

Learning Law in Elementary and High School: Innovating Civics Education for a More Empowered Citizenry

Ariel J. Liberman*

Michael J. Broyde†

ABSTRACT

A principal objective of the public school system in a democracy is to promote societal cohesion by way of preparing students for civic engagement. There exists a founding belief that a democratic nation ought to be composed of educated activists, run by innovators, and kept in check by involved citizens. For, indisputably, the democratic experiment—our values, our institutions—can only be upheld anew with each generation on the backs of critique, reinvention, and reinvigoration. But, as so many have mentioned when discussing the civics education paradigm, the increase in educational opportunities and the marked expansion of our school system has not translated into higher numbers of “citizens”—higher levels of civic knowledge and youth participation. Here, we offer a partial solution addressing substantive improvements to the civics paradigm. We argue for augmenting the current learning structure with a push towards learning law young, or else endowing children with a working knowledge of law and its methodologies. To learn law young is to approach and understand the values, rights, duties, obligations, and American questions of citizenship from a different perspective than that currently held in civics classroom, one that is at once more complex and functional. One learns by interrogating constitutional questions underpinning our civic institutions, considering reasoning behind ideological arguments, all while garnering critical analytical skills now exclusively at the disposal of the law student. This is about teaching a new way of thinking, a way of thinking necessary for every citizen today, a way that is currently not routine. The objective of this paper is to obviate the need—and extoll the benefits—of integrating law learning into childhood civics education.

Keywords: Education, Civics, Law and Society, Law and Children, Law and Religion

* Paul and Marion Kuntz Scholar in Law and Religion at Emory University School of Law’s Center for the Study of Law and Religion. He also serves as the Center’s Director of Undergraduate Outreach and Engagement as well as Managing Editor of *Canopy Forum*. His research interests are in comparative law, education law, and law and religion. He recently completed his SJD dissertation entitled “On the Empowerment Function of Law Learning,” which, to an extent, develops the ideas in this article.

† Professor of Law at Emory University and the Berman Project Director of its Center for the Study of Law and Religion. In addition, he is the director of the SJD program at Emory Law School. He writes extensively in Jewish law and law and religion. Both authors are grateful to Yuwei Zhang and Ashley Audisho for their research assistance on this article.

Table of Contents

INTRODUCTION

- I. CONFUSED CIVICS LANDSCAPE YIELDS PROBLEMS AND A WEAKER CITIZENRY
 - A. *Commenting on the “Citizen”*
 - B. *Civic Education On the Ground*
- II. LEARNING LAW YOUNG IN THEORY: DEVELOPING A MORE THOUGHTFUL CITIZEN
 - A. *Learning Law Teaches New Lessons on Law and Authority, Or, To Rebel or Not to Rebel*
 - B. *Learning Law Teaches Lessons on Virtues and Values*
- III. LEARNING LAW YOUNG IN PRACTICE: RUMINATIONS ON SUCCESSFULLY TEACHING LAW TO CHILDREN FROM THE JEWISH EXPERIENCE
 - A. *How is the Jewish law learning approach analogous to American civics education?*
 - B. *The Jewish law learning model*
 - C. *How to implement the Jewish law learning model in American civics education reform*

CONCLUSION

INTRODUCTION

A principal objective of the public school system in a democracy is to promote societal cohesion by way of preparing students for civic engagement.¹ Implicit in the annals of our national history is a founding belief that a democratic nation ought to be composed of educated activists, run by innovators, and kept in check by involved citizens.² After all,

¹ Jack Crittenden & Peter Levine, *Civic Education*, STAN. ENCYC. PHIL. (Aug. 31, 2018), <https://plato.stanford.edu/entries/civic-education> [<https://perma.cc/AVB5-8G57>]; Letter from Thomas Jefferson to William Charles Jarvis (Sept. 28, 1820) (on file with author) (“I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education.”); Letter from James Madison to W.T. Barry (Aug. 4, 1822) (on file with author) (“A popular [g]overnment, without popular information, or the means of acquiring it, is but a prologue to a [f]arce or a [t]ragedy; or perhaps both. Knowledge will forever govern ignorance: and a people who mean to be their own [g]overnors, must arm themselves with the power which knowledge gives.”); George Washington, President of the U.S., Eighth Annual Message to Congress (Dec. 7, 1796) (on file with author) (“And a primary object of [public education] should be, the education of our [y]outh in the science of government. In a [r]epublic, what species of knowledge can be equally important? [A]nd what duty, more pressing on its [l]egislature, than to patronize a plan for communicating it to those, who are to be the future guardians of the liberties of the [c]ountry?”).

² Indeed, many agreed that to realize democracy required participants to be educated as “citizens,” meaning able and motivated to participate in civic institutions. *See generally supra* note 1. Thomas Jefferson, particularly, believed that civics education, more than anything else, was the chief way to protect individual

our democratic experiment—our values, our institutions—can only be upheld anew with each generation on the backs of critique, reinvention, and reinvigoration.³ As Benjamin Barber once wrote, “[we are] born free in theory, but free in reality only when we become citizens.”⁴

As often mentioned, when discussing the civics education paradigm, the increase in educational opportunities and the marked expansion of our school system has not translated into higher numbers of “citizens.” In other words, increased educational opportunities have not yielded proportionately higher levels of civic knowledge and youth participation.⁵ As of the date of our writing, just 56% of Americans are able to identify all three branches of the federal government, and only 5% of Americans have any confidence in Congress.⁶ Even more broadly, one should ask: how many students know how policy changes are made through our legal institutions or how our existing ‘rights’ and ‘duties’ came to be? Despite these gaps in knowledge, the motivation to protest or call for institutional changes is remarkable—spurring to a maximum 39% in the wake of the *Dobbs* decision, 22% after the Black Lives Matter movements at the height of their recognition in 2018, 19% on issues of Women’s Rights, and just 10% on general government issues⁷—while, simultaneously, civic distrust and political polarization are at extreme levels.⁸

We are concerned with the consequences of a citizenry that, on the one hand, knows relatively little about the way in which our system of laws operates, and, on the other, so greatly desires and pushes for change. It is a phenomenon of commendable passion and investment—activism in their homes, communities, schools, districts, states, nationally—without direction and understanding. Just such a milieu serves in part to exacerbate the great political and social division today. In the long run, shallow perceptions of, and antagonism for, our institutions and legitimate systems might move seekers of social change from a state of protest to a state of riot. Our history even offers that such thinking

rights of citizens. Letter from Thomas Jefferson to William Charles Jarvis, *supra* note 1. James Madison also maintained that civics education could bestow a degree of proper temperament, virtue, and attention that would hold the government accountable to its people. Letter from James Madison to W.T. Barry, *supra* note 1.

³ See John Dewey, *The Challenge of Democracy to Education*, in *AMERICA’S PUBLIC PHILOSOPHER: ESSAYS ON SOCIAL JUSTICE, ECONOMICS, EDUCATION, AND THE FUTURE OF DEMOCRACY* 32–33 (Colum. Univ. Press ed. 2021).

⁴ Benjamin R. Barber, *Taking the Public Out of Education: The Perverse Notion that America Can Survive Without Its Public Schools*, 61 SCH. ADM’R 10 (May 2004), <https://mikemcmahon.info/demopublic.htm> [<https://perma.cc/9NBB-ANHL>].

⁵ See Michael J. Broyde & Ariel J. Liberman, *Learning Law Young: Towards a More Robust, Impactful Civics Education Modeled Off of Jewish Law Learning*, 52 J.L. & EDUC. 1 *passim* (2023).

⁶ Shawn Healy, *Momentum Grows for Stronger Civic Education Across States*, ABA (Jan. 4, 2022), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-civic-education-in-america/momentum-grows-for-stronger-civic-education-across-states/ [<https://perma.cc/8UNB-UPM3>].

⁷ Megan Brenan, *Abortion Issue Top Factor Urging Americans to Protest*, GALLUP (Aug. 3, 2022), <https://news.gallup.com/poll/395561/abortion-issue-top-factor-urging-americans-protest.aspx> [<https://perma.cc/L6MY-5F67>].

⁸ See *The Shift in the American Public’s Political Values*, PEW RSCH. CTR. (Oct. 20, 2017), <https://www.pewresearch.org/politics/interactives/political-polarization-1994-2017/> [<https://perma.cc/C5Z8-B7KH>]. We note that, at several points in history, there were worse divisions and fractures. See Karl Rove, *America Is Often a Nation Divided*, WALL ST. J. (Aug. 25, 2023), <https://www.wsj.com/articles/america-is-often-a-nation-divided-politics-election-gop-voters-debate-unrest-9100042a> [<https://perma.cc/REV7-9JQR>]. Nevertheless, the numbers today remain remarkable.

could result in injury or bloodshed on both small and large scales.⁹ This we especially do not want; to shed blood, to cause destruction—even in the interest of a just cause—we find unconscionable.

This concern is not a novel one. Justice Louis Brandeis had postured that *informed* political participation from *within the constitution and the system* was not just an obligation of citizenship, but the only means of assuring its strength. “Democracy,” he maintained, “in any sphere is a dangerous undertaking. It substitutes self-restraint for external restraint. It is more difficult to maintain than to achieve. It demands continuous sacrifice by the individual and more exigent obedience to the moral law than any other form of government.”¹⁰ Most fundamentally, Brandeis argued that “a democratic society should have faith in the enduring goodness of its institutions,”¹¹ that that they served as exemplars and tools for change rather than antagonistic forces—accessible to us, however, only “by taking the trouble to inform [ourselves] as to the facts necessary for a correct decision, and then by recording that decision through a public vote.”¹²

The position we take in this paper is that change which breaks and destroys does not make the world a better place. And thus, we advance in this piece a theoretical claim: our democratic social order is helped where *all* its citizens understand the nuance of how the system functions so as to best effect change from within. Commitment to American democracy is best achieved when we prioritize the acquisition of a “body of knowledge” consisting of “intellectual and participatory skills,” that “develop certain dispositions or traits of character” that enhance political participation, and “contribute[s] to [a] healthy functioning [political system].”¹³ Nevertheless, America does not do this; our civic education within primary schooling, the lynchpin of any national push to build up our “nation’s future,” fails in the charge of preparing students to operate within the existing system. It fails due to a lack of uniformity in curricular content across schools and states, confused learning objectives, lack of access, low prioritization of civics by state governments, and a general trend in civics classes toward rote memorization of descriptive

⁹ Consider, for example, the advent of the Civil War. A failure to find compromise and reconciliation between northern and southern interests from within existing civic institutions pushed the nation into war. As Noah Feldman points, tension that resulted from public opinion and unwillingness to operate within existing constitutional frameworks resulted in the outbreak of war. Moreover, by the end of the war, there was a functionally different constitution than there was before. We certainly agree that the cause of the fighting—the issue of slavery—was a just cause for the north to take up. However, the fact that this advanced to the level of great bloodshed is perturbing. See generally NOAH FELDMAN, *THE BROKEN CONSTITUTION: LINCOLN, SLAVERY, AND THE REFOUNDING OF AMERICA* (2021).

¹⁰ ALPHEUS THOMAS MASON, *BRANDEIS: A FREE MAN’S LIFE* 585 (1946) (quoting Letter from Louis D. Brandeis, Assoc. J. of the U.S., to Robert W. Bruere (Feb. 25, 1922)).

¹¹ Neil Richards, *The Puzzle of Brandeis, Privacy, and Speech*, 63 *VAND. L. REV.* 1295, 1327 (2010).

¹² William O. Douglas, *The Lasting Influence of Mr. Justice Brandeis*, 19 *TEMPLE L.Q.* 361, 361 (1946) (“Brandeis had a deep conviction that citizenship in a democracy carried responsibilities more extensive than the conventional duty to vote and to pay taxes. He perceived that it was not only necessary for those who exercised the franchise to have an intelligent grasp of the issues of government. He was convinced that it was the bounden duty of those whose training and competence permitted to assume an active civic role in getting at the heart of the issues and in carrying those issues to the public.”).

¹³ *Rationale for Education in Civics and Government*, *CTR. FOR CIVIC EDUC.*, <https://www.civiced.org/campaign-to-promote-civic-education/rationale> [https://perma.cc/2CPL-WV56] (last visited Aug. 24, 2023).

facts at the expense of conferring actual practicable skills.¹⁴ To wit, part of the problem with poor “citizens”—and even this term is far from defined uniformly—is the flawed process in how we educate for citizenship.

Here, we offer a *partial* solution¹⁵ to this flawed process, addressing substantive improvements to the civics paradigm. We argue for augmenting the current learning structure with an emphasis on “learning law young.” Specifically, we advocate for endowing children with a working knowledge of critical legal reasoning skills, a familiarity with law principles and values, and appreciation for legal institutions. To learn law young is to approach and understand the values, rights, duties, obligations, and American questions of citizenship from a different perspective than that currently held in civics classroom. We advocate for a curriculum where students learn to think in terms of how American institutions operate, and how our values come into play in the law-making process. Students can learn this, we believe, through civics classes that interrogate constitutional questions underpinning our civic institutions, consider the reasoning behind ideological arguments, and appreciating the balance in values, ethics and aims taking place within law. This is *not* about instructing students in technical substantive law—in other words, knowing *this or that* legal right, or, perhaps, the legal response in *this or that* situation. Rather, this is about encouraging students to *think* on higher levels about law. This allows younger students to gain critical analytical skills and a way of thinking that tends to be exclusively at the disposal of the law student.

We should note, at the outset, that a reader might extrapolate from this claim a normative position: that we set out to create legally obedient citizens rather than change-makers, or just the opposite, that we want a nation of lawyers and social advocates. We stop, however, at the theoretical mark. By bridging the gap between learning and acting, we want to encourage the development of a culture that understands and appreciates the value of making change *through* legitimate systems, and, where this is not possible, one eager to find the most effective, targeted means of reform utilizing critical thinking skills gained by way of a law education. Consider: when was the last time we amended the Constitution? How many arguments fizzle when we ask questions *around* how to practically implement a certain policy objective? We want to encourage the development of a culture that makes change without rioting and without destroying what, at least in theory, are good: our systems and institutions.¹⁶

¹⁴ Kathleen Hall Jamieson, *The Challenges Facing Civic Education in the 21st Century*, 142 DAEDALUS 65, 66, 71 (2013) (“[S]tandards in many states consist[] simply of a laundry list of people, events, and dates to be memorized and therefore fail[] to develop civic competence and critical thinking.” Not only is existing education failing students, but “the systematic study of civics in high school is not universal; [] fewer high school civics courses are offered now than were offered in the past; [] the time devoted to teaching the subject in lower grades has been reduced; and [] most states do not require meaningful civics assessment.”).

¹⁵ This paper does not begin to address the issues regarding problems of access or the low prioritization of civics by state governments. This, indeed, is a pressing issue that is beyond the scope of our query here.

¹⁶ We recognize some of the weakness of our paper, but we suspect that most of the criticism of our suggestions are not really focusing on “teaching law in elementary school,” but on a much more complex problem: whether law is part of the solution to what ails America or part of the problem. Of course, if the “adult law” is the problem, making sure children learn it young is hardly the solution. But this is not a problem we are prepared to address in this paper. We assume, without defending, the proposition that a population that is versed in our legal traditions are better prepared to solve tomorrow’s problems, navigate its institutions, and more aptly reform the system from within.

Part II begins by expounding on the type of “citizen” our approach envisions, highlighting the problems inherent in the current way civics is taught. Part III offers our proposed solution of the inclusion of law learning into elementary and high school civics education and discusses in greater depth the tangible skills that legal thinking and reasoning confers upon students. Further, Part III address *why* and *how* those skills are important for preparing young, involved, and thoughtful citizens in a time of contested civics and great division. Part IV anchors our discussion by offering a comparison point from the Jewish experience which we believe to be a relevant, practical, tangible model of this type of early childhood law education. Part V then concludes with some final reflections.

I. CONFUSED CIVICS LANDSCAPE YIELDS PROBLEMS AND A WEAKER CITIZENRY

The notion that a robust civics education is the best way to prepare citizens for political participation is hardly contested.¹⁷ But while civic education is conceived of as the crucial responsibility of a free nation, the United States goes about the project confusedly. The problems our current educational approach faces begin at the definitional levels: what are the key attributes of the citizen we are trying to cultivate, and how do we educate toward those attributes? This section serves to explore the confused purpose of civics learning at a theoretical level—a confusion persistent not just in the previous decades but for centuries.¹⁸ It is our hope that a discussion of the uncertainty and variance between

¹⁷ See Walter C. Parker, *Knowing and Doing in Democratic Citizenship Education*, in LINDA S. LEVSTIK & CYNTHIA A. TYSON, *HANDBOOK OF RESEARCH IN SOCIAL STUDIES EDUCATION* 65, 68 (2008); see also Frederick Hess & Matthew Rice, *Where Left and Right Agree on Civics Education, and Where They Don't*, *EDUC. NEXT* (Mar. 25, 2020), <https://www.educationnext.org/where-left-right-agree-civics-education-where-they-dont/> [<https://perma.cc/WLN3-F2Z8>].

¹⁸ The complicated landscape surrounding civics education could arguably be owed, at least in part, to the confused history with which the ideas have been developed. See Diana Owen, *Public Attitudes About Civic Education* 2–8 (Aug. 29, 2013), https://www.civiced.org/images/stories/PDFs/Public_Attitudes_About_Civic_Education.pdf [<https://perma.cc/YKM4-TQUZ>] (unpublished manuscript presented at the 2013 Annual Meeting of the American Political Science Association). Consider, for instance, that, in the early American republic, the primary objective of civics education was to make good citizens who would preserve self-rule. For the ruling class, an emphasis was placed on educating for civic virtue with the goal of developing leaders whose actions would benefit society. See Charles R. Kessler, *Education and Politics: Lessons from the American Founding*, 1991 U. CHI. LEGAL F. 101, 107–09 (1991). Prior to his presidency, President Franklin Roosevelt endorsed goals of civic education aimed at perpetuating democracy by buttressing the actions conducive to strengthening government institutions. See, e.g., Letter from Franklin Roosevelt to Sharpless D. Green (October 3, 1922) (“The best citizen, and incidentally, the happiest citizen, is not the one who has made the most money, but is the one who has taken his share of the duties of citizenship.”). Gradually, the primary goal of civic education evolved to instill uncritical support for the political system; qualities engendered in students included patriotism and loyalty, obedience to the law, respect for government and public officials, individuals’ recognition of their political obligations, a minimum degree of self-control, responsiveness to community needs in stressful times, knowledge of and agreement with the legitimating national ideology, and a recognition of the special qualities of people within one’s country compared to those of other nations. At the onset of the Cold War, civics education had the goal of promoting a common culture and build on democratic values. It was only by the 1980s, within the academic community no less, that there was a resurgence of interest in civic education. Researchers initiated endeavors to increase civic competence and promote enlightened political engagement with a goal of preparing young people to become active in politics and their community. Owen, *supra*, at 6. But even this new branding of civics, being built on shaky and unsure foundation, is not entirely accepted across the nation. See, e.g., James Miles, *The Ongoing Crisis and Promise of Civic Education*, 51 *CURRICULUM INQUIRY* 381 (2021).

definitions of adequate civic education will demonstrate the need for substantive reform, such as integration of our “law learning” theory into the civic education paradigm.

We begin by briefly exploring the vision of “the citizen” that we bear in mind when figuring how “learning law young” supports civic-minded growth. This next section assumes the benefits, without defending,¹⁹ of such a “citizen” vision, though it is worth noting that it is not the *only* vision. We cast no aspersion on those alternative versions—just as we do not suggest that our new education paradigm will solve all our national disagreements and foster the best national community. We merely aver that this “citizen” vision is conducive to the sort of discourse on law that we believe could be instrumental in pivoting our civic problems.

A. *Commenting on the “Citizen”*

At the outset, we should note that, in this section, no formal definition of the citizen will be proffered. We are intentionally *not* defining a citizen because we are not proposing that learning the law young will lead to a ~~certain set~~ ideal. Rather, we think it is helpful to show how learning law young aligns with certain, central American tenants of what society wants adults to be able to do.

To begin, our notion of ‘citizen’ is not relevantly defined by whether they protest avidly, or vote more liberally or conservatively, or know their legal rights technically. As other scholars have conceived before us, the suitably educated “citizen” is one with certain abilities, capacities, and attitudes that best allow them to operate *within* democracy and to advocate for change with an appreciation for legitimacy and slow process.²⁰ Said citizens are, for all intents and purposes, especially prepared for the political and legal unknown. They are capable of appreciating, understanding, and even resolving novel constitutional and political problems by way of sophisticated intellectual discourse with others of like- and opposing-~~mind~~ and the balancing of interests.²¹ Citizens can *think* better “about political issues affecting the nation, to examine, reflect, argue, and debate,” and to “judge political leaders critically, but with an informed and realistic sense of the possibilities available to them.”²² They are in the business of balancing interests; the citizen’s politics reflect the good of the nation, not just one’s own local group.²³

¹⁹ The goal of this article is to discuss the value of a new civic education paradigm for burgeoning citizens. That said, we use the term ‘citizen’ only as an anchoring term for clarifying our position on the value “learning law young” to civic education. To define the ideal ‘citizen’ as produced by this project requires an argument which merits extensive treatment that is best reserved for another time.

²⁰ *See generally, e.g.,* MARTHA C. NUSSBAUM, NOT FOR PROFIT: WHY DEMOCRACY NEEDS THE HUMANITIES (2016).

²¹ *Id.* at 10 (A suitably educated citizen is one who has “cultivated capacities for critical thinking and reflection [crucial] for keeping democracies alive and wide awake. [They] can think well about a wide range of cultures [and] groups . . . and the ability to imagine the experience of another.”).

²² *Id.* at 26. We note that Nussbaum also reflects on the importance of debate without “deferring to neither tradition nor authority.” We diverge a little on this score, seeing the value of authority and tradition in certain respects as a unifying boundary in which to play the game and operate within. However, we share Nussbaum’s view on the critical mindset of the citizen and the need to engage intelligently and rationally in debate. We also choose to highlight select other capabilities as outlined by Nussbaum, while under-emphasizing others to give a fuller conception of our view as distinct, but flowing from, Nussbaum’s position.

²³ *Id.* Other abilities that Nussbaum focuses on include:

To be balanced and appreciative of all perspectives, however, does not mean that the citizen is intrinsically centrist. Indeed, they can be extreme in their political direction, even “civilly disobedient where there is a cause, [so long as they] manifest[] a calculatedness and reflectiveness, as well as an appreciation for the varied interests, diverse values, and voices that are inculcated in decisions to act, protest, or disobey.”²⁴ The citizen must, however, tolerate counter-arguments, building perspectives off the basis of reason rather than social pressure. To our mind, the citizen is obedient to law and skeptical of law; eager for change but mindful of the need for deliberation and legitimacy; and interested in forgoing short-term resolutions in favor of potentially more impactful long-term maneuvers. They can have these conversations with peers and are savvy enough with institutional knowledge to conceive of ways of reforming within the system. We believe, after all, that change which breaks and destroys institutions and structures—with some rare exceptions—does not make the world a better place nor facilitate our country’s cohesion.

To many, such a citizen is ~~fictional~~, a pipedream, an unrealizable prospect. And it is quite possible this is so! However, we endeavor to argue that an education in law learning and legal reasoning is a first step in better preparing the citizen generally for the role of self-governing.²⁵ The question becomes: what does an education in law have to do with increasing the sophistication of civic discourse, cultivating individual temperament, and crafting viewpoints informed by balancing interests? Further, why should law figure in any important way into ~~the~~ general civics education? While we offer an answer to the former in Part III, we can offer something preliminary here to the latter: law must figure into a general civics education because of how we conceive of the role of law in the social order of the United States.²⁶ Law has always served as a prime mediating device for our ideals,

-
- The ability to recognize fellow citizens as people with equal rights, even though they may be different in race, religion, gender, and sexuality: to look at them with respect, as ends, not just tools to be manipulated for one’s own profit.
 - The ability to have concern for the lives of others, to grasp what policies of many types mean for the opportunities and experiences of one’s fellow citizens, of many types, and for people outside one’s own nation.
 - The ability to imagine well a variety of complex issues affecting the story of human life as it unfolds: to think about childhood, adolescence, family relationships, illness, death, and much more in a way informed by an understanding of a wide range of human stories, not just by aggregate data.

²⁴ *Id.* This attribute of the citizen is also called for by protest scholars and even abolitionist-thinkers who might disagree with other aspects of this definition of the citizen. Michael Lipsky has discussed the strategies of protest leaders and activist-citizens:

[They] must nurture and sustain an organization comprised of people with whom they may or may not share common values. They must articulate goals and choose strategies so as to maximize their public exposure through communications media. They must maximize the impact of third parties in the political conflict. Finally, they must try to maximize chances of success among those capable of granting goals.

Michael Lipsky, *Protest as a Political Resource*, 62 AM. POL. SCI. REV. 1144, 1144 (1968).

²⁵ We also do not maintain that “learning law young” will guarantee the creation of a society that thinks the way we hope they would think—sophisticatedly in intellectual discourse—but we believe that *some* will. Even getting to some children is helpful for the innovation of our discourse. Just as high school does not work for some, it does work for others. We argue that being given the tools of how to speak about law is an essential advantage for sophisticated discourse.

²⁶ The United States, as a nation of laws, is distinct in this way. Consider, for instance, Japan, where laws are malleable, and culture is the dominate way in which people, groups, and ideas interact. *See, e.g.*, Susan

norms, and beliefs as a community and as individuals. Indeed, at its best, the law can enshrine how we ought to interact with each other, relate to one another, and understand and appreciate one another's position in society. Despite this, nobody has successfully enacted real substantive change to the social values and ideals enshrined in our Constitution—the *big* legal document—in over a century.²⁷ We thus find ourselves in an era of great dissonance between legal and cultural or social understandings of our community-relations, values, and national priorities. Thurgood Marshall saw this even back in 1953. Though the 13th and 14th Amendments were law of the land by 1865 and 1868 respectively, racial inequality and disenfranchisement persisted to his time (and persist today). Appreciating how making legal pronouncements could impact social perspectives, Justice Marshall, then counsel of record, remarked to the Supreme Court in *Brown v. Board of Education*:

So whichever way it is done, the only way that this Court can decide this case in opposition to our position, is that there must be some reason which gives the state the right to make a classification that they can make in regard to nothing else in regard to Negroes, and we submit the only way to arrive at that decision is to find that for some reason Negroes are inferior to all other human beings. . . . The only thing can be is an inherent determination that the people who were formerly in slavery, regardless of anything else, shall be kept as near that stage as is possible, and now is the time, we submit, that this Court should make it clear that that is not what our Constitution stands for.²⁸

For Marshall, and for us, understanding the law as a guidepost for the American view and value-set is helpful in thinking about change; to shift the law is to shift accepted public values. Anything less is simply a drop in the bucket. Above, Marshall sought a declaration in alignment with equality values the U.S. purported to hold as legally enshrined in the

Maslen, *Japan and the Rule of Law*, 16 UCLA PAC. BASIN L.J. 281, 293 (1997) (“Generally, official law is mandated by the legitimate authority of the government of a state to have overall jurisdiction over the country. In addition, this category includes religious laws and customary practices that operate in consonance with state law and are partially absorbed into state law, yet derive their authority through tradition or culture. That is, official law does not necessarily rely on the direct sanction of the state for its validity.”) (internal citations omitted). There is a culture of treatment, a culture of connection, and this changes. But, in the United States, we do not prioritize culture in the way we conceive of a group and even individual relations. Indeed, the western tradition conceives of relations legally. *See generally*, ALEXANDER SOMEK, *THE LEGAL RELATION: LEGAL THEORY AFTER LEGAL POSITIVISM* (2017); VISA A.J. KURKI, *A THEORY OF LEGAL PERSONHOOD* (2023) Thus, an education in law and legal reasoning helps us better appreciate and navigate relationships. Consequently, an education that develops character and ideology, temperament, and values is a skill set.

²⁷ We note that we have not had a constitutional amendment that changes the structure of the government in over a century, with the last being the passage of the anti-slavery amendments at the close of the Civil War. On the one hand, this speaks to the stability of our constitutional system—we have never tried to overhaul the Constitution to reflect changing cultural ideas or values. On the other, however, it speaks to a glaring reality of the United States: our protests, our ideas, and our rhetoric since the Civil War have failed to really shift the constitutional positioning of the country.

²⁸ Thurgood Marshall, *Argument Before the U.S. Supreme Court in Brown v. Board of Education*, BLACKPAST (January 16, 2012), <https://www.blackpast.org/african-american-history/1953-thurgood-marshall-argument-u-s-supreme-court-brown-v-board-education/> [<https://perma.cc/EE4P-VXNJ>]; *see generally* *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

13th and 14th Amendments. *Plessy* was a collective, national indictment on the inferiority of the Black population *despite* the law, offering license and tacit endorsement to those who were hateful, and an obstacle for those who sought understanding and equality. Marshall thus turned to law—in this case, the Court—to properly articulate through constitutional rhetoric the relationship between groups, a new status quo, and as a means of reforming behavior.²⁹

Dissonance between law and cultural values, we argue, is a product of the fact that *we as citizens do not know how to talk about law at the highest levels, thus hindering our ability to reform*. When a citizen today protests, argues, or desires change, they may not know how to think about law in their plans for change.³⁰ They are in poorer positions for this. This is not to say we all should be Thurgood Marshall (who had the benefit of a legal education), but that we should start developing that abstract thinking in all citizens. Imagine if most citizens could appreciate how “law” figures into our collective consciousness; imagine if intellectual discourse was such that our nation of laws could be moved forward by an average citizen-body capable of understanding and reforming how we conceive of our national values through higher legal discourse. The paths to sustainable, seismic change falls on the citizen to be trained in the language of law and the ability to conduct legal reasoning. Understanding this, a civic education in legal reasoning is, therefore, one in both individual and community empowerment.

An adequate education for living in a pluralistic democracy must, therefore, be in the language of law. We see this to some extent as civic education has gradually come to envision that “part of a civic mindset means talking about the big ideas that people living in democracies grapple with all the time, like how to balance individuals rights against the common good.”³¹ Even very young children can engage in conversations about when it is okay to vote on something—whether to let the majority rule or not, “because it’s taking away someone’s rights or endangering them.”³² The foundation is there, and the question is the method by which we instruct students in these important, mindset-inspiring

²⁹ Another illustration might be the current debate over abortion. Undoubtedly, the collective culturally accepts abortion as a medical option and an inherent right. But legally we are at best neutral and at worst hostile to a right to privacy *writ large*. This was made ever apparent in *Dobbs* where constitutional rhetoric was mobilized to say that America does not stand for abortion or even privacy. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 *passim* (2022). To our minds, protesting has little effect unless we start working with an appreciation for the role of law and legal pronouncements on the issue of what we, as a country, value. Many see this already, arguing that ratification of the Equal Rights Amendment is the only sustainable solution. *See, e.g.*, Kate Kelly, *Op-Ed: The Best Way to Secure Abortion Rights? Finalize the Equal Rights Amendment*, L.A. TIMES, (May 23, 2022, 3:01 AM), <https://www.latimes.com/opinion/story/2022-05-23/roe-abortion-equal-rights-amendment> [<https://perma.cc/E58M-W2F3>]; Ctr. for Gender & Sexuality L., *ERA and Abortion Talking Points*, COLUM. L. SCH. (2022), <https://gender-sexuality.law.columbia.edu/content/era-and-abortion-talking-points> [<https://perma.cc/7RTL-FKB5>]. However, this requires a substantive change to the Constitution, which, again, is not something we have seen for over a century.

³⁰ We must assume this is the case, without really knowing. We argue, after all, that citizenship is never really taught effectively. Therefore, there is no way of knowing how many people think about law in effecting change except in unique situations. *See generally, e.g.*, Scott L. Cummings, *Hemmed In: Legal Mobilization in the Los Angeles Anti-Sweatshop Movement*, 30 BERKELEY J. EMP. & LAB. L. 1, (2009).

³¹ DEMOCRATIC DISCORD IN SCHOOLS: CASES AND COMMENTARIES IN EDUCATIONAL ETHICS 20 (Meira Levinson & Jacob Fay eds., 2019).

³² *Id.*

characteristics. Yet, for the most part, civic education on the ground is not doing any of this. As such, the following section discusses definitions of adequate civics education, the goals and objectives of the different approaches, and what skills students gain from different programs.

B. *Civic Education On the Ground*

To get us started, the Center for Civics Education (“CCE”) provides a modern description for civics, describing this learning as cultivating “informed, responsible participation in political life by competent citizens” who are “committed to the fundamental values” of American Democracy.³³ Under the CCE approach, civics instruction takes place both within and beyond the classroom. It is both institutional and personal. A civics education raises questions for students about their history, their relationship with the government as citizens, their responsibilities and duties, their values, and what skills are required to hold the office of citizens in increasingly tumultuous times. Civics education, in other words, does the important work of blending the democratic knowledge, behaviors, and values needed to participate in our increasingly polarized political society.

While this appears to be a good and comprehensive definition, others—which are just as widely mobilized and circulated, if not more so—are far more laden with ideological partisanship. On the federal level, the definitions (and commensurate outcomes) put forward by the last three administrations were competing, to say the least, and demonstrate a one-dimensional consideration of the topic of civics. For instance, the Bush administration offered civics education to strengthen “the public’s knowledge of American history values, and civic traditions.”³⁴ To teach civics was to teach “a love of democratic principles.”³⁵ In other words, the “right” citizen was a patriotic, obedient, and reverent one. In the Obama administration, the position changed: civics education was refocused on outcome-based characterizations, like “increas[ing] civic knowledge, voter participation, and volunteerism.”³⁶ In the administration’s words, “civics learning puts students at the center. It includes both learning and practice—not just rote memorization of names, dates, and processes.”³⁷ For the Obama administration, civics had a dual focus of informing democratic life and raising student achievement generally. Finally, under the Trump administration, the definition of civics saw further shift; civics was oriented towards indoctrinating ideology, a tool against what the administration termed “cancel culture,” an extension of “Make America Great Again.”³⁸

³³ Ctr. for Civic Educ., *supra* note 13.

³⁴ *President Introduces History & Civic Education Initiatives*, OFF. PRESS SEC’Y (Sept. 17, 2002), <https://georgewbush-whitehouse.archives.gov/news/releases/2002/09/20020917-1.html> [<https://perma.cc/QE75-T2SM>].

³⁵ *Id.*

³⁶ *Secretary Arne Duncan’s Remarks at “For Democracy’s Future” Forum at the White House*, DEMOCRACYU (Jan. 10, 2012), <https://democracyu.wordpress.com/2012/01/20/secretary-arne-duncans-remarks-at-for-democracys-future-forum-at-the-white-house/>. [<https://perma.cc/T46G-3D4H>].

³⁷ *Id.*

³⁸ Eleni Maria Mantas-Kourounis, *In the Trenches: The Local Politics of Civic Education 17–18* (2021) (Ph.D. dissertation, Columbia University), <https://academiccommons.columbia.edu/doi/10.7916/d8-czcf-5z70> [<https://perma.cc/Z5DE-T924>].

To be clear, civics can be—and often is—*all* these things. The issue is that the conception of civics changes with each administration ~~and~~ can lead to discordant views on the “right” type of citizen. This confusing landscape leads to inertness.

On an academic level, the task of defining civics shows equal variability. There is incongruity between conceptions about civics’ educational goals—one can find a definition about changing attitudes;³⁹ a second about resistance and activism;⁴⁰ and a third about embracing communities, connecting on a local level, and simple participation.⁴¹ The jumble of rationales, definitions, and objectives has caused great confusion and hindered the educational project very obviously in recent decades. However, there are specific behaviors, instructional content, and values that are universally agreed upon across the different conceptions and definitions of a “citizen.” As such, this article proposes adopting a uniform national conception of civics and a solution to best realize that vision.

One central theme among definitions and approaches is to develop legal reasoning traits and good behaviors for good citizens based off a certain (yet unfound) formula of blending foundational knowledge, values, and social commitment.⁴² Implicit in this formula is an eye towards a view of the *comprehensive* education of the student—in terms of subject-matter as well as education in the diversity of values in the American zeitgeist—towards competently participating in citizenship. This is certainly not novel in the discourse. In 2003, a Report on the Civic Mission of Schools argued that the civics paradigm ought not only to “help young people acquire and learn to use the skills, knowledge, and attitudes that will prepare them to be competent and responsible citizens,” but also ensure that students are generally informed and thoughtful, participate in their communities, act politically, and have moral and civic virtue.⁴³ As such, one gleans that a civics course trains the student to stay current and empowers them with the ability to obtain information, in addition to teaching students the information itself.

To favor this practical definition of civics as education the whole of the person is to reorient the paradigm to become focused on the skills, abilities, and habits one imparts and develops as part of the process. We agree with this mentality—and find that our larger discussion above emphasizing an intellectual discourse on law and politics also promises certain skills. However, despite the theory, on the ground civics classes are failing at this as well. Routine civics classes do not necessarily stress the production of “competent and

³⁹ See generally, Walter Parker, KNOWING AND DOING IN DEMOCRATIC CITIZENSHIP EDUCATION 65, 68 (Linda S. Levstik & Cynthia A. Tyson eds., 2008). Walter Parker, for instance, puts forward that the educational landscape sets about the task of changing people’s attitudes, knowledge, and behaviors regarding the relationships between the state and its citizens. *Id.*

⁴⁰ Margaret Stimmann Branson, *The Role of Civics Education*, CTR. FOR CIVIC EDUC. (1998), https://www.civiced.org/papers/articles_role.html [<https://perma.cc/SVZ7-6GVU>]. Margaret Branson joins a chorus of voices in articulating that a civics education should aspire that “citizen learns to not passively accept the dictums of others or acquiesce to the demands of others.” *Id.*

⁴¹ Crittenden & Levine, *supra* note 1. Still further, Jack Crittenden, in his entry in the Stanford Encyclopedia of Philosophy, states that civics education need only inform of “the processes that affect people’s beliefs, commitments, capabilities, and actions as members or prospective members of communities.” *Id.*

⁴² Parker, *supra* note 17, at 65, 68 (“Political engagement refers to the action or participation dimension of democratic citizenship. . . . Democratic enlightenment refers to knowledge and commitments that inform this engagement.”).

⁴³ Meira Levinson, *The Civic Empowerment Gap: Defining the Problem and Locating Solutions*, in HANDBOOK OF RESEARCH ON CIVIC ENGAGEMENT (Lonnie Sherrod, Judith Torney-Purta, & Constance A. Flanagan eds., 2010).

responsible” students or “informed and thoughtful” individuals. Instead, these classes tend to pacify the learner with information. They engender a citizen who is obedient, uninvested, and distant, albeit perhaps historically aware. We note, of course, that to know history as a distant observer is no bad thing, but, alone, those qualities are insufficient to meet the demands of the American citizens as envisioned by the founders. Consider, for instance, how one Washington State Civics Textbook boils the civics experience down to a lesson in “obeying rules and laws, helping others, voting in elections, telling an adult if someone is in danger to themselves or others, and being responsible for your own actions and how they affect others.”⁴⁴ These are less aptitudes and more platitudes; they offer little to the student seeking a civics education that is empowering and encouraging of social mobility, activism, or government participation. Another Kansas program goes a little further, urging that these duties also extend to “community involvement, staying informed, practicing tolerance, and ‘pass[ing] along the importance of good citizenship to future generations.’”⁴⁵ This approach remains vague. Similar curricula do little to tell us about the capabilities and capacities of the good citizen. We argue for more profound instruction in virtues like personal responsibility, participation, and justice,⁴⁶ perhaps, “enlightened political engagement,” and so much more.⁴⁷ We need these not because we have in mind a particular type of citizen, but because these virtues are built into of our legal and political structures. Understanding them helps us understand our system better. To show this, we look to our own proposal: teaching students at all grade levels about the law and its relationship to values, politics, personal responsibility, and justice—how to think about and work with law through critical legal reasoning.

Again, we do not endeavor ~~here~~ to define the characteristics, traits, or values that ought to be embodied by the American citizen.⁴⁸ Given the dynamic nature of our current political landscape—the great schisms that exist—one hazards to set themselves upon the task of articulating any discrete sets of values; freedom, tolerance, the value of labor, and patriotism itself are the subject of scrutiny.⁴⁹ While conservatives would maintain that schools ought to teach burgeoning citizens respect for constitutional machinery, liberals are less inclined to venerate institutions.⁵⁰ Whereas liberals advocate for equipping students as agents of change, conservatives would maintain that activist-civics distracts from in-classroom-learning.⁵¹ There is little hope for resolution at this stage.

⁴⁴ OFF. SEC’Y STATE WASH., TEACHING ELECTIONS IN WASHINGTON STATE 10–13 (2015), https://www2.sos.wa.gov/_assets/elections/civics/teachingelectionswa.pdf [<https://perma.cc/AP2C-58PE>].

⁴⁵ *Responsibilities of U.S. Citizens*, KAN. SEC’Y STATE OFF. (2022), <https://web.archive.org/web/20221216043923/http://www.civics.ks.gov/kansas/citizenship/responsibilities-of-citizens.html%5Cn%5CnSo> [<https://perma.cc/766N-YC6B>].

⁴⁶ Joel Westheimer & Joseph Kahne, *What Kind of Citizen? The Politics of Educating for Democracy*, 41 AM. EDUC. RSCH. J. 237, 239–40 (2004) (as was the barometer established by the authors).

⁴⁷ *Id.*

⁴⁸ The lack of consensus on what an American citizen ought to be and increased political polarization has significantly complicated the reform of civics education. Jamieson, *supra* note 14, at 65. The primary tensions of reform agenda lies in the conflicting conceptions of citizenship: “political progressives favor[] the development of critical thought and [citizenship for] social reconstruction, [while] conservatives [favor] the cultural heritage of the dominant society and citizenship for social reproduction. *Id.* at 70 (internal marks omitted).

⁴⁹ Hess & Rice, *supra* note 17.

⁵⁰ Jamieson, *supra* note 14, at 65, 70.

⁵¹ *Id.*

However, our view of civic education and the citizen does heavily feature one central theme among partisan approaches to civic education currently implemented: the notion of civic solidarity.⁵² Civic solidarity connotes a process of deliberation. In other words, the citizen must understand others, make an active effort to listen, and appreciate the differing values that make up the American melting pot.⁵³ They must be willing to moderate their claims and find common ground to build political decisions upon, which, in turn, orients citizens to the common good. The essence of the civic nation is the development of an inclusive natural culture that benefits from a constantly innovating, challenging environment.⁵⁴ Civic solidarity, or political identity, is not “defined according to a concrete content,” but “by the fact that everybody is attached to that identity in his or her own fashion, that everybody wants to continue that history and proposes to make that community progress.”⁵⁵ Therefore, it is the project of civics education, to help produce dispositions conducive to participation in the social experiment of deliberation: autonomy and open-mindedness;⁵⁶ social engineering;⁵⁷ non-participative and participative citizenship;⁵⁸ doing justice to diversity;⁵⁹ service learning;⁶⁰ political efficacy;⁶¹ and voting.⁶²

To build an “American character” that can be dissenting and discerning, as well as deliberative and informed in that dissent, has been expressed constantly in our histories and is the purported aim of dozens of civics curricula. However, continually permeating definitional challenges and a perpetually confused landscape have obstructed this aim. With that said, there are innovative voices and initiatives that offer a source of light and hope—to which we add our proposal. These are worth exploring before we add our ideas to the conversation.

Scholars have recently turned their attention to distilling whether civic behavior should be treated as an individualistic or a communal project.⁶³ To be communal in nature is to express that “knowledge [ought] to be passed on [in] reference [to] facts regarding the larger national entity.”⁶⁴ Courses that embrace this line of thinking stress communal values

⁵² Sarah Song, *What Does it Mean to be an American?*, 138 *DAEDELUS* 31, 31 (2009).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 36. Song notes that this is a mirage in many ways, quoting Anthony Smith, [M]odern ‘civic’ nations have not in practice really transcended ethnicity or ethnic sentiments. This is a Western mirage, reality-as-wish; closer examination always reveals the ethnic core of civic nations, in practice, even in immigrant societies with their early pioneering and dominant (English and Spanish) culture in America, Australia, or Argentina, a culture that provided the myths and language of the would-be nation.

Id. (quoting ANTHONY D. SMITH, *THE ETHNIC ORIGINS OF NATIONS* 216 (1986)).

⁵⁶ Piet van der Ploeg & Laurence Guérin, *Questioning Participation and Solidarity as Goals of Citizenship Education*, 28 *CRITICAL REV.* 248, 249 (2016).

⁵⁷ *Id.* at 250.

⁵⁸ *Id.* at 252.

⁵⁹ *Id.* at 254.

⁶⁰ *Id.* at 256.

⁶¹ *Id.* at 257.

⁶² *Id.* at 259.

⁶³ See, e.g., Aviv Cohen, *Four Aspects of Civic Education: Teaching the History and Geography of the Land of Israel as a Case Study* (Nov. 11, 2009), <https://files.eric.ed.gov/fulltext/ED509832.pdf> [<https://perma.cc/T9T4-898K>] (unpublished manuscript delivered at the CUFA 2009 Conference).

⁶⁴ *Id.* at 9.

such as obedience, nationalism, and adherence to existing structure. While this is important—and seems to undergird traditional civics curricula to date—a more progressive contingent has begun considering the benefits of individual-centric civics, to say that “knowledge that will be passed on will include the ways in which the individual can act in the social sphere and in the same manner, the values to be instilled will stress the importance of the acts of the individual.”⁶⁵ In the individualistic approach, the student is empowered to think of themselves as having the ability to change their surroundings and to be an integral part of the system. From this, one might derive the phenomenon of action-civics, an emphasis on volunteerism and protest. While our approach ostensibly aims to be both communal and individualistic, we focus on the latter category as this represents the newest wave of innovation for civic education.

This “individualistic” approach is a balance of three values. Students must be educated in (1) values that relate to self, (2) values that relate to the encounter with the others, and (3) values that relate to society as a whole.⁶⁶ The teacher must educate students in “all the processes that affect people’s beliefs, commitments, capabilities, and actions as members or prospective members of [the] communit[y].”⁶⁷ These can be processes and institutions that both empower and obscure values, norms, and rights.⁶⁸ Students should be contending with philosophical questions as profound as “what makes a good citizen?”, descriptive facts like “what rights are guaranteed under the Constitution?”, as well as jurisprudential questions like “what does justice mean to me?”⁶⁹

Yet, in reality very few, if any, civics classrooms do this work.⁷⁰ In 2010, Professors Levstik and Tyson proffered five categories of civics curricula in the United States: national democracy, cross-national comparisons, discussion and decision-making, service learning, and multicultural education.⁷¹ In terms of creating a national uniformity for education, the differing approaches promise only piecemeal education for our students;

⁶⁵ *Id.*

⁶⁶ Michael Bottery, *Values Education*, in *TEACHING VALUES AND CITIZENSHIP ACROSS THE CURRICULUM: EDUCATING CHILDREN FOR THE WORLD 10* (Richard Bailey ed., 2000).

⁶⁷ Crittenden & Levine, *supra* note 1.

⁶⁸ *Id.*

⁶⁹ We, and other scholars, note that even citizenship tests have conformed to this. The tests ask more open-ended questions about government powers and political concepts: “What does the judicial branch do?” “What stops one branch of government from becoming too powerful?” “What is freedom of religion?” “What is the ‘rule of law’?” Song, *supra* note 52, at 33.

⁷⁰ Indeed, in 2019, students in Providence, Rhode Island went so far as to assert that their state education mandate’s failure to require a robust civic education raises constitutional concerns. In *A.C. v. Raimondo*, Plaintiffs contended that their government failed to provide them “with an education that is adequate to prepare them to function productively as civic participants capable of voting, serving on a jury, understanding economic, social and political systems sufficiently to make informed choices, and to participate effectively in civic activities.” 494 F. Supp. 3d 170, 174 (D.R.I. 2020), *aff’d sub nom. A.C. ex rel. Waithe v. McKee*, 23 F.4th 37 (1st Cir. 2022). Their argument called out the deficiencies in the civics education paradigm nationwide, arguing that a *strong* civics education is not just one “about the mechanisms of our democratic system, but its spirit; about what it means to be an American and even what America means.” *Id.* at 176. Their calls beg for knowledge that is rooted *not* in the acquisition of discrete factual information about our system alone—which, as we shall see, is the *modus operandi* of the current civics learning model—but in cultivating a skillset to criticize and assess issues of political prioritization, legal and institutional values, and government dynamics. *Id.* at 174–75.

⁷¹ Linda S. Levstik & Cynthia A. Tyson, *Introduction* to *HANDBOOK OF RESEARCH IN SOCIAL STUDIES EDUCATION 1, 3* (Linda S. Levstik & Cynthia A. Tyson eds., 2010).

each focuses on only one fraction of the total conversation concerning the behaviors of the good citizen. More recent reform efforts have doubled down in their commitment to one perspective. As of 2018, the curricula of most public schools across states “largely reflect an approach to civics knowledge that emphasizes structure and function rather than critical analysis and active civic participation.”⁷² At best, this results in a culture of complacency⁷³ or inaction, at worst. It results in susceptibility to misinformation and the disquieting lure of extremist ideological indoctrination.⁷⁴ Whereas our younger generation should not feel responsible for the goings-on of our systems, the “fly-by kinds of course requirements that students merely check off of a to-do list” yields a generation of students who are often lost, reticent to even take an interest in major issues or ideas, or, if not, lack the tools they need to adequately engage in the conversations surrounding major issues that upset them.⁷⁵

While there undoubtedly has been great attention being turned towards the issue of civics on the federal level⁷⁶ and on the state level⁷⁷—many of which feature our perspective

⁷² MICHAEL A. REBELL, *FLUNKING DEMOCRACY: SCHOOLS, COURTS, AND CIVIC PARTICIPATION* 101 (2018).

⁷³ Lucy Hardy, *Youth Inaction: What Does Complacency Mean for the Future of Democracy?*, RESULTS (July 2, 2012), [results.org/blog/youth_and_advocacy_what_does_complacency_mean_for_the_future_of_democracy/](https://perma.cc/DX8S-RD5C). [https://perma.cc/DX8S-RD5C].

⁷⁴ See Colleen Flaherty, *A Failure to Educate*, INSIDE HIGHER ED (Jan. 7, 2021), <https://www.insidehighered.com/news/2021/01/08/capitol-riots-failure-educate> [https://perma.cc/H3XS-E8BM] (discussing the openness to misinformation in the media concerning politics, blaming lack of civics education for the capitol riots).

⁷⁵ Stephanie Kanowitz, *Decline of Civics Education Means Students Less Prepared to Become Informed Citizens*, AM. COUNCIL TRS. & ALUMNI (Oct. 31, 2018), <https://www.goacta.org/news-item/decline-of-civics-education-means-students-less-prepared-to-become-informed-citizens/> [https://perma.cc/7LVV-GUT5].

⁷⁶ In 2019, the National Endowment for the Humanities and the U.S. Department of Education (ED) funded the Educating for American Democracy (EAD) initiative. *About Us*, EDUCATING FOR AM. DEMOCRACY, <https://www.educatingforamericandemocracy.org/about-us/who-we-are/> [https://perma.cc/Y74L-JSXC] (last visited Feb. 7, 2024). The EAD’s report and a detailed road map to improve civic education were published in 2021. EDUCATING FOR AM. DEMOCRACY, EXCELLENCE IN HISTORY AND CIVICS FOR ALL LEARNERS (2021). The U.S. House and Senate introduced the “Civics Secures Democracy Act” in 2021, a bipartisan effort to provide \$1 billion a year over a period of five years to support innovative and engaging civics and history programs. S. 879, 117th Cong. § 107 (2021). The Every Student Succeeds Act (ESSA), passed in 2015, calls for a well-rounded education that includes civics and government, history, geography, and economics. Every Student Succeeds Act, Pub. L. No. 114-95 (2015) (codified at 20 U.S.C. §§ 1001 *et seq.*, 6301 *et seq.*).

⁷⁷ Non-legislative initiatives taken in states include several things. First, a mandated task force: Massachusetts, Illinois, Alaska, and Oregon, among others, have appointed task forces to study and make recommendations for potential improvements in civic education. See Brady Delander & Maria Millard, *Different Paths to a Common Goal: Preparing Students for Civic Life*, EDUC. COMM’N STATES (2014), <https://files.eric.ed.gov/fulltext/ED561954.pdf> [https://perma.cc/T9T4-898K]. Second, accountability metrics: Florida and Tennessee have attached consequences for students and schools for poor performance outcomes on standardized civics assessments. *Id.* Third, statewide initiatives: without legislation, Illinois and Florida have developed networks of academic institutions committed to civics education. For instance, “Illinois’ Democracy Schools are high schools recognized by the Illinois Civic Mission Coalition for their commitment to civic learning.” *Id.* “The Florida College System Civics Literacy Initiative provides civics education opportunities for postsecondary students and the communities in which they live.” *Id.* Fourth, administrative directives: some state officials have used their authority to push civic education agendas and initiatives. For example, Montana created the Civic Education Institute “as a two-day professional development experience for every secondary social studies and civic teacher” *Id.* Finally, initiatives of

of a more comprehensive, skills-focused curriculum—paths forward are unfortunately vague, results are still bleak, and the future is unclear. Consider Illinois which, in 2015, adopted a high school civics course requirement embedded with evidence-based practices. Through a public-private partnership, Illinois built a statewide system of support that ensured fidelity of implementation among schools and districts, improved dispositions among teachers, and accelerated discernable shifts in pro-civic behaviors among students taking the class. A 2017 survey⁷⁸ showed that students who completed the course were more likely to serve as leaders in a group or organization, discuss politics, or help make their city a better place to live. However, later research demonstrates gaps in civic empowerment across race lines,⁷⁹ continuously vague course objectives for teachers, and disparate outcomes across schools.⁸⁰

On the national level, there has been innovation that also warrants discussion. In 2010, the National Council for the Social Studies created a common core curricular structure for “informed and engaged citizenship” to be directly adopted by state departments of education. The dominant focus of this new curriculum was, and is, to build critical thinking, participation, and problem-solving skills as part of students’ civics learning.⁸¹ This is done by requiring active engagement components within civics lessons. For instance, opportunities for working with news-media fluency, frequenting current events discussions, community service, attending school board meetings, “simulations of democratic processes and procedures,” and action civics programming.⁸² Philosophically,

secretaries of state: because of their role in elections, some secretaries of State have provided civics resources and educational tools for teachers to educate about the political system and encourage voting behaviors.

On the legislative level, there is equal diversity in action:

From 1981–2020, a total of 76 bills and resolutions were introduced in the U.S. Congress making some reference to civic education. Of these, only 8 became law and of those 8 only the following 3 did so after 2000: the No Child Left Behind Act of 2001, the American History and Civics Education Act of 2004, and the 2015 Every Student Succeeds Act.

Mantas-Kourounis, *supra* note 38, at 19. Some of note include: the College, Career, and Civic Life Framework for Social Studies (C3), the goal of which “was to establish a Framework that would incentivize state departments of education to develop social studies standards ‘that support students in learning to be actively engaged in civic life.’” *Id.* at 1. And the Civic Education Initiative (CEI) “aimed to incentivize state legislatures to enact legislation making the passing of the U.S. Citizenship and Immigration Services naturalization exam a requirement for high school graduation. *Id.*

⁷⁸ Shawn Healy, *Momentum Grows for Stronger Civic Education Across States*, ABA (Jan. 4, 2022), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-civic-education-in-america/momentum-grows-for-stronger-civic-education-across-states/ [https://perma.cc/RFH8-DEM2].

⁷⁹ Shawn P. Healy, *Illinois Democracy Schools Largely Embracing Lived Civics Principles, but Civic Empowerment Gap Persists*, ILLINOISCIVICS.ORG (October 31, 2019), <http://illinoiscivics.blogspot.com/2019/10/illinois-democracy-schools-largely.html> [https://perma.cc/5G66-BD6R].

⁸⁰ Noah Shaar, *New Study Gives Illinois an ‘F’ for Civics and History Education Standards*, ILL. POL’Y (July 1, 2021), <https://www.illinoispolicy.org/new-study-gives-illinois-an-f-for-civics-and-history-education-standards/> [https://perma.cc/2ECC-4M5S].

⁸¹ *College, Career, and Civic Life (C3) Framework for Social Studies State Standards*, NAT’L COUNCIL FOR SOC. STUD., <https://www.socialstudies.org/standards/c3> [https://perma.cc/D69J-8RKQ] (last visited Feb. 7, 2024).

⁸² MICHAEL HANSEN, ELIZABETH MANN LEVESQUE, JON VALANT, & DIANA QUINTERO, BROWN CTR. ON EDUC. POL’Y, *THE 2018 BROWN CENTER REPORT ON AMERICAN EDUCATION: HOW WELL ARE AMERICAN STUDENTS LEARNING?* 17 (2018), https://www.brookings.edu/wp-content/uploads/2018/06/2018-Brown-Center-Report-on-American-Education_FINAL1.pdf [https://perma.cc/GP8H-C74W].

these skill-focused experiences may inspire students to develop “civic behaviors,” or the “civic agency and confidence to vote, volunteer, attend public meetings, and engage with their communities.”⁸³ In our view, this would be a more effective, practicable form of civics education than simply requiring rote memorization of historical facts so students pass a citizenship test before graduation.⁸⁴ As of 2018, only twenty-three states have properly adopted these proposed standards,⁸⁵ *no* states have “local problem-solving components in their civics requirements,”⁸⁶ and only one state requires community service for graduation.⁸⁷

Even if there were a more widespread reception of a common civics structure, or other practical-skills circular reforms, one must ask: is this enough? Perhaps not. There are some resounding critiques of this model. For instance, because the initiative is merely a standard rather than a framework, states are still able to create their own content. While emphasizing skills rather than specific content may be received positively, many maintain that the flexibility afforded states betrays the creators’ attempts to “fend off fights about both the politics of content and the potential for federal overreach into states’ rights”⁸⁸ which weakens the program’s impact. If there is a “presumption that the United States really does operate on democratic values, when that presumption often depends on which [state,] community or economic class one hails from.”⁸⁹

These critiques are valid. The federal civics education initiatives promise an important pivot into more focused aptitudes-and-abilities rhetoric in the civics education landscape but tend to be reduced to a “one-dimensional tool as a proxy for an idea of

⁸³ Rebecca Winthrop, *The Need for Civic Education in 21st-Century Schools*, BROOKINGS (June 4, 2020), <https://www.brookings.edu/policy2020/bigideas/the-need-for-civic-education-in-21st-century-schools/> [<https://perma.cc/G3HS-T98W>].

⁸⁴ Fourteen states have adopted this approach. See Amanda Litvinov, *Forgotten Purpose: Civics Education in Public Schools*, NEATODAY (March 16, 2017), <https://www.nea.org/advocating-for-change/new-from-nea/forgotten-purpose-civics-education-public-schools> [<https://perma.cc/LQC6-86U6>]. Sadly, the current paradigm does not even do rote memorization well. See Amanda Robert, *Americans Are Divided by Age and Race on the Fairness of the Justice System, ABA Civics Survey Finds*, ABA J. (April 29, 2021), <https://www.abajournal.com/web/article/2021-civics-survey> [<https://perma.cc/Z2XC-RH5P>] (discussing a 2021 Civic Literacy Survey where less than half of participants could name the current Chief Justice of the Supreme Court, one in five demonstrated confusion as to the rights guaranteed under the First Amendment to the Constitution, and demonstrating considerable differences of opinion when it came to defining items like the meaning of “defund the police,” or the consequences of “aggressive prosecution,” or even agreeing with the notion that “the nation’s judicial system adheres to the rule of law, under which all individuals are treated equally in the eyes of the law”).

⁸⁵ HANSEN, LEVESQUE, VALANT, & QUINTERO, *supra* note 82, at 21. Michigan and Illinois are among twenty states that have updated social studies, civic and government standards and curricula frameworks guided by the C3 framework, which provides a guide to upgrading these standards around an “inquiry arc.” Nat’l Council for Soc. Stud., *supra* note 81; HANSEN, LEVESQUE, VALANT, & QUINTERO, *supra* note 82, at 20; Mantas-Kourounis *supra* note 38. The inquiry arc supports student-centered, engaged learning by guiding students to develop questions and plan inquiries, apply disciplinary tools and concepts, evaluate sources and use evidence, and communicate conclusions and take informed action. Nat’l Council for Soc. Stud., *supra* note 81.

⁸⁶ SARAH SHAPIRO & CATHERINE BROWN, *THE STATE OF CIVICS EDUCATION* (2018), <https://files.eric.ed.gov/fulltext/ED586237.pdf> [<https://perma.cc/7BHU-6NV6>].

⁸⁷ *Id.*

⁸⁸ Wayne Au, *Coring Social Studies Within Corporate Education Reform: The Common Core State Standards, Social Justice, and the Politics of Knowledge in U.S. Schools*, 4 CRITICAL EDUC. 1, 7 (2013).

⁸⁹ *Id.* at 8.

nationhood”⁹⁰ when states have complete control over the content of the civics curriculum. “It might reduce the amount of time devoted to civics instruction if mastery of civics is determined by adherence to broad standards; some schools may even limit their civics instruction to the bare minimum.”⁹¹ This, of course, is not even to speak of the fact that this national program model addresses very little in the way of accessibility issues.⁹²

A better approach promises “quality and not just facts.”⁹³ A more comprehensive reform, beginning with a neatly established set of interests that compliment, at their core, the established emphasis of learning about democratic institutions, civic behavior, and values, is necessary. While the current paradigm—if correctly employed—might inform students how to participate in local communities and a history of why that matters, a *robust* civics education should do more. An education in civics should open the door for students to engage with the complex values, structures, and ideas of policy; become nuanced in how they criticize the government; acquire the tools to question their own value-sets and those of their country. It should build (1) communication skills, which enable students to both express and understand facts and opinions; (2) intellectual skills, which allow youth to critically describe, explain and analyze political and social issues, including multiple viewpoints; and (3) participatory skills, which are necessary for active civic life, such as respectful public dialogue, civic planning, and coalition-building. A robust civics education should instill characteristics and engender openness to a more sophisticated intellectual discourse, predicated on tolerance, appreciation of diversity and concern for the common good. Learning law, legal reasoning, and approaching critically problematic law questions is a broader education. This type of learning, and *how we learn it*, presents a marriage of understanding, dissent, practical skills-building, and empowering know-how.

Having now discussed what is wrong on definitional, policy, and administrative levels—as well as the citizens these paradigms produce—and reoriented toward our approach, the following section begins discussing how we can develop citizens who interact with one another and the system in thoughtful and critical ways.

II. LEARNING LAW YOUNG IN THEORY: DEVELOPING A MORE THOUGHTFUL CITIZEN

At first blush, the notion of teaching something as complicated as *law learning* to

⁹⁰ Alia Wong, *Why Civics Is About More Than Citizenship*, ATLANTIC (Sep. 17, 2015), <https://www.theatlantic.com/education/archive/2015/09/civic-education-citizenship-test/405889/> [<https://perma.cc/3JUU-TYR3>].

⁹¹ See Wayne Journell, *We Still Need You! An Update on the Status of K-12 Civics Education in the United States*, 48 PS 630, 631 (2015).

⁹² See generally CTR. FOR INFO. & RSCH ON CIVIC LEARNING & ENGAGEMENT, CIVIC SKILLS AND FEDERAL POLICY, (2010), https://archive.civicyouth.org/PopUps/FactSheets/FS_10_Civic_Skills_final.pdf [<https://perma.cc/87UX-EECT>]. Students’ opportunities to participate in high-quality, school-based civic learning are largely determined by students’ socioeconomic status and ethnicity/race. Students in poorer communities and students of color have fewer opportunities to develop the skills and dispositions necessary for full participation in democratic life. *Id.* at 5. Children with fewer home civic opportunities receive unequal civic learning opportunities through their schools (defined as opportunities provided by the school to participate in student government, service clubs, newspaper/yearbook, or community service). *Id.* at 6. Students of lower socioeconomic background are less likely to attend schools where community service opportunities are offered. *Id.* Higher socioeconomic status youth are likely to be exposed to peers who perform service who in turn may introduce them to new civic opportunities. *Id.*

⁹³ Wong, *supra* note 90.

what will ostensibly be a primary and secondary school student population may seem far-fetched. We thus clarify what we mean when we say *learning law young*. We are not proposing to enroll twelve-year-olds in intensive substantive criminal procedure and trial techniques classes. Our vision for the citizen is not outcome-oriented, rather our vision is an education that provides students with the capacity to think and hold sophisticated discussion and understanding about the law. This aspect of our proposal is unique from other law learning models that teach citizens technical laws, means of exercising rights, or the ability to discern when this or that law is applicable in this or that case.⁹⁴ Our proposal is born out of the conception that the law offers students a set of skills or tools in one's toolbox (namely, legal reasoning) that can elevate the way one perceives reform and national values-shifting.⁹⁵ The theory of law learning proposes that students should be exposed to the "idea of law and the American system" early on, and teachers should provide the means to engage with the law's problems, challenges, values, and premises. Again, our proposal acknowledges that the United States does not have a tradition of changing our laws, our Constitutional values, or our systems (beyond technical levels) very frequently. As such, our legal values often lag behind cultural values. For citizens that want to resolve a political question or remedy problematic institutions, they need to propose more abstract solutions. So, when we say that law is essential to the citizen, we mean on this grander level. Our proposal is to equip citizens with the skills and capacity for critical reasoning and discernment.

We can achieve this by introducing students to law problems and questions. Young people should begin to think in ways that a legal education favors. On a practical level, this means we expect two things of students and civics classrooms. First, methodologically, civics instruction encourages students to practice *law-think*—to "[nurture] reflexes that support [one] when faced with questions and issues, regardless of the subject matter . . .

⁹⁴ In this way, it is worth distinguishing our view of "learning law young" from the 1970s "Street Law" movement. This movement (started at Georgetown in 1972) argues that they build civic agency and foster democratic culture by way of an education in "practical law," or the "the fundamental laws that affect a person's everyday life." Seán G. Arthurs, *Street Law: Creating Tomorrow's Citizens Today*, 19 LEWIS & CLARK L. REV. 925, 945 (2015); *Street Law's History*, STREET L. INC., <https://streetlaw.org/who-we-are/about/history/> [<https://perma.cc/FT5D-U6W3>] (last visited March 17, 2024). "Street Law is about teaching high-school students how to have a voice and how to be better thinkers, communicators, and learners. Law is a perfect vehicle for helping students develop these cognitive and expressive skills while also gaining practical and relevant substantive knowledge." Arthurs, *supra* note 94, at 945. The typical curriculum involves an education in crimes and their varied punishments, background on where 'law' comes from, and studies in the exercise of rights. *Id.* at 946. Street Law partners with schools, departments of education and juvenile justice systems. In 1975, they published a textbook suited for grades 9–12. Street L. Inc., *supra*. That book is currently in its 10th edition and taught in hundreds of schools nation-wide. *Id.*

This, we regard, as a highly commendable program. But it is not "learning law young" as we conceive of it in this proposal. It is technical in nature, where we seek to empower students in an elevated, intellectual discourse. It is preemptory in that it teaches how to avoid problem with the law rather than discussing upon what values the law is founded, and how can and should they be changed' Arthurs, *supra* note 94, at 946 (discussing that discourse in Street Law classrooms is about taking sides as plaintiff or defendant in cases to argue points.) The Street law discourse model is distinct from the even higher-order conversation about the values and ideas implicit in the laws themselves. Street Law is not about debate, counterarguments, and balancing of interests on values and system-wide levels, but about immersion and skills in discrete legal battles and settings. To be sure, Street Law serves an important function, but it is distinguishable.

⁹⁵ See Broyde & Liberman, *supra* note 5.

[empowering one to impose] order and structure on [one’s] thoughts and ideas.”⁹⁶ Secondly, we might expect a substantive outcome in that civic instruction encourages students to study (albeit on a simplified level)⁹⁷ law—in the form of federal and state constitutional provisions; statutes; administrative rules; and common law judicial precedent—in areas relevant to the citizen. This might include, but is not limited to: laws of contract, juvenile court, property, family welfare, business, taxation, evidence, equity, judicial procedure, law reform and criminal law.⁹⁸ By extension, students can better explore the sort of ideas that law is predicated upon, among them: weighing values, competing interests, working with constituencies, and defending policies. In our view, learning law young develops skills and perspectives essential to the budding American citizen, not just to the budding lawyer.

In this section, we explore the methodological piece, *law-think* or legal reasoning, and the unique perspectives it affords concerning institutions and the values upon which our system is predicated,⁹⁹ and defend the need for such an education for young people. We discuss how law learning helps students in two broader contexts uniquely important for civics learners:¹⁰⁰ first, in framing the relationship between law and authority and second, appreciating the importance of law as values-education.

A. *Learning Law Teaches New Lessons on Law and Authority, Or, To Rebel or Not to Rebel*

According to a 2022 Pew Research Study, just 20% of Americans “trust the government to do the right thing,” while 8% describe the government as being “responsive to the needs of Americans,” and just over 50% have only “some” confidence in the nation’s future.¹⁰¹ Forty-six percent of young people do not trust the government and 49% have “little faith” in the justice system.¹⁰² To make matters worse, per the 2022 COVID States Project, nearly a quarter of Americans are amenable to overthrowing the government, with

⁹⁶ Jack Chorowsky, *Thinking Like a Lawyer*, 80 UNIV. DETROIT MERCY L. REV. 463, 464 (2003).

⁹⁷ See *infra* Section IV.

⁹⁸ This list is borrowed from William M. Gibson, *Law Students: A Valued Resource for Law Related Education Programs*, 25 J. LEGAL EDUC. 215, 218 (1973).

⁹⁹ For a discussion on the second substantive aspect, i.e., what does learning law look like on the ground, see *infra* Section IV.

¹⁰⁰ There are, of course, many more great results from this education. One that deserves at least a small mention is conferral upon the student a sense of self-worth, of empowerment as an individual change-maker within the collective system. A versatility and familiarity with mechanisms and processes, an understanding of the principles and values at work in the system, the substantive knowledge—all of this strengthens one’s sense of self and elevates their impression of their potential impact on the system. This, we have seen, is especially true for students of marginalized backgrounds both from within and without the law school context. C.S. Weinstein, *The Classroom as a Social Context for Learning*, 42 ANN. REV. PSYCH. 493, 519 (1991).

¹⁰¹ *Americans’ Views of Government: Decades of Distrust, Enduring Support for Its Role*, PEW RSCH. CTR. (Jun. 6, 2022), <https://www.pewresearch.org/politics/2022/06/06/americans-views-of-government-decades-of-distrust-enduring-support-for-its-role/> [https://perma.cc/2VPW-J2EZ].

¹⁰² John Gramlich, *Young Americans Are Less Trusting of Other People—and Key Institutions—Than Their Elders*, PEW RSCH. CTR. (Aug. 6, 2019), <https://www.pewresearch.org/short-reads/2019/08/06/young-americans-are-less-trusting-of-other-people-and-key-institutions-than-their-elders/> [https://perma.cc/VXL3-C5ML].

one in ten Americans saying it is appropriate “right now.”¹⁰³ These are dire statistics, but they are also unsurprising. The directorial staff at the COVID States Project argues that “[beginning with the American Revolution, we] are taught in grade school that it is at some points in history justifiable to engage in violent protest,” and, given the state of the nation, the desire has understandably “moved from the sphere of chest-thumping to the sphere of reality.”¹⁰⁴

Surely, an organized nation cannot be well-contented to have a significant portion of their population ready to overthrow the standing regime.¹⁰⁵ There *must* be an interest in changing the general disposition. We, and many others, contend that civics education is one place to begin this change in attitude. While an education in law, on its own, does not necessarily stimy any urge to dissent from authority,¹⁰⁶ it cultivates helpful dispositions and orientations that students can rely upon to express their discontent.¹⁰⁷

To begin, an education in law focuses on fostering and modeling more productive debate as well as creating conflict resolution skills.¹⁰⁸ Students may learn to argue both

¹⁰³ Matthew S. Schwartz, *1 in 4 Americans Say Violence Against the Government Is Sometimes OK*, NPR (Jan. 31, 2022), <https://www.npr.org/2022/01/31/1076873172/one-in-four-americans-say-violence-against-the-government-is-sometimes-okay> [<https://perma.cc/M25W-VKD2>].

¹⁰⁴ *Id.*

¹⁰⁵ We acknowledge here, of course, the abolition-movement focused on the dismantling of systems that are deemed corrupted and venomous. Prison abolition is the most prevalent of such movements. In our view, these are extreme solutions, albeit sophisticatedly theorized. “The mere existence of an abolition argument in the policy space might help lead people to engage in a much-needed rethinking of a failed model of prisons that has been unchanged for hundreds of years. With abolitionists in the mix, other reforms seem moderate by comparison.” Rachel E. Barkow, *Promise or Peril?: The Political Path of Prison Abolition in America*, 58 WAKE FOREST L. REV. 245, 251 (2023).

Our goal is not to defend a counter-stance to the abolition-school in this proposal, but suggest preliminarily that, as a nation of laws, the United States is (1) threatened for a myriad of reasons by extreme-thinking as opposed to solving within the existing system and (2) that the notion of legislating the abolition of any major institution is far-fetched in a nation that has not changed its own Constitution substantively to reflect changing values in over a hundred years. *See supra* note 27. Abolition can thus be problematic as a guiding theory, and we are not alone in thinking so. *See, e.g.,* Carol S. Steiker & Jordan M. Steiker, *Entrenchment and/or Destabilization—Reflections on (Another) Two Decades of Constitutional Regulation of Capital Punishment*, 30 MINN. J.L. & INEQ. 211, 224 (2012) (noting that invoking the term abolition in the context of the death penalty brings connotations that “the decision to end the practice is morally compelled to the same extent as the duty to end slavery”); *see also* Barkow, *supra*, at 246 (“[T]here is the possibility that calls for abolition could lead to more harms than they prevent. This risk exists for two main reasons. First, because the rhetoric of abolition is absolutist . . . there is the risk that approach will frighten segments of the public who would otherwise support decarceration, even radical decarceration, but are not prepared to rule it out entirely.”). It is also politically unpopular, in many cases, and therefore can be difficult to realize. *See id.*

¹⁰⁶ Just consider how many social movements and protests are led by lawyers who were mobilized in school to think critically about policy. *See* Carrie Menkel-Meadow, *The Lawyer’s Role(s) in Deliberative Democracy*, 5 NEV. L.J. 347, 349–51 (2004). This is distinct from movement lawyering which is a mixed bag in terms of lawyer participation.

¹⁰⁷ The idea that an education fosters better dispositions and temperaments in activists is not novel. *See* Tricia Niesz, Aaron M. Korora, Chisty Burke Walkuski, & Rachel E. Foot, *Social Movements and Educational Research: Toward a United Field of Scholarship*, 120 TCHRS. COLL. REC. 1, 2 (2018) (“Educational processes and contexts are crucial to the ways in which social movements’ ideas, identities and ideals are generated and promoted, taught and learned, contested and transformed.”). “What the young have learned in school about the condition of our environment has been an important source of inspiration for their activism.” Danny Wildemeersch, Jeppe Læssøe, & Michael Håkansson, *Young Sustainability Activists as Public Educators: An Aesthetic Approach*, 21 EURO. EDUC. RSCH. J. 419, 420 (2021).

¹⁰⁸ *See generally* Menkel-Meadow, *supra* note 106.

sides of a case, examine the balancing acts of court decisions, or study the way federal agencies make rules on the back of public comment. Through this work, students become intimately familiar with different sorts of institutions by way of their work product—which is already a step beyond the descriptive lessons currently taking place in the civics classroom—and thereby appreciate the challenges, roles, aspirations, and shortcomings of each institution. Instead of just learning that the Supreme Court has nine justices, for instance, students learn the burdens of *stare decisis* in court opinions, the idea of standards of review, balancing interests, and methods of interpreting statutes, all of which inform what the law (and the democratic system) is and how it is produced. This approach to civics education ultimately well positions students in the process of democratic discourse. Students become more aware and accountable protesters. They are aware because they are the beneficiaries of an education in (1) how the individual relates to institutions of authority, (2) how those institutions deal with problems, and (3) how they change policies (and the consequences of doing so). They are accountable because this awareness may incite a feeling of obligation to lead, speak out, and participate in a more nuanced process.¹⁰⁹

To demonstrate this, we offer two examples. First, we consider the ways in which learning law serves as a bulwark against the general inclination towards “folk politics,”¹¹⁰ the phenomenon where protest is reduced to fleeting displays of anger rather than attempts to amend the structural and systemic nature of problems.¹¹¹ Second, we discuss the intersection of *law-think* and action by way of the post-*Dobbs* decision protests.

Some maintain that the current state of youth protest involves meetings strewn together based on “flimsy justifications,” supporters with little knowledge of the issue (many joining only in solidarity), and a greater preoccupation with numbers than messaging.¹¹² Their position is that protesters are gradually becoming more “separate [] from the opportunity to learn something true.”¹¹³ Even when worthwhile causes are

¹⁰⁹ See Kenneth Rosen, *Lessons on Lawyers, Democracy, and Professional Responsibility*, 19 GEO. J. LEGAL ETHICS 155, 161 (2006) (“A lawyer’s fealty to democracy is obligated rather than aspirational.”).

The American lawyer of today looks out upon a field crowded with problems which do not greatly differ from those of [the founder’s] time. To meet such problems and to carry on our government as in the past we must grasp the three-fold principle of personal initiative, personal responsibility, and personal obligation, which it is the purpose of this School to instill.

[Address of Joseph Antoine Cantrell, Junior Class of the Law School](https://repository.library.georgetown.edu/bitstream/handle/10822/559531/gul_glj_v009_i02.pdf?sequence=4&isAllowed=y), GEO. L.J., Dec. 1920, at 35, https://repository.library.georgetown.edu/bitstream/handle/10822/559531/gul_glj_v009_i02.pdf?sequence=4&isAllowed=y [<https://perma.cc/DG2P-DQMA>].

¹¹⁰ This phrase is borrowed from authors Nick Srnicek and Alex Williams. NICK SRNICEK & ALEX WILLIAMS, *INVENTING THE FUTURE: POSTCAPITALISM AND A WORLD WITHOUT WORK* 3 (2015).

¹¹¹ Nathan Heller, *Is There Any Point to Protesting?*, NEW YORKER (Aug. 14, 2017), <https://www.newyorker.com/magazine/2017/08/21/is-there-any-point-to-protesting>. Srnicek and Williams are not the first to point out the inefficacy of such engagements. See Bruce Newsome, *When “PROTEST!” Is Wrong*, BERKELEY NEWS (Feb. 2, 2017), <https://blogs.berkeley.edu/2017/02/02/when-protest-is-wrong/> [<https://perma.cc/CBM7-ETZ2>]. (“In a free and fair democracy, the normative protests of our time are unnecessary, aimless, counter-productive diversions from more virtuous, old-fashioned forms of political engagement, such as researching the issues, deliberating, and developing an argument before writing to Congress.”).

¹¹² *Id.*

¹¹³ *Id.*

involved, the act of protesting them haphazardly can be reductive or worse.¹¹⁴ Now, we do not pass judgment criticizing or lauding youth protests—there is plenty of scholarship suggesting the gradual sophistication and impact of youth organizing,¹¹⁵ as well as writing against it¹¹⁶—and do believe generally that protest in any form is important as a means of expression.¹¹⁷ However, we do maintain that cultural movements and protesting in the United States—unbacked by legal changes and reception—is limited in staying-power.

One example of this is “protest voting,” where activists choose to cast their vote for a non-establishment party—or simply abstain altogether—as a means of rebellion.¹¹⁸ Those engaged in protest voting contend, to some extent, is that “only protests and direct action can bring about change, and that voting and participation in electoral politics is a waste of time.”¹¹⁹ These actions—albeit widespread and affirmed by the democratic loss of the 2016 election and its consequences on left-leaning policy, low political engagement, and worse—are antithetical to the democratic process.¹²⁰ Former President Barack Obama maintains that, though one may aspire to a perfect policy change, the following remains true: “aspirations have to be translated into specific laws and institutional practices—and in a democracy, that only happens when we elect government officials who are responsive to our demands.”¹²¹ In other words, while active voting is something to be lauded and

¹¹⁴ See, e.g., Brent Simpson, Robb Willer, & Matthew Feinberg, *Does Violent Protest Backfire? Testing a Theory of Public Reactions to Activist Violence*, 4 *SOCIUS* 1 *passim* (2018). In one study, a protest by an anti-racist group against a white nationalist group, when turned violent, was shown to increase support for the white nationalist group. *Id.* at 2.

¹¹⁵ See, e.g., HENRY JENKINS, SANGITA SHRESTHOVA, LIANA GAMBER-THOMPSON, NETA KLIGLER-VILENCHIK, & ARELY M. ZIMMERMAN, *BY ANY MEDIA NECESSARY: THE NEW YOUTH ACTIVISM* (2016); CLIFF ZUKIN, SCOTT KEETER, MOLLY ANDOLINA, KRISTA JENKINS, & MICHAEL X. DELLI CARPINI, *A NEW ENGAGEMENT? POLITICAL PARTICIPATION, CIVIC LIFE, AND THE CHANGING AMERICAN CITIZEN* (2011); Jennifer Earl, Thomas V. Maher, & Thomas Elliott, *Youth, Activism, and Social Movements*, 11 *SOCIO. COMPASS* 1 (2011). For more informal sources, see generally Megan Carnegie, *Gen Z: How Young People Are Changing Activism*, BBC News (Aug. 2, 2022), <https://www.bbc.com/worklife/article/20220803-gen-z-how-young-people-are-changing-activism> [<https://perma.cc/2ZX6-CUBA>].

¹¹⁶ See, e.g., Dennis McCafferty, *Activism vs. Slacktivism*, 54 *COMM’NS ACM* 17, 17–19 (2011) (discussing critiques of new forms of youth civic engagement); ROBERT PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000) (noting the decline of youth participation in civic activity and increase in apathy). For more informal sources, see generally Evgeny Morozov, *Foreign Policy: Brave New World of Slacktivism*, NPR (May 19, 2009), <http://www.npr.org/templates/story/story.php?storyId=104302141>.

¹¹⁷ See, e.g., Marie-Bénédicte Dembour, *What Are Human Rights? Four Schools of Thought*, 32 *HUM. RTS. Q.* 1 (2010) (demonstrating that protest scholars look at human rights as fought for, as opposed to given, agreed upon, or talked about); Hui-Ling Malone & Sara McAlister, *The Revolution is in the Hands of the Young: Youth Organizing and Leadership Spaces*, NYU STEINHARDT, <https://steinhardt.nyu.edu/metrocenter/revolution-hands-young-youth-organizing-and-leadership-spaces> [<https://perma.cc/H6FR-5NM4>] (last visited Jul. 5, 2023); Natalya McPartland, *BLM Series: The Making of Human Rights*, *STUDENT LAW.* (Oct. 21, 2020), <https://thestudentlawyer.com/2020/10/21/blm-series-the-making-of-human-rights/> [<https://perma.cc/7EEC-BE58>].

¹¹⁸ See generally R. Michael Alvarez, D. Roderick Kiewiet, & Lucas Núñez, *A Taxonomy of Protest Voting*, 21 *ANN. REV. POL. SCI.* 135 (2018).

¹¹⁹ Barack Obama, *How to Make this Moment the Turning Point for Real Change*, *MEDIUM* (Jun. 1, 2020), <https://barackobama.medium.com/how-to-make-this-moment-the-turning-point-for-real-change-9fa209806067> [<https://perma.cc/9XJP-FSSA>].

¹²⁰ *Id.*

¹²¹ *Id.*

encouraged, this shortsighted, all-or-nothing form of protest is counter-productive. This is, in no short order, not the sort of engagement that we consider beneficial.

It is this form of ineffective, extreme, reactionary protesting that learning law helps phase out. The process of studying statutes and agency policy can help the student appreciate the way we allocate resources. The slow nature of change, as well as the reality that no policy—favorable or unfavorable—is the product of an all-or-nothing stance. By studying those “specific laws and institutional practices” that they both agree and disagree with—their history, interpretation and evolution in the courts, their problems, arguments in favor or against—students learn to accept that a state of conflict is ever-present in the democratic process. Sustained law evolution is an involved process; *they*—the citizen, the voter, the individual—are a part of this growth and development. Students learn they can advance their interests through a variety of political avenues from commenting on agency rules to writing congress to protesting *the merits* of the law.

Upon dispensing with this all-or-nothing mentality and sitting in this appreciation of constant conflict (which the study of law is predicated upon), students can thus be free to make reasoned—rather than purely emotional—judgments about how to act in support of their ultimate cause. This, we view, is essential considering the primacy with which we treat our legal institutions in this country, the reality of our legal system as resistant to brash change, and the way in which extreme reaction acts as a polarizing force deepening divides. Students can learn to take a nuanced approach to policies they dislike, perhaps even respecting the ideas and reasoned opinions of those they disagree with in doing so. Furthermore, students will become more inclined towards half-measures in the interest of small incremental change and favorable evolution of the law—using the example of “protest voting,” casting a vote for a candidate more aligned, if not entirely aligned, with their beliefs rather than resorting to abstention.¹²² This is what we argue should be taught. If a student understands law processes, their definition of successfully challenging or reforming the law may be reoriented toward a resolution that builds on or within existing structures, rather than disengagement.¹²³

While the first example has to do with a favorably tempered and calculated response to authority, the second example of how law learning makes for more aware and accountable protesters of authority has more to do with the intersection of *law-think* and action. In the following, we explore how law learning helps the citizen navigate different authoritative institutions to resolve disputes effectively, efficiently, and favorably.

In the wake of the *Dobbs* decision, the approval rating of the Supreme Court has plummeted to a mere 40%.¹²⁴ Protesters have challenged the legitimacy of the court,¹²⁵ and

¹²² William M. Gibson, *Law Students: A Valued Resource for Law Related Education Programs*, 25 J. LEGAL EDUC. 215, 215–25 (1972).

¹²³ Cf. *supra* note 111.

¹²⁴ *Supreme Court*, GALLUP, <https://news.gallup.com/poll/4732/supreme-court.aspx> [<https://perma.cc/WH2R-TA7B>] (last visited Jul. 4, 2023).

¹²⁵ Robert Barnes & Michael Karlik, *Roberts Says Supreme Court Will Reopen to Public and Defends Legitimacy*, WASH. POST (Sep. 10, 2022), <https://www.washingtonpost.com/politics/2022/09/10/supreme-court-roberts-legitimacy/> [<https://perma.cc/DN24-5LNJ>]; Molly Olmstead, *What Protesters Said Outside the Supreme Court This Weekend*, SLATE (Jun. 27, 2022), <https://slate.com/news-and-politics/2022/06/roe-dobbs-abortion-scotus-protests.html> [<https://perma.cc/DG25-9P3L>] (reporting that the day of the decision, many protesters called out “abort SCOTUS”).

have argued for packing the court with new justices,¹²⁶ cutting back federal jurisdiction, and outright disobeying undesirable Supreme Court decisions.¹²⁷ To many, a “successful” protest and resulting policy shift might look like overthrowing the judicial process itself. But, again, we contend that citizens would benefit from a reoriented perspective on this subject. If students were exposed to the meat of the *Dobbs* decision on paper and asked to discuss openly the past and future of the right to privacy in the courts and in the legislature, engage in the balancing of interests implicit in substantive due process, and explore alternatives in other authoritative institutions, perhaps their immediate response might shift from overhauling institutions to working within them.

In other words, “success” can be, and should be, conducted within the existing system rather than from without. To be clear, we do not contend that students should blindly adhere to or be content with *Dobbs*, its reasoning, outcome, or consequences (which to many will surely be life-altering). We simply contend that offering nuance and context to the controversial decision will enhance engagement with the decision and with alternative reform efforts rather than reforms that may lead to increased divisiveness and mistrust.

We argue that a reformed civics education would provide students with a way to reflect on this case critically and, borrowing from the rhetoric of movement lawyering,¹²⁸ answer the important question: what’s next? In learning law—here in the case of exploring how substantive due process rights were made and guaranteed in court—students can begin to wrestle with the possibility that “better routes to reform exist through social movement mobilization in politics and legislative policy change.”¹²⁹ Or not! Perhaps, after balancing *stare decisis* and the practical consequences themselves, the student reaffirms their discontentedness for the court. This is fine, but, importantly, the student sees, objectively, a new path forward within other institutions separate and apart from the court.¹³⁰ For instance, when the Supreme Court decides cases that do not reflect current social consensus, like *Dobbs*, and the other branches do not step in to make new law, students may feel that other branches of government are not functioning properly as a check on the judiciary. With the tools gained from law learning, these students would be better equipped to propose solutions that would return the three branches to roles that the founding fathers envisioned for them. There is no abandonment of the process, only a critical mind assessing institutional strengths and weakness, accepting their shortcomings, and seeking to find the most effective way toward dispute resolution.

Becoming accustomed with balancing institutional authorities and situating your case best within them is important for *all* citizens, not just lawyers, for two reasons. First, it favors an analytical perspective and, with the knowledge of when and how we can be helpful in pushing a cause for which we are passionate, inspires us all to get involved institutions, rather than to feel ourselves demoralized, or give ourselves in to the impulse

¹²⁶ Tara Leigh Grove, *The Supreme Court’s Legitimacy Dilemma*, 132 HARV. L. REV. 2240 *passim* (2019) (discussing in depth both current and historical court packing plans and efforts).

¹²⁷ *Id.*

¹²⁸ Scott L. Cummings, *Rethinking the Foundational Critiques of Lawyers in Social Movements*, 85 FORDHAM L. REV. 1987, 2000 (2017).

¹²⁹ *Id.*

¹³⁰ *Id.* (In the context of movement lawyering, the individual is unconcerned with politics or policy, is clear-headed: they “engage with the implicit counterfactual embedded in each analysis: [are there] viable and more effective [legal or] nonlegal routes to the achievement of movement goals.”).

to villainize. Importantly, by way of showing us new paths forward carved into the fluid system, law learning can engender a belief that the individual does matter to our authorities, that they are essential to the debate, that the system reflects their ideas and interests, and that they are empowered to make change. Though one may not see this directly in the context of the Supreme Court and the *Dobbs* decision, students may see this in the context of the legislature, state governments, private and public enterprise, and other siloes within the system that they will be exposed to in class. Further, the act of law learning conditions students—the future reformers—to act with a foundational belief in the integrity of the law and the democratic system.¹³¹

Within the context of these examples, it is essential to remember that law learning does not hinder the ability to dispute the inherent corruption of institutions, the inequity of policy, or disagree with the law. Rather, law learning—harkening back to the wisdom of Justice Brandeis in the introduction to this piece—trains the student to act with a *hope* that the system is good—even if working within an institution is not amenable to their cause. In short, one’s relationship with authority becomes healthier.

Another reason why perspective concerning one’s relationship to authority is important, perhaps surprisingly, is the reinforcement of the need for *law obedience*. In the next sub-section, we discuss how law learning paints the system as a reflection of higher normative principles and values—which is especially apropos of this discussion. But here—in the case of *Dobbs* and shifting the perspective from villainizing the Court to seeing it as only a single avenue for change among the many citizens have access to—we note that a student may obey discrete positive rules even when they disagree with them when they know something about the law, appreciate the complicated balancing that takes place in courts, appreciate the slow-moving evolution of law in legislatures, understand the utility of each institution of authority, and believe that the system generally promotes order and fairness.¹³²

By following the law, one preserves order and legitimizes the system.¹³³ Ideally, to learn law encourages an appreciation for the multi-layered nature of the system and the competing interests of laws and policy. This is distinct from indoctrination because

¹³¹ James Elkins, *Professing Law: Does Teaching Matter*, 31 ST. LOUIS U. L.J. 35, 41–43 (1986). Reinforcement of the belief in the good of the system is showcased especially in the prototypical law school ethics course. Among other more substantive objectives, the ethics course in a law school cultivates character, virtue, and values in newly minted legal professionals. Students engage with larger questions including the role of the lawyer within the system, expectations of the professional, and professional socialization. The teacher instills a sense of duty and obligation to the profession and to act in the interest of justice. Implicit in this is an indoctrination into the idea that the two go together; that by acting *through* the law as intended, one also works towards justice. Thus, to assess ‘competence’ is to really judge whether a given attorney is holding themselves out in a way that helps further systemic goals and faith in the system. To teach the proper way of conducting oneself with a client is to perpetuate a certain type of behavior—a behavior favored by the system—until it becomes second nature. To be *ethical*, therefore, is built on a belief that the system in which one is acting, and conforming is *right* and *correct*. See James Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentice System in the Academic Atmosphere*, 60 CIN. L. REV. 83, 94 (1991).

¹³² For a general bibliography on the moral obligation to obey the law, see generally John Hasnas, *Is There a Moral Duty to Obey the Law*, 30 SOC. PHIL. & POL’Y 450 (2013); Kent Greenawalt, *The Natural Duty to Obey the Law*, 84 MICH. L. REV. 1 (1985).

¹³³ Judith A. McMorro, *Civil Disobedience and the Lawyer’s Obligation to Obey the Law*, 48 WASH. & LEE L. REV. 139, 147 (1991) (“Lawyers are systemically part of the power structure, and the lawyer’s intimate connection with the law may make the lawyer an even more effective symbol of civil disobedience.”).

students can evaluate the inherent injustice of a law, while also being able to practice all manner of civil and private disobedience in contexts where a moral obligation seems to supersede any duty to obey. A legal education endows students with an even greater capacity for creating change and a higher standard by which to judge injustice.¹³⁴ A legal education empowers one to reflect deeply on the very basis for injustice and its bearing on the larger system, and, in the event of a need to respond, it enables them to do so by informed, efficient, and legitimate means. An education in the “rule of law” translates to tempered responses, painstakingly considered circumstances, and informed judgments about policy.

Just as learning history in school is helpful for the student to understand their socio-cultural milieu in context, or learning math is helpful for interacting with financial [institution](#), so too does learning law help with our interactions with institutions and cultivating our perspectives on political actions. Being able to appreciate the nuance of, and converse effectively about, politics and law changes is as important to the American as anything else. *Law-think* is not about standards or obeying the law blindly. The goal of *law-think* is to combat complacency; encourage working together and hearing each other out; and cultivate a more eager, capable, and inquisitive generation able to tackle complex issues from within and put forward changes that reflect the spirit and progressiveness necessary for the sustaining the American experiment. Law learning is an education that informs students of both “the mechanisms of our democratic system, [and] its spirit . . . what it means to be an American and even what America means.”¹³⁵

At its core, learning law young helps students work stalwartly, cleverly, and critically. Learning the law young prevents students from concluding that the law is either right or wrong, or that the law is a distant, unchangeable, noble system, and students should only consider facts based on how things have been done before. Instead, students learn how to approach the law from a broader perspective and interpret the law in a more dynamic way. As a natural consequence of empowering students to think holistically, the functional approach to law learning that this article champions encourages pluralistic approaches to larger systemic problems.

As Judge Sam Bratton of the United States Court of Appeals for the Tenth Circuit once observed, constitutional and statutory provisions contribute to our form of democracy, yet democracy itself does not find its perpetuating source in them. It is enshrined in the hearts of men who cherish liberty and human dignity.¹³⁶

Empowering all citizens with law learning—or the ability to legally reason—will reorient their relations with authority in a way that meets the needs of our democracy.

B. Learning Law Teaches Lessons on Virtues and Values

Law learning as civics also has value as a moral education. In framing law and the American legal system as a reflection of higher, normative principles and values,¹³⁷ one must ask what sort of ideals and virtues one gleans from learning the law. Further, students

¹³⁴ Robert M. Palumbos, *Within Each Lawyer's Conscience a Touchstone: Law, Morality, and Attorney Civil Disobedience*, 153 U. PA. L. REV. 1057, 1062 (2005).

¹³⁵ *A.C. v. Raimondo*, 494 F. Supp. 3d 170, 176 (D.R.I. 2020), *aff'd sub nom. A.C. ex rel. Waithe v. McKee*, 23 F.4th 37 (1st Cir. 2022).

¹³⁶ Sam G. Bratton, *Our Country Today*, 4 ALA. L. 66, 68 (1943) (internal marks omitted).

¹³⁷ See generally LAW, VIRTUE, AND JUSTICE (Amalia Amaya & Hock Lai Ho eds., 2012).

should question whether and why the law is an ideal tool for raising American students in these values. For the purpose of this piece, we will not embark on the well-trodden path of how, when, and why students ought or ought not to be taught morals generally in schools¹³⁸—this is a subject for another time—and we instead focus only on a descriptive discussion of what formative civic values students might take away from an education in law.

There are at least six central values conferred as part of learning law, some of which were discussed, albeit implicitly, in the previous sub-section: justice, equality, fairness, temperament, diligence, and involvement.¹³⁹ Explanations of why these values, among others, are important to the citizen have been offered in dozens of ways by many authors,¹⁴⁰ but two reasons are relevant to this discussion of studying the law system. First, each of these values are important tools for constructing and understanding how one is supposed to go about interacting with others outside of themselves. As Lawrence Kohlberg proposes, “a moral principle is [one] for resolving competing claims, you versus me, you versus third person.”¹⁴¹ Justice and equality, especially, are principled bases for resolving competing claims; they connote impartiality, in that “disputes are resolved on the basis of an external judgement rather than in favor of one or the other because of their characteristics.”¹⁴² Simply, these values—which are ideally embodied within our legal system—aim to uphold the notion that no one is owed better treatment over another. These values further teach citizens that they are autonomous, able to navigate their lives in ways they see fit so long as they comprehend the consequences of their actions, and the system will judge those that do not obey the law accordingly (with no preferential treatment).¹⁴³ Lastly, these values demonstrate balance in that all arguments and confrontations are to be treated on their own merits, contending with the unique circumstances, weighing contexts, and checking ideals.¹⁴⁴

Studying legal reasoning is an excellent way to learn these central values and put them in practice. When a student reads a court opinion, the transcript of a sentencing hearing, or even an appellate brief, they are necessarily exposed to the application of these principles in favor of arguments and outcomes. Consider, for example, cases where the justice system forgives or mitigates punishments for individuals stealing food to save themselves from hunger. There is a balance between principles of order and the idea of

¹³⁸ See, e.g., Lawrence Kohlberg, *The Cognitive-Developmental Approach to Moral Education*, 56 PHI DELTA KAPPAN (SPECIAL ISSUE) 670 (1975); Sandra Janoff, *The Influence of Legal Education on Moral Development*, 76 MINN. L. REV. 193 (1991); Marvin Berkowitz, *What Works in Values Education*, 50 INT’L J. EDUC. RSCH. 153 (2011).

¹³⁹ The sources that support finding these inherent values are numerous. See, e.g., DORIS SCHROEDER, KATE CHATFIELD, MICHELLE SINGH, ROGER CHENNELLS, & PETER HERISSONE-KELLY, THE FOUR VALUES FRAMEWORK: FAIRNESS, RESPECT, CARE, AND HONESTY, in *EQUITABLE RESEARCH PARTNERSHIPS: A GLOBAL CODE OF CONDUCT TO COUNTER ETHICS DUMPING* 13–26 (2019); Vicki Treadell, *Universal Values: Justice and Fairness*, 9 VICTORIA U. L. & JUST. J. 3 (2019); Catharine Pierce Wells, *Pragmatism, Honesty, and Integrity*, 40 NOMOS 270 (1998); Frederick K. Slicker, *Honesty, Integrity and Civility: Three Pillars of Professionalism*, 85 OKLA. B.J. 2587 (2014), <https://www.okbar.org/wp-content/uploads/2018/06/OBJ2014Dec13-sm.pdf> [<https://perma.cc/A8CW-WRV4>].

¹⁴⁰ See *supra* note 139.

¹⁴¹ Kohlberg, *supra* note 138.

¹⁴² Robert Post, *Democracy and Equality*, 603 ANNALS AM. ACAD. POL. & SOC. SCI. 24 (2006).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

justice, which leads to the outcome that “one’s right to life comes before another’s right to property.”¹⁴⁵ In another context, consider how criminal sentencing decisions—and their appeals to higher courts—wrestle with weighing standards like individual history and background, the context of crime, perceived severity of transgression, values of recidivism, deterrence, and rehabilitation, against an interest in just outcomes. Furthermore, and just as importantly, when a student studies these social issues over time, they are exposed to the way law and society have evolved in their views of these principles. Embedded in the history of our law are the collective values and principles of our society applied to everyday cases and contexts. In this way, the law instructs students in the benefits of slow and balanced change, consistent morality, and equitable interactions between people and systems.

Whereas the first reason why these values were important was interpersonal and relational, the second reason concerns their importance in personal growth rooted in an understanding of one’s situatedness within institutions and amongst people. As Jane Aiken argues, exposing students to content implicating values like justice and fairness, especially in a legal education, teaches “students the ability to deconstruct power, to identify [their] privilege, and to take responsibility for the ways in which the law confers dominance [for some, in their favor].”¹⁴⁶ With this understanding, someone in a dominant position might “learn to use [their] power and privilege in socially productive ways.”¹⁴⁷ But how does learning law help us do this? Principally, studying law in its purest form¹⁴⁸ can teach self-consciousness, self-understanding, and self-reflection to the citizen.¹⁴⁹ Consider, in studying judges and judging, how one can be compelled to see the process as an “inherently situated activity,” where a judge “cannot escape the effects of [their] own particular situation.”¹⁵⁰ The manner in which decisions are made, the backgrounds of the parties to a case, and the ability—or lack thereof—to relate to others’ experience are factors displayed in court opinions, interpretations of statutes, and administrative ordinances. For the citizen, the act of exploring one’s own instinct, biases, upbringing, and prejudice by interrogating

¹⁴⁵ See Marshall B. Kapp, *Social Values and Older Persons: The Role of the Law*, 7 MARQ. ELDER’S ADVISOR 69 (2005).

¹⁴⁶ Jane Harris Aiken, *Striving to Teach Justice, Fairness, and Morality*, 4 CLINICAL L. REV. 1, 64 (1997).

¹⁴⁷ *Id.*

¹⁴⁸ Stephanie M. Wildman, *The Persistence of White Privilege*, 18 WASH. U. J.L. & POL’Y 245, 264 (2005); see also Thomas Morawetz, *Self-Knowledge for Lawyers*, 68 J. LEGAL EDUC. 136, 138–40 (2018). To be sure, this may not be the case concerning the current state of a legal education in law schools. After all, future lawyers are asked to “implement the interests of clients, they are expected to put forth values and seek outcomes that they may not support, to construct versions of events and motives that may not accord with their sense of univocal truth.” *Morawetz, supra*, at 139. But we are not focused on *law* for *lawyers*, but rather the use of law as a tool, in a pure form, for citizens.

¹⁴⁹ See James R. Elkins, *Writing Our Lives: Making Introspective Writing a Part of Legal Education*, 29 WILLAMETTE L. REV. 45, 52 (1993) (“Learning law, practicing it as a lawyer, or teaching it, depends more than we have previously recognized on what we think and imagine of ourselves as persons. The continual exposure to law and legal thinking affects our inner world of images, emotions, and fantasies. Law and legal thinking, the talking and listening we do as lawyers, shape our view of the world and become a world view.”).

¹⁵⁰ Catharine Pierce Wells, *Improving One’s Situation: Some Pragmatic Reflections on the Art of Judging*, 49 WASH. & LEE L. REV. 323, 323 (1992); see also BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 12–13 (1921) (“All their lives, forces which they do not recognize and cannot name, have been tugging at them—inherited instincts, traditional beliefs, acquired convictions . . . In this mental background every problem finds its settings. We may try to see things as objectively as we please. None the less, we can never see them with any eyes except our own.”).

reactions to the law and its institutions, as well as examining the predispositions of the institutions making laws, is important. Ideally, it will shift how one perceives the world, its challenges, and their ability to impact different people in a diverse society. This self-reflection can help cultivate in students a sense of collectivity and interconnectedness with others who are all availing themselves of a shared system. Therefore, the practice of learning law promotes connection and embeddedness.

Furthermore, we believe that learning legal reasoning rather than learning “the laws” is the best way to impart these central values and ideals to students. One reason for this is the universality of law to the American experience. As Alexis de Tocqueville once declared, “[t]here is hardly any political question in the United States that sooner or later does not turn into a judicial one.”¹⁵¹ Citizens can be involved in the law daily, for instance, when they decide whether to avail themselves of insurance benefits, enroll in a government program, purchase property, or engage with law enforcement. Beyond day-to-day interactions with the law, the law acts as the “boundary-setter for policy and ethical dilemmas”¹⁵² in the United States. The law dictates, for better and for worse, how, when, and under what circumstances people ought to behave a certain way. Within the law, we frame the expectations of individuals in terms of duties and obligations, our expectation of ourselves, others, and government in terms of a balance between public power and private rights.¹⁵³ The language of law is one of human conduct. For example, tracking First Amendment law through time reveals ever evolving views of the populace towards protest, ideological pronouncements, and exchanges of ideas. In another context, understanding how the law of the right to privacy developed over time serves as a study in how “prevailing social attitudes [are] codif[ied] and enshrine[d] . . . with a formal, official, and enforceable status.”¹⁵⁴ In this way, the law “shapes social values by acting as a grand educator—forced under penalty of law to behave in certain ways.”¹⁵⁵

From both a moral and practical perspective, learning law young is a grand civics and general education. It is important to note, however, that the practice of teaching children the law at a young age already exists in certain communities. Therefore, we think it is worthwhile to discuss, as an anchoring point, the Jewish community’s approach to legal education as an example for American civics education reform.

III. LEARNING LAW YOUNG IN PRACTICE: RUMINATIONS ON SUCCESSFULLY TEACHING LAW TO CHILDREN FROM THE JEWISH EXPERIENCE

In this section, we discuss the Jewish principle of, and justification for, educating children in law young. First, it is prudent of us to ask: why study Judaism and the Jewish experience as a comparison point for the American discussion? The Jewish legal tradition has, after all, mostly lacked geographical sovereignty and its population still confronts ever-present fears of antisemitism—hardly an exact model of America’s national

¹⁵¹ Jonathan H. Adler, *This Is The Real John Roberts*, N.Y. TIMES (Jul. 7, 2020), <https://www.nytimes.com/2020/07/07/opinion/john-roberts-supreme-court.html> [https://perma.cc/DG25-9P3L].

¹⁵² Kapp, *supra* note 145.

¹⁵³ See generally ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (Univ. of Chi. Press 2002) (1835).

¹⁵⁴ Kapp, *supra* note 145.

¹⁵⁵ *Id.* And, commensurately, to notice when people “get impatient with the law is behind the solidification of social and ethical consensus on a particular issue.” *Id.*

experience.¹⁵⁶ We see the connection between the Jewish approach and our approach to civics education reform as more nuanced: just as America is (or should be) preoccupied with building citizens in the context of a maelstrom of civic and political criticism, debate, and divergent opinion, so too did (and does) the Jewish legal tradition exist in this same state of contested civics.

A. *How is the Jewish law learning approach analogous to American civics education?*

Borne out of diaspora, the Jewish legal tradition is characterized by generations of Jewish leaders offering diverse solutions to different problems faced when attempting to contend with other national legal systems, often to a chorus of criticism.¹⁵⁷ Furthermore, as a cultural community within other more dominating communities, the Jewish Law tradition developed amidst a reality that its members must *choose* to follow Jewish Law. Nothing stops one from ignoring the *mitzvot* in the way one is prevented from ignoring criminal laws. However, it was precisely these contexts and complications that pushed Jewish Law to focus so tightly on how, to what end, and why to teach Jewish children law young, as well as the role legal education plays in raising “better” Jews. Jewish “civics” curriculum was developed to mobilize the process of law teaching to both cultivate involvement, by inviting each generation to help the law itself evolve, and to get people to realize why Jewish Law matters to them and *choose* to follow it.¹⁵⁸ A Jewish education seeks to instill in students the belief that, as they learn, so does the law grow, and, as they contribute, so does Judaism become more current and meaningful in their lives.

For Judaism, Jewish Law was always considered imperfect, even if it was divinely inspired. Jewish Law wrestles with conflicting opinions, ever-changing contextual circumstances, ideologies, and sources. However, Jewish Law is never considered irrelevant, wrong, or out of date by those who adhere to it, because it is the job of each new generation to continuously develop it. In contrast, the public perception of the law and our systems in America today are characterized as irrelevant, wrong, or out of date. As we have previously mentioned, America is facing renewed criticisms of once sacred institutions and values, including calls for re-drafting of the Constitution,¹⁵⁹ which was once considered

¹⁵⁶ Indeed, even the innovation of teaching law to children is not necessarily unique to Judaism but finds—to varying degrees—expression in other religious communities. For example, in Muslim communities, *madrasas* educate children in the basic duties, obligations, and responsibilities of a Muslim life. See Arshad Alam, *Understanding Madrasas*, ECON. & POL. WKLY., June 2003, at 2123. In Catholic communities, the beneficiaries of a “classical” religious education includes to some extent discussion of the moral teachings and obligations imposed by the Catholic church, catechesis, common beliefs, and values, and divinely established biblical obligations. See Joseph S. Fusco, *Exploring Values in Catholic Schools*, 9 J. CATH. EDUC. 80, 82 (2005).

¹⁵⁷ See, e.g., Chaim Saiman, *Halakha: The Rabbinic Idea of Law* 3–5 (2018) (In addition to internal rabbinic arguments and debates forming Jewish Law, Saiman reflects on how “[t]hroughout their history, Jews have been subject to political and legal systems that compete with halakha, and to which halakha has often accommodated itself.”).

¹⁵⁸ See generally *id.* at 90–102, 124–40, 195–212.

¹⁵⁹ See, e.g., SANFORD LEVINSON, OUR UNDEMOCRATIC CONSTITUTION: WHERE THE CONSTITUTION GOES WRONG (AND HOW WE THE PEOPLE CAN CORRECT IT) (2006).

divinely inspired to the point that its founders were elevated to the status of demi-gods.¹⁶⁰ We argue that a reformed civics education that is informed by the Jewish legal tradition can address the increasing discontent and mistrust of institutions. Currently, American civics education fails to cultivate respect for the law or empower students to see their role in innovating the law for the better. In contrast, Jewish civics education maintains that to respect the law, and to build a culture that upholds it, one needs to learn it and to be involved in developing the law. Ultimately, it is our contention that we must move towards a view that law was not given to us perfect—as perhaps Americans might have felt in the nineteenth century—but needs to be perfected by us through law learning.

B. *The Jewish law learning model*

Having offered a defense for the relevance of the Jewish tradition to this important conversation about augmenting civics education with learning law, we turn to the Jewish approach to law education. The Jewish approach focuses on three dramatic ideas: (1) there is an affirmative duty to educate children in Jewish Law, (2) the substance of that education needs to impact a child's future Jewish life, and (3) such learning needs to have a positive impact on community cohesion. Together, we argue, these ideas lay out the best-case scenario when law is learned young and provide a model for American civic education reform.

A first and central duty of Jewish parents is to educate their children (and themselves) in the processes and categories of Jewish Law.¹⁶¹ Judaism sees this as both a fundamental obligation owed by parents (and society) to children, and, reflexively, there is a fundamental obligation on the child to learn. Parents and communities have a special obligation to provide for the religious, moral, and secular education of children and to position the child to be a good citizen, in their youth and as an adult.¹⁶² The obligation to raise good, involved citizens is as much a part of the parental duty as the obligation to feed and to clothe. However, the duty to educate is different than any other obligation because parents are obligated not only to meet the basic needs of the child, but to prepare the child for adult life intellectually. According to many Jewish thinkers, even custody rights can be affected if a parent abandons their duty to educate.¹⁶³

One notable aspect of Jewish law is that it blends religious, moral, and secular education and it teaches Jewish children the different facets of the law very early on. For example, it is Jewish custom that the first thing children should learn to read is the biblical

¹⁶⁰ Joseph J. Ellis, *Op-Ed: The Founding Fathers: Demigods or Scoundrels?*, L.A. TIMES (Sept. 20, 2015, 5:00 AM) <https://www.latimes.com/opinion/op-ed/la-oe-ellis-founding-father-reality-20150920-story.html> [<https://perma.cc/B7KY-A268>].

¹⁶¹ For a description of the Jewish Law on the subject, see generally Michael J. Broyde & Ariel Liberman, *Learning Law Young: Towards a More Robust, Impactful Civics Education Modeled Off of Jewish Law Learning*, 78 J. L. & EDUC. 1 (2023).

¹⁶² Indeed, to this very day, American constitutional law does not mandate that the government provide for the education of children; although once it provides for the free public education of some, it must do so for all. See *Plyler v. Doe*, 457 U.S. 202, 221–23 (1982). Until the mid-nineteenth century, education in the United States was almost solely administered by private entities, mainly the dominant Protestant sects. See *Sch. Dist. of Abington v. Schempp*, 374 U.S. 203, 238, n.7 (1963).

¹⁶³ See, e.g., Michael J. Broyde, *Child Custody in Jewish Law: A Conceptual Analysis*, 36 J. HALACHA AND CONTEMP. SOC'Y 21, 21–45 (1999).

content of how God gave the law to Moses.¹⁶⁴ As early as possible, the Jewish child is pushed to think about a central Jewish narrative, how Jewish society is organized, and to appreciate their place within that storied history. Invariably, the child is encouraged to develop a lifelong proclivity for questioning how one ought to act and to acknowledge that the law is a gift that God bestowed upon the Jewish people through Moses.

A central component of a classical Jewish (*yeshiva*) education is the idea that students should study Jewish law not only to understand how to obey it, but to understand and question it as well. Today, *yeshiva* students still examine portions of Jewish Law that have no application at all to the modern world. They study outdated laws because engaging with the process of legal study is valuable on its own. While some American law schools engage in a similar practice—if they offer courses on distant and abstract legal concepts that are not applicable to the modern world—it is a much smaller part of the study of American law than it is in the Jewish practice.¹⁶⁵ Ultimately, the Jewish duty to educate provides students with critical thinking skills and allows students to better understand how their legal system operates.

Jewish Law emphasizes the right of both adults and children to an education. In the Jewish tradition, the two corresponding duties—to educate the child and to educate the adult—are essentially independent of each other and have different policies behind them.¹⁶⁶ As to children, Jewish Law imposes a duty on parents to educate so that children will be equipped with the skills and knowledge to fulfill their own duty to be educated and to participate as adults in the Jewish community. Likewise, Jewish Law obligates adults to continuously educate themselves so that they can continue being “good” citizens. The Jewish law learning model offers a theoretical and practical example for how American civics and citizenship education can encourage all members of the community to continue learning about the law. If this model is adopted, citizens would be equipped with the skills that they need to continue learning and actively participate in shaping the law.¹⁶⁷

More than that, the Jewish model of law learning provides an example of how to incorporate discussions of philosophy and theology when teaching children the law:

When does one begin to teach a child? When he begins to speak one teaches him that God commanded Moses on the Mount with the Law (Torah) and the principle of the unity of God. Afterwards one teaches him a little bit until he is six or seven at which point one sends him to elementary school.”

¹⁶⁴ This is noted in *Shulhan Arukh, Yoreh De'ah*:

When does one begin to teach a child? When he begins to speak one teaches him that God commanded Moses on the Mount with the Law (Torah) and the principle of the unity of God. Afterwards one teaches him a little bit until he is six or seven at which point one sends him to elementary school.

SHULHAN ARUKH, YOREH DE'AH 245:5.

¹⁶⁵ Verifying a claim like this is itself complex since vast institutions of Jewish study have little or no internet presence with no courses listed. See, for example, the web page of the largest *yeshiva* in America, Beth Medrash Gevoha of Lakewood, NJ. See BETH MEDRASH GEVOHA, <https://www.bmg.edu/> [<https://perma.cc/B6XP-S3SD>] (last visited July 5, 2023). The institution offers no course listings at all, and the same is true of many other such institutions.

¹⁶⁶ The *Shulhan Arukh* states, for one, that “there is an obligation on a person to educate his children,” and, as well, “if one’s father does not teach one, one must teach oneself;” SHULHAN ARUKH, YOREH DE'AH 245:1.

¹⁶⁷ See, e.g., IGGROT MOSHE, YD 2:110 (Rabbi Moshe Feinstein’s idea that every adult should seek to know as much law as they can).

The Code also mandates that a Jewish school system be established in every community, stating that “[e]very community is obligated to have an elementary school, and every community that does not have an elementary school should be shunned [until one is established] . . . since the world only exists out of the merit of the discourse found when small children study.”¹⁶⁸

The broad mandate that communities establish schools that teach the law is only the beginning of the Jewish approach to law learning.¹⁶⁹ To us, the more interesting idea is that the Jewish approach to law learning also mandates learning how the law functions. Under this approach, children are not taught what they should be doing, but what theology undergirds the law (e.g., “God gave the Torah to Moses”). In the American context, this practice would be like teaching children the opening lines of the Declaration of Independence in kindergarten to prepare them to understand why we have law, and the goals and purposes of the law in society.

Under the Jewish law learning model, Jewish children are taught how to reason using logic as well as analogy and analysis. Reasoning by analysis is deeply important to the Jewish tradition *writ large*. Those who practice Judaism must be able to analyze binding core texts to understand them, from the Bible to the *Mishna* and the *Talmud*, as well as countless important medieval and post-medieval texts. By learning to read and understand complex texts and codes, students also learn how to harmonize seemingly incompatible texts (when possible) and which tools of harmonization to apply, depending on which types of contradictions a text presents. As such, the Jewish law learning model teaches students a model of thinking that is nuanced and complex. By teaching students how to reason by analogy, students can recognize the similarities and differences between situations. This skill is not only essential to understanding how Jewish Law evolves to accommodate emergent technologies and modern social needs—the skill is essential to life generally.

Additionally, Jewish students learn how to decide when to adhere to precedent and when innovation in Jewish Law is required to address modern social needs.¹⁷⁰ Jewish Law has a particularly complex and contested relationship to precedent. The Jewish law learning model emphasizes that a system can simultaneously have precedent and be able to change.¹⁷¹ Therefore, the student of Jewish Law must learn to exercise discretion to decide when there is an established rule that may no longer be correct or needs to change to meet modern social needs or emergent technologies. Innovation is equally central to Jewish tradition. Students of Jewish Law seek out novel and innovative answers to ancient problems, and the Jewish community generally witnesses new ideas and inventions become normative. In this way, the Jewish law learning model encourages students to explore how

¹⁶⁸ Michael J. Broyde, *Why Educate: A Jewish Law Perspective*, 44 J. CATH. LEG. STUD. 179, 182 (quoting SHULHAN ARUKH, YOREH DE’AH 245:5, 245:7).

¹⁶⁹ The Code also addresses the details of classroom management. For example, it states, “[t]wenty-five children to a teacher. If there are more than twenty-five students and less than forty, one must provide a teacher’s aide; when there are more than forty students, a second teacher must be provided.” SHULHAN ARUKH, YOREH DE’AH 245:15.

¹⁷⁰ See, e.g., MICHAEL J. BROYDE & IRA BEDZOW, *THE CODIFICATION OF JEWISH LAW AND AN INTRODUCTION TO THE JURISPRUDENCE OF THE MISHNA BERURA* (2014).

¹⁷¹ See, e.g., MICHAEL J. BROYDE & SHLOMO C. PILL, *SETTING THE TABLE: AN INTRODUCTION TO THE JURISPRUDENCE OF RABBI YECHIEL MIKHEL EPSTEIN’S ARUKH HASHULHAN* (2021).

a legal system decides whether an innovative idea is correct and, on the back of that knowledge, better facilitates their ability to systemically supplant old ideas.¹⁷²

Furthermore, analogical reasoning skills help a person identify the rules of the game through comparing situations as they experience them. Legal reasoning teaches students to consider others' perspectives and learn to appreciate alternative or contrary approaches to complex questions. Through exposure to other perspectives, students develop a sense of intellectual humility and honesty, become more open to other points of view, and become more aware of the larger values at work in the community.

Beyond this, the act of learning Jewish Law cultivates the ability for students to engage in civil discussion and reach a mutually agreeable outcome when they disagree. Hypothetically, if two students are faced with a question of whether and under what circumstances Jewish Law would sanction divulging a secret with which one had been entrusted, the debates could be endless. Students could continuously debate the reasoning and justification for an answer. The Jewish law learning approach encourages students to arrive at a unified conclusion. For example, that the secrets of others are, per *halacha*, best kept absent extenuating circumstances in the interest of cultivating a policy of trust and loyalty. In the American tradition, students rarely have to reconcile legal policy matters, build legal arguments, and find common ground between disparate legal positions, unless they attend law school.¹⁷³ The Jewish approach to law learning suggests that these skills should be available more broadly, and that there are benefits—especially from the perspective of social action, social justice, and revolution—for this to be the case.

A brief exploration into Jewish legal history obviates the way in which the symbiotic presence of an energized legal system *and* a community of adherents who are themselves students of the law can help evolve legal ideas in dramatic and important ways. Two examples¹⁷⁴ demonstrate the ways in which a law-learned community catalyzed deep systemic legal changes that dramatically re-shaped previously rigid and rooted Jewish culture, values, and legal tradition—in ways that the originators of Jewish law could have hardly imagined.

The first is the family law shift from polygamy to monogamy. Biblical and Talmudic family law was, long ago, structurally polygamous and operated based on the assumption that the husband—and not the wife—could have more than one spouse. Indeed, polygamy was perceived to be better than divorce in the Talmudic model, since divorce might leave a former wife with no ready means of support. Yet from about the year 950 to the year 1300, European Jewry enacted a series of rules that prohibited polygamy and limited access to divorce for both men and women. Both of these changes in law were

¹⁷² See, e.g., MICHAEL J. BROYDE, *INNOVATION IN JEWISH LAW: A CASE STUDY OF CHIDDUSH IN HAVINEINU* (2010).

¹⁷³ See Michael Broyde & Ira Bedzow, *Learning Law Young: What Happens When Schools Teach (Jewish) Law*, HAYIDION, Winter 2012, at 56, 56–58; ELI Talks, *Michael Broyde - Learning Law Young-What Happens When Elementary Schools Teach (Jewish) Law*, YOUTUBE (Feb. 26, 2023), <https://www.youtube.com/watch?v=l-BbOHBDZZA>. Professor Cass Sunstein makes special note of how law students are trained to find what he calls “incompletely theorized agreements.” See generally CASS SUNSTEIN, *LEGAL REASONING AND POLITICAL CONFLICT* (1996). Or, perhaps more simply, “coalition or community building.”

¹⁷⁴ In fact, countless other stories could be told like these two—the Jewish tradition has undergone enormous non-violent revolution through innovative legal interpretation. See generally MICHAEL J. BROYDE, *INNOVATION IN JEWISH LAW: A CASE STUDY OF CHIDDUSH IN HAVINEUNU* (2010).

revolutions in family law that were driven not by the scholars but by communities—all learned in law—seeking changed values through internal legal shifts. These changes were eventually adopted world-wide, and polygamy essentially disappeared from the Jewish world. Change in a deeply fundamental area of law was accomplished internal to the legal system by communal decree, social acceptance, and legal activism.¹⁷⁵

Another example of how endowing community members with an understanding of law helps create change without destruction is the precept of *dina d'malchuta*. Jewish law requires people to ‘obey the law of the land’—a revolutionary legal idea that facilitated life in the diaspora and encouraged good citizenship. But this was not always the case. How exactly it was done and what exactly it covers remains in deep dispute, but it was part of the process that moved Jews into being both Jews and citizens of the nation that reside it. It is, in no short order, a mechanism for community survival. The Sage Samuel around 200 C.E. had first developed the notion that there needed to be mediation between Jewish law and the financial and family law of the society Jews lived in. Not having this would mean antagonism and, certainly, death. In some times and some places, Jewish law understood the law of the land to govern nearly all commercial transactions including all commercial matters related to family law. In other times and other places, this principle was limited to transactions where one of the parties was not Jewish. Regardless, however, for *all* Jewish communities, it is clear that the parameters of *dina d'malchuta* was determined not by the technical intricacies of Jewish law, but by the communal norms that are governed by the common sense of the community of Jews that obey Jewish law. It represented compromise and flexibility while staying true to the community’s sense of autonomy and tradition. The idea that the community has a role in determining the parameters of the law and communal norms have implications for how the law is actually to be practiced.¹⁷⁶

American civic education would do well to learn from this community dynamic. Especially considering the recent increase in controversy surrounding civic issues, the ability to engage with public policy, build arguments, and reconcile disparate political views is even more essential to general education. Consider, for example, calls from the left to re-write the Constitution¹⁷⁷ or to abolish the Supreme Court,¹⁷⁸ or, from the right, to dismantle administrative agencies.¹⁷⁹ While we offer no judgments as to the nuance and validity of the respective arguments, the extreme nature of these positions reflects a concerning socio-cultural milieu that any modern civics education innovation must address. How do we rebuild respect for our system, ensure “buy-in” and trust, and innovate our systems without dismantling? The Jewish legal tradition, ever familiar with controversy and debate surrounding its own laws and institutions, emphasizes incremental

¹⁷⁵ For a full telling of this story, see generally MICHAEL J. BROYDE, MARRIAGE, DIVORCE, AND THE ABANDONED WIFE IN JEWISH LAW: A CONCEPTUAL UNDERSTANDING OF THE AGUNAH PROBLEMS IN AMERICA HOBOKEN (2001).

¹⁷⁶ For a telling of this story, see generally Michael J. Broyde, *Public and Private International Law from the Perspective of Jewish Law*, in THE OXFORD HANDBOOK OF JUDAISM AND ECONOMICS 363 (2012).

¹⁷⁷ See generally Levinson, *supra* note 159.

¹⁷⁸ Sean Illing, *The Case for Stripping the Supreme Court of Its Power*, VOX (Oct. 27, 2020, 10:45 AM), <https://www.vox.com/2018/10/12/17950896/supreme-court-amy-coney-barrett-mark-tushnet> [<https://perma.cc/X3WU-YSBD>].

¹⁷⁹ Jason Plautz & Nat’l J., *How to Eliminate Almost Every Federal Agency*, ATLANTIC (Aug. 13, 2014), <https://www.theatlantic.com/politics/archive/2014/08/how-to-eliminate-almost-every-federal-agency/452961/> [<https://perma.cc/7CWN-MHR2>].

and sustainable change and promotes respect for the law by teaching students how to engage with the law from a young age. Instead of calls to abolish law and legal institutions, Judaism accepts that the law and its institutions are imperfect, but maintains that they are serviceable, and can be bettered through debate and melding many perspectives. We find this approach to be an especially important perspective for a contemporary American civics education. If national civics education for children included this perspective, it could transform the nature of our debates and potentially heal divides wrought by political polarization.

C. How to implement the Jewish law learning model in American civics education reform

Implementing the Jewish tradition in the U.S. requires the introduction of teaching law at a young age as a methodology. Law can be taught to elementary school students the same way that science, history, and math are taught to them, in broad strokes without engaging in too much complexity. At earlier ages, students learn by discovery¹⁸⁰ and construct knowledge for themselves. As such, the teacher should facilitate that learning process by helping children discover the relationship between bits of information.¹⁸¹ The Jewish educational tradition has already proven that law learning is perfectly amenable to this process and that there are myriad benefits to doing so.

We envision a curriculum that deals in law texts in accessible ways by adapting pedagogical techniques that favor criticism and agency to explore the law “through a language of skepticism and possibility and a culture of openness, debate, and engagement.”¹⁸² An education in law and legal reasoning should encourage students to ask questions and instruct them in how to navigate problems and resolve tensions through analysis, critical thinking, and the coordination of multiple interests and values.

CONCLUSION

Almost a century ago, America decided that law should be exclusively a graduate program. Consequently, Americans are left with a society in which the average citizen does not have a working knowledge of law or its methodologies. We believe this is a problem. We see the consequences of an incomplete civics education through how the average citizen struggles to solve problems that could be resolved by existing institutions or evolving legal systems. The United States lacks a critical mass of individuals capable of thinking about novel solutions to the complex problems our society is confronting, other than a narrow band of lawyers who have a vested interest in constructing law and society in a particular way.

We propose that a solution to this issue is to start teaching the law and its methodologies in elementary and high schools. Learning the law at a young age affords

¹⁸⁰ Jerome S. Bruner, *The Act of Discovery*, 31 HARV. EDUC. REV. 21, 21–32 (1961).

¹⁸¹ *Id.*

¹⁸² David W. Stinson, Carla R. Bidwell, & Ginny C. Powell, *Critical Pedagogy and Teaching Mathematics for Social Justice*, 4 INT’L J. CRITICAL PEDAGOGY 76, 78 (2012). We note that, as scholars of law, we are not best positioned to *craft* such a curriculum. We do hope, however, that the theory of this paper inspires others more capable of doing so.

students a versatile knowledge of our governing and legal structures, helps foster moral and value development, and, as we see in the case of the Jewish tradition, facilitates a cohesive community with shared purposes, experiences, and identities. Further, the critical thinking and reasoning skills one gains from learning law are essential. While civics curricula today purport to cultivate similar abilities, they fall flat.

In our view, this generation of citizens—emboldened more than any other to be active in political and social causes, though unarmed in terms of knowledge and tools—can assuredly benefit from learning law. We believe that investing in children in this way can better prepare them to live in a time of contested civics and bring the nation closer to resolving some of the most divisive issues. Our theory maintains that citizens who begin to learn legal reasoning in kindergarten and who are well versed with wrestling with the important texts, values, and ideas that make up our system will be better equipped fix problems in the American legal system.