“My Child, My Choice”? Justifying Mandatory Sex Education in a Liberal Democracy

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Reflecting on the inevitable controversy that follows the introduction of a sex education program, David Archard remarked: “The background fact of moral pluralism is not unique to sex education. But perhaps sex education does display this fact in a particularly dramatic fashion.”¹ This has certainly been true in Ontario, Canada’s largest province, in the last year, as protests flourished following the unveiling of the new Heath and Physical Education Curriculum. The components of the curriculum dealing with human development and sexuality – which had not been updated since 1998 – now include earlier and more comprehensive instruction about puberty and safer sex; critical discussion of the social and emotional risks posed by new technologies (such as cyberbullying and ‘sexting’); more thorough inclusion of LGBT identities; and a thematic thread relating to consent and healthy relationships.² Across the province, hundreds of parents took to the streets, brandishing placards with slogans such as “Math, Not Masturbation,” “Let Kids Be Kids” and “My Child, My Choice.” Many children were also removed from school – some for weeks at a time – and some parents vowed to pull their children out of the public system if the curriculum were not retracted.³ Whereas some parental opposition to new educational initiatives is not uncommon, Archard is correct that sex education seems to provoke uniquely heated public debate, as well as the most virulent kind of resistance.

This type of dissent over the content of public education puts the liberal state in a somewhat uncomfortable position. While the state is empowered to act as parens patriae, and legislation such as Ontario’s Education Act make schooling mandatory for all children, parents hold the prior right to raise their children as they see fit. This intuition is evinced in numerous international documents⁴, as well as the liberal state’s general reluctance to interfere with parental choice. Moreover, the justification for such protection of parents’ authority to educate their children derives, not from the argument that parents’ rights trump children’s rights, but rather from the much more persuasive argument that the two kinds of rights can only be meaningfully defined in relation to each other.⁵ It is in children’s best interests, in other words, for their parents to have ultimate authority over their education and upbringing in the normal scheme of things.

In deference to these morally weighty presuppositions, controversies over education in liberal states are usually resolved through accommodation. Curricula and schooling may be mandatory, but parents who have conscientious objections are granted opt-out clauses to preserve the identity and cultural inheritance they wish to bestow on their children.⁶ Perhaps the paradigm

² It is worth emphasizing that the vast majority of the curriculum is still devoted to physical activity, and the health education component also includes nutrition, safety, and other topics. The content pertaining to sexuality may amount to, on average, about two weeks per school year.
⁵ For a discussion, see Callan (1997), pp. 132-161, and Bridges (1984).
⁶ Sarah Stitzlein (2014) notes that the scope of opt-out clauses is widening across the United States. In New Hampshire, parents can now opt their children out of anything without even providing a rationale (Dell’Antonia 2012). This is clearly a signal that the liberal accommodation of parents’ rights has begun to undermine the very basis of liberal education.
case of this reasoning is the decision reached in *Yoder*. The Amish parents successfully demonstrated that being required to send their children to high school would impede their free exercise of religion, and this would be a potential violation of their children’s liberty as well as their own.7

Yet the limits of parents’ right to opt their children out of particular educational activities must also be drawn, as they were in *Mozert*.8 When articulating the rationale for mandatory liberal education in the face of such challenges, philosophers have typically appealed to children’s interest in autonomy. As Levinson argues, “children are widely recognized to be individuals separate from others, and not mere extensions of their parents or their parents’ interests….It is implausible…that the Mozert parents’ interpretation of parental-autonomy reasons alone could make a sufficient case for parent-dominated paternalistic control over children.”9

In this paper I argue that the standard defense of liberal education by appeal to autonomy is inadequate to motivate a strong defense of comprehensive10 sex education. This is due to the specific nature and aims of sex education, which are not generalizable to the liberal curriculum as a whole. Nonetheless, precisely because of these unique features, the liberal state must be committed to providing mandatory sex education as a matter of justice. I further argue that where the demands of liberal education and parental rights conflict, a robust justification can mitigate the state’s burden to accommodate dissenting parents through opt-outs. Specifically, I believe that Ontario parents should not be allowed to opt their children out of the new curriculum or to avert it by abandoning the public system. I conclude by suggesting some alternative ways of honouring parents’ education rights while delivering a mandatory, and controversial, curriculum.

**Justification**

Thorncliffe Park is an elementary school (ages 4–12) in central Toronto with a largely Muslim student population.11 On the first day of the school year in September 2015, half of the enrolled students—approximately 350—were absent, their parents refusing to take them to any classes as long as the controversial two weeks of sex education was due to occur at some point during the year. Two months later, many students were still absent, and the school had let three teachers go

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7 For a defense of this ruling, see Galston (1995).
8 In this 1987 American Supreme Court case, religious parents who objected to the teaching of other religious perspectives in schools were denied the right to withdraw their children on that basis. Similarly, in the Canadian Supreme Court case of *Drummondville* (2009), Catholic parents objected to the new mandatory course “Ethics and Religious Cultures” which replaced previous denominational teachings in Quebec schools. Speaking for the Court, Justice Marie Deschamps said, “The suggestion that exposing children to a variety of religious facts in itself infringes their religious freedom or that of their parents amounts to a rejection of the multicultural reality of Canadian society and ignores the…government’s obligations with regard to public education” (para 40, quoted in Gereluk (2014), p.332).
9 Levinson (1999), pp. 53-54.
10 By “comprehensive” I refer to an evidence-based, secular curriculum that covers sexual and physical development, contraception, abortion, sexually transmitted infections, gender diversity, and healthy relationships, at a minimum. “Comprehensive” is sometimes used as a synonym for “abstinence-plus” education (in contrast to “abstinence-only”), but researchers and health advocates typically agree that such programs are not nearly comprehensive enough (Collins et al. (2002)).
11 The religious and ethnic identities of the protestors became a recurring theme in the media coverage of the protest and the ensuing public debate about the relationship between sex education and Canadian identity. I will largely bracket this detail except for one comment in the final section of the paper.
due to declined enrollment. Speaking to the media about this precipitous drop in school attendance, the principal, Jeff Crane, said: “It’s disappointing for sure, but we know some of these students are attending Muslim schools and others are being home-schooled so it appears they’re learning.”

The principal’s remarks here crystallize the nature of the challenge to liberal education and illustrate the pressing need to justify such a controversial policy. For if it is just as acceptable for students to be educated elsewhere, in learning environments that are not beholden to the embattled curriculum, then why do we insist on public curriculum at all? Why go to all the trouble of designing a new curriculum, spending taxpayer money on its implementation, and losing political support from dissenting parents, if it is just as well for students not to receive it? There must be a rationale for insisting on a particular form of education that many parents oppose, and this rationale should be communicable in terms that most people understand.

Liberal theory, especially in its political (as opposed to comprehensive) version, stresses the importance of public reason to the legitimacy of the state. Rawls’ vision of an ‘overlapping consensus’ on principles of justice may be idealistic but it is not irrepudiable. Liberal policies are themselves defeated on liberal grounds if they fail to articulate reasons that most members of society could in principle support. To this extent, it is irrelevant whether a sound justification for sex education would have the practical effect of convincing skeptics of the value of the curriculum (although there is reason to be optimistic that some moderate skeptics could be so swayed). Intrinsic to liberalism itself is the commitment to justify state coercion, especially when primary liberties, such as parents’ rights, are compromised in the process.

**Autonomy**

In the substantial literature about liberal education, philosophers have most often defended controversial curriculum by appeal to children’s autonomy. Whether on a perfectionist or anti-perfectionist interpretation, autonomy is so central to the logic of liberalism that virtually no liberal goals – from civil liberties to equality to public reason – would be conceivable without it. Autonomy is a prerequisite for choosing the good life. Philosophers of education have thus correctly focused on the need for education to cultivate students’ autonomy, and argued that much, if not all, of what is valuable in liberal education can be explained by its role in achieving this fundamental need.

Moreover, the autonomy argument helps to pinpoint the ways in which children’s rights and parents’ rights can significantly diverge. In *Mozert*, for example, were it not for children’s nascent or presumptive future autonomy, their parents’ restriction of their exposure to religious points of view would be immaterial from a liberal standpoint. It is only because we think that children have a right to form beliefs and make choices that differ from those of their parents that

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13 Ibid.
14 I am not positive that the principal of Thorncliffe Park believes it is “just as well” for his former students to be educated elsewhere, but I am taking the liberty of interpreting his comments literally in order to advance the argument.
15 E.g. Rawls (1993); Nussbaum (2011).
16 E.g. Raz (1986).
18 E.g. Levinson (1999); Callan (1988); Brighouse (2000).
liberalism sometimes justifies abrogating parental authority. As Harry Brighouse argues, “children should have the opportunity to learn the skills associated with autonomy and ... parental preference is not sufficient reason to deny them that opportunity. In waiving the opportunity, parents would be depriving their children of skills which are of great value in working out how to live well.”¹⁹

When applied to sex education, however, the autonomy defense is only partly successful.²⁰ The content and aims of sex education (or what they ought to be) are relevant to understanding the need for a more elaborate justification. Consider the following three excerpts from the new 2015 Ontario curriculum. In Grade 4 (age 9), students begin to learn about puberty. By the end of this unit students should be able to

describe the physical changes that occur in males and females at puberty (e.g., growth of body hair, breast development, changes in voice and body size, production of body odour, skin changes) and the emotional and social impacts that may result from these changes.²¹

In Grade 8 (age 13), students learn about sexual diversity and should be able to

demonstrate an understanding of gender identity (e.g., male, female, two-spirited, transgender, transsexual, intersex), gender expression, and sexual orientation (e.g., heterosexual, gay, lesbian, bisexual), and identify factors that can help individuals of all identities and orientations develop a positive self-concept.²²

The theme of consent runs through the curriculum. In this excerpt from Grade 1 (age 6), students begin to learn about respect and personal boundaries:

demonstrate the ability to recognize caring behaviours (e.g., listening with respect, giving positive reinforcement, being helpful) and exploitive behaviours (e.g., inappropriate touching, verbal or physical abuse, bullying), and describe the feelings associated with each.²³

Now there is an obvious sense in which all three of these learning areas are about autonomy. Self-rule, to interpret the concept broadly, certainly seems to depend on some basic knowledge about one’s body and the experiences of others. Yet the manner in which autonomy is usually described fails to capture certain crucial aims embedded in these learning objectives. I will outline three features of the autonomy defense to illustrate these limitations.

Liberal Model of Choice

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¹⁹ Brighouse (2000), p. 70
²⁰ Here I will take for granted that comprehensive sex education, of which the new Ontario curriculum is a reasonable example, is a component of liberal education. It shares with other aspects of liberal education a commitment to exposing students to moral complexity and encouraging them to think for themselves.
²² Ibid, p. 216.
²³ Ibid, p. 94.
First, the autonomy defense presumes a standard liberal model of choice. By this I mean that the self is assumed to precede its ends and the fruition of autonomy is thought to be seen in the exercise of choice itself. Levinson, interpreting Rawls, argues that autonomy is “the capacity ‘to form, to revise, and to rationally pursue’ one’s conception of the good.”24 The justification for liberal education, such as the curriculum that was objected to in *Mozert*, is that students must have a reasonable opportunity to choose to abandon their parents’ faith and to critically reflect on their own beliefs. Writing at the dawn of the education for autonomy movement, Alan Harris said: “The more educated a person is the better he is able to make a responsible and informed choice between possible courses of behavior.”25

The idea that education should open up choice has also been used to defend sex education.26 Gutmann describes the view as follows: “Liberals insist that the state offer sex education for the sake of giving teenagers an unbiased choice among ways to live their own lives.”27 Given that cultural mores often foreclose many legitimate sexual choices, education should cultivate the autonomy needed to supersede such conditioning.

The problem with this vision is that it assumes a high degree of autonomy while assuming everything else about the persons in question to be irrelevant. As Michael Sandel famously argued, such scant metaphysical scaffolding may be inadequate to justify liberal principles.28 Just who are these anonymous, interchangeable shells of persons who choose their ends out of sheer self-determination? When applied to young people, however, the reliance on the right to choose, with no particular ends in mind, is particularly misplaced. Choices about sexual behavior depend on more than critical thinking and knowledge of anatomy. They are profoundly intertwined with developing an identity, negotiating community membership, and being part of a family – in short, with conceptions of the good. This communitarian-style critique also reveals how the liberal may be led to underestimate the extent of the conflict between sex education and traditional values. For the devout religious parents who complain of the curriculum’s factual treatment of pre-marital sex, it is not satisfying for their values and worldview to survive their child’s autonomous scrutiny. They feel affronted by having them subjected to scrutiny in the first place.29

Choice is also immaterial to most of the essential content of a sex education curriculum. Consider the portion of the curriculum devoted to puberty, which appears earlier now than in the previous iteration of the curriculum because of scientific evidence showing that children are entering puberty at a younger age. There are cultures in which girls are not taught about menstruation until they begin menstruating, and when they do, it is treated as a shameful secret. Knowing about menstruation does not allow girls to avoid it, delay it, or even conduct themselves differently when it happens. But it can help alleviate unnecessary terror (“Am I bleeding to death?!”) and combat the stigma and shame associated with bodily functions.

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26 E.g., Reiss (1995); Harris (1971).
27 Gutmann (1987), p. 108. This is not Gutmann’s considered opinion, as she ends up defending a moderate liberal position on sex education.
29 Indeed, there is no plausible hope of a ‘neutral’ curriculum when it comes to sexuality, as Archard (2003) argues. This does not exonerate us from trying to justify the one that is chosen, however; on the contrary, respecting parental opposition requires issuing a thoughtful justification that takes their concerns into consideration.
especially women’s. Teaching young boys about wet dreams is analogous. This humane function of sex education seems to be glossed over by reducing the justification to developing the capacity for autonomous action.

The emphasis on choice as a justification for sex education is dangerously misleading in another way as well. Much of what progressive sex education has contributed in recent years is a long-overdue acknowledgement of the unchosen, and hence, morally equal nature of sex and gender identity. When the curriculum calls on students to “demonstrate an understanding of gender identity (e.g., male, female, two-spirited, transgender, transsexual, intersex), gender expression, and sexual orientation,” it is challenging the language of choice that has been perniciously invoked to justify discrimination against sexual minorities.\(^{30}\) I will return to the role of homophobia in the next section, but here I want to signal that choice is precisely the opposite of how this important component of sex education should be framed.

**Future Orientation**

Second, because of its recognition that autonomy in the sense of freely-chosen action is best exemplified in adults, liberal education typically treats children as adults-in-waiting. Joel Feinberg’s influential characterization of children’s “rights-in-trust,” or “anticipatory autonomy rights,” seems to inform this line of thinking.\(^{31}\) Schooling is seen to be a mechanism for cultivating autonomy so that students may pursue the good life at some undetermined time in the future. Levinson takes it as a truism that education for autonomy is future-oriented: “In order for individuals to act autonomously, they must first have to develop the capacity for autonomous action.”\(^{32}\) Callan concurs that “[i]f autonomy is an essential feature of the good life,” then a central question for curriculum and pedagogy is “what would help or hinder students in learning to live autonomous lives.”\(^{33}\) In both cases the presumption is that the autonomous living will follow the learning.

Yet what makes sex education so indispensable for so many – and what also justifies moving some material to younger grades – is that its lessons are essential to students’ lives here and now. And they are essential not only to provide students with the skills or cognitive disposition to make choices; they are essential as a matter of human dignity, health, and, in some cases, even survival.

The menstruating girl who is full of questions and apprehensions, the adolescent with sexual desires he fears are abnormal, and the sexually active teenager who wants to avoid pregnancy, all need immediate validation and information. The same concern for present care motivates the curriculum’s attention to consent and exploitation. There is certainly a sense in which present or future autonomy is violated by the physical or sexual abuse of children. Yet reducing the argument against abuse to this, or justifying an education in consent on these grounds alone, would be a glib bit of philosophizing. Children have basic interests in safety and self-knowledge


that an age-appropriate sex education curriculum can help to protect, irrespective of its implications for future autonomy.\(^{34}\)

**Preparation for Civic Virtues**

A third limitation of the autonomy defense of sex education has to do with its orientation toward civic virtues. Developing students’ own autonomy is of limited value if they do not thereby come to see others as autonomous as well. An education that prepares students to be respectful, reflective, and engaged citizens is of course to be championed on its own merits, as Gutmann (1987) and Callan (1997) persuasively argue. Levinson concurs that “the ideal liberal school…[will] help children develop attitudes of toleration and sympathy toward other people.”\(^{35}\)

Liberal sex education has also been defended along these lines. An unbiased education that stresses sexual autonomy can be shown to lead to more respectful attitudes toward those who make different sexual choices from one’s own, for example. Archard suggests “what it should mean for citizens to be equal is that *inter alia* their sexual lifestyles are equally respected. What it means to grant a citizen liberty is among other things to protect her sexual choices, whatever they might be.”\(^{36}\)

This is true, but arguably quite secondary to the aims of a truly emancipatory sex education, especially regarding sexual diversity. The other-regarding emphasis of the civic virtues approach can make it seem as though sexual minorities are a kind of foreign species outside the classroom, whom the “normal” students must tolerate on pain of being illiberal. It may obscure the fact that there are gay, lesbian, or trans students in the room now, and that every one of the students to whom the curriculum is addressed needs to “develop a positive self-concept.”\(^{37}\) The fact that sexual orientation and gender identity are not choices, as mentioned earlier, reinforces this point. Being autonomous and respecting the autonomy of others do not, on their own, amount to a just society.

**Injustice**

If I am right, the preceding considerations expose some limitations of the standard defense of liberal education as applied to sex education. Children have profound and legitimate interests that are not captured by the notion of autonomy, however elastic.\(^{38}\) At the same time, my critiques provide the seeds of a more fulsome justification by pointing to the curriculum’s immediate health-promoting and humane impacts for children of all ages. Every individual student deserves the information and affirmation that relate to their sexual embodiment, and this can only be accomplished through a mandatory curriculum.

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\(^{34}\) This defense was in fact leveraged during the stand-off in Ontario. Critics objected to teaching children the correct names for genitalia in Grade 1 (age 6). The Government replied that without this vocabulary, children have a hard time identifying or articulating – and hence reporting – different forms of abuse.

\(^{35}\) Levinson (1999), p. 63.

\(^{36}\) Archard (2003), p. 543


\(^{38}\) Brighouse (2000) agrees that education should be guided by children’s interests, and identifies the following two as paramount: “the interest in becoming an autonomous adult; and the interest in equal opportunity” (p. 65). For the reasons already described, I believe sex education is motivated in part by more fundamental interests than these.
Still, such an analysis, even though not strictly moored in the autonomy defense, falls prey to another kind of liberal limitation. I refer to liberalism’s aversion to differentiation – the tendency to reason about individual people as though they were already equal, rather than socially situated in vastly unequal ways. This analytic approach can mask structural injustices and group-specific oppressions, including racism and sexism.\textsuperscript{39} Although liberal theory, at least in its egalitarian form, would not countenance such inequalities, it may inadvertently perpetuate them by treating all subjects of the liberal state as effectively undifferentiated.\textsuperscript{40}

The impacts of state policy on sex education are far from undifferentiated. While I have argued that comprehensive, age-appropriate sex education is likely to confer benefits on all students, it is particularly protective for vulnerable ones – especially girls and sexual minorities. This empirical point has already been gestured at, but here I will add a few facts. First, sex education has always been geared predominantly toward reducing teen pregnancy. (The failure of abstinence-only ‘sex education’ to accomplish these goals is now beyond dispute.)\textsuperscript{41} Insofar as sex education is absent or ineffective at preventing pregnancy, it is young women who bear the overwhelming costs – through physical and emotional labour, intense social stigma, very poor educational and economic prospects, and the indelible marking of their sexuality.\textsuperscript{42} Girls get pregnant; boys don’t.

Second, sexual expression and choice are far from equal-opportunity activities, and it is a virtue of recent sex education curricula, such as Ontario’s, that they attempt to level the proverbial playing field. Before contemporary sex education, young men were still permitted to express (and often gratify) their sexual desires, while young women were, and continued to be, judged for supposed promiscuity as well as prudishness.\textsuperscript{43} Teaching about sexuality with attention to gender inequality helps pave the way for a future in which young women can engage in sexual activity more safely, and without being subjected to vicious double-standards and “slut-shaming.”\textsuperscript{44} Hence the new Ontario curriculum draws attention to “the existence of differing norms for sexual behaviour and different risks associated with unprotected sexual activity”\textsuperscript{45} and asks students to reflect on “social expectations and stereotypes about gender and sexuality.”\textsuperscript{46}

Third, progressive sex education is indispensable in challenging the homophobia that LGBTQ students encounter, unremittingly, in schools across Canada and around the world. A landmark 2011 National Climate Survey on Homophobia, Biphobia, and Transphobia in Canadian Schools

\textsuperscript{39} See Young (1990); Mills (2009).
\textsuperscript{40} In his admirable crafting of the second principle of justice (the Difference Principle), Rawls (1971) talks extensively about the need to organize inequalities such that they are to the advantage of the least well off. But he seems to have only economic welfare in mind, having ruled out contingencies such as race and gender in the Original Position.
\textsuperscript{41} Collins et al. (2002).
\textsuperscript{42} I note that many of these negative outcomes, as well as others, also apply to girls who become pregnant but do not raise their babies, either because of abortion, miscarriage, or adoption. The severity of all these consequences is typically compounded for young women who are already economically disadvantaged or racially marginalized, providing further evidence of the inadequacy of individualist justifications.
\textsuperscript{43} E.g. Frye (2008).
\textsuperscript{44} The World Health Organization explicitly recognizes sex education as a gender issue, and asks: “Who is, or has a right to be, sexual, under what conditions, circumstances and context, and for what purpose or motivation? What does being sexual mean in the context of power differentials, particularly for young women, and how do power differentials manifest themselves as we develop as sexual beings?” (WHO (2002), p. 6).
\textsuperscript{45} Ontario Health and Physical Education Curriculum: Grades 9-12 (2015), p. 73.
\textsuperscript{46} Ibid, p. 104.
revealed that 70% of all participating students reported hearing homophobic language in school every day (and almost 10% heard them from teachers at least weekly); more than one fifth of LGBTQ students were physically harassed or assaulted due to their sexual orientation; and the suicide attempt rate for gay youth was three times higher than that for heterosexual youth.\textsuperscript{47} Significantly, however, the researchers found that “[i]n schools that have made efforts to introduce… some LGBTQ-inclusive curriculum, the climate is significantly more positive for sexual and gender minority students.”\textsuperscript{48} This is not so much because the curriculum promotes autonomy or toleration, as per the standard liberal approach, but because it normalizes identities that are otherwise tremendously marginalized, as the new Ontario sex education curriculum attempts to do.

Other evidence of the differential impacts of sex education could easily be generated. My purpose is not to dwell on them, but rather to stress that the education system stands to drastically alleviate, or silently perpetuate, gender- and sexuality-based oppression. As a matter of social justice it must commit itself to the former. Comprehensive sex education of the type that Ontario just introduced is known to facilitate this progress. This means that there would be a powerful a priori justification for sex education, even if it had no impact on students’ autonomy. Of course, a perfectly successful autonomy-based education would go far in addressing many of the ills I’ve just enumerated, such as unintended pregnancy and sexual harassment. But it is naïve to speak of educating for autonomy as though all students are equally positioned to assert such a capacity, to make empowered sexual choices that will be respected by their peers, for example. Paying attention to systemic injustice reveals the cracks in the individualistic assumptions that underlie the autonomy defense.

Applying this lens also makes it harder for liberals to defend the compromise approach to parental dissent. Because of the primacy of parental rights, and liberalism’s own commitment to non-interference and pluralism, it is customary to advance liberal education with escape hatches for “conscientious objectors.” Often, however, the “conscience” of protesting parents – usually expressed in terms of religious belief – is nothing more than the bigotry that the curriculum seeks to stem in the first place.

In the protests against Ontario’s new curriculum, prejudice against sexual minorities was ubiquitous. Here is an excerpt from an interview between journalist Nicholas Hune-Brown and parent Jotvinder Sodhi:

“Let’s say my son likes pink,” he remarked. “You are saying, ‘Oh, you like pink?’ Then you’re slowly moving toward, ‘Oh, you may be a girl now.’” I told him that seemed like a bit of a jump. “It’s not a jump. It’s not a jump!” he said, his voice rising. “You have books in classrooms that have two mothers, two fathers! Why is that agenda being taught in the schools?” Some kids may have same-sex parents, Sodhi acknowledged, but why should that minority dictate

\textsuperscript{47} Taylor et al. (2011), pp. 15, 16, 98. These numbers, while still appalling, are significantly down from ten and twenty years ago, before same-sex marriage was legalized in Canada (2005) and more concerted efforts began to address homophobia in schools.

\textsuperscript{48} Ibid., p. 28.
what happens in the entire class? “If one kid is sick, do you treat the whole classroom?”

The homophobic tenor of this and countless other protestors’ complaints is relevant to the government’s obligations here, for two reasons. The first is that, insofar as objectors are being motivated by discriminatory attitudes, they have no right to see these views reflected in the curriculum. Protection from discrimination on the basis of sexual orientation is enshrined in both provincial and federal legal codes. Parents are certainly entitled to hold these views, whether for religious or non-religious reasons. But they do not translate into public policy, and are not deserving of special accommodation.

More than this, if the government deferred to parental conscience without impugning its homophobic elements, it would put at greater risk the very children who are already most vulnerable. Gay children whose parents believe homosexuality to be immoral and refuse to expose them to alternative viewpoints would be stranded, as they were for most of the country’s history until very recently.

I am by no means implying that the controversy in Ontario can be exhaustively described as a clash between homophobia and gay rights, nor that principled grounds for opposition to the curriculum could not be articulated. The prevalence of the homophobic rhetoric seems sufficient, however, to illustrate the risk of grave danger to sexual minority children if parents are left completely to their own devices. I believe a similar argument could be made with respect to girls and the sexist attitudes behind some of the typical opposition to sex education as well.

This is important because it shows that being too liberal about parental choice can have drastically inegalitarian results that the liberal should wish to avoid. The justification for comprehensive sex education is (or ought to be) heavily steeped in an analysis of systemic injustice and the politics of difference. Being overly liberal about parental choice with respect to sex education essentially hands a victory to patriarchy.

Options

In the face of public outcry over an educational policy, the government would seem to have two potentially competing obligations. First it should try to provide the best possible justification for the curriculum, both in order to minimize dissent and in order to meet its own legitimacy requirements. My paper to this point has focused on the limits of the standard defense of liberal education and the opportunities for a stronger defense afforded by a critique of the autonomy approach.

The second obligation is to recognize the parents’ prior right to educate their children and to provide a good faith mechanism for parents to exercise educational choice. This obligation is

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49 Hune-Brown (2015). Other dissenting parents spoke of a “gay conspiracy,” and some even expressed concern that children would be “pushed” by the school system toward sex-reassignment surgery” (Campaign Life Coalition). The fact that Ontario’s Premier, who introduced the legislation, is openly lesbian, was not lost on commentators.

50 Most protestors vociferously denied the charge: “We are not homophobic. We live side by side with the LGB. But how is it fair that such a minority, in order to have or gain acceptance and affirmation from society, that we, our children, this generation, is indoctrinated into their lifestyles? HOW IS THAT FAIR?” (Maggie Amin, quoted in Hune-Brown (2015)).
usually taken to militate against mandatory curricula, even after the best possible justification has been provided.

Amy Gutmann believes that selective opt-outs strike the appropriate balance between forwarding a liberal educational agenda and accommodating parents’ rights. She argues: “A democratically sanctioned policy of requiring sex education in public schools with a provision for exempting students whose parents (or who themselves) are opposed on principled grounds would be both legitimate and wise.”

This balancing strategy is admirable for taking seriously the role of parents in securing children’s rights, but it seems to break down at the level of detail. First, it takes for granted that compulsory curriculum could only exist in public schools, if at all, which is a subversion of the normal meaning of ‘compulsory.’ Recall Principal Jeff Crane’s insinuation that students need not be educated in a school that follows the new sex education curriculum in order to “learn.” Flight from public schools is an option that some parents have the means to employ, but most parents will keep their children in the public system and opt them out of specific classes. From the standpoint of curriculum justification, all these options are functionally equivalent: if the curriculum has a strong rationale and some students are not receiving it, it should be equally concerning whether they are homeschooled, private schooled, or simply absent from public school on the relevant days.

Furthermore, the balancing strategy is a merely formal solution, which appears to be indifferent to both the strength of the justification for sex education and the content of the grounds on which parents (or students) oppose it. The liberal state has an obligation to acknowledge parental dissent, but this obligation is inversely proportional to the strength of the justification for the contested educational policy. The prima facie right of parents to raise their children however they see fit can be undercut when there are more powerful interests at stake. In this case I believe there are.

If we did not know the identities of the opting-out parents – just as liberalism brackets, or refuses to know, the identities of its citizens – it might be defensible to risk leaving a few students without comprehensive sex education for the sake of reducing state coercion. But the evidence points to a much stronger obligation. The opting-out parents are precisely the ones who are likely to harbour views that conflict with children’s interests – notwithstanding the interest

52 In Ontario, opt-out policies are determined at the board level. The province provides no universal mandate.
53 The one opt-out model of which I am aware that is not functionally equivalent is British Columbia’s “alternative delivery” option, which allows for the same “learning objectives” to be achieved through alternative means as determined in consultation with the school (http://www2.gov.bc.ca/gov/content/education-training/administration/legislation-policy/public-schools/alternative-delivery-for-health-and-career-education-curriculum). This option would be of little appeal to most dissenting parents, of course, since it preserves the content and objectives of the curriculum and only allows modifications to the delivery.
54 Granted, Gutmann claims that the grounds must be “principled,” but it is difficult to know what this means, or whether it would even preclude the blatantly homophobic grounds I rejected earlier. Certainly many people believe that homosexuality is immoral as a matter of principle and would insist on sheltering their children from alternative perspectives, given the choice.
children generally have in being ideologically aligned with their families – and which would leave girls and sexual minority students particularly vulnerable.

The justification for sex education, properly construed, thus undermines the normal liberal rationale for respecting parental rights. It is usually ideal for parents to make educational choices for their children, on both non-paternalistic and paternalistic grounds, and the state can usually best protect children’s interests by an attitude of deference and non-interference. But when there is good cause to believe that respecting parental rights will violate the rights of at least some children, a blanket solution is in order. The only way to ensure that every student’s interests in healthy sexuality are met is through a compulsory curriculum that applies to public and non-public schools alike.

**Mandatory Curriculum with Parental Rights?**

The bold conclusion I have just stated may make it seem as though I believe there is no place for parental rights in a controversial sex education curriculum. This is far from the case. Parental rights must not be reduced to the opportunity to opt out. Indeed, the more mandatory and controversial an educational initiative, the more urgent are appropriate mechanisms for parental involvement and input. These can take a number of forms, including: local outreach and dialogue between parents and representatives of the Ministry of Education; cooperation with non-governmental groups, such as faith-based and culturally identified organizations, and the promotion of adult education initiatives therein; regular evaluation and revision of the curriculum, in consultation with parents and communities; and robust opportunities for parental involvement in other areas of education and school life.

The latter suggestion is particularly crucial, since parental participation over the course of a child’s education can help build the kind of trust in the school system that would mitigate the divisiveness of particular controversies. Levinson enumerates a variety of ways that parents should be able to help steer their child’s education and observes that “it is significant that few of these examples rely on agreement or harmony between parents and the school concerning the aims of education.”

Once again, an analysis of difference is not inconsequential. Some parents are far less able to participate in the opportunities afforded for involvement in their children’s education, and this may well leave them feeling disenfranchised and disillusioned. Levinson points out that “recent immigrants, minorities, and non- or limited-English speakers” are systemically excluded from exercising their full parental rights, and this inequality places special burdens on the school system to better accommodate them. Ambient racism and anti-immigrant sentiment exacerbates these particular ills. It is not surprising that the most visible protestors in Ontario were

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55 There are many other justifications for sex education that I have not investigated here; for example, advocates point out that it is justified on democratic grounds, since a majority of parents and children want schools to provide it. I have focused on philosophical reasons that are commensurate with the logic of liberalism.
56 See Bridges (1984).
57 I therefore reject Gutmann’s (1987) concern that “mandating sex education would be unwise were it to lead conservative parents to flee the public schools” (p.110). Although public schools should be supported for myriad reasons, I would consider it illegitimate for parents fleeing the public schools to thereby skirt the sex education needs of their children.
58 Outside the school system, many checks are also needed, such as transparent responsible policy-making and high-functioning democracy.
59 Levinson (1999), pp. 76-77.
60 Ibid, p. 77.
predominantly non-White, recent immigrants of non-Christian faiths. When one’s social or political belonging is called into question, it is natural to turn to the protective shelter of community. Reportedly many of the protestors boycotted their children’s schools simply because a relative or neighbor of the same minority community with stronger views had told them to do so. This phenomenon reflects poorly on the democratic character of the school system, and on Canadian society in general.

It is therefore important to disentangle opting out from depriving parents of all meaningful involvement, and to separate cultural or social exclusion from genuine political dissent. On both these scores, the education system clearly has much work to do.

**Conclusion**

Children have basic interests that are not reducible to their interest in autonomy. Some of these are interests related to the brute fact of sexual embodiment. While such interests may do nothing to bolster the general defense of liberal education as it is applied to such curricular areas as civics and world religions, they become incredibly germane when defending a controversial sex education curriculum on liberal grounds.

I have argued that we can provide a stronger justification for comprehensive sex education by stressing its importance not only for autonomy, but also for other values to which the liberal is ostensibly committed, such as substantive equality and the dismantling of oppressive paradigms. This enhanced justification helps to legitimize going forward with an educational initiative despite intense and intractable conflict. Some may view any compulsory curriculum as itself illiberal, and this may be so. I hope to have shown that the vision of a liberal curriculum from which illiberal parents can choose to withdraw their children is no better.
References


