Tinker v. Des Moines / Excerpts from the Dissenting Opinion—Answer Key

The following are excerpts from Justice Black's dissenting opinion:

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 14th Amendments. Secondly, the Court decides that the public schools are an appropriate place to exercise "symbolic speech" as long as normal school functions are not "unreasonably" disrupted.

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.

While I have always believed that under the First and 14th 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.

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.

[D]etailed 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, non-protesting 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.

It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases.

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.

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Questions to Consider

1. Why was Justice Black so concerned about the Court's decision in the *Tinker* case?
   Justice Black is concerned about the time, place, and manner of the speech. He does not want schools to be used as a platform for free speech, because the message can cause students to be distracted from their schoolwork, as he says it did in the *Tinker* case.
2. How does Justice Black differ from the majority on how the balance between conflicting rights should be resolved in this case?
   Justice Black differs from the majority on how the balance between conflicting rights should be resolved in this case in that he thinks that the right of parents, teachers, and school officials to control the school should take precedence over students' right to free speech.
3. Do you think the discussions/disruptions resulting from the students' protests were significant enough to justify the suppression of speech? If so, describe protest behavior that would not be significant enough to justify the suppression of free speech. If not, how serious would the disruption have to be in order to justify the suppression of free speech?
   Student answers will vary. Students who think the discussions/disruptions resulting from the students' protests were significant enough to justify the suppression of speech might say, for instance, that wearing the armbands in the hall between classes would not be significant enough to justify the suppression of free speech. Students who think otherwise might argue that to justify the suppression of free speech, the students would have had to gather a large group of students wearing armbands and marched down the hallway while class was in session.

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