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Bathroom Access for All

How to Educate Without Indoctrinating

TETYANA KLOUBERT

Like the teachers at Northern High School, teachers across Germany struggle with teaching controversial issues. Unlike the United States, however, Germany has established guidelines for *how* such issues should be taught in the classroom. These guidelines emerged from discussions in postwar Germany about how to make the historical experience of the totalitarian regime with its “educational” (that is, propagandistic) strategies impossible in the future, and how to prevent the exploitation of civic education for ideological partisanship. After thorough, long-lasting discussions, pedagogues and political scientists agreed on what has been named the “Beutelsbacher Consensus.” It has three main guidelines:

- *Prohibition Against Overwhelming the Student.* It is not permissible to entrap students intellectually, by whatever means, for the sake of imparting desirable opinions and hindering them from “forming an independent judgment.”
- *Treating Controversial Subjects as Controversial.* Matters that are controversial in intellectual and political affairs must also be taught as controversial in schools. This demand is closely linked with the first point above. If educators treat differing or alternative points of view as forgotten, suppressed, or ignored, they lay a path to indoctrination.
- *Giving Weight to the Personal Interests of Students.* Students must be put in a position to analyze a political situation and to assess how their own personal interests are affected while also seeking ways to influence the political situation they have identified.

These are useful guides for *how* to teach a particular topic, but as the case of Northern High School makes clear, the question of how to teach controversial topics may be superseded by concerns about *what* topics should be taught in the first place. This is not an easy task, and here the Beutelsbacher Consensus guidelines offer little help. In fact, because of the second

principle's mandate that topics that are politically controversial should be taught as controversial, choosing what topics to teach takes special importance. I suggest that the Northern teachers should take two considerations into account as they decide whether to include transgender students' bathroom access in the PoP curriculum. First, are there nondiscriminatory perspectives on either side of the issue? Second, will treating the topic as a controversial issue enable all students within the school community to participate as equals in the discussion?

NONDISCRIMINATORY PERSPECTIVES

The demand for nondiscrimination remains a central issue when deciding how to discuss controversial matters in schools. An issue should not be debated if one of the positions suggests that members of certain groups are generally considered to be less valuable and thus not full and equal members of society. Treating such views as defensible openly contradicts the basic values of liberal democracy. Schools in a liberal democracy thus cannot tolerate such utterances, even if they might develop critical thinking skills among students or emphasize freedom of expression.

However, let us look closely at the given example and ask the concrete question: would putting the topic of transgender students' access to bathrooms into the PoP curriculum mean (automatically) that one of the perspectives in the discussion is discriminatory? I would argue that this is not a necessary conclusion.

If this topic were to be included in the PoP curriculum, the teachers do not have to focus the discussion on the question of supporting or denying the basic rights of transgender people (as such denial is obviously discriminatory). The PoP discussion could, for example, focus on the conflict of values in an ideologically diverse society. The shape of the debate would then be different. On the one hand, the establishment of gender-nonspecific bathrooms can be considered a sign of society's recognition of the rights and sensibilities of transgender people, and can therefore be interpreted as enhancing values such as diversity and tolerance. On the other, the gender-nonspecific bathrooms could be interpreted as a sign of disrespect or insensitivity vis-à-vis other cultural or religious groups, thereby potentially misrecognizing the rights and sensibilities of those groups. Transgender bathroom policy, in other words, becomes a means to engage students in thinking about the challenge of reconciling diverse, often conflicting, points of view in a democracy.

Although this shifts the locus of the debate, including the topic in the PoP discussion is important. Preemptively excluding sensitive topics from discussion undermines the pedagogical goals of the PoP format; namely, to analyze a controversial issue, to evaluate the different positions, and to judge for oneself whether a position is acceptable or not. An automatic exclusion of such topics, justified by the argument that dealing with a difficult topic could possibly hurt someone, undermines the opportunity for students to make decisions on the basis of reasonable arguments, regardless of whether the discussion concerns a wrong and reprehensible perspective or only those perspectives that deserve attention.

Thus, it would be helpful for the teachers to return to the pedagogical goals of the PoP curriculum. If the goal is to focus on developing the capacity for discussion and judgment—and should therefore prioritize weighing different, even ethically ambiguous positions—then including transgender bathroom rights makes sense. But if the goal is instead to focus on topics that are of a more ethical and nondiscriminatory nature, the curriculum should only consist of topics defined by ethically justifiable points of view. Or, using the words of German scholars, the limit of controversy lies in the “ethical rationality” and “in the demand to represent only those cultural positions as legitimate in educational offerings, which in turn are willing to recognize others as legitimate.”¹⁸

EQUAL PARTICIPATION

The second consideration turns on the question of equal access to the discussion within the PoP event. It is equally as important that all students be able to participate fully in the debate as it is that the topic not include discriminatory perspectives (indeed, the two are closely linked). Given the Northern High School teachers’ conversation in the case, I assume that they have no desire to intentionally discriminate against transgender students. That is to say, if the given topic is discussed in the PoP format, the teachers want to ensure that transgender students will not be *intentionally* degraded. However, what cannot be ruled out is whether the discussion can *unintentionally* trigger contempt for particular groups or become offensive speech.

Simply including some controversial topics in educational curriculum can limit how much and how able students whose identities are called into question will participate in the classroom, since the affected persons may likely feel threatened and withdraw from the discussion space. To put it more generally: enabling discriminatory statements in educational institutions creates

a climate of mistrust and fear that contradicts both the pedagogical and ethical goals of educational institutions.

However, to bring a difficult topic to discussion does not automatically imply that some groups would be offended or feel themselves callously exhibited as examples. They may feel more upset if their teachers preemptively exclude such a discussion on the grounds of protecting these students' feelings. This is because addressing certain controversies carefully and thoughtfully can serve to make invisible positions visible, and can give voice to those personally affected by the stakes of the controversy. Deciding which topics may or may not be discussed can also demonstrate a lack of faith in students' abilities to handle difficult conversations. Students who experience controversies under the right circumstances (such as through caring relationships in the classrooms) may actually demonstrate increased participation. Dealing with controversial issues can thus have a positive impact on the emotional development of young people. They may develop a better understanding of their feelings and attitudes, gain self-confidence, and learn to consider controversies and conflicts as a normal and necessary part of democracy.¹⁹

Such an effect, however, is contingent on the general social climate of the society. In a society in which racist, sexist, and/or homophobic attitudes are prevalent, and discrimination is ubiquitous, the individuals belonging to the discriminated-against groups are likely to have the least power and therefore the least degree of participation and opportunity to voice their opinions. We must also consider the strong need for peer approval within student groups, and that fears of setting oneself apart from peers by expressing contrary viewpoints could inhibit students from expressing themselves freely. The process of dealing with divergent perspectives could easily transform differences of opinion into inequality and discrimination when certain perspectives are—even unintentionally—devalued or marginalized.

CONCLUSION

The PoP curriculum case at Northern High School allows some general conclusions. Civic education should not shy away from working out differences among individuals who disagree. However, it is legitimate only if it serves democratic purposes and is not exploited for political partisanship. Learning both *what* to treat as controversial and *how* to engage in respectful dialogue with people whose values differ from one's own is important for the protection and strengthening of democracy and for the promotion of a culture of human dignity.

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10. Erik Eckholm and Alan Blinder, "Federal Transgender Bathroom Access Guidelines Blocked by Judge," *New York Times*, August 22, 2016, <https://www.nytimes.com/2016/08/23/us/transgender-bathroom-access-guidelines-blocked-by-judge.html>.
11. sj Miller, Cris Mayo, and Catherine A. Lugg, "Sex and Gender in Transition in US Schools: Ways Forward," *Sex Education* 18, no. 4 (2018), doi: 10.1080/14681811.2017.1415204.
12. Although as of this writing, they remain on the US Department of Education's website under the heading "Resources for Transgender and Gender-Nonconforming Students"; US Department of Education, Office of Elementary and Secondary Education, Office of Safe and Healthy Students, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 2016), <https://ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>.
13. American Civil Liberties Union, "Know Your Rights: Transgender People and the Law" (2017), <https://www.aclu.org/know-your-rights/transgender-people-and-law>.
14. Dominic Holden, "The Education Department Officially Says It Will Reject Transgender Student Bathroom Complaints," *BuzzFeed*, February 12, 2018, <https://www.buzzfeed.com/dominicholden/edu-dept-trans-student-bathrooms>.
15. Masen Davis, CEO of Freedom for All Americans, personal email correspondence, 2018.
16. "Homophobic and Transphobic Violence in Education," UNESCO, <https://en.unesco.org/themes/school-violence-and-bullying/homophobic-transphobic-violence>.
17. Diana E. Hess, *Controversy in the Classroom: The Democratic Power of Discussion* (New York: Routledge, 2009).
18. See Elisabeth Meilhammer, *Neutralität als bildungstheoretisches Problem: Von der Meinungsabstinenz zur Meinungsgerechtigkeit* (Paderborn: Schöningh, 2008); Wolfgang Sander, "Bildung und Perspektivität—Kontroversität und Indoktrinationsverbot als Grundsätze von Bildung und Wissenschaft," *Erwägen Wissen Ethik* 20, no. 2 (2009): 239–48, 274.
19. See Diana Hess and Louis Ganzler, "Patriotism and Ideological Diversity in the Classroom," in *Pledging Allegiance: The Politics of Patriotism in America's Schools*, ed. Joel Westheimer (New York: Teachers College Press, 2007), 131–38.
20. See, for example, Russel Berman, "How Bathroom Fears Conquered Transgender Rights in Houston," *Atlantic*, November 3, 2015, www.theatlantic.com/politics/archive/2015/11/how-bathroom-fears-conquered-transgender-rights-in-houston/414016/.
21. *Carcaño v. McCrory*, 203 F.Supp.3d 615 (M.D.N.C. 2016).
22. Daniel Trotta, "US Transgender People Harassed in Public Restrooms: Landmark Survey," *Reuters*, December 8, 2016, <https://www.reuters.com/article/us-usa-lgbt-survey/u-s-transgender-people-harassed-in-public-restrooms-landmark-survey-idUSKBN13X0BK>; "Police Departments," National