

Refusing the Test: Youth Activism and the Right to Opt Out of State Assessments

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Through widespread “opt-out” efforts over the past several years, activists have pressured school districts, states, and the federal government to reconsider the extent and limits of state-mandated assessments.¹ Other critics—including prominent civil rights groups—argue opt-out efforts undermine the public value of collecting high quality assessment data for all students.² While often framed in terms of parents’ rights, young people have been at the forefront of many opt-out efforts. This youth activism offers a new angle on longstanding legal and philosophical debates about educational authority. To what extent should young people (not just their parents) be able to refuse dimensions of public education? And how should these rights be balanced against public aims for education, including equal opportunity?

This article explores these philosophical questions in conversation with an ongoing empirical study of opt-out activism in Colorado.³ I describe some of the competing claims and values at stake in decisions to refuse state assessments, but focus on the distinct challenges posed by *students* who have opted out of state tests. These youth-led efforts challenge the framework of parents’ rights employed by opt-out activists, state policymakers and district officials. Legally, parents are the ones asked by schools to officially “refuse” to allow their children take a specific test. Yet, in opting out, activism is often reduced to a legal exit maneuver.

Here, young people may offer a different vantage point. Student activists—in refusing to participate in testing, and organizing resistance to testing in their schools—emphasized activism and critique over a discourse of individual rights. I draw on the circumstances of this case to argue that a rights-based framework fails to capture the distinctively *civic* and *educative* dimensions

of young people's activism. Moreover, the legal framework of "opting out" limits opportunities to make this youth activism more educative, largely by restricting opportunities for educators and parents to challenge young people to consider some of the broader consequences of assessment and accountability in education.

STUDENTS' RIGHTS IN PHILOSOPHICAL PERSPECTIVE

Students' rights are often marked out in relationship—and in opposition—to the rights of their parents. The rights of parents to opt-out of public schooling (in favor of private alternatives or home-schooling) are well recognized, even though the limits of these rights have been debated by both legal theorists and philosophers. The rights of parents to opt-out of certain aspects of public education have been affirmed by several legal decisions,⁴ but limited in other cases, particularly in terms of parents' rights to object to specific curricula.⁵ Still other legal decisions have explicitly considered how to weigh parents' interests against a child's current (or future) welfare.⁶ While the judicial groundwork is important, considerations of parents' rights also go beyond legal reasoning.⁷

Philosophers often frame such questions in terms of balancing the interests of the *state* to provide a basic and civic education, against the interests of *parents* to direct their children's education and pass on particular ways of life.⁸ Additionally, theorists contend that *children*—not just parents and the state—have an independent interest in education: becoming autonomous.⁹ Rob Reich defines autonomy as "a person's ability to reflect independently and critically upon basic commitments, desires, and beliefs, be they chosen or unchosen, and to enjoy a range of meaningful life options from which to choose, upon which to act, and around which to orient and pursue one's life projects."¹⁰ Joel Feinberg emphasizes that a child's autonomy cannot be determined by checking with their *present* interests, desires or preferences; rather, the right to autonomy must be held "in-trust" for that child, for the "adult he is to become."¹¹

Although children have an independent interest in education, most philosophers stop short of arguing that they have rights in the same sense that their parents do. As Harry Brighouse and Adam Swift contend, “Children, especially when they are very young, do not have rights to control over their own lives. Some adult, or some combination of adults, may properly control their lives ... these adults do not have the power of life and death over the children—other adults hold them in check in various ways—but they are the primary bearers of authority over and responsibility for the children.”¹² In this sense, philosophers often make a distinction between children’s *welfare rights* (the right to have one’s welfare considered and protected) and *agent rights* (the right to exercise independent choices). While most theorists grant that children have welfare rights, few argue that children should be able to independently exercise all choices. Here, conceptions of children’s rights rest on notions of capacity (to what extent are children capable of exercising self-judgment, and under what conditions?) and obligation (what do we, as adults, owe to children?).

The two dimensions are related. Onora O’Neill argues, for instance, that childhood is not a permanent status, but a developmental stage. Rather than focus on the *rights* of children, we should attend to our *obligations*—as adults—to help them pass from childhood to adulthood.¹³ Such a developmental view suggests that children gradually learn to exercise more autonomous choices. Samantha Brennan contends that we need a “gradualist model” of children’s rights where the basis for granting such rights changes over time. While we might start by emphasizing welfare rights, as children become more autonomous, we should respect their agency and rights to make independent choices, even when such choices may not serve their welfare.¹⁴

Indeed, a number of philosophers have called for contextual and developmental understandings of how young people develop autonomy over time and through specific contexts.¹⁵ This developmental understanding of autonomy emphasizes the importance of civic education. As Randall Curran notes, “If agency is more properly viewed as developmentally and socially contingent, then the educative prerequisites of political legitimacy and responsible

citizenship become matters of concern ...”¹⁶ Here, young people may develop autonomy—and the capacity for choice and reflection—through acts of protest and dissent.

In this sense, children’s rights might be also understood as acts of expression, or as expressive rights. Such expressive rights often have been conceptualized in terms of free speech. Courts have also taken up the limits of student speech in educational spaces. The foundational case is *Tinker v. Des Moines Independent School District* (1969) which affirmed that students have limited speech rights in public schools.¹⁷ More recently, the limits of student expression have been debated in *Morse v. Frederick* (2007).¹⁸ Both cases turned on what is known as the “Tinker Doctrine:” students *do* have speech rights, but these rights are limited and constrained by the “special characteristics” of the school environment. Beyond legal considerations, Bryan Warnick argues that schools are special *ethical* environments that play key roles in civic and moral education.¹⁹ Here, student speech might be evaluated against educational aims, for its potential to facilitate—or perhaps impede—civic education.

YOUTH ACTIVISM AROUND TESTING

Against this backdrop, how might we understand students’ activism to opt-out of state-mandated testing? Do students have an independent right to exercise such choices, separate from the rights of their parents?²⁰ Moreover, what are the implications of understanding these actions in terms of *rights*? To explore these questions, I turn to an empirical case study of youth activism in one Colorado community. Philosophers often draw on examples to build arguments and make distinctions. Yet, when scholars engage with empirical examples, they often focus on canonical court cases (e.g., *Wisconsin v. Yoder*) that frame questions of autonomy in relatively extreme terms.²¹ I focus instead on a more “everyday” case of young people refusing to participate in one aspect of public education: testing. To describe this case, I draw on media coverage of events, videos (produced by students and journalists), webpages and documents created by activists, and focus groups and interviews with students who

led these efforts.²²

In 2014, Colorado rolled out new science and social studies assessments aligned to the Common Core State Standards. These tests—part of the Colorado Measures of Academic Success, or CMAS—were piloted in Spring in Grades 3-8, and in Fall to students in their senior year. The 12th grade exam was designed to help improve the new tests, but was not explicitly tied to curriculum that students had learned, nor designed to evaluate schools. These new tests met with considerable student resistance, especially in the “Washington” school district.²³ Organized groups of students in several high schools staged a massive walk out during the two-day testing window. At Hamilton High School, only nine of 530 eligible seniors stayed inside and completed the test. Numbers were comparable at two similar-size high schools in the district: two students at Madison High School took the test, and ten students completed exams at Jefferson High School.

Most students did not, however, just skip school. At Hamilton, over 200 students gathered outside (on a cold day) to lead protests, write letters to state legislators and advocate for changes to testing policy. Students also collaborated on an open “community letter” expressing their position. They outlined five specific grievances: (1) that excessive testing is harmful to learning; (2) the disjuncture between the new standards and the material students had been taught; (3) that standardized tests do not accurately measure teacher or student performance; (4) that the state continued to cut education funding, while increasing funding for testing; and (5) that the new tests were created by a for-profit corporation, not educators. This letter was written by a core organizing group at Hamilton, but was circulated to other high schools, where hundreds of students signed on. Students also produced videos documenting their concerns. In one, Senior Julia Williams’ shared:

So, we’re here, outside on this frigid day to protest the CMAS, which is a standardized test that tests seniors on social studies and science. And we don’t agree with this test...we don’t agree with why this test is being administered and we don’t see the value in it, and we think that the

state should be giving this \$36 million dollars that they gave to Pearson on other things.

While questioning the relevance of this specific test, Williams also raised larger concerns about standardized testing, including costs and the role of private developers.

Concerns were not limited to the Fall test. “Opting out” caught fire that year, as students in multiple grades refused to take the Spring 2015 Math and English Language Arts (ELA) exams. The district’s 11th graders almost universally rejected the tests. Only eight students (out of approximately 500) took the 11th grade ELA assessment at Hamilton; only two students took the test at Madison. And, not a single student sat for the exam at Jefferson. In most cases, these student refusals happened with parental support and with notes excusing students. In other cases, students acted independently, skipping testing days or periods, or declaring they would not complete the exam.

In general, there was broad support for the students from their parents, schools and district. During the Fall 2014 walkout, students reported that teachers brought hot chocolate outside for students, and that most of the staff supported their efforts. Washington is a relatively affluent, suburban school district where students—both individually and collectively—generally have done well on state exams. Because of these routinely high scores, many students, parents and teachers saw the annual state tests as unnecessary. Indeed, some parents argued students should spend time focusing on tests that “count,” like Advanced Placement (AP) exams and college entrance exams. A student activist raised similar issues of timing and priority: “We don’t think it’s a good idea to test students in the Fall of their senior year. During this time, we are already bombarded with the ACT, the SAT, the SAT subject tests, and above all, college applications, all of which have a direct impact on our future. The CMAS is an unnecessary stressor that detracts from our learning.”²⁴ Because of widespread resistance to high school testing, this district—and the state of Colorado—shifted away from state-specific high school assessments to tests like the SAT and PSAT with more “buy in” from families, in part because they are tied to post-secondary opportunities.²⁵

Here, activism in this district raises questions of race, privilege and opportunity; questions that have been at the center of debates about the opt-out movement. Opponents argue that opting out undermines the value of collecting high quality assessment data for all students.²⁶ For these groups, opting out damages public, comparable data that documents wide disparities in access to equitable education.²⁷ Critics also note that opt-out numbers are highest in wealthier districts where, arguably, risks are diminished: they receive less federal funding and bear fewer consequences from the high-stakes accountability reforms that depend on test scores.²⁸ Others counter that accountability reforms have disproportionately *damaged* low-income communities of color,²⁹ and opt-out efforts—no matter where they originate—may benefit all students.³⁰

Yet, while issues of equity have been widely debated in the opt-out movement, they were largely absent from concerns raised by students participating in the walk-outs in the Washington district. Instead, conversations focused on the costs, validity and appropriateness of the exams. Part of this framework was driven by the goals of a Colorado state commission reviewing testing.³¹ The students were aware of these efforts and worked throughout the 2014-2015 school year to direct their comments, letters and outreach to this commission. And students—alongside other parent and community activists—were successful in winning changes to testing policy in Colorado. After widespread opt-outs in the 2014-2015 school year, the state scaled back testing requirements for high school students, moving to fewer annual exams (i.e., phasing out 12th grade tests), and shifting to “more meaningful” tests like the PSAT/SAT. In addition, the Colorado legislature passed a law affirming parents’ rights to excuse their children from participating in state exams without penalty.³² This law also asked schools and districts to refrain from either encouraging—or discouraging—students and parents to opt-out of state assessments; in effect, asking educators to respect a family’s right to decide for themselves.³³

Yet, even with these changes, high school students continued to opt-out. In Spring 2016, nearly a quarter of all 9th graders in Colorado refused to take the ELA test, and only 58% of high school students statewide took the

science exam. These numbers varied: certain districts had nearly all students opt out, while others had nearly universal participation. Many of these differences tracked different accountability pressures, and other inequities, between districts. Suburban schools continued to lead opt-out efforts in 2016 and 2017, but many of the highest numbers came from small rural districts. Facing increasing pressure from multiple constituencies, Colorado withdrew from the Partnership for Assessment of Readiness for College and Careers (PARCC), the consortium developing assessments aligned to the Common Core State Standards.

These rapid policy changes were a victory for the activists who mobilized against testing. Yet, these changes implicitly advanced the discourse that parents have the right to direct their child's education. The new state law, for instance, codified parents' rights to refuse assessments, potentially strengthening claims to opt-out of other elements of curriculum and instruction. Likewise, student victories were largely framed in negative terms: winning the ability to *not* take certain tests. Opportunities to consider the purposes of standards, accountability and assessment—and differences of opinion—remained limited.

THREE CONSIDERATIONS

So, what should we make of this case? What might a closer look at events in one district show us about the potential—and the tensions—of youth activism in the opt-out movement? I conclude by raising three issues that merit further consideration: rights, autonomy, and equity.

First, this case raises intriguing questions about rights. The language of “rights” saturated debates about opting out of tests in Colorado. Both activists and district officials, for example, often referred to parents’ “rights to opt-out.” Perhaps taking this cue, several students—and allies—specifically framed their protest in terms of rights. Addie Stevens, a senior at Hamilton, noted, “We’re all out here protesting in the freezing cold for our educational rights.”³⁴ Hamilton’s principal said he was “very proud of the students for exercising their rights.” Both speakers were perhaps aware that students did not

technically (or legally) have “the right” to refuse to take tests. That role—still being debated during these protests—was granted to parents, not students.³⁵ Stevens, however, was invoking a different, fuzzier, view of “educational rights,” one connected to students’ concerns about the mis-educative role of testing. The principal, on the other hand, emphasized the active, expressive character of student rights. In both cases, invoking rights moved beyond legal considerations, where students’ rights to opt out of public education, and even protest on public school grounds, are admittedly quite limited.³⁶ In contrast, rights were summoned rhetorically and politically, to assert that young people had a vested interest in debates about testing.

Such claims may also complicate the distinction between welfare and agent rights. Students argued that the actions of the state—in advancing a new system of standards and assessments—ran counter to their best interests. They were, at minimum, advocating for the state to take a different path, and perhaps even asserting their ability to make their own educational choices. Here, of course, the age of the students is relevant; we wouldn’t expect 3rd graders to make the same critique. Yet, this case illustrates how the distinction between agent and welfare rights is perhaps more complicated than it may first appear, and also underscores an essentially *developmental* picture of autonomy.

Second, in this way, this case allows us to pose questions about the development of autonomy: When can children start to make independent educational choices, and to what extent? One of the goals of autonomy-facilitating education is that students should have, at some point, the ability to determine their own ends. But how and when does this happen? Autonomy is, after all, not a state that is arrived at, but a constellation of civic dispositions, ones that must be cultivated and practiced. Youth activism might help illustrate how the development of autonomy is both gradual and complex. The line between dependent childhood and autonomous adulthood is not always quite clear. This view might lead us to consider the wishes of high school juniors differently than those of 7th graders. Yet it’s worth remembering that high school students are already asked to take responsibility for their education and make key choices: about what classes to sign up for, how seriously to take various

assignments, and about their future goals. And, on a very basic level, it's possible for students (of all ages) to "opt-out" of testing through sheer apathy; as teachers have long observed in collecting blank answer sheets, or ones that have been creatively "bubbled in."

In this sense, widespread test resistance is a powerful reminder that, in addition to parents, *students* are important stakeholders in education policy. This resistance also reveals a disjuncture between students' viewpoints and the policy rationales for assessment, including the argument that states need at least one measure to compare student achievement and disaggregate results by race, SES and other categories. This is by no means the *only* reason we might need assessments, and critics have questioned why policymakers need to document disparities that are already widely known. More evidence about achievement gaps will not, by itself, address pervasive inequities in students' opportunities to learn.³⁷

Students in this case, however, remained relatively insulated from these concerns. Here, and finally, this case raises questions of equity. Although they made powerful and nuanced arguments against testing, youth activists did not engage with critiques of opting out, nor recognize the privileged position their well-resourced district occupied in debates about accountability. Here, I argue that their activism was a missed civic opportunity. From their vantage point, it is not surprising (and certainly not their fault) that students did not consider issues potential issues of power and privilege in opting out. Moreover, state law, in asking districts to remain neutral about testing, restricted opportunities for teachers and school leaders to pose critical, and potentially educative, questions about testing. In the absence of alternatives, young people took up frameworks already in circulation, including language that emphasized potential *rights* to opt-out of testing.

The focus on opting out also restricted opportunities to make activism more educative. Although young people gathered to protest in the Fall of 2014, subsequent opt-out efforts largely consisted of students staying home. Many individual choices can have powerful aggregate effects. Yet, these choices, when made individually and in private, hardly offer opportunities for young

people to engage in civic expression. In this sense, I argue that the question—do young people have the *right* to opt of tests—may be the wrong question to ask, as well as the wrong way to frame the complex activism of young people. Asserting a right—rhetorically, not necessarily legally—can be a powerful claim.³⁸ But, in the case of opting out, a rights-based framework failed to capture the distinctively *civic* and *educative* dimensions of young people's activism. Young people were not simply—or not solely—refusing to take the test. They were articulating concerns, organizing other students, and seeking to influence policy change. In doing so, students offered a powerful example of how opting out might be an act of expression, agitation and resistance. Here, rather than emphasizing the *rights* of parents or students to refuse the tests, opting out might be framed more productively as a form of public engagement. Doing so, however, would call activists to engage in broader deliberation—across diverse communities—about the contested purposes of standards, accountability and assessment in public education.

1 In 2015, roughly 675,000 elementary and high school students nationwide opted out of taking state standardized tests, with particularly high numbers in New York, New Jersey, and Colorado. Fair Test, “More than 670,000 Refused Tests in 2015,” Press Release, updated August 29, 2016: <http://www.fairtest.org/more-500000-refused-tests-2015>

2 Leadership Conference on Civil and Human Rights (LCCHR), “Civil Rights Groups: ‘We Oppose Anti-Testing Efforts,’” press release, May 5, 2015: <http://www.civilrights.org/press/2015/anti-testing-efforts.html>

3 This article reports on the early stages of a study that Michele Moses and I have developed to explore the rights and values involved in opting out of state assessments. Our work has been shaped by a collaborative team, including Ana Contreras, Matt Hastings, Wagma Mommandi, Mara Taylor-Heine, and Christine Zabala. This project was partially supported by UW-Madison's Center for Ethics and Education and the Spencer Foundation. My thanks to Michele Moses, David Blacker, and three PES reviewers for their comments on an earlier version of this article.

4 Key court cases affirming parental rights include: *Pierce v. Society of Sisters*, 268 US 510 (1925); *Wisconsin v. Yoder*, 406 US 205 (1972); *Hardwick v Board* (Cal. Ct. App. 1921).

5 *Mozert v. Hawkins* restricted the rights of parents to opt-out of curricula they found objectionable. *Mozert v. Hawkins County Public Schools*, 647 F. Supp. 1194

(E.D. Tenn. 1986). These issues are far from settled. Parents continue to opt students out of sex education, curriculum about evolution, dissection activities, etc. For a review, see Michele S. Moses and Terri S. Wilson, "Opting Out of Public Education: Public and Individual Goods in Tension," *Educational Theory*, in press.

6 In addition to the previous cases, consider *Prince v. Massachusetts*, which found that the state has the right to protect children, in conflict with their parents' interests. *Prince v. Massachusetts*, 321 U.S. 158 (1944)

7 While I point to key court cases here, I am more interested in the philosophical dimensions of parents' and students' rights, as well as how a rights-based *discourse* (often without reference to any particular legal rights) is employed by many of the stakeholders in this case, often in multiple ways.

8 For different views, see: William A. Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* (Cambridge: Cambridge University Press, 1991); Walter Feinberg, *Common Schools/Uncommon Identities: National Unity and Cultural Difference* (New Haven, CT: Yale University Press, 1998).

9 Eamonn Callan, *Creating Citizens: Political Education and Liberal Democracy* (Oxford: Clarendon Press, 1997); Rob Reich, *Bridging Liberalism and Multiculturalism in Education* (Chicago: University of Chicago, 2002), 42.

10 Rob Reich, *Bridging Liberalism and Multiculturalism in Education* (Chicago: University of Chicago, 2002), 42.

11 Joel Feinberg, *Freedom and Fulfillment: Philosophical Essays* (Princeton: Princeton University Press, 1994), 78.

12 Harry Brighouse and Adam Swift, "Parents' Rights and the Value of the Family," *Ethics* 117, no. 1 (2006), 80.

13 Onora O'Neil, "Children's Rights and Children's Lives," *Ethics* 98, no. 3 (1988): 445–463.

14 Samantha Brennan, "Children's Choices or Children's Interests: Which Do Their Rights Protect?," in *The Moral and Political Status of Children*, eds. David Archard & Colin M. Macleod (London: Oxford University Press, 2003).

15 Andrew Franklin-Hall, "On becoming an adult: Autonomy and the moral relevance of life's stages," *The Philosophical Quarterly* 63, no. 251 (2013): 223–247.

16 Randall Curren, "Developmental Liberalism," *Educational Theory* 56, no. 4 (2006), 463.

17 Bryan R. Warnick, *Understanding student rights in schools: Speech, religion, and privacy in educational settings* (New York: Teachers College Press, 2013).

18 *Morse v. Frederick* (US Supreme Court, 2007).

19 Warnick, *Understanding Student Rights*, 5.

20 A 2016 Colorado state law (C.R.S. 22-7-1013(8) (A-C)) established that districts and schools must develop a policy allowing parents to excuse their students from participating in one or more state assessments.

21 Judith Suissa, "How comprehensive is your conception of the good? Liberal parents, difference, and the common school," *Educational Theory* 60, no. 5 (2010): 587–600.

22 This research is ongoing. In this article, I draw only briefly on this case to explore some of the philosophical questions raised by this youth activism.

23 While I name the state of Colorado (because the particular policy context is central to the case), all other district, school, and other names (students, teachers, etc.) are pseudonyms.

24 This quote is from a student-produced video; November 2014.

25 This argument was made in a variety of district messages and public statements.

26 LCCHR, "We oppose anti-testing efforts"; R.E. Bennett, "Opt-out: An examination of issues," *ETS Research Report No. RR-16-13* (Princeton, NJ: Educational Testing Service, 2016).

27 Valerie Strauss, "Civil rights groups blast parents opting their kids out of high-stakes tests. Why they are wrong," *The Washington Post*, May 6, 2015.

28 Marc H. Morial, "Testing provides crucial information," *Phi Delta Kappan* 97, no. 1 (2015): 34-36.

29 Wayne Au, "Meritocracy 2.0: High-stakes, standardized testing as a racial project of neoliberal multiculturalism," *Educational Policy* 30, no. 1 (2016): 39-62.

30 Judith Browne Dianis, John H. Jackson, and Pedro Noguera, "High-stakes testing hasn't brought education gains," *Phi Delta Kappan* 97, no. 1 (2015): 35-37.

31 The Colorado Standards and Assessments Task Force was established by the Colorado General Assembly in 2014 (HB14-1202).

32 Colorado Revised Statutes 22-7-1013(8)(A-C).

33 C.R.S. 22-7-1013(8)(C).

34 Student-produced video; November 2014. Names are pseudonyms.

35 Bills protecting parents' rights to opt-out were passed in Colorado and seven other states in 2015-2016. Michelle Croft and Richard Lee, "State Legislatures Opting in to Opting Out," ACT Research and Policy Issue Brief, 2016.

36 J.C. Blokhuis, "Student Rights and the Special Characteristics of the School Environment in American Jurisprudence," *Journal of Philosophy of Education* 49, no. 1: 65-85.

37 Prudence L. Carter and Kevin G. Welner, eds. *Closing the Opportunity Gap: What America Must Do to Give Every Child an Even Chance* (Oxford: Oxford University Press, 2013).

38 For other examples of activists making rights claims, see Anne Newman, *Realizing Educational Rights: Advancing School Reform through Courts and Communities* (Chicago: University of Chicago Press, 2013).