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## Comments on Justin Driver’s “Civic Education, Students’ Rights, and the Supreme Court”

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In “Civic Education, Students’ Rights, and the Supreme Court,” Professor Driver raises the critical question of the state of civic education in the United States and how the lack of robust civic education practices in schools have helped to exacerbate political tensions and conflict. He also emphasizes the important role that an analysis of Supreme Court cases and a focus on the legal debates around constitutional rights could play in fostering an engaging and impactful civic education experience for K-12 students. I agree wholeheartedly with his call to action and for the need to consider how best to educate U.S. youth for democratic citizenship. However, I would suggest that there are some key considerations that need to be added to his analysis, including: (1) a clarification regarding what he sees as the goal of “civic education;” (2) an integration of the robust literature on the best pedagogical and organizing practices for fostering youth civic engagement; and (3) consideration of how school context, including the profound racial, gender, and socioeconomic inequalities, among others, that exist in U.S. schools and society, needs to be taken into consideration when attempting to teach students about the U.S. polity and make them feel efficacy and engagement within it. I will discuss each in turn.

### *Defining Civic Education and Its Purpose*

In the piece, “civic education” seems to be doing very different kinds of political “work.” At the most basic level, it would be helpful if Driver defined what he means by civic education. For example, Rogers et al. define civic learning as “a process through which young people develop the knowledge, skills, and commitments to interact effectively with fellow community members to address shared problems. It includes preparation for both civic engagement (or practices seeking to promote the public good through non-governmental organizations and informal community work) and political engagement (or activities aiming to influence state action through formal avenues such as voting, lobbying, petitioning, or protesting).”<sup>1</sup> This definition assumes that civic education is about more than just fostering civic knowledge. Instead, civic knowledge is only valuable insofar as it serves the purpose of helping students become actively engaged in civic life. On page 4, Driver seems to be using a civic knowledge framing as the purpose of civic education, talking about how few students know the causes behind the Declaration of Independence or could name all three branches of government. Yet, at the end of the article, when discussing the outcome of a mock court session and a student’s stated desire to become a judge, Driver seems to be arguing that the purpose of a student-centered civic education is to foster students’ “civically-minded ambitions.” I would argue that successful civic education must include the development of culturally competent democratic understanding *and* engagement, rather than simply the ability to know one’s congressperson or name all three branches of government.

Returning to the “political work” Driver is asking civic education to do, by my reading he is arguing that a student-centered civic education would decrease political polarization by helping students develop empathy for those with opposing viewpoints, would help students see themselves as agents

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<sup>1</sup> Rogers, J., Hodgins, E., Kahne, J., Cooper Geller, R., Kwako, A., Alkam S., & Bingener, C. (2020). Reclaiming the Democratic Purpose of California’s Public Schools. Research Report, Leveraging Equity & Access in Democratic Education Initiative at UCLA & UC Riverside, p. 2.

in the political process, and lead to more civic-minded outcomes. Those goals are quite distinct and require different pedagogical approaches in order for them to be achieved. I will discuss the pedagogical piece below. Here I want to focus on the development of empathy for opposing viewpoints and seeing themselves as political actors. The ability of the student-centered civic education model to serve these two laudable purposes is limited by the fact that the framework seems to have been developed with a student who is imagined as a universal subject. What I mean by that is that the assumption is that all students, regardless of social position, need the same sort of civic education and will respond to that education in the same sort of way. As an example, Driver mentions students' inability to report the causes leading to the Declaration of Independence as a sign of poor civic education in the United State. But, as Rogers Smith and other scholars have pointed out, the factors leading to the development of a U.S. national identity distinct from that of Great Britain were not "taxation without representation" but rather racial and gendered framings of U.S. interests and needs that were in conflict of that of the British Empire.<sup>2</sup> In other words, the factors leading to the Declaration of Independence are not simple and, most likely, this complex understanding is not being taught to students school. Thus, one of our standard national myths is, in fact, a contested one, depending on a particular student's point of view.

Another example of the universal student subject in the text is that Driver argues that his student-centered civic education "foregrounds the major Supreme Court decisions that have shaped the everyday lives of students across the nation." Has it, though? Or has it only shaped the lives of the most privileged students of our nation? We know from decades of research in education that high poverty schools infringe on students' civil rights and liberties most often, with metal detectors, random searches of students' belongings, significant control over student behavior, bodies, and free speech, etc. Driver provides the example of student clothing being policed by schools. This and other more egregious limitations on students' rights happen every day in schools across the United States. Driver seems to assume that parents and students have the resources to hire lawyers to protect those rights. I would argue that it is only students with very particular types of privilege that are able to use the courts to advance their rights. As such, a Supreme Court-based civic education curriculum could have the opposite effect – making it clear to students how often their rights are violated while not providing them with the means to do anything about it. At a minimum, if the goal of civic education is to prepare students for democratic citizenship, we must appreciate that students' social position will affect how they interpret and understand the material provided to them. We cannot assume a universal response, given the diversity of U.S. youth, across all dimensions.

### *Incorporating Effective Civic Pedagogies*

I appreciate that Professor Driver is a legal scholar, and therefore I have no expectation that he be an expert in pedagogical practice. However, as a legal scholar making a recommendation about what should happen in classrooms, it would be helpful if that proposal were rooted in the literature on teaching, learning, and civic education that currently exists<sup>3</sup>. I cannot do justice to that literature here. But, at a minimum, that research teaches us that:

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<sup>2</sup> Rogers Smith, 1997, *Civic Ideals: Conflicting Views of Citizenship in U.S. History*, New Haven: Yale University Press.

<sup>3</sup> Carnegie Corporation of New York, CIRCLE. *The Civic Mission of Schools* (Carnegie Corporation of New York and CIRCLE, 2003). See also Jonathan, Kathleen Hall Jamieson, Peter Levine, Ted McConnell, and David B. Smith, eds. *Guardian of Democracy: The Civic Mission of Schools*. Rep. Philadelphia: Leonore Annenberg Institute for Civics of the Annenberg Public Policy Center at the University of Pennsylvania, 2011.

- Teachers struggle, for political reasons, to hold contentious conversations in their classrooms. They worry about parents' responses and, in general, are not trained in how to foster and manage such discussions. That reality has only become more challenging in our current political moment<sup>4</sup>;
- Students enjoy having contentious conversations and those conversations are most effective when the structure of the classroom is more democratic, meaning that student voice and opinion are valued and not overridden by the teacher<sup>5</sup>;
- Students of color and poor students are much less likely to have the opportunity to participate in contentious conversations that are structured democratically<sup>6</sup>;
- Problem-based approaches to civic education are most effective. By problem-based I mean that students are asked to identify a problem in their community and then, working in groups with a mentor to guide them, asked to study who is in charge of that problem in order to arrive at an approach for addressing it. Having students learn about federalism, jurisdictional overlap, and the role of governmental and non-governmental actors in this way gives them a much more grounded understanding of government, its forms, its powers, and, most importantly, the avenues into government that are available to them to make change about the things they care most about<sup>7</sup>;

All of these findings suggest that the politics and ideology that underlie each positionality in the classroom affects schools' ability to effectively engage students in their civic education. First, teachers often fear topics that are seen as "political" in their classrooms, for fear of parents' or administrators' responses. This was true even before recent events and that has only intensified recently.<sup>8</sup> Studies have shown that teachers' beliefs matter and affect what they see as important for students to learn in reference to civics.<sup>9</sup> DiGiacomo et al., in a recent study of civics teachers in a racially diverse school district, found that teachers lacked a shared understanding of what civic education was for, what the appropriate methods were for teaching civics, and that teachers lacked professional development in this area. These challenges made many of the teachers in their study shy away from addressing political issues within their classrooms.<sup>10</sup> At a minimum, these findings urge us to consider the politics inherent in teacher preparation and school settings, both of which affect the ability of schools to effectively prepare their students for democratic citizenship. Second, in today's hyper-competitive high school classrooms, students are there to do well and get a grade. They are indoctrinated early not to contradict their teachers and to give teachers what they want to see when exam time comes. That training does not disappear in the civics classroom, limiting students' ability

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<sup>4</sup> Daniela Krueger DiGiacomo, Erica Hodgins, Joseph Kahne, and Sara Trappa, 2021, "Civic Education in a Politically Polarized Era," *Peabody Journal of Education*, 96(3), 261-74.

<sup>5</sup> Cohen, C., Kahne, J., Bowyer, B., Middaugh, E., and Rogowski, J., [Participatory Politics: New Media and Youth Political Action. Youth and Participatory Politics Research Network](#). Oakland, CA. June 2012.

<sup>6</sup> Ibid.

<sup>7</sup> Joseph Kahne and Ellen Middaugh, E., 2008, High Quality Civic Education: What It Is and Who Gets It. *Social Education*, 72(1), 34-39.

<sup>8</sup> DiGiacomo, et al.

<sup>9</sup> See Knowles, R. T., & Castro, A. J., 2019, The implications of ideology on teachers' beliefs regarding civic education. *Teaching and Teacher Education*, 77, 226–239 and Farkas, H., & Duffett, A. M. High schools, civics, and citizenship: What social studies teachers think and do. Washington, DC: American Enterprise Institute, 2010.

<sup>10</sup> DiGiacomo et al., p. 272.

to be their authentic selves in those spaces and engage in contentious debate in the ways they need to in order to maximize the impact of those educational opportunities.

### *Taking School and Student Context Seriously*

My final concern about the framing of Driver's article is his discussion of the causes and consequences of polarization. Appreciating that a look at vote choice in the 2020 presidential election is a relatively flat and superficial measure of polarization, I would note that, according to CNN's exit poll, 87% of Blacks, 65% of Latinos, and 61% of Asian Americans voted for Joe Biden for president. Across all groups, that is a relatively high level of agreement. Whites were the group that was most split, with 58% voting for Donald Trump and 41% for Biden.<sup>11</sup> Looking at public opinion, whites were evenly split (50/50) when asked whether or not they agreed with the statement, "Today discrimination against whites has become as big a problem as discrimination against blacks and other minorities." In contrast, 75% of Black respondents and 71% of Latinx respondents said they disagreed with that statement.<sup>12</sup> Whites are the most segregated of any racial group in the United States and our K-12 public schools are highly segregated along the lines of race and socioeconomic status.<sup>13</sup> Thus, whites are the most ideologically polarized of any racial group in the United States and they are likely to go to school only with other whites. But, given how ideology maps onto geography in the United States, it is unlikely progressive whites will attend school with conservative whites. Those factors must be taken into consideration when thinking about civic education strategies, particularly if one of the goals of the exercise is to foster empathy. If students are only asked to interact with (and debate) students just like them, it is highly unlikely that exercise will result in any significant changes in their worldview, given they rarely interact with anyone of another opinion or of another race.

Similarly, for students of color who attend high poverty schools, demonstrating to them that students in the past, most of whom had enough privilege to find a lawyer to take their case and then wait years working through the courts to finalize gain resolution in that case, is unlikely to lead them to feelings of political efficacy given their school contexts and lived experiences. In my own research, I have found that what is most important for fostering civic engagement is an individual being shown the degree to which people "like them," similarly situated to their personal circumstances, were able to make change.<sup>14</sup> That is not what students will gain from a reading of the rare instances of student activism that resulted in support of student rights within schools. In California, "willful defiance," defined as "disrupting school activities or otherwise willfully defying the valid authority of school staff,"<sup>15</sup> was, until very recently, the most common justification for school suspension, even among elementary school children.<sup>16</sup> This policy was recently outlawed in California because its subjective nature made it possible for school personnel to suspend a student

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<sup>11</sup> <https://www.cnn.com/election/2020/exit-polls/president/national-results>

<sup>12</sup> Source: 2015 American Values Survey

<sup>13</sup> For residential segregation see Reardon SF, Fox L, Townsend J. Neighborhood Income Composition by Household Race and Income, 1990–2009. *The ANNALS of the American Academy of Political and Social Science*. 2015, 660(1):78-97. For school segregation see Will McGrew, [U.S. school segregation in the 21st century: Causes, consequences, and solutions](#). Washington, DC: Washington Center for Equitable Growth.

<sup>14</sup> Lisa García Bedolla and Melissa Michelson, *Mobilizing Inclusion: Transforming the Electorate through Get-Out-the-Vote Campaigns*, New Haven: Yale University Press, 2012.

<sup>15</sup> <http://www.fixschooldiscipline.org/wp-content/uploads/2014/11/AB-420-Fact-Sheet-Implementation.pdf>

<sup>16</sup> <https://www.aclusandiego.org/en/news/time-end-willful-defiance-expulsions-suspensions-k-12-education>

any time that student said or did anything the staff person did not like. One can imagine that a student attending a school where these kinds of suspensions happen regularly would not necessarily be able to see themselves or their school context reflected in court cases upholding students' free speech rights. If those students received that content in class and attempted to exercise that speech, their most likely outcome would be suspension or some other harsh form of discipline.<sup>17</sup> As I mentioned above, schools' gendered and racialized enforcement of school dress codes is another example of how students' lived experiences can vary dramatically from what is allowed from a legal standpoint.<sup>18</sup> For Driver's vision to be made real, those realities would need to change.

The development of common schools (which would later become our public schools) in the United States coincided with the removal of property restrictions on suffrage and the implementation of racial and gender restrictions. This resulted in the loss of voting rights for those few free blacks and women who, until then, had had the right to vote in some states, like New Jersey.<sup>19</sup> At the time, there were concerns among U.S. political leaders about how these un-propertied white men might vote. Therefore, they decided that the state needed to educate them in order to ensure their ability to effectively (and appropriately) exercise the franchise. Our public schools, then, were created in order to teach students a common narrative about U.S. politics and the role of the citizen within them. The legacy of that history is evident in civics and government classrooms today. Those narratives have been adjusted periodically in response to protest movements, but there has never been a national conversation about what civic education needs to look like in order to support a truly inclusive multiracial democracy. I agree that we need a national civic education conversation, but I would humbly suggest it needs to be rooted in that exclusionary history and the profoundly unequal reality of our nation's public schools. Only by facing all our truths – the good and the bad – will we be able to teach our young people that this democracy truly is theirs and that they have both the power and the obligation to nurture and sustain it.

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<sup>17</sup> Noguera, P. (2003). Schools, Prisons, and the Social Implications of Punishment: Rethinking Disciplinary Practices, *Theory into Practice*, 42, 341-50.

<sup>18</sup> See Jennifer L. Martin and Jennifer M. Brooks, "[Loc'd and Faded, Yoga Pants, and Spaghetti Straps: Discrimination in Dress Codes and School Pushout](#)," *International Journal of Education Policy & Leadership* 16(2020) and Morris, E. W. (2005). 'Tuck in that Shirt!' Race, Class, Gender, and Discipline in an Urban School, *Sociological Perspectives*, 48, 25-48.

<sup>19</sup> <https://www.smithsonianmag.com/smart-news/why-black-people-and-women-lost-vote-new-jersey-180967186/>