

# Denver Law Review

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Volume 90  
Issue 4 *Twentieth Annual Ira C. Rothgerber Jr.*  
*Conference: Public Constitutional Literacy*

Article 11

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January 2013

## Vol. 90, no. 4: Full Issue

Denver University Law Review

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### Recommended Citation

90 Denv. U. L. Rev. (2013).

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Vol. 90, no. 4: Full Issue

TWENTIETH ANNUAL IRA C. ROTHGERBER JR. CONFERENCE:  
PUBLIC CONSTITUTIONAL LITERACY

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The *Denver University Law Review* is published quarterly by the University of Denver Sturm College of Law through the Denver University Law Review Association.

Denver University Law Review  
2255 East Evans Avenue, Suite 425  
Denver, Colorado 80208  
(303) 871-6172

Cite as: 90 DENV. U. L. REV. \_\_\_\_ (2013).

**Subscriptions:** Subscriptions to the *Denver University Law Review* are \$40.00 per volume (add \$5.00 for mailing addresses outside the United States). All subscriptions will be renewed automatically unless the subscriber provides timely notice of cancellation.

**Single and Back Issues:** Single issues of the current volume are available from the Association at \$15.00 per issue. All previous volumes and issues of the *Law Review* are available exclusively from William S. Hein & Co., Inc., 2350 North Forest Road, Getzville, NY 14068, (800) 828-7571, [www.heinonline.org](http://www.heinonline.org).

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**Previous Nomenclature:** Published as the *Denver Bar Association Record* from 1923 to 1928, *Dicta* from 1928 to 1965, and *Denver Law Journal* from 1966 to 1984.

**Postmaster:** Please send all address changes to *Denver University Law Review*, 2255 East Evans Avenue, Suite 425, Denver, Colorado 80208.

**Denver University Law Review Online:** Recent *Law Review* articles and additional *Law Review* content, including information on past and upcoming *Law Review* symposia, may be accessed online at <http://www.denverlawreview.org/>.

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## FOREWORD: PUBLIC CONSTITUTIONAL LITERACY; A CONVERSATION

MELISSA HART<sup>†</sup>

What is constitutional literacy and how is it different from civic literacy? Is constitutional literacy a neutral concept? If it is not, does that matter? What role does constitutional literacy serve in preparing young people to participate as citizens in our democracy? Can and should law schools participate in efforts to advance constitutional literacy among younger students? The Twentieth Annual Ira C. Rothgerber Jr. Conference, “Public Constitutional Literacy,” brought scholars, judges, lawyers, and teachers together at the University of Colorado Law School to consider these and other questions.

The event was prompted in large part by three interactions I had during the 2011–2012 school year:

First, when Colorado Law launched its first “Constitution Day Project,” sending law students into high school classrooms all over Colorado to teach a lesson in recognition of Constitution Day, an online comment to a news story about the event caught my attention. The commenter queried: “Taught Constitutional law by CU law students? Depends which Constitution they choose. Obama’s taught by liberal professors in Boulder or the original signed by Patriots.”<sup>1</sup> The remark was a reminder that the concept of constitutional literacy is not uncontroversial.

The second was a conversation I had with American University Washington College of Law (WCL) Professors Jamin Raskin and Maryam Ahranjani at a meeting of chapter directors for the Marshall–Brennan Constitutional Literacy Project (Marshall–Brennan), which Professor Raskin had founded in 1999. We were discussing the resistance that programs like Marshall–Brennan often face from law school faculties because there is a concern about whether these programs are sufficiently rigorous or worthwhile to be part of the law school curriculum.

Finally, on September 19, 2011, a group of lawyers, judges, and educators met in Denver to explore how the Colorado legal community might best partner with our state’s education community to enhance teaching and learning about the Constitution, the judiciary, and the rule

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<sup>†</sup> Associate Professor of Law and Director of the Byron R. White Center for the Study of American Constitutional Law at the University of Colorado Law School.

1. LessGovtIsBetter, Comment to Brittany Anas, *Longmont High Celebrates Constitution Day with Moot Court Led by CU-Boulder Students*, DAILYCAMERA.COM (Sept. 15, 2011, 9:12 AM), [http://www.dailycamera.com/boulder-county-schools/ci\\_18906946](http://www.dailycamera.com/boulder-county-schools/ci_18906946).

of law. Many of us involved in that conversation have continued to collaborate, given our mutual strong conviction that the bench and bar should take an active role in public education about the law (for both children and adults) as part of our public service obligation.

From these three very unconnected interactions grew the conviction that a conference focused on the meaning and value of constitutional literacy and what role law schools can appropriately play in constitutional literacy efforts was much needed. Many of the participants in the conference were chapter directors of Marshall–Brennan. Others were leaders in civic and constitutional literacy efforts through national programs, such as *We the People*<sup>2</sup> or the American Bar Association’s Teaching the Constitution Committee,<sup>3</sup> and more local programs like Colorado’s Judicially Speaking<sup>4</sup> or Massachusetts’s Discovering Justice.<sup>5</sup>

The conference began with a keynote talk given by Harvard Law School Professor Mark Tushnet, a well-known proponent of popular constitutionalism, who spoke about “Constitutional Literacy Outside the Courts.”<sup>6</sup> Among other points, Professor Tushnet argued that efforts at civic or constitutional education should focus less on “factual knowledge” and more on “civic capacity.”<sup>7</sup> He observed that popular constitutionalism is often criticized for suggesting that people outside of the judiciary should actively participate in constitutional interpretation and enforcement. These criticisms point to the myriad evidence demonstrating a widespread lack of public knowledge about the Constitution and the legal system.<sup>8</sup> Professor Tushnet argued that these critics tend to focus on factual knowledge about the particular contents of the Constitution, rather than explore whether people have an understanding of the larger principles that motivate our constitutional system. This focus should be flipped, he concluded, because understanding constitutional principles is more important to civic participation than knowing the details of constitutional facts. The greatest potential of effective civic and constitutional education is to develop students’ understanding of the Constitution’s broad principles and activate their civic capacity.

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2. *The We the People Program*, CENTER FOR CIVIC EDUC., <http://new.civiced.org/wtp-the-program> (last visited Apr. 16, 2013).

3. See *Lawyers Conference*, A.B.A., [http://www.americanbar.org/groups/judicial/conferences/lawyers\\_conference.html](http://www.americanbar.org/groups/judicial/conferences/lawyers_conference.html) (last visited Apr. 16, 2013) (noting the “Teaching the Constitution: 2013 Civic Learning Initiative”).

4. Margaret Haywood, *A Civics Education, Judicially Speaking*, DOCKET, Jan. 2012, at 18, 18.

5. DISCOVERING JUST., <http://www.discoveringjustice.org/> (last visited Apr. 16, 2013).

6. Mark Tushnet, William Nelson Cromwell Professor of Law, Harvard Law Sch., Keynote Address at the University of Colorado Law School Ira C. Rothgerber, Jr. Conference: Constitutional Literacy Outside the Courts (Nov. 29, 2012), available at <http://www.colorado.edu/law/research/byron-white-center/rothgerber>.

7. *Id.*

8. *Id.*

The distinction Professor Tushnet draws between knowledge of specific facts and understanding of broader principles is one that those involved in constitutional and civic education efforts know well. As the articles in this symposium issue demonstrate, the crisis in civics *knowledge* has been a starting point for many efforts to get lawyers, judges, and law students involved in increasing public civic and constitutional literacy. The statistics demonstrating a lack of factual knowledge are one of the most effective tools to garner funding for the kinds of programs conference participants are involved in. At the same time, the goal of these programs is not simply to provide factual content. Instead, as is apparent in each of the articles included here, public constitutional and civic education is fundamentally focused on increasing civic capacity.

Certainly, this focus on civic capacity and engagement was one of the founding goals of Marshall–Brennan. Indeed, Professor Raskin makes a strong case that Marshall–Brennan is “democratic constitutionalism in action.”<sup>9</sup> It puts constitutional knowledge and the skills to deploy that knowledge effectively and responsibly into the hands of people who are among the most excluded from our political processes. At the same time, it reminds traditional students of the Constitution that you cannot understand that document simply by reading books.

In addition to detailing the ways that Marshall–Brennan empowers students to be more civically engaged, Raskin offers a powerful theoretical explanation of the value to law schools and legal education of the hands-on and engaged experience that Marshall–Brennan offers those who participate. He describes the creation of the first Marshall–Brennan chapter at WCL and sets out the core values and commitments that he and others involved in that program’s creation established for the project. This history, not only of the WCL chapter’s founding, but also of the expansion of the project nationally, is invaluable for students and teachers interested in joining Marshall–Brennan, and for those engaged in other community outreach programs. Raskin perfectly captures the relationship between legal education and civic engagement, and the way that Marshall–Brennan synergizes the two. Raskin’s article addresses head on some of the increasingly vocal criticisms being leveled at legal education today and considers how Marshall–Brennan offers a counterpoint or antidote to these criticisms. Raskin effectively demonstrates the ways in which students who engage in the active learning and community outreach that Marshall–Brennan offers are likely to become the effective lawyers and community leaders of the future.

One of the challenges facing Marshall–Brennan and programs like it is sustainability, both financially and institutionally. Continuing success

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9. Jamin B. Raskin, *The Marshall–Brennan Constitutional Literacy Project: American Legal Education’s Ambitious Experiment in Democratic Constitutionalism*, 90 DENV. U. L. REV. 833, 842 (2013).

within law schools requires these programs to develop a convincing explanation for the value they add; Raskin's article does that extremely well. In order to get necessary funding, civic education programs, whether run through law schools or through other organizations, must demonstrate measurable outcomes to potential donors. As Laura McNabb argues in her article, *Civic Outreach Programs: Common Models, Shared Challenges, and Strategic Recommendations*, developing the tools to measure outcomes is one the most significant challenges facing civic education programs.<sup>10</sup> McNabb's article is the product of detailed research, including dozens of interviews and a careful analysis of online resources for civics education. As she observes, civics education programs can be divided into two broad categories: those that focus on enhancing opportunities through the K-12 and post-secondary education systems and those that focus their attention outside of the school system. McNabb argues that programs focused on K-12 education have more potential to effect change because of the mandatory and universal nature of K-12 education and the historic obligation of schools to provide this type of education. However, McNabb observes, even programs focused on schools face significant sustainability challenges. She urges those involved in civic outreach efforts to increase inter-program coordination and to collaborate so that we are not competing for scarce resources or duplicating research as we work to develop tools that will capture evidence of the measurable outcomes that are essential to programmatic success.

Two of the articles presented in this symposium offer examples of efforts to measure outcomes. These articles focus specifically on Marshall-Brennan's effectiveness at achieving its twin goals of educating law students and high school students. American University Professors Jessica Waters and Lynn Addington present the results of a study they conducted to assess the impact of participation in Marshall-Brennan on law student career choices in *The Marshall-Brennan Effect*.<sup>11</sup> Their study focuses particularly on whether law students who teach through Marshall-Brennan are more likely to enter public interest or government civil service careers than they might have been had they not participated in the program. The article fits within a broader discussion about the phenomenon of "public interest drift": many students who come to law school stating they plan to pursue public interest careers drift away from that commitment. Waters and Addington found that just the opposite was true for Marshall-Brennan Fellows; participating in Marshall-Brennan tended to strengthen student commitment to public interest work and that commitment carried through to post-graduate career choices.

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10. Laura McNabb, *Civic Outreach Programs: Common Models, Shared Challenges, and Strategic Recommendations*, 90 DENV. U. L. REV. 871, 891-92 (2013).

11. Jessica L. Waters & Lynn A. Addington, *The Marshall-Brennan Effect: The Benefits of Teaching Constitutional Literacy for Law Students*, 90 DENV. U. L. REV. 901, 912-15 (2013).



Conference participants Maryam Ahranjani, Caleb Medearis, and Jeff Shook focus their research on Marshall–Brennan’s impact on high school students participating in the program. In *Evaluating High School Students’ Constitutional and Civic Literacy*, these authors present the results of a study they conducted during the 2010–2011 academic year in Washington, D.C. public high schools.<sup>12</sup> The study found that the high school students who participated in Marshall–Brennan for the school year ended the year with greater knowledge of their constitutional rights and responsibilities and an increased interest in civic participation.

Whereas Laura McNabb argues that the *recipients* of civics education efforts should be actors in K–12 institutions, Jill Friedman, Conrad Haber, and Eve Biskind Klothen make a powerful case that law schools at public universities in particular have an obligation to serve as *providers* of this education.<sup>13</sup> Friedman, Haber, and Klothen begin by detailing the extraordinary range of civics education public interest programs in place at Rutgers University School of Law–Camden, explaining how the school developed its interlocking network of civics education programs, and discussing the wide cross-section of community members served by these programs. The article considers some of the benefits the programs have had for community members and for law students. The authors then go on to argue that all law schools, but particularly public law schools, should offer these programs because of the important role of service to the community in a public law school’s mission.

While several of the articles presented here focus on specific programs designed to offer civics education and consider what those programs should look like, what their outcomes have been, and what challenges they face, another group of articles focuses on the benefits that might flow from civics education. In *Impaneled and Ineffective*, for example, K Royal and Darra Hofman tackle the question of how civics education might be a tool in jury reform.<sup>14</sup> Royal and Hofman first detail some of the ways that our jury system today is broken, and some promising efforts that have been made to improve that system. They go on to argue that service on a jury is one of the most important moments of civic participation for any citizen and that effective juries must include jurors with a strong understanding of our system of government and the rule of law. Royal and Hofman ultimately recommend not only increasing focus on civics education in schools but also including a short, basic

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12. Maryam Ahranjani, Caleb Medearis & Jeff Shook, *Evaluating High School Students’ Constitutional and Civic Literacy: A Case Study of the Washington, D.C. Chapter of the Marshall–Brennan Constitutional Literacy Project*, 90 DENV. U. L. REV. 917, 924–29 (2013).

13. Jill Friedman, Conrad Haber & Eve Biskind Klothen, *Educating Young People About Law in a Disadvantaged City: Rutgers University School of Law and the City of Camden, New Jersey*, 90 DENV. U. L. REV. 937, 955–56 (2013).

14. K Royal & Darra L. Hofman, *Impaneled and Ineffective: The Role of Law Schools and Constitutional Literacy Programs in Effective Jury Reform*, 90 DENV. U. L. REV. 959, 971–74 (2013).

civics class as part of any jury service. However civics education is delivered to jurors or potential jurors, Royal and Hofman conclude, the jury system will work better if jurors are better educated about the legal system.

University of New Mexico School of Law Professor Dawinder Sidhu's contribution to the symposium asks this thought-provoking question—Can civic education serve as a tool for upward social mobility for the poor?<sup>15</sup> Having posed that question, Sidhu interviews a number of prominent scholars and educators who are actively involved in efforts to understand and eradicate entrenched poverty. Although respondents generally recognized the value of civic and constitutional education for increasing civic engagement, they questioned its utility as a tool for addressing the structural causes of urban poverty.

In exploring this alternative potential goal for civic education, the article offers some important insights for how civics education programs—particularly those run by law schools that employ law students as instructors—might be structured to maximize their impact. In particular, Professor Sidhu notes that those he interviewed focused on the need for law students to model professional behavior, to serve in mentoring roles beyond the classroom experience, to offer high school students access to people and opportunities they might otherwise not have, and to discuss current and local events in their discussion of constitutional issues. All of these elements of a constitutional literacy program would benefit high school students and would be equally beneficial as training opportunities for law students. Professor Sidhu closes his article with another thought-provoking question—Do law schools have a responsibility to participate in civics education in poor communities? Those he interviewed were reluctant to place that responsibility on law schools. Sidhu himself, however, concludes that the enormous benefits that come with legal education and the privilege of legal knowledge bring with them responsibilities to those without such benefits, and that participation in constitutional literacy programs in poor communities is an effective and appropriate way to fulfill these responsibilities.

In the final article of the symposium, *Teaching the Constitution: An American Tradition*, Charles Crimmins explores the perspectives of two of America's Founders: George Wythe and Thomas Jefferson.<sup>16</sup> These two men, Crimmins explains, "believed constitutional literacy was the responsibility of every citizen and essential to a self-governing society."<sup>17</sup> Using a wealth of historical documentation, Crimmins explores the

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15. Dawinder S. Sidhu, *Civic Education as an Instrument of Social Mobility*, 90 DENV. U. L. REV. 977, 984–92 (2013).

16. Charles J. Crimmins, *Teaching the Constitution: An American Tradition*, 90 DENV. U. L. REV. 1003, 1006–12 (2013).

17. *Id.* at 1003.

relationship between Wythe and Jefferson and examines their shared view that legal education should train lawyers to be public leaders. The citizen lawyer envisioned by these Founders is a central piece of today's constitutional literacy efforts. Crimmins explores how participating in constitutional literacy programs helps both law students and law schools fulfill their obligations in an expanded effort to educate an engaged citizenry.

In all of these articles, echoing Professor Tushnet's remarks in the keynote address of the Rothgerber Conference, the themes of engagement and capacity are central. Whether the focus is on engaging law students in active learning, engaging jurors in their civic responsibilities, or engaging young people in an exploration of the Constitution, the legal system, and their potential for democratic participation, civics education efforts operate with the understanding that factual knowledge is only one piece (and perhaps not the largest piece) of a larger commitment to effective democracy. This understanding brings me back to the interactions that prompted the organization of Twentieth Annual Ira C. Rothgerber Jr. Conference around the theme of public constitutional literacy.

I do not believe we will ever reach a national consensus about the meaning of the Constitution. Although there is in fact only one U.S. Constitution (and not, as my online critic suggests, Obama's Constitution and the "original" Constitution), it is an intentionally open-ended document, designed to survive and evolve with a future the Framers couldn't have predicted. With the strengths of this design come inevitable conflicts about the scope and meaning of the Constitution. Teaching young people about the Constitution and their role in a constitutional democracy does not mean teaching them only the plain language of the document. Instead, it means teaching them about the principles on which our country was founded and giving them the tools to be part of the conversation about what those principles mean today. For law students to participate in that educational process as teachers is both a tremendous public service and an opportunity to learn in an entirely different, deeper, and more complex way. Teaching develops skills—organization and management, communication, and creative problem solving—that are essential for effective lawyering and leadership. And the work that law schools and law students do to facilitate constitutional education is only one piece of the larger project of civics education. Law students who develop a commitment to helping kids develop civic capacity will go on to join a substantial community of lawyers and judges who share the same ideals.



# THE MARSHALL–BRENNAN CONSTITUTIONAL LITERACY PROJECT: AMERICAN LEGAL EDUCATION’S AMBITIOUS EXPERIMENT IN DEMOCRATIC CONSTITUTIONALISM

JAMIN B. RASKIN<sup>†</sup>

## ABSTRACT

The Marshall–Brennan Constitutional Literacy Project is the leading effort in American legal education to mobilize law students to teach high school students about the Constitution and Bill of Rights. This Article traces the development of the project from its beginnings in the 1990s at American University Washington College of Law to its unexpected but dramatic expansion across the country to eighteen law schools today. The Article explains the Marshall–Brennan curriculum, which focuses on Supreme Court decisions addressing the rights of America’s student population in school and in the criminal justice process, and canvasses the essential operational ingredients of Marshall–Brennan chapters thriving all over America. It argues that this project provides functional meaning to the intellectual movement in constitutional law to define a democratic or popular constitutionalism, offering law schools and their students and professors an excellent, practical way to promote constitutional values in their local communities. It further posits that the project offers one compelling answer to the growing cynicism about law schools, which are being vilified for being internally exploitative, socially useless, intellectually self-referential, and indifferent to the community. Finally, the Article contends that, in the post-*Fisher v. University of Texas* age of sharply controlled affirmative action, the project is the most effective pipeline strategy in the land for making a law school education a tangible choice and viable prospect for talented and disadvantaged high school students from all backgrounds.

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<sup>†</sup> Professor of Constitutional Law and Director, Program on Law and Government and Marshall–Brennan Constitutional Literacy Project, American University Washington College of Law; Maryland State Senator; J.D., Harvard Law School, 1987; A.B., Harvard College, 1983. The author wishes to thank his colleagues Maryam Ahranjani and Steve Wermiel, and Marshall–Brennan Constitutional Literacy Project directors all over America for making the dream of the project come alive; Dean Claudio Grossman for his support and encouragement; the faculty of the Washington College of Law and the faculty of Yale Law School, where Professor Raskin was teaching in the fall of 2011 when this Article was first drafted; the magical Mary Beth Tinker; and the Marshall–Brennan Fellows everywhere—past, present, and future. This Article is dedicated to Mrs. Thurgood Marshall, cherished friend and supporter of the Marshall–Brennan project.

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## INTRODUCTION

I remembered a reply Bob Moses once made to a reporter when he was asked, "How do you organize?" "By bouncing a ball," he replied. "What?" asked the puzzled reporter. "You bounce a ball," Bob explained quietly. "You stand on a street and bounce a ball. Soon all the children come around. You keep on bouncing the ball. Before long it runs under someone's porch and then you meet the adults."

—David Dennis, Foreword to *Radical Equations: Math Literacy and Civil Rights*<sup>1</sup>

Apart from concerns about school speech doctrine, constitutional scholars rarely enter the high school classroom. This is a mistake.

—Tom Donnelly, *A Popular Approach to Popular Constitutionalism: The First Amendment, Civic Education, and Constitutional Change*<sup>2</sup>

The French have an amusing expression that came to mind when I set out to write this Article. "Well, yes, we know it works in *practice*," they say. "But does it work in *theory*?"

This ironic question nicely captures the challenge of describing the Marshall-Brennan Constitutional Literacy Project (Marshall-Brennan), which has been working in practice for nearly fifteen years, bouncing a ball across America. The project has a dynamic presence in eighteen law schools where Marshall-Brennan chapters have organized to teach thousands of students in dozens of high schools from New Jersey to California, from Louisiana to Minnesota. It has produced impressive results for these lucky high school students who have studied with the Marshall-

1. David Dennis, *Foreword* to ROBERT P. MOSES & CHARLES E. COBB, JR., *RADICAL EQUATIONS: MATH LITERACY AND CIVIL RIGHTS*, at xiv (2001).

2. Tom Donnelly, *A Popular Approach to Popular Constitutionalism: The First Amendment, Civic Education, and Constitutional Change*, 28 QUINNIPIAC L. REV. 321, 327 (2010).

Brennan Fellows (Fellows), the law students whose own educations have been enriched and transformed by their commitment to teach younger contemporaries about the Constitution and the Bill of Rights.

Yet the project has never received an extended academic presentation or defense. Even more surprisingly, although its champions and supporters are legion across America, significant numbers of legal scholars, deans, and students still have not even heard of it. This Article seeks to open a broader discussion about this surging movement for constitutional literacy that has, in short order, brought law schools and high schools together in positive ways in communities all over America.

It is an especially valuable moment to explain the project because law schools are under attack everywhere for being selfish, greedy, deceptive, exploitative, parochial, self-referential, and indifferent.<sup>3</sup> Ask any dean and you will be told: these are dark days for legal education in America, and many people who work in it are simply hunkering down and praying that the storm of criticism passes over.<sup>4</sup>

But this Article offers an expansive margin of hope amid all the gloom about the future of legal education. While many law schools are huddled in a defensive cocoon, the law schools investing energy in the Marshall–Brennan project are propelling a national movement for constitutional literacy that is doing remarkable public service by transforming the endlessly lamented but never seriously confronted civic and constitutional ignorance of the American public. The project harnesses the idealism, energy, and knowledge of law students to improve in systematic ways the constitutional intelligence of the high school students involved. Law school chapters send the Fellows into nearby public high schools to teach their students a detailed course about the Constitution and Bill of Rights. The course focuses on how constitutional values and rules apply to conflicts that take place in the public school setting or within the juvenile justice system, familiar and paradigmatic contexts that open up the world of constitutional thought in immediately understandable ways. The results of this targeted curriculum have been startling and, if replicated and expanded, could become the basis for vastly improved constitutional literacy in hundreds of communities across America.

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3. Law schools are being characterized on the Internet as greedy and corrupt rackets focused on the goal of raking in bucks. See, e.g., David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES, July 17, 2011, at B1; *Greed*, INSIDE L. SCH. SCAM (Aug. 10, 2012, 2:34 PM), <http://insidethelawchoolscam.blogspot.com/2012/08/greed.html>; Elizabeth G. Olson, *Law School Fuzzy Grad Jobs Stats: A Federal Offense?*, CNNMONEY (Mar. 16, 2012, 10:20 AM), <http://management.fortune.cnn.com/2012/03/16/law-school-fuzzy-grad-jobs-stats-a-federal-offense>. See generally THIRD TIER REALITY, <http://thirdtierreality.blogspot.com> (last visited Apr. 23, 2013).

4. See Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 31, 2013, at A1; Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES, July 14, 2012, at SR10.

High school students served by Marshall–Brennan not only master essential constitutional concepts relating to the Bill of Rights and constitutional structure but also learn a key rhetorical skill for participating in American life: how to think, argue, persuade, and reason with one’s fellow citizens in ways that draw on core constitutional values. Moreover, the high school students served by the project enter into extended contact with law students, legal thought, and judicial process. Many make the intellectual and social connections that convince them—and help them—go to college; some will even end up on the path to law school, which we insist is not an ignoble trajectory even though it is obviously not going to be for most young people.

Meantime, the Fellows achieve life-changing benefits of their own in the contested terrain of the public school classroom. Teaching young people the processes of constitutional reasoning, they deepen in impressive ways their own understanding of constitutional law. Moreover, they learn about the complex institutional life of American public schools, where much of American constitutional law has been worked out and continues to develop. In the course of the experience, many of the Fellows will encounter judges who they will come to clerk for, school system lawyers or private education law attorneys who they will be recruited to join, or public school communities they will continue to assist. Similarly, the law professors involved in teaching the Fellows not only send out but also receive back big waves of constitutional learning. The project offers a paradigm of *democratic constitutionalism in action* because the locus of the project’s constitutional discourse moves back and forth from the courts and the law schools to the high schools and the greater community, allowing for a much richer process of legal training for the Fellows and “constitutional absorption” for the high school students.<sup>5</sup>

In Part I, I describe the history of the Marshall–Brennan Constitutional Literacy Project, both in Washington, D.C., and in its unfolding national expansion. I also describe the essential operating principles of local chapters and the basic dynamics of study and action that occur in the course of the school year. In Part II, I argue that the project is potentially the most significant institutional projection of the movement among constitutional scholars to define and strengthen democratic and popular constitutionalism in American life. This is a movement that includes both scholars, like Robert Post and Reva Siegel, who seek to “protect constitutional ideals under conditions of constitutional conflict” by

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5. The model of “constitutional absorption” is suggested by Tom Donnelly, who argues that the textbooks and lessons offered to high school students about constitutional law and process are key avenues for both the transmission and “absorption” of constitutional values and ideals. See Donnelly, *supra* note 2, at 357.



securing the people's role in the cultural process of "norm contestation,"<sup>6</sup> and those, like Mark Tushnet, who seek more radically to "take the Constitution away from the Courts."<sup>7</sup> I argue that the constitutional literacy movement propelled by Marshall–Brennan speaks comprehensively to the call for a democratic and popular constitutionalism and has already begun to benefit American democracy by uplifting public understanding of the Constitution in targeted areas. When law students work with high school students in the project, the high school students (and often their families) not only gain a sense of greater civic knowledge and capacity in their school environment but also learn to participate over the course of their lifetimes in realizing constitutional values. Because Marshall–Brennan awakens passionate civic interest in many young people who are accustomed to being the objects and victims of law rather than its authors and agents, the project is also the model pipeline strategy for identifying and nurturing poor, working-class, African-American, and Hispanic high school students who may want to explore legal education as a professional pathway.<sup>8</sup> In the course of this exciting educational process, the project links law schools to the daily life of the communities that surround them. Overall, the Marshall–Brennan project offers the chance to make the high-minded and abstract promise of popular constitutionalism not a passing academic theory but an enduring pragmatic commitment and continuing project for thousands of people in different social and institutional situations.

In Part III, I explain how the project offers a strong counter-narrative to the toxic assumptions about what legal education has become and what it must be today. The Fellows are providing a lively, pragmatic, and experimentalist answer to the acid cynicism being poured down on legal education, debunking the claims that law schools are categorically insular, selfish, exploitative, and interested only in preparing students for corporate law firm jobs that no longer exist.

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6. Robert Post & Reva Siegel, *Roe Rage: Democratic Constitutionalism and Backlash*, 42 HARV. C.R.-C.L. REV. 373, 377, 381 (2007).

7. See e.g., MARK TUSHNET, *TAKING THE CONSTITUTION AWAY FROM THE COURTS* (1999).

8. See Sarah E. Redfield, *The Education Pipeline to Law School—Too Broken and Too Narrow to Provide Diversity*, 8 PIERCE L. REV. 347 *passim* (2010) (providing analysis of diversity statistics of both the U.S. and law school populations).

I. "IF WE CAN DO IT"<sup>9</sup>:

## THE HISTORY OF THE CONSTITUTIONAL LITERACY PROJECT

A. "Very Heated and Controversial": *Suppression of Student Speech About Same-Sex Marriage in 1996*

Every Marshall–Brennan Constitutional Literacy Project at each of the eighteen law schools involved has its own story to tell, each one intricate and suspenseful in its own way. But the one that I know best relates to the original project at American University's Washington College of Law (WCL), which launched in 1999 and became the working model for all the others. The WCL chapter has also become the organizing home for the national Marshall–Brennan Constitutional Literacy Project, which has worked to nourish the other law school chapters, to promote constitutional literacy as a cause within the law schools and the country, and to provide leadership for the national Marshall–Brennan moot court competition and other cooperative endeavors.<sup>10</sup>

The origins of the project lie with the outbreak of a highly charged public conflict in a suburban school system over the meaning of freedom of speech in the school setting. It began for me with a phone call that I received in 1996 from Jake Milstein, who was a senior at Montgomery Blair High School in Silver Spring, Maryland, and the son of my colleague Elliott Milstein, then the dean of WCL. Jake was a student in Blair's Communication Arts Program (CAP) and participated in the production of a monthly television talk show for Montgomery County Public Schools' cable channel called *Shades of Grey*, which featured debates on public policy issues. The show had been running on the county's Channel 60 for many years according to a signed agreement between CAP and the channel managers.<sup>11</sup>

Jake called because the managers were refusing to run the October episode that featured a debate between two prominent liberals and two prominent conservatives over whether gays and lesbians should have the right to marry. The discussion, clearly ahead of its time, was civil, lively, and fascinating; the CAP teacher, Christopher Lloyd, praised the show's general excellence (if not its primitive lighting techniques).<sup>12</sup> But the Montgomery County Public Schools authorities insisted on previewing a tape of the show—although this was not their ordinary practice—and, having seen it, concluded that it was "inappropriate" and too "hot" for

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9. See *The Principles and Structure*, ALGEBRA PROJECT, <http://www.learn2question.com/seevak/groups/2001/sites/moses/ap/principles-page2.htm> (emphasis added) (last visited Apr. 23, 2013).

10. See *The Marshall–Brennan Constitutional Literacy Project*, AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan/> (last visited Mar. 22, 2013).

11. JAMIN B. RASKIN, *WE THE STUDENTS: SUPREME COURT CASES FOR AND ABOUT STUDENTS* 64 (2d ed. 2008).

12. *Id.*

the audience.<sup>13</sup> They particularly disfavored the parts of the debate that involved guests voicing their perspectives on God and the religious implications of same-sex marriage.<sup>14</sup>

On October 23, 1996, Barbara Wood, the program director for Channel 60, sent an e-mail to Mr. Lloyd and the students explaining the decision not to run the show: “We felt that the gentleman who was a guest on the show [Dr. Frank Kameny] brought up the issue of religion and God in a very heated and controversial manner. . . . We both felt it would be inappropriate to air the program for that reason alone.”<sup>15</sup>

School authorities had apparently reacted negatively to a colloquy that took place when the student host asked a question about the basis of the guests’ views on same-sex marriage. One of the conservative guests, Paula Govers, press secretary for Concerned Women for America, introduced religious faith to the discussion:

GOVERS: The Concerned Women for America believes that marriage is an institution sanctioned by God, licensed by the state, specifically between one man and one woman, and specifically for the purpose of procreation and should be a covenant between two people that should be a lifetime commitment.

This comment prompted the liberal guests, Dr. Frank Kameny of the Washington, D.C. Gay and Lesbian Activists Alliance and Judith Schaeffer of People for the American Way, to respond:

KAMENY: Paula, you said that the First Amendment guarantees us freedom of religion, and we all have our own views of God. My God gave us homosexuality as a blessing given to us by our creator God to be enjoyed to its fullest—exultantly, exuberantly, joyously. My God sanctifies same-sex marriage even if your God does not, and we are both American citizens and both Gods deserve equal recognition from our—not your—our government.

SCHAEFFER: That’s exactly what the First Amendment requires. The government cannot legislate religious beliefs.

KAMENY: If you don’t want to enter into a same-sex marriage, don’t. But don’t tell us just because your God doesn’t sanctify it, my God is to be ignored.

GOVERS: Dr. Kameny, you said that your God does sanctify these unions. So your religious beliefs would say it’s a good thing and our religious beliefs would say it’s not. Why does your view get to trump ours?

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13. *Id.*

14. *Id.* at 65.

15. *Id.*

KAMENY: It does not. If you believe that, you have an absolute right not to enter into a same-sex marriage.

KRIS ARDIZONNE (the other conservative guest and legal director of the Eagle Forum): But my taxpayer dollars go to pay for the institution of marriage. And we don't believe in it.

KAMENY: And so do the tax dollars of gay people go to pay for marriage as well.<sup>16</sup>

Although Mr. Lloyd and Dr. Philip Gainous, the Blair High School principal, considered this spirited exchange of views enlightening, the Montgomery County Public Schools' cable managers, who reported to Superintendent Jerry Weast, deemed it "inappropriate" for the mostly adult audience of the cable channel.<sup>17</sup> As did the principal in *Tinker v. Des Moines School District*,<sup>18</sup> the nervous cable managers saw the threat of "disruption" breaking out everywhere. In both cases, education authorities who could not handle the idea of minors expressing themselves on a profound national problem—the Vietnam War or whether gay people should be permitted to marry—tried to erase all signs of the offending speech and ideas.

Jake and his classmates Andrea Merriam and Andrea Stuart asked whether I would be willing to represent the class (on a pro bono basis) to defend their right to have the show run pursuant to the letter agreement they had with the school system. I readily agreed to help.

My representation began by explaining to the students what the Supreme Court had decided about how the First Amendment affects their rights at school: the seminal *Tinker* case, the restrictive and regressive decisions in *Hazelwood School District v. Kuhlmeier*<sup>19</sup> and *Bethel School District No. 403 v. Fraser*,<sup>20</sup> and finally, the promising *Rosenberger v. Rectors and Visitors of the University of Virginia*,<sup>21</sup> an especially important case for us because it established that public institutions cannot discriminate against student speakers on the basis of the religious content and viewpoint of their speech.<sup>22</sup> We also read a few relevant Fourth Circuit decisions that were somewhat less favorable to our case. It was an intensive First Amendment workshop.

Despite the fact that these were bright honors students who had been selected for a competitive language and communications program, they had never heard of any of these decisions and indeed were uncertain

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16. *Id.*

17. *Id.* at 64.

18. 393 U.S. 503 (1969).

19. 484 U.S. 260 (1988).

20. 478 U.S. 675 (1986).

21. 515 U.S. 819 (1995).

22. *Id.* at 845-46.

as to whether high school students, as one of them put it to me, “have any rights at all. I mean, we’re in school, right?”

The students were galvanized by our review of Supreme Court authority explaining that students assuredly do have constitutional rights. They were especially moved by the doctrines of content and viewpoint discrimination, which gave them a language to describe their frustration. They were convinced that they were being censored because of what the guests on the show were saying and because the school system believed that the public could not handle an honest discussion in which articulate people advocated same-sex marriage.

The students quickly turned our impromptu seminar into strategy sessions for some old-fashioned community organizing. Although I had wanted to go straight to court, they wanted to appeal the school superintendent’s censorship decision through school system channels, and this proved to be a wise decision indeed. They proceeded to make dozens of videotaped copies of the censored show and gave it to their principal, their parents, parent-teacher association (PTA) leaders, journalists from the *Washington Post* and *Washington Times*, National Public Radio, and the school board members who would render a decision on the superintendent’s actions. They then lobbied and collected statements of support not just from their teacher, who had always backed them, but also from their principal, Dr. Gainous, who became a strong ally. They soon won resolutions of support from the Blair PTA and student council, other local high school PTAs and student councils, and local officials and prominent Blair alumni, like journalist Carl Bernstein. By the time we submitted formal arguments to the Montgomery County Board of Education, the political context had been transformed by the educational campaign that the students had undertaken with their peers, their teachers, and the community.

Before the Montgomery County Board of Education, we argued that the decision to censor the show violated both county policy and the First Amendment by discriminating against a speaker because of his religious views. We quoted the Supreme Court’s decision in *Rosenberger*, which struck down the University of Virginia’s practice of subsidizing student journals that had secular points of view but withholding funds from those that had a religious point of view.<sup>23</sup> The Court there found: “The government must abstain from regulating speech when the specific motivating ideology, or the opinion or perspective of the speaker, is the rationale for the restriction.”<sup>24</sup> The students argued that the school system’s cable managers objected to “the gentleman who was a guest on the show” who

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23. *Id.*

24. *Id.* at 829.

“brought up the issue of religion and God in a very heated and controversial manner,” which of course he had every right to do.<sup>25</sup>

When the school system responded that *Hazelwood* gave it the right to edit and censor student speech, the students had an answer. Because the actual educators in this case—the CAP media teacher and the Blair principal—both favored broadcast of the show, the school system could not claim under *Hazelwood* that its actions were “reasonably related to legitimate *pedagogical* concerns.”<sup>26</sup> The *teachers* in this case were strongly opposed to the school system’s censorship, which had nothing to do with *student learning* and everything to do with a predicted adverse *audience reaction*.

At a boisterous public meeting, the Montgomery County school board voted 4–3 to reverse the superintendent’s decision to stand by his cable channel managers. The board also voted to air the show more than a dozen times, and to broadly advertise the broadcast.<sup>27</sup> It was a sweet win for the students and their teacher, all of whom had been demoralized by the original squelching of the broadcast. The icing on the cake for the students was that their work on the show was given an A by Mr. Lloyd as a superior piece of broadcast journalism. Their principal, Dr. Gainous, soon thereafter won an award from the Freedom Forum for standing up for the First Amendment rights of his students.<sup>28</sup>

After these events, I was besieged by high school students raising serious in-school constitutional issues: random stop-and-frisks in the classroom, orders from a principal to cover up a tattoo, prayers on the loudspeaker at basketball games, unequal access to Advanced Placement courses, and so on. It suddenly became clear to me that our public schools are a terrain of continuing disputation about the rights and responsibilities of young people and the meanings of democratic citizenship. Only a small fraction of school-based conflicts ever go to court, and the tiniest fraction of those that do will reach the Supreme Court. In the main, the profoundly interesting controversies that take place at school are worked out by teachers, students, parents, principals, school boards, city councils, and state legislatures in arenas that are galaxies away from the Supreme Court. Conscious or not, this is the vaunted popular and democratic constitutionalism in action.<sup>29</sup>

There was no practical way that I could respond to these entreaties and wade into all these controversies, but one source of the problem had

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25. RASKIN, *supra* note 11, at 66.

26. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) (emphasis added).

27. RASKIN, *supra* note 11, at 66.

28. See *Newseum Presents 1st Annual Courage in Student Journalism Awards*, FREEDOM FORUM (Apr. 14, 1998), <http://www.freedomforum.org/templates/document.asp?documentID=6424>.

29. For the most fully developed theory of popular constitutionalism, see TUSHNET, *supra* note 7, at 177–94.

become disturbingly clear: the high schools that should be *teaching* students about their rights were instead too often *trampling* their rights. Neither teachers nor students had been even casually informed, much less seriously educated, about the thick body of Supreme Court precedent interpreting the constitutional balance of rights and responsibilities in the school community. This educational failure meant that neither students nor teachers nor administrators nor parents nor the broader community had even the most elementary conceptual framework for addressing the conflicts that are a recurring and unavoidable part of the educational process. This failure to prepare members of the school community for predictable conflict over rights and responsibilities represented not just a self-inflicted wound in terms of school management, but also a missed, glorious teaching opportunity and, therefore, a kind of deep educational malpractice and social failure.

*B. "We the Students": A Curriculum and Strategy Are Born*

I resolved in the aftermath of the *Shades of Grey* victory to undertake two related projects: (1) to write a book that would compile and explain the major Supreme Court decisions and public controversies involving students in public school; and (2) to create what I hoped to call a "constitutional literacy" project at American University Washington College of Law, my home school, that would deploy the magnificent energy and creativity of our law students to educate area high school students about the Bill of Rights and our constitutional system and values.

The idea behind the book *We the Students*—which was sponsored by the Supreme Court Historical Society and first published by Congressional Quarterly Press in 2000—was to provide a clear and scrupulously evenhanded casebook that could become the basis of a new curriculum for high school students to learn about the Constitution and the Supreme Court through the cases that affect them most directly.<sup>30</sup> "[H]igh school teachers still rely heavily upon textbooks for both homework assignments and the content of their classroom instruction,"<sup>31</sup> and any effort to infuse the curriculum with serious constitutional ideas would require a new foundational text, not simply a textbook with answers but a casebook with theoretical texture and hard questions. Such a casebook would also be a resource for students, teachers, parents, and others to consult about the controversies that recurrently arise in the school context.

The even more ambitious idea of a constitutional literacy project—to have law students teaching high school students about constitutional values, process and rules, and to engage them constantly on issues of constitutional moment in their own lives—reflected the fact that most

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30. See RASKIN, *supra* note 11, at ix.

31. Tom Donnelly, Note, *Popular Constitutionalism, Civic Education, and the Stories We Tell Our Children*, 118 YALE L.J. 948, 972 (2009).

school systems are neither taking constitutional education seriously nor equipped with the personnel or resources to make it happen if they were. The idea of taking direct action—using a surplus of constitutional consciousness among law students to correct a deficit of constitutional understanding among high school students—was inspired by the remarkably nimble work of the great civil rights organizer and mathematician Bob Moses.

Moses's career has involved cutting across and through existing institutional forms in society by mobilizing the idealistic energy of the young to produce intellectual and moral progress for disadvantaged and disempowered people. His career has taken him from being a math teacher to a Harvard philosophy Ph.D. student to the visionary organizer of the Student Nonviolent Coordinating Committee and Freedom Summer in Mississippi to initiating the Algebra Project in the 1990s.<sup>32</sup> He has made the best ideals of the Enlightenment come alive for millions of Americans stuck at the bottom of entrenched hierarchies of power, wealth, and knowledge. His death-defying voter registration work in Mississippi in the early 1960s developed the aspirational political language of "one person one vote," which became the "radical equation" that came to redefine American politics and social life after the civil rights movement.<sup>33</sup> Moses's current project building a grassroots social movement to teach algebra to elementary and middle school students in Mississippi and other parts of the South is giving countless Americans a new foundation for personal success, saving them from the demoralizing and disabling experience of being mathematically ignorant in the new century.

In his indispensable book *Radical Equations*, Moses explained the need for community organizers to find principles that establish a "minimum of common conceptual cohesion"<sup>34</sup> in the community of the dispossessed and then to identify what he called the "crawl space"<sup>35</sup> for progress within existing institutional channels to advance those principles in society. In the early civil rights movement, the organizing idea was one person-one vote, and the crawl space was the tiny window of opportunity opened up by the 1957 Civil Rights Act creating the Civil Rights Division in the U.S. Department of Justice. The movement found expression in the personal courage of young people active in the movement in Mississippi, as well as in the grassroots encouragement they drew from the community.<sup>36</sup> In the Algebra Project, the central idea is advanced math

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32. See MOSES & COBB, *supra* note 1, at 91-92.

33. See *Reynolds v. Sims*, 377 U.S. 533, 586-87 (1964); see also *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (proclaiming as formal equal protection doctrine the civil rights movement's principle of "one person one vote," over the vehement protests in dissent of conservative Justices that the Constitution guaranteed no such thing).

34. See MOSES & COBB, *supra* note 1, at 91.

35. *Id.* at 92.

36. See *id.* at 91-92; see also BIANCA DUMAS, ROBERT PARRIS MOSES 25-39 (2003).



literacy for all; the crawl space comes from relationships to schools that permit the project—made up originally of “outsiders”—to enter, teach, and recruit new generations of algebra teachers and experts.

The Marshall–Brennan project was inspired by Moses’s conceptual model of community organizing as a form of participatory and inclusive public education. The project’s core principle is simple: in a democracy, the Constitution belongs to everyone. The corollary was invoked long ago by both Justice Thurgood Marshall and Justice William Brennan, the namesakes of the project: to become capable and effective democratic citizens, young people need to study and understand the Constitution and Bill of Rights.<sup>37</sup> Meantime, to become the kind of lawyers that America needs—public citizens who teach, lead, and seek justice—law students should help even younger people come to terms with their place in our constitutional life.

Our crawl space was found originally in our law school’s partnership with the Washington, D.C. area’s public schools, which proved to be in great need of the energy of law students. Our inspiration was anchored in the instinctive solidarity between law students and high school students—young people at different stages of adolescence navigating the twists and turns of a very competitive and complex society.

Several colleagues at WCL immediately took to the idea and helped bring it to life. The first was Steve Wermiel, a constitutional law professor and Justice William Brennan’s authorized biographer.<sup>38</sup> Professor Wermiel recovered old speeches and articles by Justices Brennan and Marshall (discussed below) that had emphasized the importance of educating young people on constitutional basics to promote constant renewal of our civic culture. He arranged for meetings between us and Mrs. Thurgood Marshall and Mrs. William Brennan, the widows of the two great liberal Supreme Court Justices, both of whom pledged their gracious help in creating this living memorial to their late husbands and warmly endorsed the idea of calling it the Marshall–Brennan Constitutional Literacy Project. Later, Professor Wermiel would become the associate director of our Program on Law and Government assigned to run the Marshall–Brennan project. He came to innovate many of the most attractive features of the project, including partnerships with law firms and visits to Supreme Court oral arguments for the high school students in our classes, something that had never taken place before, as far as we can tell, in the history of Washington, D.C.

Another key force in the project was Maryam Ahranjani, a brilliant WCL student who—to our everlasting shame—was rejected for the pro-

37. *Faculty: Stephen Wermiel*, AM. U. WASH. C.L., <http://www.wcl.american.edu/faculty/wermiel/> (last visited Apr. 23, 2013).

38. *See generally* SETH STERN & STEPHEN WERMIEL, *JUSTICE BRENNAN: LIBERAL CHAMPION* (2010).

ject when she applied to be part of the first class (we have taken our own selection processes with a grain of salt ever since). Fortunately, she did not allow this to deter her; she reapplied, was accepted, and proceeded to become a clever teacher who lit up every classroom she entered and showed how the Marshall–Brennan experience could be the catalyst for revitalizing the high school experience in desultory school environments. When we convinced Maryam to stay on at WCL to work with Marshall–Brennan, she upgraded the curriculum, built strong ties with the high schools, and created a fierce *esprit de corps* among the Fellows. She began teaching the law school seminar in 2003 and continues to refine its utility in training and supporting the Fellows. In 2009, she joined WCL full time as the new associate director of the Marshall–Brennan project and an adjunct professor teaching the Fellows’ seminar. Over the years, she has built a strong programmatic infrastructure and managed the rapid national expansion of the program.

A final significant supporter who deserves mention is Mary Beth Tinker, the subject of the Supreme Court’s decision in *Tinker*, which was the zenith of the Court’s commitment to political free speech in school. Mary Beth, who is today a professional nurse, union organizer, and champion of young people’s rights, has lost none of the incandescent passion for justice and peace that made her a symbol of defiant free speech when she was barely a teenager in the 1960s. When we contacted her, she offered to help immediately and has been a staunch ally and participant in the work of the Marshall–Brennan project ever since, not just in Washington, D.C., but all over the country.

The WCL chapter launched formally in September of 1999, with Mrs. Marshall and Mrs. Brennan on hand to cheer on the first class of Fellows. That fall semester we sent twenty-five law students who had excelled in constitutional law into District of Columbia public high schools to teach the first course in constitutional literacy to whatever schools and classes were willing to take a gamble on the program. Several of the principals we first spoke with were skeptical. As one of them said, “Wait a second, you want to send law students into my high school to teach them about their rights? I don’t think that’s a very good idea.” But we insisted that all rights imply responsibilities—if I have a right, that means that *you* have the same right, and I have a responsibility to respect it. On this theory, teaching young people about the system of rights and responsibilities can only lead them to become effective citizens of the community. A sufficient number of principals and social studies coordinators were convinced for us to gain a foothold. As the years have passed, many more schools have realized the wisdom of teaching students about rights and responsibilities together—and as soon as possible. Today, Washington, D.C.-area schools clamor to get aboard the program, which is never able to fully meet demand. In our class-

rooms, the union of rights and responsibilities continues as a mantra and guiding philosophy.

The second- and third-year law students we named as the original Fellows were selected through a competitive application process. Although they had no real textbook yet, no seminar to back them up, and little of the support and resources that we would come to provide their successors, they were thrilled to be part of this ambitious experiment. Teaching constitutional law made them masters of the field: as they quickly discovered, the best way to learn material is to teach it to someone else, and the intellectual clarity and creativity that teaching forced upon them benefitted them as law students. Teaching a mostly working-class and impoverished population also gave Fellows a powerful sense of commitment to the local community, and to using their education for broader purposes of social reconstruction.

Over the years, the essential component parts of the project came into place as we built on our strengths, filled in gaps, learned from the Fellows and their students, and replaced weak features of the program. When I finished writing *We the Students*, the Fellows finally had a common curriculum from which to teach and build upon. The book covers the waterfront in a doctrinal sense but zeroes in on the Supreme Court decisions affecting public school students directly: drug testing of student athletes, censorship of student newspapers and yearbooks, segregation and desegregation, corporal punishment, affirmative action, the rights of students with disabilities, prayer in the classroom and on the football field, sexual harassment, and Title IX and girls' sports. The excerpted opinions in these decisions lead to questions, hypotheticals, role plays, and the kinds of constitutional brainteasers that fill up law school lecture halls but now ricochet off the walls of high schools, too.

In addition, Maryam Ahranjani and I soon collaborated with a gifted public defender named Andrew Ferguson, now a professor at the University of the District of Columbia David A. Clarke School of Law, on another book that is being used with great success in the project, *Youth Justice in America*, which explores the rights of young people caught up in the criminal justice system.<sup>39</sup> High school students are fascinated by criminal justice, and many of them, alas, have already interacted in uncomfortable ways with the police or even been arrested and found responsible for a juvenile offense and committed to a juvenile facility. This book and its attached curriculum shift the object of study from the constitutional framework governing young people in high schools to the constitutional framework governing young people in police-suspect interactions, criminal courtrooms, and juvenile detention facilities. And so, just as we teach the conflicts that occur in the schoolhouse, we teach the con-

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39. JAMIN B. RASKIN ET AL., *YOUTH JUSTICE IN AMERICA passim* (2005).

flicts that occur on the street and in the jailhouse. On this pathway we are hardly trailblazers because the pioneering Street Law program has been working since 1972 to educate young people about the criminal justice system and street interactions between police and citizens.<sup>40</sup>

At WCL, we now choose between forty and sixty Fellows each year in what remains an intensely competitive and selective process. At our school, serving as a Marshall–Brennan Fellow carries the prestige of being a member of the law review. Indeed, many students engage in both of these activities at once (and, to be sure, not much else).

The Fellows teach mostly in pairs, with a returning Fellow being joined by a new Fellow whenever possible. This arrangement permits Fellows to help each other develop their skills and authority in the classroom, divide up lesson plans, and spell one another when it gets close to law school exam period. The Fellows generally teach twice or three times per week and have the classroom and the class to themselves; only rarely do they have a teacher-observer in the room. They are responsible for all lesson planning, class management, and grading. They meet with parents on back-to-school night. They are, in every practical sense, and certainly in the eyes of their students, real teachers. One of my colleagues at WCL, Professor Robert Vaughn, once said to me, “I always know when I’ve called on one of your Marshall–Brennan Fellows in class because they start off by saying, ‘there are three essential things you need to understand about this decision.’ These law students sound like law professors.” In a certain sense, of course, that is what they become over the course of their fellowships.

The Fellows are enrolled in a weekly advanced constitutional law seminar with one or two constitutional law professors who lead them through the analysis of the cases that they themselves will be teaching. Professor Wermiel and I taught together for the first several years, combining relevant doctrinal coverage of the First, Fourth, Eighth, and Fourteenth Amendments and theoretical analysis of trends on the Court with detailed discussion of what was happening in the Fellows’ high school classes. Today, Maryam Ahranjani teaches the class. In the part of class devoted to rounds, a practice borrowed from our colleagues in the WCL clinics, we canvass how things are going in the classes and discuss teach-

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40. The original and still dynamic Street Law program is headquartered at Georgetown University Law Center, and the general curriculum for the program now extends far beyond criminal law and procedure to landlord–tenant law, consumer law, other fields of domestic law, and international human rights law. The Marshall–Brennan project differs in its overriding focus on American constitutional law and the decisions within it that affect the lives of students and young people. Also, the Marshall–Brennan project only proceeds by sending law students as part of a formal curricular program to teach complete and recognized courses in public schools; some of the Street Law programs are just like that, but in many law schools Street Law is a volunteer student project in which law students may visit high schools once a month for a lecture or exercise. The Marshall–Brennan project has enjoyed a friendly and exciting collegial relationship with Street Law ever since we launched, and in many communities the two projects work hand in hand as partners.

ing methods, syllabi, class planning, homework, memory devices, testing, grading, discipline, disabilities, the dynamics of race and gender in the classroom, how to interact with school bureaucracy, and what to do with students facing extracurricular problems, such as pregnancy or family dysfunction. In my experience, the doctrinal and rounds portions of the class reinforce each other and often bleed together once students get comfortable integrating their teaching experience with the substance of the class and their understanding of the cases with the experience of teaching.

Marshall–Brennan seminars continue to have this dual character, canvassing both the “formal curriculum” of the classes we teach and the “informal curriculum” of everything else that happens in school.<sup>41</sup> This double vision is fitting, of course, because the standard Marshall–Brennan curriculum, as found in *We the Students*, is a study of Supreme Court cases that focus on the non-curricular life or perhaps the near-curricular life of the school—subjects like segregation, desegregation, and affirmative action, the suppression of student political speech, prayer in the football huddle, and the censorship of student newspapers. In this sense, the Marshall–Brennan project is making the lived experience of students and teachers in school itself the object of reflective academic study and debate. They are learning not only about what is being deliberately taught but also about the social and context of their education.

As an exercise in constitutional inquiry, the Marshall–Brennan curricula, by definition, “teach[] the conflicts”—the sharp intellectual controversies in the Court and in the country over competing interpretations of constitutional law and democracy.<sup>42</sup> At the same time, the Fellows are teaching the constant tension between the law-on-paper as embodied in Supreme Court decisions and the law-on-the-ground as experienced by young people. Thus, a recurring theme in our Equal Protection instruction in Washington, D.C., is how to teach the normally triumphal narrative surrounding *Brown v. Board of Education*<sup>43</sup> and its local companion case of *Bolling v. Sharpe*<sup>44</sup> in a city where the vast majority of African-American students go to public schools with no white students. One of the Fellows reported to our seminar that, after teaching *Brown* in the conventionally heroic fashion to his class, one of his high school students

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41. I am borrowing this distinction from John Dewey, who distinguished between the “formal curriculum” of schools, which is what we set out to teach students in class, and the “informal curriculum,” which is what students learn from everything else that takes place in school, including how teachers treat students, how the school treats the teachers, the janitors and other personnel, and how students experience the school day. MYRA POLLACK SADKER & DAVID MILLER SADKER, *TEACHERS, SCHOOLS, AND SOCIETY* 190–95 (10th ed. 2013).

42. See generally GERALD GRAFF, *BEYOND THE CULTURE WARS: HOW TEACHING THE CONFLICTS CAN REVITALIZE AMERICAN EDUCATION* 144–70 (1992) (describing the pedagogical method of “teaching the conflicts” with regard to controversial subject matter and competing approaches to contested academic disciplines and values).

43. 347 U.S. 483 (1954).

44. 347 U.S. 497 (1954).

deflated all of his grandiose rhetoric by saying, “But that’s not the law, Mr. Lerum, because we have ‘separate but equal’ schools in D.C., don’t we?” Similarly, Fellows often encounter cognitive dissonance when telling students what their Fourth Amendment stop-and-frisk rights are in theory but advising them, in practice, how to respond safely to sharp police orders in the street.

In the development of the project’s curriculum, the fall and spring moot court competitions, which focus on cutting-edge school-related problems like the exclusion of gay couples from the senior prom or the punishment of students for off-campus Internet speech vilifying administrators, have steadily taken center stage.<sup>45</sup> The local moot court competitions that take place across the country now flow into a springtime national moot court competition, where local chapters send their finest teams to compete. The national competition has rotated between Washington—where students are able to take in visits to the Supreme Court, the Capitol, and the monuments—and Philadelphia, where we have been hosted by the thriving chapter at Drexel University Earle Mack School of Law, and feted at the National Constitution Center, and taken to Constitution Hall. The students have impressed and dazzled judges on the U.S. Court of Appeals for the Third Circuit and local Pennsylvania state court judges. Mary Beth Tinker has been an exuberantly received presence at these events. Over the years, the level of performance by high school students has been outstanding and often astounding to the judges.<sup>46</sup>

The moot court competition has become a key learning device and a central part of the rhythm of most Marshall–Brennan classes. Fellows report that many students who were passive before moot court training become energized and engaged after putting themselves in the role of

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45. Fellows and faculty from around the country develop a moot court problem for the high school students based on significant topical developments in schools. High school students learn the moot problem and its underlying precedents and then compete in their classes, with Fellows bringing in other law students to judge the competition. At the next level, the highest performers come to WCL on a Saturday to do their oral arguments before lawyers, law students, Marshall–Brennan alumni, and law professors; and, in the final rounds, the top performers argue before federal district and appellate court judges at the United States District Court for the District of Columbia. Federal judges participating in the past have included Federal Circuit Judge Sharon Prost, whose son was in a Marshall–Brennan class at Woodrow Wilson High School in Washington, D.C., and U.S. district court Judges John Facciola, William Royal Furgeson Jr., Juan Sanchez, Joel Schneider, Emmett Sullivan, Reginald Walton, and many others.

46. One 2009 high school winner, a junior on the Arizona State University chapter’s team, appeared with teammates all over the Philadelphia press after she startled the judges and audience with her poise, eloquence, and brainpower. See Valerie Russ, *71 Students From 7 Cities Get Taste of Law in Moot Court Here*, PHILA. DAILY NEWS, Mar. 23, 2009, at 12. There is something thrilling about watching high school sophomores and juniors answering questions about the appropriate level of scrutiny to be applied under equal protection, whether a school can justifiably promote heterosexuality over homosexuality, or whether a student council election constitutes a limited public forum or a nonpublic forum under the First Amendment. The experience reminds us that constitutional concepts and terms do not comprise a foreign language inaccessible to young people or non-lawyers generally. Law follows the general rules of logic, rhetoric, and common sense, and bright young people can quickly assimilate its structure and terminology.

appellate lawyers and being treated as serious public actors with something original and important to say in their own voices. We know that many of our high school students have been transformed by the experience, which calls on speaking and thinking skills normally untapped in high school. We often hear from parents and families that the complex challenge of doing moot court has turned their sons and daughters into confident and self-possessed speakers.

At the same time, the intellectual excitement and high hopes raised by this intense experience can leave some students disappointed if they lose in the final rounds or fail to advance. Thus, we emphasize that community and competition in our program go hand in hand. There will be academic and personal disappointments aplenty in the average high school student's career, and the last thing we want to do is add more negative stress. We take pains not to exalt competition over community, and we insist that the competitive dimension of the project is there only to spur hard work, group study, and intellectual achievement. Competition without community can be destructive, just as community without competition can be stagnant. The moot court has proven to be an enormously effective teaching tool for many students, but we are acutely aware of its perils.

Thus, we see to it that the moot court project is just one, albeit prominent, part of a robust extracurricular culture, which has included, in Washington, D.C., class trips to the Supreme Court and the superior court, essay competitions where there are winners in each school and in every class, creative arts competitions on constitutional themes, a competition to design our annual Project T-shirt, and a raucous poetry slam often judged by Mrs. Thurgood Marshall. The trick is that we multiply the occasions and contexts in which students can improve their talents, shine, win something, and be recognized for it. We are trying hard not to reproduce the dominant "winner take all" culture that often ends up quietly humiliating and demoralizing students who do not habitually take home top academic honors.<sup>47</sup>

### *C. "If You Build It, They Will Come": The Project Goes National*

From the very start of the project, faculty and students at other law schools expressed interest in joining us. This development was unex-

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47. Many Marshall-Brennan classes in Washington, D.C., have also tried to undertake group social action projects in the spring, like youth voter registration drives, lobbying the D.C. Council or Board of Education on education issues, fighting for voting rights in Congress for the District of Columbia, and environmental activism, such as Potomac River cleanups. These endeavors build further group cohesion, teach concrete civic skills, and permit students with different special talents to emerge. The project has developed working partnerships with the National Archives, law firms like Arnold & Porter, democracy advocacy groups like the League of Women Voters, DC Vote and FairVote, Teach For America, and environmental groups seeking to engage young people in direct action. In general, most participants agree that this is a component of the project that should be elaborated and strengthened.

pected. After all, law schools are famously insular and competitive places, divided ever more deeply by commercial rankings. Yet, we had people at schools across America reaching out to ask if they could work with us in this constitutional literacy mission and share our ideas and materials, our name, our expertise, and our ambitions for revitalized constitutional culture. We were open to such overtures because the pragmatic spirit and ambitious goals of the program invites proliferating experimentation and inter-law school cooperation. But we did not quite know how to integrate other institutions in our work at first, and it took many years and false starts for us to develop an effective model for national collaboration while maintaining our local work.<sup>48</sup>

Howard University School of Law formed a Marshall–Brennan chapter and teamed up with WCL almost immediately, sending law students to participate in our weekly seminar and to become Fellows teaching with us. We soon received inquiries from a dynamo organizer and teacher named Gwen Stern at the University of Pennsylvania Law School. She was convinced that students in the Philadelphia public schools desperately needed a program like Marshall–Brennan and that the local law schools in Philadelphia could benefit by sending their law students to teach them. Her work quickly made the local Marshall–Brennan chapter a major force in Philadelphia public schools, the host of several national moot court competitions, and the subject of numerous media profiles.<sup>49</sup> Stern later became a trial practice professor and director of the Marshall–Brennan Constitutional Literacy Project at Drexel University Earle Mack School of Law, deepening the influence of the project in Philadelphia.

Although it began on the East Coast, this pattern has been replicated across America. We have generally seen one or two public-spirited people—a law professor, a dean, a public interest coordinator, a law school alum, a former Marshall–Brennan Fellow living in a new city, or a law

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48. Today, there are bylaws, a national advisory board and regular meetings around our national moot court competition and Association of American Law School conferences. There are seven requirements for becoming and maintaining a Marshall–Brennan chapter: (1) that the chapter has formed a partnership between the host law school and an underserved local public school system; (2) that both law students and high school students in the program earn academic credit for participating in the Marshall–Brennan project; (3) that the Fellows focus on constitutional literacy, using *We the Students*, *Youth Justice in America*, or both as the foundation for what they teach high school students, and that they teach the annual moot court materials; (4) that the chapter share the goals of improving high school students' oral advocacy skills, cultivating critical-thinking skills, and instilling understanding of constitutional cases and concepts; (5) that the chapter have faculty or staff supervision and support at the host law school; (6) that the chapter maintain regular communication with the national office at WCL; and (7) that the chapter send representation to the annual directors' meetings and National Marshall–Brennan High School Moot Court Competition whenever possible.

49. See Valerie Russ, *Don't Argue with Them!: High Honors for City Students in Nationwide Test of Courtroom Skills; They Made Their Case*, PHILA. DAILY NEWS, Apr. 4, 2007, at 3; see also *Students Make Their Case During Court Competition*, TIMES LEADER, [http://archives.timesleader.com/2007\\_54/2007\\_04\\_22\\_Students\\_make\\_their\\_case\\_during\\_court\\_competition\\_nocat.html](http://archives.timesleader.com/2007_54/2007_04_22_Students_make_their_case_during_court_competition_nocat.html) (last visited Apr. 23, 2013).



student—grow determined to bring the brainpower and constitutional passion of law students into high school classrooms. They have contacted us, and we have shared with them the requirements for becoming a Marshall–Brennan chapter and offered to do whatever we can to help propel them in their work. We have offered strategic coalition-building and fundraising advice; model budgets, syllabi, and planning documents; contacts with helpful people around the country; and oftentimes the presence of a national Marshall–Brennan figure—like Mary Beth Tinker or Mrs. Thurgood Marshall or participating faculty—at their kickoffs or before their faculties. We have acted with them to brainstorm about how to build an organization with deep academic and institutional roots and many branches of inquiry and service.

The project has spread to eighteen law schools, with chapters in different phases of development, all of them owing their vibrant strength to individual faculty or student visionaries who have, through their conviction and passion, brought the idea into reality.<sup>50</sup> There are some successful chapters led by luminous constitutional law scholars like the University of Colorado Law School chapter headed up by Professor Melissa Hart or the Suffolk Law School chapter spearheaded by Professor Michael Avery; there are others, like the Rutgers–Camden chapter, led by Director of Pro Bono and Public Interest Programs Jill Friedman, where senior law school administrators take the lead; and there are others still in transition where law students shoulder most of the administrative and academic burden, such as the spirited and promising chapter at Yale Law School. The following is a list of active chapters along with the key organizers of each local project:

- American University Washington College of Law (Professors Jaimin Raskin and Maryam Ahranjani)
- Arizona State University Sandra Day O'Connor School of Law (Michelle Roddy)

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50. There are three law schools where vibrant Marshall–Brennan chapters essentially ended when the key figures behind their success left: Howard University School of Law, where a strong project ended soon after Carmia Caesar left the school; University of California Berkeley School of Law, where the project ended with the departure of Professor Jennifer Elrod; and Northeastern University School of Law, where an excellent program collapsed when the adjunct professor spearheading it, the passionate Roy Karp, chose to go work in civic education in other venues. Marshall–Brennan has reemerged in Boston under the extraordinary leadership of Professor Michael Avery and Kim McLaurin at Suffolk University Law School, a school that has made a substantial and enduring investment in the project. See *Marshall–Brennan Constitutional Literacy Project*, SUFFOLK U. L. SCH., [http://www.rappaportcenter.org/probono/marshall\\_brennan/](http://www.rappaportcenter.org/probono/marshall_brennan/) (last visited Apr. 23, 2013). But the most interesting case of disaffiliation occurred in 2012 when the University of Pennsylvania Law School Marshall–Brennan chapter ended. Despite the fact that Marshall–Brennan there involved dozens of students and was routinely chosen as one of the top pro bono projects among students, the law school was unable to commit to meeting the formal requirements of participation. The project had no academic seminar component for the student Fellows and no faculty involvement to speak of, received limited institutional funding and administrative assistance, and proved unable to participate in support of the national project and sister chapters around the country. We were sad to see them go and wish them well as the students there seek to work to pursue similar goals under a different name and auspice.

- Capital University Law School (Professor Dan Kobil)
- University of Colorado Law School (Professor Melissa Hart)
- University of Connecticut School of Law (Professor Justin Taylor)
- Drexel University Earle Mack School of Law (Professor Gwen Stern, Associate Dean Susan Brooks, and Dean Roger Dennis)
- University of Louisville Louis D. Brandeis School of Law (Professors Laura Rothstein and Sam Marcossou)
- University of New Mexico School of Law (Professor Dave Sidhu and Preston Sanchez)
- Phoenix School of Law (Professor Kristine Reich)
- University of Pittsburgh School of Law (Professor Jeffrey Shook and Associate Dean Kevin Deasy)
- Rutgers University School of Law–Camden (Professor Jill Friedman)
- Santa Clara Law School (Lecturer Deborah Moss-West)
- Southern University Law Center (Professor Russell Jones and Donna Glasper)
- Suffolk University Law School (Professors Michael Avery and Kim McLaurin, and Bob Smith, and Director of Public Interest and Pro Bono Programs)
- Washington University School of Law (Dave Collier)
- William & Mary Law School (Professor Charles Crimmins)
- William Mitchell College of Law (Dean Mary Patricia Byrn)
- Yale Law School (Andres Idaragga, Nic Riley, Jamil Jivani, Michelle Mangan, and Director for Student Affairs Sachi Sugimoto Rodgers)

There is no mystery to the success of these ventures. If you build it, they will come—“they” being the waves of law students who want to serve as Fellows and the high schools that want to give their students the chance to participate in this special intellectual experience.

The key to programmatic success has been modest but consistent institutional support by law schools to bolster the efforts of professors and students. The home law school must be willing to invest in the program, specifically with academic credits and teaching time for an advanced seminar for Fellows, academic or pro bono credits for Fellows teaching in high schools, and sufficient financial and administrative resources to sustain an operation that has a continuing relationship with what is typically a large and semi-dysfunctional educational bureaucracy. The law schools that have made these investments have produced thriving Marshall–Brennan projects that are also able to raise significant amounts of money from local bar associations, law firms, educational foundations, local governments, and private philanthropy. One of the chapters—at Southern Law School in Baton Rouge, Louisiana—has raised, under the inspired leadership of Russell Jones, prodigious amounts of money and won wide-ranging praise in the area for its impressive outreach to the high schools and the community.<sup>51</sup> It has shown

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51. For examples of the program’s outreach and success, see *Winners Announced in SU Moot Court Regional Competition; Six Students Now Go on to National Contest*, E. BATON ROUGE

that a project does not have to be in a wealthy city or belong to a university with a huge endowment to raise all the money it needs. The average Marshall–Brennan project budget, outside of salaries for the professors and staff involved, is less than \$20,000 a year. If you compare that to what schools spend on publicity and marketing simply to influence their Association of American Law Schools (AALS) ratings, it is a trifle. Even in hard times, the chapters have been able to raise what they need and to help one another.

## II. DEMOCRATIC CONSTITUTIONALISM IN ACTION

The Marshall–Brennan project can have a major influence on the future of legal education because it responds to both fresh stirrings and old yearnings within the field of constitutional law, which has offered the central frame to American legal education since the civil rights and due process revolution of the 1960s. The project addresses the traditional interest in trying to uplift public constitutional understanding but also provides a powerfully concrete and practical answer to the theoretical call for a new “popular” or “democratic” constitutionalism by linking law schools with the communities they inhabit through crosscutting waves of constitutional learning and dialogue. Moreover, by maintaining a natural pipeline of students from disadvantaged backgrounds into legal education, Marshall–Brennan promotes diversity at a time when affirmative action has been placed in a straitjacket by the Supreme Court.

Within the field of constitutional law today, numerous scholars argue passionately for what Professor Tushnet calls “populist constitutional law,” the spirit that “takes . . . to heart” the sentiment of President Abraham Lincoln’s statement in his First Inaugural Address that “[t]his country, with its institutions, belongs to the people who inhabit it.”<sup>52</sup> In his book *Taking the Constitution Away from the Courts*, Tushnet defines “populist constitutional law” as “a law oriented to realizing the principles of the Declaration of Independence and the Constitution’s Preamble,” which he calls the “thin Constitution.”<sup>53</sup> It is a law that is “committed to the principle of universal human rights justifiable by reason in the service of self-government.”<sup>54</sup> Tushnet wants to decenter and sideline the Supreme Court as the focus of constitutional aspiration and elaboration, pulling in other branches of government and the people themselves as

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PARISH SCH. SYS. (Dec. 1, 2010), <http://news.ebrschools.org/explore.cfm/ebprssnews/shsmootcourt>, and *Area Moot Court Student Winners Going to Nationals this Spring*, E. BATON ROUGE PARISH SCH. SYS. (Feb. 29, 2012), <http://news.ebrschools.org/explore.cfm/ebprssnews/mootcourt2012winners>.

52. TUSHNET, *supra* note 7, at 181 (quoting Abraham Lincoln, First Inaugural Address, Mar. 4, 1861, in JAMES D. RICHARDSON, *MESSAGES AND PAPERS OF PRESIDENTS 10* (1899)) (internal quotation marks omitted).

53. *Id.* at 181–82.

54. *Id.* at 181.

agents of constitutional progress.<sup>55</sup> Similar sentiments surface in Jack Balkin's recent work, *Living Originalism*, which promotes a "constitutional project" that involves "an intergenerational project of politics,"<sup>56</sup> and in which "popular mobilizations play a crucial role."<sup>57</sup> Alexander Tsesis also invokes the democratic spirit in his work on the historical centrality of liberty and equality, arguing that while

both equality and liberty have often been mere abstractions used as catchwords for political gain, real progress has come when these principles inspired action for the sake of fairness and national improvement. The most effective changes have arrived through the efforts of coalitions capable of winning popular and political support.<sup>58</sup>

As attractive as the academic interest in popular constitutionalism is, an important refinement to the normative calls to "take the Constitution away from the Court" comes from Robert Post and Reva Siegel. In their article *Roe Rage: Democratic Constitutionalism and Backlash*, Post and Siegel depart from some of the popular constitutionalists by embracing "the essential role of judicially enforced rights in the American polity" and therefore disclaiming any interest in "tak[ing] the Constitution away from courts."<sup>59</sup> However, they believe strongly in the idea that "[c]onstitutional judgments based on professional legal reason can acquire democratic legitimacy only if professional reason is rooted in popular values and ideals."<sup>60</sup> Their theory of a "democratic constitutionalism" observes continuous dialogue among political branches and between the government and the people, leading them to conclude that "adjudication is embedded in a constitutional order that regularly invites exchange between officials and citizens over questions of constitutional meaning."<sup>61</sup> The point of normative democratic constitutionalism is not to strip the Constitution from the Court but rather to empower other branches of government, social movements, and the people themselves to engage effectively in the critical process of "norm contestation," the process "which seeks to transform the values that underlie judicial interpretations of the Constitution."<sup>62</sup>

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55. *Id.* at 182–87.

56. JACK M. BALKIN, *LIVING ORIGINALISM* 75 (2011).

57. *Id.* at 81. Some actors in this scholarly movement for popular constitutionalism actually question or oppose the institution of judicial review, a dubious step neither necessary for nor implied by the rest of the project. *See, e.g.*, Jeremy Waldron, *The Core of the Case Against Judicial Review*, 115 *YALE L.J.* 1346, 1348–49 (2006); Louis Michael Seidman, *Let's Give Up on the Constitution*, *N.Y. TIMES*, Dec. 31, 2012, at A19.

58. ALEXANDER TSEISIS, *WE SHALL OVERCOME: A HISTORY OF CIVIL RIGHTS AND THE LAW* 3 (2008).

59. Post & Siegel, *supra* note 6, at 379.

60. *Id.*

61. *Id.*

62. *Id.* at 381.

Marshall–Brennan takes the core idea of democratic and popular constitutionalism seriously by aggressively expanding the circle of conversation about constitutional values to include many thousands of new high school students each year, who become conscious participants in the process of democratic constitutionalism. The project arms these students with the means of intellectual self-defense in the process of social norm contestation by giving them the language and concepts they need to assert themselves effectively in school and in other public contexts. The project is thus a reverberating experiment in democratic constitutionalism, with law professors teaching law students how to teach the Constitution, law students teaching high school students how to think about and understand the Constitution, and high school students teaching law students and professors about the practical realities of translating constitutional law in public schools and in community life.

Inevitably, the constitutional communities formed in the project come to address in informed ways the relevant crises of the day. The impeachment of President Clinton, the contested presidential election of 2000, the military invasion of Iraq, the revelation of torture at Abu Ghraib, the nomination of new Justices, the use of drones in the War on Terror, the lack of representation of residents of Washington, D.C., in Congress, and the debate over same-sex marriage have all been carefully processed and ventilated in real time in our classrooms. Furthermore, the Marshall–Brennan classes are able to address the localized conflicts that so often roil school communities. Fellows have been leading figures in explaining, resolving, and transcending conflicts over issues like the revocation of a place in an honor society to a pregnant high school junior, the use of metal detectors in school buildings, random locker searches, the rights of religious students to pray in a cafeteria, sexual harassment scandals, and even, most terribly, the epidemic of gun violence nationwide that leaves many public school students injured or dead.

The Marshall–Brennan project is democratic constitutionalism in action. It responds nicely to Tom Donnelly’s argument that “[i]f legal scholars are serious about popular constitutionalism, they must move beyond . . . studies of elite discourse and examine how popular constitutional meaning is shaped ‘on the ground,’” specifically “on an important pathway that has been largely ignored by legal scholars—civic education.”<sup>63</sup>

The project makes the Constitution come alive outside of the courts and in the hallways and classrooms of public schools—our central public

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63. Donnelly, *supra* note 2, at 323. Donnelly’s impressive focus on civic education and specifically on the textbooks and surrounding lessons studied by high school students mirrors the public philosophy of the Marshall–Brennan project. The only piece missing from this excellent article is the role that law schools, law professors, and law students themselves can play directly in the process of entrenching constitutional values in young America.

institution. In reality, of course, the Constitution never belonged exclusively or even primarily to the courts, and the vast majority of conflicts that shake public schools (or private schools for that matter) never see the inside of a courtroom, much less the Supreme Court. Thus, there is plainly no need to “take the Constitution away from the courts.” Rather, our task is to inject into the cultural setting of the American public high school the complex of constitutional values and conflicts that have evolved over the centuries and that pervade a good legal education. We should not feel so beleaguered by the current attack on law schools as to forget that we have something essential and irreplaceable to offer to the rest of society.

The fundamental importance of constitutional education is a point that one of our liberal namesakes, Justice William Brennan, championed. In a remarkable speech forty-five years ago before principals of girls’ schools, Justice Brennan insisted upon the “interdependence of our legal and educational systems.”<sup>64</sup> He observed:

If there is one central responsibility of the American secondary school’s curriculum, it would seem to be to transmit an appreciation of those individual rights and liberties, and reciprocal responsibilities, which form the spine of our constitutional heritage. That heritage, particularly the Bill of Rights, assures our precious liberties, but it also creates a duty of responsible citizenship.<sup>65</sup>

Justice Brennan was emphatic that constitutional law and discourse be taught critically and with democratic purposes in mind. He said that constitutional education does not consist “simply in having students carefully memorize the first ten amendments and recite them unflinchingly”<sup>66</sup> (although it is amazing that this was apparently the practice!). A rote method like that “teaches students nothing of these precious guarantees in real life. It gives them no sense of their relevance to current social, political and economic problems.”<sup>67</sup> He cautioned against the view that constitutional law is “‘a brooding omnipresence in the sky’—something which is fixed and certain if only we could capture it and put down precisely what it means.”<sup>68</sup> He argued that “every citizen must understand that constitutional principles are not absolute self-enforcing truths from the museum of our political history.”<sup>69</sup> Rather, they are “a set of principles which must be understood, grappled with, fought for and constantly

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64. William J. Brennan, Remarks at the National Association of Principals for Schools of Girls: Education in Constitutional Liberties and Responsibilities (Mar. 1, 1967), at 1–2 (unpublished transcript) (on file with author).

65. *Id.* at 2.

66. *Id.* at 7.

67. *Id.*

68. *Id.* at 7–8 (quoting *S. Pac. Co. v. Jensen*, 244 U.S. 205, 222 (1917) (Holmes, J., dissenting)).

69. *Id.* at 8.

reassessed and applied under fire. That task is not one for judges and lawyers only.”<sup>70</sup>

In his speech, Justice Brennan identified the urban riots that had taken place in the summer of 1964 as a crucible for the rule of law. He rejected the view that “if only we could find out who instigated certain acts,” punishment could follow and “that would end the matter.”<sup>71</sup> This would be to “neglect the role of law as an instrument of social justice,” for “[s]ociety’s function does not stop with the punishment of the man who transgressed, but only begins there.”<sup>72</sup> He continued: “If the rule of law is to survive and flourish in our society, then I would suggest we bear a heavy responsibility to look beneath the surface when the rule of law breaks down.”<sup>73</sup> Underneath a lot of social disintegration, he argued, is “some failure to inculcate an early and deep respect for the principles of the Bill of Rights.”<sup>74</sup> It is the job of both educators and lawyers, who are part of “overlapping” disciplines, to “teach something about the conflicts in values that make the Bill of Rights so much harder to apply than to recite.”<sup>75</sup> Justice Brennan argued that we should teach about civil rights and liberties from “case studies” that are “realistic, concrete, graphic, so as to keep the optimum interest on the students’ part,” and the cases “should be presented in terms of fact situations which are closest to the concerns and interests of secondary school students.”<sup>76</sup> He observed that “[i]f the principles can be first applied and tested this close to home, their transfer to more abstract contexts in which they are more likely to affect adults should be far easier.”<sup>77</sup> He advised, finally, that “[i]t would be well to focus each case upon a conflict of values—for the difficult cases in the civil rights area present such a clash.”<sup>78</sup>

Justice Brennan’s speech reads like a manifesto for the Marshall–Brennan Constitutional Literacy Project. To be sure, he was hoping that public and private school teachers themselves would undertake the task of constitutional education. Yet they did not do so for many complex reasons, which probably include a lack of proper resources, a fear of teaching young people about their rights, and the new nonstop testing regimes. So the critical task of constitutional education falls to law schools. As Bob Moses says in his radical axiom, “If *we* can do *it*, then *we* should.”<sup>79</sup> If not us, then who else?

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70. *Id.*

71. *Id.* at 10–11.

72. *Id.* at 11.

73. *Id.*

74. *Id.* at 12.

75. *Id.*

76. *Id.* at 19–20.

77. *Id.* at 20.

78. *Id.*

79. See *The Principles and Structure*, *supra* note 9 (emphasis added).

Basic civic and constitutional understanding for the young is a commonly expressed aspiration heard over the decades, and yet every year, at Constitution Day, the media delights in pointing out that more American high school students can name one of the Three Stooges or the characters on *Jersey Shore* than a Supreme Court Justice or a Founder of the country.<sup>80</sup> The Fellows typically roll their eyes at these perennial and superficial complaints, which seem to suggest that popular culture and constitutional knowledge are opposite ways of understanding society. In fact, as every Marshall–Brennan Fellow knows, cultural knowledge and constitutional knowledge are complementary. In any event, it is easy to bemoan young people’s ignorance, but the challenge for adults is to educate the young, not smugly rail against them. All of the foundation money pouring into studies to document the civic illiteracy of the young should be redirected to programs directly uplifting the constitutional and civic capacity of America’s teens. Constitutional education is hard and mostly invisible work, but it is exhilarating and important, and the funds to do it should be channeled into direct action.

By taking at least partial responsibility for constitutional literacy in society, professors of constitutional law can heighten the importance and relevance of their own work. If constitutional law does not belong exclusively or primarily to the Supreme Court or to the judiciary, then constitutional scholarship should be directed as much to the people as to the judges, and as much to younger people in high school as to older people on the High Court.

The recent work of Professor Lessig promoting a constitutional convention for democratic reform related to money in politics provides a good example. Lessig argues that the *Citizens United v. Federal Election Commission*<sup>81</sup> and *Buckley v. Valeo*<sup>82</sup> decisions have created an urgent need to amend the Constitution to confine money power in our campaigns.<sup>83</sup> On this matter, most Americans, including myself, agree.<sup>84</sup> He

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80. See, e.g., Liz Halloran, *What Supreme Court? Many Americans Lack Basic Supreme Court Knowledge*, U.S. NEWS & WORLD REP. (Sept. 29, 2006), <http://www.usnews.com/usnews/news/articles/060929/29annenbergestudy.htm>; *More Teens Can Name Three Stooges than Can Name Three Branches of Government*, NAT’L CONST. CENTER (Sept. 2, 1998), <http://constitutioncenter.org/media/files/survey-1999-stooges.pdf>; Amanda Paulson, *A Third of High School Seniors Lack Basic Grasp of Civics, US Government*, CHRISTIAN SCI. MONITOR (May 4, 2011), <http://www.csmonitor.com/USA/Education/2011/0504/A-third-of-high-school-seniors-lack-basic-grasp-of-civics-US-government>.

81. 558 U.S. 310 (2010).

82. 424 U.S. 1 (1976).

83. LAWRENCE LESSIG, *REPUBLIC, LOST: HOW MONEY CORRUPTS CONGRESS—AND A PLAN TO STOP IT 290–93* (2011).

84. See *National Survey: Super PACs, Corruption, and Democracy*, BRENNAN CENTER FOR JUST. (Apr. 24, 2012), [http://www.brennancenter.org/content/resource/national\\_survey\\_super\\_pacs\\_corruption\\_and\\_democracy](http://www.brennancenter.org/content/resource/national_survey_super_pacs_corruption_and_democracy); Jamie Raskin, ‘*Citizens United*’ and the Corporate Court: Giving Corporations the Inalienable Right to Buy Elections, NATION (Oct. 8, 2012), <http://www.thenation.com/article/169915/citizens-united-and-corporate-court#>; Jamie Raskin, *Take Back the Constitution from the Corporate Court*,



argues, more controversially, that the constitutional convention should be called by the states, for the first time in our history.<sup>85</sup> The Internet provides a technology of effective communication for this idea, but how might one seriously put it into action? The Fellows and the thousands of high school students they are teaching across America would be a natural first audience to consider and debate this unorthodox idea and proposed experiment. Why not draft a constitutional convention roadmap and then invite high school students across America, under the tutelage of the Fellows, to meet and brainstorm in mini-constitutional conventions on how to deal with the money politics problem? Let us see what might come of the exercise and invite the public and media to respond to the moot constitutional conventions. The Fellows can report back their insights about the project, which would indeed be a novel and challenging one.

This is obviously a simple sketch of one idea, but it suggests how the often vague concept of popular constitutionalism can gain traction in the work of Fellows and high school students across the country. The young are hungry to participate in what Professor Balkin calls the “inter-generational project of politics”<sup>86</sup> in which “popular mobilizations play a crucial role.”<sup>87</sup> There is plainly no shortage of abstract ideas and concepts introduced by law professors (I do not exempt myself from this faint praise), but there is a shortage of meaningful and practical popular dialogue about such ideas in which professors themselves interact substantively with non-lawyers. This project provides a forum for serious constitutional experimentation and civic capacity building.

Law schools themselves are shaped by the constitutional and legal practices we study. In the sweep of American history, law schools have traditionally had few non-white students, a reality produced by both segregation and the historical effects of racism and poverty.<sup>88</sup> Affirmative action programs over the last several decades have improved the picture substantially,<sup>89</sup> but the Supreme Court declared in the *Grutter v. Bollinger*<sup>90</sup> decision that the clock is ticking on affirmative action and the Court’s indulgence of the practice will likely expire no later than 2028

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PEOPLE FOR AM. WAY (July 23, 2012), <http://www.pfaw.org/issues/government-people/edit-memo-take-back-constitution-corporate-court>.

85. See Lawrence Lessig & David Segal, *Report from the Conference on the Constitutional Convention*, HUFFINGTON POST (Sept. 30, 2011, 12:25 PM), [http://www.huffingtonpost.com/lawrence-lessig/report-from-the-conferenc\\_b\\_988902.html](http://www.huffingtonpost.com/lawrence-lessig/report-from-the-conferenc_b_988902.html).

86. BALKIN, *supra* note 56.

87. *Id.* at 81.

88. See generally DISTURBING TREND L. SCH. DIVERSITY, <http://blogs.law.columbia.edu/salt/> (last visited Apr. 23, 2013) (describing diversity statistics in law schools); see also Paula C. Johnson, *The Grutter Decision*, DISTURBING TREND L. SCH. DIVERSITY, <http://blogs.law.columbia.edu/salt/the-grutter-decision/> (last visited Apr. 23, 2013).

89. Brief for the American Ass’n for Affirmative Action as Amicus Curiae in Support of Respondents at 32–35, *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411 (2013) (No. 11-345), 2012 WL 3308290, at \*32–35.

90. 539 U.S. 306 (2003).

and perhaps much sooner.<sup>91</sup> Indeed, in its 2013 decision remanding for further findings in *Fisher v. University of Texas at Austin*,<sup>92</sup> the Court insisted that strict scrutiny of racially conscious affirmative action in public universities means that these institutions must show that there are no “workable race-neutral alternatives” to achieve the acknowledged benefits of educational diversity.<sup>93</sup>

Whatever the exact fallout of the *Fisher* decision, the race is on to figure out organic ways to get minority and poorer students into the pipeline for America’s law schools, which are already seeing declining numbers admitted and enrolled from both groups.<sup>94</sup> Even with affirmative action, the pool of African-American and Hispanic students is shrinking.<sup>95</sup> The question is how to replenish and solidify the numbers, especially in an environment where financial aid is painfully scarce and the *U.S. News & World Report* rankings exert constant downward pressure on schools’ willingness to take students with weaker LSAT scores. In the current harsh economic environment, it is all too likely that, without effective and concerted action by law schools, the diversity commitment will simply fade away. This is a shocking possibility for those who believe, with the AALS, that racial and ethnic “[d]iversity is critical for *all* law schools because they all can serve as a pathway to the exercise of state power and to public office.”<sup>96</sup>

Based on our experience in the project, I would venture to say that the wrong way to build and sustain the pipeline is simply to visit classes of African-American, Hispanic, and at-risk students annually on Constitution Day and tell them that they should think about going to law school. This advice seems premature and blithely indifferent because there is little chance that the students can profit from it. What high school students need is not conclusory career advice—“Go to law school!”—but rather sustained educational interaction and a profound experimental immersion in law as a field of study. Almost all will learn from the experience, many will toy with the idea of going to law school, and some who otherwise never would have will actually end up going to college and studying law. We have countless examples of students who tell us that they never even would have gone to college but for the experience of their Marshall–Brennan class and the concrete help of their Fellows. One of the great thrills law school chapters have experienced is to have high

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91. *Id.* at 377.

92. 133 S. Ct. 2411, 2421–22 (2013), *vacating and remanding* 631 F.3d 213 (5th Cir. 2011).

93. *Id.* at 2420.

94. Leigh Jones, *Minority Enrollment Is Faltering*, 30 NAT’L L. J. 4, 4 (2008); James O’Neill, *Web Site Shows Drop in Minority Enrollment in US Law Schools*, COLUMBIA L. SCH. (Dec. 28, 2007), [https://www.law.columbia.edu/media\\_inquiries/news\\_events/2007/December07/law\\_enroll](https://www.law.columbia.edu/media_inquiries/news_events/2007/December07/law_enroll).

95. See sources cited *supra* note 94.

96. Brief for the Ass’n of American Law Schools as Amicus Curiae in Support of Respondents at 19, *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411 (2013) (No. 11-345), 2012 WL 3527822, at \*19.

school students who we taught in our project come back to our schools as law students themselves. It is satisfying beyond measure when they decide to apply and become Marshall–Brennan Fellows.<sup>97</sup>

The project provides a natural and constructive educational pathway. We treat the high school students as individuals who have both a lot to learn and a lot to contribute. Although it is not in their job description, the Fellows often help the high school students on their college searches and on their applications. They coach them closely through the admissions process, a form of assistance that many of the high school students would otherwise not receive. The Fellows cultivate their students' intellectual strengths and help steer them in the right direction. We do not want anyone to go to law school just to fill out the numbers for this group or that; the Fellows know these young people personally and want what is best for them. They only suggest an academic path leading to law school for a student if they think a student is suited for the rigors of legal education and has the makings to succeed at it.

### III. UNFAILING LAW SCHOOLS: THE MARSHALL–BRENNAN ANSWER TO CYNICISM AND DESPAIR ABOUT LEGAL EDUCATION

Law schools are under ferocious attack today, both from within and outside academia. It is hard to keep up with all of the criticisms leveled at them on the Internet: they are fundamentally selfish and greedy, deceptive in their recruiting and marketing tactics, exploitative of students, hopelessly self-referential and self-indulgent in the scholarship they produce, fundamentally indifferent to the communities they inhabit and even their own students, and complacent or complicit with injustice in the world.<sup>98</sup> This critique, which lights up the Internet on a daily basis, crystallized in Brian Tamanaha's book *Failing Law Schools*, perhaps the most thoughtful entry in this genre, which focuses on the harsh economics of legal education and the grim prospects for legal employment facing graduates.<sup>99</sup>

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97. For example, Chanell Autrey graduated from George Washington University Law School in 2012 after taking Maryam Ahranjani's Constitutional Law class at School Without Walls in Washington, D.C., in 2003–2004. Maryam and Chanell stayed in touch when Chanell went on to college at Penn State, and Maryam helped her secure law-related internships and wrote her recommendations for law school. During the 2011–2012 academic year, the WCL chapter had two Fellows—Gabrielle Lewis-White and Angela King—who had taken Marshall–Brennan classes as high school students in Washington, D.C. public schools. These successes have nothing to do with race consciousness in the admissions process and everything to do with effective and “affirmative action” in the lives of students.

98. For a sampling of some of the gentler criticism, see Charles Lane, *How Law School Became a Bad Deal*, WASH. POST, Aug. 5, 2012, at B01; David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at B1; Paul Campos, *Goodbye Is Too Good a Word*, INSIDE L. SCH. SCAM (Feb. 27, 2013, 2:43 AM), <http://insidethelawschoolscam.blogspot.com/2013/02/goodbye-is-too-good-word.html>; Steven Davidoff, *The Economics of Law School*, N.Y. TIMES DEALBOOK (Sept. 24, 2012, 3:01 PM), <http://dealbook.nytimes.com/2012/09/24/the-economics-of-law-school/>.

99. See BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012).

Tamanaha argues compellingly that law student tuition is too high—inflated across the board as schools follow the example of the most elite law schools, which have set tuition at \$50,000 a year or more.<sup>100</sup> Similarly, law professor salaries are too high, with the most elite schools paying salaries of more than \$300,000 and pulling everyone else along.<sup>101</sup> Law professors are engaged in ever more esoteric, abstract, and decadent scholarship that is scorned as useless by the bar and the bench.<sup>102</sup> The market for hiring young lawyers into the big corporate law firms—never robust enough to absorb the large surplus population of hopeful young law graduates churned out by the nation's law schools—has turned dramatically worse in the Great Recession, especially for graduates of law schools not in the first tier of the *U.S. News & World Report's* law school rankings.<sup>103</sup> Moreover, the growing ranks of unemployed or underemployed young lawyers are staggering under a giant debt burden that many of these demoralized graduates will never be able to repay.<sup>104</sup>

Meantime, many law schools, locked in savage competition for a shrinking supply of students and operating under the all-important gaze of the *U.S. News & World Report*, have been caught up in scandal and controversy over alleged deceptive consumer practices like fudging their employment statistics and sugarcoating the job prospects of their students.<sup>105</sup>

This is a grim portrait painted by Tamanaha, all of its essential features all too recognizable within the law schools. Tamanaha is right to blow the whistle on deceptive consumer practices by which law school operatives try to sell a legal education like a used car. There is simply no excuse for doctoring figures about job placement or misleading students about questions of debt. On this basic question of professional and institutional ethics, there can be no dispute. Furthermore, legal education, like other parts of higher education, is clearly undergoing an adjustment in the wake of the Great Recession, and the changes we are adopting should clearly put the needs of students and graduates first.

But when it comes to the broadside indictment of law schools, there is more to this picture than meets the eye. Every type of higher educational institution in America—if not every institution in America, period—is experiencing financial upheaval brought on by the Great Recession. The student loan debt burden facing many law students is part of a

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100. *Id.* at 132–34.

101. *Id.* at 48–51.

102. *Id.* at 55–61.

103. *Id.* at 167.

104. See Catherine Rampell, *The Lawyer Surplus, State by State*, N.Y. TIMES (June 27, 2011, 11:35 AM), <http://economix.blogs.nytimes.com/2011/06/27/the-lawyer-surplus-state-by-state/>; sources cited *supra* note 98.

105. TAMANAHA, *supra* note 99, at 145–54.

general crisis that has shaken the expectations and career plans of millions of graduate and college students who never set foot in a law school and hold degrees *less* marketable than a J.D. Indeed, student loan debt overall now exceeds credit card debt in America.<sup>106</sup> The stubborn unemployment encountered by many young lawyers continues to be a mass phenomenon that affects nearly every profession in the country. The problem is not that people are seeking graduate education; the problem is that the economy is not producing sufficient and relevant jobs on the other side of it.

In fact, what is most compelling about Tamanaha's book—his criticism of the radical disparity between wealthy institutions with comfortable professors and their debt-burdened students facing bleak employment prospects—is actually a disturbingly familiar feature of higher education generally. Indeed, this disparity is not even confined to the domain of education: the contrast between rich universities and poor students mirrors the general divide between the magnificent wealth of corporate America and the steadily sinking economic fortunes of America's middle and working classes.<sup>107</sup>

Although he may not have intended it this way, Tamanaha's profile of law schools at the start of the new century seems to fit well within the political narrative of the Occupy Wall Street movement, which arose in 2011 and targeted public policies that favor profound economic inequality and defend the political injustices that follow from it.<sup>108</sup> Tamanaha's critique is actually better understood as the story of how American legal education, following the most Wall Street-focused schools in their ranks, tied itself closely to the elite economy, reproduced the corporate culture by inflating faculty salaries and using deceptive public relations strategies to enlist students, and reinforced the sharp inequalities that gave rise to the devastating political frame of the 1% versus the 99%. The law schools that should have been standing up for the common good and

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106. Dennis Cauchon, *Student Loan Debt Surpasses \$1 Trillion: Burden Could Drag Economy in Future*, USA TODAY, Oct. 19, 2011, at A1; Daniel de Vise, *Student Loans Surpass Auto, Credit Card Debt*, WASH. POST (Mar. 6, 2012, 10:54 AM), [http://www.washingtonpost.com/blogs/college-inc/post/student-loans-surpass-auto-credit-card-debt/2012/03/06/gIQRfQnuR\\_blog.html](http://www.washingtonpost.com/blogs/college-inc/post/student-loans-surpass-auto-credit-card-debt/2012/03/06/gIQRfQnuR_blog.html).

107. See Conference, *Third Panel: How Law Constructs Wealth Patterns*, 15 GEO. J. ON POVERTY L. & POL'Y 509, 521 (2008) (“[A] CEO earns more in one day than what the average worker earns in 52 weeks. The median CEO saw his total compensation increase 186 percent between 1992 and 2005, while the median worker saw wages rise by only 7 percent.” (quoting Kent Greenfield, Professor of Law and Law Fund Research Scholar, Boston College) (internal quotation marks omitted)); Sarah E. Waldeck, *Coming Showdown over University Endowments: Enlisting the Donors*, 77 FORDHAM L. REV. 1795, 1798 (2009) (“Some scholars have even suggested that universities directly capture the benefit of these demand-generating tax expenditures by raising their tuition to account for the subsidy available to the prospective student.”); *id.* at 1811 (“In a large study of almost 9,000 nonprofits, including more than 2,000 educational institutions, researchers found a positive correlation between executive compensation and an excess endowment, with the amount of compensation increasing as the amount of excess endowment increased.” (footnote omitted)).

108. Sarah Kunstler, *The Right to Occupy—Occupy Wall Street and the First Amendment*, 39 FORDHAM URB. L.J. 989, 990–91 (2012).

exposing an epidemic of corporate crime over the last several decades instead organized themselves around the legal needs of the 1% and went along for this most dangerous ride.<sup>109</sup>

Although many law school critics seem to think that eliminating a large bloc of America's law schools would cure the ills of legal education, a different conclusion emerges if we focus on how the dominant culture of our law schools got caught up in the economic bubble, the deification of Wall Street, and the acquiescence to shocking inequality in society. After the Wall Street subprime mortgage crisis destroyed trillions of dollars of private wealth in America and millions of jobs, the consequences for lawyers were predictably brutal, leaving many attorneys out of work and in debt. The loss of junior associate positions at the top law firms caused graduates of the more prestigious schools to take a few steps down the money-based professional hierarchy to seek jobs at mid-size law firms and in government and public interest settings, forcing them into competition with the mass of lawyers who were never going to end up at Cravath, Swain & Moore or White & Case in the first place. In this context, it seems only too convenient, if predictable enough in historical terms, to deplore the proliferation of lower-prestige law schools, law students, and lawyers who occupy the places these graduates of elite law schools now want.<sup>110</sup>

This broader perspective on the political economy that structures American legal education is missing from Tamanaha's account. Therefore, his critique of the dynamics of legal education—trenchant as far as it goes—seems both too narrow and too pessimistic. It is too narrow because it describes the financial dynamics of the law school crisis in isolation from the broader economy and because it fails to capture the full sweep of the intellectual disarray and competitive neuroses affecting law schools. By organizing themselves around the confining and conservative metrics of the *U.S. News & World Report*, a reality that Tamanaha records well,<sup>111</sup> the schools have distorted not only the finances of legal education and the career expectations of their students but also the character of their intellectual and ethical missions.

Yet, paradoxically, Tamanaha is still far too pessimistic about the future of American legal education. He sees only a dog-eat-dog race to the bottom among the law schools in which the ethically questionable

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109. See Segal, *supra* note 98 (describing the “[n]umber-fudging games” involved in law school rankings and the “Enron-type accounting standards” that have become the norm in the legal academic community with regard to salaries).

110. For a fascinating analysis of prior periods when contraction in the legal labor market led to an attack on the presence of immigrant students in law schools, see Bryant Garth, *Crises, Crisis Rhetoric, and Competition in Legal Education: A Sociological Perspective on the (Latest) Crisis in the Legal Profession and Legal Education*, 24 STANFORD L. & POL’Y REV. 503 (2013).

111. See TAMANAHA, *supra* note 99, at 71–84.

practices of administrators undermine our educational mission.<sup>112</sup> But this gloomy assessment ignores the deep currents of intellectual and programmatic reconstruction taking place at many schools. Elitist economics and its failures do not chart the limits of our collective destiny, and law schools everywhere are in the process of reinventing and reinvigorating themselves to serve the real needs of the society, economy, and polity.<sup>113</sup>

I will not try to speak for any of the other healthy institutional tendencies that are percolating throughout the law schools, but the Marshall–Brennan project has been promoting a completely different set of values from the ones that Tamanaha perceives in legal education. By interacting with students in their high schools and taking responsibility for a crucial part of their education, the project’s work negates the dominant and false corporatist assumptions about legal education today.

These still-dominant assumptions, held both within the law schools and outside, specifically invite us to believe that

a. over the course of three years, law students will learn an esoteric language that will, of necessity and by definition, distance them from people in the broader community;

b. each law school must be locked in a ferocious institutional competition with all the others, precluding any prospect of engaging in common work and programmatic collaboration (apart from the kind of collusive and illegal financial practices that have been denounced by the Department of Justice and brought to an end by a consent decree with the American Bar Association);<sup>114</sup>

c. law school classes must be brutally competitive and student life cutthroat, nasty, and unhealthy;

d. law schools as elite institutions divert young people from paths of direct service in the community—especially that of teaching, which is to today’s college graduates what the Peace Corps was to graduates a few generations ago—and offer little or nothing to the public, with the possible exception of a small number of individual pro bono representations in clinics;

e. law students, not being lawyers yet and having no free time, have little or nothing to offer the public during their time in school; and

112. *Id.* at 83–84.

113. See Ethan Bronner, *To Place Graduates, Law Schools Are Opening Firms*, N.Y. TIMES, Mar. 8, 2013, at A14 (describing new ways in which law schools are creatively addressing the heavy indebtedness of their graduates and the growing number of Americans unable to pay for legal services, including universities opening nonprofit law firms for some of their graduates, the launch of Lawyers for America—“a conscious echo” of Teach For America for lawyers—and university-sponsored community law practices).

114. TAMANAHA, *supra* note 99, at 11–14.

f. law students are all grasping for the golden ring of jobs at corporate law firms and are fundamentally frustrated by the inadequate supply of such jobs, and thus come to regret their decision to go to law school.

In contrast, the Marshall–Brennan project insists that

a. over the course of three years, law students can master constitutional law by constantly translating and explaining the relevant concepts and terms to young people, bringing them closer to people in the broader community;

b. students, faculty, and staff at law schools across America are open to seeing themselves as participants in a common, socially valuable enterprise and not as warring competitors for money and power tied to different institutional hierarchies;

c. law school classes can bring out the best in each law student through cooperative hard work and study while helping to sustain a healthy and supportive law student culture;

d. law schools as places of learning and civilization can promote direct service in the community, especially teaching the law to non-lawyers, which is an obligation of professional social responsibility;<sup>115</sup>

e. law students, as energetic people whose minds are on fire with legal ideas and questions, are the perfect couriers of constitutional thought and inquiry throughout young America;

f. not all law students want to be corporate finance lawyers on Wall Street or anywhere else, and there are ample and fascinating opportunities for young lawyers committed to constitutional thought and practice to find employment as judicial clerks with judges who value the importance of constitutional literacy, and as attorneys in school districts, with school boards, in educational reform activities, in the representation of students having problems with individual disabilities or discrimination, in the myriad civil rights and civil liberties groups working on school issues, and in federal, state, and local government working on educational public policy; and

g. Fellows generally express tremendous satisfaction and pride in their work, do not hate law school, do not think that the culture is cannibalistic and suffocating, and find that there is no antidote to cynicism like creative service to others.

The “crisis” of legal education is only a crisis if we see the purpose of legal education as recruiting law students to train in a cutthroat environment to become high-paid private corporate lawyers working on or

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115. AM. BAR ASS'N COMM'N ON PROFESSIONALISM, '... IN THE SPIRIT OF PUBLIC SERVICE': A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM 50 (1986), *reprinted in* 112 F.R.D. 243, 302–03 (1986).



around Wall Street. That is a fundamentally narrow and distorted view of what lawyers do and of how their talents and services are needed in America today. In Marshall–Brennan, we do not see any of our Fellows as superfluous; each one is essential to the project, indispensable to his or her students, and part of an important movement for constitutional literacy and civic activism in our country. Similarly, we see the high school students we serve not as part of a surplus population with no future in a declining economy but rather as important actors in the great, exciting story of unfolding democracy in America.

#### CONCLUSION

Political philosopher Michael Walzer has observed that “[d]emocracy puts a premium on speech, persuasion, [and] rhetorical skill.”<sup>116</sup> These skills are at the heart of the constitutional literacy training offered by the Fellows to America’s high school students. The project teaches students how to argue about the proper interpretation of constitutional provisions, as good lawyers do, and how to argue about questions of political and ethical value, as good citizens do. It also teaches that the Constitution and its meanings belong to everyone and can truly become our own if we are only willing to take responsibility for them.

In its first dozen years, the Marshall–Brennan project has built a lean organizational infrastructure underneath a public philosophy that champions the central importance of constitutional education to healthy political democracy. The project involves partnerships with local school systems, a curriculum geared to the interests and skill levels of high school students, a moot court culture that works wonders in the motivation of teenagers, a complete menu of teaching methods and strategies, and an organizational model rooted in tight budgets and expansive use of the precious natural resources that are universally available in law schools: the raw intelligence and magnificent energy of law students and their idealism about law as an instrument of justice, enlightenment, and successful citizenship.

This infrastructure now offers a platform for law schools across the country to help renew their sense of purpose and, indeed, their image in the new century. What human rights is to American law schools in the international law field, constitutional literacy should be to law schools in the domestic program: a moral touchstone for scholarship and an organizing principle for teaching and service. The open question is whether the constitutional literacy movement will remain a kind of underground sensation among those in the know or whether it will connect with clearly relevant streams of scholarship, most notably democratic and popular constitutionalism, and the urgent institutional imperative of fashioning a

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116. MICHAEL WALZER, *SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY* 304 (1983).

durable pathway for students from impoverished communities to find their way into legal education. For the sake of both a strong constitutional democracy and a relevant and pluralistic legal academy, one can only hope that the Marshall–Brennan Constitutional Literacy Project continues to flourish and take hold in the new century.

# CIVIC OUTREACH PROGRAMS: COMMON MODELS, SHARED CHALLENGES, AND STRATEGIC RECOMMENDATIONS

LAURA MCNABB<sup>†</sup>

## ABSTRACT

Civic engagement is the cornerstone of our democracy, yet Americans consistently demonstrate pervasive civic deficits. Such deficits are particularly concerning in light of a growing body of evidence documenting the many benefits that civic education bestows on individual citizens and society at large. Despite these benefits, our national commitment to civic learning within the education system has continued to decline over the past fifty years, pushing civic education to the periphery of an increasingly narrow curriculum.

In response to these three trends—an ongoing civic deficit, declining national support for civic education, and increasing awareness of the benefits of civic literacy—there has been a proliferation of civic outreach programs aimed at increasing civic literacy among American citizens. Because these programs are numerous and diverse, this Essay proposes two models for categorizing civic outreach programs based on what services they offer and to whom these services are provided. Although a wide array of civic outreach programs is desirable, this Essay argues that programs that provide services to actors in K–12 educational institutions are best equipped to offset the current civic deficit. However, such programs face two shared challenges that threaten their ability to effectuate meaningful improvements in civic literacy: (1) identifying and measuring outcomes, and (2) ensuring program sustainability. After exploring the causes of these shared challenges, this Essay offers strategic recommendations.

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<sup>†</sup> Research Fellow for the Byron R. White Center for the Study of American Constitutional Law at the University of Colorado Law School. For their insightful suggestions and edits, I would like to thank Melissa Hart, Judge David Prince, Matthew Burns, Elisabeth Medvedow, and Meryl Kessler. I would also like to extend a special thanks to Melissa Hart for her help in conceptualizing the goal and scope of this Essay, and for her ongoing mentorship and support.

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## INTRODUCTION

An active, engaged, educated citizenry is essential to the proper functioning of our democracy. Despite the fundamental importance of civically literate citizens to our system of government, Americans consistently demonstrate a concerning civic deficit. Recognizing the dangers posed by this civic deficit, this Essay examines the multitude of civic

outreach programs that have emerged across the country. For purposes of this Essay, “civic outreach programs” are broadly defined as programs providing services that are intended to enhance the civic literacy of a specific population of people. The term “civic literacy” is meant to be an umbrella term, encompassing the types of civic knowledge, skills, and dispositions that are required for meaningful participation as a citizen. Civic literacy should be understood to subsume other commonly used terms such as “civic health,”<sup>1</sup> “constitutional literacy,”<sup>2</sup> “citizenship education,”<sup>3</sup> “civic learning and engagement,”<sup>4</sup> and “civic education.”<sup>5</sup> This Essay embraces definitions that are intentionally inclusive in order to ensure that the proposed framework for categorizing and describing civic outreach programs is sufficiently broad to apply to the wide range of existing programs.<sup>6</sup> By increasing the academy’s understanding of the common types of civic outreach programs, the shared challenges civic outreach programs face, and the possible solutions to such problems, this Essay will enhance the academy’s ability to develop and support effective civic outreach programs.

Part I of this Essay documents the extent of the civic deficit among various populations of Americans and explores the benefits that civic education confers on individual citizens and on society at large. Although the crisis in civic literacy is well documented and the benefits flowing from civic education are numerous, there has been a continuous decline in America’s overall commitment to civic education over the past fifty years. This Essay argues that these three trends—America’s ongoing civic deficit, declining commitment to civic education in our school system, and increasing awareness of the benefits of civic education—have resulted in the proliferation of geographically and substantively diverse civic outreach programs. Part II of this Essay proposes a framework for categorizing civic outreach programs based on the type of services they offer and to whom these services are provided. Two basic models of civic outreach programs are identified and described: Model 1 refers to programs that direct services to actors in educational institutions, and Model 2 refers to programs that direct services to the general

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1. See NAT’L CONFERENCE ON CITIZENSHIP, CIVIC HEALTH AND UNEMPLOYMENT: CAN ENGAGEMENT STRENGTHEN THE ECONOMY? 3 (2011).

2. See *The Marshall-Brennan Constitutional Literacy Project*, AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan> (last visited Apr. 12, 2013).

3. EDUC. COMM’N OF THE STATES, *THE PROGRESS OF EDUCATION REFORM: CITIZENSHIP EDUCATION I* (2010).

4. NAT’L TASK FORCE ON CIVIC LEARNING & DEMOCRATIC ENGAGEMENT, *A CRUCIBLE MOMENT: COLLEGE LEARNING AND DEMOCRACY’S FUTURE* 58 (2012) [hereinafter NAT’L TASK FORCE].

5. David E. Campbell, *The Civic Side of School Choice: An Empirical Analysis of Civic Education in Public and Private Schools*, 2008 BYU L. REV. 487, 489 (2008).

6. Although extensive research was conducted to develop a framework for categorizing civic outreach programs, due to the huge number of programs and the extensive time required to determine if any one program was still active, this Essay does not purport to offer an exhaustive review of all civic outreach programs nationwide.

public. Part III focuses on programs in Model 1 that provide services in the K–12 context and identifies two challenges shared by these programs: (1) identifying and measuring program outcomes, and (2) ensuring long-term program sustainability. After evaluating the underlying causes of these shared challenges, this Essay provides strategic recommendations. It urges leaders of civic outreach programs to critically evaluate their programs' responsiveness to such challenges and to develop realistic, research-based plans for improvement. If civic outreach programs are to be successful in promoting civic literacy among America's diverse citizens, program leaders must be willing to undertake the same type of critical self-analysis that is required of an active, engaged citizenry.

### I. THREE TRENDS HAVE CONTRIBUTED TO THE PROLIFERATION OF CIVIC OUTREACH PROGRAMS

Today, there is a plethora of civic outreach programs across the country. Although these programs vary in many important respects, they all work towards a common goal of increasing America's civic literacy. Over the last half-century or so, three trends have contributed to the proliferation of civic outreach programs nationwide. First, deficits in civic literacy have proven significant and pervasive. Second, commitment to civic education within the American school system continues to decline. Third, awareness of the benefits that flow from civic literacy to individual citizens and to society at large continues to increase.

#### *A. Trend 1: Deficits in America's Civic Literacy Are Significant and Pervasive*

The American civic deficit is well documented. Although there is abundant evidence that a general civic deficit exists across groups, young people demonstrate a more significant civic deficit than do adults. Among young people, those who are financially impoverished and non-white demonstrate the largest civic deficit.

##### 1. Evidence of a General Civic Deficit Among America's Citizenry

There is ample evidence of ongoing, systemic deficits in America's civic literacy. In the fall of 2005, the Intercollegiate Studies Institute's (ISI) National Civic Literacy Board tested more than 14,000 freshmen and seniors from fifty colleges and universities across the country to gauge their basic civic knowledge.<sup>7</sup> Of the sixty multiple-choice questions (which included simple questions about history, government, international relations, and economics that were developed by a team of spe-

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7. *Failing Our Students, Failing America: Holding Colleges Accountable for Teaching America's History and Institutions; Summary*, INTERCOLLEGIATE STUD. INST., [http://www.americancivilliteracy.org/2007/summary\\_summary.html](http://www.americancivilliteracy.org/2007/summary_summary.html) (last visited Apr. 12, 2013) [hereinafter *Failing Our Students*].

cialists in each applicable field<sup>8</sup>), the average senior provided fewer than thirty-three correct answers, earning a score of 54.2%.<sup>9</sup> Freshmen fared slightly worse with an average score of 51.4%.<sup>10</sup> These dismal results corroborated the findings of an earlier ISI study of 14,000 college freshmen and seniors conducted in the fall of 2005 in which the average score for college seniors on the same multiple-choice test was 53.2%, and the average score for freshmen was 51.7%.<sup>11</sup>

Eager to understand how college students' knowledge of American history and institutions compared to members of the general public, the ISI conducted a third study in the spring of 2008 using a random sample of 2,508 adults of all backgrounds.<sup>12</sup> This thirty-three-question test, designed to measure the civic knowledge that the ISI deemed necessary for informed and responsible citizenship, contained fifteen questions that were taken directly from the U.S. Department of Education's twelfth-grade test (the National Assessment of Educational Progress, or NAEP) and the U.S. Naturalization Test.<sup>13</sup> Over 70% of participants provided fewer than seventeen correct answers, earning a score of 49%.<sup>14</sup> Among the most alarming deficits in knowledge were findings that fewer than 50% of participants could name all three branches of government; nearly 50% of participants did not know that Congress has plenary power to declare war or that Congress shares authority over U.S. foreign policy with the President; and 73% of participants did not know that the Bill of Rights expressly prohibits establishing an official national religion.<sup>15</sup> Interestingly, those who attended college did not significantly outperform those who did not attend college; the average score among participants who had earned a bachelor's degree was 57%—just eight points higher than the overall average and still a failing score.<sup>16</sup> Perhaps most

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8. *Failing Our Students, Failing America: Holding Colleges Accountable for Teaching America's History and Institutions; Survey Methods*, INTERCOLLEGIATE STUD. INST., [http://www.americancivilliteracy.org/2007/survey\\_methods.html](http://www.americancivilliteracy.org/2007/survey_methods.html) (last visited Apr. 12, 2013).

9. *Failing Our Students*, *supra* note 7.

10. *Our Fading Heritage: Americans Fail a Basic Test on Their History and Institutions; Summary*, INTERCOLLEGIATE STUD. INST., [http://www.americancivilliteracy.org/2008/summary\\_summary.html](http://www.americancivilliteracy.org/2008/summary_summary.html) (last visited Apr. 12, 2013).

11. *Id.*

12. *Id.*

13. *Our Fading Heritage: Americans Fail a Basic Test on Their History and Institutions; Major Findings, Major Finding 1*, INTERCOLLEGIATE STUD. INST., [http://www.americancivilliteracy.org/2008/major\\_findings\\_finding1.html](http://www.americancivilliteracy.org/2008/major_findings_finding1.html) (last visited Apr. 12, 2013) [hereinafter *Our Fading Heritage*].

14. *Id.*

15. *Id.*

16. *Our Fading Heritage: Americans Fail a Basic Test on Their History and Institutions; Major Findings, Major Finding 3*, INTERCOLLEGIATE STUD. INST., [http://www.americancivilliteracy.org/2008/major\\_findings\\_finding3.html](http://www.americancivilliteracy.org/2008/major_findings_finding3.html) (last visited Apr. 12, 2013).

distressing, this study found that elected officials performed *even worse* than did the general public, earning an average score of 44%.<sup>17</sup>

## 2. Young People Demonstrate Larger Civic Deficits Than Do Adults

Civic illiteracy is prevalent across all age groups, but America's young people are consistently the least knowledgeable.<sup>18</sup> For example, a web-based survey conducted in 2003 as part of the Representative Democracy in America Project found that young people between the ages of fifteen and twenty-six were less likely than were older people to possess basic civic knowledge.<sup>19</sup> Among older participants, 72% correctly identified the party of their state's governor, and 61% knew which party controlled the U.S. Congress. In contrast, less than 50% of younger participants knew the party of their state's governor, and even fewer were able to say which party controls Congress.<sup>20</sup> Young participants not only lacked civic knowledge but also were less likely than were earlier generations to exhibit many of the most important characteristics of citizenship.<sup>21</sup> Compared to older participants, the younger participants were less likely to consider paying attention to government and politics, communicating with elected officials, volunteering, donating money to help others, and voting as qualities of a good citizen.<sup>22</sup>

More recent studies of civic knowledge similarly document civic deficits among young Americans. For example, the 2010 NAEP civics assessment revealed that students in the eighth and twelfth grades are not making progress in civics.<sup>23</sup> The test, which is designed to measure "the civics knowledge and skills that are critical to the responsibilities of citizenship in America's constitutional democracy," was given to nationally representative samples of fourth, eighth, and twelfth graders at public and private schools.<sup>24</sup> Although fourth graders did make statistically sig-

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17. *Our Fading Heritage: Americans Fail a Basic Test on Their History and Institutions; Additional Finding*, INTERCOLLEGIATE STUD. INST., [http://www.americancivilliteracy.org/2008/additional\\_finding.html](http://www.americancivilliteracy.org/2008/additional_finding.html) (last visited Apr. 12, 2013).

18. Robert L. Dudley & Alan R. Gitelson, *Political Literacy, Civic Education, and Civic Engagement: A Return to Political Socialization?*, 6 APPLIED DEVELOPMENTAL SCI. 175, 176 (2002) ("One consistent theme emerging from studies of citizens' knowledge is that young people are the least knowledgeable.").

19. KARL T. KURTZ ET AL., NAT'L CONFERENCE OF STATE LEGISLATURES, *CITIZENSHIP: A CHALLENGE FOR ALL GENERATIONS* 1, 5-6 (2003).

20. *Id.* at 7.

21. *Id.* at 1 (explaining that many young people between the ages of eighteen and twenty-four do not understand the principles of citizenship, are disengaged from the political process, lack the knowledge necessary for effective government, and have limited appreciation of American democracy); see also Constance Flanagan & Peter Levine, *Civic Engagement and the Transition to Adulthood*, FUTURE CHILDREN, Spring 2010, at 159, 159 (noting that today's young adults are less likely than are earlier generations to exhibit many important characteristics of citizenship).

22. KURTZ ET AL., *supra* note 19, at 3.

23. U.S. DEP'T OF EDUC., *CIVICS 2010: NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS AT GRADES 4, 8, AND 12*, at 1 (2011).

24. *Id.* at 1, 5.



nificant progress in civics, neither eighth nor twelfth graders' performance had improved since the previous civics assessment in 2006.<sup>25</sup> For eighth graders, this meant that only 22% of test takers were performing at or above proficient—a rate that has remained stable since the 1998 assessment.<sup>26</sup> Similarly, performance for twelfth graders has remained relatively constant since the 1998 assessment, with only 24% of test takers performing at or above proficient.<sup>27</sup>

Studies of college students further demonstrate the magnitude of the civic literacy crisis among young Americans. A study commissioned by the U.S. Department of Education and conducted by the National Task Force on Civic Learning and Democratic Engagement found that “the longer . . . students stay in college, the wider the gap becomes between their endorsement of social responsibility as a goal of college and their assessment of whether the institution provides opportunities for growth in this area.”<sup>28</sup> The Wabash National Study of Liberal Arts similarly found that post-secondary education does not increase civic literacy.<sup>29</sup> According to the study, during four years of college more than 50% of students either decline or show no growth in how they value diversity and political or social involvement.<sup>30</sup>

### 3. Low-Income, Non-white Young People Demonstrate the Largest Civic Deficits

Although young Americans demonstrate civic deficits across the board, non-white and financially impoverished young people fare the worst. Frequently cited as an authority on civic education, Meira Levinson<sup>31</sup> has shown that young people (and adults) who are poor, non-white, or of an immigrant population have considerably lower levels of civic and political knowledge, skills, and participation than do their wealthier, white, or native-born counterparts.<sup>32</sup> Such disparities between young people “appear as early as fourth grade and remain consistent through middle and high school.”<sup>33</sup> Professor Levinson also found that adult civic engagement and sense of civic efficacy increases as personal income increases.<sup>34</sup>

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25. *Id.* at 1–2.

26. *Id.* at 21.

27. *Id.* at 35.

28. NAT'L TASK FORCE, *supra* note 4, at 5.

29. U.S. DEP'T OF EDUC., *ADVANCING CIVIC LEARNING AND ENGAGEMENT IN DEMOCRACY: A ROAD MAP AND CALL TO ACTION* 13 (2012).

30. *Id.*

31. Meira Levinson is an associate professor of education at Harvard Graduate School of Education.

32. Meira Levinson, *The Civic Achievement Gap* 5–6 (Ctr. for Info. & Research on Civic Learning & Engagement, Working Paper No. 51, 2007).

33. MEIRA LEVINSON, *NO CITIZEN LEFT BEHIND* 32 (2012).

34. Levinson, *supra* note 32, at 5–7; see also Joseph Kahne & Ellen Middaugh, *Democracy for Some: The Civic Opportunity Gap in High School* 3 (Ctr. for Info. & Research on Civic Learning

Importantly, scores on the 2010 NAEP civics assessment evidence a similar relationship between income and civic literacy for young Americans. Among fourth graders, those not eligible for reduced-price or free lunch scored seventeen points higher than did those eligible for reduced-price lunch and twenty-eight points higher than did those eligible for free lunch.<sup>35</sup> This trend was strikingly similar among eighth-grade students, as those not eligible for reduced-price or free lunch scored fifteen points higher than did those eligible for reduced-price lunch and thirty points higher than did those eligible for free lunch.<sup>36</sup> These scores corroborate Levinson's conclusion that "poverty is the clearest predictor of lack of [civic] participation."<sup>37</sup> A 2011 report produced by the Campaign for the Civic Mission of Schools affirms Levinson's findings, explaining that "[r]ecent research shows that low income, African-American, Hispanic, and rural students score lower on tests of civic knowledge and have less optimistic views of their civic potential than [do] their more privileged counterparts."<sup>38</sup>

In addition to these well-documented differences in civic literacy among young people who are poor or minorities, there is evidence that students from these marginalized groups are least likely to have opportunities to engage in civic learning.<sup>39</sup> A series of three studies of high school civics opportunities conducted from 2005 to 2007 revealed that "a student's race and academic track, and a school's average socioeconomic status (SES) determine[] the availability of school-based civic learning opportunities that promote voting and broader forms of civic engagement."<sup>40</sup> These findings led the authors of the study to conclude that schools exacerbate the civic achievement gap by perpetuating a civic opportunity gap.<sup>41</sup>

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& Engagement, Working Paper No. 59, 2008) (citing a study by Larry Bartels that found that policy preferences of the wealthiest third of constituents received 50% more weight than did the preferences of those in the middle third, and that the poorest third of constituents received no weight at all); *Our Fading Heritage*, *supra* note 13 (suggesting that income predicts civic efficacy and civic knowledge because Americans who earned an annual income between \$30,000 and \$50,000 scored an average of 46% on the 2008 ISI test, whereas Americans who earned over \$100,000 scored an average of 55%).

35. U.S. DEP'T OF EDUC., *supra* note 23, at 11.

36. *Id.* at 24.

37. *Closing the Civic Achievement Gap: An Interview with Harvard Researcher Meira Levinson*, LEARNING FIRST ALLIANCE, <http://www.learningfirst.org/node/2098> (last visited Apr. 12, 2013) [hereinafter *Closing the Achievement Gap*] (alteration in original).

38. CAMPAIGN FOR THE CIVIC MISSION OF SCH., *GUARDIAN OF DEMOCRACY: THE CIVIC MISSION OF SCHOOLS* 13 (2011).

39. Kahne & Middaugh, *supra* note 34, at 10.

40. *Id.* at 3. The conclusions reached in this paper were backed by data from three distinct studies. Although two of the studies relied on data from California high schools, the third study utilized a data set from a nationally representative sample of ninth graders.

41. *Id.* at 5.

*B. Trend 2: National Commitment to Civic Education Is Declining*

Despite the mountain of evidence that young Americans—particularly those who are poor or minorities—are lacking by way of civic literacy, financial commitment to civic education within our school system has continued to decline since the 1960s.<sup>42</sup> As the McCormick Foundation noted in its 2007 report, *Civic Disengagement in Our Democracy*, the quality and quantity of civic education has declined to the point where “[y]oung Americans are simply not getting civic socialization in the home, schools, curriculum or extracurricular activities.”<sup>43</sup> In 2008, then-Senator Barack Obama observed that “[t]he loss of quality civic education from so many of our classrooms has left too many young Americans without the most basic knowledge of who our forefathers are, or what they did, or the significance of the founding documents that bear their names.”<sup>44</sup> The National Task Force on Civic Learning and Democratic Engagement has similarly observed “the erosion of the national investment in civic learning and democratic engagement.”<sup>45</sup>

Among the reasons for the ongoing decline in civic education is the competitiveness movement, which has resulted in the proliferation of high-stakes testing and shifted the national focus to core (i.e., tested) subjects like math and science.<sup>46</sup> As a consequence of this narrowed curriculum, civics education has been pushed to the periphery and treated as a second-tier subject.<sup>47</sup> In 2010, former U.S. Supreme Court Associate Justice Sandra Day O’Connor lamented that half of the states no longer require civics education for high school graduation, describing it as “a remarkable withdrawal from” the purpose of public education.<sup>48</sup> Similarly, in her most recent book, *No Citizen Left Behind*, Meira Levinson ob-

42. Eric Lane, *Are We Still Americans?*, 36 HOFSTRA L. REV. 13, 15 (2007) (“[F]rom the 1960s onward civic education has been declining and by the 1980s [it] had nearly vanished.”); see also Sandra Day O’Connor, *The Democratic Purpose of Education: From the Founders to Horace Mann to Today*, in TEACHING AMERICA: THE CASE FOR CIVIC EDUCATION 3, 6 (David Feith ed., 2011) [hereinafter TEACHING AMERICA] (noting that the decline in civic education has occurred despite the fact that forty state constitutions explicitly mention the importance of students’ civic literacy and thirteen state constitutions acknowledge civic education as the primary purpose of schools).

43. MCCORMICK FOUND., CIVIC DISENGAGEMENT IN OUR DEMOCRACY 7 (2008).

44. Transcript of Barack Obama’s Speech in Independence, Mo., N.Y. TIMES (June, 30 2008), [http://www.nytimes.com/2008/06/30/us/politics/30text-obama.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2008/06/30/us/politics/30text-obama.html?pagewanted=all&_r=0).

45. NAT’L TASK FORCE, *supra* note 4, at 29.

46. CAMPAIGN FOR THE CIVIC MISSION OF SCH., *supra* note 38, at 14; see also O’Connor, *supra* note 42 (noting that education initiatives that assess schools mainly by students’ performance in math and science have unintentionally contributed to the decline in civic education by pressuring teachers to focus too heavily on testable subjects).

47. CAMPAIGN FOR THE CIVIC MISSION OF SCH., *supra* note 38, at 14; Kahne & Middaugh, *supra* note 34, at 21 (noting that as a result of high-stakes testing and narrowing of the curriculum, social studies is most frequently cited as the place where reductions occur); see also LEVINSON, *supra* note 33, at 258 (noting that there is little evidence that high-stakes testing improves instructional practices); Joel Westheimer & Joseph Kahne, *What Kind of Citizen?: The Politics of Educating for Democracy*, 41 AM. EDUC. RES. J. 237, 263 (2004) (noting that “the current narrow emphasis on test scores crowd[s] out” opportunities for civic learning).

48. NAT’L TASK FORCE, *supra* note 4, at 6 (internal quotation mark omitted).

served an ongoing “decline in the number, range, and frequency of civics courses offered” in America’s public schools.<sup>49</sup> A U.S. Department of Education report from January 2012 affirmed the status of civic learning and democratic engagement as “add-ons,” which are frequently pushed to the side by schools that “mistakenly treat[] education for citizenship as a distraction from preparing students for . . . other core subjects.”<sup>50</sup>

### *C. Trend 3: Awareness of the Benefits of Civic Literacy Is Increasing*

Although our national commitment to civic literacy continues to decline, a growing body of evidence demonstrates the many benefits that flow from civic education to individual citizens and to society at large.<sup>51</sup> For individual citizens, civic education increases civic participation, improves academic performance, and teaches important job skills. In addition to the benefits enjoyed by individual citizens, civic education benefits society at large because it is correlated with economic resilience and governmental stability.<sup>52</sup>

#### 1. Civic Literacy Confers Benefits on Individual Citizens

Research conducted by the Campaign for the Civic Mission of Schools shows that students who receive effective civic education are more likely to vote, discuss politics at home, volunteer to work on community issues, and be confident in their ability to speak publicly.<sup>53</sup> A study of Chicago high school students found that civic learning had a sizeable impact on students’ commitment to civic participation and desire to vote even after controlling for variables such as prior civic commitments, demographic factors, academic factors, the degree to which students spoke with their parents about politics, and the students’ level of social capital (i.e., the number of beneficial social connections the students possessed within their social networks).<sup>54</sup> Furthermore, healthy levels of civic engagement potentially provide personal and psychological benefits to youth by fulfilling “the human need to belong and to feel that life has a purpose beyond the pursuit of individual gain.”<sup>55</sup>

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49. LEVINSON, *supra* note 33, at 52.

50. U.S. DEP’T OF EDUC., *supra* note 29, at 1.

51. Flanagan & Levine, *supra* note 21, at 173 (“Civic engagement of young adults is important both for the functioning of a democratic society and for individual development.”); NAT’L TASK FORCE, *supra* note 4, at 25 (explaining that in addition to improving the civic deficit, civic education replenishes our country’s civic capital—a “self-renewing resource for strengthening [our] democracy”).

52. *See generally* CAMPAIGN FOR THE CIVIC MISSION OF SCH., *supra* note 38; Flanagan & Levine, *supra* note 21, at 160; LEVINSON, *supra* note 33, at 48; MCCORMICK FOUND., *supra* note 43; NAT’L CONFERENCE ON CITIZENSHIP, *supra* note 1.

53. CAMPAIGN FOR THE CIVIC MISSION OF SCH., *supra* note 38, at 6.

54. Kahne & Middaugh, *supra* note 34, at 10.

55. Flanagan & Levine, *supra* note 21, at 160.

Importantly, many studies have noted that effective civic education provides youths with career skills that are highly valued by employers.<sup>56</sup> According to the Center for the Study of Social Policy (CSSP), civic education not only reduces risky behavior, increases success in school, and leads to greater civic participation later in life but also enables young people to gain work experience and to learn responsibility.<sup>57</sup> Similarly, the U.S. Department of Education has emphasized benefits of civic learning that go beyond promoting civic knowledge, skills, and dispositions, such as building valuable twenty-first-century competencies that are necessary for students' long-term career success.<sup>58</sup> The National Task Force on Civic Learning and Democratic Engagement likewise concluded that "[a] high-quality education, workforce preparation, and civic engagement are inextricably linked."<sup>59</sup>

## 2. Civic Literacy Confers Benefits on Society at Large

In addition to the benefits of civic education that are bestowed upon the individual citizen, there are numerous ways that civic literacy among American citizens benefits our society as a whole.<sup>60</sup> For example, a study released in 2011 found that a state or locality's civic health can improve its economic resilience.<sup>61</sup> Using data derived from the U.S. Census Bureau's *Current Population Survey*, the study found strong positive correlations between certain forms of civic engagement—volunteering, attending public meetings, helping neighbors, voting, and registering to vote—and resilience against unemployment following the 2006 recession.<sup>62</sup> In other words, "[s]tates and localities with more civic engagement in 2006 saw less growth in unemployment between 2006 and 2010."<sup>63</sup>

Beyond the potential for civic literacy to yield concrete economic benefits, an engaged and informed citizenry is an essential characteristic

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56. See generally NAT'L TASK FORCE, *supra* note 4, at 28; U.S. DEP'T OF EDUC., *supra* note 29, at 4; see also CTR. FOR THE STUDY OF SOC. POLICY, RESULTS-BASED PUBLIC POLICY STRATEGIES FOR PROMOTING YOUTH CIVIC ENGAGEMENT 3 (2011).

57. CTR. FOR THE STUDY OF SOC. POLICY, *supra* note 56, at 2.

58. U.S. DEP'T OF EDUC., *supra* note 29, at 4 ("A growing body of evidence . . . indicates that high-quality civic learning and democratic engagement is a win-win proposition in higher education and career preparation."); see also *id.* ("Civic learning is not only compatible with career preparation and improved graduation rates, but also is a core skill in preparing students to succeed as employees and citizens.")

59. NAT'L TASK FORCE, *supra* note 4, at 22.

60. LEVINSON, *supra* note 33, at 51 ("If we care about political stability, democratic legitimacy, and civic equality, then we must care about what is taught and what is learned in [our] schools—not just for the students' sakes, but for our own."); O'Connor, *supra* note 42, at 11 ("Today, as the schools are not meeting their founding promise of educating the next generation of active and informed citizens, reinvigorating the civic mission of public education should be a top priority for anyone concerned about the future health of our government and our society.")

61. NAT'L CONFERENCE ON CITIZENSHIP, *supra* note 1, at 6.

62. *Id.* at 3.

63. *Id.*

of a healthy democratic government.<sup>64</sup> William Lyons and Julie Drew, authors of *Punishing Schools: Fear and Citizenship in American Public Education*, explain that a democratic government can only function properly when it is “built on informed, thoughtful, cooperative, prudent, and innovative forms of citizenship.”<sup>65</sup> The importance of building an informed and engaged citizenry is even greater given America’s racial and ethnic diversity.<sup>66</sup> According to the National Task Force on Civic Learning and Democratic Engagement, widespread civic education strengthens our heterogeneous society by establishing and promoting a shared set of American values and by providing an avenue for counteracting social inequality.<sup>67</sup>

Civically literate citizens are integral to our democracy because they have the power to legitimize and stabilize our government. As the Campaign for the Civic Mission of Schools noted in its 2011 report, effective citizens have the ability to advocate for their interests and thereby prevent narrower interests from achieving disproportionate power.<sup>68</sup> Preserving the balance of power is essential because governments that serve broad societal interests enjoy more stability over time. Such governments not only inspire loyalty among citizens but also benefit from improved decision making because they are able to draw on society’s aggregate wisdom.<sup>69</sup> Importantly, civic engagement among young people has a

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64. MCCORMICK FOUND., *supra* note 43, at 4 (“We believe civic health is not only essential to building the real power of society, it is the foundation.”); *see also* Jon Kyl, *Safeguarding American Exceptionalism: An Uninformed Citizenry Risks Ceding Excessive Power to Government*, in TEACHING AMERICA, *supra* note 42, at 33, 36 (“If Americans cease to understand who they are as citizens, our country risks losing the qualities that make it exceptional.”).

65. WILLIAM LYONS & JULIE DREW, *PUNISHING SCHOOLS: FEAR AND CITIZENSHIP IN AMERICAN PUBLIC EDUCATION* 11 (2006) (arguing that, because governments require informed citizens to operate properly, investing in civic education is the inevitable starting point for cultivating effective citizens).

66. CAMPAIGN FOR THE CIVIC MISSION OF SCH., *supra* note 38, at 10 (“America as a new nation was not created out of devotion to a motherland, a royal family, or a national religion. Americans are instead defined by our fidelity to certain ideals, expressed in the Declaration of Independence, Constitution, and Bill of Rights and subsequent amendments. . . . If Americans are not bound together by common values, we will become fragmented and turn on one another.”); NAT’L TASK FORCE, *supra* note 4, at 4 (explaining that our diverse society requires us to take affirmative steps to foster shared values and ideals among our heterogeneous citizenry).

67. Kahne & Middaugh, *supra* note 34, at 22; *see also* CAMPAIGN FOR THE CIVIC MISSION OF SCH., *supra* note 38, at 6 (explaining that civic learning inherently promotes the ideal of civic equality and that by providing civic education to traditionally marginalized groups, such efforts can facilitate movement towards greater civic equality); STEPHEN MACEDO, *DIVERSITY AND DISTRUST: CIVIC EDUCATION IN A MULTICULTURAL DEMOCRACY* 42–43 (2000) (noting that the health of our system depends on shared democratic norms).

68. CAMPAIGN FOR THE CIVIC MISSION OF SCH., *supra* note 38, at 12; *see also* MCCORMICK FOUND., *supra* note 43, at 6 (“The decline in citizen political involvement has serious civic consequences. On one level, the nation is profoundly poorer for the diminished civic involvement; on another level, the more voting rates decline the more American politics become dominated by those with special interests—who seek specific policy outcomes—and the zealous—who are militant on specific issues. Consequently, government in the common interest suffers, and American politics become increasingly polarized.”).

69. LEVINSON, *supra* note 33, at 48–49.

unique role in preserving the long-term health of government.<sup>70</sup> First, youth civic engagement stabilizes society by “directing . . . discontent into constructive channels.”<sup>71</sup> Second, youth engagement, a wellspring for fresh perspectives and solutions, can facilitate problem solving and political change.<sup>72</sup> The capacity for young people to protect our government through civic engagement explains why the CSSP has urged policy makers to think about preparing youth for a successful transition to adulthood as an important societal investment.<sup>73</sup>

Ongoing deficits in citizens’ civic literacy, coupled with a declining national commitment to civic education and a growing body of evidence documenting the benefits of civic education, have resulted in the proliferation of civic outreach programs that are designed to promote and facilitate civic literacy.<sup>74</sup> Part II of this Essay explores the types of civic outreach programs that are currently working to enhance civic literacy across the nation.

## II. COMMON MODELS OF CIVIC OUTREACH PROGRAMS

To better assess the vast number of programs that currently provide a diverse range of civic outreach services, this Essay provides a basic framework for categorizing civic outreach programs based on the type of services offered and to whom these services are provided. As a starting point, this Essay proposes two basic models of civic outreach programs. Model 1 encompasses programs that direct services to actors in educational institutions. Programs within this model provide services to administrators, teachers, and students based on their relationship to an existing K–12 or post-secondary educational institution. Importantly, the majority of civic outreach programs fall under Model 1. In contrast, Model 2 encompasses programs that direct services to the general public. This mod-

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70. Flanagan & Levine, *supra* note 21, at 173 (“As generational replacement theories suggest, democracies depend on the social integration of successive younger generations into the body politic.”).

71. *Id.* at 160.

72. *Id.* at 159–60; see also *Closing the Achievement Gap*, *supra* note 37 (adding complexity to this issue, Levinson argues that the fact that race or SES affects civic participation rates functions to undermine America’s legitimacy and stability).

73. CTR. FOR THE STUDY OF SOC. POLICY, *supra* note 56, at 4 (“Creating opportunities for young people to grow into thriving adults will increase the well-being of the next generation, and ultimately translate into savings for taxpayers.”).

74. CAMPAIGN FOR THE CIVIC MISSION OF SCH., *supra* note 38, at 17 (“Numerous studies have shown that knowledge gained through courses in civics, history, economics, the law, and geography increase a student’s confidence in and propensity towards active civic participation.”); KURTZ ET AL., *supra* note 19, at 4 (noting that youth “who have taken a civics or American government class are much more likely to believe they are personally responsible for making things better for society” and that voting is important); Kyl, *supra* note 64, at 37 (“The recognition that Americans have a civic literacy deficit is not new, and many committed individuals have undertaken noble efforts to educate young Americans.”); U.S. DEP’T OF EDUC., *supra* note 29, at 3 (noting that the U.S. Department of Education shares the urgency about bolstering civic learning that is reflected in current leading reports on civic education in our nation’s schools).

el captures the few civic outreach programs that do not fit squarely within Model 1.

### *A. Model 1: Program Services Are Directed at Educational Institutions*

Model 1 includes those civic outreach programs that seek to enhance civic literacy by providing services directly to actors within K–12 and post-secondary educational institutions.<sup>75</sup> A distinguishing characteristic of programs that fall within Model 1 is exclusivity—only actors associated with a given educational institution are eligible for services. Within this model, programs target three distinct types of institutional actors: administrators, teachers, and students. Although it is possible for a program to engage actors on more than one level, this Essay categorizes programs based on which institutional actor is the principal recipient of services.

#### 1. Administrator-Focused

Programs directed at administrators are the rarest type of program within Model 1. Administrator-focused programs seek to effectuate improvements in civic literacy by incorporating civic learning and engagement opportunities on a schoolwide level. Although these programs often require substantial buy-in from teachers, they are different from teacher-focused programs because teacher involvement is a consequence of the school administration's decision to participate in the program.

One excellent example of an administrator-focused program in the K–12 setting is the Chicago-based Democracy Schools program run by the McCormick Foundation. The goal of Democracy Schools is to help secondary schools provide students with authentic civic experiences by emphasizing participatory citizenship in all aspects of the school experience.<sup>76</sup> According to Shawn Healy, resident scholar and director of professional development for Democracy Schools, providing services at the administrative level is the best way to effectuate civic learning.<sup>77</sup> By training the trainer, the Democracy Schools program helps school administrators build partnerships within their building that enable civic learning goals to be incorporated across the curriculum.<sup>78</sup>

Given that a school is generally not organized to allow for cross-curriculum learning, the initial focus of the Democracy Schools program is to provide resources and ongoing support to administrators as they

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75. This definition excludes adult education classes that occur outside of the post-secondary context.

76. *Civics Program Strategy*, MCCORMICK FOUND., <http://www.mccormickfoundation.org/page.aspx?pid=568> (last visited Apr. 14, 2013).

77. Telephone Interview with Shawn Healy, Resident Scholar & Dir. of Prof'l Dev. for the Democracy Sch. Program, McCormick Found. (Oct. 29, 2012) [hereinafter Healy Interview].

78. *Id.*



restructure how their school operates.<sup>79</sup> During this accreditation period, the Democracy Schools program helps administrators critically evaluate the quantity and quality of civic learning within their school in order to identify areas for improvement.<sup>80</sup> Once an improvement plan is in place, Democracy Schools provides the school with a small amount of money (typically \$500) to facilitate fulfillment of the plan.<sup>81</sup> This money is most often used to hire substitute teachers, giving administrators and teachers time to determine how to most effectively integrate civic learning opportunities across the curriculum.<sup>82</sup> In the past six years, seventeen schools have successfully completed the Democracy Schools accreditation process.<sup>83</sup> Once accredited, these schools were awarded \$3,000–\$5,000 to support the continuation of civic learning across the curriculum.<sup>84</sup>

Administrator-focused programs also exist at the post-secondary level. For example, through its Civic Learning and Democratic Engagement (CLDE) initiative, the Association of American Colleges and Universities supports administrators of post-secondary institutions as they take steps to make “civic and democratic learning an expected outcome for every college student.”<sup>85</sup> A similar program, the American Democracy Project (ADP), was created by the American Association of State Colleges and Universities.<sup>86</sup> Like the CLDE, the ADP is a multi-campus initiative designed to ensure that all college graduates are capable citizens.<sup>87</sup> To help member colleges and universities accomplish this goal, the ADP hosts national and regional meetings and supports campus initiatives that include “voter education and registration, curriculum revision . . . , campus audits, [and] special days of reflection.”<sup>88</sup>

## 2. Teacher-Focused

Teacher-focused programs connect teachers with valuable civics resources and often provide teachers with specific training opportunities. Unlike administrator-focused programs, which seek to integrate civic learning across the curriculum, teacher-focused programs have the narrower goal of providing individual teachers with resources or training to enhance their ability to teach civics and to provide authentic civic engagement opportunities to their students.<sup>89</sup> Most teacher-focused pro-

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79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Civic Learning and Democratic Engagement*, ASS’N AM. CS. & U., [http://www.aacu.org/civic\\_learning/](http://www.aacu.org/civic_learning/) (last visited Apr. 14, 2013).

86. *See About ADP*, AM. ASS’N ST. CS. & U., <http://www.aascu.org/programs/ADP> (last visited Apr. 14, 2013).

87. *See id.*

88. *See id.*

89. Interview with Barbara Miller & Jackie Johnson, Exec. & Assoc. Dirs., Ctr. for Educ. in Law & Democracy, in Denver, Colo. (Oct. 17, 2012) [hereinafter Miller & Johnson Interview].

grams educate and support teachers as a means of ensuring that students receive quality civic education and engagement opportunities.<sup>90</sup>

The American Board of Trial Advocates' (ABOTA) Teachers' Law School is an example of a teacher-focused civic outreach program that is available to K–12 teachers.<sup>91</sup> The Teachers' Law School, which was inspired by the Journalists' Law School program launched by ABOTA and Loyola University in 2006, is premised on the idea that teacher education is the most efficient avenue for improving civic literacy on a broad scale: teachers not only possess the necessary pedagogical skills to effectively teach civics but also have uniquely consistent contact with large groups of students.<sup>92</sup>

July 2008 marked the inaugural Teachers' Law School that provided thirty-five teachers from all over Texas a no-cost, three-day intensive crash course in the law.<sup>93</sup> Over the past four years, the Teachers' Law School has expanded to Arkansas, California, Colorado, Florida, and Pennsylvania, where local ABOTA members volunteer to organize and administer the program. Although each state covers largely the same content—criminal law, constitutional law, family law, evidence, federal courts, and education law—the depth of coverage varies by location because some programs are packed into a single day and others extend over three days.<sup>94</sup> As demand for the Teachers' Law School outpaces the program's growth, ABOTA requires interested teachers to submit formal applications and then awards seats to teachers based on need and merit.<sup>95</sup>

Other examples of teacher-focused programs for K–12 teachers include the Ludwick Family Foundation's Democracy in Action civic education project,<sup>96</sup> Indiana University's Center on Congress professional development seminars,<sup>97</sup> the Center for Education in Law and Democracy's Educating for Citizenship annual conference,<sup>98</sup> and the Center for Civic Education's *We the People* national summer institutes.<sup>99</sup>

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90. Telephone Interview with Christian Lindke, Arsalyn Program Dir., Ludwick Family Found. (Nov. 20, 2012) [hereinafter Lindke Interview]; Miller & Johnson Interview, *supra* note 89; Telephone Interview with Brian Tyson, Exec. Dir., Am. Bd. of Trial Advocates (Nov. 20, 2012) [hereinafter Tyson Interview].

91. See *Teachers' Law School*, AM. BD. TRIAL ADVOCATES, <http://www.abota.org/index.cfm?pg=TeachersLawSchool> (last visited Apr. 14, 2013).

92. Tyson Interview, *supra* note 90.

93. *Id.*

94. *Id.*

95. *Id.*

96. See *Democracy in Action: A Civic Education Project*, ARSALYN, <http://www.arsalyn.org/Display.asp?Page=democracyinaction> (last visited Apr. 14, 2013).

97. See *Teacher Outreach*, CENTER ON CONG. IND. UNIV., <http://congress.indiana.edu/teacher-outreach> (last visited Apr. 14, 2013).

98. See *Programs and Resources*, CENTER FOR EDUC. L. & DEMOCRACY, <http://www.lawanddemocracy.org/programsnew.html> (last visited Apr. 14, 2013).

99. See *We the People, National Summer Institutes*, CENTER FOR CIVIC EDUC., <http://new.civiced.org/wtp-the-program/professional-development/summer-institutes> (last visited Dec. 12, 2012).

At the post-secondary level, Diving Deep is an example of a teacher-focused program.<sup>100</sup> A Campus Compact creation, Diving Deep is a professional development institute that supports administrators and faculty members who have significant experience with civic and community engagement and are currently in a position to institutionalize civic engagement on their campus.<sup>101</sup> Among other things, this four-day institute is designed to help participants expand their capacity to grow and sustain civic engagement and to develop individual action plans for sharing what they have learned with their respective institution.<sup>102</sup>

### 3. Student-Focused

Student-focused outreach programs, which appear to be the most common type of civic outreach program, are different from both administrator-focused and teacher-focused programs because they provide services directly to students through outside resource people. The typical outside resource person is a legal professional such as a lawyer or a judge.<sup>103</sup> Although outside resource people sometimes receive training from the civic outreach program they volunteer with, a defining feature of the student-focused program is that the outside resource people are already uniquely qualified to teach civics-related content.<sup>104</sup>

The Stand Up for Your Rights program offered by Discovering Justice is one clear example of a student-focused civic outreach program that is offered in the K–12 context. Through Stand Up for Your Rights, a team of volunteer lawyers teach middle school students from underserved communities about either the First or Fourth Amendments and how each applies in public schools.<sup>105</sup> These volunteer lawyers visit the classroom for ninety minutes once a week after school for a total of seven weeks and teach out of a handbook developed by Discovering Justice. The program culminates in a mock appellate argument at the John Adams Courthouse where the students argue before a Massachusetts Appeals Court judge.<sup>106</sup>

The Stand Up for Your Rights program focuses on engaging children with civics at a young age before their civic attitudes and dispositions have fully formed.<sup>107</sup> By utilizing practicing attorneys as outside resource people, the program ensures that presenters are accurate con-

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100. *Diving Deep: Campus Compact's Institute for Experienced Civic and Community Engagement Practitioners*, CAMPUS COMPACT, <http://www.compact.org/events/divingdeep> (last visited Apr. 14, 2013) [hereinafter *Diving Deep*].

101. CAMPUS COMPACT, DIVING DEEP APPLICATION GUIDELINES 6 (2012).

102. *Diving Deep*, *supra* note 100.

103. Telephone Interview with Meryl Kessler, Legal Dir., Discovering Justice (Dec. 5, 2012) [hereinafter Kessler Interview]; Miller & Johnson Interview, *supra* note 89.

104. Kessler Interview, *supra* note 103; Miller & Johnson Interview, *supra* note 89.

105. Kessler Interview, *supra* note 103.

106. *Id.*

107. *Id.*

duits of constitutional and other legal information. In addition, the program urges participating attorneys to serve as mentors to the children in the program and to encourage these children to pursue legal careers.<sup>108</sup>

Other examples of student-focused civic outreach programs that target K–12 students include the Denver Bar Association’s Partner Alliance of Lawyers and Schools,<sup>109</sup> the National Association for Law Placement (NALP) and Street Laws’ Legal Diversity Pipeline Program,<sup>110</sup> Colorado Springs Judges David Prince and David Shakes’ Judicially Speaking program,<sup>111</sup> Professor Jamin Raskin’s Marshall–Brennan Constitutional Literacy Project,<sup>112</sup> the Liberty and Law Institute’s America’s Founding Documents course,<sup>113</sup> and the American Bar Association’s Teaching the Constitution program.<sup>114</sup>

### *B. Model 2: Program Services Are Directed at the General Public*

The primary difference between Model 2 and Model 1 programs is who is eligible to receive services. Whereas programs within Model 1 provide services exclusively to administrators, teachers, or students associated with a K–12 or post-secondary educational institution, programs within Model 2 have no such limits. Thus, Model 2 is best understood to subsume the relatively few civic outreach programs that do not fall cleanly into Model 1. Within Model 2, outreach programs tend to focus on enhancing civic literacy either among adults or among young people.

#### 1. Adult-Focused

Adult-focused civic outreach programs provide services to individuals who are over the age of eighteen. Many of the civic outreach programs that focus on this age group combine civic education with English-language acquisition. For example, the U.S. Department of Education’s Office of Vocational and Adult Education website provides links to information about adult civic education: nearly all these links connect the reader to civic outreach programs or to written materials that emphasize English literacy in addition to civic literacy.<sup>115</sup> However, there are

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108. *Id.*

109. See Erich Bethke, *A Seat at the Bar: Come to School with Democracy Education*, DOCKET, Sept. 2012, at 12, 12.

110. See *NALP/Street Law Legal Diversity Pipeline Program*, NAT’L ASS’N FOR L. PLACEMENT, <http://www.nalp.org/streetlaw> (last visited Apr. 14, 2013).

111. Judge David Shakes, Co-founder, Judicially Speaking, Remarks at the Twentieth Annual Rothergerber Conference (Nov. 29, 2012).

112. See *The Marshall–Brennan Constitutional Literacy Project*, *supra* note 2.

113. Telephone Interview with Bob Skiver, Dir., Liberty & Law Inst. (Aug. 28, 2012) [hereinafter Skiver Interview].

114. Telephone Interview with Ann Oswald, Former Chair of Teaching the Constitution Comm., Am. Bar Assoc. Judicial Div. (Sept. 13, 2012) [hereinafter Oswald Interview]. Although the Liberty and Law Institute and the American Bar Association (ABA) are not partners, the ABA uses teaching materials that were developed by the Liberty and Law Institute.

115. See *Civics Education: Office of Vocational and Adult Education*, U.S. DEP’T EDUC., <http://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/elctopic.html> (last visited Apr. 14, 2012).

some adult-focused civic outreach programs that do not have linguistic undertones. One example is Discovering Justice's Courthouse Tours program.<sup>116</sup> Through this program, members of the general public, including adults, can visit Boston's courthouses to learn about each building's history and how the court system operates.<sup>117</sup>

## 2. Youth-Focused

Youth-focused programs provide services to young people outside of formal educational systems. In other words, youth engagement with these programs is independent of the school system and instigated by the participant him or herself. For example, through Washington state's Legislative Youth Advisory Council (LYAC), twenty-two young people aged fourteen to eighteen are given the opportunity to learn about the legislative process firsthand.<sup>118</sup> The purpose of the LYAC is to help legislators address the needs of youth, which members of the LYAC fulfill by providing advice about pending legislation, drafting letters and legislative reports, and soliciting input from other youth and community organizations.<sup>119</sup> To serve on the LYAC, interested youth must submit an application, be recommended for appointment by current members, and be officially appointed to the Council by the Lieutenant Governor. Another example of a general-public, youth-focused program is North Carolina's legislatively created voter preregistration and education program.<sup>120</sup> To increase registration rates among eighteen- to twenty-four-year-olds, this program enables all sixteen- and seventeen-year-olds to preregister to vote at the Department of Motor Vehicles when they obtain their driver's license. Once these individuals turn eighteen years old, they are automatically registered to vote.<sup>121</sup>

### C. Preference Should Be Given to Model 1 Programs that Direct Services to K-12 Educational Institutions

Achieving meaningful improvements in civic literacy among America's diverse citizenry is an enormous task that is not amenable to a one-size-fits-all solution.<sup>122</sup> Given this complexity, the various approaches to achieving civic literacy encompassed by Model 1 and Model 2 programs

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116. *Courthouse Tours Program*, DISCOVERING JUST., [http://www.discoveringjustice.org/?p=pgms\\_fieldtrips\\_tours](http://www.discoveringjustice.org/?p=pgms_fieldtrips_tours) (last visited Apr. 14, 2012).

117. *Id.*

118. WASH. ST. LEG. YOUTH ADVISORY COUNCIL, <http://lyac.leg.wa.gov> (last visited Apr. 14, 2013).

119. *Id.*

120. H.B. 1260, 2009 Leg. Sess. (N.C. 2010).

121. *Id.*

122. See *Civics Program Strategy*, *supra* note 76 (explaining that reinvigorating the importance of civic literacy in our education system is "a job too big for any single foundation or organization"); *Closing the Achievement Gap*, *supra* note 37 (emphasizing the importance of students' backgrounds when developing effective approaches to civic education).

are not only inevitable but also desirable.<sup>123</sup> Despite the need for diverse civic outreach programs, the remainder of this Essay concentrates on programs that fall within Model 1 and provide services in the K–12 context. Preference should be given to these programs because they are not only the most common form of civic outreach but also the best equipped to achieve meaningful improvements in civic literacy.

First, by providing services that directly benefit young people, programs within Model 1 necessarily target the group of Americans that is least knowledgeable about civics-related topics. As discussed in Part I, studies consistently show that young people are the least knowledgeable segment of the population.<sup>124</sup> Given the unique civic deficit observed in young Americans, programs that serve young people have an enhanced capacity to improve overall rates of civic literacy.

Second, programs within Model 1 fulfill the historic purpose of schools to prepare students for meaningful civic engagement. When the idea of public schools was first conceived by America's founders, the critical mission of schools was to create effective democratic citizens as a means of preserving self-rule<sup>125</sup> and forging a common American identity among a nation of immigrants.<sup>126</sup> As historical conduits of civic knowledge,<sup>127</sup> public schools have played—and will continue to play—a central role in creating American citizens.<sup>128</sup> Because they align with the accepted purpose of public education, Model 1 programs possess institutional legitimacy that makes them most capable of widespread acceptance and implementation.

Finally, of the programs within Model 1, those that provide services specifically to actors in K–12 educational institutions have the greatest capacity to effectuate improvements in civic literacy among young people.<sup>129</sup> Unlike post-secondary educational experiences, the K–12 experi-

123. U.S. DEP'T OF EDUC., *supra* note 29, at 8 (“The next generation of civic learning features a mix of public, private, and nonprofit initiatives.”); Dudley & Gitelson, *supra* note 18, at 180 (noting that there is no single window for civic learning and engagement).

124. Dudley & Gitelson, *supra* note 18 (“One consistent theme emerging from studies of citizens’ knowledge is that young people are the least knowledgeable.”).

125. See Frederick M. Hess, *Civic Education, Devalued*, in *TEACHING AMERICA*, *supra* note 42, at xi (“For America’s founders[,] . . . the crucial mission of schools was to form good democratic citizens.”); LEVINSON, *supra* note 33, at 48 (“Public schools were founded in the United States for civic purposes.”); Tom Donnelly, *Popular Constitutionalism, Civic Education, and the Stories We Tell Our Children*, 118 *YALE L.J.* 948, 965–66 (2009) (“From the earliest years of American public education, one of its key roles has been to prepare young Americans for the duties and responsibilities of citizenship.”).

126. Campbell, *supra* note 5, at 493 (“Historically, public, or ‘common,’ schools were created in order to forge a common citizenry within a nation of immigrants.”).

127. CAMPAIGN FOR THE CIVIC MISSION OF SCH., *supra* note 38, at 11 (“[T]he role of schools as conduits of civic knowledge and virtue is deeply rooted in the American tradition.”).

128. MACEDO, *supra* note 67, at 274 (“The institution of public schools has played a central role in the project of creating American citizens”).

129. *But see* Flanagan & Levine, *supra* note 21, at 173 (arguing that because the transition to adulthood has lengthened, colleges should be the central institution for growing civic literacy).

ence is mandatory and universal. As the Campaign for the Civic Mission of Schools has emphasized, “[O]ur schools remain the one universal experience we all have to gain civic knowledge and skills.”<sup>130</sup> Similarly, Frederick Hess<sup>131</sup> has explained that schools and educators are in the best position to teach students to be citizens because “schools are the only institutions with the capacity and mandate to reach virtually every person in the country.”<sup>132</sup> Moreover, because this shared national experience extends more than a decade, K–12 educational institutions have the unique capacity to facilitate widespread mastery of civic content and skills by teaching civics to successive generations of citizens in a systematic and authoritative manner.<sup>133</sup>

### III. SHARED CHALLENGES AMONG CIVIC OUTREACH PROGRAMS AND STRATEGIC RECOMMENDATIONS

Among the many Model 1 programs that provide services to actors in K–12 educational institutions, two shared challenges exist. First, these programs often struggle to identify and systematically measure program outcomes.<sup>134</sup> Although lack of agreement about the “right” outcome and limited funding are obstacles to measuring program outcomes, research-backed civic outreach programs have become the industry standard.<sup>135</sup> By scaling research efforts to align with available resources, all civic outreach programs have the ability to meet this basic expectation. In addition to aligning with industry standards, programs that measure outcomes enjoy many auxiliary benefits such as affirmation of volunteers and participants, access to data that can be used for program improve-

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130. CAMPAIGN FOR THE CIVIC MISSION OF SCH., *supra* note 38, at 5.

131. Frederick Hess is a resident scholar and the director of education policy studies for the American Enterprise Institute.

132. Hess, *supra* note 125, at xiv.

133. Tom Donnelly, *A Popular Approach to Popular Constitutionalism: The First Amendment, Civic Education, and Constitutional Change*, 28 QUINNIPIAC L. REV. 321, 324, 336 (2010); CAMPAIGN FOR THE CIVIC MISSION OF SCH., *supra* note 38 (“Only if transmitted through our public schools—which educate more citizens in a sustained way than [do] any other institutions—can all students, regardless of background, exercise their full potential as citizens.”).

134. I identified these shared challenges based on my experiences as a research fellow for the Byron R. White Center at the University of Colorado Law School and on in-depth interviews with the following individuals: Melissa Hart, director of the Byron R. White Center for the Study of American Constitutional Law, home to the University of Colorado Law School chapter of the Marshall–Brennan Constitutional Literacy Project and the Colorado Law Constitution Day Project; Shawn Healy, resident scholar and director of professional development for Democracy Schools, a McCormick Foundation program; Christian Lindke, program director of Democracy in Action, a Ludwick Family Foundation program; Jackie Johnson, associate director for the Center for Education in Law and Democracy, home to the Educating for Citizenship annual conference; Barbara Miller, director of the Center for Education in Law and Democracy, home to the Educating for Citizenship annual conference; Brian Tyson, executive director of the American Board of Trial Advocates, home to the Teachers’ Law School program; Bob Skiver, executive director of the Liberty and Law Institute, home to the America’s Founding Documents program; Ann Oswald, former chair of Teaching the Constitution, an American Bar Association program; and Rachel DuFault, chair of Teaching the Constitution, an American Bar Association program.

135. Healy Interview, *supra* note 77.

ment, and increased legitimacy in the eyes of prospective grantors and participants.

Second, civic outreach programs that provide services in the K–12 context face ongoing threats to sustainability. Sustainability challenges are most directly related to limited funding opportunities, but unproductive competition among civic outreach programs functions to exacerbate such challenges. Although funding opportunities are unlikely to increase, programs can enhance their long-term sustainability by fostering formal collaborative relationships with compatible civic outreach programs. In addition, simple acts of cooperation—such as sharing information about one’s program and the timing of its major events—can increase awareness of where services are being provided and reduce unnecessary scheduling conflicts.

The challenges of measuring program outcomes and ensuring program sustainability require collective attention because they are common to all Model 1 civic outreach programs that provide services to actors in the K–12 context. Precisely because these challenges are endemic, they threaten to undermine such programs’ shared goal of improving civic literacy among young Americans. Failing to face these challenges is not an option. If civic outreach programs are to be successful in promoting civic literacy among America’s diverse citizenry, program leaders must be willing to address these challenges by engaging in the same type of critical analysis that is required of an active, engaged citizenry.

#### *A. Civic Outreach Programs Struggle to Identify and Measure Outcomes*

Research-based civic outreach programs (i.e., programs measuring outcomes, not merely outreach) have become the industry standard.<sup>136</sup> The CCSP’s 2011 report, *Results-Based Public Policy Strategies for Promoting Youth Civic Engagement*, provides clear evidence of this norm.<sup>137</sup> The CCSP not only encourages policy makers to make spending decisions by “leading with results”<sup>138</sup> but also identifies the selection of strategies that have “documented effectiveness” as the key to effective policy making.<sup>139</sup> In its 2012 roadmap and call to action, *Advancing Civic Learning and Democratic Engagement*, the U.S. Department of Education similarly advocates for “data-based decision-making”<sup>140</sup> and for measuring the success of civic learning and democratic engagement opportunities by whether they are effective.<sup>141</sup> Moreover, the Department

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136. *Id.*

137. See generally CTR. FOR THE STUDY OF SOC. POLICY, *supra* note 56, at 1.

138. *Id.*

139. *Id.* at 16.

140. U.S. DEP’T OF EDUC., *supra* note 29, at 22.

141. *Id.* at 7 (“We must measure the success of civic learning and democratic engagement opportunities not only by whether they are provided to all students but also by whether they are effective.”).



identified the need for more robust evidence of civic outcomes as one of its five priorities for action<sup>142</sup> and mentioned research-based programs in four steps of its nine-step roadmap for improving civic learning and democratic engagement.<sup>143</sup>

### 1. Obstacles to Identifying and Measuring Outcomes: Lack of Agreement and Lack of Funding

Although the call for research-based civic outreach programs is unequivocal, there are two major obstacles that inhibit programs' abilities to effectively identify and measure program outcomes. First, widespread disagreement about what constitutes a "good" citizen<sup>144</sup> makes it difficult for programs to determine which outcomes are most relevant to measure. As evidence of this fundamental disagreement, in *What Kind of Citizen? The Politics of Education for Democracy*, Joel Westheimer and Joseph Kane observed that civic outreach programs embody a "spectrum of ideas about what good citizenship is and what good citizens do."<sup>145</sup> Similarly, in *Political Literacy, Civic Education, and Civic Engagement: A Return to Political Socialization?*, Robert Dudley and Alan Gitelson noted that "programs that seek to teach and encourage citizenship education and engagement often engender different and sometimes contradictory beliefs regarding what 'good' citizenship constitutes and what comprises 'acceptable' civic education and civic engagement."<sup>146</sup>

Second, funding limitations and the perceived expense of developing and implementing meaningful assessments have prevented many civic outreach programs from measuring program outcomes. Limited staffing appeared to be the most common challenge because programs are often unable to expend resources administering or tracking assessments following the provision of services.<sup>147</sup> In the absence of evidence that their programs yield substantive outcomes, many civic outreach programs focus on reporting the extent of their outreach efforts (i.e., the number of individuals the program served) as a proxy for program success.<sup>148</sup>

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142. *Id.* at 3.

143. *Id.* at 22–25.

144. LEVINSON, *supra* note 33, at 43; BROOK THOMAS, CIVIC MYTHS: A LAW AND LITERATURE APPROACH TO CITIZENSHIP 237 (2007); Campbell, *supra* note 5.

145. Westheimer & Kahne, *supra* note 47, at 237.

146. Dudley & Gitelson, *supra* note 18, at 180.

147. Telephone Interview with Elisabeth Medvedow, Exec. Dir., Discovering Justice (Jan. 2, 2013) [hereinafter Medvedow Interview]; Oswald Interview, *supra* note 114; Skiver Interview, *supra* note 113.

148. See sources cited *supra* note 147. This conclusion is bolstered by the large number of civic outreach programs that report how many individuals the programs served compared to the relatively few programs that report substantive program outcomes. *Id.*

## 2. Recommendations for Effectively Identifying and Measuring Outcomes: Increased Transparency and Realistic Scaling

Although disagreement about the “right” outcome and funding limitations are common constraints, programs must find ways to measure outcomes despite such obstacles. The first obstacle seems to be more of a theoretical problem because in practice programs can simply overlook the field’s disagreement about the “right” outcomes. Instead of seeking agreement about which outcomes civic outreach programs should be trying to achieve, programs should prioritize transparency and strive to be explicit about the outcomes *they believe* are most important. Unfortunately, the second obstacle is more difficult to overcome because funding constraints cannot simply be ignored. Despite the inherent difficulties posed by limited funding, there are ways that programs with limited budgets can scale research efforts to begin measuring outcomes.

Before proceeding, it is important to recognize the different types of “valid” evidence. Specifically, the CSSP has recognized three levels of valid evidence: rigorous statistical evidence, practice-based evidence, and program evaluation and emerging evidence.<sup>149</sup> In most cases, rigorous statistical research, which involves statistical evaluations of control groups or randomly assigned participants, is not a viable option for civic outreach programs due to ethical limitations in fields relating to children and family policy.<sup>150</sup> Similarly, practice-based evidence, or evidence that enjoys broad consensus from practitioners, is not the most promising form of evidence in the civic outreach context given the diversity among programs and the fields’ widespread disagreement about the “right” outcome. In contrast, program evaluation and emerging evidence, which involves evaluations of specific programs and research from related fields, is an ideal form of evidence for civic outreach programs that wish to measure program outcomes. The program-evaluation category not only is free of major ethical restrictions but also has the capacity to accommodate divergent approaches to measuring outcomes.<sup>151</sup>

Within the program-evaluation category of evidence there are four basic types of evaluative tools: multiple-choice tests, short-answer tests, performance tests, and portfolio assessments.<sup>152</sup> Multiple-choice and short-answer tests appear to be the most common tool because they require comparatively less time to implement and are less prone to grader

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149. CTR. FOR THE STUDY OF SOC. POLICY, *supra* note 56, at 1.

150. *Id.*

151. In other words, program evaluation evidence is particularly well-suited for civic outreach programs because it typically does not require internal review board approval and can be easily adapted to each program’s unique goals. *See id.*

152. *See* CAMPAIGN FOR THE CIVIC MISSION OF SCH., *supra* note 38, at 35. Although the Campaign for the Civic Mission of Schools does not specifically refer to these civic learning assessment measures as forms of “program evaluation” evidence, they belong in this category of evidence given that their purpose is to “help evaluate the effects of programs and curricula.” *Id.*

bias than are performance tests and portfolio assessments.<sup>153</sup> The pre- and post-survey combination is a common vehicle for multiple-choice and short-answer tests that can be inexpensively developed and implemented by nearly any civic outreach program.<sup>154</sup> For example, after the third year of the Legal Diversity Pipeline Program, NALP and Street Law decided to create pre- and post-surveys to evaluate the program's progress towards several defined goals.<sup>155</sup> The pre-survey and the post-survey contained the same combination of short-answer and multiple-choice questions (including yes-no and true-false questions).<sup>156</sup> Participating high school students were asked to complete one survey before receiving any services through the program and a second survey after the program.<sup>157</sup> Based on simple comparisons of pre- and post-test data, NALP and Street Law were able to show that the Legal Diversity Pipeline Program was successful in increasing students' levels of interest in legal careers, knowledge about such careers, and knowledge of pathways to the legal profession.<sup>158</sup>

Although multiple-choice and short-answer assessments can be internally developed and implemented—saving considerable time and money—the validity of such assessments can be enhanced through external vetting. For example, the Liberty and Law Institute developed a forty-five-minute, multiple-choice review test to administer at the end of its five-day America's Founding Documents course. After spending a significant amount of time internally developing and revising the test, the Institute circulated a draft of its test to nearly a dozen individuals—including judges, lawyers, history and civics teachers, think tank experts, and academics.<sup>159</sup> Based on these experts' feedback, the Liberty and Law Institute undertook another series of revisions before the finalizing its pilot test and administering it to 250 public school students.<sup>160</sup> Because not all civic outreach programs have the initial capacity to undertake the time- and labor-intensive vetting process, external vetting can be sidelined in favor of internally created measures until sufficient resources become available.

External vetting is one way that programs can improve the validity of self-created measures, but the most direct way to achieve a valid measure is to hire or partner with an outside professional who has exper-

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153. *Id.* at 36.

154. CAMPAIGN FOR THE CIVIC MISSION OF SCH., *supra* note 38, at 36; Medvedow Interview, *supra* note 148; Skiver Interview, *supra* note 113.

155. NALP & STREET LAW, INC., NALP/STREET LAW DIVERSITY PIPELINE PROGRAM: EVALUATION REPORT 1 (2011).

156. *See id.* at 10.

157. *Id.* at 3.

158. *Id.* at 6–9.

159. E-mail from Bob Skiver, Dir., Liberty & Law Inst., to Author (Oct. 17, 2012, 4:03 PM) (on file with author).

160. *Id.*

tise in crafting and evaluating statistically valid assessments. Partnering with an outside professional not only ensures the statistical validity of a program's assessment tool but also enhances the program's legitimacy by eliciting an objective perspective on program goals and possible outcomes.<sup>161</sup> Discovering Justice and the Marshall–Brennan Constitutional Literacy Project are two examples of programs that have partnered with outside professionals to develop tools for assessing program outcomes.<sup>162</sup> The experiences of these programs suggest that partnerships with outside professionals are most successful when (1) the civic outreach program possesses realistic and clear goals, and (2) the outside professional carefully tailors the assessment tool to directly measure these goals.<sup>163</sup>

Because it is possible to scale efforts to measure outcomes so that they correspond with available resources, all civic outreach programs have the capacity to measure outcomes; lower budget programs can develop outcome measures internally, medium-budget programs can invest resources in vetting their internally developed measures, and higher budget programs can work with outside professionals to create statistically valid measures. Obviously, the availability of resources will affect the validity of such measures. Although civic outreach programs should strive to create and implement valid evaluative tools, commitment to measuring outcomes—no matter how basic the tool—should be the first priority.

Research-based programs are the new industry standard;<sup>164</sup> therefore, measuring outcomes can increase a program's legitimacy, which will, in turn, makes the program more competitive for coveted funding opportunities and more desirable as a partner for collaboration.<sup>165</sup> In addition to increased legitimacy, there are several auxiliary benefits that flow to programs that measure outcomes. First, measuring outcomes forces program leaders to discuss and identify the goals that they are trying to accomplish.<sup>166</sup> This exercise can help programs remain focused on achieving the goals they value most. Second, when evaluations show that the program is meeting these goals, it functions as validation for service providers—many of whom are dedicated volunteers—that the time they invested in the program was worthwhile.<sup>167</sup> Third, evaluations

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161. Medvedow Interview, *supra* note 148.

162. Maryam Ahranjani, Assoc. Dir., Marshall–Brennan Constitutional Literacy Project, Remarks at the Twentieth Annual Rothgerber Conference (Nov. 29, 2012) [hereafter Ahranjani Remarks]; Elisabeth Medvedow, Exec. Dir., Discovering Justice, Remarks at the Twentieth Annual Rothgerber Conference (Nov. 29, 2012).

163. Ahranjani Remarks, *supra* note 163; Medvedow Interview, *supra* note 148.

164. Healy Interview, *supra* note 77; see also CTR. FOR THE STUDY OF SOC. POLICY, *supra* note 56, at 1; U.S. DEP'T OF EDUC., *supra* note 29, at 22.

165. Healy Interview, *supra* note 77; Lindke Interview, *supra* note 90; see also CTR. FOR THE STUDY OF SOC. POLICY, *supra* note 56, at 1; U.S. DEP'T OF EDUC., *supra* note 29, at 22.

166. Interview with Melissa Hart, Dir., Byron R. White Ctr., in Denver, Colo. (Nov. 10, 2012) [hereinafter Hart Interview]; Medvedow Interview, *supra* note 148.

167. NALP & STREET LAW, INC., *supra* note 156, at 12.

that document positive program outcomes can be used to recruit more participants and enhance participant buy-in.<sup>168</sup> Fourth, and most importantly, evaluations can help programs identify areas of weakness and strategies for improvement.<sup>169</sup>

### *B. Civic Outreach Programs Grapple with Sustainability Problems*

In addition to the difficulties programs face in identifying and measuring outcomes, civic outreach programs constantly struggle with sustainability problems. Limited funding opportunities and inter-program competition threaten sustainability as civic outreach programs vie for the same financial and human capital resources. Civic outreach programs can bolster their sustainability and reduce unproductive competition by creating collaborative partnerships and increasing coordination. Undoubtedly, the most important—and most underutilized—resource available to civic outreach programs is *other* civic outreach programs.

#### 1. Threats to Sustainability: Limited Funding and Inter-program Competition

It is no secret that funding for civic outreach programs is limited.<sup>170</sup> Not only are opportunities to acquire government funding rare, but private funding streams appear to be drying up.<sup>171</sup> Even programs lucky enough to be funded by large endowments are struggling because their operating budgets are often subject to the vagrancies of the stock market.<sup>172</sup> As a result of these realities, the biggest threat to the sustainability of civic outreach programs is funding. Unfortunately, the problems created by limited funding are exacerbated by unproductive inter-program competition.<sup>173</sup> Although it is difficult to find formal evidence of inter-program competition, nearly all of the civic outreach programs that were consulted for this Essay mentioned inter-program competition as an ongoing problem.<sup>174</sup> Programs not only commonly schedule events on the same day, thus creating unnecessary competition for attendees, but also frequently compete to provide services to actors in the same geographic area.<sup>175</sup>

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168. Hart Interview, *supra* note 167; Skiver Interview, *supra* note 113.

169. NALP & STREET LAW, INC., *supra* note 156, at 11.

170. All of the individuals interviewed for this Essay agreed that funding streams are incredibly limited, making lack of financial resources a very real threat to sustainability for all civic outreach programs.

171. Miller & Johnson Interview, *supra* note 89.

172. Lindke Interview, *supra* note 90.

173. Healy Interview, *supra* note 77; Lindke Interview, *supra* note 90.

174. Hart Interview, *supra* note 167; Healy Interview, *supra* note 77; Lindke Interview, *supra* note 90; Medvedow Interview, *supra* note 148; Miller & Johnson Interview, *supra* note 89; Skiver Interview, *supra* note 113.

175. For example, when the Byron R. White Center launched its Colorado Law Constitution Day Project, it caused a significant reduction in the number of teachers who participated in the Denver Bar Association's (DBA) Constitution Day Program. The immediate result was that many volunteer Denver-area attorneys were not able to find classrooms to visit for Constitution Day.

## 2. Recommendations for Improving Sustainability: Increased Formal Collaboration and Increased Coordination

Because there are so few opportunities to acquire funding, and no evidence that such opportunities will increase in the future, programs must become more efficient in how they use the resources they have. In this difficult financial context, the most valuable resource civic outreach programs have is each other. The National Task Force on Civic Learning and Democratic Engagement has emphasized the importance of robust civic partnerships and alliances, identifying the expansion of such partnerships as one of the five essential actions necessary for achieving widespread civic literacy.<sup>176</sup> By increasing inter-program collaboration and coordination, programs can overcome many of the challenges posed by limited funding and inter-program competition.

According to the Center for Policy, Planning, and Performance (CPP&P), a nonprofit organization that provides consulting and management services to nonprofit and government agencies, collaborating through strategic partnerships is a highly effective sustainability strategy when resources are limited.<sup>177</sup> The CPP&P points out that most programs are already engaged in informal collaborative relationships and provides three specific recommendations for establishing formal collaborative relationships.<sup>178</sup> First, programs should be clear about the results they wish to achieve and have specific benchmarks for measuring progress towards those results.<sup>179</sup> Second, programs need to be aware of their own limitations and have a clear sense of the other programs in their field.<sup>180</sup> Finally, programs should only seek out partnerships with programs that have compatible missions.<sup>181</sup> Importantly, collaborative relationships can be as limited or as expansive as the parties wish. The spectrum of collaboration runs from mere pooling of administrative costs, to partnering for a specific event, to creating a permanent collaborative association.<sup>182</sup>

The Arsalyn program is proof that creating formal collaborative relationships improves sustainability.<sup>183</sup> Understanding that “expansion requires partnerships,” Arsalyn (a relatively small organization run by two staff members) partnered with the Center for Civic Education (CCE)

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However, once the White Center and the DBA connected, the programs were able to coordinate their Constitution Day outreach efforts. Specifically, the following year, the DBA referred its local attorneys to the White Center, and the White Center placed these attorneys in classrooms along with its volunteer law students.

176. NAT'L TASK FORCE, *supra* note 4, at vi.

177. *Building Capacity Through Collaboration*, CENTER FOR POL'Y, PLANNING & PERFORMANCE, [http://www.effective.org/programs/consulting/consulting\\_collaborate.html](http://www.effective.org/programs/consulting/consulting_collaborate.html) (last visited Apr. 14, 2013).

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. Lindke Interview, *supra* note 90.

(a much larger organization that provides civic outreach services in many states) on its Citizens Not Spectators Program.<sup>184</sup> Both programs started in California and are designed to increase youth civic engagement and voting. Although their similarities enabled a successful partnership, each program has benefitted from the partnership in different ways. Specifically, Aarsalyn has benefitted greatly from CCE's deeper financial resources, and CCE has benefitted greatly from Aarsalyn's strong relationships with local high schools. As a result of this partnership, both programs have expanded and together provide more voter education to high school students than ever before.<sup>185</sup>

In addition to creating formal partnerships as a means of enhancing sustainability, both Aarsalyn and the McCormick Foundation's Democracy Schools program utilize technology to increase coordination among programs and to decrease unproductive competition.<sup>186</sup> For example, Aarsalyn maintains a database of civic and political organizations that provide civic outreach services across the country.<sup>187</sup> Any civic outreach program can enter its information into the database. Users can then search for programs by name, size, and geographic location, allowing leaders of civic outreach programs to identify and connect with other programs nearby. Similarly, Democracy Schools uses a shared electronic civic-learning calendar to track all of the events sponsored by civic outreach programs in its surrounding area.<sup>188</sup> This tool helps program leaders schedule events so that they do not conflict with other civic outreach efforts, thereby reducing unproductive competition for those people who are targeted for services (e.g., administrators, teachers, and students).

Increased coordination not only reduces unproductive competition but also provides a clearer picture of which geographic areas are in the greatest need of services. With a clear understanding of where civic outreach services are already being provided, programs can more strategically funnel services to underserved areas to begin closing the civic opportunity and achievement gaps. Another potential benefit of increased coordination is that programs acquire a cohesive voice that can be used to facilitate legislative changes that align with the mission of all civic outreach programs.<sup>189</sup> Given the significant funding limitations faced by civic outreach programs, the development of robust, collaborative relationships and effective coordination efforts should be priorities for enhancing sustainability.

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184. *Id.*

185. *Id.*

186. Healy Interview, *supra* note 77; Lindke Interview, *supra* note 90.

187. *arsalyn* Search, ARSALYN, <http://www.arsalyn.org/Search.asp> (last visited Apr. 14, 2012).

188. *Civic Learning Calendar*, MCCORMICK FOUND., <http://www.mccormickfoundation.org/page.aspx?pid=992> (last visited Apr. 14, 2013).

189. For example, programs could collectively push for legislation like Florida's Justice Sandra Day O'Connor Civics Education Act., H.B. 105, 112th Leg. Sess. (Fla. 2010).

## CONCLUSION

The proliferation of civic outreach programs can be attributed to three trends: pervasive and ongoing civic deficits, decreasing national support for civic education, and increasing awareness of the benefits of civic literacy. Given the large number and wide variety of current civic outreach programs, it is important to be able to differentiate among programs. Although a wide variety of approaches to improving civic literacy is desirable, Model 1 programs that target actors in K-12 educational institutions should be given special consideration because they are best equipped to effectuate meaningful improvements in civic literacy. However, there are two challenges shared by such programs: (1) identifying and measuring outcomes, and (2) ensuring program sustainability. In light of these challenges, leaders of civic outreach programs should focus on scaling their efforts to measure outcomes and on increasing their commitment to inter-program collaboration and coordination. Strengthening civic outreach programs should be a national priority because it is clear that civic education plays an integral role in preserving our democratic system of governance.



# THE MARSHALL–BRENNAN EFFECT: THE BENEFITS OF TEACHING CONSTITUTIONAL LITERACY FOR LAW STUDENTS

JESSICA L. WATERS & LYNN A. ADDINGTON<sup>†</sup>

## ABSTRACT

Although many new law students start their studies intending to work in public interest law upon graduation, few ultimately embark on such careers. This phenomenon has been labeled “public interest drift.” Given concerns from the legal profession about this drift, researchers have sought to identify factors that lead to drift and may help to quell it. One promising finding is that drift is minimized in law school programs that provide “subcultural support” for students seeking to practice public interest law. The current study seeks to further explore this finding and examine whether participation in a non-traditional, public service-oriented law school program promotes practicing public interest law after graduation. To examine this issue, we surveyed alumni students (Alumni Fellows) who participated in the American University Washington College of Law’s Marshall–Brennan Constitutional Literacy Project. Our study revealed two important findings that should deepen and enrich the current public interest drift discussion. First, we observed a “reverse drift” phenomenon among the Alumni Fellows. Although the traditional public interest drift literature posits that law students drift from public interest career plans into private practice, over half of the Alumni Fellows who planned to work in private practice are currently working in government civil service or non-government public interest jobs. Second, we observed that many of the Alumni Fellows who “drifted” from initial public interest career plans drifted into government jobs rather than into private practice. Our research suggests that the traditional questions and definitions used when researching drift deserve reexamination.

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<sup>†</sup> Jessica L. Waters, J.D. is an Assistant Professor in American University’s School of Public Affairs and an Adjunct Professor at American University’s Washington College of Law. Professor Waters was a Marshall–Brennan Fellow at the Washington College of Law from 2001 to 2002. Lynn A. Addington, J.D., Ph.D. is an Associate Professor in American University’s School of Public Affairs.

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## I. INTRODUCTION

Over the last several decades, “various studies [have shown that] although a great deal of . . . graduates enter[] law schools with aspirations of engaging in public interest work following graduation, few actually do so.”<sup>1</sup> Employment statistics bear out that most new law school graduates are not embarking on public interest career paths. Indeed, the National Association of Law Placement (NALP) reports that consistent with data for previous law school classes, only 7.5% of employed graduates from the class of 2011 took public interest career jobs after graduation.<sup>2</sup>

This “public interest drift” phenomenon—law students’ declining interest in pursuing a public interest career between entry into law school and graduation from law school<sup>3</sup>—has forced the legal community, and particularly law schools, to examine whether legal education plays a part in exacerbating public interest drift and, importantly, whether it could play a stronger role in quelling drift.<sup>4</sup> Several related theories in academic literature have examined the effects of the traditional law school curriculum on law students’ attitudes and public interest aspirations.<sup>5</sup> Such theories posit that (1) the traditional law school curriculum and teaching

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1. Tan N. Nguyen, *An Affair to Forget: Law School’s Deleterious Effect on Students’ Public Interest Aspirations*, 7 CONN. PUB. INT. L.J. 251, 251 (2008) (summarizing public interest drift literature); see also ROBERT GRANFIELD, *MAKING ELITE LAWYERS: VISIONS OF LAW AND HARVARD AND BEYOND* 49 (1992); Howard S. Erlanger et al., *Law Student Idealism and Job Choice: Some New Data on an Old Question*, 30 LAW & SOC’Y REV. 851, 851 (1996); Craig Kubey, *Three Years of Adjustment: Where Your Ideals Go*, 6 JURIS DR. 34, 34 (1976).

2. NAT’L ASS’N OF LAW PLACEMENT, *CLASS OF 2011 NATIONAL SUMMARY REPORT 1* (2012) (collecting employment data nine months after graduation). NALP includes public defenders in the “public interest” category. NAT’L ASS’N OF LAW PLACEMENT, *CLASS OF 2011 LAW SCHOOL GRADS FACE WORST JOB MARKET YET—LESS THAN HALF FIND JOBS IN PRIVATE PRACTICE 3* (2012).

3. Erlanger et al., *supra* note 1 (“[W]hile a substantial proportion of incoming law students are interested in careers in ‘public interest law,’ that interest wanes significantly during law school.”).

4. Indeed, the legal community has called on law schools to provide public interest law training. See, e.g., ASS’N OF AM. LAW SCH., *PURSUING EQUAL JUSTICE: LAW SCHOOLS AND THE PROVISION OF LEGAL SERVICES 72–76* (2002) (describing several example programs of clinics, fieldwork, and coursework housed within law schools that introduce and promote public interest law and equal justice to law students).

5. For a more complete review of the public interest drift literature, see generally Lynn A. Addington & Jessica L. Waters, *Public Interest 101: Using the Law School Curriculum to Quell Public Interest Drift and Expand Students’ Public Interest Commitment*, 21 AM. U. J. GENDER SOC. POL’Y & L. 79 *passim* (2012); Jenee Desmond-Harris, “Public Interest Drift” Revisited: Tracing the Sources of Social Change Commitment Among Black Harvard Law Students, 4 HASTINGS RACE & POVERTY L.J. 335 *passim* (2007); Nguyen, *supra* note 1, *passim*.

methodologies can negatively affect law students' confidence levels and can contribute to significant distress, anxiety, and depression among law students;<sup>6</sup> (2) the traditional law school curriculum can cause students to disengage "from the ideals that originally motivated them to pursue public interest work,"<sup>7</sup> and (3) this disengagement from ideals can lead to public interest drift.<sup>8</sup>

Importantly, several authors have found that "subcultural support"—"students' involvement in law school subcultures supportive of public interest employment"<sup>9</sup>—may serve to counter drift by providing support for, or even strengthening, law students' public service ideals.<sup>10</sup> Some authors have noted that law students can find this support by working with public interest organizations during law school.<sup>11</sup> Others have found that support can come from associating with other law students who share public interest law aspirations.<sup>12</sup> As one law student noted, "Law school is an incredibly isolating experience, and nothing makes it more isolating than thinking you're the only one who came to law school to work for the public. Find other students like yourself. Know that you're not alone."<sup>13</sup>

With an eye toward the effects of the traditional law school curriculum on law students' public interest aspirations and the need for subcultural support to maintain these aspirations, we sought to examine whether participation in non-traditional, public service-oriented law school programs can affect law students' attitudes, ideals, and future career plans. Specifically, we surveyed law students who participated in American University Washington College of Law's (WCL) Marshall–Brennan Constitutional Literacy Project (Marshall–Brennan). The Marshall–Brennan project was founded in 1999 at WCL and, in recent years, has

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6. Nisha C. Gottfredson et al., *Identifying Predictors of Law Student Life Satisfaction*, 58 J. LEGAL EDUC. 520, 520 (2008) ("Law students are, on average, far more stressed, anxious, and depressed than the general population.").

7. Desmond-Harris, *supra* note 5, at 347 ("[L]egal pedagogy promotes a set of legal concepts and vocabulary that separates students from the social concepts that fueled their public interest or altruistic commitments.").

8. *Id.* at 348. *But see* Todd A. Berger, *Jimmy Carter's "Malaise" Speech, Social Desirability Bias, and the Yuppie Nuremberg Defense: The Real Reason Why Law Students Say They Want to Practice Public Interest Law, Yet So Few Actually Do*, 22 KAN. J.L. & PUB. POL'Y 139 *passim* (2012) (arguing that law school culture does not cause public interest drift).

9. Desmond-Harris, *supra* note 5, at 353.

10. Erlanger et al., *supra* note 1, at 862; *see also* GRANFIELD, *supra* note 1, at 189, 197.

11. Erlanger et al., *supra* note 1, at 861 (finding a relationship between participation in law school programs with a social action component—such as the Center for Public Representation, the Community Law Office, or the Legal Assistance to Inmates Program—and commitment to non-traditional employment in study of University of Wisconsin Law School class of 1976).

12. ROBERT V. STOVER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL 109 (Howard S. Erlanger ed., 1989) ("[Subcultural communities] provided altruistically oriented students with the assurance that they were not alone in their beliefs but belonged to a broader community of like-minded persons.").

13. Sarah Pierce, *Plight of the Public Interest Law Student*, JOURNEYS TOWARD JUST. (Sept. 15, 2010), <http://akhilak.com/blog/2010/09/15/plight-of-the-public-interest-law-student-guest-post-by-sarah-pierce/>.

expanded to law schools around the country.<sup>14</sup> The project seeks to teach high school students about their constitutional rights and responsibilities, democratic values, and the importance of being active citizens.<sup>15</sup> The teachers for these classes are known as Marshall–Brennan Fellows (or Fellows) and are second- and third-year law students who are assigned to teach a class for a full school year at public junior and senior high schools (secondary schools) throughout the District of Columbia and Maryland.<sup>16</sup> The classes center around a constitutional law curriculum that utilizes U.S. Supreme Court cases.<sup>17</sup>

Beginning in 2010, we surveyed two groups of Marshall–Brennan Fellows at WCL. One cohort was the 2010–2011 Fellows, who were the law students serving as Fellows during the 2010–2011 academic year. The second cohort was the Alumni Fellows, who were the WCL students and graduates who had served as Fellows between 1999 and 2010. Part I of this Article briefly summarizes the methodology we previously used to analyze and report the initial results regarding the 2010–2011 Fellows.<sup>18</sup> We highlight selected findings to provide context for our discussion of the Alumni Fellow findings that follow. Part II explains our methodology for surveying the Alumni Fellows and reports our initial results for that cohort. Finally, Part III briefly highlights some key findings and discusses whether the definition of “public interest drift” deserves reexamination.

## II. 2010–2011 FELLOWS

We surveyed the 2010–2011 Fellows at two points: before they started their teaching assignments in August 2010 (Time 1) and again at the close of their teaching assignments in May 2011 (Time 2). During both data collection periods, we asked the Fellows similar questions in several areas to ascertain any changes during their fellowship year. One set of questions concerned information regarding the Fellows’ plans for their short- and long-term career paths. Another set of questions concerned the Fellows’ current views and attitudes regarding law school. A third set of questions addressed the Fellows’ expectations and experiences about their school placement in terms of the administration, non-Fellow teachers, students, and school environment. We obtained a 95% response rate, with thirty-nine out of the eligible forty-one Fellows participating in both waves of the survey.<sup>19</sup>

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14. *The Marshall–Brennan Constitutional Literacy Project*, AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan/> (last visited Apr. 19, 2013).

15. *See id.*

16. *See* Marshall–Brennan Constitutional Literacy Project, *Fellows*, AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan/fellows.cfm> (last visited Apr. 19, 2013).

17. *See* Marshall–Brennan Constitutional Literacy Project, “*We the Students*,” AM. U. WASH. C.L., [www.wcl.american.edu/marshallbrennan/curriculum.cfm](http://www.wcl.american.edu/marshallbrennan/curriculum.cfm) (last visited Apr. 30, 2012).

18. Addington & Waters, *supra* note 5, at 93.

19. *Id.* at 90–91.

Although we will not repeat all of the previously reported findings, a few key points are worth noting. First, participating in Marshall–Brennan had measurable benefits for the law students’ self-confidence: the Fellows reported increased confidence in their academic abilities and their oral presentation skills over the course of the fellowship year.<sup>20</sup> Second, the Fellows became more questioning about their decisions to study law over the course of the fellowship year: 26% of Fellows reported questioning their decision to study law at Time 1 and 44% questioned this decision at Time 2.<sup>21</sup> The third area of interest was the Fellows’ career plans and specifically their public interest career plans. Our data showed that contrary to previous studies documenting drift, the students participating in Marshall–Brennan were actually *more* likely to intend to work in public interest or in public service<sup>22</sup>—both as short-term and long-term career goals—at Time 2 than they were at Time 1.<sup>23</sup> Not only did the Fellows maintain their public interest and public service aspirations, but they seemingly *strengthened* their commitments to pursuing public interest and public service work.

### III. ALUMNI FELLOWS

We surveyed the Alumni Fellows during the fall of 2010. These Fellows taught in the WCL Marshall–Brennan project between 1999 and 2010. Of the approximately 500 Alumni Fellows eligible to be included in our study, 112 responded to our web-based survey.<sup>24</sup> Almost half

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20. *Id.* at 94–95.

With regard to confidence in academic abilities, less than half (49%) of the Fellows at time 1 agreed with the statement, “Since starting law school, I feel more confident in my academic abilities.” At time 2, 82% agreed with this same statement, and 38% of the Fellows reported being more confident at time 2. For confidence in oral participation in class, 38% of the Fellows reported feeling more confident at time 2.

*Id.* (footnotes omitted).

21. *Id.* at 95. Fellows were asked if they agreed with the statement “Since starting law school, I have seriously questioned my decision to study law.” *Id.*

22. We defined “public service jobs” to include military and other government jobs, judicial clerkships, and public interest positions. This distinction largely tracks the NALP definition of “public service jobs.” See NAT’L ASS’N FOR LAW PLACEMENT, EMPLOYMENT FOR THE CLASS OF 2010—SELECTED FINDINGS 3 (2011).

23. Addington & Waters, *supra* note 5, at 96. Regarding short-term plans, 13% of the Fellows at time 1 intended to work in the public interest sector (including both public interest organizations and criminal defense work), but 31% had these plans at time 2. Twenty percent reported changing from non-public interest career plans to public interest ones. [Forty-six percent] of Fellows at time 1 intended to work in the public service sector immediately after graduation. At time 2, that number had increased to 68% percent.

*Id.* Regarding long-term plans,

at time 1, 18% of the Fellows planned to work in the public interest sector in five to ten years. By time 2, 26% reported these long-term plans. As with their short-term plans, slightly more Fellows had long-term plans to work in the public service sector at time 2 than at time 1 (51% and 59% respectively).

*Id.*

24. The alumni were surveyed using a web-based survey platform. Prior to implementing the survey, the alumni were contacted by WCL Marshall–Brennan staff to introduce the survey and the goals of the project. To improve response rates, we sent reminder e-mails. We obtained a response

(47%) of the respondents were recent Fellows who taught between 2007 and 2009.<sup>25</sup> The Alumni Fellows survey included questions similar to those asked of the 2010–2011 Fellows. Of relevance to our current study, the Alumni Fellows reported their reasons for attending law school and their immediate and long-term career plans during law school. In response to survey items, the Alumni Fellows also reported information about their current careers and their involvement in pro bono legal projects and other volunteer work since graduation. In addition, we gathered demographic information about the Fellows as well as information about their educational debt.

### A. Demographic Data

Over two-thirds of our respondents were female (70%).<sup>26</sup> Slightly over half were white (53%), and the rest self-identified as black (11%), Hispanic (9%), and other races (20%).<sup>27</sup> Nearly 75% of the Fellows had graduating grade point averages of 3.3 or higher.<sup>28</sup> The Alumni Fellows had significant amounts of educational debt—undergraduate and graduate education debt—immediately upon graduating from law school; two-thirds of respondents had \$100,000 or more in educational debt, with approximately 13% having \$200,000 or more in educational debt.<sup>29</sup> The alumni respondents overwhelmingly characterized their political leanings as “liberal” (72%), with no respondents identifying as “conservative.”<sup>30</sup> Since graduating from law school, over one-third of the respondents have been involved in some form of community service, including both law-related (38%)<sup>31</sup> and non-law-related service (37%).<sup>32</sup>

### B. Law School Motivations

We asked the Alumni Fellows questions about their motivations and reasons for attending law school and for attending WCL in particular. Given their participation in Marshall–Brennan, it might not be too surprising that the most common reason for attending law school was a de-

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rate of about 22%, which is comparable to other web-based surveys. See DON A. DILLMAN ET AL., INTERNET, MAIL AND MIXED-MODE SURVEYS: THE TAILORED DESIGN METHOD 338 (3d ed. 2009). The survey instrument included a mix of question formats, including those that used “force choice” options as well as those that allowed for open-ended responses. Examples of open-ended responses included reasons for attending law school, for attending WCL, and for changing jobs. These open-ended responses were coded into quantitative variables for analysis. We utilized a coding system that utilized a form of inductive coding that is based on an initial emersion reading of the responses. BRUCE L. BERG & HOWARD LUNE, QUALITATIVE RESEARCH METHODS FOR THE SOCIAL SCIENCES 369–70 (8th ed. 2012). We confirmed our coding using inter-rater reliability techniques.

25. See *infra* Table 1.

26. See *infra* Table 2.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

sire to work in the public interest (43%).<sup>33</sup> Other frequently reported reasons for attending law school included an interest in the study of law (18%)<sup>34</sup> and a desire to pursue a legal career (12%).<sup>35</sup> Reasons that might be considered more “self-interested” were less frequently reported as motives for attending law school, such as a desire to obtain an advanced degree (6%)<sup>36</sup> and a desire to make money (6%).<sup>37</sup>

The Alumni Fellows also cited public interest motivations as reasons for attending WCL in particular. The school’s Washington, D.C. location was the most commonly cited reason (50%),<sup>38</sup> but the next most frequent response was WCL’s reputation for having a public interest focus (33%).<sup>39</sup> Another 13% specifically cited the Marshall–Brennan project as a factor in their decisions to attend WCL.<sup>40</sup>

### C. Career Plans

We asked the Alumni Fellows about the career plans they had when they started law school as 1Ls,<sup>41</sup> including their short-term career plans and their longer term career plans. With regard to their immediate career goals, 24% said that as 1Ls they intended to work in non-government public interest positions.<sup>42</sup> This career plan was the most often cited response.<sup>43</sup> Other frequently cited career plans included private practice (22%) and government civil service (16%).<sup>44</sup> The Alumni Fellows’ longer term career intentions followed a similar pattern. We defined “longer term” as the plans the Alumni Fellows had as 1Ls for their careers five to ten years after law school graduation. A quarter wanted a career in non-government public interest law, 21% anticipated working in private practice, and 18% planned to work in government civil service.<sup>45</sup>

The Alumni Fellows also reported their current fields of work. The most common was government civil service (30%), followed by private practice (25%).<sup>46</sup> Only 9% reported currently working in the field of non-government public interest law.<sup>47</sup> With regard to criminal law careers,

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33. See *infra* Table 3.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. 1Ls are first year law students. See e.g., *The Law School Experience*, L. PREVIEW, <http://www.lawpreview.com/index.php/ResourcesExperience/> (last visited Apr. 19, 2013).

42. See *infra* Table 4.

43. See *id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

5% of the Alumni Fellow respondents reported current work in criminal prosecution and 4% in criminal defense.<sup>48</sup>

#### *D. Public Interest Drift*

We found that only 20% of the Alumni Fellows currently work in the field that they planned when they started law school.<sup>49</sup> The most frequently observed career path changes were from non-government public interest to another field (21%) and from private practice into another field (15%).<sup>50</sup> Further exploration into this drift from public interest indicates that one-third of the Alumni Fellows who planned to work in non-government public interest are currently working in government civil service, which is slightly more than the 29% who completely drifted into private practice.<sup>51</sup> Of interest is what might be termed “reverse drift”—a change from private practice intentions into public interest or public service careers. Here we see that over half of the Alumni Fellows who planned to work in private practice are currently working in government civil service (41%) or non-government public interest (12%).<sup>52</sup> When we examine the Alumni Fellows whose current careers are consistent with their initial goals as 1Ls, we find that over half of these respondents are working in some area of public service—either in government civil service (45%) or non-government public interest (14%).<sup>53</sup>

We also collected information on the reasons why the Alumni Fellows’ current careers differ from their original aspirations in law school. Frequent explanations concerned issues related to the current economic conditions (10%), lack of available jobs (24%), and educational debt (11%).<sup>54</sup> The Alumni Fellows also reported changes in their own interests, often as a result of exposure to classes, clinics, and internships during law school (27%).<sup>55</sup>

Further exploration of these reasons by specific career changes revealed interesting patterns.<sup>56</sup> The lack of jobs in their planned field was a commonly cited reason for those Alumni Fellows initially planning a career in non-government public interest who changed to another area such as private practice or government civil service.<sup>57</sup> Educational debt was a common reason for those interested in non-government public

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48. *Id.*

49. *See infra* Table 5.

50. *Id.*

51. *See infra* Table 6.

52. *Id.*

53. *Id.*

54. *See infra* Table 7.

55. *Id.*

56. The findings are based on additional post hoc review of the data undertaken to explore patterns initially identified in the main analyses. Due to space limitations and the exploratory nature of this review, these contingency table analyses are not presented here. Interested readers may obtain the specific analyses from the authors.

57. *See supra* note 55.



interest and government civil service to have decided to pursue work in private practice.<sup>58</sup> A change of interests during law school was cited as a reason for changing from private practice to criminal prosecution.<sup>59</sup>

#### IV. DISCUSSION

Our previously reported research regarding the 2010–2011 Marshall–Brennan Fellows allowed us to test whether the Fellows’ public interest career goals changed over the course of the fellowship year. Contrary to existing work documenting the prevalence of drift, our study revealed that the Fellows’ intentions to work in public interest or public service were significantly strengthened over the course of the year, suggesting that the Marshall–Brennan project provided “subcultural support” for public interest-minded law students.<sup>60</sup> Our conclusion was limited because we did not have data on the jobs the Fellows actually took after graduation. Our study of the Alumni Fellows allowed us to fill this gap and make preliminary observations regarding the effects of participating in Marshall–Brennan on Fellows’ actual career paths. Preliminary, two points deserve mention: (1) the reverse drift phenomenon among the Alumni Fellows, and (2) the pattern of drifting into government jobs rather than into private practice.

First, one of the more unexpected observations is the number of Fellows who planned to work in private practice but who currently work in public interest or public service jobs.<sup>61</sup> Over half of those who planned to work in private practice are currently working in government civil service (41%) or non-government public interest (12%) jobs.<sup>62</sup> The most commonly reported reasons for Fellows making this change were the fact that they did not like practicing law and a lack of jobs in their intended field.

Second, our data revealed interesting trends among those Fellows who drifted from their public interest law career aspirations into another field. Our data on the Alumni Fellows showed that they had strong public interest motivations for attending law school; almost half cited a de-

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58. *Id.*

59. *Id.*

60. See Addington & Waters, *supra* note 5, at 96 (explaining findings regarding intended careers in public interest and public service for the 2010–2011 Fellows).

61. We defined “public service jobs” to include military and other government jobs, judicial clerkships, and public interest positions, whereas we defined “public interest jobs” to include non-government public interest positions. This distinction largely tracks the NALP definitions of the two employment categories. See NAT’L ASS’N FOR LAW PLACEMENT, *supra* note 22. NALP, however, includes public defenders in the “public interest” category. Although some of our alumni respondents may have self-identified their public defender jobs as “non-government public interest” jobs, we included separate categories for criminal defense and criminal prosecution careers when collecting information about their careers. Thus, any alumni who work as public defenders are not necessarily captured in the alumni survey’s public interest category.

62. See *infra* Table 6.

sire to work in public interest as a reason for attending law school.<sup>63</sup> Likewise, as 1Ls, roughly one-quarter intended to work in non-government public interest positions after law school.<sup>64</sup> However, only 24% of those who intended to work in public interest law report actually taking such jobs upon graduation from law school, and only 9% of all Alumni Fellows currently work in such positions.<sup>65</sup> Initially, this employment data seems to show that even the Alumni Fellows succumbed to public interest drift. There is, however, an important caveat: of the Fellows who originally planned to work in public interest law, roughly one-third drifted into government civil service rather than, for example, into private practice.<sup>66</sup>

These findings raise questions about whether the definition of “drift” deserves reexamination, and more specifically, whether the traditional definition of “public interest work” often used in the drift research and literature is too narrowly defined. Much of the original (and seminal) literature in the field defines “public interest law” as including only “work in legal aid, as a public defender, or in a nonprofit organization.”<sup>67</sup> Multiple authors focusing on public interest drift have acknowledged the limited nature of this definition of “public interest law,”<sup>68</sup> noting that “the term was originally used to [only] connote left-oriented reform activities” and thus does not capture work for conservative public interest causes.<sup>69</sup> Relatedly, others have argued, for example, that if the public interest law definition includes public defenders, it should also include government prosecutors.<sup>70</sup>

Thus, as several authors have noted, “[w]hat is meant by ‘public interest law’ is certainly a question worthy of debate,” and any data-collection efforts and analyses are quite dependent on the definition used by the researchers.<sup>71</sup> The traditionally limited definition of “public interest law” may well deserve reexamination if we are to accurately capture lawyers’ career motivations, aspirations, and actual paths. Indeed, NALP has already recognized a broader definition of “public interest work,” as it now measures not only the number of lawyers employed in traditional public interest jobs, but also the number of lawyers employed in public service jobs, which includes military and other government jobs, judicial

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63. See *infra* Table 3.

64. See *infra* Table 4.

65. See *id.*

66. See *infra* Table 6.

67. Erlanger et al., *supra* note 1, at 853.

68. *Id.*; see also Berger, *supra* note 8, at 144 n.21 (arguing that most entering law school students do not actually have true public interest law aspirations).

69. Erlanger et al., *supra* note 1, at 853 (recognizing the limitations of this definition, but relying on the more limited definition).

70. Berger, *supra* note 8, at 144 n.21. We did not explicitly include public defenders or prosecutors in the public interest category. See *supra* note 61 (explaining definitions used in our research).

71. Berger, *supra* note 8, at 144 n.21.

clerkships, and public interest positions.<sup>72</sup> Using this expanded “public service” definition, we see a more consistent picture of the Alumni Fellows adhering to their original public interest or public service motivations. Specifically, of those Alumni Fellows whose current careers are consistent with their initial goals as ILs, we find that well over half of these respondents are working in public service—45% in government civil service and 14% in non-government public interest.<sup>73</sup>

Our findings may also suggest that the Fellows themselves embrace a more expansive definition of public interest work after their Marshall–Brennan teaching experiences. The Fellows teach a curriculum focused on civic rights and responsibilities: “The Marshall–Brennan Fellows work with teachers, administrators and lawyers to teach students their rights as citizens, the strategic benefits of voting, how lawmaking occurs and other fundamental constitutional processes.”<sup>74</sup> This focus on democratic process and civic engagement may well influence how the Fellows themselves define working for the public good and lead them to include government work under that rubric. Their high rates of community service also indicate a commitment to civic and community engagement that may be consistent with a decision to pursue a government career. Indeed, since graduating from law school, over one-third of the respondents have been involved in some form of community service.<sup>75</sup>

#### V. CONCLUSION

We undertook this study seeking to examine whether public interest-oriented Fellows maintained these ideals and embarked on public interest careers. Our research revealed two important findings that should deepen and enrich the current public interest drift discussion. First, the Alumni Fellows appear to be adhering to, and perhaps even strengthening, their public interest and public service motivations given the patterns of “reverse drift” and drifting into government service rather than into private practice. Second, our research suggests that the traditional questions and definitions used when researching drift deserve reexamination. Using the traditional, more limited definition of “public interest law” may not allow researchers to capture a true picture of whether law students who enter law school with public interest or public service ideals have stayed true to those motivations in their subsequent careers.

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72. See NAT'L ASS'N FOR LAW PLACEMENT, *supra* note 22.

73. See *infra* Table 6.

74. *The Marshall–Brennan Constitutional Literacy Project*, AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan/> (last visited Apr. 19, 2013) (describing the Marshall–Brennan project).

75. See *infra* Table 2.

## VI. APPENDIX

Table 1. Frequencies for Year Taught in Marshall–Brennan Program

Year	Frequencies ( <i>N</i> = 112)
1999	2%
2000	3%
2001	5%
2002	10%
2003	8%
2004	8%
2005	9%
2006	10%
2007	16%
2008	19%
2009	12%

Note: Percentages may not total 100% due to rounding.

Table 2. Frequencies for Selected Demographics and Law-Related Characteristics

Demographic or Law-Related Characteristic	Frequencies ( <i>N</i> = 112)
<i>Demographics</i>	
Sex	
Female.....	70%
Male.....	25%
Missing.....	5%
Race	
White.....	53%
Black.....	11%
Hispanic.....	9%
Other race.....	20%
Missing.....	8%
Political Leanings	
Liberal.....	72%
Moderate.....	18%
Conservative.....	0%
Missing.....	10%
<i>Law School Characteristics</i>	
Current Grade Point Average	
3.7–4.0.....	18%
3.3–3.6.....	56%
3.0–3.2.....	17%
Below 3.0.....	7%
Missing.....	2%

Demographic or Law-Related Characteristic	Frequencies ( <i>N</i> = 112)
<i>Educational Debt</i>	
None.....	16%
Up to \$49,000.....	2%
\$50,000–\$99,999.....	10%
\$100,000–\$149,999.....	22%
\$150,000–\$199,999.....	31%
\$200,000–\$249,999.....	11%
\$250,000–\$300,000.....	2%
Missing.....	6%
<i>Post-Law School Public Service</i>	
Reported law-related public service.....	38%
Reported non-law-related public service.....	37%

Note: Percentages may not total 100% due to rounding.

**Table 3.** Frequencies for Selected Reasons for Attending Law School and Attending Washington College of Law

Reason	Frequencies ( <i>N</i> = 112)
<i>Reasons for Law School (selected)</i>	
Desire to work in public interest area.....	43%
Interest in study of law/passion for law.....	18%
Interest in legal career.....	12%
Wanted a good job/good income.....	6%
Desire for advanced degree.....	6%
<i>Reasons for Washington College of Law (selected)</i>	
D.C. location.....	50%
Support of public interest work.....	33%
Marshall–Brennan program.....	13%

Note: Percentages do not total 100% because respondents could report more than one reason.

**Table 4.** Frequencies for Career Plans as 1Ls and Current Career

Career Category	Frequencies ( <i>N</i> = 112)
<i>Career Plans Immediately After Law School</i>	
Criminal defense.....	9%
Criminal prosecution.....	3%
Government civil service.....	16%
Private practice.....	22%
Non-government public interest.....	24%
Teaching/academia.....	1%
Other.....	4%
Missing.....	21%

Career Category	Frequencies (N = 112)
<i>Career Plans 5–10 Years After Law School</i>	
Criminal defense.....	5%
Criminal prosecution .....	5%
Government civil service.....	18%
Private practice .....	21%
Non-government public interest .....	25%
Teaching/academia .....	3%
Other.....	16%
Missing .....	7%
<i>Current Career</i>	
Criminal defense.....	4%
Criminal prosecution .....	5%
Government civil service.....	30%
Private practice .....	25%
Non-government public interest .....	9%
Teaching/academia .....	3%
Other.....	21%
Missing .....	5%

Note: Percentages may not total 100% due to rounding.

**Table 5.** Frequencies for Changes in Law School Career Goals with Current Career

Career Category	Frequencies (N = 112)
Change from non-government public interest.....	21%
Change from government civil service .....	7%
Change from private practice .....	15%
Change from criminal defense .....	8%
Change from criminal prosecution.....	3%
Change from teaching/academia .....	1%
Change from other .....	4%
No change in goals (current career) .....	20%
Missing information.....	21%

Note: Percentages may not total 100% due to rounding.

**Table 6.** Frequencies for Comparing Law School Career Goals with Current Career for Selected Careers

Career Category	Frequencies
<i>“Drift” from Non-Government Public Interest to . . . (n = 24)</i>	
Government civil service.....	33%
Private practice .....	29%
Other areas.....	38%
<i>“Drift” from Government Civil Service to . . . (n = 8)</i>	
Private practice .....	50%
Non-government public interest .....	25%
Other.....	25%

Career Category	Frequencies
<i>"Drift" from Private Practice to . . . (n = 17)</i>	
Government civil service .....	41%
Non-government public interest .....	12%
Other .....	47%
<i>No Change in Career Plans and Current Career (n = 22)</i>	
Non-government public interest .....	14%
Government civil service .....	45%
Private practice .....	36%
Criminal defense .....	5%

**Table 7.** Frequencies for Most Common Reasons Reported for Changing Careers

Reason	Frequencies (N = 71)
<i>Financial/External Reasons</i>	
No jobs .....	24%
Debt .....	11%
Other opportunities arose .....	11%
Economy .....	10%
<i>Personal Reasons</i>	
Interests changed during law school .....	27%
Interests changed after law school .....	10%
<i>Other Reasons</i> .....	15%

Note: Percentages do not total 100% because respondents could report more than one reason.





# EVALUATING HIGH SCHOOL STUDENTS' CONSTITUTIONAL AND CIVIC LITERACY: A CASE STUDY OF THE WASHINGTON, D.C. CHAPTER OF THE MARSHALL-BRENNAN CONSTITUTIONAL LITERACY PROJECT

MARYAM AHRANJANI, CALEB MEDEARIS & JEFF SHOOK<sup>†</sup>

## ABSTRACT

The United States maintains a reputation as a vibrant, participatory democracy. Yet, paradoxically, formal civics education has essentially disappeared from America's public high schools, particularly urban public schools serving low-income and minority students. The Marshall-Brennan Constitutional Literacy Project, which is offered at almost zero cost to public schools and districts, developed as a response to the need for civics education in high schools and as a way to train future lawyers in public speaking, leadership, and counseling. To support the growth of the Marshall-Brennan project all over the country, the authors of this Essay came together to study the Marshall-Brennan project's efficacy in Washington, D.C., during the 2010–2011 academic year.

This Essay is based on a comprehensive data set of students in fifteen classes in twelve Washington, D.C. public and public charter schools during the 2010–2011 academic year. Students were asked substantive questions related to the curriculum and to their likelihood of participating in civic activities such as voting and jury service. The results indicate increased constitutional knowledge and higher likelihood of civic participation, although there is room for improvement.

The Essay ends with two conclusions. First, the authors seek to inspire a subsequent, larger study of the efficacy of the Marshall-Brennan model of training law students to teach high school students about the Constitution. Second, until a larger study is conducted, the authors draw from the 2010–2011 data to suggest changes to the current model, including a greater focus on drawing connections between civic knowledge and civic action.

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<sup>†</sup> Maryam Ahranjani is an adjunct professor of law and associate director of the national Marshall-Brennan Constitutional Literacy Project, which is headquartered at American University Washington College of Law. Caleb Medearis is a member of the board of advisors of the Marshall-Brennan project, a 2008–2009 Marshall-Brennan Fellow, and the 2010–2011 Marshall-Brennan Education Law Fellow. Jeffrey Shook is an associate professor at the University of Pittsburgh and co-founder and director of the University of Pittsburgh School of Law Marshall-Brennan project. The authors wish to thank Claire Griggs, the 2012–2013 Marshall-Brennan Education Law Fellow, for valuable research and editing assistance.

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## I. INTRODUCTION AND BACKGROUND

Americans score low on knowledge of the U.S. Constitution.<sup>1</sup> Studied and emulated by many other countries, the U.S. Constitution<sup>2</sup> is a virtually meaningless document to most Americans. Perhaps more surprisingly, schoolchildren, who typically have studied the document and related concepts more recently than have adults, also know little about the Constitution.<sup>3</sup> A major reason for the low level of constitutional knowledge in this country is that in recent years meaningful civics education has become a low priority in America's public high schools,<sup>4</sup> particularly urban public schools serving low-income and minority students.<sup>5</sup> In addition, the No Child Left Behind Act has changed the way classes are administered and the way success is defined. The emphasis is no longer on teaching critical thinking and engaging in topics in a hands-on way but rather on rote memorization and standardized testing.<sup>6</sup> Hence, civics has been reduced to memorizing random facts without teaching why those facts are relevant and how to put that knowledge to use in students' daily lives.<sup>7</sup>

One pronounced manifestation of the failure of our schools to teach how to put constitutional knowledge into action is the low rates of voter turnout in the United States. The United States has lower voter turnout

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1. See NAT'L CIVIC LITERACY BD., INTERCOLLEGIATE STUDIES INST., *OUR FADING HERITAGE: AMERICANS FAIL A BASIC TEST ON THEIR HISTORY AND INSTITUTIONS* 6 (2008).

2. Davis S. Law & Mila Versteeg, *The Declining Influence of the United States Constitution*, 87 N.Y.U. L. REV. 762, 764–65 (2012).

3. See, e.g., INST. OF EDUC. SCIS., U.S. DEP'T OF EDUC., *THE NATION'S REPORT CARD: CIVICS 2010; NAT'L ASSESSMENT OF EDUC. PROGRESS AT GRADES 4, 8, AND 12*, at 32–33 (2010) (showing that only 17% of the eighth graders surveyed offered “[c]omplete” or “[a]cceptable” responses to a sample question based on “how the Constitution divides various powers among the three branches of government”).

4. See CAMPAIGN FOR THE CIVIC MISSION OF SCH. ET AL., *GUARDIAN OF DEMOCRACY: THE CIVIC MISSION OF SCHOOLS* 13–14 (Jonathan Gould ed. 2011).

5. See *id.* at 13; see also SCOTT KEETER ET AL., *CTR. FOR INFO. & RESEARCH ON CIVIC LEARNING & ENGAGEMENT, THE CIVIC AND POLITICAL HEALTH OF THE NATION: A GENERAL PORTRAIT* 27, 31 (2002) (showing that income and education correlate positively to civic involvement, and that “[s]tudents who attend schools that provide civic training in the classroom . . . are more involved than are students whose schools do not”).

6. See LISA GUISBOND ET AL., *NAT'L CTR. FOR FAIR & OPEN TESTING, NCLB'S LOST DECADE FOR EDUCATIONAL PROGRESS: WHAT CAN WE LEARN FROM THIS POLICY FAILURE?* 1 (2012).

7. See CARNEGIE CORP. OF N.Y., *A NEW CIVIC MISSION OF SCHOOLS* 9 (2011) (noting that drilling students on facts is to the “detriment of their imagination and critical thinking skills”).

than do most industrialized and many industrializing nations, and the rates are even lower for certain groups like African Americans and Latinos.<sup>8</sup> The Bipartisan Policy Center and the Center for the Study of the American Electorate estimate that the voter turnout in the 2012 election was around 57.5%.<sup>9</sup> In comparison, the voter turnout in the United Kingdom has been above 70% for decades.<sup>10</sup> African American voter turnout in the United States has continually lagged behind that of the rest of the population.<sup>11</sup> The excitement surrounding the first black President<sup>12</sup> and the groundswell of turnout in reaction to Republican attempts to suppress minority voters<sup>13</sup> have contributed to a major increase in African American turnout in the last two presidential elections.<sup>14</sup> Latino voter turnout has increased over the past few election cycles but still lags behind that of the rest of the population.<sup>15</sup>

What is clear is that teaching civics and government produces more engaged citizens.<sup>16</sup> For example, “15–26-year-olds who have taken civics classes are 23 percentage points more likely to believe they are responsible for making things better for society and 14 percentage points more likely to vote than their peers who have not taken civics.”<sup>17</sup> Students who take civics or government classes help solve community problems, feel they can make a difference in their communities, volunteer and trust other people and the government, make consumer decisions for ethical or

8. See CTR. FOR THE STUDY OF SOC. POLICY, RESULTS-BASED PUBLIC POLICY STRATEGIES FOR PROMOTING YOUTH CIVIC ENGAGEMENT 3 (2011) (“[B]oth the educational experiences of youth themselves and the educational experience of their parents have an impact on whether or not young adults vote.”). Because African Americans and Latinos have lower rates of educational attainment, African American and Latino children are less likely to vote. See SOC. SCI. DATA ANALYSIS NETWORK, TRENDS IN VOTER TURNOUT 2 (2009).

9. Press Release, Bipartisan Policy Ctr. & Ctr. for the Study of the Am. Electorate, 2012 Election Turnout Dips Below 2008 and 2004 Levels: Number of Eligible Voters Increases by Eight Million, Five Million Fewer Votes Cast (Nov. 8, 2012), <http://bipartisanpolicy.org/library/report/2012-voter-turnout>.

10. RAFAEL LÓPEZ PINTOR & MARIA GRATSCHEW, INT’L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE, VOTER TURNOUT SINCE 1945, at 154 (2002).

11. See SOC. SCI. DATA ANALYSIS NETWORK, *supra* note 8.

12. *Id.*

13. Roland Martin, *GOP Voter Suppression Fueled Black Turnout*, CNN.COM (Nov. 10, 2012, 10:33 AM), <http://www.cnn.com/2012/11/09/opinion/martin-black-vote/index.html>.

14. See *Blacks Voted at a Higher Rate than Whites in 2012 Election—A First, Census Bureau Reports*, U.S. CENSUS BUREAU (May 8, 2013, 5:00 PM), <http://www.census.gov/newsroom/releases/archives/voting/cb13-84.html> (noting that African American voter turnout increased from approximately 65% in the 2008 presidential election to 66.2% in the 2012 presidential election); Paul Taylor, *The Growing Electoral Clout of Blacks Is Driven by Turnout, Not Demographics*, PEW RES. CENTER (Dec. 26, 2012), <http://www.pewsocialtrends.org/2012/12/26/the-growing-electoral-clout-of-blacks-is-driven-by-turnout-not-demographics/> (noting that African American voter turnout increased from 60.3% in the 2004 presidential election to approximately 65% in the 2008 presidential election).

15. Mark Hugo Lopez, Seth Motel & Eileen Patten, *A Record 24 Million Latinos Are Eligible to Vote, but Turnout Rate Has Lagged that of Whites, Blacks*, PEW RES. HISP. CENTER (Oct. 1, 2012), <http://www.pewhispanic.org/2012/10/01/a-record-24-million-latinos-are-eligible-to-vote>.

16. *Civic Education*, CENTER FOR INFO. & RES. ON CIVIC LEARNING & ENGAGEMENT, <http://civicyouth.org/quick-facts/quick-facts-civic-education/> (last visited Mar. 19, 2013).

17. *Id.*

political reasons, believe in the importance of voting, and have higher rates of voter registration.<sup>18</sup> To improve voter turnout and other markers of civic engagement, educators and voting rights advocates should focus on the youth population.

A number of community and university-based programs have worked to ameliorate the gap in civic knowledge.<sup>19</sup> One of those groups is the Marshall–Brennan Constitutional Literacy Project (Marshall–Brennan), which is based in eighteen law schools across America, with four more to launch during the 2013–2014 academic year. This program trains talented upper-level law students to teach students in underserved public high schools.<sup>20</sup> Despite the existence of programs like Marshall–Brennan that are offered at basically zero cost, implementing them in high schools is a difficult task. Often these programs are asked to prove that they work before they are afforded support from local districts.<sup>21</sup> School districts and funders often throw around buzzwords such as “benchmarks,” “outcomes-based practices,” “performance measures,” and “results-driven programming” when discussing the effectiveness of these programs. Although school districts and funders want to ensure high-quality and efficient programming, the measurement devices that are suggested by these buzzwords are of limited utility, especially when applied to a civic education program such as the Marshall–Brennan project.<sup>22</sup>

In 1999, American University Washington College of Law (WCL) Professors Jamin B. Raskin and Stephen Wermiel started the Marshall–Brennan project as an experiment.<sup>23</sup> As constitutional law experts, they realized there was a significant gap in constitutional and civic knowledge among public school students in and around Washington, D.C. By recruiting, training, and supporting highly motivated, engaged law students to teach high school students about Supreme Court cases that affect the rights of students in the public school setting, the project inspires soon-to-be lawyers to invest their time and energy in their local community. The law students, called Marshall–Brennan Fellows (Fellows), teach in pairs two to three days each week. The curriculum—three separate courses called Constitutional Law Survey, Youth Justice, and Special

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18. *Id.*

19. There are a number of programs and web-based resources, including Justice Sandra Day O'Connor's iCivics, Street Law, Inc. and individual Street Law chapters, the Marshall–Brennan Constitutional Literacy Project, and others. See THE EDUCATION PIPELINE TO THE PROFESSIONS: PROGRAMS THAT WORK TO INCREASE DIVERSITY, at vii–xiii (Sarah E. Redfield ed., 2012).

20. See *The Marshall–Brennan Constitutional Literacy Project*, AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan> (last visited Mar. 19, 2013).

21. Marshall–Brennan Annual Directors' Meeting, in Denver, Colo. (Nov. 29, 2012).

22. Although this sentiment certainly makes sense, it is important to realize the serious limitations in focusing on numbers only because it is very difficult to conduct research on minors, and numbers can only tell part of the story. For example, anecdotes paint vivid, poignant pictures that should also be taken into account.

23. *The Marshall–Brennan Constitutional Literacy Project*, *supra* note 20.

Topics in Constitutional Law—has been approved by the District of Columbia Public Schools for social studies elective credit. Fellows teach not only about the Constitution but also about the value of and logistics of obtaining higher education.

The project spread quickly across the country, mostly through word of mouth. Marshall–Brennan Fellows thoroughly enjoy and rave about their experiences, and their students have gone on to college and even law school thanks in large part to the support they receive from the Marshall–Brennan Fellows. Fellows write letters of recommendation, take students on college visits, and assist students through all stages of the application process, including the Free Application for Federal Student Aid and other financial aid. Still headquartered at American University, the Marshall–Brennan program had chapters at eighteen law schools in sixteen cities around the country during the 2012–2013 academic year.<sup>24</sup>

In an effort to explore whether Marshall–Brennan was meeting its goals of teaching young people how the Constitution applied to them and fostering appreciation for civic participation, the Washington, D.C. chapter engaged in a year-long evaluation during the 2010–2011 school year.<sup>25</sup> This Essay analyzes the data gathered through that evaluation and offers promising evidence to support the conclusion that students in Marshall–Brennan classes learn about their constitutional rights and responsibilities and change their attitudes about civic participation. The Essay is based on a comprehensive data set of students in fifteen classes spread across twelve Washington, D.C. public and public charter schools. Students were asked substantive questions about the curriculum and about their likelihood of participating in civic activities such as voting and jury service. The results indicate increased constitutional knowledge and higher likelihood of civic participation. This Essay will present the methodology and data for the study, and discuss the findings in the context of assessing the efficacy of Marshall–Brennan’s work in Washington, D.C.

The Essay concludes with an explanation of two ultimate goals. First, the authors seek to share the initial positive findings with a larger

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24. *Id.*

25. The authors could not find a program similar to the Marshall–Brennan project that has recently undertaken a similar evaluation process. Street Law, the civic education program most similar to the Marshall–Brennan project, has commissioned evaluations of many of its programs but does not seem to have evaluated its law school-based teaching programs recently. See *Evaluation Findings*, STREET LAW, INC., [http://www.streetlaw.org/en/about/evaluation\\_findings](http://www.streetlaw.org/en/about/evaluation_findings) (last visited Mar. 19, 2013). According to Street Law, the last time it evaluated its law school-based teaching programs was in the 1980s as part of an overall U.S. Department of Justice review of law-related education. See *Frequently Asked Questions*, STREET LAW, INC., <http://www.streetlaw.com> (last modified Feb. 28, 2001). The Center for Civic Education, although qualitatively different from the Marshall–Brennan project, has used the pre–post–test method to evaluate some its programs. Its evaluations could potentially be used for comparison or ideas on how to improve the Marshall–Brennan pre–post–testing process. See *Research and Evaluation*, CENTER FOR CIVIC EDUC., <http://new.civiced.org/resources/research/researchevaluation> (last visited Mar. 19, 2013).

audience. Second, the authors argue for a subsequent, larger study of the efficacy of the Marshall–Brennan model of training law students to teach high school students about the Constitution.

## II. DATA AND METHODS

The data used in this Essay come from pre- and post-tests of high school students involved in Marshall–Brennan’s work in Washington, D.C., during the fall 2010 and spring 2011 semesters. The high school students participated in semester-long classes and were asked to complete tests at the beginning and end of each semester. The purpose of the two tests was to assess whether Marshall–Brennan was meeting the goals listed in our syllabus of developing students’ ability to “[1] understand and apply basic constitutional principles[; (2) r]ead U.S. Supreme Court opinions[; (3) t]hink critically about different sides of controversial issues[; (4) f]ormulate an effective legal argument[; and (5) p]resent an appellate case before a lawyer and/or judge.”<sup>26</sup> The pre- and post-tests were identical and consisted of thirty-one questions asking participants about their knowledge of the structure of the U.S. government, composition and function of the Supreme Court, understanding of the Bill of Rights, and knowledge of Supreme Court decisions. Additional questions assessed participants’ critical thinking skills, participation in a moot court, understanding of the role of lawyers, and participants’ current perception of their likely future civic participation.<sup>27</sup> Several of the questions had multiple parts, resulting in a total of forty-one questions in the final dataset. The questions were multiple choice, true–false, essay, and short answer. They were graded by the Fellows and then checked by a post-graduate Fellow who oversaw the evaluation process. The students’ responses were scored as either correct, incorrect, or unanswered.

Data from the pre- and post-tests was entered into Microsoft Excel and imported into SPSS version 20.<sup>28</sup> Paired-samples t-tests were conducted to examine whether the scores on the post-test represented real gains from the scores on the pre-tests. The paired-samples t-test is a method that is often used with pre- and post-test data and assesses whether the mean difference from the first to second time point is different from zero. Thus, the null hypothesis is that the means will be equal, and the alternative hypothesis is that they will be different. A statistically significant result ( $p < 0.05$ ) allows us to reject the null hypothesis and accept the alternative hypothesis.<sup>29</sup> For this Essay, the alternative hypothesis was that there was an increase in the number of participants with

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26. Maryam Ahranjani, Am. Univ. Wash. Coll. of Law, Constitutional Law Survey Course Syllabus (Aug. 2013) (on file with author).

27. See *infra* Part VI (listing the questions).

28. SPSS is a data management and analysis program.

29. The  $p < 0.05$  level is typically used to assess whether a result is significant in statistical analyses. A significance level of  $p < 0.05$  indicates that there is a less than one in twenty chance that a finding is the result of chance, and so the finding is likely to represent a systematic or real change.

correct answers on the post-test as compared to the pre-test. We also examined individual-level change across the two time points to assess stability between the pre- and post-tests. Questions are grouped and presented in seven different categories: (1) structure of government; (2) Bill of Rights; (3) Supreme Court; (4) Supreme Court decisions; (5) critical-thinking skills; (6) moot court and the role of lawyers; and (7) civic participation and knowledge.

Overall, 48% of students enrolled in Marshall–Brennan classes in Washington, D.C., in the 2010–2011 academic year ( $n = 201$ ) completed the survey at both time points. Although this completion rate is lower than we desired, it is reflective of the reality of many of the high school environments where the Marshall–Brennan project is implemented. In addition to students being absent when the pre- and post-tests were administered, many students joined the class after the pre-test was administered, and others left the class before the post-test was administered. This flow of students in and out of the classes was a phenomenon that was observed in all classes at the schools. As will be discussed later, the response rate is a potential limitation of the study. Yet, given the context in which the Marshall–Brennan project was implemented, the fact that nearly half the students completed both the pre- and post-tests gives us some confidence that the results presented below represent real gains in constitutional knowledge and understanding as a result of the Marshall–Brennan project.

### III. RESULTS

Table 1 presents the changes from the pre-test to the post-test in the percentage of participants answering questions correctly about the structure of government. These questions asked respondents to name the three branches of government, to describe the roles of these branches, and to indicate why the Framers separated the government into these three branches. A correct answer on the branches of government questions indicates that a student was able to identify both the branch and its function. As is evident from the table, participants in the Marshall–Brennan program exhibited statistically significant ( $p < 0.001$ ) increases in knowledge on each item from the pre- to the post-test.<sup>30</sup> The gains in knowledge ranged from 15% to 26% across the items. Although we will discuss this in more detail in Part IV, it is important to note that the level of knowledge about the branches of government and their roles was particularly low on the pre-test, ranging from 12% to 26% across the items. These results mean that despite significant and somewhat sizeable gains from the pre- to the post-test across each of these items, fewer than half of the students answered correctly on each of the items on the post-test.

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30. In addition to the specific questions assessed through the pre- and post-tests, two additional measures were created. The first assessed how many participants answered all three branches correctly, and the second assessed how many answered one branch correctly.

The relatively low pre- and post-test scores reflect the public's lack of knowledge about the structure of government. These scores, however, were somewhat surprising to project leaders, initiating valuable discussions about curriculum design and the extent to which this knowledge relates to the Marshall-Brennan project's goals. Ability to recite the three branches and their functions is not necessarily an indicator of civic intelligence, but the project staff assumed a strong link between civic knowledge and action. It seemed intuitive that the missing link between social problems and students acting to solve those problems was knowledge about how the process of acting would work. For example, if students identified a school's harsh late attendance policy as a problem and knew the proper steps to having their voices heard about it (e.g., organize a group of concerned students, request a meeting with the principal, present their arguments in a concise and cogent manner), they would be more likely to take those steps. However, based on the results, further study is necessary to assess whether knowledge of the structure of the government correlates to civic engagement and action.

**Table 1: Test Results Regarding the Structure of Government**

Question topic	Pre-test	Post-test	Percentage point (p.p.) change	t-statistic (a)
Legislative Branch .....	23%	46%	+23 p.p.	-6.053
Executive Branch .....	17%	37%	+20 p.p.	-5.033
Judicial Branch .....	14%	33%	+19 p.p.	-5.793
All three branches .....	12%	27%	+15 p.p.	-4.644
At least one branch.....	25%	51%	+26 p.p.	-6.768
Separation of powers.....	26%	43%	+17 p.p.	-4.784

(a) Results represent statistically significant increases ( $p < 0.001$ ).

Table 2 presents the results of the questions assessing knowledge of the Bill of Rights. As with respect to the questions regarding the structure of government, participants exhibited significant increases in knowledge on all of the questions pertaining to the Bill of Rights, reflecting an understanding of what it is and some of the specific protections included. As in the previous questions, participants' knowledge was low on the pre-test (the exceptions include the question asking what the Bill of Rights is and whether freedom of speech is included in the First Amendment). Gains on the various questions ranged from 12% to 39% of participants exhibiting increased knowledge. In fact, there were gains of more than 25% on six of the items, including the measure we constructed indicating whether a participant knew three or more of the protections included in the First Amendment. Unlike the previous questions, where fewer than 50% of the participants answered correctly on the post-test, more than 64% of the participants answered correctly across five of the nine measures, and 54% answered correctly on another measure.



Table 2: Test Results Regarding the Bill of Rights

Question topic	Pre-test	Post-test	Percentage point (p.p.) change	t-statistic (a)
Bill of Rights.....	80%	93%	+13 p.p.	-3.853
Fourth Amendment .....	17%	42%	+25 p.p.	-6.574
<i>Six Protections in the First Amendment:</i>				
Petition for redress of				
grievances .....	15%	54%	+39 p.p.	-10.729
Establishment of religion .....	15%	27%	+12 p.p.	-2.799 (b)
Right to assemble .....	21%	64%	+43 p.p.	-11.080
Freedom of the press .....	34%	69%	+35 p.p.	-8.723
Free exercise of religion .....	18%	29%	+11 p.p.	-2.455 (c)
Freedom of speech .....	53%	89%	+36 p.p.	-9.755
Three or more protections .....	30%	65%	+35 p.p.	-8.368

(a) Results represent statistically significant increases ( $p < 0.001$ ), unless indicated otherwise.

(b) Results indicate significant gains ( $p < 0.01$ ).

(c) Represents a significant result ( $p < 0.05$ ) such that the null hypothesis is rejected and the alternative hypothesis is accepted.

The next set of questions, included in Table 3, assessed knowledge of the role and makeup of the United States Supreme Court. The results of the pre- and post-tests show that there were statistically significant increases ( $p < 0.001$ ) for each of the items. Overall, gains ranged from 15% to 37% of participants exhibiting increased knowledge. Two of the questions assessing general knowledge on the role and composition of the Court were broader than the others. Participants scored higher on these items at the pre-test with gains of 18% and 37% from pre-test to post-test. The other questions were somewhat more specific, asking about particular current and past Supreme Court Justices. Although only a relatively low percentage of respondents answered these questions correctly on the post-test, the gains were fairly strong, ranging from 15% to 30%.

As with the results listed in Table 1, both the pre- and post-test scores were low, thereby feeding the discussion about the value of knowledge relative to action. In particular, one wonders whether it is necessary for students to know the basic information about Supreme Court Justices to be able to apply Court opinions in making effective legal arguments. It is possible that the answer to this question is no, but it is a question worth exploring further.

Table 3: Test Results Regarding the Supreme Court

Question topic	Pre-test	Post-test	Percentage point (p.p.) change	t-statistic (a)
Final arbiter of the Constitution ..	37%	55%	+18 p.p.	-4.122
Number of Justices on Supreme Court .....	38%	75%	+37 p.p.	-8.775
Newest Supreme Court Justice ...	11%	35%	+24 p.p.	-7.175

Question topic	Pre-test	Post-test	Percentage point (p.p.) change	t-statistic (a)
First Hispanic Supreme Court Justice .....	11%	26%	+15 p.p.	-4.341
<i>Two Justices who supported student rights:</i>				
Thurgood Marshall .....	2%	32%	+30 p.p.	-9.014
William Brennan .....	0%	23%	+23 p.p.	-7.813

(a) Results represent statistically significant increases ( $p < 0.001$ ).

Table 4 presents the results of questions that assessed knowledge regarding Supreme Court decisions. There are two types of questions included in the table. One type of question assesses understanding of the substance of decisions, whereas the other assesses understanding of the authority and application of Supreme Court precedent. Participants exhibited significant gains ( $p < 0.01$ ) across all but one of the eight questions. The only question that students did not show a significant gain on asked about whether students had constitutional rights in schools, and more than 70% answered correctly on both the pre- and post-tests. Otherwise, gains in knowledge between time points ranged from 12% to 35%. Participants showed gains both on the substantive questions and on the questions assessing knowledge of the authority of the Supreme Court and what cases the Court must hear. In general, participants exhibited a high level of knowledge on all the questions on the post-test, and 60% or more answered six of the eight questions correctly. The question concerning *Brown v. Board of Education*<sup>31</sup> had the lowest percentage of correct answers (45%) at the post-test, which may seem surprising because it is such an important case. One potential explanation is that the *Brown* question is in short-answer rather than in multiple-choice format. Question format is something that can be changed if the study is replicated.

Table 4: Test Results Regarding Supreme Court Decisions

Question topic	Pre-test	Post-test	Percentage point (p.p.) change	t-statistic (a)
Students do not have constitutional rights .....	71%	72%	+1 p.p.	-0.229
Only some lower courts are bound by the Supreme Court .....	48%	60%	+12 p.p.	-2.595 (b)
Supreme Court must hear all cases .....	44%	72%	+28 p.p.	-6.961
What is a concurring opinion? ..	38%	54%	+16 p.p.	-3.220
What did <i>Roper</i> hold? .....	31%	60%	+29 p.p.	-6.756
What did <i>Graham</i> hold? .....	39%	62%	+23 p.p.	-4.559
What did <i>Tinker</i> hold? .....	50%	85%	+35 p.p.	-8.251

31. 347 U.S. 483 (1954).

Question topic	Pre-test	Post-test	Percentage point (p.p.) change	t-statistic (a)
What case overruled separate but equal? .....	27%	45%	+18 p.p.	-4.474
(a) Results represent statistically significant increases ( $p < 0.001$ ), unless indicated otherwise.				
(b) Results indicate significant gains ( $p < 0.01$ ).				

The results of the critical reasoning questions are included in Table 5. These questions are based on a fact pattern<sup>32</sup> about a critical comment a student posted on Facebook that led to his suspension from school. Participants were asked to answer three questions (first three rows in the table) and then complete an essay describing who they felt should win the case based on Supreme Court precedent to justify their answer. As the table exhibits, there were significant increases in participants' critical reasoning skills across each of the questions ranging from 10% to 34%. In fact, there was a 34% gain for each part of the essay question where students needed to identify and justify who should win. The smallest gain was on the question asking participants to identify one or more potential plaintiff. One reason for this was that participants did not name all three of the potential plaintiffs. Otherwise, strong gains were observed across each of the items assessing critical reasoning skills.

**Table 5: Test Results Regarding Critical Reasoning Skills**

Question topic	Pre-test	Post-test	Percentage point (p.p.) change	t-statistic (a)
What is the First Amendment right in question? .....	43%	69%	+26 p.p.	-6.090
Identify any potential plaintiff .....	9%	19%	+10 p.p.	-2.941 (b)
Identify any potential defendant ...	40%	60%	+20 p.p.	-4.576
Who should win Part 1? .....	42%	76%	+34 p.p.	-8.287
Who should win Part 2? .....	2%	36%	+34 p.p.	-10.225
Who should win Part 3? .....	14%	48%	+34 p.p.	-8.287
(a) Results represent statistically significant increases ( $p < 0.001$ ), unless indicated otherwise.				
(b) Results indicate significant gains ( $p < 0.01$ ).				

The items tapping into moot court participation and the role of lawyers are included in Table 6. As evident from the table, the percentage of participants reporting that they argued in a moot court increased significantly from 9% to 68% ( $p < 0.001$ ). This is important because formulating an effective legal argument is a goal of the Marshall–Brennan project and participants are required to do so in the moot court process. Similarly, there were significant increases on each of the other questions. How-

32. See *infra* Part VI (showing the fact pattern).

ever, the percentage answering correctly on the pre- and post-tests differed substantially. Although the increase in students arguing a case before a lawyer or judge was significant, the overall percentage of participants that reported doing so in the post-test was only 17%.

**Table 6: Test Results Regarding Moot Court Participation and the Role of Lawyers**

Question topic	Pre-test	Post-test	Percentage point (p.p.) change	t-statistic
Ever argued in a moot court? .....	9%	68%	+59 p.p.	-15.473
Ever present an argument before a lawyer or judge? .....	4%	17%	+13 p.p.	-4.808
What do lawyers rely on in making arguments? .....	1%	16%	+15 p.p.	-5.704 (a)
Do lawyers argue for positions on which they disagree? .....	64%	80%	+16 p.p.	-4.025 (a)

(a) Results represent statistically significant increases ( $p < 0.001$ ).

The items in Table 7 measure both future civic participation intention and civic knowledge. There were not significant increases on the two questions concerning future civic participation (willingness to serve on a jury and desire to vote). One reason for this was that the questions, particularly the question on intention to vote, had relatively high percentages on the pre-test. Both of the questions on civic knowledge had significant increases from the pre- to the post-test. Further work would include asking even more questions about civic participation, such as interest in running for public office, likelihood of using public facilities such as libraries and museums, and interest in volunteerism.

**Table 7: Test Results Regarding Civic Participation and Knowledge**

Question topic	Pre-test	Post-test	Percentage point (p.p.) change	t-statistic
I am willing to serve on a jury .....	48%	54%	+6 p.p.	-1.255
I will vote when I'm old enough..	81%	87%	+6 p.p.	-1.96
Who is the mayor of Washington, D.C.? .....	77%	86%	+9 p.p.	-2.636 (a)
Who is my city council person?...	17%	31%	+14 p.p.	-4.528 (b)

(a) Results indicate significant gains ( $p < 0.01$ ).

(b) Results represent statistically significant increases ( $p < 0.001$ ).

#### IV. DISCUSSION

Public opinion polls reveal that Americans, both adolescents and adults, generally know little about the Constitution and the structure and

function of government.<sup>33</sup> These results are alarming because the strength and vibrancy of the Constitution is dependent upon a well-informed and active citizenry. Unfortunately, little is being done to remedy this situation. Civics education in schools is being relegated to the back of the line in an era of high-stakes testing. Low citizen involvement in political processes, exemplified by low voter turnout rates, reflects a lack of attention to and interest in issues of citizenship and democracy that undergird our constitutional system.

Recent Supreme Court decisions have increased the power of corporations and the wealthy to contribute to political campaigns, elevating their interests and increasingly drowning out the voices of average citizens.<sup>34</sup> Thus, there is a need for programs to fill the gap and seek to promote constitutional literacy and engagement in order to fulfill the vision and aspirations of the Founders.

As discussed previously, the goal of the Marshall–Brennan Constitutional Literacy Project is to remedy the lack of constitutional knowledge and understanding among high school students and promote lifelong civic and political engagement. As such, Marshall–Brennan envisions young people, often thought of as objects to be shaped or problems to be managed, as active participants in our constitutional and political system. It is based on the theoretical proposition that young people will become more knowledgeable citizens and more active participants in political and civic processes if presented with certain information and taught certain skills. Specifically, they will become more engaged if they learn about and discuss their rights and responsibilities, the structure of our system of government, and the role and history of the Constitution in regulating this system, as well as if they participate in activities that develop critical reasoning and analysis skills. Moot court, a highlight of Marshall–Brennan, has a critical impact on students' interest in civic involvement, understanding of how government functions, and ability to envision themselves as lawyers.

This Essay represents the first step in documenting the effectiveness of the Marshall–Brennan project in achieving this goal. As the results indicate, high school students involved in the Marshall–Brennan project exhibited gains in constitutional knowledge and critical thinking skills. In fact, significant gains were realized on thirty-eight of the forty-one questions we tested, as well the three additional measures we created. On a

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33. See, e.g., NAT'L CONSTITUTION CTR., MORE TEENS CAN NAME THREE STOOGES THAN CAN NAME THREE BRANCHES OF GOVERNMENT 1 (1998); NAT'L CONSTITUTION CTR., STARTLING LACK OF CONSTITUTIONAL KNOWLEDGE REVEALED IN NATIONAL CONSTITUTION CENTER SURVEY 1 (1997) ("Only 5 percent of Americans can correctly answer 10 rudimentary questions about the Constitution."); Andrew Romano, *How Dumb Are We*, DAILY BEAST (Mar. 20, 2011, 10:00 AM), <http://www.thedailybeast.com/newsweek/2011/03/20/how-dumb-are-we.html>.

34. See BLAIR BOWIE & ADAM LIOZ, U.S. PUB. INTEREST RESEARCH GRP., DISTORTED DEMOCRACY: POST-ELECTION SPENDING ANALYSIS 1 (2012).

substantive basis, many of the gains in knowledge and skills were quite large, and substantial percentages of young people answered many of the questions correctly on the post-test. It is important to note that the specific curriculum in each classroom was not based on the pre- and post-test. Questions were drawn from the Marshall–Brennan materials, but individual teaching teams had the flexibility to modify their specific classroom curriculum to the interests of the high school students. Thus, it is likely that some topics may not have been covered at all or may not have been covered in depth. This reality explains some of the differences and makes the gains across the results as a whole even more impressive.

It is interesting that high school students generally did better on the questions asking about specific amendments and cases than on the questions asking them to identify the branches of government and their respective roles. These results are likely because more attention was placed on cases than on the branches of government. It also likely reflects the scoring of these questions—students needed to answer correctly both components (branch and role) for their response to be scored as a correct answer. Given the importance of this question, however, the fact that only 27% of students named all three branches correctly suggests the need for more attention to the structure of government. Similarly, the percentage of students correctly answering the question regarding “which case overruled separate but equal” was low relative to the percentage answering correctly on other cases involving the holdings of specific Supreme Court decisions. Again, it is likely that classrooms focused more on other cases and issues. Yet it is surprising given the historical significance of the *Brown* decision and its continued salience today.

As noted, the development of critical reasoning and analysis skills is a central goal of the Marshall–Brennan project. High school students showed significant and fairly substantial increases in critical reasoning and analysis based on their analysis of the fact pattern provided in the pre- and post-tests. Also, a large percentage of the students who completed the pre- and post-tests reported that they participated in the moot court competition. The moot court competition is a task that requires a significant amount of reasoning and analysis, providing further evidence that the Marshall–Brennan project is fulfilling its goal of developing critical reasoning and analysis skills in its students. Interestingly, the questions designed to tap into civic participation and awareness showed no gains or relatively modest gains. In large part, the failure to realize significant gains in this area is because a high percentage of students reported on the pre-test that they planned to vote when they turned eighteen years old. Marshall–Brennan may also need to think more broadly about civic political participation, how it can be measured, and how well the Marshall–Brennan project is promoting action-oriented projects in addition to gains in knowledge and skills.

There are a number of ways in which Marshall–Brennan could promote more action-oriented projects. On a local scale, each chapter could ask Fellows to require students to engage in at least one civic-action project. Students would brainstorm problems and potential solutions and work toward those solutions with guidance from their Fellows. On a national scale, in the same way that moot court competitions leave students feeling enthused and motivated, the national headquarters could sponsor a civic-action competition. Students could submit action plans that demonstrate knowledge of some case or concept that we teach and how it relates to a social problem they have identified, and then lay out a plan to solve the problem. The winner(s) would receive a grant to enact the plan. This question of how to better link knowledge with action could also be discussed with the Marshall–Brennan Board of Advisors and with all the chapter directors at annual meetings.

Despite the positive results demonstrated above, we acknowledge that they are only a start. Although we have no reason to believe that these results are not generalizable based on our knowledge of other programs, these results are based on one program in one year and the completion rate for the pre- and post-test was slightly less than 50%. Additional research is necessary to examine the effectiveness of other Marshall–Brennan chapters in enhancing both knowledge and critical reasoning and analysis skills among high school students. This research can build upon and expand what we present here not only by corroborating knowledge gains but also by connecting these gains to outcomes. A pre- and post-test study is already ongoing at one other program site (University of Pittsburgh School of Law). As the Marshall–Brennan project continues to expand, it is important that the authors of the study of the WCL chapter provide guidance and support for other chapters to develop this knowledge base.

It is also important that future research seek to connect program participation, knowledge, and skill gains to specific behavioral outcomes such as voting and other forms of civic participation. This research will require enhanced theoretical development regarding the connection of Marshall–Brennan involvement to specific outcomes it seeks to achieve. The time is ripe for further study. Adopted by forty-five states and the District of Columbia, the Common Core State Standards (Common Core)<sup>35</sup> are now an enormous area of focus for educators. The Common Core State Standards provide clear, consistent expectations for what students should achieve at each grade level in every school. The idea is for students, parents, and teachers to have a shared understanding of curricular goals in mathematics and English language arts (which includes so-

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35. *Mission Statement*, COMMON CORE ST. STANDARDS INITIATIVE, <http://www.corestandards.org> (last visited Mar. 19, 2013).

cial studies) across the country and to work together in achieving those goals.<sup>36</sup>

The Marshall–Brennan project is in the process of identifying how to support the Common Core’s focus on the development of students’ higher level thinking and critical analysis that results in interdisciplinary problem solving. As the Marshall–Brennan project continues to expand across the country and improve its curriculum, it will be important that the national headquarters at WCL and individual chapters think carefully about Common Core. Further study can enhance the existing work. For example, because of our findings, in Washington, D.C., we plan to incorporate flipping<sup>37</sup> during the 2013–2014 academic year to better utilize classroom time to discuss and apply the knowledge contained in the flipped lectures. Also, in Washington, D.C., we are reframing our curriculum to teach primary-source texts (especially Supreme Court case excerpts) in such a way that enhances the “civic knowledge to action” goal.<sup>38</sup> For example, after reading actual cases in a particular substantive area, students will be asked to perform related hypothetical scenarios and to articulate orally and in writing how the Court would rule based on their knowledge of the case precedent. In all likelihood, neither of these two advancements would have occurred without the research findings discussed in this Essay.

Although some of the theoretical components are highlighted in this Essay, further development is necessary to lead to the formation of testable hypotheses. Theoretical development and hypothesis testing will serve several purposes. First, they will help to articulate the specific outcomes that Marshall–Brennan can produce and to examine whether it is, in fact, producing those outcomes. Second, they will identify the pathways through which Marshall–Brennan produces desired outcomes, thereby providing feedback that can lead to program improvement. This type of work will require longitudinal, multi-site studies that employ comparison groups.

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36. *The Standards*, COMMON CORE ST. STANDARDS INITIATIVE, <http://www.corestandards.org/the-standards> (last visited Mar. 19, 2013).

37. Nick Anderson, *More on Classroom Flipping in Colleges*, WASH. POST (Mar. 11, 2013), [http://articles.washingtonpost.com/2013-03-11/local/37618198\\_1\\_lectures-class-web-site-class-goals](http://articles.washingtonpost.com/2013-03-11/local/37618198_1_lectures-class-web-site-class-goals) (describing the practice of providing students recorded online lectures to watch before class sessions in an effort to better utilize class time for application).

38. See SHEILA BROWN & LEE KAPPES, ASPEN INST., IMPLEMENTING THE COMMON CORE STATE STANDARDS: A PRIMER ON “CLOSE READING OF TEXT” 1 (2012) (“To prepare students for . . . college and [their] careers, . . . schools must place a greater emphasis on the teaching of increasingly complex texts.”).



## V. CONCLUSION

The United States has a global reputation as a participatory democracy.<sup>39</sup> However, there is still much work to be done in terms of voter participation<sup>40</sup> and other measures of civic engagement such as government transparency.<sup>41</sup> As future civic actors, young people maintain a critical space in the discussion and in the solutions. However, civics education has not been a national priority, particularly in low-income and minority communities. The Marshall–Brennan Constitutional Literacy Project hopes this Essay furthers the development of its efforts to teach high school students about the Constitution and encourage their civic participation. This Essay highlights some critical ways in which it is both achieving and falling short of its current goals.

## VI. APPENDIX: HIGH SCHOOL CIVIC LITERACY EXAMINATION

*Part One: Basic Constitutional Principles*

1. List the three branches of government and what each branch does.
2. Why did the Framers separate the government into three branches?
3. What is the Bill of Rights?
  - a. The first 10 words of the Constitution
  - b. The first 10 amendments to the Constitution
  - c. The part of the Constitution that talks about what is right and what is wrong
4. How many Justices sit on the U.S. Supreme Court?
5. Name the newest member of the Supreme Court.
6. What is the name of the first Latino or Hispanic Supreme Court Justice and which President appointed her?
7. Against what does the Fourth Amendment protect?
8. What are the six rights contained in the First Amendment?
9. Who is the final arbiter (interpreter) of the Constitution (circle one)?
  - a. The U.S. Congress
  - b. The President of the United States
  - c. The U.S. Supreme Court
10. Who are the two former Supreme Court Justices known for their vigorous support of students' rights?

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39. See, e.g., Adam Liptak, 'We the People' Loses Appeal with People Around the World, N.Y. TIMES, Feb. 7, 2012, at A1 (noting that in 1987, 160 of the 170 countries in the world modeled their constitutions on the United States').

40. Howard Steven Friedman, *American Voter Turnout Lower than Other Wealthy Countries*, HUFFINGTON POST (July 10, 2012, 11:42AM), [http://www.huffingtonpost.com/howard-steven-friedman/voter-turnout-europe-america\\_b\\_1660271.html](http://www.huffingtonpost.com/howard-steven-friedman/voter-turnout-europe-america_b_1660271.html).

41. Opensecrets.org and the Collaboration on Government Secrecy work to promote better transparency in terms of the government's response to citizens' inquiries about government documents through Freedom of Information Act (FOIA) requests. It can take years for an agency to respond to a FOIA request. Also, legislative lobbying is an area criticized for lack of transparency. See LEE DRUTMAN, BROOKINGS INST., A BETTER WAY TO FIX LOBBYING 1–2 (2011).

*Part Two: U.S. Supreme Court Opinions*

11. True or False: The Supreme Court has ruled that students do not have constitutional rights once they enter their schools.
12. True or False: Only some lower courts are bound by the decisions of the Supreme Court.
13. True or False: The Supreme Court is required to hear every case that is appealed to it.
14. Which one of the following describes a concurring opinion?
  - a. It is the opinion written by the Justices who disagree with the majority holding.
  - b. It is the opinion written by the Justices who agree with the majority holding but disagree with the reasoning.
  - c. It is the opinion written by the majority of Justices.
15. Which of the following is true (circle one):
  - a. The Eighth Amendment supports cruel and unusual punishment.
  - b. According to *Roper v. Simmons* (2005), the Eighth Amendment prohibits execution of juveniles for any reason.
  - c. According to *Roper v. Simmons* (2005), the Eighth Amendment permits execution of juveniles.
16. Which of the following is true (circle one):
  - a. The Supreme Court ruled in *Graham v. Florida* (2010) that juveniles can be sentenced to life in prison without parole for a non-homicide crime.
  - b. The Supreme Court ruled in *Graham v. Florida* (2010) that juveniles cannot be sentenced to life in prison without parole for a non-homicide crime.
  - c. The Supreme Court ruled in *Graham v. Florida* (2010) that juveniles cannot be sentenced to life in prison without parole for a homicide crime.
17. Which of the following statements correctly identifies the rule from *Tinker v. Des Moines Independent School District* (1969)?
  - a. Student speech can be censored if it constitutes a “material and substantial disruption” to school functioning.
  - b. Students can never wear black armbands to school.
  - c. Students cannot engage in political speech at school.
18. Name the 1954 Supreme Court case that established that separate but equal public schools are not equal.

*Part Three: Critical Thinking About Different Sides of Controversial Issues*

Read the following fact pattern and then answer questions 19 through 22. In answering the questions, do not assume or infer any additional facts.

A student, at home and on his own time, posts a comment on Facebook that is extremely critical of his social studies teacher. The next day, students are talking about the posting during class. The principal believes the posting is disruptive to school functioning and suspends the student. The student protests his suspension, and the school board decides to intervene.

19. Which First Amendment right is in question?
20. Given these facts, circle any potential plaintiff(s) in a lawsuit?

- a. The suspended student
  - b. The parents of the suspended student
  - c. Other students who have been suspended for posting comments on Facebook
  - d. The principal
  - e. The girlfriend of the suspended student
21. Circle any potential defendant(s) in the suit.
- a. The suspended student
  - b. The parents of the suspended student
  - c. Other students who have been suspended for posting comments on Facebook
  - d. The principal
  - e. The girlfriend of the suspended student
22. Who do you think should win the lawsuit? Use at least one Supreme Court case to support your answer.

*Part Four: Formulating Effective Legal Arguments*

23. Have you ever participated in moot court (Yes or No)?
24. Upon what must lawyers rely in making appellate arguments?
25. Do lawyers sometimes have to present arguments with which they personally disagree (Yes or No)?

*Part Five: Presenting an Appellate Case Before a Lawyer or Judge*

26. Have you ever presented an appellate case before a real lawyer or judge (Yes or No)?
27. If so, when?

*Part Six: Current Events and Civic Engagement*

28. Who is the current mayor of Washington, D.C.?
29. True or False: I am willing to serve on a jury.
30. True or False: When I become old enough to vote, I am likely to vote.
31. Who is the city council member who represents your ward?



EDUCATING YOUNG PEOPLE ABOUT LAW IN A  
DISADVANTAGED CITY: RUTGERS UNIVERSITY SCHOOL OF  
LAW AND THE CITY OF CAMDEN, NEW JERSEY

JILL FRIEDMAN, CONRAD HABER & EVE BISKIND KLOTHEN<sup>†</sup>

ABSTRACT

In Camden, New Jersey, one of the nation's poorest and most violent cities, Rutgers University School of Law has established numerous community legal education outreach projects for the public. Primarily focused on young people in classrooms, detention centers, and youth development programs, these include the Street Law Pro Bono Project and the Marshall–Brennan Constitutional Literacy Project. First, this Essay describes the strategic establishment and development of various projects; synergies among projects; and positive impacts for law students and youth in the community, for the law school itself, and for the legal profession and society. Reflections on elements of successful programming are also provided. Second, it recounts the experience of a law student who participated in many of the law school's community legal education projects and the personal and professional impact of his experiences. Finally, the Essay argues that all law schools, and particularly public law schools, should be required to provide public education in the law as part of a comprehensive program of pro bono opportunities serving unmet legal needs in the community. Perpetuating a system of engaged democracy requires educating the public about rights and responsibilities under the law. Law students are uniquely situated to provide this critical knowledge, and public universities have a special obligation to prepare state residents for engagement in civic and political life.

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<sup>†</sup> Jill Friedman is the Acting Assistant Dean for the Pro Bono and Public Interest Program at Rutgers University School of Law–Camden and co-directs its Marshall–Brennan Constitutional Literacy Project chapter. Conrad Haber, Esq. earned his J.D. from Rutgers University School of Law–Camden in 2011 and participated in several of the educational outreach programs discussed in this Essay. Eve Biskind Klothen is the former Assistant Dean for the Pro Bono and Public Interest Program at Rutgers University School of Law–Camden.

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### INTRODUCTION

Situated in Camden, New Jersey, one of the poorest and most dangerous cities in the nation,<sup>1</sup> where only 35% to 45% of young people finish high school,<sup>2</sup> Rutgers University School of Law–Camden (Rutgers–Camden) has established a range of constitutional literacy and related programs for the public. Focusing on high schools and other youth-serving settings, the Rutgers programs not only provide an exceptional learning and service opportunity for participating law students but also demonstrate the true meaning of civic and community engagement for all involved. For all universities, it is critical to connect with their host communities as active and contributing institutions. For public universities, it is part of the social compact between the academy and the community. For a public university in a ravaged city, it is a moral and practical imperative.

Law school service opportunities must respond to actual community needs. Too often in Camden, the adults and institutions responsible for protecting and nurturing children fail them. Camden's young people experience all the strains of urban poverty, including parental incarceration, drug and alcohol dependency, domestic violence, and inadequate access to social and health services.<sup>3</sup> Many of Camden's youth are involved in the delinquency or dependency court systems or live in transitional, restrictive, or secure placements.<sup>4</sup> Many who have had bad experiences at school, and with police in their neighborhoods and in courthouses, feel

1. Kate Zernike, *To Fight Crime, Camden Will Trade in Its Police*, N.Y. TIMES, Sept. 29, 2012, at A1.

2. Melanie Burney, *Dropout Rates Grow in Camden High Schools*, PHILA. INQUIRER, Mar. 7, 2002, at A1.

3. Chris Hedges, *City of Ruins*, THE NATION, Nov. 4, 2002, at 15, 17.

4. See CAMDEN CITY YOUTH SERVS. COMM'N, COMMUNITY ASSESSMENT REPORT 27 (2002). "Current data reveals that in 1998, there were 1,447 admissions to secure confinement . . . . In 2000, there were 1,434 admissions to secure confinement . . . . [The] data also indicates that the largest number of youth incarcerated in the State of [New Jersey] is from Camden City." *Id.*

disaffected and disenfranchised.<sup>5</sup> In Camden, “[c]orruption is rampant, with three mayors sent to prison in a little more than two decades. Five police officers [recently were] charged with planting evidence, making false arrests and trading drugs for information from prostitutes.”<sup>6</sup>

By teaching constitutional literacy and providing various other law-related educational programs, Rutgers fills a vital community need. The law school has assumed responsibility for helping children understand their rights and responsibilities under the law, and for providing them some of the skills and inclinations for engaged citizenship. By employing a diverse group of law students to teach about the law, Rutgers provides important role models and fundamental information about the way society should govern itself.

Through multiple public legal education outreach programs, including the Constitution Day Outreach Project (Constitution Day), the Street Law Pro Bono Project (Street Law) and its offshoots, the Marshall–Brennan Constitutional Literacy Project (Marshall–Brennan), the moot court program, the Summer Law Institute, and the Law School Admission Council DiscoverLaw.org Prelaw Undergraduate Scholars Program, Rutgers University School of Law–Camden has created a robust legal education outreach model that serves children, youth, and young adults in a range of settings: schools, detention centers, transitional residences, youth development and therapeutic settings, and colleges and universities.<sup>7</sup> These projects have activated a group of law students who consider themselves lifelong advocates for children and educational equity, and the synergies among projects have allowed the law school to interact with the surrounding community in new ways. Although it is too soon to assess results, it is believed that these various projects will also contribute to a diversity pipeline into the legal profession by nurturing a cohort of young people who are comfortable in the law school setting and motivated by their personal successes to pursue pre-law coursework and possibly law school and legal careers.

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5. See Press Release, ACLU, Camden Agrees to Pay \$3.5M to Victims of Police Corruption (Jan. 10, 2013), available at <http://www.aclu.org/criminal-law-reform/camden-agrees-pay-35m-victims-police-corruption>; John Rudolf, *Anxiety High as Crime-Ridden Camden Scraps Police Force at Gov. Chris Christie's Urging*, HUFFINGTON POST (Aug. 30, 2012), [http://www.huffingtonpost.com/2012/08/30/camden-eliminates-police-department\\_n\\_1844840.html](http://www.huffingtonpost.com/2012/08/30/camden-eliminates-police-department_n_1844840.html). Also, Dean Friedman has heard from high school students who live in Camden anecdotal reports of bad experiences at school and with police.

6. Hedges, *supra* note 3, at 15.

7. See *Clinic Courses*, RUTGERS U. SCH. L.–CAMDEN, <http://camlaw.rutgers.edu/clinic-courses> (last visited Mar. 14, 2013); *LSAC DiscoverLaw.org PLUS Program*, RUTGERS U. SCH. L.–CAMDEN, <http://camlaw.rutgers.edu/plusprogram> (last visited Mar. 14, 2013); *Pro Bono Projects*, RUTGERS U. SCH. L.–CAMDEN, <http://camlaw.rutgers.edu/pro-bono-projects> (last visited Mar. 14, 2013); *Seminar: Marshall–Brennan Constitutional Literacy Fellowship Program*, RUTGERS U. SCH. L.–CAMDEN, <http://camlaw.rutgers.edu/cgi-bin/course-description.cgi?class=784> (last visited Mar. 14, 2013).

In Part I of this Essay, the authors will describe how various projects have been successfully implemented at Rutgers University School of Law–Camden, how synergies have developed among them, and how they have affected the culture of the law school. Part II will assess how these educational programs have influenced some of the law students who have participated in them. Part III will make the argument that public law schools should be required to sponsor efforts to teach the public about rights and responsibilities under the law.

## I. STRATEGIC ESTABLISHMENT AND DEVELOPMENT OF COMMUNITY LEGAL EDUCATION PROJECTS

### *A. Background and History*

Camden, New Jersey, just one mile from Philadelphia, Pennsylvania, via the Benjamin Franklin Bridge, is a city struggling to breathe. In September 2012, two Camden children had their throats slit, allegedly by a neighbor who had smoked PCP-laced marijuana (known as “wet”).<sup>8</sup> Two weeks earlier, according to police, a Camden mother who also had smoked wet beheaded her two-year-old son Zahree.<sup>9</sup> Whereas a new mayor,<sup>10</sup> a new medical school,<sup>11</sup> and a vibrant and growing research university<sup>12</sup> signify that many are fighting for Camden’s future, the city, characterized by disproportionate numbers of youth in poverty,<sup>13</sup> is plagued by gangs and violence, drugs, and mostly failing schools.<sup>14</sup>

As one of the three law schools in New Jersey, Rutgers–Camden serves a population partially comprised of working students who are the first generation in their families to attend professional school, and sometimes the first to have attended college.<sup>15</sup> The law school requires “service” from certain scholarship recipients,<sup>16</sup> and rewards, but does not

8. Jackie Gailey & David Chang, *Accused Throat-Slasher High on “Wet” During Attack: Cops*, NBC10 PHILA. (Sept. 4, 2012), <http://www.nbcphiladelphia.com/news/local/Suspect-Smoked-168375306.html>.

9. George Mast, *Camden Woman who Beheaded Son Had ‘Wet’ in System, Tests Confirm*, COURIER-POST ONLINE (Dec. 3, 2012), <http://www.courierpostonline.com/article/20121204/CRIME/312040019/Camden-woman-who-beheaded-son-had-wet-system-tests-confirm?odyssey=tab|topnews|text|News>.

10. Nick DiUlio, *The Anointed One: Can Camden Mayor Dana Redd Break Her City’s Sad Cycle of Poverty, Drugs and Violence?*, NJMONTHLY.COM (June 11, 2012), <http://njmonthly.com/articles/lifestyle/the-anointed-one.html>.

11. *About*, COOPER MED. SCH. ROWAN U., <http://www.rowan.edu/coopermed/about/> (last visited Mar. 14, 2013).

12. *About*, RUTGERS ST. U. N.J.–CAMDEN, <http://www.camden.rutgers.edu/> (last visited Mar. 14, 2013).

13. Claudia Vargas, *New Census Statistics Paint Grim Picture of Camden*, PHILLY.COM (Sept. 22, 2012, 7:34 AM), [http://www.philly.com/philly/blogs/camden\\_flow/170812236.html](http://www.philly.com/philly/blogs/camden_flow/170812236.html).

14. See Martha T. Moore, *Police Layoffs Hit N.J. City Especially Hard*, USA TODAY, Feb. 15, 2011, at 3A.

15. This anecdotal impression of Dean Friedman is based on conversations with students.

16. Dean’s Scholarship recipients must complete a forty-hour service obligation. See *Federal Scholarship Service Requirement*, RUTGERS U. SCH. L.–CAMDEN, <http://camlaw.rutgers.edu/federal-scholarship-service-requirement> (last visited Mar. 6, 2013).



require, pro bono legal service by students.<sup>17</sup> Rutgers's first community educational pro bono projects were the Financial Literacy Project,<sup>18</sup> an outgrowth of its long-established Bankruptcy Pro Bono Project,<sup>19</sup> and the Domestic Violence Pro Bono Project.<sup>20</sup> In 2002, after conversations between Professor Jamin Raskin<sup>21</sup> and Rutgers University School of Law Dean Rayman L. Solomon,<sup>22</sup> the law school launched the nation's second chapter of Marshall–Brennan.<sup>23</sup> The law students in this project participated in a yearlong seminar course about the Bill of Rights and education policy. In the spring of that year, the students taught constitutional law

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17. In an average year, 25% of the class is recognized at graduation for completing at least fifty hours of service. In 2012, sixteen students were recognized with the Dean's Pro Bono Publico Award for Exceptional Service for 100 hours of service. RUTGERS UNIV. SCH. OF LAW–CAMDEN, CLASS DAY CELEBRATION CEREMONY 4 (2012) (on file with authors). Between 2002 and 2012, the law school's Pro Bono and Public Interest Program grew from four small projects to over fifteen in-house and external opportunities, including its nationally recognized Pro Bono Research Project, which provides free legal research to legal services organizations, to private practitioners performing pro bono work, and to government legal departments. *See, e.g., id.* at 4–5; RUTGERS UNIV. SCH. OF LAW–CAMDEN, CLASS DAY CELEBRATION CEREMONY 3–4 (2011) (on file with authors). During that time, the law school instituted a loan repayment assistance program and placed eight students in fellowships through Equal Justice Works, the Skadden Fellowship Program, and the Independence Foundation Public Interest Law Fellowship Program.

18. The Financial Literacy Pro Bono Project is designed to educate Camden-area youth about credit, credit cards and budgeting, and computer security and identity protection. *Financial Literacy (FLiP) Pro Bono Project*, RUTGERS U. SCH. L.–CAMDEN, <http://camlaw.rutgers.edu/financial-literacy-flip-pro-bono-project> (last visited Mar. 7, 2013).

19. The Bankruptcy Pro Bono Project was established in 1993 by New Jersey Bankruptcy Judge Judith Wizmur, career clerk Bob Cooper, Esq., and an energetic bankruptcy bar. Cases are screened through South Jersey Legal Services, the local Legal Services affiliate, and are assigned to teams consisting of bankruptcy attorneys and trained law students, who together file Chapter 7 petitions. *Pro Bono Bankruptcy Project*, RUTGERS U. SCH. L.–CAMDEN, <http://camlaw.rutgers.edu/pro-bono-bankruptcy-project> (last visited Mar. 7, 2013).

20. *See Pro Bono Projects, supra* note 7. Students distribute information about domestic violence at the local courthouse.

21. Jamin Raskin is a professor of Constitutional Law, the First Amendment, and Legislative Process and is the founding director of the Program on Law and Government at American University's Washington College of Law. *Faculty: Jamin Raskin*, AM. U. WASH. C.L., <http://www.wcl.american.edu/faculty/raskin/> (last visited Mar. 7, 2013).

22. Rayman L. Solomon is the dean of Rutgers University School of Law–Camden and has a Ph.D. in American Legal History from the University of Chicago. *Faculty: Rayman Solomon*, RUTGERS U. SCH. L.–CAMDEN, <http://camlaw.rutgers.edu/directory/raysol/> (last visited Mar. 7, 2013).

23. As noted on the American University Washington College of Law's website, [i]n the fall of 1999, Professor Jamin Raskin of American University Washington College of Law launched the Marshall–Brennan Constitutional Literacy Project named in honor of the late United States Supreme Court Justices Thurgood Marshall and William J. Brennan, Jr. Th[e] project . . . was designed to mobilize talented second- and third-year law students, as well as LLM students, to teach courses on constitutional law and juvenile justice in public high schools in the District of Columbia and Maryland.

*The Marshall–Brennan Constitutional Literacy Project*, AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan/> (last visited Mar. 7, 2013). Under the leadership of national expansion director Professor Maryam Ahranjani, the project, based at American University Washington College of Law, has since expanded to include chapters at eighteen law schools throughout the United States; at all the chapters, law students study the Bill of Rights and are trained to teach constitutional law in public high schools serving disadvantaged youth in their home communities. *Id.*; *see also* Marshall–Brennan Constitutional Literacy Project, *Teaching Partners*, AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan/partners.cfm> (last visited Mar. 7, 2013).

intensively<sup>24</sup> as guest teachers in the high schools; this model, unique among Marshall–Brennan chapters, continues today.<sup>25</sup>

Also in 2002, the law school hired Eve Biskind Klothen to run its Pro Bono and Public Interest Program.<sup>26</sup> Under Dean Klothen, the program grew substantially, and came to include a small, student-run Street Law project.<sup>27</sup> In 2007, the New Jersey State Bar Foundation, the State Bar Association's charitable arm, approached the law school to propose funding a more substantial community legal education program at the law school.<sup>28</sup> With foundation funding for most of the director's position in place, the law school committed to funding the rest and hired this Essay's co-author Jill Friedman to run the project and to teach various courses, allowing for expansion and professionalization of the program.

After arriving in Camden in 2008, Dean Friedman set out immediately to meet community leaders, principals and teachers, program staff at various youth development and therapeutic programs, educational personnel at detention centers, and others. The goals were to develop a network of community partners for Street Law;<sup>29</sup> to inform them about the project; to explore how civics education might help their constituents; and to assess sites for safety, appropriateness, and suitability for law student pro bono work.

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24. Students typically taught constitutional law for 180 minutes, or four forty-five-minute class periods per week. See *Marshall–Brennan Constitutional Literacy Fellowship Program*, RUTGERS U. SCH. L.—CAMDEN, <http://camlaw.rutgers.edu/cgi-bin/course-description.cgi?class=784> (last visited Mar. 14, 2013).

25. Professor Elizabeth Hillman taught the substantive seminar on the Bill of Rights, and clinical Staff Attorney Traci Overton established nascent relationships with host schools in the city. Overton identified social studies teachers at the large, comprehensive city high schools, Camden High School and Woodrow Wilson High School, both of which house social studies academies that, *inter alia*, prepare students to participate in the state's Institute for Public Legal Education (IPLE) Model Congress program. In addition, Overton found other schools—including a since defunct disciplinary alternative high school—to host approximately seven to nine two-person teams of law student Fellows each year. After Hillman's departure for a teaching position in California, William McLaughlin, Esq., a member of the inaugural class of Marshall–Brennan Fellows at Rutgers and thereafter a practicing legal services lawyer, was recruited to teach the seminar portion of the course on an adjunct basis.

26. Ms. Klothen was hired as a director and promoted to assistant dean in 2004; she resigned in July 2013, whereupon Ms. Friedman was promoted to Acting Assistant Dean.

27. Students visited schools, detention centers, and other youth settings to teach practical law. See *About Us*, STREET LAW, INC., <http://www.Streetlaw.org> (last visited Mar. 7, 2013).

28. Congruent with the New Jersey State Bar Foundation's mission of increasing public understanding of the law, establishing Street Law projects throughout the state became the foundation's preferred vehicle—along with a statewide mock trial program—for making the law accessible to young people. By providing opportunities for law students to teach young people about law, the foundation simultaneously sensitized the state's future lawyers to the pro bono ethic and enriched their preparation for practice. The foundation already had funded similar projects, in various forms, at New Jersey's two other law schools, Rutgers University School of Law–Newark and Seton Hall Law School. The Seton Hall program operates through a partnership with the New Jersey Law and Education Empowerment Project (NJ LEEP). See *NJSBF Fellowships*, NEW JERSEY ST. B. FOUND., <http://www.njsbf.org/foundation/funding-opportunities/fellowship.html> (last visited May 17, 2013).

29. These community networks eventually became useful not only for expanding the law school's civics projects but also for expanding and improving the Pro Bono and Public Interest Program in general and for assessing community needs.

At the same time, through doctrinal teaching and active outreach, Dean Friedman began to develop relationships with individual students and student groups, especially the racial- and ethnic-affinity student bar associations.<sup>30</sup> Other immediate priorities were (1) surveying best practices regionally and nationally for curriculum and program development;<sup>31</sup> (2) developing a law student training program;<sup>32</sup> (3) establishing a database of teaching materials from Street Law, Inc.<sup>33</sup> and other sources with assistance from a series of helpful student assistants;<sup>34</sup> (4) structuring the project to permit recurrent visits by law students to the same sites, to promote interpersonal relationships, and to maximize opportunities for role modeling; (5) introducing supervision, assessment, and recordkeeping; and (6) continuing to develop relationships with sites, with periodic reflection and assessment.<sup>35</sup> The project continues to serve about twenty sites in the community, making approximately 2,000 contacts (roughly one-third unique contacts) with youth each semester, and engaging about thirty law students at a time.

Though originally hired to run Street Law, Dean Friedman was soon offered the opportunity to co-teach the Marshall–Brennan constitutional literacy seminar and co-direct the project.<sup>36</sup> Over the ensuing few years, Dean Friedman and an obliging teaching partner<sup>37</sup> have introduced programmatic changes that focus more on the socioeconomic realities of life in Camden and seek to build community among high school participants and law student Marshall–Brennan Fellows (Fellows).<sup>38</sup>

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30. The student groups included the Latino Law Students' Organization (ALIANZA), Association for Public Interest Law (APIL), Asian Pacific American Law Students Association (APLSA), Black Law Students Association (BLSA), National Lawyers Guild (NLG), and Women's Law Caucus (WLC). It was assumed that members of these groups would be inclined to serve and would be effective role models.

31. Especially helpful colleagues and resources included Craig Livemore, executive director of NJ LEEP, Inc.; Professor Richard Roe, Georgetown University Law Center; Street Law's Supreme Court Summer Institute for Teachers; and Arlene Gardener, director of the New Jersey Center for Civic Education.

32. Components of the law student training program include an introduction to the depth of poverty and deprivation in Camden; sensitivity to the social, intellectual, physical, and emotional development of adolescents; light treatment of pedagogy, learning styles, and behavior management; project mechanics; and safety, security, and professionalism.

33. "Street Law [is] a nonprofit organization that creates classroom and community programs that teach people about law, democracy, and human rights worldwide." *About Us*, *supra* note 27.

34. Former and current student assistants include Marissa Band, Esq., Tamika Stembridge, Esq., Lucille Bongiovanni, Esq., Stephen Logerfo, Esq., Jessica Miller, Esq., and Adam Wilson.

35. Andrea Leerman, education and training consultant, shared and continues to provide her invaluable expertise.

36. It was a straightforward matter to reinvigorate relationships with schools and teachers in light of new connections developed through Street Law.

37. The teaching partner was William McLaughlin, a member of the inaugural Marshall–Brennan cohort at Rutgers, a legal services lawyer and now a visiting professor in charge of Rutgers–Camden's Federal Prisoner Reentry Clinic. *Faculty: William McLaughlin*, RUTGERS U. SCH. L.–CAMDEN, <http://camlaw.rutgers.edu/directory/wmclaugh/> (last visited Aug. 16, 2013).

38. Where possible, some high school classes are scheduled to meet at the law school, where they can make use of the Archer Greiner Moot Courtroom and other law school facilities, rather than at the host schools. The law school seminar's capstone project was reconfigured as a comprehensive

Meanwhile, in the 2007–2008 school year, noting a striking lack of enrollment by students who grew up in the campuses' home communities, Rutgers University unveiled a pre-college program to prepare children in New Jersey's disadvantaged urban centers to enter and succeed in college.<sup>39</sup> When Rutgers Future Scholars (RFS) enrolled its first fifty rising eighth graders in Camden,<sup>40</sup> the students' very first activity on campus was a Street Law mini-law school day. This initial activity spawned over the course of years additional Street Law and financial literacy presentations to RFS scholars, and to their parents and guardians.

In the 2009–2010 school year, with a vision of providing more consistent and intensive summer programming for RFS and a more meaningful teaching experience for law students, Dean Friedman collaborated with RFS and the New Jersey Law and Education Empowerment Project (NJ LEEP)<sup>41</sup> to pilot a Summer Law Institute (SLI), an intensive summer program for Camden youth. The SLI was a true partnership. The law school coordinated relationships, and hosted and directed the program.<sup>42</sup> RFS offered its scholars several programming options and allowed those who chose law to double their elective slots for the more demanding law program. They also paid a fee that enabled SLI–Camden to hire staff and provide stipends to participating rising tenth graders. NJ LEEP procured additional necessary funding<sup>43</sup> and provided curriculum, technical expertise, and staffing.<sup>44</sup>

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portfolio, containing not only a scholarly paper, but also a series of classroom-ready lesson plans related to the scholarly topic. Fellows road-test their lesson plans at the January symposium inaugurated in 2010 and repeated each year since. The symposium provides an opportunity for Fellows to practice teaching with live students from local cooperating high schools and to focus intently on pedagogy with guest teachers and former Fellows as their guides and reviewers. An annual bus tour of Camden, led by Charles Ray, J.D., a native son of the city, a graduate of the law school, and a former Marshall–Brennan Fellow, was introduced in 2010. In addition, social events are arranged regularly.

39. Rutgers Future Scholars offers “students who successfully complete the pre-college part of the program . . . full tuition funding through scholarships and federal grants” if they are admitted to Rutgers University. *RFS Program Synopsis*, RUTGERS FUTURE SCHOLARS, <http://futurescholars.rutgers.edu/futurescholars/aboutus/therfsprogram.aspx> (last visited Mar. 7, 2013).

40. Nyeema Watson, a Camden native, Rutgers–Camden doctoral candidate and current director of Public School Partnerships for the Office of the Chancellor, was selected to direct RFS operations in Camden on the strength of her vision, detailed familiarity with the school system, and demonstrated commitment to Camden youth. *We Are Rutgers–Camden: Our Stories: Nyeema C. Watson*, RUTGERS ST. U. N.J.–CAMDEN (July 30, 2012, 11:31 AM), <http://we-ruc.camden.rutgers.edu/nyeema-c-watson/>.

41. NJ LEEP, Inc. is a community-based organization with the mission of empowering urban youth through educational and character enhancement through year-round programming. See NJ LEEP INC., <http://www.njleep.org> (last visited Mar. 7, 2013).

42. Dean Friedman oversaw the program, hired and supervised law student employees, and capitalized on professional contacts to arrange speakers and field trips.

43. The additional funding came from the Law School Admission Council (LSAC) and Public Service Electric and Gas Company (PSE&G).

44. NJ LEEP's Director of Legal Education Jeffrey Key, a gifted teacher, was instrumental in preparing law student instructors and guiding the classroom elements of the program. Craig Livermore and Dean Friedman collaborated with RFS to create a code of conduct and program rules. Law student training was held for three weeks before the RFS students arrived and included joint training

Having participated in the first national Marshall–Brennan moot court competition in 2009,<sup>45</sup> Dean Friedman established a yearlong moot court program that prepared students to participate in the National Marshall–Brennan High School Moot Court Competition. The program, open to Camden youth and coached weekly by Marshall–Brennan Fellows, provides opportunities for all participants: (1) for the Fellows, the moot court program provides live student preparation for spring teaching; (2) for Camden youth, the moot court program provides a safe, productive afterschool activity that offers rigorous academics, good college preparatory experience, and protracted exposure to committed law student role models; and (3) for the law school’s broader pipeline aspirations and in accord with the university’s emphasis on community engagement, the moot court program invites local youngsters to spend time in the law school building, with the opportunity to envision themselves in lawyer roles.<sup>46</sup>

By 2011, with a range of community legal education projects operating successfully, the dean of students Angela V. Baker<sup>47</sup> recognized a unique opportunity to elevate the law school’s efforts. She suggested that the law school apply for a three-year Law School Admission Council (LSAC) DiscoverLaw.org Prelaw Undergraduate Scholars (PLUS) Pro-

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with NJ LEEP’s Newark, New Jersey summer interns. Using curriculum from Legal Outreach, Inc., the Summer Law Institute employed four law students as classroom teachers. The Philadelphia Bar Association graciously hosted a luncheon that featured a casual exchange with a judge and a talk about setting short- and long-term goals with local law school admission officers. LSAC staffer Yessenia Garcia-Lebron visited the SLI and enrolled participants in the DiscoverLaw.org website program. After the successful pilot, the SLI expanded in subsequent summers, enrolling RFS and LEAP Academy University Charter School students in 2011 and 2012. Law school faculty and the local bench and bar have been extremely supportive, volunteering as guest lecturers and hosting SLI groups in their courtrooms, chambers, and offices. The 2012 Institute included a visit to Morgan, Lewis & Bockius LLP, where Michael Banks, Esq. told the story of his decades-long representation of a death-row inmate. Another annual visitor, Nikki Johnson Huston, Esq., described her odyssey from homelessness to practicing law, and Rhasheda Douglas, Esq. has shared her own inspiring story. The SLI is indebted to the Philadelphia Bar Association and its longtime executive director Kenneth Shear, Judge Denis Cohen, Judge Eduardo C. Robreno, Judge Joel Schneider, Judge Karen Williams, Judge Judith Wizmur, U.S. Marshal Terence Merrigan, and others.

45. In the 2008–2009 school year, Marshall–Brennan announced that Drexel University Earl Macks School of Law Trial Advocacy Director Gwen Stern, director of the Drexel chapter of Marshall–Brennan, had attracted funding from the Brook J. Lenfest Foundation to support a national moot court competition in Philadelphia. The national Marshall–Brennan office promulgated a problem and sponsored participation by teams from fifteen Marshall–Brennan law school chapters throughout the United States. Rutgers-coached student Jose Tavarez, from district magnet MetEast High School, reached the quarterfinals.

46. The moot court program has continued to grow and now recruits not only from local partner schools but also from RFS and from a small scholarship program at Camden Catholic High School. Fellows are invited to coach in the fall, and one of the Marshall–Brennan teaching assistants each year is assigned to manage the club, gaining valuable leadership experience in the process.

47. Dean Baker taught Legal Research and Writing for several years in the 1990s and was the director of the Legal Research and Writing Programs at Rutgers University School of Law–Camden. She has worked with the Council on Legal Education Opportunity (CLEO) and has been a lifelong advocate for immigrants. *Faculty: Angela Baker, RUTGERS U. SCH. L.—CAMDEN, <http://camlaw.rutgers.edu/directory/angbaker/> (last visited Mar. 7, 2013).*

gram grant.<sup>48</sup> LSAC selected Rutgers–Camden as a site for the three-year period beginning in 2012.<sup>49</sup> The PLUS Program was the law school’s first real opportunity to tie its community law-related education projects—all of which have the potential to contribute to diversifying the pipeline to the legal profession—to a more tangible, immediate pipeline effort. Rutgers graduated seventeen college students from underrepresented racial minority groups from its June 2012 residential program.<sup>50</sup>

## B. Synergies and Impacts

### 1. Synergies

The various community law-related educational programs at the law school benefit from and continue to spawn synergies related to people, programming, and curriculum. Resources flow efficiently from one project to another.<sup>51</sup> As the projects have matured, substantial exchange has developed among teachers, principals, guest speakers, and other participants in the various programs. Teachers from Marshall–Brennan sites assist with Street Law training, and lesson plans that have worked at the Boys and Girls Club sometimes appear in the SLI. Street Law sites routinely ask to participate in Marshall–Brennan, and now these sites also send students to the SLI and the moot court program. The law school is able to provide added value to schools and other sites when students who are there to teach also can connect the community with the law school’s Domestic Violence, Immigration and Volunteer Income Tax Assistance Projects, and other pro bono services, or can refer potential clients to the law school’s clinical program.<sup>52</sup> Law students routinely ferry flyers about law school pro bono offerings to the schools and other sites they visit as guest civics teachers.

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48. LSAC’s summer PLUS Programs provide pre-law exposure and rigorous summer academic enrichment experiences to diverse college students throughout the United States. See *LSAC DiscoverLaw.org PLUS Program*, *supra* note 7.

49. LAW SCH. ADMISSION COUNCIL, INC., 2012 DISCOVERLAW.ORG PLUS PROGRAMS 1 (2012).

50. After a rigorous application process, rising college sophomores and juniors from underrepresented racial minority groups at colleges and universities throughout the United States were selected to attend mock law school classes, participate in a whirlwind month of field trips, meetings with lawyers and judges, and social activities. The academic component of the program was structured on a lawyering model, in which students were introduced to various substantive topics and skills through a school-suspension problem developed in-house that touched on torts and search and seizure. The program will continue with LSAC support through 2014, at which point it is expected to proceed with independent funding.

51. When a site works well for Street Law, it may become a candidate for Marshall–Brennan. Speakers, field trips, and other program elements transfer easily from one project to another. Likewise, to the extent possible, recruitment flyers, behavior contracts, training materials, assessment instruments, liability waivers, and other forms and procedures are used across projects, with adaptations as warranted.

52. For example, discussions with St. Joe’s Pro Cathedral School, a local parish K–8 school, about potentially housing the law school’s Immigration Pro Bono Project later yielded partnerships for Street Law and Constitution Day. Such deepening collaborations have developed at many sites.

Perhaps the paradigmatic example of the interconnectedness of projects is the law school's relationship with UrbanPromise Academy (UPA).<sup>53</sup> When the law school's Environmental Law Society wanted to add a youth educational component to its efforts, law students developed a few lesson plans<sup>54</sup> that have since become part of a sequential four-year program the law school has developed with Demetrius Marlowe, UPA's energetic principal. This sequence includes Street Law for freshmen, environmental law for sophomores, financial literacy for juniors, and Marshall–Brennan for seniors. Mr. Marlowe also encourages his students to participate in the moot court program and hosted a dress rehearsal for the team in the spring of 2012. His students participated in the Marshall–Brennan symposium in January 2013, and Mr. Marlowe himself has assisted with Street Law and Marshall–Brennan trainings. In 2012, the law school hosted a joint session for Marshall–Brennan Fellows and UPA teachers, who together studied New Jersey's bullying legislation and child abuse reporting laws. The law school's Black Law Students Association (BLSA) provides tutoring and mentoring at UPA,<sup>55</sup> and the Pro Bono Program has organized a day of service with the ministry. The relationship between the law school and UPA is exceptionally robust, but other partnerships in the community too are incubators for energetic and creative collaborations.

Equally strong is the connection that has developed between the law school and the community of alumni who have participated in its civics projects. In addition to the emotionally riveting and enduring personal relationships intrinsic in the work of teaching young people, the projects themselves provide a continuing and concrete way for alumni to stay connected to Camden and to the law school.<sup>56</sup>

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53. UrbanPromise Academy is a private Christian high school that aims to meet the needs of students who have not met their academic potential in traditional school settings and often enter school two to three grade levels below national standards. It is part of an international ministry. *UrbanPromise Academy*, URBANPROMISE, <http://www.urbanpromiseusa.org/our-programs/academy> (last visited Mar. 7, 2013).

54. As Street Law has developed, it has spawned several offshoots to meet community needs and the interests of law student participants. When the Camden chapter of the American Constitution Society (ACS) suggested a Constitution Day observance, the law school built a partnership among ACS, Street Law, and Marshall–Brennan that is entering its fourth year in Camden's elementary and middle schools. In partnership with the law school's National Lawyers Guild chapter, Street Law developed lessons on custody, employment discrimination, landlord–tenant, and related practical legal issues for women prisoners in the Federal Correctional Center in Philadelphia. And with the Association for Public Interest Law and its Voters Rights Project, Street Law has developed lesson plans about the importance of voting and has assisted with voter registration in Camden's schools. Current projects include work with student groups to educate Camden youth about reproductive rights and domestic violence.

55. The tutoring and mentoring performed by members of the BLSA is not for pro bono credit.

56. Former students return regularly to assist with trainings, provide feedback on mock teaching exercises, orient current law students as to what they might expect at various sites, moot high school students for oral arguments, and serve as judges. Former students serving as judicial clerks have arranged and hosted field trips to their courtrooms and meetings with their judges, and alumni in practice have organized visits at their law firms. Alumna Tara Pellicori, an attorney at DLA Piper,

## 2. Impacts

There certainly is a place at Rutgers for those law students who seek a single or relatively straightforward community civics education experience. At the same time, a progressive continuum of opportunities is being defined for those who wish to invest substantially in law-related educational activities, and a community of such students is developing.<sup>57</sup> These students will carry their relationships with children from Camden into their personal and professional futures, hopefully with increased sensitivity to community needs and to the humanity of their future clients. As with other pro bono and lawyering experiences, these students—whether they ultimately practice law, become legislators or judges, teach, or pursue careers in government or elsewhere—will have a better understanding of the quality of justice.

Likewise, the civics programs have expanded and reframed the law school's own understanding of its mission. Several factors, including (1) the sheer volume of projects; (2) the telegenic appeal of the teenaged students involved; (3) the frequent opportunities for faculty and staff involvement; and (4) the intuitive "fit" between the law school's efforts and a community in frequent, but not always healthy, contact with the law, contribute to an intangible but palpable sense that one of the law school's reasons for existing is to help the community understand the law, and by so doing, to empower people in Camden. The law school has accorded its civics projects a prominent place at the table, evident at law school events such as awards ceremonies and in university publications.<sup>58</sup>

Finally, the projects have literally opened the doors of the law school to the community it serves. Camden's young people weave in and out of the law school routinely, and as a result are gaining in confidence, substantive legal knowledge, exposure to higher education and pre-professional skills, and comfort in the university setting.<sup>59</sup> The law

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a superstar teacher and prolific pro bono volunteer, continues to teach Street Law year-round, every other week at a juvenile detention center, and has helped with law student supervision.

57. The Street Law and Financial Literacy Pro Bono Projects have become feeders for the credit-bearing and prestigious Marshall-Brennan Fellowship and the SLI. These projects will feed LSAC. Additionally, of those students who excel in Marshall-Brennan each year, the law school is able to select two or three for the following year as Michael Young Scholars, teaching assistants who run the moot court program and assist with several other aspects of research and administrative work, to support the fellowship. Michael Young was a Rutgers law student whose family established a scholarship in his memory, honoring his commitment to serving disadvantaged people.

58. The law school website often features photographs of Camden youth in the law school's Archer Greiner Moot Courtroom and otherwise engaged in civics activities herein described. See e.g., RUTGERS U. SCH. L.—CAMDEN, <http://www.camlaw.rutgers.edu> (last visited Mar. 7, 2013). The university's public relations professionals produced a short videotape about the inaugural SLI in 2010 and its culminating mock trial. See RutgersToday, *Rutgers Future Scholars of the Law*, YOUTUBE (Jul. 30, 2010), <http://www.youtube.com/watch?v=dCsfnDEGVkc>.

59. Poignantly, one young man first encountered Street Law at a detention center, and the following year found himself in another Street Law class, this one held at the law school, through his general education development (GED) and work readiness program. Another student first encoun-



school's hope is to enroll graduates of its various programs in the LSAC DiscoverLaw.org PLUS Program and, ultimately, in the law school and legal profession.

### C. Themes

Although much of the progress in Camden has been the result of good timing and unusually strong support from the law school and university administration, some themes emerge that may be broadly helpful to law schools in the process of building law-related educational programs.

*Being an on-site and integral part of the law school community is significant.* In particular, strategic and consistent outreach to law student affinity groups is important. Dean Friedman, a middle-aged Caucasian woman, has made regular efforts to reach out explicitly to the affinity law student groups representing historically underrepresented racial minorities. These overtures have been to support students' individual and organizational aspirations and to engage them in educational outreach projects. The students have been openly appreciative of these efforts both because they want professional development opportunities and because they value the personal satisfaction of working with minority youth. Naturally, the students' contributions are invaluable.<sup>60</sup>

*Building a community of law students and alumni who identify as champions of social justice and educational equity takes time and effort.* It takes hard work to develop a community around these values. Soft connections, such as shared meals and casual social gatherings, go a long way.

*Champions are critical.* Camden City Public Schools were under state control for much of the past decade,<sup>61</sup> and after a brief period of self-rule, the Board of Education voted in May 2013 to endorse Governor Christie's renewed state takeover.<sup>62</sup> In a system riddled with challenges, making law school projects work has required champion teachers, administrators, and staff at schools and other sites. There is no substitute for taking time to get to know teachers and administrators, for staying in

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tered the law school through Street Law and RFS. She later enrolled in the SLI, then participated in a Marshall-Brennan class at LEAP Academy, then joined the moot court club and competed nationally. The following summer, she served as the SLI intern and rejoined the moot court club in the fall, again competing nationally in 2012. She made a guest appearance in the 2012 SLI to teach a lesson on professionalism and is now enrolled in the 2012–2013 moot court program.

60. One issue that has arisen with some regularity is that contacts in the community often have turned to the law students, seeking more comprehensive legal and personal help and support than the law school's projects are designed to provide. It is critical to work with students in training and on an ongoing basis on establishing professional boundaries and resisting the temptation to practice law without a license.

61. Matt Bolch, *A Failure of Leadership*, SCHOLASTIC, <http://www.scholastic.com/teachers/article/failure-leadership> (last visited Mar. 7, 2013).

62. Claudia Vargas, *Camden Schools Now in State's Hands*, PHILA. INQUIRER, May 2, 2013, at B1.

close touch, for planning and debriefing, and for going out of the way to make relationships work. Dean Friedman has tried to enlist law students in this effort, for example by insisting that law students meet their classroom obligations scrupulously and by asking students to stretch to accommodate teacher requests.

*It is important to prepare and sensitize law students for their work in the community.* In particular, they need to understand (1) that despite socioeconomic and cultural differences, they can make genuine connections with youth in the community by being themselves; (2) that illiteracy may obscure their students' profound intelligence; and (3) that consistency, appropriateness, fairness, and honesty are critical.

*Expect change and expect the unexpected.* In 2011–2012, in a now-defunct alternative classroom program<sup>63</sup> where Rutgers students taught Street Law, several boys were arrested, and several girls withdrew—one by one—on maternity leave. The class evaporated. It is routine for programs suddenly to lose funding or get absorbed into other programs. Principals get transferred, and schedules get changed for no apparent reason. Changing course is the norm, and it helps to expect things not to go as planned.

*Reflection and assessment are vital.* Although objective measures have a role in program development, sitting down face to face to debrief, discuss, and reflect is critically important to the success of programming.

## II. HOW EDUCATIONAL OUTREACH PROGRAMS POSITIVELY AFFECT LAW STUDENTS<sup>64</sup>

Throughout my time as a student, and even continuing after law school, I have been involved with several of the educational outreach programs offered at Rutgers–Camden.<sup>65</sup> Whether it was teaching in a high school classroom as a Marshall–Brennan Fellow, volunteering to coach high school students for the 2012 Marshall–Brennan Camden moot court program,<sup>66</sup> or serving as the assistant director for the recently instituted LSAC DiscoverLaw.org PLUS Program,<sup>67</sup> I have consistently

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63. CAMDEN CENTER FOR YOUTH DEV., <http://www.ccydinc.org> (last visited Mar. 7, 2013).

64. This Part is a firsthand account written by co-author Conrad Haber.

65. I was a 2009–2010 Marshall–Brennan Constitutional Literacy Project Fellow, the legal coordinator, and instructor for the inaugural 2010 Rutgers–NJ LEEP, Inc. Summer Law Institute, the 2010–2011 Marshall–Brennan Constitutional Literacy Project Michael Young Scholar and teaching assistant, the 2011–2012 moot court program coach, and the assistant director for the 2012 LSAC DiscoverLaw.org Prelaw Undergraduate Scholars Program.

66. The moot court program is an afterschool enrichment program serving all of the Camden-area high schools. Byron Guevara, a senior member of the team from Camden Catholic High School, won the Best Petitioner award at the 2012 Marshall–Brennan Moot Court National Competition in Washington, D.C. See *Camden Teens Shine in National Moot Court Competition: Coached by Rutgers–Camden Marshall–Brennan Fellows*, RUTGERS ST. U. N.J.–CAMDEN (Apr. 10, 2012), <http://news.rutgers.edu/medrel/camden/camden-teens-shine-i-20120410>.

67. The LSAC PLUS Program is a four-week, intensive summer program that aims to expose disadvantaged students of color to the law. Students from colleges and universities throughout the

had a desire to give back to the community through the educational outreach programs offered at Rutgers–Camden.

But this was not always the case. In fact, prior to law school, I never thought about the possibility of giving back to the community through education. I always assumed, as I imagine most do when entering law school, that community service involved volunteering through Habitat for Humanity or serving food at a soup kitchen. However, this view quickly changed during my time as a Marshall–Brennan Fellow. Watching a shy, reserved high school student with few aspirations turn into a confident, outgoing young adult through exposure to legal instruction cemented the belief in my mind that the community could be served well by law students utilizing the tools of education.

### A. *The Opportunity*

The educational outreach model provides a unique opportunity for law students and the students from the community. For law students, there is an opportunity to make an immediate difference in the life of someone from the surrounding community. I think most people go to law school because they want to create change and make a difference. The educational outreach programs at Rutgers–Camden provide law students with the ability to connect with, positively influence, and form ties with members of the local community.

For non-law students, especially high school students in urban areas, these educational initiatives provide an opportunity for them to interact with young, successful mentors while also introducing them to the benefits of legal education. I remember the first time I taught a lesson on the First Amendment to students at the LEAP Academy University Charter School<sup>68</sup> in Camden, New Jersey. While teaching a class on the freedom of speech, I immediately noticed a deficiency in the students' ability to analyze information. Although the students could understand the text of the First Amendment, and the reasoning of the Supreme Court in *Tinker v. Des Moines Independent Community School District*,<sup>69</sup> they struggled to take those two independent concepts and apply them when arguing that a particular hypothetical situation was constitutional or unconstitutional.

But after weeks of hard work, which the students were more than eager to perform, these high school students, who previously struggled to

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country attend intensive courses on substantive law, compete in a moot court competition, write memoranda and briefs, visit law firms, speak with judges and professors, and interact with practicing attorneys. *LSAC DiscoverLaw.org PLUS Program*, *supra* note 7.

68. "The LEAP (Leadership, Education, and Partnership) Academy University Charter School is a [K–12] public charter school that serves Camden City with one core principle: all children and families deserve access to a quality public education." LEAP ACAD. U. CHARTER SCH., <http://www.leapacademycharter.org/> (last visited Mar. 7, 2013).

69. 393 U.S. 503 (1969).

make the connection between cases on the first day of class, began crafting elaborate and creative arguments. I was often extremely impressed with the students' arguments, even suggesting at times that they were more creative than the arguments I heard from law students concerning similar hypothetical problems in my classes. Rutgers–Camden Marshall–Brennan Fellow Andrew Dodemaide, who taught at Woodrow Wilson High School<sup>70</sup> in Camden, New Jersey, had a similar experience. Andrew stated in an interview with the *Gloucester County Times* that when he started teaching, he noticed that students used their gut reactions to inform their opinions.<sup>71</sup> But just as I experienced in my own classroom, Andrew went on to explain that over time his students began to impress him “with their ability to apply facts and law in creative ways to justify their conclusions.”<sup>72</sup>

### B. Civic Engagement

Another major benefit derived from educational outreach programs is the constant cultural exchange. Both the law student and high school student are exposed to differing cultures, views, and ways of approaching life.

I experienced this reality firsthand during my first week teaching at the LEAP Academy Charter School in Camden, New Jersey. One day, as I was teaching a class on the Fourth Amendment, a student spoke up after I described the requirements for a warrant and its execution. This student told me I was wrong. She explained that the previous night, the Camden police had kicked in the front door of her house before dragging her mother out in handcuffs. She said the police did not have a warrant and that they did not warn anyone in the house that they were entering before they broke down the door. I didn't know what to say. This was my first experience seeing the difference between the law we study in school and the law experienced in the lives of people in Camden, New Jersey. All I could say is that if her mother was brought to jail as the result of an improper arrest, her appointed lawyer would likely be able to help her out. On the next day of class, that same girl came in with a smile on her face and said, “Mr. Conrad, you were right about that warrant thing. The cops have to buy us a new door, and my mom is back at home.”

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70. Woodrow Wilson High School was ranked 381 out of 381 schools in New Jersey for the 2010–2011 school year based on the scores the school's students received on the High School Proficiency Assessment (HSPA) Language Arts Literacy and HSPA Math exams. *Worst 10 New Jersey Schools*, SCH. DIGGER, <http://www.schooldigger.com/go/NJ/schoolrank.aspx?pagetype=bottom10&level=3> (last visited Mar. 7, 2013).

71. John Barna, *Rutgers–Camden Program Offers Camden Teens a Broader Understanding of Constitution*, NJ.COM (Apr. 17, 2011), [http://www.nj.com/camden/index.ssf/2011/04/rutgers-camden\\_program\\_offers.html](http://www.nj.com/camden/index.ssf/2011/04/rutgers-camden_program_offers.html).

72. *Id.* (internal quotation mark omitted).

At the time I was relieved to have my lesson vindicated, but as I began to reflect on what happened, I started to understand that my students had an entirely different view of how the law functions in their lives. The exposure to this different view of the law has given me the ability to better empathize and understand the problems facing people living in impoverished urban areas.

But just as I learned from my students, they were learning from me. As we continued talking about the Fourth Amendment, a student asked me to explain why someone who lived in the suburbs would sell drugs. The student said, "If I had money, had food, had a house . . . , I wouldn't risk that for money." I replied that most of those people in the suburbs just want "more money to buy stuff." The student responded, "That's stupid. If I had all that stuff I would never consider selling drugs . . . . [D]on't they realize how lucky they are?"

In my head I was left with one thought, "In some cases, I really don't think they do."

### *C. The Benefits to a Future Lawyer*

Whereas the immediate reward for any public outreach program is seeing the results of your work, I think there is a far more compelling reason to mandate participation in community outreach projects. To become well-rounded lawyers, law students need to have a wealth of experience. In some cases, the only way we can begin to understand a world we have never seen is to be exposed to it whenever possible.

As lawyers, we need to explain complex legal issues to people who have never read a textbook or taken a class in criminal law or torts. By having to break down complex legal issues and teach them to high school students on daily basis, I was able to hone my skills at making the law digestible for non-lawyers. I always thought, "If I can explain the Due Process Clause to a fifteen-year-old student who is half awake on a Monday morning, I should have no trouble explaining it to an adult."

In addition to this educational benefit, participation in these educational outreach programs—especially through law schools in impoverished areas—provides law students with the ability to learn about and understand the views of people in the community, whatever the community may be like. This understanding could be beneficial when representing a client from the local area or when trying a case before a jury comprised of members of the community. By understanding culturally different views on the law, the task of relating issues to the experiences of potential clients or jurors will be easier.<sup>73</sup>

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73. See Ian Gallacher, *Thinking Like Nonlawyers: Why Empathy Is a Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance passim* (Syracuse College of Law Faculty Scholarship Paper 6, 2012), available at <http://surface.syr.edu/lawpub/6>; see also

### III. WHY PUBLIC LAW SCHOOLS SHOULD REQUIRE PUBLIC OUTREACH PROGRAMS

We turn now to the argument that law students at public law schools should be required to teach the public about the constitution and their rights under the law, as one option of a comprehensive pro bono program designed to meet unmet legal needs in the community. Teaching the public about the constitution is an outstanding example of how law student, law school, university, and community needs overlap and provide an excellent opportunity for meaningful public service.

#### *A. What Are the Benefits for Law Students?*

In order to understand not only how but why it is critical to provide pro bono service to the community, law students should be taught the pro bono ethic. American Bar Association Model Rule 6.1<sup>74</sup> presents one of the most important values of the legal profession, and teaching it by providing opportunities to do it will give students a blueprint or game plan for incorporating it into their careers and lives. Indeed, the Preamble to the Model Rules of Professional Conduct states, “A lawyer . . . is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”<sup>75</sup> All students must take a professional responsibility course (sometimes referred to as ethics), and there is no better way to teach the pro bono ethic than by modeling it and providing opportunities to do it.

Furthermore, law students need to develop lawyering skills, including explaining critical legal concepts to those not familiar with them, knowing how to make presentations, and being able to answer spontaneous questions. Law students also benefit from a deeper understanding of constitutional law, from exposure to the community where they attend school,<sup>76</sup> and from the opportunity to serve that community. Participation in Marshall–Brennan and similar programs provides opportunities for all of the above.

When law students do any form of public service work, they generally have an opportunity for reflection on their experiences. Reflection reinforces the value of the service for both the provider and recipient of that service, which in turn reinforces the educational benefit. In addition, both exposure to and service to community where they attend school has great social value.

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Silvana Naguib, *The Law School Empathy Deficit*, AM. PROSPECT ONLINE, <http://prospect.org/article/law-school-empathy-deficit> (last visited Mar. 7, 2013).

74. Rule 6.1 states: “Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.” MODEL RULES OF PROF’L CONDUCT R. 6.1 (2012).

75. MODEL RULES OF PROF’L CONDUCT pmbl. (2012).

76. Often law students bury themselves in the school’s classrooms and libraries, so this is not insignificant. See Gallacher, *supra* note 73, at 6–7, 48.

### *B. Why Should Law Schools Participate?*

With the legal profession's core value of access to justice at its foundation,<sup>77</sup> the American Bar Association (ABA), representing the bar, and the Association of American Law Schools, representing the law school community, have taken the view that law schools must encourage and enable all law students to engage in pro bono work and public service.

In 2005, the ABA revised its accreditation standards by adopting Standard 302(b)(2), which provides, "A law school *shall* offer substantial opportunities for student participation in pro bono activities."<sup>78</sup> This revision amended former Standard 302(e), which provided only that a law school "should" provide opportunities for student participation in pro bono activities.<sup>79</sup>

In August 2007, the ABA further clarified this standard when it adopted Interpretation 302-10, which provides:

Each law school is encouraged to be creative in developing substantial opportunities for student participation in pro bono activities. Pro bono opportunities should at a minimum involve the rendering of meaningful law-related service to persons of limited means or to organizations that serve such persons . . . . While most existing law school pro bono programs include only activities for which students do not receive academic credit, Standard 302(b)(2) does not preclude the inclusion of credit-granting activities within a law school's overall program of pro bono opportunities . . . .<sup>80</sup>

Historically, public law schools shared the public university goals of providing affordable and accessible education for state residents that also grew to include providing research and assistance to improve laws of the state.<sup>81</sup> In many ways, law libraries reflect the public nature of public law schools more than does any other part of a law school, because libraries' resources must be made available to the public.<sup>82</sup> Just as libraries are an essential component of a law school, civics programs that increase public understanding of the law are a critical part of the law school's mission.

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77. H. Thomas Wells Jr., *Judges Promote the Bar's Core Value of Access to Justice*, 47 THE JUDGES J. 1, 1 (2008).

78. AM. BAR ASS'N, STANDARDS FOR APPROVAL OF LAW SCHOOLS 21–22 (2008) (emphasis added).

79. AM. BAR ASS'N, EVERYTHING YOU WANTED TO KNOW ABOUT LAW SCHOOL PRO BONO BUT WERE AFRAID TO ASK . . . , at 2 (2010); see also AM. BAR ASS'N, *supra* note 78, at ix (mandating that law schools "must provide an educational program that ensures that its graduates . . . understand the law as a public profession calling for the performance of pro bono legal services"); *id.* at 32 (requiring law schools to establish policies with respect to full-time faculty that should address faculty members' "obligations to the public, including participation in pro bono activities").

80. AM. BAR ASS'N, *supra* note 78, at 21.

81. Connie Lenz, *The Public Mission of the Public Law School Library*, 105 LAW LIBR. J. 31, 37 (2013).

82. *Id.* at 43.

Service to the state was and remains emphasized in public law schools.<sup>83</sup> Christopher Edley, the dean of the University of California Berkeley Law School, suggests that two of the elements that can define and distinguish a public law school include production of leaders for all communities and sectors, and harnessing excellence in teaching and research to tackle the toughest, most critical problems of the day.<sup>84</sup>

Making sure that everyone has an understanding of the Constitution satisfies an important community need. For historical purposes, and because the Constitution is the foundation of American law, it is critical that everyone know and understand this key document that is unique in our history, and remains highly relevant today. It is particularly important in communities where the law is seen as an oppressive force that young people understand the Constitution as a living document that safeguards their rights.

### *C. Why Is this Especially Important at Public Universities?*

Service to the community is an important part of a public university's mission. For instance, the Rutgers University mission is three-pronged: "teaching, research and . . . service."<sup>85</sup> Part of the Rutgers vision is "[a]dvancing the well-being of our communities."<sup>86</sup> To realize that goal, Rutgers is committed to "serv[ing] our communities."<sup>87</sup>

Public universities play a special role in their communities. Supported in part by public dollars, they have a heightened responsibility to serve and educate the citizens of the state. They serve a critical state interest in educating the public, so that there will be an informed citizenry and well-educated voters. "Traditionally, the core mission of the public university has been to provide citizens of the state with an affordable and accessible education, and to benefit the state by educating its citizenry and providing service to and research for the benefit of the state."<sup>88</sup>

The Kellogg Commission on the Future of State and Land-Grant Universities, which is widely viewed as setting the agenda for the future of public universities,<sup>89</sup> identifies six basic elements that define the obligation of public universities today.<sup>90</sup> Those most relevant here include

83. *Id.* at 38.

84. *Id.* at 41.

85. RUTGERS ST. U. N.J., HANDBOOK FOR MEMBERS OF GOVERNING BOARDS 4 (2007).

86. *Id.* at 6.

87. *Id.*

88. Lenz, *supra* note 81, at 34.

89. See *Kellogg Commission on the Future of State and Land-Grant Universities*, ASS'N PUB. & LAND-GRANT U., <http://www.aplu.org/page.aspx?pid=305> (last visited Mar. 8, 2013) [hereinafter *Kellogg Commission*]; see also JOHN V. BYRNE, PUBLIC HIGHER EDUCATION REFORM FIVE YEARS AFTER THE KELLOGG COMMISSION ON THE FUTURE OF STATE AND LAND-GRANT UNIVERSITIES *passim* (2006). The Kellogg Commission was created in 1996 to "help define the direction public universities should go in the future and to recommend an action agenda to speed up the process of change." *Kellogg Commission, supra*.

90. Lenz, *supra* note 81, at 36; see also *Kellogg Commission, supra* note 89.



learning environments that “prepar[e] students to lead and participate fully in society,” engagement—a conscious effort to bring “resources and expertise to address local, state, national and international problems,” and open and “public accountability.”<sup>91</sup> Commenting on the differences between private and public universities, the commission noted, “[I]t is the fundamental, inescapable obligation of public higher education to provide broad student access, to conduct research, and to engage directly with society and its problems—all in the service of advancing the common good.”<sup>92</sup>

*D. What Is the Community Interest?*

Promoting understanding of the Constitution satisfies an important community need. As noted above, because the Constitution is the foundation of American law, it is critical that everyone understand this document that remains highly relevant today. Everyone should have that understanding; all residents will better understand American history, government, and culture. In addition, with that understanding, citizens are better equipped to make informed and thoughtful decisions on election day.

Without knowledge of the law, there can be no respect; without respect, there will be less adherence. It is incumbent upon all those who seek to continue our democratic tradition to ensure that such knowledge is transmitted in the most effective way possible. The Marshall–Brennan Constitutional Literacy Project and programs like it represent the very best vehicles to achieve that end.

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91. Lenz, *supra* note 81, at 36.

92. *Id.*



IMPANELED AND INEFFECTIVE:  
THE ROLE OF LAW SCHOOLS AND CONSTITUTIONAL  
LITERACY PROGRAMS IN EFFECTIVE JURY REFORM

K ROYAL<sup>†</sup>  
DARRA L. HOFMAN<sup>‡</sup>

ABSTRACT

Trial by jury may be a constitutional right, but the jury system in practice does not always successfully carry out its duty. Jury reform has been a viable, active field of study since at least the mid-1990s, with some of the most significant advances made in Arizona. This Article analyzes one aspect of jury reform by considering the impact of civic education on jury success. Studies have cited juror participation, jury instructions, and hung juries as points of failure in the jury system. In particular, hung juries have reported questions about the quality of evidence and sentiments about the fairness of the law as critical reasons for not reaching a verdict. One solution that has been proposed is to provide a mini-course in legal procedures once a jury is impaneled. In this Article, we examine the possibility of constitutional literacy provided in the public education system as a solution for the aforementioned aspects of jury failure. Good citizenship is no less important to the democracy and health of our nation than are science and math. Frankly, good citizenship is a right and a responsibility. As a nation, we need to equip our people with the basics. Through a successful civic education program, the legal system could also have an impact on other vital interests, such as encouraging minorities to become attorneys and engaging a diversity of views.

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<sup>†</sup> K Royal is the in-house privacy counsel for a global company and currently a Ph.D. candidate in Public Affairs at the University of Texas in Dallas.

<sup>‡</sup> Darra Hofman is an author and legal scholar. Her research focuses on the intersection of law, science, and medicine; she has a particular interest in the ethics and policy of medical decision making. Her fiction is oriented towards science fiction and fantasy, and explores questions of autonomy and self-determination.

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#### INTRODUCTION

“The law is not the private property of lawyers, nor is justice the exclusive province of judges and juries.”<sup>1</sup> Juries, though, are the most, and often the only, meaningful interaction that laypersons will have with the judicial system.<sup>2</sup> Indeed, to serve as a juror is a sacred trust, a means by which an individual citizen can help uphold the social contract and maintain the fabric of a democratic society.<sup>3</sup> Unfortunately, the effectiveness of the jury as both a safeguard and a tool of justice has been brought into question due to a number of factors, with juror participation, jury instructions, and hung juries cited as points of failure in the jury system.<sup>4</sup> Jury reform has only truly been an active effort since the mid-1990s,<sup>5</sup> despite the landmark study by Harry Kalven Jr. and Hans Zeisel three decades earlier.<sup>6</sup> Although a number of novel solutions have been suggested and tried,<sup>7</sup> the struggles of the jury system reflect a greater failing in America to equip our citizens with the knowledge to fully participate in civic society.

We propose that the jury could again become an effective, vital part of our justice system through civic education. Furthermore, we propose that this education could and should be provided through a working partnership between our nation’s schools and its attorneys and law students. Indeed, as future officers of the court, law students have a moral duty to “promote justice and to make justice equally accessible to all people.”<sup>8</sup> One of the most fundamental contributions law students could make would be through participation in a robust civic education program,

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1. Proclamation No. 4565, 3 C.F.R. 22 (1978).

2. See Sherman J. Clark, *The Juror, the Citizen, and the Human Being: The Presumption of Innocence and the Burden of Judgment*, CRIM. L. & PHIL. 1–2 (July 25, 2013) (discussing jurors’ personal growth throughout the jury deliberation process).

3. See Rubey M. Hulen, “Twelve Good Men and True”: *The Forgotten Men of the Courtroom*, 38 A.B.A. J. 813, 813 (1952).

4. See PAULA L. HANNAFORD-AGOR ET AL., NAT’L CTR. FOR STATE COURTS, ARE HUNG JURIES A PROBLEM? 1, 5, 8 (2002).

5. See B. Michael Dann & Valerie P. Hans, *Recent Evaluative Research on Jury Trial Innovations*, 41 CT. REV. 12, 12 (2004).

6. HARRY KALVEN, JR. & HANS ZEISEL, *THE AMERICAN JURY* 3–11 (3d prtg. 1966); see, e.g., Valerie P. Hans & Neil Vidmar, *The American Jury at Twenty-Five Years*, 16 LAW & SOC. INQUIRY 323, 323 (1991).

7. See, e.g., MICHAEL A. YARNELL, *THE ARIZONA JURY: PAST, PRESENT AND FUTURE REFORM* 13–21 (2005); see also *Jury Selection, Trial and Deliberations, Resource Guide*, NAT’L CENTER FOR ST. CTS., <http://www.ncsc.org/Topics/Jury/Jury-Selection-Trial-and-Deliberations/Resource-Guide.aspx> (last visited Mar. 12, 2013) (providing several resources that discuss jury trial innovations).

8. A.B.A. Standing Comm. on Pro Bono and Pub. Serv., *Pro Bono Publico*, A.B.A., [http://www.americanbar.org/groups/legal\\_education/resources/pro\\_bono.html](http://www.americanbar.org/groups/legal_education/resources/pro_bono.html) (last visited Mar. 9, 2013).

bringing their specialized knowledge and passion for justice to our nation's young citizens and creating a framework within which those young citizens will acquire the knowledge and commitment to be effective jurors, active participants in our society, and perhaps even future attorneys themselves.

## I. JURY REFORM

### *A. The Problem: Background on the Jury System in the United States*

Rather than being seen as a right of the citizenry, jury duty is often viewed in the United States as a burden to be avoided.<sup>9</sup> Although the impact of this viewpoint reverberates negatively throughout the judicial system, its root cause is a failure to inculcate a sense of civic duty in our citizenry. A consideration of the failures of the system, in light of this lack of constitutional literacy, will clarify the urgent need for reform throughout the system, not just at the level of the judiciary but down to the civic education of our young people.

Juries are an established mainstay of legal systems across the globe.<sup>10</sup> In the United States, a criminal trial by jury is a constitutional right for crimes punishable by incarceration for longer than six months<sup>11</sup> and made applicable to the states under the Fourteenth Amendment and state constitutions.<sup>12</sup> Furthermore, juries determine not only guilt but also any fact used to increase the sentence, such as aggravating factors.<sup>13</sup> Federal civil jury trials are also constitutionally preserved for certain controversies.<sup>14</sup> Although most states guarantee a trial by jury in most types of civil lawsuits, many disallow jury trials for certain types of civil cases, such as divorce or child support modifications.<sup>15</sup>

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9. See ARIZ. SUPREME CT. COMM. ON MORE EFFECTIVE USE OF JURIES, JURORS: THE POWER OF 12, at 33 (1994) [hereinafter ARIZ. SUPREME CT.].

10. See Valerie P. Hans, *Jury Systems Around the World*, 4 ANN. REV. LAW & SOC. SCI. 275, 276 (2008).

11. See U.S. CONST. art. III, § 2, cl. 3, amend. VI; *Baldwin v. New York*, 399 U.S. 66, 73–74 (1970).

12. See, e.g., ARIZ. CONST. art. II, § 23; CAL. CONST. art. I, § 16; COLO. CONST. art. II, § 23; ILL. CONST. art. I, § 13; MASS. CONST. pt. I, art. XV; TEX. CONST. art. I, § 15.

13. See *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

14. See U.S. CONST. amend. VII. This is not absolute in all cases. Judges can serve both functions in the absence of a jury, or states may allow juries to determine matters of law, often through jury nullification, which will be discussed briefly later in this Article. For a more detailed discussion on jury nullification, see Jonathan Bressler, *Reconstruction and the Transformation of Jury Nullification*, 78 U. CHI. L. REV. 1133, 1133 (2011); B. Michael Dann, "Must Find the Defendant Guilty": *Jury Instructions Violate the Sixth Amendment*, 91 JUDICATURE 12, 12–14 (2007); Alan Schefflin & Jon Van Dyke, *Jury Nullification: The Contours of a Controversy*, 43 LAW & CONTEMP. PROBS. 51, 75 (1980).

15. See, e.g., TEX. FAM. CODE ANN. § 105.002(b)–(c) (West 2003) (prohibiting jury trial in suit for adoption or in adjudication of consent to adoption, of child support, of terms or conditions of possession or access, or of rights or duties of a conservator, except the determination of which joint managing conservator has the exclusive right to designate a child's primary residence); Douglas G. Smith, *The Historical and Constitutional Contexts of Jury Reform*, 25 HOFSTRA L. REV. 377, 422 (1996) (explaining civil trials by jury under common law matters of equity).

Typically, the jury determines matters of fact, whereas the judge determines matters of law.<sup>16</sup> The generally acknowledged exception to this order is jury nullification, whereby a jury can determine that under an unjust law, the defendant cannot be found guilty.<sup>17</sup> Juries are selected from a pool of juror candidates that have been randomly summoned for jury duty based on voter-registration or driver-license lists.<sup>18</sup> Eligible jurors may then be screened based on speaking English, citizenship, or disabilities that might hamper them from fulfilling their duties as jurors.<sup>19</sup> Once summoned and eligible, jurors are randomly assigned to a particular case or court; then, the attorneys screen jurors under a strict process called *voir dire*.<sup>20</sup> There have been frequent criticisms made about the current jury system, from juror summons and screening to jury decisions and nullification.<sup>21</sup>

[C]oncerns and complaints about jury trials, and how such trials impact and empower juries in deciding cases, continue to abound. Most critics focus on juror competence, doubting the ability of the average juror to understand, remember, and integrate all the information (evidence and law) given to them in modern-day litigation.<sup>22</sup>

Attorneys sometimes view a trial by jury as a game of chance with the resulting decisions seemingly arbitrary and capricious.<sup>23</sup>

But the jury process was not always this way. The original concept of the juror as a witness and fact finder to make decisions of law was inherited from the Norman conquest of England.<sup>24</sup> Even as English juries evolved, leading to a trial system in which many of the jury's previous responsibilities were assumed by judges, jurors remained responsible for questioning witnesses, victims, and defendants.<sup>25</sup> Often, the victims or claimants were jurors, as well as the individuals who brought charges against the accused.<sup>26</sup> There was not a system where the Government brought charges on behalf of the victims. Victims brought their accusations to the local representative charged with maintaining order in the community; over time this process expanded into an active jury system, where the community members played active roles in the trial. In the

16. See U.S. CONST. amend VII.

17. See Shari Seidman Diamond, *Dispensing with Deception, Curing with Care: A Response to Judge Dann on Nullification*, 91 JUDICATURE 20, 20 (2007).

18. See, e.g., YARNELL, *supra* note 7, at 10–11.

19. See *id.* at 11.

20. See *id.* at 14.

21. See B. Michael Dann, "Learning Lessons" and "Speaking Rights": *Creating Educated and Democratic Juries*, 68 IND. L. J. 1229, 1229–30 (1993).

22. *Id.* at 1229 (emphasis omitted).

23. See, e.g., Royal Furgeson, *Civil Jury Trials R.I.P.? Can It Actually Happen in America?*, 40 ST. MARY'S L.J. 795, 804–05 (2009) (discussing the view of some attorneys that jury deliberations are an imperfect procedure for delivering justice that results in error).

24. See Dann, *supra* note 21, at 1231–33.

25. *Id.* at 1232–33.

26. *Id.* at 1231–32.

early American colonies, juries devolved into passive listeners only, forced to make determinations based solely on the evidence that advocates or judges chose to present.<sup>27</sup>

Over the years, as the jury's role in the legal system changed, so too has the jurors' ability to satisfactorily perform the duties charged to the jury. As noted above, modern U.S. juries are plagued with issues surrounding both the jury decision-making process and the decisions themselves. In response, multiple states initiated jury reform actions starting in the mid-1990s, with Arizona and New York leading the charge.<sup>28</sup> Jury reform has now been prominent across the nation for approximately two decades.<sup>29</sup> In addition to Arizona and New York, some of the states known for their active jury reform efforts include Massachusetts, Colorado, New Jersey, and Hawaii.<sup>30</sup> Of these, Arizona—discussed in more in Part I.C—was most prominent in its comprehensive jury reform efforts. America started paying attention to Arizona's jury reform, perhaps most notably due to the public scrutiny of the criminal murder trial involving defendant O.J. Simpson.<sup>31</sup> Although this trial was not the first televised trial, it comprised variables that when combined, resulted in the one of the most famous trials in U.S. history, lasting from January through October of 1995.<sup>32</sup> The trial of a famous African-American professional football player accused of murdering his Caucasian ex-wife was so popular that businesses lost over \$25 billion due to workers neglecting their work in favor of following the trial.<sup>33</sup> For perhaps the first time in U.S. history, the general population was fixated on trial minutiae. Over 142 million people listened for the long-awaited jury verdict.<sup>34</sup> Many viewers vehemently disagreed with the acquittal, causing many Americans to question the reliability of jury determinations.<sup>35</sup> The timing of this widespread disdain of jury decision making coincided with Arizona's public jury reform efforts, subjecting Arizona's endeavors to unexpected scrutiny.

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27. *Id.* at 1235.

28. Randall T. Shepard, *State Court Reform of the American Jury*, 117 YALE L. J. POCKET PART 166, 168 (2008); see Gregory A. Mize & Christopher J. Connelly, *Jury Trial Innovations: Charting a Rising Tide*, 41 CT. REV. 4, 4–8 (2004).

29. See Mize & Connelly, *supra* note 28, at 4; Shepard, *supra* note 28, at 168, 170.

30. See Mize & Connelly, *supra* note 28, at 5–6 (providing general analysis of state jury reform efforts).

31. See, e.g., Shelly Rosenfeld, *Will Cameras in the Courtroom Lead to More Law and Order? A Case for Broadcast Access to Judicial Proceedings*, 6 AM. U. CRIM. L. BRIEF 12, 12 (2010).

32. See *id.* at 12; Thomas L. Jones, *The Murder Trial of O.J. Simpson*, CRIME LIBR., [http://www.trutv.com/library/crime/notorious\\_murders/famous/simpson/index\\_1.html](http://www.trutv.com/library/crime/notorious_murders/famous/simpson/index_1.html) (last visited Mar. 10, 2013).

33. Rosenfeld, *supra* note 31, at 17; see also Jones, *supra* note 32.

34. Jones, *supra* note 32.

35. See Daniel B. Wood, *O.J. Case Spurs Jury Reform Debate*, 87 CHRISTIAN SCI. MONITOR, Apr. 14, 1995, at 4, 4.

### B. Why Juries Fail

The jury system is ripe for change.<sup>36</sup> With the advent of technology, high-profile cases are being scrutinized in real time.<sup>37</sup> Jurors are vocal about their dissatisfaction with the jury system and jury service itself.<sup>38</sup> Juries apparently welcome the changes offered by various jury reform efforts across the nation.<sup>39</sup> The flaws commonly found in jury decision making can be divided into two categories: decision-making processes or tools and the ultimate decision.

First, a jury is at its heart a group of individuals forced to work together, often against their preference, in dismal circumstances, perhaps in a situation of distrust, as discussed *infra*, and without the tools to perform the task given to them.<sup>40</sup> This situation sets the stage for the old adage: what can go wrong will. The role of the juror as contemplated by our legal system is rife with potential for error. Jurors are handicapped by such systemic expectations and limitations as: (1) fulfilling a passive role; (2) being limited to observation; (3) being empty vessels to be filled; (4) being objects of one-way, linear communication; (5) recording complete and accurate information; (6) suspending judgment on evidence and issues until end of case; (7) withholding feedback until verdict; (8) exercising “recall readiness” regarding final instructions; (9) considering all evidence; (10) being well served by the adversarial system; (11) effectively representing their community; and (12) enhancing participative democracy.<sup>41</sup> We place ambitious, daily demands on ill-equipped and unsupported jurors across the nation. With these demands come flaws, which are only amplified in a stressful group situation.<sup>42</sup> Jury decision making may be tainted by such flaws as group-hate, social loafing, missing jurors, toxic jurors, juror misconduct, improper speculation, and inappropriate leadership choices.<sup>43</sup> “Group-hate” describes how some people hate working in groups and subsequently bring negative emotions into the process, tainting their objectivity.<sup>44</sup> Social loafing occurs when a juror actively decides not to participate in the decision making and is satisfied to agree with the majority.<sup>45</sup> Jurors may be missing from the deliberating process, either by physically leaving the jury room or by being ignored by the other jurors.<sup>46</sup> Toxic jurors indicate

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36. See Dann, *supra* note 21, at 1229.

37. See Rosenfeld, *supra* note 31.

38. See Wood, *supra* note 35.

39. See Dann & Hans, *supra* note 5, *passim* (discussing research that suggests higher juror satisfactions with jury reform efforts).

40. See Dann, *supra* note 21, at 1236–37.

41. *Id.* at 1240.

42. SUNWOLF, PRACTICAL JURY DYNAMICS 387–88 (2d ed. 2007).

43. See *id.* at 387–92, 395–97, 398.

44. See *id.* at 387–90.

45. See *id.* at 390.

46. See *id.* at 391–95.



just that: the individual may make such hurtful comments about the trial or the other jurors that the juror is toxic to the process.<sup>47</sup>

Juror misconduct may not rise to the level of toxicity but may still qualify as misconduct.<sup>48</sup> Misconduct occurs when jurors deliberately act against the court's instructions, such as discussing why the defendant did not testify, considering testimony that they were instructed to disregard, or investigating evidence on their own.<sup>49</sup> Such misconduct also includes improper speculation about irrelevant topics such as witness motivations, cost of the trial or salaries, or relationships of trial spectators to the participants, most commonly the defendant.<sup>50</sup> Perhaps one of the best-known facets about juries is that there is a jury foreman who is selected from among the impaneled jurors.<sup>51</sup> The flaws with leadership primarily involve the selection process; some courts select the leader randomly and others allow the jury to vote on a leader.<sup>52</sup> Either method is flawed. Someone may be chosen who is ill-equipped to be the leader yet now is placed in a position of authority over the other jurors. If made by election, the decision is the first one made by the jurors and by virtue of its formation (without thoughtfulness or careful deliberation, under pressure, and during a time of high tension), contaminates the subsequent decision-making processes.<sup>53</sup>

This decision-making process is further skewed by two particular phenomena that scholars dwell upon: hung juries<sup>54</sup> and jury nullification.<sup>55</sup> A hung jury is one that is unable to reach a unanimous or majority decision in a criminal trial.<sup>56</sup> Studies have shown that the average rate of hung juries is estimated anywhere from 5% to 33% of trials, with the wide discrepancy caused by a lack of empirical data.<sup>57</sup> Hung juries cost time, money, effort, and emotional distress to bring cases to trial again.<sup>58</sup> In the face of a hung jury, litigants often choose to settle rather than face a second trial.<sup>59</sup> Jury nullification, on the other hand, happens when the jury determines that it disagrees with the law's application in a particular

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47. See *id.* at 392.

48. See *id.* at 396–97.

49. See *id.* at 395–97.

50. See *id.* at 395–96.

51. *Id.* at 398–99.

52. See *id.* at 398.

53. See *id.* at 398–99.

54. See generally HANNAFORD-AGOR ET AL., *supra* note 4, at 1; KALVEN & ZEISEL, *supra* note 6, at 56–57, 453.

55. See generally HANNAFORD-AGOR ET AL., *supra* note 4, at 1; KALVEN & ZEISEL, *supra* note 6, at 56–57, 453; Bressler, *supra* note 14 (discussing the history and evolution of jury nullification); Diamond, *supra* note 17 (discussing whether jurors should be informed about jury nullification).

56. See HANNAFORD-AGOR ET AL., *supra* note 4, at 1.

57. See *id.* at 6, 8.

58. Dann, *supra* note 21, at 1269–70; Shepard, *supra* note 28, at 169–70.

59. See HANNAFORD-AGOR ET AL., *supra* note 4, at 7–8 (emphasizing the necessity of better pre-trial decisions by attorneys because of the increased likelihood of a hung jury when prosecutors charge cases with weak evidence).

case and finds the defendant innocent in direct disregard of the law.<sup>60</sup> The jury makes such a finding, despite evidence that the law as written applies to the parties at hand, and effectively steps outside its bounds by making determinations of law rather than fact.<sup>61</sup> Both of these outcomes, hung juries and jury nullification, are linked to the passivity of the traditional jury system that demands decisions be made in an environment least conducive to thoughtful deliberation and contemplation.<sup>62</sup>

### C. How Juries Succeed

To improve jury decision making, we need to engage in widespread jury innovation and stop looking at juries through the eyes of the legal system. We must look through the eyes of educators, psychologists, and social scientists, whose fields have progressed rapidly through abstract, empirical, and even translational research. Law, in contrast, has remained comparatively stagnant.

[Lawyers] stop[ped] progressing intellectually about the law itself right after they drafted the Declaration of Independence and the Constitution. . . . If the doctor from 1776 walked into a modern-day medical center, he wouldn't know where the hell he was. But if John Adams walked out of that courtroom in Boston and into [a modern court], he'd know exactly where he was, know what everybody's name was, what their duties were and the jury would be the same.<sup>63</sup>

The problems with the jury system run throughout the life cycle of a jury, from initial summons to juror polling after a verdict.<sup>64</sup> Because the purpose of this Article is to address reform in jury decision making, we shall not consider those problems that are completely outside the control of the jurors themselves, such as juror privacy, status of the facilities, or juror pay. However, this Article shall address tools that actively engage jurors in decision-making processes, such as the ability to take notes or ask questions.

Although jury failure has been under siege for at least a century,<sup>65</sup> the battle advanced significantly when B. Michael Dann, then-presiding judge of the Maricopa County Superior Court in Arizona, wrote a thesis paper for his Master of Judicial Studies degree about how to create educated and democratic juries.<sup>66</sup> He discussed four main topics pertinent to

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60. See *id.* at 14.

61. See *id.*

62. See Dann, *supra* note 21, at 1236-43.

63. Tim Eigo, *O' Pioneer: Michael Dann Shapes Jury Reform for a New Century*, ARIZ. ATT'Y, Feb. 2001, at 22, 22 (quoting Judge Michael J. Brown).

64. See, e.g., ARIZ. SUPREME CT., *supra* note 9, at 3; KALVEN & ZEISEL, *supra* note 6, at 8; Dann, *supra* note 21; Mize & Connelly, *supra* note 28, at 4.

65. See, e.g., Austin Wakeman Scott, *Trial by Jury and the Reform of Civil Procedure*, 31 HARV. L. REV. 669, 669 (1918).

66. Dann, *supra* note 21, at 1230-31, 1279 n.a.

jury reform: (1) the decline from an active juror role to one of passivity, (2) how established psychological and educational principles apply to juror decision making, (3) commonly suggested techniques to improve juror participation, and (4) two obscure techniques.<sup>67</sup> Soon thereafter, in April 1993, Arizona Supreme Court Chief Justice Stanley Feldman established the Committee on More Effective Use of Juries and charged it with five actions: to study the use of juries and trial conduct, to make recommendations to improve juries and their verdicts, to propose the mechanism to implement recommended changes, to suggest training programs for the legal profession, and to evaluate the new changes.<sup>68</sup> This committee recommended fifty-five changes emanating from the five stages of the juror lifecycle (i.e., summons, selection, trial, deliberations, and post-verdict), plus public awareness and a juror bill of rights, most of which have been formally adopted in Arizona.<sup>69</sup> Furthermore, scholars studied 200 jury trials in Arizona over a period of six months and found that one of the most controversial reform measures, permitting juror discussions during trial, may actually promote effective jury decision making.<sup>70</sup>

Since Arizona began its ambitious jury reform efforts in 1993, numerous states have engaged in some level of jury reform efforts.<sup>71</sup> Out of the thirty-eight states reportedly engaged in jury reform, the majority of efforts are centered on juror summons, yield, and utilization, technology, and facilities.<sup>72</sup> Less than a third of the states' reforms include jury instructions or improving juror comprehension.<sup>73</sup> In addition to reforms by state court systems, the American Bar Association eventually entered the fray. In 2005, one of the most successful advances to jury reform came from the American Bar Association House of Delegates, which adopted

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67. *Id.* at 1230–31. Dann writes:

Finally, I propose and discuss two techniques that have received only modest or, in one instance, no attention in the otherwise nearly exhaustive literature on this subject. Both ideas deserve and require further evaluation, such as field testing where results can be quantified and compared to control groups. Both procedures hold much promise: (1) permitting jurors to discuss the evidence as it is received, but only among themselves and after being instructed to withhold any decision on the outcome; and (2) asking jurors who are at an impasse and heading toward deadlock whether court or counsel can be of help to them in reaching a verdict by addressing issues of fact or law that divide them. These procedures have the potential for increasing juror understanding and recollection of evidence and, in the latter case, avoiding needless and costly mistrials due to juries that hang. If we give jurors an opportunity to ask for and receive help, they might be able to conclude such cases accurately and fairly.

*Id.* at 1231.

68. ARIZ. SUPREME CT., *supra* note 9, at 5–6.

69. *Id.* at 3; YARNELL, *supra* note 7, at 17.

70. Dann & Hans, *supra* note 5, at 17; Shari Seidman Diamond et al., *Juror Discussions During Civil Trials: Studying an Arizona Innovation*, 45 ARIZ. L. REV. 1, 76 (2003).

71. GREGORY E. MIZE ET AL., NAT'L CTR. FOR STATE COURTS, THE STATE-OF-THE-STATES SURVEY OF JURY IMPROVEMENT EFFORTS: A COMPENDIUM REPORT 1 (2007).

72. *Id.* at 9, 17.

73. *Id.* at 17.

the nineteen Principles of Juries and Jury Trials as guidance for state courts.<sup>74</sup>

These nineteen principles are to be viewed as the aspirational standards by state committees evaluating potential jury reform efforts.<sup>75</sup> Nine of these principles directly address juror decision making and behavior occurring during the trial, whereas another one directs courts to facilitate the opportunity for citizens to participate in the jury system.<sup>76</sup> Citizen education can address these ten principles of jury reform; although the current research does not contemplate it, this education could be delivered through schools as well as courts. No legal imperative limits juror education to the courtroom, other than with regard to the facts of a particular case. Otherwise, essential aspects of a jury trial, the fundamentals of law, how to understand the law, how to deliberate, impartial deliberations, breaking deliberation impasses, group decision making, and other basic tenets of the jury process can be taught outside the bounds of an individual case. For purposes of this Article, the focus is on the potential of initiating jury reform from a grassroots perspective. Specifically, this Article addresses the usefulness of civic education as a means to advance both the legal literacy and the decision-making skills necessary to help citizens become effective jurors. As such, civic education can serve as a vehicle for jury reform.

## II. CIVIC EDUCATION: A SACRED TRUST

Just as each generation—since at least the times of ancient Greece<sup>77</sup>—has bemoaned the moral and educational failings of its youth,

74. AM. BAR ASS'N, PRINCIPLES FOR JURIES AND JURY TRIALS 2 (2005).

75. *Id.*

76. *Id.* at 4–9, 17–24.

77. Although complaints about the decline of the youth of every society are common, one of the most well-documented comes from ancient Greece:

I will, therefore, describe the ancient system of education, how it was ordered, when I flourished in the advocacy of justice, and temperance was the fashion. In the first place it was incumbent that no one should hear the voice of a boy uttering a syllable; and next, that those from the same quarter of the town should march in good order through the streets to the school of the Harp-master, naked, and in a body, even if it were to snow as thick as meal. Then again, *their master* would teach them, not sitting cross-legged, to learn by rote a song, either [*pallada persepolin deinan*], or [*teleporon ti boama*], raising to a higher pitch the harmony which our fathers transmitted to us. But if any of them were to play the buffoon, or to turn any quavers, like these difficult turns the present artists make after the manner of Phrynis, he used to be thrashed, being beaten with many blows, as banishing the Muses. And it behoved the boys, while sitting in the school of the Gymnastic-master, to cover the thigh, so that they might exhibit nothing indecent to those outside; then, again, after rising *from the ground*, to sweep *the sand* together, and to take care not to leave an impression of the person for their lovers. And no boy used in those days to anoint himself below the navel; so that their bodies wore the appearance of blooming health. Nor used he to go to his lover, having made up his voice in an effeminate tone, prostituting himself with his eyes. Nor used it to be allowed when one was dining to take the head of a radish, or to snatch from their seniors dill or parsley, or to eat fish, or to giggle, or to keep the legs crossed.

ARISTOPHANES, *The Clouds*, in THE COMEDIES OF ARISTOPHANES 115, 157–58 (William James Hickie trans., 1902).

so too have Americans fretted about the lack of civic attachment among our young people.<sup>78</sup> However, current research shows that civic attachment is lower not only among young people as compared to their elders but also among young people as compared to previous young generations.<sup>79</sup> As compared to previous generations of eighteen- to twenty-nine-year-olds, today's youth vote less, are less interested in following politics, and perhaps more fundamentally, demonstrate a deep lack of knowledge of our governmental and legal systems.<sup>80</sup> Former Supreme Court Justice Sandra Day O'Connor declared, "[W]e have a crisis on our hands when it comes to civics education."<sup>81</sup>

How ignorant of civics must our students be for us to have a crisis? According to the National Assessment of Educational Progress, 97% of high school students study civics.<sup>82</sup> Yet only a quarter of students assessed demonstrated proficient or advanced knowledge of our government;<sup>83</sup> they lack such basic knowledge as traits of a constitutional democracy or the powers granted to Congress by the Constitution.<sup>84</sup> These soon-to-be voters, jurors, and participants in society simply do not possess the knowledge necessary to be successful participants in our jury system or civic life in general.<sup>85</sup>

Admittedly, juror education is tailored to the narrow needs of the jury, whereas civic education encompasses "the cultivation of the virtues, knowledge, and skills necessary for political participation."<sup>86</sup> If one looks at various nonprofit organizations dedicated to civic education, one repeatedly finds mission statements like that of the Center for Civics Education: "The Center is dedicated to promoting an enlightened and responsible citizenry committed to democratic principles and actively engaged in the practice of democracy in the United States and other countries."<sup>87</sup> Similarly, in calls to align common core educational requirements (standardized criteria for American students of a particular grade level and subject) with the civic educational needs of the United States, authors reiterate that "it is vital to the health and future of our democracy that our schools also prepare students for a lifetime of knowl-

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78. See, e.g., William A. Galston, *Civic Education and Political Participation*, 37 POL. SCI. & POL. 263, 263 (2004).

79. *Id.*

80. *Id.*; Sam Dillon, *Civics Education Called National Crisis*, N.Y. TIMES, May 5, 2011, at A23.

81. Dillon, *supra* note 80 (internal quotation mark omitted).

82. U.S. DEP'T OF EDUC., CIVICS 2010: NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS AT GRADES 4, 8, AND 12, 39 (2011).

83. *Id.* at 35.

84. *Id.* at 40.

85. See, e.g., *id.* at 4, 35.

86. AMY GUTMANN, *DEMOCRATIC EDUCATION* 287 (2d ed. 1999).

87. *Basic Facts About the Center for Civic Education*, CENTER FOR CIVIC EDUC., <http://new.civiced.org/about/about-us> (last visited Feb. 21, 2013).

edgeable, engaged, and active citizenship.”<sup>88</sup> Clearly, then, civic education contemplates creating citizens, whereas jury service is but one role that jurors play as citizens.<sup>89</sup> However, jury service, properly executed, encapsulates all of the highest duties and responsibilities of a participant in civil society.

The importance of the layperson in the American system of government in general, and in American jurisprudence in particular, cannot be overstated.<sup>90</sup> Indeed, the jury system is considered a safeguard, not just against injustice but also against tyranny and usurpation itself.

The people themselves have it in their power effectually to resist usurpation, [the wrongful seizure of authority,] without being driven to an appeal to arms. An act of usurpation is not obligatory; it is not law; and any man may be justified in his resistance. Let him be considered as a criminal by the general government; yet only his fellow citizens can convict him. They are his jury, and, if they pronounce him innocent, not all the powers of congress can hurt him; and innocent they certainly will pronounce him if the supposed law he resisted was an act of usurpation.<sup>91</sup>

One finds throughout American jurisprudence that although the jury is ostensibly the trier only of fact, juries often take it unto themselves to decide questions of law as well.<sup>92</sup> Presumptively, questions of fact belong to the jury and questions of law belong to the court, yet our jurisprudence makes clear that the truth is much more complicated.

In every criminal case, upon the plea of not guilty, [members of] the jury may, and indeed they must, unless they choose to find a special verdict, take upon themselves the decision of the law, as well as the fact, and bring in a verdict as comprehensive as the issue; because, in every such case, they are charged with the deliverance of the defendant from the crime of which he is accused. . . .

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88. L.A. CNTY. OFFICE OF EDUC., PREPARING STUDENTS FOR COLLEGE, CAREER, AND CITIZENSHIP: A CALIFORNIA GUIDE TO ALIGN CIVIC EDUCATION AND THE COMMON CORE STATE STANDARDS FOR ENGLISH LANGUAGE ARTS AND LITERACY IN HISTORY/SOCIAL STUDIES, SCIENCE AND TECHNICAL SUBJECTS 2 (2011) (citing CAMPAIGN FOR THE CIVIC MISSION OF SCHOOLS, EDUCATING FOR DEMOCRACY, EDUCATION FOR DEMOCRACY: A CALL TO RESTORE THE CIVIC MISSION OF SCHOOLS (2010)).

89. See, e.g., Clark, *supra* note 2, at 2.

90. See, e.g., Jerome Hall, *The Challenge of Jurisprudence: To Build a Science and Philosophy of Law*, 37 A.B.A. J. 23, 25 (1951).

91. *Sparf v. United States*, 156 U.S. 51, 144 (1895) (Gray, J., dissenting) (quoting 2 JONATHAN ELLIOT, DEBATES OF THE STATE CONVENTIONS, ON THE FEDERAL CONSTITUTION 111 (2d ed. 1836) (internal quotation marks omitted)).

92. See, e.g., *Horning v. District of Columbia*, 254 U.S. 135, 138–39 (1920); *United States v. Moylan*, 417 F.2d 1002, 1006 (4th Cir. 1969); *United States v. Hutchings*, 26 F. Cas. 440, 442 (C.C.D. Va. 1817); *United States v. Poyllon*, 27 F. Cas. 608, 611 (D.N.Y. 1812).

. . . The law must, however, have intended, in granting this power to a jury, to grant them a lawful and rightful power, or it would have provided a remedy against the undue exercise of it. The true criterion of a legal power, is its capacity to produce a definitive effect liable neither to censure nor review. And the verdict of not guilty, in a criminal case, is, in every respect, absolutely final. [Members of t]he jury are not liable to punishment, nor the verdict to control. . . .

. . . .

. . . [I]n human institutions, the question is not, whether every evil contingency can be avoided, but what arrangement will be productive of the least inconvenience. And it appears to be most consistent with the permanent security of the subject, that in criminal cases [members of] the jury should, after receiving the advice and assistance of the judge, as to the law, take into their consideration all the circumstances of the case, and the intention with which the act was done, and to determine upon the whole, whether the act done, be, or be not, within the meaning of the law. This distribution of power, by which the court and jury mutually assist, and mutually check each other, seems to be the safest, and, consequently the wisest arrangement, in respect to the trial of crimes.<sup>93</sup>

Clearly, then, the role of juror is one of a sacred trust. The juror is protector of the liberty of his fellow man, of the integrity of our courts, and of our very democracy.<sup>94</sup> Although we certainly do not expect our jurors (or our citizenry) to all be lawyers, they need to have the knowledge to fulfill their oath and uphold their office.

### III. JUSTICE, JUSTICE YOU SHALL PURSUE: WHAT DO OUR JURORS NEED?

In *People v. Croswell*, Chief Justice Kent opined that “[t]o judge accurately of motives and intentions, does not require a master’s skill in the science of law. It depends more on . . . knowledge of the passions, and of the springs of human action, and may be the lot of ordinary experience and sagacity.”<sup>95</sup> Kent believed it is enough to be part of humankind to serve as a juror, no further training is needed.<sup>96</sup> And whereas one must understand the motivations and intentions of one’s fellow man to be an effective juror, that alone is insufficient, based upon the findings of jury misconduct and flawed jury decision making.<sup>97</sup> Kent wrote at a time when only a small fraction of Americans was enfranchised;<sup>98</sup> those select

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93. *People v. Croswell*, 3 Johns. Cas. 337, 366, 368, 376 (N.Y. Sup. Ct. 1804) (emphasis omitted).

94. *Id.* at 346.

95. *Id.* at 376.

96. *Id.*

97. See, e.g., Dann, *supra* note 21, at 1230.

98. Jennifer L. Hochschild, *If Democracies Need Informed Voters, How Can They Thrive While Expanding Enfranchisement?*, 9 ELECTION L.J. 111, 113 (2010).

Americans were, on the whole, educated in a system that was intended to prepare them “for financial independence and for positions of leadership in society.”<sup>99</sup> Furthermore, these select men were educated for such roles through the informal culture and mechanisms of the time.<sup>100</sup> Fortunately, America has become a much more pluralistic society; almost all citizens are enfranchised potential jurors, regardless of racial, socioeconomic, ethnic, or religious background.<sup>101</sup> This deeper pool of jurors should improve the jury system by bringing a broader understanding of “the springs of human action” to the jury pool.<sup>102</sup> Unfortunately, it has not. Education is the missing critical element of today’s modern jury pool. Today’s jurors lack an education regarding their role in the body politic.<sup>103</sup> This type of education is already being addressed by numerous civic education programs around the nation<sup>104</sup> but could perhaps be adapted to include focused instruction on jury decision making along with the fundamentals of trial behavior and law. The fundamentals of our approach to civic education can be traced back to the ancient Greeks,<sup>105</sup> whose influence on American concepts of democracy is undeniable.<sup>106</sup>

Plato posited, “[A]sk in general what great benefit the state derives from the training by which it educates its citizens, and the reply will be perfectly straightforward. The good education they have received will make them good men.”<sup>107</sup> Civic education for the Greeks was not merely a facet of education.<sup>108</sup> Civic education was the goal of all education, formal and informal, and every person was a teacher, inculcating in the next generation the virtues that would allow it both to rule and to be ruled for the commonwealth and health of the polis.<sup>109</sup> Although the jury itself is believed to have its antecedents in Northern England, the Greek view of democracy, virtue, and *civitas* is fundamental to the American conception of democratic society.<sup>110</sup>

Indeed, Madison had in mind this sense of civic virtue, rather than the more common meaning of virtue as ethical behavior, when he wrote: “Is there no virtue among us? If there be not, we are in a wretched situa-

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99. Phillip Hamilton, *Education in the St. George Tucker Household: Change and Continuity in Jeffersonian Virginia*, 102 VA. MAG. HIST. & BIOGRAPHY 167, 167 (1994).

100. *Id.* at 167–68.

101. 28 U.S.C. § 1862 (2012).

102. Hochschild, *supra* note 98, at 114–15.

103. See U.S. DEP’T OF EDUC., *supra* note 82.

104. Consider, for example, such programs as iCivics, the Marshall–Brennan Constitutional Literacy Project, and Street Law, Inc. See *infra* notes 119–26 and accompanying text.

105. See Jack Crittenden, *Civic Education*, STANFORD ENCYCLOPEDIA PHIL. (Dec. 27, 2011), <http://plato.stanford.edu/archives/win2011/entries/civic-education/>.

106. *Id.*

107. Plato, *Laws*, in PLATO: COMPLETE WORKS 1335 (John M. Cooper ed., Trevor J. Saunders trans., 1997) (360 B.C.).

108. Crittenden, *supra* note 105.

109. *Id.*

110. See WILLIAM FORSYTH, A HISTORY OF TRIAL BY JURY 1–5, 290–94 (Law Book Exchange, Ltd. ed., 1994) (1875).



tion. No theoretical checks, no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea.”<sup>111</sup> Our democracy—and its creations, including jury trials—relies upon the citizenry being nurtured and educated into civic virtue.<sup>112</sup> Although one can find much debate in the literature as to what the specific virtues of a good citizen are,<sup>113</sup> civic virtue is critical for a democracy to survive.<sup>114</sup>

Fundamental to the sense of civic virtue we wish to inculcate in our jurors, and in all citizens, is a deep sense of attachment to the political structures of our society, in particular the rule of law and our system of deliberative democracy.<sup>115</sup> Lawyers and law students, with their deep study and long familiarity with the legal system, should understand better than any others how our legal system, despite its flaws, stands as a safeguard against tyranny.<sup>116</sup> With the benefit of their training and knowledge, legal professionals have both the ability and the obligation to educate and even excite their fellow citizens about our legal system.<sup>117</sup> Concepts such as procedural justice, which seem self-explanatory to an attorney and are so critical to understanding our legal system, are foreign to a public where “[n]early two-thirds of Americans cannot name all three branches of government. Yet three in four people can name all of the Three Stooges.”<sup>118</sup>

Fortunately, some legal professionals have taken up the mantle of civic educators. Both the Marshall–Brennan Constitutional Literacy Project (Marshall–Brennan) and Street Law, Inc. provide law students and attorneys the opportunity to devote pro bono hours educating people about, as Street Law puts it, “law, democracy, and human rights.”<sup>119</sup> Indeed, Street Law has been engaging youth in experiential, engaging lessons for forty years, and has expanded internationally.<sup>120</sup> Rigorous evaluation by outside professionals has shown that Street Law’s programs

111. James Madison, Virginia Convention Speech (June 20, 1788), in *SELECTED WRITINGS OF JAMES MADISON* 157 (Ralph Ketcham ed., 2006).

112. Crittenden, *supra* note 105.

113. See, e.g., William Galston, *Political Knowledge, Political Engagement, and Civic Education*, 2001 *ANN. REV. POL. SCI.* 217, 220 [hereinafter Galston, *Political Knowledge*]; William Galston, *Civic Education in the Liberal State*, in *LIBERALISM AND THE MORAL LIFE* 89, 90 (Nancy Rosenblum ed., 1989). *But cf.* GUTMANN, *supra* note 86 (arguing for very different virtues in a good citizen).

114. Galston, *supra* note 78, at 264–65.

115. See *The Civil Jury*, 110 *HARV. L. REV.* 1408, 1417 (1997).

116. Hall, *supra* note 90, at 86.

117. Phil C. Neal, *De Tocqueville and the Role of the Lawyer in Society*, 50 *MARQ. L. REV.* 607, 608 (1967).

118. Arne Duncan, U.S. Sec’y of Educ., *The Next Generation of Civics Education*, Remarks at the iCivics Educating for Democracy in a Digital Age Conference (Mar. 29, 2011), available at <http://www.ed.gov/news/speeches/next-generation-civics-education> (as submitted to the U.S. Senate Appropriations Comm.).

119. *About Us*, STREET LAW, INC., [http://www.streetlaw.org/en/about/who\\_we\\_are](http://www.streetlaw.org/en/about/who_we_are) (last visited Mar. 11, 2013).

120. *Id.*

leave high school students better able to discuss public issues, to identify multiple viewpoints, and to become more interested in legal careers.<sup>121</sup> Marshall–Brennan has a narrower objective than does Street Law, focusing instead on cases most important to the rights and obligations of students under the Constitution.<sup>122</sup> Like Street Law, however, Marshall–Brennan engages young Americans in the vital discussion about citizenship and its rights, obligations, and challenges.<sup>123</sup> Both programs inculcate civic virtue, using the enthusiasm, knowledge, and status of lawyers and law students to educate and inspire.<sup>124</sup> However, Marshall–Brennan is still small, with only eighteen chapters nationwide,<sup>125</sup> whereas Street Law reached forty countries in 2011 despite only \$2.1 million in total revenue for the year.<sup>126</sup> To successfully develop Americans into citizens who can rule, be ruled, and approach jury service with the skills and dedication to be successful, these programs and others like them must expand and extend.

One might question what role, if any, lawyers should play in civic education. After all, education, with all of its pedagogical requirements, is properly the role of professional educators.<sup>127</sup> However, as Alexis de Tocqueville pointed out, “When the rich, the noble, and the prince are excluded from the government, the lawyers then step into their full rights, for they are then the only men both enlightened and skillful, but not of the people, whom the people can choose.”<sup>128</sup> If, as Aristotle posited in *The Politics*, a good citizen is one who can both rule and be ruled,<sup>129</sup> it is rational that those who currently rule shall teach the next generation. Having stepped into the legal role, lawyers in our democratic society carry a duty of *noblesse oblige*, the obligation of the nobility to care for those beneath them socially, by virtue of their training and skill, which was historically the conscience of the aristocracy in another time.<sup>130</sup>

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121. PATRICIA G. AVERY ET AL., THE EXPANDING DELIBERATING IN A DEMOCRACY PROJECT: EVALUATION REPORT; YEAR 3, at 4 (2010); see also NAT’L ASS’N FOR LEGAL CAREER PROF’LS & STREET LAW INC., NALP/STREET LAW LEGAL DIVERSITY PIPELINE PROGRAM: EVALUATION REPORT 6–7 (2011), [http://www.streetlaw.org/en/about/evaluation\\_findings](http://www.streetlaw.org/en/about/evaluation_findings)

122. Marshall–Brennan Constitutional Literacy Project, “*We the Students*,” AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan/curriculum.cfm> (last visited Mar. 12, 2013).

123. *The Marshall–Brennan Constitutional Literacy Project*, AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan/> (last visited Mar. 12, 2013).

124. See *id.*; STREET LAW, INC., <http://www.streetlaw.org/en/home> (last visited Mar. 12, 2013).

125. Marshall–Brennan Constitutional Literacy Project, *Teaching Partners*, AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan/partners.cfm> (last visited Mar. 12, 2013).

126. STREET LAW INC., 2011 ANNUAL REPORT 2, 7–8 (2011).

127. David F. Labaree, *Power, Knowledge, and the Rationalization of Teaching: A Genealogy of the Movement to Professionalize Teaching*, 62 HARV. EDUC. REV. 123, 124, (1992).

128. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 266 (J.P. Mayer ed., George Lawrenson trans., First Perennial Classics 2000) (1835).

129. ARISTOTLE’S POLITICS 104–09 (H.W.C. Davis ed., Benjamin Jowett trans., Clarendon Press 1908) (350 B.C.).

130. DE TOCQUEVILLE, *supra* note 128.

## CONCLUSION AND RECOMMENDATIONS

The American jury system is struggling. To properly address failings that have been ingrained over centuries, the legal system must look beyond its own boundaries. Given the proclivity of jury reform scholars to look towards principles of education, it is imperative to now look towards civic education in the public schools as a route to creating better citizens and thus developing better juries. The study of jury reform is not new, and empirical data is available from surveys, field studies, mock juries, and other experiments.<sup>131</sup> Additionally, study after study affirms the impact of civic education on good citizenship.<sup>132</sup> This Article presents civic education as a platform for jury reform. To know whether civic education in the public school system would fix the flaws plaguing the jury system, we must conduct studies. Ideally, a long-term project within a contained geographic area would occur in which civic education is provided in the schools and then the effects on juries within that area would be evaluated over a couple of decades or more. Alternatively, one could engineer mock jury experiments using separate groups of high school seniors and adults, with civic education as the independent variable.

The importance of this goal—and the responsibility of the legal profession towards it—cannot be overstated.

To regard the jury simply as a judicial institution would be taking a very narrow view of the matter, for great though its influence on the outcome of lawsuits is, its influence on the fate of society itself is much greater still. The jury is therefore above all a political institution, and it is from that point of view that it must always be judged.<sup>133</sup>

The jury cannot continue to be seen as the dusty child of the crone civics. Rather, we must reawaken our citizens to the fact that the jury is part of the very lifeblood of our democracy, and that the ability to serve on a jury is a right to be embraced and celebrated.

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131. See, e.g., Dann & Hans, *supra* note 5, *passim*; Diamond et al., *supra* note 70, *passim*.

132. See, e.g., CHILDHOOD, YOUTH, AND SOCIAL WORK IN TRANSFORMATION: IMPLICATIONS FOR POLICY AND PRACTICE *passim* (Lynn M. Nybell et al. eds., 2009); Sigal Ben-Porath, *Citizenship as Shared Fate: Education for Membership in a Diverse Democracy*, 62 EDUC. THEORY 381 *passim* (2012); Galston, *Political Knowledge*, *supra* note 113, *passim*.

133. DE TOCQUEVILLE, *supra* note 128, at 272.



# CIVIC EDUCATION AS AN INSTRUMENT OF SOCIAL MOBILITY

DAWINDER S. SIDHU<sup>†</sup>

## ABSTRACT

Economic inequality—the relative distance between the wealthy and the poor—is growing in the United States. Relatedly, social mobility—the opportunity to rise economically—has stalled for many in the nation. This is most true for the urban poor, who experience extreme poverty and are trapped in American inner cities. Meaningful economic opportunity and robust public educational support are among the traditionally discussed means by which the urban poor may attain enhanced economic and physical mobility. The question becomes whether civic education—an understanding of the structure and contents of the U.S. Constitution and of the American government more broadly—has anything to offer in terms of uplifting the urban poor out of their economic stagnation and physical isolation.

This Article explores, by way of interviews with various stakeholders, whether there is a cognizable relationship between civic education and increasing the urban poor's prospects for social and physical mobility. It affirms that civic education can play a role in facilitating such mobility and argues that law schools should shoulder some of the responsibility to provide civic education in high schools located in urban areas of concentrated poverty. The Article also provides specific guidance on how civic education programs can be tailored to be most effective in these high schools.

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<sup>†</sup> Assistant Professor of Law and Regents' Lecturer, University of New Mexico (UNM); Founder and Co-director, UNM Law Chapter of the Marshall–Brennan Constitutional Literacy Project (Marshall–Brennan). My thanks to Maryam Ahranjani for introducing me to and bringing me into the Marshall–Brennan community; each of the individuals who graciously agreed to contribute to this study, particularly those who welcomed me to their schools; Melissa Hart and others responsible for organizing the important conversation on civic education where this Article was presented; members of the UNM junior faculty workshop, especially Camille Carey and Max Minzner, for their helpful comments and suggestions; and to my parents for their support and love. I regret any substantive errors, which rest ultimately with me.

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## I. BACKGROUND

The United States is premised on the proposition that regardless of one's background or original circumstances, one can rise economically by way of hard work and ingenuity.<sup>1</sup> In his seminal study of early America, Alexis de Tocqueville marveled at the "equality of conditions" in the nascent nation—the ostensible common starting point from which the individual could prosper and attain a higher quality of life for himself and his family.<sup>2</sup> In the United States, de Tocqueville observed, "the [privileges] of birth and fortune are destroyed"<sup>3</sup> and the "former barriers that kept back the multitude" have been swept away,<sup>4</sup> freeing the individual to pursue success unrestrained and to potentially achieve it through his energies and ambition.<sup>5</sup>

This fundamental promise of the country—that one can attain a higher economic position through merit and effort, irrespective of one's initial position—appears to have been breached in today's America. For example, a report uncovered that "[s]ixty-six percent of those raised in the bottom of the wealth ladder remain on the bottom two rungs them-

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1. See ISABEL V. SAWHILL & JOHN E. MORTON, PEW CHARITABLE TRUSTS, ECONOMIC MOBILITY IN AMERICA: IS THE AMERICAN DREAM ALIVE AND WELL? 3 (2007) ("For more than two centuries, economic opportunity and the prospect of upward mobility have formed the bedrock upon which the American story has been anchored—inspiring people in distant lands to seek our shores and sustaining the unwavering optimism of Americans at home."). President Barack Obama recently repeated this notion, stating that "here in America, no dream is too big if [our children are] willing to work for it." President Barack Obama, *Weekly Address: Wishing the American People a Happy Thanksgiving*, WHITE HOUSE (Nov. 22, 2012), <http://www.whitehouse.gov/the-press-office/2012/11/22/weekly-address-wishing-american-people-happy-thanksgiving>.

2. See 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 4 (Eduardo Nolla ed., James T. Schleifer trans., Liberty Fund 2012) (1835) ("Among the novel objects that attracted my attention during my stay in the United States, nothing struck me more forcibly than the general equality of condition among the people. . . . The more I advanced in the study of American society, the more I perceived that this equality of condition is the fundamental fact from which all others seem to be derived and the central point at which all my observations constantly terminated.").

3. 2 DE TOCQUEVILLE, *supra* note 2, at 945.

4. *Id.* at 1118.

5. de Tocqueville appreciated that this promise was functionally available only to white men, and not to "the Negro and the Indian," whom he called the "two unhappy races" in America. 1 DE TOCQUEVILLE, *supra* note 2, at 517.

selves,” and, “[o]nly four percent of those raised in the bottom quintile make it all the way to the top as adults.”<sup>6</sup> A separate report found that “in recent decades family income growth has slowed” and that “[u]nless economic growth picks up, the next generation will experience an improvement in its standard of living that is only about one-third as large as the historical average for earlier generations.”<sup>7</sup> These and other studies point to the same unavoidable conclusion, summarized by a prominent American public intellectual: “[O]ver the past decade, growing evidence shows pretty conclusively that social mobility has stalled in this country.”<sup>8</sup>

This reality is especially true for the urban poor, generally individuals in the United States who experience significant poverty, live in areas of concentrated urban poverty, and are disproportionately African-American and Hispanic.<sup>9</sup> “[M]ore than 70% of black children who are raised in the poorest quarter of American neighborhoods will continue to live in the poorest quarter of neighborhoods as adults.”<sup>10</sup> A leading expert on urban poverty, William Julius Wilson, similarly determined that “most black families who lived in the poorest neighborhoods in the 1970s continue to live in such neighborhoods today.”<sup>11</sup>

6. PEW CHARITABLE TRUSTS, PURSUING THE AMERICAN DREAM: ECONOMIC MOBILITY ACROSS GENERATIONS 2 (2012).

7. Isabel Sawhill & Sara McLanahan, *Introducing the Issue*, THE FUTURE OF CHILDREN, Fall 2006, at 3, 5.

8. Fared Zakaria, *The Downward Path of Upward Mobility*, WASH. POST (Nov. 10, 2011), [http://www.washingtonpost.com/opinions/the-downward-path-of-upward-mobility/2011/11/09/gIQAegpS6M\\_story.html](http://www.washingtonpost.com/opinions/the-downward-path-of-upward-mobility/2011/11/09/gIQAegpS6M_story.html); see also Rana Foroohar, *What Ever Happened to Upward Mobility*, TIME, Nov. 2011, at 26, 28 (“America’s story, our national mythology, is built on the idea of being an opportunity society. . . . [W]e have defined our country as a place where everyone, if he or she works hard enough, can get ahead. . . . [But] for most people, it’s harder to get ahead than it’s ever been in the postwar era.”); Jason DeParle, *Harder for Americans to Rise from Lower Rungs*, N.Y. TIMES, Jan. 5, 2012, at A1 (“American life is built on the faith that others can do it, too: rise from humble origins to economic heights. . . . Now the evidence suggests that America is not only less equal, but also less mobile.”); *Upper Bound*, ECONOMIST, Apr. 17, 2010, at 84, 84 (“If there is one thing [Americans] believe in above all, it is the ability to move ahead. . . . [But] rates of social mobility are unlikely to grow. . . . The evidence is that America does offer opportunity; but not nearly as much as its citizens believe.”).

9. More specifically, this class of Americans is defined by the following general characteristics: they are extremely poor, spatially confined to depressed metropolitan areas, disproportionately African-American and Hispanic, and subjected to public and private discriminatory policies, programs, and practices, both past and present. See Dawinder S. Sidhu, *The Unconstitutionality of Urban Poverty*, 62 DEPAUL L. REV. 1, 6–16 (2012).

10. Patrick Sharkey, *The Intergenerational Transmission of Context*, 113 AM. J. SOC. 931, 933 (2008). Although this study, and others, speak specifically to African-Americans in areas of concentrated urban poverty, it should be noted that this Article concerns the social mobility as to all peoples and races who constitute the urban poor. It is true, nonetheless, that the urban poor are disproportionately represented by African-Americans and Hispanics. See William Julius Wilson, *Public Policy Research and the Truly Disadvantaged*, in THE URBAN UNDERCLASS 460, 464 (Christopher Jencks & Paul E. Peterson eds., 1991) (“Sixty-five percent of the 2.4 million ghetto poor in the United States are black, 22 percent Hispanic, and 13 percent non-Hispanic and other races. Thus to speak of the ghetto poor in the United States is to refer primarily to blacks and Hispanics.”).

11. WILLIAM JULIUS WILSON, MORE THAN JUST RACE: BEING BLACK AND POOR IN THE INNER CITY 52–53 (2009); see also Anmol Chaddha & William Julius Wilson, “Way Down in the Hole”: *Systemic Urban Inequality and The Wire*, 38 CRITICAL INQUIRY 164, 164–65 (2011) (“[T]he

The urban poor, in other words, are marginalized economically and occupy the neglected corners of American social space. Furthermore, they lack meaningful opportunity to change either their prospects for social mobility or their physical location. They are stuck horizontally and vertically. This situation has reached a juncture that the urban poor are effectively considered unnecessary in the contemporary economy and society. John O. Calmore diagnosed that a “significant segment of today’s poor . . . are superfluous not only to the economy, but also to the nation’s societal organization,” referring also to their “isolation and expendability.”<sup>12</sup> David Simon, a former *Baltimore Sun* reporter and the creator of the acclaimed Baltimore-based HBO television series *The Wire* states more directly that “[t]hese really are the excess people in America. Our economy doesn’t need them . . . [They are] unprepared for the technocracy of the modern economy, [yet] we pretend to need them.”<sup>13</sup>

Whereas the “equality of conditions” in the United States, as a historical matter, sought to remove artificial barriers to prosperity (e.g., place of birth, family name, status, or wealth), in today’s America the salient characteristic that functionally predetermines one’s economic fate and opportunity to rise socially is geography. For example, Sergio J. Campos writes, “The primary source of [the black urban poor] subordination stems . . . from geography . . . . This is one instance in which one’s actual location literally defines one’s social position.”<sup>14</sup> This fact may be summed up this way: “The ZIP code you’re born in shouldn’t determine your destiny, but too often it does.”<sup>15</sup>

Accordingly, no longer, it seems, can we credibly hold out to ourselves nor to the world—or perhaps even to posterity—that upward mobility will reliably follow diligence and the drive to “make it.” And the “dream” is a particularly distant and unlikely reality for the urban poor among us.

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persistence and durability of concentrated disadvantage [in urban environments] . . . is reproduced across generations.”).

12. John O. Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 *FORDHAM L. REV.* 1927, 1943 (1999).

13. Bill Moyers, *The Straight Dope*, *GUERNICA MAG.* (Apr. 1, 2011), [http://www.guernicamag.com/interviews/2530/simon\\_4\\_1\\_11](http://www.guernicamag.com/interviews/2530/simon_4_1_11) (quoting David Simon) (internal quotation marks omitted).

14. Sergio J. Campos, *Subordination and the Fortuity of Our Circumstances*, 41 *U. MICH. J.L. REFORM* 585, 613 (2008).

15. Zakaria, *supra* note 8 (quoting a student interviewed by Opportunity Nation, a bipartisan group founded to address poverty issues) (internal quotation marks omitted); see also Reynolds Farley, *The Waning of American Apartheid?*, 10 *CONTEXTS* 36, 36 (2011) (“Where you live . . . determines much about what happens to you and your family, where your children attend school, how easily you can [access] health care (and the quality of that care), your exposure to crime, your opportunities for employment, the quality of your municipal services, your local tax rates, whether your home appreciates in value, and so on.”).



It is therefore incumbent upon those of us who subscribe to the national ethos memorialized by de Tocqueville or who are moved by relevant moral, social, or economic considerations to explore how social mobility can be more than a theoretical or aspirational possibility and can be restored in real terms for the urban poor.<sup>16</sup> Investments in improved social services, housing, education, and infrastructure are some of the traditionally discussed means by which the urban poor may break loose from their economic marginalization and physical isolation.<sup>17</sup> Changes in the criminal justice system, including a comprehensive reevaluation of the purported social benefits and consequences of the War on Drugs, as well as enhanced efforts to reintegrate ex-offenders into mainstream society, have been forcefully recommended.<sup>18</sup>

In this Article, I explore whether civic education—an understanding of the structure of the government, the individual rights protected by the U.S. Constitution, and how one may affirmatively participate in government—in high schools in urban areas has anything to offer in terms of increasing the prospects for the social mobility of the urban poor.<sup>19</sup> Since the founding of the nation, civic education has been viewed as a neces-

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16. I focus on the urban poor because of my experiences living, working, and contributing to a community project in Baltimore, Maryland and Washington, D.C. The plight of the urban poor especially resonates with me for this personal reason. This discussion should not be construed to indicate that other geographic sectors of the American landscape are unworthy of similar inquiries. In fact, it is my sense that the lessons that may be extracted from this Article parallel those that may be found in other American pockets, particularly as to the rural poor and Indian country.

17. See, e.g., *America's Wasted Blacks*, *ECONOMIST*, Mar. 30, 1991, at 14 (proposing “expensive policies . . . to lure better teachers and school managers into the cities, to build transport links to the suburbs where the jobs are, [and] to train young people for jobs”); Zakaria, *supra* note 8 (“The ingredients [for social mobility] are obvious: decent health care and nutrition for children, good public education, high-quality infrastructure—including broadband internet—to connect all regions and all people to market opportunities, and a flexible and competitive free economy.”).

18. See Chaddha & Wilson, *supra* note 11, at 170 (“Faced with the expectation of producing numbers, police departments are encouraged to focus on poor, inner city neighborhoods to provide a greater number of arrests, especially by targeting the open-air drug trade.”); *id.* at 168 (“[T]he incarceration rate is substantially higher for residents in neighborhoods . . . of concentrated disadvantage.”); see also MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 13 (2010) (“Like Jim Crow (and slavery), mass incarceration operates as a tightly networked system of laws, policies, customs, and institutions that operate collectively to ensure the subordinate status of a group defined largely by race.”); Alexander Polikoff, *America and Its Black Ghettos*, in *PUBLIC HOUSING AND THE LEGACY OF SEGREGATION* 99, 102 (Margery Austin Turner et al. eds., 2009) (“The war on drugs, which is producing no demonstrable effect on drug availability, drug crime rates, or crime rates generally, is directly responsible for the drug black market and for the crime it breeds, while diverting money from education and social initiatives.” (footnote omitted)). Respondents to this survey, perhaps moved by the importance and complexity of the subject matter, volunteered intriguing alternative proposals for how social mobility may more reliably reach the urban poor. See, e.g., E-mail from Kent Talbert, Former General Counsel, U.S. Dep’t of Educ., to Author (Oct. 20, 2012, 19:20 PM) (on file with author) [hereinafter Talbert] (suggesting that, in addition to civics education programs, students should be taught “free enterprise and entrepreneurship principles on how to start and operate a business”). “Teaching individual accountability, responsibility, hard work and the like as part of overall civics instruction can go a long way toward eliminating poverty.” *Id.*

19. I examine the relationship between urban poverty and civic education because I founded a civics program at the law school where I teach, have participated as a judge at a similar program, and happen to believe as a principled matter that civic knowledge and engagement are essential to a healthy democratic society.

sary piece for the democratic machinery to function well and function throughout the ages. "Those who won our independence believed," explained Justice Louis Brandies, "that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government."<sup>20</sup> If civic education keeps alive and replenishes our democracy, it may be helpful to diagnose whether there are additional significant functions that civic education can serve in our republic, namely the ability to facilitate social mobility in urban environments.

## II. METHODOLOGY AND SUMMARY

Thankfully, this inquiry does not begin in a vacuum. A number of dedicated Americans have committed themselves to civic education in high schools and urban poverty both independently and where these two subjects intersect. This Article draws on and memorializes the commendable work of these individuals, framed around the question of the overlap between civic education in high schools and the social mobility of the urban poor.

More specifically, in an effort to appreciably determine if there is a relationship between civic education in high schools and facilitating the social mobility of the urban poor, I interviewed a number of individuals: educators who manage high schools in neighborhoods of urban poverty, education officials, sociologists who focus specifically on the urban poor, advocates with organizations dedicated to promoting civic education, legal academics who are experts in constitutional law or who participate in civic education programs, and law students who have taught civics to underserved high school students, among others. A range of individuals, several of whom are leaders in their respective fields, was interviewed to enrich the quality of the substantive responses on whether such a relationship exists.

Instead of seeking broad and guideless responses that may be unmanageable and not optimally helpful for the reader, the responses were structured around the following topics: first, the practical value, if any, of civic education programs for students attending schools in areas of concentrated urban poverty; second, whether such civic education programs can serve a role in improving urban poor students' prospects for achieving social mobility; third, how these programs can be tailored to be most effective for students in areas of urban poverty; and fourth, what responsibility, if any, law schools may have with respect to (a) organizing civic education programs in areas of concentrated urban poverty, and

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20. *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring).

(b) developing tangible solutions that are designed to address the limited social mobility of the urban poor, more broadly.<sup>21</sup>

With a view towards supplementing the substantive responses, I visited inner city high schools in southeast Washington, D.C., and Harlem, New York, which integrate, to various degrees, civic education programs into their particular curricula. These visits provided a more tangible dimension to this research and enabled me to confer directly with administrators who not only implement civic education in their educational requirements, but also are part of overall efforts to enlarge the social welfare of their urban communities more generally.

The respondents first reported that there are practical benefits to civic education programs. Second, these benefits, they generally agreed, can be useful with respect to the social mobility of the urban poor. To be sure, this consensus cannot be described as unanimous because there were dissenting voices on both points, which were more pronounced as to the latter of the two. Third, the respondents also provided several suggestions as to how the benefits of civics programs can be maximized in urban environments. Fourth, the respondents were quite reluctant to hold that law schools possess some responsibility either to host civics programs in urban settings or to divert their intellectual capital towards resolving urban poverty itself.

These responses confirm my opinions based on my own experience in civics programs and supplementary studying of the issue: that there is practical value to civic education programs; that these programs can provide benefits to students in areas of urban poverty that can be useful in the achievement of social mobility; and that there are ways to tweak existing civic education programs to make them more effective. I cannot share the respondents' view, however, that law schools are without any responsibility to participate in civic education programs or to help dismantle urban poverty more generally. Law schools should be producing individuals who are capable of serving, and are inclined to serve, their clients as well as their communities at large,<sup>22</sup> and should be writing about and proposing solutions to society's most persistent and devastating problems, such as entrenched generational poverty in urban areas.

Before proceeding, I must enumerate the reasons why this inquiry is warranted. The first is self-evident—the very existence of concentrated urban poverty, which is significant and perpetual over time, calls for new

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21. Please note that these individuals provided responses in their individual capacities. Their responses, as a result, should not be construed as official statements of their respective organizations or employers. I provide the respondents' titles and institutional affiliations for identification purposes only.

22. See Charles J. Crimmins, *Teaching the Constitution: An American Tradition*, 90 *DENV. U. L. REV.* 1003, 1018–21 (2013) (arguing that legal education, as envisioned by Thomas Jefferson and George Wythe, was designed to develop a cadre of “citizen lawyers,” or civically conscious and engaged lawyers).

and additional ideas for its banishment. Second, this Article provides law schools with information on whether to start or fund civic education programs, and high schools with information on whether to allow such programs. Third, those who participate in civic education programs may assume that there is a tangible, positive social advantage to such programs, and a sense of fulfillment may follow as a result. This study examines whether this self-congratulatory impulse can be validated by evidence on the ground.

I must also acknowledge the primary limits on the potential benefits of this Article. First, this Article does not suggest that civic education will solve the depressed economic and marginalized physical situations of the urban poor. Nor does it argue that civic education will serve as the tipping point that when added to other initiatives, will unleash a flood of liberty that has been previously held back from the urban poor. The Article does, however, address whether civic education can be part of a viable solution to the elimination of barriers to the social mobility of the urban poor.

Second, though the subject of this Article does not begin in a vacuum, neither does this Article pretend to end that inquiry. Indeed, the findings in this Article should be construed as preliminary because its contents are based on interviews with a fixed universe of respondents. As noted above, this Article does not start from scratch—it harnesses and orients the existing work of various respondents as to a particular issue. This Article hopefully will serve as a springboard for further and more comprehensive exploration as to whether civic education can help reanimate and give full meaning to the American promise of upward social mobility—a promise that defines this nation and distinguishes it from other political experiments.

### III. DISCUSSION

#### *A. Practical Benefits of Civic Education*

There is practical value to civic education programs for students attending secondary schools in areas of concentrated urban poverty. More specifically, such programs provide several benefits, which may be subdivided into three categories, with admittedly soft edges: personal or developmental benefits that speak to high school students' growth as individuals and a widening of their perspectives as it relates to the world outside; educational or professional benefits that focus on the students aspiring towards higher education and perhaps law school; and finally, democratic or institutional benefits that touch on high school students' ability to participate effectively as citizens and in governance.

## 1. Personal or Developmental Benefits

a. Civics programs may adjust high school students' perceptions of the law such that the law is not seen as an inaccessible, external force or barrier to their welfare, but rather as an organic framework that they can understand, actively engage in, and improve through such engagement.<sup>23</sup> "When the vast majority of interactions you and those around you have with 'the system' are negative, of course it would be natural to develop biases against it and to think it is stacked against you," notes Dr. Jennifer Husbands.<sup>24</sup> Civics programs therefore "help[] us teach the youth that the law is not an external force that is constantly pushing down on them . . . . Rather, the law is something that they can get involved with and change," a law-student civics teacher told me.<sup>25</sup> Professor Margaret Fisher adds that civics programs encourage students' "[i]nclusion in the process" and can shift "urban poor youth's perspectives . . . from being on the outside to being on the inside."<sup>26</sup>

b. This modification in mentality and perspective can generate greater social cooperation with the law and legal institutions.<sup>27</sup> "The practical value" of civic education programs, identifies Parker Hudnut, "is ensuring that the basic principles of the American democracy are understood and can therefore be lived by."<sup>28</sup>

c. Civics programs enable high school students to process and formally discuss real problems that they may be encountering in their lives. As an example, civics programs may cover Fourth Amendment standards regarding searches and seizures, where high school students may have had interactions with police or know of family, friends, or neighbors who have had such interactions.<sup>29</sup> Civics programs thus may contain "content that is very useful for their personal life issues."<sup>30</sup>

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23. See E-mail from Alexandra Pardo, Exec. Dir., Thurgood Marshall Acad., to Author (July 20, 2012, 7:07 EST) (on file with author) [hereinafter Pardo] ("If the student sees him/herself as part of that system and not 'against' the system he/she can engage in the system positively."); see also E-mail from Genevieve Norwood, Former Law Student Civics Teacher, to Author (Aug. 2, 2012, 16:30 EST) (on file with author) [hereinafter Norwood] (commenting that a participating high school student can learn how the laws "can be changed" such that he may "feel as if he is a part of a democratic system").

24. E-mail from Jennifer Husbands, Dir., AUSL, to Author (July 16, 2012, 15:36 EST) (on file with author) [hereinafter Husbands].

25. *Law Students Teach Civics to High School Students*, U.N.M. SCH. L. (Sept. 10, 2012), <http://lawschool.unm.edu/news/archives/2012/sept/marshall-brennan.php> (quoting Jacob Vallejos) (internal quotation marks omitted).

26. E-mail from Margaret Fisher, Distinguished Practitioner in Residence, Seattle Univ. Sch. of Law, to Author (Aug. 5, 2012, 15:27 EST) (on file with author) [hereinafter Fisher].

27. See Norwood, *supra* note 23 (noting that civics classes "help[] bring about this transparency and trust" such that students "in turn [may be] more inclined to trust it and abide by its laws").

28. E-mail from Parker Hudnut, CEO, ICEF Pub. Sch., to Author (Sept. 27, 2012, 12:46 EST) (on file with author) [hereinafter Hudnut].

29. See E-mail from Josh Blackman, Assistant Professor of Law, S. Tex. Coll. of Law, to Author (July 31, 2012, 22:44 EST) (on file with author) [hereinafter Blackman] ("I once gave a lesson to a group of 8th graders, where I told them that they had no obligation to talk to the police,

d. These programs carry the added benefit of allowing students to bring their “practical life experience” to the classroom, where such experience may be otherwise overlooked or underappreciated in other traditional educational curricula.<sup>31</sup>

e. The law student teachers can serve as mentors and role models,<sup>32</sup> where participating high school students may “[l]ack . . . civic education examples at home [and] in community that may be positive.”<sup>33</sup> These programs “can give students the kinds of experiences that make learning fascinating, rewarding, and uplifting,” and these experiences can in turn “empower them,” notes Charles Quigley.<sup>34</sup>

## 2. Educational or Professional Benefits

a. A benefit that closely parallels the more personal benefits of civics education is that the law student teachers can be examples of individuals who have overcome obstacles to achieve academic success and are now on the verge of being lawyers, leaders, or both in their communities.<sup>35</sup>

b. Relatedly, civics programs in urban environments can serve as a pipeline from high schools to higher education in general and law schools in particular. “Many of the law school-based Street Law programs think of themselves as operating pipeline efforts designed to expose high school-age students to law as a career, motivate them to improve academic performance, continue on to higher education, and consider law school,” says Lee Arbetman about Street Law.<sup>36</sup>

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and if a police officer talks to them, they should request a parent be present (if possible). The teacher was aghast at what I was saying, and I’m sure wanted me to stop, but I continued . . . . These are lessons that many of them might face in their futures.”)

30. Fisher, *supra* note 26; see also E-mail from Lee Arbetman, Exec. Dir., Street Law, Inc., to Author (July 17, 2012, 12:03 PST) (on file with author) [hereinafter Arbetman] (“The specific value [of civic education programs includes] instruction in practical legal content . . .”).

31. Fisher, *supra* note 26.

32. For the benefit of civic education programs to law students, see Jill Friedman, Conrad Haber & Eve Biskind Klothen, *Educating Young People About Law in a Disadvantaged City: Rutgers University School of Law and the City of Camden, New Jersey*, 90 DENV. U. L. REV. 937, 953–54 (2013).

33. Pardo, *supra* note 23.

34. E-mail from Charles Quigley, Dir. & Founder, Ctr. for Civic Educ., to Author (July 24, 2012, 11:55 AM) (on file with author) [hereinafter Quigley].

35. Professor Fisher points out that civics programs generate “[e]xposure to careers and connections to real persons who are successful in law-related fields. Many of these individuals have overcome urban poverty to succeed. This also encourages these young people to continue in school.” Fisher, *supra* note 26. In this respect, higher education and even graduate school may be seen as more than an aspiration or ideal, but a real possibility that is attainable and that may be actualized. *See id.*

36. As a result, and because these programs are based primarily in low-income areas that have a disproportionate representation of minorities, the programs “are also a part of the overall effort to help diversify the legal profession.” Arbetman, *supra* note 30. For those who may not be aware, Street Law sends second- and third-year law students at the Georgetown University Law Center to “teach practical law and public policy lessons in District of Columbia [p]ublic [h]igh [s]chools using creative, interactive teaching methods.” E-mail from Lee Arbetman, Exec. Dir., Street Law, Inc., to

### 3. Institutional or Democratic Benefits

a. With respect to benefits concerning high school students' ability to participate meaningfully in the law and democratic self-government, civics programs may give high school students basic knowledge of the law that may be a prerequisite for the ability to trigger social change and for being a genuine part of the democratic system.<sup>37</sup>

b. Civics programs may encourage students to effectuate change by way of the voting booth or ordinary political means, on which the urban poor historically have not relied to enhance their conditions.<sup>38</sup> The participating high school students not only may be more inclined to exercise the franchise but also may be more informed voters as well.<sup>39</sup> In this respect, Mr. Arbetman notes that civics programs offer students "the opportunity to develop civic dispositions leading to meaningful and effective participation in our form of government."<sup>40</sup>

c. Civics programs may fulfill a democratic imperative that in order for the nation to function and function well, its citizens must have a certain threshold understanding of their rights and responsibilities. For example, Robert Cane, executive director of FocusDC, notes that "all stu-

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Author (Jan. 8, 2013, at 18:50 PST). "More than 70 law schools in the U.S. self identify as having Street Law type programs with another 50 or so in existence around the world." *Id.*

37. A law student civics teacher states, "[T]o effectively advocate on behalf of your community and to feel empowered to do so . . . you need to understand the way the system works." E-mail from Shelby Berchelmann, Former Law Student Civics Teacher, to Author (July 30, 2012, 19:37 EST) (on file with author) [hereinafter Berchelmann]. J.B. Schramm, founder and chief executive officer of College Summit, a non-profit that seeks to raise college enrollment levels in traditionally low-income areas, notes that civic education "can help young people understand how they can strengthen their community." E-mail from J.B. Schramm, Founder & CEO, College Summit, to Author (July 19, 2012, 13:25 EST) (on file with author) [hereinafter Schramm]. Mr. Quigley explains that civics programs "should provide students with the kind of understanding of the fundamental . . . values, principles, and goals of our political system that leads to a reasoned commitment to them and a constant reference to them when participating in political life and evaluating, taking, and defending positions on public policy." Quigley, *supra* note 34. Ms. Pardo comments that "[s]tudents through civic education begin to understand the policies, systems, organizations, [and] stakeholders . . . that impact them and their community." Pardo, *supra* note 23. She adds that this foundational knowledge may correct substantive misconceptions about the law and the legal system: "[S]tudents have many misunderstandings about how government functions and policy is created, implemented, [and] understood." *Id.*

38. See Blackman, *supra* note 29 ("[Civics programs can impart] basic knowledge of how voting works [and why] exercising the right to choose your representative . . . is . . . important . . . [That is, t]o the extent that [participating high school students] realize their vote, or corresponding failure to hold elected officials unaccountable, may impact their prosperity in many regards, they will be better off.").

39. Stanford Law Professor and former Circuit Court Judge Michael W. McConnell states that civics programs can help high school students "learn to be intelligent, skeptical consumers of political promises. All too often young people vote on style, with little regard for the long-term implications of policy." E-mail from Michael W. McConnell, Richard & Frances Mallery Professor of Law, Stanford Law Sch., to Author (July 17, 2012, 11:12 EST) (on file with author) [hereinafter McConnell].

40. Arbetman, *supra* note 30.

dents should be firmly grounded in civics so as to be able to participate fully in our democracy.”<sup>41</sup>

I align myself with the respondents who have identified these benefits. I agree with these respondents even in consideration of those who were not as sanguine about the value of civic education in urban high schools. One respondent, a university professor who is involved in the assessment of the quality of education in traditionally underserved urban environments, expresses concern about the opportunity costs of civics programs. He says that whatever the purported benefits enumerated above,

it is important to consider what the time spent in the civic education program would have been devoted to. For instance, one should think differently about the value of a civic education program if it crowds out time spent learning math th[a]n if it crowds out time spent doing something unproductive.<sup>42</sup>

Dr. Massey, perhaps one of the most respected sociologists in the field of urban poverty,<sup>43</sup> registers serious doubt as to whether civic education can overcome the significant entrenched structural causes of urban poverty. He assesses civics education in urban environments as having “[l]imited value,” precisely because “[t]eaching rights theoretically bestowed by the [C]onstitution when poor minorities’ *de facto* rights are systematically compromised by a corrupt and racially biased judicial and criminal justice system is not going to solve the problem.”<sup>44</sup> “The problem,” Dr. Massey claims, “is not a lack of awareness of rights, it is the inability of entire classes of people to exercise those rights in the face of overwhelming power and authority arrayed against them.”<sup>45</sup>

It seems to me that the respondents’ reactions to the query about the value of civic education for high school students in areas of urban poverty can be reconciled and are not in conflict—they merely invoke a different baseline in adjudging whether there is any advantage to civics education programs. The positive benefits identified by the respondents speak to the potential advantages of civic education programs for high

41. E-mail from Robert Cane, Exec. Dir., FocusDC, to Author (July 16, 2012, 15:17 EST) (on file with author). Dr. Husbands similarly states that “[e]very American student, regardless of socioeconomic status, should receive civic education to understand democracy and basic rights.” Husbands, *supra* note 24.

42. E-mail from Anonymous Respondent, Assoc. Professor, to Author (Aug. 20, 2012, 15:39 EST) (on file with author) [hereinafter Anonymous Respondent].

43. See Doug Massey, *Princeton Sociology Dep’t*, PRINCETON UNIV., <http://www.princeton.edu/sociology/faculty/massey/> (last visited Apr. 17, 2013); see also Douglas S. Massey *Curriculum Vitae*, PRINCETON UNIV., [http://www.princeton.edu/sociology/faculty/massey/cv\\_massey.pdf](http://www.princeton.edu/sociology/faculty/massey/cv_massey.pdf) (last visited Apr. 17, 2013).

44. E-mail from Douglas S. Massey, Henry G. Bryant Professor of Sociology & Public Affairs, Woodrow Wilson Sch. of Public & Int’l Affairs, Princeton Univ., to Author (July 17, 2012, 7:57 EST) (on file with author) [hereinafter Massey].

45. *Id.*



school students relative to their understanding or situation prior to the commencement of the programs. By contrast, Dr. Massey's comments touch upon the value of such civic education programs relative to the structural reasons for urban poverty that have been amassed against and to the detriment of the urban poor.<sup>46</sup>

Moreover, the law professor's comment appears to be based on a concern that civics should not crowd out instruction in other critical subjects; I do not believe, however, that schools need to be faced with an either-or proposition of either offering civics or offering math, science, and similar essential courses. Rather, civics should be taught along with, not at the expense of, these courses. Indeed, it is problematic that civics may be seen as expendable, and that civics is not seen as capable of compatibly coexisting with these courses and not occupying the same tier of educational importance as math, science, etc. Accordingly, even upon considering the more pessimistic responses, the benefits of civic education generally should not be set aside or dismissed.

### *B. Civic Education and Social Mobility*

Civic education programs provide benefits to high school students situated in areas of urban poverty, and one of those benefits includes enhancing urban poor students' prospects for achieving social mobility. That is, civic education can serve a role and be part of a viable solution to minimizing or eliminating the causes and effects of urban poverty. Although respondents mostly agreed that there is a plausible relationship between civic education and enlarging the social mobility of the urban poor, this sense is not universally shared. In fact, there is greater skepticism as to the existence of this relationship, as compared to the more general concern of whether civic education has any practical value overall.

1. In support of a connection between civic education and enhancing the social mobility of the urban poor, respondents noted that civic education programs may create or supplement high school students' networks of individuals who have demonstrated an ability to overcome modest circumstances to reach higher education and potentially hold positions of power and influence. Such networking is important because

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46. In response to Dr. Massey's take on civic education in schools situated in urban environments, David Wakelyn of Democracy Prep, a network of public charter schools in Harlem, New York, that makes it its mission to "educate responsible citizen-scholars for success in the college of their choice and a life of active citizenship," DEMOCRACY PREP, <http://www.democracyprep.org> (last visited Apr. 19, 2013), notes that some may have not seen the tangible benefits of civic education on a micro level, and that as a result, they may not see the potential of such programs if and when they grow in scale. Interview with David Wakelyn, Senior Dir. of Strategy & Dev., Democracy Prep, in Harlem, N.Y. (Aug. 3, 2012). I share Wakelyn's view that with a significantly increased reach of such civic education programs, the beneficiaries of these programs may, in concert with others, be able to meaningfully contest and tear down the entrenched structural problems giving rise to and reinforcing urban poverty.

urban high school students may be detached from individuals who have succeeded in pursuing higher education, attaining meaningful employment, or engaging in the civic life of the country. Civics programs, however, may help bridge the gap between high school students' existing role models, on the one hand, and accessible individuals who are doing well academically and generally have bright professional futures ahead of them, on the other.<sup>47</sup>

2. Civic education programs may give high school students the tools to converse and engage with individuals for purposes of changing public policy or obtaining meaningful employment.<sup>48</sup> Mr. Arbetman mentions that these programs can assist in the "development of skills that are needed [for the participating students] to navigate our law-saturated society."<sup>49</sup> Elisabeth Medvedow of Discovering Justice explains, "By teaching young people about law, justice, government, and democracy, in combination with exposure and introductions to lawyers, judges, and legal professionals, students will have their eyes opened to new career possibilities in their lives."<sup>50</sup>

3. Related to the potential of giving students the common instruments to participate in the mainstream contexts, civic education programs may encourage or activate students' interests in civic engagement. For example, Professor Blackman comments, "To the extent students understand how their government structure, and related voter apathy, may keep them in poor conditions, they may be motivated to either get more involved, or seek institutions that are more responsive to their needs."<sup>51</sup>

4. The urban poor are, functionally speaking, politically orphaned.<sup>52</sup> But civic education programs may give the urban poor the substantive knowledge of the government such that they may be able to independent-

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47. For example, Professor Fisher states that civic education programs "can have an impact on reducing the effects of urban poverty . . . by providing connections to individuals who have found a way out . . . and many times overcome the same type of obstacles as they are facing." Fisher, *supra* note 26.

48. As one former law student teacher indicates, "[C]ivic education programs can help students work on their critical thinking, writing, and reading skills, which are all helpful when advocating for one's self and acquiring employment." Norwood, *supra* note 23. "Often, people of influence in government are in a higher income bracket, and by giving everyone the tools to represent themselves and their needs, it helps decrease this gap," she explains. *Id.*

49. Arbetman, *supra* note 30.

50. E-mail from Elisabeth Medvedow, Exec. Dir., Discovering Justice, to Author (Aug. 2, 2012, 15:02 MST) (on file with author).

51. Blackman, *supra* note 29. Similarly, Dr. Husbands writes, "[T]he more urban teens know about the system that surrounds them and how it actually works (or can work), they may be more empowered." Husbands, *supra* note 24.

52. See Sidhu, *supra* note 9, at 14–15.

ly advocate for their interests, rather than depend on political actors for assistance.<sup>53</sup>

Accordingly, and in sum, there is consensus among the respondents surveyed that civic education may play a role in enhancing social mobility of high school students in areas of urban poverty. Even the most optimistic respondents acknowledged, however, that civic education will not, alone, remedy the entrenched causes of urban poverty, though it may help chip away at those causes and their deleterious effects.<sup>54</sup>

Other respondents, however, resisted the suggestion that civic education can serve any meaningful part in enhancing the social mobility of the urban poor.<sup>55</sup> This reluctance was more pronounced than the question of whether civics education has any practical benefits in the urban high school setting. For instance, Dr. Massey admits to being “skeptical of civics as an antidote to the terrible inequalities of class and race that prevail in the United States.”<sup>56</sup> As with his response to the existence of any benefits to civic education, however, I suspect that Dr. Massey’s sense is tied to his baseline (i.e., the entrenched situation of the urban poor, rather than the level of civic capacity possessed by the urban poor).

Dr. Massey also rejects the premise that civic education can play some role in improving social mobility for the urban poor: “[K]nowledge of rights and principles of democratic government are not going to help students compete in a post-industrial knowledge economy when the schools they attend leave them barely literate in English, math, and science, not to mention critical thinking.”<sup>57</sup> Dr. Massey’s comments highlight the inadequacy of education generally in urban environments. Studies indicate that schools in areas of urban poverty are not preparing students with basic skills or with the ability to participate in the modern economy.<sup>58</sup> Viewed against the backdrop of the inadequate educational

53. See Talbert, *supra* note 18 (“As . . . students become educated on local, state, and national government and citizenship, they will use that to improve their position in life and be able to move from the category [of] urban poor to middle class or better.”); see also Norwood, *supra* note 23 (noting that civics may provide students with “an understanding of government so that they have an outlet to voice their opinions and needs”).

54. Mr. Arbetman states that “sending smart, well-intentioned law students into urban schools will not, by itself, do the trick.” Arbetman, *supra* note 30. Mr. Hudnut observes that civic education programs “certainly can be a part but they will not in and of themselves solve the crisis.” Hudnut, *supra* note 28. Mr. Quigley adds, “Civic education is not a panacea, but it can and should be used to diminish the problem as much as possible[,] and it has the potential to do so.” Quigley, *supra* note 34. Mr. Talbert echoed this view: “Civic education can be a viable solution (it’s only part of the solution) for minimizing or eliminating the effects of poverty.” Talbert, *supra* note 18. A law-student civics teacher joined the chorus: “[C]ivics education programs help, but while uncoordinated with larger efforts by organizations committed to creating change, law schools will not move the needle significantly enough.” Berchermann, *supra* note 37.

55. Professor McConnell asserts that to the extent that civic education programs “can develop students’ minds and abilities and encourage them to work hard and succeed,” the ability of civic education to facilitate social mobility is “[d]oubtful, but not impossible.” McConnell, *supra* note 39.

56. Massey, *supra* note 44.

57. *Id.*

58. See Sidhu, *supra* note 9, at 20–23.

opportunities of urban high school students, providing civic education to such students may be seen, at worst, as a lost cause and, at best, as a partial toolkit where more fundamental and basic aspects of a student's skill set, such as reading and writing, may be lacking. Accordingly, for civics to serve a useful role in urban high school students' ability to attain greater social mobility, the quality of their core education must be assured.

Even accepting this, we, again, are not presented with an either-or proposition in which civics will be taught at the expense of other critical subjects. Indeed, to argue in favor of civics education, and therefore the accrual of the certain benefits that will flow from civics, is not to suggest that other instruction in English, math, or science should be pushed aside. As Justice Sandra Day O'Connor, a champion of civics education, notes in a co-authored essay, to promote civic learning is not "to diminish the importance of improving math and science education."<sup>59</sup> "We need more students proficient in math, science and engineering. We also need them to be prepared for their role as citizens."<sup>60</sup>

In short, these respondents' objections, however thoughtful and well-reasoned, are not enough to overcome the modest proposition that civics can play a meaningful part in facilitating the social mobility of high school students in areas of concentrated urban poverty.

### *C. Tailoring Civics Programs for Maximum Value in Urban High School Settings*

The benefits of civic programs are not automatic; the programs must be structured and taught effectively for the identified benefits to materialize. There are ways to help ensure that the benefits identified above spring from civics instruction. The role of law schools, law student teachers, and the civics curriculum each can be addressed in order to fulfill the potential of these programs.<sup>61</sup>

#### 1. Law Schools

a. A concerning practice has developed where some law schools seem to be selling civics programs to law students as an opportunity to improve the *law students'* credentials and to "save" poor students. Alexandra Pardo, executive director of the Thurgood Marshall Academy, explains that "[t]he experience becomes more about the law students['] own development and growth than that of the high school students" and

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59. Sandra Day O'Connor & Roy Romer, *Not by Math Alone*, WASH. POST (Mar. 25, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/24/AR2006032401621.html>.

60. *Id.*

61. To be sure, not all respondents offered any specific ideas. Instead, some of the respondents simply repeated their skepticism that civics education had any part to play in elevating urban poor students' opportunities for social mobility.

that law students “feel the need to ‘save’ the kids.”<sup>62</sup> She convincingly states, however, that law schools must emphasize that civics programs are about the development of the high school students and that civics programs, although important, are only part of high schools’ efforts to enhance the knowledge base and skills of the high school students.<sup>63</sup> In other words, law schools must present civics education programs as a way to develop high school students, not to advance law students’ own interests. Any benefits to law students themselves, therefore, should be seen as incidental to the cardinal purpose of the civics programs.

b. As noted above, law-student civics teachers may provide high school students with mentorship and with support that the high school students may be otherwise lacking. The law students also may exist as real-life examples of individuals who have been able to reach not only college but also law school, and who are on the precipice of joining a respected public service profession. To ensure this relationship exists between the law students and high school students, law schools should select law student teachers who demonstrate a sincere interest in the high school students and who, because of their own experiences, may be able to relate to the high school students. Professor Fisher, for example, “strongly suggest[s] recruiting law students from the minority student organizations,” who may “come from similar backgrounds” as the high school students.<sup>64</sup> It is important to select law students in this fashion, according to Professor Fisher, because the law students, ultimately, must “be authentically interested in the [high school] students,” be able to “connect with [the high school students] one on one,” and “take the time to ask about issues/events that are important to [the high school students].”<sup>65</sup>

## 2. Law School Civics Teachers

a. In addition to law schools, there are ways to calibrate the law-student civics teachers to ensure that the positive benefits of the civics programs materialize. Due to the fact that the law students may be seen as mentors and as role models, the law student teachers should be open to developing meaningful, long-term professional and mentoring relation-

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62. Pardo, *supra* note 23.

63. *Id.*

64. Fisher, *supra* note 26.

65. *Id.* Mr. Arbetman seems to agree, stating that a “practical suggestion . . . is to recruit . . . from [the Black Law Students Association] and other minority law student organizations on . . . campus.” Arbetman, *supra* note 30. There may be a sense that law students from the same backgrounds or neighborhoods as the high school students may be more likely to connect with the high school students. There is intuitive appeal to this argument. I wish to emphasize, however, that any law student with a genuine interest in the welfare and development of high school students can be a successful civics teacher and mentor, and that race itself should not be used as a proxy for such interest or ability. Moreover, civics programs would be committing a disservice to the high school students if these programs were to suggest to high school students that only individuals of a given race are capable of exhibiting such interest or ability. In short, such capability should not be presumed by or tied to race.

ships with the high school students. Put differently, the law student teachers should not perceive their responsibilities towards the high school students as being defined by the class period or as ending with the semester or academic year, whichever the case may be. A law student teacher puts it this way: "To have a greater impact, . . . there needs to be ongoing contact between the students and teachers for the change to be long lasting."<sup>66</sup>

b. Even during the term of the civics program, law student teachers can open up the opportunities for mentorship and demonstrate concern for the high school students by being available both before and after class sessions, by being available after the end of the semester or academic year, and by making an effort to attend events of importance to the high school students, such as sports matches, plays, or celebrations.<sup>67</sup>

c. The law student teachers themselves should be adequately trained. Mr. Arbetman concedes that "[w]ithout significant training in empowering pedagogy, law students may teach as they have (for the most part) been taught and the results will not be positive."<sup>68</sup> He further notes that "we can't expect law students to be proficient at teaching, particularly in challenging urban school settings."<sup>69</sup> Mr. Quigley shares this concern: "[T]he vast majority of teachers do not have the required subject matter background and skills in using the kind of interactive methodology that is required for effective civic education programs. [The teachers] need inspiration and professional development."<sup>70</sup>

d. The law student teachers must comport themselves in a professional manner, both in words and in appearance. Ms. Pardo, for example, observes that "[s]tudents in areas of high poverty need to learn soft skills—professional dress being one of them. When students see their teachers in less than professional dress[,] this sends the message that it is appropriate to wear 'street' clothes in such a setting."<sup>71</sup> In short, "[s]tudents model what we do."<sup>72</sup> As a corollary, law student teachers must resist the temptation to sacrifice professional modes of behavior to be more accepted by the high school students. Ms. Pardo elaborates:

Students do not benefit from a law student (or anyone else) who comes in and wants to be friends with them while the person is unable to distinguish [his or her] role as a role model or adult in the classroom. Too often, we've had unsuccessful law students at the

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66. Norwood, *supra* note 23.

67. *See id.* ("[C]urrently law school civic education programs targeting urban poverty are too short lived[,] and the reach is not broad enough to make sweeping changes to the landscape of urban poverty.")

68. Arbetman, *supra* note 30.

69. *Id.*

70. Quigley, *supra* note 34.

71. Pardo, *supra* note 23.

72. *Id.*

school because they want to come into the building[,] share their knowledge[,] and not recognize that the students need structure of a class.<sup>73</sup>

Although the instinct to want to develop a strong rapport with the high school students and be likeable in general is understandable, informal or inappropriate language undermines both the professionalism that is necessary for these programs to succeed and the example that should be set for the high school students.

### 3. Civics Curriculum

a. Because personal development purportedly is a key advantage of these civics education programs and the high school students' existing support mechanisms may be modest, the law student teachers should positively reinforce the high school students whenever possible, as appropriate and consistent with established pedagogical standards. Professor Fisher notes that the law student teachers should "give [high school] students a chance to shine" and "use positive feedback regularly."<sup>74</sup>

b. Dr. Husbands suggests that for the law and legal principles generally to seem more accessible to the high school students, and conversely for the law and governing doctrine not to appear removed and distant, the law student teachers should incorporate local landmarks and "local stories or cases with which they may be familiar or have them provide examples."<sup>75</sup>

c. The law student teachers should allow the high school students to speak with other possible leaders and successful individuals from the legal community. Dr. Husbands suggests that perhaps high school students should "hear from a judge who is from a similar background as them (racially/ethnically and socioeconomically) to share his or her perspective on the justice system and how their life choices will influence how they do and do not interact with it."<sup>76</sup>

d. Relatedly, to reduce the possibility that high school students will see the law as a foreign and unsavory force imposed (perhaps disproportionately) on them, the law student teachers should have high school students meet with legal actors in a friendly, non-adversarial fashion. Such interaction may break down preconceived notions and may permit a more human, informal connection to be built. One law student teacher

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73. *Id.*

74. Fisher, *supra* note 26.

75. Husbands, *supra* note 24. Professor Fisher similarly states that the law students should "localize hypos and examples." Fisher, *supra* note 26. Professor Blackman takes an additional step, noting that perhaps the law student teachers should explore the possibility of role-playing "instances where students from that school have been disciplined in a manner that touched on the [First, Fourth, and Fifth] [A]mendment[s]." Blackman, *supra* note 29.

76. Husbands, *supra* note 24.

offered that, where high school students “look upon cops and the ‘system’ as villainous, as opposed to supportive, . . . exposing at-risk youth to law enforcement and vice versa is critical in order to desensitize biases,” and that “the students need to see that same person in uniform to help complete the desensitization and [elimination] of biases.”<sup>77</sup> This bond, the law student teacher states, may diminish prior views of the law and may facilitate compliance with the law, and this elevated behavioral cohesion with the law may, in turn, “increase the likelihood of employment and social mobility.”<sup>78</sup>

e. Similarly, with school permission and while adhering to all appropriate policies, law student teachers should take the high school students outside of the classroom to expose them to legal institutions and civics in action. For example, Dr. Husbands suggests “showing them what a law school looks like by perhaps teaching one of the classes on campus [or by] taking them to a courthouse or other institution representing the justice system that could paint the system in a more positive light.”<sup>79</sup> Ms. Pardo similarly encouraged civics programs to “actually leave the classroom to see ‘civic education’ in their local government. Field trips to council meetings; local protest; board meetings can all serve this purpose.”<sup>80</sup> Mr. Talbert concurs, recommending “multiple ‘field trips’ that are synchronized with the lesson plans.”<sup>81</sup> For example, “learning about the county court system would involve studying about trial courts . . . and taking the students to a trial [on a topic that] will generate interest.”<sup>82</sup> These experiences could be recreated in the classroom, Mr. Talbert notes, where students could conduct mock trials and a “mock session” of the legislature in which students would consider, debate, and vote on bills.<sup>83</sup>

f. With respect to the substantive instruction in civics courses, Professor McConnell opines that high school students should be given information on why the prospects for social mobility are limited in areas of concentrated urban poverty and on the factors that may make it more likely for them to escape their economic position and spatial isolation.<sup>84</sup> He states, specifically, that the high school students should have “an accurate understanding of the reasons opportunity is bleak and what they can do about it.”<sup>85</sup> Professor McConnell cites a study showing that “if students do three things: (1) complete high school, (2) get a full time job,

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77. Norwood, *supra* note 23.

78. *Id.*

79. Husbands, *supra* note 24.

80. Pardo, *supra* note 23.

81. Talbert, *supra* note 18.

82. *Id.*

83. *Id.*

84. McConnell, *supra* note 39.

85. *Id.*



and (3) get married and do not have children out of wedlock, they will very likely achieve a middle class life.”<sup>86</sup>

g. Professor McConnell further warns that civics education programs must instill in the minds of high school students the view that they can change their circumstances and that they should not look exclusively to others for assistance in improving their situation. Civics teachers “must not encourage dependency and despair, or a sense of grievance.”<sup>87</sup>

h. Perhaps one of the most promising and compelling initiatives is being spearheaded by Democracy Prep, a high school located in Harlem, New York. Democracy Prep requires, as a condition of graduation, that high school students complete various civic activities, including in-person lobbying, publishing an op-ed column or letter to the editor, volunteering for a political campaign, voting (if eligible), engaging in web-based advocacy, fundraising for a social cause, participating in a debate tournament, and volunteering outside of the school.<sup>88</sup> Another is Discovering Justice, which, based in Boston, Massachusetts, involves “teaching about tolerance, justice, democracy, how to use one’s voice, civility, debate, government, laws, and the justice system,” and does so in a way that “encompasses in-school curriculum, afterschool multi-week programs, and courthouse-based experiential learning.”<sup>89</sup>

Clearly, there a number of ways in which civics education can be improved, particularly with respect to how law schools sell civics teaching opportunities to prospective law student teachers, ensuring that law student teachers are properly trained and oriented, and tailoring the substantive contents of the curriculum itself. These suggestions, if implemented, may raise the benefits of civics education programs to an optimal level.

#### *D. The Responsibility of Law Schools to Provide Civics in Urban High Schools*

Law schools are being battered by charges that they do not sufficiently prepare law students with the requisite skills for legal employment and that they saddle graduates with too much debt, all while compensating law faculty for producing irrelevant and obscure scholarship.<sup>90</sup> Legal education in the United States, in part because of these internal and

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86. *Id.* (citing Ron Haskins, *Mobility Is a Problem, Now What?*, BROOKINGS INST. (Dec. 23, 2011), <http://www.brookings.edu/up-front/posts/2011/12/23-mobility-opportunity-haskins>).

87. *Id.*

88. E-mail from Benjamin Feit, Assistant Dir. of Strategy & Dev., Democracy Prep Pub. Sch., to Author (Aug. 20, 2012, 14:22 EST) (on file with author).

89. Medvedow, *supra* note 50.

90. *See, e.g.*, Elizabeth Lesly Stevens, *Will Law School Students Have Jobs After They Graduate?*, WASH. POST (Oct. 31, 2012), [http://www.washingtonpost.com/lifestyle/magazine/will-law-school-students-have-jobs-after-they-graduate/2012/10/31/f9916726-0f30-11e2-bd1a-b868e65d57eb\\_story.html](http://www.washingtonpost.com/lifestyle/magazine/will-law-school-students-have-jobs-after-they-graduate/2012/10/31/f9916726-0f30-11e2-bd1a-b868e65d57eb_story.html).

external criticisms and in part because of the persistent decline in applicants, is undergoing significant self-assessment and is bracing itself for the likelihood of wholesale reform. This institutional reflection and any resultant modifications, it is hoped, will yield law schools that are more responsive to employment realities and social needs.

As part of this introspection, it may be asked what responsibility, if any, law schools have in terms of (a) organizing civic education programs in areas of concentrated urban poverty, and (b) developing tangible solutions designed to improve the urban poor's chances to achieve social mobility more broadly. To the extent that law schools are said to possess this responsibility, law schools should consider adjusting accordingly, in order to more fully serve their students and their communities.

Respondents were hesitant, however, to assert that law schools have a responsibility towards either maintaining civics education programs in areas of concentrated urban poverty or offering suggestions to bring greater social mobility to the urban poor. At most, it seems, respondents were willing to indicate that law schools can and should play an enhanced supporting role in this context. Dr. Massey, for example, says that law schools, and the communities, would be better off tackling the entrenched reasons for persistent urban poverty: "Law schools would do greater good by challenging the legal structures that now work to oppress minorities and the poor."<sup>91</sup> Professor McConnell also says that law schools' responsibility with respect to urban poverty is "[n]one," adding that this "is not the law schools' job."<sup>92</sup> He notes instead that law schools' efforts in civics in urban settings and in eliminating urban poverty may be incidental to their core purposes.<sup>93</sup> "In the course of educating their students, law schools may sometimes make a modest contribution to civic education in poverty areas."<sup>94</sup> Another law professor was reluctant to "say [that law schools] have a responsibility" to civics or urban poverty.<sup>95</sup> Furthermore, he shares, "[I]mproving social mobility is an important goal, but I don't think it's right to say that law schools generally have a responsibility to do so."<sup>96</sup>

Ms. Pardo admits that she "would not go as far as to say it is a law school's responsibility" because "[t]he responsibility is on the [high] school the student attends."<sup>97</sup> Rather, she states, "Law schools can be a

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91. Massey, *supra* note 44.

92. McConnell, *supra* note 39.

93. *Id.*

94. *Id.* For example, a law-student civics teacher points out that law schools can train their students to be more effective lawyers and leaders by exposing law students to "low income populations" because these "populations are counting on these law students/future politicians to go on to accurately represent their interests." Norwood, *supra* note 23.

95. Anonymous Respondent, *supra* note 42.

96. *Id.*

97. Pardo, *supra* note 23.

partner and support.”<sup>98</sup> Mr. Arbetman also writes that he perceives “a law school as a place where law is taught and learned,” and that a “law school can also serve the community as a resource for teaching the law, a task that can be accomplished by law students, given adequate preparation.”<sup>99</sup>

Whereas in other aspects of this Article I agree with the consensus of the respondents’ views, as to this particular question I must respectfully depart from and lodge a dissent to these prevailing sentiments. Although this issue deserves more comprehensive treatment, suffice it to say that law schools, in my view, should shoulder some of the burden in educating the public about civics, and in addressing how entrenched urban poverty may be diminished or eliminated. That burden rises to the level of a responsibility.

Law schools provide intellectual experiences in which students may enrich and expand their understanding of various important subjects, including, and surely not limited to, the legitimacy and credibility of a sovereign, the propriety of rules governing otherwise unrestrained individual behavior, the respective functions of and checks on the branches of government, the relationship between morality and the law, and what constitutes justice. Knowledge for the sake of knowledge is an essential feature of higher education. Such questions and issues only serve to elevate the capacity of a student to think critically and to ultimately arrive at a more sound position as to his place in the world and how he may most robustly advance ideas and arguments on behalf of his community or his client, whatever the case may be.<sup>100</sup>

Law schools, in addition, are in the business of producing legal practitioners, more specifically giving students the practical instruments with which to write, research, and advocate on given issues.<sup>101</sup> A student may possess significant knowledge of a particular legal subject but is poorly situated to effectively represent a client or cause if he cannot adequately express himself orally or in writing. Accordingly, there is necessarily a merger or union between the substantive components of the law and the more skills-oriented aspects of legal practice. Neither should exist without, and each by nature mutually reinforces, the other.

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98. *Id.*

99. Arbetman, *supra* note 30.

100. See generally JOHN STUART MILL, “ON LIBERTY” AND OTHER WRITINGS 38 (Stefan Collini ed., 1989) (1859); Dawinder S. Sidhu, *A Critical Look at the “Critical Mass” Argument*, CHRON. HIGHER EDUC. (Feb. 18, 2013), <http://chronicle.com/article/A-Critical-Look-at-the/137369/> (“[E]xposure to different backgrounds and perspectives requires people to defend and even reformulate their respective worldviews. . . . [T]hat diversity enriches what we think about ourselves and one another.”).

101. See generally *Sweatt v. Painter*, 339 U.S. 629, 634 (1950) (“[A]lthough the law is a highly learned profession, we are well aware that it is an intensely practical one. The law school [is] the proving ground for legal learning and practice . . .”).

At bottom, the pursuits of the law student are to serve himself (e.g., his knowledge and his skills), but in a greater measure to serve the society and community in which he will have a personal and professional life. The public continually turns to lawyers for help in resolving disputes and cutting through complex and persistent problems in society. Lawyers are, in other words, a source of policy and legal decision making that permit general society to move forward and hopefully move ahead. In this respect, lawyers are quintessential public and social actors, if not servants.

Law students and law schools thus depend on the public and on society for their very purpose and survival. Were it not for a public that desires or needs the judicial system for the evaporation of disputes, requires proposals to enhance social welfare, and needs general leadership in the face of local, national, global, and intergenerational problems, the social importance of law schools would be at its lowest ebb, sustainable only on a purely intellectual foundation. As it turns out, however, law schools owe their existence to society and are in business because of the social function they are designed and called on to perform.<sup>102</sup> Justice Cardozo wrote: "The final cause of law is the welfare of society. The rule that misses its aim cannot permanently justify its existence."<sup>103</sup> I would modify this quote to read as follows: "The final cause of law schools is the welfare of society. Legal education that misses its aim cannot permanently justify its existence."

To artificially restrain the passage of knowledge and the development of skills to the law school walls—and to only those who pay tuition—is to ignore the meaningful social role that law schools play in our country and to deprive others beyond the law school gates of tools that can uplift both the individual and the community to which he belongs. An opposite viewpoint—one of a law school maintaining a complete monopoly on and hoarding of certain information and abilities—cannot be maintained on any legitimate ground of which I am aware. Furthermore, a major responsibility of law faculty is to engage in teaching and scholarship. To fail to explore in the classroom or in scholarship society's most pressing problems, such as concentrated and generational poverty, is to be complicit in their existence and to permit their perpetuation.

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102. See generally Earl Warren, *Responsibilities of the Legal Profession*, 26 MD. L. REV. 103, 108 (1966) ("The law is not just a craft. It is a profession. And it is a profession with increasing responsibilities to serve society as a whole. Today's law schools have a significant responsibility, not just to train lawyers but to further the development of our democratic system. The law must keep abreast of the needs of society. In order to fulfill these needs, a lawyer cannot confine his services entirely to special interests, important as those may be. But the community in which he lives and the national community as well—indeed, the international community—must be viewed in the broader sense as each lawyer's client.").

103. Dawinder S. Sidhu, *A Crisis of Confidence and Legal Theory: Why the Economic Downturn Should Signal the End of the Doctrine of Efficient Breach*, 24 GEO. J. LEGAL ETHICS 357, 393 (2011) (quoting BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 66 (1921)) (internal quotation marks omitted).

Accordingly, I cannot join the view that law schools are without a responsibility either to improve the civic capacity of young minds or to help fashion solutions to concentrated urban poverty.

There are ways to closely align the functions of law schools as educators of future lawyers with the needs of the local community. Dr. Husbands explains that law school “projects that are designed for service-learning can be very productive and engaging, and often count toward requirements for volunteering and other forms of civic participation that high schools increasingly require.”<sup>104</sup> In addition, she offers that “much like medical schools, perhaps law schools could set up clinics in impoverished areas . . . to provide advice, guidance, and support to young people and their families who are dealing with legal matters and feel they have nowhere to turn.”<sup>105</sup> She envisions that, collectively, “[t]hese types of actions could go a long way in reducing the distrust of the system and those within it (such as attorneys and judges)[,] which [are] sorely needed in high poverty communities.”<sup>106</sup> Given this potential, law school-based “[c]ivics education represents fertile territory for law schools to contribute to expanding educational opportunities in low-income communities,” according to Mr. Schramm.<sup>107</sup> Law schools should seriously consider the aforementioned and similar possibilities to better educate their students and to justify their place in society.

#### IV. CONCLUSION

Generally, the urban poor are effectively locked into marginalized economic and physical positions, without meaningful opportunity to enhance either their social or geographic mobility. This Article explores whether civics programs can help the urban poor reach greater economic heights and expand the spatial choices available to the urban poor. There is ample support for the proposition that there are benefits to civics education, which can exist as a partial, but meaningful, instrument of social mobility for the urban poor.

There is also ample reason to assert that civic education should be made a more ubiquitous, if not essential, aspect of law students’ and high school students’ educational experiences. Should such programs be utilized in schools in urban settings, this Article contains explicit guidance on how the programs can be refined to be most useful for the students themselves. These suggestions will ensure that the programs can be optimally taught and implemented.

This Article also addresses whether law schools possess an obligation to engage in civic education programs outside of campus and other-

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104. Husbands, *supra* note 24.

105. *Id.*

106. *Id.*

107. Schramm, *supra* note 37.

wise help uplift the urban poor out of their entrenched positions. I answer this inquiry in the affirmative. In this respect, it joins the broader reexaminations of the role of law schools in society and whether law schools are worthy of their special standing in our nation.

# TEACHING THE CONSTITUTION: AN AMERICAN TRADITION

CHARLES J. CRIMMINS<sup>†</sup>

## ABSTRACT

Constitutional literacy is startlingly low among American citizens. When surveyed, a majority of Americans lacked basic constitutional knowledge. Recent high school graduates fared worst, indicating a problem with civic education in America's schools. This trend would concern America's Founders, particularly George Wythe and Thomas Jefferson, who believed constitutional literacy was the responsibility of every citizen and essential to a self-governing society. Without an informed citizenry to safeguard the rights and protections afforded by the Constitution, Wythe and Jefferson doubted the viability of America's model of self-government. Constitutional literacy programs that promote collaboration among law schools and high schools create the educated, active, and engaged citizenry Wythe and Jefferson envisioned.

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<sup>†</sup> Charles J. Crimmins is an adjunct professor at William & Mary Law School, where he teaches a class in constitutional literacy and is the founding director of William & Mary's chapter of the Marshall-Brennan Constitutional Literacy Project. Professor Crimmins's class explores the U.S. Constitution's application to public campuses and prepares law students to teach the Constitution to high school students. Prior to law school, Professor Crimmins served as a teacher in Houston, Texas, through the Teach For America program and in the Bronx, New York, at Abraham House, a program dedicated to serving the families of the incarcerated. Fluent in Spanish, Professor Crimmins mentored and taught English as a second language to Hispanic students. He received a B.A. in Foreign Affairs from the University of Virginia and a J.D. from William & Mary Law School, where the faculty honored him as a Benjamin Rush Scholar for his research and writing. He is a member of the Texas and Virginia bars. The author is grateful to President W. Taylor Reveley III, Professor of Practice Rebecca Green, Mr. Michael J. Fox, and Ms. Kathryn J. Jordan for providing helpful comments on earlier drafts; Dena Shata, Patrick Slebonick, and Melanie Walter for their research assistance, ability, and industriousness; and the staff of the William & Mary Law Library for its patience. The views expressed herein, and any errors, are solely the author's.

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## INTRODUCTION

The Constitution of the United States<sup>1</sup> is history's greatest promoter of liberty and freedom<sup>2</sup> and "is the final refuge of every right that is enjoyed by any American citizen."<sup>3</sup> It is unsettling that many Americans take for granted the checks and balances created by the Constitution<sup>4</sup> because the Constitution requires public support to thrive.<sup>5</sup> Citizens' understanding of the Constitution is a prerequisite to public support. In other words, the Constitution cannot thrive and be appreciated unless it is taught and learned.<sup>6</sup>

Constitutional literacy programs,<sup>7</sup> such as the Marshall–Brennan Constitutional Literacy Project (Marshall–Brennan),<sup>8</sup> place law students

1. When I refer to the Constitution throughout this Essay, I refer to its Preamble, operational articles, and Bill of Rights.

2. WARREN E. BURGER, *THE CONSTITUTION: FOUNDATION OF OUR FREEDOM*, at iv–v (ann. teacher's ed. 1990).

3. Calvin Coolidge, *Foreword* to JAMES M. BECK, *THE CONSTITUTION OF THE UNITED STATES: YESTERDAY, TODAY—AND TOMORROW?*, at ii (10th prtg. 1925).

4. See BURGER, *supra* note 2, at 83 ("Today most Americans take for granted the system of government created by those inspired delegates to the Constitutional Convention in the long, hot summer of 1787. In some respects this affirms the success of their efforts—the system has worked.").

5. See Coolidge, *supra* note 3 ("The Constitution is not self-perpetuating. If it is to survive, it will be because it has public support.").

6. See Letter from Thomas Jefferson to Marquis de Lafayette (May 14, 1817), in *THE QUOTABLE JEFFERSON* 89, 89 (John P. Kaminski ed., 2006).

7. For the purposes of this Essay, I define "constitutional literacy program" narrowly, as a program in which a law professor teaches a for-credit law school class focused on constitutional issues and in preparation for the law students themselves becoming teachers of a for-credit constitutional law class offered to public high school students in order to develop knowledge of rights and responsibilities under the U.S. Constitution and to foster citizenship and civic participation.

8. The Marshall–Brennan Constitutional Literacy Project was founded at American University's Washington College of Law in Washington, D.C., in the fall of 1999. *The Marshall–Brennan Constitutional Literacy Project*, AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan/> (last visited Mar. 30, 2013). The project is "designed to mobilize talented second- and third-year law students . . . to teach courses on constitutional law . . . in public high schools . . ." *Id.* The national project is headquartered in Washington, D.C., and has expanded to include licensed chapters across the country. *Id.*

This movement for constitutional literacy is rooted in the belief that students will profit for a lifetime from learning the system of rights and responsibilities under the U.S. Constitution. . . . The Marshall–Brennan Fellows work with teachers, administrators and



in high school classrooms to teach the Constitution. Law students introduce high school students to the rights and responsibilities afforded to them by the Constitution, and use the Constitution, cases, and current events to challenge high school students to think critically. Through these exercises, the programs foster citizenship and encourage civic participation.<sup>9</sup>

This Essay reaffirms the original purpose of the American law school. The first American law school was founded to create “citizen lawyers”;<sup>10</sup> therefore, teaching the Constitution to the next generation advances the purpose for which legal education was initially conceived.<sup>11</sup> In supporting constitutional literacy programs, modern law schools have the opportunity to train lawyers ready and willing to serve the public good. Cultivating citizen lawyers should be a cornerstone of modern legal education.

Part I introduces George Wythe and Thomas Jefferson, and explains how their views shaped today’s legal education system. Part II explains how Wythe and Jefferson’s aim to educate the citizen lawyer applies today, and how law schools providing constitutional literacy programs honor Wythe and Jefferson’s purpose. Part III underscores why Wythe and Jefferson would find particular value in constitutional literacy programs and why educating high school students about the Constitution is of particular value to society.

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lawyers to teach students their rights as citizens, the strategic benefits of voting, how lawmaking occurs and other fundamental constitutional processes.

*Id.*

9. Although this Essay focuses on the benefits of law students teaching constitutional law and civics to high school students through programs like the Marshall–Brennan Constitutional Literacy Project, several organizations contribute to civic and constitutional literacy. See, e.g., CIVICS FIRST, <http://civicsfirstct.org> (last visited Mar. 30, 2013) (“Civics First is a private, non-profit association that promotes and conducts law-related education programs and projects in Connecticut’s public and private schools, courtrooms and communities.”); *Courtroom in the Classroom Program*, CT. APPEALS OHIO NINTH APP. DIST., <http://www.ninth.courts.state.oh.us/school.htm> (last visited Mar. 30, 2013) (“The Courtroom in the Classroom Program is the Ninth District Court of Appeals’[s] educational outreach program. It provides high school students . . . with hands-on experience in how the Ohio judicial system works and illustrates how disputes are resolved in a democratic society. The Judges travel to high schools to hear . . . actual oral arguments involving real cases pending before the Court . . . .”); ICIVICS, <http://www.icivics.org/> (last visited Mar. 30, 2013) (“iCivics prepares young Americans to become knowledgeable, engaged 21st century citizens by creating free and innovative educational materials. In 2009, Justice Sandra Day O’Connor founded iCivics to reverse Americans’ declining civic knowledge and participation. Securing our democracy, she realized, requires teaching the next generation to understand and respect our system of governance.”); *About Us*, STREET LAW, INC., [http://www.streetlaw.org/en/about/who\\_we\\_are](http://www.streetlaw.org/en/about/who_we_are) (last visited Mar. 30, 2013) (“By helping to improve the teaching of law and understanding of relevant legal principles, Street Law empowers youths and adults to use their knowledge to solve problems and better their communities, and motivates them to become active participants in society.”).

10. See Letter from Thomas Jefferson to James Madison (July 26, 1780), in 3 THE PAPERS OF THOMAS JEFFERSON 506, 507 (Julian P. Boyd ed., 1951) (“This single school by throwing from time to time new hands well principled and well informed into the legislature will be of infinite value.”).

11. See, e.g., Davison M. Douglas, *The Jeffersonian Vision of Legal Education*, 51 J. LEGAL EDUC. 185, 185 (2001).

I. GEORGE WYTHE, THOMAS JEFFERSON, AND  
THE BIRTH OF MODERN AMERICAN LEGAL EDUCATION

*A. George Wythe and Thomas Jefferson*

That George Wythe is not a household name today—like other Founding Fathers—should be a surprise.<sup>12</sup> Wythe's name appears prominently above those of the other Virginia signers on the Declaration of Independence.<sup>13</sup> Because Wythe was on leave from the Continental Congress, he did not sign the document until autumn of 1776.<sup>14</sup> On July 4, 1776, Thomas Jefferson and the other Virginia signers insisted on leaving a space above their names to assure a place of honor for Wythe.<sup>15</sup> Wythe's reputation for integrity<sup>16</sup> and progressive thought<sup>17</sup> was a model for the members of the Continental Congress, including better known Founding Fathers such as Benjamin Franklin, George Washington, John Adams, and James Madison.<sup>18</sup>

12. JOYCE BLACKBURN, *GEORGE WYTHE OF WILLIAMSBURG*, at xi–xii (1975). Scholarship on Wythe has been limited due to the loss of his papers. IMOGENE E. BROWN, *AMERICAN ARISTIDES: A BIOGRAPHY OF GEORGE WYTHE* 14 (1981).

13. BLACKBURN, *supra* note 12, at xi.

14. *Id.*

15. ALONZO THOMAS DILL, *GEORGE WYTHE: TEACHER OF LIBERTY* 1 (1979).

16. See, e.g., NATHAN SCHACHNER, *THOMAS JEFFERSON: A BIOGRAPHY* 33 (1957) (“Of Wythe’s character the testimony is unanimous and approaches the panegyric. He was likened in virtue, integrity and purity of manners to the ancient Roman senators of whom Plutarch wrote . . .”); PAUL D. CARRINGTON, *AMERICAN LAWYERS: PUBLIC SERVANTS AND THE DEVELOPMENT OF A NATION* 22 (2012) (“There was no person in America so qualified for the role of moral educator.”).

17. See JULIAN P. BOYD & W. EDWIN HEMPHILL, *THE MURDER OF GEORGE WYTHE: TWO ESSAYS* 4 (1955). According to Thomas Jefferson, “[o]n the first dawn of that [Revolution], . . . instead of higgling on half-way principles, as others did who feared to follow their reason, he took his stand on the solid ground that the only link of political union between us and Great Britain, was the identity of our executive; that that nation and its Parliament had no more authority over us, than we had over them, and that we were coordinate nations with Great Britain and Hanover.” *Id.* (alteration in original) (internal quotation marks omitted). Wythe’s support of the antislavery movement and his being among the first to liberate slaves under the 1782 act of the legislature authorizing manumission illustrate that Wythe’s reputation for virtue was well deserved. See CARRINGTON, *supra* note 16, at 23. Wythe was one of very few who provided manumitted slaves financial resources and literacy, and risked punishment for doing so. *Id.* at 23, 147. An additional illustration of Wythe’s character was exhibited through correspondence between Thomas Jefferson and Richard Price, a British moral philosopher and preacher who asked for Thomas Jefferson’s advice on how to end slavery in the United States. Letter from Richard Price to Thomas Jefferson (July 2, 1785), in 8 *THE PAPERS OF THOMAS JEFFERSON*, *supra* note 10, at 258, 258–59. Thomas Jefferson suggested that Price might gain support for ending slavery by enlisting George Wythe’s help, writing:

The college of William and Mary in Williamsburg, since [the creation of the chair of law], is the place where are collected together all the young men of Virginia under preparation for public life. They are there under the direction (most of them) of a Mr. Wythe[,] one of the most virtuous of characters, and whose sentiments on the subject of slavery are unequivocal. I am satisfied if you could resolve to address an exhortation to those young men, with all that eloquence of which you are a master, that [its] influence on the future decision of [ending slavery] would be great, perhaps decisive.

Letter from Thomas Jefferson to Richard Price (Aug. 7, 1785), in 8 *THE PAPERS OF THOMAS JEFFERSON*, *supra* note 10, at 356, 356–57.

18. See BLACKBURN, *supra* note 12, at xi.

Wythe was an attorney, patriot, revolutionary, statesman, and above all a teacher.<sup>19</sup> Posts filled by Wythe's students include President of the United States, Chief Justice of the U.S. Supreme Court, U.S. Secretary of State, Speaker of the U.S. House of Representatives, U.S. Senator, U.S. Ambassador,<sup>20</sup> State Governor, state supreme court justice, college president, and law professor.<sup>21</sup>

Thomas Jefferson, after completing his undergraduate work at the College of William & Mary under the tutelage of Professor William Small,<sup>22</sup> sought a profession that would prove intellectually stimulating, useful to society, and profitable.<sup>23</sup> Jefferson chose law.<sup>24</sup> American law schools, however, did not exist;<sup>25</sup> aspiring attorneys served as apprentices to licensed members of the bar.<sup>26</sup> Professor Small recommended Jefferson to his friend, George Wythe,<sup>27</sup> who was foremost among highly esteemed and scholarly lawyers in the colonies.<sup>28</sup> Jefferson rejected the traditional course of apprenticing with one of his relatives, several of

19. See, e.g., BLACKBURN, *supra* note 12, at 113 ("Communicating knowledge from one mind to another superseded all of the other great drives which [Wythe's] intellect energized."); BOYD & HEMPHILL, *supra* note 17, at 3 (calling Wythe "one of the greatest teachers and jurists that America has produced"); Thomas Hunter, *The Teaching of George Wythe*, in 1 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES 138, 155 (Steve Sheppard ed., 2007) ("Of course in addition to his great sense of public duty, Wythe probably began instructing young men in the classics simply because teaching gave him great enjoyment. The Reverend Maury once told [Thomas] Jefferson that 'Mr. Wythe . . . seems to enjoy himself no where, so much as with his pupils.'" (omission in original) (quoting DILL, *supra* note 15, at 56)). In a letter to John Banister Jr. dated October 15, 1785, Jefferson espoused his own views concerning Wythe's talents as teacher and the best place to educate youth, after weighing the benefits of various European cities:

But why send an American youth to Europe for education? . . . When [c]ollege education is done with and a young man is to prepare himself for public life, he must cast his eyes (for America) either on Law or Physic. For the former where can he apply so advantageously as to Mr. Wythe?

Letter from Thomas Jefferson to John Banister, Jr. (Oct. 15, 1785), in 8 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 635, 636.

20. What is today referred to as U.S. Ambassador was in Wythe's time referred to as United States Minister Plenipotentiary.

21. DILL, *supra* note 15, at 1–2 (noting that among Wythe's students were Thomas Jefferson, John Marshall, Henry Clay, Littleton Tazewell, John Brown, St. George Tucker, John Coalter, and Spencer Roane).

22. See JAMES PARTON, LIFE OF THOMAS JEFFERSON 26 (1971).

23. MERRILL D. PETERSON, THOMAS JEFFERSON AND THE NEW NATION: A BIOGRAPHY 13 (1970) (explaining that because Jefferson's family wealth would not support a comfortable retirement, Jefferson's professional options to earn income included the ministry, military, medicine, and law, and that Jefferson positively viewed the law as "a profession of service and, incidentally, of livelihood").

24. SCHACHNER, *supra* note 16, at 32.

25. ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES 19 (1953).

26. *Id.* Although a number of colonists traveled to the Inns of Court in London, the majority of aspiring lawyers self-educated by reading law books or apprenticed with a member of the bar. Douglas, *supra* note 11, at 188.

27. SCHACHNER, *supra* note 16, at 32 ("Dr. Small's most intimate friend in Williamsburg was George Wythe, perhaps the most learned and scholarly lawyer in all Virginia, if not in the colonies generally. On Small's advice, Jefferson entered Wythe's law office and thereby came under the second great influence of his early career."); see also PAUL M. ZALL, JEFFERSON ON JEFFERSON 6 (2002).

28. SCHACHNER, *supra* note 16, at 32.

whom were among the colonies' leading legal practitioners.<sup>29</sup> Instead, Jefferson chose to study with Wythe, "the best legal mind in Virginia,"<sup>30</sup> a choice that reflected Wythe's reputation as an educator<sup>31</sup> and Jefferson's commitment to scholarship.<sup>32</sup>

### B. *The Origins of Modern Legal Education*

Before becoming a member of the bar, Wythe had served as an apprentice under his uncle, Stephen Dewey.<sup>33</sup> "Dewey 'treated [Wythe] with neglect, and confined him to the drudger[ies] of his office, with little, or no, attention to his instruction in the general science of law.'" <sup>34</sup> Wythe, no doubt, did not want his apprentices to have a similar experience.<sup>35</sup> He taught for the simple joy of imparting information, regularly refusing compensation.<sup>36</sup> Jefferson was likely referring to the apprentice system then common with other attorneys when he stated:<sup>37</sup> "We are all too apt by shifting on them our business, to incroach on that time which should be devoted to their studies. The only help a youth wants is to be directed what books to read, and in what order to read them."<sup>38</sup>

The current model of legal education in the United States stems from Thomas Jefferson's—and others'—frustration with the colonial legal apprenticeship system.<sup>39</sup> Many unlucky apprentices served as a hybrid between personal assistant and monastic scribe.<sup>40</sup> Although ap-

29. WILLARD STERNE RANDALL, *THOMAS JEFFERSON: A LIFE* 47 (1993) (noting that Peyton and John Randolph, Jefferson's cousins, were among the colonies' leading legal practitioners).

30. *Id.*

31. See, e.g., BROWN, *supra* note 12, at 64 n.56 (discussing Jefferson's deeply held belief that Wythe vehemently refused to sign Patrick Henry's law license because Henry had completed only a six-week course of study).

32. See, e.g., PARTON, *supra* note 22, at 33 (comparing Patrick Henry's six-week crash course to Jefferson's more thorough course of study and noting that "[i]t was not in [Jefferson's] nature to slight his work").

33. Hunter, *supra* note 19, at 138, 140.

34. DILL, *supra* note 15, at 9 (quoting Daniel Call, *George Wythe*, in 4 REPORTS OF CASES ARGUED AND DECIDED IN THE COURT OF APPEALS OF VIRGINIA xi (1833)).

35. *Id.* ("Perhaps posterity can thank Counselor Dewey for being a poor instructor. He may have inured young Wythe to the law's drudgeries. He may also have sharpened Wythe's appetite for learning in the deeper and richer historical basis of legal institutions. Above all, he seems to have given Wythe a thorough grounding in how *not* to teach!").

36. See, e.g., BLACKBURN, *supra* note 12, at 113 (noting that Wythe's love of teaching inspired him to refuse compensation); Herbert A. Johnson, *Thomas Jefferson and Legal Education in Revolutionary America*, in THOMAS JEFFERSON AND THE EDUCATION OF A CITIZEN 103, 105 (James Gilreath ed., 1999); SCHACHNER, *supra* note 16, at 34 (noting that no record exists of payments from Jefferson to Wythe).

37. Douglas, *supra* note 11, at 190.

38. Letter from Thomas Jefferson to Thomas Turpin (Feb. 5, 1769), in 1 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 23, 24.

39. See Morris L. Cohen, *Thomas Jefferson Recommends a Course of Law Study*, in 1 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES, *supra* note 19, at 169, 171.

40. See, e.g., PAUL M. HAMLIN, *LEGAL EDUCATION IN COLONIAL NEW YORK* 40-41 (Da Capo Press 1970) (1939) (noting that apprentices typically served "in a variety of ways unrelated to the practice of law"). John Adams described his time with one lawyer thusly: "Mr. Thatcher, as it was Evening when I waited on him, invited me to Tea and then made me smoke Bridgewater tobacco with him, till after ten O Clock. He said nothing about Law, but examined me more severely in

prentices sought and even paid<sup>41</sup> for training, lawyers had little time to mentor.<sup>42</sup> Even where apprentices were allotted time to read theory between copying writs and declarations, the text was dense and indecipherable without guidance.<sup>43</sup> After long apprenticeships, lawyers were often ill equipped to practice law and serve as leaders.<sup>44</sup>

Jefferson wanted more; he thought lawyers should be trained not only as trade practitioners but also as public leaders.<sup>45</sup> Jefferson understood that lawyers were particularly well suited to provide direction for the new nation.<sup>46</sup> To mold leaders, neither an apprenticeship nor a Bachelor of Arts degree was sufficient.<sup>47</sup> In 1779, then Governor of Virginia, Jefferson, in his capacity as a member of the Board of Visitors of the College of William & Mary, oversaw the establishment of the first chair of law at the college.<sup>48</sup>

The board of visitors appointed Wythe chair of law, making him the first American professor of law.<sup>49</sup> Wythe balanced practice and theory<sup>50</sup> and “designed an innovative, rigorous, and enjoyable curriculum.”<sup>51</sup> Students read and analyzed seminal legal texts, listened to lectures,<sup>52</sup> and traveled to the capitol building to participate in the nation’s first moot court and moot legislature.<sup>53</sup> Thus, Wythe created the curriculum that serves as the foundation for all modern-day American legal education.<sup>54</sup>

Metaphysic[s].” 3 DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS 272 (L.H. Butterfield ed., 1961); see also Charles R. McKirdy, *The Lawyer as Apprentice: Legal Education in Eighteenth Century Massachusetts*, 28 J. LEGAL EDUC. 124, 128 (1976) (noting that “it was a rare clerk indeed who didn’t spend a good deal of his time bent over a desk copying writs and declarations”).

41. LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 56 (3d ed. 2005).

42. See, e.g., A. Christopher Bryant, *Reading the Law in the Office of Calvin Fletcher: The Apprenticeship System and the Practice of Law in Frontier Indiana*, 1 NEV. L.J. 19, 23 (2001) (“The Achilles’ heel of the apprenticeship system was that an apprentice’s education was no better than his master was a teacher. Lawyers were then and are now busy people, and some were more given than others to the role of tutor.”); Douglas, *supra* note 11, at 190.

43. See JOHN O. SONSTENG ET AL., *A LEGAL EDUCATION RENAISSANCE: A PRACTICAL APPROACH FOR THE TWENTY-FIRST CENTURY* 18 (2008).

44. See *id.*

45. W. Taylor Reveley, III, *W&M Law School Came First. Why Care?*, 35 U. TOL. L. REV. 185, 185 (2003).

46. Douglas, *supra* note 11.

47. See Hunter, *supra* note 19, at 146.

48. *Id.* at 144. In order to receive a law degree, a student must first have received a Bachelor of Arts degree. *Id.* at 146.

49. *Id.* at 144–45.

50. See Cohen, *supra* note 39, at 174 (stating that Jefferson’s view of legal education was “liberal” and “well-rounded in both its legal and general aspects”); Paul D. Carrington, *The Revolutionary Idea of University Legal Education*, 31 WM. & MARY L. REV. 527, 535 (1990) (noting that Wythe’s lessons included political economy, public law, English common law, as well as assignments that might be described today as clinical).

51. See Hunter, *supra* note 19, at 145.

52. *Id.* (noting that Governor John Tyler’s notes from Wythe’s lectures reflected much more than a copy of Blackstone in that they contemplated unique underlying reasoning behind the texts).

53. See *id.* at 146 (noting that the motive behind the moot court and moot legislature was to prepare students as speakers and republican leaders).

54. See Carrington, *supra* note 50, at 535–38.

Students and faculty spoke highly of Wythe's comprehensive<sup>55</sup> legal program.<sup>56</sup> One visitor to the college wrote Jefferson, "As to the university, I cannot conceive an institution better planned, or more judiciously managed for the forming, either the lawyer, or the statesm[e]n."<sup>57</sup> Wythe focused on creating not only lawyers, but also leaders for the new republican nation.<sup>58</sup> Writing to John Adams, Wythe explained that his charge as law professor was "to form such characters as may be fit to succe[ed] those [who] have been ornamental and useful in the national councils of America."<sup>59</sup> Wythe and Jefferson believed legal education should aim to produce leaders able to promote "public prosperity."<sup>60</sup>

## II. THE CITIZEN LAWYER

### *A. Wythe, Jefferson, the Constitution, and the Importance of Civic Engagement*

While Jefferson was serving as Ambassador to France,<sup>61</sup> he sent James Madison a letter detailing his thoughts on the proposed constitution.<sup>62</sup> Jefferson closed the letter with a plea: "Above all things I hope the education of the common people will be attended to[,] convinced that on their good sense we may rely with the most security for the preservation of a due degree of liberty."<sup>63</sup> Jefferson understood that education was outside the federal government's purview;<sup>64</sup> therefore, his inclusion of education in a letter that was otherwise exclusively dedicated to the analysis of the proposed federal constitution highlights his belief that the

55. See *id.* at 535–36 (noting that Wythe's program included readings, lectures, moot courts, and moot legislatures).

56. See Douglas, *supra* note 11, at 202.

57. See Hunter, *supra* note 19, at 148 (quoting THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 112) (internal quotation marks omitted).

58. See Letter to Thomas Jefferson from James Madison (July 26, 1780), in THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 506, 506–07 ("This single school by throwing from time to time new hands well principled and well informed into the legislature will be of infinite value.").

59. Letter from George Wythe to John Adams (Dec. 5, 1783), in 15 PAPERS OF JOHN ADAMS, 1783–1784, at 396, 396 (George L. Lint et al. eds., 2010).

60. See Carrington, *supra* note 50, at 529.

61. Jefferson's official title was United States Minister Plenipotentiary to France; the term Ambassador was not yet in use.

62. ANDREW BURSTEIN & NANCY ISENBERG, MADISON AND JEFFERSON 171 (2010).

63. See Letter from Thomas Jefferson to James Madison (Dec. 20, 1787), in 12 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 438, 442.

64. See Letter from Thomas Jefferson to Garreau (Dec. 22, 1785), in 9 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 121, 121 (noting that under the Articles of Confederation, Congress's powers did not extend over public education). Although Jefferson appreciated that the proposed constitution would create a more powerful federal government, he turned to the state as the principal sovereign charged with educating the citizenry. See generally Richard D. Brown, *Bulwark of Revolutionary Liberty: Thomas Jefferson's and John Adams's Programs for an Informed Citizenry*, in THOMAS JEFFERSON AND THE EDUCATION OF A CITIZEN, *supra* note 36, at 91, 96. Later, Jefferson, as President, in a speech to Congress, supported the establishment of a national endowment for education. CHARLES MAURICE WILTSE, THE JEFFERSONIAN TRADITION IN AMERICAN DEMOCRACY 140 (1960).

success of the constitution depended on an informed citizenry.<sup>65</sup> The hallmark of Jefferson's constitutional thought was the emphasis he placed on popular participation.<sup>66</sup> The ability to govern had been wrested from the Crown and given to the people, and Jefferson viewed education and self-government as inseparable.<sup>67</sup>

Jefferson's *Bill for the More General Diffusion of Knowledge*, a novel idea for its time,<sup>68</sup> called for the establishment of public schools.<sup>69</sup> The survival of the new nation depended on an educated citizenry<sup>70</sup> because there was a "direct correlation between literacy and successful self-government[; o]ne was necessary to ensure the future of the other."<sup>71</sup> Jefferson wrote Wythe from Paris, "By far the most important bill in our whole code is that for the diffusion of knowledge among the people."<sup>72</sup> Wythe agreed and consistently worked in his capacity as legislative drafter to revise Virginia law to include free education.<sup>73</sup>

65. See THE QUOTABLE JEFFERSON, *supra* note 6 ("Ignorance [and] bigotry, like other insanities, are incapable of self-government.")

66. DAVID N. MAYER, THE CONSTITUTIONAL THOUGHT OF THOMAS JEFFERSON 314 (1994).

67. See Letter from Thomas Jefferson to Joseph Priestly (June 19, 1802), in 37 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 625, 625; see also HAROLD NORRIS, *Education for Popular Sovereignty: A Bicentennial View of the Purpose of Education*, in EDUCATION FOR POPULAR SOVEREIGNTY THROUGH IMPLEMENTING THE CONSTITUTION AND THE BILL OF RIGHTS: A COLLECTION OF WRITINGS ON THE OCCASION OF THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION AND THE BILL OF RIGHTS 31, 31 (1991).

68. See Benjamin R. Barber, *Education and Democracy: Summary and Comment*, in THOMAS JEFFERSON AND THE EDUCATION OF A CITIZEN, *supra* note 36, at 134, 146 (calling publicly funded education "an alien notion to eighteenth-century Americans"); Brown, *supra* note 64, at 102 (describing the bill as an attempt "to bypass the old Anglican establishment, and create new, secular educational institutions"); Eugene R. Sheridan, *Liberty and Virtue: Religion and Republicanism in Jeffersonian Thought*, in THOMAS JEFFERSON AND THE EDUCATION OF A CITIZEN, *supra* note 36, at 242, 252 (calling Jefferson's proposal "innovative").

69. *A Bill for the More General Diffusion of Knowledge*, in 2 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 526, 526–27.

70. See MAYER, *supra* note 66, at 86–87 ("Jefferson's stress on public education was tied directly to his republicanism and the assumptions that underlay his concept of self-government. As he later observed, a civilized nation could not be both ignorant and free.")

71. Jeff Sparagana, *The Educational Theory of Thomas Jefferson*, NEW FOUND. (May 13, 2002), <http://www.newfoundations.com/GALLERY/Jefferson.html> (citation omitted).

72. Letter from Thomas Jefferson to George Wythe (Aug. 13, 1786), in 10 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 243, 243–44. A more full text of Jefferson's letter to Wythe reads:

[B]y far the most important bill in our whole code is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom, and happiness. If anybody thinks that kings, nobles, or priests are good conservators of the public happiness, send them here. It is the best school in the universe to cure them of that folly. . . . Preach, my dear Sir, a crusade against ignorance; establish and improve the law for educating the common people. Let our countrymen know that the people alone can protect us against these evils, and that the tax which will be paid for this purpose is not more than the thousandth part of what will be paid to kings, priests and nobles who will rise up among us if we leave the people in ignorance.

*Id.* at 244–45.

73. See BLACKBURN, *supra* note 12, at 114 (noting that Wythe "scarcely needed Jefferson's admonition to crusade against ignorance" and that Wythe came from "four generations of gifted educators on his mother's side of the family"). James Madison, in a letter to Jefferson explaining that the bill for universal education was unlikely to pass due to cost, hints at Wythe's tremendous efforts to champion the bill: "Mr. Wythe I suppose will not decline any duty which may be imposed on him,

Jefferson believed that survival of the liberty won by the colonies during the American Revolution depended on successful self-government, and successful self-government depended on universal education.<sup>74</sup> Wythe and Jefferson transformed the teaching of law from a system of arcane drudgery to one of inclusive engagement; this idea should not be viewed in a vacuum, but as consistent with their promotion of literacy, civic education, and public schooling.<sup>75</sup>

Wythe and Jefferson read Montesquieu, who “cautioned that education in law is essential if self-government is . . . to be maintained,”<sup>76</sup> and Locke, who presupposed that legitimate government must be derived from the consent of the people through education.<sup>77</sup> Wythe required that his pupils study constitutional law, an innovative approach that contributed to their understanding of politics and social philosophy.<sup>78</sup>

This foundational knowledge prepared young citizen lawyers to lead the national discourse on constitutional issues.<sup>79</sup> Thus, constitutional literacy programs perfectly meld Wythe and Jefferson’s desire to educate citizen lawyers and provide for an educated citizenry.

### *B. Wythe and Jefferson’s Citizen Lawyer and What It Means Today*

Wythe and Jefferson intended to train government leaders to sustain the new republic;<sup>80</sup> the express purpose of America’s first law school was

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but it seems almost cruel to tax his patriotic zeal any farther.” Letter from James Madison to Thomas Jefferson (Dec. 4, 1786), in 10 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 574, 576.

74. Jennings L. Wagoner, Jr., “*That Knowledge Most Useful to Us*”: Thomas Jefferson’s Concept of Utility in the Education of Republican Citizens, in THOMAS JEFFERSON AND THE EDUCATION OF A CITIZEN, *supra* note 36, at 115, 118. Jefferson from Paris wrote to George Washington: “It is an axiom in my mind that our liberty can never be safe but in the hands of the people themselves, and that too of the people with a certain degree of instruction. This it is the business of the state to effect, and on a general plan.” Letter from Thomas Jefferson to George Washington (Jan. 4, 178[6]), in 9 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 150, 150–51.

75. See Barber, *supra* note 68, at 149 (discussing the purpose behind Jefferson’s attempts “to take law away from lawyers and return it to citizen philosophers”). Although Barber’s piece only examined Jefferson, for purposes of this Essay, it is fair to also credit Wythe; Jefferson’s role in the transformation of legal education cannot be separated from the role of Wythe—the teacher that inspired Jefferson to champion, and that Jefferson chose to lead, the effort for fundamental changes to the structure of legal education. Also worth noting, Wythe was passionate about teaching students of all ages. See BLACKBURN, *supra* note 12, at 113 (noting that Wythe taught languages, mathematics, and English literature to grammar school students).

76. CARRINGTON, *supra* note 16, at 23.

77. See, e.g., Jan Lewis, *Jefferson, the Family, and Civic Education*, in THOMAS JEFFERSON AND THE EDUCATION OF A CITIZEN, *supra* note 36, at 63, 67.

78. See Hunter, *supra* note 19, at 145 (“Wythe also discussed materials more akin to political science, and since the first written constitutions in the English-speaking world had just been produced in various colonies, Wythe has been called the first commentator on constitutional law.”).

79. See CARRINGTON, *supra* note 16, at 24 (noting that Wythe was among the first judges “to declare a law invalid as inconsistent with the higher law expressed in Virginia’s constitution” and that John Marshall, one of Wythe’s former students, would soon do the same in invalidating a federal law).

80. See W. Taylor Reveley, III, *The Citizen Lawyer*, 50 WM. & MARY L. REV. 1309, 1309, 1316 (2009).



to educate citizen lawyers.<sup>81</sup> Current President of the College of William & Mary, and former Dean of William & Mary School of Law, W. Taylor Reveley III, in an article titled *The Citizen Lawyer*, modernized the concept of the citizen lawyer by defining a “citizen lawyer” as one who meets his or her civic responsibilities.<sup>82</sup> A lawyer might meet these responsibilities not only through filling government roles but also through representing pro bono clients, leading nonprofit organizations, taking jobs squarely devoted to the larger good even when they offer less compensation or job security than the lawyer’s prior position, and charitable giving.<sup>83</sup> Robert Gordon, citing Reveley’s article, sums up the concept well: citizen lawyers will “devote time and effort to public ends and values: the service of the Republic, their communities, the ideal of the rule of law, and reforms to enhance the law’s efficiency, fairness, and accessibility.”<sup>84</sup>

### III. CIVICS AND TEACHING THE CONSTITUTION

#### A. *The Rise, Fall, and Inadequacy of Civic Education in America*

Civic education, as we recognize it today, first entered school curricula around the turn of the twentieth century.<sup>85</sup> American schools installed these courses to assimilate the many immigrants coming into the United States, emphasizing the country’s “Judeo-Christian, Graeco-Roman, and . . . Anglo-American roots.”<sup>86</sup> The subsequent patriotism surrounding the two World Wars and the onset of the Cold War sustained these programs.<sup>87</sup> The 1960s marked the beginning of the decline of civic education.<sup>88</sup> Sputnik shocked Americans into focusing on math and science education, the Vietnam War disillusioned the American populace, and Watergate shook confidence in the country’s traditional institutions.<sup>89</sup> The shortcomings of the civic education system compounded the issue. Curricula in the 1950s and 1960s were marked by a dry, lecture-driven focus on the structure of American government, and lacked any application or acknowledgment of current events.<sup>90</sup> Consequently, most civics programs were eliminated.<sup>91</sup>

Following this shift, experts began to notice a severe inadequacy in American students’ understanding of government. In his 1984 book *De-*

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81. *Id.* at 1310.

82. *See id.* at 1310–11, 1317.

83. *See id.* at 1316–19.

84. Robert W. Gordon, *The Citizen Lawyer—A Brief Informal History of a Myth with Some Basis in Reality*, 50 WM. & MARY L. REV. 1169, 1169 (2009).

85. Charles N. Quigley, *Civic Education: Recent History, Current Status, and the Future*, 62 ALB. L. REV. 1425, 1426 (1999).

86. *Id.*

87. *Id.* at 1426–27.

88. *Id.* at 1427.

89. *Id.* at 1427–29.

90. *Id.* at 1427–28.

91. *See id.* at 1428.

*mocracy at Risk: The Rising Tide of Political Illiteracy and Ignorance of the Constitution*, Jerry Combee analyzed the lack of comprehension exhibited by high school students in this area.<sup>92</sup> For example, he detailed the 1976 National Assessment of Educational Progress surveys, which exposed a poor understanding of basic constitutional principles.<sup>93</sup> Of seventeen-year-olds surveyed, many could not correctly place the President, Congress, Supreme Court, or cabinet within their respective branches,<sup>94</sup> few understood the concept of judicial review,<sup>95</sup> and some viewed the power of the President as unlimited.<sup>96</sup>

### *B. The Continuing Need to Reform American Civic Education*

Today, few Americans can demonstrate satisfactory knowledge of the Constitution.<sup>97</sup> A Brennan Center for Justice report found that “[o]nly 42 percent of [New York] respondents could correctly answer all three questions about the different roles of the three branches of government.”<sup>98</sup> One-third of New Yorkers could not correctly answer that the President is in charge of the Executive Branch.<sup>99</sup> The report called the lack of constitutional literacy a “crisis” in need of creative answers.<sup>100</sup>

This is a nationwide issue. Another recent survey by the Center for the Constitution found that 69% of respondents reported a limited understanding of the Constitution.<sup>101</sup> Recent high school graduates fared the worst.<sup>102</sup> This statistic is unnerving for two reasons. First, given that less

92. JERRY COMBEE, *DEMOCRACY AT RISK: THE RISING TIDE OF POLITICAL ILLITERACY AND IGNORANCE OF THE CONSTITUTION* 1–2 (1984).

93. *See id.* at 3.

94. Only 74% identified Congress as part of the Legislative Branch, 71% identified the President as part of the Executive Branch, 35% placed the cabinet within the Executive Branch, and 65% knew the U.S. Supreme Court was part of the Judicial Branch. *Id.*

95. Only 62% knew that the Supreme Court could declare an act of Congress unconstitutional, 7% knew it took only a simple majority of Justices to do this, and 52% did not know that the Senate must approve Supreme Court appointments. *Id.* at 4.

96. In response to the question “Does the President of the United States have the right to do anything affecting the United States that he wants to do?” 10% of students responded “yes.” *Id.* (quoting Karen Dawson, *What You Ought to Know and Believe About the Constitution*, in *TEACHING ABOUT THE CONSTITUTION IN AMERICAN SECONDARY SCHOOLS* 29, 30 (Howard D. Mehlinger ed., 1981)) (internal quotation marks omitted).

97. *See, e.g.*, ERIC LANE & MEG BARNETTE, BRENNAN CTR. FOR JUSTICE, *A REPORT CARD ON NEW YORK’S CIVIC LITERACY* 7 (2011) (finding that 86% of respondents “[b]elieve democracy requires citizens to be knowledgeable about the Constitution,” while a mere 16% of respondents “[c]onsider themselves ‘very familiar’ with the Constitution”).

98. *Id.* at 13.

99. *Id.* at 13–14.

100. *Id.* at 21.

101. *See* CTR. FOR THE CONSTITUTION AT JAMES MADISON’S MONTPELIER, *THE STATE OF THE CONSTITUTION: WHAT AMERICANS KNOW* 1 (2010).

102. *See id.* (finding that nearly 85% of respondents in the eighteen-to-twenty-four-year-old group reported some, a little, or not much of an understanding of the Constitution). Some attribute these declining numbers to the No Child Left Behind Act. *See, e.g.*, SUZANNE SOULE & TED MCCONNELL, CTR. FOR CIVIC EDUC., *A CAMPAIGN TO PROMOTE CIVIC EDUCATION: A MODEL OF HOW TO GET EDUCATION FOR DEMOCRACY BACK INTO U.S. CLASSROOMS IN ALL FIFTY STATES* 2 (2006); Seth Schiesel, *Former Justice Promotes Web-based Civics Lessons*, N.Y. TIMES, June 9, 2008, at E7 (“One unintended effect of the No Child Left Behind Act . . . is that it has effectively

than 30% of Americans obtain a college degree,<sup>103</sup> high school is often the last opportunity to educate the populace on matters of constitutional literacy. Second, youth participation in elections is increasingly influential. Eighteen-to-twenty-four-year-olds' voting and campaign activities arguably decided the 2008 and 2012 elections.<sup>104</sup> Without an understanding of the core concepts of the Constitution, eighteen-to-twenty-four-year-olds might not make educated voting decisions.<sup>105</sup> With such great potential to impact American self-government, it is essential that eighteen-to-twenty-four-year-olds have a basic level of constitutional literacy.

### C. Civic Education's Renewed Role in Shaping Democracy

The last few decades have seen multiple movements to reinvigorate and reemphasize civic education in America. In 1988, Harold Norris proposed that education should aim to create citizens competent and skilled for self-government.<sup>106</sup> He sought a "self-governing society of self-governing individuals"<sup>107</sup> and noted that a thorough grounding in the Constitution, Bill of Rights, and Declaration of Independence could serve as an efficient moral education.<sup>108</sup> Similarly, in 1994, the Center for Civic Education published the study *National Standards for Civics and Government*, which discussed the importance of civic education and laid out standards for grades K–4, 5–8, and 9–12.<sup>109</sup> The center's guidelines

squeezed out civics education . . . . And at least half of the states no longer make teaching of civics and government a requirement for high school graduation." (quoting Justice Sandra Day O'Connor, Keynote Address at the Games for Change Conference (June 4, 2008)) (internal quotation marks omitted)).

103. Although 57% of American adults experience some level of post-secondary education, only 28% of American adults reported educational attainment of a bachelor's degree or higher. CAMILLE L. RYAN & JULIE SIEBENS, U.S. DEP'T OF COMMERCE, EDUCATIONAL ATTAINMENT IN THE UNITED STATES: 2009, at 6 (2012). As of 2009, among people aged twenty-five to thirty-four, about 30% have a bachelor's degree. *Id.*

104. See, e.g., Scott Keeter et al., *Young Voters in the 2008 Election*, PEW RES. CENTER FOR PEOPLE & PRESS (Nov. 13, 2008), <http://www.pewresearch.org/2008/11/13/young-voters-in-the-2008-election/> (noting that young voters disproportionately support Democratic candidates, attend campaign events at a rate far exceeding that of older generations, and have made financial contributions at rates comparable to their middle-aged counterparts).

105. See JOHN LOCKE, THE SECOND TREATISE OF CIVIL GOVERNMENT AND A LETTER CONCERNING TOLERATION 48 (J.W. Gough ed., Basil Blackwell Oxford 1948) (1690) ("Men being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, *without his own consent*. . . . When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make *one body politic*, wherein the *majority* [has] a right to act and conclude the rest." (emphases added)). The high correlation between parents' voting choices and the political views of their children may provide further evidence of the need for more extensive civic education to prepare young voters to truly consent to their governance. See Kitty G. Abraham, *Influence of Significant Others' Perceived Voting Behaviors on Children's Political Socialization*, 54 PERCEPTUAL & MOTOR SKILLS 995, 1000 (1982); see also Larry M. Bartels, *The Study of Electoral Behavior*, in THE OXFORD HANDBOOK OF AMERICAN ELECTIONS AND POLITICAL BEHAVIOR 241, 242–43 (Jan E. Leighley ed., 2010).

106. See NORRIS, *supra* note 67, at 33.

107. See *id.* at 35.

108. *Id.* at 56–60.

109. CTR. FOR CIVIC EDUC., NATIONAL STANDARDS FOR CIVICS AND GOVERNMENT 8 (2010).

emphasize citizens' role in the mechanisms and principles of American government.<sup>110</sup>

Along these lines, in 2008, Cricket F.L. Kidwell recommended steps to improve the civic education of students in California schools.<sup>111</sup> The report highlighted the insufficient time, resources, and teacher preparation devoted to civics in California schools and encouraged a renewed emphasis.<sup>112</sup> The Norris and Kidwell studies also emphasized engaging students in activities simulating our governmental and legal processes, evoking greater interest and understanding.<sup>113</sup>

Civic engagement has also gained prominent international attention. Since 1999, the World Movement for Democracy has organized seven assemblies around the globe discussing the challenges faced by democracy today and how to overcome them.<sup>114</sup> Each assembly stressed the importance of civic education to the success and spread of democracy.<sup>115</sup> Additionally, in 2006, Susan Soule and Ted McConnell of the Center for Civic Education presented an article at an international conference on school reform outlining current efforts to reform American civic education.<sup>116</sup> Civic education has become a leading issue for concerned experts in recent years.

#### *D. The Constitution's Essential Role in Civic Education*

The Constitution is the business of every American citizen,<sup>117</sup> and is the embodiment of what it means to be an American.<sup>118</sup> The U.S. government provides one hundred civics flashcards to immigrants wishing to pass the naturalization test.<sup>119</sup> The first flashcard asks: "What is the supreme law of the land?"<sup>120</sup> Answer: "[T]he Constitution."<sup>121</sup> The second

110. *See id.* at 13.

111. CRICKET F.L. KIDWELL, CAL. CAMPAIGN FOR THE CIVIC MISSION OF SCH., CIVIC EDUCATION IN CALIFORNIA: POLICY RECOMMENDATIONS 3 (2008).

112. *Id.* at 2-4.

113. *See* KIDWELL, *supra* note 111, at 4; NORRIS, *supra* note 67, at 61.

114. *See Assemblies*, WORLD MOVEMENT FOR DEMOCRACY, <http://www.wmd.org/assemblies> (last visited Mar. 31, 2013).

115. *See, e.g., Youth Engagement & Empowerment*, WORLD MOVEMENT FOR DEMOCRACY, <http://www.wmd.org/assemblies/sixth-assembly/workshops/youth-engagement-empowerment/increasing-investment-youth-educati> (last visited Mar. 16, 2013) (reporting on discussions from the sixth assembly including the idea that "[e]ducation in democracy is important because it creates consciousness among youth").

116. *See* SOULE & MCCONNELL, *supra* note 102, at 1.

117. *See* TONI MARIE MASSARO, CONSTITUTIONAL LITERACY: A CORE CURRICULUM FOR A MULTICULTURAL NATION 70 (1993) (stating as fallacy that constitutional principles "are the province of lawyers and judges, not ordinary citizens").

118. *See, e.g.,* Justice William J. Brennan, Jr., Speech at the Georgetown University Text and Teaching Symposium (Oct. 12, 1985), [http://www.pbs.org/wnet/supremecourt/democracy/sources\\_document7.html](http://www.pbs.org/wnet/supremecourt/democracy/sources_document7.html).

119. U.S. CITIZENSHIP & IMMIGRATION SERVS., U.S. DEP'T OF HOMELAND SEC., CIVICS FLASHCARDS FOR THE NATURALIZATION TEST 3 (2012).

120. *Id.* at 4.

121. *Id.* at 5.

flashcard asks: “What does the Constitution do?”<sup>122</sup> Answer: “[S]ets up the government[;] defines the government[;] [and] protects basic rights of Americans.”<sup>123</sup> The third flashcard asks: What are the first three words of the Constitution that describe the idea of self-government?<sup>124</sup> Answer: “We the People.”<sup>125</sup> The U.S. government’s prominent placement of the Constitution in the study material given to aspiring citizens is a testament to its importance in the life of every American. Citizenship is a birthright for those born on American soil.<sup>126</sup> This birthright must be appreciated and understood.

Constitutional literacy programs protect the American system of self-government by producing engaged citizens.<sup>127</sup> Teaching the Constitution to high school students meets both pedagogical and civic ends.<sup>128</sup> Constitutional literacy programs directly benefit high school students: students who understand the Constitution are better able to navigate American political structures;<sup>129</sup> students capable of grasping complex constitutional debate are better able to hold political leaders accountable;<sup>130</sup> students aware of the individual rights afforded by the Constitution are less likely to accept government infringement and more likely to respect the rights of others;<sup>131</sup> students wrestling with and deliberating the text of the Constitution are more likely to become responsible citi-

122. *Id.* at 6.

123. *Id.* at 7.

124. *Id.* at 8.

125. *Id.* at 9.

126. U.S. CONST. amend. XIV, § 1 (“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”).

127. See Douglas L. Wilson, *Jefferson and Literacy*, in THOMAS JEFFERSON AND THE EDUCATION OF A CITIZEN, *supra* note 36, at 79, 81 (“With literacy came knowledge and discernment, and with these came the means of safeguarding self-government and independence. Thus the link between literacy and successful citizenship was unambiguous and direct.”).

128. See MASSARO, *supra* note 117 (“[T]he commitments set down in the Constitution are believed to have specific pedagogical implications. They imply a preference for methods of instruction that inspire critical deliberation, are tolerant of diverse viewpoints, and respect individual autonomy.”); see also James Youniss & Peter Levine, *A “Younger Americans Act”: An Old Idea for a New Era*, in ENGAGING YOUNG PEOPLE IN CIVIC LIFE 13, 14 (James Youniss & Peter Levine eds., 2009) (noting that engaging youth in civics might inspire “mature” citizens).

129. See JAMIN B. RASKIN, *WE THE STUDENTS*, at xiv (2d ed. 2003) (stating that studying the Constitution might cause the high school student to “fulfill the highest calling of democracy: to be an active, engaged, educated, and responsible citizen”).

130. See ADOLF G. GUNDERSEN, *THE SOCRATIC CITIZEN: A THEORY OF DELIBERATIVE DEMOCRACY* 91 (2000) (“The more individual citizens are capable of defining the issues, the more they set the agenda, and the more the public sector must respond to them rather than vice versa.”); see also MASSARO, *supra* note 117, at 153 (describing, as important, “the kind of national knowledge that will enable our children to assume the complex duties of American citizenship”).

131. See MASSARO, *supra* note 117, at 70, 151 (noting that “constitutional literacy is the best way to preserve” the values in the Bill of Rights because “[t]he Constitution and its vocabulary offer a particularly accessible and engaging framework for the core curriculum debate in that constitutional language transcends disciplines, sects, political affiliations, and dialects”); see also RASKIN, *supra* note 129, at xiii (stating that learning the Constitution enables high school students to “learn your rights as a citizen, but [that such] rights exist only . . . where we all assume corresponding responsibilities”).

zens who act for the common good;<sup>132</sup> and students studying the Constitution are more likely to transcend differences and exhibit tolerance.<sup>133</sup>

### *E. Constitutional Literacy as a Mechanism to Educate Citizen Lawyers*

To educate modern-day citizen lawyers, Reveley challenges law schools in four ways.<sup>134</sup> Law schools must (1) “talk the talk” of the citizen lawyer by communicating the importance of lawyers as citizens at every opportunity, (2) walk the walk of the citizen lawyer by supporting professors and administrators who are themselves citizen lawyers, (3) find opportunities for law students to serve the common good while in school, and (4) bring together influential lawyers to promote public service in the legal profession.<sup>135</sup> Constitutional literacy programs advance each of the four goals.

Marshall–Brennan promotes constitutional literacy by bringing together high school and law students.<sup>136</sup> Law schools, by virtue of being Marshall–Brennan licensed chapters, strive to meet the challenge to produce citizen lawyers. Marshall–Brennan’s membership standards require a law school to (1) offer a for-credit class designed to prepare law students to teach constitutional literacy and (2) partner with a school district to provide a for-credit constitutional literacy class for high school students.

First, Marshall–Brennan chapters “talk the talk.” Each chapter must attract law and high school students. Law professors actively recruit students, and former Marshall–Brennan Fellows recommend the program to fellow law students. This buzz inspires positive dialogue about the importance of constitutional literacy and the benefits of becoming citizen lawyers by helping community youth. School district administrators, counselors, teachers, and program alumni actively recruit, recommending the class to current high school students. Recruiting efforts communicate the benefits of constitutional literacy and the importance of civic education.<sup>137</sup>

Second, Marshall–Brennan chapters walk the walk by employing citizen lawyer professors qualified to lead the constitutional literacy program. The professors must commit time to effectively teach law students

132. See GUNDERSEN, *supra* note 130, at 185 (stating that deliberation promotes responsibility in three concrete ways: (1) by forcing individuals to identify values, (2) by issuing a challenge to determinism, and (3) by highlighting that the citizen is active rather than an object subject to forces beyond the citizen’s control).

133. See MASSARO, *supra* note 117 (“The Constitution and its vocabulary offer a particularly accessible and engaging framework for the core curriculum debate in that constitutional language transcends disciplines, sects, political affiliations, and dialects.”).

134. Reveley, *supra* note 80, at 1319–20.

135. *Id.*

136. See *The Marshall–Brennan Constitutional Literacy Project*, *supra* note 8.

137. Interview with Deborah H. Crawford, Academic Advisor, Warhill High Sch., in Williamsburg, Va. (Nov. 7, 2012).

to present a constitutional literacy curriculum in a high school classroom setting. The professors must also maintain close contact with school district administrators, high school students, and parents to ensure program success. The school must commit financial and professional support to the program.<sup>138</sup> Faculty and administrators must support the offering of a for-credit law school class, a professor's salary, annual chapter dues, and other expenses.<sup>139</sup>

Third, Marshall–Brennan chapters provide law students the opportunity to serve while still in law school. Law students are busy. Opportunities for service outside of law student organizations and scholarship are limited. By providing constitutional literacy programs, law schools enable students to benefit their community as teachers and role models to high school students.<sup>140</sup>

Fourth, Marshall–Brennan chapters inspire lawyers—both within and external to the law school community—to contribute to constitutional literacy. At William & Mary Law School, faculty support for the program extends into high school classrooms. Because academic calendars do not perfectly align, law students are sometimes unavailable to teach the regularly scheduled high school class.<sup>141</sup> Members of the law faculty volunteer to cover these classes each semester.<sup>142</sup> Lawyers from the outside community also contribute to the programs. For example, one Virginia Commonwealth attorney regularly welcomes the high school students to the courthouse to learn about the judicial system,<sup>143</sup> and local attorneys judge moot court competitions.<sup>144</sup>

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138. At William & Mary Law School, the program exists thanks to a committed faculty and administration. Specifically, Marshall–Brennan membership is possible thanks to the leadership of Professor Neal Devins, the support of Professor of Practice Rebecca Green, and the backing of Dean Davison Douglas.

139. At William & Mary Law School, other expenses include funding for sending faculty and students to national high school moot court competitions and the provision of classroom space on campus to teach the high school class. The college's main campus generously invites law students to teach the high school students in the nation's oldest functioning collegiate building, the Sir Christopher Wren Building, where George Wythe was once a professor and Thomas Jefferson was once a student. This collaboration, between college and law school, illustrates the campus-wide support for constitutional literacy and the cultivation of citizen lawyers.

140. Interview with Deborah H. Crawford, Academic Advisor, Warhill High Sch., in Williamsburg, Va. (Nov. 7, 2012).

141. Faculty substitutes are generally needed for three or four class sessions each semester as a result of law school final exams or holiday breaks.

142. At William & Mary Law School, faculty members Neil Devins, Ali Larson, Rebecca Green, and Anna Chason are enthusiastic volunteers.

143. Commonwealth Attorney Nathan Green's lesson provides the high school students with a bird's-eye view of the criminal justice system from the inception of a crime through potential sentencing and appeal.

144. In addition, William & Mary's Marshall–Brennan chapter organized a program where local attorneys and law students are welcomed to high school classrooms to teach a week-long seminar on civics, the Constitution, law, and legal writing. At the conclusion of the seminar, a high school counselor reflected: "We all appreciate the opportunity to collaborate with the Law School through the Constitutional Law classes and speakers you provided for our freshmen. Our students

*F. The Value of Law Students Teaching the Constitution to High School Students*

Repeated classroom success has proven constitutional literacy programs' worth.<sup>145</sup> Placing law students, high school students, and the Constitution in the same room is a recipe for success.<sup>146</sup> All are entertained, real issues are examined thoughtfully, and the value of compromise is appreciated.<sup>147</sup> This model works because law students and high school students are particularly suited to benefit each other.

First, law students have recently studied constitutional law.<sup>148</sup> This enables Marshall–Brennan Fellows to tackle complex issues from a new perspective. A Marshall–Brennan Fellow notes: “Law students are uniquely suited to teach the U.S. Constitution to high school students because . . . they have current knowledge of constitutional issues.”<sup>149</sup> Preparing to teach is an effective way to learn. Another Marshall–Brennan Fellow reports: “I did not realize how much I knew about the intricacies of our [C]onstitution until I was being grilled by an eleventh grader.”<sup>150</sup>

Second, law students can relate to high school students. Generally, law students are only five to ten years older than high school students. This makes them uniquely suited to serve as effective mentors and to develop culturally relevant and effective classroom materials.<sup>151</sup> Having a civics teacher who speaks the same generational language as his or her

benefit greatly from the enrichment [faculty] and students provide.” E-mail from Ann Shaver, Counselor, Jamestown High Sch., to Author (Jan. 22, 2013, 8:39 EST) (on file with author).

145. E-mail from Ann Shaver, Counselor, Jamestown High Sch., to Author (Jan. 22, 2013, 13:13 EST) (on file with author) [hereinafter Shaver] (“High School students . . . enthusiastically report that it was a highlight of their high school classes. Whenever I ask a student about the experience, the response is always positive. Kids offer that they loved the class, enjoyed the atmosphere and level of debate, and that the class was pivotal to their deeper understanding of content delivered in AP Government and other classes. Regardless of courses taken at the high school, [the constitutional literacy class] helps kids learn to think on their feet, collect the facts to prepare a well-informed debate, and become better citizens through their knowledge of the Constitution.”).

146. See E-mail from Quincy Marrow, Supervisor of Guidance and Counseling, Williamsburg-James City Cnty. Pub. Sch., to Author (Apr. 16, 2012, 8:58 EST) (highlighting the continued success of the constitutional literacy program) (on file with author).

147. See Shaver, *supra* note 145 (“When you discuss controversial topics, people who don’t understand often stick to their opinions without considering or understanding the other side. The law students pushed us [high school students] to learn more from each other and the facts we needed to reach an agreement. I can see why it’s hard to compromise and come to a consensus so I have a better appreciation for why the law is both challenging and satisfying when you fuse opinions with facts. In Constitutional Law, your opinion is ‘money’ as long as you support it with the facts. This is an analytical skill that will help me in life.” (quoting Amy Pressey, a high school student who participated in the constitutional literacy program) (internal quotation marks omitted)) (on file with author).

148. Constitutional law is typically part of a law school’s first-year curriculum.

149. E-mail from Naomi Harralson, Marshall–Brennan Fellow, William & Mary Law Sch., to Author (Jan. 20, 2013, 18:51 EST) (on file with author).

150. E-mail from Kylie Madsen, Marshall–Brennan Fellow, William & Mary Law Sch., to Author (Nov. 28, 2012, 23:16 EST) (on file with author).

151. William & Mary’s Marshall–Brennan chapter attempts to match the experiences of Marshall–Brennan Fellows with the interests of the high school students taking the class.



students is especially useful in communicating difficult or complex ideas. Understanding what is likely to capture high school students' attention, law students regularly incorporate pop culture references into their lesson plans, dramatically improving the learning environment and level of retention.<sup>152</sup>

Third, law students are taught to think critically and examine issues from multiple viewpoints. Teaching high school students the same inspires a sharper, more responsible analysis. One high school student reflects: "The class has made me better at taking a step back from an issue at hand and looking at things objectively."<sup>153</sup> Requiring students to employ rational thinking makes them more effective leaders. This program teaches them that no one person can have a monopoly on absolute truth.<sup>154</sup>

Fourth, teaching high school students provides law students with a ready example of the merits of their chosen profession. In recent years, the legal profession has suffered a decline in reputational capital. Public perception has shifted, and a profession once viewed as admirable is now vilified. Law students facing a challenging employment market and public scrutiny derive a sense of pride from participating in a community-minded program. The chance to demonstrate legal knowledge while fostering goodwill and providing an essential community service is an invaluable addition to modern legal education.

#### CONCLUSION

Jefferson valued education: "The boys of the rising generation are to be the men of the next, and the sole guardians of the principles we deliver over to them."<sup>155</sup> The survival of American principles and values, as set forth in Constitution, is not assured; it requires those willing to teach and those willing to learn.<sup>156</sup>

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152. See, e.g., PATRICK SLEBONICK, LESSON PLAN: FOURTH AMENDMENT; SEARCH AND SEIZURE *passim* (2011) (on file with author). After reading a law review article that analyzed the lyrics from Jay-Z's hit song *99 Problems*, Mr. Slebonick created a Fourth Amendment lesson plan to educate students about search and seizure. *Id.*

153. See WILLIAMSBURG-JAMES CITY COUNTY HIGH SCHOOL STUDENT CLASS EVALUATIONS (2011) (on file with author). Other reflections similarly illustrated an increased awareness of issues by high school students, e.g., "[t]his class gave me the opportunity to see different perspectives from all types of people"; and "[m]y teachers were adamant about us learning to think with logic and rationale as opposed to thinking with our emotions on issues. Critical thinking is an important, if not the most important, aspect of humans, so essentially by teaching us how to utilize this better, our teachers made us better human beings." *Id.*

154. See Interview with Robert M. Gates, Chancellor, Coll. of William & Mary, in Williamsburg, Va. (Feb. 2, 2012).

155. Letter from Thomas Jefferson to Samuel Knox (Feb. 12, 1810), in THE QUOTABLE JEFFERSON, *supra* note 6, at 85, 85.

156. See Schiesel, *supra* note 102 ("The better educated our citizens are, the better equipped they will be to preserve the system of government we have. And we have to start with the education of our nation's young people. Knowledge about our government is not handed down through the gene pool. Every generation has to learn it, and we have some work to do." (quoting Justice Sandra

To Wythe and Jefferson, self-government exists in symbiosis with education. The mechanisms set forth by the Constitution cannot flourish without an informed citizenry; this realization led Wythe and Jefferson to champion universal education and found America's first law school.<sup>157</sup>

Constitutional literacy programs promote an educated, active, and engaged citizenry, realizing both of Wythe and Jefferson's goals: first, to cultivate citizen lawyers; and second, to provide for an informed citizenry capable of safeguarding the American system of self-government provided by the Constitution.

Today's constitutional literacy programs implemented at law schools across the United States promote Wythe and Jefferson's vision of citizen lawyers and public education partnering to secure America's future.<sup>158</sup> Leaders of every institution of legal education in the United States should answer the citizen lawyer's calling, undertaking a comprehensive constitutional literacy program to help revive civic education in America. Imagine what George Wythe would think.

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Day O'Connor, Keynote Address at the Games for Change Conference (June 4, 2008)) (internal quotation marks omitted).

157. See CARRINGTON, *supra* note 16, at 23 (stating that for Wythe and Jefferson, self-government depended on citizens' ability to choose the public good over private interest and that "[i]t was the aim of Jefferson and Wythe to deploy the public College of William and Mary to supply the needed moral training").

158. At the time of publication, at least eighteen law schools nationwide support constitutional literacy programs. Marshall-Brennan Constitutional Literacy Project, *Teaching Partners*, AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan/partners.cfm> (last visited Mar. 31, 2013). Licensed Marshall-Brennan chapters include American University Washington College of Law, Arizona State University Sandra Day O'Connor School of Law, Drexel University Earle Mack School of Law, Howard University School of Law, Phoenix School of Law, Rutgers University School of Law-Camden, Santa Clara Law School, Southern University Law Center, Suffolk University Law School, University of California Hastings College of the Law, University of Colorado Law School, University of Louisville Louis D. Brandeis School of Law, University of New Mexico School of Law, University of Pennsylvania Law School, University of Pittsburgh School of Law, Washington University School of Law, William Mitchell College of Law, and Yale Law School. *Id.*