
LIBRARY HOLDINGS, “DIVISIVE CONCEPTS,” AND PARENTAL RIGHTS

Bryan Warnick
The Ohio State University

Over the past several years, there have been numerous legislative attempts to limit discussion of race and gender/sexuality in K-12 schools and higher education in the name of parental rights.¹ As I write this, sixteen states have banned the teaching of “Critical Race Theory” (CRT) and additional legislation is being considered in twenty-two other states.² Common legislative language includes prohibitions on teaching students that one racial group “bears responsibility for actions committed in the past by other members of the same race or sex” or that students from certain racial groups should feel “discomfort, guilt, anguish or any other form of psychological distress.”³ Such bans are commonly justified on the grounds of parental rights: as the primary caregivers, parents should control what students are taught about racial issues. Parents, it is said, should be able to “opt their children out” of what they consider to be “racially discriminatory instruction.”⁴ With respect to gender and sexuality, Florida’s “Parental Rights in Education Act” (HB 1557) stipulates that “classroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur” in the early grades. Additionally, groups such as Moms For Liberty are seeking to ban books in school libraries, also under a justification of parental rights.⁵ The targeted books tend to deal with LGBTQ or racial issues. As part of both initiatives, there is also a concern to provide parents

¹ Katie Reilly, “Republicans are Increasingly Targeting ‘Divisive Concepts’ at Colleges and Universities,” *Time* (March 29, 2022): <https://time.com/6162489/divisive-concepts-colleges/>; Terry Gross, “From Slavery to Socialism, New Legislation Restricts What Teachers Can Discuss,” *NPR* (February 3, 2022): <https://www.npr.org/2022/02/03/1077878538/legislation-restricts-what-teachers-can-discuss>.

² See an updated list at: <https://wisevoter.com/state-rankings/states-that-have-banned-critical-race-theory/>

³ Eesha Pendharkar, “Legal Challenges to ‘Divisive Concepts’ Laws: an Update,” *Education Week* (October 17, 2022): [Legal Challenges to ‘Divisive Concepts’ Laws: an Update \(edweek.org\)](https://www.edweek.org/legal-challenges-to-divisive-concepts-laws-an-update)

⁴ Jonathan Butcher and Lindsey Burke, “Protecting Children and Families with Parents’ Bills of Rights,” The Heritage Foundation (April 11, 2022): <https://www.heritage.org/education/report/protecting-children-and-families-parents-bills-rights>

⁵ Julie Page, “You’ve got us all wrong. Moms for Liberty isn’t about banning books,” *The News and Observer* (Dec. 28, 2022): <https://www.newsobserver.com/opinion/article270200227.html#storylink=cpy>

access to school information. This information relates to curricular transparency and all “mental health” changes relating to students.

What should we make of attempts to limit discussion of racial injustice and gender identity in schools, and to limit parent access to curricular information, from a parents’ rights perspective? To better understand this question, we need to be clear about the reasons why we (rightly) give parents a large amount of discretion in making educational decisions. I will argue that parents’ rights grow out of the sacrificial labor that parents provide to their children. The right that grows out of this sacrificial labor is best conceived as a “right to invite.” I will argue that, while this right is indeed substantial, it comes with certain inherent limitations. I then will examine the scope of the right to invite, together with its limitations, to determine whether parental rights can be extended to the curricular bans mentioned above and to limitations of library holdings.

Some may find that such a rational analysis is beside the point, claiming that the invocation of “parents’ rights” is made in bad faith. This is not an abstract debate about rights, they might worry, but is a cover for racist or transphobic opinions, or is being used as a political tool to undermine public education. It is worth stating from the onset that there is, in fact, a subtext to many arguments about parents’ rights—they are not always what they appear to be. Still, I think we should disagree with this as an overly broad generalization: while many proponents of parents’ rights use the language as a cover for hate, this is surely not *always* the case. There are people who legitimately wonder where to draw the line in questions of parental authority. To excuse ourselves from trying to engage with their arguments is to hold an overly myopic, truncated, and condescending view of one’s fellow citizens.

THE BASIS OF PARENTAL RIGHTS

There are two popular arguments for empowering parents to make educational decisions.⁶ First, there are child-centered arguments: It benefits the child to be cared for by a small, consistent group of adults who know them very well. Parents usually know best the personal histories of their children. They usually know best what their children like, want, need, and fear. They also usually have a personal concern for the child that no one else does. This intimate knowledge and unique concern that parents have for their children suggests that parents are well placed to make educational decisions. If, instead of parents, the caretakers were an ever-changing group of strangers, or government bureaucrats, or even professional educators, the knowledge of the individual child would be less, and the concern would not be as uniquely personal. In these cases, the educational decisions would be either less optimal or (in some cases) disastrous.

⁶ Discussion of these positions can be found in David Archard, *Children: Rights and Childhood* (London, UK: Routledge, 1993) and James G. Dwyer, *Religious Schools v. Children’s Rights* (Ithaca, NY: Cornell University Press, 1998).

According to this argument, it benefits children to give parents educational rights.

Second, there are parent-centered arguments. According to these arguments, parenting is part of what makes for a meaningful human life. How we judge our lives is partly determined by how well we play this role. Also, part of what makes life meaningful is the possibility of a shared life with others. We want to be around people who share our enthusiasms and passions, to say nothing of our deepest beliefs and values. Giving parents a chance for this shared life, for these relationship goods, is why we give parents the right to make many educational decisions. Education, after all, is how shared passions, beliefs, and values most often develop. Parents should be given the tools that they need to succeed at the project of parenting as they conceive of it. If a positive self-concept is shaped, in part, by success in parenting, then parents should have rights to make the educational decisions they need to actualize their vision of success.

Both the child-centered and the parent-centered arguments have to do with maximizing certain interests. Both hold great power and recognize important moral truths about the parent-child relationship. But there are several theoretical questions that these arguments cannot answer adequately, questions where the implied answer seems counter to moral intuitions. Some of the most important questions surround historical examples and thought experiments related to the redistribution of children. There are historical cases, for example, where infants have been forcibly taken away from birth families and given to adoptive parents, often for political purposes (this happened during the so-called “Dirty War” in Argentina in the 1980s and is currently being perpetuated by Russia in the Russo-Ukrainian War). In many cases of such infant displacement, we can imagine that the infant comes to be fully loved and fully known by the adoptive family. The child may grow without any knowledge of their past abduction. In such cases, the child’s educational interests would be fully served. Surely, however, a moral travesty has occurred when infants are forcibly removed from families. The child-centered arguments cannot explain what has gone wrong since the child’s interests are fully met.

We can also imagine cases where childless couples would be better parents—and make better educational choices—than actual parents. Such childless couples might be unable to have children, and thus be prevented from having the relationship goods and shared intimacy with children. Why shouldn’t we redistribute children away from ineffective biological parents? Why not give the infants to childless couples who desperately want children (maximizing the parent-centered interests) and who would be demonstrably better parents (maximizing child-centered interests)? This would seem to maximize the interests of everybody, parents and children alike. Here again, though, forcible redistribution of children in this fashion seems to go strongly against moral intuitions.

To respond adequately to the problem of forcible redistribution, I have argued, the justification for parental rights cannot solely be based on the *interests* that are served.⁷ The argument must not be solely forward-looking, but must also be backward-looking. It is about what parents *deserve* for what they have already done. The biological parents have invested their work, their pain, their discomfort in bearing, birthing, and raising the child. They have invested their “sacrificial labor.” Because of this investment, we cannot take children away from parents even though it might serve certain interests. It is only in cases where that sacrificial labor is lacking (in cases of serious neglect) or where parent action actively and intentionally harms the child (in cases of abuse) that the state is justified in removing children from parents.

With respect to parenting, the sacrificial labor is given in hopes of building a meaningful relationship with the child. Relationships are linked to shared interests and values.⁸ This relational hope is ultimately, I believe, why the labor or parenting should translate into a right to make educational decisions: because parents labor in hopes of relationships, and because relationships are linked to shared passions, beliefs, and values, then parents should be given wide discretion to make educational decisions to create this shared life.⁹ This includes the discretion to make sub-optimal educational decisions. Thus, although it may benefit children or childless couples to forcibly redistribute children, it violates the respect we should have for sacrificial labor of parenting, starting initially with the biological parents.

I think the best way to describe the rights of parents is in terms of a “right to invite,” which honors the hope of shared values and experiences behind the sacrificial labor of parenting.¹⁰ The right is best framed as an “invitation,” as we will see, because it allows for the future agency of children. After all, an invitation is not a destiny; it can be accepted or rejected. The state provides no guarantee that the children will accept the parental invitation, and in some cases, it may even hope that the children do not. Also, an invitation is usually an expression of a desire toward a shared experience, which captures the relationship goods that parenting aspires toward. Parents should be protected in making invitations to their children into a shared life. Parenting is the ability to make certain invitations into a shared experience. The discretion that is granted here is fairly substantive. It would allow parents to immerse their children into a

⁷ Bryan R. Warnick, “Parental Authority Over Education and the Right to Invite,” *Harvard Educational Review* 84, no. 1 (2014): 53–71.

⁸ Of course, parents who want their children to be clones of themselves are being short-sighted and perhaps pathological. Joy can be found in differences as well as similarities (See Andrew Solomon, *Far from the Tree: Parents, Children and the Search for Identity* [New York, NY: Scribner, 2012]). However, at least some degree of shared values, beliefs, experiences, and activities is, undeniably, part of rich human relationships.

⁹ This discretion includes the ability to remove themselves completely from the decision-making by giving a child up for adoption.

¹⁰ Warnick, “Parental Authority Over Education.”

particular belief system (baptizing them, for example, or requiring that they attend a particular church) since it is only through participation that one can fully understand the invitation that is being offered.

Schools respect the right to invite by refraining from indoctrination. This involves both a negative and a positive obligation. First, negatively, schools cannot construct curricula or activities with the purpose of countering or degrading the reasonable beliefs and cultures of families, nor can schools explicitly single out any reasonable forms of life as being superior to others. Second, positively, schools should give due recognition to all reasonable cultures and belief systems of the students within the schools.¹¹ That is, schools should provide positive curricular representations, acknowledge different cultural and religious holidays, and so forth. Schools are responsible to give families space to invite children into a shared family life, without active and intentional hostility.

This right, while substantial, is limited by what I have called the “autonomy proviso.” The autonomy proviso is suggested by the notion of sacrificial labor from which the right to invite emerges. The right to invite is built on honoring and recognizing the sacrificial labor of parenting. There is nothing unusual about this; society often attempts to honor different forms of work and sacrifice, depending on the “sphere of justice” in which the practice is situated.¹² Sometimes, in the military realm, monuments are built to those who give their lives in war, while in the economic realm, work is rewarded with income. What makes a sacrifice worthy of social recognition? For one thing, sacrificial labor worth recognizing is labor on behalf of another, and that is wanted and chosen. After all, someone who paints my house without my permission does not earn a payment—this would be more an act of vandalism than sacrificial labor. The ability to choose the labor that is performed on our behalf is one precondition to the value of that labor. The complication here is that children do not have the ability to choose, initially, the labor that is exerted on their behalf. They cannot reject the sacrificial labor of their parents or the educational discretion that parents are given because of it. Over time, however, they can come to develop the ability to choose, and we honor this future agency by helping them to develop

¹¹ “Reasonable” should be taken in the Rawlsian sense of belief systems that recognize others as “free and equal” in the public realm and that agree to fair terms of social cooperation (John Rawls, *Political Liberalism* [New York, NY: Columbia University Press, 1996]). Beliefs that teach hatred, denigration, or discrimination against fellow citizens are not reasonable in this sense. I acknowledge, but cannot here address, the complexity involved in applying this principle. Also, to be sure, the very fact of education implies that some forms of life will be designated as “better” than other forms of life. Education teaches us, for example, that it is better to be literate than not. This is an unavoidable part of education. The point here is that school should not actively or intentionally denigrate or try to remove students from the reasonable forms of life that are present in the community.

¹² Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York, NY: Basic Books, 1983).

autonomy. The state has an obligation to help children to eventually choose the value of the labor that is exercised in their behalf.

What this means is that, while schools cannot indoctrinate children into the preferred views of the state, families (whatever the law may say) do not have the moral right to indoctrinate their children into their own preferred views. That is, families cannot limit the exposure of their children to only the views of the family. Families have a right to invite, but they do not have a right to make this the *only* invitation that children receive. Schools have an obligation to show that there are a number of possibilities, a number of inviting options. Schools are a principal way in which students experience invitations to lives outside of what their parents believe. The general idea behind the autonomy proviso is that schools should invite students to access the “Great Sphere,” beyond the invitation of their parents.¹³

PROBLEMS WITH INVOKING PARENTS’ RIGHTS

What does this all have to do with legislative attempts to limit curricula or library holdings in the name of parents’ rights? The right to invite and the autonomy proviso both have important implications. It should be noted, initially, that this legislation exists within a context of family pluralism. In most schools, families will have different beliefs, values, and practices. One aspect of a curriculum might cohere with the beliefs of one family, while challenging the beliefs of another. Invoking parents’ rights to limit library holdings or the curriculum assumes that all parents agree about the invitations that they want to offer. In this sense, asking for these types of restrictions is very different from asking for one’s own children to be excused from certain lessons or textbooks. These curricular and library limitations not only change the invitations that are offered to one’s own children, but to all children. Invoking parents’ rights to support such restrictions is presumptuous. Some parents, after all, might want their children exposed to troubling racial history and to sex education from early on, and to impose restrictions on these subjects is to ignore the desires of these parents. The scope of these limitations makes them much more problematic, and they are problematic precisely from the perspective of parental rights. They assume certain parents matter more than others.

There are, of course, dominant ideologies that are circulating in American society. Some communities might have strong support for certain restrictions on curriculum and library holdings. Even if all families agree on the invitations they want to offer, however, limitations on curriculum and library holdings would still conflict with the autonomy proviso. The conflict exists in the two areas of social concern related to these two political activities.

First, consider curricula related to gender and sexuality. As I indicated, part of the recent activism we are seeing in education is an attempt to limit discussion of these topics (the piece of legislation out of Florida was nicknamed

¹³ Eamonn Callan, “The Great Sphere: Education against Servility,” *Journal of Philosophy of Education* 31, no. 2 (1997): 221–232.

the “don’t say gay” bill). Under the framework of the right to invite, and particularly under the autonomy proviso, restrictions on the topic of gender and sexuality are problematic. The autonomy proviso stipulates that schools have a responsibility to expose children to different forms of social life. One of the most important ways that schools can reveal alternatives is precisely in the domain of family life. Families, by their nature, set precedents in personal relationships, particularly around gender roles and sexuality. In whatever way the family is constructed, it will enact and exemplify from the very beginning what it means to play various family/gendered/social roles. Since these relationships are constantly modeled, constantly placed before the children, they set strong precedents. Because the intense nature of family life tips the scale toward one particular way of being as a family, toward one particular invitation, then schools have a special responsibility to reveal and validate alternative patterns of reasonable family relationships. Hence the need for schools to “say gay.”

Second, what about the efforts to restrict discussion or library holdings related to race relations and the more problematic sides of American history? One might say that learning about racial history has little to do with fostering student autonomy—it doesn’t seem to necessarily be an invitation to live a certain way. We should recognize, however, that individual choices are always made against the background of cultural context and community history. This background shapes how children come to think of their life possibilities. For example, this background shapes perceptions of the sort of professions that are open to someone “like me.” Occupational choice has much to do with one’s self-concept and the set of choices that seem like realistic options. Walter Feinberg calls this the issue of “standing”—the impression of where one stands in the social order.¹⁴ Students need to understand history to understand their “standing,” and they need to understand how their “standing” is constructed to find their way in the world. That is, students need to know why the social order is constructed in certain ways and how that construction might limit their own views of themselves. The challenge, then, is not simply learning that someone “like me” can be doctor, but also to help them understand why they may not personally know many black doctors—it is not about natural ability or intelligence, they might come to understand, but historical oppression and discrimination. This realization may open doors of self-understanding and new possibilities. The home environment may not supply this necessary context. The autonomy proviso requires that schools provide it, to show students that different ways of living are possible. Curricular restrictions on the topic of racial discrimination, then, would not be permitted.

¹⁴ Walter Feinberg, *On Higher Ground: Education and the Case for Affirmative Action* (New York, NY: Teachers College Press, 1998).

WHAT PARENTS MAY REASONABLY REQUEST

The right to invite does have some implications that protect parents' rights to shape the education of their children in ways related to these political activities, if only tenuously. First, part of a vision that parents have is for their children to have a particular sort of childhood. Future shared lives are shaped in part by past shared memories. There is an intersection between the sort of childhood we want to provide our children and certain notions of childhood innocence. Many families believe in a particular vision of childhood in which the child is protected from thinking about certain issues and concerns of the "adult world." This view should be honored, to some extent. To point to a fanciful and glib example, if a school held a session called "thinking critically about Santa Claus" for elementary school students, it might be infringing on this right. This is not because parents want their children to believe in Santa Claus as adults, but because they want to share experiences as a family in the present, to create certain types of shared memories, and to carry on certain traditions. These are not unreasonable desires. This means that age-appropriateness is indeed a valid concern, and schools should be sensitive to concerns on this topic that are voiced by parents. There comes a time, of course, when this protectiveness reaches its limits and starts to encroach on the boundaries of the "autonomy proviso." Age-appropriateness is a complex topic and has to do with timing of knowledge as it relates to children's wellbeing, with the maturity of a particular child, with social norms about what children know and when, and so forth. Some curricular restrictions in the early grades, however, could be justified on parental rights on the grounds of age-appropriateness.

Second, as part of the right to invite, schools have a responsibility to not indoctrinate. As part of this responsibility, schools have an obligation to provide respectful representations of different family backgrounds in the curriculum. While the traditional family structure, for example, cannot be the *only* structure discussed or represented, the traditional family structure should be present as one possible valid model of family life. Likewise, abstinence should be presented as a valid choice in sex education, among other choices, since many parents will be teaching that at home. Exclusion of such representations should be considered a violation of the family's right to invite. Failure to include positive representations of the values held by families indicates a hostility to those norms.

This point was made by Eamon Callan in his commentary on the federal court decision in *Mozert v. Hawkins*.¹⁵ The Mozert families, recall, were seeking exemption from what they regarded as a wrongheaded and hostile Holt reading series. Callan disagrees with most of the arguments of the families in that case. He concedes, however, that they had one important point to make: there were zero positive representations of any protestant Christians in the Holt series, even while religious diversity was a primary theme of the readings. The parents'

¹⁵ *Mozert v. Hawkins*, 827 F.2d 1058 (6th Cir. 1987).

argument, he writes, was “not about the evils of reflection on diversity but the alleged failure to initiate such reflection in a context where the way of life which the parents and their children shared was given due respect and recognition.”¹⁶ Parents cannot seek to censor alternative positions, Callan suggests, but they can ask for respectful treatment of their beliefs. In some ways, the parents should have sought to *add* books to the curriculum rather than taking them away.

What might this mean for racial history? Certainly, the right to invite does not justify any censorship of the ugly truths of American history. Schools must teach truth, and they must find age-appropriate ways to teach it, even from early on. Nor would it justify banning certain ways of understanding social reality in favor of parents’ rights. The autonomy proviso prevents this. Students must be given access to a wide variety of perspectives when it comes to understanding their social lives. At the same time, schools cannot provide only one way of approaching social reality, even one as powerful as those embodied in critical approaches—here, one might make rough distinction between the facts of history, which are what they are, and a particular theoretical interpretation of those facts.¹⁷ Suppose a school did adopt CRT as the only theory of social reality presented to students, that only this was taught and it permeated all aspects of the curriculum—even all library books conformed to this perspective. Such a school would be in violation of the right to invite, and, for that matter, probably the autonomy proviso as well. It would be indoctrinatory. This would hold for any school dominated by a singular political or social perspective.

In this section, I have discussed ways in which the parental right to invite might give parents certain valid complaints under certain conditions. Of course, these conditions are very different from what the Moms for Liberty imagines that they are. In thought experiments, we can abstractly posit a school that lacks all respectful representations of traditional families or heterosexual couples. We can imagine a school that has a singular focus on CRT as the *only* accepted view of social reality. But conjectures hardly justify concerns about what is going on in actual schools. If such schools exist, they would be quite rare. Parental concerns about respectful representations of religion and conservative views may be more justified, but in such cases the legitimate response is not to censor or ban, but to add and enrich. This is what would be necessary to align school practices with the parental right to invite and the autonomy proviso.

What about the demands that schools provide parents with detailed information about curricula? Does the right to invite imply that parents have a right to know the curriculum of the school? I believe that, on this point, the right

¹⁶ Eamonn Callan, *Creating Citizens: Political Education and Liberal Democracy* (Oxford, UK: Clarendon Press, 1997), 160.

¹⁷ Of course, this distinction is “rough” because social theories determine which facts are chosen to be presented to students and which facts are ignored. A conscientious teacher of history will be aware of how historical narratives are constructed, particularly their own, and show how the facts of history are always multivocal and under-determinative of the overall narratives.

to invite does support a right to know the details of the school curriculum. Families have valid reasons to know what schools are teaching. Parents, as part of their right to invite, are given the opportunity to convince their children to adopt family values, practices, and belief systems. The school curriculum intersects with this project in several ways. Parents may want to support their own invitations with what is being taught in schools. Maybe they are interested in science or health. Knowledge of the school curriculum would allow them to expand or amplify what is being taught. Or, they might be motivated to counter what is being taught in schools. If parents are given the opportunity to argue and convince, then they should be able to share their disagreements with what the school is trying to impart.

The most sensible worry about curricular openness is that it might have a “chilling effect” on curriculum. The result of this will be that schools will avoid anything remotely controversial, to the detriment of a rich education. But it is difficult to know what to make of this worry. First, motivated parents can always find out what is being taught, after all, and an air of secrecy would seem to increase feelings of distrust. A curricular openness will doubtless be exploited by bad-faith actors, of course, but so will the fact that the curriculum is closed off. Second, schools should welcome discussions with parents about the curriculum—parents might have valid input for schools to consider. If teachers are worried that the curriculum will be offensive to family sensibilities, the solution is not to hide it, but to explain it and stand by it, if it is defensible. Again, bad faith actors will cause trouble here, but the solution is not to hide things from parents. It would be up to good-faith actors to counter-mobilize in defense of what is right.

To be sure, curricular openness might encourage some parents to opt out of certain discussions. In theoretical terms, the right to invite would prohibit parents from opting out of topics that they disagree with. Students need to be exposed to beliefs and values beyond what is taught at home. This obligation derives from the autonomy proviso—parents cannot seal off their children from views that run contrary to their own. Recognizing certain non-ideal realities of American schooling, however, suggests a more pragmatic approach. The non-ideal reality is that parents can ultimately opt out of public schooling all together. They can homeschool or send their children to private schools (often now fully supported with state funding). If parents are denied the ability to opt out of certain lessons or certain textbooks, it seems more likely that they will then opt out of public schools entirely. Overall, this would be a *worse* outcome for student autonomy than allowing them to opt out of certain lessons or textbooks. In a public-school environment, after all, they will passively be exposed to many different values and belief systems—much more so than in a homeschool or private school environment. The development of autonomy would be better served by keeping students within the public system. In some sense, the wise educator will meet worried parents where they are. These non-ideal considerations, then, point to approving parent requests to opt out. This should be offered to parents who, knowing the curriculum, demand curricular changes.

School libraries could do something similar, perhaps by maintaining a list of students who need parental permission to check out books. Educators can also respond to concerned parents by adding rather than subtracting, maybe by including more religious or conservative books in the library (books endorsing abstinence education) rather than taking other viewpoints away. To parents who are acting in good faith, this might send the message that the school has heard their concerns.

CONCLUSION

If we understand parental rights as a right to invite, there is little justification for the recent political initiatives that have arisen on the grounds of parents' rights. Such policies violate the right to invite in assuming that all families want to make a similar invitation. They also may violate the autonomy proviso in preventing certain important, alternative invitations to be offered to students. A right to invite may provide some justification for limitations relating to age-appropriateness and to schools adopting a singular viewpoint. It also suggests that schools have a positive obligation to allow parents to access the curriculum and to provide positive representations of reasonable forms of life within the curriculum. This obligation, however, points schools more toward adding to the curriculum and to libraries rather than subtracting.
