

Examining the Crossroads of Law, Ethics, and Education Leadership

ABSTRACT: Educational leaders are bound by legal and ethical imperatives to make certain that all children have access to an education and the opportunity to learn. To better understand how law and ethics intersect, this article adopted the cultural study perspective to analyze U.S. Supreme Court opinions for language revealing the intersection of law and ethics. The Supreme Court has contributed to the realization of educational goals, relying on the Fourteenth Amendment's Equal Protection Clause to ensure that equal educational opportunities are not deprived because of a child's race (*Brown v. Board of Education*, 1954) or illegal immigration status (*Plyler v. Doe*, 1982). Through the cultural study of law and exploration of legal discourse—language, symbols, and content—in these landmark Supreme Court decisions, similar taxonomies and patterns of discussion emerged illustrating the intersection of law and ethics. These taxonomies were used as coding protocols and exploratory guides for the subsequent review of education leadership literature through the quantitative content analysis method. Based on this analysis, a proposal is made advocating a paradigm shift in the way that law and education scholars analyze, discuss, and critique the Supreme Court decisions affecting children's educational rights. Specifically, this article proposes the adoption of an integrated legal and ethical paradigm to study the legal discourse in the Supreme Court's education law decisions.

Democracy has to be born anew every generation, and education is its midwife.

—John Dewey

The U.S. Supreme Court has played a significant role in establishing basic legal imperatives through numerous decisions that interpret and protect the constitutional and statutory rights of children in schools. On national and local levels, cases such as *Brown v. Board of Education* (1954) and *Plyler v. Doe* (1982) have had a widespread impact on public education in

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the United States and have shaped the very substance of education policy discussions. In light of the significant and influential role of the courts on local school systems, the examination of legal issues and decisions emerging from the courts has occupied a prominent place in most, if not all, school administration programs of study. Yet, education is not primarily a legal enterprise; rather, the protection of educational opportunities is also deeply rooted in ethical principles, values, beliefs, and moral obligations.

It is not surprising then that law and ethics have both emerged as key areas of focus in school administration programs. Numerous scholars have emphasized the important role of ethics in education leadership, advocating for the adoption of coursework and strategies to enhance educational leaders' ethical discourse and knowledge (Beck, 1994; Furman, 2002; Sergiovanni, 1992; Shapiro & Stefkovich, 2001, 2005). Starratt (1994) advocated specifically for inclusion of the ethic of justice, ethic of care, and ethic of critique in leadership preparation programs. An additional perspective, ethic of the community, has been introduced by Furman (2002). Shapiro and Stefkovich (2001, 2005) proposed a conceptual model that emphasizes multiple perspectives—justice, care, critique, ethic of profession—that should be considered by educational leaders who are confronted with complex ethical dilemmas in schools.

One component of their multiparadigm framework illustrates the close relationship between law and ethics (Shapiro & Stefkovich, 2005). Specifically, the ethic of justice focuses on the laws and rights that influence educational leaders' decision making and encourages leaders to question how the existence or absence of law, policy, or rights informs their course of action in a given situation. Through the ethic of justice perspective, legal and ethical claims are simultaneously examined and evaluated by educational leaders before making decisions with ethical implications. This evaluative process seems well suited to the analysis of ethical dilemmas that arise throughout an educational leader's workday, but it may not work in the same fashion, for example, when a leader is confronted with legal mandates emerging from the Supreme Court. In fact, it is not especially clear that the Court's decisions include an ethical claim. Thus, the present article sought to address the following research questions:

Research Question 1: Does the legal discourse in cases such as *Brown v. Board of Education* (1954) and *Plyler v. Doe* (1982) reveal an intersection of law and ethics?

Research Question 2: How has the popular educational leadership literature, specifically the *Phi Delta Kappan* journal, addressed the legal and ethical discourses that emerge from the selected Supreme Court cases?

The questions identified focus primarily on understanding the intersection of law and ethics and, ideally, extending the *ethic of justice* perspective identified in the model proposed by Shapiro and Stefkovich (2005).

Investigating the intersection of law and ethics in education is critical given the fundamental importance of education. DeVito (2007) claims that most Americans assume that educational rights are protected under the U.S. Constitution. In fact, education is not a protected right; instead, it is primarily a function of state laws and governance. Thus, it is often left to the courts to interpret and define the parameters of statutory law to determine the extent of children's educational rights pursuant to the law. This interpretation of statutory law frequently occurs in the state courts, but when constitutional rights are implicated, the U.S. Supreme Court plays a significant role in public schools, ensuring that children's constitutional rights, especially equal educational opportunities, are protected.

In this article, a two-phase exploratory research process was adopted as a method of investigating the intersection of law, ethics, and education leadership. The first phase examined law through the cultural studies perspective in an attempt to reveal the power of law as ethical discourse (Sarat & Simon, 2001). Through this phase, I developed the taxonomies of law and ethics to reveal the social and cultural context of the selected U.S. Supreme Court decisions. During the second phase of this study, I examined education leadership literature, specifically the *Phi Delta Kappan* journal, to confirm or disconfirm evidence of an ethical discourse consistent with the taxonomies of law and ethics developed following the review of the Supreme Court decisions.

LEGAL INFLUENCE IN EDUCATION

In light of the significant and influential role of state and federal courts on local school systems, the examination of legal issues in education has occupied a prominent place in most, if not all, school administration programs of study. According to Haller and Kleine (2001), legal knowledge is "essential when [an administrator is] deciding what to do" (p. 57) about a specific problem in a given school district. Specifically, various rules, regulations, policies, and laws both limit and demand certain actions by administrators in public school systems. Thus, when administrators are faced with potential legal issues in their schools, they must be keenly aware of how the laws require or prevent certain actions. At the same time, there exists a fairly wide degree of discretion (Stefkovich & O'Brien, 2001;

Stefkovich & Torres, 2003) that school administrators may exercise because the policies and laws may not always mandate specific actions but, rather, permit the exercise of discretion. In such circumstances, school administrators may find it especially helpful to rely on their core ethical beliefs and values to guide their decisions and inform their understanding of legal obligations.

The U.S. Supreme Court has had widespread impact on public education in the United States, interpreting constitutional rights and providing landmark rulings on issues such as affirmative action (*Grutter v. Bollinger*, 2003), civil rights (*Brown v. Board of Education*, 1954), disability rights (*Board of Education of Hendrick Hudson v. Rowley*, 1982), English-language learners' rights (*Lau v. Nichols*, 1974), and education rights (*Plyler v. Doe*, 1982). These court rulings, among many others, have established guiding parameters and served as catalysts for significant reform in society and public school systems across America. On national and local levels, decisions such as *Brown* have shaped the very substance of education policy discussions.

As an independent body of the U.S. government, the Supreme Court is relied on to provide "stability in the law" (Rosenberg, 2001). In this role, legal scholars have questioned whether the Court is able to shape policy in a manner that reflects the ethical imperative of public education? According to Dahl (2001), one way to answer this question is to empirically examine U.S. Supreme Court decisions to determine what happens when the Court validates constitutional rights. Public policy scholars have embraced Dahl's theories regarding the Court's influence on public policy but have limited their views to the Court's influence on the implementation phase of policymaking.

Few individuals could disagree with the significant influence that the Supreme Court has had on public schools and students' educational rights. Many of the identified decisions not only highlight the Court's significant policymaking function but also reveal the evidence of an ethical discourse that is manifestly linked to the Court's legal discourse. Thus, this article proposes to examine how and to what extent the legal discourse in Supreme Court decisions has potential to inform the ethical practice and awareness of educational leaders. Ultimately, the goal of this article is to reveal how the Court's legal discourse confirms the moral and ethical foundations of education.

COMPETING APPROACHES TO LEGAL ANALYSIS

Historically, legal analysis followed a formalistic pattern of logical reasoning to reach legal outcomes and obtain right outcomes through "conven-

tional methods of legal analysis" (Posner, 1990, p. 40). In other words, formalistic legal analysis ensured that legal outcomes maintained the autonomy and objectivity that was desired in law. Posner (1990) remarked that such a formalistic approach is appealing to most legal professionals and is particularly well suited to maintaining the status quo. According to Posner, however, formalism is misleading because it encourages legal discourse that is inconsistent with the realities of judicial decision making. Given Posner's argument, this article posits that formalistic legal analysis has been extended beyond its confines as a method of resolving legal questions and has been adopted as a method of analyzing legal discourse in an effort to artificially impose separation between legal and ethical principles.

The formalistic method of analyzing legal discourse in court opinions leads to an objective concept of law that focuses on court-determined tests or court-adopted rules. Through this analytic approach, the stability and objectivity of law have been maintained but only at the expense of moral considerations that arguably influence the laws and legal doctrine. Dworkin (2006) makes a similar argument in his critical review of legal theorists (see, e.g., Hart, 1994) who embrace the doctrinal concept of law and advocate for the formalistic review of judicial opinions to advance the identification of inductive principles of law (Posner, 1990).

The formalistic model of legal thinking removes ambiguity and lulls us into believing that law is objective and logical (Distelhorst, 1991). According to formalists, legal decisions are assumed to be the product of functional equations that operate through a deductive and closed process of applying rules to specific factual contexts to achieve legitimacy in the final decision. The competing model of thinking by legal realists contradicts the formalistic model. Thus, the formalistic approach to interpreting legal decisions in education is wholly inappropriate given the inherently moral enterprise of education (Noddings, 1998).

Finally, educational leaders may sometimes be derailed by an overemphasis on law, fear of litigation, and pressure for legal compliance (Bon & Bigbee, 2011). Although the legal principles are not always in conflict with ethical principles, it may at times be difficult to discern how ethical and legal principles are compatible sources of authority in education. Furthermore, the rulings and laws that emerge from the courts are complex and confusing and often provide school administrators with a degree of "administrative discretion" (Stefkovich & O'Brien, 2001; Stefkovich & Torres, 2003). As a result, administrators may have greater autonomy in how they respond to and comply with the laws emerging from the courts. Given this flexibility, greater efforts should be made to increase school leaders'

awareness of the fundamental role of ethics and how key ethical principles are bound to and reflected in the law and court rulings.

THE ETHICAL IMPERATIVE OF EDUCATION

As indicated earlier, the influence of values, ethics, beliefs, and morals on school leaders has emerged as an area of significant importance and focus of study over the past several decades (Begley, 1999; Starratt, 2004; Willower, 1999). The moral foundation of education according to John Dewey (1909) is not grounded in the teaching of morality; rather, it is found in teaching itself. In other words, the very purpose of education and teaching is to increase students' learning, intellectual power, and enlightenment. Herein lies the moral foundation of schools; that is, education is primarily focused on the process of enrichment and growth through the immersion in knowledge and its possibilities.

Ethics or a moral purpose has been identified not only as a foundation of education but also as a primary motive guiding educational leaders' decisions (Fullan, 2001). Several scholars have sought to promote ethical leadership and decision making by administrators, who encounter ethical dilemmas in schools (Cranston, Ehrich, & Kimber, 2003; Shapiro & Stefkovich, 2005). These efforts to engage school leaders in reflection and conversation about ethics, values, and beliefs are crucial given the moral foundation of education (Goodlad, 1990).

Beck and Murphy (1997) described ethics as the fundamental principles that guide educational leaders and inform their practice. Without these key ethical principles, leaders may lack sufficient guidance to make fundamentally sound decisions (Furman, 2003), especially given the complex and increasingly high-stakes educational environment. Thus, educational leaders must recognize their ethical responsibilities in relationships with others and be prepared to discern the often-competing interests and rights of students, teachers, parents, and the school community (Cranston et al., 2003).

According to Begley and Stefkovich (2007), some "leaders literally use ethics as leadership tools to support actions taken, model ideal practice, and/or promote particular kinds of organizational or societal activity" (p. 400). They refer to the strategic application of ethics to pursue specific outcomes for students and protect the rights and opportunity rights of children in schools. Similarly, Begley (2006) indicates that individual responses to and thoughtful interpretations of ethical dilemmas are shaped by school leaders' values and ethical predispositions. Ethical dilemmas are typically characterized as choices among closely competing goods or the pitting of

values in a given situation. Thus, the following section examines theoretical perspectives of ethics and explores how these perspectives are reflected in ethical frameworks proposed as guides for school leaders' decisions.

ETHICAL FRAMEWORKS AND DECISION MAKING

The ethical dimensions of leadership have been examined from theoretical and empirical perspectives (Frick & Gutierrez, 2008). Shapiro and Stefkovich (2005) proposed a theoretical framework for decision making that built on and expanded the ideas about ethical leadership introduced by Starratt (1994). Specifically, Shapiro and Stefkovich proposed a multiparadigm approach that incorporates the ethics of justice, care, critique, and ethic of the profession in a conceptual framework designed to guide ethical problem solving by educational leaders. Furman (2002, 2004) adds the notion of collective commitment to the framework through her proposed inclusion of the ethic of community. I explain these ethical perspectives and their philosophical orientation in brief detail.

The justice perspective emanates from foundational concepts in democratic society, including legal ideals such as "due process, freedom, equality, individual liberty, and the common good" (Frick & Gutierrez, 2008, p. 35). In addition, the notion of fairness is a significant feature of the ethic of justice. Finally, the ethic of justice is also derived from the comprehensive theory of justice offered by Rawls (1971), which is premised on equality of opportunity and liberty. As Rawls explains, basic rights, duties, and equality are essential to a just and fair society. Specifically, he describes equality as requiring the same basic rights for all and addressing social and economic inequalities in such a way that is advantageous for all.

Noddings (1984, 2002) describes caring as an essential aspect of ethics and the essence of relationship with others, particularly in the context of teaching and working with children. Thus, the ethic of care perspective is often attributed to her foundational work that established caring as a theoretical foundation for decision making in education and education leadership. Additional perspectives offered by Beck (1994) and Gilligan (1982) have contributed to the discussion of caring and concern for others, relative to the moral and ethical functions of schools.

Critical theory, broadly defined, advocates for the exposure of oppressive social structures that marginalize those without power. The ethic of critique advances similar arguments and is found in the work of Giroux (1992) and Purpel (1989), who challenge educators to confront the discriminatory injustice that may resign in the bureaucratic structures of schools. Starratt (1991)

also advances the ethic of critique and encourages educators to confront the status quo and engage in fundamental transformation of schools.

The ethic of the community is focused on the communal processes of leadership in schools. Specifically, educational leaders are focused on relationships and must defer to community rather than individual perspectives. Furman (2002, 2004) claims that school leaders must have interpersonal commitments, communication, and other awareness skills that promote dialogue and communal practice.

As indicated earlier, the conceptual framework proposed by Shapiro and Stefkovich (2005) incorporates the ethics of justice, care, critique, and the profession into a model designed to guide ethical problem solving by educational leaders. These ethical frameworks, in addition to the ethic of community proposed by Furman (2003), are said to inform the educational leadership field (Frick & Gutierrez, 2008). Begley and Stefkovich (2007) comment on the application of these ethical perspectives, claiming that educational leaders should avoid a prescriptive and dogmatic approach when drawing on them. Instead, "the sequencing and application of ethical perspectives needs to be very fluid and dynamic as an initial organizer, not a recipe, and as a stimulus for reflection or dialogue, not a prescription" (p. 407).

INTERSECTION OF LAW AND ETHICS

Law and ethics are frequently used as interchangeable concepts. In part, the failure to distinguish legal from ethical concepts may originate from the historical perspectives regarding the core foundational principles in the U.S. Constitution—namely, democracy, justice, equality, and individual rights. Distelhorst (1991) suggested that law and justice are "ambivalent and ambiguous words in the English language," which have moral and ethical meaning in society (p. 57). Finally, Glen (2005) indicated that a moral interpretation of the constitution may lead to decisions that are not clearly or solely based on legal principles, as in *Brown v. Board of Education*, but are instead based on natural law theories, such as those espoused by St. Thomas Aquinas.

Strassburg (1995) argued that it is time for the legal profession to take ethics seriously. Although his efforts have primarily focused on promoting moral and ethical awareness for legal professionals, his emphasis on the moral dimensions of law is instructive to education leaders who encounter and are obligated to adhere to the law. While adherence to and respect for the law is expected in schools, the importance of ethical leadership and values may be relegated to an afterthought if concern over legal consequences is allowed to dominate the decision-making process. Instead, educational leaders are encouraged to consider how the legal discourse in some court decisions may include social ideologies that reveal the influence of ethical principles on the rule of law emerging from the courts.

Although the impact of Supreme Court decisions on education policy has been questioned by legal scholars (see, e.g., Becker, 1969; Rosenberg, 1991), numerous decisions protecting and promoting students' educational rights and learning opportunities are universally recognized as milestones in education. The current formalistic approach has failed to engage educational leaders and scholars in critical dialogue about the Court's role in affirming ethical jurisprudence; thus, analysis of the Court's opinions should not be limited to the traditional formalistic inquiry. Instead, the legal discourse of Supreme Court decisions should be examined critically to extract deeper meaning, content, and language that more fully capture the essence of the decisions.

This article argues that symbolic representations of values and ethics in the legal discourse have been summarily dismissed in favor of the emphasis on judicial tests, rules, and inductive principles of law (Posner, 1990). In Phase 1 of this exploratory research design, this article reviewed two historically significant Supreme Court cases using an interpretive and critical inquiry to examine the language and text for meaning and intent that reveals the intersection of law and ethics. Through legal discourse analysis, I identified similar taxonomies and patterns of discussion that implicitly and explicitly illustrated the intersection of legal and ethical principles.

This article seeks to extend the study of law, particularly for school leaders, beyond the normative boundaries of rules and compliance. Inspired in part by the question "What is it we see, and fail to see, when we look to the Court?" posed by Kahn (1999b, p. 154) this article seeks to advance new conceptions of the law (Sarat & Simon, 2001) for educational leaders. Because the law has sometimes been used primarily as a mechanism for reaffirming existing social order (Fox, 1993), Kahn's critical questioning of law provides an important alternative pathway of understanding the law and, more important, the limits to or neglected potential of the law. As suggested by Kahn, law does not exist in the abstract but rather should also be understood in its relationship to individuals and society.

METHOD

During Phase 1 of the study, two U.S. Supreme Court decisions, *Brown v. Board of Education* (1954) and *Plyler v. Doe* (1982), were identified because of the significant impact that both cases have had and continue to have in education. These cases were also identified because both were decided pursuant to the Court's application of the Fourteenth Amendment's Equal Protection Clause. Both cases were examined from the cultural studies perspective, and the legal discourse—language, symbols, and content of the court opinions—was analyzed to identify the taxonomies of legal, ethical, moral, and value-laden dialogue in the Court decisions. Following analysis of the Court opinions, this article then explored the intersection of law, ethics,

and education in the professional education leadership field by conducting a quantitative content analysis of *Phi Delta Kappan* journal articles focused on the selected Supreme Court cases.

PHASE 1: CULTURAL STUDY OF LAW

Kahn (1999a) proposed the cultural study of law and encouraged scholars of law and culture “to investigate how [law] works in its multiple uses” (p. 162). As an advocate for the cultural study of law, Kahn challenged the elitist domination over legal scholarship and suggested the need to study how law is represented in popular culture. Kahn proposed the cultural study of law as a form of legal study that describes practices and beliefs about the rule of law. In essence, the law is unveiled and observed as a powerful source of culture that informs “our conception of the way law lives in and through our identities, interpretations, and imaginings” (Sarat & Simon, 2001, p. 21). Finally, Kahn posits that the cultural study of law may be accomplished in part through the study of rhetoric and interpretation.

The cultural study of law was adopted because this approach was consistent with the focus of this article on determining whether the Court’s rhetoric and traditional legal discourse simultaneously conveys not only the rule of law but also an ethical perspective. Legal realism was premised on a view of the law as political and social. The cultural study of law is not contrary to the precedential role of judicial decisions but instead suggests that to more fully capture the shifting landscape of American society, it is necessary to extend the inquiry to symbolic representations of the rule of law in present discourse and popular culture.

Brown v. Board of Education. The landmark desegregation case, *Brown v. Board of Education* (1954), was selected because this historically significant decision represents the first major decision affecting public education, which was made pursuant to the Equal Protection Clause of the Fourteenth Amendment. In *Brown*, the Court was asked to determine whether segregation in public education violated the Equal Protection Clause of the Fourteenth Amendment. Writing the majority opinion of the Court, Chief Justice Warren recognized the importance of public education:

It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. (p. 493)

He added that separating children “from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone” (p. 494).

These remarks are more than a simple application of law—the Equal Protection Clause of the Fourteenth Amendment—to a controversial issue in a

case before the U.S. Supreme Court. Rather, these remarks are evidence of the deeply held beliefs about the fundamental importance of education in society. Table 1 presents the legal discourse from *Brown v. Board of Education*, organized according to the three primary concepts that represent the essence of the Court's meaning.

The cultural study perspective suggests that legal discourse should be contextualized and interpreted according to the competing and individual interests of those affected by the case outcome. Thus, in *Brown*, the context is determined by the historical and critical examination of the issue and facts of the case—specifically, did the state-imposed segregation in schools violate legal and ethical expectations of African American children to access education? After an evaluation and synthesis of the Court's

Table 1. *Brown v. Board of Education* Taxonomy of Law and Ethics

OPPORTUNITY	
• Equal Educational Opportunity	<ul style="list-style-type: none"> → Segregation deprives children of equal education opportunities → Segregation leads to substantially inferior education opportunities
• Opportunity Rights	<ul style="list-style-type: none"> → Opportunity to access an education is important to success in life → Education is an opportunity right that must be made available to all on equal terms
EQUALITY	
• Fourteenth Amendment Rights	<ul style="list-style-type: none"> → Racial segregation deprives 14th Amendment equal protection → Segregated schools cannot be made equal and deprive children their equal protection clause rights under the 14th Amendment
• Equality & Justice	<ul style="list-style-type: none"> → All persons stand equal before the law → Doctrine of "separate but equal" has no place in education
FUNDAMENTAL EDUCATION VALUES	
• Educated Society	<ul style="list-style-type: none"> → Education is the foundation of good citizenship → Education is important to our democratic society → Education is required to perform basic public responsibilities → Education is perhaps the most important function of state and local governments
• Education & Dignity	<ul style="list-style-type: none"> → Segregation has detrimental effect on minority children → Segregation deprives benefits of integrated school system → Segregation leads to a sense of inferiority for minority children and affects their motivation to learn → Segregation generates a feeling of inferiority for minority children that may affect their hearts and minds in a way unlikely ever to be undone

language in *Brown* and *Plyler*, the following three overarching concepts emerged: opportunity, equality, and fundamental value of education. Thus, the dominant language that emerged from both cases is not primarily legal or ethical but rather theoretically consistent with the philosophical perspectives of Kant (Kanz, 1993) on ethics, education, and justice, as well as the egalitarian perspectives emphasizing essential moral worth, justice, and equal treatment under the law (Anderson, 1999). Table 1 provides the taxonomy of law and ethics, with the specific discourse patterns that supported the identification of the three major concepts. The language in the *Brown* decision has clearly demonstrated the intersection of law and ethics.

Plyler v. Doe. The Supreme Court recognized the rights of undocumented children of alien parents in *Plyler v. Doe*. In this case, the Court held that application of the Fourteenth Amendment of the U.S. Constitution was not confined to a limited group of persons within a state's jurisdiction as reflected in the Equal Protection Clause. Justice Brennan rejected (implicitly, as ludicrous) the argument of the State of Texas, which declared that undocumented aliens are not "persons within the jurisdiction" of Texas (p. 210; emphasis added). In a footnote, Justice Brennan wrote, "Some classifications are more likely than others to reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective" (p. 218). Thus, such classifications are presumptively antithetical to constitutional guarantees of "equal justice under the law" (p. 218).

The significance of education as a fundamental value that enables individuals to function and thrive in our nation has been reaffirmed by the Court on numerous occasions (see, e.g., *Abington Township School District v. Schempp*, 1963; *Meyer v. Nebraska*, 1923; *San Antonio Independent School District v. Rodriguez*, 1973; *Wisconsin v. Yoder*, 1972). Collectively, the aforementioned cases reiterate that education is an important institution that prepares citizens to function in a democratic society and provides children with the necessary knowledge and values to function in a free and independent society. Justice Brennan explains,

Paradoxically, by depriving the children of any disfavored group of an education, we foreclose the means by which that group might raise the level of esteem in which it is held by the majority. . . . Illiteracy is an enduring disability. The inability to read and write will handicap the individual deprived of a basic education each and every day of his life. (*Plyler v. Doe*, p. 222)

This legal discourse conveys an indisputable message about education and the fundamental value of education in American society. Brennan concludes that the denial of an education threatens the very dignity and well-being of a child and is thus contrary to the Equal Protection Clause.

As indicated earlier, three broad categories—opportunity, equality, and fundamental value of education—emerged through a comparative legal and ethical analysis of the language in *Brown* and *Plyler*. Table 2 presents the legal discourse from *Plyler v. Doe*, organized according to the three primary concepts that represent the essence of the Court's language, message, and meaning in the case.

Table 2. *Plyler v. Doe* Taxonomy of Law and Ethics

OPPORTUNITY	
• Equal Educational Opportunity	<ul style="list-style-type: none"> → Denying educational opportunity will create underclass of citizens → Education is an opportunity that must be made available to all on equal terms
• Opportunity Rights	<ul style="list-style-type: none"> → Opportunity to access an education is important to success in life → A child will be permanently disadvantaged if denied the opportunity of an education
EQUALITY	
• Fourteenth Amendment	<ul style="list-style-type: none"> → All caste-based and invidious class-based legislation is abolished → All persons within the territorial jurisdiction, regardless of race, color, or nationality, are protected under 14th Amendment → Creating an underclass by denying education is inconsistent with the 14th Amendment
• Equality & Justice	<ul style="list-style-type: none"> → Denying an education leads to permanent disadvantage and is contrary to notion of equality → Prejudicial legislation is incompatible with equal justice under law equality → Legislation creating an underclass is inconsistent with principles of equality → Legislation punishing children for their parent's misconduct is inconsistent with fundamental concept of justice
FUNDAMENTAL EDUCATION VALUES	
• Educated Society	<ul style="list-style-type: none"> → Education transmits the values of our society and maintains our basic institutions → Education is necessary to preservation of freedom and independence → Public schools inculcate fundamental values of democracy → American people regard education as supremely important → Public schools prepare citizens to participate in vital civic institutions and preserve democracy
• Education & Dignity	<ul style="list-style-type: none"> → Depriving an education will have lasting impact on child's life → Denying education to innocent children imposes a lifetime hardship and stigma of illiteracy that is not a rational response to illegal immigration concerns → Depriving an education will have an inestimable toll on the social, economic, intellectual, and psychological well-being of a child

The language used by the Court reveals a deliberate effort to extend the legal parameters of protection under the Equal Protection Clause of the Fourteenth Amendment. Specifically, the language is bound to the contextual beliefs about education as a fundamental value and source of dignity for children. Although the Equal Protection Clause of the Fourteenth Amendment provides the legal source of authority, the inherent power in this decision is revealed in a more meaningful manner through the poignant words of Justice Brennan. In *Plyler*, the Court engaged in a historical and critical examination of the critical role that education plays in society. Thus, the context of education again demanded more than a purely legal response, and as captured in the taxonomy of law and ethics for *Plyler*, denying an education places a lifetime hardship on innocent children.

PHASE 2: CONTENT ANALYSIS

In an attempt to reveal the extent to which ethical principles in these Supreme Court opinions have influenced emerging legal obligations in schools, the second phase of this paper included a review of education leadership literature using quantitative content analysis. Content analysis was adopted as an effective method of searching for discourse patterns that were similar to the taxonomies developed following the inquiry and analysis of legal discourse in the *Brown* and *Plyler* decisions.

The quantitative approach to content analysis has emerged in the literary and social science fields as a powerful method for the rigorous study of texts and language (Krippendorff, 2004; Neuendorf, 2002). Through quantitative content analysis, texts are summarized through a systematic review process, in an attempt to make inferences from the data and content. Content analysis also provides a credible method of comparing across and between textual meaning in fields such as law and education, where the language is often context specific and thus not readily accessible to all readers.

The *Phi Delta Kappan* journal is an influential periodical published by Phi Delta Kappa International (2011), which is a leading education association with thousands of members, including teachers, principals, superintendents, higher education faculty, and administrators. This publication was chosen not only because of the wide readership that *Phi Delta Kappan* enjoys but also because it has consistently included commentary and discussion of significant court decisions affecting education and education leadership.

Each article was assessed for inclusion in the study based on the following two criteria: (1) if the article referred to and provided more than a

trivial review of *Brown v. Board of Education* or *Plyler v. Doe* and (2) if the article was published during the 20 years immediately following each Supreme Court decision. The historical context of law may be understood by examining a static point in time—for example, when the case was decided—but it may also be understood as a shifting paradigm with patterns and legal understandings emerging over time because of the normative nature of law (Kahn, 1999b). Thus, articles published between 1954 and 1974 were included if they discussed the decision in *Brown*, and articles published between 1982 and 2002 were included if they discussed the *Plyler* decision.

Although content analysis is generally viewed as an exploratory method, it provided a systematic process to discern if and how ethics, values, and beliefs were referenced in the discussion of significant Supreme Court cases in the education leadership literature (Krippendorff, 2004). One of the important guidelines for using content analysis is the a priori design and adoption of a coding scheme before conducting the text analysis. Two coding sheets (see Tables 1 and 2) emerged directly from the legal discourse analysis of language and text in *Brown* and *Plyler*. The coding sheets, identified as the taxonomies of law and ethics, were a valuable data coding protocol and provided a systematic method of reviewing the articles for evidence of the intersection of legal and ethical principles. Using this protocol, I was able to follow a logical method of coding language and summarizing text in the articles. Although the debate regarding law and ethics is unlikely to be resolved through this article, the proposed content analysis is intended to provide empirical evidence to document how law and ethics are presented in the education leadership literature.

LIMITATIONS

This article adopted an exploratory study method to examine the intersection of law and ethics in the legal discourse of Supreme Court opinions and in the education leadership literature. Given the exploratory nature of this study, the findings are limited, in part by the nontraditional approach to the cultural study of law perspective. In addition, this study is limited by the narrow scope of the review. Specifically, only two cases—*Brown v. Board and Education* and *Plyler v. Doe*—were considered. While content analysis is an accepted method in many fields of study (e.g., journalism and policy fields), it is less frequently employed in education leadership and legal studies fields, thus posing another limitation to the present study. Finally, the review of only one journal, *Phi Delta Kappan*, limits the scope of this study and generalizability of the content analysis.

FINDINGS AND DISCUSSION

The ethical principles explored in education leadership are complementary to and woven into the theories about justice, fairness, and equality (Rawls, 1971); freedom (Dworkin, 1996); and opportunity rights (Levin, 1981). This article, through an exploratory analysis of legal discourse in *Brown v. Board of Education* and *Plyler v. Doe*, revealed how legal and ethical principles may be interwoven as critical concepts. These concepts are referred to as the taxonomy of law and ethics and include—Educational Opportunity, Equality in Education, and the Fundamental Value of Education. The legal discourse used to convey these ideals as pivotal sources of legal and ethical authority in education is presented in Table 1 (*Brown*) and Table 2 (*Plyler*).

Given the Court's refusal to recognize education as a legal right protected by the U.S. Constitution (*San Antonio Independent School District v. Rodriguez*, 1973), the emphatic language describing education as "perhaps the most important function of state and local governments" (*Brown v. Board of Education*) suggests that a fundamental value of education prevails without regard to clearly defined legal rights. In *Plyler v. Doe*, the Court also affirmed the fundamental value of education, noting that education is necessary to preserve freedom, independence, and democracy.

The content analysis of the *Phi Delta Kappan* journal articles provided only a modest source of information and guidance because of the limited discussion of the selected cases. Specifically, I conducted a search of the comprehensive online database for *Phi Delta Kappan* using the JSTOR Arts and Science VI Collection (1916–2008) to find all articles that referenced *Brown v. Board of Education* between 1954 and 1974 or *Plyler v. Doe* between 1982 and 2002. A total of 470 articles were initially identified as relevant to the *Brown* decision and as meeting the prescribed period; however, only 6 articles were identified for the *Plyler* decision and specified period. After the initial collection of articles, a more careful sorting led to the elimination of nonarticle content, including items such as *Phi Delta Kappan* membership survey results, book reviews, and letters to the editor. Articles were also eliminated from further consideration if the cases received only trivial mention in the article. Thus, a total of 29 articles were examined for *Brown*, and only 4 articles were examined for *Plyler*. The articles were analyzed for consistency using the taxonomies of law and ethics developed for the two cases as coding protocols. Less than 30% of the *Brown* articles (8 out of 29) had language that was consistent with the taxonomy of law and ethics developed from the case. Only 25% of the *Plyler* articles (1 out of 4) contained language matching the taxonomy of

law and ethics developed from the case. Thus, only preliminary and certainly limited inferences can be drawn from the content analysis. Several specific quotes are shared from the articles to illustrate how the language corresponded to the taxonomies developed for each of the cases,

In one article, the author (Steinhilber, 1969) lamented about school funding lawsuits and the challenges of ensuring proper remedies to address educational adequacy. Quoting the Court directly, Steinhilber emphasized his contention that the Court's decision in *Brown* made education more than just an optional provision:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. (p. 152)

Steinhilber appeared to use the quote not to reveal the legal outcome of *Brown* but instead to focus attention primarily on the fundamental value of education and the importance of an educated society.

Another author, Bickel (1970), claimed that desegregation has failed because it has not transformed schools from dual to unitary systems. He argued that the integration process itself seems to be leading to the tipping point of resegregation. Bickel focused primarily on the challenges and inconsistencies between desegregation and integration. Yet, despite his skepticism about the impact of the *Brown* decision, he seemed to emphasize the principle of equality and that of equality and justice. Specifically, he noted, "*Brown v. Board of Education* held out for us the principle that it is wrong and ultimately evil to classify people invidiously by race" (p. 520).

As these quotes suggest, the nine authors did not solely focus on law; rather, they also emphasized and quoted the Court's language, reflecting the intersection of law and ethics. Specifically, the use of language in these *Phi Delta Kappan* articles is consistent with the taxonomy of law and ethics—educational opportunity, equality in education, and the fundamental value of education.

Due to the limited number of articles on *Brown* and *Plyler* during the identified periods, there was insufficient information to conclusively answer the second research question: Has the popular educational leadership literature, specifically the *Phi Delta Kappan* journal, emphasized the legal

and ethical discourses emerging from the selected Supreme Court cases? Although there appeared to be limited evidence from the literature, specifically *Phi Delta Kappan*, to document the intersection of law and ethics, this study has sparked an exploratory journey to find connection among three seemingly incongruous fields of study: cultural study of law, content analysis, and ethical leadership.

Supreme Court decisions are often studied for purposes of promoting knowledge of the legal rule, which may lead to an overemphasis on the procedural aspects, such as briefing cases and memorizing statutes, and underdevelopment of substantive issues, including, for example, equality, justice, and basic freedoms. School administration courses are an ideal venue for exploring connections between law and ethics. Anchoring school administration on the interconnected nature of law and ethics would do much to advance the "moral steward" role of school leaders (Beck & Murphy, 1997). School leaders who wish to affect society must utilize a powerful set of beliefs or convictions that are anchored in concepts emphasized by the Court—specifically, educational opportunity, equality, justice, and the fundamental value of education. These beliefs or convictions are foremost derived from the ethical and principled foundation of society, as captured in the Bill of Rights of the U.S. Constitution. School leaders should be taught to critically analyze the Court's legal discourse through an ethical lens. At the same time, education law scholars are encouraged to embrace the moral and ethical dimensions of education (Goodlad, 1990) and to recognize ethics as a cohesive facet of the law.

Those who prepare school leaders, especially education law scholars, should support students' growth as legally and ethically astute practitioners. One way to facilitate this development is through the development of taxonomies of law and ethics. These are especially important in law because the crucial legal principles are not ignored but rather enhanced given the contextual demands of the education field. As Sergiovanni (1992) observed, school leaders must maintain a belief in possibilities; they must have a passion that affects others. They must view their task more as a mission than a job. The moral leader uses ethics and justice to guide the thousands of decisions they make daily (Beck & Murphy, 1997). Educational issues are foremost bound in and by the ethical and moral principles embodied in our basic democratic ideals (DeVito, 2007).

Consequently, education exists within a unique context that is both legal and ethical; thus, individuals' beliefs about education are laden with cultural and symbolic meaning in American society. Competing views along with the evolution of legal theories, however, have challenged the formalistic approach to understanding legal discourse and broadened the study of

law. For example, Posner (1990) disputed the narrow constraints imposed by positivism and sought to counter their approach with his proposition that moral principles are also legal principles. Finally, Dworkin (2006) approached the law and judicial decision making as an interpretive concept, observing that judicial opinions often rely on a moral interpretation of the constitution. If we are willing to accept Dworkin's moral interpretation of the constitution, we may be able to advance the argument that the Court's rulings on constitutional issues are thus bound by a moral foundation and should be interpreted within this value-laden context.

Given the aversion to theoretical and moral interpretations of laws, ethical ambivalence is likely to plague and distract school administrators, who are relentlessly confined by competing expectations in performance of their duties. As leaders for learning, school administrators exist in an oppositional system because they are bound simultaneously by the mandatory adherence to formal legal rules (Hart, 1994) and by an ethical obligation to promote the fundamental role of education in society. Thus, rather than examining legal decisions for ethical meaning in an effort to expose the value-laden impact of decisions, positivists are guided by the formal constraints of rule obedience, even if this might lead to ethical disobedience (Strassberg, 1995). Consequently, the positivist jurisprudence has tainted education law scholars and, subsequently, educators such that we remain almost naively unaware of the potential message about ethics, values, and leadership that may be discerned from the legal decisions that inform policies and procedures in schools.

CONCLUSION

The rule of law emerges as a result of judicial intervention and resolution of a given controversy. As such, the law often reflects the degree to which courts are bound by historical norms and established legal concepts rather than by moral or ethical precepts. Yet, legal scholars have debated whether the court decisions are solely about justice or if, in fact, these key Supreme Court decisions are also about the morals, values, and beliefs that are implicitly and explicitly embodied in the U.S. Constitution. Education, however, is an inherently moral enterprise, making the decisions critical that interpret and determine laws and policies that influence children and their educational rights.

Although the Supreme Court may play a limited role in shaping education policy, school leaders must assume the responsibility to be aware of the ethical principles embodied in the Court's decisions. In his examination

of the role of the U.S. Supreme Court, Rosenberg (1991) claims that the Court could not achieve significant social reform without the active support of political leaders, in part because the Court's "decisions are not self-implementing" (p. 81). School leaders must be given the necessary tools and skills to recognize the interrelated nature of legal and ethical principles. Furthermore, school leaders should be encouraged to critically examine the Court's legal discourse for the ethical principles that are embedded in the objective and formal resolution of legal questions.

The taxonomies of law and ethics developed in this cultural study of law are limited in scope because they were developed solely on the basis of an analysis of the legal discourse in *Brown v. Board of Education* and *Plyler v. Doe*. The legal discourse analysis used to identify these taxonomies should be used to examine additional cases for emerging patterns of intersecting legal and ethical principles. The cultural study of law here revealed the power of law to be productive and not just instructive. In other words, the legal discourse was infused with language that reflected the ethics, values, and beliefs guiding the debate in education law decisions. The language in both these cases not only emphasized legal compliance and instruction on the law but also revealed the potential of legal discourse to inspire and inform imagination about and awareness of previously unrealized paths of justice (Sarat & Simon, 2001).

IMPLICATIONS AND RECOMMENDATIONS

This article examined the legal discourse in two significant education law cases decided by the U.S. Supreme Court to identify the values, ethics, and beliefs implicitly and explicitly referenced in the Court's decisions. The Court decisions were selected because they have significantly affected school administrators and their leadership in education. In both cases, the legal discourse was infused with ethical principles. Yet, in the content analysis of *Phi Delta Kappan* articles, few authors made reference to the identified ethical principles and instead focused almost exclusively on the legal outcomes of the cases. These results imply a serious disconnect between legal and ethical principles underlying education.

Future studies might expand the legal discourse analysis and develop taxonomies of law and ethics for additional landmark Supreme Court cases addressing education rights and significant issues in education. The content analysis method could also be used to critically explore legal scholarship, such as education law texts, law review articles, and popular legal media outlets, including, for example, the popular education law blog *Edjurist*.

When we accept a circumscribed (Hart, 1994) and utilitarian (Posner, 1990) interpretation of law, we impose an ordinariness that divests law of integrity and theoretical depth (Dworkin, 2006). This study concludes with an appeal for a critical awakening to the inherent moral authority that is vested in laws and legal discourse. The exploration of legal and ethical discourses must not be approached as mutually exclusive inquiries (Kahn, 1999b). As revealed in the *Phi Delta Kappan* articles reviewed for this study, discussions about race, segregation, discrimination, illiteracy, and fundamental values are separated from the cultural power of the language and instead remain steadfast to the formal constraints of legal thinking and objectivity. The Supreme Court's decisions in *Brown* and *Plyler* significantly affected the lives of children, families, and communities, yet the law has been conveyed and reported through neutral, objective, and emotionless language, even in the years immediately following these decisions.

The objective and formal obedience to a traditional study of law is in direct conflict with our ethical and moral responsibility to ensure education opportunities for all children. Laws and court rulings are critical sources of power and authority in democratic society. This article does not suggest that we abandon the traditional study of law; rather, it concludes that it is time to revise our current practices and adopt an integrated legal and ethical paradigm to study law.

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