

School Crime and the Democratic Balance

Stephen Short
Indiana University

School crime poses a serious threat to education for a democracy. Unchecked, it disrupts the educational process, and it undermines our ability to provide a democratic education for all. Therefore, we, as a democracy, have an obligation to take steps to reduce school crime. However, in taking action, we must act with caution. Hasty action taken to alleviate the immediate threat of school crime may in the long-run prove detrimental to our democratic processes. It may upset the precarious balance between the autonomy needed to make a democracy meaningful and the discipline required to sustain democratic institutions. This paper examines recent federal policies to reduce school crime to see if they jeopardize this balance between autonomy and discipline. I will consider the nature of the democratic balance, our schools' obligation to maintain the democratic balance, guidelines educational policies must meet to maintain the balance, and their implications for current efforts to reduce school crime.

THE DEMOCRATIC BALANCE

A tension inherent in many democratic theories is that of balancing autonomy with discipline. On the one hand, a democracy depends on individuals capable of making independent decisions. We want individuals who can develop new ideas and who can articulate those ideas in the deliberative process. We also want individuals with an independent mind who are capable of judging an idea based on its merit rather than individuals easily manipulated by an elite few. Yet, in a democracy, once a majority has decided a course of action, it is then necessary for all individuals to abide by that decision. Consequently, we also allow the state to take disciplinary actions against individuals who fail to recognize the authority of the democratic state. If we over-emphasize autonomy, we may be encouraging rebellion, or, at the very least, noncompliance. If we stress discipline, we may have a citizenry all too eager to submit to the will of the majority. In either case, a democracy's ability to sustain itself is seriously threatened. Therefore, the autonomy of the individual must be tempered by the democratic state's enforcement of a certain degree of discipline.¹

SCHOOLS AND THE DEMOCRATIC BALANCE

In a democracy, the primary function of the schools is to provide future citizens with a democratic education. Although schools do not have an exclusive role in preparing individuals for democratic citizenship, they do have a critical role.² Schools provide one of our first opportunities to introduce an individual to our democracy. This introduction occurs at a critical juncture in an individual's life, when one is most susceptible to outside influences. As a consequence, the actions of our schools deserve the highest degree of scrutiny. Just as schools can be used to facilitate development toward independence, they can also be manipulated to serve the state's need for compliant citizens. While we want future citizens to accept the will of the majority, we also want those citizens to engage actively in the continuous transformation of the majority's will. The former allows schools to make rules and to expect students to abide by those rules. The latter creates the need for schools to support the autonomy of the individual. Thus schools face a problem similar to the one faced by the larger democratic society: the need to have disciplinary policies that do not place an undue burden on the autonomy of future citizens.

GUIDELINES FOR SCHOOL DISCIPLINARY POLICIES

Policy makers concerned with school crime have the difficult task of determining whether policies aimed at increasing school discipline place too great a constraint on the development of an individual's autonomy. In the United States, judicial guidelines have been a primary means for maintaining the democratic balance. These guidelines stem from the courts' interpretations of an individual's constitutional rights to due process. Although its application to schools is limited, due process does provide students with certain limited rights. When formulating policies dealing with school discipline, policy makers have generally been required to adhere to three relevant judicial guidelines intended to protect a student's due process rights: the activity prohibited must be precisely defined; there needs to be legitimate justification for the policy; and the disciplinary action taken must be suited to the offense.³ In this section, it will become apparent that these legal guidelines used to protect an individual's due process rights are not sufficient for maintaining the democratic balance. To maintain the democratic balance, we must rely on democratic theory rather than the judiciary's interpretation of the constitution. By using democratic theory as a foundation, a modification of these guidelines will produce a more acceptable test for determining whether a policy maintains the democratic balance.

The first judicial criterion, the activity prohibited must be precisely defined, is consistent with maintaining our democratic balance.⁴ This criterion requires that students know exactly what behavior is and is not permissible. A vaguely defined rule may be interpreted too broadly. Consequently, the school may take excessive disciplinary action that infringes too much upon a student's autonomy. A vaguely defined rule may also be interpreted too narrowly. The schools, as a consequence, may not encourage enough discipline. For example, suppose that a school district adopts a rule stating that "no student can show disrespect for a teacher." School A, narrowly interpreting "disrespect" to mean "physical assault," may allow students to insult their teachers. As a result, such a rule allows for too much autonomy. On the other hand, School B may broadly interpret "disrespect" as "the failure of students to acknowledge the superior status of teachers." At School B, students may be showing disrespect when, for example, they fail to rise every time a teacher enters a room. As a consequence, School B may place too much emphasis on discipline. Even if a school does not adopt a broad interpretation of a policy, student uncertainty about the proper course of action may constrain their activities. Without clear and more precise language in the original policy, the democratic balance may be upset.

The second relevant guideline the courts have used for protecting a student's due process rights is a requirement that any policy diminishing an individual's basic liberties must represent a legitimate concern. The courts have generally held that a concern is legitimate if any reasonable person could be expected to agree that failure to prevent the offense would result in harm to a person, damage to property, or a disruption of the school's activities.⁵ As it is currently interpreted, this criterion places some limits on school policies aimed at creating more discipline. For example, imagine that a state adopts a law making it "unlawful to scratch one's head in the public schools between the hours of 1:00 p.m. and 2:00 p.m." This offense, scratching one's head between 1:00 p.m. and 2:00 p.m., is precisely defined. Therefore, it meets the first criterion. However, it is hard to see how scratching one's head between 1:00 p.m. and 2:00 p.m. will result in harm to a person, damage to property, or disruption of the educational process. As a consequence, although the first criterion is met, a court would probably reject such a policy because the offense does not represent a legitimate concern.

Although this guideline places some limits on school disciplinary policies, it is insufficient for maintaining the democratic balance. Consider the case where five students in Indiana were expelled for a semester for attempting to organize a student walk-out at their public school. The courts found that the school had legitimate reason for expelling the students because the actions of the students threatened to disrupt the school's activities.⁶ Yet, if we remind ourselves that the primary function of schools in a democracy is to provide a democratic education, it does not seem that a student led walk-out would be entirely inconsistent with this function. After all, a few days of disruption of the school's normal activities may provide a better democratic education than a few years of in-class instruction on how to participate in our democracy. Nevertheless, this criterion gives schools the

discretion to limit all substantially disruptive activities regardless of their benefit to the democratic education of the student.

Two important modifications of this judicial criterion are needed to make it more consistent with maintaining the democratic balance. First, if the primary function of schools is to provide a democratic education, then whether a concern is legitimate should not depend exclusively on whether the offense to be prohibited is detrimental to school activities. Rather, a concern should be deemed legitimate if the offense to be prohibited is detrimental to a democratic education. Consequently, despite the disruption of school activities they may have caused, the five Indiana students may, under the right circumstances, still have been allowed to lead the school walk-out. Second, even when a disruption of democratic education does not occur, this criterion should acknowledge that some forms of democratic education are superior to others. This allows the prohibition of certain forms of democratic education when a superior form of democratic education can be offered in their place.

In the case of the student walk-out, students may argue that their walk-out is a form of civil disobedience and participating in this activity is an important part of their democratic education. Thus, they can justify a disruption of regular school activities by arguing their democratic education should take precedence over their regular education. However, it may be that some students resort to a walk-out whenever student elections go against them. In this instance, the school would be justified in prohibiting a student walk-out in order to encourage the students to accept the will of the majority. This is because, even though civil disobedience may play an important role in a democracy, too much civil disobedience or civil disobedience for the wrong reasons will ultimately undermine a democracy. The case of the Indiana high school students illustrates the points necessary to make the second criterion consistent with maintaining the democratic balance. That is, a disciplinary policy should be seen to be addressing a legitimate concern when the activity prohibited is detrimental to a democratic education or when the prohibition of the activity results in a democratic education that is superior to the democratic education stemming from the prohibited activity.

The final judicial guideline requires that school policy makers take disciplinary measures suited to precisely defined and legitimate offenses. For the most part, courts have deemed a disciplinary measure suited to the offenses except when the procedures followed to discipline the student are unfair or when the punitive act is arbitrary, wanton, or malicious.⁷ The need for a revision of this current judicial guideline can be seen by imagining that a school board adopts a policy forbidding the possession of a hand-grenade in a school; violators of this rule are subjected to mandatory expulsion with no alternative education provided. The offense in this rule is precisely defined; thus, it meets our first criterion. This offense is also consistent with our second criterion because a hand-grenade can disrupt a democratic education. Assuming the procedures taken to expel the student were fair, expulsion is, arguably, not an arbitrary, wanton or malicious disciplinary action taken against someone who brings a hand-grenade to school. As a result, a court would likely maintain that the prescribed punitive action is suited to the seriousness of the offense. However, expelling violators of this policy is not consistent with maintaining the democratic balance, because this policy emphasizes discipline at the expense of other forms of democratic education.

Some may disagree and justify expelling the student with the hand-grenade by maintaining that this is the only way non-violators of the policy can receive a democratic education. According to this line of thinking, the democratic education of violators of this school policy must be forfeited if non-violators of school policy are to receive a democratic education. However, the democratic education of one student need not occur at the expense of another student's. While some students may require removal from the general school population, violators and non-violators can still receive some form of a democratic education. Others may argue that expulsion shows the violators of the policy the limits of their autonomy and, subsequently, is a form of democratic education. However, this optimizes only one aspect of a democratic education. Students violating the policy may have a

greater need to develop an understanding of the limits of their autonomy than non-offenders, but it is not necessary to deny them access to other forms of democratic education. This policy attempts to maintain school safety and order by excluding certain individuals from having an opportunity to develop the skills necessary for full democratic participation. If our commitment to democracy is genuine, we should reject policies that maintain discipline by ignoring our commitment to provide each individual with a democratic education. To protect our commitments to democracy and to providing a democratic education, our last criterion should require our schools to adopt policies for dealing with school crime that optimize the chances for each student, including the violators of school policy, to develop the full range of skills necessary for democratic participation.

After reviewing the judicial guidelines relevant to formulating disciplinary policies, it has become apparent that only the first guideline is fully compatible with maintaining the democratic balance. By modifying the other guidelines, we are able to make them more compatible with this task. As a result of these modifications, we now have three criteria that can be used to determine if a disciplinary policy roughly maintains the democratic balance:

1. The activity prohibited must be precisely defined.
2. The action to be prohibited represents a legitimate concern when it either disrupts efforts to provide a democratic education or when prohibiting the action provides for a superior form of democratic education than the behavior that it prohibits.
3. The response to an offense must provide the optimal democratic education for each student.

If a proposed policy does not meet a particular criterion, we should have considerable doubt about its ability to maintain the democratic balance in our schools.

A BRIEF HISTORY OF FEDERAL INITIATIVES TO REDUCE SCHOOL CRIME

The federal government has been increasingly involved in the move to reduce school crime. The issue of school crime began to draw widespread federal attention in the early seventies. In 1971, the House of Representatives held hearings on the issue and debated the passage of the Safe Schools Act, which never got beyond the House floor. The following year, legislation was introduced in the House and the Senate to deal with the problem of school crime. Again, Congress stopped short of passing legislation on the issue. It was not until the late 1970's that Congress began to take action aimed at reducing school crime.

In 1977, Congress requested the U.S. Department of Health, Education, and Welfare (HEW) to conduct a study on school crime. The HEW report that was issued as a result of this study showed school crime was a serious problem in approximately eight percent of the public schools. The report sided with those calling for more discipline of our youth by recommending increased security in the schools as well as suggesting that a principal acting as a firm disciplinarian was the best deterrent to school crime.⁸ After the report was issued, considerable public discussion of the topic of school crime ensued. However, the federal government did not begin to take more substantial action until the early to mid-1980's.

Around the time *A Nation at Risk* was published, the Reagan administration embarked on a campaign to make school crime a top priority in school reform. In 1984, the Department of Education issued a report, *Disorder in Our Public Schools*. The report had many of the alarmist qualities of *A Nation at Risk*. It suggested that school crime was seriously undermining our ability to provide a good education for our children. The report called for more stringent enforcement of a tougher discipline code in the schools. The emphasis was clearly on the restoration of authority in our public schools. This rhetoric was matched by Congressional action. Congress, in 1984, started the National School Safety Center (NSSC) located at Pepperdine University in California. Congress charged the NSSC with bringing to the nation's attention remedies for the problem of school crime. Later, in 1986, Congress passed the Drug Free Schools and Communities Act. The Bush

administration carried on the campaign for disciplined and drug free schools and was the initial supporter of an updated Safe Schools Act.

Recently, the federal government has continued its support of the Safe Schools Act. It has begun actively to promote the concept of "safe schools" in order to reduce instances of crime in our nation's schools. In general, safe schools are being defined as drug and violence free schools that provide a "disciplined environment conducive to learning."⁹ While the concept of safe schools dates back to the 1970s, the active involvement of our government in promoting this concept marks a new era in our educational history. The concept has recently appeared in Title VII of the Goals 2000: Educate America Act. Title VII authorizes \$50,000,000 for the funding of crime reduction in our nation's most crime ridden schools. In addition to Title VII, the federal government has passed other measures to reduce crime, for example, Title X Part B of the Goals 2000: Educate America Act or the Gun-Free Schools Act.

APPLYING THE CRITERIA TO RECENT FEDERAL INITIATIVES TO REDUCE SCHOOL CRIME

As noted above, a recent initiative to bring about safe schools has been the Gun-Free Schools Act of 1994. This act requires that all schools receiving federal funds expel students found with a firearm for a minimum of one year. This act meets our first criterion, the activity prohibited must be precisely defined. The offense in this case is bringing a firearm to school. Schools are given a precise definition of a firearm in section 921 of title 18 of the United State Code; thus, it avoids ambiguity. This act also meets our second criterion, the offense must represent a legitimate concern, because the threat of gun violence in our schools seriously undermines our ability to provide a democratic education. Although our first two criteria have been met, this act does not meet our third criterion, the remedy must provide the optimal democratic education for each student. We must ask ourselves if there is an alternative remedy that optimizes the democratic education of each student, including the student who violates this policy. As with the example of the hand-grenade policy, this policy encourages schools to shirk their fundamental responsibility to provide a balanced democratic education and should be rejected for this reason.

Title VII of the Goals 2000: Educate America Act represents another major initiative by the federal government to reduce school crime. Title VII provides funds to certain schools for the purpose of reducing their problem of school crime. This legislation takes a very different approach to the problem of school crime than the Gun-Free Schools Act. Title VII's aim is to take proactive measures to prevent school crime rather than punitive actions to deter school crime. To meet this end, the Safe Schools Act does not prescribe one particular solution to the problem of school crime. Instead, Title VII suggests a variety of ways schools can use the available funds. For example, schools can teach students conflict resolution skills, create programs to involve the community, or develop their own plan for dealing with the problem. There is some leeway in the act for schools to adopt plans that may place undue restrictions on a student's autonomy, for example, increased security. However, such restrictive actions are severely limited by section 705 (b) of the act. Section 705 (b) stipulates that not more than five percent of the funds allocated to a school can go to increasing school security by enforcing "safe zones of passage," increasing security personnel and devices, and by paying law enforcement officers to help prevent school violence.¹⁰

When applying our criteria to the Safe Schools Act, we will find that the language of this bill does not meet our first criterion: the offense must be precisely defined. Many of the terms are fraught with ambiguity; for instance, the Safe Schools Act sets as its goal that "every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning." The act does not make clear what is meant by a disciplined environment. A disciplined environment could range from a community of mutual respect to a military style academy. Other terms in this passage are equally problematic. Nevertheless, suppose the language of the act could be made more precise so that it could meet our first criterion; would this act then be able to meet the rest of our criteria? In

order to meet the second criterion, the concern the act addresses must be legitimate. The primary concern of this act is the problem of school violence, a problem that is detrimental to our ability to effectively provide a democratic education. Consequently, we can conclude that the concern is legitimate and the second criterion is met.

The emphasis of the Safe Schools Act appears to be consistent with our third criterion: the response to an offense must provide the optimal democratic education for each student. Allowing schools some discretion in choosing a course of action enables them to pursue the course of action best suited to their needs and the needs of each student. Furthermore, the Safe Schools Act seems to avoid too much emphasis on discipline. The programs suggested in this act appear to offer students the chance to develop the skills necessary for learning the limits of their autonomy. Unfortunately, the Safe Schools Act allows schools to eschew the suggested programs and develop their own program plan with only minimal constraints. While this may result in education plans consistent with maintaining the democratic balance, individual schools may use these funds for less than democratic forms of education. Our uncertainty about the exact nature of the programs that this act may create should cause us to have some reservations about fully endorsing it.

CONCLUSION

This paper has explored the issue of school crime as it is related to the maintenance of our democratic commitments, more specifically, our commitment to maintaining the democratic balance. This has not been an exhaustive study of the issue of school crime or its legal aspects. I have not addressed many important aspects of this issue, for example, the question of whether school crime is a perceived or an actual problem. I have focused merely upon asking whether some of the disciplinary actions now in place undermine our ability to provide an effective democratic education. After examining the current disciplinary actions discussed in this paper and other disciplinary actions, I am concerned that, in our haste to prevent further school crime, we may be jeopardizing our democratic institutions. To prevent this from happening, we must carefully scrutinize our schools' disciplinary actions to ensure that they maintain the balance between the autonomy and discipline needed for the continuance of a democracy.

1. My discussion here is based, in part, on a similar argument Bertrand Russell made to American high school principals in "Education for Democracy," *Bulletin of the Department of Secondary School Principals of the National Educational Association*. (March 1939), 6-16.

2. The question of what form democratic education should take has been the subject of much debate among democratic theorists. For example, Carole Pateman has argued the democratic process itself is educative. Pateman, building on J.S. Mill's justification of democracy, contends that the more we participate in a democracy, the better we become as persons and democratic citizens. Democratic education, for Pateman, should be experienced in an adult's life in more arenas, e.g., the workplace. In focusing on the role of schools in developing democratic citizens, I do not intend to diminish the importance of other forms of democratic education, such as those proposed by Pateman in *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1970).

3. The guidelines mentioned here are only those relevant to the making of a disciplinary policy. A student's full due process rights involve more guidelines than those listed here, e.g., right to fair hearing. See Edgar H. Bittle, *Due Process for School Officials: A Guide for the Conduct of Administrative Proceedings* (National Organization on Legal Problems for Education, 1986); Michael W. La Mort, *School Law: Cases and Concepts*, (Boston: Allyn and Bacon, 1993).

4. The courts have a high standard for criminal statutes and often use the "void for vagueness" doctrine to overturn a criminal conviction. They have been reluctant to fully apply the "void for vagueness" doctrine to school policies. Still, schools are, to a certain degree, held accountable to this doctrine (Bittle, *Due Process*, 6-10). Arval Morris, *The Constitution and American Education*. (St. Paul, Minnesota: West Publishing Company, 1980), 512-13 cites a 1975 Connecticut Supreme Court Case (*Mitchell v. King*) involving the state's school expulsion law. The law in question was used for "authorizing expulsion for student 'conduct inimical to the best interest of the school.'" The Connecticut Supreme

Court found that this law lacked clarity and precision and, consequently, gave local school administrators too much discretion in taking disciplinary action.

5. In the landmark *Tinker v. Des Moines Independent School District* (U.S. Supreme Court, 1969), the Supreme Court decided schools could not restrict a student's political, social, and economic speech merely because it displeased the school administrators. The court decided that restrictions on such speech can occur only when the speech would result in a substantial disruption of the operation of the school (La Mort, *School Law*). Although the courts are generally hesitant about extending full due process rights to students, this case was important in that it showed students have some due process rights.

6. *Dodd v. Rambis* (Southern District of Indiana, 1981) as cited in *School Safety Legal Anthology* [National School Safety Center. *School Safety Legal Anthology* . (Sacramento, California: Pepperdine University Press, 1985)].

7. Even when a punitive act may seem wanton or malicious, the courts are reluctant to act. For instance, in *Wexell v. Scott* (cited in Morris, *The Constitution*), a parent of a student sued an Illinois school for not taking appropriate action against a teacher that called his son "worthless, undependable, incompetent" and [stated] further that he [the student] was unfit to ever marry and that if he did, his children would be ashamed of him" (Morris, *The Constitution*, 556-57). In the *Wexell* case, the court found in favor of the school teacher. According to the court, the powers vested in teachers are consistent with this type of verbal admonishment.

8. National Institute of Education, *School Crime and Disruption: Prevention Models*. (Washington: U.S. Government Printing Office, 1978).

9. Safe Schools Act of 1994.

10. This is somewhat misleading, because Congress has authorized funds in other acts to carry out these activities. For example, the Drug Free Schools Act supports the enforcement of drug free zones around the schools.

©1996-2004 PHILOSOPHY OF EDUCATION SOCIETY
ALL RIGHTS RESERVED