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Deliberation can wait: How civic litigation makes inquiry critical

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ABSTRACT

Scholars of citizenship education have long regarded deliberation as the default framework for democratic discussion in the classroom and beyond. Turning to the history and theory of rhetoric, we question why the deliberative model of the Athenian assembly has been developed for social studies pedagogy without including the litigative discourse of the Athenian courts. In response, we offer civic litigation, a discursive framework that recasts public controversies from a pro vs. con to an accusation vs. defense format. By examining the role of civic litigation in a historical case study from the 1960s Black civil rights movement, along with three inquiry-based lessons concerning contemporary controversies, we argue that civic litigation plays a crucial role in the effort to make inquiry-based instruction critical when it addresses issues of injustice.

KEYWORDS

Aristotle; classroom discussion; counterpublics; critical authenticity; justice; Martin Luther King Jr.

Published by the National Council for the Social Studies (NCSS) in 2013, *The College, Career, and Civic Life (C3) Framework for Social Studies State Standards* has become the prevailing pedagogical model in the field of social studies education. As opposed to a traditional civic education in which teachers “spend much of their time talking at students,” the framework invites teachers to pose compelling questions that students can respond to through deliberation (NCSS, 2013, p. 83). The *C3 Framework* defined deliberation as “discussing issues and making choices and judgments with information and evidence, civility and respect, and concern for fair procedures” and it positioned deliberation as the norm for civic discussion in a democratic classroom and society (p. 31). Within the *C3 Framework*, the Inquiry Design Model (IDM) serves as a blueprint for planning inquiry units (Grant et al., 2017; Swan et al., 2018; see C3Teachers.org). While inquiry predates this model for citizenship education (e.g., Bruner, 1966; Manfra, 2009), and there are different approaches to inquiry in the field (e.g., McCoy et al., 2019; Shear et al., 2018), the *C3 Framework* and IDM have offered an architecture for inquiry in social studies that has generated extensive theoretical (e.g., Crowley & King, 2018), empirical (e.g., Colley et al., 2021; Thacker et al., 2017), and practitioner (e.g., Knapp & Hopkins, 2018) scholarship.

Classroom discussions can take many forms, but when they challenge students to reach a decision for what to do about a controversial issue, scholars of citizenship education have strongly favored deliberation (Hess, 2009; Hess & McAvoy, 2015; McAvoy & Hess, 2013; Parker, 1997; Parker & Hess, 2001). They have good reasons for taking this approach. Deliberation has numerous benefits, such as: forging compromises (Fishkin & Mansbridge, 2017), actualizing civic engagement (Asen, 2004), building community (Kuyper, 2018),

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refining policies (Bessette, 1980), educating participants (Parker, 2003), and engaging students (Lo, 2018). Moreover, as an inquiry practice, deliberation provides a democratic frame for discussing the problems that vex civic life. Yet, counterposing deliberation against instruction that offers little opportunity for students to speak, or against forms of discussion that do not resolve into collective action (Parker & Hess, 2001), strongly suggests that deliberation should be taught as the default framework for democratic discussion.

Deliberation's earliest theoretical definition comes from Aristotle's *Rhetoric* (ca. 330 B.C.E./1926), a treatise constructed from his lecture notes that was lost to the European world at Alexandria and then recovered in the thirteenth century when it was translated into Latin from Arabic language commentaries (Borrowman, 2008; Copeland & Sluiter, 2009; D. L. Black, 1990; Murphy, 1974). In his *Rhetoric*, Aristotle (ca. 330 B.C.E./2007) defined deliberation as the species of rhetoric appropriate for civic discussion in the legislative assembly. However, he also offered forensic discussion (what we call *civic litigation*) as a parallel ideal for civic discussion in the courts, which were run by the citizenry in Athens (Cammack, 2013; Conley, 1990; Hansen, 1991; Kennedy, 1994). Thus, when citizens in a democracy discuss the sort of policy problems that have solutions in legislative action, Aristotle said they offer pro and con arguments in order to deliberate, but when they discuss problems of injustice that are addressed through judicial rulings in the courts, they litigate using accusations and defenses (Aristotle, ca. 330 B.C.E./2007; Strauss, 1964).¹ This rhetorical history begs a couple questions for citizenship education. Why is deliberation so often the only option presented for democratic discussion? How might civic litigation help structure inquiry-based instruction that teaches democratic discussion as a means of addressing injustice?

Grounded in Aristotle's *Politics*² (ca. 350 B.C.E./1932), many political theorists have asserted deliberation as the overarching ideal for civic discussion in a democracy (Barber, 1984; Cohen, 1989; Fishkin, 1991, 2009; Fishkin & Mansbridge, 2017; Gutmann & Thompson, 1996; Landemore, 2012; Mansbridge, 1983, 1991; Mutz, 2006; Neblo, 2015). Yet, others have noted deliberation's shortcomings, such as its struggles to balance discursive rigor and inclusion (Krause, 2008; Shapiro, 2017; Welsh, 2002; Young, 2000), especially when addressing matters of injustice in a society riven by inequality (Garsten, 2009; Gibson, 2020a; Hicks, 2002; Kendi, 2017; Levinson, 2003; Mouffe, 2000; Sanders, 1997). Scholars of social studies education have already recognized a distinction between participatory and justice-oriented citizenship (Westheimer & Kahne, 2004) and observed that notions of citizenship differ for communities who have been traditionally marginalized by American democracy (Busey & Dowie-Chin, 2021; Busey & Walker, 2017; Johnson, 2019; Rodríguez, 2018; Vickery, 2015, 2017). Given its purpose as a framework for discussing alleged injustices, civic litigation offers an alternative to deliberation that aligns better with critical pedagogies that center justice issues.

Elaborating civic litigation as a discussion pedagogy is not just a matter of theoretical coherence, but also a practical issue for educators. We have encountered teachers who aspire to implement justice-oriented curricula by teaching critical Indigenous civics (Sabzalian, 2019), confronting racism in current events (J. L. King et al., 2018), or presenting immigrant students' testimonio in response to anti-immigration policies (Rodríguez & Salinas, 2019) who worry that centering minoritized perspectives and histories would be biased. Faced with social studies curricula and standards that typically center Whiteness (Gibson, 2020b; Hawkman, 2020; Hawkman & Shear, 2020; Martell, 2013; Solórzano &

Yosso, 2002; Vickery & Duncan, 2020), on the one hand, and critical approaches that center minoritized perspectives on the other, cautious social studies educators often turn to deliberative pedagogies on the assumption that holding a pro and con discussion is an unbiased approach. However, addressing issues of injustice with pro and con arguments opens space for false equivalencies where students are provided a platform to argue that unjust actions are warranted or ought to be condoned (Wegwert, 2015). It can also excuse students from confronting difficult questions about how injustices come to be, how they are sustained and evolve, and what it means for a society to take responsibility for them. The answers to those questions sometimes require the rhetoric of accusation, which is frowned upon as violating deliberation's expectations for civility (Higginbotham, 1993) and its focus on the issues rather than the people discussing them (National Council for the Social Studies, 2013).

To provide a model for democratic discussion at the intersection of inquiry and critical pedagogy, we propose civic litigation as a complement to deliberation by incorporating it into Crowley and King's (2018) call for critical inquiry. With an instructional design framework that questions systems of power and oppression, incorporates the perspectives of the oppressed and marginalized, and asks students to take tangible steps toward redressing the injustices they study, Crowley and King have outlined an inquiry-based program for a justice-oriented democratic education. However, whereas the IDM looks to deliberation as a means for organizing classroom discussions of controversial issues (Grant et al., 2017; Swan et al., 2018), we argue that a Critical Inquiry Design Model (CIDM) consonant with Crowley and King's (2018) call for justice-oriented inquiry should use civic litigation. In a just democracy, citizens must be just as prepared to work through sobering allegations of wrongdoing as they are to address stubborn disagreements over policies, but such preparedness is impossible if their civic education never asks them to study and practice the rhetoric of accusation and defense as a dimension of democratic discussion.

Rhetorical methods

Our case for civic litigation has four parts, all of which are grounded in rhetorical theory and criticism, the study of persuasive discourse (Bizzell & Herzberg, 1990; E. Black, 1965; Conley, 1990; McKerrow, 1989; Neuendorf, 2017). First, we offer a theoretical account of the distinction between civic deliberation and civic litigation that explains how the public discussion of injustice achieves democracy in parallel with, not through, deliberation. This theoretical discussion brings the concept of forensic rhetoric into conversation with deliberative democracy using the theory and history of forensic speech to define civic litigation as a kind of public discussion that: addresses issues of justice above all else, traffics in accusations and defenses, and pursues a collective discussion of responsibility in order to instantiate democracy (Benoit, 1995; Campbell, 1989; Enos, 1990; O'Connell, 2017; Ryan, 1982, 1988; Villadsen, 2012; Ware & Linkugel, 1973; Wohl, 2010).

We then turn from rhetorical theory to criticism, applying this distinction in two close readings. In the first reading we consider a historical episode commonly taught as part of citizenship education in the United States: the exchange of public letters between Martin Luther King Jr. and eight White Alabama clergy during the Southern Christian Leadership's campaign to desegregate Birmingham in the spring of 1963. Through a textual analysis of King's "Letter From Birmingham Jail" and the White clergy's "A Call for Unity," we find

that the crux of their disagreement was not over the merits of desegregation itself, as both sides agreed that it ought to happen somehow (Bass, 2001; Watson, 2004), but over two competing visions for what kind of democratic discussion would best facilitate integration, civic deliberation or litigation. Contrary to the common depiction of King's letter in civic education curricula and elsewhere, we find that it was not a triumph of deliberation, but a triumph over it.

For the second close reading, we consider three practitioner lessons that utilize the IDM blueprint in order to ask what kinds of controversies are open for civic litigation. The first practitioner article concerned voter ID laws and asked students to deliberate over its subject (Seitz et al., 2018). By re-approaching this lesson with the understanding that civic deliberation was a decision rather than an inevitability, we find that it highlights how asking students to deliberate can have unintended consequences when there are competing versions of a controversial public issue in the public sphere, one that is deliberative and one that is litigative. The second and third practitioner pieces are both from C3Teachers.org, a website created and maintained under the guidance of U.S. social studies scholars John Lee, Kathy Swan, and S.G. Grant to share the IDM and vetted inquiries. The second lesson concerns the problem of child labor in the banana industry and illustrates the trouble with asking students to deliberate over a matter of injustice. The third lesson also concerns children's rights but used inquiry to frame the exploitation of children around the world as an issue that requires civic litigation over what it means to take responsibility for such a widespread injustice. Examining these three lessons offers insights into how deliberation can sometimes mishandle lessons about injustice and how civic litigation is often better suited for teaching lessons that focus on issues of injustice.

Our last section of analysis returns to rhetorical theory, using it to posit a CIDM by recommending civic litigation as the means by which students might communicate conclusions in Crowley and King's (2018) formula for critical inquiry. Whereas a typical IDM is centered around a compelling question that addresses a public problem, provides sources from varied perspectives, communicates conclusions via civic deliberation, and asks students to take informed action that is participatory, a CIDM is centered around a compelling question that critiques a system of power and oppression, provides sources that specifically include the perspectives of marginalized and oppressed people, communicates conclusions via civic litigation, and asks students to take action toward alleviating injustice.

Civic litigation defined

Two bodies of theoretical scholarship converge on the question of what should be expected of civic discussion in a democracy, one political and the other rhetorical. Thus far, only the political theory of civic discourse has received sustained engagement from scholars of civic education. As a result, democratic deliberation has been adopted as the preferred ideal for discussion in a democracy by the mainstream of scholarship on democratic education. Yet, deliberation presents difficulties as the default paradigm for democratic dialogue because it is largely agnostic on the question of how existing power relations influence the potential for genuinely equal decision-making discussions (Gibson, 2020a). It can sustain or even magnify existing inequalities as it crowds out other forms of civic discourse that are not readily accepted by a majority of citizens but that bring those very inequalities to light (Sanders, 1997). Deliberation also presents difficulties as the default paradigm for civic

discussion in a democracy because it was never meant to be the only or even the predominant means by which citizens in a democracy discuss their problems.

An exhaustive history of the theorization of deliberative democracy is beyond the scope of this article, but we offer a general synopsis of its history and tenets. The term “deliberative democracy” was coined by Bessette (1980) in a retrospective essay anticipating the bicentennial of the U.S. Constitution. Like Aristotle (ca. 330 B.C.E./2007), he posited that only some political speech qualifies as deliberation, but not by reference to the other species of rhetoric. Instead, Bessette (1994) distinguished between civic speech that was careful and well-reasoned enough to qualify as deliberation and speech that was not. For Bessette, such prudential discourse was achieved in the U.S. Congress, where the will of the people—democracy—was improved via legislative discussion—deliberation—to create a kind of governance he called deliberative democracy.

Since Bessette introduced the term, political theorists have subsequently embraced the position that the general public can engage in deliberation, not just legislators. Thus, they use the term democratic deliberation to describe discussion that hews to certain norms while addressing a public problem rather than what happens to popular ideas when they are taken up by the Congress (Childers, 2009; Gutmann & Thompson, 2004; Neblo, 2015). Although accounts of what sort of civic discourse constitutes democratic deliberation are as numerous as those that theorize it, a few normative expectations tend to hold, specifically that a deliberation should be inclusive, fair, and reasoned (Hicks, 2002).

For political theorists and scholars of citizenship education, the deliberative model has tended to focus on the aspects of social problems that can be addressed through policy-making. For example, Parker and Zumeta (1999) have recommended teaching deliberative democracy through public policy deliberation, a model for discussion based on the kind of dialogue that unfolds in legislative settings such as city councils or the congress. Likewise, Hess (2009) has argued that strong civic discussions must be grounded in the disagreements that arise over controversial public issues. In both cases, this means a civic discussion in which participants align themselves either for or against a policy.

Both Hess (2009) and Parker (2003) have acknowledged the value of discussions over matters of justice that occur outside a deliberative framework (Parker & Hess, 2001). In particular, they have turned to Kohlberg’s (1981) conceptualization of justice as a set of hierarchical attitudes that are developed in people through educational discussions and other activities. However, these discussions of justice are meant to be separate from the political work of deliberating. Rather than shaping deliberative discussions by imposing a set of discursive norms, justice in this sense—as a set of attitudes held internally by individuals—is brought to bear on deliberation as those attitudes influence the positions participants take and the reasons they give for taking them. The internalized kind of justice Kohlberg theorized is an important dimension of any civic discussion, including deliberation as Hess and Parker have asserted, but a deliberation sensitive to its participants’ concerns about justice derives only its content, not its form, from the pursuit of justice. In the same way a deliberation or debate over a controversial public issue derives their educative value from addressing policy problems as they are in the world, so too do discussions over matters of justice. However, discussions of justice do not perform their democratic purpose when they are forced into a deliberative mold; they require their own discursive framework.

Luckily, deliberation has a complementary, justice-oriented framework for democratic discussion with an equal claim on the history of democracy. In Athens, the power all citizens had to bring suit against unjust laws and the legislators who made them was considered the *sine qua non* of its democracy (Cammack, 2013; Hansen, 1991; Harris, 2013; Ober, 1989). For Athenians, democracy was just as much the product of the people's courts as their legislature (Ober, 1989). However, in court, Athenians did not engage in deliberative discussions. Instead, they practiced a form of civic litigation Aristotle called forensic rhetoric, which involved arguments of accusation and defense (Aristotle, ca. 330 B.C.E./1926; Strauss, 1964). This civic rhetoric of litigation belies the contemporary assertion that democratic discussion should primarily aspire to deliberation, and it offers an alternative model for discussion both in the classroom and beyond.

Social studies educators could benefit from applying Aristotle's idea to their classrooms, not out of an obligation to democracy's theoretical tradition, but because his distinction between the rhetoric of the assembly and the court can help align their pedagogical goals and practices. In her critical legal scholarship, Matsuda (1987) has recommended that experts in the law look to the words of marginalized and oppressed peoples for normative guidance. In a just democracy, all people would need to do so, not just legal professionals. Members of the public need a civic rhetoric for democratic discussion that seeks justice. The rhetorical culture of the Athenian court system, one that involved its citizens more deeply than does the U.S. judicial system (Osbourne, 1985) and that its people regarded as essential to their role in government, offers a starting point for adapting such a framework (Sandel, 2009). Thus, we offer a counterpart to deliberative pedagogy by borrowing Aristotle's conception of civic litigation and filtering it through a process of discursive norm-making akin to what has been achieved by political theorists of deliberative democracy. It has three parts.

First, a civic litigation turns on a question of injustice. It might take up practical or policymaking issues, but it does not let pragmatic concerns divert its participants from their collective effort to determine the nature and scope of the injustice under consideration. Second, rather than pro and con arguments, a civic litigation consists of accusations and defenses because the issue at the center of a civic litigation is the allegation that someone or some group has committed an injustice. In a civic litigation, policies or other instruments of oppression cannot be estranged from the people who implemented them. Third, rather than pursuing democracy by making government representative, a civic litigation makes it socially responsible. Whatever the results of a civic litigation may be, it always answers the question of what should be done about the injustice. Finally, as in Athens, civic deliberation and civic litigation can coexist but neither can substitute for the other if a community desires to be both democratic and just.

King's "Letter From Birmingham Jail" as civic litigation

To demonstrate the applicability of civic litigation when social studies lessons address historical examples, we turn to Martin Luther King Jr.'s "Letter From Birmingham Jail." Not only does the exchange of letters between King and the clergy neatly demonstrate Aristotle's distinction between deliberation and civic litigation, but its prominent place in the history of political thought means it already has an interpretive tradition that includes

scholarship in both social studies education and rhetoric. We briefly attend to that tradition before analyzing the text.

In a literary analysis of how six popular history textbooks present Martin Luther King Jr., Derrick Aldridge (2006) identified three distortionary master narratives: King was a messiah, he embodied the civil rights movement, and he was a political moderate. According to Aldridge, this presentist representation of King resulted from the selection of his most moderate political writings such as “Letter From Birmingham Jail,” which many textbooks contrast with writings from figures like Malcolm X. Woodson (2016) has shown such representations can be harmful as civic education because messianic narratives constrained the civic agency of Black youth, but a closer look at King’s “Letter From Birmingham Jail” reveals that the problem of portraying him as a moderate goes beyond the selection specific speeches to how they are interpreted for students.

King’s “Letter From Birmingham Jail,” was written in response to an open letter by eight White Alabama clergy entitled “A Call to Unity.” Rhetorical critic Martha Solomon Watson (2004) insisted that King’s letter cannot be appreciated without carefully examining “A Call to Unity” as part of its context. Parker (2003) has interpreted “Letter From Birmingham Jail” as part of King’s prophetic and revolutionary conception of citizenship. For Parker, the radical nature of King’s letter resided in its use of Kohlberg’s (1981) highest level of moral reasoning in which universal principles are applied to real world situations through a process of perspective-taking Kohlberg called ideal reciprocity. As a result, the dispute between King and the eight clergy who disparaged his efforts in Birmingham involved a crucial distinction between King’s higher, and the clergy’s lower, conception of justice.

By taking Watson’s (2004) recommendation to read King’s letter as a response to the clergy, we agree with Parker’s (2003) assessment that it is a revolutionary, not moderate text. However, the key difference between the two letters is not just their conflicting conceptions of justice, but also their conflicting conceptions of democracy. The fundamental difference between King and the clergy was not the immorality of segregation (Bass, 2001) but rather what kind of civic discussion was required to achieve integration. Whereas the clergy argued for and in the mode of deliberation, King responded with civic litigation.

“A Call for Unity” was an attempt to enforce deliberative norms. Against “unwise and untimely” demonstrations, the clergy urged “negotiations among local leaders” who had “knowledge and experience” with “the local situation” (Bass, 2001, pp. 233–234; Carpenter et al., 1963). In other words, the clergy preferred to see Birmingham’s issues addressed through legislative-style discussions in the city council rather than with marches and other forms of political expression that they thought certain to result in violence. For the clergy, democratic politics required “responsibility and proper channels” to achieve legitimate, representative government (Bass, 2001, p. 235; Carpenter et al., 1963).

Although King responded to the clergy’s call as if it had been a personal attack, their letter only implicitly characterized him as an outsider, and King’s status in Birmingham was not their main point in the way his response suggested. Consistent with their gradualist position, the clergy called for “restraint,” from everyone in Birmingham, but specifically from the city’s Black community, stating: “We,” the clergy, “strongly urge our own Negro [sic] community to withdraw support from these demonstrations, and to unite locally in working peacefully for a better Birmingham” (Bass, 2001, pp. 235–236). King’s actions constituted the unstated example in “A Call for Unity.” However, the ultimate purpose of the letter was not to prosecute King but to dissuade Black Birminghamians against adopting

his political tactics and instead committing themselves to a “negotiation” (Bass, 2001; Carpenter et al., 1963).

The clergy’s letter expressed a desire for fair, inclusive, and reasoned deliberation (Hicks, 2002) on the premise that it could resolve the problem of race relations in Birmingham. Even anticipating the problem that deliberations might be marred by conditions of injustice, the clergy insisted that: “When rights are consistently denied, a cause should be pressed in the courts and in negotiations among local leaders, and not in the streets” (Bass, 2001, p. 236; Carpenter et al., 1963). In other words, litigative discussion could benefit democracy so long as it was kept inside the courthouse, leaving citizens to approach their role in civic life along deliberative lines alone.

Overall, the clergy made their argument in a way consistent with the deliberative norms they endorsed. “A Call for Unity” addressed the crisis in Birmingham that spring by engaging a pro and con argument over whether Black Birminghamians should protest. As a result, the letter sidestepped the question of who was responsible for Black oppression in Birmingham and fell back on the assumption that civic tranquility, as Watson (2004) noted, is most advantageous for everyone, even a Black populace for whom tranquility would mean accepting life largely as it was in the most segregated city in the United States.

King could have accepted deliberation as the framework for his response to the clergy by appealing to Black Birminghamians to join his protest despite the clergy’s admonitions, but instead, he addressed the clergy directly by confronting their veiled criticism of his activism (Fulkerson, 2004; Leff & Utley, 2004). Thus, the begging of M. L. King’s (1963/2010) letter reads: “While confined here in Birmingham city jail, I came across your recent statement calling my present activities ‘unwise’ and ‘untimely.’ Seldom do I pause to answer criticism of my work and ideas” (p. 85). From the first two sentences of “Letter From Birmingham Jail,” King set aside the deliberative argument over whether the city’s Black citizens ought to join him in protest. Instead, King took aim at the clergy’s implicit accusation that the protests he led were the real danger Birmingham’s Black residents needed to unify against. Thus, in contrast to how “A Call for Unity” advocated for and in the argumentative form of deliberation, “Letter From Birmingham Jail” advocated for and in the argumentative form of civic litigation.

Modeled to a degree on Plato’s *Apology*, “Letter From Birmingham Jail” has long been recognized as a speech of defense (Bosmajian, 1967). However, it is more accurately described as civic litigation because King engages in both defense and accusation (Henry, 1988). Just as “A Call to Unity” is simultaneously an argument for negotiation and against protest, the first half of King’s letter is a defense of himself, the Southern Christian Leadership Conference (SCLC), and the Civil Rights Movement. The second half of the letter is an accusation against the clergy, the White church, and White moderate Americans. By choosing to defend himself against the charge that his tactics were ill-conceived, King took the opportunity to explain and defend those tactics. Moreover, King’s decision to frame his letter around the question of whether his politics were responsible also opened space to question the clergy’s vision of civic action and whether it aligned with their stated goals for an equal Birmingham.

In both the case of his defense and his accusation, King made justice the stakes of the dispute. King began by defending his actions and the actions of those who joined him in the Birmingham campaign. For example, after explaining that he had been invited to the city by an affiliate organization of the SCLC, he asserted injustice as the core justification for the

protests and his participation. Referring to segregation and attendant forms of racial repression in Birmingham, M. L. King (1963/2010) explained: "I am in Birmingham because injustice is here" (p. 86). Against the clergy's assertion that Birminghamians should come together to address their city's problems without interference from outsiders, King argued that issues of injustice are not bound by place and neither is one's obligation to redress them. "Injustice anywhere," he famously declared, "is a threat to justice everywhere" (M. L. King, 1963/2010, p. 87).

King's emphasis on justice distinguished both his political actions and his understanding of conditions in Birmingham. "You [the clergy] deplore the demonstrations taking place in Birmingham," but, as he continued, "your statement, I am sorry to say, fails to express a similar concern for the conditions that brought about the demonstrations" (M. L. King, 1963/2010, p. 87). King both litigated the events that led Birmingham to a political crisis and contrasted his effort to do so with the clergy's evasion of the past in their embrace of a forward-looking deliberation.

In his emphasis on justice and decision to respond in great detail to the portion of the clergy's letter that implicitly critiqued him, King set the rhetorical stage to turn accusation back on the clergy. After concluding his defense, King transitioned his letter by saying, "I must make two honest confessions to you, my Christian and Jewish brothers." The first was that, "I have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Council or the Klu Klux Klanner, but the white moderate who is more devoted to 'order' than to justice." The second was that, "I have been so greatly disappointed with the white church and its leadership (M. L. King, 1963/2010, p. 96)." By responding to the clergy's letter as if accusation had been its intended thesis, King was able to present his indictment as the ironic result of a search for responsibility the clergy had themselves initiated.

Here, King's choice to argue in the form of civic litigation converges with his vision for democracy. In both the case of the White moderate and the White church, it was their vision of democracy as civic deliberation that made them responsible for continued segregation. For White moderates, their devotion to order in the form of decision making via deliberative discussion made them unable to accept protest as necessary. Deliberation meant waiting on yet another court case or for a discussion in which Birmingham's segregationists would come around of their own accord, and as M. L. King (1963/2010) said, "This 'Wait' has almost always meant 'Never'" (p. 91).

King argued that the selective comfort of the White church, with democracy as merely representational and the gospels as silent on social issues, abdicated their obligation to enact moral leadership. Saying that the church was acting as a passive "thermometer" rather than an active "thermostat," King noted how White preachers were afraid to turn accusation on their White congregations and communities no matter how unjustly their fellow citizens were treated (M. L. King, 1963/2010, p. 104). According to King, the clergy's call for deliberation was not an attempt to embrace the hard work of democracy but rather a bid to use the norms of deliberation to avoid it.

In *Controversy in the Classroom* and elsewhere, Hess (2009) stressed that an effective civic education must challenge students to address the real and difficult controversies that vex political life outside the school. These two letters with opposing visions for the pursuit of democracy in Birmingham offer just such a dispute at the heart of the U.S. social studies curriculum. However, the controversy alive in the exchange between King and the clergy

was not whether Birmingham needed to be desegregated, whether King ought to have been arrested, whether he should be considered a moderate, or even how best to define justice, but whether a democratic society, committed to deliberation to the exclusion of civic litigation, could become just. For King, it could not. While his argument with the clergy is worth teaching as history, it also suggests that contemporary civic education pedagogy is missing a critical ingredient if it offers no alternative when deliberating delays difficult, but necessary discussions of injustice.

Civic litigation and the discussion of critically authentic issues

Below, our examinations of three practitioner pieces all using the IDM show that King's experience in Birmingham remains relevant for students today. Even so, for teachers to use civic litigation to organize classroom discussions they must have some means for deciding when it is appropriate. Scholars of social studies education have been grappling with the problem of how to determine what makes a controversy suitable for discussion for decades (Hahn, 1991; Johnson & Johnson, 1979; Pace, 2021), but when they have considered the relationship between the openness of a controversy and the kind of discussion that should be used to address it, they have typically imagined a deliberation (Hess, 2008; Ho et al., 2017).

By looking across this scholarship, Journell (2017) identified four justificatory frames that have been developed to clarify when an issue is open for discussion. The first is the behavioral criterion, which states that a controversy is open so long as groups of people express opposing views on it (Bailey, 1971). The second is the epistemic criterion, which holds that it must be possible to take at least two distinct, but also rational, positions on a controversy for it to warrant teaching (Dearden, 1981; Hand, 2008). The third criterion uses political theory to distinguish between public and private values (Rawls, 1993). For this framework, rational disagreements about public life can be the basis for classroom discussion so long as they do not attempt to override public rights through the imposition of private values (Gutmann, 1999). The fourth is the politically authentic criterion. Its authors, Hess and McAvoy (2015), have argued that an issue should be considered open when it "has traction in the public sphere" (p. 168).

None of the four criteria fit civic litigation. The behavioral criterion functionally permits the discussion of anything in the classroom and thus offers little guidance for civic litigation or deliberation. The epistemic criterion's demand for rationality is troubling for civic litigation because labeling certain political speech as insufficiently rational to contribute anything of value to a democratic discussion has been put to repressive ends (Gibson, 2020a; Mouffe, 2000; Valdez, 2001) in contexts where discussions of injustice have been declared unfit for deliberation (Sanders, 1997). While the epistemic criteria can be useful for ruling out certain positions that are unjustifiable because they lack an evidentiary basis, if it does so only to secure a logically rigorous deliberation focused on the substance of the issue at hand in the way Journell (2017) has described, it does not offer a basis for engaging a litigatory exchange of accusations and defenses. Likewise, the political criterion focuses on the nature of the issue itself as either public or private and requires that educational discussions address public issues (Gutmann, 1999).

However, civic litigation describes a mode of democratic dialogue that does not fit neatly into the distinction between public and private. Civic litigations address issues of public

import like racial justice, but through discussions that ask individual citizens to confront the consequences of their own words and actions—as well as others’—to uncover and address the root causes of injustice in phenomena like White privilege. By making responsibility an objective of a democratic discussion, civic litigation broaches questions of public values alongside private morality, not in lieu of them.

Finally, like the others, the politically authentic criterion was not designed for civic litigation, but it does not preclude it. According to Hess and McAvoy (2015), an issue can achieve political authenticity “when it has traction in the public sphere,” a condition met when it appears “on ballots, in courts, within political platforms, in legislative chambers, and as part of political movements” (pp. 168–169). Contrary to the behavioral criterion, the politically authentic criterion does impose limits on the topics for classroom discussion, but it does not do so by deciding what counts as rational, and it does not presume that publicness and privateness are mutually exclusive conditions for an issue. The result is a sensible standard for deliberative issues in which the ongoing discussion of a topic in places like electoral politics ensures that there will be policy proposals whose pros and cons can be deliberated. Yet, as King’s letter reminds us, some issues of injustice are only prolonged when a deliberation would sidestep the question of who is responsible for it. Thus, in order to serve as a means for determining when civic litigation is called for, the politically authentic criterion must be modified. When an issue has traction in the public sphere it is politically authentic, and social studies teachers are justified in asking their students to deliberate it. However, when an issue has traction in a counterpublic sphere where it becomes controversial for members of a marginalized or oppressed group, it becomes *critically authentic* and teachers may consider civic litigation as a frame for class discussion to avoid enacting the repressive form of deliberation King decried.

A theory of the public first emerged in the early twentieth century in a debate between Lippmann (1925) and Dewey (1927) in which Dewey defined a democratic public as the result of citizens perceiving themselves as stakeholders in events that do not directly involve them (Schudson, 2008; Whipple, 2005). In the middle of the twentieth century, Habermas (1989) put communication at the center of publics formation by examining how the circulation of periodicals and the discussion of their contents in eighteenth century coffee-houses gave rise to civic communities in Europe. Hess and McAvoy’s (2015) rule that a controversy becomes open for class discussion when it circulates in political discourse aligned with Habermas’s theory of the public, but the public sphere is not as unified as Habermas’s initial work suggested.

Near the end of the twentieth century, Fraser (1990) argued that the representation of what Habermas called a bourgeoisie public sphere as *the* public does ideological work that discounts “a host of competing counterpublics,” many of which arise from the circulation of discourse among subaltern groups (p. 61). In agreement, Warner (2002) stressed how people’s participation in publics always involves “struggles . . . over the conditions that bring them together as a public” (p. 12). How, then, can one tell a counterpublic from the public? Asen (2000) has recommended looking to how those who take part in a counterpublic “set themselves against wider publics” in what they say and how they say it (p. 437). On this basis, scholars have studied a host of counterpublics, from organizations like ACT-UP, to the Arab-American Press, to protests against Breast Cancer Awareness Month (Asen & Brouwer, 2001; Brouwer, 2005; Chávez, 2011; Dunn, 2010; Kaufer & Al-Malki, 2009; Pezzullo, 2003; Waisanen, 2012). Thus, when a group that positions itself as

against a wider public also takes up an issue as a matter of injustice it becomes critically authentic, and educators may invite their students to take part in a civic litigation in which accusations and defenses are employed, compared, and evaluated in order to determine where responsibility lies for an injustice and what should be done to address it. Distinguishing between controversies that are open to deliberation and civic litigation is not just a more nuanced application of public theory to the facilitation of classroom discussion (Eberly, 1999), but it can also improve the role of argument in civic education (Eberly, 2000). Social studies educators can draw on critical inquiry (Conrad, 2020) and civic litigation as theoretical approaches to guide their practice, make responsive teaching decisions (e.g., whose perspectives are centered in current events), and design or choose inquiry questions and lessons. To explain the latter topic, we consider three IDM examples.

The unintended consequences of deliberating over voter identification

Educators can unwittingly undermine their ability to address issues of injustice with students when deliberation is the default, and often only, form of classroom discussion from which to choose. In some cases, deliberation can serve to supplant a sorely needed conversation about justice when teachers employ deliberation in an effort to make a lesson nonpartisan. Take for example, an IDM unit on voter identification which one of us coauthored.

Voter identification laws participate in a repressive history (Keyssar, 2009), exploit racist attitudes among Whites (Banks & Hicks, 2016), and disproportionately burden minoritized voters (Barreto et al., 2019; Grimmer et al., 2018; Hajnal et al., 2018, 2017; Mycoff et al., 2009). Although demonstrably antidemocratic, voter identification laws are also demonstrably controversial. Since the U.S. Supreme Court ruled that states could require photo identification for citizens to vote in *Crawford v. Marion County Election Board* in 2008, voter identification laws have spread across the country and so has discussion of them (Highton, 2017).

In this lesson published in a prominent practitioner journal for social studies educators, Seitz et al. (2018) proposed teaching the voter identification controversy through deliberation, using the justification that the *C3 Framework* recommends. The authors set the stage with exposition about the Republican party's efforts to pass and strengthen voter identification laws at the state level and then summarized both the Republican and Democratic party lines on the issue: "Many Republicans argue that these laws will safeguard democracy by preventing voter fraud; however, many Democrats and other political groups say that the underlying purpose of these laws is to suppress the vote of historically marginalized groups." They then posed the question: "Are voter ID laws democratic?" (Seitz et al., 2018, p. 291).

The compelling question of whether voter identification laws are democratic is not itself a pro and con controversy, but the lesson envisioned students taking pro and con stances in a discussion. For example, the lesson provided a worksheet based on the structured academic controversy method (Parker & Hess, 2001) that provides space for comparing the pros and cons of voter identification laws. Additionally, its communicating conclusions and taking informed action steps stressed stances for and against voter identification laws as the primary outcomes of its discussion. In addition to embracing a pro and con argument structure, the lesson also embraced advantageousness as a decision-making framework.

Citing Hess and McAvoy (2015), the lesson envisioned students asking, “what option seems best for society as a whole, given varied views and perspectives?” (Seitz et al., 2018, p. 292). So long as students could articulate their reasons in a way that takes society as a whole into account, their conclusions about voter identification laws were sanctioned by the lesson as contributions to a democratic discussion.

Seitz et al. (2018) also stressed deliberative norms so that the class discussion would teach participatory citizenship. Students were encouraged to suspend their personal judgments as they record and weigh each other’s arguments, and teachers were asked to referee the discussion to ensure that students listen to other opinions, share the floor, and articulate their positions using the evidence provided. In the end, the lesson advised teachers to extend their students’ education beyond the classroom by assigning them to write their representatives, an act meant drive home the relationship between deliberation, representation, and democracy.

However, by embracing deliberation, the lesson distorted the controversy over voter identification laws it initially presents. As the lesson clarifies at its outset, the Republican and Democratic positions pursued entirely separate controversies. Whether states ought to create or strengthen voter identification laws was the Republican version of the controversy, a deliberative policy proposal that invited discussion of its pros and cons. Whether Republicans were arguing in bad faith was the Democratic version of the controversy, a litigative charge against the Republican proposition that would involve arguments of accusation and defense. Ironically, by choosing deliberation as a presumptively nonpartisan framework, the lesson sided with the Republicans and asked students to treat accusation as outside the bounds of democratic politics while they debated whether it should be harder for some of their community members to vote. Worse yet, it flatly ignored the potential implication of the Democrats’ accusation. If Republican representatives are arguing in bad faith, it would be perverse for teachers to advise students to write to them under the pretense of representative democracy. Could a different framing have helped to prevent this misapplication of deliberation?

The behavioral criterion offers no guidance. There was disagreement over voter identification laws and so a class discussion was justified. The epistemic criterion could recommend delegitimizing the Republican position because it lacked credible evidence, but it offers no rationale for instead holding a class discussion over the Democrats’ accusation against them. The political criteria would presumably aim to keep the controversy public, perhaps prescribing a deliberation over whether it would be best to repeal voter identification laws. Finally, the politically authentic criterion would find that voter identification laws had traction in the public sphere as a policy proposal and were thus an appropriate controversy for deliberation.

Looking to counterpublic accounts of the voter identification issue would have offered a different framing for the controversy. Counterpublic discourse is not hard to find in a digital age. Because search engines and social media have made it so accessible, many traditional news publications now include counterpublic views by hiring writers who position themselves as such or inviting freelance writing from those who do. For example, *The Atlantic* ran a series of articles on voter identification laws by Vann R. Newkirk II, a journalist who writes on politics and race and helped found the Seven Scribes project. Newkirk’s (2016, 2017a, 2017b) articles repeatedly charged Republicans with suppressing Black voters and offered evidentiary grounds for considering the accusation. Similarly, an

article by pastors Barber and Wilson-Hartgrove (2016) published in *The Atlantic* around the same time described voter identification laws as an attack on multiethnic democracy and situated them within a long history of racial oppression in the South.

Altogether, the voter ID lesson demonstrated the danger behind assuming that an issue with traction in the public sphere, and also in a counterpublic sphere, can be deliberated in a way that will actually be nonpartisan in practice. It also shows the danger in disregarding the tension between the public and counterpublic framings of an issue. Disagreements over what kind of civic discussion should be used to pursue democracy in a given situation cannot be set aside without the risk of suppressing the discussion of an injustice and who is responsible for it.

The false equivalency of deliberating child labor

In addition to supplanting a discussion of injustice, the deliberative framework for class discussion can also be misapplied so that it incorporates an issue of injustice into a pro and con debate that trivializes it. Deliberation's pro and con structure sometimes results in a form of false equivalency known as "bothsidesism" (Speers & Lewis, 2004) in which a moral wrong is weighed against a practical, often economic, benefit. A C3Teachers.org lesson on child labor and bananas has provided an example.

"What Is the *Real* Cost of Bananas?" was a fifth-grade unit created for the New York State Social Studies Resource Toolkit and was included in the collection of 154 vetted inquiries available at C3Teachers.org. The lesson guided students through an examination of the banana industry that highlights the widespread problem of child labor on banana plantations. Its sources included a report by the International Labor Organization (ILO), a United Nations agency, that estimates 25,000 children work in the banana industry. It also included a Human Rights Watch (HRW) report that found children in Ecuador working in the fields where their labor supplied bananas to companies such as Dole, Del Monte, and Chiquita (C3Teachers.org., 2015b).

Given credible evidence of the exploitation of children for profit, such a lesson would have been justified in holding a civic litigation that asks how this disregard for children's rights has come about, who should be held responsible for it, and what kinds of collective action should be taken to redress the resulting injustice. Instead, "What Is the *Real* Cost of Bananas?" framed a debate over whether the banana industry's labor practices are worth the cheap bananas they provide. Against the ILO and HRW reports, the inquiry presented a Chiquita Corporation webpage as a featured source. The lesson asked the supporting question: "What do corporations in the banana industry contribute to society?" Perhaps most concerning, the inquiry concluded with a summative performance task that asks students to: "Construct an argument (e.g., a detailed outline, poster, or essay) that discusses the real cost of bananas using specific claims and relevant evidence from historical sources while acknowledging competing views," and among the stances that the lesson anticipates students taking were: (1), that "although fair-trade bananas may be a better option for Americans, it should be up to individual consumers, and not the government, to change the practices of the banana industry;" (2) "the practices of the banana industry are harmful to small Latin American farmers, benefit too few people, and exploit children;" and (3) "the practices of the banana industry are actually helpful to child workers who earn money for their families" (C3Teachers.org., 2015b, pp. 1, 2, 5, 8, 9). Thus, rather than assigning a civic

conversation that reinforced the principle that the exploitation of children is always deplorable, the lesson required students to acknowledge the perspective of corporations whose operations benefit from child labor.

In this case, the misapplication of deliberation taught an amoral lesson about democracy as benefiting from a framework for civic conversation in which arguments that devalue the lives of faraway children are legitimated as “competing views.” At the same time, this lesson declined to do the unpleasant work of civic litigation, a kind of democratic conversation that would ask what should be done when American corporations use their overseas operations to sidestep basic legal and ethical norms. Clearly, “What Is the *Real Cost of Bananas?*” could have benefited from reframing its issue as one of injustice rather than advantage, a remedy that could be accomplished by attending to some of the counterpublic voices that have been accusing multinational corporations in South and Central America of exploiting the poor for decades (Cadorette et al., 2004; Chomsky, 1985).

A civic litigation approach to children’s rights

Our article presents a theoretical account of how civic litigation can be used to facilitate discussion, but the absence of a theory has not meant that social studies curricula have been devoid of civic litigation. In contrast with how “What Is the *Real Cost of Bananas?*” asked students to deliberate over the exploitation of children, C3Teachers.org also includes a third-grade inquiry entitled “Do People around the World Care about Children’s Rights?” (C3Teachers.org., 2015a) that framed the same subject using civic litigation.

“Do People around the World Care about Children’s Rights?” used the counterpublic advocacy of Malala Yousafzai as a jumping off point for a litigative discussion. Rather than asking students to consider a deliberative question about whether they favor or oppose some aspect of children’s rights, the unit asked them to examine a litigative controversy—whether they agree with the accusation that people around the world do not care about children’s rights. Much like in “What Is the *Real Cost of Bananas?*,” child labor was specifically identified as a violation of children’s rights, but unlike that unit, students were not taught that a good discussion of the issue requires that they give credence to arguments about the upsides of child labor. The summative performance task for “Do People around the World Care about Children’s Rights?” envisioned students considering the state of children’s freedom from labor and access to education in several places around the world alongside efforts to improve those conditions. The students then used the examples to form an opinion of the global effort to uphold children’s rights. Altogether, the unit taught about children’s rights and child labor just like “What Is the *Real Cost of Bananas?*” but by shifting from a pro and con deliberation to a civic litigation between an accusation and its defense, “Do People around the World Care about Children’s Rights?” invited an argumentative discussion of a live controversy about child labor without asking students to take or otherwise legitimate the unethical position that it should be permitted.

Throughout *The Public and Its Problems*, Dewey (1927) discussed the challenge of helping the public find itself. That is, how to foster processes whereby individuals come to see themselves as part of a community and then translate that sense of belonging into political participation. Thus, for Dewey, “the problem of the public” was “the essential need” for “the improvement of the methods and conditions of debate, discussion, and persuasion,” an undertaking which “depends essentially upon freeing and perfecting the processes

of inquiry” (p. 208). This stance means developing a theory of classroom discussion that understands inquiries about injustice as more than topically distinct from others but also involving a choice between communicative frameworks. It means looking to places where deliberation does not fit and considering its alternatives. In addition to a competitive debate framework or an indirectly argumentative means of storytelling, civic litigation offers a structure for arguing about an injustice as a public problem when an issue has critical authenticity, but what instructional design principles does it entail?

Civic litigation as part of a critical inquiry design model

Recognizing civic litigation as an alternative to deliberation has implications for social studies instruction on at least three levels. The first is conceptual. Civic litigation provides social studies teachers with an alternative to deliberation for framing democratic discussion. Whereas a civic deliberation addresses a disagreement over a policy with pro and con arguments, a civic litigation addresses an unresolved injustice through accusation and defense. While civic deliberation encourages participatory democracy in which divergent views on a policy question get represented, civic litigation encourages justice-oriented democracy in which social responsibility is assigned for an injustice. Whereas litigation uses civic discussions to confront injustices directly, deliberation remains neutral on questions of justice and instead seeks to resolve political differences into public policy. [Table 1](#) outlines these basic differences.

Incorporating civic litigation into social studies instruction refigures the prevailing model of the relationship between civic speech and democracy in social education by moving past Bessette’s (1994) supposition that political speech either rises to the level of deliberation or fails to reach it. In that framework, the options for civic speech are deliberation, failed attempts at deliberation, or idiotic discourse which does not involve its participants in the public life of their society (Parker, 2003). Adding civic litigation does not just introduce another option for democratic discussion; it requires that democratic discussion be conceptualized as socially constructed rather than as a universal or neutral practice. If deliberation is not the right way to have a democratic discussion, but one among many ways, then it must be recognized as a choice, not an inevitability, for pursuing inquiry and democratic education.

Choices have costs and benefits. Consider the concept of idiocy (Parker, 2003). On the one hand, civic litigation adds an alternative alongside deliberation for overcoming it. On the other hand, civic litigation suggests a more complicated relationship between deliberation and idiocy. Insisting on deliberation in the face of an injustice only makes sense on the assumption that there is no alternative discourse practice. However, with civic litigation available as a justice-oriented means for holding a democratic discussion, deliberating over an injustice is exposed as an escape from the unpleasant rhetoric of accusation and defense.

Table 1. Civic litigation, a framework for democratic discussion.

	Civic deliberation	Civic litigation
Issue	Policy disagreement	Unresolved injustice
Argument	Pro & con	Accusation & defense
Resolution	Views are represented	Responsibility is assigned

The discussion of how and by whom an injustice was perpetrated and then sustained is often fraught and personal, but no less democratic. When deliberation is used as a means for excusing teachers and students from certain public conversations because they may be unpleasant, it becomes a cause of idiocy, rather than its cure.

Shifting from a dichotomy between deliberation and silence to a schema that includes civic deliberation *and* civic litigation also allows for the recognition of a crucial category of controversies: those over whether an issue should be addressed as a disagreement over policy or the adjudication of an injustice. Such disputes rank among our most entrenched: whether abortion is a criminal act or a medical procedure that should be governed through health policies; whether police violence against Black, Indigenous, and People of Color is part of a broader system of oppression or an unfortunate consequence of enforcing the law; and whether climate change can be addressed as a matter of environmental policy or must be considered a matter of environmental justice. Recognizing civic litigation alongside deliberation unfolds a whole register of controversies that social studies educators must face if they are to offer a deeply democratic education (Hess, 2009).

The second level of implication for incorporating civic litigation into social studies education pertains to the *C3 Framework's* inquiry arc. Crowley and King (2018) have already distinguished between what it means to pursue an *inquiry* and a *critical inquiry*. For them, a critical inquiry addresses a compelling question that explicitly critiques systems of oppression and power (it makes an accusation), incorporates sources and perspectives from oppressed and marginalized groups (it is critically authentic), and calls for informed action where students take tangible steps toward alleviating the injustice they examined (it enacts responsibility). However, Crowley and King have not specified what form of civic discussion would be most appropriate for such an inquiry. The *C3 Framework* usually assumes deliberation, but that risks misidentifying a controversy and undercutting a justice-oriented lesson, as was the case in the “What Is the *Real Cost of Bananas?*” lesson. As a justice-oriented argumentative framework for democratic discussion and inquiry, civic litigation aligns well with the steps and objectives of critical inquiry; therefore, we recommend including it in Dimension 4. See Table 2.

To be sure, civic litigation is not deliberation's only alternative. Black, Indigenous, and People of Color have developed traditions of democratic discussion that differ from deliberation (Hill Collins, 1998). These counterpublics and their discourse practices have

Table 2. Critical inquiry with civic litigation.

C3 framework	Inquiry (National Council for the Social Studies, 2013)	Critical Inquiry (Crowley & King, 2018)
Dimension 1	Teacher asks compelling and supporting questions that address a public problem.	Teacher asks compelling and supporting questions that explicitly critique systems of oppression and power.
Dimension 2	Students apply disciplinary tools and concepts such as historical thinking and geospatial reasoning.	Students apply disciplinary tools and concepts such as historical thinking and geospatial reasoning.
Dimension 3	Students evaluate sources and use evidence	Students evaluate sources that include the perspectives of marginalized and oppressed groups and use evidence.
Dimension 4	Students communicate conclusions via class deliberation (or another task) and take informed action.	Students communicate conclusions via class <i>litigation</i> (or another task) and take informed action that pushes students to take tangible steps toward alleviating the injustice explored in the inquiry.

allowed them to construct, expand, and protect their communities when the larger societal context is oppressive (Busey & Walker, 2017; Fraser, 1990; Johnson, 2019; Sabzalian, 2019; Vickery, 2017; Warner, 2002). Civic litigation does not substitute for specific counterpublic discourse practices like testimonio or counternarration, but it offers a framework for democratic discussion that achieves inquiry without reducing voices from the margins to just another piece of evidence in a policymaking argument.

In her case for a pedagogy of counternarration, Gibson (2020a) identified a crucial problem for pursuing justice-oriented pedagogies in a deliberative context. “Merely assimilating counternarratives into deliberation,” Gibson explained, “does not fundamentally disrupt racialized power hierarchies” because a deliberative framework demands that counternarratives be adapted to the purposes of pragmatic decision-making (p. 17). Much like when the clergy in Birmingham admonished King and the Civil Rights Movement for failing to reflect deliberative expectations for civility, a deliberative pedagogy might disqualify other forms of democratic speech on the assumption that their content could have been delivered in a deliberative form. Not only did King accuse the clergy, but he defended the need for an accusatory form of protest in Birmingham. Alternatively, non-deliberative discourse can get distorted when it is translated into a deliberative framework (Nebl, 2015), as was the case when the voter identification lesson reframed the accusation against those pedaling voter identification as a con argument against its implementation. Gibson (2020a) discussed this problem as it applies to counternarration, but it applies equally well to testimonio or any other resistive or radical discourse practice that might be implemented in the context of a classroom, school, or community with a deliberative political culture.

Civic litigation is a necessary component of *critical inquiry* because it provides a discursive framework that regards the kind of accusatory speech found in many counternarratives and testimonios as vital to democracy (Solórzano & Yosso, 2002) rather than an uncivil threat to it. Although nothing guarantees that a counternarrative, testimonio, or any other resistive text will not be misinterpreted by teachers or students, the existence of civic litigation delegitimizes the insistence that such discourse ought to be reframed as evidence for or against a policy for the purpose of classroom discussion. Instead, a civic litigation insists that such discourse be approached as it is when it indicts an oppressive power structure and those who contribute to and/or benefit from it.

If students are to identify tangible steps that could be taken to address the injustice in a critical inquiry, then they must see injustice as more than a policy-making challenge resolvable through representative democracy. Instead, critical inquiry must embrace a scheme of civic discourse that can set pragmatic considerations aside long enough to map the scope of an injustice and the network of responsibility it entails. Likewise, if discourse practices like testimonio and counternarration are undermined when they are received as deliberation by other means, then they too need a framework for democratic discourse that values the way they elaborate a challenge to dominant narratives through storytelling practices that address questions of justice and responsibility (Spatharas, 2020).

The third level of implication for making civic litigation a dimension of social studies education is practical. With a few changes, the IDM can be modified to create a CIDM, which can be used for planning justice-oriented social studies instruction. In schools where inquiry has never taken root or where justice-oriented social studies pedagogies outside the mainstream deliberative approach have been thoroughly embraced, a CIDM model may

well be ineffectual or superfluous. However, for the large number of classrooms and schools where inquiry and deliberation are standard aspects of social studies education, but justice-oriented instruction is rare or nonexistent, a litigative approach could encourage critical practices (Ball & Cohen, 1999; Cuenca, 2021; Dinkleman & Cuenca, 2020). Social studies educators should be able to reject deliberative framings when they address textbook metanarratives, current events, or social problems in schools and communities. Civic litigation provides a justice-oriented form of inquiry that can be used in lieu of deliberation. Yet even when civic litigation is not enacted in favor of another justice-oriented pedagogy, it can still provide a helpful way of explaining why deliberation would not be appropriate.

To facilitate social studies inquiry, C3Teachers.org has offered an “at a glance” template for creating instructional units. By adding civic litigation to Crowley and King’s (2018) recommendations for critical inquiry, this template can be retrofitted to support critical inquiry. Following Crowley and King’s (2018) recommendations, the compelling question should critique a system of power and oppression, the featured sources should include those that center the perspectives of marginalized and oppressed groups, and the taking responsible action step should respond to the injustice identified in the compelling question. Applying civic litigation as the discursive framework for the inquiry helps to fill-in the connective tissue between the compelling question and the taking action step. Specifically, supporting questions can facilitate a litigative inquiry by examining the nature of the injustice, who bears responsibility for it, and what it would mean to act on that responsibility beyond supporting the passage of legislation. The formative performance task can ask students to synthesize and implicate what they find in sources that feature oppressed and marginalized voices. Also, the argument writing option for the summative performance task should require that students engage in litigative, rather than deliberative, argumentation. Figure 1 uses the CIDM template to revise “What Is the *Real* Cost of Bananas?”

Using the CIDM, teachers can design social studies lessons that address injustices in both their content and form. As this revised lesson demonstrates, challenging students to consider an allegation against a system of power and oppression through the rhetorical forms of accusation and defense creates a classroom discussion in which questions about responsibility and the stakes of injustice take center stage. Democracy in such a classroom includes the difficult, but necessary, discussions of how an injustice came to be, how it is sustained, who bears responsibility for it, and what it would mean to take action to redress a systemic problem. Moreover, inquiry in such a classroom challenges students to synthesize knowledge in an interdisciplinary fashion as they pursue democracy and justice together across the fields of history, political science, and language arts (Levy et al., 2013).

In addition to the practical benefit of retrofitting the IDM template to create a CIDM template with a familiar format, the CIDM also helps teachers adopt existing justice-oriented classroom practices not just as one-off experiments, but within a critical framework for citizenship pedagogy. For example, the Zinn Education Project has frequently embraced classroom trials as a means for addressing historical injustices. Their popular activity, “The People vs. Columbus, et al.” (Bigelow, 2020), offers one version of a summative performance task that could be used in a civic litigation. Likewise, practices such as counternarration and testimonio could be incorporated almost anywhere within the CIDM template or beyond it. Our revised version of “What Is the *Real* Cost of Bananas?” provided a counternarrative as a featured source through interviews conducted by Brown (2013) and through hearing materials from the U.S. Supreme Court

Critical Inquiry Design Model (CIDM) - Based On "IDM At a Glance"					
Compelling Question	The compelling question must pose a critique of a system of oppression and power (Crowley & King, 2018). Such questions bring conditions of injustice to students' attention and challenge them to confront what they mean for themselves, their history, and their society. <i>Example: Does the banana industry exploit children?</i>				
Standards and Practices	Social studies standards will vary by locality. Educators can also cite C3 standards. <i>Example: Explain the effects of increasing economic interdependence on different groups within participating nations (D2.Eco.15.3-5).</i>				
Staging the Question	Staging discussions provide the terms of the accusation by describing the conditions that are said to be or to have been unjust. <i>Example: Discuss forms of child labor from across history (e.g., enslavement, the industrial revolution, human trafficking).</i>				
Supporting Questions					
As with an IDM, the supporting questions for a CIDM should prepare students to eventually answer the compelling question. In the case of a CIDM, supporting questions must address key litigative issues such as: defining the alleged injustice, identifying those who might be responsible for it, and considering the means by which those implicated in the injustice and the broader society in which it occurred can take responsibility for it. <i>Examples: What types of labor are children subjected to on banana plantations? Who controls the working conditions on banana plantations?</i>					
Formative Performance Tasks					
Formative Performance Tasks also serve a similar function for CIDMs as for IDMs. They help prepare students to respond to the compelling question and complete the summative performance task. Led by litigative supporting questions, they allow teachers to evaluate their students' understandings and interpretations of the assigned disciplinary materials and to assess the degree to which they engage with the compelling question as a matter of justice. <i>Example: Drawing on the sources, write a paragraph describing the working conditions on banana plantations that have not been designated fair trade.</i>					
Featured Sources					
Just as with the IDM, each Formative Performance Task should include a small set of disciplinary sources that help students answer the compelling and supporting questions and that challenges them to think rigorously about justice. Sources can be selected for the same purposes as they are in an IDM, but a CIDM would be incomplete without sources that expose students to the perspectives of the marginalized and oppressed people who have suffered the injustice under examination (Crowley and King, 2018). <i>Example: Excerpts of interviews with banana laborers from Urabá (Brown, 2013).</i>					
Summative Performance Task	<table border="1"> <tr> <td>Litigative Argument</td> <td>A CIDM challenges students to compose a response to the compelling question using specific claims, relevant evidence, and justice as a standard of judgment. <i>Example: The class will hold a civic litigation using source evidence to answer the compelling question: Does the banana industry exploit children?</i></td> </tr> <tr> <td>Extension</td> <td>An extension activity can be offered in addition to a summative performance task. <i>Example: Write an essay using specific claims and relevant evidence answering the compelling question..</i></td> </tr> </table>	Litigative Argument	A CIDM challenges students to compose a response to the compelling question using specific claims, relevant evidence, and justice as a standard of judgment. <i>Example: The class will hold a civic litigation using source evidence to answer the compelling question: Does the banana industry exploit children?</i>	Extension	An extension activity can be offered in addition to a summative performance task. <i>Example: Write an essay using specific claims and relevant evidence answering the compelling question..</i>
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Extension	An extension activity can be offered in addition to a summative performance task. <i>Example: Write an essay using specific claims and relevant evidence answering the compelling question..</i>				
Taking Responsible Action	Taking just action means considering and acting on one's own responsibility for an injustice and asking others to do the same (Crowley and King, 2018) <i>Example: Identify activist groups seeking to end child labor and hold multinational companies responsible for their role in it, create an inventory of the tactics they use such as Fairtrade certification and lawsuits (e.g. Nestlé USA, Inc. v. Doe I, Cargill, Inc. v. Doe I), and then choose an action to take in coordination with one of the groups.</i>				

Figure 1. Critical inquiry design model.
 Source: Adapted from Grant et al., 2014.

case, *Nestlé USA, Inc. v. Doe I*. When combined with the charge that students should engage in both spoken and written forms of civic litigation, our revised lesson positioned these counternarratives as more than a compelling anecdote or evidence in a deliberation. Instead, the revised inquiry situates the experiences of exploited agricultural workers as part of an accusation against a system of power and oppression that will

be considered in the context of the litigative discourse norms appropriate for evaluating an injustice.

As a component of critical inquiry delivered through the CIDM, civic litigation offers a conceptual, programmatic, and practical approach to justice-oriented civic education. However, as inquiry, civic litigation does have limits. Just as with deliberation or any other framework for discussion, students engaged in a civic litigation might ignore the evidence in front of them in favor of their preexisting views (Jacobsen et al., 2018; Segall et al., 2018) and scuttle its justice-oriented purpose. Nevertheless, defiant students may be the least of civic litigation's challenges.

Civic litigation as civic education for a democracy in crisis

As polarization (Hawkin et al., 2018) and hyper-partisanship (Mason, 2018; Sunstein, 2017) have given rise to increasingly brazen forms of demagoguery (Merceica, 2020; Roberts-Miller, 2017), many longstanding democratic norms in the United States have broken down (Mann & Ornstein, 2012), including those that pertain to its civic discourse (Keith & Danisch, 2020). Civic educators must now teach students how to function as citizens in a political context with little consensus, not just about the issues, but about what it means to address them democratically (Geller, 2020; Sibbett, 2016). Without a doubt, the proliferation of risible accusations from the highest offices of government to the lowest chatrooms of the Internet has done damage to the democratic culture of the United States. At the same time, however, accusatory rhetoric has brought matters of injustice like police brutality into sharper focus and helped make their urgency clear, not just for those who suffer from them directly. Instead of shunning the rhetoric of accusation, civic educators should teach civic litigation so that their students learn to differentiate between accusations that weaken and strengthen democracy. Those who ply the rhetoric of accusation in their efforts to influence the political future should have to do so in the shadows of its most masterful practitioners such as Martin Luther King, Jr., Henry David Thoreau, and Ida B. Wells, but such shadows must be cast from social studies classrooms.

Civic education should include civic litigation because it is a necessary part of civic life, but fulfilling its promise will be up to those who teach it. Just as deliberation has been misused, it is possible that some educators, supporting oppressive ideologies or caught up in hyper-partisanship, might abuse civic litigation as well. Civic litigation is an evidence-based approach to inquiry. If an educator is willing to misrepresent or withhold the facts of an issue and then assign their students to have a discussion based upon falsehoods, civic litigation can be made harmful in the same way such deception would corrupt deliberation or any other discussion pedagogy. It is also possible that some educators might implement a CIDM and civic litigation in a sincere effort to teach lessons about justice that run counter to any conception of justice supported by critical theory. For example, a lesson that accuses affirmative action programs and those who design and implement them as oppressing White people could arguably take the form of a CIDM and implement a sort of civic litigation if the teacher portrayed White Americans as an oppressed counterpublic. Such a lesson would require the educator to ignore or be unaware of a great deal of important information on the subject, but it is a possibility the CIDM itself cannot prevent.

However, if educators whose political views do not align with those that animate critical theory fulfill civic litigation's requirement to engage counterpublic voices (Asen, 2009), they

may find their teaching invigorated by politically ambiguous phenomena like the growing Black gun rights movement (Carlson, 2012; Chavis, 2020) or the newly contested interpretation of the free exercise clause in the Supreme Court case *Employment Division, Department of Human Resources of the State of Oregon vs. Smith* (Employment Div. v. Smith, 1988). It would be impossible to use civic litigation without a commitment to teaching students to recognize their civic responsibility to foster justice (Sandel, 2009). Nevertheless, civic litigation does envision space for weighing various meanings of justice that abound in civic education (Busey & Walker, 2017; Johnson, 2019; Rodríguez, 2018; Sabzalian, 2019; Stone, 2001; Vickery, 2017). All in all, the lesson that democratic discussion should involve the examination of injustices on their own terms, and not only as facets of policymaking, opens space for teaching issues like strengthening tribal sovereignty or reparations as actionable injustices rather than recalcitrant policy problems.

For teachers who want their classroom to be a thermostat, rather than a thermometer, of political life outside the school, civic litigation's reliance on counterpublic voices and focus on justice helps orient civic discussion in the classroom. Importantly, civic litigation offers a diagnostic language for educators who teach issues in which the nature of the controversy itself is unsettled. In their practitioner piece about teaching the role of racial literacy in political life, L. J. King et al. (2018) turned to the public controversy over U.S. football player Colin Kaepernick's decision to kneel during the national anthem to protest police killings of Black people. Where their proposed lesson called for discussion, L. J. King et al. recommended that teachers present their students with arguments about Kaepernick's actions and ask that they organize them. For such an exercise, civic litigation could help to name versions of the controversy that frame it as a matter of injustice and also to explain the consequences of such framing. The challenge of teaching civic life in a fractious democracy like the United States goes beyond preparing students to confront entrenched or irresolvable disagreements over policies. The disagreements that tear at the fabric of political life in the United States are more like the one Martin Luther King, Jr. faced when he wrote back to the clergy. As an alternative to deliberation, civic litigation makes controversies over where, whether, and how justice can be pursued through democratic discussion an explicit part of civic education and thus offers one way to meet this challenge.

Conclusion

Since its release in the 2013, recommendations for educational practice by scholars of social studies have been dominated by an inquiry architecture rooted in deliberative norms endorsed by the *C3 Framework*. However, this framework can derail educators seeking to attend to questions of justice when they implement it by presenting issues of injustice such as voter suppression or child labor as policy disagreements meriting pro and con arguments instead of unresolved injustices in which responsibility must be assigned before just action can be taken. We therefore recommend reconsidering the role of deliberation's ancient alternative, civic litigation, as a pedagogical practice for pursuing inquiry through democratic discussion. Combined with Crowley and King's (2018) critical inquiry framework, civic litigation provides a discussion paradigm that completes a CIDM. With requirements for questioning systems of power and oppression, incorporating the voices of those who have been marginalized or oppressed, holding a litigative conversation that involves identifying those responsible for the injustice, and then calling for students to take action toward

ensuring that those responsible and society at large can take responsibility for the injustice, the CIDM provides a model for instructional design less likely to miss its justice-oriented mark than deliberation. Additionally, the CIDM is unlikely to incorporate justice-oriented instructional practices like counternarration and testimonio without also challenging the conditions of oppression that make them necessary. Rather than abandon its investments in either democratic education or inquiry, the CIDM offers a means by which the *C3 Framework* could deepen them.

As a means for pursuing a just society, civic litigation is a valuable form of citizenship education in its own right, but as an alternative to deliberative pedagogy, this approach also has a clarifying benefit. When an issue of injustice is shoehorned into a deliberation, the result is not only that the lesson about injustice gets distorted, but that students are taught to expect to deliberate always and everywhere in their civic lives, even when another kind of conversation is sorely needed. As a result, just the awareness of civic litigation as an option for citizenship education can improve deliberative pedagogy by preventing its application beyond the policy controversies it is best suited to address. Moreover, by negating the historically and empirically indefensible view that deliberation is democracy's default discursive framework, civic litigation helps to enlarge citizenship education beyond efforts to teach democracy as we know it, to offer a more expansive vision of what democracy has been in the past and what it could yet become in the future. We should remember that when King said that "injustice anywhere is a threat to justice everywhere," he was challenging the clergy's call for deliberation. King's lesson about the rhetoric of justice is one educators would do well to keep in mind when leading discussion in their classrooms.

Notes

1. Athens was a slave-holding society in which only adult male citizens were allowed to participate in politics (i.e.: deliberate in the assembly or litigate in the courts). Much like the United States, it was an incomplete democracy. We would like to be clear that we are looking to Aristotle and Athens because the Western intellectual tradition, which includes the social studies as well as theories of deliberation, has already grounded its theories of civic life in that space. Although no society should aspire to the restrictive version of democracy Athenians practiced, we find that the misinterpretation of Athens as a purely deliberative democracy offers a lesson about how no society should mistake deliberation for the default framework for civic discussion, as Athenians found civic litigation a vital complement. So long as the social studies draws ideas such as deliberation from the Greek context, we maintain that it must do so mindful of what it leaves behind for good reason, as well as what it may be leaving behind by mistake.
2. In writing an article about justice-oriented citizenship, we think it important to note Aristotle's *Politics* included his theory of climate, which has been employed to maintain White supremacy (Kendi, 2017).

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