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TINKER V. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT

393 U.S. 503 (1969)

In December 1965, three Des Moines, Iowa, teenagers—siblings John and Mary Beth Tinker and Christopher Eckhardt—decided to protest the war in Vietnam by wearing black armbands to school. Aware of their plan, school authorities adopted a regulation banning such armbands. The students wore them anyway and were suspended. They complained in federal court that the school had violated their free speech rights. Although the lower courts sided with the school authorities, the students prevailed in the Supreme Court.

Previous decisions, including *West Virginia State Board of Education* v. *Barnette* (1943), had established that students in public schools were entitled to some constitutional protections. In *Tinker*, the Court for the first time set forth standards for safeguarding public school students' free speech rights. The case involved non-verbal expression or "symbolic speech," which the Court first recognized as meriting protection in *Stromberg* v. *California* (1931).

Justice Fortas, writing for the Court, found that the students' wearing of armbands had not created any disorder or disturbance, and that the mere "fear of a disturbance" could not justify the regulation at issue. Fortas further noted that the schools, while permitting students to wear other political symbols, such as campaign buttons, had through the regulation at issue targeted a specific view on a single subject. That kind of prohibition, he said, was "not constitutionally permissible."

In dissent, Justice Black read the record differently, finding that "the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war. . . . [I]f the time has come when pupils of state-supported schools . . . can defy . . . orders of school officials to keep their minds on their own school work, it is the beginning of a new revolutionary era of permissiveness . . . fostered by the judiciary."

Opinion of the Court: **Fortas**, Warren, Douglas, Brennan, Stewart, White, Marshall. Concurring opinions: **Stewart**; **White**. Dissenting opinions: **Black**; **Harlan**.

Tinker v. *Des Moines Independent Community School District* was decided on February 24, 1969.

OPINIONS

JUSTICE FORTAS DELIVERED THE OPINION OF THE COURT . . .

The District Court recognized that the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment. . . . As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment. . . .

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost fifty years. In *Meyer* v. *Nebraska* [1923] and *Bartels* v. *Iowa* [1923], this Court . . . held that the Due Process Clause of the Fourteenth Amendment prevents States from forbidding the teaching of a foreign language to young students. Statutes to this effect, the Court held, unconstitutionally interfere with the liberty of teacher, student, and parent. . . .

In *West Virginia State Board of Education* v. *Barnette* [1943], this Court held that under the First Amendment, the student in public school may not be compelled to salute the flag. . . . On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. . . . Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style, or deportment. . . . It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech."

The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the school or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome

the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk . . . and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. . . .

In the present case, the District Court made no such finding, and our independent examination of the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students. . . .

On the contrary, the action of the school authorities appears to have been based upon an urgent wish to avoid the controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in the conflagration in Vietnam. . . .

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol—black armbands worn to exhibit opposition to this Nation's involvement in Vietnam—was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. . . .

The principle of these cases is not confined to the supervised and ordained discussion which takes place in the classroom. The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an inevitable part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours. . . . But conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech. . . .

As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression. . . .

REVERSED and remanded.

JUSTICE BLACK, DISSENTING . . .

The Court's holding in this case ushers in what I deem to be an entirely new era in which the power to control pupils by the elected "officials of state supported public schools" in the United States is in ultimate effect transferred to the Supreme Court. . . .

As I read the Court's opinion it relies upon the following grounds for holding unconstitutional the judgment of the Des Moines school officials and the two courts below. First, the Court concludes that the wearing of armbands is "symbolic speech" which is "akin to 'pure speech'" and therefore protected by the First and Fourteenth Amendments. Secondly, the Court decides that the public schools are an appropriate place to exercise "symbolic speech." Finally, the Court arrogates to itself, rather than to the State's elected officials charged with running the schools, the decision as to which school disciplinary regulations are "reasonable."

Assuming that the Court is correct in holding that the conduct of wearing armbands for the purpose of conveying political ideas is protected by the First Amendment, . . . the crucial remaining questions are whether students and teachers may use the schools at their whim as a platform for the exercise of free speech—"symbolic" or "pure"—and whether the courts will allocate to themselves the function of deciding how the pupils' school day will be spent. While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases. . . .

While the record does not show that any of these armband students shouted, used profane language, or were violent in any manner, detailed testimony by some of them shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other, nonprotesting students had better let them alone. There is also evidence that a teacher of mathematics had his lesson period practically "wrecked" chiefly by disputes with Mary Beth Tinker, who wore her armband for her "demonstration." Even a casual reading of the record shows that this armband did divert students' minds from their regular lessons, and that talk, comments, etc., made John Tinker "self-conscious" in attending school with his armband. While the absence of obscene remarks or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually "disrupt" the classwork, I think the record

overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war. And I repeat that if the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary. . . .

In my view, teachers in state-controlled public schools are hired to teach there. . . . Certainly a teacher is not paid to go into school and teach subjects the State does not hire him to teach as a part of its selected curriculum. Nor are public school students sent to the schools at public expense to broadcast political or any other views to educate and inform the public. The original idea of schools, which I do not believe is yet abandoned as worthless or out of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders. It may be that the Nation has outworn the old-fashioned slogan that "children are to be seen not heard," but one may, I hope, be permitted to harbor the thought that taxpayers send children to school on the premise that at their age they need to learn, not teach. . . .

Change has been said to be truly the law of life, but sometimes the old and the tried and true are worth holding. The schools of this Nation have undoubtedly contributed to giving us tranquility and to making us more law-abiding people. Uncontrolled and uncontrollable liberty is an enemy to domestic peace. We cannot close our eyes to the fact that some of the country's greatest problems are crimes committed by the youth, too many of school age. School discipline, like parental discipline, is an integral and important part of training our children to be good citizens—to be better citizens. Here a very small number of students have crisply and summarily refused to obey a school order designed to give pupils who want to learn the opportunity to do so. One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders. This is the more unfortunate for the schools since groups of students all over the land are already running loose, conducting break-ins, sit-ins, lie-ins, and smash-ins. Many of these student groups, as is all too familiar to all who read the newspapers and watch the television news programs, have already engaged in rioting, property seizures, and destruction. They have picketed schools to force students not to cross their picket lines and have too often violently attacked earnest but frightened students who wanted an education that the pickets did not want them to get. Students engaged in such activities are apparently confident that they know far more about how to operate public school systems than do their parents, teachers, and elected school officials. It is no answer to say that the particular students here have not yet reached such high points in their demands to attend classes in order to exercise their political pressures. Turned loose with lawsuits for damages and injunctions against their teachers as they are here, it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools rather than the right of the States that collect the taxes to hire the teachers for the benefit of the pupils. This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,390 public school systems in our fifty States. I

wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent.

RESPONSES

FROM THE *EVENING STAR*, WASHINGTON, D.C., FEBRUARY 26, 1969, "THE COURT AND THE KIDS"

The Supreme Court has displayed something short of supreme wisdom in its ruling upholding the right of children to stage protests in public schools and to demonstrate in favor of their political beliefs. The seven-judge majority carefully pointed out that the permissiveness was limited to peaceful demonstrations. They piously asserted that their ruling was in no way related to miniskirts and long hair. They were, they said, only doing right by the Constitution. And they turned to other business, leaving the country's school authorities holding a large can of worms. . . .

No particular legal expertise is required to see how wide a door has been opened. Any minute now some miniskirted teenie-bopper or long-haired adolescent will come up with a high-minded cause for which they must speak up—symbolically—by displaying their thighs or hiding their ears. What hope remains of editing the garbage out of student publications when a hyper-sensitive pre-teen author holds "John F. Tinker et al. v. Des Moines Independent Community School District et al." over the faculty's head? What hope remains for discipline in general when school authorities are required to wait for the riot to start before lifting a finger? What expectation can there be that our universities will some day regain their sanity when the grade schools offer primary training in protest?

The general subject of student protests raises fine constitutional points that cannot lightly be dismissed by the disciplinarians or taken completely for granted by the libertarians. And now the Supreme Court—Justices Harlan and Black excepted—has compounded the complexity of the debate by its implicit assumption that the full protection of the United States Constitution starts at the birth of a United States citizen.

Just where that protection should begin is a suitable subject for discussion—perhaps 18 might be about right. But one thing should be clear to the most isolated legal theorists: Infants are not prepared for freedom, and one of the duties of society is to provide preparation through discipline.

Man is a social animal through necessity, not through instinct. Unlike the bee or the wolf, he must be taught that the rights and needs of others must be respected, sometimes at the expense of his natural inclination to self-indulgence. Sometimes it is necessary for teachers to curb the freedom of those shrill and demanding voices. Sometimes it is necessary for parents to indulge in cruel and unusual punishments to bring those burgeoning little egos under control. And even the justices of the Supreme Court should be wise enough to know it.

FROM THE *NEW YORK TIMES*, FEBRUARY 26, 1969, "ARMBANDS YES, MINISKIRTS NO"

The majority of the justices felt—we think, rightly—that a line could and should be drawn between expression and disorderly excess. A close reading of the fact and decision shows that there is no license given here to riot, to interfere with classroom work, or to substitute the Court for the thousands of school boards.

Freedom of expression—in an open manner by those holding minority or unpopular views—is part of the vigor and strength of our schools and society. So long as it does not obstruct the right of others in the classroom or on campus, it must be allowed in this country. If dissent ever has to go underground, America will be in real trouble.