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# Republican Citizenship in a Democratic Society

Suzanna Sherry

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## Book Review

### Republican Citizenship in a Democratic Society

DEMOCRATIC EDUCATION. By Amy Gutmann.† Princeton: Princeton University Press, 1987. Pp. xii, 321. \$19.95.‡

Reviewed by Suzanna Sherry\*

Amy Gutmann's *Democratic Education* might equally well be entitled *Republican Education*, for its central theme is how to produce true republican citizens—citizens who possess both the ability and the motivation to participate in their deliberative political communities. That such a republican education must take place in a democratic context, however, imposes limits on how educational decisions are made and on what may be taught. Gutmann carefully explores both. The resulting “democratic theory of education” she proposes and examines is a small masterpiece of political theory with implications far beyond the educational context.

The book's significance for legal and jurisprudential scholars lies primarily in the development of principles of democratic republicanism. Modern constitutional jurisprudence rests largely on an accommodation of competing theories of the central meaning of our constitutional system; majoritarianism conflicts with individual rights, and the liberal focus on communities as aggregations of individuals conflicts with the republican focus on individuals as members of communities. Constitutional scholars—of both the traditional and neorepublican schools—who are attempting to reconcile the conflicting demands of majoritarianism, individual rights, and common community aspirations would do well to begin with some version of Gutmann's theories of democracy and education. The book also contains insights on such issues as antidiscrimination law and academic freedom that might be useful to public law scholars. Putting *Democratic Education* on a recommended reading list for almost everybody imposes no hardship: the book is as well written as it is important.

† Associate Professor of Politics, Princeton University.

‡ Hereinafter cited by page number only.

\* Professor of Law, University of Minnesota.

## I.

A democratic theory of education is necessary, according to Gutmann, largely because our diversity makes consensus on educational policy impossible. But resolving educational differences by democratic deliberation is not merely an inconvenient necessity, for it is also a democratic virtue: "The democratic virtue, too simply stated, is that we can publicly debate educational problems in a way much more likely to increase our understanding of education and each other than if we were to leave the management of schools [to experts]."<sup>1</sup> A democratic theory of education thus provides a lesson in republican citizenship not only to the children (and adults) whose schooling it guides, but also to the members of the public who make decisions about educational policy.

Simply stated, Gutmann's democratic theory of education consists of a basic principle, "democratic control," subject to two constraints. The basic principle is that educational policy decisions should be reached by popular political means even if the resulting decisions are in some objective sense incorrect. Democratic societies may make mistakes, but "democracy is valuable for far more than its capacity to achieve correct outcomes."<sup>2</sup> Self-government is an end in itself and not merely an instrumental good. Gutmann thus rejects the notion of a directed democracy, in which popular choices are subject to a general test of correctness.

Gutmann, however, also criticizes strong democracy, which places no limits on popular choices. The ideal of democracy itself, she suggests, requires some constraints on possible outcomes. These constraints are necessary because the democratic ideal, as Gutmann describes it, is more than majoritarianism; it is "a society whose adult members are, and continue to be, equipped by their education and authorized by political structures to share in ruling."<sup>3</sup> Thus any educational policy that deprives current or future citizens of their ability to participate in governmental processes is illegitimate, regardless of whether it is arrived at democratically. A democratic society "must educate all educable children to be capable of participating in collectively shaping their society."<sup>4</sup>

Two types of substantive educational policies might deprive children of their future ability to "participate intelligently as adults in the political processes that shape their society."<sup>5</sup> Policies that directly or indirectly exclude some children from acquiring an education adequate to the

1. P. 11.

2. P. 96.

3. P. xi.

4. P. 39.

5. P. xi.

rights and duties of citizenship violate what Gutmann calls the principle of “nondiscrimination.”<sup>6</sup> Policies that stifle the development of children’s critical faculties, and thus prevent them from participating as adults in a deliberative democracy, violate the principle of “nonrepression.”<sup>7</sup> Nondiscrimination and nonrepression constitute Gutmann’s two constraints on the basic principle of democratic decision making. “The promise of the principles of nonrepression and nondiscrimination is just this: to support a strong democracy without sanctioning majority tyranny or sacrificing self-government in the future.”<sup>8</sup>

Behind this simple promise lies a complex theory of democracy. In Chapter one, Gutmann outlines her theory of democratic education, which reveals her broader image of the democratic ideal. It is an elegant and persuasive vision, in part because she rejects foundationalism<sup>9</sup> and instead tries to combine the strengths and avoid the weaknesses of various other theories.

She relies primarily on three of the most commonly held theories of education: the Platonic “family state,” the Lockean “state of families,” and the Millian “state of individuals.” The family state is a polity in which the government takes an omnipotent and omniscient parental role, “teaching all educable children what the (sole) good life is for them and . . . inculcating in them a desire to pursue the good life above all inferior ones.”<sup>10</sup> The state of families gives parents complete control over the education of their children, either for the consequentialist reason that they are the best protectors of their children’s future interests or for the moral reason that they have a natural right to educate their children.<sup>11</sup> The state of individuals denies that either the state or parents should have control over education. Instead, education must be designed to give all children an opportunity to choose their own good lives, while educators remain neutral among competing conceptions of the good life.<sup>12</sup>

In her critique of these theories Gutmann provides the most valuable insights for scholars attempting to reconcile the demands of democracy with the ideals of republican virtue. She is also most successfully pragmatic here, measuring each theory against the realities of the Ameri-

6. P. 45.

7. Pp. 44-45.

8. P. 97.

9. Foundationalism is the belief “that any defensible political theory must begin by discovering some unquestionable or self-evident starting point.” P. 21.

10. P. 23.

11. See pp. 28-29.

12. P. 34.

can social and political structure. Finally, by identifying the strengths of each theory, she is able to construct a composite democratic theory of education. What Gutmann identifies, often persuasively, as strengths of each theory are in fact aspects that are commonly criticized. Thus her democratic theory represents an approach to education and to republican democracy significantly different from that provided by the more common theories.

Gutmann criticizes the ideal of the family state, in which the government is the sole arbiter of the good life, not on the usual pluralist ground that no single good life can be unerringly identified. She instead argues that imposing even the one true good life on those who are not persuaded of its wisdom violates democratic principles, stressing again that democracy has a value of its own beyond the results it might produce. Moreover, as a practical matter, an existing society will have difficulty in selecting the good life: "The objectively good life, defined as the life that is best for people who are rightly educated from birth, need not be the good life, or even the closest approximation of the good life, for people who have been wrongly educated."<sup>13</sup> The main strength of the family state, however, is an aspect frequently criticized by liberal pluralists:<sup>14</sup> education in the family state is intentionally not value-neutral, but rather predisposes children to choose "the kind of character conducive to democratic sovereignty."<sup>15</sup>

Gutmann rejects the state of families both because some parents (racist parents, for example) "cannot be counted upon to equip their children with the intellectual skills necessary for rational deliberation"<sup>16</sup> and because children "are members of both families and states."<sup>17</sup> As members of democratic states, children are entitled to state assurance of an education that ultimately will enable them to participate as citizens. Beyond this minimal definition of the good life of a citizen, however, lie many different visions of the good, and both the virtue and danger of the state of families is that it allows parents to perpetuate their own particular visions. The state of families, like the family state, protects nonneutral education. It recognizes "the value of our desire to cultivate, and allow communities to cultivate, only a select range of choice for children, to prune and weed their desires and aspirations."<sup>18</sup> Cultivating only se-

13. P. 26.

14. See K. POPPER, *THE OPEN SOCIETY AND ITS ENEMIES* (1977); B. WILLIAMS, *ETHICS AND THE LIMITS OF PHILOSOPHY* (1985).

15. P. 41.

16. P. 29.

17. P. 30.

18. P. 35.

lected values in children should encourage them, as adults, both to lead “a worthy life” and to “sustain a flourishing society.”<sup>19</sup> Despite this easy reconciliation between an individual good life and a good society, some tension obviously exists between the family state and the state of families. Gutmann recognizes the tension and returns to it after reviewing one final theory, the state of individuals.

The state of individuals is perhaps the most commonly held educational theory today. Such a state turns control of education over to professional educators to avoid the value-laden teaching of either parents or the state. The ideal educational policy, for individualists, “is one that maximizes future choice without prejudicing children towards any controversial conception of the good life.”<sup>20</sup> One problem Gutmann identifies with the state of individuals is that opportunity for choice often conflicts with neutrality. Using the example of Amish children, she suggests that “[c]hildren may grow to have a greater range of choice (and to live more satisfying lives) if their education is biased by those values favored by their society.”<sup>21</sup> Freedom of choice, moreover, is not the sole end of education, because we as a society value other things that might conflict with freedom: “We value, for example, the moral sensibility that enables us to discriminate between good and bad lives, and the character that inclines us to choose good rather than bad lives.”<sup>22</sup> We also value for children the “identification with and participation in the good of their family and the politics of their society.”<sup>23</sup> The quintessentially liberal state of individuals ignores these more republican and communitarian goods. The strength of the individualist theory of education is that it counters the identified weaknesses of the other two theories by avoiding both antidemocratic values taught by parents and single-good values taught by the state.

Having read this far, most readers should now be able to sketch the outlines of Gutmann’s defense of the democratic theory of education. That her theory follows naturally from her critiques and yet does not appear redundant or uninteresting is a tribute to her writing. A democratic state of education begins with the recognition that education must prepare children to become democratic citizens. Democratic citizens have two distinctive features. First, they are “partially constituted by subcommunities (such as their family, their work, play, civic, and reli-

19. *Id.*

20. P. 34.

21. *Id.*

22. P. 37.

23. P. 43.

gious groups)."<sup>24</sup> Second, they are nevertheless free to choose ways of life beyond those of the subcommunities, "because the larger community has equipped them for deliberating and thereby participating in the democratic processes by which choice among good lives and the chance to pursue them are politically structured."<sup>25</sup>

A democratic theory of education shares with the family state the notion that education should predispose children to choose lives "that are consistent with sharing the rights and responsibilities of citizenship in a democratic society,"<sup>26</sup> including "religious toleration and respect for the dignity of persons."<sup>27</sup> Like the state of families, however, the democratic theory recognizes that particularized visions of the good life may be passed on from parent to child. Finally, a democratic theory of education, like an individualist theory of education, requires educational policies that "aid children in developing the capacity to understand and to evaluate competing conceptions of the good life and the good society": in other words, to develop the capacity to "deliberate critically."<sup>28</sup>

It is hard to disagree with Gutmann's general vision of what education should do in a democratic state—especially one with republican aspirations. The basic principle—democratic control—and its two constraints—nonrepression and nondiscrimination—follow naturally from her original amalgam of the virtues of each theory. The web of relationships among the different parts of her analysis is intricate and elegant. Citizens cannot participate fully in shaping their political society if they have not learned to deliberate critically—a recognition derived from the state of individuals and requiring the constraint of nonrepression. Nor can citizens participate fully if they lack an intimate understanding of the essential values of democracy in general—a recognition derived from the family state and requiring the constraint of nondiscrimination. Nor can they participate fully if they lack a connection to their own democratic communities in particular—a recognition derived from the state of families and requiring democratic control.

The value of Gutmann's theoretical analysis inheres in more than its particularized persuasiveness. She avoids sharp dichotomies and foundationalist axioms and uses all the pragmatist tools to pursue her goal of

24. P. 45.

25. Pp. 45-46.

26. P. 42.

27. P. 72.

28. P. 44. The notion of democratic citizens as citizens able to deliberate critically and rationally is, as Gutmann recognizes, reminiscent of John Dewey. See J. DEWEY, *THE SCHOOL AND SOCIETY* (1900). She suggests, however, that Dewey's theory of education is insufficiently democratic and overly individualist because it imposes on communities an abstract notion of what "the wisest and best parents" would want. P. 13.



describing a democratic theory of education. She recognizes the value of both individual rights and community membership, of freedom to choose and the importance of making the right choice. In rejecting the liberal dichotomy between neutrality and totalitarianism, she argues: “Give children liberty or give them virtue. Neither alternative is acceptable: we legitimately value education not just for the liberty but also for the virtue that it bestows on children; and the virtue that we value includes the ability to deliberate among competing conceptions of the good.”<sup>29</sup>

Were the book to consist only of Gutmann’s presentation and defense of her theory of democratic education (most of which is found in Chapter one and the beginning of Chapter four), it would be a significant and almost flawless work. The rest of the book, which goes on to explore the applications of the basic theory, is weaker and less interesting, but it is still well worth the effort.

## II.

Gutmann first uses her democratic theory of education to illuminate the purposes of primary education—elementary through high school.<sup>30</sup> To become functioning citizens of a democracy, children must learn both moral character and moral reasoning. Her justification for requiring both is an excellent summary of the attributes of republican citizenship. Citizens who participate in the deliberative processes of a republic must be “morally serious people,”<sup>31</sup> so that they

can be trusted to defend and to respect laws that are not in their self-interest, at the same time as they can be expected to oppose laws that violate democratic principles, and ultimately to disobey them, if necessary, with the intent of changing them by appealing to the conscience of the majority.<sup>32</sup>

Republican citizens must be both willing and able to deliberate about moral questions in order to be distinguishable from “both sophists, who use clever argument to elevate their own interests into self-righteous causes, and traditionalists, who invoke established authority to subordinate their own reason to unjust causes.”<sup>33</sup> According to Gutmann, moral character—a willingness to deliberate about moral questions—is best taught by example,<sup>34</sup> and moral reasoning—the ability to

29. P. 36.

30. See p. 49 & n.6.

31. P. 52.

32. *Id.*

33. *Id.*

34. See p. 57.

deliberate—is best taught didactically.<sup>35</sup> Consequently, schools should use both methods.

Gutmann then turns to the major project of the book: using a democratic theory of education to formulate educational policy. In undertaking this project, Gutmann and her democratic theory of education must answer two questions: “[W]ho should have authority to make decisions about education, and . . . what [are] the moral boundaries of that authority . . .”<sup>36</sup>

Gutmann concludes in Chapter three that control over education should be divided among the federal government, state and local governments, and professional educators within the schools. Leaving control solely in the federal government would bureaucratize the schools, “eliminat[ing] any effective democratic control.”<sup>37</sup> Allowing state or local governments to control schools entirely “would reduce the United States to a collection of democratic city-states, totally neglecting our collective interest in . . . education.”<sup>38</sup> Accordingly, Congress should set minimum educational standards and require both “those [subjects] that are essential to the justice of any democratic society and those that serve to unite and distinguish us from other democratic societies.”<sup>39</sup> State and local governments would be free to implement and supplement those minimums. Finally, professional educators would be responsible for upholding the principle of nonrepression, preventing majorities from simply perpetuating their own beliefs in the curriculum.<sup>40</sup>

In reaching and defending this scheme, Gutmann engages in a mode of analysis that typifies the remainder of the book and that illustrates both her strengths and weaknesses. Her practical application is sometimes superficial and uninformed by necessary technical expertise. In canvassing the reasons that teachers cannot currently ensure the nonrepressive character of education, for example, she lists factors that virtually any observer would notice: low pay and low status, little teacher control over what goes on in the classroom, entrenched unions with interests other than good education, and a tenure and seniority system that provides no incentives.<sup>41</sup> Gutmann’s discussion of the division of authority between state and federal governments might have benefited from some historical, political, or legal analysis of federalism principles.

35. See pp. 57-58.

36. P. 11.

37. P. 73.

38. *Id.*

39. P. 74.

40. See pp. 75-76.

41. See pp. 78-83.

She also provides little detail on how to implement her general suggestions.

Her approach does have two major strengths. Although the primary focus of each chapter might suffer from the breadth of the discussion, this very breadth ensures that the reader will be both educated and entertained. Gutmann's discussion of how much control states should retain over educational policy contains a gem of a footnote listing some of the more ridiculous requirements that states currently mandate: "California requires the teaching of 'kindness towards domestic pets'; Wisconsin requires instruction in 'the true and comparative vitamin content . . . and health values of dairy products'; Maine requires public schools to 'teach virtue and morality for not less than one-half hour per week.'"<sup>42</sup> In analyzing the problems with the teaching profession, she engages in an extended and interesting discussion of the hazards of too much or too little control over professional standards resting in the hands of the profession itself. This discussion is relevant to other professions, including, as she notes, law. Too little autonomy results in "the ossification of office" and too much in "the insolence of office."<sup>43</sup> These discussions, tangential to her primary purpose, do much to compensate for the occasional lack of depth. The second benefit of her approach is that it represents an admirable effort—whether or not successful—to place her theory in context and to solve real-world problems.

The remainder of the book explores different facets of the practical implications of her democratic theory of education and exhibits similar strengths and weaknesses. In Chapter four, Gutmann applies the nondiscrimination and nonrepression principles to conclude that even democratic majorities cannot ban books from school libraries arbitrarily or require the teaching of creationism. Such majorities are free, however, to select textbooks, to decide whether to require sex education, and to adopt affirmative action policies in order to break down stereotypes that might inhibit some children from receiving an adequate education.

Gutmann's treatment of these issues often seems uninformed and one-dimensional, especially in areas with substantial legal precedent or scholarship, such as affirmative action and creationism. She reaches an interesting conclusion regarding gender-based affirmative action in hiring: such action is justified not to guarantee equal employment opportunities for women, but to ensure equal educational opportunities for girls by providing them with unsteretyped role models.<sup>44</sup> Because this ap-

42. P. 74 n.2.

43. See pp. 76-79.

44. P. 114.

proach directly contradicts the Supreme Court's approach in *Wygant v. Jackson Board of Education*,<sup>45</sup> some legal analysis might have been helpful. Gutmann is not legally trained, however, and the book is not specifically directed at a legal audience, so this is a minor quibble.

Sometimes Gutmann's applications seem to be missing elements of her own theories. Her argument against requiring the teaching of creationism, for example, seems to rest on two bases: that teaching creationism "violates the principle of nonrepression in indirectly imposing a sectarian religious view on all children"<sup>46</sup> and that we cannot agree on what "knowledge" to transmit to future generations without accepting scientific standards of verification.<sup>47</sup> Both arguments are rather indirect.

She might instead have suggested that the difference between scientific theories and religious theories is actually the difference between critical deliberation and blind acceptance. While scientific practice often may be constrained by a nearly blind acceptance of the "truth" of the reigning paradigm,<sup>48</sup> the goal of science is a search for knowledge. As such, critical deliberation may be more ideal than real in scientific inquiry, but it is still the ideal: there is no authoritative source of knowledge. For those religious sects that advocate teaching creationism, however, the ultimate truth is found in a literal interpretation of the Bible. To the extent that neither the authoritativeness nor the interpretation of the Bible's account is questionable, critical inquiry is unnecessary and perhaps even dangerous. This is, of course, only an account of a religious ideal, and not all religions even subscribe to this ideal.

Thus, the difference between teaching evolution and teaching creationism is that teaching evolution is (or should be) teaching a still-evolving theory and the tools with which to construct and deconstruct that theory, while teaching creationism is teaching undisputed and indisputable truth. Teaching creationism directly violates the principle of nonrepression by inhibiting the development of the capacity to deliberate

45. 476 U.S. 267 (1986). In *Wygant*, the Court struck down a provision of a collective bargaining agreement that required the Jackson Board of Education to protect members of certain minority groups against layoffs. *Id.* at 270. The district court had upheld the agreement, stating that racial preferences were permissible under the equal protection clause as an attempt to remedy social discrimination by providing "role models" for minority school children. The Court rejected the role model theory, stating that the theory would allow the Board to engage in discriminatory hiring and layoff practices long past the point required by any legitimate remedial purpose. *Id.* at 275. The Court went further and noted that school boards might actually use the district court's theory to escape the obligation to remedy such practices by relying on the small percentage of black students to justify the small percentage of black teachers. *Id.* at 276.

46. P. 103.

47. P. 102.

48. See T. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 5 (1962).

critically and rationally.<sup>49</sup>

Like the earlier chapters, however, even the weaker portions of Gutmann's discussion reward a careful reader. She recognizes that affirmative action, by resting important decisions on gender, poses a threat to the principle of nondiscrimination. Because most elementary school teachers are women and most school administrators are men, however, without affirmative action "schools will teach children that 'men rule women and women rule children.'" <sup>50</sup> This unfortunate lesson encourages children to accept stereotypes uncritically and diminishes the educational opportunities of some children. Gutmann thus notes a conflict between the principles of nonrepression and nondiscrimination.<sup>51</sup> Although her resolution of the conflict is less than satisfying,<sup>52</sup> her identification of the possibility of conflict raises intriguing questions for law teachers. One may view the Socratic method as a quintessential attempt to uphold the principle of nonrepression by teaching rational and critical reasoning. What then should a Socratic law teacher do when that style of reasoning is foreign to some students because of their different educational backgrounds, cultures, or "voices"<sup>53</sup> and thus would violate the principle of nondiscrimination by making it more difficult for those students to learn?

Chapter five discusses the extent to which society should allocate resources to education rather than to other social goods, how it should distribute those resources, and how it should distribute children within

49. Cf. L. BOLLINGER, *THE TOLERANT SOCIETY: FREEDOM OF SPEECH AND EXTREMIST SPEECH IN AMERICA* 243-47 (1986) (distinguishing between the "tolerant mind," one prepared to accept diversity of viewpoints and comfortable with uncertainty and complexity, and the "obedient mind," one that does not think for itself). Bollinger admits, however, that tolerance may become obedience, citing obedience to and tolerance of a monarch by his subjects. *Id.* at 246. The tolerant mind, however, unlike the obedient mind, remains free to consider the possibility of disobedience. *Id.* at 247.

50. P. 113 (quoting L. POGREBIN, *GROWING UP FREE: RAISING YOUR CHILDREN IN THE 80's*, at 491 (1980)).

51. See p. 114.

52. Gutmann proposes "to admit gender as a qualification for administration and teaching until there are enough men and women in both positions to break down their sex stereotyping." *Id.* She does not explain how this solution avoids violation of the nondiscrimination principle. A more complex analysis would take account of the interaction between the nondiscrimination principle and preexisting inequalities. See generally Minow, *Foreword: Justice Engendered*, 101 *HARV. L. REV.* 10, 54-57 (1987) (noting how the presumption that existing societal arrangements are "natural and desirable" is deeply entrenched and influences courts in subtle and complex ways).

53. See generally C. GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982) (exploring the difference between men's and women's moral "voices"); *Excluded Voices: Realities in Law and Reform*, 42 *U. MIAMI L. REV.* 1 (1987) (symposium focusing on how some viewpoints are excluded from lawmaking); *Colloquy: Human Voice in Legal Discourse*, 66 *TEXAS L. REV.* 577 (1988) (discussing the absence of "human voice" in legal education); Sherry, *Civic Virtue and the Feminine Voice in Constitutional Adjudication*, 72 *VA. L. REV.* 543 (1986) (noting that women's jurisprudential "voices" may be different from men's).

school systems. Again, Gutmann's theoretical discussion is more satisfying than her practical application of it. She rejects currently popular arguments that educational opportunity should be maximized, equalized, or based solely on intellectual ability or motivation.<sup>54</sup> Instead, a democratic theory of education requires a democratic determination of the relative allocation of funds between education and other goods, even if such a distribution fails to maximize educational opportunity. Distribution within schools, however, is subject to a restraint similar to nondiscrimination: inequalities are justified only if the worst-off students still receive an education adequate to participate in the political process as adults. Beyond that minimum, democratic communities may decide for themselves how to allocate resources.

The practical usefulness of this precise scheme is compromised by Gutmann's fuzzy definition of an education adequate for republican citizenship. Such an education would require high school graduates "to have the intellectual skills and the information that enable them to think about democratic politics and to develop their deliberative skills and their knowledge through practical experience."<sup>55</sup> Her own application of this definition, moreover, suggests the utopian nature of many of her practical suggestions: she says that redefining functional literacy from the standpoint of a democratic theory of education leads to a redirection of concern "away from the question of whether high school graduates can get good jobs and toward the question of whether they have the capacity to deliberate about the political issues that affect their lives."<sup>56</sup>

The chapter on distribution of educational resources does contain a nice discussion of integration and judicially mandated busing. Gutmann presents one of the more persuasive arguments in favor of busing, avoiding some of the extremes on both sides. She suggests that de facto segregation, like de jure segregation, perpetuates racial stereotypes and thus violates the principle of nondiscrimination,<sup>57</sup> that parental opposition to busing is so entrenched that legislators cannot safely advocate it,<sup>58</sup> and

54. See p. 136.

55. P. 147.

56. P. 148. Part of the utopian nature of Gutmann's suggestions lies in the necessarily limited focus of the book itself. Societal problems, including the failure of republican citizenship, cannot be traced solely to education, nor can they be cured by changes in educational policy. Gutmann notes that "states must provide access to a wide range of other goods and services—decent housing, job training and employment for parents, family counselling, day care and after-school programs for children—without which schools cannot possibly succeed in their educational missions." P. 151. Gutmann argues further that the "aims of democratic education will not be fully realized until citizens have additional opportunities to exercise discretion in their daily work and to participate in democratic politics." P. 282.

57. See p. 162.

58. See p. 165.

that parents whose children have been bused actually find busing a positive experience.<sup>59</sup> She thus argues that “[o]ne can begin to construct a tentative case for judicial enforcement of desegregation upon its democratic rationale, the educability of public opinion concerning desegregation, and the electoral obstacles to its implementation.”<sup>60</sup>

The last four chapters explore more specialized questions farther afield from the primary focus of the book. Gutmann discusses the purposes of higher education in Chapter six, the distribution of higher education in Chapter seven, and extramural and adult education in Chapters eight and nine respectively. Perhaps because these questions are peripheral to the central issues of the book and raise rather unique problems, Gutmann’s treatment of them is particularly unsatisfying. Each pair of chapters might serve as the focus for another entire book, and the limited discussion of these subjects in *Democratic Education* inevitably seems superficial and problematic.

Again, however, each chapter contains sufficient insights and useful tangents beyond its central theme to justify a careful reading. Gutmann’s discussion of the purposes of higher education contains an excellent refutation of Allan Bloom’s vision of universities as elite ivory towers.<sup>61</sup> Her chapter on distributing higher education provides a good justification of the secondary result reached in *Regents of the University of California v. Bakke*.<sup>62</sup> She argues persuasively that it is absurd to suppose that academic ability is a sufficient qualification for any professional career, and thus academic ability is only one of many characteristics (including, in some instances, race or gender) relevant to distributing higher education.<sup>63</sup> In Chapter nine, Gutmann disputes Rawls’s conclusion that government should not subsidize culture;<sup>64</sup> in the process she shows how the abstractness of *A Theory of Justice* detracts from its usefulness in the real world.<sup>65</sup>

59. See pp. 165-66.

60. P. 167.

61. See pp. 185-93. See generally A. BLOOM, *THE CLOSING OF THE AMERICAN MIND* (1987). For an equally good refutation that takes a different approach, see Nussbaum, Book Review, N.Y. REV. OF BOOKS, Nov. 5, 1987, at 22.

62. 438 U.S. 265 (1978). In *Bakke*, the Court invalidated the University of California Medical School’s admission program that set a fixed numerical quota of places reserved for economically or educationally disadvantaged applicants and members of minority groups. *Id.* at 274-75. The Court, however, upheld the broader practice of taking race into account in admissions decisions. *Id.* at 272.

63. See pp. 198-99. Even here Gutmann avoids drawing absolute conclusions. She states that it is “almost” as absurd to rely solely on academic ability as it is to rely solely on good character: “Almost, I say, because a few professional careers, in theoretical mathematics for example, require almost exclusively intellectual ability.” P. 199 n.14.

64. See J. RAWLS, *A THEORY OF JUSTICE* 283 (1971).

65. See p. 262.

Evaluated solely as a philosophical work about American educational policy, *Democratic Education* is an interesting, informative, and persuasive book. For that reason alone, most educators (including legal academics) should read it. It is also much more. As an integration of democratic principles and republican citizenship, the book has much to teach those of us who struggle with these problems in the field of constitutional law and jurisprudence.

### III.

What can constitutional scholars learn from *Democratic Education*? First, Gutmann addresses a central problem of modern constitutional jurisprudence in general: reconciling majoritarianism with limits on majority rule.<sup>66</sup> Recall her description of the democratic ideal: "a society whose adult members are, and continue to be, equipped by their education and authorized by political structures to share in ruling."<sup>67</sup> From this ideal she derives both the principle of majority rule and the constraints on its exercise.

Her theory of democracy thus mirrors much of contemporary constitutional jurisprudence, insofar as it contemplates the existence of principled limits on outcomes against a background of majoritarianism.<sup>68</sup> Constitutional scholars have long struggled—largely without success—to define substantive constraints on majoritarianism.<sup>69</sup> None of these attempts has produced anything resembling a consensus. What Gutmann contributes to the struggle is a way of deriving the substantive constraints from the purposes of democracy itself, while at the same time focusing on both the individual citizen and the polity. Earlier attempts to identify democracy with political participation<sup>70</sup> often have failed to recognize that citizenship means more than the unconstrained opportunity to vote or to debate public issues. Gutmann's focus on education—and thus on

66. See pp. xi, 121, 177. For two different views on why this might not be the appropriate focus of constitutional jurisprudence, see Farber, *Legal Pragmatism and the Constitution*, 72 MINN. L. REV. — (forthcoming 1988), and Sherry, *Issue Manipulation by the Burger Court: Saving the Community from Itself*, 70 MINN. L. REV. 611, 612-14 (1986).

67. P. xi.

68. See, e.g., Bishin, *Judicial Review in Democratic Theory*, 50 S. CAL. L. REV. 1099, 1117 (1977) ("Although it is natural to emphasize the great power that majorities are given in democratic government—for this obviously distinguishes such a government from monarchy or oligarchy—it is critical to recognize that they are not given all power."); Sager, *Rights Skepticism and Process-Based Responses*, 56 N.Y.U. L. REV. 417, 441-45 (1981) (noting a systematic tension between a commitment to majority rule and a commitment to individual rights).

69. Perhaps the best-known example of such an attempt is John Ely's *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* (1980).

70. See, e.g., A. MEIKLEJOHN, *POLITICAL FREEDOM: THE CONSTITUTIONAL POWERS OF THE PEOPLE* (1960).



preparation for citizenship—allows her to consider more carefully the conditions under which political participation becomes more than a formal structure of rules. Her analysis also might be useful as a way of defending or discussing such cases as *Brown v. Board of Education*,<sup>71</sup> *Plyler v. Doe*,<sup>72</sup> and *Wisconsin v. Yoder*,<sup>73</sup> each reflects a vision of what it means to be educated as a citizen of a democracy.

More importantly, *Democratic Education* offers a republican vision of democracy. Recently, a number of constitutional scholars have suggested that both our history and our constitutional jurisprudence encompass more than uncomplicated individual liberty. Following the lead of historians<sup>74</sup> and philosophers,<sup>75</sup> these constitutional scholars are attempting to transform the prevailing liberal individualist paradigm by recapturing a virtue-based republicanism.<sup>76</sup> I say “recapturing” because virtually all contemporary neorepublicans weave into their theories a claim that we have deviated from our republican heritage. Whether or not their claim of departure from our heritage is true, neorepublicans face serious problems in persuading a modern liberal state that the republican paradigm should prevail.

The republican paradigm, in its simplest form, contemplates a state in which the community deliberatively chooses a nonneutral vision of the

71. 347 U.S. 483 (1954). In prohibiting segregation in public education, the Court stressed the importance of education in a democratic society. *Id.* at 493. Education, the Court noted, is required in the performance of the most basic public responsibilities and is the foundation of good citizenship. *Id.*

72. 457 U.S. 202 (1982). In holding that a state could not deny aliens access to public education, the Court recognized that public schools are a most vital civic institution for the preservation of a democratic system of government. *Id.* at 221. The Court added that some degree of education is necessary to prepare citizens to participate effectively and intelligently in an open political system. *Id.*

73. 406 U.S. 205 (1972). In holding that Amish parents could decline to send their children to public or private school after they had completed eighth grade, which was in violation of a state's compulsory school attendance law for children up to 16 years of age, the Court recognized that despite the need for education, it could not impinge on other fundamental rights and interests protected by the Constitution, in this case the first amendment right to the free exercise of religion. *Id.* at 213-14. The majority opinion did not discuss whether such a religiously motivated parental choice would deprive Amish children of an adequate education.

74. During the last two decades, many historians have suggested that eighteenth century Americans were influenced by classical republican ideals as well as by the liberalism of John Locke. See, e.g., B. BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* (1967); G. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC 1776-1787* (1969); Katz, *Thomas Jefferson and the Right to Property in Revolutionary America*, 19 J.L. & ECON. 467 (1976).

75. See, e.g., A. MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* (1981) (arguing that our society has largely if not entirely lost its practical and theoretical comprehension of morality).

76. See Michelman, *The Supreme Court, 1985 Term—Foreword: Traces of Self-Government*, 100 HARV. L. REV. 4 (describing republicanism as a counter-ideology to the prevailing scheme); Sunstein, *Interest Groups in American Public Law*, 38 STAN. L. REV. 29 (1985) (challenging the influence of factions and interest groups, which can distort the lawmaking process and undermine original constitutional goals).

good life, a vision that then supports and is supported by a virtuous citizenry.<sup>77</sup> The obvious danger of such a republican vision is its tendency to shade into totalitarianism. Moreover, many modern republicans have engaged in a utopian tendency toward overvaluing the interest of the community at the expense of the individual.<sup>78</sup> This particular tendency creates two problems for the new republicans. First, it distorts the historical record, as eighteenth century republicans were also strong advocates of natural rights.<sup>79</sup> More importantly, such a tendency guarantees the failure of neorepublican theories in a society that still treasures individual rights: "Theorizing a comfortable place for individual legal rights within a republican constitutional vision is a task that has never been completed. No republican revival in American constitutional law is likely to last very long without major progress in that task."<sup>80</sup>

*Democratic Education* offers a way out of this dilemma. While Gutmann's citizens are clearly republican, her polity is democratic. "Like the family state, a democratic state of education tries to teach virtue—not the virtue of the family state (power based upon knowledge), but what might best be called *democratic* virtue: the ability to deliberate, and hence to participate in conscious social reproduction."<sup>81</sup> The central virtue in a democratic republican state thus derives from democracy itself. I have argued elsewhere that the best way to reconcile the contemporary conflict between the historical visions of republicanism and natural rights is to label participation in the republican project of defining community aspirations and values a natural right of citizens.<sup>82</sup> Gutmann's thesis improves on this suggestion by linking both civic virtue and individual rights to an even more fundamental principle—democracy. She thus makes a jurisprudential virtue out of a historiographic necessity.

77. See, e.g., Michelman, *supra* note 76, at 4 (asserting that republican politics involve not the pursuit of self-interest, but the selection of the values that ought to control public and private life); Sherry, *supra* note 53, at 551 (noting that republicanism finds the primary purpose of government to be the definition of community values and creation of the public and private virtue for societal achievement of those values); Sunstein, *supra* note 76, at 39 (noting that under republicanism, civic virtue of the citizenry and of its representatives would work as a safeguard against factional tyranny).

78. I include myself in this group in my earlier writings on republicanism. See Sherry, *supra* note 53, at 552. But see Sherry, *The Intellectual Origins of the Constitution: A Lawyer's Guide to Contemporary Historical Scholarship*, 5 CONST. COMM. — (forthcoming 1988). I am grateful to the participants in the November 1987 "After the Bicentennial" Conference at the Georgetown University Law Center for showing me some of the problems with such a skewed vision of republicanism.

79. See Sherry, *The Founders' Unwritten Constitution*, 54 U. CHI. L. REV. 1127 (1987).

80. Michelman, *supra* note 71, at 43 n.229.

81. P. 46.

82. See Sherry, *A Pragmatist Approach to Natural Rights and Republican Citizenship*, in *After the Bicentennial: Essays on the Constitution in its Third Century* (M. Tushnet ed.) (unpublished collection) [hereinafter *After the Bicentennial*].

The book's focus on education, moreover, provides perhaps the best hope of solving the central practical problem with neorepublicanism. Eitler because humans are naturally egoistic rather than virtuous,<sup>83</sup> or because the legacy of two hundred years of individualism is the exaltation of the selfish over the altruistic,<sup>84</sup> Americans do not appear suited for republican citizenship. An apathetic and ill-prepared citizenry barely exercises its right to vote and devotes more time and enthusiasm to watching televised sports than to watching televised election returns. Politics is left to politicians and self-interest generally prevails.<sup>85</sup>

As Gutmann recognizes, the best remedy for these failings is education—both education of children by adults and education of adults by one another. *Democratic Education* defends and describes education for citizenship.

We must now begin carrying the task forward, sketching structures, both educational and jurisprudential, which will ensure that internalization of uniquely American values does not become mindless emulation of the past, and that development of critical faculties does not lead merely to change for its own sake. We must differentiate between an education *for* citizenship and the rights *of* citizenship, because giving either too many or too few rights to children or their parents might interfere with their ability to receive an education adequate to citizenship. Finally, we must further explore the relationship between the larger polity and the many subcommunities within it, as well as the relationships among those subcommunities.<sup>86</sup>

As Gutmann notes, the importance of pluralism is that “social diversity enriches our lives by expanding our understanding of differing ways of life.”<sup>87</sup> Learning to tolerate and understand other ways of life is not merely the necessary price of living in a pluralist society, but is a way of enriching our own lives. For a truly republican citizen, participation in the life of the community (or communities) and “the cultivation and improvement of the human mind”<sup>88</sup> need not be mutually exclusive ac-

83. See J. SHKLAR, *MEN AND CITIZENS: A STUDY OF ROUSSEAU'S SOCIAL THEORY* 18 (1969).

84. See Diamond, *Ethics and Politics: The American Way*, in *THE MORAL FOUNDATIONS OF THE AMERICAN REPUBLIC* 75, 95 (R. Horwitz 3d ed. 1986).

85. On the problem of republican citizenship generally, see Tushnet, *The Problem of Republican Citizenship*, in *After the Bicentennial*, *supra* note 82. On some of the causes of nonparticipation, including both structural obstacles and an apathetic population, see F. PIVEN & R. CLOWARD, *WHY AMERICANS DON'T VOTE* 97-99, 119 (1988).

86. See Minow, *Groups and the Constitution*, in *After the Bicentennial*, *supra* note 82.

87. P. 33.

88. J. MADISON, *NOTES OF DEBATES IN THE FEDERAL CONVENTION OF 1787*, at 287 (A. Koch ed. 1966) (C. Tansill 1927) (citing remarks of James Wilson on July 13, 1787).

tivities. *Democratic Education* should inspire further efforts to define and to encourage republican citizenship.