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Book Reviews

Review of *Democratic Education*¹ by Amy Gutmann²

Reviewed by Nadine Strossen³

INTRODUCTION

The U.S. political system rests upon two fundamental concepts: the concept of democracy, which generally assures majorities the right to make policy decisions; and the concept of individual liberty, which constrains that of democracy by guaranteeing certain basic freedoms and protecting them from majoritarian control. The inherent tension between these two concepts is sharply reflected in conflicts concerning educational policies. As the Supreme Court often has recognized, “public education in our nation is committed to the control of [democratically elected] state and local authorities,”⁴ so that “local school boards have broad discretion in the management of school affairs.”⁵ However, the Court consistently has qualified this general principle of democratic power to shape educational policy by recognizing the limiting concept of individual liberty. For example, the Court has stressed that “the discretion of States and local school boards in matters of education must be exercised in a manner that comports with the transcendent imperatives of the First Amendment.”⁶

As its name suggests, Professor Amy Gutmann’s *Democratic Education* stresses the concept of democracy and urges that it should be paramount in resolving educational issues. Her central thesis is that a democratic political system and “democratic education” — *i.e.*, education reflecting majoritarian will — are mutually interdependent. “Just as we need a more democratic politics to further democratic education,” she writes, “so we need a more democratic education to further democratic politics.” (18) This statement makes clear Gutmann’s belief that the principle of

1. Princeton University Press, Princeton, New Jersey 1987; 321 pp.; \$19.95.

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3. Visiting Professor of Law, New York Law School (on leave from N.Y.U. School of Law, 1988-89); B.A. 1972, Harvard College; J.D. 1975, Harvard Law School.

4. Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico, 457 U.S. 853, 864 (1982), quoting *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 507 (1969).

5. *Pico*, 457 U.S. at 863 (1982).

6. *Id.* at 864.

democratic control should receive more emphasis in educational policy-making than it does now. What is less expressly clear from Gutmann's formulation of her democratic educational theory is that its increased majoritarian control entails a decrease in individual freedoms which are beyond that control.

As a theoretical matter, Gutmann acknowledges that majoritarian power in the educational realm should be limited by protections for individual rights. However, Gutmann's application of her theoretical scheme to actual educational controversies demonstrates that these theoretical protections are relatively weak in practice, and she does not provide a persuasive conceptual defense for such diminished level of protection. This particular asymmetry between Gutmann's abstract theory and its practical implementation is typical. In general, the book is most tightly reasoned and persuasive in its development of a democratic *theory* of education, and less so in its explications of how that theory should be implemented to resolve actual educational policy issues.

This review will first outline the structure and scope of Gutmann's book, and then summarize the democratic educational theory she advocates, along with its supporting rationale. Next, the review will discuss the book's overall strengths and weaknesses. Finally, the review will demonstrate several of the book's shortcomings, including the central problem with Gutmann's theory — that its preference for majoritarian decisionmaking processes undervalues countervailing concerns for individual freedom — by critically analyzing its application to a difficult and important educational issue: whether individual students whose religious beliefs (or whose parents' religious beliefs) conflict with certain aspects of the public school curriculum should be exempted from those aspects, even if they reflect important majoritarian values, or whether instead the school should inculcate those values in all students, including those with religious objections.

* * *

Gutmann's book first defends the proposition that a democratic theory of education is superior to alternative theories which have been propounded by political philosophers from Plato onward. She then sets out her particular democratic theory, distinguishing it from the leading democratic educational theory expounded by John Dewey earlier in this century. Once the theoretical underpinnings and the basic contours of her theory are in place, Gutmann proceeds systematically to apply that theory to the entire gamut of educational issues facing American schools (including primary and secondary schools, as well as universities and professional schools) today, and also considers the issues of "extramural education" (232) presented by libraries, cultural institutions, and television.

Many of the subjects Gutmann addresses should be of great interest to

those concerned with educational policy: for example, the pros and cons of voucher plans (64-70); the professional responsibilities of teachers (76-79); the role of teachers' unions (79-84); the allocation of educational resources among especially able, disadvantaged, and other children (128-39, 148-59); the division of funding and policymaking between local, state and federal levels of government (139-145); the justification for busing and other court-imposed remedies to achieve racial integration of public schools (160-170); the roles of universities as guardians of academic freedom and as "gatekeepers" to powerful social offices (174-185); the roles of students, faculty, administrators and trustees in university governance (185-193); the appropriate criteria for choosing among applicants to selective universities or professional schools (194-207); the justifications for preferential admissions policies or quota systems vis-a-vis black applicants to selective higher educational institutions (207-218); the justifications for compensatory college admissions programs (*i.e.*, admitting unqualified applicants who have been deprived of adequate primary and secondary education) (218-222); the appropriate levels of tuition and financial assistance for facilitating the higher education of economically disadvantaged students (222-231); the desirability of governmental funding of television and regulation of commercial broadcasting (238-255); the justification for governmental funding of cultural institutions (256-270); and strategies for reducing the high rate of adult illiteracy (273-281).

One set of issues which Gutmann explores is likely to be of particular interest not only to those interested in educational policy, but also to lawyers, judges, legal scholars, and others who wrestle with the legal claims that these issues have increasingly spawned. Discussed in the chapter entitled "The Limits of Democratic Authority," these issues concern banning library books (97-99), approving textbooks (99-101), teaching creationism (101-104), teaching civics (104-107), sex education (107-111), and sexist education (111-115). Gutmann's discussion is rather abstract and does not provide specific resolutions of conflicting claims in these areas. Moreover, her general tendency to elevate collective democratic interests at the cost of individual liberties, without a convincing principled basis, is particularly evident in this section. Nevertheless, the theoretical principles which Gutmann enunciates for analyzing these claims provide an interesting perspective from which legally oriented readers can themselves evaluate current legal doctrine.

At the outset, Gutmann distinguishes democratic educational theories from three major normative educational theories which political philosophers have advocated. Displaying her facility for formulating captivating phrases which effectively capture fairly complex ideas, Gutmann labels the first two theories that of "the family state" and "the state of families," respectively. (22) "The family state" theory, which is derived from Plato's

writing, vests the state with exclusive authority for educational decisions. In contrast, “the state of families” theory, which is derived from John Locke’s writings, vests the family with such exclusive authority. The third principal alternative educational theory, which Gutmann labels “the state of individuals” (33), is an extension of some libertarian notions propounded by John Stuart Mill. Its central tenet is that education should maximize students’ future life choices without prejudicing them for or against any controversial conceptions of the good life.

Gutmann endorses the rationales underlying each of these normative educational theories to a certain extent, but contends that each carries its rationale to an undesirable extreme. Thus, her theory of democratic education draws upon all of the alternative theories, but in moderation; each such theory acts as a check upon the excesses of the others. Gutmann summarizes the similarities and differences between her democratic educational theory and its progenitors as follows:

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. Like the state of families, a democratic state upholds a degree of parental authority over education, resisting the strong communitarian view that children are creatures of the state. But in recognizing that children are future citizens, the democratic state resists the view, implicit in the state of families, that children are creatures of their parents. Like the state of individuals, a democratic state defends a degree of professional authority over education — not on grounds of liberal neutrality, but to the extent necessary to provide children with the capacity to evaluate those ways of life most favored by parental and political authorities. (46; emphasis in original)

As indicated by the foregoing passage, Gutmann designates “conscious social reproduction” as the educational end of a democratic system. (39) Although she fails to define this key term, its import is indicated by Gutmann’s proffered justification for positing “conscious social reproduction” as the goal of democratic education: to “leave[] maximum room for citizens collectively to shape education in their society.” (39) Further inferences about the meaning of this term can be drawn from Gutmann’s specification of the conditions conducive to it:

A necessary (but not sufficient) condition of conscious social reproduction is that citizens have the capacity to deliberate among alternative ways of personal and political life. . . .

But neither a good life nor a good society require *maximizing* freedom of choice. Educational authorities may teach children that religious intolerance and racial bigotry (for example) are wrong without claiming that the justification for their nonneutrality is the future freedom of children. The justification for teaching these virtues is that they constitute the kind of character necessary to create a society committed to conscious social reproduction. (40; emphasis in original)

While education dedicated to conscious social reproduction explicitly rejects the goal of *maximizing* individual freedom of choice (thereby distinguishing Gutmann's democratic educational theory from the Millian "state of individuals" theory), Gutmann recognizes that "a democratic state must aid children in developing the capacity to understand and to evaluate competing conceptions of the good life and the good society." (44) Accordingly, Gutmann's postulate that education should foster conscious social reproduction — embodying the concept of democracy — is qualified by two corollary principles, which embody the competing concept of liberty. Just as Gutmann fails expressly to articulate the meaning of "conscious social reproduction," she likewise does not explicitly describe the meanings of implications of the two corollaries, which she labels, respectively, the principles of "nonrepression" and "nondiscrimination." When presenting these principles, Gutmann says simply that the first "prevents the state, and any group within it, from using education to restrict rational deliberation of competing conceptions of the good life and the good society" (44) whereas the second embodies the idea that "all educable children must be educated." (45)

The significance of Gutmann's emphasis on collective decisionmaking is underscored by the distinction she draws between her democratic educational theory and what she refers to as "the most influential [educational] theory of this century — John Dewey's," which is also "explicitly democratic." (13) While Dewey concluded that "what the best and wisest parent wants for his own child, that must the community want for all its children,"⁷ Gutmann concludes instead that "the enforcement of any moral ideal of education . . . without the consent of citizens subverts democracy." (14)

The book's outstanding strength is the consistency of its theoretical approach. Although Gutmann provides some hints that her particular political views fall on the liberal end of the liberal-to-conservative spectrum, she consistently advocates the resolution of educational policy issues in accordance with the democratic principles she articulates, rather than in accordance with either liberal or conservative policy preferences. She vigorously defends the thesis that we can best preserve and perpetuate civic freedom through an educational system in which all decisions are made in accordance with democratic precepts. Thus, she defines a "legitimate" educational policy choice as one which is made pursuant to democratic decisionmaking processes, and distinguishes "legitimate" choices from "wise" ones. (*E.g.*, 109) While majoritarian choices may not

7. John Dewey, "The School and Society" [1900] in "*The Child and the Curriculum*" and "*The School and Society*" (Chicago: University of Chicago, 1956), p. 7 (quoted at p. 13).

necessarily be wise, Gutmann forcefully argues that in the long run, both our educational system and our larger political system would suffer more damage from non-democratically made decisions than from unwise ones. In one of the book's many pithy phrases, she summarizes this notion as the "democratic right to be wrong." (99)

Gutmann's process-oriented perspective is admirable in theory because it ostensibly offers neutral principles for resolving ideologically charged and divisive conflicts over educational policy. However, when applied to concrete controversies, this perspective often proves unsatisfying. It explicitly exalts form over substance.⁸ Moreover, analysis reveals that it implicitly exalts certain substantive values over others without adequate justification. Notably, individual rights are too often sacrificed to collective decisionmaking authority. Gutmann pays almost no heed to the rights of elementary or secondary school students. Instead, in discussing which decisions should be made by individuals rather than by governmental or educational authorities, Gutmann largely assumes that the individuals in question are parents rather than students. But no individuals — neither parents nor students — are granted much protection against the collective will. Even the traditionally "preferred freedoms" guaranteed by the First Amendment are given short shrift. In a characteristically conclusory passage, Gutmann dismisses these rights as follows:

Citizens share educational authority over children with parents One cannot consistently uphold this authority and claim that children or parents have the right of free exercise of religion or of free speech within schools. (122)

Gutmann's unjustified derogation of individual liberties is particularly clear in her discussions of how her conceptual framework would apply to particular educational policy issues. Although her principles of "nonrepression" and "nondiscrimination" should in theory preserve a sanctuary for basic individual freedoms not subject to majority control, in concrete situations, these principles seem to afford scant actual protection for individual rights. For instance, in discussing the schools' authority to select or remove books from school libraries or curricula, Gutmann says

8. This pattern is illustrated by Gutmann's discussion of the criteria which should limit the public schools' selections and removals of books from libraries and curricula. Gutmann suggests that students' intellectual freedom may most effectively be protected by imposing procedural constraints on the processes for making such decisions, rather than by imposing substantive constraints on the outcomes of such processes. (101) Fair procedures, however, do not prevent decisions which indefensibly curtail students' freedoms. *See, e.g.,* *Virgil v. School Bd. of Columbia County, Fla.*, 677 F. Supp. 1547 (M.D. Fla. 1988) (following fair procedures, School Board removed from curriculum a textbook containing works by Aristophanes and Chaucer on ground that these works include sexually explicit or vulgar passages; although "authorities on Western literature are virtually unanimous in their high praise for the works of these authors," *id.* at 1552, Court reluctantly upheld removal under *Hazelwood School Dist. v. Kuhlmeier*, 108 S. Ct. 562 (1988).

that her “nonrepression” principle protects students’ intellectual freedom only to the limited extent of prohibiting educational authorities from shielding students from “reasonable” views. (98) In other words, the authorities may “protect” students from reading any views they deem “unreasonable.” Similarly, Gutmann asserts that the nonrepression principle is satisfied if banned books “glorify abhorrent ways of life.” (99) Numerous books of substantial literary, historical and cultural value could be banned from schools under Gutmann’s niggardly view of students’ intellectual liberties. For example, *Gone With the Wind*, *Uncle Tom’s Cabin*, *Huckleberry Finn*, and other works which could plausibly be said to “glorify” the “abhorrent” way of life under the slave system of the antebellum South, would therefore be subject to banning.

Gutmann never explains why schools should be given such broad latitude to classify certain ideas as “unreasonable” or certain ways of life as abhorrent, and hence to purge the libraries and curricula of books conveying these ideas or “glorifying” these lifestyles. As she recognizes in another context (251 n. 42), the intellectual freedom of adults encompasses the right to be exposed to virtually all ideas, even those which the majority may view as “unreasonable” or “abhorrent.” Far from justifying the substantially circumscribed intellectual freedom which she advocates for students, Gutmann offers a compelling rationale for guaranteeing students particularly broad access to books describing controversial ideas and ways of life. According to Gutmann’s educational theory, students are in school precisely to “develop[] the capacity to understand and to evaluate competing conceptions of the good life and the good society.” (44)

One of the book’s shortcomings is the mirror image of its greatest strength; its very emphasis upon a consistent theoretical perspective makes it less useful as a guide for resolving actual issues. As indicated above, the governing precepts are rather abstract and even ambiguous, and thus not easy to apply to particular concrete conflicts. Certain elements central to Gutmann’s analytical framework are labelled with catchy terms, but the terms are not explicitly defined, and the underlying concepts not fully elaborated. Thus, the book fails to provide clear standards for resolving — let alone actual proposed resolutions of — some of the most vexing current issues.

The complementary strengths and weaknesses in Gutmann’s book, in terms of theory versus application, are inherent in her concept of a democratic educational theory. In her view, “[t]he primary aim of a democratic theory of education is not to offer solutions to all the problems plaguing our educational institutions, but to consider ways of resolving those problems that are compatible with a commitment to democratic values.” (11) It thus follows that “[t]he most distinctive feature of a

democratic theory of education is that it makes a democratic virtue out of our inevitable disagreement over educational problems.” (11) In short, Gutmann believes that democratic virtues are inherent in the *process* of resolving educational issues democratically, independently of the substantive resolutions yielded by that process. The beneficiaries of this democratic decisionmaking process, in her view, are not only the students and educators directly affected by the decisions, but also the parents and other citizens who participate in the process.

Some of the book's problems are illustrated by its treatment of one of the most difficult educational issues currently confronting educational policymakers and the legal system: whether public schools may inculcate certain values in their students, even if some students (or their parents) assert that these values conflict with sincerely held religious beliefs, or whether the objecting students should be exempted from portions of the curriculum which purvey the religiously objectionable values.⁹ Gutmann acknowledges the importance of delimiting the public schools' inculcative authority by repeatedly referring to this general subject throughout her book (*e.g.*, 40, 44, 55, 72, 118, 124, 173, 287). However, these scattered references afford only sketchy, internally inconsistent standards for resolving the issue. Moreover, the resolution they suggest elevates democratic control over individual freedom of conscience. Most disturbingly, this conclusion is defended in conclusory terms, failing to provide a principled reason for its undermining of individual liberties.

The book's discussions of the schools' authority to inculcate values are ambiguous in two important respects. First, these discussions are unclear as to whether the schools simply have the discretion to inculcate certain majoritarian values if they choose to do so — *i.e.*, whether schools *may* inculcate such values — or whether, instead, they *should* or *must* inculcate at least some of these values. Second, the book contains several varying descriptions of the values whose inculcation it advocates.

Both types of ambiguity are highlighted by Gutmann's conclusion that private schools should be exempted from teaching some, but not all, values that public schools should instill. The values which even private schools must inculcate are described as those “essential to democracy” and exemplified by “religious toleration [and] mutual respect among

9. The author of this review has urged that, in certain circumstances, the First Amendment's Free Speech Clause and Free Exercise Clause mandate exemptions, and that such exemptions would not violate the First Amendment's Establishment Clause. Strossen, “*Secular Humanism*” and “*Scientific Creationism*”: *Proposed Standards for Reviewing Curricular Decisions Affecting Students' Religious Freedom*, 47 Ohio State L.J. 333 (1986). For a thoughtful work advocating even greater protection for the beliefs of school children (and their parents), see Dent, *Religious Children, Secular Schools*, 61 S. Cal. L. Rev. 863 (1988).

racess.” (118) As Gutmann recognizes, private schools should afford some haven for religious and other dissenters from majoritarian values. Therefore, since she contends that even private schools must inculcate the foregoing values, it would seem that public schools should *a fortiori* be required to inculcate the same ones. Yet, some of Gutmann’s discussions of public schools’ inculcative authority seem to be phrased permissively, indicating that public schools may inculcate these values, but needn’t necessarily do so. For example, she writes:

It makes more sense, on . . . democratic grounds, to . . . take the chance that we might lose the political battle to teach religious toleration as a virtue, for example, rather than give up any chance that education will serve one of its primary purposes — cultivating the kind of character conducive to democratic sovereignty. (41)

Moreover, Gutmann’s descriptions of the values that may or should be inculcated by public schools deviate in some significant respects from those that she says ought to be inculcated by private schools. For example, Gutmann repeatedly indicates that public schools should teach children mutual respect not only among races, but also among all people. (44, 72) In her conclusion, she expressly calls upon public schools to cultivate “respect for racial, religious, intellectual and sexual differences among students.” (287) Especially in light of Gutmann’s professed feminist values, and her decrying of sexist education, one wonders why she believes that only public, but not private, schools should be required to inculcate non-sexist values.

It should be recalled that Gutmann defines the values which private schools must inculcate as those essential to democracy. However, she also describes the values that public schools should instill in almost identical terms, noting that they include both the values underlying our particular democracy and those “*essential* to any democratic society.” (72; emphasis in original) Having provided such similar broad descriptions of the values appropriate for inculcation by both private and public schools, and having suggested no criteria or processes for determining which particular values are encompassed by these vague definitions, Gutmann offers no justification for including any specific values in either category, let alone for including some in one category but not the other.

Putting aside the unexplained discrepancy between Gutmann’s express declaration that public schools should inculcate mutual respect regardless of sex and her failure to make such an express declaration with respect to private schools (perhaps she does believe that private schools should be required to instill such attitude, but simply neglects to say so), the more fundamental issue is whether any type of school may inculcate this viewpoint consistent with Gutmann’s standard for justifiable inculcation. Are no-

tions of sexual equality essential to democracy? Clearly, our democratic society long thrived absent any commitment to sexual equality, and arguably the repeated rejection of the Equal Rights Amendment indicates that the majority of Americans still do not perceive this value to be essential. Moreover, as made clear in recent litigation seeking religiously-based exemption from portions of the public school curriculum,¹⁰ non-sexist values conflict with certain sincerely held religious beliefs. Since Gutmann does not explicitly address the question, perhaps one should infer that the foregoing considerations prompted her consciously to avoid advocating that private schools inculcate non-sexist notions. On the other hand, one could make the same observations about non-racist attitudes, which she *does* expressly state should be inculcated by private, as well as public, schools. Alas, our democracy long endured without any commitment to the concept of mutual respect among races, and some religious creeds include beliefs of racial inequality.

Since Gutmann asserts that private schools should be required to teach mutual respect among races, she apparently concludes that this view is essential to democracy, but she provides no explanation for this conclusion. Given our nation's shameful historic legacy of slavery, racial segregation and discrimination, one is forced to surmise in what sense Gutmann could plausibly contend that mutual respect among races is essential for democracy. And if she means this in the normative rather than the descriptive sense, why should concepts of racial equality be more "essential" than those of sexual equality? More generally and fundamentally, if the values appropriate for inculcation are those which *ought* to be widely shared in our democracy, by what standard or authority are such values identified? After all, Gutmann repeatedly eschews any notion of an educational decisionmaking process not reflecting popular will. It would thus seem squarely inconsistent with her theory to say that non-majoritarian standards or decisionmaking processes should govern such a crucial determination as which values must be taught to our nation's young citizens.

Gutmann's failure to provide a principled explanation for her differing lists of the values which should be inculcated by private and public schools is paralleled by her failure to defend the conclusion that dissenters do not have the right to be shielded from these values in public schools, even though she acknowledges that they do have such a "right" if there is an affordable, accessible private school option. Democrat and egalitarian

10. See, e.g., *Mozert v. Hawkins County Pub. Schools*, 647 F. Supp. 1194 (E.D. Tenn. 1986), *rev'd*, 827 F. 2d 1058 (6th Cir. 1987), *cert. denied*, 108 S. Ct. 1029 (1988).

though she is in other respects, Gutmann does not even acknowledge the inequities of an educational system which protects the religious and moral beliefs of parents who can afford private schools, and of parents who belong to religious denominations that are sufficiently well represented in the geographic area to have denominational schools there, but does not protect the beliefs of poorer parents or those who belong to smaller sects. This insensitivity is especially disturbing in light of Gutmann's unsatisfactory reasons for rejecting voucher schemes designed to increase and equalize parental freedom of choice among public and private school options.

Gutmann's conclusion that public schools should not be required to exempt individual students from aspects of the curriculum which they find religiously objectionable is even more inexplicable in light of her recognition that such an exemption would promote the very democratic values she seeks to instill. She states, "If public schools do not permit such exemptions, they are likely to drive more parents to enroll their children in private schools, where they will be even less exposed to common democratic standards." (122) Moreover, Gutmann acknowledges that "[b]y respecting conscientious dissent . . . public schools can offer a valuable lesson in democratic toleration." (123) Religious toleration, it will be recalled, is one of those core values "essential to democracy" whose inculcation Gutmann advocates even in private schools. In light of these powerful considerations, it is unclear why Gutmann does not advocate exemptions as essential to democratic values. Where individual rights of conscience can be respected without undermining democratic values — and, to the contrary, while simultaneously promoting such values — there appears to be no justification for not protecting these individual rights.

In another context, Gutmann expressly argues that certain individual rights — those to be free from racial discrimination — *should* be guaranteed even though contrary to the majoritarian will, specifically on the rationale that, in the long run, this short-range trumping of collective authority will promote democratic values. Specifically, Gutmann defends the judicial imposition of measures designed to achieve racially integrated public schools, notwithstanding the opposition to such measures by the majority of citizens and their democratically elected representatives, on the theory that these measures will ultimately secure democratic values. (167) By a parity of reasoning, it would seem that judges could require schools to exempt religious objectors to elements in the public school curriculum, despite majoritarian opposition to such exemption, on the theory that — as Gutmann herself concedes — it too will promote democratic values in the long run. Gutmann never addresses, let alone resolves, this

inconsistency between her analyses of the religious objection issue and the racial desegregation issue.¹¹

Gutmann's conclusion that religious objections should not exempt public school students from the teaching of religious toleration or mutual respect among races may well be defensible, given the fundamental, normatively "essential" nature of these values. But her conclusion that public school students should not be exempted from other elements of the curriculum, which violate their (or their parents') sincerely held religious beliefs, such as mandatory sex education programs, is more troubling. Indeed, Gutmann does not indicate that she would require public schools to exempt students from *any* aspect of the curriculum to which they or their parents had religiously based objections.¹² This position does not follow from Gutmann's definition of the values which may be inculcated as those "essential to democracy," because surely such definition was not intended to encompass the entire public school curriculum. Conversely, other values whose universal inculcation Gutmann does not expressly advocate, such as sexual equality, could reasonably be viewed as "essential" in the normative sense. Thus, she fails to provide a principled rationale for her conclusions concerning values inculcation.

CONCLUSION

The Supreme Court recently has been making significant inroads on the rights of public school students, giving increasingly broad latitude to democratically elected school boards and their delegates to inculcate majoritarian values at the cost of students' intellectual freedom.¹³ These rul-

11. Gutmann's rationale for advocating judicially mandated busing and other remedies to achieve public school desegregation also seems inconsistent with other aspects of her analysis. If the fostering of mutual respect among races is so important that it justifies thwarting the generally sacrosanct majority will in these regards — and also justifies requiring private schools to inculcate such mutual respect (118) — why then should private schools (120) and universities (180) be permitted to pursue racially discriminatory or exclusionary admissions policies, as Gutmann contends? A private school pursuing such policies could hardly do a very affective job of teaching its students to respect members of any excluded or disfavored race.

12. Having tentatively suggested a possible principled basis for identifying those values which our educational system may inculcate, notwithstanding sincere religious objections, this reviewer appreciates the difficulty of such a task. See Strossen, *supra* note 9, at 375-77. Gutmann's apparent conclusion that *all* values are in this category has the value of simplicity, but it would be equally simple — and equally unprincipled — to conclude that *no* values are in this category.

13. See *Hazelwood School District v. Kuhlmeier*, 108 S. Ct. 562 (1988) (in holding that high school principal could censor student newspaper produced in journalism class, court ruled that school officials may impose any regulation upon curriculum-related student speech which is reasonably related to legitimate pedagogical concerns); *Bethel School District v. Fraser*, 478 U.S. 675 (1986) (holding that high school properly disciplined student whose speech at school assembly contained sexual innuendo, on ground that such innuendo might offend certain audience members, even though there was no evidence that any student was actually offended).

ings have been disheartening to those, including the dissenting Justices, who stress that the schools' legitimate function of transmitting majoritarian values should not eclipse their at least equally legitimate function of fostering students' intellectual freedom.

In its strong preference for the democratic concept of majority decision-making over the libertarian concept of fundamental individual rights immune from majority control, the theory delineated in Amy Gutmann's *Democratic Education* could potentially justify the Supreme Court's recent decisions circumscribing student freedom. However, Gutmann's political and educational theory ultimately affords no more persuasive a basis for curtailing individual freedoms within the nation's school system than does the Supreme Court's legal theory. As Justice Brennan stated in his forceful dissent from the Court's most recent decision narrowing students' rights:

The Court opens its analysis in this case by purporting to reaffirm *Tinker's* time-tested proposition that public school students " 'do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.' " . . . That is an ironic introduction to an opinion that denudes high school students of much of the First Amendment protection that *Tinker* itself prescribed. Instead of "teach[ing] children to respect the diversity of ideas that is fundamental to the American system," [quoting Justice Blackmun's concurring opinion in *Pico*], and "that our Constitution is a living reality, not parchment preserved under glass," *Shanley v. Northeast Independent School Dist. Bexar Cty, Tex.*, 462 F. 2d 960, 972 (CA5 1972), the Court today "teach[es] youth to discount important principles of our government as mere platitudes." *West Virginia State Board of Education v. Barnette*. 319 U.S., at 637. The young men and women of Hazelwood East expected a civics lesson, but not the one the Court teaches them today.¹⁴

14. *Kuhlmeier*, 484 U.S. at 290-291 (Brennan, J., dissenting).