding suspension of student for delivering a "loud and vulgar" speech at a school assembly).
\item[25.] 262 U.S. 390 (1923) (invalidating state laws that forbid the teaching of German to students).
\item[26.] 268 U.S. 510 (1925) (invalidating state laws that require all students to attend only public schools).
\item[27.] \textit{Meyer}, 262 U.S. at 402.
\item[28.] \textit{Pierce}, 268 U.S. at 534-35.
\end{itemize}
by these cases remained vague.  

_Barnette_ and _Tinker v. Des Moines Independent Community School District_, mark the second stage of the Court's development of student autonomy. The _Barnette_ decision gave needed substance and form to student autonomy. Recalling the holdings of _Meyer_ and _Pierce_, Justice Jackson, for the majority, wrote that the Constitution forbids the "compulsory unification of opinion." Yet, unlike either of these earlier opinions, Justice Jackson grounded this conclusion in the free speech and free exercise provisions of the first amendment.

Twenty-six years later, the Court in _Tinker_, invoked _Barnette_ to invalidate the suspension of three students who had protested the Vietnam War by wearing black armbands to class. For the _Tinker_ majority, the school's punishment of such political dissent was yet another attempt to transform students into "closed circuit recipients" of state-approved ideas. Yet, as some commentators have pointed out, _Tinker_ is more than a rote application of _Barnette_. The _Barnette_ decision protected students from being required to affirm state-approved ideas with which they disagreed. _Tinker_ guaranteed students an opportunity to actively dissent from those ideas. Perhaps even more striking, _Tinker_ assured students the right to select their own medium of non-disruptive dissent. After all, the school's narrow prohibition of armbands that was struck down by the Court, had actually allowed other forms of expressing dissent.

_Board of Education, Island Trees Union Free School District No. 26 v. Pico_, is the last case in which a majority of the Supreme Court sought to expand the free speech rights of students. In an unusually splintered opinion, the Court in _Pico_ held that local school boards may not remove books from the school library simply because they dislike the ideas those books contain. Justice Brennan, writing for the plurality, based the holding on the proscription

---

29. _Pierce_, 268 U.S. at 534-35; _Meyer_, 262 U.S. at 401. The Court relied on the fourteenth, rather than the first amendment, because the first amendment had not yet been applied to the states; _see_ Gitlow v. New York, 268 U.S. 652, 666 (1925) (Court stated that freedom of speech and of the press as secured by the Constitution is not an absolute right to speak without responsibility).


32. _Id._ at 641; _see_ Note, _supra_ note 13, at 497.


34. _Id._ at 511.

35. Note, _supra_ note 24, at 1810.

36. _Id._


38. _Id._ at 870-71.
against orthodoxy in school and on a student's first amendment right to receive ideas in the school library. Although many commentators have criticized Justice Brennan's discussion of a "right to ideas" as unnecessary and misguided, this rationale can be viewed as but another logical extension of the orthodoxy doctrine. In guaranteeing one's opportunity to actively dissent from school messages, the protection against orthodoxy must also provide access to dissenting ideas and an opportunity to evaluate them freely.

Together, the cases discussed above constitute a paradigm of student-speech theory devoted to the twin objectives of autonomy and citizenship. Justice Forta's declaration that students do not "shed their rights at the schoolhouse gate" resonates as a powerful anthem for the central human interests shared by both adults and children. Adherents to the Autonomy model implicitly recognize that although students' identities and values may not be fully formed, students are capable of the same kind of clear thinking and self-inquiry that justifies governmental respect for adult autonomy.

The Court first recognized student autonomy in *Barnette* when it characterized the interest against orthodoxy as freedom of *individual* thought rather than as a protection of the Barnette family's religious beliefs. In *Tinker*, Justice Fortas justified free student-speech on the theory that truth arises from the free competition of ideas, even though past proponents of this theory had never envisioned the activities of children. The Court calls the American high school a "marketplace of ideas" where students discover "truth 'out of a multitude of tongues,' [rather] than through any kind of authoritative selections."

When Justice Brennan formulated a positive right to receive ideas in *Pico*, he similarly revealed confidence in students' abilities to examine information and reach personal and responsible conclusions. Justice Brennan first cites *First National Bank of Boston v. Bellotti*, a case acknowledging the rights of adult voters to public

---

39. Id. at 866-68, 70.
40. See, e.g., Note, supra note 13, at 508-09; Note, supra note 24, at 1805.
41. Note, supra note 24, at 1813.
42. See id.
45. See J.S. MILL, ON LIBERTY (C. Shields ed. 1956) (1st ed. London 1859); J. MILTON, AREOPAGITICA — A SPEECH FOR THE LIBERTY OF UNLICENSED PRINTING (London 1644); see also Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) (best test of truth is the power of thought to get itself accepted in the competition of the market).
46. *Tinker*, 393 U.S. at 512 (quoting Keyishian v. Board of Regents 385 U.S. 589, 603 (1967)).
access of political ideas, in establishing the right to receive ideas in a school library. He next draws from *Griswold v. Connecticut* and *Stanley v. Georgia* — two cases that emphasize individuality and maturity in supporting the right to receive and evaluate information.

Woven into the notion of student speech as an inherent liberty, is also the idea that tolerance of student speech fulfills the school's primary function of training youth for citizenship. In *Barnette*, Justice Jackson wrote: "[t]hat [schools] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." Justice Jackson's observation that we cannot teach what we do not practice has been confirmed by educational research.

Of course, not all educationally sound theories demand Constitutional protections. But Justice Jackson and future adherents of the Autonomy model believed that sound civic education was a precondition to any meaningful exercise of civil liberties in the future. Therefore, at least some minimum standards of school conduct was constitutionally compelled. The notion that a free citizenry presupposes civic education remains a cornerstone of the Autonomy model.

An extension of this idea, implied in both *Tinker* and *Pico*, was that as the conceptions and preconditions of democratic participation evolve, so would the Court's notion of civic education. Thus, as social protests and other methods of mass petition gained greater legitimacy in the 1960s, the *Tinker* Court expanded the meaning of *Barnette* to guarantee non-disruptive, symbolic dissent. As doctrines emphasizing individual inquiry and personal decisionmaking

---

49. 381 U.S. 479 (1965) (protecting right of married couple to obtain and use contraceptives) (cited in *Pico*, 457 U.S. at 866); see also *Bellotti v. Baird*, 428 U.S. 132 (1976) (protecting right of minor to choose abortion without the consent of her parents).
52. See infra note 92 for a discussion on educational research which favors participatory decision-making exercises over authoritarian approaches.
53. The theory that the structure of democratic government leads to certain constitutionally guaranteed preconditions was fully developed by Alexander Meiklejohn in the same decade as *Barnette*. Meiklejohn believed that true self-determination in democratic society presupposed a guarantee of free speech. He argued that courts should evaluate governmental conduct on the basis of whether such conduct helps or hinders speech in this capacity. See generally A. MEIKLEJOHN, FREE SPEECH AND ITS RELATION TO SELF GOVERNMENT (1948); Note, supra note 13.
took root in the late 1960s and 70s, Justice Brennan's doctrine of free inquiry followed students into the school library. As he explains in Pico: "[A]ccess [of ideas] prepares students for active participation in the pluralistic, often contentious society in which they will soon be members."54

In the name of both individual rights and preparation for citizenship, supporters of the Autonomy model see schools as learning centers that should (at least in part) encourage a loosely guided rehearsal of competing student voices. Schools provide students with a fair opportunity to discover and accept values and to practice promoting those values in the political marketplace of ideas. Aware of the dangers of creating a "homogeneous people," proponents of Autonomy do not expect students to arrive necessarily at the same note. Theirs is a school of "duelling banjos."

Justices supporting the Autonomy model would be the first to admit that there are limits. No court has yet suggested that the first amendment protects students who materially disrupt the functions of the school. Even for ardent supporters of student liberties, the threshold of disruption may be small.55 Supporters of the Autonomy model also concede the need for inculcating at least some values. Although they have stressed the importance of values necessary to democracy,56 they have also endorsed the teaching of traditional "social, moral, and political" values of the community.57 They would, however, limit this conveyance of community values to a point before it becomes politically biased58 or threatens to prescribe orthodoxy in politics, nationalism, or religion.59

Overall, proponents of the Autonomy model show little confidence in inculcative policies, even if developed by democratic, well-meaning school districts.60 For them, small local authorities prove even less vigilant in protecting against prescriptions of orthodoxy. Such local groups often have little incentive to protect views of the minority and may be isolated from the public media which would otherwise challenge their actions.61

55. See Bethel School Dist. No. 403 v. Fraser, 478 U.S. 672, 687 (1986) (Brennan, J., concurring) (allowing that a speech containing sexual innuendo constitutes disruption of an educational activity).
56. See, e.g., Pico, 457 U.S. at 864.
57. See id.
60. See Barnette, 319 U.S. at 637-38.
61. Id.
The notion that courts should protect student speech as an end in itself correctly identifies students as contributing members of their society. The corresponding view that protection of speech further develops one's ability to participate in politics imports a degree of pragmatism to first amendment theory, while correctly identifying student speech as both a current and future right. Perhaps most helpful, the Autonomy perspective suggests an evolving standard of impermissible orthodoxy designed to keep pace with changing notions of democracy and governmental participation. Yet, as it is currently defined, the Autonomy model contains three major weaknesses. These weaknesses stem from a current conception that over-emphasizes individual liberties and private preferences.

The first objection to the Autonomy model centers on its reason for acknowledging student liberty. As we have seen, members of the Autonomy camp justify protections of student speech, in part, on the basis that students are capable of the same kind of rational decisionmaking that we attribute to adults. Yet to supporters of Autonomy, most students are clearly not adults. If adherents to this view saw students as truly autonomous people, they could not justify a school's mild inculcation of community values. They could not even justify compulsory education itself. Constitutional guarantees based on autonomy seem automatically fixed to a sliding scale of a student's perceived maturity level. This notion does not provide students with a very strong or predictable claim for first amendment protection.

Second, by concentrating on individual interests, the Autonomy perspective does not sufficiently stress the importance of group participation in the development of political preferences. The constitutional guarantees of Barnette, Tinker, and Pico rely more heavily on individual liberties and private preferences than on group development. The Barnette decision essentially protects one's conscious. Tinker protects students' rights to silently convey political messages to passive viewers. Although the Court in Tinker does speak of encouraging the robust exchange of ideas in school, it does not deeply consider how or why students' preferences should be formed as a result. Significantly, it seems likely that at least some of the Tinker children had borrowed their parents' political opinions without critically evaluating them.

62. See Tinker, 393 U.S. at 515 (Stewart, J., concurring) (“a child . . . is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees.”) (quoting Ginsberg v. New York, 390 U.S. 629, 649-50 (1968)).
63. See Note, supra note 24, at 1811.
64. The Tinker children had been encouraged by their parents to wear black armbands to school. Their ages ranged from 8 to 15 years old. See Tinker, 393 U.S. at 516 (Black, J., dissenting).
Pico provides the most explicit treatment of the rights of a student body to receive and develop points of view. But the plurality’s opinion ultimately proves unsatisfactory since it confines the right to evaluate ideas to individual inquiry within a library setting.\(^{65}\) As we have already seen, Justice Brennan grounded the Court’s protection of free inquiry on precedent primarily concerned with private choice. The non-interactive nature of this inquiry is highlighted by Justice Brennan’s description of a library as “a place dedicated to quiet, to knowledge, and to beauty.”\(^{66}\)

None of the cases from Meyer to Pico substantively addresses students’ interests in maintaining dialogue with teachers, administrators, or other members of the school community. In the words of one district court, “First Amendment freedoms retained at the schoolhouse gate may be shed at the classroom door.”\(^{67}\) By seeing student preferences as individual, pre-packaged interests, rather than as products of communal and group interaction, the Court creates a doctrine for student rights which is at odds with the group nature of learning.

Finally, in their enthusiasm to protect students from constitutional infringements within the school, supporters of the Autonomy model underemphasize the role students will play in their outside community before and after they graduate. The brand of civic education protected by Justices Jackson and Fortas may have advantages in state or federal politics. But the Court should find a way to translate its first amendment protections in ways that will enable students to involve themselves productively in community affairs as well. This concern with students as members of the local community plays a more prominent role in the Authority perspective.

**B. Authority**

If the Autonomy model takes its shape through the Court’s progress toward the protection of student speech, the Authority model exists as a force of resistance to that change. Barnette, Tinker, and Pico, all produced dissenting opinions.\(^{68}\) The objections of those in the Authority camp resound with a sincere and unified concern for order in the class, the inculcation of values, and a com-

---

65. See Pico, 457 U.S. at 868.
munity's freedom to control its youth. Apparently, these objections have been heard. The Court's most recent student-speech cases, *Fraser* and *Hazelwood*, each signify a move toward the Authority camp.

Supporters of the Authority model see public education as a means of teaching students to respect the authority of a democratic government and to understand the freedoms and responsibilities of ordered liberty. They acknowledge the importance of preparing individuals to participate in their government. Yet this is achieved by "inculcating fundamental values necessary to the maintenance of a democratic political system." For some, this means occasional disciplining of students when they act inconsistently with those values. As Justice O'Connor notes in her dissenting opinion in *Pico*, public schools are also charged with the vital role of teaching students the basic skills they will need to function in society.

Effective transmission of these lessons requires an "orderly exposure" to selected information; this presupposes a conducive learning environment where students respect their teachers and each other. Not surprising, duelling banjos are discouraged. In the Authority model, education works best when teachers envelope their students in smooth and precise orchestrations, where students play muted or complementary parts. Thus, a school has an interest in selecting faculty voices most likely to harmonize with its message. Students who distract the school's audience with messages substantially out of sync with the school's may be silenced. As Justice Black put it, "[O]ne may, I hope, be permitted to harbor the thought that taxpayers send [their] children to school on the premise that at their age they need to learn, not teach."

---

70. *Id.* (quoting *Ambach v. Norwich*, 441 U.S. 68, 76-77 (1979)).
71. *See Fraser*, 478 U.S. at 686; *Tinker*, 393 U.S. at 524 (Black, J., dissenting) ("School discipline, like parental discipline, is an integral and important part of training our children to be good citizens . . .").
73. *Id.* at 914; *see also New Jersey v. T.L.O.*, 469 U.S. 325, 350 (1985) (Powell, J., concurring) ("Without first establishing discipline and maintaining order, teachers cannot begin to educate their students"); Hafen, *supra* note 12, at 686-87 (citing studies which indicate that educational approaches emphasizing order and discipline succeed more often than those that do not).
Adherents of the Authority model place great emphasis on the purity of the school's message because, for them, this message comes from the local community itself. Close ties between the community and the school help fulfill the strong interests parents have in instilling values in their young. Such a bond also promises to promote cohesive local communities that are based on shared principles and interests. A school that accurately reflects the principles valued by community members must rely on efficient and accessible democratic processes, such as P.T.A. meetings and school board hearings. For Chief Justice Burger, the degree of parental involvement in shaping the message of the public schools is inspiring:

In most public schools in the United States the parents have a large voice in running the school. Through participation in the election of school board members, the parents influence, if not control, the direction of their children's education. A school board . . . is truly 'of the people and by the people.'

Justice Powell has echoed this sentiment, declaring that "no single agency of government at any level is closer to the people whom it serves than the typical school board."

As both barometers and shapers of community values, public schools play a uniquely symbiotic role with the society around them. The school's role of educating and providing role models permeates inside and outside the boundaries of a school's campus. A school's reputation and the ideas it becomes associated with, according to this view, affect not only the lessons learned in school, but the confidence the community will maintain in the educational structure. This explains why the Court in Fraser, and later in Hazelwood, placed such emphasis on a school's interest in disassociating itself from objectionable speech.

Pointing out a school's unique role as educator and community-builder, adherents to the Authority model do not see public schools as state actors in the traditional constitutional sense. Rather, schools are more like parental substitutes, or what Professor Hafen has called "mediating structures" between families and the state. In reviewing the issue of student protections against search and seizures, for instance, Justice Powell stressed the "special" and non-

78. Pico, 457 U.S. at 894 (Powell, J., dissenting).
79. Id. at 891 (Burger, C.J., dissenting).
80. Id. at 894 (Powell, J., dissenting).
81. See Bethel School Dist. No. 403 v. Fraser, 478 U.S. 672, 685-86 (1986); Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260, 271-72 (1988). In Hazelwood, concern for the school's outward image as role model also helps explain the majority's (otherwise irrelevant) fear that the newspaper's articles on pregnancy might fall into the hands of the students' younger brothers or sisters. See Hazelwood, 484 U.S. at 274-75.
82. See Hafen, supra note 12, at 696.
adversarial relationship a student has with a teacher.\textsuperscript{83} He called attention to the "personal responsibility" teachers often feel for the welfare of their students.\textsuperscript{84} Justice Rehnquist, dissenting in \textit{Pico}, similarly underscored the state's role as educator and wrote that, in such a situation, the first amendment "may speak with a different voice."\textsuperscript{85} 

Because adherents of the Authority model believe the school uniquely represents community objectives — and because those objectives often promise order and control — they are willing to give school policies a great deal of discretion.\textsuperscript{86} Adherents also worry that close judicial scrutiny of school policy will chill educational policymaking and "corrobe the school board's authority and effectiveness."\textsuperscript{87} In addition, courts rarely seem competent to make decisions regarding pedagogical approaches and, even then, are not directly accountable to community members. 

Beneath the view that would restrict student voice as a means of creating order and perpetuating values, is a belief that a student's interest in free expression is not the same as an adult's. When talking to young people, the first amendment does, indeed, speak in a different voice. Part of the justification for this different treatment rests on "the special characteristics of the school environment."\textsuperscript{88} For proponents of Authority, there is also a related belief that many traditional interests underlying free speech guarantees do not fully exist when applied to young people. 

Conventional political wisdom holds that the protection of free expression serves at least three main functions: (1) it allows citizens to realize their personal identities; (2) it allows citizens to find truth through open debate; and (3) it allows citizens to participate easily in the political process.\textsuperscript{89} These justifications stress government respect for individualized autonomy and intellectual maturity, and, thus, invite arguments for treating students differently. Students sometimes lack the firm self-definition (assumed in adults) to benefit from a rule protecting their self-realization. The theory of truth-through-debate relies on a marketplace of experienced and rational consumers (again assumed in adults); such free-

\textsuperscript{84} Id. at 350 (Powell, J., concurring).
\textsuperscript{85} Pico, 457 U.S. at 908 (Rehnquist, J., dissenting).
\textsuperscript{86} See id. at 890-91 (Burger, C.J., dissenting); Hafen, supra note 12, at 718-19.
\textsuperscript{87} Pico, 457 U.S. at 894 (Powell, J., dissenting).
market analysis appears unrealistic in a school of young, impressionable shoppers. Finally, students' interest in democratic representation declines if we assume, as the Authority model does, that students are already represented by their parents and other adult community members.

Although the Authority model correctly addresses the interests of the local community and attempts to locate a place for students within it, the model fails. Ultimately the community of adults in this vision craves too much power. The community's role for young people proves too subservient. The Justices who adhere to the Authority view overemphasize discipline and respect for authority. They also underestimate the importance of teaching student participation and decision-making skills. In fact, current research suggests that the teaching of democratic values requires more than formal instruction, particularly where such instruction differs from observations and experiences of students.

Linda McNeil, an educational researcher who has studied class dynamics and interviewed high school teachers in the Midwest, questions the effect of order in the classroom. Her study finds that in schools where the administrators concern themselves mainly with student management and control, both students and teachers take learning less seriously. Aware of the premium placed on uniformity and keeping classrooms "running smoothly," even very creative educators, McNeil argues, fall into a pattern she calls "defensive teaching." "Defensive" teachers find that the most effective way of maintaining discipline and order in the class is to eliminate controversial or political discussions and avoid participation of students in order to cover more factual material more quickly. All this is done, ironically, so that by placating the administration, the teacher can safeguard what little autonomy over the class that he still has.

In addition, many values glorified by the Authority view such as respect, technical expertise, and obedience seem suspiciously geared toward fostering success in the industrial marketplace

90. See Hafen, supra note 12, at 703.
91. Id. at 707.
92. See Levin, supra note 13, at 1654, n.31 (listing educational research that favors participatory decision-making exercises over more traditional, authoritarian approaches).
94. THE HARVARD EDUCATION LETTER, supra note 93.
95. Id.
96. Id.
rather than in the marketplace of ideas. While economic competitiveness is certainly an important target in today’s world, such a goal should not eclipse the constitutional value of teaching good citizenship. Even those who believe a school’s primary function is to groom students for employment should favor a greater emphasis on deliberative skills and civic responsibility. Tomorrow’s employers will further emphasize communicative skills and group management techniques as the American economy (particularly in its urban centers) becomes more service-oriented. As manufacturers move toward industries requiring high-level skills, they too will require employees comfortable with abstract reasoning and decision-making responsibilities.

Insight into social dynamics and group problem-solving promises to benefit even those entering areas of low-technology; labor unions and industrial managers are gradually moving toward more democratic representative structures, in which workers are asked to assume more substantial governing roles. An opportunity to work, without the knowledge available to influence the politics of the workplace or the surrounding community, leads only to worker oppression, not liberation.

Second, the Authority model overestimates the degree to which the policies of local school boards and administrators democratically reflect the interests of students and other community members. Because of their size and diverse economic and racial demographics, school districts may not be the responsive, intellectual republics some had thought. A survey conducted by the National Center for Education Information revealed that 81 percent of polled school board presidents said they were greatly influenced by the school superintendent, while only 4 percent were greatly influenced.

---

98. See Chira, Trying to Coax a Work Force from the Schools of New York, New York Times, July 30, 1989, at 5, col. 1. For instance, over half of New York City’s labor force is involved in financial services or other information-processing industries. Today many economists and educators predict New York will face increasing difficulties in filling its employment needs from its future generation of its students. Id.
100. As early as 1868, George Eliot argued this point forcefully in Felix Holt, Radical, a fictional study of the radical labor movement in England. As Felix Holt explains to a crowd of fellow workers, simply having the right to vote is not enough to insure self-determination. “Whether our political power will be any good to us now we have got, must depend entirely on the means and materials — the knowledge, ability, and honesty — we have at command.” G. Eliot, Felix Holt, Radical (London ed., 1st printing 1868).
enced by parent-teacher associations. Teachers also find themselves strikingly disenfranchised from decisions concerning hiring, the curriculum, and standards of student behavior. Even in communities where school boards seem relatively responsive to community voices, dialogue over policy decisions, as the book censorship cases make clear, can often be dominated by well-organized, vocal minorities.

Similarly, a school's promise to strengthen the fibers of moral cohesiveness is dubious given the diverse populations of many communities. If families in the school district really could decide on a common set of community values or define a proper "manner of civility," we would not see controversies over group protests in schools or censorship of books in the classrooms. Because the Autonomy and Authority poles of the student speech debate do not recognize the primacy of the other's principles, we cannot reconcile these views by seeking common ground. The Autonomy model, which justifies student rights in terms of independent rationality, should give way to a broader image of student rights — one that aims toward the welfare of the community and promises more consistent speech protection for all. Similarly, the Authority model's attachment to power and control must also be questioned. We should find a new model of democratic education which can incorporate students' interest in free expression and inquiry into the needs of the local community itself.

II. ENGAGEMENT: AN ALTERNATIVE PERSPECTIVE

So gather home these far-flung flocks, amalgamate them with the others . . . and weave, without bias or seam, a cloak to clothe the City of Athens!

— Lysistrata

101. School Official and Public Split on Issues, Poll Finds, New York Times, March 1, 1989, at B7. Such disparities predictably lead to differences between what school officials and parents each want for their school. A 1987 Gallop poll, for instance, showed that 71 percent of the public believes parents should have the right to choose the school their child attends, while only 36 percent of school board presidents favor this idea. Id.

102. Teachers Locked out of Most Major School Decisions, Carnegie Finds, Education Daily 3, September 13, 1988. According to a study from the Carnegie Foundation, only 7 percent of teachers say they are involved in hiring decisions; 63 percent have some influence over the curriculum; less than half report any influence over standards of student behavior. Id.; see also Wood, Run Public Schools Like Colleges, New York Times, July 26, 1990, at 23, col. 3 (Op-Ed) (arguing for a greater role for teachers in determining budgets, curriculum, and rules of student conduct).

103. S. Arons, supra note 6, at 65.

104. See id.

Pulling students into the fold of community participation requires rethinking both educational and political objectives. John Dewey, as well as the more modern theorists, Henry Giroux and Peter McLaren, offer a way of understanding public education as primarily a community-focused institution which operates through the free sharing of diverse ideas. Together, their views promote a particular view of government participation that carries its own set of preconditions for an active citizenship. This type of civic virtue takes on a legal significance when joined with a constitutional theory of democratic governance that shares these educators' commitment to community and group deliberation. This hybrid of educational and constitutional theory provides the basis for seeing student expression as a means of democratic preparation and participation. I call this new view of reconciling student rights and community involvement the perspective of Engagement.

A. Educational Engagement

1. The Purpose of Schooling

In the early part of this century, John Dewey became the first educator to fully develop the idea of the public school as a center for the development of a democratic citizenry.106 In fact, both the Autonomy and the Authority models of the Supreme Court reflect Dewey's notions concerning the importance of civic education and the school's relationship with the community.107 Dewey believed the first priority of a public school system in a democracy was to teach students to be good citizens — to teach them the skills necessary for self-definition and meaningful participation in our political system. For Dewey, being a good citizen meant more than reading the papers and casting a vote once a year. Effective citizenship required a willingness to band together with others who had similar interests in order to amplify their voices. Through such political, social, or vocational associations, individuals could directly involve themselves in shaping the social and political contours of their society. Good citizens were smart citizens, who knew how to analyze, socialize, and persuade.

Dewey knew that such social skills and political savvy did not sprout from the citizenry spontaneously. He also knew that such an important entitlement as citizenship could not be left to the cultiva-

106. See generally J. DEWEY, MORAL PRINCIPLES IN EDUCATION (1909). The following description of John Dewey's educational beliefs are taken primarily from J. DEWEY, EDUCATION AND DEMOCRACY (1916) and J. DEWEY, MORAL PRINCIPLES IN EDUCATION (1909).

Civic Virtue and the Protection of Student Voice

Civic virtue and the protection of student voice are fundamental to the democratic process. “[I]t is the right of each individual,” wrote Dewey, “to have a voice in the making of social policies as, indeed, he has a vote in the determination of political affairs. If this be true, education is primarily a public business.”

Dewey believed the best way to nurture the skills and values of civic participation was to create a miniature democratic society within the school itself. This inner community would reflect the political and social processes of the external community. Schools were more than bootcamps for industrial or corporate labor markets. They were greenhouses for an empowered citizenry. Students (guided by skilled and free-thinking instructors) would learn to analyze the complexities of their world through application of logical and ethical principles. They would learn to see themselves as autonomous actors and as catalysts for social reform.

The first step in the education process focused on helping students define themselves as unique individuals in the context of a pluralist society. Through a guided process of self-inquiry, teachers would encourage students to examine their moral and political preferences, and to discover how these preferences fit into contemporary discourse. This assertion of self-identity is so important that Lawrence Kohlberg, who has drawn extensively from Dewey’s work, writes that “‘the development of free and powerful character’” is, in fact, the “democratic educational end for all humans.”

This “free and powerful character” could be nurtured through guidance and intellectual challenge, but it could not be authoritatively imposed. “Regarding freedom,” wrote Dewey, “the important thing to bear in mind is that it designates a mental attitude rather than external unconstraint of movements, but this quality of mind cannot develop without fair leeway of movements in exploration, experimentation, application, etc.”

Having directed student inquiry inwards, Dewey next asked students to inject their unique personalities into the external political world. By teaching the vision and social relationships necessary to critical democracy, Dewey hoped schools would encourage students to bring their experiences to legislatures and voting booths in order to improve the quality of government. “To an extent characteristics of no other institution save that of the state itself,” wrote Dewey, “the school has the power to modify the social order.”

108. J. DEWEY, MORAL PRINCIPLES, supra note 106, at v-vi.
110. J. DEWEY, EDUCATION AND DEMOCRACY 305 (1916).
111. J. DEWEY, MORAL PRINCIPLES IN EDUCATION v (1909); see also J. DEWEY, THE CHILD AND THE CURRICULUM AND THE SCHOOL AND SOCIETY (1956); J. DEWEY, CREATIVE DEMOCRACY - THE TASK BEFORE US, reprinted in CLASSIC
Dewey's theory of education sows the seeds for a view of Engagement that will emphasize the role of civic education as a means of fulfillment and community transformation. But his analysis is only a starting point. Like the Autonomy view, Dewey's vision celebrates the free-wheeling spirit of the individual in society. He sees associational forums more as amplifiers of collective self-interest than as spawning groups for new worldviews. Democratic schools for Dewey ultimately provide a means of protecting or realizing a future vested right in autonomous choice in the adult world. To a lesser extent, his vision also accents the school's unique relationship with the community and suggests some common level of understanding between the values of liberty and the collective interests of local communities. Indirectly, Dewey's theory also points to the importance of moral reasoning in the process of training youth for citizenship.

In a nation preoccupied with instability in the Middle East, Savings and Loan scams, and 2 Live Crew, parents today are rightfully concerned with the values society conveys to its young people. Many parents if given the choice, would demand moral education in the schools. But incorporating moral lessons into an educational program designed to suit everyone can be difficult. Because public school attendance is often the only realistic option to compulsory education laws, public schools have aspired to instruction that is beneficial, yet inoffensive to all. We have been led to think of public school teachers as promoters of universally accepted truths and developers of unbiased, cognitive skills. Morals have little to do with universality or cognitive deduction. Indeed, morals exercise such force in our lives exactly because they spring from the most personal and intuitive parts of ourselves. Not surprisingly, parents, at various points on the political spectrum, have challenged school lessons which convey moral values with which they disagree.

Commentators have proposed a variety of educational and legal mechanisms for keeping public school education morally neutral.
Yet for any educational scheme that sincerely aspires toward self-development and social reform, the conveyance of values seems both necessary and inevitable.

Facing headlines ranging from surrogate motherhood, to apartheid, to the "greenhouse effect," we are acutely aware of how closely related personal identity, politics, and morality can be. Schools cannot prepare students to interpret their democratic community and to seek positive change within it, without first equipping them with the tools of moral deliberation and persuasion. Recognition of our own moral presumptions and those of others, enables us to understand and communicate our concerns in political contexts. An acceptance of intuitive values also promotes governmental stability. Without the awareness of competing moral imperatives, our society could never tolerate widespread dissent. For the same reason, minorities could never convince majorities to adopt their interests or to consider their moral point of view. As Amy Gutmann explains:

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 — 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.115

Because the capacity for moral reasoning is so essential to self-identity as well as to political discourse, democratic schools should not duck the responsibility of imparting values to students.116

Dr. Robert Coles, a professor of psychiatry and medical humanities, also emphasizes the importance of moral education in his work. He laments that students today often pick up the wrong moral lessons from adults and peers.117 In a continuing survey on young people and morality, Coles notes that student values are increasingly marked by self-interest and a refusal (or inability) to ex-

---


116. Some argue that although the teaching of morals is important, it is better left to the family. Yet as Gutmann warns, we cannot depend on individual families to impart the values most necessary for life in a pluralist democracy. In fact they are likely to do just the opposite by emphasizing the personal and localized concerns of the particular family unit while deemphasizing concerns of social groups different from themselves. Such localized lessons are not necessarily undesirable so long as the values essential to social discourse and political tolerance are taught somewhere else, in this case, the school. Id. at 464.

press guilt or shame. Among other findings, his survey reports that sixty-five percent of high school students would try to cheat on a test, and that sixty percent of all students surveyed rely on moral standards that have, as their main purpose, self-gratification. Coles links these attitudes to today's "highly competitive, SAT-conscious" student culture and to examples set by an outside world often preoccupied with pragmatism and profit. Significantly, Coles' survey finds that most students define their values by listening to one another and watching what goes on around them. The power of adult authority figures to shape (or impose) morality is diminishing.

At least part of this decline in "moral literacy" stems from the trend in public schools to avoid controversial issues of community values and morality. But by ceasing to acknowledge moral issues, schools do not cease to teach morality; they simply become oblivious to the moral lessons they convey. As Coles' research suggests, adults' most powerful influence over moral growth of children occurs when they do not even intend it — when they are setting examples.

It is almost impossible for a school to achieve real neutrality in values. Schools are, after all, products of their own institutional role and historical context. Proponents of "Values Clarification," who claim to encourage students to locate and embrace their own personal moral code, inevitably promote certain values (tolerance, self-inquiry) over others (chauvinism, unquestioned allegiance). Even schools that do not aim toward any one pedagogical technique convey values. Corporal punishment, textbook selection, or student-body elections all convey subtle lessons about discipline, objectivity, and speech. Even frog dissections in biology classrooms can...
take on a particular moral meaning.\textsuperscript{125}

As society becomes more complicated — as drugs, handguns, and corporate dollars infiltrate the classroom — values do too. Students attending some high schools in New York City thread their way through metal detectors and x-ray machines before entering school buildings.\textsuperscript{126} Teenagers in Knoxville, Tennessee begin each day with a commercially funded satellite news broadcast, complete with paid advertisements for dandruff shampoo and candy bars.\textsuperscript{127} In the San Francisco Bay Area, a local high school, with the help of students, has opened its own 7-Eleven outlet on campus.\textsuperscript{128} From electronic searches to subsidized Slurpees, a school’s response to cultural and social realities inevitably extends a moral point of view. In the words of education theorists, Purpel and Ryan, “it comes with the territory.”\textsuperscript{129}

While schools should be careful not to impose moral views tightly bound to religious or politically partisan agendas, educators should not shy from encouraging the process of moral deliberation that lead to civic virtue. Borrowing from Dewey’s approach, we begin to see more of the values that the Engagement model would promote. Schools of Engagement would structure their curricula to emphasize the importance of political participation in relation to individual social experience. While seriously acknowledging a school’s role in preparing students for employment, schools of Engagement would downplay simple materialism and self-gratification. They would encourage cooperation, tolerance, and ingenuity. Perhaps most important from a student-speech perspective, the school of Engagement would favor a strong presumption for communication as a means of resolving differences.

\textsuperscript{125} Last year an animal rights group protested a Brooklyn school’s policy allowing animal dissection in the classroom. Protestors accused the school of forcing students to “take part in a system in which animals are subjected to torture and death.” Animal Protest Blamed for Damage, New York Times, June 13, 1989, at 3, col. 1.


\textsuperscript{127} Today, Class, We’ll Learn About Soap, Newsweek, March 20, 1989, at 62-63; Teaching by TV, Boston Globe, March 7, 1989, at 1. Other programs between public schools and private companies such as I.B.M., General Electric, and Du Pont have caused some educators to worry about the effects large pro-business groups may have on the curriculum. Deutsch, Corporate Takeovers?, New York Times, Aug. 6, 1989, at 42, col. 2.

\textsuperscript{128} Today, Class, We’ll Learn About Soap, supra note 127, at 63.

\textsuperscript{129} D. Purpel and K. Ryan, What Is It and Where Are We? reprinted in Moral Education, supra note 124, at 3-10, 9; see also D. Purpel and K. Ryan, It Comes with the Territory, reprinted in Moral Education, supra note 124, at 44-55; Gutmann, supra note 115, at 463; P. Jackson, Life in the Classrooms (1968).
At this point, we have defined schools as centers for individual and societal improvement. We have also proposed a number of abstract moral values that could support these ends. Our next step is to find a specific model of teaching that would encourage effective civic virtue in today's societal context. As teachers know, the very process of teaching can define the substance of the lesson.

2. The Method of Schooling

In an essay primarily devoted to the education of teachers, Giroux and McLaren embrace Dewey's notion of democratic education as a means of self-definition and social reform, but offer contemporary insight and innovation. They argue that in order to cultivate citizens for a more "critical democracy," students should be encouraged to question more and to take more responsibility for their actions. Giroux and McLaren explore the role of authority in the classroom and suggest ways in which teachers can exercise it in a way that "emancipates" students. Finally, Giroux and McLaren define the process of democratic education as one that engages the voices of teachers, students, and other community members in a pursuit of the common good.

Giroux and McLaren preface their discussion by noting that, sadly enough, the majority of today's public schools have abandoned even the most diluted efforts to foster citizenship in the classroom. They find current discourse among practitioners bereft of any serious attempts to democratize schools or politically empower students. Giroux and McLaren point to the findings of Barbara Finkelstein. In 1984 she wrote:

Contemporary reformers seem to be recalling public education from its traditional utopian mission—to nurture a critical and committed citizenry that would stimulate the processes of political and cultural transformations and redefine and extend the workings of political democracy . . . . Reformers seem to imagine public schools as economic rather than political instrumentalities. They forge no new visions of political possibilities. Instead, they call public schools to industrial and cultural service exclusively.

Finkelstein's observations continue to hold true. Throughout the 1980s, state and federal educational reports justified educational reform almost exclusively in economic terms. Contemporary re-

131. See id. at 215, 224-5.
132. Id. at 234-35.
133. Id. at 217-22.
134. Id. at 217 (quoting Finkelstein, Education and the Retreat from Democracy in the United States, 1979-1987, 86 Teachers College Record 280-81 (1984)).
135. See, e.g., A Nation at Risk, supra note 12, at 7 ("If only to keep and improve on the slim competitive edge we still retain in world markets, we must
formers, originally spurred by the "Reagan Revolution," switched the educational focus from civic responsibility to a set of narrowly defined labor market objectives. President Bush is projecting this same focus into the 1990s. A statement issued after the president's historic "Education Summit" in 1989 with the nation's governors, emphasized only the goals of national prosperity and economic competitiveness, and did not mention the role of education in strengthening political citizenship.

Today's educational emphasis on economic competitiveness is significant in two ways. From an educational theorist's point of view, the current movement in educational reform suggests an upside-down version of Dewey's model: instead of public schools reshaping the political and economic foundations of the external world, economic incentives of the external world are shaking the foundations of the public schools. This continued trend in valuing earning above learning threatens our very political structure and drives Giroux and McLaren to recast Dewey's ideas in more radical terms. From a legal point of view, this trend in educational reform indicates a flaw in the reasoning of recent student-speech cases. Both the Autonomy and Authority factions of the Court have decided speech disputes as if the defendant schools really acknowledged their civic roles in the democratic process. Today's educational priorities argue against allowing schools more discretionary power over student speech. Without even a vague commitment to civic education to guide school policy, a school's unchecked control of speech is likely to prove even more arbitrary.

According to Giroux and McLaren, equipping students with the knowledge and skill to live in a critical democracy requires an educational environment that welcomes both creative reasoning and voices of student experience. Because the social order of the outside world has such potential to influence education within the classroom, Giroux and McLaren seek to revive critical evaluation in the classroom. Students, they argue, should learn to examine cur-

---

136. See authorities cited supra note 135.

137. See "A Jeffersonian Compact": The Statement by the President and Governors, New York Times, Sept. 1, 1989, at 22, col. 2. The summit's statement also neglects to mention any role of the students in further defining these goals. In describing a task-force operation to recommend more specific educational goals, the summit leaders said the process would involve "teachers, parents, local school administrators, school board members, elected officials, business and labor communities and the public at large." Students were not mentioned. See id.

138. See supra notes 53-68 and accompanying text discussing civic education in the Autonomy Model.
rent political and economic institutions and be encouraged to imagine what alternative forms might look like. Because democracy is an inherently active process, Giroux and McLaren invite students to confront and analyze social differences and diverse points of view. They should learn to engage in critical analysis and make choices about morally appropriate behavior. To learn the process of democracy, students must be allowed to test their assumptions and conclusions. They must learn first hand the consequences and responsibilities of free choice.

Teachers can direct students, but should allow students to make their own choices and implement them. Although teachers should use their authority to promote the values of critical inquiry and social justice, they should take care not to mystify knowledge. Rather, they should question how knowledge is produced and distributed. In the words of Kohlberg and Meyer, "[t]he democratic educator must be guided by a set of psychological and ethical principles which he openly presents to his students, inviting criticism as well as understanding."141

For Giroux and McLaren, the key to unlocking the secrets of democracy is not merely the promotion of student experimentation and inquiry, but the injection of student voice.142 Giroux and McLaren pay special attention to dialogue. For them, communication is both a means for students to define themselves as individuals and a way to incorporate their values into the schools, thus shaping their communities.143

Voice, quite simply, refers to the various measures by which students and teachers actively participate in dialogue. It is related to the discursive means whereby teachers and students attempt to make themselves "heard" and to define themselves as active authors of their worlds. Displaying voice means, to cite Mikhail Bakhtin, "retelling a story in one's own words."144

We define ourselves only within the context of other human beings. Through self-expression we assert our own class, culture, and racial identities.145 By articulating our experiences to others, being listened to and understood, we define ourselves as participants in a common society and empower ourselves.146

139. Giroux & McLaren, supra note 97, at 225.
140. Id.
141. Kohlberg & Mayer, supra note 109, at 494; see also Giroux & McLaren, supra note 97, at 226.
143. Id.
144. Giroux & McLaren, supra note 97, at 235 (citing H. Rosen, The Importance of Story, 63 LANGUAGE ARTS 234 (1986)).
145. Id. at 235-37.
146. See id. at 235-37.
Voice also allows students to bridge the gap between their world and the world of the teacher and administrators. The students remind the teacher that the classroom is socially constructed, historically determined, and reproduced through institutionalized relationships of class, gender, race, and power. In order for teachers to teach, they must understand the values the students enter with.

Finally, voice provides the opportunity for incorporation and transformation. Educators must work to broaden the experience in the classroom since the school often speaks (metaphorically and, perhaps literally) with only one accent. This links the school with the histories and experiences of the outside community. It allows students to evaluate participatory democracy in a context and allows them to relate the ideal of democracy to the real thing. The standpoint of the community's members should be the starting place for social critique.

Although the teaching method of Giroux and McLaren affirms Dewey's mandate for democratic schooling, it differs from Dewey's plan in several respects. First, Giroux and McLaren acknowledge that both the school and outside community forces have the potential to act upon each other, sometimes to unequal extents. They would not only encourage teachers and administrators to push for democratic reform within the schools, but would push for such reform in other institutions as well.

Second, in an effort to broaden their research for creative democracy, Giroux and McLaren recognize students as full-fledged participants in political reform at the moment they join the school community. Thus, the authors expand the field of politics to include not only the ballot boxes and town halls, but also the classrooms and the schoolyards.

Third, the authors dramatically extend the spectrum of student dialogue to encompass communication with teachers and other community members. This innovation underscores the importance of cultural and class experience in the community and transforms school policymaking into a more deliberative process. Also, the notion of democratic dialogue as including the voices of teachers and students creates a presumption that channels for such communication be provided within the curriculum itself.

149. Id. at 234-35.
150. Id. at 238.
151. See id. at 235-37.
152. Id. at 236-37.
Finally, Giroux and McLaren's emphasis on the inclusion of minority experience in teaching suggests a more active role for a mediating teacher.\textsuperscript{153} For example, if a class planned to discuss a topic of community interest and no students could articulate the minority perspectives, a teacher would furnish readings or other materials that provided these perspectives. This idea suggests an argument against broad censorship policies in school curricula since censored books often contain the perspectives of political or cultural minorities.\textsuperscript{154}

Admittedly, we are a far cry away from Justice Black's cool observation that children are in school "to learn, not teach."\textsuperscript{155} But real attempts to incorporate student contributions into school policy have achieved remarkable results. One of the most striking examples of a program blending both participatory democracy and morality is found in one of the least likely places: Theodore Roosevelt High School in the South Bronx of New York.\textsuperscript{156} In this school, serving a student body drawn from 26 different immigrant groups and plagued with problems of drugs, broken homes, and teen pregnancy, administrators have set up an experiment in self-governance called the "just community."

In this program, "communities" consisting of 5 teachers and 100 students meet once a week to discuss issues which typically range in importance from field trips to student discipline and drugs. The meetings work very much like the traditional town meeting. Members exchange points of view, appoint committees and task forces, and decide matters by open vote. The majority rules. Applying such democratic principles is not easy. Meetings are often draining on students and teachers. As in other democratic forums, discussions sometimes bog down and prevent speedy action.\textsuperscript{157} But by almost all accounts, Roosevelt's just community has succeeded in producing a less violent and more involved learning environment. One student who had repeated ninth grade twice because of truancy

\textsuperscript{153} See \textit{id.} at 222-24.

\textsuperscript{154} For instance, in \textit{Pico}, the Island Trees school board elected to ban the following books, among others: \textit{BEST SHORT STORIES NEGRO WRITERS} (L. Langston Hughes ed. 1967); \textit{R. WRIGHT, BLACK BOY} (1945); \textit{E. CLEAVER, SOUL ON ICE} (1967); and \textit{ANONYMOUS, GO ASK ALICE} (1971). \textit{Pico}, 457 U.S. at 856-57 n.3.


\textsuperscript{157} School members tell the story of one just community — made up of school truants — that entered into a protracted meeting to establish rules for a field trip to a state park. They eventually agreed to a rule prohibiting weapons, fighting, radios, and sex, but only after a minority favoring weapons and sex finally gave in. Hand, \textit{supra} note 156.
problems, commented that Roosevelt's program compelled her to change. After attending day and night classes throughout the school year and into the summer, she is now a senior and describes herself as a "role model" to others. Experienced teachers at the school note that they too have become more tolerant and fairer as a result of the program.

The "just community" program came in response to public demand for moral education in the schools. The experiment draws from the work of Lawrence Kohlberg who believed that moral development hinges on the notion of justice. The two prerequisites to moral development, according to one researcher supervising the program, are to listen and appreciate. Roosevelt High dramatically proves that deliberative democracy works not only in learning laboratories or polite communities, but in real urban areas where social forces often isolate and dispossess its members.158

In less dramatic ways, other programs throughout the country affirm this point. Administrators in two urban California schools, for instance, found they could reduce alarming truancy rates only after consulting formally with faculty and students.159 Before such talks, the schools had tried everything from detention programs to plainclothes police officers — all with unsuccessful results.160 Other schools have found student input significantly helpful in curbing gang conflict and drugs on campus.161

Student mediation groups have proved successful in significantly reducing suspension rates and fighting in urban schools.162 Students involved in dispute resolution programs are often more likely to understand the feeling of the disputants and to see areas of common ground than are their adult counterparts.163 The programs empower disobedient students and student mediators (many of whom were problem students themselves) to resolve disputes without adult authority figures dictating results.164

158. Kohlberg's notions of justice and morality have previously inspired democratic learning experiments in smaller, more affluent schools in Massachusetts and Scarsdale, New York. Roosevelt High's program is the first to extensively apply such theories to a so-called "problem" school. See Hand, supra note 156.


160. Id.


164. Id.
Educators are finding that students can learn much from each other in academic settings as well. Research demonstrates that students actually understand topics better if they learn them as part of a collaborative effort with other students.\footnote{165} The line between teaching and learning is fading.

The central message of the Engagement view is that group dialogue helps students define their personal identities and collective interests. Such dialogues supply a catalyst for social transformation within the school and in the external community. The corollary to this is that student voices must be heard not only by other students, but by teachers, and administrators. Once heard, students must then be responded to. Through the lens of Engagement the “right” to speech is much more than an individual entitlement to respect of one’s autonomy. It is recognition of one’s membership in an interconnected human community devoted to learning through inclusions of diverse experiences.\footnote{166}

B. Constitutional Engagement

The model of Engagement offers more than a prescription for better teaching in a democracy. It reconceptualizes what democracy should be. It asks citizens to aspire to a richer, more participatory role in social reform. In its revision of the democratic ideal, the Engagement model sets forth a new set of preconditions for the guarantees of self-rule under the Constitution. In the tradition of \textit{Barnette, Tinker}, and the \textit{Pico} plurality, this model argues for granting its new approach to educational democracy as a constitutional mandate. We can find support for this more communitarian approach in the recent revival of constitutional discourse known as civic republicanism.\footnote{167}

Civic republicanism recasts democratic policymaking as a reasoned, public dialogue about the public good. It rejects the more widely accepted pluralist model which sees political decision mak-


Civic Virtue and the Protection of Student Voice

ing as competition among private interests for self-satisfaction.\textsuperscript{168} Government, reconceived in republican terms, is the result of groups of individuals of differing interests and perspectives vocalizing their interests and inviting others to respond.\textsuperscript{169} Ideally, the results they reach will not represent any one interest of a majority faction, but rather a group interest that reflects consideration of majority and minority interests.\textsuperscript{170} Republican self-government relies on three primary principles: deliberation, a belief in a common good, and broad civic participation.

Deliberation refers to a method of policymaking based on rationality and group consensus. When legislators, voters, or even school board members join to form policies that affect others, they should aspire toward a process of what Paul Brest has called, "discursive participation."\textsuperscript{171} According to Brest, discursive participation "induces us to listen to other people's positions and justify our own" and "induces us to assume the 'moral point of view' that lies at the heart of most ethical-political systems."\textsuperscript{172} Although the responsibility to fashion policy through deliberation ideally falls on the policymakers themselves,\textsuperscript{173} some republicans emphasize the role of the courts in striking legislative or executive enactments which do not reflect deliberative origins.\textsuperscript{174}

An aspiration for this sort of deliberative process presumes a citizenry devoted to seeking a common good. While members of society will certainly disagree with the substantive nature of that good, they must at least accept this group decisionmaking process. Republicans, therefore, believe that the government has a special interest in inculcating political values such as empathy, community membership, and a willingness to participate.\textsuperscript{175} While pluralist education in the Autonomy model might encourage acts of individual fulfillment, the Engagement model, following a republican tack, would encourage the fulfillment of group empowerment. Like Dewey and Giroux and McLaren, republicans see the teaching of civic virtue as both a means of social reform and as a means of self-realization.\textsuperscript{176} As Frank Michelman describes it, "[p]olitical engagement is considered a positive human good because the self is understood as partially constituted by or as coming to itself through

\begin{itemize}
\item \textsuperscript{168} Sunstein, \textit{supra} note 167, at 1544.
\item \textsuperscript{169} \textit{Id.} at 1541.
\item \textsuperscript{170} \textit{Id.} at 1544.
\item \textsuperscript{171} Brest, \textit{Further Beyond the Republican Revival: Radical Republicanism}, 97 \textit{Yale L.J.} 1623, 1624 (1988).
\item \textsuperscript{172} \textit{Id.}
\item \textsuperscript{173} \textit{Id.}
\item \textsuperscript{174} \textit{See} Sunstein, \textit{supra} note 167, at 1579.
\item \textsuperscript{175} \textit{Id.} at 1556.
\item \textsuperscript{176} \textit{See} id. at 1550; \textit{see also} Michelman, \textit{Politics of Values, supra} note 167.
\end{itemize}
such engagement.”  

To insure that political deliberation reflects broad consensus, republicans seek to include as wide a range of citizen participation as they can. Unlike the eighteenth-century notion of republicanism popular among anti-federalists, the new republicanism does not seek to replace diverse group perspectives in favor of a single, universal worldview. Instead it embraces social plurality as a political good and reaches far to include the “silenced voices of emergently self-conscious social groups.” Because republican politics embrace the perspectives of all its members, it naturally lays the foundation for genuine community and produces just laws and a just society.

The necessity of including so many diverse perspectives, some necessarily on the fringe, presents a problem for civic republicans, since not all groups command as much attention as others. Advocates of republicanism, therefore, favor broad access to the media and argue that modes of communication in the political process should not be monopolized by one faction of powerful citizens. Further, republicans attempt, in at least two ways, to include people not involved in the formal political process. First, they seek to annex the interests and perspectives voiced in extra-political groups. For Michelman, such groups include, social organizations, workplaces, and, significantly, public and private schools. Second, they expand the boundaries of politics itself to include “social life at large.” By observing activity and debate in such quasi-political forums, republicans encourage formal policymakers — who may not have certain minorities represented in their ranks — to understand and incorporate the interests of less prominent groups.

Whether such procedural fine-tuning can insure true republicanism in all facets of democratic society remains open to debate. Yet this process of political annexation seems especially well-suited to the system of public schools. School boards are generally small, devoted to a singular purpose, and already understood as functioning for the common good of students and the community as a
Civic Virtue and the Protection of Student Voice

Further, smaller voluntary associations composed of parents and teachers are already in place to inform the public dialogue. Although school boards have every potential to serve as civic republican institutions, they are not there yet. A school board devoted to discursive participation should seek to incorporate the views of the entire school community. In expansive terms, that includes nearly anyone whom the educational program affects: parents, teachers, administrators, employers, politicians, and students. As we saw in Part I of this essay, school boards currently are likely to incorporate the needs of school administrators and employers, but not those of parents, teachers, and students. Parents and teachers at least have formal channels, such as P.T.A. groups and the ballot, to voice their views to school administrators. Yet school systems exclude any formal dialogue with the one "marginal" voice that means the most and is the least politically powerful: that of the students.

Students, forever on the margins, cannot be said to have political ambassadors either in their parents or teachers. Parents may not adequately represent students since many nowadays find themselves not only out of touch with the schools, but with their children. Even a parent who accurately champions a child's individual interests will not necessarily represent her interests as a member of a student community. Teachers may better understand the needs and perspectives of student groups; but without a formal mechanism of dialogue between teachers and students, deep understandings will not occur.

The obvious solution is for school board members to embrace the perspective of students by annexing them into the political dialogue. Although "colonizing" some extra-political institutions for republican aims can raise substantial problems, we should have no fear of incorporating student dialogue in school board politics: schools are ideally geared toward political transformation, virtue, and the public good. Civic republicanism fits naturally with the theories of education we have just reviewed. It affirms, in a constitutional context, the preconditions of government assumed by Giroux and McLaren's educational theory. Civic republicanism also promises to pull a student body devoted to civic virtue into the life of the larger community. As a union of progressive educational theory and republican politics, the Engagement model, then, would envision two levels of discursive participation.

The first level involves the interior community of the school itself. There, school officials would provide students with channels

184. See Brest, supra note 171, at 1629-30 (discussing apparent virtues of a public school district in the civic republican perspective).
of group communication. They would encourage students to define their identities and group interests through an exchange of experiences and cultural values. Teachers would play an active role in directing discourse, smoking out underlying principles inherent in student viewpoints, and reaching to include minority voices that would otherwise remain silent. Where outside materials, such as literature or film, affirm existing perspectives, or offer additional ones, teachers and students would have the freedom to inject those messages into discussions as well. These moments of deliberative engagement would not be confined to classroom discussions, but would include dialogue in school-sponsored newspapers, musical recitals, dramatic presentations, and other broad forms of student communications. The primary purposes of this directed dialogue on the school level would be to prepare students to participate in deliberative democracy and to instill civic values such as empathy, responsibility, and tolerance.

The second level of political engagement in this model would occur in the broader community of the school district. There, school board members, administrators, teachers, parents, other adult community members, and students would, ideally, contribute to the policies of the schools. At the very least, formal policymakers would work to incorporate the interests and perspectives of the other community members in constructing new policy. The challenges of today's school boards include a number of problems — gang violence, drug abuse, and teen pregnancy. These are all closely related to the social environment that young people live in. Formal policymakers in the community should be made aware of the choices various students perceive in their world and the solutions they, themselves, might favor. Student deliberation and dialogue through journalism, music, and other means of self-expression can provide teachers and administrators with that unique insight of the students.

Parents, administrators, and other members of the school community should not object to student voice on the grounds that free expression of youth undermines other community interests in order, tradition, and economic prosperity. Stronger student speech protection does not mean more traditional values must be abandoned, only that adults must convince students, by appealing to reason, to accept them voluntarily. Also, as we have seen earlier, preparation for tomorrow's labor markets will require students versed in the skills of communication and decisionmaking.186 Today, schools that attempt to grant students true participation in the development of policy find that order and discipline are easier to

186. See supra note 100 and accompanying text for a discussion on worker apprehension caused by insufficient knowledge.
The second level of the Engagement model would view school-sponsored student dialogue as a direct means of political expression and reform. In contrast to the Autonomy model, student speech proves more than a reward for individual and intellectual maturity. Departing from Dewey's earlier theory, student speech is more than a nurturing of a future, vested right in political participation. Rather, speech is a means of preparation and *actualization*. Speech signifies one's present membership in the local community.

In this section, we have examined the more abstract and far-flung territory of educational politics; we are about to return to the more concrete world of East Hazelwood High in order to apply the principles of Engagement. The Engagement model provides a very powerful and expansive notion of democratic education. In an effort to place this discussion in an appropriate context for Part III, I should make two points. First, both the educational and political components of the Engagement theory are offered as prescriptions, not descriptions. Certainly the happenings in a tenth-grade classroom have never, and may never resemble the politics of the Athenian city-state. Nor do school boards, as currently conceived, reach regular moments of discursive participation. Yet schools are, perhaps uniquely, the place for aspirations and ideals. By learning to strive for political discussions in the community's interest, students learn the civic principles that lie beneath their communications, even when their responses seem misguided or inarticulate. By requiring school officials to confront the collective expression of students, the Engagement model encourages policymakers to consider student views when they otherwise might not.

Second, although this essay only addresses the protection of school-sponsored student speech, the Engagement model logically leads to much greater and expansive reforms in education. Giroux and McLaren explicitly argue for deep reforms in pedagogical and administrative approaches to public education. One could use the principles of civic republicanism to reform a number of educational issues, including student discipline, unequal school financing, and bilingual education. The broader implications of Engagement, however, should not distract us from a more specific effort to strengthen student speech. A movement towards a more civic-minded educational process correctly begins with opening the channels of dialogue.

---

187. *See supra* notes 156-65 and accompanying text for a discussion on different schools' attempts at granting students true participation.

III. ENGAGING THE SPECTRUM

We must say it all, and as clearly as we can.
— Horses Make a Landscape Look More Beautiful\textsuperscript{189}

A. The Trouble with Hazelwood

Examining student speech cases through the lens of Engagement helps us see the development and the dangers in the Supreme Court's most recent decision concerning student speech: Hazelwood \textit{v.} Kuhlmeier. The Hazelwood decision revives the conflict between autonomous rights and educational authority. As a solution the Hazelwood Court attempts to insulate each interest from the other by splitting the school into curricular and non-curricular forums. Each is subject to different degrees of protection from state influence. Because the Hazelwood decision does not acknowledge strong speech interests in and outside the formal curriculum, the Court's approach is fundamentally at odds with the politics of Engagement. Its reasoning threatens to undermine full civic participation by current and future citizens.

Hazelwood holds that the first amendment allows a school to delete objectionable articles from a student-run newspaper that is published as part of a high school journalism class.\textsuperscript{190} What is remarkable about Hazelwood is not so much the ultimate decision (although that in itself marks a decline in student protection) but the way the Court reaches the decision.

Justice White, writing for the majority, examines the free speech question at East Hazelwood High School by setting up a two-part analysis. First, he asks whether Hazelwood has opened \textit{Spectrum} "by policy or practice" as a public forum.\textsuperscript{191} Justice White finds that \textit{Spectrum} was produced as part of a supervised, curricular offering, dismissing evidence of a school board policy favoring free speech as well as evidence that the newspaper staff published with an understanding of first amendment protection.\textsuperscript{192} As part of the curriculum, the Court emphasizes that the newspaper does not constitute a public forum.\textsuperscript{193} Accordingly, school officials may regulate the contents of \textit{Spectrum} in "any reasonable manner."\textsuperscript{194}

In the second part of his analysis, Justice White finds that \textit{Tinker} — which provides stronger protection of student speech —
does not apply in this case. He distinguishes between school-sponsored student expression (such as articles appearing in *Spectrum*) and "personal" student expression "that happens to occur on the school premises." The latter situation is protected by *Tinker*; the former is not. Justice White argues that educators are entitled to exercise greater control over expression occurring within the curriculum. He concludes that educators may constitutionally exercise control "over the style and content of student speech in school-sponsored activities so long as their actions are reasonably related to legitimate pedagogical concerns." Because *Spectrum* is a school-sponsored component of the curriculum and because the principal could reasonably conclude the topics discussed were inappropriate for certain age groups or might violate the privacy interests of some students, the Court finds the school's conduct constitutional.

In describing the degree of constitutional protection afforded a school newspaper, the Court divides the school into two channels of dialogue: unsponsored and sponsored. In the first channel, where "personal" speech just "happens" to occur, the school's interest in imparting knowledge or skills is presumptively weak. Student speech transmitted through this conduit remains protected by the traditional *Tinker* standard. The second channel is dominated pri-

---

195. *Id.*
196. *Id.* at 271.
197. *Id.*
198. *Id.* at 273. The difference between a "school-sponsored" and "curricular" activity (if one exists here) is not laid out specifically in the majority's opinion. According to Justice White, school-sponsored student speech would include school newspapers, theatrical productions, or any other expressive activity that "students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school." *Id.* at 271. Such activities, would constitute part of the school's curriculum even if outside the classroom, as long as they were supervised by a teacher and "designed to impart particular knowledge or skills to student participants and audiences." *Id.*

By holding that the "reasonable relationship" test applies to all school-sponsored speech (as opposed to school-sponsored speech *within the curriculum*) the majority implies that either (1) a finding of school sponsorship necessarily includes a finding of a curricular interest, or (2) a finding of a curricular interest is ultimately irrelevant to the standard as long as there is school sponsorship. Neither option makes perfect sense. The first possibility would expand the curriculum to include literally everything the school pays for, as well as anything the public might perceive the school as supporting. This definition of curriculum proves too broad to serve any purpose. The second possibility, while more internally consistent, collides with the principles articulated in *Pico*, which explicitly grants educators less editorial control over a school-funded program outside the curriculum (in this case, a school library) than one inside the curriculum. *Pico*, 457 U.S. at 869; see also Romano v. Harrington, 725 F. Supp. 687, 690 (E.D.N.Y., 1989) (partially relying on *Pico*'s distinction between curricular and extra-curricular, court refuses to apply the *Hazelwood* standard to a school-sponsored, extra-curricular newspaper).

arily by the school. Although student voices occasionally filter back and forth, they do so only with permission of school officials and only when their wavelengths do not vary substantially from the school’s dominant message.

The *Hazelwood* opinion is disturbing for three main reasons. First, in reaching its decision the majority refused to apply the *Tinker* standard.\(^{200}\) *Tinker* would have required East Hazelwood’s principal to justify his actions in the familiar language of a “reasonable fear” of “material interference.”\(^{201}\) *Tinker*, after all, never distinguished between school-sponsored and personal student expression.\(^{202}\) Only two years before *Hazelwood*, in *Fraser*, the Court had arguably invoked the *Tinker* standard (although not by name) to uphold the punishment of a student for a speech made as part of a school-sponsored assembly.\(^{203}\) In addition, it is not unlikely that, with some small adjustments, the Court could have reached its same result through the *Tinker* analysis. Thus it could have concluded that the students’ articles threatened to disrupt the school’s educational mission by using its own channels to disseminate information.\(^{204}\)

Most likely, the possibility of adjusting *Tinker* to justify the school’s conduct in *Hazelwood* did not satisfy the Court’s Authority-minded faction. The Authority model holds that a school’s educational interest requires it to dominate certain channels with its message.\(^{205}\) It supposes that such channels can be realistically defined and insulated so as to allow school officials to enjoy flexibility in their approaches without fear of legal conflict.\(^{206}\) For this reason, Justice White does not see *Fraser* as a case about disruption of the school’s mission, but instead about the school’s attempt to define social norms within an “official school assembly.”\(^{207}\) *Hazelwood* presented an opportunity for those Justices carrying the banner of Authority to draw the line between the voice of the

---


\(^{203}\) See *Hazelwood*, 484 U.S. at 282 (Brennan, J., dissenting).

\(^{204}\) Cf. *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 672, 683-85 (1986) (“sexually explicit monologue” given at school assembly is seriously damaging to younger teenage students and undermines the school’s “basic educational message”).

\(^{205}\) See supra notes 92-96 and accompanying text discussing the control aspect of the Authority model.

\(^{206}\) See supra notes 68-104 for an indepth discussion on the Authority model.

school and the voice of the student once and for all. But ultimately their attempt to draw this line becomes overly complicated. The Court begins by importing the public-forum doctrine from adult speech cases. Eventually it entangles itself in elusive distinctions involving sponsorship and curriculum.

This resulting confusion is the second peculiarity in the Hazelwood opinion. The Court's various distinctions concerning public forums, sponsored expression, and curricular activities are at once disjointed and easy to manipulate. To begin with, the majority's opinion offers two separate tests for justifying increased school control over student speech: one (the public forum doctrine) dividing the school into two kinds of places, the other (the sponsorship rule) dividing student speech into two kinds of voices. Justice White begins his legal analysis by asking whether or not the Spectrum constitutes a public forum. He finds that Spectrum is not a public forum because it is part of a journalism class. Next, he concludes that, based on the newspaper's nonpublic status alone, school officials were entitled to regulate its content "in any reasonable manner." Although the majority seems to have already reached a basis on which to ground its decision, it moves on to a second subsection in order to discuss the issue of school sponsorship. The Court concludes that because Hazelwood sponsored the newspaper, the school is entitled to regulate the style and content of the newspaper so long as such regulation is reasonably related to educational concerns.

Even after careful reading of the majority's opinion, it is not clear exactly what the difference between these two tests is or why it matters. The question of whether the medium of expression is a nonpublic forum turns on whether the school authorities have "by policy or by practice" opened the forum for "indiscriminate use by the general public" or by some segment of the population such as student organizations. Because Spectrum is an integral part of the journalism curriculum, the Court concludes the school could not have intended the paper for such broad use. If we are to take the majority's opinion literally, this finding alone is enough to sidestep the Tinker rule and permit the school's broad editorial control. Such a conclusion suggests that the Tinker standard only applies in
public forums intentionally created by the school. Tinker, however, which extolled a student's right to express herself "in the cafeteria, or on the playing field, or on the campus," clearly envisioned broader student protection than this.\footnote{214}

The question of school-sponsorship, on the other hand, appears to turn on a combination of community perceptions and the school's intent to convey knowledge. Justice White writes that school-sponsored speech includes expressive activities "that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school."\footnote{215} A school's greater control of such expressive activities is justified by the school's interest in assuring that participants in the sponsored activity learn the intended lessons.\footnote{216}

The exact relationship between the public-forum doctrine and the school-sponsorship doctrine remains unclear. While the Court's language encourages us to view these inquires as independent, it is doubtful that a finding of school sponsorship could have sustained the Court's holding if Spectrum had first been declared an open forum. Likewise, the Court, despite its confident assurances, could not have based its results solely on the public forum doctrine without directly confronting Tinker.

Most likely both tests are very similar ways of reaching the same conclusion. Although their criteria differ slightly, we can see each as ultimately turning on the fact that the students' articles were specifically part of the school's educational process and were, as a result, within the proper latitude of school censors.\footnote{217} But even after collapsing these two standards into a single rule affirming school control over school supervised activities, this rule still provides little guidance in determining the boundaries of school-sponsorship.

Does such a rule mean school authorities could lawfully require prior review of an underground student newspaper distributed as part of a senior class celebration in which the faculty took

\footnotetext{214}{Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503, 512-13 (1969). In fact, the Court in Tinker makes no mention of the public-forum doctrine at all.}


\footnotetext{216}{Id. at 271.}

\footnotetext{217}{In fact, the degree of latitude offered state officials under either test is very similar. Under Cornelius v. NAACP Legal Defense Fund, 473 U.S. 788 (1985), the government may impose any restrictions on speech in a nonpublic forum that are "reasonable and [are] not an effort to suppress expression merely because public officials oppose the speaker's view." Id. at 800. Under Hazelwood's standard, state school officials may regulate in any manner "reasonably related to pedagogical concerns". Hazelwood, 484 U.S. at 273. At least one federal circuit has found the Hazelwood standard to be a direct application of the Cornelius standard. See Searcey v. Harris, 888 F.2d 1314, 1319 (11th Cir. 1989).}
part? Could school officials lawfully refuse objectionable advertisements in an athletic bulletin published outside of class and distributed after school? Surely a school could claim these activities were designed at least in part to convey lessons of personal responsibility, socialization, and the rewards of perseverance and hard work. Yet were we to extend Hazelwood's school-sponsorship standard to these difficult cases, there might be little protected student activity left.

The third disturbing point about the Hazelwood opinion is that even if one could properly distinguish between sponsored and non-sponsored student speech, the Court does not adequately justify handling sponsored speech differently. In dictum, the Court seems not only to allow, but to endorse viewpoint restrictions on student speech within sponsored channels. A school "must" retain the right, according to the majority, to bar from its channel, "speech that might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with the 'shared values of a civilized social order.'" Significantly, the Court suggests no limit on how far viewpoint discrimination in the curriculum might extend. It similarly ignores the precedents set by Meyer, Barnette, and Pico, which explicitly bar attempts to impose political orthodoxy in the curriculum.

Ultimately, these objections raise concerns about the distinction between sponsorship and non-sponsorship. This concern lies at the heart of the Engagement perspective. By locking free student speech out of curricular dialogue, courts limit students' ability to formally connect with other groups of students and (more importantly) teachers and administrators. By allowing greater control of school-sponsored student speech, Hazelwood severely inhibits the deliberative role of its members.

218. See Burch v. Barker, 861 F.2d 1149 (9th Cir. 1988) (refusing to apply the "reasonableness" standard in Hazelwood to an underground newspaper distributed at a senior class barbecue at which faculty were present); Recent Developments, Student Freedom of Expression in Public High Schools, Burch v. Barker, 861 F.2d 1149 (9th Cir. 1988), 24 HARV. C.R.-C.L. L. REV. (1989). Although the court in Barker claims to reach this conclusion easily under both Tinker and Hazelwood, the answer may not be so clear. See infra note 224 for a discussion on predistribution review of non-school sponsored communications.

219. See Planned Parenthood v. Clark County School Dist., 887 F.2d 935 (9th Cir. 1989) (allowing school district to reject advertisements for Planned Parenthood in schools' newspapers, yearbooks, and athletic programs because all these publications play a role in the school's mission).


221. Fortunately, no courts have yet interpreted the holding of Hazelwood to allow viewpoint discrimination, although some school boards have made the argument. See, e.g., Searcey, 888 F.2d at 1319 n.7 (despite school board's argument, Hazelwood does not eliminate the requirement that restrictions on speech in a curricular activity be viewpoint neutral).
The students' work on *Spectrum* provides an excellent example of just how discursive participation among students should work. Obviously concerned with the many social forces influencing young people today, East Hazelwood's student reporters, along with their faculty adviser, devoted a section of *Spectrum* to explore the issues of divorce, runaways, juvenile delinquency, and teenage marriage and pregnancy. These articles promised a way for student readers to better understand the challenges of their own lives and encouraged future dialogue on these subjects. By interviewing teenage mothers and children of divorced families, the student reporters reached out to the sometimes overlooked margins of the student community and sought to join those perspectives with the perspectives of other school members. Ideally, these reports invited students to empathize with the experiences of others, to see themselves in a kind of extended family where societal pressures influence its members in very different ways.

Had East Hazelwood's principal not deleted the stories from the school's newspapers, these reports and the interviews could have then initiated a dialogue among students and faculty. They could have explored the ways that a community might reduce teenage pregnancy rates or support teenage parents.

To be sure, listening to the voices of those involved in unexpected pregnancies or broken families is not always pleasant for either students or adults. The principal, for instance, felt the students' frank talk about their sexual histories and "use or nonuse of birth control" seemed inappropriate and likely to encourage sexual irresponsibility. He also worried that the articles might offend the boyfriends and parents of the interviewed students. However, neither the school nor the community will ever find ways of counselling responsible sex unless they first legitimate the feelings teenagers have and learn to understand them. Likewise, one will never appreciate the disruptive force of family separation by turning a deaf ear to that student in the name of protecting her parents.

Any school truly devoted to improving the lives of its students should remember Ernest Bloch's powerful observation that "the standpoint of the victims of any society ought to always provide the starting point for the critique of that society."

The need of a school-sponsored forum in these kinds of discussions is especially important. Unlike conversations in the cafeteria,

---

223. *Id.* at 288 (Brennan, J., dissenting) (the majority, along with East Hazelwood's principal apparently read the pregnancy article as advocating irresponsible sex).
224. *Id.* at 274.
225. As quoted in Giroux & McLaren, *supra* note 97, at 221.
Civic Virtue and the Protection of Student Voice

or even reports in an underground newspaper, the school-sponsored forum gives the issues discussed legitimacy in the eyes of faculty and the administration and demands their attention. After the principal excised their stories, the reporters of East Hazelwood later did distribute their stories on their own. But the fact that the school's "legitimate" channels had rejected these students essentially branded them as rebels and troublemakers with nothing constructive to say. We can imagine that any teacher or student sympathetic to their views would certainly have felt reluctant to introduce such topics into relevant classroom discussions. Any school devoted to free speech as a means of communion with others and of creative social reform cannot allow broad censorship in the forums where it really matters. "Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots." Hazelwood marks a dangerous course in student speech jurisprudence, not merely because it cuts back dramatically on the protection of student speech, but because it creates out of whole cloth, a new distinction between sponsored and unsponsored speech. It discourages student discourse exactly where it is needed most. The decision has produced a chilling effect in some areas and has sparked legislative reform in others. According to the Student Press Law Center in Washington, D.C., reports of actual or threatened school censorship have significantly increased after the Hazelwood decision. Many student authors now censor themselves before waiting to be told an article on a topic such as pregnancy or abortion is "inappropriate." Some student readers now dismiss their school's official newspapers as a bullhorn for the administration's view. Concerned over this silencing effect, some states, including California and Iowa, have passed laws to extend Tinker-style protections to student speech in school-sponsored forums.

---

230. See, e.g., Paper Gets F from Some Medfield Teachers, Boston Globe, April 7, 1989, at 17 (students run a controversial underground newspaper because the school newspaper is "basically what the administration wants to say.").
231. See Hechinger, supra, note 228. Iowa's recent law states that "students of public schools have the right to exercise freedom of speech including the right of expression in official publications," provided the articles are not "ob-
Ironically, the Autonomy model's focus on individual liberties may have distracted the Court from seeing the link between student-speech and community involvement. For as long as the majority could see student-speech rights as tied to personal dress or private inquiry in a library, it could reserve curricular activities involving students and faculty for something else.

B. Hazelwood's Progeny

The battlelines between sponsorship and non-sponsorship now drawn, students and school officials are struggling to further define and broaden their territory in the courts. Student speech cases after Hazelwood focus primarily on whether the deferential Hazelwood standard applies. This inevitably leads courts to the question of what defines "sponsorship" and the "curriculum."

The Eleventh Circuit recently affirmed the decision of a Florida district court to apply Hazelwood to school textbooks. The district court allowed a school to remove an anthology that contained Lysistrata and Chaucer's The Miller's Tale even though neither piece has been assigned. Seeming reluctant to reach its result, the district court wrote that "[g]iven the breadth of the Kuhlmeier decision . . . this Court must apply the Kuhlmeier standard [requiring a reasonable relation to a pedagogical goal] to the present case." In a subsequent case, the Eleventh Circuit extended Hazelwood's broad rational to uphold speech restrictions on a university campus.

In Planned Parenthood of Southern Nevada, Inc. v. Clark County School District, the Ninth Circuit invoked Hazelwood to uphold a ban on advertisements for Planned Parenthood in a number of school publications, including a non-curricular athletic program. "Though the programs are not part of the school district's curriculum," the court wrote, "they are disseminated under [the school's] auspices [and] therefore play a role, however small, in the school's mission."

The school had argued that its ban furthered school interests by (among other things) avoiding controversy and by insuring that the school did not violate a state law that required sex education to

scene, libelous or slanderous" and do not "incite students to commit unlawful acts on school property or break school rules." Id.

232. Virgil II, 862 F.2d 1517.
234. Id. at 1552.
235. Alabama Student Party v. Student Gov't Ass'n of the U. of Alabama, 867 F.2d 1344 (11th Cir. 1989).
236. 887 F.2d 935 (9th Cir. 1989).
237. Id. at 943 (quoting Hazelwood, 484 U.S. at 272).
be taught by licensed teachers or school nurses. Despite any showing that the school’s fears were justified, the court easily found the school’s conduct reasonably related to a pedagogical objective. The court wrote:

Hazelwood grants wide latitude in controlling the content of school-sponsored publications. The newspapers, yearbooks, and athletic event programs all “bear the imprimatur of the school.” [Citation omitted.] It is thus reasonable for the school district to attempt to ensure that the “views of the individual speaker are not erroneously attributed to the school.”

Only one year before this decision, students in a Washington high school had successfully persuaded the Ninth Circuit to protect speech featured in Bad Astra, a non-sponsored, underground newspaper. The Ninth Circuit reasoned that Hazelwood’s approval of prior review for school-sponsored material necessarily implied a “corollary” that “no similar content control is justified for communication among students which is not part of the educational program.”

In Romano v. Harrington, a New York district court raised student-speech protections one more notch. In Romano, a school discharged a faculty advisor for allowing The Crows Nest, the school’s newspaper, to publish a student’s article opposing a federal holiday for Martin Luther King, Jr. Even though the newspaper was school-sponsored and advised by a teacher, the court refused to apply the Hazelwood standard because the paper was not formally part of the curriculum. The court acknowledged Hazelwood’s invitation to interpret a school’s curriculum broadly, but declined the offer. “Because educators may limit student expression in the name of pedagogy, courts must avoid enlarging the venues within which that rationale may legitimately obtain without a clear and precise directive.”

At least one court has suggested that not all student-speech controversies will be played out on the distinction between school

---

238. Id. at 945-46.
239. There was reason to suspect the school’s policy was not based on realistic fears, since other high schools in the Clark County area had allowed the Planned Parenthood advertisements without problems. See id. at 938-39.
240. Id. at 946.
242. Id. at 1157. But see Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260, 273 n.6 (1988) (leaving the question open as to what restrictions apply to policies of prior review of non-sponsored student expression).
244. Id. at 687.
245. Id. at 689.
246. Id.
speech and personal speech. In *Sears v. Harris*, members of the Atlanta Peace Alliance challenged a school policy involving a school's "Career Day." The school's policy welcomed military recruiters, but expressly excluded members of the Peace Alliance. The school justified its policy on the grounds that presenters should be currently affiliated with their fields (insuring they were knowledgeable), and that controversial or critical presentations should be avoided. The Eleventh Circuit found the "Career Day" program to be both part of the curriculum and a non-public forum, and, therefore, used Hazelwood's deferential standard. It then struck down the policies excluding the Peace Alliance as not rationally related to the school's legitimate goals.

In discussing the school's requirement that recruiters be currently affiliated with their fields, the court refused to defer to the school board's policy without a showing that the lack of present affiliation posed any problems. "There is no evidence which even arguably explains the Board's [choice of policy]," said the court, "[w]e cannot infer the reasonableness of a regulation from a vacant record."

The court similarly questioned the school's second rationale for the Peace Alliance, which was to avoid critical or controversial presentations. The court conceded that the objective of providing non-controversial, motivational information to students was legitimate. But it found unreasonable the school's attempt to achieve this goal by totally banning the organization (rather than by limiting what it can say). The court further held that while a ban on pejorative language could reasonably be justified by a desire to encourage students, the exclusion of negative facts could not.

*Hazelwood*’s progeny emphasizes some important points regarding the current state of student speech law. The key question posed by *Hazelwood* is still whether or not its standard applies to a particular case. Finding the answer is confusing. Some courts place more emphasis on a curricular relationship than on sponsorship.

247. 888 F.2d 1314 (11th Cir. 1989).
248. Id. at 1316.
249. Members of the Atlanta Peace Alliance included former, but not present, military personnel. They sought to present students with an "alternative," and often negative, view of career life in the military. Id. at 1317.
250. Id. at 1318.
251. Id. at 1322.
252. Id. at 1321-22.
253. Id. at 1322 (emphasis in original).
254. Id.
255. Id. at 1323.
256. See Burch v. Barker, 861 F.2d 1149 (9th Cir. 1988); Romano, 725 F. Supp. 687.
Others do the reverse. The Ninth and Eleventh Circuits at times seem to waffle between narrow and broad interpretations of Hazelwood's scope.

Recently, cases such as Planned Parenthood and Searcey have suggested that the definition of "reasonableness" under Hazelwood is yet another pressure point in student-speech doctrine. The Planned Parenthood court's heavy concern with protecting the school from views attributable to it demonstrates the power and breadth of this argument once accepted by a court. On the other hand, the Searcey court's willingness to put teeth into Hazelwood's reasonableness standard shows that speech protections within a school's official channels may not have completely eroded.

Planned Parenthood and Searcey are also significant because they involve the efforts of outside community members to seek an audience with students. These are cases where both the rights of speakers and listeners are at stake. Although both the courts in Planned Parenthood and Searcey framed their issues as the right of outside organizations to use the school's forum to address students, the courts could also have seen the issue as one involving the students' right to receive ideas. Viewed from the perspective of Engagement, these apparently separate interests are actually manifestations of a single shared interest in social dialogue. Such cases as Planned Parenthood and Searcey underscore the mutual interest schools and communities both have in leading students to examine such basic moral issues as love and war.

Building bridges of productive dialogue between students and the community cannot be accomplished with the current judicial tools. Sharpening the lines between protected and unprotected speech, in the spirit of Barker or Romano, does not fortify students with the real power to change their communities. Similarly, students cannot always rely on courts to scrutinize school justifications as the Eleventh Circuit did in Searcey. The solution lies in switching the focus from the "Authority versus Autonomy" battle to the fulfillment of civic republican politics within the school. The Engagement theory argues for a first amendment jurisprudence that aims to protect group civic education of students, as well as their political role in the community. Both of these values depend on granting students the means to define themselves in community

---

258. See Planned Parenthood, 887 F.2d 935; Barker, 861 F.2d 1149; Virgil II, 862 F.2d 1517; Searcey v. Harris, 888 F.2d 1314 (11th Cir. 1989).
260. It is ironic that the court in Planned Parenthood, while deferring to local sensitivities, ultimately isolated students from certain perspectives in the larger community.
contexts and to contribute to the improvement of their society in a meaningful way.

C. A New Doctrine

Having studied communitarian examples of educational and political thought, and having examined the practical pitfalls of Hazelwood, we begin to see what a new doctrine of speech based on Engagement would look like. Such a doctrine would seek primarily to foster the kind of self-defining, deliberative dialogue discussed in Part II. It would teach citizenship and responsibility by example. To understand the meaning of free-expression or democratic consensus, students would be free to explore issues such as pregnancy, drug abuse, or AIDS. The new doctrine would seek to pull students into the political process and to make the school and larger community responsive to them.

Aspiring for deliberative dialogue would mean erasing certain distinctions set down in Hazelwood. First, the distinction between sponsored student expression and non-sponsored expression would be eliminated. This distinction is not at all obvious in hard cases and encourages litigation on both sides to set limits. More importantly, holding sponsored speech to a higher standard blocks avenues of dialogue between groups of students and adults within the school community.

A new student speech doctrine would also wipe out any distinction between public or non-public forums. This dichotomy, borrowed from adult speech cases, has little relevance in pubic secondary schools. High schools are not parks or town squares. Neither are they closed-circuit transmission lines. Rather, schools are, ideally, centers for connection and learning — forums of Engagement. The unique status of schools explains why neither Hazelwood, nor the cases following it, can clearly articulate the independent significance of the public/non-public distinction in their reasoning.

From a practical standpoint, a new student-speech doctrine would also be as clear and easy to follow as possible. Ease of application will aid judges in future disputes. Clarity will help avoid costly and inefficient litigation in the first place. A new doctrine should, therefore, avoid such protean concepts, as “curriculum” or “sponsorship,” whenever possible. It should explicitly ground its standards in a consistent philosophy of educational and constitutional interpretation so that neither courts nor school officials will

261. Indeed, the Court in Tinker found no such distinction relevant either. Recent decisions applying Tinker (where Hazelwood did not apply) have refused to inquire into the forum’s status as public or non-public. See, e.g., Rivera v. East Otero School Dist. R-1, 721 F. Supp. 1189, 1192 (D. Colo. 1989).
get lost in applying its rules. Yet although a doctrine based on Engagement should seek to avoid litigation, it should not fear confrontation in non-judicial forums. Disagreements between students and administrators about their respective freedoms is inevitable and is a necessary process in reaching political awareness. A new doctrine would, therefore, encourage a healthy means of confrontation and dispute resolution.

A doctrine of Engagement would also be expansive and flexible. It would anticipate controversies involving school dialogue of all kinds, from student publications to textbook selections. It would also seek to protect two-way lines of communication among school members and community members as well.

Keeping these guidelines in mind, we might envision the following free speech doctrine for high schools. First, to protect the school’s interest in relaying academic lessons, school officials could regulate or ban student speech that directly threatens to substantially disrupt the educational mission of the school. Aside from speech that incites fights, blockades, or other obvious physical disruption, schools could also control student speech that directly interferes with or interrupts a school while it is delivering its message. This standard would specifically protect student speech which happens to conflict with the school’s message, but does not directly interrupt the school’s speech or distract its audience from subject areas currently being discussed. Courts would emphasize that since verbal style and imagery are deeply connected with a speaker’s experiences and perspective, one’s manner of speaking could not, in and of itself, constitute grounds for regulation. This standard, borrowed from *Tinker*, would apply to all communications where students participate either as speakers or listeners.

Second, to protect the school’s legitimate interest in conveying civic values, school officials would be permitted to restrict student speech that intentionally threatens to substantially disrupt deliberative dialogue itself. This rule allows schools to target “hate speech” — speech that deliberately stigmatizes or victimizes an individual or group on the basis of race, ethnicity, religion, gender, or sexual preference. Because hate speech excludes or devalues the contributions of certain groups in school discourse, schools of Engagement have little interest in protecting it. But because such schools have a large interest in encouraging open discussion of diverse views, courts would limit restrictions on hate speech to expressions that deliberately and directly interfere with tolerant discussion. Hate speech restrictions would not be used to fuel the causes of those who would censor works of literary merit, such as *Huckleberry Finn* or *The Merchant of Venice*. Though these works occasionally offend, they do not explicitly argue for the inferiority
or isolation of any group. Similarly, schools would not be allowed to censor student expression merely because it articulates a political stance unpopular with minority groups or women.  

Today efforts to restrict hate speech are best known on university campuses, where they have sparked considerable controversy. At the university level, these restrictions raise difficult questions about the relationship between the right to free speech and the right to protection against discrimination. Yet bans on hate speech at the high school level should not generate such controversy, where schools are already charged with the responsibility of socializing students for participatory democracy.

In addition to substantive guidelines on speech that disrupts academics and student discourse, a free-speech standard based on Engagement would also require procedural protections. These protections would strongly favor resolutions achieved through dialogue between school authorities and students. Before a school could censor student speech for either of the substantive reasons listed above, it would have to provide a prompt, informal hearing in which school officials make their case for censorship and allow the student speakers (or listeners) to respond. Only if the challenged expression clearly threatens immediate, physical disruption, could a school censor the speech without such a process. In those cases, the school would still be required to conduct a similar hearing with the student after the censorship had occurred. Ultimately this procedural safeguard would serve two purposes. It would (1) help assure that in all cases of censorship, the school had exhausted at least some of the less restrictive means available to it, and (2) engage the school and the student in a dialogue, in which ideally, the two would not only discuss the merits of the controversial message, but work together to develop a way to realize the interests of both par-

262. Thus, the student speech in Romano, which opposed a federal holiday honoring Martin Luther King, Jr., would remain protected, as would principled arguments against such issues as affirmative action or comparable worth laws.


ties in a way that did not substantially harm the other. Even if the school did ultimately ban the interest, the student would have won an audience of influential members of the school community.

To understand how these rules would work in practice, we can imagine how this standard would apply in *Hazelwood* itself. On the facts of *Hazelwood*, the principal, having learned of the students' articles on divorce and teen pregnancy, would first decide whether he has the power to remove the articles under the new doctrine. He will conclude that he does not. Although he may be able to argue at a hearing that the publication of such articles would conflict with the school's interest in responsible sex or personal privacy, the principal could not convincingly show that publication of the stories would lead to immediate disruption. Further, publication of the articles would not interrupt the school in the course of voicing its own message.

This does not, however, mean the principal does not have options. In this case, he should meet with the student reporters in order to express his anxiety. He would preface his remarks by making clear that regardless of the outcome of the discussion, the students would retain the right to publish their stories if they still wanted to. This tactic shifts the terms of discussion from whether or not they may publish their articles to whether or not they should. The principal thus emphasizes the responsibility that comes with democratic participation.

Next, the principal should discuss the students' reasons for wanting to print the stories and attempt compromises that protect the interests of both parties. Should compromise prove impossible, the students would print their stories. But the principal could insist that an editorial representing the school's viewpoint run on the same page as the other stories. Ideally, the principal could even invite a student who shared his ideas to write an editorial representing the school's view. In this way the school avoids silencing important student dialogue and asks student readers to critically evaluate the stories in the newspaper. To the extent that the principal can publish his own messages along side those of the students, he will maintain greater influence over communications in the school than if he had forced the reporters to publish their articles in an underground newspaper.

---

266. Under my proposed system, it is not certain that the principal would learn of the students' stories before publication. Since the Engagement doctrine does not distinguish between sponsored or unsponsored speech, the principal could not insist on prior review unless he also insisted on such review for unsponsored speech. Such a blanket demand would likely chill speech and would cut against the principles of Engagement. For the sake of this example, we may assume that the principle has, nonetheless, learned of these stories from students or faculty members.
The same reasoning behind the standards for student expression also extend to the selection of books and materials within the curriculum. Students have a right to course selections not influenced by political bias so that class discussions can properly develop understandings of diverse community viewpoints. Although schools would be free to select or remove books for reasons other than those supported by political bias, there should be a strong presumption against course lists which systematically exclude the experiences of significant groups of people whose ideas directly relate to the course from which they are excluded.

To protect students' interest in receiving and discussing ideas within the curricula, schools would be required to implement a standard review process for schools wishing to remove books from the curricula. Similarly, if a large number of students or parents believed schools were refusing to include relevant books on the basis of political or cultural bias, the school would be required to hold a hearing in which all points of view could be discussed. Short of litigation, school officials would still probably retain ultimate control over their selections. Yet the presence of a hearing would provide a forum for deliberative discussion to take place. By requiring school officials to justify their actions in rational terms, this process would prevent much arbitrary censorship of school books.

A student-speech doctrine emphasizing broad speech protections in school forums and procedural guarantees would not only benefit more privileged schools in relatively peaceful neighborhoods, it would also benefit urban schools confronted with racial tension and violence. Deliberative dialogue alone will never eradicate such complicated problems. But broad speech protections can engage students in an active search for a more peaceful community. The "just community" program at Roosevelt High attests to the peace-keeping power students can realize when encouraged to analyze together and set examples for one another. The success of student mediation programs throughout the country similarly point to the positive effect that frank discussions can have even between students unaccustomed to using words to resolve disputes.

The procedural guarantees are especially important in diverse urban areas, where school officials may be more likely to dismiss minority positions as too controversial or misguided. Freer speech

267. See Formal Censorship Procedures Actually Help Schools Keep Books, Groups Agree, Education Daily, at 6 (Sept. 9, 1988) (while rates of challenges are higher in districts with formal review policies, rates of ultimate removal are lower than in districts without such procedural protections).

268. See supra notes 156-58 and corresponding text for a discussion on the "just community" program at Roosevelt High.

269. See supra notes 159-65 and corresponding text for a discussion on successful school mediation programs.
in school forums, as well as required pre-censorship hearings would also allow opportunities for students and administrators to communicate views on serious topics that otherwise might be neglected or left only to school disciplinary hearings. Protecting student voice in this way empowers schools in times of peace and tumult, and eventually paves the way for more extensive changes in teaching and curriculum that the principles of Engagement would promote.

CONCLUSION

In this essay I have argued that in the context of student-speech cases, the Supreme Court has been viewing the interests of the schools and the students in the wrong way. Cases such as Hazelwood and Tinker are ultimately not about weighing one's individual interest in autonomous expression against the school's interest in preserving the community. These controversies are about the efforts of students to define a relationship between their peers and other members of the school in order to build consensus and to transform their society. These are cases of connection, not rebellion.

The theory of Engagement, based on an educational theory of group learning and civic republicanism, seeks to join pro-liberties concerns with more traditional interests in communal cohesiveness and integrity. Success in this effort means razing the current wall between sponsored and non-sponsored speech established in Hazelwood. Courts should also require schools to establish both procedural and substantive avenues for student voice to enter the heart of classroom learning. Ultimately, opening the channels of community discussion within the school can lead to many things: a stronger commitment to civic virtue, a deeper understanding of social structure, and meaningful contributions from students of diverse experiences. But it begins with one word. Listen.