Pluralism, Liberal Democracy, and Compulsory Education: Accommodation and Assimilation

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I. Introduction

In recent years, the analysis of justice, pluralism, and social stability in liberal democracies has moved into new territory. Political philosophers and legal theorists have begun to pay serious attention to forms of diversity other than race, class, and gender. Specifically, they have directed their attention to doctrinal moral, religious, and philosophic diversity, on the one hand, and to ethnic, cultural, and national diversity, on the other. To be sure, past political philosophers and legal theorists did not wholly ignore these forms of social diversity. But the current attention focused on them in the United States, Canada, Great Britain, many European nations, Australia, and elsewhere is truly remarkable. There are several reasons for this, and they seem to pull in different directions. This is itself one reason why 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.

One reason for this recent focus on pluralism is that political philosophers and legal theorists have begun in recent years to see more clearly and pay closer attention to the complex relationships between group membership, self-understanding, and the preconditions of leading a good life. Some have argued that as a comprehensive moral theory and as a political philosophy liberalism has historically failed to take adequate account of these relationships. Others have gone further and argued that there is no way for liberalism, as either a comprehensive moral theory or a political philosophy, to take adequate account of these relationships without radical transformation, without becoming something other than liberalism. On this view, an adequate theoretical account of the constitutive social relations within and through which any good life becomes possible will entail abandoning first, liberalism’s foundational theoretical commitment to individual autonomy, and second, liberal political policies and practices that have the effect of assimilating diverse social groups into the singular, comprehensive and highly individualistic moral outlook associated with contemporary liberalism. Others have argued that it is possible for liberalism to take adequate account of the complex relationships between group membership, self-understanding, and the preconditions necessary to a good life without radical transformation or self-annihilation. But even these theorists have begun to raise serious questions about the extent to which some political policies and practices in liberal democracies have been and remain a
threat to diverse forms of social relations or ways of life. It should come as no surprise, then, that ranking high among the hot topics of contemporary political and legal discourse are assimilationist policies and practices of liberal democracies, past and present, even policies and practices nonviolative of basic rights and liberties. These policies and practices are attacked on the grounds that they threaten primary constitutive social relations, purchase a hollow form of social stability or unity at the price of justice, and aim to impose a moral outlook or way of life that is but one of several alternatives compatible with a just and stable liberal political order. Liberal democracies, one emerging consensus suggests, must do a better job of accommodating diversity.

A second reason for the recent focus on pluralism is that 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 historically associated with liberal democracy. In most contemporary liberal democracies social diversity is on the rise, whether in the form of moral, religious, philosophic, ethnic, cultural, or national diversity. So too are 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, politics in many liberal democracies 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 the citizens of liberal democracies deserve more rather than fewer opportunities to participate in political life than they have historically enjoyed, opportunities that may be and increasingly are realized through various new technologies. The primary threat liberal democracies face, for these theorists, arises not out of too much assimilation, but too little. Many of these theorists emphasize that in a liberal democracy distributive economic justice places significant demands on citizens. And if citizens do not feel themselves bound to their fellow citizens, if they do not identify with them in some strong sense, they will resist making the sacrifices necessary to secure distributive justice. 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 substantively rich conception of citizenship, complete with liberal democratic ideals of reciprocity, mutuality, political legitimacy and autonomy, and civic friendship. These thinkers argue for policies and practices, presumably nonviolative of basic rights and liberties, aimed at the social reproduction of citizenship. Liberal democracy, a second emerging consensus suggests, 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 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 that 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 that 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 principled responses to diverse accommodationist demands to be excused to one degree or another from one or more aspects of a system of compulsory education.5

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 socially reproducing 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.6 The 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). The capacities, dispositions, 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. 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 (1) that they are, one and all, free and equal members of a single body politic, (2) that as such they are, one and all, entitled to something like equal concern and respect from the body politic they collectively constitute, (3) that insofar as they and their fellow citizens collectively constitute the body politic, they are, one and all, entitled to equal concern and respect from one another in political life, (4) that they are each obligated as a matter of political morality to perform regularly certain basic tasks of citizenship and to act politically in more ambitious ways whenever necessary to resist serious injustice or in times of constitutional crisis, (5) that there is, as yet, no evidence that the free, open and public exercise of reason among citizens will overcome certain “burdens of judgment” or “reasonable disagreements,” and (6) that there are political consequences to this apparent ineliminability of certain reasonable disagreements under conditions of freedom that every citizen ought to accept. Thus, in a pluralist liberal democracy, there is an argument from stability not just for compulsory education, but for compulsory civic education.

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 as well as positions and jobs 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. 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.
Within liberal democracies, the universal distribution of these skills to some requisite minimum degree is essential to 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, 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.10 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 that 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 certain forms of home schooling) subject to complex forms in institutional control. At the most basic levels, various forms of democratic control ought to dominate. These must be limited, of course, as justified democratic control must always be, by the constraints of basic justice. At intermediate and administrative levels, various forms of parental and professional control ought to dominate.

The foregoing picture of compulsory education remains extremely vague. Yet the picture does reveal in general outline 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. Moreover, it suggests that within any pluralist liberal democracy, compulsory education is likely to generate accommodationist demands from various social groups.

III. Compulsory Education and Accommodationist Demands

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

In many modern liberal democracies, however, 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 Orthodox Jews, Mormons, Old Order Amish, Hutterites, Mennonites, 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 constitutive of their ethnic, cultural, or national group and thus threatens to destroy their group’s way of life within a few generations.11

Here the case of Wisconsin v. Yoder is illustrative.12 The Old Order Amish, like Canadian Hutterites, immigrated from Europe to North America to live quiet and withdrawn lives of faith. Whereas Canadian Hutterites were explicitly promised various forms of accommodation to encourage their immigration, Old Order Amish were apparently not made any explicit promises of accommodation. Historically, however, they have been accommodated to a large degree within the United States, and arguably their immigration to and continued residence in the United States may be viewed as conditional upon the existence and honoring of such historical promises, whether explicit or implicit. Like the Hutterites of Canada, the Old Order Amish wish simply to be left alone. 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, nor do they object to liberal democratic states, so long as they are left alone. They are generally self-sufficient as a community and law-abiding as individuals. Their way of life, although antiquated and in many ways internally illiberal, strikes many non-Amish citizens as a generally valuable way of life, even if one they would never choose for themselves. Members of Old Order Amish communities are formally permitted to and sometimes do leave their community, sometimes for other religious communities (usually Mennonite or comparable communities) and more rarely for a life within the secular space of the town or city.

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 8.\textsuperscript{13}

How should a liberal democracy respond in a case like the foregoing to accommodationist demands to be excused from compulsory education beyond grade 8? Many will have accommodationist intuitions in such a case. And indeed, the U.S. Supreme Court reached an accommodationist result in \textit{Yoder}. Yet the Court’s reasoning is troubling. The best way to bring out the problems with the 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 \textit{Yoder} and cases like it.\textsuperscript{14}

IV. Finding a Foothold for Accommodationist Intuitions

A. Arguments from Neutrality

One way to argue for an accommodationist result in cases like \textit{Yoder} is to invoke a liberal principle of neutrality. The power of the state in a liberal democracy, it might be argued, ought not to 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. Although 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.

Rawls has argued that arguments of this sort rest on a confusion between two distinct neutrality principles.\textsuperscript{15} 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 principle. This principle, however, Rawls argues, 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. 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 institutionally embodied, all conceptions of justice will prove nonneutral in their effects on various comprehensive doctrines or ways of life around which particular social groups organize.

But it might be argued against Rawls that the basic social structure of a liberal democracy surely ought to be nonneutral in its effects on social groups, comprehensive doctrines, and ways of life permissible on its own account of political justice. After all, one of the foundational commitments of any liberal democracy 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 there would be something seriously wrong with a self-described liberal democracy within which there was scant or merely superficial 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 and depth 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. And since a liberal democracy is committed to fairness, it must commit itself to a principle of neutrality of effects. The problem with this argument, Rawls argues, 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 liberal 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 Rawls insists there is no way to make this showing without simply assuming the 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 that 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 survives critical reflection, then, Rawls maintains, unintended nonneutral effects must simply be accepted with regret.

Whereas no liberal democracy can or should promise neutrality of effects, on Rawls’s view, all can and should promise neutrality of aim. Within a liberal democratic political order citizens ought not purposefully to 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. 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.

Thus, Rawls concludes, 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, if Rawls is right, a liberal democratic principle of neutrality of aim provides no foothold for accommodationist intuitions in *Yoder*.

I want to make two points about the foregoing Rawlsian analysis. First, the Supreme Court seems to have recently adopted something like this analysis for the purposes of evaluating accommodationist demands grounded in the First Amendment’s free exercise clause. The Court has indicated that whenever the state can demonstrate a rational basis for a law neutral in aim and of general applicability, the Court will decline to carve out constitutional exemptions for groups making accommodationist demands. The nonneutral effects of laws neutral in aim and of general applicability apparently will no longer trigger the application of the stringent “compelling state interest” test the Court used in *Yoder* and similar accommodationist cases of past decades. Thus, it is unclear that the Court would reach today an accommodationist result if presented again with the facts of *Yoder*. The Court has left to legislative bodies the business of granting or refusing accommodationist demands. For many social groups, this is an unwelcome development.

The second point I want to make is that there is fundamentally something both right and wrong with Rawls’s argument that we must simply accept with regret the nonneutral effects of laws, policies, or practices neutral in aim. Rawls is surely right to reject an across-the-board neutrality-of-effects principle. Once institutionally embodied, all conceptions of justice (and certainly all liberal conceptions of justice) will prove nonneutral in their effects on various comprehensive doctrines and ways of life. Within any just society, some social groups will flourish and endure over successive generations, whereas others will slowly fade away. It doesn’t follow, however, that any social group has been treated unfairly. Thus, agents in a Rawlsian original position would surely reject any principle of political morality demanding that all laws, policies, and practices be fully neutral in their effects.

But agents in a Rawlsian original position would surely demand more than neutrality of aim of the laws, policies, and practices of their liberal democracy. This is, I think, where Rawls’s argument runs off course. Suppose we ask why agents in a Rawlsian original position would affirm a neutrality-of-aim principle. Surely, the answer is that behind a veil of ignorance no agent would be willing to confer the power of the state to fellow citizens without a promise that they would not intentionally use the power
of the state to disadvantage the citizen the agent represents. Each and every agent would regard the intentional imposition of any such disadvantage as unfair, since a law, policy, or practice nonneutral in aim is necessarily a law, policy, or practice that those it disadvantages could have no reason to accept or affirm. Now, it may appear here as if the focal concern for agents in the original position is the aim of laws, policies, or practices of general applicability. But suppose we ask whether agents in the original position would have any reason to reject laws, policies, or practices nonneutral in aim but neutral in their effects. It is not obvious that they would, for it is the effect of being put at a disadvantage relative to others from which agents wish to protect those they represent. But this suggests that liberal principles of justice cannot merely dismiss as unfortunate but inevitable any and all nonneutral effects, the actual experience of being put at a disadvantage relative to others, of laws, policies, or practices, even when they are neutral in aim. Rawlsian liberalism cannot shut itself off to the possibility that laws, policies, or practices neutral in aim but nonneutral in effect may in particular cases generate legitimate accommodationist demands. And this suggests the possibility of finding within Rawlsian liberalism a foothold for accommodationist intuitions in cases like Yoder. Of course, Rawls’s own argument suggests there is no such foothold. But Rawls may be wrong about the implications of his own theory. Of course, if it is possible to argue from Rawlsian liberalism to an accommodationist result in Yoder or any other case, it cannot be merely a matter of deducing an accommodationist result from a general principle proscribing laws, policies, or practices nonneutral in their effects. There are good reasons to reject any such general principle. Whether Rawlsians can justify an accommodationist result in Yoder or any other case depends on whether the particularities of the case provide good liberal reasons for accommodation.

B. Arguments from Parental Rights

Parental rights are often invoked as a good reason for reaching an accommodationist result in Yoder and cases like it. 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 in a particular community and way of life. Thus, if a 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 Yoder and cases like it. 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, in which 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 in 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 to 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.

Here it is worth recalling that from any defensible liberal democratic point of view the family must be regarded as one of the institutional elements of the basic social structure. The family, then, must be subject to political criteria of justice. But not directly. Principles of justice are properly applied only to a basic social structure taken holistically as a system or network of institutions.20

Let us assume that the family will in some form or other figure into the basic social structure of any just liberal democracy. To what extent must the family itself internally honor liberal and democratic values? The answer is that it depends on other features of the basic social structure as well as the facts of psychological and moral development within the family. A just basic social structure might permit a wide range of internally illiberal and undemocratic family structures provided that it included other institutional
mechanisms capable of effectively ensuring the social reproduction of citizenship and that the members of such families each receive what they are entitled to as a matter of liberal distributive justice. To permit internally illiberal and undemocratic family structures in the absence of such mechanisms would be to permit the random and morally irrelevant accident of birth to exclude some citizens from citizenship and liberal distributive justice. If members of the Amish community have a right to live within internally illiberal and undemocratic families, they have that right only to the extent that it is compatible with the social reproduction of citizenship and liberal distributive justice.

It is hard to see how a just liberal democracy could permit internally illiberal and undemocratic forms of family life in the absence of a system of compulsory education aimed at ensuring that the children raised in such families come to regard themselves as citizens, free and equal, and to enjoy that to which they are entitled as a matter of liberal distributive justice. But this means that the children in such families must be taught, among many other things, that they are, politically speaking, equal and free to resist religious authority and that many of the forms of discrimination affirmed within their family or religious community are prohibited in the larger economic, social, and political spheres of the body politic to which they belong. Since there is no reason to think that children living within such families will learn these lessons from their parents or from family life more generally, the task of teaching such children these lessons falls largely to institutions of compulsory education. If it is implausible to think that these lessons could be learned without, say, some high school education, then there is no reason to excuse the children of Amish (or any similarly illiberal and undemocratic) families from compulsory education prior to the completion of some high school education.

The objection is sometimes made here that subjecting the children of such families to compulsory education of the sort sketched above merely undermines the authority of parents within the family and confuses the children, who hear one thing at home and another at school. This objection may have some merit with respect to compulsory education in the very early years of childhood. Assuming that there are good instrumental reasons for the citizens of a liberal democracy to delegate to parents much of the authority over the education of their children, especially in the earlier years of childhood, it would be counterproductive to then turn around and systematically undermine that authority or its efficacy. But this objection loses force in the later years of childhood. Parents have no right continually and exclusively to control and direct the education of their children or to prevent their children from hearing messages at odds with their own beliefs. And children have a right to the education and training necessary for them to enjoy a meaningful opportunity to lead a good life, whether they grow up to live themselves in internally illiberal and undemocratic families or not. If there is no way to satisfy this right without sometimes undermining parental authority or confusing children during the later years of their compulsory education (e.g., the high school years), then that price must simply be accepted.
C. Arguments from Religious Liberty

The right to religious liberty is fundamental within any liberal democracy. Liberal democratic citizens enjoy or ought to enjoy an unlimited liberty of conscience and freedom of thought as well as the freedom to exercise religious beliefs within the constraints of justice. A central doctrinal feature of some religions is that parents are duty bound to direct the education of their children with the aim of passing 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 that may reasonably be thought to involve denying their children social resources, here the benefits and lessons of compulsory education, essential to any meaningful opportunity to exercise their own religious liberty as adults. Where parents seek to deny their children the benefits and lessons of compulsory education so as to ensure that their children lack the social resources that would make it possible for them to question or leave their religious faith or community, then the conflict is not fundamentally between the parents’ right to religious liberty and the state’s interest in compulsory or civic education, but rather between the rights of both parents and 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 that substantially threatens 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. In a liberal democracy, the right to religious liberty entails more than the freedom to live according to one’s religious beliefs without legal constraint. The right to religious liberty is inextricably tied to the right to freedom of conscience and thus to the liberal notion that no life is a good life unless it is (or at least could be) reflectively affirmed from the inside by the person living it. The right to religious liberty is an empty formalism, then, for any adult who as a child and adolescent is systematically denied knowledge of alternative religious faiths as well as any social interaction as a free equal with members of other religious groups, is encouraged to understand herself solely through membership in her religious community and discouraged
from thinking of herself as a citizen, and is effectively disabled through the absence of various forms of social knowledge and marketable skills from living outside her religious community.

Although parents may do a great deal to secure these goods for their children, in a liberal democracy they are under no obligation to do so. But they are under an obligation to permit the body politic to do so through its system of compulsory education. Thus, parents may teach their children about only one religion, may seek to minimize the contact their children have with other religions or persons affirming religious views other than their own, and may emphasize the acquisition of only whatever knowledge and skills are necessary to live within their religious community. But parents may so act toward their children only on the condition that they permit their children to participate in their society’s system of compulsory education.

A just system of compulsory education will include in its curricula materials aimed at familiarizing students with the doctrines and practices of several religions, at encouraging students to interact as free equals in social contexts, real or imagined, independent of their religious community, and at transmitting social knowledge and marketable skills sufficient to enable any student to exit her particular religious community upon reaching legal adulthood. These curricular requirements must be met by all schools within the system of compulsory education, whether private, religious, or public. Indeed, they must be met by any form of home schooling faithful to the demands of liberal justice generally and to securing for successive generations the social resources necessary to any meaningful form of religious liberty.

**D. Arguments from Partial Citizenship**

Jeff Spinner has suggested that members of certain social groups in a liberal democracy, such as the Amish in *Yoder*, may be regarded as partial rather than full citizens. 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 often illiberal and antimodern way of life in peace. So long as the members of such social groups pose no threat 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 (rightly) the uniqueness of the facts in *Yoder*.

Two points bear immediate mention here. First, many of the social groups presently 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, these facts undermine the force of accommodationist demands to withdraw largely or completely from a system of compulsory education, as the Amish demanded in *Yoder*. Second, many of the social groups presently making accommodationist demands with respect to compulsory education in liberal democracies are not demanding to withdraw largely or completely from the system of compulsory education. Rather, they are seeking adjustments to various aspects of compulsory education so that they can participate in the system without sacrifice to other values or commitments constitutive of their group identity or membership. That they participate in the institutions of civil society, the market, and democratic politics in no way undermines these latter sort of accommodationist demands aimed not at withdrawal, but at integration or inclusion on fair terms.

Spinner provides a subtle and illuminating analysis of citizenship that 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 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.
E. 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 that might provide the needed foothold for accommodationist intuitions in *Yoder* and cases like it. 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 that 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 that inevitably shape, change, and sometimes dissolve them over time. It does mean, however, that a liberal democracy ought to worry about institutional forces that threaten quickly and radically to destroy or decenter the fundamental relations and identifications that constitute the societal culture within and through which particular social groups and their members gain an identity and assign value and commit themselves to various projects, commitments, and ends. Such forces threaten to leave some or all of the citizen members of the social group in question unable to enjoy any meaningful opportunity to pursue a good life. A liberal society, then, ought to avoid or adjust institutional arrangements, even arrangements neutral in aim (such as Wisconsin’s system of compulsory education), that might very quickly and radically disrupt the societal culture of a particular class or group of citizens, assuming the citizens in question pose as a class or group with no immediate threat to basic political justice or social stability.

This argument is not without its own difficulties. But let us suppose they may be overcome. If so, then we have a general theoretical framework for considering the diverse accommodationist and sometimes separatist demands made by various social groups within contemporary liberal democracies. Of course, there may be very good reasons within this theoretical framework for treating the demands of recent immigrant social groups differently from those of national minorities. And there may be good reasons for treating the demands of immigrant social groups wanting fairer terms of inclusion or integration differently from those wanting to separate or withdraw from the larger society. Still, we may have in Kymlicka’s general 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 societal culture of a particular and historically present social group that unless immunized from some of those forces, some or all group members will likely find themselves unable to pursue any good life in a meaningful way.
Importantly, this argument 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 societal culture, 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 that threaten quickly and radically to destroy or center the particular societal culture within and through which the Amish constitute and express their identity and live their way of life.

Three points bear mentioning here. First, nothing in the foregoing argument suggests that it might sometimes be necessary to excuse members of a particular social group from every aspect of a just basic social structure, or even a just system of compulsory education, in order to remain faithful to the fundamental commitments of liberal democracy. There are limits to how far a liberal democracy ought to go in accommodating national minorities or other culturally specific social groups. Second, the foregoing 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 this is not what it means for individuals to live within the Amish community, then the foregoing argument suggests that basic institutions need be adjusted only to the degree necessary to ensure that all members of the Amish community enjoy a meaningful opportunity to pursue a good life. By itself the foregoing argument provides no reason for thinking that the Amish have a right to be immunized from all or most of the institutional forces that may over time shape, change, or eventually dissolve the identity of any social group within a liberal democracy.

If the foregoing analysis is correct, then whether the Court ought to have accommodated the Amish in *Yoder* turns on whether excusing Amish children from the demands of compulsory education after grade 8 may be plausibly regarded as necessary to ensure that Amish children and adults enjoy a meaningful opportunity to pursue a good life. The Amish did offer evidence that compulsory education after grade 8 would likely mean the end of their community and way of life within a 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. When supported by such evidence and arguments, however, 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.

F. Arguments from Historical Agreements

There is to consider one final line of argument for accommodation in Yoder and cases like it. It is the argument from historical agreement. As Will Kymlicka has pointed out, some liberal democracies have in the past made explicit accommodationist promises to immigrant groups so as to secure their immigration. Canada, for example, made such promises to the Hutterites so as to secure their immigration to and settlement of the Canadian western frontier. Such promises, when acted upon, constitute a historical agreement between the immigrant group and the liberal democratic body politic. The existence of such an agreement is a morally significant fact. It is perhaps most significant where the agreement substantially motivated the social group to immigrate and where that social group sought and was granted something like the status of Spinner’s “partial citizens.” Such agreements impose prima facie moral obligations and ought, barring other moral considerations, to be honored. Of course, there are today almost always other moral considerations, and it is sometimes less than obvious that a liberal democratic body politic must as a matter of justice honor accommodationist promises made five or six generations earlier under very different circumstances.

This argument has only partial force in Yoder. The Amish do qualify as “partial citizens” under Spinner’s analysis (unlike, for example, Hasidic Jews). But although the Amish desire to withdraw has been accommodated historically in the United States, and although the expectation and actual enjoyment of such accommodation no doubt explains why the Amish immigrated to and continue to reside in the United States, historically the Amish have not entered, to my knowledge, into any agreements with federal, state, or local governments guaranteeing such accommodations. Finally, much has changed since the Amish immigrated and were initially granted various informal accommodations. For example, there is now a system of compulsory education that distributes social resources essential to all but a very few ways of life and conceptions of the good lived by citizens in contemporary liberal democracies. There are, in short, other moral considerations today.

In many ways, the Amish present an atypical accommodationist demand. It is a demand largely to withdraw from the institutions of a just liberal democracy. It is a demand that has historically been honored. And it is a demand by a group that, although internally illiberal and antiquated in its ways, poses no real threat to the stability or unity of any contemporary liberal democracy. These peculiarities are perhaps responsible both for the peculiar reasoning of the Court in Yoder and for the Court’s general
unwillingness since Yoder to extend its analysis in ways that would otherwise seem natural.

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. 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.

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 8 was sufficient in Yoder to secure those interests. Thus, after grade 8, the religious liberty of Amish parents outweighed the state’s compelling interests in compulsory education. And so, the Court reached an accommodationist result. Although 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 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 citi-
zen as merely a subject, emphasizing that the Amish were generally law-
abiding and self-sufficient, and thus good, if nonparticipatory, citizens. 
Given this thin conception of citizenship, the Court concluded, not unre-
asonably, that for the Amish, compulsory education through grade 8 was
sufficient to satisfy the state’s compelling interest in socially reproducing
the capacities, dispositions, virtues, and affections of liberal democratic citi-
zenship. 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 8 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.

Of course, the Court could have distinguished between “partial” and
“full” citizens and the capacities, dispositions, virtues, and affections essen-
tial to each. The Court could then have argued that because the Amish are
“partial” citizens, in their case less education is necessary for the state to
satisfy its compelling interest in the social reproduction of citizenship. This,
however, the Court did not do.

Third, the Court reduced the kind and amount of education and train-
ing 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 ensure 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 ensure
that 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 8 was necessary to ensure 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 8.

Justice William O. Douglas dissented from the Court’s accommodationist
result in *Yoder*. Ironically, Justice Douglas comes closest in his dissenting
opinion to articulating the line of argument that 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 8.

One of the difficulties with Justice Douglas’s 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 continual, critical, self-reflective judgment. If this is Justice Douglas’s view, then he has not justified his assimilationist conclusion. Within a liberal democracy there is no justification for policies or practices aimed at assimilating all citizens into a Kantian or Millian comprehensive moral theory or conception of the good life within which the highest good is autonomy understood as constant, critical, self-reflective judgment.

A second possibility, however, is that on Justice Douglas’s 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’s view, then there is no reason to reject the line of argument he draws upon to reach his assimilationist conclusion. The line of argument is basically consistent with that developed more fully by Kymlicka.

Suppose this second possibility is Justice Douglas’s view. Justice Douglas reached the right result, then, only if there were good reasons for thinking that compulsory education beyond grade 8 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 diverse assimilationist and accommodationist demands in a wide range of institutional contexts. I have tried to identify many of the considerations essential to any 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 U.S. Supreme Court in *Yoder* misses several of these considerations. 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 that what I have said here may prove of some value to those inclined to think through the proper analysis of accommodationist
demands not just in the context of compulsory education, but in other contexts as well.

Notes


3 These reasons range from general moral arguments for the superiority of deliberative models of democracy (within which democratic politics is primarily an exercise of moral reasoning by an autonomous body politic through the free and equal members that constitute it) over market-oriented models (within which democratic politics is primarily a means of aggregating the private preferences of individuals) to historically specific arguments to the effect that only increased citizen political participation can save contemporary liberal democracies from being overrun by the economic forces unleashed within a late-capitalist global economy.


5 These cases include demands that various forms of dress or religious practice be accommodated, that student members of certain social groups be excused from various curricular demands, that special curricular opportunities be made available to student members of certain social groups, and that public school districts be drawn to ensure that particular social groups control their own school district.

6 Although 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., Thomas Bridges, *The Culture of Citizenship* (Albany: State University of New York Press, 1994); William Galston, *Liberal Purposes* (New York: Cambridge University Press, 1991); and Stephen Macedo, *Liberal Virtues* (Oxford: Oxford University Press, 1990).

7 For discussion of the tensions between civic education and liberal legitimacy, see Harry Brighouse, “Civic Education and Liberal Legitimacy,” 108 *Ethics* 719 (1998). Brighouse contends 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 assumptions that 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.

Brighouse’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 that 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.

The conception of liberal democratic citizenship sketched here is common to a great many liberal democratic theorists. The language used is generally that of John Rawls. See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

The conception of liberal distributive justice sketched here is common to a great many liberal democratic theorists. The language used is generally that of John Rawls. See Rawls, *Political Liberalism*.

For one discussion of these two requirements, see Kymlicka, *Multicultural Citizenship*, 80–84.

In addition to the well-known case of *Wisconsin v. Yoder*, discussed and cited in the text below, the courts have addressed diverse accommodationist demands in the educational context. See, for example, *Mozert v. Hawkins County Board of Education*, 827 F.2d 1058 (6th Cir.), cert. den., 484 U.S. 1066 (1988) (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 with or undermine the doctrinal beliefs or way of life of fundamentalist Christians); *Runyon v. McCrary*, 427 U.S. 160 (1976) (private schools may not discriminate in admissions or hiring on the basis of race even if they are moved to do so discriminate by comprehensive moral, religious, or philosophic commitments); *Ohio Civil Rights Commission v. Dayton*, 477 U.S. 619 (1986) (private schools have no right to discriminate in employment on gender grounds, even if they are moved to do so discriminate by doctrinal religious commitments).


*Wisconsin v. Yoder*, 406 U.S. 205 (1972). Recent discussions of the philosophical issues raised in the *Yoder* case include Richard Arneson and Ian Shapiro, “Democratic

Members of the Old Order Amish argued in Yoder 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 Rs” (reading, writing, and arithmetic) was necessary to life within the Amish community.

I should emphasize that, as I discuss below, it is no longer clear that the Court would reach the same result today. See, e.g., Employment Division v. Smith, 494 U.S. 872 (1990) (substituting the weaker “rational basis test” for the stronger “compelling state interest test” when the free exercise clause of the First Amendment is invoked as the constitutional basis for an exemption from an otherwise neutral and generally applicable law); and Flores v. City of Boerne, 521 U.S. 507 (1997).

See Rawls, Political Liberalism, 190–200.


This principle, demanding neutrality of aim, does not 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 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.

See Employment Division v. Smith and City of Boerne v. Flores.


I take this claim to be consistent with the argument Susan Okin develops in Justice, Gender and the Family (New York: Basic Books, 1989). There Okin argues that although principles of justice generally apply to the basic social structure taken as a whole, they must specially apply internally to the family given the role of the family in the psychological and moral development of citizens. Okin’s analysis suggests that if she is wrong about the role of the family in the psychological and moral development of citizens, then perhaps the family need not specially and internally satisfy the principles of justice directly.

Although political philosophers and legal theorists disagree over many of the details of particular accommodation and assimilation issues, there is a general (but not universal) consensus that a liberal state must substantially ensure that no citizen is, in effect, imprisoned within a particular social group or way of life. Thus, William Galston and Will Kymlicka can agree that a liberal state must secure “exit conditions” for all citizens. I agree and would argue that compulsory education of the sort sketched in the text is necessary to secure these exit conditions in a meaningful way. For Galston on “exit conditions,” see “Two Concepts of Liberalism.” For Kymlicka’s view, see Multicultural Citizenship.
22 Will Kymlicka makes a similar point about the liberal ideal of tolerance; see Multicultural Citizenship, 155–58.
24 This appears to be Galston’s view: see “Two Concepts of Liberalism.”
25 See Kymlicka’s Liberalism, Community and Culture and the more recent Multicultural Citizenship.
27 Interestingly, there is in the United States no federal constitutional right to an education. There is, however, in most states a state constitutional right to an education. See 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 that must be compulsory at the elementary school level.
28 Again, it bears emphasis that it is no longer clear that the Court would reach the same result. See Employment Division v. Smith and City of Boerne v. Flores.