THE SCHOOLS' NEGLECTED MISSION:

PREPARING ALL STUDENTS FOR CIVIC PARTICIPATION

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Introduction

The 2016 presidential election campaign underscored some very troubling trends in the present state of our democracy: the extreme polarization of the electorate; the dismissal of people with opposing views; the failure of many voters (and, quite often, the candidates) to focus on substantive policy issues; and the widespread acceptance and circulation of one-sided and factually erroneous information. Other disturbing trends have been present for decades: the proportion of eligible voters who actually vote is substantially lower than in most other developed countries; the number of residents who actively participate in local community activities has dramatically declined; and Americans are increasingly neglecting basic civic responsibilities like jury service.

These trends raise the question of whether our nation's schools have been fulfilling their critical civic mission to prepare young people to be good citizens, capable of safeguarding our democracy and stewarding our nation toward a greater realization of its democratic values. Throughout American history, the primary mission of the public schools has been to prepare students to be effective citizens capable of sustaining a vibrant and inclusive democracy. The nation's founders believed that the profound experiment in republican government that they were initiating "depended on citizens' ability to participate in public life and to exhibit civic virtues such as mutual respect and prudent judgment."[2] Horace Mann, the founder of the nineteenth-century "common school" movement, stressed the primacy of preparation for citizenship:

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[2] Lorraine M. McDonnell, *Defining Democratic Purposes*, *in* REDISCOVERING THE DEMOCRATIC PURPOSES OF EDUCATION 1, 2 (Lorraine M. McDonnell, P. Michael Timpane and Roger Benjamin eds., 2000).

> Education must be universal….With us, the qualification of voters is as important as the qualification of governors, and even comes first, in the natural order….The theory of our government is – not that all men, however unfit, shall be voters – but that every man, by the power of reason and the sense of duty, shall become fit to be a voter. Education must bring the practice as nearly as possible to the theory. As the children now are, so will the sovereigns soon be.[3]

For Mann, the strength of the American democracy depended on the strength of the schools.

Over the past half century, however, even as the scope of American democracy has expanded to include a broader, more diverse population and an understanding of the need to respect and embrace the needs and aspirations of all our citizens, the schools' civic focus has eroded, so much so that, at the present time, the viability of our democratic institutions is at risk.

The Decline of Civic Preparation in the Schools

Education for citizenship, which historically permeated the school curriculum, no longer is a core aspect of most schools' program, and "civic education" has become a discrete and diminishing component of the schooling experience. The U.S. Department of Education has itself acknowledged this reality. In a report issued in 2012, it stated:

> [U]nfortunately, civic learning and democratic engagements are add-ons rather than essential parts of the core academic mission in too many schools and on too many college campuses today. Many elementary and secondary schools are pushing civics and service-learning to the sidelines, mistakenly treating education for citizenship as a distraction from preparing students for college-level mathematics, English and other core subjects.[4]

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[3] HORACE MANN, LECTURES ON EDUCATION, vii (1855).

[4] U.S. Department of Education, Advancing Civic Learning and Engagement in Democracy: A Road Map and Call to Action 1 (2012).

The ability of the schools to carry out their historical civic preparation role has been further undermined by wide disparities among schools in the availability of resources to provide opportunities for effective civic preparation.

Consistent with this neglect of civic education, Americans' knowledge of basic political facts is strikingly low. For example, on the civics exam administered by the National Assessment of Educational Progress (NAEP) (known as "the nation's report card") administered in 2014, only 23% of a national sample of 18 year olds performed at or above a "proficient" level.[5] Only 27% of Americans know the Bill of Rights expressly prohibits establishing an official religion in the United States,[6] and, although the main political stake in the 2014 mid-term election was control of the Senate and House of Representatives, only 38% of the public knew that the Democrats controlled the Senate before the election, and the same percentage knew the Republicans controlled the House.[7] With this level of political illiteracy, most native-born Americans would fail the basic citizenship test that is administered to those seeking to become naturalized American citizens.[8]

There are disturbing overall patterns in these surveys of political knowledge: "men are more informed than women; whites are more informed than blacks; those with higher incomes are more informed than those with lower incomes; and older citizens are more informed than

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[5] Available at http://www.nationsreportcard.gov/hgc_2014/#civics.

[6] New York State Bar Association, Report and Recommendations of the Law, Youth and Citizenship Committee on Civic Education, (2013), available at: http://www.nysba.org/LYCcivicsReport2014.

[7] ILYA SOMIN, DEMOCRACY AND POLITICAL IGNORANCE: WHY SMALLER GOVERNMENT IS SMARTER 24 (2016).

[8] Liav Orgad, *Creating New Americans: The Essence of Americanism Under the Citizenship Test*, 47 HOUSTON L. REV. 1227, 1265 (2011).

younger ones."[9] These patterns suggest that wealth and privilege strongly affect Americans'
access to civic preparation.

Given the lack of political awareness among our citizens, it is not surprising that
relatively few Americans vote. In the 2016 presidential election, only 56.8% of Americans
eligible to vote chose to do so. This means that nearly one hundred million Americans failed to
go to the polls.[10] In the 2014 mid-term elections, turnout was even worse: only 36.7% of eligible
voters cast ballots.[11] These voting percentages are consistent with the general trends of voter
turnout for presidential and mid-term elections for the past 70 years.[12] Overall, America's
youngest voters have moved toward less engagement over time, as 18- through 24-year-olds'
voting rates dropped from 50.9 percent in 1964 to 38.0 percent in 2012.[13] Americans rank 139th
in voter participation out of 172 world democracies.[14]

Americans who do not vote also often do not participate—in any sustained way—in other
political or community civic activities.[15] There has been a dramatic decline in recent decades in
active participation in civic associations, PTAs, and religious organizations, and, overall, social
bonds have atrophied, trends that Robert Putnam documented in his classic volume, *Bowling
Alone.*[16]

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[9] MICHAEL X. DELLI CARPINI AND SCOTT KEETER, WHAT AMERICANS KNOW ABOUT POLITICS AND WHY
IT MATTERS 157 (1996).
[10] National Voter Election Project, Voter Turnout, available at http://www.electproject.org/home/voter-turnout/demographics.
[11] *Id.*
[12] *Id.*
[13] Thomas File, Young-Adult Voting: An Analysis of Presidential Elections, 1964–2012, 2 (2014), U.S.
Census Bureau, available at https://www.census.gov/prod/2014pubs/p20-573.pdf.
[14] McCormick Tribune Foundation, Civic Engagement in Our Democracy 6 (2007), available at
http://documents.mccormickfoundation.org/publications/civicdisengagement.pdf.
[15] *Id.*
[16] ROBERT PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 254
(2000).

And although as of 2015, 92% of teens used the internet daily,[17] most schools have also failed to help students apply critical thinking to their use of new media, something that will have to change if our future voters are to be able to deal effectively with one-sided presentation of information, misrepresentation, and factually inaccurate or "fake news" stories circulated online. The Stanford History Education Group recently administered a series of assessments that sought to gauge "civic online reasoning" to approximately 8,000 secondary school and college students across 12 states."[18] Among other things, they found that only 9% of Advanced Placement high school students and only 7% of college students were able to distinguish between reliable and unreliable web sources.

Although most American students are not being prepared properly for civic participation today, the gaps in civic knowledge and civic preparation are particularly acute for African American students and students living in poverty. This has created what Harvard professor Meira Levinson has called a "civic empowerment gap."[19] This difference stems from a variety of factors, including extensive and longstanding disparities in resources available in schools attended predominantly by students of color and students in poverty; distrust of civic institutions, stemming from legacies of historical discrimination; and continuing racism and/or unconscious bias among many administrators and teachers.

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[17] PEW RES. CTR., TEENS, SOCIAL MEDIA & TECHNOLOGY OVERVIEW 2015 (Apr. 9, 2015), *available at* http://www.pewinternet.org/2015/04/09/teens-social-media-technology-2015/.

[18] Stanford History Education Group, Evaluating Information: The Cornerstone of Civic Online Reasoning, Executive Summary 4 (2016).

[19] MEIRA LEVINSON, NO CITIZEN LEFT BEHIND (2012).

As a result, African American students, on average, have lower achievement scores generally, and, specifically, in subjects like civics and history, than white students. For example, on the 2014 NAEP test in civics, while 32% of 8th grade white students performed at or above the proficient level, only 9% of black students did the same; in U.S history, 26% of white students performed proficiently, as compared with 6% of black students. Similarly, Hispanic students also scored at markedly lower levels, for example, only 12% of Hispanic students achieved a proficient level in civics, compared to 32% of white, non-Hispanic students, and only 8% reached proficiency, compared with 26% of non-Hispanic white students.[20] The civic-preparation gap also goes deeper than disparities in test scores and opportunities for civic learning. The combined impact of the legacy of slavery—and contemporary realities of discrimination and poverty—have left many African American students disillusioned, cynical, and largely indifferent to civic issues.

Causes of the Decline in Civic Preparation

There are many interrelated explanations for the decline in civic preparation in the schools. They include:

- The tendency of many schools, particularly those serving large numbers of students in poverty and students of color, to focus on basic reading and math to the detriment of the humanities, social studies, civics, and the development of higher-order thinking skills and habits of mind;

- The inability of many schools to provide and promote experiential learning opportunities through field trips, the arts, service learning, and extracurricular activities that develop interpersonal skills and foster civic agency and empowerment;

- The rapid spread of the use of new media, among students and adults, and the slower pace of skill-building to use them critically and responsibly;

- Teacher and administrator reluctance to foster classroom discussion of controversial issues;

- A loss of faith in traditional institutions, stemming from their failure to respond adequately to the rights articulated, and expectations raised, by the civil rights era, and to the inequities that have resulted from globalization and automation;

- Inequitable and inadequate funding, especially for schools that serve large numbers of students in poverty, both in urban and rural areas.

The challenge for educators, teacher training institutions, and policymakers today is to recognize these factors and to address them proactively.

Addressing the Decline in Civic Preparation

Despite their current shortcomings, schools continue to be the main institutional setting in our society in which people from diverse political and social backgrounds can come together in a venue where rational discussion and tolerance for differing views can be prized and rewarded. In order for schools to foster these essential elements of civic preparation, however, states and districts must adopt education-policy and pedagogical approaches that recognize current political, social, economic, and cultural realities. For civic education to succeed, schools must be able to create environments that respect and harness both pluralism and individualism, and adopt pedagogical practices that promote civic agency, critical inquiry, and participatory experiences.

They must capitalize on the positive possibilities of the internet and the new media. And they

must provide equitable educational opportunities.

How can this be done? Despite general agreement on the significance of civic

preparation, school officials and policymakers have made few real efforts to deal with its decline

in recent decades. Certainly, preparing students for civic participation under contemporary

conditions is a formidable challenge. Schools today operate in a rapidly changing society that is

ideologically polarized and is confronting continuing racial inequality, accelerating economic

gaps, rapid demographic shifts, and changing social norms. Our traditional notions of education

for citizenship were formed in times when society's values and expectations addressed the needs

of a limited segment of the populationand the challenge of change affected schools at a more

manageable pace. Many educators and policymakers today are unsure of how to deal with these

complex challenges, but there are effective strategies and practical models for effectively

preparing students for civic participation today that all schools can and should adopt.

Education for Civic Participation in the 21st Century

Most scholars, educators, and policymakers who are concerned about these issues agree

that effective preparation of students for civic participation requires that students acquire (1)

basic civic knowledge in government, history, law, and democracy; (2) verbal and critical

reasoning skills; (3) social and participatory experiences; and (4) responsible character traits and

acceptance of democratic values and dispositions.[21] For schools actually to prepare students from

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[21] *See, e.g*., Carnegie Corp and CIRCLE, The Civic Mission of the Schools 21-28 (2003); Campaign for the Civic Mission of Schools et al, Guardian of Democracy: The Civic Mission of Schools 16-17 (2011), Judith Torney-Purta and Susan Vermeer Lopez, Developing Citizenship Competencies from Kindergarten Through Grade 12: A Background Paper for Policymakers and Educators (2006), available at

a broad range of cultural backgrounds and ideological orientations for capable citizenship in the 21st century, however, broad-based changes in current educational policies will be necessary. To function productively as civic participants in contemporary society, students need knowledge, skills, experiences, and values beyond what has been needed in the past.

Civic Knowledge

The range of knowledge that civic participants need in order to participate effectively in a democratic society today is much greater than in the past. Civic participation– whether as voters, jurors, or people working together to make a change in the community—requires a working knowledge of many subjects, including history, politics, economics, science, and technology. Successful deliberation in our complex and enormously diverse contemporary culture requires, for example, understanding the history and culture of "the varied subgroups (ethnic, national, religious, gender-based) that comprise one's own nation, their achievements, struggles, and contributions," as well as "contributions and similarly complex knowledge about nations and traditions outside one's own."[22]

For this reason, Peter Levine and Kei Kawashima-Ginsburg, the former director and current director, respectively, of the Center for Information and Research on Civic Learning and Engagement (CIRCLE), call for "broader and deeper approaches to education."[23] By "broader," they "mean opportunities to explore not only reading, mathematics, and science but also fields like the social studies, arts, and [world] languages, as well as interdisciplinary inquiry." And by

http://files.eric.ed.gov/fulltext/ED493710.pdf, Danielle Allen, Education and Equality, (2016); Wolfgang Althof and Marvin W. Berkowitz, Moral Education and Character Education: Their Relationship and Roles in Citizenship Education 35 J OF MORAL EDUC. 495, 503 (2006).

[22] MARTHA NUSSBAUM, NOT FOR PROFIT: WHY DEMOCRACY *NEEDS* THE HUMANITIES 81 (2010).

[23] Peter Levine & Kei Kawashima-Ginsberg, Civic Education and Deeper Learning 1 (2015), available at http://www.jff.org/sites/default/files/publications/materials/Civic-Education-and-Deeper-Learning-012815.pdf.

"deeper," they mean "efforts to master not just core academic content (which is certainly important) but also…critical thinking and problem solving, collaboration, effective communication, [and] self-directed learning…."[24]

The educational priorities that were established in the federal No Child Left Behind Act (NCLB) and have now been perpetuated in successor legislation, the Every Student Succeeds Act (ESSA), stress competency in basic literacy and mathematics, but not in civics, history, world languages, social studies, economics, and the arts.[25] Particularly in schools with constrained resources, what gets tested tends to be what gets taught; the lower priority status of civics, history, social studies, economics, and the arts in state accountability systems has meant that schools have in recent years substantially reduced the time students spend engaged in these areas.[26]

In the mid-20th century, three civics-related courses were common in high school: civics, problems of democracy, and American government.[27] Today, civics and problems of democracy courses have largely disappeared, and generally only a one-semester course in American government is required.[28] Furthermore, CIRCLE reports that, as of 2012-2013, only 21 states required a state-designed social studies test, a dramatic reduction compared with 2001, when 34 states conducted regular assessments on social studies subjects; eight states have statewide,

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[24] *Id* at 1-2. *See also*, DANIELLE ALLEN, EDUCATION AND EQUALITY (2016.)

[25] 20 U.S.C. A § 6311(b) (1) (C).

[26] *See, e.g*. From the Capital to the Classroom: Year 4 of the No Child Left Behind Act (Washington, D.C.: Center on Education Policy, 2006), Table 4-D, p. 96. (In 2006, 33% of diverse school districts in a nationally representative selection of 299 reported that they had reduced social-studies instruction (history, geography, civics) somewhat or to a great extent in order to devote more time to English and/or math, in response to NCLB accountability systems.)

[27] Carnegie Corp. of N.Y. & Ctr. for Info. & Res. on Civic Learning & Engagement (CIRCLE), Civic Mission of the Schools 14. (2003).

[28] Center for Information and Research on Civic Learning and Engagement (CIRCLE), Civic Mission of the Schools 14 (2003).

standardized tests specifically in civics or American government, but only two of these (Ohio and Virginia) require students to pass this test to graduate from high school.[29]

All states do have standards for social studies, a broad category that includes civics/government along with other disciplines such as history, economics, and geography. In recent years, many educators and policy organizations have urged states to adopt standards that emphasize higher-order thinking skills and a critical-analysis approach to civics and other social studies. In 2013, 15 national professional organizations, including the National Council for the Social Studies, the Campaign for the Civic Mission of Schools, and the Center for Civic Education collaborated on a College, Career and Civic Life (C3) Framework for Social Studies State Standards.[30] The C3 standards recommend that, by the end of 12th grade, students should, among other things, be able to:

- Analyze the role of citizens in the U.S. political system, with attention to various theories of democracy, changes in Americans' participation over time, and alternative models from other countries, past and present.

- Explain how the U.S. Constitution establishes a system of government that has powers, responsibilities, and limits that have changed over time and that are still contested.

- Evaluate citizens' and institutions' effectiveness in addressing social and political problems at the local, state, tribal, national, and/or international level.

- Apply civic virtues and democratic principles when working with others.

- Use appropriate deliberative processes in multiple settings.[31]

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[29] Subhi Godsay, et al, CIRCLE Fact Sheet 9 (Oct. 2012), available at
http://files.eric.ed.gov/fulltext/ED536256.pdf.

[30]The College, Career, and Civic Life (C3) Framework for Social Studies State Standards: Guidance for Enhancing the Rigor of K-12 Civics, Economics, Geography, and History (2013).
[31] *Id* at 32-34.

States like Kentucky, Kansas, Maryland, New York, and New Hampshire have largely adopted these standards. Most other states, however, have not. The majority of state social-studies standards still largely reflect an approach to civic knowledge that emphasizes structures and functions rather than critical analysis and active civic participation. For example, Georgia's high-school social-studies standards contain only the following types of formalistic expectations:

- The student will demonstrate knowledge of the organization and powers of the national government.
  a. Describe the structure and powers of the legislative, executive, and judicial branches.
  b. Analyze the relationship between the three branches in a system of checks and balances and separation of powers.

  The student will describe how thoughtful and effective participation in civic life is characterized by obeying the law, paying taxes, serving on a jury, participating in the political process, performing public service, registering for military duty, being informed about current issues, and respecting differing opinions.[32]

Even in the states in which the social-studies standards call for more dynamic approaches to civic preparation, it is far from clear that students actually receive the type of education that the standards call for. Because civics instruction is generally packed into a single-semester course, teachers are pressed for time to cover more than the basic functions and structures of government. Furthermore, textbooks are written for national markets and not individually for states that emphasize active citizenship in their standards; not surprisingly, therefore, most textbooks emphasize the structures and functions approach to civics education. High-quality professional development that enables teachers to prepare students for civic participation is almost nonexistent in American schools today.[33]

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[32] Georgia American Government/Civics Social Studies Performance Standards (2012), available at https://www.georgiastandards.org/standards/Georgia%20Performance%20Standards/American-Government.pdf.
[33] Rebecca Burgess, Civic Education Professional Development: The Lay of the Land (2015), available at http://www.aei.org/publication/civic-education-professional-development-the-lay-of-the-land/.

An additional concern is that the lack of access to "broad" and "deep" curriculum and course offerings disproportionately affects students of color and students living in poverty. A recent nationwide analysis undertaken by the Office of Civil Rights of the U.S. Department of Education found,

> Eighty-one percent (81%) of Asian-American high school students and 71% of white high school students attend high schools where the full range of math and science courses are offered (Algebra I, geometry, Algebra II, calculus, biology, chemistry, physics). However, less than half of American Indian and Native-Alaskan high school students have access to the full range of math and science courses in their high school. Black students (57%), Latino students (67%), students with disabilities (63%), and English language learner students (65%) also have less access to the full range of courses.[34]

State regulations play an important role in permitting these disparities to exist. In New York State, for example, high schools are not required to offer courses in chemistry or physics, and they are required to provide only one year of instruction in a language other than English, and need not offer a choice of languages.[35] Schools in lower-wealth communities often lack the resources to provide more than these minimum requirements.

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[34]Expansive Survey of America's Public Schools Reveals Troubling Racial Disparities, U.S. DEPARTMENT OF EDUCATION (2014) available at:
https://www.google.com/search?q=Expansive+Survey+of+America%27s+Public+Schools+Reveals+Troubling+Racial+Disparities%2C+U.S.+DEPARTMENT+OF+EDUCATION+(2014)&rlz=1C1EJFA_enUS595US596&oq=Expansive+Survey+of+America%27s+Public+Schools+Reveals+Troubling+Racial+Disparities%2C+U.S.+DEPARTMENT+OF+EDUCATION+(2014)&aqs=chrome..69i57.7229j0j4&sourceid=chrome&ie=UTF-8.
[35] *See*, 8 NYCRR §100.5(a)(3)(iii); 8 NYCRR §100.2(d)(1)-(2) (Students are also required to complete two units of study in a language other than English by grade 9.) Because schools are not required to offer students a choice of world languages, some under-resourced high schools provide no more than the minimum one year of language, and many schools offer only one language, generally Spanish.

An additional concern is that, in at least 18 states, there is no regulation of the content of the curriculum taught in private schools,[36] including the increasing number of states in which private schools now receive public funding through vouchers or tax credit programs.[37] Therefore, many of the approximately five million students who currently attend private schools may be receiving a curriculum that imparts even less of the knowledge, skills, and dispositions needed to be prepared for civic engagement than even the most minimal state standards require.

Civic Skills

Verbal Skills

Effective political participation depends on adequate verbal and other cognitive skills. The skills deemed most important for students to acquire for civic preparation, according to the civics framework promulgated by the National Assessment Governing Board, the agency that develops the NAEP exams, are those that help citizens identify, explain, and analyze information and arguments; in addition, civic participants should be able to evaluate, take, and defend positions on public policies.[38] In other words, citizens in a democracy need a substantive set of

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[36] S Eric A. DeGroff, *State Regulation of Non Public Schools: Does the Tie Still Bind*? 2003 B.Y.U. EDUCATION AND LAW JOURNAL 363, 382, 390, 393 (2003.) (18 states impose no curricular requirements whatsoever on private schools or on schools that have not voluntarily registered); U.S. Department of Education, State Regulation of Private Schools 329 (2009), available at http://www2.ed.gov/admins/comm/choice/regprivschl/regprivschl.pdf (based on self-reporting, 23 states do not impose curriculum requirements on some or all of the private schools in the state).

[37] As of 2015, 19 states across the county, nine of which are in the South, had established programs that provide state-funded vouchers and/ or state tax credits to support student attendance in private schools. Southern Education Foundation (SEF) Race & Ethnicity in a New Era of Public Funding of Private Schools: Private School Enrollment in the South and the Nation 2 (2016), available at http://www.southerneducation.org/getattachment/be785c57-6ce7-4682-b80d-04d89994a0b6/Race-and-Ethnicity-in-a-New-Era-of-Public-Funding.aspx2.

[38] National Assessment Governing Board, Civics Framework for the National Assessment of Educational Progress 23-26 (2014), available at https://www.nagb.org/publications/frameworks/civics/2014-civics-framework.html. NAEP also articulates "participatory skills" that include interacting, listening and

cognitive skills not only to understand written and spoken words, but to be able to analyze their meaning critically and to be able to express their own opinions on important issues persuasively.

Many American students today are barely attaining satisfactory basic verbal skills. The verbal proficiency of students living in poverty and students of color is especially worrisome. For example, on the 2015 NAEP reading assessments, 44% of white 8th grade students achieved proficiency-level scores, compared with 16% of black students and 21% of Hispanic students; in 4th and 8th grade reading, 21% of students eligible for free or reduced price lunch were proficient compared with 52% of other students.[39] Development of basic literacy skills is not, of course, the end of the matter. Many American students who have developed these basic skills have yet to master the critical reasoning and deliberation skills that are essential for students to appraise one-sided or false information, assess policy alternatives effectively, and enter into fruitful conversation with persons with opposing views.

b) Critical Analysis Skills and Deliberative Democracy

Many scholars discuss the critical-analysis skills necessary for civic participation in terms of abilities required for "democratic deliberation." Democratic deliberation is "a talk-based approach to political conflict and problem-solving—through arguing, expressing, demonstrating, and persuading"[40] that emphasizes critical reasoning, thoughtful discussion, openness to plural

monitoring, and "influencing" by voting, petitioning, and participating in civic and political activities. *Id* at 26-29.

[39]*National Center for Educational Statistics, 2015 National Assessment for Educational Progress* (2016), available at https://www.nationsreportcard.gov/reading_math_2015/#reading?grade=4.
[40] Jane Mansbridge et al.,"A Systemic Approach to Deliberative Democracy IN JOHN PARKINSON AND JANE MANSBRIDGE, DELIBERATIVE SYSTEMS DELIBERATIVE DEMOCRACY AT THE LARGE SCALE 1, 4-5 (2012). For other discussions of the theory of deliberative democracy, s*ee*, *e.g.* BENJAMIN BARBER, STRONG DEMOCRACY: PARTICIPATORY DEMOCRACY FOR A NEW AGE (1984), AMY GUTMANN AND

aims, respect for the legitimacy of decisions taken purposefully, and the mutual recognition of the deliberative capacities of the participants.[41]

The highly partisan and polarized state of current American politics is far from the deliberative democracy ideal. This polarization has been generated, to a large extent, by major structural political changes such as party realignments since the 1960s that have resulted in the Democrats becoming increasingly liberal and the Republicans increasingly conservative, as well as to closer elections and increasing inequality.[42] It is compounded by "affect" polarization that leads members of political parties not only to dislike members of the other party, but to attribute negative traits to rank and file members of the other party. Shanto Iyengar and his colleagues found that, from 1960 to 2010, the percentage of Democrats and Republicans who said that members of their own party were more intelligent than those in the opposition party grew from 6% to 48%, and the percentage that described members of the opposition party as "selfish" rose from 21% to 47%.[43]

These trends argue for, rather than against, the pursuit of democratic deliberation in the schools. If oppositional attitudes are to be countered or defused, this is likely to occur primarily in schools where diversity is valued and young people at a formative age are encouraged to deal with differences through tolerance and respect.

Unfortunately, most American middle schools and high schools are not effectively promoting democratic deliberation. Developing skills for deliberative democracy begins with

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DENNIS THOMPSON, WHY DELIBERATIVE DEMOCRACY (2004), and RONALD DWORKIN, JUSTICE FOR HEDGEHOGS (2011).

[41] *See*, Joshua Cohen, Deliberative Democracy and Democratic Legitimacy in THE GOOD POLITY 21 (A. HAMLIN AND P. PETIT, eds 1989).

[42] Jane Mansbridge, *Three Reasons Political Polarization Is Here to Stay*, WASHINGTON POST, March 11, 2016, available at https://www.washingtonpost.com/news/in-theory/wp/2016/03/11/three-reasons-political-polarization-is-here-to-stay/.

[43] Shanto Iyengar, Gaurav Sood and Yphtach Lelkes, *Affect, Not Ideology: A Social Identity Perspective on Polarization,* 76 PUB. OPIN. Q. 405 (2012).

exposing students to controversial ideas in the classroom. Most teachers today, however, shy away from taking on this challenge. Almost 80% of social studies classes do not discuss social problems and controversial issues.[44] As Diana Hess puts it:

> Democratic education without controversial issues discussion would be like a forest without trees or fish without water, or a symphony without sound. Why? Because controversy about the nature of public good and how to achieve it, along with how to mediate among competing democratic values, are intrinsic parts of democracy. If there is no controversy, there is no democracy. It is as simple as that.[45]

According to political scientist Stephon Arons, the teaching of civics and social studies in many schools has become "bland, homogeneous, ethically numb…. In this marketplace of ideas, the shelves are mostly stocked with pabulum."[46]

Shira Eve Epstein, an associate professor at the City College of New York, provides an example of how well-designed classroom exercises can encourage students to engage with controversial social problems. Her approach deals with controversial issues by encouraging students to understand better how their own racial, ethnic, and religious backgrounds may influence their perspectives, but at the same time, how candid discussion of these perspectives can build trusting relations with their classmates from other backgrounds. Epstein advocates a three-stage methodology for this purpose: problem identification, problem exploration, and action.[47]

During the initial problem-identification stage, a teacher can organize an open forum where students present problems that bother them; this allows students to express their personal

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[44] DIANA E. HESS, CONTROVERSY IN THE CLASSROOM: THE DEMOCRATIC POWER OF DISCUSSION 162 (2009).

[45] *Id* at 35.
[46] Stephon Arons, *The Myths of Value-Neutral Schooling*, EDUC. WEEK, Nov. 7, 1984, at 24.
[47] SHIRA EVE EPSTEIN, TEACHING CIVIC LITERACY PROJECTS: STUDENT ENGAGEMENT WITH SOCIAL PROBLEMS (2014).

interests, concerns, and aspirations in a safe environment. After hearing their classmates' views and experiences, the class as a whole selects a problem or a set of problems to research. Finally, collectively, the class determines action to take to address the problem or problems. These phases allow students to work together to understand a complex issue and act jointly to change it.

Mastering the pedagogical skills to provide this kind of instruction requires effective training and professional development. Recent research suggests that "most teachers did not learn, or at least did not have adequate time to master, the kinds of high-leverage pedagogies that are so critical to quality civic education."[48] As a result, most social studies teachers do not even know "what the precise content of a proper civic education should be."[49] Effective professional development to help teachers lead students in the exploration of controversial issues should include deep subject-matter knowledge; "active learning" that encourages teachers to become engaged in meaningful discussion, planning, and practice; the building of collaborative professional relationships; and continuous follow-up.[50]

Some teachers avoid classroom discussions of certain issues because they fear criticism from administrators or parents for addressing controversial or political topics. School boards need to develop and promulgate clear policies that encourage teachers to promote productive classroom discussions of controversial topics. A number of school boards do have such policies

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[48] Diana Hess and John Zola, "Professional Development as a Tool for Improving Civic Education," in MAKING CIVICS COUNT: CITIZENSHIP EDUCATION FOR A NEW GENERATION 197 (DAVID E. CAMPBELL, MEIRA LEVINSON AND FREDERICK M. HESS, EDS, 2012).

[49] Rebecca Burgess, Civic Education Professional Development, *supra*, note 33, at 1.

[50] Guardians of Democracy report, *supra*, note 21, at 38.

and professional organizations such as the National Council for Social Studies encourage their adoption.[51]

c) Applying Critical Analysis Skills to Use of New Media

Accelerating use of new digital media present both major challenges and major opportunities for educators seeking to develop critical reasoning and deliberation skills in their students. As of 2015, 76% of young people were active participants in social media, including Facebook, YouTube, Twitter, Instagram, and Snapchat.[52] On the one hand, the internet and social media may make it more difficult to motivate and equip students for civic participation if students use these tools primarily for socializing, entertainment, and consumer pursuits. On the other hand, the digital age has the potential to create a dynamic new public square that can instill in young people a sense of agency and motivate them to engage more deeply with political issues and to develop more sharply honed research and deliberative skills.

Key challenges for educators at this point, therefore, are to create and adopt curricula and instructional practices that enable all students to develop lifelong critical reasoning skills that they can apply to all media, to gain practice in employing these skills in their exploration of the web and their use of digital media, and to motivate them to engage in "deliberative dialogue." A number of programs already have responded to these possibilities. "Student Voices" is one early example of how this can be done. Taught over the course of ten weeks as a supplement to existing civic-education curricula, "Student Voices" combines classroom discussions of political

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[51] *See*, JONATHAN ZIMMERMAN AND EMILY ROBERTSON, THE CASE FOR CONTENTION: TEACHING CONTROVERSIAL ISSUES IN AMERICAN SCHOOLS 79-82, 88-91 (2017).

[52] Pew Research Center, Teens, Social Media & Technology Overview 2015, available at http://www.pewinternet.org/2015/04/09/teens-social-media-technology-2015/.

and social issues with online activities. At computer terminals that are provided in the classrooms,

> students can read daily news coverage of their city and state, locate their state officials and their district's city council member, and research their positions on issues of relevance to them. The Web site also promotes interaction with other Student Voices participants by providing the opportunity to vote in "click polls" on current issues and communicate with students from other classrooms by posting their own opinions on controversial topics.[53]

A study of the implementation of this program in 22 Philadelphia high schools found that the strongest predictor of positive outcomes was effective classroom political discussion.[54]

Harold Rheingold, a technology expert and visiting lecturer in Stanford University's Department of Communication, has suggested that teachers instruct students to (1) write a blog post that takes a position on an issue and uses links to other relevant sites to support the position; (2) ask probing questions about the assumptions, assertions, and logic of the arguments on a selected website; and (3) use wikis (websites that are jointly created and edited) to develop collaborative communities that can share knowledge and coauthor documents on topics of mutual interest.[55] Others have proposed that teachers provide students the opportunity and tools to undertake high-quality investigations through multiple sources and tap social networks to engage in dialogue with people with diverse perspectives,[56] or to create a "digital portfolio" in

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[53] Lauren Feldman et al, *Identifying Best Practices in Civic Education: Lessons from the Student Voices Program*, 114 AM J OF EDUC 75, 79 (2007), available at
http://repository.upenn.edu/cgi/viewcontent.cgi?article=1370&context=asc_papers
[54] *Id* at 93. Another interesting finding of this study was that the Student Voices program had "equal impact across ethnic and racial groups." *Id* at 94.
[55] Howard Rheingold, "Using Participatory Media and Public Voice to Encourage Civic Engagement" in CIVIC LIFE ONLINE: LEARNING HOW DIGITAL MEDIA CAN ENGAGE YOUTH 97, 104 (W. Lance Bennett, ed., 2008).
[56] Joseph Kahne, Erica Hodgin and Elyse Eidman-Aadahl, *Redesigning Civic Education for the Digital Age: Participatory Politics and the Pursuit of Democratic Engagement,* 55 THEORY & RESEARCH IN SOC. EDUC.1, 10-12 (2016.)*,* available at
http://www.tandfonline.com/doi/full/10.1080/00933104.2015.1132646.

which they post writings, videos of activities, and examples of students' civic and political analyses and actions.[57]

Civic Experiences

As John Stuart Mill aptly noted, preparing citizens for civic participation is like teaching someone to ride a horse or to swim: both require the formation of habits through exercise.[58] In addition to civic knowledge and civic skills, therefore, students also need to practice civic engagement through experiential learning opportunities that show them how politics and government actually work and how their own and others' agency and engagement can influence social and political outcomes.[59]

John Dewey recognized almost a century ago that involvement in student government, service-learning activities, speech and debate, the arts, civic-action projects, and other actual and simulated civic and political activities provide important opportunities for developing civic skills and dispositions.[60] These activities also help students understand how civic and political institutions function and can help young people develop tactical skills for active civic and political involvement later in life.

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[57] Joseph Kahne, Jacqueline Ullman and Ellen Middaugh, "Digital opportunities for Civic Education 207,227 in MAKING CIVIC COUNT: CITIZENSHIP EDUCATION FOR A NEW GENERATION (David E. Campbell, Meira Levinson and Fredrick M. Hess, eds, Joseph Kahne, Campbell, 2012). The portfolios could be placed within a network so that teachers and students could see and comment on each other's work.

[58] Quoted in James Youniss, "How to Enrich Civic Education and Sustain Democracy," in MAKING CIVICS COUNT, *supra*, note 54, at 116-117.

[59] *See*, ALLEN, *supra,* note 24 at 42-43 ("strategic and tactical understanding of the levers of political change" is an essential aspect of "preparatory readiness" for capable citizenship).

[60] JOHN DEWEY, DEMOCRACY AND EDUCATION: AN INTRODUCTION TO THE PHILOSOPHY OF EDUCATION (1935).

An extensive body of research also holds that experiential learning opportunities, such as those provided in extracurricular activities and active community service experiences, have a significant positive impact on long-term civic involvement. The experience of working closely together for extended periods of time on drama productions, concerts, sports teams, school newspapers, debate teams, and the like, afford students the kind of experiences that are most conducive to overcoming stereotypes, breaking down cultural barriers, facilitating meaningful communication and uncovering common interests among people from varied income, racial, religious, and ethnic groups. Participation in community-service activities directly acquaints students with community problems and political issues with which they may not have been aware or were aware only in the abstract, and it provides a network of people with whom to discuss civic issues.

These experiences have been directly linked with increased civic participation in later life. For example, a longitudinal analysis of the experiences of a sample of 20,000 students found that the likelihood of involvement in civic-engagement activities eight years after graduation was approximately 50% greater for students who had participated in high-school extracurricular activities for one year than for students who had not, and that students who had participated for two years evidenced even greater rates of civic engagement.[61] Participation in extracurricular activities has also been found to promote increased voting.[62]

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[61] Margo Gardner, Jodie Roth, Jeanne Brooks-Gunn, *Adolescents' participation in organized activities and developmental success 2 and 8 years after high school: Do sponsorship, duration, and intensity matter*? 44 DEV. PSYCH.814 (2008); *see also*, Jonathan F.Zaff, Kristen A. Moore, Angela Romano Papillo and Stephanie Williams, *Implications of Extracurricular Activity Participation During Adolescence on Positive Outcomes* 18 *J. ADOLESC. RES.* 599 (2003). (Adolescents who consistently participated in activities from 8th grade through 12th grade were more likely to vote, volunteer or attend college than those who participated only occasionally or those who never participated).

[62] Reuben J. Thomas and Daniel A. McFarland, Joining Young Voting Young: The Effects of Youth Voluntary Associations on Early Adult Voting, Circle Working Paper #73 (2010), available at

Studies have also shown that both voluntary and school-required community-service activities, as well as involvement in extracurricular activities, are strong predictors of adult voting and volunteering.[63] Service learning, an approach that combines community service with classroom discussions and analysis of community-service experiences, has been found to have a large effect on later civic participation, even when controlling for a range of neighborhood, school, and family characteristics.[64]

Most schools today do provide a range of extracurricular opportunities. However, a good number of schools attended predominantly by students living in poverty and students of color lack the resources to provide a reasonable range of such activities to their students. For example, a 2010 study of all high schools in North Carolina found that school size and poverty levels significantly influence the number and types of activities available, with larger schools and those schools with more affluent student bodies offering more activities.[65]

An additional problem is that, in times of recession or fiscal constraint, many schools that are forced to trim school budgets cut back on these activities, which generally are not mandated parts of the curriculum. For example, following the 2008 recession, schools throughout the

http://eric.ed.gov/?id=ED512250. (The most robust effects on voting habits resulted from high school involvement in the performing arts.)

[63] Daniel Hart, Thomas M. Donnelly, James Youniss and Robert Atkins, *High School Community Service as a Predictor of Adult Voting and Volunteering,* 44 AM. EDUC. RES. J 197 (2007); *See also*, James Youniss, Yang Su, and Miranda Yates, *The Role of Community Service in Identity Development: Normative, Unconventional and Deviant Orientations*, 14 J. ADOLESC. RES. 248 (1999). (Service experience positively affects development in the areas of political involvement, religion and substance abuse; students' participation in school government and other types of school activities doubled the likelihood of service.)

[64] Joseph E. Kahne and Susan E. Sporte, *Developing Citizens: The Impact of Civic Learning Opportunities on Students' Commitment to Civic Participation*, 45 AMER. EDUC. RES. J 738 (2008).

[65] Elizabeth Stearns and Elizabeth J. Glennie, *Opportunities to participate: Extracurricular activities' distribution across and academic correlates in high schools,* 39 SOC. SCI. RESEARCH :296 (2010), available at https://www.researchgate.net/publication/248571987_Opportunities_to_participate_Extracurricular_activities'_distribution_across_and_academic_correlates_in_high_schools.

country eliminated field trips to legislatures, art museums, and local historical sites;[66] dropped

middle school sports; cut back on interscholastic competitions; and eliminated spelling bees and

drama clubs.[67] Our own study of the impact of budget cuts on 33 high-need schools in eight

districts in New York State found that "most of the high schools had to eliminate their civics-

related afterschool offerings, including community-service programs, student government,

school newspaper, and programs like Model UN and Moot Court."[68]

Another practice that a growing number of schools utilize during times of financial

constraint is a "pay-to-play" policy that requires students who want to play on athletic teams,

participate in drama clubs, or write for school newspapers to pay fees. For example, in recent

years, students in Arlington, Massachusetts, were required to pay $720 to play ice hockey or

participate in gymnastics, and $408 to be on the cheerleading squad; in Lakeville, Illinois, it cost

$150 to join the chess club; in Shannon, New Jersey, the fee to write for the literary magazine

was $200; and in Medina, Ohio, students were charged $660 to play a high school sport, $200 to

join the concert choir, and $50 to act in the spring play.[69] Needless to say, these policies

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[66] Associated Press, *Field trips becoming history at some Ohio schools,* CINCINNATI ENQUIRER, Oct. 8, 2012, available at http://www.northjersey.com/news/education/field-trips-becoming-history-at-some-ohio-schools-1.383829; *See also*, DANIELA ALTIMARI**,** *Field Trips Fading Fast In An Age Of Testing*, HARTFORD COURANT, Dec. , 2007, available at
https://www.researchgate.net/publication/248571987_Opportunities_to_participate_Extracurricular_activities'_distribution_across_and_academic_correlates_in_high_schoolshttp://www.hartfordinfo.org/issues/documents/education/htfd_courant_120907.asp. (Field trips cut back due to budget cuts and perceived need to use more time to boost scores on standardized tests.)
[67] June Kronholz, Academic Value of Non-Academics: The Case for Keeping Extracurriculars, 12 EDUC. NEXT (2012), available at http://educationnext.org/academic-value-of-non-academics/.
[68] Michael A. Rebell, Jessica R. Wolff, & Joseph R. Rogers, Jr. Deficient resources: An analysis of the availability of basic educational resources in high needs schools in eight New York State school districts 11 (2012), available at http://www.equitycampaign.org/i/a/document/25804_DeficientResources2-21-13.pdf.
[69] *See*, Stephanie Simon, *Public Schools Charge Kids for Basics, Frills*, WALL ST. J. , May 25, 2011, available at http://www.wsj.com/articles/SB10001424052748703864204576313572363698678; *See generally*, Note, *Pay-to-play: A Risky and Largely Unregulated Solution to Save High School Athletic Programs from Elimination,* 39 Suffolk L. Rev. 583 (2005-2006.)

disproportionately exclude students from low-income households, many of whom are students of color.

High-quality service-learning and community-involvement activities also need to be made more widely available. An example of an effective service-learning program is the Madison County Youth Service League project conducted in a middle-class, largely suburban community. Students in this program worked on public-service projects in their county's administrative offices. One group of students investigated whether citizens in their community wanted curbside trash pickup. Another group helped to develop a five-year plan for the fire-and-rescue department. For each project, students had to collect and analyze data, interact with government agencies, write a report, and present their findings in a formal hearing before the county's Board of Supervisors. An evaluation of this program concluded that it had a powerful impact on students' capacities for and commitments to civic participation.[70]

Some version of such experiential opportunities for civic learning should be available in all schools all of the time. A cost-efficient complement, but not a substitute, for such participatory experiences is the use of online games and other digital tools that provide students virtual civic experiences in running for political office, legislating, deciding legal cases, and administering public institutions. One example in wide use is the "iCivics" games sponsored by the nonprofit organization established by former U.S. Supreme Court Justice Sandra Day O'Connor.[71] To maximize the effectiveness of the students' use of these games, they should be integrated into social-studies lessons with appropriate teacher guidance.

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[70] JOEL WESTHEIMER, WHAT KIND OF CITIZEN? EDUCATING OUR CHILDREN FOR THE COMMON GOOD 63 (2015).

[71] iCivics is available at https://www.icivics.org/games.

Civic Values

Most contemporary educators who are concerned about civic preparation believe that schools today also need to promote certain character values and civic dispositions, in addition to providing access to civic knowledge, skills, and experiences.[72] The nineteenth-century common schools sought to inculcate values like patriotism, religious faith, hard work, responsibility, honesty, altruism, and courage. Contemporary proponents of civic preparation endorse fostering most of these personal values, although they do not allude to religious values (at least not in the public schools). They emphasize that democratic citizens need to be responsible, honest, hard-working, caring, and have the courage to do what is right and just, even in difficult circumstances.[73]

In addition, most contemporary educators and policymakers also emphasize equality, tolerance, due process, and respect for the rule of law as important democratic values, particularly in light of our nation's experiences with slavery, Jim Crow laws, assimilation of immigrants, and struggles with totalitarianism and terrorism. The value of tolerance, combined with an emphasis on critical thinking, is especially important to foster the kind of deliberative discussions needed to prepare students for civic participation in a diverse democratic society.

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[72] *See, e.g.* Pathways to Civic Character: A Shared Vision For America's Schools (signed by, *inter alia*, the Association for Supervision and Curriculum, National Association of Elementary School Principals, the National Association of Secondary School Principals, and the National School Boards Association), available at http://www.utahciviccoalition.org/downloads/Pathways_to_Civic_Character.pdf; Carnegie Corporation and CIRCLE, The Civic Mission of Schools, 4 (2003), available at http://civicmission.s3.amazonaws.com/118/f7/1/172/2003_Civic_Mission_of_Schools_Report.pdf.

[73] *See*, e.g., Wolfganf Altof and Marvin W. Berkowitz, Moral Education and Character Education: Their Relationship and Roles in Citizenship Education, 35 J OF MORAL EDUC. 495, 513 (2006), available at https://characterandcitizenship.org/PDF/MoralEducationandCharacterEducationAlthofBerkowitz.pdf (emphasizing "social justice, honesty, personal and social responsibility, equality, etc.") Character Counts! Six Pillars of Character (trustworthiness, respect, responsibility, fairness, caring and citizenship), available at website, www.charactercounts.org.

To be effective in developing civic values—certainly for secondary school students—the concepts presented must strike them as relevant and as dealing forthrightly with issues that affect their lives and their perceptions of what is really happening in the society in which they live. Students can best develop and hone positive civic values, traits, and dispositions within a schooling environment that allows them to wrestle with the realities of diversity and equality, deliberate about relevant political, social and moral issues, and work with others on meaningful school-based, community-service and political activities.

Scott Seider, an associate professor of education at Boston University, provides a number of examples of schools that have successfully created such an ethos. The three Boston-area schools he studied combined courses that conveyed civic knowledge, advisories that pressed students to grapple with relevant political and social issues, and school-community meetings and assemblies that dealt democratically with important school-governance issues. For example, students at Roxbury Prep engaged in exercises like writing letters to students in their school who were being bullied[74] and, through performing a speech, a poem, and a rap before a school-wide assembly, reflected on their reactions to the expulsion of half a dozen of their classmates for drug dealing in school.[75] At the nearby Pacific Rim School, discussions focused on such issues as how the numbers of students who were sent to the principal's office break down by gender, race, and grade and how these patterns compare with law-enforcement patterns outside the school.[76]

Traditional values like patriotism can also be taught in a way that rings true to contemporary issues and contemporary values. During the 19th and early 20th centuries, American schools taught "an old fashioned patriotism" that emphasized "the glory of the United

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[74] SCOTT SEIDER, CHARACTER COMPASS: HOW POWERFUL SCHOOL CULTURE CAN POINT STUDENTS TOWARD SUCCESS 126-127 (2012).
[75] *Id* at 128-129.
[76] *Id* at 180-81.

States, the greatness of democracy and the blessings of American liberty…[and] [t]here was little criticism of American characteristics or activities."[77] These trends began to shift when "patriotism" became a contentious concept during the Vietnam War era, and many students and teachers viewed the war as immoral, the government as flawed, and patriotism as the adoption of an uncritical attitude toward the government.

Some believe that the terrorist attack on the World Trade Center in New York City on September 11, 2001, precipitated a renewed sense of a "shared fate"[78] among American's diverse citizens and at that time led many schools to begin to adopt a broader and more balanced approach to teaching patriotism that has been called "democratic patriotism" as opposed to "authoritarian patriotism."[79] A distinguished panel of scholars and educators at a recent conference of the Stanford Center on Adolescence articulated three aspects of patriotism that teachers should address: "1) felt attachment to society and to the ideals that the United States has traditionally espoused; 2) willingness to criticize and change aspects of the country that do not live up to those values; and 3) commitment to make personal sacrifices, when necessary, for those ideals and for the common good."[80] Patriotism taught in this way "acknowledges and promotes visions of shared histories, struggles, institutions, languages, and value

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[77] MORRIS JANOWITZ, THE RECONSTRUCTION OF PATRIOTISM: EDUCATION FOR CIVIC CONSCIOUSNESS 84,94 (1983).

[78] Sigal Ben-Porath, "Education for Shared Fate Citizenship" in EDUCATION, JUSTICE & DEMOCRACY, *supra,* note 71 at 80.

[79] Joel Westheimer, Introduction in PLEDGING ALLEGIANCE: THE POLITICS OF PATRIOTISM IN AMERICA'S SCHOOLS 4 (Joel Westheimer, ed., 2007.)

[80] Stanford Center on Adolescence*,* Youth Civic Development & Education: A Conference Report 19 (2014): *See also*, Center for Civic Education, National Standards for Civics and Government, Standard IV. D. 3 (1994), available at http://www.civiced.org/standards?page=912erica#15. (Patriotism means "loyalty to the values and principles underlying American constitutional democracy as distinguished from jingoism and chauvinism.")

commitments."[81] It can be a means for teachers to stimulate meaningful discussions of the nation's advances and setbacks in implementing the values and visions of the Declaration of Independence and the Constitution.

Diversity and Equity

Two additional necessary building blocks for civic preparation in today's schools are diversity and equity. Unfortunately, many of our schools do not provide learning environments where students from diverse races, ethnicities, religions, sexual orientations, and socioeconomic backgrounds thrive together. Often, sufficient resources for many basic educational necessities for civic preparation are not available. No discussion about civic preparation can advance productively without contending with these facts about the broader social context in which schools operate.

Schools in the U.S. today serve a more diverse population of students than ever before, and, as a whole, the American public schools aspire both to greater excellence and to greater equity than at any time in their history. That is, public schools in the U.S. aim to educate a population of students with a greater need for supports than in years past to meet higher-than-ever educational standards. While there has been some progress toward equity and excellence in the public schools, there are still many significant obstacles. This context is critical as we seek to understand how all schools can ensure that all of their students reach high standards of civic preparation. Today, schools bring together students from different socioeconomic strata, different religious and political backgrounds, different races and ethnicities, with diverse cultures and home languages, with a range of intellectual and physical abilities and disabilities, with

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[81] Sigal Ben-Porath, *supra*, note 81, at 90.

different family configurations and different sexual orientations. Overall, Black, Latino/a, and Asian-American students now make up 45% of the student population nationally[82] and are projected to be a majority of the entire student population nationwide by 2020.[83] Students with identified disabilities made up approximately 13% of the student population in 2012-2013. [84] Students who self-identify as gay constituted 5% in 2008.[85]

Changes in immigration laws and the arrival of refugees from throughout the world in recent decades have vastly expanded the diversity represented in American schools. In 2013, the New York City Department of Education reported that over 41% (438,131) of students enrolled in New York City public schools speak a language other than English at home, and that these students, collectively, speak 151 different languages;[86] in the Los Angeles public schools, 93 languages other than English are spoken.[87] These new demographic trends are not limited to major urban areas. In rural schools, as of 2010, 10% of the students were African American and

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[82] *Racial/Ethnic Enrollment in Public Schools,* NATIONAL CENTER FOR EDUCATION STATISTICS (2015). available at: http://nces.ed.gov/programs/coe/indicator_cge.asp

[83] William J. Hussar and Tabitha M. Bailey, *Projections of Education Statistics to 2022,* 41 NATIONAL CENTER FOR EDUCATION STATISTICS 33 (2014), available at https://nces.ed.gov/pubs2014/2014051.pdf.

[84] U.S. Department of Education, National Center on Educational Statistics, Children and Youth With Disabilities (2015), available at http://nces.ed.gov/programs/coe/indicator_cgg.asp.

[85]Susan Jones, *Poll: Five Percent of High School Students 'Identify As Gay*', CNS News, July 7, 2008, available at http://nces.ed.gov/programs/coe/indicator_cgg.asp. The actual percentage is probably higher, since by the time that they reach college as many as 12% of students self-identify as gay or bisexual. Suzannah Weiss, *About 12 percent of students identify as gay or bisexual,* BROWN DAILY HERALD, Nov. 12, 2010, available at http://www.browndailyherald.com/2010/11/12/about-12-percent-of-students-identify-as-gay-or-bisexual/.

[86] NEW YORK CITY DEPARTMENT OF EDUCATION, Office of English Language Learners, 2013 Demographic Report, (2013), available at: http://schools.nyc.gov/NR/rdonlyres/FD5EB945-5C27-44F8-BE4B-E4C65D7176F8/0/2013DemographicReport_june2013_revised.pdf.

[87] *Fingertip Facts,* LOS ANGELES UNIFIED SCHOOL DISTRICT 1 (2015). available at: http://achieve.lausd.net/cms/lib08/CA01000043/Centricity/Domain/32/Fingertip%20Facts15-16_final-updated.pdf.

13% were Hispanic,[88] and in rural and small-town regions, the Hispanic population increased by 1.9 million, or 46%, between 2000 and 2010.[89]

Some schools serve much higher concentrations of students from different subgroups.[90] Racial-ethnic diversity, for example, is unevenly distributed from state to state, and, in local communities, "diversity contrasts are even sharper. Diversity may be a fact of daily life, anchored in regular contact with people from ethnoracial communities outside one's own or it may be experienced more vicariously, if one's own group dominates."[91] Given these realities, America's historical assumption that immigrants, people of color, and other subgroups could or should readily be assimilated into the dominant culture no longer applies. And earlier assumptions about achieving diversity and equity through integration must be questioned.

To prepare students to function productively as civic participants in this dynamic, increasingly varied American society, schools need to not merely tolerate diversity but to embrace it and to provide students with knowledge, skills, experiences and values appropriate to this task. Public schools today need to combine durable American institutions, and important democratic values with mores and values drawn from the vast array of practices and perspectives that the heterogeneous groups that now comprise their population can contribute. Embracing diversity also means promoting effective racial and class integration to the maximum extent feasible under existing law and pressing the courts to adopt more proactive standards regarding

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[88] National Center on Education Statistics, The Status of Rural Education (2013), available at https://nces.ed.gov/programs/coe/indicator_tla.asp.

[89] Housing Assistance Council, "Race & Ethnicity in Rural," HAC RURAL RESEARCH BRIEF, April 2012, available at: http://www.ruralhome.org/storage/research_notes/rrn-race-and-ethnicity-web.pdf.

[90] Matthew **Hall**, Laura **Tach**, and Barrett A. **Lee,** *Trajectories of ethnoracial diversity in American communities, 1980-2010.* 42 POPULATION & DEV. REV., 271-297 (2016).
Id at 271.

school desegregation in a context that provides meaningful educational opportunities for all students.

For positive intergroup relations to flourish within schools and communities, students "must feel that their relationship rests on equality: each must believe that the relationship's benefits and burdens are shared more or less equally."[92] This kind of relationship cannot exist in schools where students are treated unequally or among students in substantially underfunded schools who recognize that they lack important opportunities that students who attend other schools regularly enjoy.

For more than a decade, the stated educational policy of the United States has been "to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency in meeting challenging state academic achievement standards.[93] Nevertheless, in 23 states, state and local funding combined provides the poorest school districts fewer per capita dollars than it does to affluent school districts, even though these students have greater needs.[94] These disparities deny equal educational opportunity to the students in these schools and, as Diana Hess writes,

> It is one thing to say that students, especially poor students who are more likely to be students of color than White, need more and better democratic education. But…it is hard to expect that under-funded and under-supported schools and the students within them who are being attacked by the *hard bigotry* of inequality should do any better with respect to democratic education outcomes than they do with any other outcomes.[95]

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The stark fact is that, given our nation's increasingly diverse school settings, without equal and sufficient resources, "common" schooling that can truly prepare students for democratic functioning will remain an unrealized ideal. Schools are capable of preparing today's students to function productively as civic participants, but they cannot fully accomplish that goal unless our society productively addresses the legal and policy context in which schools operate.