Ethical Reasoning of High School Seniors Exploring Issues of Free Speech

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Because ethical decisions about what is fair or just are at the heart of most controversial issues in the public sphere, understanding how high school seniors reason ethically about conflicting democratic values is important. Teachers and teacher educators would be assisted in leading discussions if they know the ethical frameworks most often used by students and how the facilitator might encourage consideration of alternative ethical viewpoints. By creating a professional community of practice between four U.S. government teachers, a university researcher, and a political science professor, we asked high school seniors to discuss their position relative to the Supreme Court decision in Texas v. Johnson (1989), which upheld flag burning as an expression of free speech. We were curious to know what ethical frameworks students used in wrestling with the value conflict in freedom of expression. We found all students used Lawrence Kohlberg’s (1976) ethic of justice framework almost exclusively and reasoned primarily in stages four and five on Kohlberg’s hierarchy.

Keywords: civic education, discussion, ethical reasoning, moral reasoning, ethic of care, ethic of justice

Introduction
The central mission of the social studies is to prepare citizens to deliberately reason through complex issues by considering the public good. These issues most often require citizens to consider conflicting democratic values (liberty vs. security; individual vs. community) as they grapple with what is fair or just, right or wrong. Public discussion of controversial issues holds great potential to expand the thinking of participants by revealing new insights, perspectives, information, or logics into the participants’ consideration. Despite decades of advocacy and support, however, few social studies teachers consistently frame their curriculum and daily student experiences around the public discussion of complex, controversial questions (Engle & Ochoa, 1988; Newmann & Oliver, 1970; Oliver & Shaver, 1966; Parker, Mueller, & Wendling, 1989; Parker, 2003, Social Studies Inquiry Research Collaborative, [SSIRC] 2011). The Persistent Issues in History (PIH) Network is a decade-long professional development community of practice encouraging, modeling, and supporting teachers in increasing inquiry-based social studies teaching. By forming a professional community of practice between four U.S. government teachers, a university researcher, and a political science professor, we hoped to create class discussions focusing on issues of fairness and justice. We explore the ethical reasoning employed by high school seniors in U.S. government courses discussing to what extent the students agreed with the Supreme Court’s decision in Texas v. Johnson, which upheld flag burning as a form of free speech. Knowing the ethical frameworks high school students’ use in considering the justness and fairness of a Supreme Court decision is helpful for the careful creation of rich classroom discussions. After developing reading materials and discussion guides for a seminar/deliberation (Parker, 2001) focused on this controversial Supreme Court decision, we were curious to know the following:
How do high school seniors reason through ethical questions of limiting or allowing controversial speech?

- Does gender influence their ethical reasoning?
- Do students privilege an ethic of justice or care in reasoning about free speech?

**Overview of the Problem**

The National Council for the Social Studies (NCSS) standards (1994) state, “The primary purpose of social studies is to help young people make informed and reasoned decisions for the public good as citizens of a culturally diverse, democratic society in an interdependent world” (p. 3). In making reasoned decisions, citizens of a pluralistic democracy will disagree about the best policies because the foundational values of our liberal democracy are inherently in conflict (Oliver & Shaver, 1966). Social problems are multi-logical and multi-variable (Saye & Brush, 2004a; Parker, Mueller, & Wendling, 1989), and they involve ethical considerations of justice (Oliver & Shaver, 1966; Parker, 1986). These ethical considerations should involve dialectical reasoning and the careful weighing of viewpoints, consequences, and values before making a reasoned decision (Saye & Brush, 2004b; Parker, Mueller, & Wendling, 1989). The meaning of justice, however, has sparked considerable debate among moral and political philosophers.

**Justice vs. Care**

Building on the work of Jean Piaget, Kohlberg’s sense of justice (Kohlberg & Lickona, 1976; Kohlberg, 1979) involves humans potentially moving through six stages of moral development by demonstrating ever more mature reasoning about complex ethical decisions. By asking male research participants to make ethical decisions on abstract dilemmas, Kohlberg sought to gain insight into the reasoning they used in making those decisions. He found when operating in the lower stages of reasoning, participants applied rules out of a fear of punishment, or as a result of a desire to be seen as good. He further found these participants, when operating in the highest stages of moral development, considered universal principles and how they, as individuals, would feel if they were person experiencing the conflict. They demonstrated an ability to reason beyond rules by considering universal rights, values, and principles and even questioned whether the rules themselves are just. At the highest levels of moral reasoning, the decider reconsidered the self in relation to the needs and desires of others.

The political philosopher John Rawls’ (1971) conception of justice is similar to Kohlberg’s in arguing the fairest decisions must be made behind a veil of ignorance, in which the decider imagines they do not know where they would be personally situated in the spectrum of people impacted by the decision. We would not know our gender, our race, or our level of income. It asks the decider to consider the receiver(s) of the decision, with the expectation that this would lead to the most just decisions and principles being rendered (Parker, 1986).

Not all moral philosophers agreed with Kohlberg’s stages of ethical reasoning. In a study interviewing dozens of women asking them to describe the most difficult personal moral choice they had made, Carol Gilligan (1982) criticized Kohlberg’s methodology for two reasons: (1) he only interviewed male participants, and (2) he focused exclusively on abstract, de-contextualized dilemmas that privileged abstract, principle-based reasoning. In the responses from her participants, Gillian believed she heard moral reasoning that did not fall into any of Kohlberg’s six categories. She argued the women articulated an entirely different moral language composed of two primary concerns: (1) the women privileged maintaining relationships over principles; and (2) asked many questions in order to deeply understand the specifics of each situation before...
making a decision. She argued that applying Kohlberg’s hierarchical structure on women’s decisions resulted in their being labeled as stuck in Stage 3 (being seen as a good person). Instead, Gilligan argued an entirely different language of ethics is needed in an attempt to more fully understand moral reasoning of both genders. She argued this alternate moral framework was based on a subordinated position, which required women to rely heavily on personal relationships for survival. She was not arguing women were more caring than men, or women were incapable of considering justice; she was encouraging a consideration of an alternative language in describing moral reasoning.

According to Gilligan, the ethic of care comprises three stages. In the first stage, or the pre-conventional stage, the focus is on caring for the self in order to survive. In stage two, also known as the conventional stage, good is equated with caring for others and actions are seen as selfish or unselfish. This stage, in Gilligan’s opinion, engendered the unhealthy, but often celebrated, sacrificial actions of a mother or wife. The third and most advanced stage of caring is the post-conventional stage, in which the individual expresses concern with maintaining relationships, but may be willing to care for the self in order to more fully care for others. In the ethic of care, relationships are assumed to be permanent and decisions require deep understanding of specific details of context. In the ethic of justice, principles should remain constant and specific details can muddle, rather than assist the application of those principles.

<table>
<thead>
<tr>
<th>Kohlberg’s Stage</th>
<th>Description</th>
<th>Gillian’s Stage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 Post-conventional</td>
<td>Universal ethical principles</td>
<td>3 Post-conventional</td>
<td>Care of self and others important to maintain relationships</td>
</tr>
<tr>
<td>5 Post-conventional</td>
<td>Social contract</td>
<td>4 Conventional</td>
<td>Authority and social order</td>
</tr>
<tr>
<td>4 Conventional</td>
<td>Authority and social order</td>
<td>2 Conventional</td>
<td>Self-sacrifice is seen as goodness</td>
</tr>
<tr>
<td>3 Conventional</td>
<td>Conformity</td>
<td>2 Pre-conventional</td>
<td>Self-interest</td>
</tr>
<tr>
<td>2 Pre-conventional</td>
<td>Self-interest</td>
<td>1 Pre-conventional</td>
<td>Care for self for survival</td>
</tr>
</tbody>
</table>

Education philosopher, Nel Noddings (2003, 2010) built upon Gilligan’s work and explained that the ethic of care is built on a sustained relationship between the “one caring” (Noddings, 2003, pp. 16-18) and the “cared for” (Noddings, 2003, pp. 19-21). Her standard calls for the “one caring” to remember the internal feeling of a time when they felt generous emotions and motivations of love, affection, and generosity toward someone they loved and, in turn, apply those feeling to the decision being made. The “one caring” should predict the potential implications of their decision on the one “cared for” and whether or not it would be desirable. In Noddings’ view, the application of abstract principles to ethical decision-making holds the potential of damaging relationships and harming the “cared for.” For this reason, context is critical to exploring the ethical reasoning of the decider as opposed to abstract situations, onto which principles are applied.

Critics have argued that rather than gender determining the moral framework, it may be the type of case being evaluated that lends itself to different ethical frameworks. Two separate
studies found men and women used both the ethic of care and ethic of justice, but their use of the frameworks was determined by the dilemma presented, rather than the participants’ gender (Juujarvi, 2006; Weinberg, Yacker, Orenstein, & DeSarbo, 1993). Impersonal and abstract dilemmas lent themselves to the use of the ethic of justice (How would one judge the rightness of X decision?), while more personal dilemmas (Should one turn in his or her friend for cheating?) led to the use of the ethic of care. This poses interesting questions for political issues, which are abstract, public questions, but impact real people whom we may or may not know personally. Which ethical framework would encourage both the abstract reasoning about conflicting values, but also empathetic consideration of particular people who will be impacted by policies?

Rather than the case or the participants’ gender influencing the use of an ethic of care or ethic of justice, McLaughlin (1997) argued a participant’s status in society was more likely to determine the use of the ethic of care because people in subordinated groups may not have the luxury of abandoning relationships in order to uphold principles. This argument is consistent with Gilligan’s belief that women’s status as a subordinated group led them to privilege relationships as mode of survival, rather than relying on abstract principles that could lead to severing relationships. McLaughlin argued that unless political discussions put the interconnected relationships between groups of people at the center of the discussion, political decisions based on justice could perpetuate unfair policies by overly emphasizing abstract principles and ignoring the implications on people impacted by the policies. Another study found that when participants felt connected to a group, they were more likely to use care-oriented reasoning, and if they saw a group as an “other”, they were more likely to use a justice orientation (Ryan, David, & Reynolds, 2004). This finding makes Rawl’s vision of the veil of ignorance potentially problematic. The political philosopher, Iris Young (1990) criticizes Rawls’ approach because it relies on the reasoner to impartially consider every potential point or view, which she claims is impossible. She argues, instead, for communicative ethics, which encourage dialogue between reasoners who explore particular contexts in order to more fully appreciate the complexity of an ethical dilemma. Her ideas connect with Noddings’ (2003, 2010) emphasis on the “one caring” considering the impact of the decision on the one “cared for.” While exploring students’ ethical reasoning through drama, Brian Edmiston (1998) relied on Mikhail Bakhtin’s (1986) ethics which focuses on dialogue, imagination, and answerability. According to Bakhtin, ethical decision-making assumes a relationship among individuals and groups and requires the reasoner to imagine a dialogue between ourselves and those who would receive our decision. We are to imagine ourselves in the shoes of the other and how our decision would be received. He calls this a “double voice” (Bakhtin, 1986, p. 429) and asks the reasoner to consider how he would answer for his decisions or deeds to those impacted. All of these critics are arguing the need for ethical dilemmas to explore the full complexity in considering the potential and specific implications for all groups and individuals involved in an ethical decision. This poses incredible challenges and interesting questions for exploring issues of public policy, which must be applied across a diverse nation and have very personal impacts on a hugely diverse population.

Exploring controversial issues in a secondary social studies classroom in a way that explores the principles or values in conflict as well as the implications of the potential decision on all the groups and individuals is an incredibly complex challenge for teachers and students (Kohlmeier & Saye, 2012).
Collaborative Community of Practice

Because teachers are reluctant to implement inquiry-based strategies and controversial issues in their teaching, on-going professional development support is critical in providing a vision, support, and encouragement in the endeavor (Saye, Kohlmeier, Brush, Mitchell, & Farmer, 2009). In past work building collaborative communities of practice, Saye et al. (2009) used a mentoring model to blend teacher craft knowledge with researcher knowledge to build professional teaching knowledge (Hiebert, Gallimore, & Stigler, 2002) grounded in Problem Based Historical Inquiry (PBHI) (Kohlmeier, Saye, Mitchell, & Brush, 2011; Saye & Brush, 1999, 2002, 2004a, 2004b, 2006; Saye et al., 2009). In the professional development, teachers were encouraged and supported by mentors to design, implement, and critique PBHI lessons. By blending the situationally specific, contextual understandings of teachers’ craft knowledge with public researcher knowledge, both mentor and mentee teachers moved along a spectrum of professional teaching knowledge indicating an increased sophistication in appreciating the challenge and potential of inquiry-based instruction coupled with controversial, value-based issues (Saye et al., 2009).

Data Sources and Analysis

We organized a collaborative community of practice (Saye et al., 2009) over a two-year cycle, made up of four U.S. government teachers, a social studies teacher educator, and a political science professor to design lesson materials for three units focused on controversial texts: the U.S.’s Pledge of Allegiance, Martin Luther King Jr.’s Letter from a Birmingham Jail, and the U.S. Supreme Court decision Texas v. Johnson (1989), which upheld flag burning as a form of free speech. The first year included one university researcher, two of the U.S. government teachers, and the political science professor. The team designed the discussion guides for three Socratic seminars on the three texts listed above. The second year broadened the teacher team to include two new teachers, each recruited by the two mentor teachers. The broader teacher team extended the curriculum development to include full units, placing the controversial texts into units focused on a central question: (1) Should the Pledge of Allegiance be said in schools? (2) Is the Defense of Marriage Act a just or unjust law? and (3) Should the confederate flag be banned in high schools? For this paper, the researchers focused analysis on the six (two the first year and four the second year) Socratic Seminars in which the students explored the arguments in the Supreme Court’s decision in Texas v. Johnson, which upheld flag burning as a form of free speech and discussed to what extent they agreed with the Court’s decision.

The data collected for this study were the full class discussions on the Texas v. Johnson, 1989 Supreme Court case led each of the four teachers over the course of two years, for a total of six seminars (two the first year and four the second year). In three of the six discussions the teachers asked each student to report their position supporting or opposing a Constitutional amendment to ban flag burning. The discussions were transcribed and analyzed first by counting the student responses to the question “Would you support a Constitutional Amendment banning flag burning?” We disaggregated the data into the four categories of ethnicity and gender present in the classes: African-American females, African-American males, White females, and White males. We also analyzed the full transcript of all six Seminars using analytic induction, beginning with the codes justice (applying abstract principles) and care (privileging details of context and relationships). These codes proved far too broad so we narrowed our analysis by
reasons given for or against the Constitutional Amendment to ban flag burning. This generated the following codes favoring a ban: flag represents pride in country; flag represents respect for military and veterans; law and order; slippery slope; role of politics. We also found these codes opposing a ban: flag represents freedom; protection of rights; slippery slope; U.S. rights vs. other countries’; legal precedent; and unjust law. Within these codes we applied the stages of ethical reasoning according to both Kohlberg and Gilligan. In order to protect anonymity, we created a list of pseudonyms for the names of the teachers and students participating in the study.

Findings

When the Socratic Seminar discussion guides were collaboratively planned, the teachers intended to end the seminar by asking each student to take a position on the question of whether or not they would support a Constitutional Amendment banning flag burning. Of the six Seminars, however, only three teachers left time for this question. The totals, therefore, represent half of the overall sample. While that has obvious limitations, the descriptive statistics are also interesting.

Table 2
Descriptive Statistics of participants’ position on a Constitutional ban on flag burning

<table>
<thead>
<tr>
<th>Demographic Group</th>
<th>Yes</th>
<th>%</th>
<th>No</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>17</td>
<td>44%</td>
<td>21</td>
<td>56%</td>
</tr>
<tr>
<td>Females</td>
<td>9</td>
<td>38%</td>
<td>15</td>
<td>62%</td>
</tr>
<tr>
<td>Males</td>
<td>8</td>
<td>57%</td>
<td>6</td>
<td>43%</td>
</tr>
<tr>
<td>Whites</td>
<td>12</td>
<td>52%</td>
<td>11</td>
<td>48%</td>
</tr>
<tr>
<td>African-Americans</td>
<td>5</td>
<td>33%</td>
<td>10</td>
<td>67%</td>
</tr>
<tr>
<td>White Females</td>
<td>9</td>
<td>53%</td>
<td>8</td>
<td>47%</td>
</tr>
<tr>
<td>African-American Females</td>
<td>0</td>
<td>0%</td>
<td>7</td>
<td>100%</td>
</tr>
<tr>
<td>White Males</td>
<td>3</td>
<td>50%</td>
<td>3</td>
<td>50%</td>
</tr>
<tr>
<td>African-American Males</td>
<td>5</td>
<td>63%</td>
<td>3</td>
<td>37%</td>
</tr>
</tbody>
</table>

Female students were more likely to resist a ban on flag burning while males were split almost in half. Whites were also split down the middle, but African-American students were twice as likely to resist a ban. This may be attributed to the 100% opposition of the African-American females to banning flag burning while the African-American males were more likely to support it. Amongst African-Americans, gender seems to have played a role in the overall decision, while it was not a heavy factor among White students. However, the final decision was not as important in our investigation as the reasoning the students used in defending their positions. The rest of the paper reports our qualitative analysis of the six seminar/deliberations (Parker, 2001) in an attempt to determine the ethical reasoning the students used in exploring the fairness of limiting free speech. We have selected the richest quotes that provide the deepest insight into the students’ thinking, admitting that deep exploration into their reasoning was limited by the format of the seminars. Each teacher had between 25-30 students in a circle and a 90-minute instructional block in which to explore the Supreme Court decision. In a future paper, we hope to evaluate these seminars for the role of the teacher in facilitating ethical reasoning in a Socratic seminar. The student comments throughout the six seminars in this paper reveal their
ethical reasoning about this complex topic. We begin with an exploration of the four most prominent reasons for supporting a ban on flag burning.

**Reasoning of students supporting a Constitutional ban on flag burning**

The students who argued in favor of banning U.S. flag burning made four basic arguments: (1) burning the flag is disrespectful of veterans and military personnel; (2) it was against the law in Texas to burn the flag; therefore, it should not have been done; (3) the flag represents the freedoms of the United States, its history, and its government; as such, burning it is a disgraceful act showing a lack of appreciation of the rights and freedoms we share as Americans; and (4) if we allow this type of protest, it will lead to a lack of pride and patriotism in our government, which will undermine our society. All four of these arguments used an ethic of justice consistently, but only the first category indicated students using an ethic of care.

**Disrespectful to military and veterans.** The students who argued in favor of a ban on flag burning often used words like “offensive” and “disrespectful”. When the teachers pressed them to explain who would be offended and who is being disrespected, they often said members of the military or veterans. B.J. felt burning an American flag is “disrespectful to people who stood up for our country.” Ben agreed saying:

> If someone burns flag to protest government, it stands for a lot more than government. I don’t want my rights to be taken away, but I feel there should be something against that. I have family members who were in wars and it’s disrespectful.

Paris added, “I think the flag is bigger than the Constitution, it represents everything. They’re destroying the Declaration of Independence, the Constitution, all veterans, and that should offend people. People died for this country. It offends me.”

These quotes might be viewed differently within Kohlberg’s and Gilligan’s ethical reasoning hierarchies. According to Kohlberg’s rankings, these students fall in this third stage because they are making decisions based on thinking about how others would feel. They are thinking about how the veterans would feel about seeing someone burn the flag. They are not necessarily thinking about how Johnson would have felt about being arrested for it. Their reasoning is that they are considering the impacts of the action on veterans, assuming someone burning a symbol of America, for which they sacrificed a good deal, would offend them.

If we apply Gilligan’s three stages of moral reasoning, the students could fall into her third (highest) category because they are considering the relationship the U.S. has with veterans and the country should honor military personal and that the sacrifice those members made. It appears the students are recognizing a relationship between the government (in this case the Supreme Court) and the military personnel and veterans. The students feel relationship should be maintained at the expense of the principle of free speech. The consequences of applying the two frameworks is that in Kohlberg’s the students appear to be fairly limited in their moral reasoning while in Gilligan’s their reasoning is assessed to be more sophisticated.

**Adherence to the law.** A few of the students arguing for a ban on flag burning felt Johnson was wrong because he broke the law of Texas. They argued in favor of government’s need to maintain order and to prevent chaos should people started breaking laws based upon their dislike of them. This is consistent with Kohlberg’s fourth stage, which includes a view that society creates laws to maintain order; right and wrong are seen as complying with those rules. Lauren epitomizes this belief when she argued, “I’m still caught up in the fact that its’ the law of
Texas not to burn the flag.” Paris said, “The point of government is to keep order. If we keep allowing this kind of behavior we will lose order, we won’t have a normal society and everyone will think they can protest.” He goes on to say the Supreme Court is sending mixed messages to citizens when he argues, “Sometimes parents make a rule. Mom says ‘no,’ so the kid goes to Dad, and he says ‘yes,’ so the kid doesn’t learn. How are we going to have a law if the Supreme Court says we don’t have a law?” These students are saying the law must be followed no matter what. Their reasoning used an ethic of justice, but no evidence of an ethic of care.

**Flag should be revered.** Approximately half of the students favoring a ban on flag burning were students who believed the flag represented the freedom, the rights, and the history of the United States. They felt people should be proud of the flag and saw Johnson as ungrateful. These students were also in stage four of Kohlberg’s hierarchy because they argued for consistent social norms in order to maintain a cohesive society based on these fundamental values. Burning the flag goes too far as a form of protest because they saw him as not valuing democratic government. Jessica said:

> The flag stands for our country. Stars for states, red for blood for freedom, white, I forget. That represents how we became the U.S. If someone burned it, it offends me because they don’t understand what the flag means and that ticks me off.

Andre and William both said the flag stands for America or our country, and burning it is inherently wrong. Nigel felt that if other “countries could put our flag on a pedestal we should, too.” Paris passionately argued:

> That got me fired up, who does he think he is? Let’s put him in a communist country and see how he likes that with no freedoms. He thinks he can burn what we stand for. He destroyed it to protest a president. That’s ridiculous and disgusting. I wish he understood how much he had.

The reasoning with this argument relied solely on an ethic of justice with an emphasis on the abstract symbolism of the flag.

**Slippery slope.** A few students also added the slippery slope argument of stage four in fearing protecting flag burning as a form of protest would lead to further disruptive and unpatriotic behaviors that would undermine the support for government and democracy. Ben said if the government allowed citizens to begin burning the flag:

> It is going to get worse and worse and never stop. They [flag burners] will keep ruining our country by convincing others to hate our country. What happened to the patriotism we discussed in our first discussion on the Pledge of Allegiance? It’s murdering our country, killing a small part of our country.

These arguments fall comfortably in the fourth stage of Kohlberg’s hierarchy because they desire cohesion and conformity. The students see this offensive speech as out of bounds and dangerous. They feel it will influence others to undermine society; as such, they do not see any good coming from protecting this form of offensive speech. The students do not demonstrate any connection with Johnson. If they feel any connection, they feel it to veterans and other like-minded citizens who would be offended by Johnson’s actions, but they do not feel the government or the public has any relationship to Johnson. They do not seem to empathize with his position or consider how he might react if his speech was limited. Therefore, they do not demonstrate any of the ethic of care tendencies that Gilligan and Noddings consider. If there
is any dialogical reasoning, it is with the comments about the military and veterans. The students in those statements seem to consider the government and the veterans dialoguing to some degree, but that is limited by their perception of the veterans and government as agreeing. The students do not imagine dialogue between the government and Johnson or consider what one would say to the other. Therefore, the students are demonstrating stages three and four justice reasoning in their ethical statements for banning flag burning.

**Arguments opposing a ban on flag burning.**

When directly polled for their position, 42 of the 76 students (55%) argued against a ban on flag burning and fell primarily in stage five, with a few comments potentially warranting a stage six ranking, of Kohlberg’s hierarchy of moral reasoning. While the students arguing for a ban felt the flag represented freedoms we should honor and protect in the flag, the students who opposed a ban argued that because the flag stands for freedoms and rights, an individual’s right to burn it in protest must be protected. In their reasoning, legal protections of the flag would diminish it as a symbol of freedom. Three arguments were given by students supporting the Supreme Court’s protection of flag burning: (1) the U.S. democracy protects a minority’s right to differ from the majority; (2) if the government limits this freedom, it could begin limiting other expressions of protest; and (3) the law was unjust and the Supreme Court performed its appropriate role in overturning an unjust law. All of these arguments relied on an ethic of justice and show attempts at applying Rawls’ (1971) veil of ignorance, but none of the arguments utilized an ethic of care.

**Protection of individual liberty.** The most prominent line of argument in the discussions was a basic expression of defending a fundamental right to free speech. These students recognized Johnson had an unpopular view, but he should have the right to express his opinion because that is the type of speech the first amendment was meant to protect. Monica said, “People should be able to disagree with our country and this is one way to do that.” Janice argued, “Lots of people don’t agree with things but having freedom means you should be able to do what you want.” Bob demonstrated dialectical reasoning when he stated:

> The whole time I wanted to say yes because burning the flag is offensive to a whole bunch of people, but I think I would say no because you have right to do what you believe and have your opinion.

Tony similarly admitted, “I planned on saying yes until Anne Marie and Bob gave their ideas, but now I feel like you should be able to be your own person.” KeAnna demonstrated an attempt to empathize with Johnson when she said, “I think Johnson is expressing himself. I wouldn’t do it, but that was how he felt with [former President] Reagan and how he felt he wanted everybody to know about it.”

These quotes are a handful of statements that capture the basic sentiment expressed simply saying that citizens have a right to hold different opinions. This argument would rest within Kohlberg’s stage five which recognizes society is made of multiple individuals with numerous viewpoints and needs. It recognizes multiple perspectives. They are attempting Rawl’s approach to justice in imagining how they might feel if they were Johnson. These quotes expose a fairly simplistic view of free speech as they do not offer any insight into when they would limit expression or speech or why upholding these rights are important. They do not demonstrate any dialogic reasoning in terms of considering a conversation between the
government and Johnson. The following arguments demonstrate more sophisticated reasoning by other students in the Seminar.

**Slippery Slope.** Several students defended Johnson’s right to burn a flag because they feared if the government could limit his ability to express himself, then it could later suppress a freedom they enjoy. Hallie asked, “If government feels they can take that right away, what is next? I don’t want that to lead to us losing more rights.” Anne Marie added:

If we allow one thing to change, then the government could go further. I wanted to say yes [to a ban on flag burning], but as I heard from others, then I changed my opinion. Morally I would say yes, but after discussing it more I say no because I don’t want the government to take away any of my freedoms. I think burning the flag is wrong and disrespectful, but I don’t want to make it a law that you can’t do it.

Tenisha said:

I agree with Hallie and Anne Marie, if we change things, then the government can keep changing. Morally it’s [burning the flag] wrong, but I don’t want to lose any of my expression rights so I say no, don’t make it a law [to ban flag burning].

This final quote demonstrates a student using Rawls’ veil of ignorance in considering the question. Brittany said,

When I make decisions, I don’t just look at how I feel, but think about how others feel. I don’t think he (Johnson) should go to jail. If we eliminate burning the flag, it creates more problems. It would possibly mean I can’t wear a shirt that says ‘Go McCain’ or a lip ring because someone would say it’s offensive. You can’t draw that line because there are so many issues.

In Kohlberg’s fifth stage of moral reasoning, the assumption is that society is made up of people with many viewpoints and each should be respected. Laws are made as a social contract that can be changed when the society feels it needs to adjust them. These students recognize that Johnson holds different views than they do but, also that they have a vested interest in protecting his right to have those views because it also protects their right to have their own views. They see the law as open to interpretation and change, not something that must be followed without question. Only one student in this group is fully considering Johnson’s views, but they do seem to be applying Rawls’ veil of ignorance at an elementary level by considering how they might feel if they were in his position. The students do not reveal motives of caring for Johnson or recognizing a relationship between the government and Johnson. They apply principles consistent with Kohlberg’s hierarchy but do not describe reasoning consistent with Noddings’ standard of caring for the one about whom you are making a decision so they are not using an ethic of care framework in their decision-making.

**Unjust law.** The most sophisticated arguments supporting the Supreme Court’s decision to protect flag burning as free speech were made by students arguing the Texas law violated Johnson’s Constitutional rights and diminished the flag as a symbol of freedom and liberty. These students come the closest to Kohlberg’s sixth stage of moral development in which he argues the reasoner makes decisions based on what is just at that moment, not on what society or the law states is the law. The reasoner must imagine what they would do in the other person’s shoes if they knew what that person knew to be true. It is not clear how deeply the students empathize with Johnson’s political views, but they minimally argue he has a right to speak up in
a public place about his political views and the act of being controversial is part of that expression. It is because his views are controversial that they need protecting and the law of Texas was unjust. James argued:

If we do take away his right, then it takes away what the flag stands for. We should be able to stand against ideas in America and the flag has to stand for people to be able to voice their opinion.

KeAnna agreed stating,

In the 8th paragraph of the reading [excerpted Supreme Court decision] it says ‘the way to preserve the flag is not to punish those who feel differently, but persuade them they are wrong.’ That is all you can do about it. I’m not saying it [burning the flag] is good, but I don’t think you can punish him for it.

Brittany said, “In paragraph seven [of the reading] it says ‘the government can’t punish someone because others feel offended.’ I’m all about not disrespecting the flag, but I’m with Johnson because he was expressing himself.” Ann added, “It was wrong for Texas to deny him the right to express himself. Do you want to live in a country that isn’t upholding what it believes in?” These students are arguing that Texas was wrong in passing it’s law and that Johnson was justified in breaking this unjust law. It was the law that was wrong, not Johnson.

Ann later argued Johnson had legal precedent on his side in defending his decision to express himself by burning an American flag when she said:

Attaching a peace sign, refusing to salute, there are many ways the flag has been disrespected but people weren’t convicted for that, so how would you punish him for this when they haven’t punished others? What makes this worse than those? Is not saluting your flag going against the country?

Brittany makes the clearest statement of the need to overturn the Texas law when she responded to the students who were saying Johnson was wrong to break the law of Texas by asking, “What if it was a bad law? We’re the same country that had laws about black and white people, which was a bad law. Something had to be done. We need someone to override a bad law.” These students are arguing Johnson was justified in breaking the law because the law violated the principles of justice and fairness embedded in the Constitution. Their arguments are consistent with Kohlberg’s sixth stage of moral reasoning, which involves making decisions outside the law, but based on what is just. It encourages moral decision-making that calls for the breaking of unjust laws. They also seem to be applying Rawls’ veil of ignorance to their reasoning by imaging how they would feel if they were in Johnson’s position. They would want the government to protect their right to express themselves if they had an unpopular viewpoint. They are applying the abstract principles of fairness and free speech to this situation.

Implications

Our study reveals that high school students demonstrated a capacity of moral reasoning at the upper levels of Kohlberg’s hierarchy, but did not use an ethic of care in considering the questions surrounding free speech. Gender did not seem to play a significant role in the use of ethical frameworks since all the students privileged an ethic of justice. The findings are encouraging in terms of all the students who commented ranked at least at the fourth stage of Kohlberg’s hierarchy of moral reasoning. It is very probable that the abstract nature of the topic and scenario influenced the use of the ethic of justice. It would be interesting to see what would happen in a similar seminar if the teacher asked questions such as: “Does the government have a
relationship to Johnson?” or asked the students more personal questions about friends or acquaintances who have unpopular views and whether or not they would defend their friend’s ability to express their views if others tried to silence them.

The study has limitations in interpreting a few comments from a few students in large group Socratic seminars as opposed to personal interviews. The purpose of the study, however, was to explore what ethical reasoning could be explored in a class discussion, since that is the most typical format a classroom teacher would use. Future studies could explore how the conversation might be different in smaller groups or with more personal scenarios discussed that parallel the Supreme Court case. Asking students to write their decision with reasons would provide a format of data that might provide lengthier responses from the students and provide richer insights into their reasoning.

This study raises additional questions about the role of the teacher in facilitating a discussion on such a rich text. Further examination of the decisions of the Seminar leader at key moments in these discussions may reveal moments where lines of ethical reasoning were encouraged or discouraged, left off the table, or skillfully encouraged. It is clear these high school students were engaged and capable of ethical reasoning on an important topic so further study of the role of the teacher and their instructional support is warranted.

The final question the study raises for us is the potential and limitations of the seminar/deliberation in exposing ethical reasoning. What would follow-up writing assignments reveal about students thinking after sharing their own views and listening to others’ ideas on these controversial topics? If students had to make a decision and defend that decision in writing, what might that reveal about their moral reasoning? We feel this study begins a line of inquiry that could benefit the field in illuminating the reasoning of secondary students, the decisions of teachers, the potential and limitations of whole-class discussions, and the ethical frameworks used by students in deliberating on controversial questions of the public good.

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