

Curriculum and the Conscience of Parents

Sarah Stitzlein
University of Cincinnati

Despite Governor John Lynch's veto and the outcry of teachers and education scholars, New Hampshire recently enacted HB 542, called the "Parental Conscience Act" by supporters. This bill was introduced by Republican and Tea Party officials in response to the reading of a book perceived to be anti-Christian and anti-capitalist in one school's personal finance class (Barbara Ehrenreich's *Nickel and Dimed*). It allows parents to opt their children out of the teaching of any material or through any pedagogical style that they find "objectionable." Additionally, the law requires that, at the expense of the parent, the teacher or school must construct an alternative curriculum that is suitable to the parent while still meeting state requirements in the relevant subject area. Unlike previous court cases that have protected parents' rights of conscience on religious grounds, HB 542 does not require parents to provide any justification at all for their claim that school material is objectionable. While the word "conscience" itself was ultimately removed from the final version of the bill, the initial version and many of the discussions about it described parents' objections in terms of violations of their conscience. Finally, parents are further protected by the law's provision that parents' names and any reasons they do provide for objecting to school teachings are to be kept out of the public record. HB 542 enshrines the protection of parents' conscience into public school policy, regardless of the justification for parents' views, discussion of the impact on their children, or concern for teachers who could face dozens of objections and obligations to construct alternative curricula at any one time.

This fascinating new law challenges educational philosophers to reconsider the role of parents and conscience in curriculum. In this essay, I will define conscience and consider its role in terms of the private and public benefits of public education. I will argue that this law, which may impact other developing legislation regarding parental rights and school choice, favors the views of parents potentially to the detriment of the public good, including violation of key tenets of democracy, dissolution of democratically-selected curriculum, prevention of the cultivation of children as autonomous liberal choosers, and endangerment of the development of good conscience itself.

THE CONTEXT OF THE BILL

HB 542 is clearly related to central beliefs asserted in the Universal Declaration of Human Rights, which proclaims that everyone has the "right to freedom of thought, conscience and religion" and "to manifest his religion or belief in teaching,"¹ as well as stating that though "everyone has a right to education," "parents have a prior right to choose the kind of education that shall be given to their children."² HB 542 is also related to major court cases, such as *Wisconsin v. Yoder*, *Pierce v. Society of Sisters*, *Meyer v. Nebraska*, and *Mozert v. Hawkins County Board of Education*, which have struggled to balance parents' rights, children's

autonomous development, freedom of religious practice, and the needs of the state. Yet, while the courts have consistently upheld the right of parents to control the upbringing of their children in part through choosing a school for them, “they do not have a fundamental right generally to direct how a public school teachers their child.”³ Despite this, parents have repeatedly relied on *Yoder* and *Mozert* to call for opt-out procedures in their schools, most notably beginning in the 1970s with sex education.

Individual states have also sought to protect the role of parents, including Kentucky whose longstanding Beckner amendment and Bill of Rights Section 5 guarantee that no man shall be “compelled to send his child to any school to which he may be conscientiously opposed”;⁴ Texas which allows parents to opt out of any class or activity that “conflicts with a parent’s religious or moral beliefs”;⁵ and Missouri which recently decided that no student shall be compelled to take part in any “academic assignments or educational presentations that violate his or her religious beliefs” — beliefs that admittedly typically come from parents.⁶

Finally, HB 542 may be connected to increasing calls for school choice, including the large number of states that have recently considered voucher plans to aid parents in engaging choice, as was the case in New Hampshire which passed a statewide voucher plan on the heels of HB 542. Parents may support wider and publicly financed forms of school choice in order to enact their conscience by selecting a school whose views are already more aligned with those of the parent. Interestingly, professor of law Robert Vischer remarks on the implications of parental conscience in relation to school choice: “As school choice bolsters the ability of a school to create its own identity, the ability to maintain and defend that identity presupposes a reduced authority for the individual consciences of the school’s prospective constituents” because “to the extent that the implementation of a school’s mission creates tension with a dissenting student’s conscience, the student’s exit option gives the school a stronger claim to maintain its mission.”⁷ In other words, while school choice may enable parents to more thoroughly enact their conscience by selecting a school more closely aligned with their views, those parents lose the ability to flex their conscience by demanding curricular changes within the chosen school because parents have the ability to remove their child from that school at any point. In a setting of substantial school choice, the child is not a captive audience to a curriculum to which the parent objects and the parent has less grounds on which to dictate it. HB 542 seems to carve out some middle ground that protects the conscience of parents within an assigned public school, but it does so problematically, as I will demonstrate in the coming sections.

DEFINING CONSCIENCE

Conscience is primarily viewed as an internal personal conviction that one is entitled to hold. It is an “inward domain,” which John Stuart Mill believes contains “liberty of thought and feeling; absolute freedom of opinion and sentiment of all subjects, practical or speculative, scientific, moral, or theological.”⁸ There are three ways in which most people employ the term: as a faculty of moral reasoning, an

affective response to moral matters, and a need to follow what one believes is morally right. Freedom of conscience has deep roots in America, extending to its earliest days of settlers seeking religious refuge and explorers setting out on their own to shape life as they saw fit. Our founding documents ensure the protection of conscience and freedom of thought as central not only to the pursuit of happiness but to the very definition of a person, himself or herself.⁹ Noting the longstanding tradition supporting conscience, Martha Nussbaum adds, “Conscience is precious, worthy of respect, but it is also vulnerable, capable of being wounded and imprisoned . . . [it] needs a protected space around it within which people can pursue their search for life’s meaning.”¹⁰ While the state is tasked with protecting liberty of conscience, individuals often feel a corresponding need to protect their own conscience from tyranny or imposition by the state.

Problematically, the American tradition of rugged individualism and the more recent focus on rights talk has limited conscience to being viewed as a trait of individuals, when it is better understood in a collective and relational sense as shared knowledge.¹¹ “The word is the direct descendant and the exact cognate of the Latin *conscientia*, which is the word for knowledge, *scientia*, to which is added the prefix *with*. Thus it means to know along with others.”¹² Vischer rightly argues, “There is a clear need to recapture the relational dimension of conscience — the notion that the dictates of conscience are defined, articulated, and lived out in relationship with others. Our consciences are shaped externally; our moral convictions have sources, and our sense of self comes into relief through interaction with others.”¹³ Conscience is something we develop through interactions with others, hold alongside others, and engage in ways that impact others. It is not merely an internal construct; rather, “Conscience, by its very nature, directs our gaze outward, to sources of formation, to communities of discernment, and to venues for expression.”¹⁴ In this way, as a faculty that is nurtured, honed, and practiced, conscience is a concern of education.

In the case of HB 542, conscience is used, as it too often is, to draw a firm line in the sand, to stop interaction and education in the interest of the parent and (at least in the view of the parent) his or her child. Instead, claims of conscience should be used as starting points for discussion about collective knowledge and one’s moral stand so that the content of what is taught in public schools can be shaped by public input and reflect public will. Conscience claims should be calls to negotiation and exchange, rather than personal withdrawal.¹⁵ Invoking conscientious objections under HB 542 places children in a tenuous position when balancing the private and public nature of education and of conscience. While HB 542 conforms to the respect-conscience principle which protects the conscience of individuals operating in public domains,¹⁶ requesting to remove students from the classroom during the teaching of objectionable material risks that individual students may be ostracized from their peers and prevented from obtaining all of the public benefits of public education. Further, it reifies conscience as solely a private matter by precluding public discussions that might engage the conscience of parents or the developing conscience of their children.

THE DETRIMENTS OF ENACTING PARENTAL CONSCIENCE IN
THE PUBLIC SCHOOL CLASSROOM

How do we, as the public tasked with protecting the weak and vulnerable among us (which includes children who may be sheltered from public school teachings or taught narrowly in the ways of their parents), decide whose conscience is worth honoring and whose is not? What basis do we use to determine the legitimacy of one's principles of disagreement and whether being forced to violate those principles is of a significant hardship? When, if ever, is it in the best interest of a parent or student to have their conscience intentionally challenged? As we struggle to find an acceptable balance between exercising conscience when viewed as a private objection held by parents with the need to widely and thoroughly educate their children, we must be careful that the scales do not tip too heavily to one side. In this section, I will show that HB 542 and other similarly modeled actions privilege the conscience of parents, understood in the predominant current sense as an internal moral compass, to the detriment of the public good and democratically designed curricula, as well as jeopardize the promotion of conscience in the much richer sense of shared knowledge.

JEOPARDIZING THE PUBLIC GOOD

The interests served by a public school may be private in nature, such as an individual student earning certifications that enable him to access college or careers, but they tend to be largely public in nature, such as achieving a mutually beneficial way of life co-constructed and maintained by caring citizens. These public interests, which bring together shared ways of living in political, cultural, and economic systems, are often grouped together into the notion of a public good. The public school works to determine and enact this public good.¹⁷ It enculturates children into accepted public ways of living, while also holding open those ways of life to debate and scrutiny as children learn about them. When one considers the public good, to use John Stuart Mills's terms, one must take into account "other-regarding consequences," as opposed to straightforward concern with the "self-regarding consequences" of private interests.

Philosophers of education Chris Higgins and Kathleen Knight Abowitz argue that the "public" of public schools is best seen as a verb, an action that entails creating common worlds often arising from mutually beneficial problem solving or a bringing together of different viewpoints around common concerns.¹⁸ This act of creation and problem solving is best achieved in schools that invite and engage open participation from multiple constituencies, including those who may hold worldviews quite different from one's own, rather than in schools that practice exclusion or remove some children from critical conversations. In order for this to occur, public schools must invite everyone into constructing and participating in the public good. The public good requires and thrives upon an array of different beliefs, including minority views — the very type that many parents are trying to protect when they claim an objection to curricula based on conscience. Those beliefs should be exchanged, enhanced, and challenged in the marketplace of ideas. A commitment to the liberty of conscience is a commitment to the public good, where it is

acknowledged that individuals are able to flourish not when they are shielded from all conflicting views, but when they are exposed to and engage with a multiplicity of views.¹⁹

There is a tendency right now among many people to seek like-minded news sources, friends, and social media, for instance. This process of isolation and fragmentation prevents people from coming together across differences and from having their differing beliefs challenged. HB 542 facilitates isolation by allowing parents to withdraw their children from the general educational setting and to prohibit them from learning particular pieces of information or worldviews that counter their own. This is not only potentially harmful to the student and a thriving public, but it also risks a watering down of the curriculum such that class material that is seen as potentially objectionable might be weeded out preemptively so as to avoid parental complaint, thereby removing complex and controversial curricula through which children come to see nuance, difference, and debate around matters of importance in society. Echoing these concerns, Governor Lynch defended his veto of HB 542 by saying, “The intrinsic value of education is exposing students to new ideas and critical thinking. This legislation encourages teachers to go the lowest common denominator in selecting material, in order to avoid ‘objections’ and the disruption it may cause their classrooms.”²⁰ To achieve public as a verb and to work toward the public good, the scales must be weighted toward educational practices that promote a proliferation of content and worldviews.

VIOLATING TENETS OF DEMOCRACY

While not everyone must know the same things, American cultural practices operate most efficiently and engage the widest array of citizens when participants have the same knowledge sets to draw from. Students whose parents opt them out of various parts of the curriculum, especially if they do so repeatedly, may lack shared knowledge and shared experience with their peers. Or, in the words of the court, “To allow students and parents to pick and choose which courses they want to attend would create a stratified school structure, where division and derision would flourish.”²¹ Opting out and receiving an alternative course of instruction may also splinter the entire curriculum and risk its cohesiveness.

The receipt of a rich and shared knowledge base is important for the success of democracy in two additional ways. First, the free flow of information is a central tenet of democracy and has been a sufficient justification for the courts to decline parental requests to remove their children from sex education.²² Children must be able to access information that can help them lead a healthy and happy life, as well as information that can enable them to challenge and expand their worldviews or those of the dominant society, especially for the maintenance of a good democracy. Second, exposure to rich sets of knowledge and skills is central to providing equal educational opportunity in America. We must be careful not to foreclose the opportunity of some children in order to satisfy the desires of their parents.

Finally, liberal democracies may be guided by the majority, but their constitutions outline an obligation to protect the rights of minorities. As noted by the bill’s

endorser, Senator James Forsythe, HB 542 seeks to protect the conscientious objections of parents, many of whom hold minority views.²³ But providing extra and individualized resources to particular children as the result of a parental claim under the new law may result in the majority of students who remain in the larger class not receiving fair treatment insofar as the children of the objecting parents receive one-on-one instruction from the teacher or special materials. This situation raises the longstanding struggle between the liberty of individuals and the equality of groups.

DISSOLVING THE DEMOCRATICALLY DESIGNED CURRICULUM

Curriculum in most public schools is the result of democratic processes. Curriculum and content specialists come together with elected officials and practitioners at the state level to set the standards that guide local curriculum. That curriculum is then shaped by teachers in the community and by the elected school board, which holds open meetings where curriculum may be debated and negotiated. The curriculum is not only developed through a democratic process, but it also tends to have democratic purposes insofar as it is intended to unite students in a shared American identity, prepare them for citizenship, and equip them to contribute to economy and community. These democratic purposes ground the curriculum that is developed for schools.

Sigal Ben-Porath wisely argues:

When parents oppose teaching their children a democratic, civic curricula (as in *Mozert*), they “do not have a general right to override otherwise legitimate democratic decisions concerning the schooling of their children.” It is therefore the school’s commitment to democracy that takes precedence over any demand made by specific parents or groups regarding the civic education of children. This claim, widely accepted by political, educational, and legal commentators in the context of *Mozert*, should be extended to include situations in which the social majority rejects the educational commitment to substantive democracy. The democratic argument for committing the public education system to the principles of democracy, not to majority rule or parental authority, should be maintained in better and worse times.²⁴

Here, Ben-Porath recognizes the importance of preserving the democratic purposes of curriculum in the face of disagreeing parents and prioritizes those purposes over some democratic processes that may challenge them.

In previous cases where parents sought to remove their children from specific class activities, one judge warned that parents “may not use this Court to interpose their own way of life or their own philosophy, however, laudable, as a barrier to reasonable state and local regulation of the educational curriculum . . . [a] way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education.”²⁵ Invoking HB 542 allows the views of one individual parent to trump the curriculum design and educational aims of the society. Moreover, it is an evasive measure rather than a publicly beneficial one, especially if the curriculum in question is not only objectionable to the parent but also potentially wrong or unjust (as some might say is currently the case with the social studies curriculum standards endorsed in Texas and the narrow vision of history proclaimed in Florida). As opposed to avoiding curriculum through opting out or selecting alternatives, parents should challenge the curriculum by engaging in the political

process, including speaking out at school board meetings, raising awareness about perceived problems, and gathering coalitions of parents with similar concerns.²⁶ Rather than trumping democracy, these approaches engage it by bringing people together to address issues of shared concern. In this way, the process itself perpetuates democracy and protects public schools from excessive demands for alternatives and from litigation.

PREVENTING THE FULL DEVELOPMENT OF CHILDREN AS
AUTONOMOUS LIBERAL CHOOSERS

One important justification for the receipt of a rich and varied curriculum that exposes students to a wide variety of subject matter and worldviews is that it affords children the opportunity to choose the best life for themselves from a wide array of choices. We must be careful not to overemphasize autonomy, nor to believe optimistically that all children can fully achieve it through education alone, nor to suggest that the state running public schools knows what is best for children. Nonetheless, arguments for the importance of autonomy and the ability to choose and construct a good life for oneself are well-established in the philosophy of education field and I will not rehash them here. I will, however, point out that invoking HB 542 is a move that privileges the autonomous thought of the parent over the autonomy development of the child. It emphasizes the ability of the parent to safeguard one already-selected vision of the good life over the child's ability to learn about multiple and conflicting visions.

ENDANGERING THE DEVELOPMENT OF GOOD CONSCIENCE ITSELF

Conscience has long been a matter important to the Catholic theology. Then-Joseph Cardinal Ratzinger, speaking of problems with understanding conscience as internal conviction, powerfully argues: "Whoever equates conscience with superficial conviction identifies conscience with a pseudo-rational certainty, a certainty that in fact has been woven from self-righteousness, conformity, and lethargy."²⁷ He continues, "included in the concept of conscience is an obligation, namely, the obligation to care for it, to form it and educate it. Conscience has a right to respect and obedience in the measure in which the person himself respects it and gives it the care that its dignity deserves. The right of conscience is the obligation of the formation of conscience."²⁸ This belief that conscience must be nurtured in educational settings is certainly held not only by Catholics. Vischer and others who emphasize the inherently relational nature of conscience demonstrate that conscience is developed and strengthened in moments of debate, deliberation, and exposure to new ideas — the very practices that happen in good educational settings. In this regard, HB 542 may actually limit the development of the conscience of children when the conscience of parents is exercised via curriculum objections and demands for alternative teachings.

Moreover, it is not enough just to tell children that everyone should be able to freely engage their conscience — an option that would seem to be valued by even the parents who enact HB 542. This approach is insufficient because simply stating that conscience is something of equal value for all people will not overcome the influence of parents who teach their children that their way is the only good and right

way to live, which presumes that the conscience of others is of less worth.²⁹ Children need to see how others live and see the humanity in it in order to come to value the protections of conscience. Removing children from moments when these difficult matters play out only further prevents them from coming to respect the liberty of conscience for all people in public spaces.

CONCLUSION

Democracies must work to protect an array of opinions and the freedom of conscience of individuals. We should not require all children and parents to participate in the public school system if other means of teaching their children better preserve their freedom of conscience while also educating their children well, but we currently allow for this through private school and homeschooling options. HB 542 tips the scales too far by opening up public schools to private accommodations without warranted justification on the part of individual parents who invoke it. Additionally, it opens up the possibility for mass demands for alternative accommodations, which place not only an undue burden on schools and teachers, but also stress on the health of our democratically designed curriculum and our democracy as a whole. HB 542 should be viewed as more than just one isolated law, as it is aligned with Republican-backed measures being put forward across the country that protect parental viewpoints and work to increase parental choice.³⁰ Responding to this bill and others that will surely follow requires that we figure out a better way to balance the objections of parents with the needs of the state, the public good, and individual children. One step in achieving this goal is to begin with a better understanding of conscience, one that acknowledges its social dimension and cherishes the role of education in shaping and enhancing it, rather than one that seeks to protect it in spaces of isolation within our schools. This form of conscience may help guide us through future legislation regarding parents' rights, school choice, and vouchers.

1. United Nations, "The Universal Declaration of Human Rights," Article 18, <http://www.un.org/en/documents/udhr/>.

2. *Ibid.*, Article 26.

3. *Blau v. Fort Thomas Public School District*, 401 F.3d 381 (6th Cir. 2005): 395–396.

4. James C. Carper and Thomas C. Hunt, *The Dissenting Tradition in American Education* (New York: Peter Lang, 2007), 190; and, Kentucky Bill of Rights, Section 5, <http://www.lrc.ky.gov/lrcpubs/rr137.pdf>.

5. KJ Dell'Antonia, "When Parents Can Opt Out of School Curriculums," *New York Times Blog*, January, 17, 2012, <http://parenting.blogs.nytimes.com/2012/01/17/when-parents-can-opt-out-of-school-curriculum/?scp=1&sq=school%20curriculum&st=cse>.

6. Valerie Strauss, "The Real Wall of Separation in Public Schools," *Washington Post*, September 6, 2012, http://www.washingtonpost.com/blogs/answer-sheet/post/the-real-wall-of-separation-in-public-schools/2012/09/05/aaf3d766-f6b7-11e1-8253-3f495ae70650_blog.html.

7. Robert K. Vischer, *Conscience and the Common Good* (Cambridge, UK: Cambridge University Press, 2010), 207.

8. John Stuart Mill, *On Liberty*, quoted in Paul Strohm, *Conscience: A Very Short Introduction* (Oxford: Oxford University Press), 56.

9. Roger Williams, who substantially influenced the views of settlers and early American religion, viewed conscience as the man himself; see Martha Nussbaum, *Liberty of Conscience* (New York: Basic Books, 2008), 52.
10. *Ibid.*, 19.
11. Thomas Hobbes argued for this relational understanding of conscience in his 1651 *Leviathan*.
12. Richard G. Stevens, "Conscience and Politics," *Teaching Political Science* 11, no. 4 (1984): 171.
13. Vischer, *Conscience and the Common Good*, 3.
14. *Ibid.*, 4.
15. Strohm, *Conscience*, 88.
16. Nussbaum, *Liberty of Conscience*, 22.
17. Though I have chosen to use it here, Deron Boyles fairly convincingly troubles the term "the public good" in "The Privatized Public: Antagonism for Radical Democratic Politics in Schools?," *Educational Theory* 61, no. 4 (2011): 434.
18. Chris Higgins and Kathleen Knight Abowitz, "What Makes a Public School Public? A Framework for Evaluating the Civic Substance of Schooling," *Educational Theory* 61, no. 4 (2011): 365.
19. Vischer, *Conscience and the Common Good*, 45.
20. John Lynch, "Veto Message Regarding HB 542," delivered July 13, 2011.
21. *Davis v. Page*, 385 F.Supp. 405 (D. NH, 1974).
22. *Brown v. Hot, Sexy and Safer Productions, Inc.*, 68 F.3d 525 (1st Cir. 1995).
23. James Forsythe quoted in Patt Morrison, "New Hampshire Parents Get to Nix School Curriculum They Find Objectionable," *Southern California Public Radio*, January 27, 2012, <http://www.scpr.org/programs/patt-morrison/2012/01/27/22299/new-hampshire-parents-get-to-nix-school-curriculum>.
24. Sigal R. Ben-Porath, *Citizenship under Fire: Democratic Education in Times of Conflict* (Princeton, NJ: Princeton University Press, 2006), 123.
25. Rosemary C. Salomone, *Visions of Schooling: Conscience, Community, and Common Education* (New Haven, CT: Yale University Press, 2000), 173.
26. Admittedly, HB 542 was itself the result of political action, action that was spearheaded by parents angered by their children reading *Nickel and Dimed*. But the type of political recourse they sought is problematic insofar as it promotes the type of isolation that I argue against here.
27. Joseph Cardinal Ratzinger, *On Conscience* (San Francisco: Ignatius Press, 2007), 21.
28. *Ibid.*, 63.
29. Salomone, *Visions of Schooling*, 333.
30. One example is the Republican platform released in Texas in 2012, which states the party's opposition to the teaching of critical thinking skills that "have the purpose of challenging the student's fixed beliefs and undermining parental authority." Republican Party of Texas, Report of the Platform Committee, page 12, http://s3.amazonaws.com/texasgop_pre/assets/original/2012Platform_Final.pdf.