

Legal Theory Workshop
UCLA School of Law

Scott Altman

University of Southern California

“Rights Against Influence and Subversion:
The Case of Parental Rights”

Thursday, October 30, 2025 4:00pm – 5:45pm
Law School Room 2326 (Faculty Library)

Draft, October 2025. For UCLA Workshop.
Please don't cite or quote without permission.

Rights Against Influence and Subversion: The Case of Parental Rights

Scott Altman*

***Abstract.** Some rights protect only against coercion, while others also protect against efforts to influence choices or frustrate goals—what this paper calls steering and subversion. The paper develops a taxonomy of steering and subversion, identifies reasons some rights should be insulated from these forms of influence, and applies the framework to parental rights.*

Parents' rights provide a timely example. Recent high-profile disputes turn on whether they protect against influence and subversion. Such disputes include controversies about exemptions from public school classes and school nondisclosure policies that frustrate parental monitoring of children's gender expression.

Steering and subversion are sometimes necessary because legal and moral rights can include a right to cause harm or do wrong in ways that cannot be prevented through coercion. Encouraging responsible choices through persuasion, mild incentives, or selective facilitation can mitigate harm without infringing rights. Facilitating resistance to harmful goals, especially by those who suffer harm, can reinforce these efforts.

We should, nevertheless, insulate rights from steering and subversion when these actions cannot be justified using neutral principles, aim to corrupt principled decisions through incentives, invite government abuse, or undermine rights-specific goals such as intimacy or truth-seeking.

The article argues against insulating parental rights from most forms of steering and subversion. When parents exercise their rights in ways that harm children or society, we should steer them away from doing so. Children may be entitled to resist parental efforts to direct their upbringing, even when parents have a right against state coercion. The article considers and rejects claims that steering and subversion lack neutral justification, corrupt parental decision-making, or undermine the values parental rights are meant to protect.

* Virginia S. & Fred H. & Bice Professor of Law, University of Southern California. For helpful comments, I thank Jordan Barry, Rebecca Brown, Ryan Bubb, Jessica Clark, David Cruz, Matteo Godi, Sophie Gu, Felipe Jimenez, Mugambi Jouet, Greg Keating, Tomer Kenneth, Ariel Kleiman, Dan Klerman, Ed McCaffery, Jonathan Quong, Bob Rasmussen, Nicole Rasmussen, Stephen Rich, Daria Roithmayr, Nomi Stolzenberg, Abby Wood, and workshop participants at USC Law School.

Some rights protect only against coercion, while others protect against efforts to influence our choices or frustrate our goals. For example, the state may not urge us to adopt a religion, but it may encourage us to marry, to have more or fewer children, or to use our property in favored ways. Why do we insulate some rights, such as religion, but not other rights, such as family formation, from noncoercive influence?¹

This article offers a general answer. It illustrates its claims by considering recent controversies over parental rights to direct their children's upbringing. These disputes depend on whether parental rights protect against influence and subversion. For example, some parents demand that schools notify them if their child uses a different name or pronoun at school, and that libraries allow them to view their children's records. Parents also want the power to excuse students from public school classes that contradict their views, including classes about sexuality or featuring same-sex couples. Although these claims can also implicate parents' religious rights,² in this article, I focus on parental rights claims unrelated to religion.³ Secular examples might

¹ Noncoercive means of influencing behavior have been described as exhortative – mechanisms that include both persuasion and incentives. See Crescente Molina, *Exhortative Legal Influence*, 43 *Law & Phil.* 131 (2024). Common ways of categorizing rights, such as Hohfeld's taxonomy, do not specify (absent more analysis) whether one's claim is not to be coerced or not to be subject to intentional influence. For an account of such categories and their functions, see Leif Wenar, *The Nature of Rights*, 33 *Phil. & Pub. Aff.* 223 (2005). Leif points out that some rights seek to protect discretion. But that observation does not explain whether discretion needs protection from influence and subversion.

² The U.S. Supreme Court recently addressed this controversy, recognizing a parental right to opt children out of classes that conflict with their religious beliefs. They declared that parents have a constitutional right to opt their children out of classes whose lessons conflict with their religious beliefs. *Mahmoud v. Taylor*. I address the question of parents' religious rights in a companion article.

³ Although religious claims by parents currently offer the strongest constitutional basis for parental victories, parents have constitutional rights outside of religious claims. *Pierce v. Society of Sisters*, 268 US 510 (1925); *Troxel v. Granville*, 530 US 57 (2000).

include conservative parents who object to a required high school ethnic studies course,⁴ or progressive parents seeking exemptions from history classes inspired by anti-DEI laws.⁵

Noncoercive interference with rights takes two primary forms: steering and subversion. Steering means trying to influence how, or whether, a person exercises a right, such as by urging someone to join a protest rally or charging rally organizers fees to deter protests. Subversion means attempting to frustrate the goals someone pursues by exercising their rights, other than by influencing their choices. For instance, if the government tried to divert attention away from a protest by launching a war or announcing a controversial policy, it would subvert the protesters' goals without influencing their choice to protest. Steering aims to shape choices; subversion aims to frustrate the chooser's goals.

Denying opt-outs for required public school classes constitutes steering. It offers free education as an incentive, encouraging parents to expose their children to ideas they might dislike. It could also be considered subversion if it aims to prevent parents from successfully inculcating values that the state opposes. Refusing to disclose information about children's library books or

⁴ Parental rights claims cut across political ideologies. Many advocates for minimizing parental rights are progressives; they trust the state to achieve good outcomes and rely on scientific evidence. They distrust claims of family privacy, which have long been used to shield abuses of family power. But progressives focused on racial justice sometimes distrust state surveillance and interference with the family. They view parental rights as a tool to protect families against discrimination. Progressives also sometimes invoke parental rights in litigation when states impose rules that contradict their values or views on sound science. For example, in recent litigation challenging state bans on gender affirming care for trans children, some parents argued that these laws violate parental rights. See Brief for Family Law and Constitutional Law Scholars in US v. Skrametti.

⁵ For a review of recent laws and analysis of their constitutionality, see Heidi Kitrosser, The Government Speech Doctrine Goes to School, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5372715&dgcid=ejournal_html_email_northwestern%3Auniversity%3Apritzker%3Aschool%3Aof%3Alaw%2C%3Apublic%3Alaw%3Alegal%3Atheory%3Aresearch%3Apaper%3Aseries_abstractlink. For another recent example, see <https://www.nytimes.com/2025/03/14/us/oklahoma-2020-election-history-standards.html>. (reviewing Oklahoma's history curriculum, which asks students to identify discrepancies in the 2020 election).

pronoun use counts as subversion. It aims to impede parental efforts to control their children's gender expression.⁶

This article identifies factors that should influence whether states can steer or subvert specific rights. We should often let the state steer and subvert rights when people use them in ways that harm others, but the state cannot compel them to stop. As I explain below, some rights include the right to do wrong—often because the right requires broad discretion whose value would be undermined by coercive micromanagement. Steering and subversion mitigate the dangers of such rights without undermining their core function. Subversion should also be allowed when rights operate competitively, as they do for speech rights.

Despite these virtues, we should often insulate rights from steering and subversion. The article examines four reasons for insulation: (1) The need for neutral justifications. For some rights, such as religion, it might be impossible to justify steering without appealing to controversial accounts of the good; (2) Corruption. Using incentives to steer sometimes undermines people's ability to make principled decisions by offering inappropriate reasons, such as profit, for choices that should exclude such considerations; (3) Government abuse of power. Governments might steer and subvert rights to suppress criticism and punish political opponents; and (4) Various rights-specific goals, such as promoting truth through vigorous debate or encouraging family intimacy.

The article applies these considerations to parental control rights and concludes that we should not insulate parental rights from most steering and subversion. Parents sometimes harm children and society when they exercise rights-based authority. Steering is justified because it

⁶ One might argue that it is also a steering case if we regard non-disclosure as aiming to encourage a specific form of parenting, such as parenting that encourages children to trust their parents rather than fear them.

limits those harms and protects children without undermining the core reasons for parental rights. States may justifiably help children resist parental authority to protect children's interests in privacy and emerging autonomy.

There are reasons to hesitate about steering and subverting parental rights. However, most arguments in favor of insulating parents misinterpret justificatory neutrality and the goals served by parental rights. They ignore the neutral reasons for steering and subverting parental goals, even when parental goals are motivated by value judgments. They also overestimate dangers to values specific to parental rights, such as intimacy and parental counseling.

The article makes three contributions. Part I develops a taxonomy of steering and subversion. It shows several ways rightsholders can be influenced without being coerced and illustrates variation in the permissibility of steering and subversion. Part II identifies normative considerations that determine when rights should be insulated from such steering and subversion. Part III applies this framework to parental rights, clarifying their scope and illustrating the broader method for distinguishing which rights require protection against steering and subversion and which do not. Part IV addresses objections and concludes.

I. Permissible Steering and Subversion

Some rights include duties not to coerce, but little more, while others demand insulation from efforts to steer or subvert. Rights against steering and subversion appear in varied settings, including constitutional and human rights, as well as more mundane statutory and common law rights, and in moral rights. Although these insulated rights are plentiful, many rights (including fundamental rights) offer no such protection. Some rights are protected from steering but not subversion, and vice versa. When rights are insulated, they sometimes protect us only from government actions, and sometimes also from private pressures.

This section reviews permissible forms of steering and subversion for various rights. It is primarily descriptive, illustrating the types of noncoercive interference that certain rights preclude, and setting the stage for normative inquiry in Part II.

As noted above, by steering, I mean actions intended to induce a rightsholder to use or refrain from using a right in a specific way, or not to exercise their rights at all. By subversion, I mean seeking to defeat a rightsholder's purposes in exercising their rights. Steering and subversion are not always distinct. A government might frustrate goals pursued through rights to encourage people to make choices that the government will not frustrate. So, subversion can be a tool used for steering.

Before presenting a taxonomy of steering and subversion, I would like to clarify a few details about the scope of my analysis. First, the article focuses on intentional efforts to influence rights assertions and subvert rightsholders' goals, rather than on unintended influences. It also ignores manipulative interventions, such as nudges, which aim to bypass rightsholders' reasoning.⁷

Second, my questions about steering and subversion apply most naturally to rights that protect choices. Steering and subverting are easy to understand when applied to rights that can be exercised in several ways, such as speaking and procreating. Rights like due process or bans on discrimination are not as easily described as subject to steering and goal subversion.⁸

⁷ Some non-coercive influences are considered inappropriate because they distort people's reasoning. Although there is controversy over what constitutes wrongful manipulation and why it is wrong, none of the parents' rights examples involve manipulation, as they alter options and incentives rather than influencing how parents reason. For recent contributions to this literature, see Sophie Gibert, *The Wrong of Wrongful Manipulation*, 51 *Phil. & Pub. Aff.* 333 (2023); Massimo Renzo, *Manipulation and Rational Agency*, 1 *Free & Equal* 108 (2025); Massimo Renzo, *Why Manipulation is Wrong*, 2 *Political Phil.* 176 (2025). Claims of wrongful manipulation have been advanced against nudging policies. Cass Sunstein, *The Ethics of Nudging*, 32 *Yale J. on Reg.* 413 (2015); Andreas Schmidt & Bart Engelen, *The Ethics of Nudging: An Overview*, 15 *Phil. Compass* (2020).

⁸ Some rights include a complex amalgam of choice and equality norms. Voting is a good example. States might try to steer voting by encouraging people to vote for a ballot measure. They might undermine a voter's

Third, I address steering and subversion when government coercion is impermissible.⁹ When coercion can be justified, steering and subversion are less intrusive means of achieving government aims and usually do not violate a right. Of course, what constitutes coercion is hotly debated, both as an abstract question and in its application to particular rights. I aim to be agnostic about these debates so I can ask whether and why we should insulate some rights from non-coercive steering and subversion. The answer should be acceptable to people with varied views on which state actions are wrongfully coercive.

Finally, questions about steering and subversion arise for both negative and positive rights. The claimed parental right to be notified about children's behavior in school is a positive right. The claimed right to opt out of classes is a negative right against compelled attendance.

A. Steering through Persuasion

One common and generally permissible form of steering is persuasion. Having a right does not usually prevent others (including the government) from advocating whether or how you should exercise it. The government cannot confiscate my guns, but it can fund a public education campaign about the risks of gun ownership. It cannot dictate whether I have children, but it can urge everyone to have larger or smaller families.

Persuasion rarely violates our rights, at least if it occurs in a noncoercive context. However, some rights insulate us from persuasive steering. For example, the state cannot seek to persuade people about religious beliefs or rituals, though this non-steering duty does not extend to private citizens, who have the right to proselytize. Voting is another area where influencing the exercise of

goal by funding candidates with opposing preferences. But they also might undermine the value of a vote through vote dilution or gerrymandering. These last actions do not fit easily into my categories.

⁹ Some authors presume that rules against steering and subversion apply only or primarily to coercive government actions. However, they also note that determining what constitutes coercion can be challenging. See, e.g., Jeremy Waldron, Legislation and Moral Neutrality, 61, 72 in **Liberal Neutrality** (Robert Goodin & Andrew Reeve, eds. Taylor Francis, 2018).

rights through persuasion is restricted. The state can encourage people to vote, but it cannot urge them to vote for a specific candidate or party.¹⁰ Admittedly, legal rules about government speech and electioneering are complex and in flux, and the constitutional source of limits to government speech can be debated. But despite these debates, in some circumstances, the government clearly cannot try to persuade us how or whether to exercise our rights.¹¹

B. Steering through Incentives and Selective Facilitation

Governments steer not only through persuasion but also through incentives and selective facilitation.¹² For instance, governments might disincentivize gun ownership by sponsoring gun buyback programs, imposing modest harm reduction fees,¹³ or offering free home security systems to anyone who agrees not to keep a gun in their home. They might offer tax or welfare incentives to encourage larger or smaller families, or to encourage marriage. Although these incentives might violate rights if they were large, the government can gently encourage us to exercise many rights in ways it prefers.¹⁴

¹⁰ The rules governing permissible electioneering by governments and government officials are complex. They differ for candidate elections and ballot measures, and are not entirely settled. But the general principle that governments cannot fund or advocate for one side in a contested candidate election seems well established. See *Stanson v. Mott*, 17 **Cal.3d** 206, 218 (1976) (A “fundamental precept of this nation’s democratic electoral process is that the government may not ‘take sides’ in election contests or bestow an unfair advantage on one of several competing factions.”). The Hatch Act restricts government employees’ participation in campaigns. Scott Bloch, *The Judgment of History: Faction, Political Machines, and the Hatch Act*, 7 **U. Pa. J. Lab. & Emp. L.** 225 (2005). For a review of the constitutional rules and theoretical justifications of banning government participation in elections, see Steven J. André, *Government Election Advocacy: Implications of Recent Supreme Court Analysis*, 64 **Admin. L. Rev.** 835 (2012); Nelson Tebbe, *Government Nonendorsement*, 98 **Minn. L. Rev.** 648 (2013).

¹¹ For a broad overview of the limits of state endorsement, see Tebbe, *supra*.

¹² Most rights are not insulated from influence by private parties, who often use incentives and social pressure to affect how others exercise their rights. But we sometimes insulate rights from private pressures. For example, some states and countries ban employment discrimination based on employee speech to prevent censorship through financial pressure. See Scott Altman, *Hiring and Firing Based on Political Views* (forthcoming **So. Cal. L. Rev.** 2025).

¹³ *National Association for Gun Rights v. City of San Jose*, Order Granting Defendants’ Motion to Dismiss with Leave to Amend in Part and Without Leave to Amend in Part, Case no 22-cv-00501-BLF (Northern District of California, July 13, 2023).

¹⁴ Doctrinally, Constitutional doctrines sometimes focus on whether rights-focused incentives are coercive, or impose undue burdens, or directly and substantially interfere with rights. Undue burden analysis was once

Governments can also influence how we exercise rights by selectively facilitating rights assertions. For example, landowners have the right to decide how to use their land, subject to applicable nuisance and zoning laws. Governments sometimes facilitate uses they prefer by waiving environmental and zoning requirements for landowners who are willing to use their land for government-favored purposes.

We do not always allow steering through incentives or selective facilitation. Speech and religious freedom limit the use of incentives and selective facilitation. Governments can subsidize speech by funding public broadcasting or inviting people to lecture at public universities. However, governments cannot discriminate against speakers based on their message when distributing funds or facilitating speech, such as by licensing parades or protests.¹⁵ Similarly, religious rights impose limits on government incentives and selective facilitation, particularly those that favor one religion over another.¹⁶

Another constraint on government incentives is unconstitutional conditions doctrine. Rules vary by context, but the doctrine often prevents governments from offering non-mandatory benefits to induce people to waive their rights.¹⁷ The doctrine finds its strongest application in areas where

a part of the Supreme Court's approach to laws imposing impediments to abortion. See, e.g., Shannon Russell, The Burden Is Undue: Whole Woman's Health and the Evolution, Clarification, and Application of the Undue Burden Standard, 24 **Geo. Mason L. Rev.** 1271 (2016-2017). Rules have been analyzed based on whether they impose a direct and substantial burden on marriage. Zablocki v. Redhail, 434 US 374 (1978).

¹⁵ For example, in Legal Services Corp. v. Velazquez, 531 U.S. 533 (2001), the Supreme Court distinguished content-based restrictions on speech that represent government speech (such as a ban on federally funded family planning clinics discussing abortion) from government funding of private speech. In Velázquez, the Court struck down a ban on federally funded legal services lawyers challenging welfare laws.

¹⁶ This non-steering rule for religion is not, however, absolute. For example, it permits (and sometimes requires) lenient zoning rules for places of worship. Jason Pesick, RLUIPA: What's the Use, 17 **Mich. J. Race & L.** 359 (2012). A recent addition to the Texas constitution goes further than RLUIPA, forbidding any law that interferes with religious services. For an interpretation, see Gary Perez & Matilde Torres v. San Antonio 68 Tex. Sup. Ct. J. 1197 (Texas Supreme Court, June 13, 2025).

¹⁷ The justification and proper scope of this doctrine are debated. See, e.g., Cass Sunstein, Is There an Unconstitutional Conditions Doctrine, 26 **San Diego L. Rev.** 337 (1989); Kathleen Sullivan, Unconstitutional Conditions, 102 **Harv. L. Rev.** 1413 (1989).

we already insulate rights from steering, such as religion and speech. It also applies when the government might use conditions as pretexts to evade its duties, such as the compensation duty in takings law.¹⁸

C. Subverting Rights: Facilitating Competition and Resistance

Exercising rights sometimes resembles playing basketball (where opponents can block your shot or steal the ball) more than playing golf (where everyone must be quiet so you can concentrate).¹⁹ Rightsholders must confront opponents who try to frustrate their aims rather than operating in a protected environment. Although governments rarely compete directly with individuals, they facilitate competition and resistance to rightsholders' goals and occasionally act to impede them.

Speech is an obvious example of a competitive environment, more like basketball than golf. Our right to speak protects, among other things, our interest in persuading others. However, my efforts to persuade people will be limited by other speakers with opposing views and people who refuse to listen. Rules about union formation are another example of the government setting ground rules for competitive rights assertions. Workers are entitled to unionize. However, employers have a right to speak against unionization. Religious practices face similar competition through proselytization and other competition among religious organizations to attract adherents. And, of course, markets, supported by state rules, are inherently competitive. My ability to sell goods is constrained by your right to offer them at a higher quality or a lower price (and to compare your goods unfavorably with mine), as well as consumers' right to boycott our products.

¹⁸ For example, it cannot offer zoning waivers to developers who donate land to the city (for a park or school) unless the donation and the waiver are appropriately related. Dolan v. City of Tigard, 512 U.S. 374 (1994).

¹⁹ The sports metaphor is, of course, imperfect. Even golf involves competition in which others seek to prevent us from winning. But the rules disallow efforts to keep us from achieving a good score.

As these examples illustrate, we must sometimes accept competition that might subvert goals we pursue through rights. Other people's rights might require this outcome, and the public good is sometimes enhanced when rightsholders compete and try to frustrate one another's aims. They also illustrate that we allow competition even for rights, such as speech and religion, that we insulate against steering.

Although many rights are subject to competitive subversion, some rights are partly insulated from competition. One example is monopoly-granting rights, including all intellectual property rights.²⁰ Patent rights and copyright protections insulate rightsholders from many competitive pressures that might undermine their goals of further developing ideas (as with copyright protection against derivative works) or earning profits from initial investments. Another example is employment agreements that include non-compete or trade-secret provisions. These agreements (where enforceable) prevent third parties from tempting the promisors to breach their commitments.²¹ An archaic example of a monopoly right is the legal right to marital fidelity. At one time, inducing someone to breach this marital vow was a tort. Although such heartbalm laws have been abolished in most states, many people regard it as immoral to seek sex with a married person, arguably because the value of spousal fidelity binds third parties not to induce or participate in its breach.

Facilitating competition is not the only way governments intentionally undermine efforts to pursue goals through rights. Governments sometimes limit the group of people who are obligated to respect our rights, allowing others to undermine the goals we pursue. For example, although, as

²⁰ Contractual terms creating monopolies can also insulate rights from competitive subversion. For example, promises not to compete are often enforceable after the sale of a business. Enticing someone to breach a contract is often a tort. We also enforce contracts that create rights of first refusal and purchase options.

²¹ For a discussion of the legal complexity of non-compete agreements, see Jonathan Barnett & Ted Sichelman, The Case for Noncompetes, 87 **U. Chi. L. Rev.** 953 (2020).

noted earlier, trade secret law generally protects against private subversion, it permits reverse engineering of products that are otherwise protected by trade secret (subverting the secrecy aims of many companies). A similar subversion arises from press freedoms. Reporters can lawfully disclose truthful information of public concern that was wrongfully acquired, provided they did not participate in the wrongful acquisition. This press right undermines the aims of public figures who use privacy and property rights to keep information private.²²

Finally, the state might directly subvert some rights (rather than merely facilitate private subversion). For example, imagine that a religious leader urges followers to follow the biblical command to "be fruitful and multiply." The government has no desire to oppress religious people or target this leader, but it wants to discourage large families to combat climate change. It enacts a modest tax on families with more than one child, offers free contraception, and urges everyone to avoid having large families. As to individual decisions, this is steering. But it is also an effort to subvert the leader's religious goals.

Another example was noted in the introduction. Imagine that a group seeks permission to hold a press conference in a prominent location in Washington, D.C. It might plan to reveal evidence of government corruption, or to release a document purporting to show the intellectual inferiority of some racial groups. The government cannot turn down the application based on the group's views. But it could grant the permit and schedule the announcement of a military operation or a new scientific discovery shortly before the press conference to divert public attention from the

²² Bartnicki v. Vopper, 532 U.S. 514 (2001). For a broader discussion of third-party liability for inducing breach of contractual privacy rights, see Mark Fenster, Breach Agents: The Legal Liability of Third Parties for the Breach of Reputational NDAs, 6 *J. Free Speech* 48 (2025).

group's disfavored message. The announcement would subvert the group's goal, but it would not violate the First Amendment.²³

Similarly, imagine that the government invents a new fabric that can repel bullets. Far better than Kevlar, it is lightweight, inexpensive, breathable, and completely bulletproof. The government distributes clothing made of this fabric for free to anyone who asks. As a result, guns become ineffective as a means of self-defense. The government has subverted the purpose for which some people keep guns, but it has not violated the Second Amendment.

Of course, subverting rights is not always morally desirable, as the example of government distraction illustrates. My point is not that we should applaud every action that undermines a rights holder's goals, but that, in many circumstances, our actual legal rights allow subversion. In some of these cases, we tolerate subversion for good moral or practical reasons.

My examples of permissible steering and subversion may reveal patterns, but they are not immediately apparent. For example, we sometimes permit the steering or subversion of fundamental constitutional rights, and sometimes we do not. The state may steer us about marriage, gun ownership, and procreation, but not speech, religion, or voting, even though these are all fundamental rights. We also allow subversion for some fundamental rights, but not for seemingly less urgent statutory rights. We permit proselytizing to lure someone from their religion, but forbid enticing someone to reveal a trade secret or breach a contract. Any pattern in these rules must be more complex than insulating our most precious rights. In the next Part, I offer one possible account of when we should permit or forbid steering and subversion.

²³ For discussions of amplification and distraction as harms to speech that do not always violate speech rights, see Tim Wu, *Is the First Amendment Obsolete?*, 117 **Mich. L. Rev.** 547 (2018); Erin Miller, *Amplified Speech*, 43 **Cardozo L. Rev.** 1 (2021).

II. Why Insulate Rights from Steering and Subversion?

Why do we insulate some rights from influence and subversion? Although no single account can explain all examples, several features of rights make steering and subversion desirable in some contexts and inappropriate in others. This part begins by reviewing features that make steering and subversion desirable and then examines several opposing factors. The combination might explain why some rights need insulation and others do not.

A. The Benefits of Steering and Subversion

1. Steering

Steering allows states to prevent harm when coercion is impermissible. For example, steering procreative choices might make sense because the social stakes are high, but coercion is off-limits. Coercing these decisions violates rights to bodily integrity and undermines individual control over life-defining choices. However, procreative choices could exacerbate climate change or lead to economically debilitating population shortfalls. Encouraging responsible procreative choices through persuasion, mild incentives, or selective facilitation enables the government to influence decisions for the common good without infringing rights to bodily integrity or autonomy.

Of course, steering is not always appropriate, and the next section reviews several reasons to avoid it. But crucially, those reasons are not always present. When they are absent and coercion is impermissible, steering may be the best way to minimize the harm people cause when they exercise their rights.

2. Subversion

Although subversion can be morally problematic, it can also protect rights holders, prevent harm, or sustain valuable institutions. Sometimes we permit subversion because competitive systems, in which people oppose one another and seek to frustrate others' goals, produce public

goods and protect rights that people use when in pursuit of conflicting goals. Competition in markets, political campaigns, and public debate all fit this model.

Another circumstance where subversion plays a valuable role is when rightsholders are tempted to harm others, but the state cannot compel good behavior. In these cases, subversion is a substitute for steering. Rather than persuading rightsholders or offering incentives, the government can try to frustrate rightsholders' efforts to pursue harmful goals. The state cannot command or implore ministers to refrain from urging people to procreate, but it can encourage small families to combat harmful global warming.

Sometimes the state authorizes or tolerates private subversion as a way of checking power. Employee resistance is one example. Employers can lawfully monitor many aspects of employee work, including reading their work emails and logging employee mouse movements and keystrokes. Employees have no right to prevent this monitoring, but they can undermine employer goals by using encrypted texts for private communications or mouse-giggling devices to simulate work. Similarly, employees who object to excessively detailed employer rules can subvert employer goals by engaging in work-to-rule strikes.

Another example is jury nullification. We delegate broad discretion to prosecutors for law enforcement choices. Jury nullification constrains their decisions by undermining prosecutorial goals in circumstances where rules restricting their choices might not work. Although jurors have no right to nullify, they have a nullification privilege (sometimes acknowledged by the legal system).²⁴

²⁴ Travis Hreno, Jury Nullification: **The Jurisprudence of Jurors' Privilege** (2024); Nancy Marder, Jury Nullification: Don't Ask, Don't Tell?, 17 **L. Culture & the Humanities** 404 (2021).

Many beneficial uses of steering and subversion constrain wrongful or harmful rights assertions that cannot be checked through coercion. Sometimes coercion is unavailable because of a right's distinctive feature, such as the connection between bodily integrity and the right to procreate. In other cases, we cannot coerce a rightsholder because choice-rights demand broad discretion, including the discretion to make incorrect choices. That many rights include a right to do wrong means that noncoercive interventions can be helpful, provided they do not undermine the value of protecting the rightsholder's discretion.²⁵

B. The Dangers of Steering and Subversion

Although steering and subversion sometimes serve valuable ends, they can be morally inappropriate or politically dangerous. Several factors can counsel against their use.

First, liberal requirements for neutral justifications might lead us to insulate certain rights from steering. According to some liberal theories, governments must justify their actions (or a subset of their actions) in ways that all reasonable people can accept, avoiding reasons that appeal to controversial interpretations of the good.²⁶ When governments encourage people to adopt specific religious beliefs, practices, or ideas, or to express particular views, they may struggle to provide justifications that avoid controversial visions of the good.²⁷

Justificatory neutrality might warrant limiting subversion. But the case against subversion based on neutral justification requirements is less clear, even for speech and religion. For example, suppose the government declares that the spread of Islam undermines American values and seeks to inhibit its spread. To this end, it offers financial incentives to any adult who completes a two-hour

²⁵ On the right to do wrong, see Jeremy Waldron, *A Right to Do Wrong*, 92 *Ethics* 21 (1981).

²⁶ Jonathan Quong, *Liberalism without Perfection* (Oxford, 2010). Some scholars question the special focus on the good and ask why other controversies, such as factual disputes or disputes over justice, do not violate the demand for neutral justifications. Richard Arneson, *Neutrality and Political Liberalism*. In: Merrill, R., Weinstock, D. (eds) *Political Neutrality* (Palgrave Macmillan, London 2014).

²⁷ Ronald Dworkin, *Religion without God* (Harvard U. Press, 2013).

online class portraying Islam as a violent and intolerant religion. Its effort to subvert religious goals (recruiting members to the faith) cannot be justified based on values that are neutral as to the good because the alleged harm it seeks to prevent cannot be seen as a harm without embracing the idea that Islam is an inferior religion.

Although such religious subversion cannot be justified neutrally, other examples of subverting religious goals can be justified neutrally (absent reason to suspect a pretext). One example (noted above) is government incentives for small families, which try to counter religious leaders' efforts to promote large families. This subversion does not violate the duty of neutral justification because the goal of avoiding environmental catastrophe does not depend on any controversial interpretation of the good.²⁸

Second, steering through incentives can corrupt conscientious decisions by providing inappropriate incentives. When governments attempt to influence people's speech, associations, or religious rituals, they can undermine integrity by disconnecting matters of conscience from conscientious reasons, substituting threats or bribes for reflection, inspiration, and principled deliberation. This is a kind of corruption. Such corruption can be intended. For example, a government might condition tax or welfare benefits on embracing Christianity to induce religious belief (or its simulation) through bribery. In other cases, corruption might be unintended. For example, conditioning a job on willingness to work on the Sabbath might not aim to corrupt (or even influence) decisions about faith. Still, it imposes a substantial risk of corrupting conscientious decisions, leading people to ignore their religious commitments for profane reasons.²⁹ Corruption

²⁸ Some recent religious freedom cases embrace a norm against governments subverting religious goals, such as retaining children as members of the faith when they become adults. For reasons I elaborate in a separate article, I do not think justificatory neutrality requires this outcome. I address this question in another article, Scott Altman, *Mahmoud v. Taylor: Horrible Holding, Passable Policy* (draft).

²⁹ For an elaboration of this interpretation of corruption, see Scott Altman, *Are Boycotts, Shunning, and Shaming Corrupt?*, 41 *Oxford J. L. Stud.* 987 (2021).

differs from coercion in that it provides inappropriate reasons, rather than imposing excessive pressure.

Third, regulations that steer or subvert speech and religion can be tools for governments to abuse power, insulating themselves from critique or persecuting dissenters. Governments can abuse power by regulating speech and religion in several ways. They can suppress ideas that contradict government positions or criticize incumbents or their supporters. They can stigmatize people based on ideas or religion, scapegoating them for social problems, and seeking popularity by demonizing enemies. Such abuses are more easily accomplished through coercion than through steering and subversion. But denying benefits or offering subsidies based on speech and religion can contribute to oppression and shield the government from critique.

Finally, we insulate some rights from steering or subversion for reasons specific to the values they protect. For example, the government can encourage marriage, but it should not steer us to marry one person rather than another. Perhaps no one should tempt a married person to commit infidelity. The reasons for these non-steering and non-subversion rights stem from the value of intimacy and have little to do with reasons for non-steering or subversion in other contexts.

Similarly, norms against steering and subversion regarding speech and religion may aim to protect values specific to these rights. State steering and subversion can promote orthodoxy and might make some ideas unavailable for debate or cause some ways of life to disappear.³⁰ Avoiding

³⁰ Concerns about diversity in our ways of life take several forms. Sometimes the worry is preservationist; state subsidies or subversion might lead to the extinction of a specific culture or religion, or to unwanted changes. Of course, ways of life are never static, and preserving all of them without change is neither desirable nor realistic. But concern among members of a community with the disappearance of a language, for example, or a religious sect, seems to underlie some diversity or pluralism aims. This was one interpretation of the Yoder decision. Mandatory education allegedly threatened to subvert parental goals of retaining children in their faith by tempting them with secular alternatives. The Supreme Court noted that this could lead to the religion's demise. A second diversity concern aligns more closely with biodiversity goals than with concerns about extinction. We might worry that state orthodoxy will homogenize our culture, as fast food and shopping malls have homogenized our cities. The worry is not about losing a specific way of life but

the homogenizing effects of state-supported orthodoxy applies to several rights, but it is not a general reason to avoid steering and subversion.

III. Should Parental Rights Preclude Steering and Subversion?

Should we insulate parental rights from steering or subversion? Addressing these questions requires a brief account of why parents have rights. Of course, this is a matter of debate, and I hope to offer an account of steering and subversion that is agnostic about the nature of parental rights. There are two main theories of parental rights. Child-centered theories assume that parents have rights only because parental authority benefits children, and that the scope of parental rights depends solely on children's interests. On this account, parental rights derive from parental duties to children. Parents resemble trustees; they have power because their child-protecting duties require control and some immunity from being second-guessed. These theories emphasize that children benefit from decisions made by loving parents and from the intimacy and trust established when children perceive their parents as authorities who consistently act in their interests.³¹

The competing justification for parental rights relies on dual-interest theories. These theories justify parental rights and define their scope based on the joint (and sometimes conflicting) interests parents and children have in allowing parents to direct children's upbringing. They emphasize that parents' rights benefit children (just as in child-centered theories) and that

narrowing unduly the available options. Of course, just as with their environmental analogs, these concerns overlap. Additionally, our concern for preserving many ways of life might lead us to think more about structures that encourage variety rather than asking whether we currently face a danger of homogenization.

³¹ For examples of child-centered justifications for parental rights, see Anca Gheaus, "The Best Available Parent," *Ethics* 131 (2021): 431–59; James Dwyer, *Deflating Parental Rights*, 40 *Law and Phil.* 387 (2021); Anne C. Dailey & Laura A. Rosenbury, *The New Parental Rights*, 71 *Duke L.J.* 75-165 (2021). Some theories support a dual-interest account of the right to be a parent and a child-centered account of the rights parents exercise once they occupy the parental role. See Harry Brighouse and Adam Swift, *Family Values: The Ethics of Parent-Child Relationships* (Princeton, NJ: Princeton University Press, 2014), 121; Sarah Hannan and Richard Vernon, *Parental Rights: A Role-Based Approach*, 6 *Theory and Research in Education* 173 (2008).

parents benefit from forming and maintaining loving relationships with their children, as well as from nurturing, counseling, and educating them.³²

Some versions of both theories note that parental guidance benefits parents, children, and society because parents share racial, religious, cultural, and other family traditions with their children. Children benefit when they grow up connected to communities and traditions. Parents benefit by sharing values with children. Communities benefit from sustaining diverse ways of life.

Both camps have room for minimalists and maximalists (and moderates in between). Minimalists about legal rights³³ believe that currently recognized parental rights exceed what is best for children or necessary for parents.³⁴ Maximalists believe that the risks of state surveillance, interference in family life, and the frequency of state errors justify broad and robust parental rights. Although these groups disagree on how often the state should use coercive interventions, everyone who believes in parental rights acknowledges that children are sometimes best protected when parents make decisions with minimal supervision, even though parents may make preventable

³² For examples of dual interest theories, see Matthew Clayton, **Justice and Legitimacy in Upbringing** (Oxford: Oxford University Press, 2006); William Galston, **Liberal Pluralism** (Cambridge: Cambridge University Press, 2002); Colin Macleod, “Conceptions of Parental Autonomy,” *Politics and Society* 25 (1997): 117–40; Scott Altman, Parental Control Rights, in **Philosophical Foundations of Children’s and Family Law**, (Lucinda Ferguson & Elizabeth Brake, eds, (2018); Scott Altman, Why Parents’ Interests Matter 133 **Ethics** 271 (2023); Scott Altman, Are Parents Fiduciaries? 42 **Law & Phil.** 411 (2023).

³³ Divisions about moral rights focus less on the harms and benefits of state intervention and more on the benefits and harms of parental control. For example, some maximalists think that children benefit from parental religious instruction, even if this deprives children of exposure to alternative ways of life. Some minimalists think that parental religious instruction harms children. See Matthew Clayton, **Independence for Children** (Oxford 2025).

³⁴ Minimalists worry that some parents lack the expertise to make good decisions or the skills to provide adequate care, sometimes prioritizing their needs above those of their children. They view potential harms caused by state intervention as overstated or speculative and emphasize the preventable, long-term damage some parents do to children absent state monitoring and intervention.

mistakes. In other words, parental rights include the right to make mistakes and, at times, to make morally wrong choices.³⁵

Some readers may balk at the claim that parents have any rights to control their children's upbringing. The idea that anyone has a moral right to exercise control over another person seems offensive. Perhaps parents have no moral right to control their children, but only the legal powers and immunities necessary to fulfill their duties toward them. Although there are plausible responses to this position, even if parents' legal rights derive entirely from their moral duties, the question posed by this article arises: are parents' legal rights to make decisions for children the kind of legal rights we should protect only against coercion, or also against steering and subversion?

To assess whether we should permit steering and subversion of parental rights, consider the two examples mentioned earlier (curricular opt-outs and parental notification) with some added details.

For the opt-out example, imagine that a state's high school graduation requirements include classes that some parents oppose, such as ethnic studies,³⁶ and sex education.³⁷ Additionally, some primary schools have adopted a reading curriculum that includes books featuring LGBTQ characters. These books and classes are thought to benefit children and society, although not enough to justify mandating them for private schools and homeschoolers.

³⁵ This idea is referred to as a right to do wrong. Jeremy Waldron, *A Right to Do Wrong*, *supra*; William Galston, *On the Alleged Right to Do Wrong: A Response to Waldron*, 93 *Ethics* 320 (1983); Ori Herstein, *Defending the Right to Do Wrong*, 31 *Law & Phil.* 343 (2012).

³⁶ <https://edsource.org/2021/california-becomes-first-state-to-require-ethnic-studies-in-high-school/662219>.

³⁷ Most states permit parents to opt their children out of public-school sexual education classes. See Sexual Information and Education Council of the United States, *Policy Brief: Sex Ed & Parental Consent Opt-in vs. Opt-Out* (2018).

The state refuses to allow opt-outs from the high school classes because it wants parents with mild reservations to let their children learn this information. It understands that parents who strongly oppose such exposure will opt for homeschooling or private schools. The incentive is not considered coercive because the state provides vouchers for private schools on a sliding scale based on parental wealth.³⁸ With vouchers, any parent can afford a private school, although for some, this choice may require a financial sacrifice. The school districts disallow elementary school opt-outs for another reason: implementing an opt-out system for a reading curriculum would be impractical. The books are woven into the curriculum, rather than isolated into discrete modules.

For the notification example, assume that the state allows (but does not require) teachers to inform parents about children's behavior at school.³⁹ Teachers can inform parents if they believe the child would benefit from parental guidance or if the school would benefit from parental assistance. Regarding children's names, pronouns, and clothing at school, teachers are advised to consider a child's desire for a parent not to be informed when making this assessment.

Questions about steering and subversion arise when states aim to influence rights holders to act in ways that states cannot coerce. These public school examples arguably fit this category. The disputed policies only apply to public schools.⁴⁰ Private schools and homeschoolers do not need to offer sex education, teach from books involving same-sex parents, or respect children's

³⁸ The constitutional rules about conditioning school access on compromising a constitutional right are unclear. In Mahmoud, the majority declared that the constitution forbids such conditions. Slip Opinion at 32. However, that case relied on the combination of religious freedom and parental rights, and the opinion stressed the challenge many parents face in affording private schools.

³⁹ California law prohibits school districts from requiring such disclosures (although it does not prohibit disclosure by individual teachers). AB-1955 (2024). https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1955. Other states require such disclosures. See, Indiana HB 1608 (2023).

⁴⁰ We mandate minimum standards for education that apply to all schools, public, private, and home schooling. All children must be taught the information and skills necessary to participate in a democracy and become financially self-supporting. Education also helps prepare children for life in the adult world, equipping them with intellectual and social skills to pursue their aims.

privacy about library books or their gender identity. Applying these rules only to public schools suggests that states view these goals as insufficiently urgent to justify requiring all parents to comply. I will assume, for now, that these examples involve noncoercive steering and subversion and that coercive interventions would be impermissible. I revisit these assumptions in the concluding section.

How do the considerations outlined above, supporting and opposing steering, fit with parental rights? Although the answer is not straightforward and might depend on empirical questions, parental rights likely should not preclude steering and subversion. Of course, this does not mean that all steering or subversion of parental rights is permissible. Sometimes it is unjustified, for example, because it pursues immoral goals or targets parents based on their race or religion. However, we should not presume that steering or subversion of parental rights is wrongful in the way we might for some other rights.

A. The Benefits of Steering and Subverting Parents

1. Steering

As I noted above, steering is often desirable if rightsholders might exercise their rights in ways that harm others, but coercing them to stop is impermissible. Parental rights fit this pattern. Parental rights include the right to do wrong; we allow parents to make choices about their children's upbringing, even though parents inevitably make preventable errors. Children would be worse off if governments too often supervised and second-guessed parents. Steering is a way to mitigate this problem. Governments that cannot coerce parents (without undermining the value of parental control) might be able to persuade or encourage parents to refrain from asserting their rights in ways that harm children or society.

Opt-out denials offer a good example. Parents might want to opt their children out of an ethnic studies class because they fear the child will be indoctrinated into woke ideology. They

might oppose sex education because they think it will lead their children to adopt permissive views about sex or to engage in sex while young or unmarried. They might not want their children exposed to LGBTQ stories because they do not want them to accept the legitimacy of same-sex intimacy or trans identity. Steering parents away from these choices might benefit children and society. For example, the ethnic studies class might help children learn to coexist cooperatively in a diverse society where people hold opposing views. The sex education class might help students avoid diseases and unwanted pregnancy. And the LGBTQ reading might help children feel welcome and accepted, reducing depression and rates of suicide, or discourage harmful discrimination against LGBTQ people.

Of course, the state will sometimes be wrong. Perhaps mandatory ethnic studies classes will lead to polarization rather than cooperation. Risks like this warrant caution when steering. But when the state has information that parents lack and an incentive to consider the broad social effects of parental choices, it will at least sometimes make sense to steer parents away from bad choices when the state cannot compel better ones. Additionally, if state incentives are mild, children benefit from both government insight and informed parental judgment.

[2. Subverting](#)

When rights are used harmfully, the best corrective may be to empower others, especially those at risk, to resist the rights holder's aims. When parents exercise their rights, children may be entitled to resist their parents' harmful decisions. They would have no duty to obey and so may justifiably keep secrets or evade rules, especially when those rules violate their moral rights.⁴¹ As I will argue below, the values served by parental control rights do not demand complete obedience

⁴¹ On this understanding of the relationship among parents, children, and the state, parents have rights against coercive state interference in certain decisions, a privilege (with respect to children) to make and enforce rules, but not a right to their children's obedience.

from children.⁴² Children must be receptive to parents' guidance and teaching, but parental rights can often serve their functions even if children do not defer to parents on every matter.

Parental rights to monitor their children and impose discipline sometimes harm children by depriving them of privacy or interfering with their growing capacity to help direct their upbringing and explore the values they embrace. These interests might justify resistance, sometimes facilitated by the state. In this respect, parents' rights might be subject to resistance rights to fight against abuse, much like the right of jury nullification. The comparison highlights the similarity between parents and the state: both are given broad powers needed to fulfill their roles, and both might be constrained from unjust choices by resistance from those they have the power to govern.

When children express their gender identity at school, their resistance privilege may be grounded in privacy. Although privacy rights in semi-public spaces like classrooms might seem odd, privacy often allows experimentation in low-stakes environments, enabling people to form and refine their ideas and identities.⁴³ Privacy also helps children avoid subordination. They may fear parental judgment but feel safer exploring identity among peers or teachers, making classrooms into partially private spaces.⁴⁴ Children may also want to avoid parental criticism of their emerging gender identity. If parental reaction to children's gender expression harms children, then the state might justifiably assist children in evading parental detection to protect them from harm. The state likely cannot coerce parents to support their children's gender identity or prevent parents from

⁴² There is some doctrinal support for the idea that children have a limited privilege to resist parental control. In many states, juvenile court intervention depends on finding habitual disobedience. Children who merely disobey parents in typical ways are thought not to need state intervention. Sue Brenner, Disobedience and Juvenile Justice: Constitutional Ramifications of Childhood as a Moral Concept, 21 **J. Fam. L.** 457 (1982-1983).

⁴³ Ruth Gavison, Privacy and the Limits of Law, 89 **Yale J. J.** 421, 448, 459 (1980).

⁴⁴ Scott Skinner, **Privacy at the Margins** (Cambridge U. Press 2020).

monitoring their children's behavior. So, facilitating subversion may be the best protection the state can offer.

One can view efforts to steer parents and subvert parental authority as part of a healthy structure for the parent-state relationship. By using indirect means to prevent harm, the state protects parental rights and family interests. Steering parents and frustrating their aims intrudes less on parental control by directly dictating to them how to raise their children. In this way, steering and subversion offer safety valves (admittedly imperfect) to protect children from harm and families from excessive state intrusion.

B. Are there Reasons not to Permit Steering or Subverting Parents?

1. Neutral Justifications

Unlike efforts to influence the content of speech or religious practices, steering parents when they exercise their rights or subverting their goals can usually be justified by neutral purposes. As I noted above, required sex education can be justified based on reasons that do not rely on controversial conceptions of the good. These classes might aim to delay sexual activity, reduce teen pregnancy and venereal disease, and combat teen suicide. Similarly, assigning books that portray LGBTQ characters positively might seek to make all students feel welcome and accepted, particularly if the reading curriculum also features many other family forms, including religious families. These classes and books need not imply any position on the morality of sex outside marriage, same-sex intimacy, or trans identity. Similarly, refusals to surveil and report on children in schools and libraries can be justified as protecting children's privacy or developing autonomy without relying on controversial views about gender identity.

Some parents may disagree that these justifications are neutral or that they accurately reflect the state's aims. They might think that government steering and subversion show disdain for

their values and practices. For example, curricular choices may aim to inculcate values that parents oppose rather than promote acceptance or expose children to ideas. Schools can claim that books portraying LGBTQ families aim merely to make all students feel welcome and help them to learn about the diversity of family lives. However, an honest account would also acknowledge that these curricular choices aim to counter what the state perceives as bigoted attitudes.⁴⁵ The state seeks to subvert parental value transmission because it disapproves of parental values. Surely, the parents might say, intentionally subverting value transmission cannot be justified in ways consistent with liberal neutrality.

Similarly, parents who want the school to monitor and report on their child's behavior may view neutral justifications skeptically. They can make two arguments. First, they think that obedience is more important than developing the capacity for autonomous choice, as they want their children to become obedient members of the religion, rather than free thinkers. Prioritizing autonomy over obedience may be the kind of value judgment about the good that a liberal state should not make. Second, protecting children's privacy and autonomy might not fully explain the refusal to surveil. A school might be willing to inform parents if a child of vegan parents is trading lunches in the cafeteria, but not to disclose a child's change of pronouns or name at school. The reason is disapproval of the parents' views about gender identity or their anticipated responses, not merely a disagreement about privacy.⁴⁶

⁴⁵ The majority opinion in Mahmoud emphasized evidence that the state sought to demean views that did not accept the morality of same-sex intimacy or non-binary gender identity. For example, the Court mentioned a comment by a school board member who said that parents who sought opt-outs from inclusive reading were like white supremacists and xenophobes. Slip. Op. at 11.

⁴⁶ This objection might be mistaken. Perhaps children have a greater interest in privacy regarding their gender-related behavior than in their food choices. The need for room to explore issues of gender might be more important than exploring food.

These objections are partly correct. States sometimes attempt to shape children's beliefs and values in ways that conflict with parents' child-rearing goals. This is one form of state subversion—trying to prevent some parents from successfully transmitting values to their children. When they do this, parents reasonably believe that the state thinks their values are wrong. However, the state's justifications might nonetheless count as neutral. The reason is that states are permitted to prevent harm caused by people whose actions are motivated by controversial visions of the good, if categorizing their actions as harmful does not itself rely on such controversial visions. This idea is uncontroversial in many circumstances. A killer might sincerely believe that God requires honor killings, but the state can work to prevent such murders. When people cause harm through value transmission, rather than violence, the principle still applies.

For example, parents might hope to rear their children to value obedience to God rather than self-direction. Perhaps they have a right to take steps toward that goal.⁴⁷ However, because children eventually become adults, some of whom do not embrace their parents' values, the state can protect children's capacity to pursue the values they eventually embrace. Protecting the children's capacity to live with integrity as adults is a neutral justification.⁴⁸ The state need not favor autonomy over obedience as a value. It can merely seek to protect those children who ultimately reject their parents' commitment to obedience so they can live in accordance with values they do embrace, including autonomy.

The state can offer similar responses to the other complaints. Perhaps the state aims to combat discriminatory attitudes and actions against LGBTQ people through its school curriculum.

⁴⁷ Not everyone agrees that parents have this right. Matthew Clayton, **Independence for Children** (Oxford 2025). But even on the assumption that they have this right, the state can seek to prevent harms caused by them when they use it.

⁴⁸ Some scholars refer to this as protecting autonomy. I have elsewhere suggested that protecting the capacity to live with integrity is a preferable interpretation, as integrity is a neutral value. Scott Altman, Reinterpreting the Right to an Open Future: From Autonomy to Authenticity, 37 **Law & Phil.** 415 (2018).

It can identify discrimination against LGBTQ people as a harm worth preventing without adopting a view of the morality of same-sex intimacy. Discrimination can be harmful and unjust, even if fundamentalist views about the immorality of some sex acts are true. As to selective refusals to surveil, the state can take note of psychological harms to trans children from unaccepting parents without disparaging those parents' views as false.

2. Corruption and Harms to Integrity

Steering parents with incentives when they exercise rights might raise concerns about integrity and corruption. Many parenting decisions reflect parental values; parents decide what is best for their children based on their beliefs about what constitutes human good and happiness. So, guiding children to live well can be just as much a matter of integrity as speaking one's mind and living according to one's religious beliefs. However, when governments regulate parental interests, they rarely intend to incentivize parents to abandon conscientious decisions. Governments typically do not offer subsidies to entice parents into shifting the moral lessons they teach their children.

One might argue that governments intend to corrupt parents (or create a high risk of corruption) by denying classroom opt-outs. Opt-out denials might incentivize parents to compromise their moral views about educating their children to avoid the costs or practical challenges of private school or homeschooling.

Although such government incentives for parents create a risk of corruption, they do not aim to distort parental reasons. Opt-out denials might aim to persuade parents that certain classes will benefit their children. They might seek to sort parents into groups, retaining those who do not object strongly to the class, and encouraging those whose values conflict strongly with the class to use private schools. And they might aim at avoiding the administrative burden of managing an opt-

out system. If opt-out denials aim at persuasion, sorting, or efficiency, their goals are not corrupting.⁴⁹

Additionally, parents are not corrupted if they choose morally imperfect public education because it is free. Often, such parents will realize that the money saved by using public schools can benefit their children in other ways, perhaps allowing them to attend college. Focusing on what is best for children overall does not corrupt parents in the same way as making moral decisions based on profit. Even if financial concerns influence their choice, they remain focused (as their moral compass dictates) on which choice benefits their children, all things considered.

[3. Abuse of Power](#)

Governments can abuse power through family regulations. They can persecute parents by targeting them based on race, religion, or other protected characteristics. For example, the disproportionate surveillance of Black families by child protective services and the removal of children from their homes is thought by some people to be unjustified by child safety and part of broader patterns of structural racism.⁵⁰ The long history of removing children from Native American families fits a similar pattern.

Noncoercive steering and subversion, unconnected to discrimination based on protected status, is an unlikely tool for oppressing parents. Of course, current law does not perfectly capture all racial targeting, in part because it does not restrict rules with disparate impact very effectively.

⁴⁹ Sorting is not corrupting because it does not seek to influence anyone to compromise their moral views for money. One example is the requirement that conscientious objectors to war must do alternative service. One function of the alternate-service requirement is to reduce the chance of insincere invocations of conscience by making the invocation somewhat costly. An example of corruption would be offering conscientious objectors double their salary to participate in a war.

⁵⁰ Dorothy Roberts, **Torn Apart** (Basic Books 2022).

However, when the government steers or subverts parental goals in ways uncorrelated with protected classes, oppression is unlikely.

4. [Values Tied to Parental Rights](#)

Do the interests that justify parental rights against state coercion (whether based on child-centered or dual interest theories, and whether minimalist or maximalist) also justify sheltering parents from steering or subversion? One cannot measure whether steering and subversion undermine intimacy and parental guidance (including transmission of family and cultural values and traditions). However, there are reasons to think that these benefits are robust rather than fragile and, for that reason, that parental rights are unlikely to be undermined by state steering or goal subversion.⁵¹ To see why, consider how examples of opt-out denials and refusals to surveil might affect family intimacy and parental guidance.

[A. Family Intimacy](#)

Would family intimacy suffer if required course materials contradict parental views? Students might learn in school that (some people believe) gender is (or is not) determined by biology before birth, or that structural racism is (or is not) the primary cause of disparate outcomes correlated with race. If parents express opposing views at home, might their children lose respect for them or experience strained family bonds?

Parents should worry about what schools teach their children. However, the worry about lost intimacy seems fanciful. Admittedly, children sometimes lose respect for their parents, and intimacy can be unpredictable. However, generations of children have learned about evolution in school and been told at home that God created the world in six days. There is no evidence that exposure to secular ideas reduces family intimacy. Scholars of family intimacy do not include

⁵¹ On the robust nature of family intimacy, see Scott Altman, [The Pursuit of Intimacy and Parental Rights](#) in **The Routledge Companion to Philosophy of Law** (Andrei Marmor, ed., 2011).

curricular contradiction among the risks posed by public schools.⁵² The reason is easy to understand. Good teachers communicate information in ways that do not demean students' political, moral, or religious views.⁵³ Children whose parents hold minority views know that others disagree with them. They learn from their peers or the media that their family's beliefs or practices are unusual or disfavored. In this context, the marginal role of state speech in undermining perceived parental authority is likely small. Moreover, criticism is as likely to solidify family bonds as to break them.

Perhaps, though, family intimacy is more fragile for very young children. The argument that children know (apart from what teachers say) that their parents hold views not shared by others might be persuasive for older students. However, elementary school children might confront disagreement with their parents' views for the first time in a classroom. They might be more likely to lose respect for parents if an authority figure contradicts what they learn at home. Parents might want to delay exposure to alternative views until family bonds are more firmly established and children are better equipped to understand sources of disagreement. This concern is understandable and provides a good reason to protect the right to use private schools and to homeschool. Parents who want to delay their children's exposure to alternative views can opt for these solutions. But non-coercive inducements, such as opt-out bans, do not threaten family intimacy if parents can shelter their children through private schools or homeschooling.

Refusing to share information about children's classroom behavior raises a more complex issue for family intimacy. One might think that classroom secrecy poses little threat to family

⁵² See Michael Merry & Charles Howell, Can Intimacy Justify Home Education?, 7 **Theory & Research in Ed.** 363 (2009) (identifying factors that make homeschooling more conducive to intimacy, including better knowledge and shared experiences about failure, bullying, and risk-taking behavior).

⁵³ Lisa Borgerding, High School Biology Evolution Learning Experiences in a Rural Context: A Case of and for Cultural Border Crossing, 12 **Cult. Stud. of Sci. Educ.** 53 (2017)

intimacy. Intimacy requires sharing, but it does not require abandoning privacy or disclosing every secret. Even in our closest relationships, we do not disclose all our thoughts and actions.

Admittedly, children who keep secrets from their parents and entrust those secrets to other adults may have lost trust in their parents and established intimacy elsewhere. However, a lack of trust and lost intimacy are more likely the cause of such secret-keeping than its result. If children will not tell their parents what they are reading or the pronouns and clothing they use at school, the origins of their distrust likely predate the school secrecy.

However, secret-keeping might exacerbate distrust, even if it does not initially cause it. If parents knew that their children were keeping secrets, they could take appropriate steps to rebuild trust. Denying them this information undermines their ability to address relationship failures. Moreover, children sometimes misjudge their parents as untrustworthy. The school or library might be unwarranted in assuming that parents will use information to harm their children, rather than to foster intimacy and offer guidance.

This critique of withholding information has some merit. In some cases, secret-keeping might undermine family intimacy by making it harder for parents to repair or strengthen family bonds. In other cases, however, parents might not use the information to rebuild trust, but rather to harm their children.

How should outsiders respond to uncertainty about whether keeping secrets undermines family intimacy? Perhaps we should assume that parents will use the information to help their children. However, for children who are mature enough to form sensible opinions, perhaps we should sometimes trust children's conclusions about sharing information. In other contexts, we withhold information from parents when the children believe their parents would misuse it. Information about teen contraceptive use is one example. Many states forbid disclosing such

information to parents. Some states permit doctors to use their discretion in determining whether to disclose such information to parents.⁵⁴

If it is sometimes best to trust children, at least older children, then we could place the responsibility for maintaining trust and intimacy on parents rather than imposing a duty to support family intimacy on third parties. Parents who want their teens to be open with them about sex and contraception must work to build the trust needed to ensure such disclosure. A similar approach might be appropriate for library books and gender-connected behavior in school.⁵⁵

B. Parental Guidance and Value Transmission

Will denying opt-outs deprive children of the value of decisions made by parents who know about and love them, or deprive parents of the benefits of nurturing and educating their children? Guidance from loving and informed parents can take several forms. Parents guide their children by sharing ideas and demonstrating how to live well. Opt-out denials do not interfere with these channels of parental guidance. Parents can still share ideas with their children. If they feel strongly about not allowing children to learn about some topics, they can demonstrate their values by removing children from public schools.

Parents also guide their children by making decisions that benefit children. Noncoercive opt-out denials will not undermine this benefit either. Denying opt-outs might lead some parents to choose private schools or homeschooling, even though they believe public schools with opt-outs or alternative required classes would be the best option. Opt-out denials limit the choices available to such parents, denying them their preferred option: public education aligned with their values. They also may increase the costs of some choices, thereby depriving children of funds that would

⁵⁴ <https://www.healthline.com/health/do-you-need-parental-consent-for-birth-control#exceptions>.

⁵⁵ In this respect, school nondisclosure might be a form of steering (not just subversion). It encourages parenting strategies that build trust, rather than those that rely on domination.

benefit them. However, parental guidance does not necessitate removing all barriers to parents providing children with everything they believe is beneficial.

The parental right to direct their children's upbringing offers children the benefit of informed, loving decision-making. It provides parents with a chance to nurture and educate their children. Mild incentives do not deprive children of informed and loving decisions, nor do they deprive parents of the chance to nurture and educate their children. If parents feel strongly that public school requirements are contrary to their children's interests, they will (because they love and know their children) opt for private schools or homeschooling. Choosing in the face of tradeoffs exemplifies, rather than undermines, parental nurturing. If parents can realistically make choices they believe allow their children to thrive and live good lives, they and their children benefit from parental rights.

A distinct interpretation of parental guidance locates its benefits (to both children and parents) in the transmission of values and traditions. The right to choose private schools or homeschooling protects this idea by allowing parents to raise their children somewhat more isolated from the homogenizing effects of public schools and in a setting that emphasizes specific religious or cultural ideals.

Families that remain in public schools despite unwanted requirements might worry about two kinds of harm to the transmission of values.⁵⁶ One is the increased difficulty of inculcating values in the face of pressures to conform. Families must endure the inevitable pressures that arise from embracing values or customs that differ from the majority, as well as the additional challenge

⁵⁶ A third concern is that the homogenizing effect of public education may endanger ways of life or reduce overall cultural and religious diversity. The harm seems unlikely. In the US, private school attendance and homeschooling are widespread, substantially undercutting the concern that homogenizing public schools will endanger cultural and religious diversity.

of unwanted state messages in mandatory classes. Another harm is the increased risk that children will adopt views that parents hope they will reject.

The first harm is likely not severe. As noted above, the primary challenges families face in sustaining their religious and cultural commitments stem from widespread pressures from public culture and social interactions. The marginal harm from classroom speech is likely small.

The second harm likely cannot be called a harm from the child's perspective (and so does not count as a harm on a child-centered theory of parental rights). Embracing values different from your parents is an aspect of maturity, rather than a source of regret. From the parents' perspective, of course, having children reject values or traditions the parents hold dear might be a failure of their central life project. But if parental rights rely on their interests in nurturing and educating children, they are not justified by the urgency of guaranteeing parental success in their value-inculcating projects. The good of parenting that deserves protection is the good arising from guiding a child, as best one can, toward living well, not the good of successful value inculcation.

Dissenting parents might claim that the harm they suffer is not failure to transmit values, but rather the denial of an equal opportunity to inculcate values and educate their children. For example, if a state requires public school students to learn about evolution, then parents who believe in the literal truth of the Bible's creation account must spend time rebutting the state's lessons. They must work harder to instill their values than parents whose values match the majority. Progressive parents might raise similar objections in school districts with ideologically conservative curricula.

Some accounts of justice support the idea that the law should strive to provide everyone with a fair opportunity to pursue their legitimate aims.⁵⁷ But the parents' objection misunderstands that idea in three ways. First, non-coercive steering and subversion do not necessarily deny anyone an opportunity to pursue their aims. Private school options and the ability to convey values to children outside school offer parents ample opportunity to instill values. Second, a fair opportunity to pursue one's aims does not require the state to equalize one's chances of success or the costs of pursuing aims. For example, some orthodox Jews believe that men should devote almost all their time to studying Torah, forgoing paid work and depending on state benefits, family money, or charity to sustain themselves.⁵⁸ The state does not owe them welfare benefits to enable this choice, even though it would facilitate their ability to fulfill religious commandments, and even if other people face fewer barriers to fulfilling their religious commitments. Third, the state may have good reasons to make it harder for some people to achieve their legitimate aims. For example, some religious employers believe it is sinful to employ people who engage in same-sex intimacy. They are not entitled to exemptions from employment discrimination law, even though such exemptions would enable them to fulfill their moral commitments.⁵⁹ We owe people a fair chance to pursue important aims, not equal distribution of those opportunities.

What about refusing to inform parents about their children's activities in school? If letting parents control their children's activities and exposures is justified by the benefits of informed and loving decisions, then permitting third parties to help children resist parental control would seem to undermine the value of parental rights.

⁵⁷ Alan Patten, *The Normative Logic of Religious Liberty*, 25 *J. Polit. Phil.* 129 (2017).

⁵⁸ https://www.jpost.com/opinion/article-835386#google_vignette.

⁵⁹ Scott Altman, *Discrimination, Noncomplicity, and Reasons That Mask Disdain*, 136 *Ethics* 6 (2025).

However, the value of parental guidance does not require parents to know about or successfully control every aspect of a child's life. Parents can try to stay informed about their children's lives, make specific decisions about their children, and shape their children's lives and values through those decisions. But parental supervision and control are never total and inevitably decline as children form identities and become more capable of resisting parental influence. Parents cannot be aware of all their children's actions, many of which will remain hidden from them. Nor can they dictate their children's values, which are also influenced by peers, media, and the children's independent views.

The benefit of parental guidance does not always increase as parents exercise more oversight. Indeed, parental control likely ceases to be beneficial long before it becomes total. Suppose a new drug could render children perfectly obedient or guarantee that children would forever embrace their parents' values. Or suppose we developed a technology that allowed parents to monitor their children's every movement, word, and thought. Child welfare would not be enhanced by such panopticon parenting or value implantation. Children need parental involvement, but they also require space for privacy and experimentation, allowing them to explore and develop their values. Nor would such tools benefit parents, who need a loving relationship with their children and a chance to show them why they hold their values. Nurturing and educating are not advanced by parents dominating their children's lives.

Of course, the extreme example of godlike parental control does not resolve real-world issues about parents' right to specific information. Within limits, well-informed parents are better equipped to guide their children, and third-party informants can play a valuable role in effective parenting. Many people who grew up in small towns recall that neighbors reported bad behavior to parents, and that surveillance helped keep them out of trouble. Almost everyone agrees that teachers help children when they share information with parents about a child's educational

progress or behavior problems. We should often share information to facilitate parental guidance and rule enforcement. As the saying goes, "it takes a village."

However, sometimes there are reasons not to cooperate with parents' efforts to surveil and control their children. As I noted above, the state might seek to protect children's rights to resist parental control. It may refuse to share some information if it believes parents will use their rights to harm children.

IV. Objections

Several objections deserve attention. One is that I have misdescribed my examples. I argue that steering parents and facilitating the subversion of their goals may be warranted because parents sometimes misuse their rights to harm children or society. Steering and subversion offer mechanisms for containing the harm parental do without undermining their core purposes of parental rights when coercion is impermissible. However, one might object that the examples I cite as justifying steering and subversion would, in fact, justify coercion. Perhaps in any circumstance where the state can steer or subvert, it can also coerce.

This objection is not correct for rights in general. Earlier, I gave an example of a religious leader who urged followers to be fruitful and multiply as God commands, and a state that tries to persuade and gently incentivize people to have small families for environmental reasons. The state is steering its citizens' procreative choices and subverting the religious leader's religious goals. However, the environmental justification for steering and subverting would not warrant state coercion. The state could not prohibit procreation (for reasons of bodily integrity and autonomy). It could not penalize the religious leader for urging compliance with religious texts (for reasons of free speech and religious freedom).

Are parental rights (or my parental rights examples) different? Suppose one adopts a purely child-centered theory of parental rights. One might think that any state goal that justifies steering and subversion also justifies coercion, since, by definition, any justified state intervention benefits children. I do not think this is correct. First, even if parental rights are justified entirely by children's interests, we might still protect some parental activities on the basis of parental interests. For example, the state might help children subvert parental surveillance at school because parental rejection of a child's gender identity causes psychological harm. Or the state might encourage parents to expose children to diverse moral views, hoping they will become cooperative and tolerant citizens. But the state cannot order parents to warmly support their children's gender identities or express to children that tolerance is preferable to intolerance. Doing so would intrude on parental speech rights.⁶⁰ Additionally, steering and subverting might do less harm to family goods, such as intimacy and parental guidance, than coercive measures that aim at the same goals.

A related reason to think my examples do not fit my theory is that I posit an unrealistic version of school choice by assuming generous vouchers. Although vouchers are becoming more common, many parents cannot find or afford practical alternatives to public schools, which raises questions about my claim that states do not coerce through steering and subversion in schools. Depending on one's theory of coercion, this objection might be correct. I note, however, that parents' constitutional right to reject public education has never been understood to include access to inexpensive, readily available private alternatives. The constitutional right of school

⁶⁰ Perhaps the state could compel private schools to tolerate varied gender expression and hide children's behavior from parents. For religious schools, this might violate free exercise rights. And it might compel such schools to include LGBTQ-inclusive literature, though again, religious freedom might disallow this. In any case, it almost certainly could not compel homeschooling parents to convey moral messages.

choice has always been viewed as a purely negative right, adequately protected by the legally permissible exit.

Even if my examples do not illustrate my theory, the theory can still succeed. The argument should still be valid and applicable to areas beyond public education. Governments regularly steer parents toward choices they favor through persuasion and incentives. They subsidize healthy meals in schools and offer cash incentives for parents to take their children for well-baby checkups.⁶¹ Some offer free books to encourage reading at home.⁶² Governments might also subsidize after-school and summer programs that focus on sports (to encourage exercise and teamwork or discourage screen time) or academic pursuits (to encourage more study). Some actual and possible programs include more controversial aims. States can encourage parenting classes (with subsidies or other benefits, such as priority access to daycare). These classes might include efforts to persuade parents, for example, to avoid corporal punishment,⁶³ or to support children who identify with a gender that does not match their sex assigned at birth. Some government programs encourage mothers to nurse their infants.

The same is true for subversion. Governments sometimes facilitate children's resistance and act to subvert parental goals outside the school setting. Denying parents access to library records is one example. Teens can read about same-sex family structures or contraceptive methods in a public library, despite parents hoping to shelter them from this information. As I noted earlier, many states protect teen access to contraceptives without parental notice or consent.

⁶¹ <https://www.texaschildrenshealthplan.org/benefits/healthy-rewards/health-and-wellness/well-child-checkups-reward>.

⁶² <https://www.rif.org/literacy-network/Matching-Grant>.

⁶³ It is unclear whether the US Constitution would permit a state to forbid all parental use of corporal punishment. So far, states permit it, preferring to steer rather than compel.

States also facilitate children's disobedience toward parents' rules about internet access by not requiring age verification for viewing web pages in most circumstances.

Another objection is that my examples might not be generalizable. Even if steering and subversion are permitted in these examples, might they be problematic in other parental rights settings? And even as to my examples, might some forms of steering and subversion in school be inappropriate? For example, might schools violate parental rights by refusing to share educational information with parents?

I did not mean to suggest that all state steering and subversion is permissible. My argument was that nothing about parental rights should lead us to a presumption against steering and subversion. The argument did not depend only on examples. Instead, it pointed out that the main reasons to hesitate about these techniques are generally absent in parental rights claims. In contrast, the main reasons for using them (such as conflicting rights and interests and limits on coercion) are often present. When there are no legitimate opposing interests, subversion (including non-disclosure) is impermissible.

A final objection is that some of my arguments depend on empirical claims for which I offer little or no evidence. For example, I claim that family intimacy is robust and that state steering likely has a marginal effect on children's attitudes toward their parents. I also claim that state non-disclosure is more likely the result than the cause of distrust. I suggest that the state might help trans children resist parental surveillance because parental rejection will harm children. I also say that requiring children to read stories about LGBTQ families might foster tolerance. Although these claims are plausible, they are not demonstrably true.

I note that most of my argument did not depend on these empirical claims. In defending the permissibility of steering and subverting parental rights, I noted that parental rights include a right

to do wrong, and that states might use steering and subversion to constrain parental wrongdoing when they cannot coerce parents. I also noted that many reasons for restricting steering and subversion are less pressing for parental rights than they are for speech, religion, and voting. For example, there are often neutral justifications for steering and subverting parental rights and little risk of corrupting parental decisions.

As to empirical speculation, my arguments relied on legitimate state goals, such as protecting children from parental harm. States often act with only modest empirical evidence to support their decisions. Courts decide on child custody, purporting to pursue children's best interests, even though they rarely know with much certainty what choice will best protect children. I acknowledge that evidence could show some of my claims to be mistaken. Perhaps exposure to ideas that contradict parental values undermines children's respect for their parents and undermines family intimacy. Even if this is correct, it is hard to see how denying opt-outs to parents who can choose private schools to preserve that intimacy undermines the value of parental rights.

Conclusion