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Teaching Controversial Issues in American Schools

Emily Robertson (Syracuse University)

Abstract

Robert Kunzman's review of our book is thoughtful and generous. There are numerous points of agreement between us. We indicate a few areas where comments might be helpful to our readers, including our support of pedagogical neutrality, our legal analysis of teachers' rights to free speech, our support of academic freedom for teachers, and the goals of teaching controversial issues.

This article is in response to:

Kunzman, R. (2018). Contention and Conversation in the K–12 Classroom. A Review Essay of *Teaching Controversial Issues* and *The Case for Contention*. *Democracy & Education, 26*(1), Article 5. Available at: http://democracyeducationjournal.org/home/vol26/iss1/5

Our book is the third in a series from The University of Chicago Press that brings together historians and philosophers to comment on public policy in education. It thus does not focus directly on pedagogy or curricula, although we certainly believe teachers and other educators will benefit from reading it. We are interested in what has happened historically to efforts to teach controversial issues and what policies might facilitate such teaching given that everyone appears to agree that it is an important part of civic and intellectual education. Discussion is certainly not the only aspect of civic life, but it is a central one. Other books in the series focus on particular controversial issues. (The first two address religion and evolution, respectively, and the fourth focuses on the achievement gap. See Justice & Macleod, 2016; Laats & Siegel, 2016; Darby & Rury, 2018).

There is substantial agreement between Kunzman (2018) and us about a number key issues, including the underpreparation and lack of support for teachers to teach controversial issues, that some issues are settled and shouldn't be taught as controversial, and the need for teaching students respect for the reasonable disagreement wrought by moral pluralism as a step toward the development of democratic virtue. Nevertheless, there are a few points Kunzman made about our claims where clarifications from us might prove helpful to our readers.

We argue that issues are "maximally controversial" when there is reasonable disagreement among fairly knowledgeable people. In such cases, the issue is not clearly settled. We hold that teachers should explore all sides of maximally controversial issues and remain pedagogically neutral, not pushing students toward any position. However, we argue that teachers can state their own positions if pedagogical neutrality is maintained. Pedagogical neutrality is not an easy stance, and we agree that it can be a slippery slope, as Kunzman (2018) said. He thought we crossed the line in our support for two teachers who hung "No war in Iraq" posters in their rooms. Perhaps the poster, as he said, goes further than simply indicating one's support for antiwar movements, thus endorsing one side over the other. But our point was that, while these teachers were taken to have indoctrinatory intent, the

Emily Robertson is associate professor emerita at Syracuse University. We thank Robert Kunzman for his thoughtful and generous review of our book and this journal for allowing us to extend the conversation.

recruiting posters hanging elsewhere in the school were not so condemned. When the burden of proof of anti-indoctrinatory intent is applied to only one side of a controversy, a thumb on the scale for the other side of the issue is evident.

Teachers have sometimes lost their jobs, been demoted, or in other ways disciplined when they have taught issues that are controversial in the local community. Given that almost all school districts have the teaching of controversial issues as an explicit goal, we explore the protections that exist for teachers when they teach such issues in ways that accord with school policies. One possible source of protection is the first amendment's commitment to free speech.

In summarizing our discussion of this question, Kunzman (2018) stated: "While many districts have policies intended to promote the teaching of controversial issues, contemporary case law views K–12 public school teachers as government employees whose classroom speech is 'hired' by the school system" (p. 3). The legal situation with teacher free speech is a complex one and we cannot fully summarize it here (see Zimmerman & Robertson, pp. 82–88). However, Kunzman's statement was not completely accurate. Basically, the problem is that he cited the decision of one circuit court, but another circuit court has issued a contrary ruling. Further, there is more than one legal framework for deciding teacher free speech cases, whereas Kunzman's statement implies that treating teachers as public employees is the only standard.

In *Garcetti v. Ceballos* (2006), the Supreme Court ruled that when public employees' speech occurs as part of their official duties, they are not speaking as citizens, and hence they do not have free speech protections. This case concerned a deputy district attorney, not a teacher. In its decision, the court reserved the issue of whether *Garcetti* applies to teaching and scholarship. Subsequently, one district court has decided that there is an exception from *Garcetti* for teachers (*Demers v. Austin*, 2014) while another district court ruled that *Garcetti* does apply to public school teachers (*Mayer v. Monroe*, 2007). The Supreme Court has not reviewed these rulings; thus, it is not clear which one is correct.

Because the Supreme Court has not directly addressed teachers' free speech rights in the classroom, some courts have applied cases concerning government employees' free speech rights to teachers (as in the district courts who have applied *Garcetti*) while other courts have applied cases concerning student free speech rights in schools to teachers (see, for example, *Ward v. Hickey*, 1993). Kunzman (2018) was referring to the first line of analysis, but the second is also currently in use (and reaches different conclusions about teacher speech). The jurisprudence on this issue is thus unsettled.

Our main point in our legal analysis is that neither of these ways of understanding teacher free speech is appropriate. Teachers are not simply government employees, nor do they act merely as citizens (as students might) expressing their views in a classroom setting. They are modeling a democratic conversation for students and equipping them to enter the debate. To play their role, we argued, teachers need a measure of academic freedom.

Kunzman (2018) expressed some qualms about giving teachers more freedom in teaching controversial issues:

> *Zimmerman and Robertson conclude their book by asserting that we need to have more faith in our teachers, but this is too simple. Find the best teachers in a school and ask them if they trust all their colleagues to handle controversial issues effectively; not only will they answer in the negative, but they will likely acknowledge their own blind spots or ignorance about certain topics. (p. 6)*

We are unclear what Kunzman found "too simple" about our analysis. Teachers are in a double bind when their district says that controversial issues should be taught yet punishes them when they do if someone in the community complains. In such situations, controversial issues are not likely to be taught—teachers will fear teaching them. Nevertheless, we did not argue for giving chart blanche to teachers to teach whatever they want. We distinguished the kind of academic freedom public school teachers should have from the freedom college professors currently enjoy. We argued that teachers' freedom should be regulated by school district policies generated through collaborations among teachers, administrators, board members, and students. We argued that not all teachers are prepared to teach controversial issues effectively, and even the best teachers will occasionally make mistakes. We cited English educator Jane Agee's 1999 claim in her article "'There It Was, That One Sex Scene': English Teachers on Censorship" about the importance of regular conversations at all levels of the system "not only to understand policies but also to learn more about the issues and how experienced teachers have developed effective strategies for dealing with them" (Zimmerman & Robertson, 2017, p. 91). Part of our plea is to establish an environment in which teachers can learn with others how to teach controversial issues rather than be disciplined for any missteps (which are bound to occur). Unless such an environment is created, teachers will be unwilling to undertake the work of teaching controversial issues and the quality of democratic conversation will fail to be enlivened by their efforts.

Kunzman (2018) offered his own recommendations for dealing with controversy in his conclusion. He recommended modest goals:

> *"We should certainly still teach our students the ideals of deliberation, but also cultivate an appreciation for the virtue of "muddling through" (Lindblom, 1959): acknowledging the likelihood of limited information, imperfect analysis, and the necessarily provisional nature of our decisions about the shape of our shared public life. Such an incremental approach to communicating across profound moral difference, one less focused on procedural rules and ideal speech, might also feel more familiar and authentic to students—conversation rather than conclusions, appreciation rather than resolution." (p. 7)*

In this perspective, he echoed Noddings and Brooks's focus on understanding others and ourselves as a goal of teaching controversial issues.

We are not sure that we fully understand Kunzman's (2018) claim. If he meant that we should not teach controversial issues as if we were training the debate team, then we agree.

Understanding and appreciating the positions of others is as important as developing one's own position on the issue. However, if he meant that we should emphasize conversation and appreciation rather than conclusions and resolution, we disagree. We believe that students should confront the fact that democratic life requires a series of decisions: What is our immigration policy? Are we open to political refugees whose lives may be in danger if they return to their home countries? Do we accept only well-educated people who bring knowledge and skills that we need? Do we support a policy that allows undocumented immigrants who have been here for many years to become citizens? In a democracy such as ours, citizens make these decisions (and influence the decisions of others) largely through their support of elected officials but also through social movements, rallies, social media, conversations with neighbors, et cetera. Understanding others' views and respecting them (when we can—not all views are respectable) is a step toward democratic decision-making, but ultimately, decisions must be made. Sharing our views with other citizens and attempting to influence them is a necessary part of the continuing conversation that constitutes democracy. Teaching students to discuss controversial issues, including articulating their conclusions, is part of their training for participation in democratic life.

References

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