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PLURALISM, LIBERAL DEMOCRACY, AND COMPULSORY EDUCATION: ACCOMMODATION OR ASSIMILATION?

Resumen: En este ensayo se sostiene la tesis de que, en los últimos años, el análisis de la justicia, el pluralismo y la estabilidad social en las democracias liberales ha traspasado sus linderos tradicionales, incluso aquellos discursos que se fundamentaban en categorías como raza, clase y género; y que ahora, se presta mayor atención a problemas legales relativos, por ejemplo, a la educación moral y religiosa, y a la autoidentidad cultural. Mi sospecha es, sin embargo, que semejante intento, por parte del liberalismo político, de forzar esta amalgama, es fútil. Considero, entonces, que es necesario esclarecer la clase de análisis que los filósofos políticos y los teóricos legales suelen realizar cuando evalúan políticas asimilacionistas y prácticas acomodacionistas dentro de los supuestos parámetros pluralistas de las democracias liberales. A tal efecto, centraré mi estudio en ciertos casos *sui generis* de educación compulsiva en U.S.A. por las siguientes tres razones. 1) Todas o casi todas las democracias liberales tienen alguna forma de educación compulsiva que incide en la asimilación de una cultura minoritaria en la nacionalmente estandarizada. 2) Entre las instituciones constitutivas de una estructura básica de una sociedad justa (Rawls), son las instituciones de educación compulsiva, más que otras, aquellas en las cuales se apoya el Estado para promover sus políticas integracionistas. 3) En los últimos años ha habido en los Estados Unidos, Gran Bretaña, Canadá y otros países varios casos legales, muy publicitados, en los que se demanda al Estado por ejercer, a través de la educación compulsiva, una política asimilacionista respecto de comunidades religiosas que se niegan a aceptar los criterios y valores exigidos por la política educativa oficial. Toca a los filósofos liberales, entonces, ofrecer soluciones satisfactorias a este problema, antes de proveer esquemas universalistas (asimilacionistas) para sociedades 'justas' y 'bien ordenadas'.

Abstract: In this essay it is sustained that, in recent years, the analysis of justice, pluralism and social stability in liberal democracies had no other choice but to surpass its traditional boundaries, even the ones that were commonly based on

categories like race, class and gender. Indeed, liberal philosophers have to pay, now, more attention to legal problems, moral and religious education, and multicultural identity, as they failed in their analysis of the legal outcome of certain judicial cases related to compulsive education, for the following three reasons. 1) All or almost all liberal democracies have some form of compulsive education in order to assimilate a minority culture into the standardized majority values. 2) Among the institutions constitutive of a just basic structure of society (Rawls), education institutions more than any other is due to solve the tensions between citizens' public and non public identities. 3) In the last years there has been in the United States, Great Britain, Canada and other countries several, highly publicized, legal cases, in which the State is demanded of exercising, through compulsive education, an assimilationist policy in order to integrate religious communities that refuse to accept the approaches and values demanded by the official institutions of the State. In sum, liberal philosophers are requested, now, to offer satisfactory solutions to this problem, before providing universalistic (assimilationist) schemes for 'fair' ('well ordered') multicultural societies.

1. Introduction

In recent years, the analysis of justice, pluralism and social stability in liberal democracies has moved into new territory, expanding beyond the categories of race, class and gender. Political philosophers and legal theorists have begun to pay serious attention to moral, religious, philosophic and cultural diversity. To be sure, past political philosophers and legal theorists did not wholly ignore these forms of social diversity. But never has so much attention been focused on them as is focused today in the United States, Canada, Great Britain, many European nations, Australia and elsewhere. There are several reasons for this. These reasons pull in different directions, however. And it is for this reason that the "fact of pluralism" has recently proved and will likely continue to prove such a challenge to political philosophy and legal theory in liberal democracies.

On the one hand, many political philosophers and legal theorists have begun in recent years to see more clearly the complex relationships between group membership, self-

understanding, and the preconditions of leading a good life.¹ These thinkers argue that as both a comprehensive moral theory or way of life and a political philosophy liberalism has historically failed to take adequate account of these relationships. The implications of this failure are said to be two-fold. First, liberalism falls on its own terms as a comprehensive moral theory or way of life, for it ignores the constitutive social relations within and through which any good life becomes possible. Second, liberalism fails on its own terms as a political philosophy, for liberal political orders inevitably assimilate all citizens, or aim to assimilate all citizens, to a certain highly individualistic moral outlook and way of life which is but one of the many reasonable moral outlooks or ways of life a liberal political order ought on its own criteria to tolerate and protect. It should come as no surprise, then, that many political philosophers and legal theorists have begun to argue against many of the assimilationist policies and practices of past and present liberal democracies, even those non-violative of basic rights and liberties. These thinkers reject these policies and practices because they threaten primary constitutive social relations and aim to impose a moral outlook and way of life that is but one of several alternatives compatible with a liberal political order. As a matter of both justice and stability, they argue, liberal democracies must do a better job of accommodating diversity.

On the other hand, many political-philosophers and legal theorists have begun in recent years to argue that no liberal democracy can long sustain itself as both just and stable unless most of its citizens internalize and honor a conception of citizenship morally far richer than that historical-

¹Cf. Benhabib, S., *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics*. New York, Routledge, 1992; Kymlicka, W., *Liberalism, Community and Culture*. Oxford, Oxford University Press, 1989; Spinner, J., *The Boundaries of Citizenship: Race, Ethnicity, and Nationality in the Liberal State*. Baltimore, Hopkins University Press, 1994; Young, I., *Justice and the Politics of Difference*. Princeton, Princeton University Press, 1990.

lly associated with liberal democracy.² Most contemporary liberal democracies face increases in the range of moral, religious, philosophical and cultural diversity as well as the demands of diverse social groups to be heard politically. As a result, and in the absence of a shared and adequate conception of citizenship, in many liberal democracies politics is becoming or threatening to become increasingly divisive, hostile and destabilizing. This problem is made worse by the fact that there are good reasons to think that in light of the forces unleashed within a late capitalist global economy the citizens of liberal democracies deserve more rather than fewer opportunities to participate in political life, opportunities which may be and increasingly are realized through various new technologies. It should come as no surprise, then, that many political philosophers and legal theorists have begun to argue that if contemporary pluralist liberal democracies are to avoid collapsing under the weight of their own hostile, divisive, and destabilizing politics, most citizens must be brought to affirm and honor a fairly rich conception of liberal democratic citizenship, complete with ideals of liberal legitimacy, democratic political autonomy, public reason (and its limits) and civility. These thinkers argue for policies and practices, presumably non-violative of basic rights and liberties, aimed at the social reproduction of citizenship. As a matter of both justice and stability, they argue, liberal democracies must do a better job of assimilating diversity.

The two foregoing lines of argument pull in different directions. Yet, there is some truth in both. A just and stable plu-

²See, e.g. Audi, R., "The Separation of Church and State and the obligations of Citizenship", in *Philosophy and Public Affairs* (18), 1989, p. 259; Gutmann, A., "Civic Education and Social Diversity", in *Ethics*, 1995, Vol. 105, p. 557; Macedo, S., "Liberal Civic Education and Religious Fundamentalism: The Case of God vs. John Rawls", in *Ethics*, 1995, Vol. 105, p. 468; Spinner, J., *The Boundaries of Citizenship: Race, Ethnicity, and Nationality in the Liberal State*. Baltimore, John Hopkins University Press, 1994.

pluralist liberal democracy must both accommodate and at the same time assimilate. This makes the challenge of pluralism in a liberal democracy difficult to meet. One way to try to meet this challenge would be to search for a single general principle or value which political philosophers and legal theorists might use to evaluate correctly a wide range of assimilationist policies and practices and accommodationist demands. My suspicion here, which I will not defend, is that such a search would prove futile. Within a pluralist liberal democracy assimilationist policies and practices and accommodationist demands must be evaluated on a case by case basis within their particular institutional context against a range of relevant considerations. Of course, this makes the challenge of pluralism even more difficult to meet.

But it doesn't make it impossible to meet. My aim in this paper is modest. I aim only to shed some light on the sort of analysis political philosophers and legal theorists ought to pursue as they undertake on a case by case basis to evaluate assimilationist policies and practices and accommodationist demands within pluralist liberal democracies. I will take compulsory education as my institutional focus for three reasons. First, all or nearly all-enduring liberal democracies have some form of compulsory education which directly or indirectly but almost always purposefully serves assimilationist ends. Second, of the institutions constitutive of a just basic social structure, institutions of compulsory education more than any other must engage, manage and mediate the tensions between citizens' public and nonpublic identities. Third, over recent years there have been in the United States, Great Britain, Canada and elsewhere a number of highly publicized cases demanding some principled response to accommodationist demands to be excused to one degree or another from compulsory education; in general, legislative and judicial responses to these demands have been philosophically problematic.

II. Compulsory Education in a Liberal Democracy.

There are generally two sorts of sound arguments advanced for compulsory education in a liberal democracy. Sound arguments from the demands of justice establish that any modern pluralist liberal democracy committed to one or another vision of liberal distributive justice must include within its basic social structure some system of compulsory education (typically through schooling) aimed at distributing to all citizens the knowledge and skills necessary for them to make meaningful use of their basic liberties, to enjoy fair value for their basic political liberties, and to enjoy fair equality of opportunity. Sound arguments from the demands of liberal social stability establish that any modern pluralist liberal democracy committed to enduring over successive generations must include within its basic social structure a system of compulsory education aimed at reproducing socially citizens possessed of certain capacities, dispositions, virtues and affections essential to liberal democratic citizenship. Briefly reviewing these arguments in outline is perhaps the easiest way to identify some of the most important features essential to any system of compulsory education responsive to the demands of justice and social stability in a pluralist liberal democracy.

The long term stability of a just pluralist liberal democracy depends to a significant degree on the extent to which citizens over successive generations come to possess certain capacities, dispositions, virtues and affections.³ The

³While liberal democratic theorists do not agree on any one comprehensive list of the capacities, dispositions, virtues and affections essential to liberal democratic citizenship, with respect to particular capacities, dispositions, virtues and affections, there is widespread agreement that they are essential to liberal democratic citizenship and that their acquisition is a social achievement. See e.g., Bridges, Th., *The Culture of Citizenship*, Albany: State University of New York Press, 1994; Galston, W., *Liberal Purposes*, New York: Cambridge University Press, 1991; Macedo, S., *Liberal Virtues*, Oxford: Oxford University Press, 1990.

trouble is that there is no reason to think that most humans will inevitably acquire these capacities, dispositions, virtues and affections as a matter of either natural endowment or natural development. Their acquisition is a social achievement. And this achievement is most unlikely in any modern pluralist liberal democracy without significant contributions from a system of compulsory education. Of course, there are limits to the ways in which a system of compulsory education in any liberal democracy may justifiably promote the widespread acquisition of the capacities, dispositions, virtues and affections central to liberal democratic citizenship. Compulsory education must not violate the demands of justice (e.g., violate basic liberties) and it must not jeopardize the capacity of citizens to legitimate through their consent to constitutional arrangements exercises of coercive state power faithful to those arrangements.⁴ The capacities, dis-

⁴For discussion of the tensions between civic education and liberal legitimacy, Cf. Brighouse, H., "Civic Education and Liberal Legitimacy", *Ethics* Vol. 108, (1998), p. 719. Brighouse argues that arguments for civic education rooted in the demands of social stability are problematic in one important respect: they oftentimes appear to support a kind or degree of compulsory education that would seem to undermine the connection between political legitimacy and citizens giving their consent to constitutional arrangements. If citizens are subject to a system of compulsory civic education that aims to cultivate the capacities, virtues and affections of citizenship primarily through the teaching of a mythologized or fictionalized history, the regular performance of various public rituals with high emotional content, the recitation of slogans and singing of songs and the like, then it is hard to see how citizens could legitimate constitutional exercises of coercive state power through their consent. Their consent would reflect not so much their reflective or critical judgment as it would their manipulation within a system of compulsory education. The same may be said if citizens are subject to a system of compulsory education that aims to lead them all to a civic or democratic humanism within which active participation in political life is understood as a necessary and central ingredient in any good life. To be sure, it may be impossible, indeed incoherent, for the consent of any given citizen at any given time to reflect fully and only her reflective or critical judgment. Every reflective or critical judgment proceeds from some

positions, virtues, and affections of liberal democratic citizenship must be encouraged and effectively socially reproduced over time without injustice and without recourse to either an overly manipulative sentimentalist civic education or a civic education intentionally aimed at leading all citizens to a particular conception of the good life. But this is, I think, possible. I will not argue the point here. But I see no reason why, in addition to reading, writing, mathematics, science, history and the like, citizens may not be taught, without injustice, excessively manipulative sentimentalism, or intentional indoctrination into a civic or democratic humanism, a) that they are, one and all, free and equal members of a single body politic, b) that as such they are, one and all, entitled to something like equal concern and respect from the body politic, c) that as members of such a body politic they are each obligated to perform certain minimal political tasks and to act politically in larger ways whenever necessary to resist serious injustice or in times of constitutional crisis, d) that there is no escaping certain "burdens of judgement" when it comes to the free, open and public exercise of reason

assumptions, which escape critical reflection, at least for the purpose of the judgment given. Yet, there is no reason that most if not all such assumptions may not themselves be subject, in principle if not in practice, to reflective and critical judgment over time. Thus, there is no reason to think that over time the consent of a given citizen to constitutional arrangements may not reflect to a higher and higher degree her reflective and critical judgment and thus serve to legitimate exercises of coercive state power within constitutional constraints. Brighthouse's point is that consent cannot so serve if citizens are socialized through a system of compulsory education into some set of affective commitments, psychological identifications or singular vision of the good life which would guarantee their consent to liberal democratic constitutional arrangements or disable them from reflectively and critically judging over time their basic assumptions relevant to the normative evaluation of political authority. The point here is not that there is no sound argument from stability for compulsory education, even compulsory civic education. There is. The point is just that compulsory education, and especially compulsory civic education, must operate within a number of limits.

among citizens and e) that there are political consequences to these burdens (or the fact of reasonable pluralism to which they give rise) which every citizen ought to accept.⁵ Thus there is, I think, an argument from stability for not only compulsory education, but compulsory civic education, in a pluralist liberal democracy.

Of course, in modern pluralist liberal democracies the primary justification for compulsory education turns on the demands of Justice. Whatever else it requires, liberal distributive justice requires that all citizens enjoy certain familiar basic liberties as well as fair equality of opportunity to secure public offices and positions and in the economic marketplace. Further, liberal distributive justice requires that all citizens receive the social resources necessary for them to enjoy fair value for their basic political liberties, and to make some meaningful use of their other basic liberties.⁶ These social resources include literacy, numeracy, and a not insignificant degree of cultural, historical, philosophical, political and scientific knowledge. They include also, however, various skills essential to deliberative and critical reasoning. The universal distribution of these skills to some requisite minimum degree is essential to liberal distributive justice. Liberalism aims most generally at securing, the social conditions necessary for each and every citizen to enjoy a meaningful opportunity to lead a good life. Among, these conditions is the capacity of each and every citizen to reflect to some degree critically on the values, commitments and projects constitutive of her life. This follows, first, from the mere fact of human fallibility and, second, from the very idea of leading, a good life. Since all humans are fallible,

⁵The conception of liberal democratic citizenship sketched here is common to many liberal democratic theorists. The language used is generally that of John Rawls. Cf. Rawls, J., *Political Liberalism*, New York: Columbia University Press, 1993.

⁶This conception of liberal distributive justice, as developed by Rawls, is also common to a great number of liberal democratic theorists.

citizens cannot all enjoy a meaningful opportunity to lead a good life unless they each possess the capacity to assess now and again whether they have made some basic error about the value of the life they are living. And to lead a good life, citizens must be able to affirm the values, commitments and projects constitutive of their lives as genuinely their own. That is, they must be able to affirm their life from the inside, so to speak.⁷ But this they will not be able to do unless they are at least familiar with some alternative values, commitments and projects and have learned how reflectively to take at least a minimally critical stance toward their own values, commitments and projects.

To secure liberal distributive justice, then, a liberal democracy must distribute to all citizens a significant amount of knowledge and numerous skills. Given the developmental facts of human beings, this distribution must be accomplished early in life, at a point antecedent in the lives of citizens to the possibility of their genuinely consenting to it. Thus, liberal distributive justice demands a system of compulsory education. Of course, compulsory education may be secured through any number of institutional arrangements. For many reasons which I shall not rehearse here, it must to a large extent be secured in any modern liberal democracy through some sort of formal schooling (which may include home schooling) subject in at least some basic respects to various forms of democratic control.

We have now identified some of the more important features of any system of compulsory education responsive to the demands of justice and social stability in a pluralist liberal democracy.

III. Compulsory Education and Accommodationist Demands.

Obviously, in many modern liberal democracies some social groups committed to one or another comprehensive

⁷For discussion, Cf. Kymlicka, W., *Liberalism, Community and Culture*.

doctrine or way of life will object to a system of compulsory education of the sort sketched above. We may for present purposes safely ignore as uninteresting objections from barbaric, militantly theocratic, or racist social groups with political ambitions. Insofar as their objections arise out of a fundamental hostility to the basic values of liberal democracy, their objections cannot be met save by rehearsing the case for those values. Moreover, insofar as we are committed to the case for those values, we ought not as liberal democratic citizens give ground to those living among us who seek to overthrow or undermine a just liberal democratic political order.

However, in many modern liberal democracies there may be objections to a system of compulsory education of the sort sketched above from social groups that are neither obviously hostile to nor explicitly seek to overthrow or undermine a just liberal democratic political order. Historically, compulsory education has been resisted to varying degrees by Catholics, Hasidic and Ultra-Orthodox Jews, Mormons, Old Order Amish, some evangelical fundamentalist Christian sects, various tribal and ethnic groups indigenous to many liberal democracies, and even some utopian communities. The strongest of accommodationist demands by such groups have rested on claims that the structure, content, or duration of compulsory education, even as delivered through private or parochial schools, conflicts seriously with their comprehensive moral, religious, or philosophic doctrine and/or threatens to undermine the primary social relations among group members and destroy the group's way of life within a few generations.⁸

⁸In addition to the well-known case of *Wisconsin v. Yoder*, discussed and cited in the text below, the Courts have addressed accommodationist demands in a wide range of contexts. Cf. for example, *Mozert v. Hawkins County Board of Education*, 827 F.2d p. 1058 (6th Cir.), cert. den., 484 U.S. (1988), p. 1066 (fundamentalist Christians have no right to have their children excused from reading and discussing the books listed on a standard compulsory reading list, even if the books conflict

Here the case of *Wisconsin v. Yoder* is illustrative.⁹ The Old Order Amish live quiet and withdrawn lives of faith within liberal political societies. They do not seek to employ the coercive power of the state to force their views or way of life on others. Indeed, they generally do not seek or exercise political power. They are generally self-sufficient as a community and law-abiding as individuals. Their way of life, while antiquated and in many ways internally illiberal, strikes many non-Amish citizens as a valuable way of life, even if one they would never choose for themselves. Members of Old Order Amish communities are permitted to and sometimes do leave for other religious communities or for a life within the secular space of the town or city.

with or undermine the doctrinal beliefs or way of life of fundamentalist Christians); *Runyon v. McCrary*, 427 U.S. (1976) p.160 (private schools may not discriminate in admissions or hiring on the basis of race even if they are moved to so discriminate by comprehensive moral, religious, or philosophic commitments); *Ohio Civil Rights Commission v. Dayton*, 477 U.S. (1986), p. 619 (private schools have no right to discriminate in employment on gender grounds, even if they are moved to so discriminate by doctrinal religious commitments). In light of a general judicial unwillingness to excuse from compulsory education the children of those who feel that compulsory education threatens their doctrinal beliefs or way of life, many citizens who feel so threatened by compulsory education in the United States have retreated to what is known as "home schooling." This has given rise to judicial and legislative battles over the right of parents to home school their children and the justifiability and limits of state regulation of home schooling. For discussion see generally, Note, "The Constitutionality of Home Education Statutes," *University of Missouri-Kansas City Law Review* Vol. 55, (1986) p. 69; Note, "Missouri Home Education: Free at Last?" *St. Louis University Public Law Review*, Vol.6, (1987), p. 355; Stocklin-Enright, B., "The Constitutionality of Home Education," *Willamette Law Review*, Vol. 18, (1982), p. 563.

⁹*Wisconsin v. Yoder*, 406 U.S. (1972), p. 205. Recent discussions of the philosophical issues raised in the *Yoder* case include Arneson, R., & Shapiro, I., "Democratic Autonomy and Religious Freedom," and Shelley Burt, "In Defense of *Yoder*: Parental Authority and the Public Schools," both reprinted in *Political Order, NOMOS*, Vol. 38 (Russell Hardin & Ian Shapiro, eds.), New York: NYU Press, 1996.

In the *Yoder* case, members of an Old Order Amish community objected to Wisconsin's system of compulsory education which required their children to attend a state-certified school, public or private, into the high school years. They argued that forcing their children to attend a state-certified high school undermined their children's religious beliefs, endangered their children's salvation (their highest good), strained primary social relations within the group, and threatened the very survival of their community and way of life into future generations. Several experts testified without significant opposition that immersing Old Order Amish children in the curriculum and culture of state-certified high schools would likely lead many Amish children to reject central Amish beliefs and practices and would destroy the community and its way of life within a generation or two. Members of the Old Order Amish community sought to have their children excused not from compulsory education altogether, but rather from compulsory education beyond Grade Eight.¹⁰

How should a liberal democracy respond in a case like the foregoing to accommodationist demands to be excused from compulsory education beyond Grade Eight? Many will have accommodationist intuitions in such a case. And, indeed, the United States Supreme Court reached an accommodationist result in *Yoder*. Yet, the Court's reasoning is troubling. The best way to bring out the problems with the

¹⁰Members of the Old order Amish in *Yoder* argued that salvation requires a life lived exclusively or nearly exclusively within a Christian church community apart from the modern world and its influences. They argued that compulsory high school education, even in a state-certified religious school, encourages competition, intellectual and scientific achievement, critical thinking, self-distinction, worldly success, and living a life within the shared and diverse public space of modern civil society. These values the Amish rejected. The Amish did not seek to have their children excused from compulsory elementary education, for they maintained that learning the "three R's" (reading, writing, and arithmetic) were necessary to life within the Amish community.

Court's reasoning is to review first the potential reasons for thinking that as a matter of political morality a liberal democracy ought to reach an accommodationist result in *Yoder* and cases like it.

IV. Finding a Foothold in for Accommodationist Intuitions.

A. Arguments from Neutrality.

One way to argue for an accommodationist result in cases like *Yoder* is to invoke a liberal principle of neutrality. The power of the state in a liberal democracy, it might be argued, ought not put any social group, comprehensive doctrine, or way of life, at a significant advantage or disadvantage relative to others. Of course, a liberal democracy need not be neutral toward those social groups, comprehensive doctrines, or ways of life hostile to it. Terrorist groups, militantly theocratic doctrines, or ways of life rooted in the systematic and thorough exploitation or oppression of some by others may and ought to be discouraged through state action (within the constraints of justice, of course). Toward groups, doctrines, and ways of life not fundamentally hostile to the essentials of a just liberal democracy, however, state action ought to remain neutral. While it may have been neutral in aim, Wisconsin's system of compulsory education was undeniably nonneutral in its effects, and so it might be argued, it violated a liberal principle of neutrality.

As Rawls has pointed out, arguments of this sort rest on a confusion between two distinct neutrality principles.¹¹ One principle demands a basic social structure neutral in its effects on all social groups, comprehensive doctrines and ways of life not hostile to the essentials of a just liberal democracy. The other demands a basic social structure neutral only in its aim. The accommodationist argument sketched above would appear to rest on a neutrality of effects princi-

¹¹Cf. Rawls, J., *Political op, cit.*, pp. 190-200.

ple. This principle, however, does not belong to liberal democratic political morality.

Even apart from a system of compulsory education, any basic social structure faithful to liberal principles of political justice will inevitably prove nonneutral in its effects on many social groups, comprehensive doctrines and ways of life, some of which may be more or less unopposed to liberal democratic political values. It is true that no liberal democracy can promise neutrality of effects. But this should not count against it, for no conception of justice, liberal or nonliberal, can promise, not to mention deliver, neutrality of effects once it is institutionally embodied.

But, it might be argued, surely the basic social structure of a liberal democracy ought to be nonneutral in its effects on social groups, comprehensive doctrines and ways of life permissible on its own account of political justice. One of the foundational commitments of any liberal democracy, it might be argued, is to a social world maximally diverse with respect to associations, comprehensive doctrines, and ways of life more or less compatible with a liberal democratic political order.

It is true, of course, that we would be right to suspect that something was seriously wrong with a self-described liberal democracy within which there was scant social diversity or within which social diversity was systematically eliminated over time. But what reason would we have to suspect that something was wrong with a self-described liberal democracy within which the degree of social diversity present merely fell short of some supposed maximum?

One might argue that to settle for anything less than a maximally diverse social world would be *unfairly* to privilege some permissible social groups, comprehensive doctrines, or ways of life over others.¹² Thus, the argument goes,

¹²William Galston comes close to defending a version of liberalism aimed at preserving the greatest amount of social diversity compatible with a

insofar as a liberal democracy is committed to fairness, it must commit itself to a principle of neutrality of effects. The problem with this argument is that it presupposes without establishing the superiority of a competing theory of justice.

Liberalism rests on no commitment to the value of a social world maximally diverse within the constraints of a just liberal democracy, and there is no reason to think that it should. Thus, if *unintended* nonneutral effects on permissible social groups, comprehensive doctrines or ways of life are necessarily *unfair*, this needs to be shown. But there is no way to make this showing without simply assuming a superiority of a competing theory of justice. The basic principles of liberal democracy provide no reason for thinking *unfair* the *unintended* nonneutral effects of social institutions, which are aimed at securing the conditions necessary for each and every citizen to enjoy a meaningful opportunity to pursue a good life. Of course, the basic principles of some other theory of justice might provide such a reason, but then we need an argument showing its superiority to liberal democracy. If our commitment to the principles of justice fundamental to liberal democracy survive critical reflection, then it would appear that *unintended* nonneutral effects must, as Rawls puts it, simply be accepted with regret.

While no liberal democracy can or should promise neutrality of effects, all can and should promise neutrality of aim. Within a liberal democratic political order citizens ought not purposefully arrange their basic institutions or adopt laws to favor or encourage, or disfavor or discourage, particular comprehensive doctrines or ways of life not fundamentally hostile to a liberal democratic political order.¹³

functional and enduring liberal democracy. Cf. Galston, W., "Two Concepts of Liberalism," *Ethics*, Vol. 105, (1995), p. 516.

¹³This principle, demanding neutrality of aim, does or ought not prevent citizens from arranging basic social institutions or adopting laws intentionally designed to discourage or disfavor comprehensive doctrines or ways of life fundamentally inconsistent with liberal political justice. Of course, any such institutional arrangements or laws must not violate the

Liberal democratic citizens ought not understand or intentionally use coercive political power, as a tool for promoting or discouraging particular permissible social groups, comprehensive doctrines, or ways of life.

Every liberal democracy ought to be committed to a principle of neutrality of aim. It is not obvious, however, that the citizens of Wisconsin violated this principle in *Yoder*. There was no allegation or evidence that the citizens of Wisconsin aimed through their system of compulsory education at anything, other than liberal distributive justice and the social reproduction of liberal democratic citizenship. Their aim was neutral, and thus a liberal democratic principle of neutrality provides no foothold for accommodationist intuitions in *Yoder*.

B. Arguments from Parental Rights

The idea of parental rights is often invoked as the necessary foothold for accommodationist intuitions in *Yoder* and cases like it.¹⁴ Parents have a right, it is argued, to control and direct the education of their children and to transmit to their children allegiances, doctrinal beliefs and a way of life. So acting is fundamental to many parents' reasonable conception of a good life. Moreover, many parents believe themselves to be under a religious duty to control and direct the education of their children and to raise their children into a particular community and way of life. Thus, if a

basic rights and liberties of citizens. Thus, citizens may use a system of compulsory education to discourage or disfavor doctrines or ways of life committed to bringing about through violence a theocracy or racially pure state. But they must do so without violating the basic rights to freedom of speech and association of those who hold such doctrines.

¹⁴For discussion of parental rights and compulsory education, see Crittendon, B., *Parents, the State, and the Right to Educate*, Melbourne: Melbourne University Press, 1988; Gutmann, A., *Democratic Education*, Princeton: Princeton University Press, 1987. Cf. also the *NOMOS* volume essays by Shelley Burt as well as Richard Arneson and Ian Shapiro cited above.

system of compulsory education is to operate within the demands of justice, it must yield, the argument goes, to the rights of parents in cases of conflict over the education of their children.

Arguments from parental rights generally fail to provide the needed foothold for accommodationist intuitions in cases like *Yoder*. Within a liberal democracy, parents typically do and ought to enjoy a right to control and direct the education of their children, especially during the early years of childhood. This right, however, is neither natural nor fundamental. It is rather a conditional or instrumental right rooted in the reasonable assumption that liberal distributive justice and the social reproduction of liberal democratic citizenship will be most effectively realized if parents are given wide latitude in controlling and directing the education of their children, especially during the early years of childhood. To put it differently, a key ingredient in the system of compulsory education adopted in most liberal democracies is a limited and conditional parental right to control and direct the education of their children. But this means that the idea of parental rights by itself cannot support accommodationist parental demands to withdraw children to any significant degree from a system of compulsory education intended and well-designed to secure only distributive justice and the social reproduction of citizenship. This is especially true in the context of *Yoder* where the issue was not parental rights during the very early years of childhood, when they are strongest, but rather during the high school years.

Many parents, of course, assign great value to directing the education of their children and to raising them into a particular set of doctrinal beliefs or way of life. And there is nothing unreasonable about affirming a conception of the good with respect to which such activity is fundamental. Since the whole point of liberalism is to secure for each and every citizen the social resources necessary to enjoy a meaningful opportunity to lead a good life, it might be argued

that a liberal democracy ought not frustrate and instead ought to accommodate parents in their efforts to secure this reasonable component of their conception of the good.

But this argument misses the mark. The whole point of liberalism is to secure for citizens the social resources necessary to enjoy a meaningful opportunity to lead a good life within a just basic social structure. Parents who assign great value to directing the education of their children or passing on a particular comprehensive doctrine or way of life must undertake to realize this good within the institutional framework of a just basic social structure, which, as we have seen, must include a system of compulsory education. If it proves impossible fully to realize this good within such an institutional context, then parents, like citizens generally, must be prepared either to demonstrate that the institutional context is unfair or otherwise at odds with justice, or otherwise to subordinate some of their desires or to revise their conception of the good.

Of course, religious liberty is fundamental within any liberal democracy. Within liberal democracies citizens enjoy or ought to enjoy an absolute liberty of conscience and freedom of thought as well as the freedom to exercise religious beliefs within the constraints of justice. Now, it is a central doctrinal feature of several religions that parents are duty bound to direct the education of their children and to pass on a particular set of doctrinal beliefs and way of life. This was certainly true of the Amish parents in *Yoder*. Thus, one might argue that accommodationist intuitions in *Yoder* and cases like it gain their necessary foothold in the fact that compulsory education must sometimes give way to the rights of religious parents to exercise their religion, for honoring such rights is constitutive of political justice. Indeed, as we shall see below, the Court in *Yoder* rooted its accommodationist result (wrongly I shall claim) largely in just this soil.

The trouble with this line of argument is that *Yoder* and cases like it do not really present a conflict between the

religious liberty of parents and the demands of a system of compulsory education so much as they present a conflict between a present exercise of religious liberty by parents and the preconditions of any prospective exercise of religious liberty by their children. The Old Order Amish are just one among several well-established groups within the Judeo-Christian-Islamic tradition, as well as other religious traditions, within which parents seek to exercise their religious liberty in a manner which may reasonably be thought to involve denying, their children social resources essential to any meaningful opportunity to exercise their own religious liberty as adults. The conflict in these cases is not fundamentally between the right to religious liberty of parents and the state's interest in compulsory or civic education, as the Court in *Yoder* framed it, but rather between the rights of both parents and of their children to religious liberty.

A liberal democracy ought to resolve this particular conflict by preventing parents from presently exercising their religious liberty in a manner which undermines or substantially threatens to undermine any prospective exercise of religious liberty by their children. All citizens are entitled politically to the basic social resources necessary for them to enjoy the right to religious liberty in a meaningful way. Of course, the right to religious liberty is an empty formalism for any adult who as a child and adolescent is systematically denied knowledge of alternative religious faiths, is denied significant social interaction with members of other religious groups, is encouraged to understand herself solely through membership in her religious community, and is effectively disabled from living outside her religious community.

C. Arguments from Partial Citizenship.

Spinner provides a subtle and illuminating analysis of citizenship which mediates as well as any the tension between particularism and universalism within a pluralist lib-

eral democracy, such as the Amish in *Yoder*, may be regarded as partial rather than full citizens.¹⁵ Partial citizens are full citizens in every formal respect. What distinguishes partial from full citizens is that partial citizens are committed to a doctrine or way of life within which civic or political engagement is fully or near fully rejected. Partial citizens do not seek or exercise political power (they don't vote, run for office, or engage in political advocacy). They do not seek to participate in the institutions of civil society, including labor and capital markets. They make only minimal use of the material and institutional infrastructure of the state within which they reside. They seek simply to be left alone to live their largely illiberal and antimodern way of life in peace. So long as the members of such social groups pose no treats to liberal political justice and so long as group members are not involuntarily subject to serious harms at the hands of others, a liberal political society ought to cut such social groups a wide berth. Spinner suggests that the Court reached the right result in *Yoder*, although he emphasizes the uniqueness of the facts in *Yoder*. Many social groups making accommodationist demands with respect to compulsory education in liberal democracies do, to a significant degree, seek and exercise political power, participate in the institutions of civil society, and make use of the basic material and institutional infrastructure of society. On Spinner's account, their accommodationist demands are less compelling than those of the Amish in *Yoder*.

Spinner provides a subtle and illuminating analysis of citizenship which mediates as well as any the tension between particularism and universalism within a pluralist liberal democracy. Yet, notwithstanding his own tentative conclusions, his analysis does not support reaching an accommodationist result in *Yoder* and cases like it. Suppose Spinner is right that the adult members of the Amish community

¹⁵Cf. Spinner, J., *The Boundaries of Citizenship: Race, Ethnicity and Nationality in the Liberal State*, cited above.

in *Yoder* may be regarded as partial citizens and that there are sometimes good reasons affirmatively to protect partial citizens from unintended nonneutral effects of a just liberal democratic basic social structure. It doesn't follow that there are good reasons to protect the children of such partial citizens from those same effects.

Presumably, the justification for accommodating the adult members of the Amish community rests in large part on the notion that a liberal society ought to respect the reflective choice or judgment of those who wish to withdraw fully or nearly fully from the modern, public world, so long as they impose no involuntary harms on others within their group and pose no threat to public justice and stability. But if this is right, then why should a liberal democracy accommodate those who, without any reflective choice or judgment or perhaps even any capacity for reflective choice or judgment, simply wish to continue undisturbed in their traditional ways? Spinner's analysis provides no reasons for thinking that it should. By itself the idea of partial citizenship provides no reason for immunizing the adult members of the Amish community from some of the nonneutral effects of living in a liberal democracy if they either did not or could not reflectively choose or at least affirm their lives as a partial citizens.

It follows, then, that even if Amish children may be properly regarded as partial citizens, Spinner's analysis provides no reason to excuse them from the demands of compulsory education if they either did not or could not reflectively choose or at least affirm their lives as partial citizens. It is most implausible to suppose, and there was no evidence tendered showing that the twelve year old Amish children in *Yoder* either did or could reflectively choose or affirm their lives as partial citizens. Thus, Spinner's analysis does not support the accommodationist result reached in *Yoder*, or at least it does not by itself, although it may support accommodationist results in other sorts of cases.

D. Arguments From The Necessary Preconditions For Any Good Life.

Will Kymlicka has developed in recent years an argument grounded in the values of liberal democracy which might provide the needed foothold for accommodationist intuitions in *Yoder* and cases like it.¹⁶ Kymlicka starts with the familiar notion that whatever else a liberal democracy is committed to, it is committed to securing for all citizens the social conditions necessary for them to enjoy a meaningful opportunity to lead a good life, or more particularly, to form, revise and rationally pursue a determinate conception of the good which is affirmed or could be affirmed from the inside, so to speak. Among these conditions is a relatively stable horizon of sociocultural identifications. Without such a stable horizon within which to situate or frame reflective judgment and choice, citizens will simply find themselves unable to lead any good life at all. This does not mean that a liberal democracy must somehow seek to immunize social groups from the various institutional forces which inevitably shape, change, and sometimes dissolve their over time. It does mean, however, that a liberal democracy ought to worry about institutional forces which threaten quickly and radically to destroy or decenter the relations and identifications which constitute of the identity of group members. Such forces threaten to leave some or all of the citizen members of the group in question unable to enjoy any meaningful opportunity to pursue a good life. A liberal society ought, then, to avoid or adjust institutional arrangements, even arrangements neutral in aim (such as Wisconsin's system of compulsory education), which might very quickly and radically disrupt the sociocultural identifications of a particular class or group of citizens, assuming the citizens in question pose as a class or group no immediate threat to basic political justice or social stability.

¹⁶Cf. Kymlicka, W., *Liberalism,...* *op. cit.*

This argument is not without its own difficulties.¹⁷ But let us suppose they may be overcome. If so, we have in Kymlicka's argument the foothold needed to argue from the fundamental commitments of liberal democracy to an accommodationist result in *Yoder* and cases like it. Accommodation may be justified where there is compelling evidence that the institutional forces of a liberal democratic basic social structure will so quickly and radically decenter or undermine the primary constitutive relations and identifications of a particular social group that unless immunized from those forces some or all group members will likely find themselves unable to pursue any good life in a meaningful way.

Importantly, the argument here is not limited to adult members of the Amish community. It extends fully to Amish children. Moreover, the argument is not that the Amish way of life is of special value or that Amish citizens are entitled to pursue their way of life even if a just liberal democratic basic social structure must be significantly adjusted to enable them to do so. The argument is that Amish citizens are entitled, as are all citizens, to a basic social structure within which they may enjoy a meaningful opportunity to pursue a good life. But without the capacity for reflective (if not critical) choice and judgment, there is no meaningful opportunity to pursue a good life. And without a relatively stable set of socio-cultural relations and identifications, there is no framework or foundation for and thus no possibility of reflective choice and judgment. Thus, liberal democratic justice demands immunizing members of the Amish community, including child members, from those aspects of the basic social structure which threaten quickly and radically to destroy or de-

¹⁷For criticism of Kymlicka's position, see Kukathas, Ch., "Are There Any Cultural Rights?" *Political Theory*, No 20, (1992), p. 105; Tomasi, J., "Kymlicka, Liberalism and Respect for Cultural Minorities," *Ethics* Vol.105, (1995), p. 580.

center the socio-cultural relations and Identifications constitutive of their-croup identity.

Three points bear mentioning here. First, nothing in Kymlicka's argument suggests that it might sometimes be necessary to excuse members of a social group from every aspect of compulsory education in order to remain faithful to the fundamental commitments of liberal democracy. Second, Kymlicka's argument provides no reason for immunizing members of the Amish community from certain aspects of compulsory education if what it means for individuals to live within the Amish community is never to acquire or to have crushed the capacity to think about fundamental commitments, projects and values in a way sufficient to be able reflectively to choose or affirm them from the inside. Third, assuming that is not what it means for individuals to live within the Amish community, then basic institutions need be adjusted only to the degree necessary to insure that all members of the Amish community enjoy a meaningful opportunity to pursue a good life. Kymlicka provides no reason for thinking that the Amish have a right to be immunized from all or most of the institutional forces which may over time shape, change, and sometimes dissolve the identity of any social group within a liberal democracy.¹⁸

Whether the Court ought to have accommodated the Amish in *Yoder*, then, turns on whether excusing Amish children from the demands of compulsory education after Grade Eight may be plausibly regarded as necessary to insure that Amish children and adults enjoy a meaningful opportunity to Pursue a good life. The Amish did offer evidence that compulsory education after Grade Eight would likely mean the end of their community and way of life within a

¹⁸But here Spinner's notion of (reflectively chosen or affirmed) partial citizenship may be brought into play. Kymlicka and Spinner taken together may provide a framework from which to justify a wide range of accommodationist measures for social groups as fully withdrawn from modern public life as the Amish.

few generations. But it doesn't follow that group members would necessarily find their capacity reflectively to choose or affirm their fundamental commitments, projects and values from the inside so undermined that they would not enjoy a meaningful opportunity to pursue a good life at all. I do not know whether the Amish could have offered credible evidence and sound arguments for this stronger claim. However, when supported by such evidence and arguments, accommodationist demands to be excused from one or another aspect of compulsory education carry significant moral force, regardless of whether the demands come from the Amish or a relevantly similar non-religious social group.

V. The Problematic Reasoning of the Yoder Decision.

Early in its decision, the Court affirmed the compelling interest, indeed the responsibility, of a liberal democratic state to distribute education and training to all citizens in a manner calculated to satisfy liberal distributive justice and to cultivate the capacities, dispositions, virtues, and affections of citizenship.¹⁹ The Court acknowledged the likely nonneutral effects on some social groups of a system of compulsory education well-designed to so distribute education and training. But the Court noted that the desire of parents within such social groups to preserve their way of life, however virtuous, provides by itself no reason to excuse them or their children from a democratically and reasonably regulated system of compulsory education neutral in aim. This much of the Court's reasoning is philosophically well-grounded.

¹⁹Interestingly, there is in the United States no federal constitutional right to an education. There is, however, in most states constitutional right to an education. Cf. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). Article 26.1 of the United Nations' "Declaration of Human Rights" specifies a basic right to education, which must be compulsory at the elementary school level.

The Court also noted that a system of compulsory education must not violate citizens' basic liberties, including freedom of religion. And this is surely correct. The Court went on, however, to identify as the basic conflict in *Yoder* a conflict between the religious liberty of Amish parents and the compelling interest in compulsory education of the body politic. Having so identified the basic conflict in *Yoder*, the Court undertook to determine whether compulsory education into the high school years was the means least restrictive of the religious liberty of Amish parents through which the State might satisfactorily advance its compelling interests. The Court found that compulsory education through Grade Eight was sufficient in *Yoder* to secure those interests. Thus, after Grade Eight, the religious liberty of Amish parents outweighed the State's compelling interests in compulsory education. And so, the Court reached an accommodationist result. While this result will prove consistent with the intuitions and sympathies of many committed to the principles and values of liberal democracy, there are unhappily at least three serious defects in the Court's reasoning.

First, the Court was right to note that the right to religious liberty of Amish parents includes the right to control and direct much of their children's education, including their children's religious education. The Court was wrong to conclude from this, however, that *Yoder* presented fundamentally a conflict between the religious liberty of Amish parents and the State of Wisconsin's compelling interest in compulsory education. What the Court failed to see was that the right to religious liberty of Amish parents could never include the right to control and direct the education of their children in ways calculated or likely to destroy the prospective value to their children of that same religious liberty. But this, arguably, was just what the Amish parents in *Yoder* sought to do. In order to conclude justifiably that *Yoder* presented fundamentally a conflict between the religious

liberty of Amish parents and the State of Wisconsin's compelling interest in compulsory education, the Court would first have had first to conclude that Amish parents did not seek to exercise their religious liberty in ways calculated or likely to destroy the prospective value to their children of that same religious liberty. But this the Court did not do.

Second, the Court relied upon an impoverished conception of the citizen as merely subject, emphasizing that the Amish were generally law-abiding and self-sufficient, and thus good, if non-participatory, citizens. Given this thin conception of citizenship, the Court concluded, not unreasonably, that for the Amish compulsory education through Grade Eight was sufficient to satisfy the state's compelling interest in socially reproducing the capacities, dispositions, virtues and affections of liberal democratic citizenship. But whatever the details, liberal democratic citizenship entails a richer set of capacities, dispositions, virtues and affections. In any modern, pluralist liberal democracy citizens generally must be able and inclined to do far more than simply understand, and meet their basic material needs within, the law. Had the Court relied upon anything like an adequate conception of liberal democratic citizenship, there is good reason to think that it would have concluded that education beyond Grade Eight was necessary for the State of Wisconsin to satisfy its compelling interest in promoting citizenship among, all children, including Amish children, living within its borders.

Third, the Court reduced the kind and amount of education and training to which Amish children were entitled as a matter of political justice to that which was needed to keep them from becoming a burden on society. The State of Wisconsin argued rightly that Amish children were entitled to the kind and amount of education and training, (which they pegged at some high school education) needed to insure a meaningful opportunity to make use of basic rights and liberties, to underwrite in public life the fair value of basic political liberties, and to pursue at least some careers

or ways of life outside the Amish community. The Court took the State to be arguing only that Amish children must be given enough education and training to insure they don't become a social burden. The Court then noted that very few Amish children grow up to leave the Amish community, and that when they do, they rarely become a social burden (by joining the welfare rolls, etc.). The Court concluded that the State had failed to show that compulsory education beyond Grade Eight was necessary to insure that Amish children received that to which they were entitled by liberal distributive justice. Had the Court relied on anything like an adequate understanding of the demands of liberal distributive justice, there is good reason to think it would have concluded that the State could not meet those demands without compulsory education beyond Grade Eight.

Justice Douglas dissented from the Court's accommodationist result in *Yoder*. Ironically, Justice Douglas comes closest in his dissenting opinion to articulating the line or argument which might have justified an accommodationist result in *Yoder*. Justice Douglas argued that the State of Wisconsin had a compelling interest in securing for all its citizens, including Amish children, the social conditions necessary to an autonomous life. This interest, he suggested, could not be secured without compulsory education beyond Grade Eight.

One of the difficulties with Justice Douglas' dissent is that his account of the State's compelling interest in autonomy is somewhat unclear. One possibility is that on his view a liberal democratic state has a compelling interest in specially promoting a Kantian or Millian ideal of the good life as the autonomous life of critical, reflective judgment. If this is Justice Douglas' view, then there is reason to reject not just his assimilationist conclusion, but also the line of argument he suggests for that conclusion. Within a liberal democracy there is no justification for policies or practices aimed at assimilating all citizens to a Kantian or Millian com-

prehensive moral theory or conception of the good life within which autonomy and critical, reflective judgment rank as highest goods.

A second possibility, however, is that on Justice Douglas' view a liberal democratic state has a compelling interest in securing for all its citizens the social conditions minimally necessary for them reflectively to choose or affirm from the inside their fundamental commitments, projects and values, whatever they may be. If this is Justice Douglas' view, then there is no reason to reject the line of argument he suggests in support of his assimilationist conclusion. The line of argument is basically consistent with that developed more fully by Kymlicka.

Suppose this second possibility is Justice Douglas' view. Justice Douglas reached the right result, then, only if there were good reasons for thinking that compulsory education beyond Grade Eight would not have had the unavoidable effect of so rapidly destroying or decentering the primary constitutive social relations and identifications among members of the Amish community that many members of that Community would likely have found themselves unable in any meaningful sense reflectively to choose or affirm from the inside fundamental commitments, projects and values. Unfortunately, neither Justice Douglas nor the Court majority seems to have inquired into this matter.

VI. Conclusion.

Pluralist liberal democracies now face and are likely increasingly to face the need to mediate, both legislatively and judicially, the tension between assimilationist and accommodationist demands in wide range of institutional contexts. I have tried to suggest the kind of analysis appropriate to mediating properly such tensions when they arise in the context of compulsory education. And I have argued that the analysis offered by the United States Supreme Court

in *Yoder* fell far short of the mark. Whether the analysis I offer here will transfer easily and wholly to other institutional contexts, I do not know. I have my doubts. Nevertheless, I hope what I have said here proves of value to those inclined to think through the proper analysis of accommodationist demands in contexts other than compulsory education.

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