

Human Rights and Educational Policies

Abstract

Human rights have become a new and powerful tool for organizing, selecting, and explaining competing educational ideas. They are used as arguments by advocates, as defences for minorities – and sometimes they are misused. Teachers and students are now clarifying rights, responsibilities, and reasonable limits by society. The obligations of governments for informing citizens and teaching children are now being accepted, and courses and teaching materials are being developed.

Human rights education introduces a new and very exciting prospect for the educational challenges that face school administration. By refocusing old debates in different ways, new possibilities that may have been ignored are introduced. The focus on human rights transforms some competing demands into systematically related examples of the same set of principles, that can be viewed as alternatives, or pursued together. Education about human rights alters some of the power relationships that have served to keep education following traditional lines. The potential for shaping constructive change is thereby introduced.

Awareness of human rights

The struggle for human rights has developed very powerful organizing principles and negotiating tools, with their influence well demonstrated in several recent challenges of provincial legislation concerning education (Figure 1). In these examples, governments have been neither consistent winners nor losers, but the decisions suggest how frequently the courts may influence future policies.

Figure 1
Provincial Legislation Challenged in the Courts

QUEBEC	Language could not be a surrogate for religion as the primary basis of organizing schools.
ONTARIO	"Public School" defenders could not prevent the province from extending full funding for separate high schools.
MANITOBA	Century old laws, which established English as the only official language for Manitoba, were declared to be unconstitutional.
ALBERTA	Compulsory attendance laws could not be used to force religious minorities to send their children to public schools.

The courts have not been the only source of challenge. Many individuals and various organizations (Task Force, 1978) have also realized that recognition of human rights provides potentially strong arguments for reorienting traditional educational policies and practises. Historically, many of our existing systems emerged as partial or initial approaches to safeguard human rights. Compulsory education, the certification of teachers, and the requirement that boards must provide schools and hire teachers are examples from the nineteenth century. Judging from the cases reported in Figure 1, it is not easy to predict the outcomes of some challenges that might arise. One that is likely to be addressed concerns the archaic and implausible prescription of "Duties of Teachers," which is sometimes exempted from the protection of the human rights codes of provinces. To this date, there have been no challenges under *The Canadian Charter of Rights and Freedoms*.

Teachers' collective rights

Through most of Canadian school history, teachers could be hired and dismissed at the will of a local board (Enns, 1963). Their contract relationship to the board was that of master and servant, with very few statutory protections (McCurdy, 1968). When federations were created during the last sixty years, they were very hesitant in claiming rights for teachers, but their express purpose was to protect and further the rights of their members in every appropriate way (Gilliss, 1987). What was "appropriate" gradually changed over time, for the official and widespread public opposition to teachers' unions at first made confrontation counterproductive

(MacKay, 1984, p. 246). It was only after trade unions won a legitimacy in both the United States and Canada during the mid-thirties that teachers were able to think in terms of compulsory membership, collective bargaining, and (ultimately) strikes. There is an important distinction between the right to associate (form unions) and to strike. The first associations preceded the legal right to strike by many decades, but both organizing and striking rights were won comparatively early in Canada. By contrast, the first legislation in the United States requiring boards to bargain salary schedules with the teaching profession was not enacted until 1959, in Wisconsin (Valente, 1980, p. 211).

The basic expectation that a federation will protect the interests of its members (Gilliss, 1987, p. 28) has recently been subjected to a demanding test that it be rooted in the human rights of the pupils and the community, rather than exclusively in the interests of the teacher. For example, the Alberta Teachers' Association broadened its mandate to recognize its responsibilities to the pupils and to the public, responsibilities which arose out of its status as a public monopoly. This conversion was virtually obligatory after the Ghitter Commission (1984) recommended several readjustments to the Alberta school system following a reappraisal of "The Keegstra Affair" (1) and the manner in which it was mishandled (Bercuson & Wertheimer, 1985; Mertl & Ward, 1985).

At the community level, human rights are involved in school closings – even when the closings result from legal strikes or lockouts. In this case, the interests of those directly involved are not adequately represented by the current participants of the teachers' union, board, and (sometimes) provincial legislators. As was demonstrated by public reaction during the 1987 strike of primary teachers in Toronto Metro, a strike or lockout can be conducted according to the rules but may still cause great public resentment and win no friends (*Toronto Star*, October 8, 1987, and *Sunday Star*, October 18, 1987). Are human rights actually being abused by the current mechanisms for settling disputes, or do the media merely reflect the hyperbole of parents or newspaper editors? Can we find analogies in the way family laws now require that the interests of children be taken into account (for example, in divorce actions) and perhaps even be protected by their independent advocate?

Pupils' rights

At the personal level, the rights of the child/pupil have been safeguarded recently in ways that stem from the recognition of human rights. There are numerous arguments for extending the legal concept of "human being" so that children and pupils are legally protected (Ayim, 1986; Besharov, 1985). In consequence, "cruel and unusual punishments"

are rarely meted out in schools today (Pamenter-Potvin, 1985). The right to freedom of expression by students has been better defined (MacKay, 1984, pp. 301-303) so that it is no longer likely that children who are "improperly dressed" in blue jeans and knitted shirts will be sent home. This actually happened, with the board's right to regulate school dress upheld in court. However, the judge's criticism of the foolishness of this "lawful" exercise of power by the board, and the attendant bad publicity, resulted in the regulation being withdrawn. Now children regularly attend schools dressed or groomed in ways that would once have been considered objectionable (Choukaslos, 1981).

The shibboleth that parents are the best (or necessary, or adequate) protectors of the interests of the child has recently been subjected to a more rigorous legal test (MacKay, 1984, ch. 6). The right of the child to reasonable privacy has been affirmed, thereby denying access to school records by unauthorized persons (Humphreys, 1980), restraining invasions of lockers (MacKay, p. 219-222), or even searching of childrens' bodies (Balderson, 1983).

Reasonable limitations

Teachers and principals sometimes find themselves to be the victims of well meaning but misguided zealots for children's rights. Bergen (1982) provides a balanced exploration in "Should schools provide appeal procedures for disciplined students?" It is clear that overzealous reference of school matters to the courts may lead to such a reaction as that of **The Ontario Secondary School Teachers' Federation**, which resolved that false accusations of teachers – particularly alleging sex offenses – should be punished severely. Teachers' reputations may remain tarnished even after acquittal.

Because of legal obligations that arise out of international law, Canada is expected to impart an understanding of human rights. The process through which this is imparted is important. Children need to know the nature of **human rights** – to be able to distinguish them from rights confined to a particular group (members of the glee club) or those that apply also to non-humans (e.g., animal rights). Children also need to learn that rights entail obligations, but that these are not the result of a bargain, such as, "You respect my language claims and I will support your fish" – a proposal that Trudeau scornfully denounced in 1980 as a basis for constitutional change (*Globe and Mail*, July 5, 1980). Children must realize that if there is a particular right – to legal justice, for example – it is a right which every person must have, and which every authority must therefore respect. In the extreme (as in the Keegstra case) it may be necessary to limit the exercise of rights, but not to discredit in advance any right or any person's right to claim it.

The promotion of human rights

It may be possible at an early age to stimulate children's understanding of human rights, obligations, and reasonable limitations upon these rights. These concepts, in most cases, are best illustrated in international law (Humphrey, 1984, pp. 75-76), *The Canadian Charter of Rights and Freedoms*, and various provincial laws. They have not yet been rigorously applied in the school curriculum.

The conscious promotion of human rights in the Canadian population is a relatively recent national objective. *The Constitution Act of 1867* empowered the Federal government to make laws for "the Peace, Order and Good Government of Canada," and many authorities have stressed the relative ease with which Canada has been governed – perhaps because of this constitutional principle. For a century schools lauded law-abiding citizens, advocated the vote, and praised loyalty to God, family, and flag. Recognizing a duty beyond these civic ideals came as a result of widespread recognition of flaws in the public and private record of Canadian immigration and employment laws in the first half of the twentieth century (since documented extensively, for example, by Abella & Troper, 1982; Adams, 1975; and Broadfoot, 1979). Particularly in the period since 1945, objectives have been raised to reflect emerging international standards.

During the interval since the United Nations proclaimed *The Universal Declaration of Human Rights* – a document which Canada did not support until the last moment (Humphrey, 1984, p. 71) – there has been a gradual warming to the idea. Canada passed its first federal *Human Rights Bill* in 1960. *The Canadian Charter of Rights and Freedoms* provides a much stronger safeguard at the heart of the present Canadian Constitution. All provinces have provincial human rights legislation which prohibits discrimination in most situations, and affirms important rights of children, women, persons with disabilities, and the poor (Tarnopolsky, 1982). Unfortunately, these documents are ordinary legislation which can still be readily amended and abrogated by governments when enforcement proves to be inconvenient. Only *The Canadian Charter of Rights and Freedoms* is really difficult to ignore in this way – and even it can be temporarily over-ridden by a determined government.

Human rights education

Human rights education may have many potential meanings. Only John Calder (no date) has prepared and published a serious course book in this area for Canadian high school students. Several courses deal with aspects of human rights in senior secondary grades (Ray, 1984), but there remains a need for early intervention through research based instruction on

the essence of human rights and some of its basic applications in Canada. Education of the population that has completed initial schooling is even more haphazard, but provincial human rights commissions are introducing modest programs. According to the advice received by **The Canadian Human Rights Foundation**, in a nationwide survey of the human rights education provided and desired in schooling (see Figure 2), such instruction would best address the mainstream needs of Canadian students. These suggestions accorded very well with those proposed by international authorities on human rights education (Bernstein Tarrow, 1987; Torney-Purta, 1982).

Figure 2
Teaching Human Rights:
Principal Canadian Educators' Recommendations*

Start in elementary grades, just after the children can read, and before they have acquired too many prejudices from adults.

Teach through all suitable subjects rather than making human rights a detached abstraction that has no place in ordinary activities.

Teach in a way that reflects human rights rather than discusses them. Involve the children.

Ensure that the teachers have adequate materials to accomplish the objectives without strenuous preparation.

* Stan Urman. (1986). Human rights education: A legal and moral imperative. *Canadian Journal of Education* 11(2), 383-87.

The course discussed here has been developed by **The Canadian Human Rights Foundation** over the past several years (Urman, 1986); it has been pilot-tested in French and English in six Canadian provinces and may soon be adopted or adapted in some. It introduces the basic concepts of human rights, responsibilities, and reasonable limitations to elementary grades, together with key applications in Canada.

Human rights education, as part of the curriculum, has some theoretical advantages over other approaches to bringing into the mainstream the type of education required for Canada. The first characteristic is that the approach is not based upon the value systems of part of the population but upon provincial, federal, and international law. Although most laws reflect the interests of their original sponsoring groups and may exist at the expense of others, they have the potential for winning wider approval

because they are debated by a diversified legislature. Hortatory approaches are replaced by research based, developmental, participatory, and interdisciplinary methodology and examples. The desired goals can be achieved without adding additional courses to an already overcrowded curriculum. Human rights education aims for a curriculum that is exciting, with supportive activities so that the pupils employ their new knowledge and skills in many typical situations.

The teachers' needs are met by having extensive teaching support materials, an opportunity to choose among alternative exercises for achieving a particular goal, and evaluation materials designed for the particular units. Further support materials and programs are necessary if success is to be achieved from the initial instruction with the units.

Conclusion

Policy makers usually reject piecemeal decisions that would set precedents that might hobble future actions. They prefer decisions that are consistent with research or philosophically derived systems of data. If these are universal, so much the better, for it is desirable to reduce feuding about "which set of values" shall be chosen. It is the job of administrators to ensure that these decisions are based upon adequate research, and that courses based upon them are ready for effective classroom use.

Such appears to be the case for Canadian school administrators today. Rather than responding to the advocates of particular causes, it may be possible to deal with many worthy ideas as examples of a set of principles that ideally stand together. Even though it is impossible to know all such examples, the general structure can be identified and supported. It is therefore possible to address the personal interests of the pupil, the community aspects of the social, religious, or linguistic group; and obligations to uphold justice even within international society. In Canada, these relationships theoretically correspond with objectives of our system of government, and imperfections are capable of being addressed. These analytical tools, more than the details of social systems that may be used incidentally to define, illustrate, or explain it, are the outcome of a good human rights education.

An earlier version of this paper was presented as a discussion opener to the Ottawa School Board Administrators, October, 1987.

NOTE

1. James Keegstra was a social studies teacher who taught his students from books that were not authorized for use in schools, despite cautions to follow the curriculum. For this he was eventually fired and decertified. Because the books and his teaching alleged that the World War II holocaust was a hoax, he was later charged with a criminal offense of teaching hatred to an identifiable group. The principal and superintendent were criticized for failing to stop Keegstra much earlier, and the Alberta Teachers' Association was criticized for overzealously defending the rights of the teacher instead of merely insisting that Keegstra be provided with an adequate defence (Schwartz, 1986).

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