

The Struggle for Student Rights: Tinker V. Des Moines and the 1960S

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Three engineering professors at Iowa State—Merlin Spangler, M. B. Russell, and Ralph Moyer—were among the first recipients of the HRB's George Bartlett Award, established in 1940 to recognize outstanding research. Only after Crum died in 1951 and MacDonald retired from the Bureau of Public Roads in 1953 did Iowa's presence on the national stage begin to wane.

Building Better Roads serves its intended purpose well. The narrative is clearly written, with each chapter helpfully divided by sub-headings, and generously illustrated with an appropriate selection of historical photographs and engineering drawings. It is also a history that future scholars will consult. Other historians have covered Thomas MacDonald's role in envisioning the interstate highway system; however, those who wish to examine the evolution of highway engineering nationwide can consult this work to learn more about Iowa's overall contributions.

The Struggle for Student Rights: Tinker v. Des Moines and the 1960s, by John W. Johnson. Landmark Law Cases and American Society Series. Lawrence: University Press of Kansas, 1997. xiii, 250 pp. Bibliographical essay, index. \$35.00 cloth, \$12.95 paper.

REVIEWED BY KERMIT L. HALL, OHIO STATE UNIVERSITY

Few law cases in the history of Iowa have stirred as much controversy and generated as much constitutional discourse as *Tinker v. Des Moines Independent Community School District*, decided by the Supreme Court of the United States in 1969. The case involved Christopher Eckhardt, John Tinker, and Mary Beth Tinker, all students at Des Moines public schools. The two teenaged boys had participated in the November 1965 march against the Vietnam War in Washington, D.C., although Mary Beth had not. In December 1965 the three teenagers brought their protest home by wearing black arm bands to class in violation of a recently (and hastily) passed school policy prohibiting the practice. School authorities suspended the students and sent them home, refusing to readmit them until they returned without the arm bands. The students, for their part, claimed a constitutional right under the First Amendment of the federal Constitution to register their dissent to the war, and they charged that school authorities had violated that right by banning the wearing of arm bands. The students also insisted that the school board had adopted a double standard, asking the students during the previous year to wear arm bands to mourn the loss

of school spirit but prohibiting their use in protest against the war. Eventually, the case reached the U.S. Supreme Court.

The justices found for the students. By a vote of 7 to 2, the High Court ruled that school officials had the authority to set rules of conduct for students, but that such rules had to be consistent with the students' First Amendment rights. In the *Tinker* case, school administrators had clearly exceeded their powers. Justice Abe Fortas, in one of his few memorable opinions, held that students did not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (171). Justice Fortas concluded that wearing an arm band in silent protest was a form of "pure speech" that demanded the highest level of constitutional protection.

The *Tinker* decision opened a new and expanded chapter in the history of free speech generally and student rights particularly. A majority of the justices reasoned that by wearing the arm bands the students had neither interfered with the work of the school nor with the rights of other students. Although school authorities warned that the arm bands might prompt students who supported the war to commit violent acts, no violence had occurred. In any case, according to Justice Fortas, the few reported incidents were the price that had to be paid for freedom in an open society. The majority also concluded that school officials had not been consistent in their policies toward the wearing of not just arm bands but political symbols. Some students, for example, had worn political campaign buttons and even an Iron Cross, the symbol of Nazism. School authorities, however, had singled out for punishment only students with black bands wrapped around their arms to protest the war in Vietnam.

Not all of the justices agreed. Hugo Black wrote a stinging dissent, arguing that local school officials were in the best position to judge the appropriate limits to place on free expression. Black also asserted that Des Moines officials had presented convincing evidence that wearing arm bands had caused disruptions. According to Black, it was well within those officials' powers to prevent further incidents.

Professor John W. Johnson, head of the department of history at the University of Northern Iowa, brings his considerable talents as a historian of American law and society to bear in making sense of these events. Johnson has examined the personal, social, and political background of the case in microscopic yet fascinating detail. *The Struggle for Student Rights* is a particularly timely reminder of the power of narrative history to render the past understandable by showing the ways everyday people try to resolve values in conflict. Johnson, however, is smart enough not to become lost in the details,

and the larger message that he delivers illuminates the ambiguities of First Amendment rights in the context of the schoolhouse. Johnson ably argues that by making the classroom part of a larger marketplace of ideas, the majority in *Tinker* performed the important service of drawing more clearly the thin line that divides education from indoctrination. Johnson also does a fine job of underscoring the importance of individual choice and courage in the development of constitutional law. Wearing the arm bands was one example of the protesters' commitment to rights; agreeing to sue the school system was a separate story of young people prizing dissent as a constitutional value more than many of their elders. Johnson also reminds us that while the *Tinker* decision remains good law, it and the rights of students that it protects have eroded since the early 1970s, much the same way that the Rehnquist Court has increasingly limited the so-called right to an abortion and to the use of affirmative action. The Rehnquist Court has extended school officials' powers of regulation over curricular matters and even student expression in school-sponsored settings such as student newspapers and assemblies.

The Struggle for Student Rights is a splendid example of the case study method used to its best advantage. Johnson not only sheds light on the history of American constitutional law and the Supreme Court, but also brings new insight to the question of why a group of clean-cut Iowa teenagers would defy authority and boldly assert their constitutional rights to be heard. The book, therefore, reveals how the depth of hostility to America's policy in Vietnam shaped the history of constitutional rights and education not only in Iowa but also in the nation.

Possessed by the Past: The Heritage Crusade and the Spoils of History, by David Lowenthal. New York: The Free Press, 1996. xiii, 338 pp. Notes, bibliography, index. \$25.00 cloth.

REVIEWED BY BENJAMIN FILENE, MINNESOTA HISTORICAL SOCIETY

David Lowenthal's *Possessed by the Past* is the work of a man who got what he asked for and isn't so sure it's what he had in mind. The "it," in this case, is widespread popular appreciation for history. In 1985, in his brilliant book, *The Past Is a Foreign Country*, Lowenthal argued that the past should be dynamic, personally meaningful, and relevant to contemporary life. Now—with a shock, it seems—he has realized that "the public" is taking history as its own, and, in his view, it is making a mess of it. *Possessed by the Past* is his response, an alternately reasoned, fascinating, obstinate, and frustrating explora-

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