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# Schools as Intellectual and Moral Associations

Bruce C. Hafen\*

## I. INTRODUCTION: EDUCATION AND THE IMPORTANCE OF INTELLECTUAL AND MORAL ASSOCIATIONS

In one of his remarkable insights about the role of mediating structures in American democracy, Tocqueville wrote that certain voluntary associations nurture the formation of those "habits of the heart" that he called "mores."<sup>1</sup> By mores, Tocqueville meant "the whole moral and intellectual state of a people,"<sup>2</sup> particularly the ennobling attitudes that restrain individualism's destructive, acquisitive appetites and that develop each citizen's sense of personal and civic virtue. The institutions that best cultivate mores are "intellectual and moral associations," which differ from associations formed primarily for "political and industrial" ends. For Tocqueville, "nothing . . . more deserves attention than the intellectual and moral associations."<sup>3</sup> The "mores" formed in such places are "one of the great general causes responsible for the maintenance of a democratic republic in the United States."<sup>4</sup> Indeed, "[t]here have never been free societies without mores."<sup>5</sup>

By their very nature, "intellectual" and "moral" knowledge must be both *taught* and *learned*, not merely legislated. Hence, institutions of learning play a crucial role in a democratic society because they teach not only the skills that enable personal development, but also the skills that enable democracy's own meaningful continuity.<sup>6</sup> To this end, American schools have

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1. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 287 (J.P. Mayer ed. & George Lawrence trans., Anchor Books 1969) (1966). Robert Bellah and his colleagues drew on this phrase for the title of their book, *Habits of the Heart*, which reviewed the state of individualistic attitudes in middle class American society. ROBERT N. BELLAH ET AL., *HABITS OF THE HEART* (1985).

2. TOCQUEVILLE, *supra* note 1, at 287.

3. *Id.* at 517.

4. *Id.* at 287.

5. *Id.* at 590.

6. See generally Bruce C. Hafen, *Developing Student Expression Through Insti-*

historically been concerned with three different categories of "mores." Using Tocqueville's terminology, I will call the first of these categories the "intellectual" or cognitive mores. Category I includes basic literacy and numeracy, along with the political, economic and other general knowledge required to exercise the duties of self-governance. Without such education, democratic masses are unable to make responsible electoral choices and then hold their elected leaders accountable under the theory of the Social Contract.

Within the more value-oriented "moral" sphere, I see two rather distinct additional categories—matters of moral "principle" and matters of moral "preference." Category II, matters of moral *principle*, includes universal values that all citizens must understand and accept as conditions of social survival in a free society, such as honesty, tolerance, civic loyalty, and some degree of personal responsibility. From the acceptance of such values comes each citizen's willingness to obey the unenforceable. Without that willingness to exercise self enforcement at some threshold level, democracy cannot flourish, or even survive.

Category III, matters of moral *preference*, includes personal choices that can have significant moral—and social—implications, but that will naturally vary from one person to another. For example, I would include here the development of the value systems that shape one's sense of life's meaning, allowing the pursuit of such subjective personal choices as career direction or religious orientation.

To illustrate the distinction I draw between principle and preference, consider the example of parental choice in educating one's children. As a matter of moral *principle* (Category II), every parent should ensure that his or her child obtains a rudimentary education in compliance with state compulsory school laws. However, as a matter of moral *preference* (Category III), parents are free to send their children to either a public school or a private school. Some private schools, as distinguished from public schools, may have a religious orientation consistent with parental religious preferences. A parent may regard a given private school's orientation as an essential ingredient in teaching her child an appropriate cosmic framework for understanding life's meaning. Because public schools rarely enter the

sphere of moral preference in the sense in which I am using that term, parents who send their children to public schools must pursue alternative means for teaching their children the sense of personal meaning found within Category III's concern with cosmic frameworks. American society and the United States Supreme Court have balanced these issues of principle and preference by acknowledging the right of parents to direct the education of their children in accordance with each parent's personal philosophy of life and education, so long as that choice also satisfies fixed, general standards of educational achievement, as well as standards prohibiting child abuse and neglect.

By educating the nation's children in both the intellectual and moral spheres, American schools perform an indispensable "mediating" function between the public and private sectors of our national life as well as the public and private dimensions of each individual's life.

A school aspires to be a bridge between the private world of the individual and the public world of society, helping each individual to realize his own autonomous sense of self while simultaneously inducting him into membership in the democratic community. He [or she] thus learns to give as well as to take from the wellsprings of a free culture. To fulfill such contradictory but lofty purposes, the school as [a] mediating institution must itself be a paradoxical construct, belonging both to the private world of the family and to the public world of the state. Thus a school must reflect *both* institutional authority and personal autonomy, private values and public virtues, excellence and equality, neutrality and advocacy.<sup>7</sup>

Against this background, I offer only a modest and general observation: if schools are to perform their mediating role in democratic society, legally based policy making should acknowledge and broadly support the institutional authority schools need in order to teach students in all three categories, subject to the principle of church/state separation in public schools. In what follows, I will suggest a few ideas that pursue this policy end.

## II. SELECTED HISTORICAL DEVELOPMENTS IN AMERICAN SCHOOLS

A review of certain historical developments illustrates how

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7. *Id.* at 728-29.

courts and legislatures sometimes confuse the three categories in ways that weaken both intellectual and moral development.<sup>8</sup> For example, in the two categories of moral education, we must more clearly respect the distinction between matters of principle and matters of preference. One extreme to avoid in this regard is the approach that makes all choices within the moral sphere a matter of principle, leaving no room for matters of moral preference. This result can follow from excessive control by the public side of a school's mediating network, as illustrated by the totalitarian state that seeks to impose a monolithic order of meaning on each citizen's view of his or her life. Another extreme to be avoided is the approach that regards all moral choices as matters of preference. This attitude relativizes all of the issues having moral or ethical underpinnings by making every moral choice appear to be a matter of personal preference. Only by avoiding such extremes can a democratic society maintain schools that produce a citizenry that is "educated" in both the intellectual and moral sense. A brief review of the history of schools in America will provide the basis for a few comments on these observations.

#### A. *Public and Private Schools*

Let us first consider the public school heritage. In general, the center of policy gravity for American schools has, over time, moved from the private sphere toward the public sphere. American public schools originated in the colonial period at the most local levels of neighborhood and family, as reflected in the well established—but now somewhat less clear—traditions of local control and funding from local tax revenues. Indeed, as the concept of *in loco parentis* suggests, public schools were originally extensions of the home. Because local communities were once far more culturally homogeneous than are many communities today, this approach often allowed local communities to treat their local moral preferences as matters of moral principle.

Throughout much of the nineteenth century, the widespread acceptance of Protestant attitudes created a blurring of the line between moral principle and moral preference on a national scale.<sup>9</sup> However, increasing numbers of Catholic im-

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8. As I will suggest toward the end of this paper, the newly emerging democracies of Eastern Europe and the former Soviet Union also need their own sources of authoritative master/apprentice tutoring. See *infra* part IV.

9. See generally Hafen, *supra* note 6, at 675 (discussing the development of

migrants found themselves unwilling to blend their distinctive religious values into the Protestant-flavored melting pot of American schools. As a result, Catholic families established alternative schools that reflected their moral preferences while at the same time honoring the most basic principles of educational quality and democratic ideals. Nonetheless, some Protestant majorities had difficulty accommodating this degree of deviation from their notion of moral principles in education, even to the degree of urging state compulsory school laws that required attendance at public schools.

In 1925, the Supreme Court struck down such a law in Oregon, thereby reinforcing the distinction between principle and preference.<sup>10</sup> Once parochial and other private schools have complied with the most basic expectations of Category I (intellectual foundations) and Category II (universal personal values), the Court said these schools are free to pursue Category III (moral preference). "The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."<sup>11</sup> These "additional obligations" include the privately chosen personal value systems of Category III.

### B. *Desegregation and Schools as State Agents*

In 1954, through the vehicle of *Brown v. Board of Education*,<sup>12</sup> the Supreme Court cast American public schools in a leading role in the nation's struggle to desegregate a racially divided society. The schools' relatively successful response to this challenge reflected the best tradition of mediating structures, as the schools undertook the arduous task of *teaching* a new "habit of the heart" to American society. In so doing, the schools were operating within the meaning of Category II, conveying the expectations of a newly reinforced universal value—the elimination of racism. At the same time, the degree of judicial and political power required to sustain the desegregation movement also moved the schools further away from the local and private spheres toward the megastructure role we associate with the federal government. By casting the schools

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the American school system).

10. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

11. *Id.* at 535.

12. 347 U.S. 483 (1954).

more sharply into the role of a state actor, the Court made it more difficult for the schools to engage in the shaping of students' lives in other ways.

This momentum continued as the Bill of Rights began being applied to the school context in due process, search-and-seizure, and other cases during the 1960s and 1970s.<sup>13</sup> Schools increasingly seemed more like typical state agents than representatives of the parental role. It soon became more difficult to think of schools as institutions that should mediate between the private sphere and the megastructures of government because the schools in some sense had become part of the megastructure.

### C. Church/State Issues

The next major chapter in the story of American schools involved the church/state cases that began with the school prayer and bible reading cases of the 1960s.<sup>14</sup> In an important sense, these cases proceeded from the Category II "universal" premise that the state should not interject itself into the purely personal value realm of Category III. However, the experience of the last generation has produced a body of evidence suggesting that both school personnel and the public have exaggerated the meaning of the church/state cases in two aberrational ways that are mutually reinforcing and harmful.

One of these aberrations is the incorrect assumption that the Court's prohibition of religious worship and its concern with state aid to parochial schools also means that schools should not be involved in Category II moral education at all, but should confine themselves solely to the intellectual realm of Category I. The other, related aberration is the belief that the same degree of laissez-faire pluralism that characterizes the state's regulation of personal choices of Category III should also characterize the way schools treat the moral issues of Category II. The effect of this attitude is to relativize values that were once considered normative because of their universal application. Taken together, these aberrational interpretations blur the distinctions among all three categories in confusing and unsettling ways.

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13. See, e.g., *Goss v. Board of Educ.*, 373 U.S. 683 (1963).

14. *Wallace v. Jaffree*, 472 U.S. 38 (1985); *School Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962).

In an illustration of how matters of moral principle can be relativized to become matters of personal preference, educational researcher Gerald Grant has documented "a shift of profound dimensions" in the emergence of a "new adversarial and legalistic character" in urban public schools since the 1960s.<sup>15</sup> One effect of this shift is that "[a]dult authority is increasingly defined by what will stand up in court."<sup>16</sup> And in a related vein, school personnel "are no longer sure that they know what is right, or if they do, that they have any right to impose it."<sup>17</sup> This attitude is influenced not only by the fear of litigation, but also by the prevailing belief among teachers and administrators that "children are adults capable of choosing their own morality as long as they do not commit crimes."<sup>18</sup> To the extent that such beliefs are accepted by schools, those schools will be unable to teach the moral habits of the heart traditionally located within Category II.

#### D. *The Anti-authoritarian Revolution*

Another recent chapter from the history of American education, the "student revolutions" of the 1960s, illustrates how a passion for personal preference can also undermine the schools' ability to teach even the intellectual elements of Category I. That revolutionary period questioned the legitimacy not only of governmental megastructures, but the legitimacy of all institutional authority structures, public or private.<sup>19</sup> Among this movement's most pervasive themes was its questioning of authority in any form, including the place of authority in educational processes and organizations. "The radical critique shook public confidence in the schools and in traditional teaching methods by portraying the schools as enemies of true learning and instrumentalities of social control."<sup>20</sup> Thus, the movement "openly opposed the self-discipline, order, and respect for reason that educational institutions rely on."<sup>21</sup> This basic rejection of authority posed a special challenge to education, not

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15. Gerald Grant, *The Character of Education and the Education of Character*, AM. EDUC., Jan.-Feb. 1982, at 37, 41.

16. *Id.*

17. *Id.* at 42.

18. *Id.* at 44.

19. For further development of this theme, see Hafen, *supra* note 6, at 677-81.

20. *Id.* at 679.

21. DIANE RAVITCH, *THE TROUBLED CRUSADE: AMERICAN EDUCATION, 1945-1980* 200 (1983).

only in its moral dimensions but also in its Category I intellectual dimensions because "[e]ducation . . . is by its nature an exercise in authority . . . since the teacher presumably seeks to impart something that the student does not know or cannot do."<sup>22</sup>

The issue of authority reveals the paradoxical nature of public school education. Schools "mediate" between the private and public sphere, preparing children to move from the private world of childhood to the public world of responsible citizenship. We commonly regard mediating institutions as "voluntary associations," whose role is to maximize personal liberty—and to maximize the social stability that nourishes personal liberty—in a free society. Yet the "voluntary" association we call a public school operates under the mandate of "compulsory" school laws. This may seem like an impossible contradiction until we realize that children have a particular problem with the paradox of authority: because they lack actual as well as legal capacity, children have a special need to submit themselves—even by the force of compulsory laws—to the yoke of educational demands in order to develop their own capacity for autonomous action. This is not at all unusual, since mediating institutions typically ask individual citizens to yield some degree of short-term personal freedom for the sake of long-term communitarian values. Thus, by challenging the legitimacy of all authoritarian processes and institutions, the revolutionary era called into question not only the way schools function, but the way any intermediate institution functions.

### III. INSTITUTIONAL AUTHORITY AND THE STUDENT EXPRESSION CASES

Let us explore this problem using the Supreme Court's student expression cases as illustrations because these cases clearly display the conflict between institutional authority and student freedom. In addition, the development of this line of cases introduces some recent and significant attempts by the Court to restore the capacity of public schools to perform their mediating functions in the intellectual as well as in the moral categories.

Until 1986, the Court's experience in the student expres-

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22. Diane Ravitch, *The Continuing Crisis: Fashions in Education*, 53 AM. SCHOLAR 183, 189 (1984).

sion area was concerned primarily with protecting the individual first amendment rights of students. For example, in the 1943 "flag salute" case, the Court held that a public school could not compel students who were Jehovah's Witnesses to pledge allegiance to the American flag because such compulsion has a coercive effect on religious beliefs.<sup>23</sup> And in the 1969 case of *Tinker v. Des Moines Independent Community School District*,<sup>24</sup> the Court protected the right of public school students to wear black armbands in a peaceful protest against the Vietnam War. *Tinker* held that schools may not discipline students for either actual or symbolic expression unless such expression is manifestly disruptive.<sup>25</sup> This seemingly unqualified holding left lower courts in considerable doubt about the right of schools to control curriculum-related expression that was not disruptive.

In 1982, a plurality of the Court held in *Board of Education v. Pico*<sup>26</sup> that students have a right to receive information, which right can limit the discretion of a school board to direct the arbitrary removal of books from school libraries. However, the Court also implicitly acknowledged that school boards have wide latitude in determining what books to order in the first instance and in exercising non-arbitrary control over curricular matters.<sup>27</sup>

This ongoing extension of protection for individual student interests came to an end in 1986, when the Court held in *Bethel School District v. Fraser*<sup>28</sup> that a school could discipline a student for giving a vulgar speech in a student assembly. This opinion reaffirmed in relatively broad terms the schools' obligation to teach citizenship values and to act *in loco parentis*. However, the opinion left some room for doubt whether this limitation on student speech would apply to circumstances other than offensive vulgarity.

Those doubts were removed by *Hazelwood School District v. Kuhlmeier*,<sup>29</sup> in which the Court held that a public school may regulate the content of a school newspaper produced by students in a journalism class. The basis for this holding was

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23. West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943).
  24. 393 U.S. 503 (1969).
  25. *Id.* at 505-06.
  26. 457 U.S. 853, 869-72 (1982) (plurality opinion).
  27. *Id.* at 863-72.
  28. 478 U.S. 675, 685-86 (1986).
  29. 484 U.S. 260, 273 (1988).

the Court's recognition that schools may control any school-sponsored expressive activity, not only within the traditional curriculum but in any circumstances that are or may be perceived as being school-sponsored.<sup>30</sup> This decision resolved many post-*Tinker* doubts by limiting the *Tinker* rule to private student speech that occurs outside school-sponsored activities. It also reinforced the principle of what might be called institutional academic freedom, a principle that is crucial to sustaining the functions of the "intellectual and moral associations" to which Tocqueville referred.<sup>31</sup> Let us consider the connection between these cases and that principle.

Certain features of the student expression cases are related to declines in the ability of schools to educate their students—not that the cases themselves directly reduced the schools' educational effectiveness; rather, *Tinker* was the child of an overall environment that challenged the institutional authority of schools. I have summarized elsewhere certain ways in which declining institutional authority in public schools since the 1960s has apparently contributed to reductions in student academic achievement.<sup>32</sup> As just one example, the empirical studies of James Coleman and his colleagues have established strong connections between the exercise of institutional authority and student performance in both academic and behavioral dimensions.<sup>33</sup> In both public and private schools, student achievement improves when schools maintain strong disciplinary policies, homework expectations, and attendance requirements. Reductions in school authority are most damaging to the educational attainments of disadvantaged students. In addition, students perceive firm disciplinary requirements as not only more effective, but also more fair.<sup>34</sup>

In some ways, the suspicions about school authority reflected in such cases as *Tinker* and *Pico* arose not from evidence that schools were actually damaging students by authoritative interventions, but from the growing ideological belief that because schools are part of the governmental megastructure, they should not intervene in students' lives, whether in intellectual

30. *Id.* at 271-73.

31. Bruce C. Hafen, Hazelwood School District *and the Role of First Amendment Institutions*, 1988 DUKE L.J. 685.

32. Hafen, *supra* note 6, at 684-88.

33. JAMES S. COLEMAN ET AL., HIGH SCHOOL ACHIEVEMENT: PUBLIC, CATHOLIC, AND PRIVATE SCHOOLS COMPARED (1982).

34. See Hafen, *supra* note 6, at 686-87.

or behavioral realms. This belief had been reinforced by the schools' emerging role as agents of the political state in the enforcement of national desegregation policies, as well as by the perceived doubt that the church/state cases seemed to cast on the schools' right to provide moral instruction of any kind.

Yet, despite the proper legal characterization of schools as state actors, the very nature of education places schools in a mediating role between each student and the larger community in ways that distinguish schools from any other state agency.

Public education seeks affirmatively to teach the capacity to enjoy first amendment values—to mediate between ignorance and educated expression. [This] is a process that invites intrusion, requires authoritarian paternalism, and depends upon the exercise of unsupervisable discretion. There must be legal protection against clearly harmful abuse of this flexibility, but without some strong influence from those apparent enemies of personal autonomy in the educational process, little serious education is possible. Traditional first amendment jurisprudence was never designed to deal with governmental action of this kind, because the original cases arose in contexts involving adults and were concerned only with when to limit governmental action, not with how to encourage it toward such complex ends as educational development.<sup>35</sup>

The *Fraser* and *Hazelwood* cases have now sent the very important signal that schools can actually *foster* and *nourish* the underlying values of the First Amendment—such as free inquiry, personal expression, and participatory democracy—by authoritatively but affirmatively directing educational processes, not just by staying out of students' way. This is because students who lack education also lack the capacity for meaningful participation in the democratic experiment. Freedom of expression has two meanings—freedom *from* restraints, and the capacity *for* self-expression. Schools can heighten students' capacity *for* self-expression by providing them with effective educational tools—which, experience shows, must often be authoritatively imposed. Teachers and schools may and should also elect non-directive methods that distinctly lack authority or that place a premium on student initiative or student criticism of authority. But the methods chosen, according to *Hazelwood*, are matters of educational philosophy, not matters

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35. *Id.* at 669.

of constitutional law. All of this suggests that a child's right to be educated can be more substantial than a child's right to be left alone. In education as in family life, we do not serve the long range interests of children when our civil liberties-based jurisprudence has the effect of abandoning children to their "rights."

The underlying theory of the *Hazelwood* case is that the institutional autonomy of schools can play a significant role in developing students' educated capacities; therefore, by recognizing the "institutional freedom" of a school, courts can in certain circumstances promote rather than retard the underlying purposes of the First Amendment. This assumes, of course, that a school so protected will shoulder its heavy burden of teaching well.

One year prior to its *Hazelwood* decision, the Court had recognized this fact about such "intellectual and moral associations" as schools and churches in *Corporation of the Presiding Bishop v. Amos*,<sup>36</sup> in which Justice Brennan stated in his concurring opinion that, "[s]olicitude for a church's ability to [engage in its own self-definition] reflects the idea that furtherance of the autonomy of religious organizations often furthers individual religious freedom as well."<sup>37</sup> In other words, a mediating institution needs protection from state intrusion not only to protect its purely institutional interests, but also to protect the right of its members to draw upon its institutional role as a carrier and developer of personal meaning. "The first amendment must therefore protect not only individual writers, but newspapers; not only religious persons, but churches; not only individual students and teachers, but schools."<sup>38</sup>

Given the value of Tocqueville's ideas about what "intellectual and moral associations" can do for both individuals and society, the ideal school would teach its students effectively in all three categories: I, intellectual knowledge and skills; II, universal moral principles; and III, a basis for finding personal meaning in life. A private religious school that maintains rigorous educational and intellectual standards is theoretically more likely than other institutions to fulfill this aspiration because such a school teaches the "mores" inherent within *each* category, perhaps integrating all three categories together. This re-

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36. 483 U.S. 327 (1987).

37. *Id.* at 342 (Brennan, J., concurring).

38. Hafen, *supra* note 31, at 704-05.

sembles the ancient mythical model by which the young child learns *all* of life's meaning at the feet of a wise master of all knowledge. Public schools in the early part of American history approached a realization of educational goals in all three categories, but before long it was clear that state authority should not be employed to supersede parental prerogatives in directing the development of children's personal life orientation in Category III.

This recognition of the need to remove public schools from Category III took the first step in limiting schools' authority to teach "mores." The natural momentum of historical development, especially in recent years, has continued to limit schools' authority. For example, our longstanding skepticism about state involvement in Category III has now been transferred to a more recent skepticism about state involvement in Category II. If American society's pluralism makes it inappropriate for a school to teach *particular* religious and moral values, we can easily begin to believe that same pluralism also makes it inappropriate to teach *general* moral values—especially in a day when we increasingly, and unwisely, associate all moral codes and assumptions with particular ethnic and class-oriented backgrounds.

Having now moved to the point that school personnel "are no longer sure they know what is right, or if they do, that they have any right to impose it,"<sup>39</sup> we may begin to doubt not only a school's right to teach principles of character or citizenship, but also its right to assert institutional authority in the teaching of Category I intellectual and cognitive principles. The pre-*Hazelwood* student expression cases reflected these doubts. The extreme expression of this educational philosophy found a voice in the anti-authoritarian revolutions of the 1960s and 1970s, as illustrated by A.S. Neill's *Summerhill* school. Neill believed that "a child is innately wise and realistic. If left to himself without adult suggestion of any kind, he will develop as far as he is capable of developing."<sup>40</sup>

The view that schools as mediating institutions should not authoritatively intervene in children's minds and lives at any point along the entire spectrum from Category I to Category III essentially rejects Tocqueville's idea that individual citizens—children or otherwise—need the institutional constraint

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39. Grant, *supra* note 15, at 42.

40. A.S. NEILL, *SUMMERHILL: A RADICAL APPROACH TO CHILD REARING* 4 (1960).

of being *taught* the "habits of the heart" that are essential for democratic success and continuity. With *Fraser* and *Hazelwood*, the Supreme Court has slowed the momentum that was moving toward this extreme conclusion, but the Court's decisions have not been well-received in the scholarly literature.<sup>41</sup> Whether American schools will build upon these cases and current public unhappiness with public education to reverse the historical tide remains very much an open question.

#### IV. IMPLICATIONS FOR THE NEW DEMOCRACIES

In the meantime, one wonders what the current vacuum of authority in Eastern Europe and the former Soviet republics will mean for the development of the civilizing habits and knowledge without which democracy cannot take deep and permanent root in those countries. As noted above, we have devalued educational authority in the United States by a gradual process that has continually extended both our skepticism about state authority and our commitment to the individual right to be left alone. The collapse of excessively authoritarian regimes has similarly—yet very suddenly—devalued authority in the newly emerging democracies, which predictably promotes anti-authoritarian attitudes. In either case, it is natural to expect a continual and at times intense distrust of any authoritarian practice or institution, whether in a government agency or in a quasi-public or even private institution.

A friend of mine spoke recently with an educational leader in an Eastern European university. The educator asked my friend to recommend a qualified professor from the United States who might come to his university and give a series of lectures on moral philosophy. The source of this interest was the educational leader's belief that his country has no more crucial challenge than to develop the seedbed in which individual citizens—old as well as young—can learn to be self-governing, not only politically and economically, but morally and even spiritually.

Will abstract lectures on moral philosophy exact from an audience the voluntary willingness to sacrifice self-interest in favor of the public good? What is the source of the personal

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41. See, e.g., J. Marc Abrams & S. Mark Goodman, *End of an Era? The Decline of Student Press Rights in the Wake of Hazelwood School District v. Kuhlmeier*, 1988 DUKE L.J. 706; Richard L. Roe, *Valuing Student Speech: The Work of the Schools as Conceptual Development*, 79 CAL. L. REV. 1271 (1991).

commitment to obey the unenforceable? I ask those questions not only about the new democracies, but about the educational wellsprings of American democracy. Tocqueville's answer to such questions was clear:

Among laws controlling human societies there is one more precise and clearer, it seems to me, than all the others. If men are to remain civilized or to become civilized, the art of association [especially the art nurtured by intellectual and moral associations] must develop and improve among them at the same speed as equality of conditions spreads.<sup>42</sup>

Mary Ann Glendon observed that no institutions have appeared that take the place of the families, neighborhoods, workplace associations and religious associations that teach the skills essential to sustaining democratic societies. As a result, "paradoxically, liberal democratic welfare states seem to require the maintenance in their midst of value-generating institutions that are not necessarily organized on liberal principles. Yet, perversely, the liberal state and the free market seem to undermine the social supports upon which they rest."<sup>43</sup> She then quotes Francis Fukuyama, who wrote that "liberal principles have had a corrosive effect on the values predating liberalism that are needed to sustain strong communities, and thereby on a liberal society's ability to be self-sustaining . . . . Successful political modernization thus requires the preservation of something premodern within its framework."<sup>44</sup>

One of the "pre-modern" values upon which liberalism has a corrosive effect is the value of authority in the necessarily authoritarian process of education. A school is in this sense a strikingly pre-modern institution—pre-modern not only because its processes may require "compulsory" attendance for children, but paradoxically, because it is only by submitting to the authoritative direction of teachers that young people learn the skills, attitudes, and understandings without which they cannot successfully sustain the operation of a democratic society. As Eva Brann has written, "A school is not the world. And yet it is *a* world, a small republic of the intellect within the politi-

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42. TOCQUEVILLE, *supra* note 1, at 517.

43. Mary A. Glendon, *Individualism and Communitarianism in Contemporary Legal Systems: Tensions and Accommodations*, 1993 B.Y.U. L. REV. 385, 416.

44. *Id.* & n.68.

cal community."<sup>45</sup> Thus a school is the place in which democracy is spiritually created and matured before its students enter the temporal place of free markets and the marketplace of ideas, once they have developed through arduous learning and effort the skills needed for truly autonomous action. To prematurely thrust students—or societies—onto this stage of total freedom is to put at risk not only their personal survival but the survival of the society their collective presence creates.

## V. CONCLUSION

So how do democracies, old and new, learn these pre-modern survival skills? They need not only constitutions and blueprints, but teachers; not only stock markets and parliaments, but apprenticeships and *schools* of all kinds. The prescription for building a successful democracy may be like the prescription for other forms of knowledge that are essentially matters of *skill*, like building a Stradivarius violin: the prescription does not—and cannot—exist fully in writing. As Michael Polanyi has explained:

*[T]he aim of a skilful [sic] performance is achieved by the observance of a set of rules which are not known as such to the person following them.*

....

An art which cannot be specified in detail cannot be transmitted by prescription, since no prescription for it exists. It can be passed on only by example from master to apprentice. This restricts the range of diffusion to that of personal contacts, and we find accordingly that craftsmanship tends to survive in closely circumscribed local traditions. Indeed, the diffusion of crafts from one country to another can often be traced to the migration of groups of craftsmen . . . . [And] while *the articulate contents of science* are successfully taught all over the world in hundreds of new universities, *the unspecifiable art of scientific research* has not penetrated to many of these . . . . Without the opportunity offered to young scientists to serve an apprenticeship in Europe, and without the migration of European scientists to the new countries, research centres overseas could hardly ever have made much headway.

It follows that an art which has fallen into disuse for the period of a generation is altogether lost. There are hundreds

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45. EVA T.H. BRANN, PARADOXES OF EDUCATION IN A REPUBLIC 146 (1979).

of examples of this to which the process of mechanization is continuously adding new ones. These losses are usually irretrievable. It is pathetic to watch the endless efforts—equipped with microscopy and chemistry, with mathematics and electronics—to reproduce a single violin of the kind the half-literate Stradivarius turned out as a matter of routine more than 200 years ago.

*To learn by example is to submit to authority. You follow your master because you trust his manner of doing things even when you cannot analyse and account in detail for its effectiveness. By watching the master and emulating his efforts in the presence of his example, the apprentice unconsciously picks up the rules of the art, including those which are not explicitly known to the master himself. These hidden rules can be assimilated only by a person who surrenders himself to that extent uncritically to the imitation of another. A society which wants to preserve a fund of personal knowledge must submit to tradition.*<sup>46</sup>

The educational process of transmitting the prescription for modern, liberal democracy from one generation to another is impossible without submission in some degree to that pre-modern and anti-liberal principle of authority—not the unlimited and brutal authority of a “master” toward a slave, but the limited and nurturing authority of a “master” toward an apprentice. There was a time when we called this “anti-liberal” process a “liberal education.” The educational process—even when authoritatively imposed—still has a fundamentally liberating effect.

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46. MICHAEL POLANYI, PERSONAL KNOWLEDGE: TOWARDS A POST-CRITICAL PHILOSOPHY 49, 53 (1962) (emphasis in last paragraph added).