To "kill the Indian ... and save the man": A Constitutionalist Critique of Civic Education

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A Constitutionalist Critique of Civic Education

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Autocratic systems of government may rely substantially on force or the threat of force to maintain themselves. Constitutionalist orders are different, at least in theory. They depend for their authority on the voluntary attachment of citizens. And, because citizenship is a consequential status in a constitutionalist order, citizens (or at least a significant number of them) must possess the virtues and capacities appropriate to their position and functions. It’s easy to see why the education of children might be an attractive approach to inculcating civic competence. Historically, political systems of many sorts have tended to rely on families to provide an appropriate education, not only for civic functions (if any) but also for moral, intellectual, and vocational purposes.

Some polities, however, might perceive families not to be consistently reliable purveyors of civic information and values. The United States was not such a polity, at least in the beginning, when the citizenry (not necessarily to say the population as a whole) was fairly homogeneous: white, Western European, and Christian. Even the Deists of the founding generation tended to be rooted in an ethos that was recognizably Protestant, though they were not trinitarian, and their worldview was strongly influenced by the Enlightenment. By the latter half of the nineteenth century, patterns of immigration had changed, as increasing numbers of immigrants came from Eastern Europe or outside Europe entirely, and many were non-Christian. Incorporating these recent arrivals into the polity was a challenge. The challenge was all the greater because the United States relied more heavily than most political orders on a degree of civic participation (at least by white men) and
because “America” was as much an idea as it was a geographic place. Increasingly after the Civil War, the several states turned to the common school, supported by various forms of taxation, to educate the young. This move was as much self-interested as it was humanitarian, for it ensured the production of citizens who possessed a basic level of education and literacy. And, in providing civic training, it Americanized the nation’s youth – not only the children of immigrants but also children whose familial ancestors had long resided in the United States.

To be sure, many children of wealthy families as well as of Catholics, opted out of common schools. But, by the early twentieth century, the common school was the dominant institution for educating the young and for making them Americans, albeit often with a local stamp. The effects of the states’ assertion of authority over education were essentially twofold. One was to displace the historic authority of families for educating their children. Another was to make children, at least to some degree, “creatures of the state.”\(^1\) In short, the United States began to regulate and use education to reproduce its own citizenry.

This way of doing things may appear normal and largely unobjectionable today. To show something of the policy’s hidden implications, however, it’s useful to examine its origins. Those origins are ironic in at least four ways. (1) The initial policy of state-sponsored civic training in the United States was designed not to integrate immigrants but to assert control over children of the truly native-born: American Indians. (2) The template for programs educating children of the tribes was devised, not by a constitutional democracy aiming to make citizens, but by the *ancien regimes* of Europe that invaded and settled North America. (3) By the time the United States was acquiring

\(^1\) The quoted phrase borrows from *Pierce v. Society of Sisters*, 208 U.S. 510 (1925).
dominion over its part of the continent, however, its policies were even more aggressive in some respects than those of the Europeans. (4) But the United States’ policies were also more subtle, as systematic indoctrination replaced overt force as the principal tool for controlling and, in many cases, destroying the tribes.

I. The Europeans

The Europeans who first arrived in what came to be known as North America faced a basic question: What to do with the various tribes of people who already lived here? As arrival morphed into invasion and settlement, the question became all the more acute, even as its possible answers multiplied. Plainly, military conquest was a basic element of the European strategy – especially for the Spanish, but also for the English, French, and Dutch. Where conquest stopped short of physical annihilation, however, the question persisted. One answer was education.

The viability of this answer, of course, assumed that Indians were both educable and worthy of education, assumptions that many Europeans contested. In truth, the image of the Indian in the European mind was conflicted – vacillating between felicity and debasement. Some of the felicitous images were imaginary, antedating Columbus’s expeditions. But others drew on evidence available from European contact. The image was of people who lived in harmony with both nature and one another – an idyllic life, as if uncorrupted by the biblical fall from grace.\(^2\) The debased images,

\(^2\) Howard Munford Jones, *O Strange New World* (New York: Viking Press, 1964), at 1-34. In Britain, John Locke would invoke this image in the service of a political theory to challenge Thomas Hobbes’s state of nature, and to promote instead the notion of self-limiting human beings for whom limited government was appropriate. Locke, *Second Treatise of Government*, C. B. Macpherson ed. (1690, 1980), § 49: “[I]n the beginning all the world was America . . . .”
which became equally potent, depicted Indians as not only untutored, but positively treacherous, amoral, barbaric, and savage. In short, on this view, Indians lacked the capacity for civilized discourse, intercourse, and life.\footnote{See Jones, supra note 2, at 40-70.}

Fairly early, however, those who mattered, for purposes of policy in European nations, decided that members of the tribes were capable at least of education even if they remained culturally or otherwise inferior. From the beginning, and regardless of the identity of the colonizing nation, education included at least three elements: religious, linguistic, and economic. From Europeans’ perspectives, native education served several purposes: salvation, ethical correction, social control, pacification, integration, and commercial intercourse and exploitation. The relative primacy of these purposes varied, depending on temporal, geographic, social, and military contexts. But it is possible to summarize all in a single word: civilization. Education could illuminate and elevate. In the process, it might enable Indians to learn to coexist with civilized peoples and nations.\footnote{The word “civilization” was, and remains, ironic in its various usages. Nor need we resolve definitively the question of European (or white American) motive in dealing with the Indians – whether, to put it too simply, it was (merely) crassly self-interested or was (also) other-regarding. Human motivation is often a combination of these two motives (and more). Hence, although it is often safe to assume that self-interest is dominant (albeit complex), its dominance does not eliminate the possibility of altruism. The presence of altruistic motive, on the other hand, does not preclude perverse or unintended effects or self-interested outcomes.}

Religion – specifically, instruction in Christianity – was central, for reasons metaphysical, ethical, and political. It is clear that their religions were important to the tribes. For some, religion
suffused almost every aspect of daily life – from hunting, planting, and harvesting food, to the passage of members to adulthood, to responsibilities across generations, to tribal identification. In short, religion was the foundation for a tribe’s view of itself, its members, and the rest of the world. It is clear also that the cosmology, metaphysics, and rites of tribal religions differed from those of Christianity (or, if not of Christianity per se, then of European norms). It has been reported, for example, that in at least one native language there was no word for “sin.” And it is clear that some of the ethical relations, obligations, and constraints of tribal religions differed from those of Christianity. Europeans were struck, for example, by aspects of Indians’ familial lives. Matrilinearity was typical (and, from a European perspective, problematic). Extended familial relations and norms of inheritance struck Europeans as odd. In some tribes, divorce was common. Some permitted polygamy. Christian missionaries worried that Indian girls had an inadequately developed sense of sexual inhibition. And, outside the realm of familial ethics, missionaries worried about the civility of certain groups who practiced cannibalism or torture.\(^5\)

Much of the early impetus for education came from religious institutions – the Catholic Church in the case of territories claimed by Spain (and, soon after, those claimed by France), and the Anglican Church in the case of most of the eastern territory that would become the United States. Although the Dutch tended to have more overtly secular motives, the Dutch Reformed Church did perform projects of education in New Netherland. In the eighteenth century, Presbyterians, Moravians, and Quakers would also get involved in Indian education in the English colonies.

The Catholic history is in some respects the most vivid, as it was the genesis of European

\(^5\) Ronald Howard, “Native Americans (1600-1754),” in American Eras, 8 vol. (2003); Jones, supra note 2, at ___.
religious proselytizing of the tribes, was documented, and was formally traceable to a single source of authority. Even before Columbus’s first voyage, Pope Innocent VIII designated King Ferdinand of Spain the official purveyor of Catholicism beyond Europe, in exchange for Ferdinand’s promise not to tolerate other religions. A series of papal bulls issued between 1493 and 1537 decreed that Indians “were capable of understanding the Catholic faith” and could therefore be converted to Christianity. It was decreed also that the Crown had a duty to “preach the word of God, convert the . . . infidels and barbarous peoples, [and] instruct and teach the converts in the true faith.” These fateful decrees would likely save the lives of many Indians (though perhaps not most), even as they laid the foundation for demolishing tribal cultures.

With financial and military backing from the Spanish government, the Church commenced a serious effort to educate Indians in territories held by Spain. The Church did so by establishing missions throughout much of Spanish North America, including areas that would come to be parts of the American southwest, Texas, and Florida. This effort was not entirely systematic, however, as Franciscans and Jesuits disagreed over how best to effect their calling.

The Franciscan aim was radical: to transform Indians from savage pagans into civilized Christians. To achieve this aim, the Order posited that it was necessary to destroy all remnants of existing tribal religions. Methods included not only instruction in Catholic doctrine, but also the prohibition of native rites, appropriation of ritual objects and clothes, and punishment of tribal religious leaders who publicly opposed indoctrination. The aim and methods frequently provoked reaction, including resistance, flight, and outright rebellion. In 1680, for example, the Pueblo drove

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6 James Carson, “New World Colonies (Early American Civilizations and Exploration to 1600),” in American Eras, 8 vol. (2003).
out the Spanish from a large part of what is now New Mexico. Twelve years later, however, the Spanish returned, re-conquering the Pueblo and inflicting extravagant retribution in the process. Following this military solution, relations between Spanish and Pueblo grew easier, partly out of the Indians’ submission to necessity, and partly because of shared antagonism toward two even more incorrigible tribes, the Apache and Comanche.\textsuperscript{7}

Jesuits tended to pursue a gentler course in their dealings with Indians near their missions. The Society of Jesus established missions among the Pima and Papago tribes in the area that is now northern Mexico and southern Arizona. The Society was also active farther north and east, as papal promises of monopoly to Spain did not inhibit the Church from supporting efforts to civilize the tribes in territories held by the French. Hence, the Jesuits were a major presence in Quebec (among the Huron), the lands abutting the Great Lakes (especially among the Ojibwe), and later in the Mississippi Valley (among the Illinois). Jesuits even established missions among the Muskogee in French territory along the Gulf of Mexico, though these efforts were not as long-lived as those to the north or the west.\textsuperscript{8}

Unlike the Franciscans, who tried to supplant native religions root and branch, the Jesuits aimed, in the main, to graft Catholicism onto existing tribal beliefs and practices. (Jesuits in Quebec did establish a school for Indian children, but parents resisted it.) Also in contrast with the Franciscans, who rotated out of a mission after a few years, Jesuit fathers (especially those from France) tended to spend their entire missionary lives in one geographic area. Some even lived

\textsuperscript{7} Howard, \textit{supra} note 5.

\textsuperscript{8} Howard, \textit{supra} note 5.
among the Indians, learned native languages and cultures, administered medical care, and actively helped with farming. The school in Quebec aside, Jesuits’ techniques tended to incite less opposition than did those of Franciscans.9

Although the Dutch succeeded in forging economic relations and military alliances among the Iroquois in New Netherland, they failed spectacularly in “bringing the Indians to Christ,” as the Articles for the Dutch West India Company had directed in 1624. Part of the reason may have been that Dutch troops were preoccupied with matters other than enforcing the faith. (The British eventually defeated them, establishing English control of New Netherland, in 1664.) But another likely reason had to do with the particular representatives the Dutch Reformed Church sent to the territory. Father Jonas Michelius set the tone, calling the Indians “entirely savage and wild, strangers to all decency, yea, uncivil and stupid as garden poles, proficient in all wickedness and godlessness.” The solution, he insisted, was to remove Indian young from their parents and tribes, teach them the Dutch language, and then impart the principles of Christianity. This solution had the virtue of presuming that Indians (at least the young) were educable, but it failed to appreciate the irrational attachment that native parents had for their children. Father Michelius’s successors were less rigid – one even learned the Mohawk language – but they were little more successful in converting “the Heathen.”10

Like the Spanish and French, the British assumed that Christianity was the key to civilizing the Indians. In contrast with the systematic work of the Catholic Church, however, religious efforts

9 Carson, supra note 6.

10 Howard, supra note 5.
in the British colonies were models of disorganization. In New England in the mid-seventeenth century, the Puritans found Indians on the whole to be an unreceptive audience for Christianity. This did not deter some ministers in Massachusetts from attempting to proselytize among the tribes or from establishing towns for “praying Indians.” With financial support from the Society for the Propagation of the Gospel and its successors (all chartered by Parliament), colonists distributed books that were translated into Algonquian, including an Algonquian edition of the Bible. These efforts met but limited success, however, and the British decided that the best way to civilize Indians was not only to Christianize them but also to Anglicize them. The British employed two methods to attempt to accomplish this. One was to conquer the tribes. The other was to found special schools for Indians.

In the final decade of the seventeenth century, the charter for the College of William & Mary provided for the establishment of an Indian school, with one teacher, whose duty was to teach English language, mathematics, and religion. The school attracted few students until the mid-eighteenth century, when young hostages from the military campaigns against the Cherokee and Shawnee were brought to Williamsburg to study. Despite having a (literally) captive audience, the school fell short of its founders’ vision, as many students died from disease, others resisted the course of instruction, and still others “relapsed” into Indian ways when they returned to their tribes.

11 Howard, supra note 5.

Schools for Indians were established in the early eighteenth century in New England, too. Probably the most famous was Moor’s Indian Charity School, founded in Connecticut by Congregationalist minister Eleazer Wheelock. He eventually moved the school to New Hampshire as Dartmouth College. Like William and Mary, Harvard College made provision for the education of Indian boys. Some New Englanders decided that educating native children would be even more effective under conditions that encouraged the creation of families on the English model. One strategy, which Cotton Mather and Joseph Talcott proposed, was to remove Indian children from their tribes and apprentice them to “English and Godly families.” This proposal failed when the tribes refused to cede their children. Another strategy was to establish boarding schools for boys and girls. The boys, after all, would eventually need proper wives if they were to become (part of) families that were self-sustaining and could resist the allure of uncivilized tribal ways.

II. The Americans Through the Nineteenth Century

The aims of the United States’ strategy for dealing with the tribes varied with time and circumstance. On the whole, however, as concerned the treatment of Indians, the new republic was not substantially new; it was in many respects a continuation of practices originating in the first European presence on the continent. The effectiveness of policies may have changed. But the means and goals, for the most part, did not.

Initially, “American” policy aimed at pacification (whose immediate motive was domestic

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13 Howard, supra note 5; Fischbacher, supra note 12, at 64-6.

14 Howard, supra note 5.
security) and at regulating trade with Indians. There was consequently a geo-strategic aspect to United States policy, playing friendly tribes against less friendly ones and against competing powers – the French, Spanish, and British. This was especially the case around the time of the Revolutionary War, as the Continental Congress attempted to appease the tribes either to keep them neutral in conflicts with European powers or simply to maintain good relations with friendly tribes. But this quasi-military aim continued well into the nineteenth century.

As early as the constitutional founding, however, the United States began aggressively to chase another aim that would alter the new nation’s approach to the tribes: territorial expansion. To pursue this aim the Americans adopted the device that the Spanish had used so effectively: military conquest. But the United States used a second device that the Europeans had lacked the means to employ in a rigorous way: geographic displacement or, as it came to be called, removal.

If, by the mid-nineteenth century, the United States’ approach to “the Indian question” was systematically vicious, there were nonetheless ethical and practical limits to the new nation’s ability to answer it. To put it coldly, it was not possible nor politically expedient to kill all the Indians.

15 See Constitution of the United States, art. I, sec. 8 (delegating to Congress the power to regulate commerce with the Indian tribes); Fischbacher, supra note 12, at 99.

16 Fischbacher, supra note 12, at 69-73.

17 In the early decades of the republic, through the first half of the nineteenth century, the job of supervising and implementing relations with the tribes was the delegated responsibility of the Department of War. This jurisdiction was transferred in 1849 to the Department of Interior’s Office of Indian Affairs. Fischbacher, supra note 12, at 43-5.
Hence, the old question: What to do with those who survived? Before the twentieth century, citizenship was not a comprehensive option. Because of this and other barriers, robust economic integration was unlikely, even if it had been desirable. For reasons both altruistic and self-interested, white America espoused education as part of its strategy for dealing with the tribes. Education could promote pacification, secure social control, underwrite an alternative form of economic survival, and encourage acculturation.

In the early years, the United States considered the tribes to be distinct peoples and independent nations. The new republic, therefore, tended to conduct political relations through treaties with specific tribes. Well into the nineteenth century, it was not uncommon for treaties to include provisions for educating Indian children. The first general statutory policy (if it can be called a policy) of education, however, was adopted in 1819. Its unsurprising title was the Civilization Act. Its stated purposes were to inhibit “the further decline and final extinction of the Indian tribes” and, of course, to “introduc[e] among them the habits and arts of civilization.” To these ends, the Act provided an annual appropriation of $10,000 for education. By its terms, the statute provided for instruction in agricultural production and for more traditionally academic

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18 For legal and constitutional purposes, the presumption was that citizenship was prohibited. See Constitution, art. I, sec. 2 (excluding from representation “Indians not taxed”); 14th Amendment (also excluding from representation “Indians not taxed”). Treaties and statutes awarded citizenship in limited cases, but did not recognize citizenship for Indians generally. The Citizenship Act removed the legal impediment. H.R. 6355, 43 Stat. 253, 68th Congr., 1st sess. (June 2, 1924).

19 Fischbacher, supra note 12, at 102-3.
schooling in reading, writing, and arithmetic.\textsuperscript{20}

It is possible to read these purposes as being benignly motivated, even if misguided; but President Monroe’s message to Congress four months prior to passage revealed a slightly different spirit:

Experience has clearly demonstrated that independent savage communities cannot long exist within the limits of a civilized population. . . . To civilize [the Indians], and even to prevent their extinction, it seems to be indispensable that their independence as communities should cease, and that the control of the United States over them should be complete and undisputed. The hunter state will then be more easily abandoned, and recourse will be had to the acquisition and culture of land, and to other pursuits tending to dissolve the ties which connect them together as a savage community, and to give a new character to every individual.\textsuperscript{21}

Just as Europeans before had imagined that the road to civilization must run through England (or Spain, France, or the Netherlands, or a particular brand of religion), President Monroe’s declarations were an early step toward the notion that “civilized” meant Americanized. This entailed at least three things: basic minimal schooling in the 3 Rs, training in a manual or petit-bourgeois occupation, and (profession of) commitment to an approved system of religious ethics. Communal property was anathema. Identification with tribe was discouraged. Polygamy was scorned. And promiscuity was

\begin{footnotes}
\item[20] 3 Stat. 516 (March 3, 1819).
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condemned (as a matter of public rhetoric, if not as a matter of consistent social practice). The American ideal was individualist monogamous Christian restraint and self-sufficiency.

In implementing the Civilization Act, officials amplified it in significant ways. John C. Calhoun, who was the first Secretary of War to administer the Act, committed to using the appropriations to finance the efforts of “benevolent associations” that worked or proposed to work among the tribes. This term was restricted to religious organizations. Calhoun expanded the program of study to embrace (for boys) “such of the mechanic arts [as] are suited to the condition of the Indians” and (for girls) “spinning, weaving, and sewing.” He also specified that organizations or schools receiving funds teach patriotism (to the United States) – in order “to impress on the minds of the Indians the friendly and benevolent views of the Government toward them, and the advantage to them in yielding to the policy of Government, and co-operating with it.”

Benevolent or not, the Congress in 1830 enacted a statute to “remove” eastern tribes to reserved land west of the Mississippi River. Although removal had been practiced repeatedly “in a haphazard manner for many years,” as Lucille Griffith put it, the Removal Act committed the United States systematically and comprehensively to the policy. For the tribes, the consequence of removal was catastrophic. This included the impact on programs of Indian education. Tribes that had invested in the conversion to agriculture – attempting to root themselves in cultivated soil – saw

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22 Fischbacher, supra note 12, at 111-4.

23 Indian Removal Act, 4 Stat. 411-12 (May 28, 1830).

24 Lucille Griffith, Alabama: A Documentary History to 1900, rev. ed. (University, AL: Univ. of Alabama Press, 1972), at 118.
their investment vanish. By the end of Andrew Jackson’s presidency, almost all tribal Indians in the southeastern states were driven under military supervision to the region that would become Oklahoma.25

In the wake of removal, the American approach to Indian education altered subtly. One change was a shift in “curricular” emphasis. In the 1840s, officials began to encourage the religious groups that ran Indian schools to de-emphasize scholastic and religious instruction and to stress manual training. The reasons were both practical (to encourage economically viable occupations) and racist (that, as savages, manual occupations were the only ones within the Indians’ grasp). It is doubtful that ministers and missionaries ever forsook religious instruction, which they viewed as the primary purpose of their mission; but there is some evidence that a greater emphasis on manual training, as against scholastic instruction, was real.26 Another change concerned the type of school that certain commissioners of Indian Affairs preferred.27 By the 1860s, at least one commissioner expressed disdain for day schools maintained in tribal “neighborhoods” and a strong partiality to boarding schools. The reason was similar to the reasons offered for boarding at the end of the colonial period: Indians could not be properly acculturated – civilized – if not uprooted from their


26 Fischbacher, supra note 12, at 121, 137.

27 Congress created the office of Commissioner of Indian Affairs in 1832, to preside over the Office (later, the Department) of Indian Affairs. Indian Affairs was initially placed in the Department of War. In 1849, it was relocated to the Department of Interior.
tribes. Each of these changes was more a shift in sensibility than of direction, but both would become dominant aspects of policy after the Civil War.

From the first day of his presidency, Ulysses S. Grant acknowledged that United States policies toward the tribes had produced an unhappy history of predation and carnage (mostly by whites) that had steadily transformed relations between government and Indians. No longer were the latter sovereign peoples. No longer were relations to be managed by treaties. Now the Indians were “wards of the nation.” This status called for governmental responsibility – to place Indians on the path to “their civilization.” What civilization amounted to, however, had changed. Pacification was no longer its principal aspect. To be sure, there were still bands or tribes at war with the United States, but these tended to be few and relatively small. By 1870, almost all the tribes had been subdued, defeated, or decimated. (General Custer would realize in 1876, however, that the Sioux and Cheyenne had not been.) The primary aim of civilization, according to Grant, was now citizenship. And citizenship entailed or presupposed assimilation.

Schools were essential to assimilation, but only if they were effective. In truth, most Indian schools were a travesty. White indifference aside, part of the reason for this was that schools were inadequately funded, and the process for supervising them, vested in Indian agents, was susceptible to breath-taking corruption. In an effort to clean up the process for appointing agents, Grant

28 Fischbacher, supra note 12, at 128.

29 Congress had formally recognized the death of treaty in 1871. 16 Stat. 544 (March 3, 1871).

delegated this authority wholesale to Christian organizations (both Protestant and Catholic), which as late as 1870 continued to receive almost all appropriations for operating Indian schools. President Grant also attempted to achieve administrative efficiencies in the management and supervision of schools. And in 1870 Congress began appropriating unprecedented sums for education.  

What made these efforts both feasible and desirable was that most tribal Indians were now confined (or were in the process of being sent) to reservations. Confinement undoubtedly made it easier to implement Grant’s administrative efficiencies. It also focused attention on government’s legal responsibility for these “wards.” This is not to suggest that the United States became more benevolent in all respects. It is only to say that government became more attentive. From the standpoint of the tribes, however, attention was a double-edged sword; for, having sequestered most of the tribes, the United States now tried to demolish them. The assault was two-pronged. One involved property (and its relation to citizenship), the other a distinct shift in the character of and control over Indian education.

The General Allotment Act (also known as the Dawes Severalty Act) authorized the President to order that any reservation be surveyed, divided into lots, and allotted among the Indians living there, with the largest parcels going to heads of families, smaller ones to various “single person[s].” Congress amended the Act two years later, to permit non-reservation Indians, too, to select parcels. At the time the allottee took possession of his parcel, he became a citizen. This

31 Fischbacher, supra note 12, at 153-8. The appropriation in 1870 was $100,000. Appropriations after 1870 continued to be comparatively large. Because these amounts dwarfed the $10,000 annual appropriations provided in the Civilization Act, that Act was repealed in 1873. 17 Stat. 461 (February 14, 1873).
status was merely inchoate, however, as the allottee lacked full privileges of citizenship. In fact, he lacked also full rights to the parcel, for the United States held it in trust for twenty-five years. After this period, the allottee would ascend to full citizenship, and the government would convey title to the land, unless the President decided to lengthen the period of trust.\(^{32}\)

In its own way, the Dawes Act was designed to be an educational enactment. Its aim was to provide individual Indians a powerful set of incentives. In the immediate term, the allottee would be impelled to assume responsibility for his and his family’s material welfare. Over time, the allottee would begin to acquire values of the “Protestant ethic” – thrift, energy, and productivity. In short, the allottee would learn to become an individual, not a tribal member. The lessons of responsibility for property would also transmit a capacity for citizenship, and the twenty-five year trust would provide time for Indians to practice (or imagine practicing) citizenship. In this way, the ownership (or possession at least) of property united liberalism and democracy. From the standpoint of the United States, allotment would generate ancillary benefits, too, for the subdivision of property into individual parcels would dismantle the communal property that was the reservation. Having destroyed the material base supporting communist ethical conceptions, which were in turn the foundation for tribal ways of life, the government aimed to destroy the tribes’ capacity to sustain themselves as tribes. In their place would arise a new, American way of life for Indians.\(^{33}\)

Hiram Price, the Commissioner of Indian Affairs, had anticipated this belief in his Annual Report in 1881:

\(^{32}\) 24 Stat. 388-91 (February 8, 1887); 25 Stat. 890.

\(^{33}\) Fischbacher, \textit{supra} note 12, at 235-8.
There is no one who has been a close observer of Indian history and the effect of contact of Indians with civilization, who is not well satisfied that one of two things must eventually take place, to wit, either civilization or extermination of the Indian. Savage and civilized life cannot live and prosper on the same ground. One of the two must die. If the Indians are to be civilized and become a happy and prosperous people, . . . they must learn our language and adopt our modes of life. . . . The few must yield to the many.34

Allotment, he said, would tend to civilize the tribes. It “tends to break up tribal relations. It has the effect of creating individuality, responsibility, and a desire to accumulate property. It teaches the Indian habits of industry and frugality, and stimulates them to look forward to a more useful life, and, in the end, it will relieve the government of large annual appropriations.”35 The Annual Report of the Board of Indian Commissioners in 1881, agreed: Allotment would “secure to [the Indian] the integrity of the family and the home[,] . . . the unit of Christian civilization.”36

Merrill Gates, president of Rutgers College and a member of the United States Board of Indian Commissioners, reiterated some of these themes and gave them a gendered cast, in a speech in 1885. The tribe, he said, has perverse effects on its members. “The highest right of man is the right to be a man, with all that this involves. The tendency of the tribal organization is constantly to


35 Id., at 311.

36 Fischbacher, supra note 12, at 241.
interfere with and frustrate the attainment of this highest manhood.” 37 How so? The answer implicated family and property.

The family is God’s unit of society. On the integrity of the family depends that of the State. There is no civilization deserving of the name where family is not the unit in civil government. Even the most extreme advocates of individualism must admit that the highest and most perfect personality is developed through those relations which the family renders possible and fosters. And from the point of view of land and law, students are generally at one with Sir Henry Maine when he says, in his latest work, “I believe I state the inference suggested by all known legal history when I say there can be no material advance in civilization unless landed property is held by groups at least as small as families.” 38

The tribal conception of property – specifically, the institution of communal property – “cuts the nerve of all that manful effort which political economy teaches us proceeds from the desire for wealth.” 39 It makes people lazy. 40 And it inhibits the accumulation of wealth that might have been


38 Id., at 17 (quoting from Maine, Early History of Institutions, p.126)

39 Id., at 17.

40 Id., at 18. As an example of the lethargic effects of communism, Gates notes the absence of theft in tribes: “The fact that robbery is said to be almost unknown among Indians within the tribe is largely explained by the fact that property, too, . . . is almost unknown. There is an utter barbarism in which property has almost no existence.” Id., at 17.
used “for the benefit of children.”

The solution, said Gates, was law, propagated by the (nation-)state. Law should work toward family and property. It can do so by promoting private property, “punish[ing] offenses against purity, and . . . abolish[ing] polygamy. . . . These laws enforced will help still further to develop true family feeling. Family feeling growing stronger and stronger as all the members of the family work on their own homestead for the welfare of the home, will itself incline all toward welcoming the reign of law, and will increase the desire of all for systematic education.” But perhaps it was too much to expect that all would desire education. “We must as rapidly as possible break up the tribal organization and give them law, with the family and land in severalty as its central idea. We must not only give them law – we must force law upon them. We must not only offer them education – we must force education upon them!” And so, through the law of severality, “the family and a homestead prove the salvation of those whom the tribal organization and the reservation were debasing.”

The Dawes Act was terribly effective in wresting land from the tribes. It did more than this, however, for it also led to the loss of land from allottees. In short, law was an instrument for defeating legal rights. It is estimated that, before the Act, Indians held 138 million acres of land, either as individuals or through tribes. By the end of the period of allotment forty-five years later, they had lost more than sixty percent of those tracts. One reason is that initial allotments were either too isolated or too small to support productive grazing. Another is that laws of inheritance

41 Id., at 18-9.

42 Id., at 21. (Emphasis in original.)
frequently worked to break up holdings.\textsuperscript{43} Still another reason has to do with white settlers and agents. Unscrupulous or coercive bargaining was commonplace; but it was also not uncommon for whites who coveted desirable Indian land to have the allottee declared incompetent and so to force the sale of his land.\textsuperscript{44} All of these consequences were traceable to the Dawes Act. This experience, in itself, was a kind of civic education for Indians, though not the precise lesson intended by the Act’s most benevolent proponents.

In the schools, the United States made two significant changes. One was the gradual move away from federally funded sectarian schools, toward schools that government both funded and ran. Sentiment for secular schools had begun to surface in the mid 1870s, especially among governmental administrators in Indian affairs, and gathered momentum in the following decade. It is difficult to know whether the dominant motive for this change was a belief that government-run schools would be more effective, an unreflective succumbing to the rising tide of common schools, a principled objection to the use of public money to support sectarian activities, or a desire to draw more responsibility (or power) under a bureaucratic umbrella. Whatever the motive, secularization happened. In 1889, the new Commissioner of Indian Affairs Thomas Morgan announced his intention to terminate federal contracts with religious schools. Most religious organizations responded by getting out of the business of educating Indians. One exception was the Catholic Church, which, indignant, fought the policy intensely on several fronts. In the end, however, the

\begin{footnotes}
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\item[\textsuperscript{43}] Martha Elizabeth Layman, \textit{A History of Indian Education in the United States} (Ph.D. dissertation, University of Minnesota, 1942), at 439.
\item[\textsuperscript{44}] Fischbacher, \textit{supra} note 12, at 250.
\end{itemize}
\end{footnotes}
Church conceded the inevitable and severed ties with governmental programs.\textsuperscript{45}

Regardless of who ran the schools, there was still a question about their character. One possibility, long practiced especially by the churches, was the day school, located on the reservation. In the 1870s, as indicated above, commissioners of Indian Affairs grew disenchanted with these schools, and not merely because they were run by religious organizations. Truancy was rampant, partly because of parental resistance. The quality of instruction was generally low. And officials (and others) worried that the environment to which students returned at the end of the day were subverting the lessons of school.\textsuperscript{46}

Another possibility resurrected an approach with which Europeans and Anglo Americans had flirted in colonial times: the boarding school. The idea was to have children take up residence at the school. The earliest versions of this sort of school were located on reservations. One challenge, of course, was getting students. If some Indian parents resisted day schools, wouldn’t they be even more reluctant to send their children to boarding schools? The answer is that they were. Frequently, agents and officials who ran the schools resorted to deceit, coercion, and (sometimes) kidnaping to generate a clientele.\textsuperscript{47} But even when parents voluntarily sent their children, many

\begin{footnotes}
\item[45] Id., at 276-81.
\item[46] Id., at 199-203.
\item[47] G. Stanley Hall, Adolescence: Its Psychology and Its Relations to Physiology, Anthropology, Sociology, Sex, Crime, Religion, and Education, vol. 2 (New York: D. Appleton & Co., 1916), at 696. Although the Commissioner of Indian Affairs was eventually delegated authority to force Indian children to attend schools on the reservation, he did not possess authority to force them to attend off-reservation schools. Charles M. Scanlon, The
\end{footnotes}
parents would not stay away. They visited frequently and expected their progeny to come home at every available holiday. Almost immediately, therefore, critics argued that these schools suffered from some of the same limitations as day schools. 48

Some critics advocated and began to experiment with boarding schools located far from the reservation. As proponents of off-reservation schools saw it, this approach had several advantages. With students unable to return home, it would be much easier to compel attendance and enforce discipline. Learning, therefore, could be more rapid. Schools could require all English all the time. And they could more effectively de-emphasize academic subjects in favor of a more systematic exposure to “industrial” training. As we’ve already seen, for boys this training was in agriculture and mechanical trades; for girls it was in domestic pursuits like sewing, cooking, and cleaning. The aim at bottom was to ensure that students acquired the “habits of civilized life.” 49 Commissioner Morgan was specific about what this life entailed:

When we speak of the education of the Indian, we mean that comprehensive system of training and instruction which will convert them into American citizens. . . . Education is the medium through which the rising generation of Indians are to be brought into fraternal and harmonious relationships with their white fellow-citizens, and with them enjoy the sweets of refined homes, the delight of social intercourse, the emoluments of commerce and trade, the

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49 Fischbacher, supra note 12, at 203-8.
advantages of travel, together with the pleasures that come from literature, science, and
philosophy, and the solace and stimulus afforded by a true religion.\textsuperscript{50}

The prototype for and most famous of the off-reservation industrial boarding schools was
the school in Carlisle, Pennsylvania. The Carlisle School was established in 1879 by a former Indian
fighter, Capt. Richard Henry Pratt, in vacant army barracks.\textsuperscript{51} Pratt was a committed assimilationist.
He believed that, as individuals, Indians were plainly educable; their disability was their culture,
which was, in a word, “savage.”\textsuperscript{52} The aim of a civilizing education, then, was to kill the savage
person. “We accept the watch-word. There\textit{ is} no good Indian but a dead Indian. Let us by
education and patient effort \textit{kill} the \textit{Indian} in him, and save the \textit{man}!”\textsuperscript{53} Removal – this time removal
\textit{from} the reservation – was essential to education.\textsuperscript{54}

The Carlisle School’s program combined systematic acculturation with formal learning.
Every aspect of the program aimed at killing the Indian. Acculturation commenced as soon as
students arrived on campus. The School cut their hair, gave them “civilized” clothing, and renamed
them. The most immediate purpose for renaming was that it enabled (white) teachers to become

\textsuperscript{50} Quoted in Clyde Ellis, \textit{To Change Them Forever: Indian Education at the Rainy Mountain Boarding

\textsuperscript{51} For a quasi-autobiographical account of the school, see Richard Henry Pratt, \textit{Battlefield and Classroom:

\textsuperscript{52} Adams, \textit{supra} note 48, at 51-5.

\textsuperscript{53} Quoted in Gates, \textit{supra} note 37, at 14-5. (Emphases in original.)
more familiar with students more quickly, which promoted both pedagogy and discipline. But it served, too, as a general device for the transmission of culture. And it was also the case that, if students were to become owners of property someday, they would have to have proper surnames that could be efficiently registered in the records of probate courts. Exposing students to Western food played a (universally despised) role in acculturation. But perhaps the most thoroughgoing effort at acculturation was the militarist, Spartan regimentation imposed throughout the day – from waking, to taking meals, to studying, to working, to sitting in the classroom, to sleeping, to participating in regular marching drills. The justification for this militarization of citizenship boiled down to the centrality, not of deliberation or choice, but of obedience: Military regimentation cultivated the ability to follow orders; following orders was a necessary condition for personal discipline; discipline was a fundamental prerequisite to life under law.\(^5\) The curriculum reinforced these norms. Much of the curriculum, of course, covered the standard academic and vocational subjects whose aim was “self-reliance.” But a significant part of the training was in citizenship, inculcating a patriotic respect for the American nation and its values, and suppressing the history of conflict between whites and Indians.\(^6\)

No matter how rigorous the discipline or refined the instruction, the school was in its way still separated from white society. Thus, if Pratt criticized reservations for their inherent segregation, the school was susceptible to a similar criticism. Pratt recognized this tension. The best system, he


\(^6\) *Id.*, at 117-24. In some off-reservation schools, marching drills were a daily, lengthy, and punitive ritual.

\(^5\) *Id.*, at 142-56.
believed, would be to take every Indian child on the continent and place him/her permanently with a white family, who would send the child to public school, teach by example the requisites and regularities of a civilized life, and prepare the child for a lifetime of productive labor. This would be consistent with the child’s best interest as a human being, not an Indian. In most cases, Pratt acknowledged, permanent placement wasn’t possible. But there was a “second-best” alternative that borrowed from the eighteenth-century fantasy of transforming Indian children by apprenticing them with “English and Godly families” in New England.

Pratt adopted a version of this vision. He called it “outing.” Although outing was voluntary, it was thoroughly integrated into the rhetoric and operation of the program. The school extolled and encouraged it (for the right students). Holding to Jeffersonian notions of the republican virtue of agrarian life, Pratt preferred to place his students on farms with white Christian middle-class English-speaking families. There, students would have an opportunity to participate in the daily lives of host families, attend local schools, work on farms (for a wage), and go to church – all the while immersed in English. The typical outing was for the summer months only; but Pratt favored, where possible, placing his students for one or two years.

The Carlisle School was a model for similar schools across the country. By 1902, there were

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57 Id., at 52-4.

58 Id., at 156-63. On occasion, the school would place students in cities, to learn non-agrarian trades. But Pratt disliked these placements. “We prefer good country homes or homes in the suburbs. . . . Almost every time we have placed students in a city they have dropped into the servant class and became the victims of some degeneracy, unless they happened to be our especially advanced and capable students.” Quoted in id., at 157.
twenty-five off-reservation schools and even more boarding schools located on reservations. As early as 1887, 76% of Indian children who attended school were in boarding schools; and 94% of federal appropriations for Indian education went to such schools. 

The boarding schools operated with varying degrees of success. At many, even the most basic of buildings, sanitation, and food were inadequate. The level of instruction at some was quite low. And more than a few schools were poorly managed and maintained. At some schools in the west, the outing program was essentially a device for farming out cheap, pliable labor to locals. These operational deficiencies aside, it is also the case that boarding schools ultimately failed to achieve the results their most ardent proponents had predicted. Pratt had urged, “To civilize the Indian, get him into civilization. To keep him civilized, let him stay.” As it happened, most students did not stay. For a variety of reasons, they went home after their time at school had ended.

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59 *Id.*, at 57.


62 Adams, *supra* note 48, at 162-3. Pratt had insisted that outing could not work on the frontier, where the amenities, institutions, and ethos of civilization were scarce.

63 There is reason to believe, however, that Carlisle was more successful in this regard than were most of the other schools. *Id.*, at 288-9, 298.

64 *Id.*, at 55.
(In the parlance of the day, they “returned to the blanket.”) On going home, many graduates, again for a variety of reasons, did not practice the bourgeois lives for which their education had ostensibly prepared them.\(^65\) This fact was a source of bitter disappointment for Pratt and others who had proclaimed boarding schools to be effective vehicles for assimilation.

In part because of these failures, the United States would eventually rescind the program of allotment, retreat from using boarding schools, move to community day schools, and renounce assimilation as a goal.\(^66\) By then, however, United States policy had decimated tribal ways of life.

### III. Contemporary Models for Civic Education

By the late nineteenth century, the various policies for educating the children of the tribes tended to share at least five characteristics: maintaining the constitutional order, employing coercive methods, creating civic persons, suppressing certain ways of life, and assimilation. First, the educational program for the tribes was a device for maintaining the constitutional order. One way of maintaining was to control the native populations. From the perspective of the regime, physical control was the first priority. But after achieving that goal, the regime used education to provide an added layer of control, for education not only reinforced pacification but also began a process that made dramatic uses physical constraint unnecessary and that strengthened and extended the power of the regime.

Second, in order to be effective, the policies had to reach their targets. To that end, the policies were coercive in several ways. For one thing, the nation required that Indian children

\(^{65}\) Id., at 273-306; Pratt, supra note 51, at xvi.

\(^{66}\) All of these changes became official policy by the mid 1930s.
receive an education provided by the nation-state. For another, the methods of instruction were coercive – to some extent, perhaps, unavoidably so. And for another, it was sometimes the case that children were coercively taken from their tribe and family in order to place them in boarding schools.

Third, and another condition of effectiveness, the policies were designed to create a new, civic personality. Thus, teaching was not confined to skills of expression (reading and writing) or analysis (arithmetic). It also concerned the transmission of values and culture. These values were “civilizing,” within a particular meaning of the word. That is, they aimed to cultivate the basic elements (or virtues) of a civilized life, from the perspective of the regime. For the Europeans (including the British) and eventually for the early United States, those elements were religious, linguistic, and economic in character. After the constitutional founding, the economic element became forthrightly liberal in ways it was not (could not have been) in colonial times. And over time, explicit commitment to religion gave way to ostensibly secular values. By the end of the nineteenth century, the United States would adopt another civilizing element that was overtly political in character, related specifically to citizenship. This is not to suggest that the nation was then prepared to welcome Indians as full citizens. But it was prepared to prepare them for the possibility of citizenship. This new civic element coincided with several disparate trends in American history that were related to the clarification and intensification of nationalism: a tendency

67 I say “ostensibly” for two reasons. One is that the Protestant roots of American educational policy were persistent. The other is that it is possible to view the (secular) project of the Enlightenment either as an extension of certain religious foundations or, conversely, as a quasi-religious surrogate. On the latter possibility, see Henry F. May, The Enlightenment in America (New York: Oxford Univ. Press, 1976).
toward increasingly democratic norms, the suppression of the Southern secessions, the conquest and containment of the tribes, and the rise of secularization in common schools. With respect to the last trend, overtly religious expressions of value gave way to a language of civic values, which encompassed two competing sets of commitments: democracy and liberalism. Perhaps ironically, adding citizenship as an element of civilization enhanced and expanded the state’s control over persons.

A fourth aspect of the program of Indian education was a suspicion of non-conforming associations. In this context, “non-conforming associations” connotes familial, religious, or tribal groups whose values and practices – ways of life – were perceived to contradict in some substantial way the prevailing commitments of the regime. In the beginning, these commitments were monarchic, colonial, mercantile, and Christian. By the nineteenth century, they became liberal-democratic, imperial, capitalist, and formally secular. Despite their differences, however, each regime attempted to suppress non-conforming associations. The Jesuits were a moderating exception to this tendency in the early years. Later, the American policy – expressed in institutions of education, in the dismantling of tribal lands, and in the redistribution of that land to bourgeois families – sought to limit the influence of incompatible (tribal) ways of life and ultimately to eliminate them.

Fifth, civic education’s function was assimilative. That is, it aimed to render children productive members of society, or at least to prevent their being threats to or drags upon it. Assimilation had not always been the point of policies for educating the tribes. In the early years, there was doubt about Indians’ ability to become, for example, proper Englishmen or Americans. Thus, the Europeans and early Americans focused primarily on moral instruction and economic
integration, skills designed to promote accommodation, not outright integration. Later, however, the American policy became aggressively assimilationist. The rise of nationalism and the importance of citizenship were part of this shift. The American project for the formation of citizens through education began with the education of Indians.

Having noted this, I can imagine at least two objections to using the experience of American Indians to shed light on relations and tensions between families and civic education. One is that the Indians are an exceptional case. They were indigenous, having established distinct communities or nations that antedated European settlement. This fact and the post-European history, the argument might go, make Indians incomparable to the orthodox or fundamentalist religious adherents (or even non-religious radicals) who today may find themselves at odds with common schools. The second is that we here today are different from the Europeans and Americans who preceded us. Specifically, our government – liberal and democratic – is the most just form of government available. To be sure, that government continues to maintain itself in part through coercive educational policies, but coercion is justified by the special legitimacy of this government. Moreover, coercion in America is limited in that it is carried out under law and within the bounds of human, political, and civil rights that our forebears did not respect. There is something to these claims. Indians’ experience in America since the coming of the Europeans is special and, in some respects, unique. And, if the system of government that Americans practice is not the most just imaginable (or achievable), it is more respectful of some (though not all) rights than the governments of our predecessors. Still, I believe the objections are not entirely well founded.

Let’s take the first objection first. Where civic education is concerned, American Indians were not *sui generis*, but are an especially illuminating example of the manner in which the authority
of government is brought to bear on objectors and dissenters, whether they are religiously motivated or not. Put differently, we can conceive the persons on whim the state acts, for the purpose of education, as being arrayed along a continuum. On one end of the continuum are children of fully integrated “mainstream” families who are perfectly content to have the state educate and civilize their children. At the other end is a range of “dissenters” of various sorts, including orthodox or fundamentalist religious adherents and secularists who object to one or more basic aspects of the constituted order. We may count many (though not all) Indians on the dissident end of the spectrum. To be sure, their circumstances distinguish them from some the other dissidents I’ve described. But the distinction is one of degree, not of kind, for the issues pertaining to the state’s regulation of their education is structurally similar. Understood in this way, American Indians are not merely an example of what (not) to do with indigenous tribal groups that persist in a modern nation-state. For Indians’ experience is a useful case for considering the more general and pervasive problem of what constitutions (should) do in the face of fundamental disagreement.

Moving to the second objection, even if we’re different now – our state, for example, does not typically take children physically from families without legal authorization and is formally secular not religious – the differences are not dispositive. Certainly, adherence to legal formality alone is not distinguishing. For one thing, nineteenth-century Americans frequently (not always) adhered to legal forms in their dealings with the tribes and with individual Indians. For another, even unfailing adherence to law (or the rule of law) is not the end of the matter from the standpoint of constitutionalism. But there’s more at work than respect for law or rights. For despite such respect, there is reason to believe that, in significant ways, we are our ancestors. This is neither a claim that history repeats itself nor a brief for the genetic or cultural determination of human behavior. It is
merely to contend that the imperatives of maintaining or extending a political order are potent, especially if the order is imperial, and regardless of whether it is monarchic, liberal, or democratic.

Consider, for example, three contemporary proponents of civic education, proponents with distinct approaches to the issue. One is Lynne Cheney, who at different times has been Chair of the National Endowment for the Humanities, founder of the American Council of Trustees and Alumni, and “Second Lady” of the United States. She has used her offices to advocate strong programs of civic education. Consistent with that commitment, she has also published a number of children’s books. Cheney’s approach to civic education – evident in her policy positions and in her children’s books – is largely historical. She mines the period of the founding of the nation for “stories” (her word) of the American experience. Although these stories are grounded in real persons and events, some of the content is not strictly factual but includes the stuff of “legend.” These are stories of aggressively patriotic indoctrination. They link statism, militarism, and religion. They celebrate the “bravery” of “our heroes.” They are designed to inspire attachment to the nation. Military heroes are especially significant for Cheney. “Let us remember their bravery with awe and talk about the inspiration we should draw from it.” She wants also to celebrate those founders who say they have sought “divine providence” to guide their actions. The basic theme of Cheney’s stories is always tied to a particular view of freedom. Thus, not all narratives of American history are acceptable for purposes of civic education. She is especially critical of accounts that are insufficiently celebratory, especially if they are negative or critical, or that she perceives to be anti-American or Marxist. In the wake of 9/11, for example, she encouraged the use of “teach-ins for freedom,” but only if the events were “balanced,” which is to say they should not be narrowly critical of the United States and should ideally include representation by officials from the Bush
administration. Whether in grades schools or colleges, the point of civic education is to create patriotic persons who appreciate “how fortunate we are to live in freedom” and how virtuous has been the American use of armed force in the world.\textsuperscript{68}

For an approach that’s less directly tied to Americanism per se, we might consider Amy Gutmann’s influential argument for “democratic education.” The point of education in a democracy, she says, is “conscious social reproduction.” Its method is to create fully functional democratic citizens. Who has primary responsibility for this creation? Gutmann says that the role of parents must be limited. Chief responsibility resides in the nation-state, assisted by educational professionals. The job of these professionals is to inculcate “critical deliberation,” which is the constitutive capacity of democratic citizens. It subjects to scrutiny and possible rejection all ways of life except for democracy itself. A democratic education “predisposes children to accept those ways of life that are consistent with sharing the rights and responsibilities of citizenship in a democratic society.” The ways and values of families or other nomic communities, she observes, may be inconsistent with the needs of democracy. Thus, children are to be educated to choose an acceptable “way of life compatible with their larger [national] community identity.” The range of permissible pluralism is necessarily limited. A plurality of families, she says, is a sham. Social diversity is beneficial only if children are “exposed to ways of life different from their parents and – in the course of their exposure – ... embrace certain values such as mutual respect among persons.” The end of education, then, is to “cultivat[e] the kind of character conducive to democratic

\textsuperscript{68} Lynne Cheney, “Teaching for Freedom,” Lecture to the James Madison Program in American Ideals and Institutions, Princeton University (November 29, 2001),
Stephen Macedo’s complementary approach focuses on the problem of plurality. He argues that too much “social diversity” – indeed, too much attention to diversity – is problematic. For one thing, some forms of diversity are incompatible with proper civic values. For another, the survival of a constitutional order depends upon social convergence on basic values. This convergence does not happen spontaneously. The state must actively foster it through a muscular program of civic education. The values to be fostered are liberal values. And the aim of education is to “transform” children into civic beings of a specific sort: “good liberal citizens.” This transformation involves a struggle against parochial conceptions of personhood, like those of orthodox or fundamentalist religions, which can be “hostile to republican attitudes and aspirations.” The object of this struggle is to civilize fundamentalists, or to marginalize them. “[S]ome groups have been pushed to the margins of society for good reason, and the last thing we want is a politics of indiscriminate inclusion.” This marginalization, combined with an education that forms a civic personality, will ensure that “public reason” – the form of reason that informs deliberation over social policy – is the reason of civic liberalism. “[G]ood liberal citizens should justify basic political principles in terms

they can share not only with members of their own sects, but with their reasonable fellow citizens.”

The intellectual aspiration of the program of civic education is to promote liberal freedom. This is the freedom “to leave oppressive associations and relations” and to choose to join and to enjoy the benefits of “a liberal political community.”

IV. Civic Education and Constitutionalism

The lesson of these three approaches is that, even today, the forms and purposes of civic education resemble those of the programs designed for children of the tribes in the nineteenth century. Even so, should we worry? After all, even a constitutionalist order needs to maintain itself and control its domestic environment (though presumably not at all costs). And teaching children is usually a more attractive way of maintaining and controlling than are gulags and extermination. To push the point further, educating for citizenship, even when carried out coercively, might be consistent with constitutionalism. From the perspective of the citizen, the benefits of a civic education touch on three dimensions of human experience: political, economic, and ethical. As a political matter, such an education may enable citizens not only to live under law but to participate in democratic processes through which the makers of law are chosen, and also perhaps to contribute to the making of law and to other aspects of public life. To live under law is largely a matter of obedience. To choose lawmakers and, even more, to participate in making law involve more than mere obedience. They are simultaneously analytic, evaluative, and creative – calling on capacities more refined and extensive than those required for subjects of law alone. As an economic matter, a civic education promotes participation in and (it’s hoped) enjoyment of the material fruits of

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organized society. These benefits are especially apt if we conceive civic education broadly to include exposure to language, literature, history, mathematics, and analytical reason. From an ethical standpoint, the point of a civic education is normalization. It aims, that is, not to perfect students (from a moral perspective) but to provide a shared ethical framework for socially useful interactions among fellow citizens – interactions that provide opportunities not only for imbibing but also for creating a common culture.

We might consider alternatively the advantages of civic education from the perspective of the political order itself, especially if it aims to be constitutionalist. Constitutionalism is a political theory concerned with the architectural structure and basic values of society and of government. Historically, it is preoccupied with the problem of power, particularly the power of those who would rule others, particularly when that rule might be arbitrary. To solve this problem, constitutionalism has three sets of needs or requirements.

First, in substantive terms, it requires institutions that span three dimensions of human experience. One dimension is political, implicating the allocation of benefits and burdens among people in society, the articulation of norms for human behavior, and the processes by which formal decisions are made. Another is economic. This dimension is concerned with the production, distribution, and exchange of material goods and materially consequential services. The third dimension is moral. It pertains to the norms by which people evaluate the substantive value or rightness of human action. In conjunction with one another, these dimensions – political, economic, and moral – are concerned with “ways of life.” There might be many such ways – for societies, for groups, or for individuals – consistent with constitutionalism.

Second, in functional terms, constitutionalism needs institutions capable of doing three things:
creating, maintaining, changing, and dissolving (or fundamentally altering) constitutional orders. This set of needs makes a written constitution especially useful, maybe essential. It also explains the utility of a theory positing sovereignty in “the people,” as distinct from government. But constitutionalism might require additional, more ordinary institutions that can perform one or more of the three functions. There’s another dimension to this aspect of constitutionalism. It concerns a problem with which virtually all political orders must wrestle: reconciling the tension between individual and collective, or, if not fully reconciling, then putting them in a workable relationship with each other. The American order attempts to achieve this by committing simultaneously to two partially competing political theories – democracy and liberalism – without resolving the competition.  

By democracy, I have in mind simply an emphasis on (or liberty in) one or more collectives for establishing social goals and policies. By liberalism, I intend only an emphasis on (or liberty in) individuals as basic units of society. American constitutionalism aims at a framework of


72 A democratic polity can display any number of institutional forms – direct or representative, unitary or divided (vertically and/or horizontally), majoritarian or consensus, and so forth. It’s also the case that the term “collective” needs to be specified. For now, however, I’m content to leave forms and terms unspecified.

73 “Liberalism” can mean several things. It can refer to a muscular theory of the good, which liberal government may coercively enforce. It can refer to a general libertarian theory that posits a thin conception of the good and a highly limited role for government. As a subset of this definition, it can refer to a libertarian theory that’s largely “economic,” with government constrained from taxing and/or regulating enterprise or property. It can sometimes refer to pluralist theories that permit a number of differentiated group-based ways of life, under the
values and institutions that accommodates interests of collective and individual without extinguishing either.

Third, in terms of method, it aims at authorizing and constraining power through what Alexander Hamilton called “reflection and choice.” This aim suggests the primacy of principle and the deficiency of mere force as bases for political action, and it implies the importance of authority and respect for limits. “Authority” connotes the justified exercise of power. “Limits” may entail the exercise of power through established, rational procedures, through the rational pursuit of specified ends, or through respect for rights; it may also make institutional balance desirable. The preoccupation with authority and limits makes law an attractive, perhaps necessary, element of any constitutionalist regime. But constitutionalism and rule of law are not coextensive, for reasons that Vladimir Putin’s proclaimed aspiration for a “dictatorship of law” may help clarify.

It’s doubtful whether Lynne Cheney’s jingoistic civic education is constitutionalist in these ways, aside from the fact that it is preoccupied with maintaining the regime. Gutmann’s and Macedo’s theories, however, speak to all three of the basic needs of a constitutional order: substance, function, and method. By way of method, their theories aim to produce civic persons who have a capacity for critical deliberation, which is relevant to a kind of “reflection and choice.” These citizens may exercise this capacity with respect to debates about matters of policy, choices from among allowable ways of life, and decisions about staying in or leaving intermediary umbrella of a larger protective regime. For purposes of understanding American constitutionalism, I’m content to rest with a generic emphasis on individuals – leaving open the time, place, and manner of the state’s relation to individuals. The discussion of civic education, below, will focus on the first (muscular) version of liberalism.

associations. To this extent, the concern for critical deliberation is consistent with constitutionalism, but the scope of permissible deliberation is narrow.

By way of substance, Gutmann and Macedo speak to all three dimensions of human experience – political, economic, and moral. To understand how they do so in constitutionalist terms, we may look to *Brown v. Board of Education*,\(^7\) with which the theories are largely harmonious.\(^6\) The Supreme Court noted that “education is perhaps the most important function of state and local governments.” The Court justified this claim across the three dimensions:

> [E]ducation ... is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.\(^7\)

It is significant that this language appeared in a case involving the schooling of African-American children. Hence, the Court held that, “where the state has undertaken to provide” the opportunity for an education, it must do so without segregating by race. In short, states that provide a common

\(^7\) *Brown v. Board*, at __.

\(^6\) I say this recognizing that the basic meaning of *Brown* is contestable. Compare Gutmann and Macedo with Derrick A. Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* (New York: Basic Books, 1989), at __.

education must make it “available to all on equal terms.”78 This is not the most robust affirmation of the value of a common education, but it’s not nothing.

By way of function, the basic theories of the American order – liberalism and democracy – are plainly present in Gutmann’s and Macedo’s theories. In fact, despite their distinct denominations, each embraces both liberalism and democracy in ways consistent with the excerpt from Brown. In doing so, they are committed to maintaining a liberal-democratic order. Again we see the extent of this commitment in their treatment of critical deliberation, which encompasses an intermediate range of choices about policy and life, but does not include matters that go to a fundamental alteration of the character of the order, and especially not matters that might entail rejecting it. For Macedo and Gutmann, there is (or should be) no exit from the liberal-democratic order.

V. A Constitutionalist Critique of Civic Education

Herein lies the source of a problem, for a genuinely constitutionalist order must be willing to die – or, less dramatically, to accede to fundamental change.79 This requirement can conflict with the imperative that a constitutionalist order maintain itself. We have, therefore, a tension at the heart of a constitutionalist order, and the question is how to resolve it. With respect to civic

78 Brown v. Board, at __.

79 In the human species – in almost all species of life that we know – death is an evolutionary advantage, depending on when it tends to occur within a population. The same may well be the case for political orders, but my argument ultimately does not rest on its being the case. It is enough that constitutionalism’s values and principles require that constitutionalist orders be willing to give way to fundamental change.
education, we can see the tension in opposing opinions in *Minersville School District v. Gobitis*\(^{80}\) and *West Virginia v. Barnette*.\(^{81}\) Both cases involved the refusal of young Jehovah’s Witnesses, with the support of their parents, to participate in a civic ritual at their public school: a formal pledge of allegiance to the flag of the United States.

Justice Frankfurter’s opinion of the Court in *Minersville* invoked the conditions necessary for sustaining the “security” (i.e., the continuation) of a “free government.” Government, he said, “presuppose[s] the existence of an organized political society.” That society, in turn, rests on “the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization.” Rituals and symbols serve an educative and unifying function in the conservation of civilization. They engender, in a word, “loyalty,” on which free societies depend for the perpetuation. Therefore, government may coerce participation in civic rituals in a public school, even if they are incompatible with deeply and sincerely held beliefs. If parents disagree, the state may compel obedience. “A society which is dedicated to the preservation of [the] ultimate values of civilization may in self-protection utilize the educational process for inculcating those almost unconscious feelings which bind men together in a comprehending loyalty, whatever may be their lesser differences and difficulties.” Government, that is, may actively shape not only the mind but

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\(^{80}\) 310 U.S. 586 (1940).

\(^{81}\) 319 U.S. 624 (1943).
the heart of the citizen.82

Regardless of whether Gutmann and Macedo would agree with Frankfurter’s conclusion in Minersville – or despite the fact that they purport to disagree with it – the logic of his opinion is identical to that of their arguments. It also maps the repeated justifications offered for various regimes across American history for educating Indian children. Again, this fact alone is not sufficient to dismiss Frankfurter’s position. As I indicated above, there is much to it. The challenge is that it conflicts with a similarly powerful countervailing intuition, with respect not only to the Jehovah’s Witnesses but also to American Indians – indeed to social non-conformists and protestants of many sorts.

Dissenting in Minersville, Justice Stone objected to the compulsory salute and recitation.

“The Constitution may well elicit expressions of loyalty to it and to the government which it created, but it does not command such expressions or otherwise give any indication that compulsory expressions of loyalty play any . . . part in our scheme of government.”83 Much of Stone’s opinion rested on a doctrinal discussion of the Witnesses as a “discrete and insular minority,” deserving of special protection under paragraph 3 of footnote 4 of Carolene Products.84 This discussion implicitly touched on the value of plurality. But also implicit in Stone’s dissent were two additional considerations relevant to a constitutionalist critique of Frankfurter’s position: the recognition that education is an assertion of power and the notion that the Constitution is logically prior to

82 Minersville, at __.

83 Minersville, at __ (Stone, dissenting).

government.

Justice Jackson expanded on all three – plurality, power, and priority – in his opinion for the Court in *Barnette*, overruling the decision in *Minersville*. His commitment to plurality included even subversive communities, even children in public schools:

Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. . . . Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing.

Free government, therefore, depends not on loyalty but on “consent of the governed.” To be of value, that consent must be freely given. “Authority here is to be controlled by public opinion, not public opinion by authority.” The foundational requirement for free government, then, is the unfettered citizen, whose “conscience” is prior to, and not a creation of, government. If government controls to too great a degree the modes by which citizens attach to the order,

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85 One frequently quoted line from Jackson’s opinion is: “[F]reedom to differ is not limited to things that do not matter much. . . . The test of [freedom’s] substance is the right to differ as to things that touch the heart of the existing order.” *Barnette*, at __.

86 *Barnette*, at __.
therefore, it undermines its own authority.\textsuperscript{87} Put somewhat differently, aggressive and coercive efforts at assimilation may be constitutionally dangerous.

John Locke helps us see how and why this might be.\textsuperscript{88} Locke understood that one of the basic and enduring problems of politics was constraining and directing political power. Specifically, in his terms, power should be constrained against arbitrariness and directed to the common good.\textsuperscript{89} His solution to this problem was complex, involving natural rights, majoritarianism, and rule of law, among other things. We need not pause over these particulars, nor need we worry now about the merits of Lockean liberalism in general. The more pertinent concern is Locke’s notion that the people possess residual powers to declare government dissolved and to replace it with a new one more consistent with their needs. By maintaining the threat of dissolution – and, of course, by implementing it – the people’s residual powers could help sustain limits. And, to the extent that attentive and self-interested people presided over the rites of dissolution and replacement, they could help direct political power toward the common good.

From the standpoint of constitutionalism, the powers to destroy and create are essential. In practical terms, if people are to exercise these powers, they must, at a minimum, be able to imagine new ways – both normative and institutional – of ordering their political world(s). This capacity in turn presumes that people possess, at a minimum, intellectual and ethical resources independent

\textsuperscript{87} Barnette, at __.

\textsuperscript{88} The remaining discussion in this section and the following borrows from Brandon, “Family at the Birth of American Constitutional Order,” \textit{77 Tex. L. Rev.} 1195 (1999).

from the ruler or state. In other words, people must be able to be not merely good citizens but also anti-citizens – or, more accurately, anti-statists – when circumstance justifies. They must be able to dismantle existing arrangements and replace them, perhaps with something radically new, perhaps with something that attempts to recapture or reinforce values or institutions that are lost or waning. Finally, in order to perform these roles, people must be able to occupy meaningful spaces that are partially autonomous from the state.

Of course, Jackson’s unfettered citizen is a mythological creature. For, if conservative (or post-modern) thought has taught anything, it is that human beings, including liberal-democratic citizens, are constituted by a multitude of relations and forces that ground their social existence. They are, in short, embedded. This means that Jackson’s citizen is sensible primarily as a conceptual construct or heuristic, not an empirical reality. The most we can make of the construct is that we should act as if citizens were unfettered, without presuming that they exist in the world in this way. Even so, we’re left with something of a dilemma: Jackson’s is a constitutionally sound position, but so too is Frankfurter’s. Each promotes a constitutionally significant function. The problem is that the functions collide. Again, what is to be done?

VI. Families as a Solution to the Problems of Civic Education

It might be tempting to conclude that nothing need be done, and not merely because the tension I’ve described exists in any constitutionalist society. There’s an even more concrete temptation: To conclude that there’s not a genuine problem in the case of American Indians, because civic education was so ineffectual on so many fronts. I believe this conclusion is misguided for at least two reasons. One is that it’s a double-edged sword. On one side, if we can generalize beyond the case at hand, the conclusion might suggest abandoning civic education altogether. On
the other side, it may merely argue for more (or more extreme or insidious means of) indoctrination. The strategy of more indoctrination might address the problem of ineffectuality, but would also intensify constitutionalist objections – assuming that I’ve properly classified Justice Jackson’s position. The second reason the conclusion is misguided is this: To say the policies were ineffectual is not to say they had no effect. It is only to say their effects, in the main, were not consistently attuned to their purpose of assimilation. Though they failed to produce integrated and indoctrinated citizens, they succeeded in furthering tribal disintegration and in manufacturing large numbers of children who had a home in neither the world of their parents nor the world of the state.

   It is difficult to measure the psychic and social costs of this alienation, unintended though it might have been. Some such costs may simply be the human price that’s paid for maintaining in muscular fashion any constitutional order. If so, they may justify reconsidering the value of maintenance, or at least of muscularity. This consideration aside, I believe the costs help to clarify that aggressive assimilation is a constitutional problem. Is there a constitutionally sensible way to mitigate it?

   A possible solution exploits a value Justice Jackson invoked in *Barnette*: plurality. James Madison famously noted plurality’s contribution to stability and liberty. Both constitutional text and relatively uncontroversial aspects of constitutional doctrine embrace forms of plurality. Federalism, committing aspects of policy to the states, is an example that’s embedded in the formal institutional structure of the polity. Valuable as states are, however, there may be reasons to doubt their sufficiency for matters like the one at hand, for states’ control of (civic) education can just as

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easily inhibit plurality as secure it. An auxiliary source might be intermediary associations, whose presence promotes plurality in and among social groups. But which groups should be protected, for what purposes? The First Amendment’s commitment to the free exercise of religion is exemplary.\footnote{Admittedly, the prohibition against establishment of religion removes certain normative and institutional options for the purpose of organizing government. But even this removal may be justified in the interest of pluralism, as long as free exercise of religion (or more expansively, freedom of conscience) is respected.}

So too are freedoms of association and of economic enterprise, even if we can’t find them in so many words in the constitutional text. Still, none of these seems to address the problem of United States policy in dealing with the Indians. Another – family – might.

\textit{Meyer v. Nebraska}\footnote{262 U.S. 390 (1923).} and \textit{Pierce v. Society of Sisters}\footnote{268 U.S. 510 (1925).} posited a protected sphere for family in the domain of children’s education. \textit{Meyer} located the source for this sphere in the common law. Its antithesis, however, had roots even more ancient. Writing for the Court in \textit{Meyer}, Justice McReynolds noted that Plato extolled a Spartan regime in which the state leveled the family (at least for one class of citizens) and controlled the education of children. The Court’s conclusion was essentially that the state’s alienation of children from parents was inconsistent with basic values and institutions of the Constitution.\footnote{\textit{Meyer}, at \underline{___}.} \textit{Pierce} affirmed this position, again through McReynolds: “The fundamental theory upon which all governments in this Union repose excludes any general power of
the state to standardize its children” through the regulation of their education. It’s not uncommon to hear these decisions dismissed as relics of an outmoded jurisprudence. If they are old-fashioned, however, they continue to find lively expression in more recent decisions. In *Wisconsin v. Yoder*, for example, the Court permitted Amish parents to opt out of the state’s law compelling education up to 16 years.

The Court explicitly connected family with plurality in *Skinner v. Oklahoma*, a case involving the constitutionality of a penal statute requiring that persons convicted thrice of crimes of moral turpitude be sterilized. In striking down the statute, Justice Douglas invoked a right of “marriage and procreation.” The functional foundations for the right were twofold. One was that procreation is (or was at one time) essential to the propagation of the species. The other, which is closer to my point, was the potential impact of sterilization on distinct groups. “The power to sterilize, if exercised, may have subtle, far-reaching and devastating effects. In evil or reckless hands it can cause races or types which are inimical to the dominant group to wither and disappear.” Disappearance implicates two types of plurality – genetic and cultural. Genetic diversity is an evolutionary advantage, in that it enhances the adaptability of the species and therefore the probability of survival (of the species, not necessarily of individuals). Cultural plurality also may produce species-related benefits, albeit subtle and indirect. For constitutional purposes, if Madison

95 *Pierce*, at ___.

96 406 U.S. 205 (1972)

97 See also *Troxel v. Granville*, . . . upholding parental autonomy outside the realm of education.
is correct, its primary contribution is to the stability and vitality of the polity. And, if Locke has a point, there is potential danger in government’s controlling too tightly “the ethical and intellectual DNA of civil society.”

The ability to use family for these purposes (and on behalf of the Indians), however, faces several obstacles. One is the historical irony that family was used as a weapon against the children of the tribes. Just as McReynolds derided Plato’s Spartan family, in which “wives are to be common, and their children are to be common,” proponents of severalty and of boarding schools invoked the dissimilarity between tribal families and the bourgeois nuclear model as a justification for dissolving tribal relations and assuming a degree of control over Indian children. Hence, if family were to be viable as a shield against assimilation, the conception of family historically venerated in American culture and instantiated in law and policy would need to be expanded beyond conventional boundaries.

The second obstacle is doctrinal. Without denying the importance of a kind of family, for example, Frankfurter flatly rejected its constitutional utility in this realm.

The preciousness of the family relation, the authority and independence which give dignity to parenthood, indeed the enjoyment of all freedom, presuppose the kind of ordered society which is summarized by our flag. A society which is dedicated to the preservation of these ultimate values of civilization may in self-protection utilize the educational process for


99 Quotation from Brandon, supra note 87, at __. Genetic and cultural diversity may help reinforce the constitutional fibre of Loving v. Virginia, 388 U.S. 1 (1967),
inculcating those almost unconscious feelings which bind men together in a comprehending loyalty, whatever may be their lesser differences and difficulties. 100

This position, of course, was part of a dissent. But even Meyer and Pierce presumed a circumscribed parental role, both in degree and with respect to circumstance. Meyer, for example, approved of state regulations compelling attendance at school, requiring general instruction in English, and prescribing a curriculum of study. Doubtless, one reason for the Court’s doctrinal tentativeness has been the importance of government’s interest in education. But another likely reason is pragmatic. It is difficult to specify the practical limits to familial autonomy, especially when there are so many circumstances in which the state reserves the power to intercede to protect children and other members of families from serious, even acute and critical, harms.

These considerations give rise to a third obstacle, which is theoretical. Put simply, the logic of liberal democracy tends to be uncongenial to an expansive place for family, aside from the domains created and protected under positive law. Thus, whatever the viability of the “libertarian” decisions as a matter of doctrine, it is certainly the case that Gutmann and Macedo want to confine their reach. Although Macedo believes the two cases were decided correctly on their facts (involving a state’s prohibition on teaching foreign language in a private school in Meyer and a state’s prohibition on private education in the primary years in Pierce), he is suspicious of extending the principle beyond the facts. Gutmann wants to resist reading the decisions as a commitment to a “state of families.” Family-based plurality is not desirable, she argues; and a muscular place for parental control in education is inconsistent with the perpetuation of the democratic regime. Sherry,

100 Minersville, at __.
too, suspects that evidence of the capacity of many parents to make decisions in their children’s interest is not favorable. Hence, in the context of education, where there’s a conflict between parent and state, the state should prevail.\(^{101}\)

This supremacy of the “statist quo,” as I’ve argued, is precisely the problematic point from the perspective of constitutionalism, which is suspicious of perpetuities and which seeks to preserve the possibility of dissolution or of basic change. We should acknowledge, however, the quaint fragility of these considerations. For the impetus to maintain a nation-state is powerful, perhaps inexorable. Indeed, it may be quixotic to expect a political order not to try to sustain conditions for its own continuation. And there are many good reasons for wanting to maintain an order that has at its foundation tenets of liberalism, democracy, or republicanism.

But even an order that wants to maintain itself may have a constitutionalist incentive to preserve plurality and to resist the lure of assimilation. Suzanna Sherry, who also argues for a muscular program of civic education, has urged that the price of not assimilating is chaos or even civil war.\(^{102}\) I suggested above that James Madison may have thought differently. But we needn’t resort to a framer to affirm the intuition that a program of assimilation can be counterproductive. To support her brief for assimilation, Sherry cites the case of the former Yugoslavia. This case, I believe, is inapt. Yugoslavia was an authoritarian regime that held together a multicultural society

\(^{101}\) As I read them, Gutmann and Macedo disagree in principle with the Court’s decision in Wisconsin v. Yoder, 406 U.S. 205 (1972), cited above. Justice Douglas’s dissent, essentially constitutionalizing the best interest of the child, captures their theories.

\(^{102}\) Suzanna Sherry, [......... citation ..............]
predominately by coercion and force, not to mention a substantial dose of indoctrination. A constitutionalist society may be different, at least in terms of aspiration, if not always in practice. For one thing, it presents a different face to the world, an expression of reflection and choice, not coercion and force. For another (and consequently), the dynamics of stability and change may simply work differently in such a society.

Working out the details of these dynamics is beyond my present purpose, but my hunch is this: A culturally heterogeneous constitutionalist society may actually run the risk of instability if it attempts aggressively to assimilate. Present-day France may be an apt example. It is a strongly nationalist society with a singular conception of citizenship that is enforced through policies of assimilation. In schools and other public forums, French policy positively suppresses expressions of deviations from nationalist identity – especially deviations of a religious or ethnic character. It is possible that a recent cost of this policy has been dramatic civil unrest. Doubtless, the causes and characteristics of this unrest are complex and deserve more analysis than I can give them here. But I suspect that a more pluralist approach might have engendered a more stable multicultural environment.

These pragmatic, regime-centered questions aside, there are also considerations of humanity and humility. The history of Indians in America may commend humility, if not in the effort to maintain the order, then in imposing a regime of civilizing education on unwilling peoples. That history – not to mention the histories of other nations at other times – is replete with policies that were, from the standpoint of the regime, perfectly rational. Proponents, moreover, were often benignly motivated and always confident in the correctness of their programs. In hindsight, however, the policies proved to be reprehensible – not merely because of the stupefying ineptitude
with which they were carried out, but also (and more) because of the stunning human cost they
exacted. If in the end, we ourselves were to entertain some humble self-doubt, and if that humility
engendered a bit of restraint in dealing with non-conforming persons or peoples, history might
judge us more kindly. 103 This may not be a constitutionalist requirement. But it is a humanist
imprecation.

103 For an interesting precis on the ethical value of doubt, see Christopher L. Sagers, “Waiting with Brother