

BOOK REVIEW

THE POLITICS OF SCHOOLING AND ADOLESCENT LIFE

UNDERSTANDING EQUAL EDUCATIONAL OPPORTUNITY: SOCIAL JUSTICE, DEMOCRACY, AND SCHOOLING. By Kenneth R. Howe. New York, NY: Teachers College Press, 1997. Pp. xii, 163. \$50.00

CHILDREN'S SOCIAL CONSCIOUSNESS AND THE DEVELOPMENT OF SOCIAL RESPONSIBILITY. By Sheldon Berman. Albany, NY: State University of New York Press, 1997. Pp. x, 254. \$54.50

EMPOWERING EDUCATION: CRITICAL TEACHING FOR SOCIAL CHANGE. By Ira Shor. Chicago, IL.: University of Chicago Press, 1992. Pp. vii, 286. \$14.95 (paperback)

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I.

INTRODUCTION : ADOLESCENT LIFE AND FAILING SCHOOLS

Due to the widespread belief that schools and youth represent our nation's future, schools remain at the center of "culture wars."¹ Political leaders emphasize the role of education in cultural life and champion school reform as central to the achievement of particular visions of humanity and society. Indeed, every recent decade has brought significant attempts to foster fundamental reform.² As cultural trends change, each succeeding generation develops its own criticisms, anxieties, and frustrations about the purposes of education and the organization of schools.³

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1. See JAMES DAVISON HUNTER, *CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA* xii (1991) (arguing that education and schools are important battlegrounds on which contemporary culture wars are being waged).

2. DAVID TYACK & LARRY CUBAN, *TINKERING TOWARD UTOPIA: A CENTURY OF PUBLIC SCHOOL REFORM* 1-11 (1995).

3. Thomas S. Popkewitz, *Educational Reform: Rhetoric, Ritual and Social Interest*, 38 *EDUCATIONAL THEORY* 77 (1988).

Adolescent behavior has always differed from that of the mainstream community and from parental mores. The peer group significantly shapes the period of adolescence.⁴ In addition, just as previous broad social changes accompanying urbanization and industrialization contributed to the invention of adolescence,⁵ recent developments contribute to its reinvention. The mass media, the commercial marketplace, globalization, and even new approaches to the study of adolescence currently contribute to shaping the adolescent experience.⁶

Political responses to schooling fail to the extent that they ignore such changing realities in adolescent behavior and attendant changes in students' interests. Indeed, such responses exacerbate the problems facing youth and the failure of schools that these responses attempt to address. There are several elements to the link between school failure and the failure to consider students' interests and experiences in formulating approaches to education. First, in the educational environment, students confront cultural and political issues as they confront their own journeys through adolescence. Students experience profound changes in their own emotional, physiological, and biochemical systems and behavior while also developing their cognitive faculties.⁷ Second, adolescents remain the most politically unrepresented group. They do not possess the right to vote and directly influence political processes that affect schooling, and are arguably also the group with the least readily enforceable legal rights.⁸ Lacking formally recognized legal rights, adolescents are unable to influence curricular

4. JOHN COTTERELL, *SOCIAL NETWORKS AND SOCIAL INFLUENCES IN ADOLESCENCE* 1-18, 23-46 (1996).

5. Frank A. Fasick, *On the "Invention" of Adolescence*, 14 *J. OF EARLY ADOLESCENCE* 6 (1994).

6. See, e.g., David A. Hamburg, *Meeting the Essential Requirements for Healthy Adolescent Development in a Transforming World*, in *PREPARING ADOLESCENTS FOR THE TWENTY-FIRST CENTURY: CHALLENGES FACING EUROPE AND THE UNITED STATES* 1, 1-8 (Rubi Takanishi & David A. Hamburg eds., 1997) (providing an evolutionary perspective and discussing the current challenges faced by contemporary adolescents).

7. For a survey of changes, see JOHN W. SANTROCK, *ADOLESCENCE* 23-30 (1996) (discussing the nature of adolescent development).

8. See, e.g., Roger J.R. Levesque, *The Internationalization of Children's Human Rights: Too Radical for American Adolescents?*, 9 *CONN. J. INT'L L.* 237, 239 (1994) (noting that even the United States, arguably the most rights-conscious nation in the world, has failed to recognize adolescents' rights); see also Homer H. Clarke, Jr., *Children and the Constitution*, 1992 *U. ILL. L. REV.* 1, 1-4 (1992) (noting the Constitution's silence on the subject of children's rights, but noting that state and federal statutes, as well as common-law doctrines, affect the rights of adolescents). Courts have begun to recognize children's rights in a number of contexts. Although the holdings have been narrow, the legal theories underlying the holdings are significant. See, e.g., Susan C. Lonowski, *Recognizing the Right of Terminally-Ill Mature Minors to Refuse Life-Sustaining Medical Treatment: The Need for Legislative Guidelines to Give Full Effect to Minors' Expanded Rights*, 34 *U. LOUISVILLE J. OF FAM. L.* 421 (1995-96) (noting that some courts are beginning to recognize that, under certain circumstances, terminally-ill children have the right to exercise an adult right to bodily self-determination and to refuse life-sustaining medical treatment); Janine P. Felsman, *Eliminating Parental Consent and Notification for Adolescent HIV Testing: A Legitimate Statutory Response to the AIDS Epidemic*, 5 *J.L. & POL'Y* 339 (1996) (discussing some state statutes

decisions and the structure of schools.⁹ Third, in addition to not having a formal legal voice, students do not have even an informal voice in efforts to improve their own educations. Discussions of reform deliberately or unwittingly exclude youth.¹⁰ From the perspective of adolescents, the problem aptly may be described as schools failing their students. Yet, commentators continue to view schools as failing our society, youths' parents, the economy, or our political system.¹¹ Defining school failure as a social failure, rather than as a failure for adolescents themselves, commentators champion reform efforts that increase community input, especially that of parents.¹² The politics of schooling ensure that adolescents are not

that authorize teenagers to independently consent to HIV testing); Rachel M. Dufault, *Bone Marrow Donations By Children: Rethinking the Legal Framework in Light of Curran v. Bosze*, 24 CONN. L. REV. 211 (1991) (discussing whether to honor petitions, brought on behalf of children, asking that they be allowed to serve as tissue or organ donors for ailing siblings).

9. Adolescents remain unable to effect broad reform, as exemplified by the difficulties encountered by attempts to address the denial of education due to sexual harassment. See Jeff Horner, *A Student's Right to Protection From Violence and Sexual Abuse in the School Environment*, 36 S. TEX. L. REV. 45, 56 (1995) (concluding that students are unlikely to recover damages from the school for actions against a student perpetrated by an employee or student, and that recovery is even less likely if the sexual harassment involves only students). On teacher-on-student sexual harassment, see John W. Barkowski & Alexander E. Dreier, *The 1997-98 Term of the United States Supreme Court and its Impact on Public Schools*, 129 EDUC. L. REP. 887 (1998) (discussing *Gebser v. Lago Vista Individual School District*, 524 U.S. 274 (1998), holding that unless a school district official with authority to institute corrective measures had actual notice of the harassment and failed to respond adequately, the school district is not liable). On student-to-student sexual harassment, see George M. Rowley, *Liability for Student-to-Student Sexual Harassment Under Title IX in Light of Davis v. Monroe County Board of Education*, 1999 B.Y.U. EDUC. & L.J. 137 (1999) (arguing that the Title IX road to holding educational institutions liable for peer sexual harassment seems to be closed). For a discussion of student recovery under §1983, see Monica L. Hof, *Roadblock: The Fifth Circuit Further Insulates Public School Systems from §1983 Liability*, 43 LOY. L. REV. 649 (1998) (arguing that the trend of the Supreme Court and the Fifth Circuit is to block supervisory liability, which is the only hope for §1983 recovery by public school students assaulted in or around the school).

10. Walter C. Parker, *"Advanced" Ideas about Democracy: Toward a Pluralist Conception of Citizen Education*, 98 TEACHERS COLLEGE RECORD 104, 120 (1996) (stating that "[t]he discussions I have in mind involve teachers, principles, curriculum coordinators and parents who are wondering whether it would [sic] be worthwhile and what it might mean, to educate students for democratic citizenship") Michael A. Rebell & Robert L. Hughes, *Schools, Communities and the Courts: A Dialogic Approach to Education Reform*, 14 YALE L. & POL'Y REV. 99, 114-136 (1996) (proposing a "dialogic model" that seeks to unite all relevant stakeholders in the processes of discussion, deliberation and reevaluation of fundamental policies and values, yet which largely ignores student voices).

11. Broad social concerns, particularly the nation's economic future and crime rates, currently fuel reforms. See generally, Michael Heise, *Goals 2000: Educate America Act: The Federalization and Legalization of Educational Policy*, 63 FORDHAM L. REV. 345 (1994) (arguing that declines in student achievement levels led to the federalization of educational policy).

12. Critics charge that "local school reform does not empower those who have the most important stake in improving education—the parents." John M. Evans, *Let Our Parents Run: Removing the Judicial Barriers for Parental Governance of Local Schools*, 19 HASTINGS CONST. L.Q. 963, 964 (1992) (emphasis added). Several argue that states should only rarely be able to justify overriding parents' educational authority: Stephen G. Gilles, *On*

directly involved in determining their roles in their own educational experiences.

Commentaries on law and educational policy-making reflect the failure to include youth's interests in attempts to address the continued failure of schools.¹³ Even more problematic, legal commentaries that discuss educational equality and opportunity ignore the rights of individual youth; those concerned with legal change focus more, for example, on class,¹⁴ gender¹⁵ and racial equality.¹⁶ The plight of adolescents is considered only as it relates to other groups—especially the poor, women, and racial minorities. While commentators have developed strategies for meeting the needs of adolescents who are also disadvantaged, they have ignored the needs of adolescents as a whole.

This review explores the need for increased inclusion of youth in educational reform efforts. The investigation necessarily rests on the valuable contribution of those who champion a need for educational policies that better reflect the demands of democratic societies. Although numerous

Educating Children: A Parentalist Manifesto, 63 U. CHI. L. REV. 937, 938-944 (1996); Stephen Arons & Charles Lawrence III, *The Manipulation of Consciousness: A First Amendment Critique of Schooling*, 15 HARV. C.R.-C.L. L. REV. 309 (1980).

13. Suzanna Sherry, *Responsible Republicanism: Educating for Citizenship*, 62 U. CHIC. L. REV. 131, 182-194 (1995).

14. A considerable number of commentaries examine, for example, the plight of immigrant and homeless children. See, e.g., Lora L. Grandrath, *Illegal Immigrants and Public Education: Is There a Right to the 3 R's?*, 30 VAL. U.L. REV. 749 (1996) (proposing model federal and state statutes enabling states to block access to public education for the children of undocumented immigrants); George E. Pawlas, *Homeless Children: Are They Being Prepared for the Future?*, 61 EDUC. FORUM 18 (1996) (encouraging programs for homeless children within the public schools); Sonja Diaz-Granados, *How Can We Take Away A Right That We Have Never Protected: Public Education And Immigrant Children*, 9 GEO. IMMIG. L.J. 827 (1995) (examining the extent to which the children of immigrants have educational rights and how those rights are being protected); Evan S. Stolove, *Pursuing the Educational Rights of Homeless Children: An Overview for Advocates*, 53 MD. L. REV. 1344 (1994) (exploring the effect on homeless children when they are denied admittance to public schools); James H. Stronge & Virginia M. Helm, *Legal Barriers to the Education of Homeless Children and Youth: Residency and Guardianship Issues*, 20 J.L. & EDUC. 201 (1991) (seeking to ascertain the impact of residency and guardianship requirements on the provision of educational opportunities to homeless children and youths).

15. The most recent investigations examine issues of sexual harassment that operate to deny educational choices to girls and boys of homosexual orientation. See *supra*, note 9; see also, Kelli Kristine Armstrong, *The Silent Minority within a Minority: Focusing on the Needs of Gay Youth in Our Schools*, 24 GOLDEN GATE UNIV. L. REV. 67 (1994) (examining the education system's attempts to address the problems gay and lesbian teens face and the responses of organizations and politicians to teen homosexuality).

16. See generally, Denise C. Morgan, *What is Left to Argue in Desegregation Law? The Right to Minimally Adequate Education*, 8 HARV. BLACKLETTER J. 99 (1991) (arguing for the existence of a constitutionally-protected property right in minimally adequate education).

books now urge that schools become more democratic,¹⁷ this essay advocates what I call the “participatory model” of education and examines the need to take adolescents’ interests and rights more seriously. Responsible democracies provide individuals and communities with meaningful opportunities to participate in matters that affect them. In terms of preparing students for the fulfillment of their responsibilities and the enjoyment of their rights as citizens, the participatory model has four significant strengths. First, the model addresses society’s failure to include all its members in determining the nature and purpose for education. Second, the model addresses pressing political needs, stressing the need to acquaint youth with cultural diversity and to help them recognize and adjust to rapid social change. The model strives to ensure that no group remains at the periphery and attempts to meet each group’s needs.¹⁸ Third, the model reflects an active image of democracy, in which people participate directly rather than through elected representatives. Fourth, the model has increasingly gained empirical support from research showing both why people obey the law¹⁹ and how people in pluralistic societies achieve tolerance.²⁰ In brief, the participatory model is motivated by a commitment to democratic processes and the belief that schools serve an important democratic purpose.

17. See e.g., DAVID T. SEHR, *EDUCATION FOR PUBLIC DEMOCRACY* (1997) (seeking to re-examine schools through the “lens” of public democracy and to help democratic educators use that lens to recreate American education); JOHN I. GOODLAD, *IN PRAISE OF EDUCATION* (1997) (arguing that the proper context for education is a politically and socially democratic one); *DEMOCRACY, EDUCATION AND THE SCHOOLS* (Roger Soder ed., 1996) (addressing fundamental questions of democracy, education, the schools and the interrelationship among the three); WALTER R. PARKER *EDUCATING THE DEMOCRATIC MIND* (1996) (developing the idea, in a collection of essays, that deliberate education towards democracy is essential to a functioning polity); THOMAS J. LASLEY II, *TEACHING PEACE: TOWARD CULTURAL SELFLESSNESS* (1994) (encouraging an approach to education that promotes a selfless disposition and extra-centered habits in young people); JESSE GOODMAN, *ELEMENTARY SCHOOLING FOR CRITICAL DEMOCRACY* (1992); AMY GUTMANN, *DEMOCRATIC EDUCATION* (1987) (advocating democratic education as a political as well as an educational ideal) [hereinafter GUTMANN, *DEMOCRATIC EDUCATION*].

18. Commentators who research how current schools silence the voices of those who differ report that programs fail because they ask students “to dislike themselves and their own culture. The staff preach the virtues of upward mobility, trying to create an environment where that might occur. At the same time, however, they are asking their students to reject their social origins and to replace them with something ‘better,’ that is, to implicitly view themselves and those they love as deficient.” Bram A. Hamovitch, *Socialization without Voice: An Ideology of Hope for At-Risk Students*, 98 *TEACHERS COLLEGE RECORD* 286, 302-03 (1996).

19. See TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (1990) (finding, based on a survey of nearly 1,600 people, that views of the fairness of legal procedures, defined largely by opportunities to participate in the process, were central to the formation of beliefs concerning the legitimacy of the legal system).

20. See W. PAUL VOGT, *TOLERANCE & EDUCATION: LEARNING TO LIVE WITH DIVERSITY AND DIFFERENCE* (1997) (examining how tolerance is learned in schools and colleges in order to design curricula for teaching tolerance).

In Part II of this review, I highlight Kenneth Howe's recent efforts to rethink the role of schooling in democracies that have become increasingly heterogeneous. While Howe takes the first step by acknowledging that schools need to adopt a more participatory approach to schooling, his perspective is still too much that of an educator, and he fails to take adequate account of the needs of youth. Part III discusses Ira Shor's and Sheldon Berman's attempts to build upon the participatory model suggested by Howe, and to demonstrate ways in which schools fail both society and their students because they do not prepare students adequately for democratic participation. While Shor's work takes us part of the way towards the sort of participatory model for education that I advocate here, Berman's work improves upon Shor by conceiving a classroom environment that supports students in developing their senses of the responsibilities of democratic participation.

Part IV addresses the extent to which legal obstacles may hamper efforts to recognize adolescents' peculiar interests. While the Supreme Court took positions in the 1950s and 1960s that indicated a general receptivity for the participatory approach to education,²¹ in subsequent decisions, the Court has made it clear that it regards the interests of the state and of parents as outweighing those of children and students.²² Because the law does not adequately recognize the rights of youth, legal decisions have failed to consider contemporary theory on educational reform in rendering decisions that determine the nature of youth's educational experiences.

II.

SCHOOLING AND RESPONSIBLE DEMOCRACIES

Kenneth R. Howe's recent work illustrates the need to consider a more participatory model for schooling.²³ Howe's analyses highlight the need for greater inclusion of students in the politics of schooling and indicate ways in which different educational policies can become more inclusive if they take basic democratic principles seriously. In order to do so, Howe recommends a "radical liberal framework"²⁴ that centers on participation. Implicit in Howe's approach is the assumption that current uncertainties and confusions that surround education can only be understood and addressed by confronting questions about the society education helps to sustain. Difficulties now facing education will not be resolved by introducing still more policies for improving the technical expertise of teachers,

21. *See infra*, text accompanying notes 84-89.

22. *See infra*, text accompanying notes 92-101.

23. KENNETH R. HOWE, UNDERSTANDING EQUAL EDUCATIONAL OPPORTUNITY: SOCIAL JUSTICE, DEMOCRACY AND SCHOOLING (1997).

24. *Id.* at 15-33.

raising standards, or increasing the economic effectiveness of schools. Instead, educators must address fundamental moral and political questions about the role of education in creating a desirable society.

Howe offers a theory of equality of educational opportunity grounded in participation. Howe contends that educational opportunity must mean that society provides mechanisms to provide students with educational settings that are tailored to the needs of different groups of students.²⁵ More controversially, Howe suggests that the needs, interests, and perspectives of all groups be considered in determining what educational opportunities are desirable. He concludes that "genuine equality of educational opportunity can frequently be achieved only by including the voices of groups who have historically been excluded in negotiating what educational opportunities have worth."²⁶ Unlike traditional approaches to equality that merely seek to provide equal access to certain educational services, Howe's approach considers matters of equality when determining what ought to be included in educational curricula.

Howe develops his argument in the context of current educational controversies. Howe's concern with multicultural education exemplifies his approach.²⁷ Howe frames the issue in terms of the manner in which current educational structures impose important costs on those who want to achieve academic success. These costs include, most notably, changes in one's identity and alienation from one's cultural group. Howe would have society move toward a participatory model that would develop educational ideals that are sufficiently open to cultural differences to avoid oppression.²⁸

Howe rejects the postmodernist view that we must abandon universal educational ideals because they are inherently hegemonic and oppressive.²⁹ He also rejects the more common assimilationist view that adopts one standard for all children.³⁰ Illustrative of Howe's model is his discussion of two related debates regarding testing. The first debate regards the effects of testing on the distribution of educational opportunities. Howe believes that attempts to eliminate predictive bias in testing, the central aim of those who aim to assure educational opportunity for all, are misguided, because they fail to identify what it is tests really ought to measure.³¹ His solution

25. *Id.* at 26-27. Howe is thinking of groups of students distinguished by special needs, e.g., students who need bilingual education or special education.

26. *Id.* at 27.

27. *Id.* at 53-77.

28. *See id.* at 53 (providing quotations from Mexican-American, American Indian, and Puerto Rican students who remark on the difficulties of maintaining their cultural identities while participating in an educational system often viewed by members of minority groups as inculcating students into the majority culture and majority value system).

29. *Id.* at 59-65.

30. *Id.* at 54-59.

31. *Id.* at 93-100. Charges of predictive bias tend to arise when an identifiable group underperforms on a test relative to other groups. Howe distinguishes two main conceptions

is to eliminate what he calls "criterion bias." While predictive bias assumes that a given criterion of performance is legitimate and assesses whether group promise is accurately assessed according to that criterion, criterion bias measures whether the criterion itself is biased against groups in terms of characteristics internal to the test.³² Howe argues that the potential for criterion bias can be reduced if questions concerning curriculum are addressed in a democratic fashion. Howe thus provides an innovative solution to the problem of standardized testing by focusing not on the tests but on education and preparation.³³ The second debate concerns the recent reform proposals, particularly *A Nation at Risk*³⁴ and *America 2000*.³⁵ Howe argues that these reform efforts are likely to fail because they focus on the traditional curriculum,³⁶ rather than seeking to renegotiate educational aims, pedagogical practices, and curricular content in order to orient education towards preparing students for participation as citizens in a democratic society. Howe instead argues for a balanced approach to education grounded in democratic principles.³⁷ Drawing on Amy Gutmann's influential work on the role of education in a democratic society,³⁸ Howe suggests that democracy requires respect for, not merely tolerance of, cultural difference, and that democracy also requires a principle of nonoppression; people must not only be allowed to make claims, but democracy must ensure that their claims have real authority.³⁹ Simply stated, Howe proposes that groups must be taken seriously, and that their needs determine the nature of society's needs.

Howe adopts a similar approach with respect to a number of issues. He evaluates numerous arguments in favor of school choice, including those based in parental autonomy, market, communitarian and pragmatic

of predictive bias. External conceptions construe the problem of bias in terms of how well a test predicts the real-world performance it is trying to measure. Internal conceptions construe the problem in terms of characteristics internal to the test. *Id.* at 94.

32. *Id.* at 95.

33. *Id.* at 106-108.

34. UNITED STATES DEPARTMENT OF EDUCATION, NATIONAL COMMISSION ON EXCELLENCE IN EDUCATION, *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM: A REPORT TO THE NATION AND THE SECRETARY OF EDUCATION* (1983).

35. *AMERICA 2000: AN EDUCATION STRATEGY: SOURCEBOOK* (1991).

36. *Id.* at 100-105. E.D. Hirsch's work is exemplary of more traditional approaches to educational reform which focus on curricular reform. According to Hirsch, in order to contribute to the production of a cohesive democratic society, schools must emphasize a specific content: that is the names, dates, places, maxims, etc., that constitute mainstream cultural knowledge. The dissemination of that basic knowledge ensures that individuals share common understandings and can communicate with one another. Hirsch does not argue that non-mainstream cultures or languages are inferior in some fundamental sense. Rather, he proposes that it is in the best interests of those from disadvantaged positions to master the knowledge associated with success in U.S. society as it presently exists. Hirsch's views on education can be found in E.D. HIRSCH, *THE SCHOOLS WE NEED AND WHY WE DON'T GET THEM* (1996), and E.D. HIRSCH, *CULTURAL LITERACY* (1988).

37. *Id.* at 65-66.

38. GUTMANN, *DEMOCRATIC EDUCATION*, *supra* note 17.

39. *Id.* at 66-70.

concerns. Howe rejects these arguments, however, arguing that advocates of school choice employ an impoverished conception of democracy, rely on suspect and distorted empirical claims, wrongly identify markets with democracy, ignore the problems with construing education as a private rather than public good, and ignore the implications for equality of educational opportunity. He concludes that school choice undermines the traditional democratic and egalitarian goals of the public schools.⁴⁰ On the subject of gender equality, Howe cites feminist theorists and advocates that educators adopt the participatory conception of equality and educational opportunity espoused by such theorists.⁴¹ On the subject of segregation, the author discusses tracking, gifted education and special education, but he rejects arguments that segregationist policies serve the interests of all students and the interests of society overall. He instead champions inclusive policies, which comport with new research about the benefits of such policies.⁴²

Howe's participatory model focuses on the group and the need to respect group identity.⁴³ Howe persistently objects that the differential treatment of students must be rooted in equal respect for differing views on students' needs, interests and capabilities.⁴⁴ Different groups should be able to express themselves in public institutions without shedding their distinct identities or suffering disadvantage because of them.⁴⁵ Although Howe focuses on difference, he does not does abandon universal goals; but he argues that those goals should be open to a process of negotiation.

Although Howe makes invaluable contributions to the process of education reform, his failure to consider the needs of youth exemplifies the ways in which commentators continue to view schools as failing society, rather than as failing students. Although Howe's text does contain examples of how schools can better address students' needs,⁴⁶ his own failure to consider students' needs renders his reform proposals incomplete. Taking participatory models seriously must mean that deliberations on education reform must include the voices of those who have most at stake, the youth being educated.

40. *Id.* at 109-127.

41. *Id.* at 34-52.

42. *Id.* at 125-126.

43. *Id.* at 31-32.

44. *Id.*

45. *Id.* at 32.

46. For example, in his discussion of school segregation in the form of tracking, Howe correctly notes that the participatory ideal requires that as students age and mature, they should be allowed to forego uniform curricular requirements and to exercise increasing discretion. *Id.* at 84.

III.

EXPANDING VISIONS OF DEMOCRACY AND SCHOOLING

The works of two recent commentators explore why schools fail students and democracies. Ira Shor tackles the first issue,⁴⁷ while Sheldon Berman, who illustrates how students become responsible citizens, addresses the latter.⁴⁸ Shor identifies two major deficiencies in America's schools that lead schools to resist change and cause their students to become disaffected. The first deficiency involves the limits currently placed on curricula. The other involves the one-way transmission of rules and knowledge from teacher to students.⁴⁹ Students' responses to these deficiencies include apathy and resistance to their teachers' authority. Schools' resistance to change and students' resistance to their instructors combine to discourage the students' development of their independent interests. Students thus sabotage themselves and this contributes to the cycle of school failure.

Shor's solution involves "critical dialogue,"⁵⁰ aimed at motivating inquiry and learning that surpasses traditional "teacher talk" by focusing on joint student-teacher participation.⁵¹ Critical dialogue capitalizes on students' capacities as motivated learners, encouraging them to "take part in making meaning, articulating purposes, carrying out plans, and evaluating results."⁵² Participatory pedagogies negotiate authority in class, focus on student experience, and ensure critical thought.⁵³

In Shor's dialogic approach to classes, teachers are to engage in problem-posing and guide students through topics that the teachers link to the students' life experiences. Schools thus situate academic themes within relevant contexts of personal affect and perception⁵⁴ and introduce materials in a manner that enables the students to apply them directly to their own experiences of society, politics and community.⁵⁵ Shor emphasizes that a

47. IRA SHOR, *EMPOWERING EDUCATION: CRITICAL TEACHING FOR SOCIAL CHANGE* (1992) [hereinafter SHOR, *EMPOWERING EDUCATION*]

48. SHELDON BERMAN, *CHILDREN'S SOCIAL CONSCIOUSNESS AND THE DEVELOPMENT OF SOCIAL RESPONSIBILITY* (1997) [hereinafter BERMAN, *CHILDREN'S SOCIAL CONSCIOUSNESS*].

49. SHOR, *EMPOWERING EDUCATION*, *supra* note 47, at 31-37.

50. *See generally, id.* at 85-111 (outlining the basic precepts of critical dialogue as "a student-centered, teacher-directed process" involving discussion developed by the teacher in cooperation with the students).

51. *Id.* at 17-20.

52. *Id.* at 18.

53. *Id.* at 21.

54. *See generally, id.* at 60-73 (suggesting that a student-centered approach should be used as the point of departure for education).

55. *See id.* at 179-181 (applauding educators who have had students make community murals devoted to groups often ignored in history classes); *id.* at 181-82 (embracing attempts to have students rethink their everyday activities and the consequences of those activities for life in another country, such as thinking of breakfast foods and their connection to the economies of developing nations).

process that allows students to participate in a dialogue concerning their education enables them to establish important connections between education and their lives outside of school and thus to develop their interests, while sharing their diverse experiences with others.

In stressing the centrality of attention to emotional processes in the rethinking of the transfer of knowledge,⁵⁶ Shor draws on a recent movement in psychology and education that recognizes the need to consider the emotional dimensions of learning and intelligence.⁵⁷ Shor proposes that "an empowering educator seeks a positive relationship between feeling and thought. He or she begins this search by offering a participatory curriculum."⁵⁸ His focus on dialogue and its emotive components breaks with traditional learning. In the participatory classroom, the teacher offers questions, comments, structure, and academic knowledge in order to provide students with opportunities to develop their thoughts, agendas and abilities.

Shor breaks even more from traditional thinking when he concludes that the participatory model essentially aims to desocialize students. That is, he proposes that students must be taught to question the social behaviors and experiences that constitute the myths, values, and relations of the dominant culture. That desocialization must occur both in school and in daily life.⁵⁹ Desocialization is a means of combating the student passivity that routine teacher-talk often elicits, and which interferes with critical thought.⁶⁰ He also calls for desocialization from mass culture, that is, from regressive values like racism, sexism, homophobia, self-reliant individualism, excessive consumerism, authority-dependence, militarism, and class prejudice.⁶¹ Desocialization enables students to reach critical consciousness, question the status quo, examine values that stifle democratic change, and view themselves as connected to larger processes of social transformation.⁶² Once the students have been desocialized, they can then participate in an educational experience that will re-socialize them as part of a process

56. *Id.* at 23-30.

57. *Id.* Shor's work builds on, without citing to, theories of multiple intelligences. See, e.g., HOWARD GARDNER, *FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES* 3-4, 8-10, 388-92 (2d ed. 1985) (developing theories concerning emotional dimensions of learning and intelligence by exploring the concept of "multiple intelligences," and emphasizing the need to respond to each individual's way of learning and their distinctive combinations of abilities); DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* (1995) (elucidating the idea of emotional intelligence, which expands the definition of intelligence by placing emotions at the center of one's ability to handle life situations, as necessary and valuable tools in the educational process).

58. *Id.* at 24.

59. See *id.* at 114 (explaining desocialization in daily life as critically examining and questioning "learned behavior, received values, familiar language, habitual perceptions, existing knowledge and power relations and traditional discourse," all of which shape one's daily interactions).

60. *Id.* at 118-123.

61. *Id.* at 114.

62. *Id.* at 126-130.

that also re-makes society. Shor's proposes an activist approach to schooling, an approach that treats students as already participating in democratic society.

Giving control to youth undoubtedly raises several concerns, not the least of which is that youth are not capable of controlling their own education. Two responses address that concern. The first response stresses teachers' continued control of the classroom. The second response appeals to the advantages of granting youth greater control and a participatory role in education. The participatory model fosters students' sense of social responsibility, a fundamental concern of a democratic society.

Commentators who adopt a dialogic teaching model view teachers as providing overall structure and resources that allow students to engage cultural diversity and historically divergent perspectives. Teachers are part of educational experiences that allow youth to become more self-reflective and grow into responsible adulthood. As Shor puts it,

The pedagogy described in this book is student-centered but is not permissive or self-centered. Empowerment here does not mean students can do whatever they like in a classroom. Neither can the teacher do whatever she or he likes. The learning process is negotiated, requiring leadership by the teacher and mutual teacher-student authority.⁶³

The teacher, then, leads and directs the curriculum. Education that proceeds in a democratic fashion simply orients its subjects to the student's own culture and lives.⁶⁴ Shor notes that educational theorists indicate not only that youth are able to control their educations, but that that control helps them develop the skills they need in order to participate in a democratic society.⁶⁵

Although Shor links empowered education to empowered democratic life,⁶⁶ his text neglects processes that increase social consciousness and foster moral development. Sheldon Berman's recent work illustrates how children can engage and must be engaged in determining educational outcomes.⁶⁷ To foster the process, Berman proposes a framework of "social responsibility" that centers on the development of the student's relationship with the political and social world and her personal investment in the well-being of others.⁶⁸ Berman's work integrates research from many educators, political scientists, and psychologists who have studied the role schools play in the development of young people's ethical thinking, political understandings, and social behavior. His work addresses not only how

63. *Id.* at 15-16.

64. *Id.* at 16-17

65. *Id.* at 15-17.

66. *Id.* at 18.

67. BERMAN, CHILDREN'S SOCIAL CONSCIOUSNESS, *supra* note 48.

68. *Id.* at 9.

young people develop a sense of responsibility, but also what classroom and school practices effectively support that development.

Berman stresses youth's sense of social responsibility and rejects the conception of children as egocentric, morally immature, and uninterested in social and political worlds. Adolescents and young children try to make moral and cognitive sense of the social and political world and of their place in it.⁶⁹ Most notably, social and political inequalities that relate to gender, race and class affect children's abilities to enter into and feel a part of the social and political world. Youth develop theories of the how societies work, and they negotiate their own relationships to society. Berman reveals how youth, "in essence, feel their way into the world. . . . Social consciousness and social responsibility are not behaviors that we need to instill in young people but rather they are behaviors that we need to recognize emerging in them."⁷⁰ The key link between social consciousness and actual behavior derives from the individual's negotiation of meaning, place and commitment.⁷¹ Rather than focusing on the child's sense of self, Berman emphasizes the child's concern with the nature of her relationship to others, and with the social and political world.

Berman appropriately points out that educational structures could better respond to dialogic needs.⁷² His scholarship reveals that participatory and open processes foster development by enabling youth to learn others' perspectives and to reflect on their own attitudes and beliefs. Educational processes are deeply relational in nature, focusing on dialogue with those with whom one is in disagreement and on establishing balanced, healthy relationships with others.⁷³ The explicit and implicit political structure of the school constitutes a social system that can be changed to better meet the needs of youth, but the means already exist for the creation of environments in which students can learn about the social and political worlds and which also nurture students' sense of social responsibility.⁷⁴

Research on social action and responsibility reinforce Howe's and Shor's central propositions. Interest in participation and actual activism are stimulated by interaction with others. An approach to education built around encouraging student participation in shaping their own educational experiences requires us to rethink other aspects of the curriculum. Educators must model social action, moral commitment and political involvement. This approach "means lifting the veil we place between young

69. *Id.* at 38.

70. *Id.* at 39.

71. *See generally, id.* at 85-101 (discussing more specifically the processes that foster social responsibility).

72. Schools must foster skills that help students resolve differences without resorting to violence. Students must learn to appreciate diverse cultures and the perspectives they offer. *Id.* at 94.

73. *Id.* at 9, 189-203.

74. *See generally, id.* at 108-153 (discussing the open classroom and means for encouraging student participation in decision-making and democratic governance).

people and the social and political world around them and allowing them to confront injustices and to help those in need.”⁷⁵ Rather than distancing youth from society, education must strengthen the interaction between youth and society.

IV.

ADOLESCENTS, SCHOOLING AND THE LAW

An appropriate starting point for an investigation into the nature of youths' educational rights is the United States Constitution. Beyond the minimum protections provided by the Constitution, policy makers may ignore or expand youths' rights. The Constitution does protect adolescents' right to education in certain circumstances, and the nature of that right suggests that the exclusion of youth from participatory efforts must be taken more seriously. We now examine educational rights and the extent to which youth are subjects of educational rights, rather than mere objects of those rights.

Although the Supreme Court came close in *Brown v. Board of Education*⁷⁶ to recognizing a fundamental right to education,⁷⁷ and to recognizing students' right to take an active role in shaping their own educations in *Tinker v. Des Moines Independent Community School District*,⁷⁸ both possibilities have since been explicitly rejected. Either because our federal judges have concluded that they ought to defer to the decisions of local administrators or because federal judges tend to be rather conservative in their views on education, the courts have not adopted the progressive views on education reform articulated in the books under review.⁷⁹ In *Hazelwood School District v. Kuhlmeier*, the Court held that local school administrators can regulate speech that relates to the curriculum. Indeed, the *Kuhlmeier* Court held that their interest in controlling both the form and the substance of certain aspects of education justifies school control over the content of student publications.⁸⁰

75. *Id.* at 79.

76. 347 U.S. 483, 493 (1954) (noting that education is perhaps the most important function of state and local governments and recognizing that educational opportunities, once offered, must be available to all on equal terms).

77. *Brown*, 347 U.S. at 493.

78. 393 U.S. 503, 511 (1969) (recognizing that students possess fundamental rights that the State must respect, and criticizing views of education that imagine students as “closed-circuit recipients” of information the State chooses to communicate to them).

79. Education rights were not central to the cases discussed here, so the courts do not take explicit positions on educational reform in these cases. However, in arriving at the conclusions necessary to support the holdings of these cases, courts have made certain assumptions about education which do not lend support to the views on educational reform developed in this review.

80. 484 U.S. 260, 273 (1988) (holding that educators do not violate students' First Amendment rights by exercising editorial control over the style and content of student speech in school-sponsored activities, so long as the educators' actions are reasonably related to legitimate pedagogical concerns).

In 1973, a 5-4 majority of the Supreme Court refused to accord to the right to education the status of a fundamental constitutional right.⁸¹ The Supreme Court nevertheless views the state's interest in the education of its minors as one of its most important concerns. In *Brown*, for example, the Court noted that

education is perhaps the most important function of state and local governments. . . . [I]t is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him adjust normally to his environment [I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.⁸²

Although states' efforts to require education of all resident youth remain controversial, in most circumstances, states both require that all children receive a basic education and set up standards establishing educational criteria that all schools must meet.⁸³

The Court has occasionally protected students' educational rights by means of protecting their rights to engage in free speech and the free exercise of religion. This jurisprudence has prevented schools from mandating certain kinds of behavior. Unfortunately, courts have not taken the next logical step of promoting student input into the content and form of schooling.

Numerous cases have asked the Court to balance youths' individual interests against those of their family members, and those of the local community and society in general. The balancing of these interests resulted in three important lines of cases, deriving from *West Virginia State Board of*

81. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973). In reaching this conclusion, the Court held that no explicit or implicit protection for a right to education could be found in the Constitution. *Id.* at 35. *But see*, Thomas J. Walsh, *Education as a Fundamental Right Under the United States Constitution*, 29 WILLAMETTE L. REV. 279, 296 (1993) (employing a "rights-combination" argument, involving education and due process, to advance the claim that education is necessary to enable Americans to effectuate their various rights under the Constitution).

82. *Brown*, 347 U.S. at 493.

83. There are important exceptions to this general rule. *See, e.g.*, *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (holding that the State of Wisconsin's interest in mandating compulsory school attendance for children below the age of sixteen did not override the free exercise interest of Amish parents convicted of violating the compulsory attendance law). *See also*, *Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 458-65 (1988) (upholding a North Dakota statute permitting some of the state's school districts to charge a user fee for bus transportation to school). While the statute challenged in *Kadrmas* cannot be read to suggest that school attendance in North Dakota is non-compulsory, it creates an obstacle to education for residents who can neither afford the bus service nor provide an alternative method of transportation to school.

Education v. Barnette,⁸⁴ *Tinker*, and *Board of Education v. Pico*⁸⁵ respectively. Each line of cases reinforces the principle that adolescents' right to schooling mandates efforts to protect them from exclusion.

The Court has used powerful language in support of youths' individual rights. The language appears most forcefully in cases that involve the right to engage in speech and to receive protection from government-compelled speech. In *Barnette*, students protested on religious grounds a voluntary-flag saluting ceremony. The Court found the flag salute requirement an unconstitutional exercise of governmental authority and stated "that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."⁸⁶ A generation later, in *Tinker*, the Court upheld students' free speech rights to wear black armbands in protest of the Vietnam War.⁸⁷ Here, in its most expansive proclamation of students' rights, the Court stressed that students do not "shed their constitutional rights . . . at the schoolhouse gate."⁸⁸ The Court found that student expression may not be confined to "officially approved" sentiments and, significantly in this context, that personal communication among the students "is also an important part of the educational process."⁸⁹

But the Court has since retreated from this position favoring a participatory approach to education. The Court weighs the interests of the state and the desires of parents far more heavily than those of the youth. Parents have long held the right to exercise control over their children's education, subject to some state regulation.⁹⁰ In *Wisconsin v. Yoder*, the Court granted Amish parents the right to pull their children out of high school two years earlier than ordinarily allowed under state law, even

84. 319 U.S. 624 (1943).

85. 457 U.S. 853 (1982).

86. *Barnette*, 319 U.S. at 642.

87. *Tinker*, 393 U.S. at 503.

88. *Id.* at 506.

89. *Id.* at 511-512.

90. In *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925), a lower court had struck down a state law that had declared it a misdemeanor for a parent or guardian to send a child between the ages of eight and sixteen to school other than the public school in the district where the child resided. The Supreme Court affirmed, recognizing the right hinted at in *Meyer v. Nebraska*, 262 U.S. 390 (1923), giving parents the power to direct their children's education. The *Soc'y of Sisters* Court went on to state that "the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with a high duty, to recognize and prepare him for future obligations." 268 U.S. at 535. Importantly, and often ignored, the Court recognized the state's interest in regulating education and its inculcative functions. The Court acknowledged the "power of the State reasonably to regulate all schools" and to require that "certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare." *Id.* at 534. *Meyer* actually involved the right of teachers to pursue their profession, but *Meyer* has been taken to establish parents' rights to "establish a home and bring up children" as they like. 262 U.S. at 399. The Court also indicated that the state had interfered with the power of parents to control the education of their children. *Id.* at 401.

against the child's wishes. According to the Court, the "primary role of parents in the upbringing of their children is now established beyond debate as an enduring American tradition."⁹¹ *Yoder* suggests that the parental right to control children's educations is well entrenched and that parental interest continues to guide educational policymaking.

However, the parental interest is balanced by recent cases recognizing the power of school officials to shape educational policy. *Pico* upheld the "right to receive information and ideas"⁹² in the context of school libraries⁹³ but made clear that school boards have the discretion to remove books based on educationally relevant criteria.⁹⁴ The Court stressed that public schools are "vitaly important 'in the preparation of individuals for participation as citizens,' and as vehicles for 'inculcating fundamental values necessary to the maintenance of a democratic political system.'"⁹⁵ The Court acknowledged school boards' broad control over curricular matters, pointing out that the school board "might well defend [its] claim of absolute discretion in matters of *curriculum* by reliance upon [its] duty to inculcate community values."⁹⁶ The Court has reinforced its support for the authority of school boards in school governance in a number of other cases.⁹⁷ In these cases, the Court has allowed schools to regulate speech deemed threatening to others, disruptive, contrary to "the shared values of a civilized social order,"⁹⁸ or which contravened the mission of schools to inculcate "fundamental values necessary to the maintenance of a democratic political system."⁹⁹ Included in these values is tolerance of diverse and unpopular political and religious views, but that tolerance must be balanced against the interests of society in teaching the bounds of "socially

91. *Yoder*, 406 U.S. at 232.

92. *Pico*, 457 U.S. at 867 (quoting *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)).

93. *Pico*, 457 U.S. at 868-869.

94. *Id.* at 871. The school board's motivation is determinative in assessing whether it acted based on educationally relevant criteria. The school board must act in a content-neutral manner. *Id.* The Court concluded that issues of fact concerning whether the school board's decision to remove books that it claimed were "anti-American, anti-Christian, anti-Semitic, and just plain filthy" (*id.* at 857) violated the constitution precluded summary judgment for the school board. *Id.* at 875.

95. *Id.* at 864 (quoting *Ambach v. Norwick*, 441 U.S. 68, 76-77 (1979)).

96. *Pico*, 457 U.S. at 869 (emphasis in original). However, the Court concluded that while absolute discretion may be appropriate in the context of the "compulsory environment of the classroom," it is misplaced in the context of the school library. *Id.*

97. In *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675 (1986), the Court held that the school board did not violate a seventeen-year-old's free speech rights when it disciplined him for delivering an obscene speech at a voluntary assembly held during school hours. The Court noted its earlier decision that students' constitutional rights in public school settings are not coextensive with the rights of adults in other settings. *Id.* at 682 (citing *New Jersey v. T.L.O.*, 469 U.S. 325, 340-42 (1985)). In *Kuhlmeier*, the allowed educators to exercise editorial control over the style and content of a student newspaper, so long as the educators' actions were reasonably related to legitimate pedagogical concerns. 484 U.S. at 273; *see also supra* note 80.

98. *Fraser*, 478 U.S. at 683.

99. *Id.* at 681 (quoting *Ambach*, 441 U.S. at 76-77).

appropriate behavior.”¹⁰⁰ The Court has thus not really pursued the position it expressed in *Tinker*, that students do not shed their constitutional rights at the schoolhouse gate.¹⁰¹ The Court has instead stressed school boards’ power to introduce reasonable time, manner and place restrictions on student speech.

The above decisions emphasize the inculcative nature of schooling for a given purpose and indicate that public schools not only may but should influence their students to adopt particular beliefs and values. As such, these cases are in tension with Justice Jackson’s declaration that no official “can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”¹⁰² The current approach looks to socialization as a mechanism both for preserving community interests and preferences and for preparing students for citizenship in the larger society.¹⁰³ Schools must do more than simply transmit knowledge; schools must educate, using methods that will ensure the inculcation of democratic values.

Greater inclusion of adolescents’ own concerns is plausible in the current legal world of youths’ educational rights, simply because schools have the obligation to prepare youth for citizenship. As a result of this obligation, states have considerable power to regulate both private and public education. State and federal courts consistently uphold state laws regulating state approval of private school teachers, instruction in core subjects, and reporting of attendance information.¹⁰⁴ States may condition government financial assistance to private schools on their compliance with requirements that the states might not otherwise be constitutionally permitted to impose. When the regulation connects to an important state interest relating to the children in these schools, the Supreme Court repeatedly has stressed that parents have no constitutional right to provide their children with a private school education unfettered by reasonable government regulation.¹⁰⁵

100. *Fraser*, 478 U.S. at 681.

101. *Tinker*, 393 U.S. at 506.

102. *Barnette*, 319 U.S. at 642.

103. The Supreme Court repeatedly has acknowledged the special role of the public schools in preparing youth for citizenship and full participation in a democratic society. See *Ambach*, 441 U.S. at 76-77, and cases cited therein. See also *Brown*, 347 U.S. at 493 (noting that school is a “principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment”).

104. See *Fellowship Baptist Church v. Benton*, 815 F.2d 485 (8th Cir. 1987) (holding that reporting and teacher certification requirements served a state interest and did not infringe on the free exercise of religion or violate freedom of association). See also *New Life Baptist Church Academy v. Town of E. Longmeadow*, 885 F.2d 940 (1st Cir. 1989) (holding that town school committee could enforce state law requiring approval of secular education offered by a private religious school without violating the free exercise clause or establishment clauses); *Johnson v. Charles City Community Sch. Bd. of Ed.*, 368 N.W.2d 74 (Iowa, 1985) (refusing to expand the “Amish exception” to compulsory school attendance).

105. See *Pierce*, 268 U.S. at 534 (stating as beyond question the power of the states reasonably to regulate all schools, to monitor teachers and the quality of education, and to

If the states can demonstrate the importance of its regulations for children's well-being, the Court has asserted that the state not only has the power but the "high responsibility. . . to impose reasonable regulations for the control and duration of basic education."¹⁰⁶ The law thus sets up a hierarchy according to which state interests prevail over parental interests so long as the state does not trench upon free speech or free exercise rights. The law considers it the state's responsibility to act in the interests of students.

V.

CONCLUSION

The Court has long held that students "do not shed their constitutional rights . . . at the schoolhouse gate."¹⁰⁷ Yet, recent efforts to understand the place of schooling in democracy generally leave adolescents' concerns and peculiar needs outside the schoolhouse. Commentators on educational law and policy also largely exclude the voices of adolescents. They do so even when they suggest a need to rethink both how to increase educational opportunity and how to adapt the goals of education to better reflect rapid changes in the composition of society. This essay suggested that reform proposals, especially those that focus on democratic, participatory efforts, demand youths' more active participation in shaping their own education. That theoretical demand finds considerable support from empirical research. Although that support is welcomed, it is important to keep in mind that participatory efforts make more than empirical and theoretical sense: the very notion of democracy demands them.

ensure that nothing be taught that is "manifestly inimical to the public welfare"); *Runyon v. McCrary*, 427 U.S. 160, 175-177 (1976) (acknowledging that parents have a First Amendment right to send their children to schools that promote the belief that racial segregation is desirable, but refusing to acknowledge a right to exclude racial minorities from such institutions).

106. *Yoder*, 406 U.S. at 213.

107. *Tinker*, 393 U.S. at 506.

