

Education and the Right to Autonomy

by

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B.A., University of Alberta, 2008

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Supervisory Committee

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Abstract

In this essay I argue that all children have a right to Autonomy Facilitating Education (AFE), and a corresponding right to freedom from indoctrination. Citizens of liberal-democratic societies have a fundamental interest in autonomy because it underpins what Rawls called the moral powers, because self-consciously liberal democratic societies cannot coherently endorse anti-perfectionist liberalism and must endorse at least weak-perfectionism with respect to children's prospective right to autonomy, and because it is constitutive of a form of civic virtue the general diffusion of which is necessary for the vitality and sustainability of liberal democratic society. Autonomy consists in the exercise of two cognitive capacities: one self-reflective, the other self-affective. The aim of AFE is to develop these capacities by meeting three basic pedagogical requirements: The *Knowledge Requirement* develops the ability to access information. The *Skill Requirement* develops the ability to rationally evaluate and understand the relevant information. The *Disposition Requirement* develops the psychological disposition to engage the first two deliberative abilities (which together generate one's considered best judgment) and then commit to that judgment and not deviate from it without first engaging the deliberative abilities again in light of new information, newly acquired evaluative skill or new understanding of the information. These requirements can be met from a range of pedagogical approaches, and parents have the right to provisionally privilege their own worldview in the pedagogical approach to their child's AFE. I use this account to evaluate two Canadian case studies: the first involving lawsuits over the Ethics and Religious Culture program in Québec, the second involving recent changes to Alberta's Human Rights legislation enshrining parents' rights over their child's education.

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Dedication

The first service a child doth a father is to make him foolish. – George Herbert

For my children, who every day reacquaint me with wonder.

List of Abbreviations

AFE: Autonomy Facilitating Education

ATA: Alberta Teachers' Association

CRC: United Nations *Convention on the Rights of the Child*

DR: Disposition Requirement

ERC: Ethics and Religious Culture

ICCPR: United Nations *International Covenant on Civil and Political Rights*

ICESC: United Nations *International Covenant on Economic, Social and Cultural Rights*

KR: Knowledge Requirement

LGBT: Lesbian Gay Bisexual Transsexual

SR: Skill Requirement

UDHR: United Nations *Universal Declaration of Human Rights*

UN: United Nations

UNESCO: United Nations Educational, Scientific, and Cultural Organization

Introduction

The question this thesis seeks to address concerns the compulsory nature of education for children, the essential aims to which it is directed, children's right to education of a certain kind, and the rights of parents regarding their child's education. Specifically, the thesis addresses two related questions. First: do parents have the right to limit their child's exposure, through a course of otherwise compulsory education, to ideas and/or worldviews with which they do not agree, even if this would entail impeding the development of the child's autonomy or subjecting the child to indoctrination? Second: must the pedagogical approach to autonomy as an educational aim be neutral with respect to the presentation of curricular content? To both questions, my answer is "no."

My **first thesis** is that *all children have a right to a certain kind of benevolent governance: autonomy facilitating education (AFE); and a corresponding right to freedom from its opposite: indoctrination*. We are not, *pace* Rousseau, born free in the sense that we are born independent. An infant is a completely helpless being, entirely dependent upon external care. But we are all born with equal *potential* for independence, which for us is inextricably linked to our common capacity to reason. As Locke observed, we are born *to* reason, but we only gain the *exercise* or *use* of reason through experience.¹ The faculty is there insofar as all the material parts are present and in normal working order; they need only be developed, just as the proverbial acorn contains within it the potential oak. But just as certain conditions of soil, water and sunlight are necessary to facilitate development from acorn to oak, so too human beings require certain conditions to facilitate their

¹ See Locke, *Second Treatise: On the True Original, Extent, and End of Civil Government*. Chapter 6, Section 61

development into beings capable of exercising reason and thus capable of free choice; beings capable of understanding and deciding for themselves. To be autonomous is to be sovereign of oneself, but this implies having the practical ability to carry out the *functions* of sovereignty. For autonomy to be substantive, certain practical abilities and positive dispositions must obtain.

In order to exercise free choice a person must have the practical ability to understand the choices available to them, they must have the practical ability to evaluate those choices, and they must have the psychological disposition to exercise those abilities and to decide - for themselves - what to do in the face of those choices. Therefore, my **second thesis** is that *autonomy consists of two distinct cognitive capacities: one self-reflective, the other self-affective. These two cognitive capacities are cultivated through the three central pedagogical aims of AFE: The Knowledge Requirement (KR) is the development of the ability to access information. The Skill Requirement (SR) is the development of the ability to rationally evaluate and understand the relevant information. The Disposition Requirement (DR) is the development of the ability or positive psychological disposition to both engage the first two deliberative abilities (which together form a person's considered best judgment) and then act on and commit to that judgment and to not deviate from it without first engaging the deliberative abilities again in light of new information, newly acquired evaluative skill or new understanding of the information.*

Meeting the necessary conditions for the development of autonomy, as of any development, requires taking the environmental context of development into account.² In some environments, a seed can simply fall on the ground and grow and flourish without any deliberate benevolent intervention in

² I am using the term 'environment' in its broadest sense, meaning everything external to the thing in question, whether material or social or otherwise.

its development. But in other environments, intervention *is* necessary in order to artificially create or provide the necessary conditions of development. It follows that the degree of deliberate intervention necessary to meet the child's right to AFE will vary depending on environmental context. In the context of social diversity (e.g. contemporary multicultural Canadian society), AFE requires meaningful exposure to that diversity and meaningful engagement with it through critical reflection and evaluation. It is not a requirement, however, that the pedagogical approach to AFE be neutral in a context of social diversity. The basic requirements of AFE can be met by a wide range of pedagogical approaches, all of which may provisionally privilege one worldview or set of ends over others.³ I argue that such provisional privileging is unavoidable and does not necessarily impede AFE. In other words, a pedagogical approach can privilege one worldview and yet not count as indoctrination. My **third thesis** is that *parents ought to have the right to choose the pedagogical approach to their child's education, so long as it is not indoctrinating and meets the basic pedagogical requirements of AFE.*

The Conflict

In recent years there has been increasing public debate on the place of religion, morality and culture in Canadian primary and secondary education. Some argue that the right to self-determination entails that everyone has a right to learn about the diversity of world views in society, and the right to choose and form their world view for themselves. Everyone has the right to choose how to live their life and what to believe, so long as it does not infringe on the rights of others, and that means everyone has a right to learn about differing world views they could choose to embrace. In short, everyone has

³ The idea of the legitimacy of provisional privileging of parent's own worldviews and convictions in the context of their child's upbringing is drawn from Colin Macleod's paper, *Conceptions of Parental Autonomy* (1997). I return to this idea in chapter 4, in the context of Macleod's democratic, liberal and refined liberal conceptions of parental autonomy.

the right to AFE. Contrary to this position, some argue that true respect for diversity means allowing the various ethnic, cultural, and religious communities within the wider society freedom to exercise their practices and way of life, so long as members of that community do not infringe on the rights and freedoms of those outside the community.⁴ They argue that they, the community and/or the family unit, have the right to organize and govern their affairs according to their own judgment, and that it is within the scope of the parents' rights to authoritatively fix their children's educational ends and worldview so long as the child is in their charge. In short, they argue that communities, or at least families⁵, have the right to self-governance, and that they have the right to limit their child's critical reflection of certain ideas and exposure to alternate ends and worldviews. The first view is that children have a right to AFE, while the latter suggests that parents may legitimately deny children such an education.

The conflict may not be obvious, because the adult members of the communities in question do not deny the legal right of its other adult members to leave and embrace alternative world views. After all, if a person has the right to self-determination in choosing to embrace their community's world view and its associated practices, then a person equally has the right to embrace an alternative world view. Self-determination necessarily implies choice. The community may think the alternative world view is *wrong*, but they do not deny that it is not a legal crime to change world views. They do not contest the rights of adults *per se*, but rather the rights of their children and the role and rights of parents in their upbringing. If adults have a right to autonomy, but being autonomous is contingent on

⁴ I do not mean to deny the existence of internal restrictions, or that some adult members of the community are not censured or ostracized for deviating from "mainstream" norms within the minority. No doubt, such internal restrictions exist in many cases, but for the purposes of this essay I will consider only such internal restrictions as they pertain to children in the parent child relationship.

⁵ This raises an interesting and important question, which is what constitutes a family in the eyes of the State? For instance, some people have stronger familial ties with their community (especially in small communities) than others have with their immediate family. Here I will assume 'family' to denote two parents/guardians and their one or more children/wards.

certain conditions in order to develop, then it follows that children *qua* future adults have a prospective right to those conditions. The problem arises in determining not only what precisely those conditions are, but in determining who has the final authority in deciding what they are and how they will be implemented. The one side argues that one of the necessary conditions of developing autonomy is exposure to diversity in a secular⁶, neutral space, practice evaluating world views and reflecting on one's own world view in terms of one's values, beliefs, desires, etc. This means, for instance, that children of Catholic families must be exposed to the world views and practices of Protestantism, Judaism, Islam, Buddhism, Paganism, Atheism, and so on.

Some argue that children must have the opportunity to evaluate these world views in a space where their family's world view is held at arm's length so as to avoid bias or prejudice, and involves imagining what it is like to embrace these alternate world views, empathizing with those who do, and respecting and valuing the fact of all this diversity. Some parents, however, argue that the requirement of pedagogical neutrality implies a worldview of normative pluralism, and that it in fact amounts to indoctrinating children to adopt that worldview. They argue that such a program of education actually undermines and belittles the diverse world views it represents by implying that the higher order truth of the matter is that all world views are equal, and thus in a sense superficial; a matter of taste, as in music or food or dress.⁷ This, they argue, is really nothing more than a thinly veiled relativism, a world view that they do not endorse, is often antithetical to their own world view, and which they vehemently oppose the state indoctrinating their children into endorsing through compulsory schooling.

⁶ The meaning of the term "secular" is a matter of ongoing debate in contemporary political philosophy. In this essay I am using the term in Charles Taylor's sense, that is to denote the a particular characteristic of public institutions and

⁷ Which, it should be noted, some people believe is not at all superficial or a mere matter of taste.

The Canadian Context

In the course of arguing for these theses, I will evaluate recent legislative developments in Canadian education that raise these kinds of questions about the nature and value of autonomy, and about the appropriateness of means of achieving autonomy as an educational aim. Since 2008, two nearly polar opposite approaches to this question have manifested in provincial government legislation: The first is the creation of Québec's mandatory Ethics and Religious Culture Program (ERC) in July 2008, and which has become the occasion of two landmark lawsuits. The other is the enshrining of parental rights over their child's education in Section 9 of the Alberta Human Rights Amendment Act (Bill 44) in September 2010. These are important test cases for the question of religion in public sphere of education, for the question of the relationship between children's rights and parental rights, and for the nature, value and function of personal and parental autonomy. The Québec approach purports to be a practical implementation of a program designed to protect the individual's right (as child and future adult) to autonomy and AFE. Critics object that the ERC program is an affront to the rights of the parent to raise their children according to what they judge is their child's best interests. The Alberta approach seems to agree with the ERC critics, but is itself criticized for being an affront to the right of the child to AFE, and an affront to the interest of a diverse, liberal democratic society.

Outline of Chapters

In the first chapter I outline the debate surrounding the Québec and Alberta cases. In the Alberta case, I focus on the official rationale of for Bill 44's parental rights clause, and to its most vocal critics. In the Québec case, I focus on the proceedings and arguments of the Drummondville lawsuit (public school) and the Loyola High School lawsuit (private school). I will show how the Québec and Alberta debates are diametrically opposed, such that arguments in favor of the Alberta

approach are effectively arguments against the Québec approach, and vice versa. I will also show that both cases raise questions about the nature and value of personal autonomy, parental autonomy, and the role of the state in mediating between the two.

The second chapter gives an account of the nature of autonomy and AFE. I argue that a person can only be said to have made any given decision autonomously when each of the three general categories of practical ability requirements obtain (i.e. the KR, the SR, and the DR). I argue that a person can only be said to be robustly autonomous (i.e. not just as having made particular autonomous decisions, but as being autonomous overall) to the extent that they make decisions and judgments that are self-regarding such that the three categorical requirements of autonomous decision making are understood as comprising two distinct cognitive capacities: the first, a self-reflective capacity to reflect on and recognize one's own values, beliefs, desires, preferences and motives in general, as well as their logical relations to each other (i.e. which ones conflict, which compliment and/or each other, which are more important and which are less important, and so on); and the other self-affective (i.e. the ability to affect one's own mindset by revision and commitment to core values and ends; to accept or attempt to change one's values, desires etc. in light of exercising one's self-reflective capacity). I argue that robust personal autonomy is the result of exercising one's free will at key choice junctures in one's life, i.e. those choices regarding life-values and goals. I argue that natural propensities and intrinsic motives develop into robust autonomy *if and only if* the surrounding environment (i.e. family, community, culture, school, etc.) facilitates such development. This then provides the rationale for AFE and indicates the specific competencies it is concerned with developing.

The third chapter gives an account of the value of autonomy and AFE. I argue that everyone has a fundamental interest in securing personal autonomy, and that all children have a corresponding fundamental prospective interest in *becoming* autonomous. Since there is a fundamental interest in

being and becoming autonomous, there is a *right* to being autonomous and becoming autonomous. I argue that there are both self-regarding and other-regarding reasons to value autonomy. Being autonomous is in the self-regarding interest of citizens of liberal-democratic societies because it allows them to fully enjoy the constitutional rights and freedoms of those societies⁸. It is in the other-regarding interest of individuals as members of society at large to create, through the power of the state, autonomous citizens⁹ so as to sustain the vitality of a political culture that animates liberal democratic public life, without which such a society would likely remain neither liberal nor democratic for very long. Specifically, I argue that AFE is necessary for: (1) a coherent basis of self-consciously liberal democratic societies with regards to children; (2) development of what Rawls called the *moral powers*; and (3) the vitality and sustainability of liberal democratic society.

The fourth chapter considers the value of AFE in the context of an account of indoctrination and authority, and argues for autonomy as an educational aim. I then consider the value of parental autonomy, and argue that it is beyond the legitimate scope of parental autonomy to deny their child AFE. There is, however, ample room for, and an entitlement to, parental choice regarding the pedagogical approach to AFE.

In the fifth chapter I evaluate the cases in light of the account of autonomy and AFE developed in the previous chapters. I argue that the Alberta case is problematic because it does not meet the basic requirements of AFE, and amounts to denying the child's right to freedom to AFE and from indoctrination by granting parents the right to authoritatively quarantine their own worldview from

⁸ In this way, autonomy is the positive aspect of the right to liberty insofar as it confers the ability to act on one's liberty as opposed to the negative aspect, which is simply that liberty not be blocked.

⁹ The State's interest, and indeed the general interest in creating citizens with the virtue of justice (of which autonomy is an essential part) is explored in depth by Eamonn Callan in his book *Creating Citizens: Political Education and Liberal Democracy* (Oxford University Press, 2004).

critical reflection so long as the child is in their charge. This is because the Alberta approach is based on a problematic conservative/democratic conception parental autonomy. I argue that the Québec case is problematic because it wrongly asserts that a neutral pedagogical approach is a requirement of AFE, and denies that a wide range of non-indoctrinating pedagogical approaches can meet the basic requirements of AFE. Moreover, it unjustly denies the parents' legitimate right to choice of pedagogical approach to AFE.

I conclude that Alberta and Québec education policy ought to recognize that parents have a legitimate right to reasonable choice with respect to the pedagogical approach of their child's education, but they do not have the right to restrict nor to opt-out of the core curricular content of AFE because access to AFE is the child's fundamental right as it is the basis for the future exercise of their fundamental right to autonomy. In the end, I will hope to have presented compelling arguments that children have a fundamental right to AFE, that parents have a corresponding right to choose an education program that meets the basic requirements of AFE and whose pedagogical approach provisionally privileges their own worldview. Moreover, I will hope to have provided a compelling account of the nature and value of autonomy and AFE.

Chapter 1: Autonomy and AFE in Québec and Alberta

Chapter Abstract:

In the last four years, two nearly polar opposite approaches to balancing parents' and children's rights in education have manifested in Canadian provincial legislation: Québec implemented the mandatory Ethics and Religious Culture program (ERC)¹⁰, and Alberta passed the *Alberta Human Rights Amendment Act* (Bill 44) enshrining parents' rights to limit their child's exposure to certain topics.¹¹ Both approaches have been met with fervent opposition, such that arguments for the one tend to work as arguments against the other. In this chapter I outline these two cases and the debates surrounding them. The Alberta approach gives parents the right to authoritatively fix some aspects of their child's worldview by denying their children certain basic requirements of AFE. The Québec approach denies parents this right and claims that AFE can only be pursued from a pedagogical approach of secular neutrality.

The Québec ERC Case

In December 1997, Québec adopted an amendment to the 1867 *Constitution Act* which allowed for the abolition of denominational school boards. This then provided for the establishment, effective July 1, 1998 of French and English linguistic school boards, replacing the older Catholic/Protestant school boards in a broad series of reforms aimed at moving Québec public education to a secular model. A 2003 brief to the Québec Minister of Education makes the following note on these changes:

¹⁰ Came into effect in September 2008,

¹¹ Came into effect September 2010

The changes to the denominational nature of the schools brought about by Bill 118 were clearly in favor of greater secularization. In general terms this bill made a sharp distinction between church and state, an essential component of secularity.¹²

Another note lists the specific changes brought about by the Bill 118¹³: an end to confessional state organizations; schools that are project-specific cannot implement a specifically religious educational project; public schools no longer have confessional status; confessional animation services are replaced by new spiritual care/guidance and community involvement services; and all Secondary Cycle Two students will undertake a common program on the ethical and religious culture of Québec.

In June 2005, Bill 95 brought the new ERC curriculum into effect and ended all remaining faith-based confessional elements in Québec public education, and introduced a single common and compulsory educational program for all students, running from grade 1 to grade 11. In 1997, a resolution was tabled to amend the *Constitution Act* so that Bill 109 could come into effect.¹⁴ Then Minister of Intergovernmental Affairs, Stéphane Dion and tabler of the amendment¹⁵ noted that "the right to religious instruction is still guaranteed under Section 41 of the *Québec Charter of Human Rights and Freedoms*, a document that has quasi-constitutional status according to the Supreme Court of Canada."¹⁶ However, when Bill 95 passed in June 2005, Article 13 amended the *Québec Charter*.¹⁷ The revised Article 41 removed the parental rights in the old Article to "require in the public educational establishments their children receive a religious or moral education in conformity with

¹² *ibid* pp.6

¹³ *ibid.* pp.5-7

¹⁴ See <http://www.pco-bcp.gc.ca/aia/index.asp?lang=eng&Page=archive&Sub=release-communique&Doc=19971001-eng.htm> Accessed September 2011.

¹⁵ Mr. Dion was then Minister of Intergovernmental Affairs, and was the one who tabled the resolution.

¹⁶ See <http://www.pco-bcp.gc.ca/aia/index.asp?lang=eng&Page=archive&Sub=release-communique&Doc=19971001-eng.htm> Accessed September 2011

¹⁷ As critics like Douglas Farrow are quick to point out, this was done with no public notice, no record of meaningful debate and no recorded vote.

their convictions, within the framework of the curricula as provided for by law.”¹⁸ Article 13 of Bill 95 replaced that right with the parental right to “give their children a religious and moral education in keeping with their convictions and with proper regard for their children's rights and interests.”¹⁹

No clarification is given, critics note, as to who has the authority to decide what those rights and interests of the child are, but supporters of the amendment generally point to Article 14 Section 1 of the *United Nations Convention of the Rights of the Child* (UNCRC), which reads: “State Parties shall respect the right of the child to freedom of thought, conscience and religion.”²⁰ To which critics of the amendment reply “what thought, what conscience and what religion? Those passed on by the parents or those inculcated by a program sanctioned by the State?”²¹

In July 2008 the new curriculum came into effect.²² It has been opposed from the outset various interest groups such as the anti-religion secularists of the Mouvement Laïque Québécois who question the value of religious literacy²³, by Quebec Nationalists²⁴ some of whom see it as a sort of

¹⁸ *Québec Charter of Human Rights and Freedoms*, Chapter IV. Wording of Article 41 as it stood prior to June 2005.

¹⁹ *Québec Charter of Human Rights and Freedoms*, Chapter IV. Wording of Article 41 as it currently stands. Note that no specification is given as to whether parents have rights in the school or only at home.

²⁰ Article 14 Section 1 of the *United Nations Convention of the Rights of the Child*. See <http://www2.ohchr.org/english/law/crc.htm> Accessed June 2011

²¹ From the Association of Christian Parent-Educators of Québec, a homeschooling group. See http://www.acpeq.org/en/cle_pourquoi_en.html Accessed May 2011

²² The act came into effect in theory, but in practice there were no initially available approved manuals or teacher training for the first 16 months. Public opinion was divided among the general public with 45% opposed the new program and 72% wanting the freedom to choose between the new curriculum and a traditional denominational religion course in keeping with their beliefs. The latter figure now stands at 79%. See <http://www.newswire.ca/fr/releases/archive/October2008/23/c9151.html> , and <http://www.newswire.ca/fr/releases/archive/May2009/26/c7735.html> Accessed May 2011.

²³ http://www.mlq.qc.ca/vx/6_dossiers/ecole/ecd/summary_2008_04_24_en.html Accessed May 2011

²⁴ Refers to persons in favor of Quebec separation and/or independence.

indoctrination to multiculturalism²⁵, and by representatives of religious denominations who denounce it as relativistic.²⁶ It is also the occasion of two landmark lawsuits.

The first lawsuit was brought by a family in Drummondville whose children were enrolled in the local public school. The family sued the School Board and the Ministry for not granting exemptions to the ERC, arguing that parents and students should have the liberty to decline the State's version of ethical and religious education:

The course imposes on the student a polytheistic vision of the religious phenomenon, is relativist, separates ethics from morality, claims to maintain a neutrality in dealing with ethical questions, [and] interferes with the ability of parents to transmit their faith to their child.²⁷

The judge decided that ERC participation is compatible with the family's Catholic faith²⁸ and that compulsory attendance therefore does not violate their Charter rights.²⁹ In his decision Judge Dubois wrote,

In light of all the evidence presented, the court does not see how the ... course limits the appellant's freedom of conscience and of religion for the children when it

²⁵ For example, see this *L'Action Nationale* article http://www.action-nationale.qc.ca/index.php?option=com_content&task=view&id=808&Itemid=1 Accessed May 2011

²⁶ For example, see <http://coalition-cle.org/> Accessed May 2011

²⁷ <http://www.lifesitenews.com/news/Québec-family-files-appeal-motion-for-exemption-from-mandatory-relativism-c> Accessed May 2011

²⁸ This is also an interesting test case for the practice in Canadian jurisprudence of interpreting religious identity. Avigail Eisenberg argues that the Canadian courts find themselves between a rock and a hard place when it comes to such decisions involving religious identity because on the one hand the subjective approach opens the floodgates to all manner of potentially problematic claims to religious freedom, while on the other hand the objective approach is “forbidden territory” for judges. It is forbidden because a person must, if sincere, be taken to be the judge of their own faith requirements. The fact that there is often diversity even within relatively narrow worldviews shows that just because the dominant membership of a given group endorses a particular definition of themselves, there may always be a “minority within a minority” so-to-speak, and thus no objective test can suffice. From Eisenberg's Public Lecture, *Reasons of Religious Identity: How Courts Assess Claims About what is Important to our Religious Identities*. University of Victoria Feb.3, 2010

²⁹ The Drummondville decision was announced on 31 August 2010 and is currently, as of this writing, under appeal to the Supreme Court of Canada. See *S.L., et al. v. Commission scolaire des Chênes, et al.* Summary available at <http://www.scc-csc.gc.ca/case-dossier/cms-sgd/sum-som-eng.aspx?cas=33678>. The Evangelical Fellowship of Canada has also published its own summary, available at <http://files.efc-canada.net/si/Education/LavalleeQA.pdf> Accessed June 2011.

provides an overall presentation of various religions without obliging the children to adhere to them.³⁰

The second lawsuit was brought by Montréal's Loyola High School – a private school - against the Minister of Education, over the requirement that it teach the new ERC curriculum, and asked for an exemption allowing it to teach its own ethics and world religions course which was already compulsory for all Loyola students.³¹ Loyola did not dispute the subject matter but rather the ERC pedagogical approach to the subject matter, arguing that it would contradict its Catholic Jesuit teaching tradition, and that requiring it violates the school's and its teachers' Charter rights. Loyola's Principal Paul Donovan summed up their dispute in the following open letter to the Montréal Gazette:

Our request to the Ministry of Education was simply to allow us to teach all of the competencies, content and goals of the program using a structure and methodology that is more in keeping with our Jesuit and Catholic identity. We were informed that these things cannot be taught "according to ministerial expectation" in a Catholic context. Our question to the courts, since the Ministry would not talk with us, is quite simply, "Why not?" If, as Schleifer so proudly points out, the values and ideals of the program are universal, then surely we can explore them as Catholics.³²

Loyola won their case in June of 2010 and now enjoys an exemption from the ERC program. In his decision, Superior Court Justice L'honorable Gérard Dugré said that,

...the obligation imposed on Loyola to teach the ethics and religious culture course in a lay fashion assumes a totalitarian character essentially equivalent to Galileo's being ordered by the Inquisition to deny the Copernican universe.³³

Douglas Farrow, professor of religious studies at McGill University, and expert witness in the Loyola lawsuit, argues that the Drummondville and Loyola cases are “not just about religious literacy,

³⁰ See <http://wcr.ab.ca/old-site/bishops/henry/2009/henry052509.shtml> Accessed April 2012.

³¹ The Loyola course had at the time been in running for 25 years, which they argued showed that they had more experience with this kind of education than the crafters of the ERC curriculum.

³² Paul Donovan. “Loyola has had a World Religions course for 25 years; the high school taught the course long before it became popular to do so.” *The Gazette*, A.21. 2009, May 21. Accessed May 2011

³³ See <http://www.coalition-cle.org/media/Jugement-Loyola.pdf> Accessed May 2011

but about religious liberty.”³⁴ He claims they raise important questions about the way in which citizens, communities, and freestanding civil institutions (e.g. private schools) relate to the State and vice versa. The problem is subtler than the assessment given by Sebastien Lebel-Grenier, Professor of Law at l'Université de Sherbrooke, who wrote an open letter reflecting a common argument in favor of the ERC:

What parents were demanding was the right to ignorance, the right to protect their children from being exposed to the existence of other religions... This right to ignorance is certainly not protected under the Canadian Charter of Rights and Freedoms. Freedom of religion does not protect the right not to know what is going on in our universe... [The course aims] to explain to these children the diversity in which we now live in Québec.³⁵

This, Farrow argues, is false and misses the point of the Loyola objection. He acknowledges that there may indeed be people who prefer ignorance to knowledge, but the question at the heart of the ERC controversy is a question about “how knowledge is communicated, to what use it is directed, and who gets to decide that.”³⁶

The Québec government’s approach to diversity in Québec society owes much to Charles Taylor, whose recent work³⁷ describes the nature of diversity in the 21st-century, and describes different ways of responding to this diversity. Taylor argues in favor of an approach to religion in the public sphere of 21st-century secular society that he calls the *management of diversity* model of

³⁴ Douglas Farrow, interview on CBC Radio, broadcast in November 2010.

³⁵ <http://www.skyejethani.com/teaching-religion-in-public-schools/405/> Accessed May 2011

³⁶ Farrow Report. pp.8 One question the ERC program raises then is about Québec’s particular model of secularism. Charles Taylor has argued that there are at least two kinds of secularism that are prominent in the modern world: what he calls the management of diversity model and the containment of diversity model. The former seeks to include maximal input from religious actors in the public square, even collaborating with such actors on occasion in the public interest, yet always being able to justify government action independently of any particular religious worldview.

³⁷ See, for example, Taylor’s *Sources of the Self*, *The Malaise of Modernity*, *A Secular Age*, and *Modes of Secularity*.

secularism, as opposed to a *containment of diversity* model of secularism.³⁸ Taylor argues that we should have a society in which we have liberty to express our beliefs that are at the core of our identities and worldviews; a society in which maximum input at this level is encouraged not discouraged. Taylor rejects the containment of religion model³⁹, and encourages a commitment to religious literacy. He has spoken about the ERC program in this connection, which makes sense because it has become an interesting and important test case for autonomy, for how religion is to be handled in the public sphere, and for the viability of the management of diversity model of secularism. Besides committing to religious liberty and maximum input from every serious partner in civil society, Taylor's management model also commits to State institutions independence with respect to world views (religious or not). Specifically, management of diversity requires that the state's ethical and religious education be developed independently of (though not neutral with respect to) particular religious views.

³⁸ See Charles Taylor, *Multiculturalism and the Politics of Recognition* (1992). Taylor's argument is that for Canada to remain united it must find a way to bridge the gap between the politics of equality and the politics of difference. His suggestion to this end is to adopt a politics of recognition, wherein the most basic of rights (such as the right to life, security of person, etc) are held equally by all individuals, but the less basic rights (such as language or cultural rights) ought to be treated more flexibly so as to be responsive to certain collective aims of minority groups within the wider society. He claims that recognition is a basic human need, and that if the politics of equality goes too far it can lead to an unjust situation in which the majority culture overwhelms and eventually assimilates the minority culture, constituting a harm to members of the minority. The containment model of diversity is, roughly speaking, a model based that fails to recognize difference in a meaningful way, and thus denies certain persons in the society the basic need of recognition. The management model of diversity, by contrast, seeks to give maximum recognition to difference, while maintaining the essential equal basic liberties demanded by the politics of equality. This, Taylor argues, is the basic idea behind the multicultural approach and the metaphor of Canada as a cultural mosaic, as opposed to a cultural melting pot.

³⁹ Farrow and others usually call the containment of religion model *militant secularism*.

Purpose and Rationale of the ERC program

Professor Georges Leroux, a leading academic advocate for the ERC program and advocate of Taylor's management of diversity model, wrote, "that someone looking in from the outside on the transformation in progress could say we are preparing a sort of revolution."⁴⁰ The revolution, Leroux says, is in response to two related voids in Québec education: one moral and the other religious. The first void was created in part by the unfortunate fact that, as Leroux says, "literary culture is no longer the vector for the moralization of the youth, and even less so for their introduction to thought."⁴¹ The end of confessional education in Québec schools, and more generally by what Leroux calls a "de-confessionalized" society, generated the second void. To de-confessionalize is, he says,

... to break with the structure of the denominations and faith, in order to gain access in school, as elsewhere in the public sphere, to a nondenominational secular space. The break cannot erase the past, but it also cannot help being a true interruption. Public schools will no longer be the setting of any confessionality whatsoever, and we must take the full measure of the break with the past. But this nondenominational space is nevertheless not destined to become empty, a space whose neutrality would require complete indifference to everything moral, spiritual and religious. The positive aspect of this movement must now challenge us more than the impact of the break in communities of believers which are called upon for their part to face the challenge of reconstruction of denominational transmission in their own institutions.⁴²

In other words, it is now the responsibility of the State rather than religious communities to teach children how to negotiate what Leroux calls "the considerable issues, both moral and religious, facing the contemporary world."⁴³ The ERC program, he says, "does not intend to empty the place for

⁴⁰ Leroux, "Ethics and Religious Culture," pp. 3

⁴¹ *Ibid* pp. 17

⁴² *Ibid* pp. 5

⁴³ *Ibid* pp. 5

the religious and the symbolic, but fill it another way. It also assumes as resolutely as possible responsibility for the education of all young people to face the moral issues of these times.”⁴⁴

If the State assumes responsibility for equipping children to face the moral issues of the day, then this certainly is a revolution, because the state will also have to assume responsibility for deciding what the issues are and how to present them in the classroom.⁴⁵ If the Québec government does not intend to leave Leroux’s void unfilled, then “it will have to decide how that space should be filled,” and, writes Farrow, “What was once the task of the family and of the religious community working in cooperation with the schools has now become the task of the State.”⁴⁶ In other words, the ERC revolution transfers “some of the most fundamental responsibilities of civil society” from the family and the cultural or religious community to the State. Advocates of the ERC argue that this is not really a transfer because it in no way stops families and churches from transmitting their worldviews outside of school. Against this, Farrow argues that Leroux implies such a transfer when he says, “Québec's choice is radical and absolutely unprecedented.”⁴⁷ Farrow notes that Québec has adopted neither the communitarian model⁴⁸, nor the republican model.⁴⁹ The former leaves schools⁵⁰ free to offer moral and religious education reflecting the practices and world views of the community. The republican

⁴⁴ *Ibid* pp. 3

⁴⁵ Farrow Report pp.2

⁴⁶ *Ibid* pp.2

⁴⁷ Leroux, “Ethics and Religious Culture,” pp. 5

⁴⁸ The communitarian model is followed in many jurisdictions such as, for example, Alberta. Kent Donlevy, University of Calgary Education Professor, has argued that it is also the model the Canadian Supreme Court has implicitly adopted in deciding *Trinity Western University v. College of Teachers* (1997), and *Chamberlain et al. v. The Board of Trustees of School District No. 36* (Surrey). (2002). Donlevy argues that the decisions imply an underlying communitarian philosophy and a principle of value pluralism over value monism. See Donlevy, J. K. (2004). Value pluralism & negative freedom in Canadian education: The trinity and surrey cases. *McGill Journal of Education*, 39(3), 305-325. See <http://ezproxy.library.uvic.ca/docview/202723143?accountid=14846> Accessed December 2011

⁴⁹ This is the model followed in France.

⁵⁰ This includes public schools.

model avoids formal moral and religious education, and instead approaches moral and spiritual questions from a literary perspective. Québec's choice, Leroux says, “is for a new model that puts moral and religious education in the schools into the hands of the Ministry.” The State assumption of responsibility for the spiritual and moral formation of the children of Québec will not necessarily result in neglect, but it will result in transformation by virtue of its underlying political philosophy.

Taking on responsibility for transmitting norms entails, according to Leroux, “not limiting ourselves to the transmission of basic knowledge such as language, mathematics and science.” This explains why both religion and ethics are included in the ERC program. It explains why the architects of the ERC program “decided to fill the gap left by de-confessionalization not with one project but with two concomitant projects for the transmission of norms.”⁵¹

The ERC then is revolutionary because it continues, even under de-confessionalization, to acknowledge and require the transmission of norms. To this, Farrow asks the question: “can a revolution be neutral?”⁵² It is revolutionary because it assumes this responsibility, although its method of discharging that responsibility differs significantly from the earlier confessional education model. “We believe that moral and religious knowledge must be explicitly transmitted, not suppressed,” says Leroux, “and we believe that transmission must reflect the pluralism of our culture.”⁵³ However, Farrow points to an unresolved tension: the belief that de-confessionalization is a necessary condition of a neutral secular space, and the commitment to a “robust educational philosophy that recognizes the importance of personal autonomy and of formation of the person through the deliberate transmission of

⁵¹ Leroux, “Ethics and Religious Culture,” pp. 12

⁵² Farrow Report pp.3

⁵³ Leroux, “Ethics and Religious Culture,” pp.13

favored norms.”⁵⁴ Consider again the ERC's underlying philosophy, which Leroux calls “normative pluralism.” In Leroux's words,

...the first reason that we the Government and all those that have supported it and judged that it is necessary, even essential, to draw up the course of ethics and religious culture is normative pluralism. It is essential that diversified experience, both on the moral and the religious level, be valued in its diversity.⁵⁵

Pluralism

The term pluralism is even more ambiguous than the term secularism, and calls at this point for some explanation. Pluralism can be a descriptive reference to a social phenomenon, i.e. diversity in society, or it can refer to a philosophy characterized by skepticism about the possibility or appropriateness of trying to give a universally convincing comprehensive worldview within the realm of public reason and with respect to public programs. As a political philosophy for responding to diversity, it asserts that the public sphere should not be governed by any single comprehensive world view, which is in effect to govern by the principles of normative pluralism. Considered in the context of education, Leroux writes,

...on the one hand, a determination to gather for transmission the normative heritage, both moral and religious, of Québec history, a heritage of great riches; on the other the political determination to make the pluralist social and cultural experience a success in a nonreligious secular framework.⁵⁶

⁵⁴ Farrow Report pp.4

⁵⁵ As quoted by Jean Morse-Chevrier, “*Gare au pluralisme normatif*” (*Le Devoir*, 4 June 2007), p.A6, from an address by Prof. Leroux to the *Fédération des établissements de l'enseignement privé* on 3 May 2007. See <http://www.libredepenser.net/societe/ethique-et-religion/146064/libre-opinion-gare-au-pluralisme-normatif-dans-les-cours-d-ethique-et-de-culture-religieuse> Accessed May 2011

⁵⁶ Leroux, “Ethics and Religious Culture,” pp.14

The function of normative pluralism can thus be understood in both negative and positive terms. In negative terms, “no one principle, ideal, or way of life can dominate.”⁵⁷ In positive terms, the function is to ensure that a diverse society possesses the means of engagement that is a necessary condition to sustain a common society.⁵⁸ Normative pluralism, according to this conception, implies that justice demands something like the management of diversity model of secularism advocated by Taylor. The strategy is to emphasize valuing moral and religious diversity as the new norm, though with respect to morality a few foundational universal maxims are nonetheless necessarily posited.

This, Farrow argues, presents a problem: pluralism may value diversity and appeal to the utopian hope that disparate groups in society can peacefully and cooperatively exist and interact, and it may value the multiculturalism of an immigrant nation. There is, Farrow concedes, no problem there and “one does not need to be a pluralist in order to join the celebration.”⁵⁹ But, he argues, if pluralism guarantees the conditions of engagement it sees as necessary for a common society, and if it achieves this by policing the engagement so that that no one principle or ideal dominates (i.e. as the mechanism of the negative function of pluralism), then what is the status of pluralism itself? Are the norms inherent in pluralism itself as a political philosophy not, ultimately, self-contradictory? As Farrow puts the question, “is ‘the determination to make pluralist social and cultural experience a success in a nonreligious secular framework,’ not in fact a dominating principle?”⁶⁰ Farrow notes that the *Proulx*

⁵⁷ Avigail Eisenberg. Review of David Miller and Michael Walzer, eds., *Pluralism, Justice and Equality* (Oxford 1995), in *American Political Science Review*, 90.3, 1996, pp. 636.

⁵⁸ Position advocated by the Harvard Pluralism Project. See <http://www.pluralism.org>

⁵⁹ Farrow Report pp.5

⁶⁰ *Ibid* pp.8

report⁶¹, which championed religious and moral diversity by mandating conformity to a secular framework, had already raised this problem. Of that report, Peter Lauer, Justice of the Supreme Court of Ontario, observed,

It is no small irony that it trumpets pluralism in Québec society, but then prescribes uniformity in public education as the appropriate antidote. The Report is a brilliant piece of propaganda for its own policy prescription. It wraps itself in the cloak of human rights but it is really aimed at social homogenization.⁶²

That uniformity is currently the law of the land in Québec, and every school in the province is required to abide by it and until the recent court victory even explicitly religious schools such as Loyola High School. As Leroux acknowledges, the ERC revolution was inspired from the very beginning by a commitment to normative pluralism and its manifestation in secular political philosophy, and its advocates do not pretend to be neutral about it. But, as Farrow reminds us, ERC claims to be neutral about religion, and to aim at presenting religion from the neutral perspective of the de-confessionalized, secular classroom.⁶³

This raises the question: how can the ERC curriculum be neutral in its approach to religion? Its religious literacy goals are relatively limited as compared to the traditional denominational confessional curriculums. It is devoid of confessional instruction and/or catechesis; it is explicitly not a course in philosophy of religion, or religious doctrine, or the history of religion. Rather, it is a course on religious culture. This is indicated in the officially approved introduction to the ERC program:

⁶¹ Proulx, Jean-Pierre, et al. *Religion in Secular Schools: A new perspective for Québec (Laïcité et religions: Perspective nouvelle pour l'école québécoise)*. Ministère de l'Éducation, 1999.

⁶² Peter Lauer, "The Proulx Report and Educational Changes in Québec," pp. 2. Paper delivered at the Centre for Cultural Renewal symposium: "Pluralism, Liberalism, Religion and the Law," Montebello, 1999.

⁶³ For a detailed critique of this aspect of normative pluralism and secularized education in the American context of the famous *Hawkins* and *Mozert* cases, see Nomi Maya Stolzenberg's influential paper, "He Drew A Circle That Shut Me Out": Assimilation, Indoctrination, And The Paradox Of Liberal Education" in *Harvard Law Review* Vol. 106, No.3 pp.581-667. January 1993.

This instruction is aimed at an informed understanding of the many forms of religious expression present in Québec society and in the world. It is considered cultural because it is aimed at the ability to grasp the field of religion by means of its various forms of expression in time and space. It allows for understanding the signs in which religious experiences of individuals and groups are conveyed and contribute to shaping society. Moreover, it does not espouse any particular set of beliefs or moral references.⁶⁴

The ERC architects intended to avoid contentious religious concepts and judgments by keeping the inquiry phenomenological. “Again, the goal is neither to accompany students on a spiritual quest, nor to present the history of doctrines and religions, nor to promote some new common religious doctrine aimed at replacing specific beliefs.”⁶⁵ The stated primary responsibility of the teachers is,

... to accompany and guide their students in their reflections on ethical questions, in understanding the phenomenon of religion, and in engaging in dialogue. Teachers therefore play the role of cultural mediator - that is they build bridges between the past the present and the future, especially with regard to Québec culture.⁶⁶

This, however, raises what is bound to be a contentious issue: how to differentiate between the spiritual and the cultural⁶⁷, without reference to any particular set of beliefs. The ERC deliberately places “new demands on teachers with regard to the professional stance they adopt.”⁶⁸ Teachers are to avoid sharing their own point of view in order to ensure students are not unduly influenced in developing theirs. Teachers are also expected to hone their pedagogical skills in order to foster openness to diverse cultures and values. Furthermore, in the words of the Ministry, since the subject matter,

⁶⁴ *Québec Ethics and Religious Culture: Secondary*. Approved by the Minister of Education, Recreation and Sports, July 13, 2007. pp.6 See <http://collections.banq.qc.ca/ark:/52327/bs1561569> Accessed may 2011

⁶⁵ *Ibid.* pp.7

⁶⁶ *Ibid.* pp.7

⁶⁷ The problem here hinges on how to determine the religious identity of citizens while staying within the proper bounds of a public, secular institution.

⁶⁸ *Québec Ethics and Religious Culture: Secondary*. Approved by the Minister of Education, Recreation and Sports, July 13, 2007. pp.7 See <http://collections.banq.qc.ca/ark:/52327/bs1561569> Accessed may 2011

...touches upon complex and sometimes delicate personal and family dynamics, teachers have an additional obligation to be discreet and respectful and to not promote their own beliefs and points of view. However, when an opinion is expressed that attacks a person's dignity or if there is an action suggested that compromises the common good, the teacher will intervene by referring to the programs and objectives. The teacher must cultivate the art of questioning by promoting such values as openness to diversity, respect for convictions, recognition of self and others, and the search for the common good.⁶⁹

The official professional posture of the ERC outlined above is, according to Farrow and Loyola, a “defining feature of the ERC.”⁷⁰ It is also, Loyola argues, the ground on which the Ministry initially refused to allow them to offer their equivalent program (i.e. by teaching these subjects its own Catholic, Jesuit way).⁷¹ Of this initial refusal, Farrow makes three criticisms: First, pedagogies, like political philosophies are not neutral but are always necessarily based in world views.⁷² Second, while the teacher is required to avoid sharing their own views and convictions, they are also required to promote certain values and to avoid anything that compromises “the common good or the dignity of the person.”⁷³ But, Farrow asks, “what is the common good and what is the dignity of the person?”⁷⁴ This is either empty advice, or some important value decisions have already been made, and some deeply significant beliefs have already been accepted.⁷⁵ Third, by making ERC universally mandatory, the State imposes a comprehensive philosophical world view and its associated pedagogy on everyone. That world view is the comprehensive or perfectionist liberalism that Rawls resists in *Political Liberalism* and *The Law of Peoples*.

⁶⁹ *Ibid.* pp.7

⁷⁰ Farrow Report pp.12

⁷¹ *Ibid* pp.12. This is also the thrust of the main argument advanced by Loyola High School Principal Paul Donovan.

⁷² There is no view from nowhere.

⁷³ *Québec Ethics and Religious Culture: Secondary*. Approved by the Minister of Education, Recreation and Sports, July 13, 2007. pp.8 See <http://collections.banq.qc.ca/ark:/52327/bs1561569> Accessed may 2011

⁷⁴ Farrow Report pp.15

⁷⁵ *Ibid* pp.15

Loyola asked of the Ministry only that it be allowed to cover the prescribed topics of the ERC program in its own way, in accordance with its “Catholic and Jesuit identity.” It did not object to the primary objectives of the program to encourage recognition of others and pursuit of the common good.⁷⁶ Farrow points out that these two objectives are consistent with, if not straight out of Catholic teaching. In Vatican II’s famous declaration on religious liberty, the function of government is to “make provision for the common good” which consists, it says, “of those conditions of social life under which the dignity of persons can be properly pursued and developed.”⁷⁷ Nor, notes Farrow, did Loyola in object to the three main competencies of the ERC program, that the student “carries out thorough reflection on ethical questions, demonstrates an informed understanding of the phenomenon of religion and engages in dialogue with a view to contributing to community life.”⁷⁸ Nor yet did Loyola object to the idea that education is primarily about training human beings. Catholicism also embraces this kind of language and it is consonant with Vatican II’s *Declaration on Christian Education*, which reads: “True education is directed towards the formation of the human person in view of his final ends and the good of society to which he belongs and in the duties of which he will as an adult have a share.”⁷⁹ Loyola’s objection was to the Ministry’s inflexible requirement that it pursue these objectives and these competencies “as if the human being could be properly formed without any

⁷⁶ *Québec Ethics and Religious Culture: Secondary*. Approved by the Minister of Education, Recreation and Sports, July 13, 2007. pp.10 See <http://collections.banq.qc.ca/ark:/52327/bs1561569> Accessed may 2011

⁷⁷ Declaration on Religious Freedom, *Dignitatis Humanae*, “On the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious”, Promulgated by His Holiness Pope Paul VI, December 7, 1965. Article 3. See http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html

⁷⁸ *Québec Ethics and Religious Culture: Secondary*. pp.8

⁷⁹ *Declaration on Christian Education, Gravissimum Educationis*. Proclaimed by His Holiness Pope Paul VI, October 28, 1965. http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_gravissimum-educationis_en.html Accessed May 2011. Note that the second objection can be assumed with reference to the first.

reference to his or her final end, and as if its teachers did not believe in any such end;”⁸⁰ In short, as if they were all agnostics⁸¹. What Loyola objected to, in other words, was the Ministry's implication that the ERC goals and competencies could not be achieved from a distinctly Catholic pedagogical approach, which is simply to be honest and open about their Christian identity which permeates all aspects of their teaching and school life. Farrow argues that the Ministry’s position suggests that it has its own view of what human dignity and the common good are, and it will not tolerate any competitors to its view. He notes that according to Catholic canon law,

... since true education must strive for complete formation of the human person that looks to his or her final end as well as to the common good of society, children and youth are to be nurtured in such a way that they develop their physical, moral, and intellectual talents harmoniously, and acquire a more perfect sense of responsibility and right use of freedom in our forms to participate actively in social life.⁸²

Farrow notes that the appeal here to a final end is the only part of this the ERC program drops, but the appeal to a final end is, for Catholics, the most decisive element. “To require Catholics to drop it” writes Farrow, “is really to require them not to be Catholic.”⁸³ This is evident in the Church’s document on religion in school,

It is clear that the school has to review its entire program of formation, both its content and its methods used in the light of that vision of the reality from which it draws its inspiration and on which it depends. Either implicit or explicit reference to a determinate attitude to life is unavoidable in education because it comes into every decision that is made.⁸⁴

⁸⁰ Farrow Report pp.8

⁸¹ By this I mean agnostics while teaching the course, but not at all other times and places in the school.

⁸² Catholic Canon 795. See http://www.vatican.va/archive/ENG1104/_INDEX.HTM Accessed May 2011

⁸³ Farrow report pp.9

⁸⁴ From “The School as a Centre of Human Formation” in *the Catholic School: The Sacred Congregation for Catholic Education*, October 15, 1976. pp.6. See http://www.ncea.org/UserFiles/File/09_Sacred_Congregation.pdf Accessed May 2011

The ERC, Farrow argues, has its own determinate attitude in just this sense. The document quoted earlier, *Religious Rights and Symbols in Schools*, cites a UNESCO report from the International Commission on Education for the 21st Century:

We must be guided by the utopian aim of steering the world toward greater mutual understanding, a greater sense of responsibility, and of greater solidarity through acceptance of our spiritual and cultural differences.⁸⁵

This utopianism is, Farrow objects, an article of faith. It is a belief and a basic presupposition of the ERC program. The implementation of ERC is itself a vital instrument for realizing the vision. ERC “will facilitate the management of religious diversity.”⁸⁶ How? “By teaching students of all faith traditions to accept the utopian notion that differences can be dealt with simply by acknowledging and accepting them.”⁸⁷ This, he argues, sounds close to Taylor’s management of diversity model of secularism, but in practice is hard to distinguish from the containment model that Taylor rejects. The ERC seems designed to manage and contain the conflicting religious and moral commitments by insisting that it is “all a sort of game that can be played without injury so long as there are levelheaded referees who will rule every actual truth claim out of bounds.”⁸⁸ However, “if the ERC is to attain the objective of recognition of others”, argues Leroux, “it is first and foremost in the recognition of the absolute value of the fundamental positions of everyone, believers and unbelievers alike. That is the ideal neutrality which ERC seeks to implement.”⁸⁹

⁸⁵ From *Learning: the Treasure Within*, a report to UNESCO by the International Commission on Education for the Twenty-first Century. pp.34. See http://www.unesco.org/education/pdf/DELORS_E.PDF Accessed May 2011

⁸⁶ Farrow Report pp.11

⁸⁷ *Ibid* pp. 12

⁸⁸ *Ibid* pp.11

⁸⁹ Leroux, “Ethics and Religious Culture,” pp.17

Critics object that this seems to be a fixed game. “If absolute value is to be accorded to the fundamental positions of everyone, is to be accorded to the fundamental positions of no one. If everyone is special then no one is special; if everyone is right then there is no such thing as wrong.”⁹⁰ Farrow insists that under these rules it is the referees who represent the truth and not the people who are in dialogue. It is one thing to believe that greater understanding and neutrality is a good thing. It is quite another, Farrow argues, to believe “that greater solidarity can be achieved simply by accepting differences.”⁹¹ Those who believe the latter, he says, present differences as “merely cultural”; not substantial but superficial. Where these differences are more than superficial they are said to belong not to the sphere of public reason, but to the private sphere of preference and personal autonomy. In Farrow’s words, “anything that might threaten the desired solidarity is simply bracketed out.”⁹²

Some, however, take their world view and community more seriously than such pedagogy allows. This kind of supposed AFE pedagogy always refers the student back to herself as the final reference point, rather than to, say, her supposed divine end as the Loyola pedagogy purports to do. This is, moreover, not just a recommendation but a State requirement, which Farrow argues is evidence that the final reference point of the ERC is really not the autonomous individual at all, but rather the State which will, to borrow Sartre’s phrase, condemn everyone to be free according to official State definition.

Normative pluralism as a political philosophy holds that the state should govern public affairs, including education⁹³, on the basis that there are a wide variety of worldviews operative in modern

⁹⁰ Farrow Report pp.12

⁹¹ *Ibid* pp.12

⁹² *Ibid* pp.12

⁹³ Whether in public or private schools.

society, and that the State should commit to none of them (in effect committing only to normative pluralism). Farrow argues that this singular commitment to the worldview of normative pluralism suppresses diversity while claiming to support it. “It tends to mono-culturalism, not multiculturalism or inter-culturalism,” Farrow writes, “it is more Rousseauian than Rawlsian; more Statist than Democratic.”⁹⁴

In his book *Éthique, culture religieuse, dialogue: Arguments pour un programme*, Leroux argues that the State ought to become the “sole owner” and the “sole actor” in education, implying that the church and other religious authorities will not be actors in any privileged sense. They are to be reduced to the status of mere citizens. Leroux describes it as a rite of passage for Québec society; a coming-of-age transfer of authority. But, Farrow argues, even if “the people of Québec will now speak for themselves and hear themselves speaking. In any event it now falls to the State to be their tutor.”⁹⁵

The ERC and the Management of Diversity Model of Secularism

The ERC as it is currently conceived is arguably contrary to Taylor’s management of diversity model of secularism. Critics claim that the mandatory ERC curriculum is antithetical to liberty of belief, equality of treatment and maximum input from religious world views. On that approach the communities that have generated and sustained the religious world views that have hitherto shaped Québec and Canada are “being pushed out by a competing world view in which the supposedly autonomous individual walks hand-in-hand with the putatively neutral State.”⁹⁶

⁹⁴ Farrow Report pp.7

⁹⁵ *Ibid* pp.15

⁹⁶ *Ibid* pp.16

Farrow argues that parents and families are also being pushed out. Article 26, Section 3 of the *Universal Declaration of Human Rights* (UDHR) states: “parents have a *prior* right to choose the kind of education that shall be given to their children.”⁹⁷ Article 10, Section 3 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) declares that signatories shall “ensure religious and moral education in conformity with their parent’s convictions.”⁹⁸ That is also what Article 41 of the *Québec Charter* said prior to its revision in 2005. Farrow notes that even the *Toledo guiding principles on teaching about religions and beliefs in public schools* warns against any attempt by the States to “indoctrinate pupils in a particular world view through the educational system against the wishes of the pupil's parents.”⁹⁹ Farrow argues that these principles and liberties are “being eroded by an unwanted and unwarranted advance of the State under the guise of neutrality.”¹⁰⁰ This guise is, moreover, a false-consciousness on the part of the Québec government, because no society can avoid making positive religious judgments. Consider O'Donovan’s remarks in his *The Desire of the Nations*,

Imagine the questions such a society would have to avoid deciding: Are sacred ancestral lands protected against plans for mining or other development? Is drug-taking, or sex with child prostitutes, a valid religious activity? Can racial discrimination be practiced to preserve the elect people of God or to safeguard religious caste? May women be priests? Must those in quest of unemployment benefit be prepared to accept work on Sundays or Saturdays? Every actual society reaches answers to these questions which it treats as normative, and so makes definite religious judgments about the proper content of religious belief and practice. The false self consciousness of the would-be secular society lies in its determination to conceal the religious judgments it has made.¹⁰¹

⁹⁷ *Universal Declaration of Human Rights* Article 26, Section 3. My emphasis.

⁹⁸ United Nations *International Covenant on Economic, Social and Cultural Rights*. See <http://www2.ohchr.org/english/law/cescr.htm> Accessed June 2011.

⁹⁹ See the *Toledo guiding principles on teaching about religions and beliefs in public schools* Prepared by the ODIHR Advisory council of experts on freedom of religion or belief. pp. 68

¹⁰⁰ Farrow Report pp.16

¹⁰¹ Oliver O'Donovan. *The Desire of the Nations*. pp.247

Critics of the Québec approach argue that it operates under naïve assumptions about the nature and development of personal autonomy. They claim it belies a false-consciousness that can only end in contradiction. They do not argue against the value of personal autonomy; how could they, since parental autonomy assumes the personal autonomy of the parent; nor yet do they argue against the value of AFE *per se*. Rather, they argue against the appropriateness of certain approaches to AFE, and more specifically, who is to be the final authority in determining the appropriateness of various such pedagogies. Critics of the Québec approach argue that parents ought to be that final authority, and that their authority ought to be enshrined in law as parental rights in the education of their children.

The Alberta Bill-44 Case

In Alberta, the ruling provincial Progressive Conservative government under then-premier Ed Stelmach¹⁰² went in almost the polar opposite direction on this question. Instead of removing or emasculating parental rights,¹⁰³ Alberta has enshrined them and invested them with the full force of the Alberta Human Rights Commission.¹⁰⁴ In May 2009, the Stelmach Government took steps to follow the Supreme Court's *Vriend vs. Alberta*¹⁰⁵ ruling, which ordered the Alberta government write in freedom from discrimination on the basis of sexual orientation in the *Alberta Human Rights Act*. Eleven years later the Alberta government complied, albeit with considerable concessions to certain groups within the party. Critics allege that some party members cited the recent *Corren vs. BC*

¹⁰² It is worth noting that Alberta's new premier Alison Redford has expressed openness to revisiting the question of parental rights brought in with the passing of Bill-44. See <http://www.edmontonjournal.com/news/Redford+could+reopen+debate+parental+veto+classrooms/5508543/story.html> Accessed December 2011.

¹⁰³ As ERC critics feel has occurred in Quebec.

¹⁰⁴ The Alberta Human Rights Tribunal is a quasi-judicial tribunal which oversees enforcement of all Alberta Human Rights legislation.

¹⁰⁵ *Vriend v. Alberta*, [1998] 1 S.C.R. 493

*Ministry of Education*¹⁰⁶ human rights complaint, and wanted to protect against LGBTTIQ activists forcing officials to include sexual orientation in the curriculum. As a result, the controversial Section 9 was included with the final version of Bill 44.

The *Human Rights, Citizenship and Multiculturalism Amendment Act, 2009* (Bill 44) was proclaimed and came into force on October 1, 2009, with the exception of Section 9, the parental opt-out clause, which came into force on September 1, 2010.¹⁰⁷ Section 9 of Bill 44 introduced Section 11.1 to the *Alberta Human Rights Act* and enshrines a parent's right to have their child,

...exempted from courses of study, educational programs, instructions or exercises or the use of instructional materials that deal primarily and explicitly with religion, human sexuality and sexual orientation.¹⁰⁸

The legislation goes on to stipulate that where a parent makes a written request, teachers shall exempt the student, without academic penalty, from such instruction, course of study, educational program, or use of instructional material.¹⁰⁹

For those who sympathize with the critics of Québec's ERC program, the Alberta alternative might appear to be a shining beacon of reason and liberty, in contrast to the so-called Nanny-State. After all, Farrow's criticism of the ERC amounts to the claim that justice demands the provision of choice of for dissenting parents when it comes to those aspects of the public school curriculum that

¹⁰⁶ *Corren and Corren v. B.C. (Ministry of Education)* (No. 3), 2006 BCHRT 5

¹⁰⁷ Bill 44 was introduced by the Honorable Lindsay Blackett, MLA and Alberta Minister of Culture and Community Spirit.

¹⁰⁸ *Human Rights, Citizenship and Multiculturalism Amendment Act, 2009* (Bill 44), Section 9. The exception to this is where the student is 18 years of age or older, or where the student is 16 years of age or older and is living independently. In those situations, the student is considered an "independent student" and has the authority to exercise the rights and obligations that the parent ordinarily has.

¹⁰⁹ These requirements do not, however, apply to incidental or indirect references to religion, religious themes, human sexuality or sexual-orientation. Critics point out that no clarification is given as to what counts as "incidental or indirect."

constitute the moral and religious education, and that the ERC program is a gross violation of that right.

Dave Hancock, Alberta's then Minister of Education, defended the parental rights clause, claiming, "with respect to values, religion and sex education have always been areas of concern for parents, and they've always been areas parents have had the right to be notified about and to exempt their students from."¹¹⁰ The Minister was likely referring to the acknowledgment of parental rights in the *Alberta School Act*, which states in the preamble: "Whereas parents have a right and a responsibility to make decisions respecting the education of their children."¹¹¹ Premier Stelmach echoed the sentiment, declaring that "This government supports a very, very fundamental right and that is parental rights with respect to education."¹¹² The difference is that Bill 44 puts parental rights under Alberta's *Human Rights Act*, which brings the Alberta Human Rights Commission into play.

Those who argue in defense of the enshrining of parental rights in Bill 44 say that initiatives like Québec's ERC program, where students are taught that all sexual-orientations are equally good, and all religions are equally true,¹¹³ infringe on parents' human rights as described in the UDHR (their "prior right"). This is a disagreement over the priority of parents' vs. children's rights. On the surface, it looks as though the Alberta approach gives priority to parental rights; while the Québec approach gives priority to the child's prospective rights.

¹¹⁰ See <http://www.cbc.ca/news/canada/calgary/story/2009/04/30/cgy-bill-evolution-law-alberta-classes-teachers.html> Accessed May 2011

¹¹¹ *Alberta School Act* Preamble. See <http://education.alberta.ca/departement/policy/legislation/regulations.aspx> Accessed June 2011. Note that the preamble wording does say parents have the right and responsibility for *all* or even *which* decisions. The wording, as it currently stands, is ambiguous, which could pose a problem for a judge one day.

¹¹² See <http://www.cbc.ca/news/canada/calgary/story/2009/04/30/cgy-bill-evolution-law-alberta-classes-teachers.html> Accessed May 2011

¹¹³ For example, the National Posts Barbara Kay makes this kind of argument in various articles in favor of Bill 44 and against the ERC program.

Critics argue Bill 44 renders topics like family structures, religion, evolution and sexuality off limits for classroom discussion. They say that students have a right to education about religion, sex and sexuality, regardless of how their parents may feel about those topics. They argue that denying students the right to learn about, for example, teenage-pregnancy and sexually transmitted diseases poses a real threat to their interests and well-being, and point to statistical evidence that parents (especially fundamentalist religious parents) routinely fail to adequately educate their children on these topics.¹¹⁴ The charge is that such parents fail in their duty as guardians of the best interests of their children, and that the failure is a form of neglect and perhaps even abuse.¹¹⁵

Another criticism of the Alberta approach is that enshrining parental rights infringes on the child's right to equal educational opportunity by limiting or outright denying access to AFE. They argue that all children have a fundamental interest in becoming autonomous adults, because all adults have a fundamental right to autonomy as liberty of thought, conscience, expression, etc. The assumption of the fundamental value of personal autonomy as expressed in these ways is the foundation of secularism and normative pluralism, which manifest in the State's guarantee of freedom from domination by any single world view, and is justified by the principle of personal autonomy and what Rawls called the "burdens of judgment," or the acknowledgment of the fact that reasonable people can agree to disagree; to live and let live. The inherent limits of human reason force us to acknowledge that in many cases one person's conclusions are just as reasonable as another person's

¹¹⁴ See Janet Rosenbaum's much cited paper *Patient Teenagers?: A Comparison of Sexual Behavior of Virginity-Pledgers and Matched Non-Pledgers*. Available online at <http://pediatrics.aappublications.org/content/123/1/e110.full> Accessed December 2011.

¹¹⁵ The idea that values transmission from parent to child could constitute abuse has been debated recently in regards to the a case in Manitoba where a kindergarten aged girl was sent to school with swastika's and neo-Nazi emblems drawn on her arms. See <http://www.cbc.ca/news/canada/manitoba/story/2008/07/10/swastika-child.html> Accessed August 2011.

contrary conclusions. Indeed, it seems to be the very right being invoked by those who defend parental rights.

Critics from the Alberta Teachers' Association (ATA) argue that the bill will have a number of unfortunate consequences, including requiring teachers to exclude some students from classroom discussions that consider world views that may be contrary their parents' religious beliefs. They claim it will ostracize some students from their peers; impede teachers' "ability to provide accurate, age-appropriate information to students on a variety of current and emerging social topics"; and that it will engender a "learning atmosphere for students where some topics are effectively censored; and "restrict student access to non-judgmental information regarding issues that impact their lives."¹¹⁶ It will threaten teachers' professional autonomy to teach in a "pluralistic manner" for what the ATA claims to be to the benefit of all students, and it will "stigmatize children who ask legitimate questions in classrooms whereby teachers are unable to respond to them in a genuine and honest manner by engaging the teachable moment."¹¹⁷

Dissenters wrote letters to the *Edmonton Journal* objecting to the government's approach, arguing that the government was demonstrating "a lack of respect and inclusion of its lesbian, gay, bisexual, and transgender (LGBTTIQ) citizens."¹¹⁸ The ATA, the College of Alberta School Superintendents (CASS), the Alberta School Councils' Association (ASCA), and the Alberta School Boards Association (ASBA) all opposed Bill 44's parental rights clause. They argued unanimously that

¹¹⁶ Quote from CBC radio interview with *Kristopher Wells, chair of the ATA's Sexual Orientation and Gender Identity Educational Subcommittee.*

¹¹⁷ Ibid.

¹¹⁸ Quote from CBC interview with *James Chamberlain, assistant director, BCTF's Professional and Social Issues Division.*

the clause is “virtually unenforceable,” is antithetical to the basic tenets of public education, and that there is no justifiable educational reason for its inclusion in human rights legislation.

Critics argue that the impact of Bill 44 will close down critical dialogue on important social issues, that it will effectively stigmatize LGBTTIQ citizens, and that it will prevent some students from learning about and appreciating their legal right to freedom from discrimination on grounds of sexual-orientation. They argue the legislation will also increase risk to children of same-gender families. Rather than fostering understanding, they claim that Bill 44 perpetuates ignorance about the LGBTTIQ community, and that “mandated silence and curricular invisibility send the sinister message that the lives, experiences, and contributions of LGBTTIQ people are unfit for public discussion.”¹¹⁹ Ultimately, they argue, Bill 44 impedes students from learning how to be good global citizens, in effect limiting the role of public education, rather than expanding it to include everyone, regardless of differences.

Ron Ghitter, a prominent former PC MLA and Senator, is also sharply critical of the bill, particularly with respect to the parents’ right to pull students from classes studying the theory of evolution. “We’re kind of stepping back into the Middle Ages a little with legislation like that,” says Ghitter, “I suppose it’s indicative of the attitudes in some parts of Alberta, but it really is a backward step. Once you open that Pandora's box, it goes on and on...where do you stop on something like that?”

¹¹⁹ Kristopher Wells and James Chamberlain. “Professional Autonomy” in *Teacher: Newsmagazine of the BC Teachers’ Federation*. Vol. 22, No.1. September 2009. pp5.

Ghitter oversaw the government audit of private and public school¹²⁰ curriculums in the province that followed the infamous Keegstra Affair¹²¹ in the early 1980s. He says some of the schools investigated were "schools of indoctrination." "Heaven forbid we should do that in our public school system...the public school system should always be open to pluralistic thoughts and attitudes and critical thinking." In Ghitter's view,

...[Students] should be able to see all sides, think for themselves, and come to their conclusions. Now that is an educational system that should be supported and should be accepted. What the government is doing in Bill 44 is taking away from that. They're accepting that indoctrination is an acceptable scope in an educational environment, and they're totally wrong.¹²²

A Philosophical Issue?

What are we to make of these contrasting approaches? The Québec government claims to be upholding children's rights by creating a secular space where students of all backgrounds can have the opportunity to engage in serious critical self-reflection on matters of identity and spirituality, which it is argued is necessary for the development of a robust sense of self and the capacity for autonomous choice. Alberta claims to be upholding the right of parents to shape and/or authoritatively fix their children's convictions, ends, and worldview; a right they say parents possess first of all by virtue of

¹²⁰ In Alberta, the public school system includes *de facto* secular common schools, and *de jure* Catholic schools, and Protestant schools all under this heading. Ghitter speaks of undifferentiated public schooling, but note that these three systems could handle parents rights differently or with different rationales if not substantively different practices.

¹²¹ This was the infamous case of the Alberta social studies teacher James Keegstra, who had been teaching holocaust denial and inciting hatred toward minorities in his classes. See http://en.wikipedia.org/wiki/R._v._Keegstra Accessed September 2011.

¹²² Quotations from interview with Ron Ghitter in Calgary Herald, May 1, 2009. See <http://www.ffwdweekly.com/calgary-blogs/politics/2009/05/01/bill-44-puts-alberta-back-into-the-middle-ages-former-tory-mla-21/> Accessed May 2011. For more on the Keegstra Affair, see also William Hare, "Limiting the Freedom of Expression" in the *Canadian Journal of Education*, (1990).

being in the natural and fundamental position of guardian of the child's best interests, and second by virtue of their *Charter* right to freedom of religion.¹²³

The cases raise two key questions: what is the good of education? Moreover, who gets to decide that? Both the Québec and Alberta approaches claim to uphold fundamental rights and freedoms, and both have critics who say these approaches infringe on them. What comes out in the debates is a general concern of respect for autonomy. The difference, it seems, is how autonomy is conceived in terms of its nature and value, when it applies, and to whom. Which should have priority, the rights of the autonomous adult parent to determine their child's best interest and educate them accordingly, or the prospective rights of the child *qua the* future autonomous adult the state would have her grow into (namely, one in possession of the capacities of autonomy)? Do children have a right to an education that promotes or facilitates the development of their ability to shape their own convictions and autonomously endorse their own conceptions of the good? Or do parents have a prior right to shape their child's future convictions and world view because the child is unable, and the parent is by right of parental responsibility (which they argue is a natural right and responsibility) the final authority regarding their own child's best interests?

In the following chapters, I will argue that parents' rights extend only to the right to provisionally privilege their own worldview in their child's education by having the right to choose which pedagogical approach their child's education will take. Parents do not, however, have the right to attempt to authoritatively fix their child's worldview by choosing an education program that does

¹²³ The right to freedom of religion is guaranteed federally by the *Canadian Charter of Rights and Freedoms*, as well as provincially by the *Québec Charter* and the *Alberta Charter*. It is also supported by Article 18 of the *Universal Declaration of Human Rights*.

not meet the basic requirements of AFE.¹²⁴ This position is thus midway between those who argue for parents' rights to deny their children the basic requirements of AFE (i.e. the Alberta approach), and those who argue parents have no such right and that furthermore AFE can only be pursued from a neutral¹²⁵ pedagogical perspective (i.e. the Québec approach).

¹²⁴ This approach is advocated by William Galston in his book *Liberal Purposes* (2004) wherein Galston argues that people have the right to an examined or an unexamined life (See *Liberal Purposes* pp.204), and that the state cannot legitimately force critical reflection on anyone. Shelly Burt also advocates this kind of approach in her paper *In Defense of Yoder: Parental Authority and the Public Schools* (1993), although her position does not deny the right to autonomy or AFE, but rather disputes the meaning of autonomy and disputes what I will be arguing are the pedagogical requirements of AFE (i.e. the KR, SR, and DR).

¹²⁵ This kind of position is developed by Michael Clayton in his book *Justice and Legitimacy in Upbringing* (2006). Clayton argues that enrolling children in particular ethical or religious practices is illegitimate on the grounds that it violates the child's right to liberty of conscience. This includes, curiously, the illegitimacy of bringing up children into secular worldviews. Clayton, however, acknowledges that strict neutrality is practically impossible with respect to pedagogies, but argues that meeting the child's right entails a sort of counterbalancing approach. Clayton's approach is similar to the ERC approach in justification, but goes further in practice. Clayton himself, for example, is an avowed atheist but sends his son to an Anglican school.

Chapter 2: The Nature of Autonomy and AFE

Chapter Abstract

In this chapter I develop an account of the nature of autonomy and defend my second thesis. I argue that autonomy consists of having two related cognitive capacities: a self-reflective capacity and a self-affective capacity. The self-reflective capacity is the capacity to reflect on one's own motives and beliefs such that one is able to identify them and able to understand the logical relations between them (i.e. contrary/complementary, hierarchy, etc.), against background knowledge of alternative beliefs and motives operative within the environment. The self-affective capacity is the ability to either accept one's motives and beliefs as they are or to attempt to change them so as to integrate them into a coherent sense of self capable of responsiveness to reasons and reasoning. The self-affective capacity is, in this way, the combined capacity to implement a change in one's motivational make-up, to commit to the change, and to resist temptation to abandon the change without first engaging the dual-capacities. Autonomy is a contingent on the presence of external conditions conducive to a natural process of critical reflection and self-shaping which gradually brings an agent to a state of robust autonomy. Here the agent's motives are either self-chosen or self-endorsed through the exercise of the cognitive capacities of autonomy. Such an environment necessarily involves a deliberate program of AFE; one that exposes children to the diverse range of world views operative in the wider society, and which provides them with the reasoning skills and the opportunity to practice those skills of evaluation. Without such an AFE, and especially if subjected to indoctrination, children may grow up to be adults with minimal autonomy.

The Basic Philosophical Value of Autonomy

Before developing an account of the nature of autonomy and of autonomy facilitating education, it will be instructive to consider how the term is used in the philosophical literature, and what its basic, non-political philosophical value is usually taken to be.

Perhaps the most famous proponent of the basic philosophical value of autonomy is Immanuel Kant, who places the concept at the heart of his moral philosophy. Kant's basic idea is that the only thing that can be regarded as good in itself is a good will, and that this is the starting point of all moral reasoning. Kant argues that morality is a system of rules which we can access through the use of reason by considering the maxim of our actions. In short, if we can rationally will that the maxim of our action be applied by all persons in every context, then we can regard that maxim as indicative of and consistent with the universal moral law, or what Kant called the "categorical imperative": never treat persons as a mere means, but always as ends unto themselves. Since others are to be regarded as ends unto themselves, then an intrinsic part of human dignity is that they are able to determine what those ends are for themselves, by power of their own sovereign will and judgment. Respect for the universal moral law thus entails respect for the self-regarding sovereign judgment of persons. This, moreover, goes not only for other persons, but also for oneself (since oneself is a member of the set of persons). Therefore, autonomy is of basic philosophical value because it is an essential and intrinsic part of human being and human dignity. A contemporary proponent of this view is Thomas Hill, whose paper *Servility and Self-Respect* makes this point.

Since Kant's time, the term 'autonomy' has come to be one of those words that is all things to all people, so-to-speak. I will return to the broader value of autonomy and AFE in the next chapter, but for now it will suffice to say that the basic value I take autonomy to have is that it is indicative of a person whose life is, ultimately, their own. Ronald Dworkin argues that the valuing the autonomy of others is closely related to the basic notion of equal respect that is foundational to liberal democratic

society. Gerald Dworkin, whose dual-capacity account of autonomy I draw upon later in this chapter, argues that the basic philosophical value of autonomy lies in its conferral of ownership and authorship to one's life; making one's life one's own in a substantive sense. For my purposes here, I will be developing an account of autonomy that tries to avoid contentious metaphysical baggage and political controversy by keeping the account as strictly logical as possible, but at the same time reflects the sentiment that these kind of conceptions of the basic philosophical value of autonomy express. My account makes use of a range of conceptions of autonomy, and is an attempt to retain the basic philosophical value expressed in each, and each of which is foundational for the wider value of autonomy and AFE that is the subject of the next chapter. Therefore, let us now consider a series of conceptions of autonomy in developing what will in the end be a robust conception that is the basis of the larger value of autonomy that is the basis of thesis 1.

Coherence vs. Hierarchical Accounts of Autonomy

Laura Ekstrom describes a coherence theory of autonomy as one where,

... we take an agent's *true* or *most central self* to be a subset of those acceptances and preferences, namely, those that *cohere* together. Once preferences... are *authorized* - or sanctioned as one's own - when they cohere with one's other preferences and acceptances.¹²⁶

Coherent elements consistently and firmly fit together and are mutually supportive. These elements are reflective of the core, authentic self because they are relatively long-lasting, they are the result of reason and critical reflection on first-order desires, and they are "fully defensible" against external challenges. These core elements form a person's world view, i.e. the view from which they

¹²⁶ Laura Ekstrom, "A Coherence Theory of Autonomy", in *Philosophy and Phenomenological Research*. Vol.53, No.3, September 1993. pp.608

judge any and all desires they may come to have. As such, on this view a person's desires count as their own in the relevant sense if and only if they cohere with this core viewpoint which is identified as the person's *true self*. The elements are, moreover, higher-order preferences that one is comfortable owning, because they have gone through the proving fire of critical self reflection many times and in many contexts. Ekstrom's coherentist conception of autonomy is thus composed of a set of "authorized preferences" that form the standard against which all the rest of a person's desires are judged in the process of self reflection. When a problematic tension arises between two or more internal desires, or an internal desire and a core preference, the agent considers all the elements of her core self and determines which desire and/or preference is of greatest value in terms of producing the greatest degree of internal coherence, and the one that comes out on top gains status in preference moving closer to the core, and becomes authorized, while the loser - even though it may persist in the person's psyche - is unauthorized and thus counts as an external force that is nevertheless *within* the person. Therefore, on Ekstrom's coherence account of autonomy, only those desires that gain authorization are core preferences and are considered one's *own*, in the relevant sense, even though they remain a desire that *belongs* to that person.¹²⁷

This kind of coherentist account of autonomy is a response to the hierarchical account defended by philosophers such as Harry Frankfurt.¹²⁸ The coherentist account is an attempt to solve the apparent problematic regress generated by the hierarchical account. On the hierarchical account, one gets closer and closer to identifying one's *true self* by analyzing one's desires in terms of higher and lower order

¹²⁷ *Ibid.* pp.612

¹²⁸ For example, see Frankfurt's *The Importance of What We Care About* (Cambridge: Cambridge University Press, 1988), pp. 23-24

volitions. The problem is that there always seems to be need of some further higher-order desire to justify any given desire, leading to a highly implausible and problematic regress.

The coherence account rests on the intuition that in order to attribute an action to an agent and hold them responsible for it, it must not be the case that from the point of view of her core self she would not authorize or in some way denounce that very action.¹²⁹ One consequence of the coherentist approach, however, is that agents can be moved by desires that they have no power to stop or resist. On this view, if a smoker finds she is unable in a particular instance to overcome a craving to smoke due to her overpowering addiction to nicotine, she would still be autonomous as long as she did not actively object to her addiction or its effects. It does not matter, furthermore, where her attitude toward her own addiction comes from, because self-governance does not depend on how we came to be the way we are nor on the rationality of our beliefs and attitudes. The reason these things do not matter is because they are external to the agent, because on the coherentist view all that matters is what is internal to the agent.

Responsiveness-to-Reasons

We can avoid this consequence of the simple coherentist account of autonomy by adding the externalist qualification that an agent is only self-governing if her motives are responsive to reasons for and against performing a particular action. The intuition here is that an agent cannot govern herself if she has no way of understanding the reasons for what she does or she has no way of being moved by reasons to act one way or another. In this sense, an agent's authority over her own action is legitimate

¹²⁹ In positive terms, an agent must at least in principle be in a position where they could endorse the action.

only by virtue of her being able to give sufficiently robust¹³⁰ reasons for what she does. The insight here, as Buss points out, is that if a person does something poorly enough, “at some point they are not really doing it at all.”¹³¹ Just as a person cannot be really said to be sailing a boat whilst “three sheets to the wind,” so too a person who is unable to take into account reasons for their action is not doing a very good job of self-governing, because it is likely that in the long run, albeit inadvertently, acting without knowing the reason why will often produce results that are counter to one’s own interests and ends. If the agent has the ability to consider a range of reasons for and against acting in some way, then she will be more likely to act in her own interest on the whole. Ignorance, on this view, undermines self-government.¹³² If doing one thing constitutes doing another, but I do not know that it does, then I might do the one thing thinking that I am in fact not doing the other thing. In this case, although I have authorized one action, I have *not* authorized the other action which I have nevertheless done also. For example, I may have a desire to eat chocolate cake all day and another desire to not gain weight. If I am ignorant of the causal connection between eating chocolate cake all day and gaining weight, even though I can be said to autonomously authorize my action of eating chocolate cake all day the same cannot be said of my gaining weight, since the former is constitutive of the latter. I have, in this sense, failed to govern myself with respect to my gaining weight. I may have even thought, ignorantly, that

¹³⁰ Sufficiently robust reasons are those that are plausible and which speak to all aspects of the action in question.

¹³¹ Sarah Buss. *Personal Autonomy*. Stanford Encyclopedia of Philosophy

¹³² This point is the footnote to Plato. In his dialogue *Protagoras*, Socrates argues that all ostensibly *akratic* behavior (i.e. instances of weak will) is in fact special cases of ignorance. The Socratic theory is that all virtue is a kind of knowledge, while all vice is a kind of ignorance. Specifically it is lacking the art of measurement, or ignorance of the knowledge of good and evil.

eating chocolate cake was a way of *not* gaining weight,¹³³ in which case my ignorance has yielded the exact opposite of what I thought was my authorized action (i.e. to *not* gain weight).¹³⁴

Responsiveness-to-Reasoning

There is, however, more to the reason responsiveness account of autonomy than simply being able to enumerate reasons for and against performing a given action, and that is the ability to reason itself, or the practical skill of *reasoning*. The account of autonomy that stresses the importance of responsiveness to reasoning rests on the intuition that the essence of autonomous self-government lies in one's evaluative reasoning skill, whereby one can evaluate one's motives in terms of their relation to one's other motives, and the ability to change motives in light of the evaluation. This is the ability to recognize the logical and hierarchical relations between one's beliefs and desires, and thereby be able not only to state reasons for action but to *understand* reasons for action. Of course it is possible to exercise a reasoning capacity with faulty information, and as such on the *responsiveness-to-reasoning* account of autonomy being guided by the right reasons is not sufficient for autonomy; rather, the ability to evaluate whatever reasons are presently available is necessary. This guards against the possibility of considering someone autonomous who may have been indoctrinated in such a way that she lacked any real ability to examine her own beliefs and attitudes through a process of self-revision.

¹³³ This may sound like a ridiculous thing to believe, but I have encountered it when I worked as a baker for a local organic food store. Many of our customers bought our organic and vegan chocolate cakes because they believed it was healthy *because* it was organic and/or vegan. One co-worker actually said she thought it was healthier (that she would stay thin) if she ate organic chocolate cake for breakfast and lunch every day. She was apparently ignorant (perhaps willfully) of the fact that organic sugar has just as many calories as non-organic sugar.

¹³⁴ For example, a person may begin a new diet regimen which purports to be a way to lose weight but which actually results in gaining weight. In this case, a person has started on a course of action of their own free will, but it is difficult to say they are fully responsible for having gained weight because they were operating with either false or misleading information. As such, they may have thought they were engaged in autonomous self-governance but the result was the exact opposite of what they intended to achieve.

Such a person would, in effect, not be self-governing but would rather be governed by the agents of her indoctrination. She could list reasons for her action, but those reasons would not be her own because they had not yet been authorized by her own judgment.

This approach shares in common with the coherentist approach the idea that the essence of autonomous agency lies in the ability to occupy a standpoint at a distance, so to speak, from one's own motivating attitudes and beliefs. When an agent is able to occupy this standpoint from which they are able to authorize certain motives and not others, the act of authorization is internal to the agent. However the capacity for self-reflection involves not only the simple ability to hold higher-order attitudes or core preferences, but also involves the ability to ground those higher order attitudes or core preferences in practical reasoning that supports them. Therefore the truly autonomous, self-governing agent not only endorses the motives that lead her to act in one way or another, her endorsements are supported by reasons that she understands by virtue of her own sovereign reasoning ability.

Robust Autonomy

From the preceding three accounts of autonomy we can construct an account of robust autonomy. People exercise robust autonomy to the extent that they have information about the decision at hand (i.e. responsiveness to reasons), sufficient skill to evaluate the information (i.e. responsiveness to reasoning), and their decision is ultimately coherent with their core preferences or *true self*. To this I would only add what I have called the DR. Thus, a robustly autonomous person has a coherent and integrated set of core values and/or principles against which to make decisions; she knows the reasons for choosing to do one thing rather than another thing, she understands those reasons because they have been comprehended by her own, sovereign judgment; and finally she is disposed (that is, she has a habituated or inculcated propensity) to make decisions autonomously and to re-evaluate as necessary.

Two or Three Pillars of Autonomy?

What we have then is essentially two pillars of autonomy: the capacity for self-reflection, and the capacity of self-revision and implementation, or the capacity for self-affectation. Some might argue that we ought to add to this a third pillar, namely the capacity to commit to one's autonomously chosen ends and to resist temptation to abandon them.¹³⁵ This, though, is really just the problem of weak will by another name. The capacity to commit can be subsumed under the other two autonomy capacities if the revision is performed with sufficient respect for the core preferences given in the coherence account of autonomy. More important, I believe, is the necessity for a positive disposition to exercise the first two capacities, a disposition developed through repetition.¹³⁶

Shelly Burttt argues that without a capacity to commit, the other two capacities render the agent a mere consumer of world views.¹³⁷ She argues that instead we ought to conceive of the possibility of autonomy from within the un-chosen constraints of identity conferred upon us by the fact of our personal history and our connection to community and family. On Burttt's view, genuine autonomy involves not so much deciding, say, *whether* to be Christian but *how* to be a Christian. Not *whether* to choose to embrace Islam, but *how* to be a Muslim. Not *whether* to be Canadian but *how* to be Canadian. On this view one is genuinely autonomous even if one's overall identity is in some important respects un-chosen. This view asserts that there simply is no view from nowhere from which to assess and adopt beliefs and values. One is always, as Michael Sandel puts it, a radically encumbered

¹³⁵ For example, Eamonn Callan holds this view in his *Creating Citizens*.

¹³⁶ i.e. according to the Aristotelian model of habituation and inculcation of virtue.

¹³⁷ See Shelley Burttt, "In Defense of Yoder: Parental Authority and the Public Schools" in Shapiro and Hardin (eds.) *Political Order: Nomos XXXVIII*, pp.412-37. See also Burttt, "The Proper Scope of Parental Authority: Why We Don't Owe Children an Open Future" in *Child, Family, and State*.

self, but the mere fact of this inescapable encumbrance does not render autonomy impossible.¹³⁸ To the contrary, it is precisely the fact of one's encumbrance that allows one to exercise one's autonomy without falling into a state of anomie. Without the firm footing of this un-chosen aspect of our identity, autonomous choice is impossible, and moreover to act as though we are or can be autonomous in a way that ultimately transcends our un-chosen identity is, in the end, to live with a sort of false consciousness.

I would like to suggest that this capacity to commit is a part of what I have been calling the self-affective capacity, and is developed by meeting the basic requirements of AFE (i.e. KR, SR, and DR).¹³⁹ I think the intuition behind the commitment requirement just is that people will be sufficiently motivated to act on their own best judgment. The idea is that a rational autonomous agent is always able to reevaluate her commitments in light of new relevant information. This conception of robust autonomy implicitly recognizes a logical prioritization of core preferences. The capacity to commit is not a separate pillar of autonomy, but rather a part of the first two properly understood.

AFE as a Practical Mechanism of Psychological Self-Integration

What are the necessary environmental conditions for the development of an agent's autonomy? The more demanding the environment the less likely autonomy is to manifest left to chance, because its development in the face of a demanding environment is too complex and requires too much context sensitivity to be likely to develop without some deliberate benevolent intervention with the purpose of

¹³⁸ See, for example, Michael Sandel, "The Procedural Republic and the Unencumbered Self" in *Political Theory*, Vol.12, No.1 (1984). pp.81-96

¹³⁹ i.e. the responsiveness to reasoning requirement.

facilitating the development of autonomy and the abilities with which it is associated. So what does AFE involve in practice?

AFE can be described as the cultivation of the competencies and practical abilities associated with autonomy. Consider again our robust conception of autonomy, but now in terms of the specific capacities and/or capabilities it entails. Gerald Dworkin's dual-capacity model of autonomy works well in this respect, and is in keeping with the conception developed thus far. The first capacity of the Dworkin model is the capacity for an agent to reflect on her own motives – i.e. her desires, beliefs, values, principles, attitudes, ends, goals, etc. – and to be able to identify these motives and their logical and hierarchical relations to one another (i.e. first-order desires, second-order values, supporting relations, contrary relations, etc.). Call this the *self-reflective* capacity. The second capacity of the Dworkin model is for an agent to either accept or attempt to change her motives and/or their relations identified by exercising the self-reflective capacity. Call this the *self-affective* capacity. Exercising these two cognitive capacities is the mechanism whereby an agent comes to take ownership of her own life, through her learned ability to reshape herself.

Pedagogical Requirements for Development of the Dual Capacities of Autonomy

What are the preconditions for the exercise of the first cognitive capacity of autonomy, on the Dworkin model? We can approach this problem by breaking the dual-capacity model down to three requirements identifiable as competencies to which AFE pedagogy is directed. Clearly one must be able, minimally, to have the cognitive capacity to identify, which presupposes an ability to give names to discrete motives and beliefs. One must, in other words, know what the motives and beliefs are in order to be able to identify them. Knowledge of one's own pre-existing motives and beliefs also requires knowledge of the background of alternate motives and beliefs one *could* adopt but does not in

fact presently hold. To “Know Thyself” is, in a sense, to also know something about what is *not* thyself. Knowing what motivates you and what you believe entails knowing at least something about what does not motivate you and what you do not believe. Hence, one must be able not only to identify ones own beliefs and motives, but also have access to knowledge of alternate beliefs and motives that negatively define the background of one’s motives and beliefs. Call this the *Knowledge Requirement* (KR).

But simply being able to given names to each of one's motives is not enough. One must also have the ability to evaluate the relations that obtain between motives. This therefore presupposes a distinct kind of evaluative skill. Call this the *Skill Requirement* (SR). Therefore the exercise of the first cognitive capacity - the self-reflective capacity - presupposes a sufficient degree of knowledge, and a sufficient degree of skill.

The second cognitive capacity on the Dworkin model – the self-affective capacity - presupposes yet another requirement. The agent must have a positive disposition to use her reflective capacity, which means she must have a positive disposition to acquire sufficient knowledge required for its exercise, and to acquire sufficient skill for its exercise. The agent must, furthermore, possess a positive disposition to act on her analysis provided by her self-reflective capacity. For instance, if while employing the reflective capacity an agent recognizes a problematic tension that exists between a first-order desire and a higher-order value, the agent must have a positive disposition to choose whether or not to accept the problematic tension and leave it as is, thereby accepting all of the implications of maintaining the problematic tension, or to attempt to change either the first-order desire or the second-order value. The idea here is simply that one may have a latent ability to engage these cognitive functions, but without a positive psychological disposition to actually engage them the agent never actually does so and thus never engages in the self-reshaping thus far associated with robust

autonomy. There must also not be any psychological block that prevents the agent from engaging her self-reflective capacities. Call this the *Disposition Requirement* (DR).

Analysis of the Dworkin dual cognitive capacity model of autonomy thus yields three distinct, although interrelated, preconditions for their exercise: the *KR*, the *SR*, and the *DR*. These three requirements then provide us with a way to structure a program of AFE, insofar as we can make these three requirements the target competencies of an autonomy facilitating pedagogy. Therefore, any AFE must include, minimally, in its pedagogical framework a method of giving the student the tools to identify her motives, which necessarily entails exposure to knowledge of those motives in some way, the tools to evaluate that knowledge, and the iterations in practice which will yield a positive disposition to employ that knowledge and skill. These three competencies and the pedagogical requirements they entail thus have far-reaching implications for modern educational practices. Conversely, this model also defines conditions under which the right to AFE is violated. Where access to information is blocked, evaluative skill is neglected or distorted, and psychological manipulation produces involuntary psychological blocks, autonomy is not facilitated but rather is impeded (and thus are conditions not of AFE but of indoctrination).

The Great Sphere

Bruce Ackerman gives an account of liberal education that would seem to satisfy the requirements of autonomy facilitation. Ackerman writes,

The entire educational system will, if you like, resemble a great sphere. Children land upon the sphere at different points, depending on their primary culture; the task is to

help them explore the globe in a way that permits them to glimpse the deeper meanings of the dramas passing on around them.¹⁴⁰

Eamonn Callan notes that in order for AFE to work, it must be more sensitive to the needs of the child than this model proposes if left unqualified. This is because, Callan argues, “children are not well placed even to glimpse the ‘deeper meanings of the dramas unfolding around them’ until they have a secure sense of the meaning of their own culture of birth.”¹⁴¹ A thoughtful AFE would be designed to cultivate a cognitive depth of appreciation for diversity by providing space for the student’s anchoring cultural background, and would avoid “[wrenching] them away from all that gives significance to their lives outside the school.”¹⁴² Nevertheless, it seems that in order to meet the demands of the skill, knowledge, and DRs of AFE, the curriculum must extend beyond the boundaries of the student’s comfort zone defined by their primary cultural world view (i.e. the dominant world view of their family and community). Callan describes this essential point in the following way:

... schooling should at some stage elicit substantial critical engagement with ethical beliefs at odds with the culture of the family within which the child is reared. Moreover, the relevant engagement must be such that the beliefs by which others live are entertained not merely as sources of meaning in their lives; they are instead addressed as potential elements within the conceptions of the good and the right that one will create for oneself as an adult. I characterize the understanding this process is intended to yield as ‘sympathetic’ not because it entails an indiscriminate emotional embrace of pluralism. My point is rather that understanding ethical diversity in the educationally relevant sense presupposes some experience of entering imaginatively into ways of life that are strange, even repugnant, and some developed ability to respond to them with interpretive charity, even though the sympathy this involves must complement rather than supplant the tough-mindedness of responsible criticism.¹⁴³

¹⁴⁰ Bruce Ackerman, *Social Justice in the Liberal State*. Yale University Press, 1980. pp.159.

¹⁴¹ Eamonn Callan, “The Great Sphere: Education against Servility” in *Journal of Philosophy of Education*, Vol.31, No.2, 1997. pp.221

¹⁴² *Ibid* pp.221

¹⁴³ *Ibid* pp.222

Callan argues that such an AFE curriculum is justified by the necessity of inculcating a sufficient diffusion of political virtue among citizens of liberal democratic societies. Regardless of the value we place on the development of autonomy, this kind of curriculum seems to capture the necessary pedagogical elements of AFE. The KR is met by meaningful exposure to diversity (although the exposure must include those world views that can serve as genuine and not merely superficial alternatives to the dominant world view of the family and community). The SR is implied by the allusion to “entering imaginatively into ways of life that are strange” and to developing the ability to respond to diversity with “interpretive charity.” The DR is also implied by the insistence on exploring Ackerman’s “great sphere”, and implies gaining experience in the evaluative skills implicit in charitable imagination. This results in an inculcated habit of exercising such abilities.

Changing Beliefs and Values

I have presented an account of autonomy, following Dworkin,, where autonomy consists of two distinct cognitive capacities, the first concerned with identifying and understanding one’s own motives through a process of self-reflection, the second concerned with affecting one’s own motives through a process of implementing and committing to changes one might decide to make to those motives.¹⁴⁴ The term ‘motive’, however, refers to a mental state, and any theory that references mental states and cognitive functions implies a philosophy of mind, and if there is one thing that almost all philosophers of mind agree on it is that there are at least two distinct kinds of mental state: On the one hand there are mental states whose function is to represent the world; we call these mental states ‘beliefs’, and when

¹⁴⁴ It has not been my intention to enter into the debate about what the correct account of autonomy is. My aim has merely been to try and motivate the intuition in the reader that the account I describe is compelling and useful when brought to bear on the problems raised in the Alberta and Quebec cases. I do not claim that my account is correct where other accounts are incorrect. Autonomy is one of those words that has myriad uses, and I have not intended to dispute other accounts.

those beliefs are sufficiently justified by reference to evidence we call those beliefs ‘knowledge’. On the other hand there are mental states whose function is to motivate you to change the world so as to conform to the content of the motivation; we call these mental states desires, and when those desires are generalized such that they confer to an agent a general motivational stance or overarching orientation to the world, we call that desire a ‘value’.¹⁴⁵ A value is usually a desire that also extends beyond ourselves to other people, such that depending on the strength of the value we may insist on others conforming to it. Moreover, values often define not only what we prefer to do, but what we *must* do. The difference between these two kinds of mental states is sometimes called the *fact/value* distinction.

All of this points to a distinction in the mechanism active in the exercise of the self-reflective and self-affective capacities. On the one hand, one could exercise these capacities with the target being one’s beliefs about the world. William James describes the psychology of belief formation and transformation roughly along these lines. James writes,

The process here is always the same. The individual has a stock of old opinions already, but he meets a new experience that puts them to strain. Somebody contradicts them; or in a reflective moment he discovers that they contradict each other; or he hears of facts with which they are incompatible; or desires arise in him which they cease to satisfy. The result is an inward trouble to which his mind till then had been a stranger, and from which he seeks to escape by modifying his

¹⁴⁵ I should mention here that my claims about the connection between desires and values is controversial. Some authors argue that desires are not the same thing as values, and that the two ought not be conflated. This is because there appear to be cases in which one may have a desire that is counter to what one takes to be one’s values. For example, a drug addict may value a drug free lifestyle very highly, and yet nevertheless have an overpowering desire for the drug and give in to that desire often. This is a problem that often comes up in literature on the problem of weak will. I cannot adequately argue a position on this topic here, but I will say that for the purposes of this thesis there is considerable practical overlap between desires and values in normal cases. It is also controversial because, some authors argue, judgments of fact are arguably based on judgments of value. Again, for my purposes here it is suffice to say that facts and values are two different ways of thinking about the world, and my point is simply that the same mechanism we use to critically reflect on our beliefs and judgments concerning facts can also be brought to bear through critical reflection on our judgments of value.

previous mass of opinions. He saves as much of it as he can, for in this matter of belief we are all extreme conservatives. So he tries to change first this opinion, and then that (for they resist change very variously), until at last some new idea comes up which he can graft upon the ancient stock with a minimum of disturbance of the latter, some idea that mediates between the stock and the new experience and runs them into one another most felicitously and expediently.¹⁴⁶

Such, James argues, is the psychological mechanism by which the mental states we call *beliefs* are modified so as to integrate with one's overall belief set¹⁴⁷. The function of the mechanism here is to improve or maintain the functionality of the belief itself, which is to represent the world. Part of what I am arguing for here is that this same mechanism can be applied to those mental states we call 'desires' and 'values'. Just as we are often, upon reflection, confronted with contrary beliefs, so too we are often confronted with contrary values. In both cases our psychological integrative tendency compels us to make choices regarding the competing beliefs and the competing values, and moreover under varying degrees of ignorance. What distinguishes this process of self-reflection and self-affectation when it comes to the question of autonomy is its distinctly meta-cognitive character. When we engage our self-reflective and self-affective capacities, our engagement implies that we already hold certain beliefs *about* beliefs, and have certain values *about* values. When our cognitive processes 'go meta', as it were, they have the function of not only representing the world and orienting us to the world, they have the over-arching function of conferring on us ownership of our beliefs and values.

On the belief side, when our self-reflective and self-affective capacities are brought to bear, there is an implicit over-arching belief that exercising those capacities will maintain or improve the

¹⁴⁶ James, W. 1907. *Pragmatism: A New Name for Some Old Ways of Thinking*, reissued, together with *The Meaning of Truth*, by Harvard University Press, Cambridge, MA, 1978. pp.35

¹⁴⁷ Another way of conceiving of it is, following Quine, as a "web of belief", some strands of which are easier to change than others, but all of which are ultimately and in principle subject to revision, though not necessarily at the same time. For Quine's version of this argument, see his book *Web of Belief*.

function of those beliefs. On the value side, when these capacities are brought to bear we have an implicit over-arching value that tells us we should care about our values and their consistency and coherence. Thus, these capacities are capacities of *autonomy* because they force us to take not only the *world* as it is given, but also *ourselves* as we are given, to take ownership of our representations of the world in our system of beliefs, and to take ownership of our orientation to the world in our system of values. This is in a way a sort of asserting of one's own sovereign authority of judgment over one's own world view, which is the sum of one's beliefs and values. It is an assertion of power that declares the only legitimate and final authority over one's own life is oneself. As Aristotle observed, we are creatures of habit; the more we do something, the more naturally it comes to us. Thus, the more we assert ourselves in this way, the better we will get at doing it. But if we do not have sufficient opportunity to so assert ourselves, there is a very real danger of developing not autonomy, but its antithesis: servility.

Chapter Summary

Autonomy consists of two related capacities: a self-reflective capacity and a self-affective capacity. Agents can possess these capacities to greater or lesser degree, and possessing them can be expressed through a combination of coherence, responsiveness-to-reasons and responsiveness-to-reasoning accounts of autonomy. Autonomy is a contingent condition that requires a facilitating environment for its natural development. Such a conducive environment entails a program of deliberate AFE whereby the not-yet robustly autonomous person has the opportunity to develop evaluative skills (responsiveness-to-reasoning or SR), is exposed to knowledge of a diverse range of world views (responsiveness-to-reasons or KR), and develops a positive disposition through habituation/inculcation to exercise the capacities of autonomy (DR). Since robust autonomy requires

certain material and social conditions in the environment (including AFE), an agent can lack robust autonomy and yet still have free will. Autonomy is thus also an integrative psychological mechanism whereby those motives that are undeniably *ours* (because they are a part of our psyche) become our *own* through a process of authorization and endorsement wherein we take responsibility for them by conferring the legitimacy of our own sovereign authority over our inalienable judgment. As such, autonomy is also a psychological mechanism that is *contra* the phenomenon of weak-will. Exercising the capacities of autonomy is the mechanism by which an agent comes to be the owner and author of her own life.

Chapter 3: The Value of Autonomy and AFE

Chapter Abstract

In this chapter I develop an account of the value of autonomy and of AFE. I argue that the question of value presupposes an account of human well-being, which in the Alberta and Québec cases is in the context of a liberal democratic society. I argue that AFE ought to be regarded as a child's right for three reasons:

- Autonomy is a by-product of the kind of political education (for the Rawlsian moral powers) to which every citizen has a right.
- Self-consciously liberal democratic societies cannot coherently endorse anti-perfectionist liberalism and must endorse at least weak-perfectionism with respect to a child's prospective right to autonomy.
- It develops a democratic character of political virtue, the general diffusion of which is necessary for the vitality and sustainability of liberal democratic societies.

Human Well-Being

The history of moral philosophy is flush with answers to the question: “what is human well being?” There are hedonic accounts which hold that humans are ‘well’ to the extent that they can maximize pleasure and minimize pain.¹⁴⁸ Such hedonic conceptions are, for example, the subject of Aldus Huxley's *Brave New World*, where in a dystopian future people are kept in a perpetual state of happy contentment through a combination of drugs, lies and genetic engineering.¹⁴⁹ The problem with such a conception of human well-being is of course that happiness achieved in this way amounts to

¹⁴⁸ The standard example here is the hedonic utilitarianism of Jeremy Bentham, who declared that man serves two sovereign masters: pleasure and pain; and that the goal of ethics was to maximize the former and minimize the latter in the aggregate. Hence the utilitarian principle and slogan, “the greatest good for the greatest number”.

¹⁴⁹ Another popular example from the philosophical literature is the so-called “pleasure machine”, whereby subjects are given the option of plugging into a *Matrix* like virtual reality in which their every hedonic desire is satisfied by the machine by virtue of brain manipulation.

living in a fool's paradise. But as Huxley implies¹⁵⁰, even though a person living in a fool's paradise may exhibit neurologically testable evidence of pleasure and/or contentment, they are nevertheless not really living well. Such a life is devoid of conscious achievement of self-chosen ends, and rests ultimately on an illusion. Other moral philosophies such as Buddhism and Stoicism hold that human well-being consists in the suppression of desire, because by constantly pursuing desires one becomes a slave to desire. On this view, human well-being consists in casting off the chains of desire through wisdom and self-mastery.

The conception of autonomy I developed in the previous chapter lends itself to a theory of human well-being where autonomy is essential. Toward the end of the last chapter, I suggested that the value of the self-reflective and self-affective capacities of autonomy is in how they make us the originators of, and thus responsible for, our beliefs and values. But why is it important to be the originator of one's beliefs and values? Why should we care about where our beliefs come from or how our values are constituted? Why does human well-being necessarily involve the ability to determine for oneself one's overall life-goals, values, beliefs and conceptions of the good? What is the value of autonomy and AFE?

Weak Perfectionism and the Three Pillars of Liberalism

One way to answer these questions in the context of a liberal democratic society is to find a middle ground in our interpretation of liberalism as a political philosophy, between the so-called *perfectionist* interpretation, most often identified with Mill, and the *anti-perfectionist* interpretation,

¹⁵⁰ See also, Aristotle's *Nicomachean Ethics*, Book 1.

most often associated with the later Rawls.¹⁵¹ Between these two competing interpretations there is what Meira Levinson calls the *weak-perfectionism* interpretation of liberalism. The differences between these competing interpretations can be drawn out by considering the presuppositional tenets and/or commitments of liberalism, of which Levinson argues there are three:¹⁵²

(1) *Recognition and acceptance of the fact of pluralism.* The fact of pluralism is that people in modern society subscribe to a wide variety of values, identities and conceptions of the good. These often conflict with one another and are often incommensurable. Few, if any, values are universally shared, yet many (perhaps even most) are nonetheless constitutive of reasonable ways of life.

(2) *A concern for a public legitimation process.* The existence of a legitimation process for establishing the principles of justice by which the state operates has the following characteristics: it is public and transparent, all citizens are equally and freely entitled to participate, and it is directed at generating a set of basic principles and institutions that are reasonably acceptable by all citizens.

(3) *A commitment to substantive liberal institutions.* Liberalism entails a judgment that a public legitimation process entails constitutional democracy and a broad system of basic individual liberties and governmental duties.

The Problem of Pluralism

Of the three pillars of liberalism listed above, it is usually the first one that causes trouble. Pluralism, as I said in the first chapter, has two distinct senses. In the first sense, the term ‘pluralism’ denotes a descriptive social phenomenon, characterized by a society in which there coexist a diverse

¹⁵¹ By “the later Rawls” I mean the Rawls of *Political Liberalism* and *The Law of Peoples*. The “earlier Rawls” refers to the Rawls of *A Theory of Justice*. It is worth noting that Rawls never endorsed perfectionism, but his later work is more explicitly anti-perfectionism and concerned to distinguish itself from so-called “comprehensive” liberalisms.

¹⁵² Levinson outlines these three commitments in *The Demands of Liberal Education* pp.15-25

range of world views, values, beliefs, etc. The other sense is prescriptive and political and advocates a way of dealing with diversity. In the political sense, ‘pluralism’ refers to a political doctrine which asserts that different values *ought* to be allowed to coexist within the same society. However, if pluralism is to be viable it raises the question as to what, if any, ought to be the minimal set of values to which all citizens should conform. Some, like Leroux and other proponents of the ERC program, argue that for pluralism to work, children should be raised in a public culture characterized by respect for secular institutions and diverse world views. They claim that if a form of child-rearing does not meet these requirements, then it should not be tolerated. More positively, some liberals argue that a working pluralism requires that a sense of justice and certain political virtues need to be actively promoted both within the family and within the schools. Others claim only that diverse communities with profoundly different world views ought to be prepared to tolerate each other in a *modus vivendi*.¹⁵³

Different interpretations of liberalism understand and respond to the fact of pluralism in different ways, which in turn yields differing conceptions of pluralism as a political doctrine. Roughly speaking there are two leading approaches to this problem: the *perfectionist* interpretation of liberalism and the *anti-perfectionist* interpretation of liberalism. These interpretations attempt to unify (1) (2) and (3), although as Levinson compellingly argues, they each fail for related reasons stemming from how

¹⁵³ This raises the interesting question of whether pluralists ought to allow non-secular values to be taught in publicly-funded schools. Those who think that pluralism implies secularism in public life (for example, Stephen Macedo advances this view in his *Liberal Virtues*) say ‘no’. On the other hand, some authors, such as Eamonn Callan, argue that if such schools subscribe to a common education curriculum which incorporates a pluralist outlook, and they develop tolerance towards others, then the answer is ‘yes’. A particular problem arises, however, for systems which embrace autonomy as an aim, such as I am advocating here, especially with respect to the question of whether or not to use public funds to support schools in communities for which the capacities of autonomy are believed to be inimical. Such questions, however, while interesting are beyond the scope of this thesis.

they deal with (1). This leads us to adopt a third, middle ground position advocated by Levinson, namely the *weak-perfectionist* interpretation. I will now consider each of these interpretations in turn.

Perfectionist Liberalism

If a state is to count as a liberal state, then it must satisfy each of these three basic presuppositions. One of the problems of providing an interpretation of liberalism is in figuring out how a state can coherently and consistently satisfy and respect all three. Liberal theorists have attempted to provide an interpretation in a variety of ways. Usually, one of the conditions is either weakened or rejected. For example, Raz rejects (2), arguing that such a legitimation process is impossible given (1), and instead he argues for a perfectionist interpretation where the value of autonomy provides the link from (1) to (3).¹⁵⁴ Levinson remarks that Mill's attempt to take on all three conditions belies a misconstrual of the fact of pluralism, because Mill believes that the value of autonomy¹⁵⁵ will inevitably be accepted by all citizens in the legitimation process of (2). In effect, Levinson argues, Mill rejects (1) by bracketing out anyone who does not accept the value of autonomy, in favor of (2) and (3). Common to both the Raz and Mill views is a commitment to the fundamental value of autonomy – understood as “the capacity to form a conception for the good, to evaluate one's values and ends with the genuine possibility of revising them should they be found wanting, and then to realize one's revised ends.”¹⁵⁶ Also common is the commitment to the value of autonomy to justify and perpetuate (2) and (3) in the absence of (1). Such an interpretation argues that the liberal democratic state ought to value and actively promote autonomy in all citizens, both with the carrot and the stick, so-to-speak.

¹⁵⁴ Levinson pp.15

¹⁵⁵ Mill uses the term ‘individualism’ for what we are here calling ‘autonomy’.

¹⁵⁶ Levinson pp.15

Anti-Perfectionist Liberalism

Opposed to the perfectionist interpretation of liberalism is the anti-perfectionist interpretation, often called *political liberalism*. The leading advocate of political liberalism is the later Rawls, who argued that (1) (2) and (3) can be met without conceding to an overriding commitment to valuing autonomy (which some authors, including Rawls, argue amounts to a sort of liberal tyranny). Rawls argues that committing to autonomy as a fundamental and overriding value can be avoided in the liberal democratic state¹⁵⁷, even in the face of (1), with an appropriate political conception of the person, wherein persons are considered to have the two ‘moral powers’, which are first, a capacity for a sense of justice, and second, a capacity for a conception of the good. The moral powers are a sort of threshold level of autonomy such that a person has the minimal practical ability to be able to choose to pursue a reasonable¹⁵⁸ conception of the good life, and the ability to exercise a sense of justice. In Rawls’s words:

...in matters of basic political justice citizens are equal in all relevant respects: that is, that they possess to a sufficient degree the requisite powers of moral personality and the other capacities that enable them to be normal and fully cooperating members of society over a complete life...

Justice as fairness regards citizens as engaged in social cooperation, and hence as fully capable of doing so... Persons so regarded have what we may call “the two moral powers,” explained as follows:

(i) One such power is the capacity for a sense of justice: it is the capacity to understand, to apply, and to act from (and not merely in accordance with) the principles of political justice that specify the fair terms of social cooperation.

(ii) The other moral power is a capacity for a conception of the good: it is the capacity to have, to revise, and rationally to pursue a conception of the good. Such a

¹⁵⁷ Also known as the “well-ordered society” in Rawls’s terminology.

¹⁵⁸ This ‘reasonable’ qualifier is roughly based on the harm principle and a respect for the basic principles of justice as fairness.

conception is an ordered family of final ends and aims which specifies a person's conception of what is of value in human life or, alternatively, of what is regarded as a fully worthwhile life.¹⁵⁹

The first moral power presupposes acceptance of what he calls the “burdens of judgment,” which leads one to inevitably recognize certain instances of disagreement as reasonable, and to thus recognize the opposing values and conceptions of the good as reasonable and worthy of tolerance and coexistence. Rawls writes,

...the sources of reasonable disagreement – what I call the burdens of judgment – among reasonable persons are the many obstacles to the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life.¹⁶⁰

Rawls writes that reasonable disagreement stems from accepting the limits of human reason and the obstacles to achieving consensus on any given issue. The kinds of obstacle Rawls is referring to include: conflicting and complex evidence, disagreement about the weight given to relevant considerations, the inherent vagueness of concepts and intuitions about hard cases, the way our differing total life experience affects our assessments, and the force of differing normative considerations on either side of a question.¹⁶¹ Taking all of these factors into consideration Rawls concludes that,

...the burdens of judgment alone can account for the fact of reasonable pluralism...; and since we cannot eliminate these burdens, pluralism is a permanent feature of a free democratic culture.¹⁶²

¹⁵⁹ Rawls, *Justice as Fairness: A Restatement*, pp.35 18-19

¹⁶⁰ *Ibid* pp.35

¹⁶¹ *Ibid* pp.36

¹⁶² *Ibid* pp.36.

Those who recognize the limits these and other considerations place on the abilities of human reason and judgment will feel the force of the burdens of judgment, and will accept and tolerate reasonable world views that are different than their own. Rawls, therefore, has interpreted (1) as acceptance of the burdens of judgment, which is at the same time to exercise a capacity for a sense of justice. Thus, recognizing the fact of pluralism and its source in the burdens of judgment is, Rawls argues, one of the key moral powers which all persons are considered to have in the just political conception of the person. Furthermore, accepting the burdens of judgment is “to accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime,” thus securing both (2) and (3) through a proper interpretation of (1).¹⁶³ The consequence for education is, in Rawls’s words, the following:

Because of the fact of reasonable pluralism, constitutional democracy must have political and social institutions that effectively lead its citizens to acquire the appropriate sense of justice as they grow up and take part in society. They will then be able to understand the principles and ideals of the political conception, to interpret and apply them to cases at hand, and they will normally be moved to act from them as circumstances require. This leads to stability for the right reasons.¹⁶⁴

Levinson argues that Rawls’s anti-perfectionist approach, however, falls victim to the same kind of problem as does the perfectionist approach advanced by Raz and Mill. This is because “requiring participants in the legitimation process to alter their reasoning about the nature of pluralism, as opposed to asking them merely to accept its existence... violates the boundaries of pluralism itself.”¹⁶⁵ The problem is that claiming that all ‘reasonable’ people will accept the burdens of judgment

¹⁶³ Rawls *Political Liberalism* pp.57

¹⁶⁴ Rawls, *The Law of Peoples*. pp.15

¹⁶⁵ Levinson pp.17

is, in a sense, to rig the game in advance, or at least to misconstrue, as Mill does, the true depth of (1) in modern society. Rawls writes,

The evident consequence of the burdens of judgment is that reasonable persons... recognize that all persons alike, including themselves, are subject to these burdens, and so many reasonable comprehensive doctrines are affirmed, not all of which can be true (indeed none of them may be true). The doctrine any reasonable person affirms is but one doctrine among others.¹⁶⁶

This, Levinson notes, means that many persons would be required to “fundamentally re-conceive their relationship to their communities and churches, the character of their beliefs, the content of their values, and even their conception of their own identities.”¹⁶⁷ Insisting on this requirement of accepting the burdens of judgment thus constitutes not a respect for the fact of pluralism, but a sort of *disrespect* for it insofar as it amounts to a redefinition of pluralism in which the conceptual baggage associated with the term ‘reasonable’ is smuggled in. Therefore, the Rawlsian anti-perfectionist approach also fails to provide an interpretation that upholds the commitments to (1) (2) and (3), essentially abandoning (1) by redefinition or misconstrual.

Levinson and Callan both point to a further implausibility in Rawlsian anti-perfectionism that stems from Rawls’s denial of the overriding or fundamental value of autonomy. In his rejection of the comprehensive, perfectionist interpretation of liberalism which actively promotes such values as autonomy, Rawls advocates a much weaker version, whose education requirements are correspondingly much less demanding, and requires,

... far less. It will ask that the children’s education include such things as their constitutional and political rights so that, for example, they know that liberty of conscience exists in their society and that apostasy is not a legal crime, all this to

¹⁶⁶ Rawls Political Liberalism pp.60

¹⁶⁷ Levinson pp.17

ensure that their continued membership [of their own interest group] is not based simply on ignorance of their basic rights or fear of punishments that do not exist.¹⁶⁸

Rawls argues that autonomy is not necessary because the kind of critical distance from one's own world view implied by accepting the burdens of judgment need only apply to the public, political sphere and not to the private sphere. But such "mental compartmentalization", as Levinson calls it, seems implausible, and in Callan's estimation is even distasteful. Callan makes the point that, "to retain a lively understanding of the burdens of judgment in political contexts while suppressing it everywhere else would require a feat of gross self-deception that cannot be squared with personal integrity."¹⁶⁹

Rawlsian political liberalism considers people to be sane and rational adults and it allows and respects their choices. But, as Christopher Winch points out, if this is so, then the position of children within liberalism is problematic.¹⁷⁰ If children are seen simply as the property of adults then the liberal's only concern is with what those adults do with such property. But, as Winch observes, there are no plausible, let alone adequate conceptions of childhood that give only this limited status to children.¹⁷¹ Winch argues that typically, we see a child as a locus of value in and for itself, and where we take particular adults to be 'responsible' for that child this responsibility has to be understood (at least partly) in terms of the child's own interests.¹⁷² This is to say that "children can become rational, autonomous adults and that liberal democratic societies have a duty to ensure that progress towards

¹⁶⁸ Rawls *Political Liberalism*, pp.199-200

¹⁶⁹ Callan, *Political Liberalism and Political Education*, pp.12

¹⁷⁰ Winch *Key Concepts in Philosophy of Education*. pp.118

¹⁷¹ Thomas Hobbes would count as an exception in this case. Hobbes thought that children were the property of parents and that parents could do with them exactly as they please, including having the right to sell or even kill their children if they so desire.

¹⁷² Winch pp.119

such autonomy is not impeded.”¹⁷³ In the passage above Rawls seems to assume that the conditions for this kind of progress are met if learning about political rights is added to the curriculum as a sort of “educational extra.” But, Winch argues, this is not enough. Rawls himself even seems to realize as much in the passage directly following the one quoted above:

Moreover, their education should also prepare them to be fully cooperating members of society and enable them to be self-supporting; it should also encourage the political *virtues* so that they *want* to honor the fair terms of social cooperation in their relationships with the rest of society.¹⁷⁴

It is, therefore, apparent that having the two moral powers presupposes a degree of autonomy; though one may have the moral powers without being completely autonomous or having autonomy as an explicit life goal and/or conception of the good. The autonomy implicit in the first power is given away by Rawls’s parenthetical remark, that one must act *from* and not merely *in accordance with* the principles of political justice. This suggests that the authority invested in the principles of justice must derive from one’s own autonomous judgment; it cannot derive from the judgment of another. For example, if I cooperate with you only under duress, we are not inclined to characterize my cooperation as moral, because that would require that I cooperate of my own free will and presupposes a discretionary, dual-rational choice. Similarly, one must first freely agree on the principles of justice, thus investing them with the authority of one’s own reason, before one can be said to be acting *from* and not merely *in accordance with* the principles of justice.

The autonomy implicit in the second moral power is more subtle than the first, but is more strongly evident in practice. If we want to say that one’s having, revising, and rational pursuing of a

¹⁷³ *Ibid* pp.119

¹⁷⁴ Rawls, *Political Liberalism* pp.200. My emphasis.

conception of the good is moral, then these acts must ultimately be grounded in one's own autonomous judgment. If they were not, then they would not necessarily be immoral, but we would not be inclined to find them morally praiseworthy. Therefore, for the moral powers to be truly moral they must have their source in a person's autonomous capacities. Moreover, the capacity to revise seems to be equivalent to the combined exercise of the self-reflective and self-affective capacities of autonomy described in the previous chapter. Unless the revision is aimless and empty (in which case the moral power itself would seem aimless and empty), it implies that the revision satisfies something like a KR (i.e. the revision would be responsive to reasons), a SR (i.e. the revision would be responsive to reasoning). A similar connection is implied by the ability to "rationally pursue." The ultimate problem for the Rawlsian anti-perfectionist political liberalism approach is, as Levinson points out, that "the capacity to 'form, revise, and rationally pursue' one's conception of the good encompasses the capacity for autonomy"¹⁷⁵

Rawls admits that education for the moral powers would perhaps inevitably also result in education for autonomy.¹⁷⁶ Amy Gutmann has called this the "spill-over effect."¹⁷⁷ Levinson notes that it may, nonetheless, be of some comfort to parents who are uncomfortable with autonomy-promoting or facilitating educational practices (such as Ackerman's Great Sphere). The moral powers are necessary for the stability of a well-ordered society, and as Rawls argues ensuring that all citizens develop the moral powers leads to stability "for the right reasons." Thus, since the moral powers are a right of all citizens of liberal democratic societies, the State is justified in (indeed, it is required to) meet the demands of liberal education that overlap, in the ways indicated, with AFE.

¹⁷⁵ Levinson pp.19

¹⁷⁶ Rawls Political Liberalism pp.200

¹⁷⁷ Gutmann, Democracy and Education pp.51

Weak-Perfectionist Liberalism

An alternative to the perfectionist and anti-perfectionist approaches is to stake out a middle ground position. Levinson calls this the ‘weak-perfectionist’ interpretation of liberalism, and argues that it is the best candidate for realizing the commitment to (1) (2) and (3), while avoiding the problems sketched out above with the other interpretations. Levinson defines weak perfectionism as follows:

An autonomy based weakly perfectionist state values citizen’s exercise of autonomy, but does not discriminate against those who do not exercise autonomy in their own lives. This is in part because of the sheer impossibility of screening adults for their exercise of autonomy – and relatedly, the consequent political tyranny of any state that did try to differentiate in its treatment of autonomous and non-autonomous adults on the basis of criteria easily susceptible to arbitrariness and abuse. It also makes sense, however, because the exercise of autonomy is not required for equal citizenship. So long as individuals take responsibility for their actions, see themselves as ‘self-authenticating sources of valid claims’, and are able to have a conception of the good, they are to be regarded as equal citizens and not discriminated against.¹⁷⁸

Levinson’s account of the weakly-perfectionist liberal state consists of three essential elements. First, that it positively values autonomy and correspondingly ensures there are meaningful opportunities to exercise it. Second, that it treats all “responsible, self-authenticating individuals as equal citizens.”¹⁷⁹ And third, it tolerates and does not discriminate against those citizens that do not hold to the value of autonomy nor exercise autonomy. However, toleration for non-autonomy only extends to those who have already had the opportunity to, paradoxically, autonomously decide to give up (or at least limit) their autonomy. Children have not had such an opportunity because they have not yet had the opportunity to develop their autonomy at all. Therefore, discrimination is justified to a

¹⁷⁸ Levinson pp.22

¹⁷⁹ *Ibid* pp.22

limited extent insofar as the state is justified in demanding that all not-yet-autonomous children receive and AFE. Once they have received such an education they are free to employ their autonomous capacities or not, as they see fit and according to their own judgment and conception of the good, and are still guaranteed all of the rights and freedoms of citizenship within liberal-democratic society. As such, the demands of liberal education are stronger than usually supposed, and although they include development of the moral powers concomitantly with the development of the capacities of autonomy, they do so for reasons not captured by Rawlsian anti-perfectionist political liberalism, nor by Millian perfectionist individualism. Rather, the justification for compulsory AFE is derived from the fact that the weak-perfectionist state values and promotes autonomy and AFE in children as a consequence of the demands of the principles of justice properly understood in relation to the three central commitments of liberalism.

Civility and the Moral Powers

Autonomy and the moral powers are cultivated in the school by exposing the student to something like Ackerman's "Great Sphere": that is, exposure to a diverse array of concepts and ways of life that mirrors the diversity of the wider society.¹⁸⁰ In this environment the student becomes accustomed to thinking critically, impartially, and autonomously, and has a reasonable chance to develop a sense of justice and a capacity to have, revise, and rationally pursue a conception of the good. My suggestion is that having a capacity for a sense of justice (and the associated acceptance of the burdens of judgment) goes farther than what Rawls indicates because it is part of having the distinctively political and public virtue of civility. It develops the habit of critical, yet open-minded

¹⁸⁰ Callan pp.132-161

reflection and inquiry, and an ability to exercise one's power of imagination to imagine what different world views are like *from the inside*. Such an imaginative exercise will also, ideally, develop virtues of charity and respect.

What does it mean to cultivate a sense of justice? Having a sense of justice involves the ability to imagine being in the other's shoes, to imagine seeing things from a perspective that is not your own. So it is at least partly a question of the imagination. What is the necessary condition for the possibility of such an imaginative power as required by a sense of justice? One necessary condition is having an idea of what to imagine in the first place. In order to perform a thought experiment you need to know the parameters. What is it that we are trying to imagine? Whose perspective are we trying to take on? What do we know about them? What details do we know of the particulars of their life and history? What distinguishes this particular other? We need knowledge of the subjective and objective details of the subject of the imaginative exercise in order to get started. One cannot imagine something on purpose, that is, perform a particular thought experiment, without the salient details and parameters established first. To prove this, let us try a thought experiment right now....

Notice that you are waiting for me to give you a bit of direction. One cannot deliberately imagine a particular thing without knowing something about that thing. This is true when it comes to deliberately attempting to imagine being in another person's shoes.¹⁸¹ In this way, the imaginative exercises that are part of developing a sense of justice involve the same conditions as are required for autonomous choice: there is a KR (*knowing that* the parameters of this particular imaginative exercise

¹⁸¹ When Einstein imagined himself hitching a ride of a ray of light, and from that thought experiment supplanted Newton, he was establishing parameters to the imagination (enabling limits if you will. The air pushing against it does not limit the bird. It would not fly better if the air were removed, just as one cannot skate on a frictionless surface. Rather, the air and the friction allow the bird to fly and the skater to skate).

are such and such), a SR (*knowing how* to go about conducting this particular imaginative exercise), and a disposition/virtue requirement (wanting to and/or being good at conducting such imaginative exercises).

High school is a time when students might have an opportunity to learn primarily and explicitly about diverse world views on religion, human sexuality, or sexual orientation – particularly those with which their parents or community may disagree. Since September 2010 there have been students in Alberta who have had that opportunity taken away by their parents. This is unfortunate because it is not only the student who loses the opportunity, but society as well. It is a loss for the student because she has an interest in learning about the diversity in these things if only because it directly facilitates the development of her autonomy. It is a loss for society because the opportunity to cultivate political virtue (in terms of civility) and autonomy (in term of the ability to consent) is decreased. Compulsory education is (at least partly) aimed at the cultivation of political virtue and autonomy in future citizens, and we do not want to become complacent and regress to a less just society.¹⁸²

The pedagogical strategy of AFE is based on the social conditions of autonomy. These conditions must be satisfied for autonomy to be considered meaningful. For example, one of the conditions is that there be a sufficiently wide array of well understood choices.¹⁸³ We do not tend to think that if someone gets mugged and the mugger tells them they can either hand over their wallet or

¹⁸² Still, there is the lingering possibility that the advocates of abolition of compulsory schooling are right after all. Ought implies can, and therefore we only ought to have compulsory schooling if it works and in fact can (and does) sufficiently accomplish its aims. There is always room for improvement, but if the fact is that compulsory schooling does not and/or cannot actually cultivate political virtue or effectively impart political knowledge or skill, let alone basic skills, then it cannot be a demand of justice. If we accept that the fact of the burdens of judgment, then it is surely possible that the compulsory schooling curriculum is fallible. If this is true, then Bill 44 might turn out to be reasonable. For now though we will assume that the curriculum and pedagogy of compulsory schooling do work as intended. But, it should be noted that if there are significant weaknesses in the argument I am presenting, this is potentially one of them.

¹⁸³ This is kind of like the choice my mother typically gave us for supper when I was a boy: “take it or leave it!”

die, that the person who got mugged really made a free and autonomous choice. Similarly, if a child grows up never learning about religions and conceptions of the good other than those her parents subscribe to, then she does not have an opportunity to autonomously choose that conception. Moreover, where there is no autonomous choice there is no moral responsibility.¹⁸⁴ Thus if a child goes through her compulsory schooling and her parents exercise their right to exempt her from education primarily and explicitly about other conceptions of the good given by different world views, religions or critiques of religion, or other sexual identities, then her parents have effectively ensured that she has not made an autonomous choice with respect to her conception of the good given by her default to her parent's religion, nor an autonomous choice with respect to her affirmation, exploration and views on sexual identity. She will not have developed nor exercised her moral powers in these two crucial respects because they did not involve any meaningful autonomous choice.

Political Virtue and the Vitality and Sustainability of Liberal Democracy

One way of reading the later Rawls is, as I have argued above, to see his political liberalism as interpreting the conditions that a polity needs to satisfy to count as a liberal democracy, and these conditions will largely apply to relationships holding between competent adults at a particular time. But, as Winch observes, all societies also try to perpetuate what they what they see as the best of themselves into the future,¹⁸⁵ and their means of doing so are largely (if not totally) within their systems of education. Winch's argument here is compelling:

Any society committed to the type of liberal democracy espoused by Rawls must, if it wishes to continue into the future, ensure that there are educational policies in

¹⁸⁴ Or at least there is far less moral responsibility when there is no autonomous choice involved.

¹⁸⁵ And also, perhaps, ensure that the mistakes of the past are not reproduced in that future.

place which will facilitate such a continuation. And it is likely, if such a continuation is to be a realistic option, that this means having an education system that tries to ensure that at least a large majority of those being educated embrace liberal values. Without this, it is likely that such a society will slip into one of the less than liberal alternatives. If this is so, then it would appear that Rawls's rather thin notion of education is inadequate to the task.¹⁸⁶

Much of the literature that follows Rawls on the question of education in liberal democratic society (e.g.. Callan¹⁸⁷ and Guttman¹⁸⁸) advance similar arguments to that advanced by Winch above; that the sustainability of the liberal-democratic state requires embracing a more comprehensive liberalism than the later Rawls advocates (and indeed which he actively seems to resist), which, Winch notes, "extends to a much richer view of education."¹⁸⁹

Compulsory Schooling and Political Education

What is at issue is not only a question of ideal justice, but of practical sustainability and democratic vitality. The basic structure that upholds the practical day-to-day functioning of liberal democratic institutions is the political virtue of the citizenry. A society is only as democratic as its people, and to make democracy work requires not only political knowledge and skill (e.g.. knowing that you have a right to vote, and knowing how to vote), but political virtue. People also have to want to vote. They have to be motivated. They have to feel compelled to actually do it. That feeling of freely choosing to live as a member of a society, with all the duties it entails, is what is meant by political virtue. Civility is part of political virtue, as is hospitality, and participation.

¹⁸⁶ Winch pp.121

¹⁸⁷ Callan, 1996, 1997, 2000

¹⁸⁸ Guttman 1995

¹⁸⁹ Winch pp.122

Reasonable people are those who can – and know when to - agree to disagree. Such a disposition entails certain attitudes that constitute political virtues. The political virtues are of two kinds: those that relate to one’s relations with others in society, and those that relate to one’s relation with oneself. In the former category there are the virtues of civility, respect for the autonomy of others, and the sense of justice. The latter category is summed up in the concept of personal autonomy, and in the possession of the second moral power to have a conception of the good. Public education aims to cultivate all of these, but as the focus shifts over the years to a more academic focus there is a corresponding shift of emphasis to civility and autonomy. When children are in grade school the focus is much less academic. There are no exams in Kindergarten. But by the time they are in secondary school there is a noticeable shift in emphasis. This is because at the heart of civility there is the ability to agree to disagree. When two people can respectfully debate a question of deep moral and political significance and come to two different positions, and each judges the other’s position to be reasonable, and yet not share the other’s position, and in the end agree to disagree: that is the virtue of civility. Civility and autonomy are at the heart of the functioning of the basic institutions of liberal democracy. There is a question, two or more answers are proposed, we have a referendum to determine the answer we will collectively go with, and we respect the legitimacy of the outcome. Respecting the legitimacy of a democratic outcome is a way of agreeing to disagree.¹⁹⁰

This is not simply a theoretical problem of ideal justice; it is also a practical problem of societal stability and sustainability. Without a sufficient diffusion of political virtue, knowledge and skill, the institutions of democratic society will cease to function; civil public reason in the form of respectful

¹⁹⁰ Rousseau had this kind of justice in mind when he wrote about the general will. Majority rule is not naturally good. Rather, we have a consensus that we will agree to decide a difficult and divisive issue by taking a vote. The principle of majority rule is legitimate only when it is agreed to by everyone insofar as they act with respect to the general will.

political debate, elections, and referendums will give way to jockeying for positional advantage and a race to the rhetorical bottom. Reasoned arguments and rational reflection will slowly give way to insults,¹⁹¹ *ad hominem* attacks, and 7-second sound bites. Society is only as democratic as its citizens, and if the political basis of democracy is undermined by undermining the aims of political education, then eventually you are left with a society with no more democratic people, and thus no more democratic society.¹⁹² Therefore, the stability and sustainability of such societies depends on achieving a sufficient diffusion and degree of political virtue.

It is an old idea in political philosophy that the point of political education is to produce virtuous citizens. The idea is that a society, or political regime, is only as good, only as just, and only as virtuous as its citizens. In the western tradition there is always in the background, the parable of Socrates, and the sober reminder of the consequences of his choice of educational philosophy. The nature and definition of virtue is a perennial source of division and debate, but when the debate turns to questions regarding how and what to teach society's children, the issue takes on an urgency that it previously lacked. It is one thing to argue about whether or not this or that person is a *good* person, but it's quite another to argue about whether or not we as a society should inculcate and develop one definition of what it is to be a *good* person over all others in all children. After all, public education writ large is nothing less than our collective attempt to shape our collective future, by molding the characters and convictions of future generations of citizens. Part of the unwritten code of our political life is to give to our children *better* than we have received. Not only in terms of material goods, but in terms also of social goods, and that means we want future society to be not only richer but more

¹⁹¹ The last refuge of a bad argument.

¹⁹² A democratic citizen is one who acts democratically and respects and is committed to democratic process. A person can fail to be democratic and yet be a person-in-democracy insofar as they happen to live in a democratic society.

virtuous. We want our children to be better than ourselves, not just better-off. Moreover, we want to ensure that they are at least no worse than we are, just as we want to ensure they are no worse-off. For a future society descended from our own in which the public virtues that characterize a vibrant liberal-democracy – deliberation, civility, etc. – has all but disappeared, would be a tragedy we should all be concerned to avoid.¹⁹³

The Political Virtue of Justice as Reasonableness

One author who argues for this approach to justifying autonomy as an educational aim in liberal-democratic societies is Eamonn Callan. In Callan's words, "Creating virtuous citizens is as necessary an undertaking in a liberal democracy as it is under any other constitution." The crux of Callan's account of political virtue is an idea he adapts from Rawls; what he calls "justice as reasonableness."¹⁹⁴ This, he says, is no less than "the cardinal personal virtue of liberal democratic politics", the cultivation of which is the proper aim of common education in a liberal democracy.¹⁹⁵ However, his adaptation of Rawls's notion of reasonableness leads him to conclusions that radically depart from Rawls's own. For Rawls¹⁹⁶, citizens of liberal democracies are entitled to an education that provides them with an understanding of their rights, and teaches them how to get along with their fellow, law-abiding citizens. Callan argues that when Rawls sets up this limit to the scope of political liberalism - renouncing the comprehensive in favor of the strictly political in answer to communitarian

¹⁹³ This is essentially Mill's argument for freedom of expression in his *On Liberty*. Allowing the most reviled points of view freedom of expression is the guarantee of a vibrant and always progressing society, both in terms of material, social, and moral well being. Moral progress is possible, Mill argued, so long as we have the stomach for it.

¹⁹⁴ Callan pp.8

¹⁹⁵ *Ibid* pp.8

¹⁹⁶ That is, the later Rawls of *Political Liberalism*, and *Justice as Fairness: a Restatement*. It is unclear whether Callan's criticisms can fairly be directed at the earlier Rawls of *A Theory Of Justice*, because the earlier work seems to be more in keeping with the comprehensive liberalism Callan argues is implicit in taking seriously Rawls's theory of supposedly strictly political liberalism.

and pluralist objections¹⁹⁷ - justice is forfeited in the process. Again, a just society is only as just as its citizens; and the implications of asserting that the cardinal virtue of citizens of liberal-democratic societies is *reasonableness*, is far more radical than Rawls anticipates. In Callan's words:

Good citizens have the virtue of justice. That is a truism... The justice we need under pluralism requires us to think for ourselves in a much more radical way than we must when all can take for granted the same conception of the good and the right. To give the respect due to ethical viewpoints in deep conflict with our own, we must learn to enter them imaginatively and to understand that much of the pluralism that permeates our social world is a consequence not of evil or folly but of the inherent limits of human reason. That is a pivotal idea in Rawls's political conception of the person, even though he is reticent about its full political and educational significance.¹⁹⁸

In *Creating Citizens*, Callan develops this thought at length, arguing for an account of political virtue for liberal-democratic societies.¹⁹⁹ He presents the virtuous liberal democratic citizen as having a respect for "reasonable pluralism" grounded in her acceptance of the burdens of judgment; citizens as willing to engage emotionally, intellectually, imaginatively, and charitably in moral debate; citizens as engaged and active in the political process of deliberative and participatory democracy; and as fundamentally entitled to an education that facilitates the development of her moral autonomy, understood as freedom from "ethical servility."²⁰⁰

¹⁹⁷ For example, Michael Sandel and Charles Taylor provide powerful communitarian critiques of Rawls's *Theory of Justice*. The crux of the communitarian objection is that, contrary to the abstract and unencumbered rational agents who in the Rawlsian Original Position derive the principles of justice in a logical bargaining process and from a perspective of rational self-interest, we are all in reality radically encumbered agents. Moreover, our encumbrance is an essential part of what makes life worth living and gives substance to our sense of identity. Therefore, communitarians argue, comprehensive liberalism is fundamentally problematic insofar as it requires everyone to be free in an unrealistic, and for many a profoundly undesirable way.

¹⁹⁸ Callan pp.43

¹⁹⁹ Callan's account is similar in many ways to that given by Gutmann (1986: 48-70) and White (1983), and assumes deliberative and participatory democratic theories as its background political ideal.

²⁰⁰ Callan pp.152

Callan also argues that autonomy as an educational aim raises important questions regarding the collective character of the virtuous liberal-democratic polity, and the educational challenges of cultivating both the *political* virtue of individual citizens and the *public* virtue of public reason. Public reason is an abstract idea of a public forum governed by a sense of liberal neutrality and/or tolerance; neutrality between the plurality of various citizens' conceptions of value and the good; tolerance of the plurality of competing moral views. However, although Callan characterizes the virtuous liberal democratic citizen as one who is above all else reasonable and thus respecting of reasonable pluralism, this does not mean that the virtuous citizen is one who tolerates all views on every subject. He argues that liberal democratic society ought not to let toleration and respect for pluralism go too far, the limit being the line between what we might call reasonable vs. *unreasonable* pluralism. This point is made in response to Mill's assertion in *On Liberty*, that the outcome of a properly functioning moral debate is the eventual conciliation of the parties as the truth emerges from the dialectical process of debating opposing moral views.²⁰¹ Callan argues that hoping for this kind of congenial outcome is at best a utopian fantasy, and at worst serves only to exacerbate moral division and risks violent alternatives to civil moral debate. Therefore, instead of simply avoiding moral debate altogether, as an alternative we should aim for a different kind of conciliation:

The fitting response to ongoing moral conflict is sometimes not renewed effort to achieve dialogical victory over our adversaries but rather the attempt to find and enact terms of political coexistence that we and they can reasonably endorse as morally acceptable. That is the purpose of public reason as Rawls conceives it, and teaching future citizens what they need to participate competently in public reason is the dialogical task of common education...

²⁰¹ J.S. Mill *On Liberty* pp.21

...the dialogical task is about learning to think wisely about the difference between reasonable and unreasonable pluralism, and so far as unreasonable pluralism is a part of our lives, there is much that we cannot agree to disagree about...

Part of the educational challenge here is cultivating the intellectual virtues that reasonableness entails and developing a discerning eye for the corresponding vices of unreason that threaten to contaminate public reason.²⁰²

Autonomy and Deliberative Democracy

These arguments are concerned with the cultivation of political virtue for citizens of liberal democratic societies. The form of which is taken to be something like Gutmann's and Thompson's description of deliberative democracy: the rule of the people through public discourse, collectively deciding on courses of action.²⁰³ Such a form of democracy is inherently participatory, and requires that citizens be engaged in public debates, and in particular public moral debates. The ability to participate in debate presupposes a certain threshold of deliberative skill²⁰⁴, and a desire to engage with others in the process of deciding what is the best course of collective action. The virtue of reasonableness is attained when we have exercised our skill of deliberation with an accompanying appropriate degree of emotional/imaginative charity. Thus reasonableness can be understood in an Aristotelian²⁰⁵ sense as the golden mean between on the one hand an excess of emotional/imaginative charity and a deficiency in critical/analytical deliberation - leading to the vice of acquiescing not to the argument with the soundest logic, but to the argument with the most persuasive rhetoric - and on the other hand an excess of critical/analytical deliberation and a deficiency in emotional/imaginative

²⁰² Callan pp.215

²⁰³ See Gutmann and Thompson *Why Deliberative Democracy?*

²⁰⁴ Which can be further broken down to analytical and critical skill.

²⁰⁵ See Aristotle *Nicomachean Ethics*.

charity - leading to a cynical nihilism that seeks only to undermine debate and expose all arguments as fundamentally flawed.

If the above arguments for the political value of autonomy and AFE are compelling – that it is necessary for development of the moral powers, and for the vitality and sustainability of liberal democracy – then we can conclude that citizens have an interest in autonomy, and that children have a corresponding prospective interest in autonomy and therefore have an interest in AFE. These interests are fundamental for citizens of liberal democracies.

From Interests to Rights

Perhaps the most straightforward general account of rights is the so-called ‘interest’ approach, which was invoked above to motivate the argument for a political right to autonomy and AFE. On the interest approach, rights have the function of expressing and protecting certain fundamental interests people have. Clearly, everyone has a fundamental interest in the basic liberties derived from the first principle of justice. Everyone has a fundamental interest in liberty, but not only the negative liberty that guarantees *freedom from* unreasonable and/or arbitrary interference in their lives. People also have an interest in the positive aspect of liberty that guarantees reasonable *freedom to* live their lives as they see fit. What I want to suggest here is that having the capacities of autonomy is constitutive of this positive aspect of the fundamental right to liberty. Thus, if we accept that all persons have a fundamental interest in basic liberties such that the existence of such an interest constitutes their having a *right* to basic liberties, then they must have rights that correspond to both the negative and positive aspects of basic liberties. Therefore, since the interest in possessing the capacities of autonomy is the positive aspect of the interest people have in basic liberties, there must be a corresponding *right* to autonomy.

Chapter Summary

Autonomy and AFE are valuable because they are necessary for developing the moral powers that are the basis of the Rawlsian political conception of the person in a well ordered society. I have argued in favor of Levinson’s weak-perfectionist interpretation of liberalism, whereby the liberal democratic state is obligated to value the autonomy of its citizens (which includes respecting citizens’ liberty to forgo exercising their autonomous cognitive capacities²⁰⁶), and that active facilitation of autonomy as an educational aim is obligatory in the case of children. The liberal democratic state is obligated to provide compulsory education for the moral powers to all children, and that education for the moral powers is coextensive with education for autonomy. The liberal democratic state has an interest (and there is a corresponding general societal interest) in promoting autonomy as it is an essential part of political virtue, the general diffusion of which is necessary for the vitality and sustainability of liberal democracy because the institutions of such a society depend on a robust deliberative democracy and a general democratic character in the citizenry. The political value of autonomy arguments leads to a recognition that citizens of liberal democratic societies have a fundamental interest in autonomy, and that therefore autonomy – and thus AFE – are rights of citizens of liberal democratic societies.

²⁰⁶ William Galston calls this “the right to an unexamined life”. See his book *Liberal Purposes* pp.254.

Chapter 4: Indoctrination and Parental Autonomy

Chapter Abstract

In this Chapter I consider the value of AFE in the context of indoctrination and authority, and the value of parental autonomy as a universal human right, and argue that while it is important it is nevertheless beyond the scope of the right to parental autonomy to deny children access to AFE. This is because parental rights are constrained by the basic principle that no person's rights may be invoked in the suppression or violation of the rights of another. There is, however, ample room for autonomous parental choice in choosing, for instance, the pedagogical perspective from which AFE is pursued.

The Dilemma

In the Québec and Alberta cases there is a dilemma that cuts to the heart of the question of the value of autonomy. The dilemma gains its force primarily from the fact that it is presented in a liberal democratic context in which liberal values entail certain fundamental rights and freedoms. The problem occurs because it seems that in certain cases, parental rights and the rights of their children collide, and we (through the State) are forced to choose between them.

It is uncontroversial that some kind of education is essential for well-being, in addition to being essential to the political sustainability of liberal democratic society. However, some parents in liberal democratic societies would prefer to opt their children out of those particular aspects of education that I have been arguing all children have a fundamental interest in receiving. These parents harbor no malicious intent toward their children, but they do sincerely believe that their children's chances of living what they believe to be a good human life is profoundly and unjustly undermined by being required to submit to state sponsored AFE. The parents' conception of what constitutes a good life entails a conception of education that appears to be antithetical to the development of autonomy, and

thus, from the perspective of the values articulated in the previous chapter, appear deeply harmful to those children. This is therefore not simply a conflict between the parents' right to raise their child according to what they sincerely believe to be the child's best interests and the social good of political education; it is rather, in Callan's words, "a collision between parental choice and the basic interests (as the larger society defines those interests) of individual children."²⁰⁷ Thus, the first horn of the dilemma is that if the parent's choice is denied, it is an apparent violation of their freedom of conscience and their parental human rights.²⁰⁸ The other horn of the dilemma is that if we accommodate parental choice, then we deny children an important element of the kind of education to which some argue they are entitled.²⁰⁹

Education and Indoctrination

Much of the worry expressed by parents in the Alberta and Québec cases over having autonomy as an educational aim stems from the disagreement over whether a particular pedagogical approach is indoctrinating. On the one hand, AFE is supposed to work *against* indoctrination. The skills of autonomy are just those skills of critical reflection and systematic, rational doubt. Education for autonomy, it is implied, develops the ability to be indoctrination-proof. But on the other hand, some argue that pedagogies aimed at developing autonomy are *themselves* inevitably indoctrinating. This is the argument made against the proponents of the Québec ERC program: the ERC curriculum and pedagogy indoctrinates a child into accepting an overriding belief in the value of diversity, and an

²⁰⁷ Callan "Galston's Dilemmas and Wisconsin vs. Yoder" in *Theory and Research in Education* Vol.4 (2006). pp.262

²⁰⁸ As stated in the UDHR Article 26 Section3, on the parents' *prior right* to chose what kind of education their children shall receive.

²⁰⁹ William Galston presented this dilemma first in his book *Liberal Purposes*, and in his more recent book *Liberal Pluralism*. In both cases, Galston argues for a strong principle of deference to parental choice, largely due to practical considerations of entrenched family values in the American public.

acceptance of normative pluralism. Therefore in order to sort the dispute out it will be necessary to give an account of the conditions that render a program of education indoctrinating. Such an account will also serve to characterize the difference between a person who has received a non-indoctrinating AFE, and one who has been indoctrinated despite going through a program designed to be autonomy facilitating.

R.S. Peters argues that the use of the term ‘education’ always implies a judgment of value. Whenever we call a process ‘education’, we express our approval of what is being passed on and the manner of its transmission.²¹⁰ The literature concerning the concept of education is interesting and complex, but for our purposes it is not necessary to enter the debate. Peters’s analysis, however, is useful insofar as it provides us with a plausible account of our use of the term ‘education’ as it relates to the educational aim of autonomy. We tend to use the term ‘education’, Peters notes, in a way that denotes a favorable judgment. To speak of someone as educated is normally to praise her, and to call someone an educator is normally to praise her work. ‘Education’ is good, where ‘indoctrination’ is bad, and although neither term necessarily stands for any particular process, nevertheless the term ‘education’ represents a favorable judgment on the teaching activity while the term ‘indoctrination’ denotes an unfavorable judgment.

The contrast between these two terms can be further illustrated by considering the difference between an educated person and an indoctrinated person. In terms of social normativity, to say that a person is educated is to express approval; to say that she is indoctrinated is to express disapproval. This approval or disapproval is connected, as I.A. Snook observes, “not with the amount of knowledge she

²¹⁰ It should be noted that taken as a tight conceptual point, this view has been shown to be defective. As a consequence, Peters subsequently argues for two concepts – one in which the value component is necessarily implied and one in which it is not. See Peters (1973).

has but with the quality of it, the way it is organized, and the use she makes of it.”²¹¹ According to Peters’s illuminating analysis, an educated person exhibits the following three key characteristics:²¹²

- 1) a high degree of understanding: she is not simply trained and her responses are not drilled,
- 2) a sense of commitment to this knowledge: she respects the evidence and conforms to the standards of disciplined inquiry, and
- 3) a cognitive perspective: her knowledge is integrated in a conceptual scheme and there are no ‘compartments’ immune from scrutiny.

By contrast, an indoctrinated person often tends to have “stock answers to difficult questions,” is not committed to the logical consequences of her knowledge, and as Snook puts it, “reserves to herself some area of knowledge which is rationally untouchable, immune to argument and logic.”²¹³ Part of the difference can be seen also in the form of authority taken by the teacher, where one kind of authoritative stance would be facilitating of the development of the student’s autonomy, while the other would have the opposite, indoctrinating effect of rendering the student ethically servile. This then raises the question of the relation of authority to autonomy as an educational aim.

Education and Authority

Authority can be divided into two types: being *in authority* and being *an authority*.²¹⁴ To be *in authority* is to be entitled to having one’s will carried out. To be *an authority* is to possess reliable knowledge. Alternatively, we can consider the contrast as between being rightfully empowered vs. rightly deferred to. Traditionally, educators are considered authorities in both senses. Teachers are normally entitled to have their will adhered to (at least as it relates to the pedagogical approach to the

²¹¹ Snook pp. 102

²¹² *Ibid.* 103

²¹³ Snook 104

²¹⁴ Peters, 1967

curriculum within the context of the classroom) and are appointed partly because they possess reliable knowledge necessary for carrying out their duties as teacher. However, some authors have questioned the appropriateness of conferring such authority on educators. For example, progressive and child-centered educators argue that any overt imposition of one person's will on another will inevitably be "psychologically and educationally damaging."²¹⁵ Since being *in* authority does typically involve an overt imposition of will, they argue that the educator's role ought to be modified toward a non-authoritarian model, whereby they would no longer be authorities in the traditional sense, but rather 'facilitators'.²¹⁶

The Right to Parental Autonomy

The relationship between parents and children has been evolving since the times of the Old Testament, where parental authority was considered absolute and included the power of life and death.²¹⁷ The Christian tradition took over the notion of absolute parental authority but modified it through the constraints imposed on parents through natural law. God limited parents' rights to actions in accordance with divine natural law, and God's word was accessible to all Christians.

However, the tradition of absolute paternalism continued into the 17th century with Robert Filmer, who applied the biblical account of the relationship between sovereign and subject to his contemporary situation in his *Patriarcha*. Filmer's argument was rejected by Locke in his *First Treatise*²¹⁸, but Locke was still left with the problem of explaining parental authority in the context of a political system that was accountable to its citizens. His solution, proposed in the *Second Treatise*, is to

²¹⁵ See Winch pp.16

²¹⁶ See Gatto pp.48

²¹⁷ See Genesis 22

²¹⁸ Locke *First Treatise on Government*

make parents the interpreters of their children's interests, because the limited rationality of young children does not allow them to determine those interests for themselves. Parental authority is derived from the child's right to (and interest in) a proper upbringing. It is thus a conditional and temporary authority and is circumscribed by the requirement that the interests of children are at all times respected.²¹⁹ The Lockean account thus uncouples the contractarian theory of the state (which assumes its citizens to be fully rational beings) from the account of the child in the family (which assumes that the child is imperfectly rational), thus providing a defense of the legitimacy of the private life of the family in the context of an accountable State.

Today, the rights and interests of children are regarded as more and more as specifiable independently of the preferences of parents. Parental authority been subject to various forms of legal contestation, mainly relating to the relative weighting, on the one hand, of children's perceptions of their interests as opposed to those of their parents and, on the other, of society's as opposed to their parents' interpretations.²²⁰ The parent's interpretation of their child's best interests usually²²¹ predominates in most modern institutions, including modern schooling. This raises the question as to the extent to which different parental interpretations of their children's interests might undermine the possibility of common schooling.

²¹⁹ *Ibid*, Chapter 6.

²²⁰ For example, see Archard 1993, 2003

²²¹ There are of course limits to the parental deference principle, including in schooling. But the fact remains that parents are not only a force to be reckoned with in the school system, but in all but the most extreme of cases they are usually regarded as having final say judging the best interests of their child. It is also true that there are cases in which the parents' views are not at all considered in specifying the best interests of the child. When the parental deference principle is contested in a particular case, it is usually in the family law courts in custody battles, or in cases of clear abuse and/or neglect of the child. These are the exceptions, and understanding the nature of parental and state authority over children in such circumstances is interesting and important, but beyond my aims here. For an inquiry into these and related questions, see David Archard's *Children, Family and the State* (2003).

Insofar as schools act *in loco parentis*²²² they will also be fulfilling a parental role. The notion of paternalism has obvious connections to notions of childhood and children's rights. It is clearly the case that with these connections comes the possibility of argument concerning the rights, duties and interests of children with respect to the rights, duties and interests of parents. In such cases it is clear that both party's perceptions of such things may be either partially or completely wrongheaded. But it is also the case that the *locus parentis* position of schools raises difficult to resolve disputes between, for example, school officials and parents over a child's best interests or well-being with regard, say, to religious education, sex education, or curriculum censorship.²²³

Parental Duties Entail Parental Rights

Advocates of parental rights often makes the case that the duty to educate falls under the parent's duty to raise their child, and therefore entails the right to educate. One cannot at the same time have a duty and also not have a right to discharge that duty. To hold someone to such a standard is to put them in a double bind, so-to-speak. This is a version of the "ought implies can" principle: if parents ought to raise and educate their children, then they can raise and educate their children. If parents are blocked from educating their children, then they effectively cannot raise and educate them. In such a situation, where the parent cannot discharge their parental duty, then the duty does not obtain.

As was noted in the first chapter, advocates of parents' rights often point to Article 26, Section 3 of the UDHR, "Parents have a prior right to choose the kind of education that shall be given to their

²²² In place of the parent.

²²³ Differences of opinion between parents and school officials could of course cover more areas than these. For example they may disagree about how to best correct problematic behaviour, with one group emphasizing negative reinforcement (i.e. punishment), and the other positive reinforcement (i.e. reward).

children.”²²⁴ The use of the term “prior right” here indicates precedence over the internal legal rights of states, and is designed to make explicit that the rights relation with respect to education includes not only the relation between child and state, but between child, state *and* parent. Parents are thus regarded as having precedence in the educational rights regime, particularly over and above that of states and the state’s right to discharge its duty to meet the educational rights of the child.²²⁵ But surely this must be subject to some limitations. For instance, a particularly malevolent parent might want to subject their child to “education” involving prolonged solitary confinement, or severe corporal punishment, or some other practice most people would recognize as abuse. Therefore, the choice of the kind of education to which the parent has the prior right of choice must be constrained at least to exclude clear cases of severe child abuse. But once that line is crossed, we have implicitly agreed that the supposed “prior right” of parents does not, in fact, trump all other rights; and therefore the door is open to ask what the appropriate scope of parental rights truly amounts to. Parents must not be put in a double bind, but they cannot have ultimate priority either.

Barring the implementation of a social order along the lines of Plato’s *Republic*, wherein the State takes on the full responsibility of raising children²²⁶, we must therefore qualify the rights and responsibilities of parents so as to avoid this kind of double-bind situation.²²⁷ We need an appropriate

²²⁴ UDHR, Article 26, Section 3. See <http://www.un.org/en/documents/udhr/index.shtml#a26> Accessed December 2011.

²²⁵ Professor Holder has pointed out to me that this way of thinking about the rights regime of educational as involving the precedence of parental rights is similar to the reasoning involved in minority rights. Regimes and rights to freedom of conscience.

²²⁶ It should be noted that Plato only argues (in the *Republic* at least) that the State take responsibility for the upbringing of the guardian class, but in any event I assume we don’t want that either.

²²⁷ Without doubt, there is more to the grounding of the parental right to autonomy than this, but I think it captures the essence of the right as a claim against discharging a duty. Someone like Joseph Raz might point out that the relation between rights and interests is not always, nor even often straightforward. A person does not have a right *simply* because they have an interest. Sometimes it is a different interest that grounds a person’s right, or even an interest not held by themselves but by others or the wider society (i.e. a general interest). Nonetheless, I think it is relatively uncontroversial to assert that when parental rights are

conception of the scope of parental rights and duties. We need a conception of parental autonomy that agrees with the right to autonomy and AFE developed thus far.

Why is parental autonomy important? The most straightforward answer is that parents have a strong interest in raising their children according to their conscience. Raising a family is, for many people, a fundamental (and certainly reasonable) part of their life-plan and conception of the good. Moreover, it is wrong to completely discount the interests and preferences of parents in favor of the best interests of the child. Some balance must be struck between the interests of parents and the prospective interests of children in the eyes of society. Parental rights are universal (i.e. they are fundamental and not grounded in any particular contingent political arrangement), but also subservient to the right to personal autonomy and the child's right to develop personal autonomy. This follows from the limits placed on liberty according to Mill's harm principle, that everyone has rights to the extent that those rights do not infringe on the rights of others.²²⁸

Conservative, Democratic, and Liberal Conceptions of Parental Autonomy

Colin Macleod distinguishes four categories of conceptions of parental autonomy. First there is the conservative conception, which at the extreme takes children to be the property of their parents, including the power of life and death. A less extreme conservative conception takes parents to be the final authority in judging what is in the child's best interests, but the idea is still that those best interests are the determinate of action, whereas the extreme conservative conception is not necessarily

invoked, it is usually on the justification of discharging parental duty, whether that duty is responsive to the interests of the parent, the imposed interests of the wider society, or the interests of the child. In any case, we assume it is normally the parent's responsibility, and thus imply that the parent has a right to discharge that duty, and this is the substance of their parental right. For more on the comprehensive approach to interests analysis and rights, see Joseph Raz *Individual Rights and Well-being* (1992).

²²⁸ Your rights end where my nose begins, so the saying goes.

beholding to the child's interests. In this conception, the state has no right to impose its judgments of what the best interests of the child are on the family. This conservative conception is aligned with classical liberalism. It is the idea that the natural law of family ought to be respected by deferring to the parents' judgment.

Then there is the democratic conception of parental autonomy, which shares much with the conservative conception but allows that the State has the right to implement and require universal schooling of certain key competencies, such as knowing how to vote, knowing what rights and responsibilities citizens have, etc. Some democratic conceptions, such as the one advanced by Amy Gutmann in *Democracy and Education*, stress the need to cultivate a certain degree of political virtue in students, so as to ensure that there is a sufficient diffusion of political virtue in the future wider society that will help provide stability and encourage social civic vitality. It still maintains, however, that beyond these minimal requirements necessary to keep democracy functioning, parents remain the final authority over determining their child's best interests, even to the point of having the right to fix the ends/conception of the good of their children. This conception allows for an education entirely devoid of exposure to diversity of world views, so long as that education teaches the basic democratic skills and constitutional knowledge (rights, laws, etc).

Third is the liberal conception of parental autonomy. In this conception, education must include exposure to diversity and aim at a standard of pedagogical neutrality in order to facilitate the development of the child into an independent, autonomous individual. This conception reverses the conservative stance and asserts that parents have no right to impede the state's provision of neutral and even-handed AFE, even if they judge it not to be in their child's best interest, and that they certainly have no right to attempt to fix their child's ends or conception of the good. This conception gives priority to the wider society, and renders the state the final authority in judging the best interest of the

child, at least in this respect. Such a conception denies the “prior right” of parents, yet its advocates argue it goes further than the conservative and democratic conceptions in guaranteeing most widely recognized rights, and that it is more consistent with the UDHR and a right (as articulated here) to autonomy and AFE (Article 26, Section 3 of the UDHR notwithstanding).

Critics might object that such a conception of parental autonomy limits the scope of parents’ right of judgment to superficial things, and is unduly hostile to traditionally recognized parental prerogatives. If something is important enough, then on the liberal conception the State is the ultimate authority. Moreover, it is the state which defines what counts as a matter of parental choice and what does not, which means it is ultimately the state which decides what is important in education, and to what aim or use it is directed. This is precisely the conception of parental autonomy critics of Québec’s ERC argue against. This leaves us back with the dilemma of the first chapter, which then raises the question: is there a middle ground that respects both parental autonomy (based in natural law) and the child’s rights and interests as defined by the state, as well as imparts a sufficient degree of civic knowledge, skill and virtue for the sustainability of the liberal democratic society?

Refined Liberal Conception of Parental Autonomy

Macleod’s answer to the dilemma, and the question it raises, is a refined liberal conception of parental autonomy; a sort of compromise between the first three conceptions, if not a perfect balance.

Macleod writes,

Neutrality does not serve the autonomy-related interests of children, and it is unduly hostile to the interests parents and children have in adopting distinctive ideals and participating in shared family projects...we should replace the ideal of neutrality

with a more permissive conception of parental autonomy that extends to parents the prerogative of *provisionally privileging* the conception of the good that they favor.²²⁹

It recognizes a parental deference principle (as Burt calls it), such that parents rights are recognized, but it denies that the scope of parents' rights includes the right to deny their children AFE outright. What the refined liberal conception does do, however, is allow that parents have a prior right to privilege their own world view in their child's education. One way of doing this is to allow parents the right to choose from what pedagogical perspective AFE is delivered, since the theoretical ideal of neutrality is impossible in practice, and there are many pedagogical perspectives that can meet the basic requirements of the AFE to which the child is entitled. If Farrow and O'Donivan are right and there is no such thing as a neutral pedagogy, then it stands to reason that there will be a range of potential pedagogical approaches to AFE that would satisfy the child's right to autonomy and AFE. The parent then has the right to determine, within the basic constraints of basic requirements of AFE, the choice structure that is presented to their child in the course of their AFE. Since any pedagogy will inevitably favor one conception of the good or world view over another, so long as the basic competencies of autonomy are realized (i.e. the knowledge, skill and DRs) parents ought to have the right to choose which world view is favored in the pedagogical approach to the child's AFE.

Chapter Summary

In this chapter I have argued that there is an apparent dilemma in choosing between the rights of parents and the prospective rights of children as judged by the wider society. I have argued that much of the worry in the Québec and Alberta cases comes from a desire to avoid indoctrination on either the part of the parent or the state, and the problem of giving an account authority as it relates to

²²⁹ Macleod, Colin. "Conceptions of Parental Autonomy" pp.129

indoctrination and education. I have argued for an account of authority in education that avoids indoctrination through meeting the basic requirements of AFE, and that this can support parental autonomy. The account of parental autonomy it supports, however, is neither the conservative, democratic nor liberal conceptions but rather the refined liberal conception advocated by Macleod. These considerations entail that parents ought to be regarded as having the right to provisionally privilege their own convictions and world view by having the freedom to choose which pedagogical approach to their child's AFE will be pursued, but that they do not have the right to exempt their child from AFE outright.

Chapter 5: Evaluation of Cases and Conclusion

Alberta's Bill 44

I have argued for the right of every child to an AFE sufficient for the development of Rawls's two moral powers and the collective goal of general cultivation and diffusion of political virtue for the sake of the stability of liberal democratic institutions and civic culture. I have also argued that in keeping with this, the only justifiable conception of parental autonomy is the refined liberal conception, which recognizes a parent's right to provisionally privilege their own conception of the good in the pedagogical approach to AFE, but does not allow them to block their child from exposure to alternative conceptions of the good and other alternative values.

Consider cases where a parent is worried her child will be exposed to what she sees as sinful, corrupting behavior contrary to her judgment of her child's best interest. She therefore wants to ensure no such exposure occurs. The parent can say to the Rawlsian that her child has a conception of the good (i.e. the parent's) and knows right from wrong (i.e. has adopted the parent's moral code or sense of justice). However, to prove it the parent can only point to the child's religious instruction, which cannot be seen as a meaningful autonomous choice on the part of the child because of the lack of exposure to reasonably understood alternate world views and conceptions of the good.

The argument against Bill 44 demands that religious convictions not override the basic requirements of the stability of liberal democratic society, nor override the child's right to AFE. Consider the British public education system, where they make the crucial distinction between religious education and religious instruction. Religious education presents facts about a religion (historical, sociological, legal, etc). Religious instruction is the teaching of a particular religious doctrine or catechesis.

I think it is acceptable for a parent to refuse to allow their child to be subject to religious instruction, but not religious education. Religion is pervasive and directly involves a conception of the good life. It also greatly influences one's sense of justice. Therefore a parent would be justified in ensuring that their child was not being indoctrinated with values that the parent does not agree with. This is compatible with the refined liberal conception of parental autonomy, because it recognizes the parent's right to provisionally privilege their conception of the good over others, and indoctrination to some other conception is contrary to this privilege and can undermine it. One could, furthermore, run a similar argument regarding sexual-orientation and sex education.

An objection that we might consider at this point is that there is a time and a place for developing an autonomously chosen conception of the good life and a sense of justice, but it is not best pursued in grade school and high school. One might argue that college is the time and place for learning about sexuality and sexual orientation and religion. Of course the quick rebuttal to this objection is that not everyone does in fact, nor ought necessarily, go to college. Therefore as a matter of equality of educational opportunity, public compulsory education ought to be concerned with these topics and the development of the moral powers. However to press the objection, one could claim that it is possible that there are other ways besides compulsory education to develop the moral powers, but then the burden of proof is on the objection.

For a law to be reasonable, it must be autonomously justifiable in principle. It is not reasonable if it is simply a demand of servile adherence. 'Ought' implies 'can'. Therefore, if society makes a normative command of its citizens in the form of legislation, then it implies that the citizens can in fact abide by that legislation. The legislation in this case is primarily that one cannot discriminate on the basis of sexual orientation, and all parents have the right to exempt their child from otherwise compulsory education if they so choose. All reasonable legislation must in principle be autonomously

justifiable by all citizens to whom it applies. It cannot be a demand of or from servility. Therefore, all citizens must in principle have the ability to imagine the relevant details of the situation of the other (in this case religion and sexual orientation). Therefore it is the duty of public compulsory education to deal with topics of religion, human sexuality, and sexual orientation, so that the students have a meaningful opportunity to develop their political virtue and autonomous moral powers.

Insofar as it is partly the responsibility of the public education system to combat servility and ignorance, universal compulsory schooling is justifiable and reasonable. But can compulsory education go too far? If so, where do we draw the line? The government of Alberta has drawn the line at religion, sex education, and sexual orientation. The Bill recognizes a parents' fundamental human right to have their child be free of compulsory schooling on those matters the parent may see as at the core of family values. The government's position is that the government and/or society have no right to de-stabilize the family and override parental autonomy. Parents feel very strongly about their families and what happens to their kids. That is why they feel so strongly about what their child does in school. Parents care about the curriculum to which their child is subject, especially when they think it might be harming their child in their eyes. This is the idea behind the human rights legislation enshrining parental rights. These rights amount to giving legal legitimacy to parents who want to systematically influence their child's development in some way they see as very important.

Nevertheless, schooling is still compulsory. So what is the aim of compulsory schooling? If exposure to the diversity of Ackerman's great sphere and the development of the moral powers are impeded in some substantial way by the Bill 44, then what else could we say is the aim of public education that the Bill implies? Reading, writing and arithmetic? If so then the current system is grossly inefficient. Day-care? If so, then why not make it far more open ended? Why have a curriculum and grading?

Development of the moral powers means getting experience looking at things from other points of view, or trying to is precisely the pedagogical program that gives rise to the very possibility of civilized, liberal-democratic society. It is what allows us to accept the fact of reasonable pluralism, which is one of the core values of liberal democracy.

Another anti-Bill 44 argument worth mentioning might run like this: Could a parent demand that their child be exempted from learning about the legislation itself and the human rights act? Would that not mean that a certain class of citizens would be subject to laws they are not permitted to know about? And would it amount to discrimination based on religion or sexual-orientation? It seems that the answer would be “yes”, so unless we want to allow for discrimination on the basis of religion and/or sexual orientation – the very thing Bill 44 is supposed to make illegal - we must conclude that Bill 44 is not only unreasonable on the grounds of a problematic conservative/democratic conception of parental autonomy, and again on a problematic implication for the stability/sustainability of liberal democratic society through the undermining of the general cultivation and diffusion of political virtue and autonomy, but it is also self-contradictory.

However, the parental rights clause of Bill 44 only applies when a course, program of study, instruction, exercise or instructional material deals "primarily and explicitly" with religion, human sexuality or sexual orientation. Outcomes related to human rights are taught in the Social Studies curriculum. Even if religion or sexual orientation is mentioned explicitly in instruction around human rights, the instruction must also be "primarily" about religion and human sexuality in order for Bill 44 to apply. The outcomes in the Social Studies curriculum are, according to Alberta Education's handbook on the high school curriculum, primarily about citizenship and identity; not religion or sexual orientation. In addition, Bill 44 does not apply where religion, human sexuality or sexual orientation comes up incidentally or indirectly in classrooms. These are important details that may

have the effect of rendering Bill 44's questionable enshrining of parental rights no real teeth. As long as the school board can argue that a subject is not primarily about religion, sexuality or sexual orientation, then Bill 44 will not apply, even though the subject matter and the curriculum may explicitly and repeatedly deal with these topics. Nevertheless, this still does not leave Bill 44's parental rights in good shape, because instead of rendering it necessarily unreasonable, it renders it ineffectual and thus empty. Moreover, even if it is ineffectual, the principles that lie behind the parental rights clause remain unreasonable for the reasons already given. The Bill undermines a child's right to an AFE by failing to guarantee provision of the basic requirements of AFE in terms of the KR, SR and DR.

Québec's ERC

An impartial observer might think that the ERC appears to be more about teaching religious history than religion; i.e. more religious education than religious instruction. In a multicultural society (and an increasingly interconnected multicultural world), this kind of education is extremely valuable. How can a person have an understanding of their own society without understanding the forces that shaped that society? As one parent commentator on the issue put it:

In order to understand a society, you need to understand the stories it tells itself, including its religious stories. We do not object to our children learning Greek mythology, because we realize that without this foundation, they will not understand the Iliad and Odyssey, let alone much of the significant institutions of the Hellenic world. It is difficult to see what parents who object to such lessons hope to avoid—the risk that their children will abandon their own religious heritage in favor of another? If so, then it suggests that the faith in which the children are being raised cannot survive under realities of the multicultural society in which we live. Sooner or later, those kids are going to go out in the world and bump up against people who

believe different things than they do. How do we want them to respond in these cases— In ignorance, or with informed understanding?²³⁰

Recall, however, that the ERC is explicitly *not* a course on religious history, but is rather a course on religious culture. Insofar as it does involve teaching religious history, it is with the aim of understanding and appreciating religious world views that are presently held in Québec society.²³¹ The problem is not with access to knowledge *per se*, but with the atmosphere and pedagogical approach taken. All the discussion so far has been about the aims of the Alberta and Québec programs, and although I think it is equally important to address how front line teachers deliver the material and the messages they implicitly or even unconsciously pass on to their students, I cannot adequately address this concern here.²³² What I will say is that the problem is the pedagogical approach implies a dominant world view characterized by normative pluralism. Since there can be no neutral pedagogical approach, any attempt at AFE or a program like the ERC must be grounded in some world view. So long as the competencies of AFE are satisfied – there is meaningful access and exposure to diversity (KR), meaningful exploration and critique of diversity (SR), and practice developing a disposition explore and evaluate diversity – then the parents ought to have the right to provisionally privilege their own world view in choosing from what pedagogical approach their child’s AFE will be pursued.

If we can separate the pedagogical approach from the content and competency aims of AFE, then the theses I have defended here are largely in agreement with the Superior Court decision in the

²³⁰ Comment from a parent commentator on self-published article by Christian parents rights advocate Sky Jethani. Available at <http://www.skyjethani.com/teaching-religion-in-public-schools/405/> Accessed August 2011.

²³¹ Note that the differentiation between “religious culture” and “religious history” is controversial.

²³² A study on the educational psychology differentials between different AFEs would be fruitful in addressing this concern. No doubt there would be significant psychological differences between AFEs that would have to be taken into account in regulating parent’s right to school choice. Fortunately, there is a great deal of work being done on this in SDT research. For more information see <http://www.selfdeterminationtheory.org/> Accessed January 2012.

Loyola case. Catholic parents have the right to have their child explore the diversity inherent in AFE *as Catholics*, and the same follows for parents of any world view.

This is fine for parents who can afford to opt out of the public school system and send their children to a private school that reflects their own world view, but what about those who cannot afford this luxury? Loyola is a prestigious private school, whereas the school in the Drummondville case is public. My third thesis is intended to recognize parental rights and to balance them with the state's right and obligation to protect the prospective rights of the child to autonomy and AFE, but it amounts to asserting a (qualified) right of parents to opt out. Nevertheless, if exercising the right to opt out entails incurring a cost, then it is not a costless alternative. There will be many parents who will have the right in name only if they cannot afford to exercise it. Therefore, in order to remain consistent with the principle of equal opportunity, something must be done to ensure that all parents have equal opportunity to exercise their right to reasonable school choice, which then entails the necessity of an education system where there are a variety of AFE programs available offered through a variety of schools, and an environment in which the differential cost of choosing one school over another is as low as possible. I mention this point only to indicate that accepting my three theses entails a commitment to answering the question of the problem of school choice and social justice. But while I recognize the three theses raise this issue, I will not attempt to address it fully here.

Conclusion

The Québec and Alberta cases are set to collide in the Supreme Court of Canada in the near future, and the issues they represent cut to the core of our liberal democratic values. Both the

Drummondville²³³ and the Loyola cases are under appeal to the Supreme Court, and in Alberta the Catholic school boards, the ATA, and representatives of the LGBT community have stated that they are considering legal action. I have argued that deciding these cases will require reference to a consistent and coherent account of the nature and value of autonomy and AFE, along with an equally consistent and coherent account of the rights of parents, the prospective rights of children, and the rights and responsibilities of the state in upholding them both.

I have argued that autonomy ought to be understood as a condition of persons such that they have distinctive self-reflective and self-affective capacities, and that such capacities necessarily require a program of AFE that meets what I have called the KR, SR and DR. I have argued for an account of the value autonomy and AFE from the perspective of liberalism: first, that citizens of liberal democratic societies require the autonomy implicit in the Rawlsian moral powers in order to enjoy their political rights as citizens; second, that liberal democratic society cannot consistently take an anti-perfectionist stance with respect to the education of children, but must rather take a weak-perfectionist stance that privileges autonomy; and third, that the vitality and sustainability of liberal democratic institutions requires a sufficient general diffusion of political knowledge, skill and virtues that are coextensive with the capacities of autonomy.

I have also argued that these considerations must be balanced against a consistent and coherent account of parental rights against a background account of indoctrination vs. education. The

²³³ The Supreme Court of Canada recently came to a unanimous decision on the Drummondville case. They decided that the parents in the case failed to demonstrate that the ERC violated their right to freedom of religion. The decision stated that: “the early exposure of children to realities that differ from those in their immediate family environment is a fact of life in society... 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 Quebec government’s obligations with regard to public education.” See *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7. Read the complete ruling at <http://scc.lexum.org/en/2012/2012scc7/2012scc7.html> Accessed April 2012.

conclusion of my evaluation of the Québec and Alberta cases is that neither approach adequately addresses all of these concerns. Alberta's Bill 44 goes too far on the side of parents' rights, and ought to limit parental rights to choice over pedagogical approach and not extend them to cover the content and competency aims of the basic requirements of AFE. The Québec ERC approach, on the other hand, fails to adequately recognize the right of the parent to provisionally privilege their own worldview through the freedom of choose the pedagogical approach of their child's AFE, and aspires to a standard of neutrality that is at best impossible to achieve and at worst indoctrinating, ultimately undermining AFE in the process. It is my hope that this may serve to help understand what is at issue in these cases, and offer an account of how they might be justly decided.

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