

Parental Rights: A Foundational Account

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KEY TAKEAWAYS

Parents have a fundamental right to direct the education and upbringing of their children, including by homeschooling them.

Parental rights are necessary to promote the creation of an environment in which citizens live together peacefully and engage in civic life.

Unless the state has a compelling case, it must respect the rights of parents to raise their children as they see best.

Most Americans presume that parents have the primary responsibility to raise and educate their children—and that the government should generally not interfere with parents’ childrearing practices except in cases of abuse or neglect. Yet parental rights are increasingly being threatened on a number of fronts, both in principle and in practice.

Today, many influential political and legal theorists—including those who educate future lawyers, judges, and politicians—are highly skeptical of any robust notion of parental rights. In fact, some outright oppose them. According to the dominant view among scholars, parental rights, if they do exist, are highly circumscribed by the child’s right to autonomy and/or the government’s interest in ensuring that children are taught respect for diversity to

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prepare them for citizenship in a pluralistic democratic society. Many scholars call for abolishing the right to homeschool and/or subjecting it to onerous regulations. Likewise, some advocate eliminating private schools or heavily regulating their curricula, requiring all schools to expose children to values and ways of life that may conflict with those that they are learning at home.

Erosion of Parental Rights in Practice

The undermining of parental rights in principle goes along with their erosion in practice.

Sex Education and Gender Confusion. For instance, in a growing number of public schools throughout the country, comprehensive sex-education curricula and other school programs and activities teach highly controversial views about gender and sexuality—without even informing parents or providing them with an opportunity to opt their children out. Some schools are adopting protocols to enable children confused about their gender identity to be treated as their preferred gender in school (with a different name, a change of clothes, access to bathroom facilities of the opposite sex, etc.), while deliberately hiding this fact from parents by ensuring that the child’s legal name and sex remain on all documents to which parents have access.¹

Textbook Bias and “Free-Range” Parenting. More generally, school textbooks have long been biased against conservative political, economic, religious, and moral values, and, in recent years, this bias has become increasingly overt.² Outside of school, parents, especially poor, working-class, and minority parents, may be accused of neglect or even be arrested and lose custody of their children for engaging in “free-range” parenting practices such as allowing a nine-year-old to play unsupervised at a park near home.³

Medical Decisions. The right of parents to make medical decisions on behalf of their children is also being undermined, especially as it relates to gender and sexuality. In 2018, Ohio parents lost custody of their teenage daughter with gender dysphoria because they would not allow her to begin hormone treatments to transition to a male gender identity.⁴ More generally, 20 states have passed laws banning so-called conversion therapy for minors. These laws usually define conversion therapy so broadly that it could encompass *any* form of therapy that fails to encourage and unquestioningly affirm a child’s same-sex attraction or transgender identification.

Children as Community Property. The dominant view was expressed by political scientist Melissa Harris-Perry in a controversial MSNBC interview in 2013: “[W]e have to break through our kind of private idea that kids belong to their parents or kids belong to their families and recognize that kids belong to whole communities.”⁵ If this view were correct, then it would be right for public schools to unapologetically teach children whatever they think is best, regardless of whether parents object. It also would be right to forbid or heavily regulate homeschools and private schools—and to keep tight watch over parenting decisions more generally, making practices like free-range parenting illegal if the community deemed them inappropriate. And it would be “right” for the community to override the medical decisions that parents make on behalf of their children when there is disagreement about what is in the children’s best interests.

Fundamental Questions

In order to respond to these challenges, it is necessary to articulate a foundational account of parental rights.

Such an account needs to be able to answer questions like the following: Why do we presume that biological parents have the responsibility and right to raise their own children? Why do parents—rather than the political community as a whole—have primary childrearing authority? What does it mean to say that parents are the primary educators of their children? Do parents’ rights extend beyond the schoolhouse door? Is there a right to homeschool?

In this *Backgrounder*, I offer principled answers to these crucial questions. I explain why, *pace* Harris-Perry and many other legal and political theorists, children belong primarily to their parents, *not* to the larger political community. I explain, in other words, that parents are the ones with the primary responsibility to care for children and with the corresponding rights and authority to make child-rearing decisions in line with the dictates of their consciences.

Parents’ authority over their children is both *primary* and *pre-political*. To say that parental authority is *primary* means that it is prior to the state’s authority over children, which is subsidiary to that of parents. And the primacy of parental authority is based on its *pre-political* origins, meaning that it is grounded in the very nature of the parent–child relationship, not in any way derived from the authority of the state. I also respond to objections from critics of parental rights by explaining why respecting the primacy of parental educational authority is not only compatible with, but also, on balance, helpful for the promotion of children’s future autonomy and the achievement of civic educational goals.

Foundations of Parental Rights

Parental rights are really about parents' authority to make decisions about what is in the best interests of their children. Because children are not mature enough to make important decisions for themselves, someone needs to have the authority to make decisions on their behalf. Defenders of parental rights believe that childrearing authority belongs primarily to parents and that the state should not interfere with parents' decision-making except when parents have clearly shown themselves to be unfit.

Critics of parental rights, by contrast, deny the primacy of parents' authority, arguing that the state can and should override or significantly constrain parents' decisions when the state disagrees with parents about what is in the children's best interests. Therefore, in order to understand the foundations of parental rights, it is crucial to understand why parental authority is primary and pre-political, rather than secondary to or derived from the authority of the state.

Philosophical Tradition. In the Western legal and philosophical tradition, and throughout most civilizations, the right of parents to direct the education and upbringing of their children has largely been taken for granted. Thomas Aquinas, for instance, defended the natural educational authority of parents against those who proposed that the children of Jewish parents ought to be baptized against their parents' will. He argued that "according to the natural law, a son, before coming to the use of reason, is under his father's care. Hence it would be contrary to natural justice, if a child...were to be taken away from its parents' custody, or anything done to it against its parents' wish."⁶

In his influential *Second Treatise on Government*, John Locke emphasized that paternal authority derives from the natural duties parents have to nurture and educate their children. Locke believed that parental childrearing authority is prior to and independent of political authority, and should be respected by the government. He claimed in chapter six of the *Second Treatise* that, even after becoming part of a political society, parents "retain a power over their children and have as much right to their subjection as those who are in the state of Nature" (the state in which there is no political authority).⁷

Common Law and the Supreme Court. Under English common law, which is the foundation for the United States legal system, parents were considered to have a natural duty to provide for the education of their children. The United States Supreme Court affirmed this natural parental duty (and corresponding right) in *Meyer v. Nebraska* and *Pierce v. Society*

of Sisters (1925).⁸ In *Meyer*, the court overturned a Nebraska law which prohibited teaching foreign languages, and in *Pierce* the court overturned an Oregon law that prohibited parents from sending their children to private schools. The court argued that these laws violated the fundamental rights of parents to direct their children's education. As the Court stated in *Pierce*:

The fundamental theory of liberty upon which all governments in this Union repose excludes any power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.⁹

Yet now, as we have seen, this tradition of respect for parental rights is being undermined on a number of fronts. While the primacy of parental educational authority was once considered so obvious that it needed no defense, today this is no longer the case. It is therefore crucial to look deeper and offer a foundational account of these fundamental rights that had previously been taken for granted.

Why Biological Ties Matter. Understanding parental authority as primary and pre-political requires understanding the moral relevance of the parent-child relationship, the central case of which is grounded on a *biological* tie. One way of thinking about this issue is to ask the question: Why should I get to bring my *own* baby home from the hospital, rather than some other baby chosen at random from the nursery? Why are we horrified to hear of cases in which babies were accidentally switched at birth, or of a mix-up at the in vitro fertilization clinic that results in a woman becoming pregnant with another couple's embryo, rather than her own?

The answer to these questions lies in recognizing that, because we are bodily beings whose personal identity has a biological foundation, the biological parent-child relationship is, in and of itself, a true personal relationship. Like other personal relationships in which the parties are related to one another on the basis of unique personal characteristics, the biological parent-child relationship generates special obligations. The weight of these obligations is proportionate to the closeness of the relationship and the needs of the individuals involved. In other words, the closer the relationship and the needier the person, the weightier the obligation.

Dependencies and Obligations. Personal relationships also involve personal dependencies; that is, if Sam and Sally are in a personal relationship, Sally has needs that *only* Sam can meet. Thus, personal relationships generate

personal, non-transferable obligations. For instance, if a husband promises to take his wife out for a romantic dinner, his obligation to do so is non-transferable; it has to be carried out personally. If some unforeseen emergency arises and he cannot fulfill the obligation, he may be excused from doing so, but he cannot simply send someone else to take his wife to dinner instead.

Now, let us apply this to the biological parent–child relationship. The biological parent–child relationship is a truly personal relationship that involves personal dependencies. This relationship is uniquely intimate in that it is a cause of the child’s very existence and identity. The relationship is permanent and, for the child, literally identity-defining. If I had been conceived by a different mother or a different father, I would not be me. Indeed, I would not exist at all. No other relationship, however influential, defines my identity in this radical way. And, of course, when children are brought into being, they are extremely needy in every respect. Therefore, since the weight of special obligations is proportionate to the closeness of the relationship and the needs of the individuals involved, biological parents have weighty special obligations to their children.

Non-Transferable Obligations. Those special obligations are also in some respects non-transferable. Of course, many of a child’s needs could be met by people other than her parents. But there is at least one need that the biological parents (and only the biological parents) can fill, and that is the need for *their* parental love. While a child can be well-loved by others, the love of others still does not replace the *specific* love of those who are the source of the child’s biological life and identity. Similarly, a widow may remarry, but the love of her new husband cannot replace the *specific* love of her deceased husband.

As a result, biological parents have a weighty *non-transferable* obligation to love their children—that is, to have a high-priority commitment to the promotion of their children’s well-being—an obligation that can usually only be fulfilled by raising those children oneself. This is, in part, because knowledge of parents and relatives helps a child to develop a mature sense of personal identity. But more fundamentally, failing to raise one’s biological children oneself is not compatible with the high-priority love one owes them unless there are serious child-centered reasons for not doing so. For only in such cases would the child eventually be able to understand that his parents’ decision not to raise him themselves was not the result of lack of love, but rather an expression of their love and their desire to enable him to have a better life than they could provide.

This account helps us to see why there is a good reason for people to want to bring their own babies home from the hospital, and why, except in cases of clear incompetence, parents have a right to raise their own children. Parents

have this right because they are the ones with the strongest and most direct obligation to provide for their children's needs, an obligation that is in some respects non-transferable. Since children cannot yet make decisions for themselves, the obligation to take care of children implies the authority to make decisions on their behalf. Thus, by virtue of their relationship to their children, parents are the ones with primary childrearing authority.

Adoption. At this point, many might be wondering: What about adoption? Of course, the case of adoption is slightly different. As we have seen, the rights and duties of biological parents flow from their relationship to the child. By contrast, the rights and duties of adoptive parents flow from their commitment to take on the role that biological parents have by nature, when the biological parents cannot or will not fulfill their responsibility. The state recognizes this difference. The state requires that prospective adoptive parents meet certain criteria before granting them a license to adopt. But the state does not require biological parents to prove that they are competent before they are allowed to begin caring for their children, because the parental authority of biological parents is prior to and independent of the authority of the state.

Allow me to note that my emphasis on biological parenthood is in no way meant to suggest that adoptive parents are not "real" parents. Rather, my point is that we can only understand the nature of parenthood—including its attendant rights and responsibilities—by looking at the *central case* of parenthood, which is biological. I also emphasize biological parenthood as the central case because it is the biological parent-child relationship that helps us see why the family community has a natural structure—married biological parents and their children—that is not arbitrarily defined by the state. And it also helps us to see why the authority of parents as head of the family community is likewise natural, not derivative of the state's authority.

A "Spiritual Womb." To borrow a metaphor from Thomas Aquinas, it is just as natural for children to be raised to maturity within the "spiritual womb" of their family under the authority and care of their parents as it is for children to be gestated in the physical womb of their mothers.¹⁰ Like the physical womb, the family is a "spiritual womb," a protected sphere within which children can grow to maturity. Thus the family, grounded in marriage, is a natural authority structure that corresponds to unchanging features of human nature and deep human needs. The state did not create that structure any more than it created a woman's womb, and it is not *from* the state that parents get their authority. Parents have that authority by nature due to their uniquely intimate, permanent, and identity-defining link to their children—and the state has no right to take it away or encroach on it.

The “spiritual womb” of the family marks out a sphere of sovereignty within which parents have the authority to direct the internal affairs of the family community, including the education and upbringing of children. Of course, it is true that children are also members of the larger political community, but only indirectly. Human beings are, in a sense, nested within various levels of community like the traditional Russian nesting dolls.

Children belong first and foremost to their families headed by their parents, and their relationship to the larger political community is mediated through the family. And it is therefore usually only indirectly, through the mediation of the child’s parents, that the state exercises authority over children. Similarly, my relationship to the larger international political community and to international bodies like the United Nations is mediated through my U.S. citizenship, and the regulations of the United Nations generally only affect me insofar as they are taken up by my own government.

There are times, of course, when the state may be justified in breaking into the “spiritual womb” of the family and interfering with the way parents raise their children. But the justifications for coercive state intervention into the family sphere are similar to the justifications for international intervention into the affairs of a sovereign nation. In the international case, coercive intervention is generally considered to be justified only to stop grave human rights abuses or to prevent serious harm to the international order. Analogously, the state is justified in intervening coercively in the family sphere to stop abuse or neglect (non-ideologically defined) or to prevent serious harm to the public order. For instance, the state would be within its rights to shut down a terrorist-training school, or, more commonly, to enact minimal educational regulations to ensure that children are equipped to be law-abiding, productive citizens as adults.

Parental Authority and the First Amendment. Understanding that parental authority is grounded on parents’ serious personal obligation to care for their children also leads to a second, related argument for parental rights. This second argument conceives of parental rights as conscience rights, or rights to the free exercise of religion such as those protected by the First Amendment of the United States Constitution. When the state makes it difficult or impossible for parents to fulfill their parental responsibilities in line with the dictates of their consciences, it violates their conscience rights and, in many cases, their free exercise rights, because many parents explicitly see their childrearing obligations as religious obligations.

It is important to remember here that parents’ obligations to educate their children are *personal* and, in some respects, *non-transferable*. This means that while, of course, parents can enlist the help of others (teachers, clergy, friends,

family, etc.), the responsibility for their children's education is ultimately *theirs*. So the state cannot tell a parent: "Do not worry if what your child is learning in school contradicts the values you want to teach him, because now that your child has started school, we are in charge of his education, and we have experts who know how to do it better than you, so you are absolved of your obligation." That would be like telling a Catholic: "Do not worry if we pass a law that forbids you from going to church on Sunday, because we have also ensured that another, more devout and prayerful person will go in your stead, so you are absolved of your obligation." That is absurd, of course, because the obligation to attend Mass is a personal and non-transferable one. Obviously, there can be legitimate excuses for not fulfilling it, but you cannot fulfill it by having someone else do it for you. The same is true of parents' obligations to direct the education and upbringing of their children.

As a result, policies that make it difficult or impossible for parents to fulfill their obligations are a serious violation of conscience rights, and often also explicitly of free exercise rights. For instance, when educational regulations require parents to allow their children to be exposed to certain ideas or a particular educational environment that they believe is potentially harmful, they face a situation in which fulfilling their perceived parental obligations becomes nearly impossible. Either they must break the law (and risk having their children removed from their custody as a result), or they must knowingly place their child in harm's way.

The Romeike Family. Consider the case of the Romeike family in Southwest Germany, where homeschooling is illegal. Uwe and Hannelore Romeike were distressed when they discovered that their son Daniel's health textbook used foul language to refer to sexual acts, and that, more generally, the values conveyed in their children's classes and readings often conflicted with the Christian moral and religious values they sought to teach their children at home. In response, they pulled their children out of the public schools and began educating them at home. A protracted battle with state authorities ensued, including police attempts to enter the Romeikes' home and bring the children to school by force, along with onerous fines adding up to 7,000 euros. Fearing imprisonment and loss of custody of their children, the Romeikes moved to the U.S. where they would be free to educate their children as they thought best. Although their request for asylum was denied, they were granted permission to remain indefinitely in the country shortly before their scheduled deportation in 2014.

It is tragic that loving and responsible parents like the Romeikes should have to flee their homeland in order to be able to fulfill their parental obligations in line with the dictates of their consciences. But at least the Romeikes

were able to do so. In many cases here in the United States, parents who lack the means to homeschool their children or send them to a private school effectively have no choice but to send them to a public school—even if they have serious objections to aspects of the school’s environment or curriculum. Of course, like free exercise rights more generally, parents’ rights are not absolute. However, because these rights are so fundamental, a high bar needs to be met before the government is justified in overriding them, as I will explain in greater detail below.

Requirements of Respect for Parental Rights

The state does have a legitimate interest in children’s well-being. However, because parents are the ones with the most direct responsibility for their children, the state’s role in promoting children’s welfare is indirect and subsidiary to that of parents. This means that the state’s role is secondary to the parents’ role and should consist in providing services and resources that assist parents in fulfilling *their* responsibilities, not in taking actions that bypass, override, or undermine the decision-making authority of fit parents. (And parents should be presumed fit unless there is clear evidence to the contrary.) The state also has an important and direct interest in ensuring that children receive an education that will enable them to become productive, law-abiding, and engaged citizens as adults. In promoting this interest, however, the state must choose means that respect the fundamental rights of parents.

Strict Scrutiny Standard. What does this mean in practice? The position I have outlined thus far would imply, for instance, that the state can rightly enact minimal educational regulations or compulsory education laws up to a certain age or grade level, given the state’s interest in children’s welfare and in the education of future citizens. But exemptions or accommodations should be provided when such laws conflict with parental rights unless this would seriously undermine the state interests at stake. In other words, because, as the Supreme Court acknowledged in *Pierce v. Society of Sisters*,¹¹ parental rights are fundamental, the “strict scrutiny” standard should be applied to laws that conflict with parental rights. Laws meet this standard only if they serve a compelling state interest *and* are narrowly tailored to that interest. This standard is appropriate not only from a constitutional perspective but also in principle as a matter of justice, and should therefore guide legislators as well as judges.

Wisconsin v. Yoder. Consider the case of *Wisconsin v. Yoder*,¹² in which Amish families sought an exemption from a compulsory education law so

that they could stop sending their children to school at age 14 and begin educating them at home in skills necessary for the Amish way of life. The law at issue, which requires children to attend school until age 16, seems reasonable in general, insofar as it promotes the state's interest in the education of future citizens without usurping parental authority (presuming that parents have genuine options about where to send their children to school, including the option to homeschool them).

For the Amish, however, this law proved to be a significant burden on their ability to educate their children in line with their values and prepare them for adulthood in the Amish community. The parents in the case worried that the school environment could be harmful to their children by exposing them at an impressionable age to worldly values at odds with the Amish way of life. Further, it would be impossible for the parents to provide their children with the vocational training they considered essential if the children were engaged in full-time academic learning. As a result, the state's requirements, though generally reasonable, made it impossible for Amish parents to fulfill their religious obligation to prepare their children for the Amish way of life. As the Supreme Court recognized, "enforcement of the compulsory formal education requirement after the eighth grade would gravely endanger if not destroy the free exercise of [the parents'] religious beliefs."

The compulsory education law at issue in the case does serve the compelling state interests of educating future citizens and preparing children to be self-sufficient members of society. Yet as Justice Burger pointed out in his majority opinion:

[A] State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children.¹³

The Court recognized that the state's interests would not be significantly undermined by allowing the Amish to end their children's formal schooling at age 14, particularly given the Amish community's long history of producing law-abiding, peace-loving, and self-supporting citizens. Therefore, because (1) the law conflicted with the Amish parents' right to free exercise of religion and with their right to direct the education and upbringing of their children, and (2) exempting the Amish was compatible with the compelling state interests at stake, the Court correctly held that the Amish had a right to the exemption.

In his dissenting opinion, Justice William Douglas expressed concern that the autonomy of Amish children would be undermined by ending their formal education early and preventing them from being exposed to competing values and ways of life. Responding to Douglas, Justice Warren Burger emphasized that it would be a usurpation of parental authority for the state to try to “liberate” children from the value system their parents are attempting to pass on to them. Burger goes on to unequivocally affirm:

[T]he history and culture of Western civilization reflects a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.¹⁴

Mozert v. Hawkins. Another case worth considering, one in which parents were ultimately not granted the accommodation they sought, is *Mozert v. Hawkins*.¹⁵ In this case, fundamentalist Christian families objected to the local public schools’ use of reading textbooks with a selection of readings that sought to expose children to diverse religious and cultural beliefs. The families claimed that the readers were unbalanced, lacking favorable portrayals of Protestant Christianity and portraying relativistic viewpoints and non-Christian views too sympathetically. They feared that the reading curriculum could undermine their children’s Christian faith. Arguing that the reading curriculum violated their right to educate their children in accordance with their religious beliefs, the parents sought an accommodation that would allow their children to use an alternative textbook.

The Tennessee District Court rightly judged that failing to provide the accommodation would violate the parents’ rights, because the parents believed they had a religious obligation to prevent their children from being exposed to the content of the textbooks, and without an accommodation they would only be able to fulfill this obligation by foregoing the benefit of free public education. Further, the District Court argued that, although the state has a compelling interest in the education of children, that interest could be served without requiring every student to use the same textbook. The court also noted that allowing the children in the case to use an alternative textbook would be practically feasible. However, the 6th Circuit Court reversed the District Court’s judgment on appeal, denying that merely exposing the children to diverse viewpoints, without forcing them to affirm or deny any particular view or to engage in an activity directly contrary to their faith, did not constitute a violation of free exercise rights.

Reasonable Accommodations. *Mozert* differs from *Yoder* because the parents in *Mozert* could have resolved their problem without running afoul of compulsory education laws by sending their children to a private school. However, the refusal to provide an accommodation effectively forced the parents to pay a significant financial penalty in order to fulfill their parental obligations in line with their religious beliefs. Thus, the state was undermining the rightful authority of the *Mozert* parents by coercing them (under threat of an indirect financial penalty) to allow their children to be exposed to viewpoints they considered harmful. Further, not all of the parents who objected to the curriculum may have had the financial means to send their children to a different school.

For this reason, especially if public schools have a monopoly on public educational funding, respect for parental rights requires that, when possible, reasonable accommodations be made to avoid exposing students to content that their parents believe to be harmful or objectionable. This is especially true when it comes to highly sensitive and controversial topics like sexuality and gender. Ideally, parents should have a say about whether, how, and when such issues are addressed in school. At the very least, parents should be informed in advance about the content of the school's curriculum or any special policies, activities, or speakers related to such issues—and given the ability to opt their children out.

Doe v. Madison. One current court case that powerfully highlights what is at stake is *Doe v. Madison Metropolitan School District*.¹⁶ In April 2018, Madison Metropolitan School District in Wisconsin released a document, “Guidance and Policies to Support Transgender, Non-Binary, and Gender-Expansive Students.”¹⁷ The new policies promoted gender ideology across the curriculum by, for instance, instructing teachers to use “books and lessons that are inclusive of all identities and send messages of empowerment to students,” to display “visual images and posters that send messages of gender inclusion,” and to avoid using terms like “boys” and “girls” when teaching about bodily changes during puberty (instead to refer to “people with penises” and “people with vaginas”).

The policies also included instructions on how to support a child who chooses to transition socially to the opposite gender in school (wearing different clothes while at school, adopting a different name, etc.) without even informing the child's parents. Faculty and staff were told to use the child's official name and sex on all documents to which parents had legal access under the Family Educational Rights and Privacy Act, while recording any information about the child's gender transition only in personal notes that parents had no legal right to see. The school would therefore

make it possible for a child to live as a boy at school and as a girl at home (or vice versa), while keeping parents completely in the dark about the child's struggles with gender identity. This latter part of the policy led 14 parents to sue the school district for violating their parental rights. The outcome of the case is still pending.

The *Madison* case—and the realistic recognition that public schools will inevitably tend to favor the dominant cultural ideologies in their curriculum—also shows why genuine school choice is another a requirement of respect for parental rights. Genuine school choice means, first of all, that parents have the right to send their children to private schools, as well as the right to homeschool them. Further, while the state can enact reasonable regulations to ensure that children are indeed receiving a basic education, those regulations should be relatively minimal, giving broad latitude to private schools and homeschooling parents to determine curricular content and methods.

Alternatives to Public Schools. Genuine school choice also means ending the monopoly that government-run schools have on public educational funding. Otherwise, not only are parents financially penalized for not sending their children to public schools, but many with serious objections to the public school's curriculum or environment simply have no alternative because they lack the resources to send them elsewhere or homeschool them.

Given the public benefits of an educated citizenry, it makes sense for public funds to support children's education. However, because parents, not the state, are the ones with primary educational authority and responsibility, there is no reason why government-run schools should have a monopoly on public educational funding. The state's role in education is, after all, primarily one of *assisting* parents in fulfilling *their* educational responsibilities. It is therefore more just and more in line with the primary educational authority of parents for educational funding to be funneled through parental choice via some form of voucher system.

Responding to Objections

Let me now consider some of the typical objections made by critics of parental rights. First, many critics worry that allowing parents to shelter their children from diverse worldviews harms children by preventing them from becoming autonomous adults, capable of choosing their own values and way of life. Second, critics claim that robust accounts of parental rights like mine fail to give sufficient weight to the importance of education for

democratic citizenship. In particular, they tend to argue that children need to be taught to be tolerant and respectful of diverse worldviews in order to be prepared for citizenship in a pluralist democratic society, even against the conscientious objections of parents. If such critics, like Martha Fineman, James Dwyer, Jeffrey Shulman and many others, had their way, homeschooling would be banned, private schools would either be eliminated or subject to significant government oversight, and the very notion of parental rights would be effectively eradicated from the law.

Shulman, for instance, argues that “the state must protect all its children, not just those in the public school system.” He advocates “a schooling that takes seriously the idea that both autonomy and tolerance require children to know other sources of meaning and value than those they bring from home.” He explicitly recognizes that this effort to expose children to views that challenge those passed on by their parents “is more likely than not to divide child from parent,” and notes that “we should be entirely candid about the fact that the inculcation of such intellectual habits will be more compatible with the beliefs of some religious groups than others.”¹⁸

In other words, Shulman effectively admits that his proposal is effectively aimed at preventing conservative religious parents from successfully passing on their beliefs to their children. Fineman, Dwyer, and others argue on similar grounds for an end to homeschooling and significant restrictions on private schools. How can we respond effectively to these attacks on parental rights?

Children’s Autonomy. First, with regard to concerns about children’s future autonomy, on my account it is easy to see why the state would be usurping parents’ rights by mandating, for instance, that, regardless of parental objections, all schools expose children to a diversity of moral and religious worldviews and encourage children to think critically about the values they are taught at home in order to promote children’s autonomy. For, as I have argued, it is illegitimate for the state to seek to promote the well-being of children in ways that usurp the authority of parents or undermine parents’ ability to educate their children in line with the dictates of their consciences, except in cases of abuse and neglect. And, while some may reasonably worry that an education that shelters children from diverse viewpoints is less than ideal, it is implausible to claim that this amounts to abuse or neglect—unless we think that the meaning of abuse and neglect should change drastically depending on the preferred educational theories of the people who happen to be in power.

Moral Maturity. However, I also believe that respecting the primacy of parents’ educational authority is actually on balance *more* likely to promote

children's genuine autonomy than the alternative, at least in most cases. This is because genuine autonomy requires moral virtue as classically understood—that is, the habitual governance of our sub-rational desires in line with reason. In order for children to develop a mature moral character, it is crucial that they receive coherent moral guidance.

This coherence is undermined when children hear conflicting messages at home and at school. Even in adolescence, children's habits of self-mastery are likely in many cases to be too fragile to survive a critique of the worldview that grounded them. Exposure to the merits of conflicting moral views and to criticisms of the moral views that parents are trying to inculcate may endanger the morally immature person's still-precarious ability to make reasonable decisions about what is truly good, rather than simply following the pull of passions.

Further, a child or adolescent who has not yet achieved moral maturity does not have the inner moral resources—the moral virtues—that are prerequisites for the ability to make fully reasonable judgments about conceptions of the good life. If, in the name of fostering children's autonomy, schools present a cafeteria-style offering of different conceptions of the good life in which none is portrayed as inherently superior to any of the others, this can simply be an invitation to pick and choose elements of different conceptions insofar as they enable children to justify the indulgence of sub-rational desire. For instance, a teenager who is frustrated because his parents limit his social media consumption or restrict the types of shows he can watch may be all too eager to judge his parents' value system incoherent or unsatisfying by comparison with less restrictive value systems, regardless of the genuine merits of each.

Therefore, even if one were to grant the premise that autonomy is important for leading a good life, it is not clear that children who are exposed from a young age to a wide variety of conflicting belief systems will be, on balance, better prepared to lead a good life and make genuinely autonomous choices than those whose parents shelter them from competing viewpoints. Further, parents, not the state, are the ones in the best position to know when and how to expose their children to diverse beliefs and lifestyles. Exposing children to diversity in a way that is beneficial rather than confusing depends very much on the time and manner in which this is done and on the specific characteristics of each child. Even when dealing with children of the same age and grade level, what is helpful for one child may be harmful to another. The delicate task of teaching children about diversity is best left to the parents' discretion.

And even if it were true that many or most children would benefit from

broad exposure to competing values in school, the key point is that the state lacks the authority to impose one controversial educational approach on all children. Given that sheltering children from diverse viewpoints is clearly not abusive or neglectful, the state has the obligation to respect parents' educational authority in this regard.

Preparation for Citizenship. Now let us consider the second objection to robust protections for parental rights: that children should be exposed to diverse worldviews in schools in order to prepare them for citizenship in a pluralistic democratic society. I agree that the state does have a serious interest in civic education and in preparing children to be law-abiding and productive citizens. What is in dispute, therefore, is not whether the state has the right to establish *some* educational requirements in the name of preparing children for responsible citizenship. What is in dispute, rather, is whether the sorts of diversity and tolerance education programs that critics of parental rights deem necessary—but which would prevent many parents from educating their children in line with the dictates of their consciences—are actually necessary to achieve this goal.

In fact, evidence suggests that traditional religious schools (including homeschools), which, due to their sheltered environment, are the primary target of proposals for mandatory diversity or autonomy education, are actually likely to foster good citizenship and contribute to the health of our democratic society in a number of ways, drawing on resources from within their own traditions. This claim is borne out by research indicating that private or religious schools perform at least as well as public schools with regard to civic education. Patrick Wolf, for example, analyzes 21 studies on this topic, and concludes that “the effect of private schooling or school choice on civic values is most often neutral or positive,” and that positive effects are greatest for students in Catholic schools.¹⁹

Similarly, David Campbell's fine-grained analysis of the 1996 National Household Education Survey shows that, on balance, private and religious schools do better than public schools in terms of encouraging community service, teaching civic skills and knowledge, and fostering political tolerance.²⁰ Research specifically on Muslim schools in the United States and Canada also indicates that these schools neither isolate students from the diversity of the larger society nor breed intolerance, but actually foster civic engagement and interfaith dialogue.²¹ Likewise, a recent Institute for Family Studies research brief shows that homeschooled children compare favorably to public school children on community involvement and civic engagement.²² While, of course, some private or religious schools or homeschools will fail to teach civic virtues, studies like these show that such

schools are the exception rather than the rule—and therefore that coercive civic education measures are unnecessary.

Traditional religious education also fosters social harmony and good citizenship indirectly by fostering moral virtue. Traditional religious schools or homeschools are arguably more likely than other educational environments to produce citizens of strong moral character. Indeed, following the insights in Alexis de Tocqueville’s seminal work, *Democracy in America*, one could argue that traditional religious education helps to counteract the tendencies toward individualism and materialism that threaten to undermine the health of democratic societies.

On the community level, the powerful positive impact of religious schools, particularly in the most underprivileged communities, has been well-documented. Not only is it true that students who attend religious schools are much more likely than their peers at urban public schools to graduate from high school, earn a college degree, have stable marriages, get good jobs, and be involved in their communities as adults, but the presence of religious schools also has a broader positive effect on the community itself.

In their recent book *Lost Classroom, Lost Community*, Margaret Brinig and Nicole Garnett show how urban Catholic schools build social capital in the communities they serve, contributing to social harmony and to the reduction of violent crime. For instance, they found that urban Chicago neighborhoods with an open Catholic school had 33 percent lower crime rates than neighborhoods in which a Catholic school had recently closed.²³ A study of Philadelphia’s urban communities revealed similar results.²⁴

Conclusion

We must reintroduce into the public square a principled argument for the fundamental right of parents to direct the education and upbringing of their children, grounded on parents’ pre-political childrearing authority, as well as on conscience rights and free exercise rights, to fulfill their parental obligations. A robust notion of parental rights—including the right to genuine school choice—is compatible not only with respect for children’s future autonomy, but also with a concern for the education of future citizens capable of living peacefully and respectfully with those of different creeds and of participating meaningfully in civic and political life. Of course, parental rights are not absolute, and the state may step in when parents are abusive or neglectful, presuming that we define abuse and neglect non-ideologically. The state may also set reasonable educational requirements to ensure a kind of civic minimum. Yet even when it comes to minimal requirements,

exemptions should be given to those like the Amish whose religious freedom and parental rights would be substantially burdened by them and who have proven themselves to be peaceful, self-supporting, and law-abiding.

Unless the state has an interest that is *truly* compelling, and unless the policy is narrowly tailored to the achievement of that interest, the fundamental rights of individuals, including the rights of parents to raise their children as they think best, must be respected. Much is at stake—nothing less than the integrity of the human institution upon which our civilization is built.

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