Realizing Educational Rights: Advancing School Reform Through Courts and Communities
Anne Newman

Understanding Student Rights in Schools: Speech, Religion, and Privacy in Educational Settings
Bryan R. Warnick

In this review essay, I discuss Anne Newman’s Realizing Educational Rights and Bryan Warnick’s Understanding Student Rights in Schools. Newman, an advocate with an instrumentalist conception of rights, argues that rights claims are an effective means to the achievement of political reforms and deliberative democratic ideals. Warnick, an ethicist who views schools as ethical environments, seeks to define what the Supreme Court described in the 1969 Tinker decision as “the special characteristics of the school environment.”1 These are very different books, and I come to very different conclusions on their respective merits. Indeed, I initially balked at presenting these books side by side. Read together, they reveal what can happen when unsubstantiated claims about legal rights go unchallenged. I conclude with a call for jurisprudentially sound conceptions of legal rights in philosophy of education.

Taking Rights Seriously?

“My central purpose in this book,” writes Anne Newman, “is to advance the case for a right to education as a matter of political equality, and to consider how this right might be realized” (RER, 2).2 Given its twofold aim, Realizing Educational Rights is appropriately divided into two sections. In the first, Newman asks, “What is the place of a right to education in a participatory democracy?” In the second, she asks, “How can this right actually be realized?” (RER, 2).

Realizing Educational Rights contains neither a philosophically sound theory of moral rights nor a jurisprudentially sound theory of legal rights. Instead, Newman adopts a strictly instrumentalist conception of rights discourse. By her account, rights claims — whether invoked by lawyers in courtrooms or by activists in community organizations — are an effective means to community
empowerment and to the achievement of public policy reforms. Hence, as the book’s subtitle indicates, it is through courts and communities that school reforms and educational rights are realized.

To bolster her instrumentalist conception of rights claims, Newman cites Ronald Dworkin straight out of the gate and throughout the book. “The moral heft of rights claims gives educators, parents, and politicians a powerful vocabulary (or as philosopher Ronald Dworkin put it, ‘political trumps’) with which to express their frustrations with and hopes for public schools.” She then quotes a community advocate who asserts, ostensibly in full agreement with Dworkin, that “part of what gets [parents] feeling strong is to say, ‘You have a right!’” (RER, 1).3

“Rights claims convey unparalleled moral and political urgency because of their privileged place above majority will,” adds Newman in chapter 2. “Yet their function as ‘political trumps’ … presents a significant justification problem for those who advocate welfare rights, including educational rights” (RER, 24). Later in chapter 5, Newman insists that “rights draw a line around individuals’ interests that should not be violated and thus serve as countermajoritarian checks.” Thus “when Coleman [a community advocacy group] presses a rights claim, it implicitly acknowledges the tension between rights and democratic rule and asserts the priority of a particular entitlement over popular will” (RER, 94). This, Newman claims, demonstrates “the truth of Ronald Dworkin’s notion of rights as political trumps” (RER, 93).

Unfortunately, this is not what Dworkin meant in describing rights as trumps. “Trumping contrasts with balancing: we choose trumping where a balancing analysis would for some reason be inappropriate,” writes Jeremy Waldron.4 Hence rights claims could not “Trump” an affirmative action policy because “there is no reason to believe that consequentialist arguments in favor of affirmative action have been corrupted by prejudice in the way that consequentialist arguments for segregation almost certainly were.”5 Normally, judges attempt to balance the interests of the parties to a dispute, but not in cases in which the state attempts to justify its actions on improper grounds. Waldron accordingly assures us that “the ‘trumping’ force of rights, on Dworkin’s theory, is not a way of rendering certain individual interests as such impervious to considerations of the general good. Nor is it a way of saying that certain individual interests require special protection against majorities.”6

I wrestled for some time with the notion of “realizing rights” as well. The phrase implies that rights are “unreal” until, by Newman’s account, a court declares otherwise. The federal Constitution and state constitutions, federal and state legislation, contracts and common law principles are generally recognized as sources of legal rights, not judicial opinions per se. Newman’s titular phrase, coupled with its implication that rights are “imaginary” or “mythical,” seems to have come from Stuart Scheingold, who posited in his book The Politics of Rights that while the law is real, it is also “a figment of our imaginations.”7 The instrumentalist conception of rights claims that Newman incorrectly attributes to Dworkin can be ascribed to Scheingold, as can the phrase “realizing rights.”
Indeed, virtually everything except Newman’s theoretical framework seems to have been inspired by the late socio-legal scholar’s work. I shall accordingly provide an overview of The Politics of Rights, as it will help readers to better appreciate the structure and content of Realizing Educational Rights.

Like Newman in Realizing Educational Rights, Scheingold declared from the outset that his specific aim was “to assess the part that lawyers and litigation can play in altering the course of public policy.” But Scheingold chastised scholars for “concentrat[ing] on a particular institution — most frequently the Supreme Court — or a single policy problem like civil rights” (PR, 4). Newman, for her part, focuses on rights claims in a U.S. Supreme Court case (Rodriguez), in a Kentucky appellate court case (Rose), and by a California community organization (Coleman Advocates), examining how all these claims helped to achieve public policy reforms, among other things.

In the first chapter of The Politics of Rights, Scheingold adopted an overarching theoretical framework of legalism, based primarily on work by Judith Shklar and Lon Fuller. According to the branch of critical legal theory embraced by Scheingold, the law is an ideological construct with symbolic power that plays an important role in sustaining political legitimacy. Legalism, according to Shklar, is “the ethical attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules.”

In the first part of Realizing Educational Rights, Newman adopts a theoretical framework of deliberative democracy, relying directly on the work of her advisor at Stanford, Eamonn Callan, and indirectly on work by Amy Gutmann, Dennis Thompson, and John Rawls. With this as her theoretical framework, rights claims must do more than advance school reform; they must also help sustain deliberative democracy.

In the second chapter of The Politics of Rights, Scheingold questioned the role of lawyers and the courts in sustaining what he termed the “myth of rights.” “The myth of rights rests on a faith in the political efficacy and ethical sufficiency of law as a principle of government,” he wrote (PR, 17, emphasis in original). “According to this way of thinking, the political order in America actually functions in a manner consistent with the patterns of rights and obligations specified in the Constitution. The ethical connotations of this rule of law system are based on a willingness to identify constitutional values with social justice” (PR, 17).

Activist lawyers are, in Scheingold’s view, most deeply invested in the myth of rights, because the legalistic approach to addressing social problems “exaggerates the role that lawyers and litigation can play in a strategy for change.” He critiqued as legalistic the assumption “that litigation can evoke a declaration of rights from the courts; that it can, further, be used to assure the realization of these rights; and finally, that realization is tantamount to meaningful change” (PR, 5). Like any critical theorist worth his salt, Scheingold recommended that the “myth of rights” be abandoned (as an example of “false consciousness,” presumably). “The myth of rights may work in behalf of change, but its dominant tendency is surely to reinforce the status quo,” he cautioned (PR, 91).
Early on in his book Scheingold questioned the utility of rights claims as a means to the achievement of public policy reforms. “Instead of thinking of judicially asserted rights as accomplished social facts or as moral imperatives,” he wrote, “they must be thought of, on the one hand, as authoritatively articulated goals of public policy and, on the other, as political resources of unknown value in the hands of those who want to alter the course of public policy” (PR, 6–7). In other words, rights claims by activist lawyers (deeply invested in the “myth of rights”) should be abandoned in favor of rights claims by community activists (deeply invested in “the politics of rights”). “Litigation is more useful in fomenting change when used as an agent of political mobilization than when it is employed in the more conventional manner — that is, for asserting and realizing rights,” he continued (PR, 9).

Here is what Scheingold then said about rights claims as “empowering tools” for community activists:

You come to those who are in a position to honor your claim as a supplicant — one who is in need. Why should your request be honored while others go unheeded? How much more compelling to assert a right. You are claiming only what is due to you and what others have an obligation to fulfill. There is dignity in asserting a right. (PR, 58)

And here is how Newman puts it, ascribing much of the substance of Scheingold’s claim to Waldron:

Rights discourse in practice bears out an advantage of rights claims that philosophers highlight. By framing calls for reform in terms of entitlements rather than needs, rights discourse emboldens individuals so they are not mere supplicants. As Jeremy Waldron puts it, “the language of rights refers us to the full moral status of claimants in a way that the language of needs, taken on its own, does not.” By invoking rights claims, Coleman can inspire its constituents to feel the sense of entitlement that more advantaged parents regularly act upon, and thereby to overcome “the despair of reformers who can work much more effectively in an atmosphere of indignation.” (RER, 94)

That last bit — “the despair of reformers who can work much more effectively in an atmosphere of indignation” — is one of only two brief and decontextualized quotes from The Politics of Rights to appear in Realizing Educational Rights. The other, from the same page, is “acquiescence of the oppressed” (RER, 68, quoting PR, 132). Buried in a footnote in chapter 6, Newman acknowledges Scheingold as merely one of “a number of scholars in recent years [who] have emphasized the importance of connecting reform litigation to broader community organizing and public engagement efforts” (RER, 139n1).

Significantly, toward the end of the book, in a chapter titled “Legal Rights and Political Mobilization,” Scheingold repudiated both “the myth of rights” and “the politics of rights” as means to “the realization of rights”:

The evidence suggests that litigation may be useful for providing remedies for individuals but that its impact on social policy is open to question. The implementation of social policy by court orders is likely to be slow, costly, and perhaps self-defeating. The utility of constitutional politics is similarly suspect. There is very little reason to believe that legal and constitutional values are directly persuasive to the elites who are most immediately responsible for making decisions for the polity. These elites are, however, likely to respond to effectively organized interests, and legal symbols can be usefully employed in [sic] behalf
of political mobilization. The politics of rights, therefore, involves the manipulation of rights rather than their realization. (PR, 148)

If Newman had adopted Scheingold’s conclusions alongside his instrumentalist conception of rights claims, the title of her book would have been *Manipulating Educational Rights: Advancing School Reform Through Courts and Communities*. Clinging to an instrumentalist conception of rights claims as an effective means to community empowerment, the realization of rights, and the maintenance of deliberative democracy, Newman appears to have embraced Scheingold’s *politics of rights*, “a conception of rights as political resources,” without entirely abandoning Scheingold’s *myth of rights*, which by his account “encourages us to ... assume there are satisfying constitutional solutions for all of society’s problems” (PR, 94).

One important distinction between the two books remains to be addressed. As previously noted, Scheingold’s theoretical framework in *The Politics of Rights* is *legalism*, based primarily on the work of Shklar. After scrutinizing the effectiveness of rights claims by lawyers and activists in courtrooms and community organizations, Scheingold concluded that rights claims tend to reinforce the status quo — *the law as an ideological construct*. This is perfectly coherent.

Newman’s theoretical framework in *Realizing Educational Rights*, on the other hand, is *deliberative democracy*, which, as already mentioned, is based directly on Callan’s work and indirectly on that of Gutmann, Thompson, and Rawls. After interviewing community activists and key players in a number of school finance cases (especially *Rose*) and scrutinizing the effectiveness of their rights claims, Newman concludes as follows:

In the first part of this book I argue that the right to education should trump majority rule [because] ... the right to education is a necessary precondition to a fair deliberative democracy. ... The second part of this book has focused on realizing educational rights claims through the two most prevalent types of educational rights advocacy. ... Advocating for educational rights in court carries the advantage of the imprimatur of the law, which in Kentucky was critically important for achieving reform through the legislative process. ... By contrast, rights claims that community organizers advance in the everyday settings of democratic politics — in the streets, in community meetings, at city hall — can be more expansive, whatever positive law might say.... The message they want to send is: “You do have the right. It’s just not real yet.” (RER, 106, 107, and 108)

What would Scheingold make of this? I suspect he would say that casting deliberative democracy as an ideal to which the effective use of educational rights claims in courts and community organizations will lead us is rather like using vegetarianism as an ideal to which the effective use of two recipes for fried chicken will lead us [one from Kentucky and one from California, no less]. There is no apparent connection to deliberative democracy in the school finance cases discussed in Newman’s book. More importantly and more obviously, a society in which everyone framed their interests as rights claims would *not* be a deliberative democracy. This was Mary Ann Glendon’s cautionary thesis in *Rights Talk: The Impoverishment of Political Discourse*: “In its simple American form, the language of rights is the language of no compromise. The winner takes all and the loser has to get out of town. The conversation is over.” To this, Newman blithely responds,
“If we take Glendon’s point seriously, rights claims are conversation stoppers that undermine deliberation” \([\text{RER}, 99]\).

It is worthy of note that Scheingold invoked a similar caution from Oliver Wendell Holmes, who declared in 1908 that \textit{all} rights “tend to declare themselves absolute to their logical extreme.” To this, Lon Fuller added, “It is just this tendency toward the absolute that constitutes the essential meaning of ‘a right,’ whether it be legal or moral.”\(^{14}\) Nonetheless, Newman concludes that “rights give us a moral vocabulary with which to express our aspirations for education for democratic citizenship and, by extension, for a more just society. They also empower individuals to lay claim to the education they deserve here and now” \([\text{RER}, 116]\). Ultimately, the message of Newman’s book seems to be that in order to “realize” educational rights, one needs civil rights lawyers and community activists. What civil rights lawyer or community activist would argue with that?

Unfortunately — and with apologies to Holmes — the law is not a brooding \textit{liberal} omnipresence in the sky waiting for rights claims to be raised by civil rights lawyers and community activists pursuing social justice. Of course, as Scheingold observed, there have been times, most notably in \textit{Brown v. Board of Education}, when all nine Supreme Court justices “identified themselves with basic, if often neglected, liberal democratic values” \([\text{PR}, 102]\).\(^{15}\) Nonetheless, one cannot simply ignore — as Newman does — the fact that rights claims have also been used by neoliberals and oligarchs to undermine liberal democratic ideals.\(^{16}\)

\textbf{The Special Characteristics of Schools as Ethical Environments}

\textit{Understanding Student Rights in Schools} is based on three articles published by Bryan Warnick since 2007.\(^{17}\) The first, “Surveillance Cameras in Schools: An Ethical Analysis,” initially appeared in the venerable \textit{Harvard Educational Review} and now forms the basis of chapter 5, “Privacy and Surveillance,” where it continues to do what it says on the tin.\(^{18}\) Warnick begins with a short history of the constitutional right to privacy as advocated in 1890 by Louis Brandeis and Samuel Warren and as subsequently interpreted and applied by the Supreme Court in \textit{Olmstead v. United States} (1928), \textit{Griswold v. Connecticut} (1965), and \textit{Lawrence v. Texas} (2003).\(^{19}\) He then considers the extent to which these privacy rights apply to students in public schools by means of an ethical analysis of the circumstances giving rise to high-profile cases including \textit{New Jersey v. T.L.O.} (1985), in which the Supreme Court ruled that the search of a student’s bag by a school official after the student was caught smoking was reasonable in the circumstances; \textit{Vernonia School District 47J v. Acton} (1995), in which the Supreme Court found that random drug testing of interscholastic athletes did not violate the Fourth Amendment; and \textit{Board of Education v. Earls} (2002), in which the Supreme Court likewise determined that the mandatory drug testing of students participating inextracurricular activities was constitutional.\(^{20}\) Thus in chapter 5, Warnick provides readers with a fine example of something not often seen in philosophy of education circles — a work of \textit{ethical jurisprudence}, “the branch of legal philosophy concerned with the law from the viewpoint of its ethical significance and adequacy.”\(^{21}\)
The second article, “Student Rights and the Special Characteristics of the School Environment,” initially appeared in *Educational Researcher* and now forms the basis of chapter 2, “The Special Characteristics of Schools,” and chapter 3, “Student Speech Rights.” The third article, “Student Rights to Religious Expression and the Special Characteristics of Schools,” initially appeared as part of a symposium published in *Educational Theory* that was coedited by Anne Newman and Sarah Stitzlein. It now forms the basis of chapter 4, “Rights to Religious Expression.”

To assess the appropriateness of school rules that may limit the putative speech rights of students (chapter 3) and the putative free exercise rights of students (chapter 4), Warnick proposes seven “ethically relevant” characteristics of school environments in chapter 2, based on “the age of school populations” and his observation that students are a “semi-captive audience,” that school officials must “focus on student safety,” that public schools are subject to “public accountability and legitimacy,” that the behavior of students may be “school-associated action,” that schools must be responsive to “multiple constituencies and parents’ rights,” and that the *raison d’être* of any school is the “promotion of educational goals.” Thus Warnick plays to his strength in *applied ethics*, outlining a framework for understanding schools primarily as *ethical* environments in which the conduct of students is constrained by teachers and school officials. Ultimately, in both chapter 3 and chapter 4, he concludes that if the First Amendment rights of students are limited in schools, these limitations must be consistent with what he terms an “educational criterion.” Student rights “should be limited in an educational way, one that affirms the power of the rights claim, while acknowledging its limitations in schools” ([USR], 126). Warnick accordingly calls for a presumption in favor of free speech and free exercise rights for students, coupled with a high level of dissociation by schools from what students say and do: “This combination of free exercise and strong school disassociation does justice to both free exercise values and establishment values” ([USR], 127).

This conclusion may be legally problematic — perhaps even a constitutional impossibility. Warnick takes his cue from Supreme Court decisions, but it is important to bear in mind that he seeks to help readers understand the nature of schools as *ethical environments*, not legal environments per se. As Justice Abe Fortas declared in *Tinker*, “First Amendment rights, *applied in light of the special characteristics of the school environment*, are available to teachers and students.” Warnick makes quite clear from the start that “exploring these special characteristics, and thus describing the ethical nature of school environments, is the primary task of this book” ([USR], 2).

*Understanding Student Rights in Schools* is not a book for lawyers or legal scholars, notwithstanding Warnick’s claim that his “comprehensive treatment of the special characteristics of schools should be of interest ... to the legal community” ([USR], 6). As I have written elsewhere, the idea that minors have or ought to have constitutional rights coextensive with those of adults is patently inconsistent with American jurisprudence — including the *Tinker* decision itself.25
Nor does American jurisprudence provide any support for the idea that legal rights are preexisting or freestanding entities that are somehow “transformed” by school environments, unless one takes literally the lofty rhetoric of Justice Fortas when he declared that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

As a matter of law, what takes place at the schoolhouse gate is a partial handover of custodial authority from parents to teachers and school officials. If it is a public school, those teachers and officials are agents of the state. In 1969, the Supreme Court determined that the Constitution applies in limited ways to the exercise of custodial authority inside the schoolhouse gates by public school teachers and school officials (in loco parentis), even though it does not apply to the exercise of custodial authority outside the schoolhouse gates by parents themselves. It is because public school teachers are agents of the state that children have limited constitutional rights while in their charge. So Warnick goes somewhat astray when he writes, “The goal of this book is to explore the special characteristics of the school environment to better understand how schools can transform students’ moral and legal rights” (USR, 6).

What does Warnick mean by rights? He seems to have relied exclusively on unsubstantiated claims by Anne Newman: “When we speak of a ‘right,’ we are referring to the strength of [a] moral claim rather than a particular domain of protection,” he writes. “A right refers to the strength of the moral claim, according to my understanding, not to a particular aspect of life that is to be protected” (USR, 9–10). Explicitly channeling Newman, he adds that “the idea of rights can be used as a way of strengthening communities rather than weakening them” (USR, 147). He later observes that “rights are claims that are among the strongest claims in our moral vocabulary. They often are seen as trump cards, things that we are strictly owed and things that we strictly owe to others” (USR, 169). Given his reliance on Newman, it is not surprising that in his “special characteristics analysis,” Warnick aims to explore “how rights are transformed when students are already playing roles of learners within educational institutions” (USR, 22, emphasis added).

In a forthcoming paper, I seek to clarify for philosophers of education that in American jurisprudence, (a) the “custodial and tutelary” relationship between public school teachers and pupils is what gives public school environments their “special characteristics”; that (b) legal status precludes the ascription of constitutional rights coextensive with those of adults to minors; and that (c) the legal status of minors remains the same whether they are inside or outside the schoolhouse gates.

From an ethical perspective, Warnick may be on solid ground, but from a jurisprudential perspective he is not when he claims, “It is the role of being a student, not being a child or an adult, that matters more when it comes to rights” (USR, 36). Granted, the ethical responsibilities of adults may to some extent be contingent upon the social or institutional contexts within which they perform certain professional roles. Warnick knows more about ethics than I do. But what may be true from an ethical perspective is not necessarily or always
true from a legal perspective. In American jurisprudence, constitutional rights are generally contingent on the legal status of the claimant, not the institutional environment within which a rights violation has allegedly occurred. So Warnick (as an ethicist) and I (as an academic jurist) could have some long and mutually beneficial discussions based on what he describes as his book’s “central thesis”: the idea “that rights depend, to some extent, on institutional contexts” ([USR, 16]).

Warnick asserts that “a comprehensive and systematic account of [‘the special characteristics of the school environment’] has rarely been attempted in any detail, in either the official court decisions, or in legal, philosophical, or educational scholarship” ([USR, 5]), but it is not clear that he has done the legal research needed to support this claim. He missed the implicit definition given by Justice Fortas in 1969, for a start. He quotes the “custodial and tutelary” definition given by Justice Antonin Scalia in *Vernonia* in 1995 ([USR, 134]), but fails to notice it in four subsequent Supreme Court decisions, along with 54 federal district court decisions, 29 federal appellate court decisions, and 46 state court decisions likewise containing both the phrase “special characteristics of the school environment,” and the phrase “custodial and tutelary.” Last time I checked, the Hein Online database included 48 articles containing both phrases published since 1995. Most importantly, the legal encyclopedia *American Jurisprudence* explicitly affirms the appropriateness of understanding the “special characteristics of the school environment” in light of the “custodial and tutelary” relationship between public school teachers and pupils — a relationship predicated on the legal status of pupils as *minors*. Here are excerpts from two of the many relevant entries:

The State, through its proper organs, exercises its power for the protection of its resident infants since it, as *parens patriae*, is the guardian of the children within its jurisdiction. Stated otherwise, each state has a substantial or compelling interest in the welfare of its children and in preventing and deterring mistreatment of them. States have a responsibility to protect the interests of children and may create restraints on their freedom even though comparable restraints on adults would be constitutionally impermissible.... ([42 Am Jur 2d Infants § 12 [2013]])

Because of the State’s custodial and tutorial authority over the students, public school students are subject to [a] greater degree of control and administrative supervision than is permitted over a free adult.... ([67B Am Jur 2d Schools § 284 [2013]])

As Warnick correctly observes, “courts [that] have examined the special characteristics of schools ... usually have found reasons to limit student rights” ([USR, 6]). Yet Warnick does not seem to recognize the *status of children as minors* as the most important legal rationale for these limits, ascribing them instead to “the full school context” — the seven special characteristics of schools as ethical environments he outlines in chapter 2. By his account, as noted earlier, what matters when it comes to rights is [1] the age of students; [2] that they are a “semi-captive audience”; [3] that school officials must “focus on student safety”; [4] that public schools are subject to “public accountability and legitimacy”; [5] that the behavior of students may be “school associated”; [6] that schools must...
be responsive to “multiple constituencies and parents’ rights”; and (7) that the 
raison d’être of any school is the “promotion of educational goals.”

Happily, there are some parallels between the seven characteristics of schools 
as ethical environments (as Warnick sees them) and schools as “custodial tutelary 
environments” (as I see them) that could have been noted for members of the legal 
community in a handful of caveats. For example, in American jurisprudence, it is 
not the age per se of students but their presumptive competence or incompetence 
that matters when it comes to rights. A student who has reached the age of 
majority has reached the point at which legal presumptions of maturity and 
competence shift. The legal presumption of immaturity and incompetence for 
minors allows for the exercise of substituted decision-making authority on their 
behalf by parents, parental delegates, and the state. Hence for the duration of 
their minority, children are subject to custody [not “captivity”] no matter where 
they are. More importantly, it must be said that the Supreme Court has not 
left forever undefined “the special characteristics of the school environment,” 
and its decisions since Tinker have not been “inadequate,” as Warnick contends 
([USR, 6]).

The increased attention paid to jurisprudence in general and to legal rights 
in particular in philosophy of education in recent years represents a welcome 
return to issues and concerns that have defined our field since the time of Plato 
and Aristotle, who “explored related questions about justice, virtue, happiness, 
human development, civic friendship, political stability, the relationships between 
education and law, and the tools of statesmanship.”28 I wholeheartedly endorse 
Warnick’s assertion that “the question of the special characteristics of schools 
requires the sustained attention of the educational research community ... [and] 
calls for the highest sort of interdisciplinary energy” ([USR, 7]. Yet while Warnick 
acknowledges a number of scholars “for their assistance in writing [his] book” 
([USR, ix]), none appears to be a lawyer, academic jurist, or philosopher of law. If 
we want our jurisprudential claims to be taken seriously by the philosophers of 
law we cite and by the members of the legal community to whom we tend to 
address our work, we should consult and collaborate with academic jurists. For all 
its manifold strengths, Understanding Student Rights reveals that ethicists may 
occasionally need help from academic jurists to see things as legal scholars do, just 
as academic jurists like me may need help seeing things as ethicists do.

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2. Anne Newman’s Realizing Educational Rights will be cited in the text as RER.


5. Ibid., 302n7.

6. Ibid., 303 (emphasis added).

7. Stuart A. Scheingold, The Politics of Rights: Lawyers, Public Policy, and Political Change (New Haven, Connecticut: Yale University Press, 1974), 3. This work will be cited in the text as PR for all subsequent references.


12. In the last line of this excerpt, Newman quotes N’Tanya Lee of Colman Advocates (RER, 108).


17. Bryan Warnick’s Understanding Student Rights in Schools will be cited in the text as USR.


