

Homeschooling and the Educational Rights of Children: The Case of Kansas

Introduction

In a 1968 decision, United States Supreme Court Justice Abe Fortas paused to note that “[b]y and large, public education in our Nation is committed to the control of state and local authorities.”¹ “By and large” understates things. In comparison to other modern liberal democracies, education in the US is a remarkably decentralized affair. The US Constitution is silent on how the citizens it governs are to be educated, and indeed it has nothing specific to say about children at all. While a degree of federal interest and involvement in educational affairs dates back to the 19th century, the modern Department of Education was established only in 1979 and presents its mission as “supporting” and “promoting” education rather than regulating directly any aspects of schooling.²

This is not to say the law and courts have been silent on educational matters—far from it. Schools may be controlled locally, but education is still constrained by considerable federal case law. But it is telling that the most influential and often discussed federal court cases pertaining to education concern balancing the rights of parents to control their children’s education with the state’s interest in an educated citizenry. These include most notably *Meyers v Nebraska*, *Pierce v Society of Sisters*, *Yoder v Wisconsin*, and *Mozert v Hawkins*. Taken as a whole this case law has on the

¹ *Epperson v. Arkansas*, 393 U.S. 97 (1968).

² A Department of Education was established in 1868, but—quite revealingly—it was dissolved almost immediately amidst “concerns that the Department would exercise too much control over local schools.” US Dept. of Education Website, <https://www2.ed.gov/about/overview/focus/what.html>. Accessed 6/26/2018.

one hand recognized the constitutionality of compulsory schooling laws and the right of schools to impose curriculum requirements over the objection of parents while on the other hand it has ceded fundamental control of children's education to parents. This includes a recognized right to educate children privately and in some narrowly defined circumstances to be exempted from compulsory schooling laws.

Both federal case and statutory law has been much less robust when it comes to defining and promoting the educational interests and rights of children. While the courts have recognized Constitutional protections for children in public schools they have been explicit in stating these are weaker than the rights enjoyed by adults when it comes to due process, free speech, and protection from cruel and unusual punishment.³ While the landmark and much celebrated 1954 decision in *Brown v Board of Education* guarantees protection against discrimination based on race, federal courts have yet to find a Constitutional basis for insisting children get an equal education, an adequate education, or indeed any education at all, lacunae that federal law has done little to fill.⁴

To those concerned about the educational interests of children, things look better at the local level where a patchwork of state laws and local policies mandate that all capable children should arrive at adulthood prepared for college or gainful employment. A wrinkle in all this is the above noted right of parents to opt for private schooling for their children. Per *Pierce*, all states allow private schooling to satisfy the

³ See for example *Tinker v Des Moines* (1969), *Goss v Lopez* (1975), *Ingraham v. Wright* (1977), *New Jersey v. T.L.O.* (1985), *Hazelwood School District v. Kuhlmeier* (1988), and *Vernonia School District v. Acton* (1995).

⁴ Most recently, a federal judge ruled against the claim that something as minimal as “access to literacy”—i.e. the opportunity to attend a school that can at a minimum teach a child to read—is a fundamental Constitutional right. See *Gary B. et al v Richard Synder et al.*

demands of compulsory education laws, but while we might expect it to be the norm that they do so by being held to the same minimal educational standards to which states hold public schools, the reality is rather complicated. The right to private schooling in fact allows parents to choose among a very diverse educational opportunities for their children. Most private schools in the United States are religious and are operated by or closely aligned with specific faith traditions. Many of these are quite forceful in emphasizing their religious identity and basing their curriculum on doctrinal claims of the faith. This can lead to curriculum considerably at odds with educational orthodoxy, and the common wisdom has it that many parents choose such schools for their children in order to initiate them into a conservative religion while avoiding having them exposed to evolutionary theory or liberal ideas about human sexuality in particular. The biggest wild card of all, for reasons that will emerge, is the increasingly popular option of parental homeschooling. To get a better sense of this rather murky picture we will consider the specific case of Kansas.

Kansas Education Law: A Primer

Education law in Kansas falls squarely within the range of what is found across the US. Its state constitution calls for the establishing of public schools and goes a little further than some in specifying a state responsibility to promote specific educational goals. While many details are left to local school districts, the state Department of Education sets curriculum standards detailing what is required for promotion and graduation. State law also requires public schools to go through a regular accreditation process and sets detailed standards for teacher certification.

Kansas statute is also unremarkable in making compulsory school attendance universal:

[E]very parent or person acting as parent in the state of Kansas, who has control over or charge of any child who has reached the age of seven years and is under the age of 18 years...shall require such child to be regularly enrolled in and attend continuously each school year (1) a public school for the duration of the school term...or (2) a private, denominational or parochial school taught by a competent instructor for a period of time which is substantially equivalent to the period of time public school is maintained in the school district in which the private, denominational or parochial school is located.⁵

As this language makes clear, the primary requirements on private schools are that they mirror local public schools in the amount of time students attend, and that classes be taught by “competent” instructors.

The use of public schools as the standard goes further in the case of accredited private schools which are required to meet the same curricular requirements as public schools and to hire teachers certified according to same standards as public school teachers. However, none of these requirements apply to *non-accredited* private schools, and state law does not require a school to be accredited in order for attendance at it to count as satisfying the law. Again, all that is required by law is that a student go to *some* school or other for about the same amount of time as she would go to a public school in a normal year, and that the teachers in the school be competent. Kansas case law has made clear that “competent” does not mean

⁵ KSA 72-1111.

“certified”, so these schools need not hire professionally trained teachers, or even teachers with any particular level of education.

Note too that there are no curricular requirements for private schools *per se*—if they are willing to forgo accreditation, a private school can teach what it likes. And by the same token it can decline to teach what it does not like. It is important to note that this does not mean unaccredited private schools are free to teach nothing at all. As interpreted, KSA 72-1111 holds that if attending a given school is materially equivalent to not going to school at all, then its “students” are truant.⁶ If challenged, a school must be able to provide evidence of a meaningful curriculum, regular testing, competent teaching, and students’ academic progress.

As in many states, homeschooling in Kansas is handled legally within the framework established for unaccredited private education. In order to legally educate their children at home parents must tell the state that they are operating an unaccredited private school in their homes, and they must notify the local school district that their children will be “attending” this school rather than the public school to which they are assigned. The adequacy of the education homeschooled children receive is addressed accordingly. While the state encourages homeschoolers to adhere to its curricular standards and provides resources for parents wishing to do so, the only legal requirements pertain to minimal hours of instruction and competent teaching. It is for the homeschooling parent to document both of these, and while they are encouraged to do so they are not required to except in the sense that they must offer evidence if challenged. As noted, requiring “competent” instructors does not mean

⁶ See for example *In Re Sawyer*, 672 P.2d 1093 (Kan. 1983).

homeschooling parents must have any particular amount of formal education or training.

While the legal realities regarding homeschooling in Kansas may already be enough to alarm those concerned with the educational interests and rights of children, other elements of state law—most of which are not unique to the Sunflower State—need to be noted as well. While the compromise allowing states to operate public schools and parents to seek alternatives prevails at the federal level, Kansas state law tips the balance in the direction of more explicit and substantive parental rights by writing them into state statutes. Kansas law expressly declares that “It shall be the public policy of this state that parents shall retain the fundamental right to exercise primary control over the care and upbringing of their children in their charge.”⁷ More recently, Kansas state law has gone even further in construing parental rights as fundamental liberty rights. A portion of a 2013 Religious Freedom Restoration Act adopted by Kansas recognizes

the fundamental right of every parent to control the care and custody of such parent's minor children, including, but not limited to, control over education, discipline, religious and moral instruction, health, medical care, welfare, place of habitation, counseling and psychological and emotional well-being of such minor children as set forth in the laws and constitution of the state of Kansas and of the United States.⁸

⁷ K.S.A. §38-141(b). The language here reflects a proposed Constitutional Amendment protecting parental rights. The same statute does recognize a child's “the right to protection from abuse and neglect.”

⁸ KSA 60-5305 (l)

Kansas also allows parents to exempt their children from any subject taught in public schools on religious grounds:

No child attending public school in this state shall be required to participate in any activity which is contrary to the religious teachings of the child if a written statement signed by one of the parents or a person acting as parent of the child is filed with the proper authorities of the school attended requesting that the child not be required to participate in such activities and stating the reason for the request.⁹

In conjunction with the state's highly tolerant approach to homeschooling, these parental rights provisions give parents expansive control over their children's education. Outside of treatment that would meet the legal threshold of abuse and neglect or outright educational failure, parents in Kansas can decide for themselves what their children do or do not learn to. As a sizable percentage of homeschooling parents do so for religious reasons, Kansas thus makes it possible for parents to do all they can to instill their own religious convictions while minimizing any challenges that might come by way of unwelcome exposure to competing beliefs. As we will see next, these legal realities and the emphasis on parental rights and authority puts the state of Kansas on one side of a very deep divide separating it from what has become orthodoxy in a lot of recent philosophy of education.

Kansas v the Philosophers

Thinking about children has changed in recent decades, and in some places quite dramatically. While the attitudes towards parental authority enshrined in Kansas

⁹ KSA 72-1111 (e). I do not know the history of this provision but it seems expressly designed to counter *Mozert*.

law remain deeply engrained in American culture, there has been a convergence of work and research in a number of fields that have challenged deeply previously common assumptions. In legal instruments such as the *United Nation Convention of the Rights of the Child*, the *European Convention on Human Rights*, the UK Human Rights Act of 1998, as well as in the laws of a number of individual European countries, the political, religious, and educational rights of children have been dramatically elevated, often at the expense of parental authority. Increasingly, it is no longer possible to begin an analysis of educational or family law in these countries with the presumption that parents have expansive control over their children's upbringing, education, or religious formation.

An impressive number of philosophers have contributed to this evolution of ideas and practices, and education.¹⁰ Something of a consensus has emerged around the following propositions among what I will refer to as 'the philosophers':

- 1) children are individuals who need to be recognized as the moral equals of adults;
- 2) as equals, children are entitled to exercise their own autonomy in deciding what they believe and value;
- 3) the right of children to determine their own beliefs and values limits the freedom of parents to deliberately instill or shape their children's beliefs and values;

¹⁰ I am drawing here on the work of a diverse and large group of thinkers, including Harry Brighthouse and Adam Swift, *Family Values: The Ethics of Parent-Child Relationships*; Princeton: Princeton University Press. (2014); Stephen Law, *The War for Children's Minds*. London: Routledge, (2006); Matthew Clayton, *Justice and Legitimacy in Childrearing*. Oxford: Oxford University Press, (2004); Amy Gutmann, "Children, Paternalism, and Education: A Liberal Argument" *Philosophy and Public Affairs*, 9, 1980; Meira Levison, *The Demands of Liberal Education*, Oxford: Oxford University Press,(1999) and James G. Dwyer, *Religious Schools v Children's Rights*, Ithaca: Cornell University Press, (1998).

- 4) the state's obligation to protect the autonomy of children trumps the limited freedom of parents to shape their children's beliefs and values;
- 5) the state has an obligation to provide each child with an education that will enable her to freely arrive at her own beliefs and values.

As we would expect, there is a lot of disagreement among the philosophers about how to understand these five propositions, especially in regard to 3). Most commentators focus on children arriving at adulthood being capable of autonomous thought—they do not object to parents to raising children within a religious faith, for example, so long their upbringing is not so restricting and doctrinaire to render eventual defection practically or psychologically impossible. Others take a more radical stance and argue the need to respect the autonomy of children *as children* should stop parents from raising their children to believe things reasonable people may reject.¹¹ This would severely limit the right of parents to initiate their children into a given faith while they are children by compelling religious practice or allowing that faith to shape education.

While these differences are important and have significant implications for the educational policies different thinkers support, we can for present purposes put these aside. Even at the level of generality in which they are stated here, these five propositions can be used to urge governments do more to guarantee children an education oriented towards, at a minimum, producing autonomous adults than they traditionally have. These philosophers routinely urge much greater oversight of religious private schooling, including, *a fortiori*, religiously motivated homeschooling. That the

¹¹ See in particular Clayton (2004).

state would be well within its rights to ban all private schooling—and especially homeschooling—is not an uncommon conclusion. Nor are suggestions that if tolerated religious private schooling should not be directive or intended to inculcate specific religious beliefs. For obvious reasons, religiously motivated homeschooling in particular finds few friends here as it can look to be a perfect distillation of all that is objectionable about private education. In short, it takes very little to see how wildly at odds commonly argued limits on parental authority often are with the legal and political realities of a place like Kansas.

The gap between Kansas law and the philosophers is troublesome. There are good reasons to think Kansas law is overly indulgent of homeschooling, and of unaccredited private schools in general, for reasons reflected in the philosophers' position. I also think this literature provides a welcomed corrective to an excessive focus on parental rights at the expense of children's educational interests. Overall, however, I think the philosophers' conclusion frequently are:

- 1) politically impotent and legal non-starters;
- 2) based too often on questionable stereotypes of religious parents;
- 3) philosophically misguided in opposing the respective interests of children and parents in regard to religious education.

A more realistic appraisal of the legal and political realities of education in Kansas, I will argue, support more modest and plausible reforms while diminishing, I hope, the alarm my simple statement of the brute legal facts may have generated. I will take up these three points in turn, spending most of the remainder of this paper on the third.

Kansas to the Philosophers: No One's Listening

Philosophers inclined to endorse the propositions listed above are led, perfectly reasonably, to endorse positions that will not be given a passing thought in a place like Kansas anytime soon. I have in mind in particular suggestions that homeschooling, or even all private schooling, should be banned as well as the weaker but still radical suggestion that all private schools—including those with a forthright religious mission—must provide an education largely mirroring that found in secular public schools. The thinking behind the statutory right of parents to control their children’s education remains too deeply entrenched.¹² More, for two decades now at least, political trends in conservative “red” states such as Kansas in particular have been increasingly supportive of greater educational options for parents to choose between.¹³ There is little political interest in standardizing private education on any grounds, never mind as a push against parental rights. In short, a bill banning homeschooling or private schools outright would be in direct tension with other parts of Kansas statute as well as federal case law—were it to become law it would be struck down in court in short order. Even suggestions that the educational standards to which public schools are held should be applied to all schools as well as homeschooling parents is unlikely to find traction in the current political environment. However lamentable, these are simply the political realities.

¹² See Fineman and Shepherd, “Homeschooling: Choosing Parental Rights Over Children’s Interests”, *University of Baltimore Law Review* 46(1), (2016) for an account of these legal realities. Fineman and Shepherd are deeply disapproving of the case law here, but though they argue that legal grounds exist to rethink some of the controlling decisions, they concede “[t]he concept of ‘parental rights’, which was founded in Supreme Court cases decided in the early part of the twentieth century, stands in the way of state curtailment of homeschooling.” (88)

¹³ See James G. Dwyer, *Vouchers Within Reason: A Child-Centered Approach to Education Reform*, Ithaca: Cornell University Press, (2002) for a disapproving but resigned summary of these trends.

That politicians and jurists are unlikely to be moved by the arguments of philosophers is of course no objection to the philosophical positions being defended. There is something of value, I think, in asking what education should look like in a modern liberal democracy considered in the abstract. If we were designing such a state from scratch, for a people with no history or abiding cultural practices, the recommendations of the philosophers would look very compelling, and this is important. It is also true an American revolution in education would have to start somewhere. But political philosophers and philosophers of education ought also to strive to speak to contemporary issues *in situ* so to speak, by finding ways to address issues in the language of the people whose lives their proposed laws and policies would directly affect, and by presenting arguments that reflect and respect as much as possible currently embraced values. Only if we are convinced that the current legal realities are so wanting that *only* a drastic overhaul could effect meaningful improvements should we settle on such politically implausible remedies.

How bad for children is homeschooling?

How wanting are the legal realities? Answering this questions definitively would require providing answers to difficult empirical questions. As things stand, it is hard to know just what happens in a typical homeschool—the paucity of reporting requirements guarantees that until they draw the attention of social workers, the experiences of homeschooled children will remain private. This makes it hard to judge how academically effective homeschooling is or is not on average, or whether or not homeschooled children are more likely to be abused or suffer neglect, or whether abuse or neglect is more likely to be discovered if children go to public or more

mainstream private schools, or whether homeschool children are likely to suffer from social isolation, and so on. Absent this kind of data, it is difficult to say just how desperately homeschooling needs increased oversight. *A fortiori*, it is difficult to conclude that the current legal framework is radically insufficient, in need of strengthening but fundamentally sound, or working just fine. It is worth noting again, however, that as indulgent of parental preferences as it may seem when it comes to homeschooling, existing Kansas educational law provides the legal grounds for intervention when it is discovered that it reliably fails children, or rises to the threshold of neglect.

Pending real evidence that homeschooling is regularly a vehicle for children's mistreatment or educational neglect, we might look to reforms that would not deeply challenge the existing legal framework. Some obvious proposals suggests themselves. As we have seen, Kansas does require homeschooling parents to meaningfully educate their children, and parents can and have been taken to task if they fail to do this. The worry is less that the state simply does not care that children are educated than that it provides no means by which it can regularly or reliably enforce this expectations when it comes to homeschooling. But simply requiring children to be regularly tested using an instrument designed to measure minimal academic progress would go far in addressing this concern, and such a regimen would not upset the emphasis on parental authority in any obvious way.¹⁴

Does Homeschooling Undermine Children's Autonomy?

¹⁴ Indeed, such regulations exist in a small number of states already.

The paucity of decisive empirical evidence showing private schools or homeschooling are reliably disastrous leads the philosophers to rely on more theoretical considerations in making their case against homeschooling. As noted, one of the biggest concerns among the philosophers is with protecting children's present or (especially) future autonomy, and at first glance this seems to be a serious issue. Autonomy looms large in liberal political thought as a particularly important capacity, and plausibly it is essential to any conception of a life well-lived we may be tempted to endorse. The enormous control parents can wield over what ideas their children are or are not exposed to by homeschooling them raises in the mind of critics all sorts of worries about children being forced into ways of life they have not in any sense chosen for themselves. But for all that, autonomy is not an easy concept to operationalize, and indeed philosophers have trouble even defining it. Too often, I think, the ambiguities attached to our understandings of what it is to be autonomous are exploited in attempts to discredit robust religious education across the board¹⁵

Briefly, many criticisms of religious education depend on an equivocation on what is meant by "autonomy." In order to avoid falling into their own brand of illiberalism these thinkers have to assume an understanding of autonomy that is reasonably uncontroversial, and so acceptable to both the religious citizens of liberal democratic states and the more secular minded. Adopting the Rawlsian language so frequently used in these discussions, the kind of autonomy that the state ought to be in the business of promoting should be defensible using public reason, and should not be

¹⁵ See Arjo (2017), Chapter 2 for a longer treatment of this topic. For additional criticism along the same line, see Shelly Burt, "In Defense of Yodor: Parental Authority and the Public Schools." *Nomos*, 38 (1996) and "The Proper Scope of Parental Authority: Why We Don't Owe Children an 'Open Future'", in *Child, Family and State*, edited by Stephen Macedo and Iris M. Young. New York: New York University Press, 2003.

unduly wedded to any particular comprehensive doctrine.¹⁶ The problem is that this minimal definition does not deliver the desired goods—quite arguably even the Amish are unopposed the educational aims Rawls thinks a liberal state should limit itself to in the way of promoting autonomy. According to Rawls this is a very basic civic education that “prepares children to be fully cooperating members of society and enables them to be self-supporting.”¹⁷ This will hardly suffice to ground arguments against religious education *per se*, as it is amply clear that all manner of religious schooling, including homeschooling, can instill this much. Again, the empirical evidence regarding the general effectiveness of homeschooling is lacking, but it is implausible to suggest that religious homeschooling as such is doomed to fail even in this task.

To indict sectarian education as such, the philosophers must shift to defining autonomy in a particularly strong fashion, which they typically do by appealing to Enlightenment era thinkers while noting that religions such as Christianity and Islam have had problems with all that. Stephen Law, for example, celebrates “Kant’s Enlightenment vision of a society of morally autonomous individuals who dare to apply their own intelligence rather than more-or-less uncritically accept the pronouncements of authority.”¹⁸ Roger Marples insists each child learn “how to live a life in accordance with a script she wrote for herself as opposed to one written for her by her parents,

¹⁶ An exception to the common commitment to political liberalism is Dwyer, who rather refreshingly makes no apologies for advocating a confessional state built on a comprehensive liberalism. His would be a state in which all education would be *de facto* public. Suffice to say such a state would not be Kansas. See. Dwyer (1998).

¹⁷ John Rawls, *Political Liberalism*. New York: Columbia University Press. (1996) p. 199.

¹⁸ Stephen Law, *The War for Children’s Minds*. London: Routledge. (2007) p. 193.

priests or peers.” This, he states, “is inextricably bound up with her being able to flourish as a person.”¹⁹ Once fostering an ability to arrive at one’s most fundamental beliefs and values independently, free from the undue influence of authority and tradition, is made the mark of successful schooling, it is a short step to the conclusion that theistic parents and educators are *as a kind* opposed to “genuine” education. This conclusion is frequently underscored by liberal uses of polemical terms such as “indoctrination” and “brainwashing” to describe what happens to children given a robustly religious education.

The problem is plain. If by “autonomy” these thinkers mean something reasonable religious citizens might reject, it should not be the basis of law and policy binding everyone. Philosophers in particular should be mindful of the many ways in which the plausibility of Kantian moral autonomy might be challenged, and the competing ways in which autonomy might be defined by different philosophical—never mind religious—traditions.²⁰ But if the kind of autonomy at stake is weak enough to pass the lower bar of political liberalism, religious education is hardly the intrinsic threat it is being made out to be. It is very telling how hard it is for these critics to find actual evidence that religious parents or schools typically claim a right to willfully stunt

¹⁹ Roger Marples, “Parents Rights and Educational Provision”, *Studies in Philosophy and Education* 33: 23 (2014).

²⁰ For an argument that draws on Aristotle and St. Thomas Aquinas to suggest that teaching children to embrace the tenets of a moral or religious tradition relatively uncritically *enhances* their later autonomy see Melissa Moschella, *To Whom do Children Belong*, Cambridge: Cambridge University Press, (2016), Chapter 4. For an argument to the same effect drawing on empirical data, see Andrew M. Robinson. “Liberal-Democratic States Should Privilege Parental Efforts to Instill Identities and Values.” *Theory and Research in Education* 15(2), 2017: 145-164.

children’s ability to think or to keep them ignorant of everything outside official doctrine, and all too frequently caricatures and cliches take the place of actual data.²¹

None of this to suggest that religious schools—or by extension religiously motivated homeschoolers—are above reproach. If what happens in the name of religious education indeed relies on cruelties or manipulative methods that leave students intellectually and emotionally crippled, incapable of any semblance of independent thought, it is rightfully condemned and properly proscribed. But as before, it is far from clear that this is either typical of religious education or homeschoolers as such or that the actually existing legal framework of a place like Kansas is insufficient in principle to address such abuses. Kansas statute does not require each child to be educated in fine Kantian fashion, but it would be a gross misreading to suppose it, or the privileging of parental authority it evinces, cedes parents a right to “indoctrinate” or “brainwash” or inflict “education abuse” on their children.

The Source and Limits of Parental Authority: Another Primer

We will turn now to what I think is the crux of the philosophers’ dissatisfaction with the more traditional attitudes about parental authority reflected in education law, which is to the simple fact that the law remains stubbornly “parent centered.” As noted,

²¹ Law relies extensively on a single passage by Rabbi Jonathan Sacks, which he uses three times as an example of an endorsement of illiberal religious teaching. Lamentably, Rabbi Sacks is joined by such familiar characters as ruler wielding nuns and Catholics who misunderstand the doctrine of papal infallibility to mean they have to defer to the Pope in all matters. Martha Fineman and George B. Shepherd deploy a different but equally dubious strategy, which is to conjure an image of the worst homeschooling parents imaginable and point out such people might exist. “It is”, they add, “undeniable that some parents homeschool their children in order to indoctrinate them with extreme views while isolating them from moderate, competing views.” Fineman and Shepherd (2016) pg. 18. Given the range of “some” and the vagueness of “indoctrinate” and “isolate” this probably is undeniable. What this statement does *not* tell us is how prevalent such parents are, or why such “educational abuse” cannot be addressed under existing law if it is truly harmful, or if it cannot, whether reforms to existing laws might suffice given the implausibility of an outright ban.

the objections to private schooling voiced by the philosophers begin with the insistence that children are the moral equals of adults. This fundamental claim drives the demand that the interests of children—and their interests in their (at least future) autonomy in particular—be a primary concern of the state, on par with the autonomy of adults. Even if we put aside worries about protecting children’s autonomy and empirical speculations about the prevalence of abuse, the idea of children’s moral equality might be thought to motivate us to object to allowing parents to use their authority to deliberately shape their children’s religious beliefs to the extent made possible by homeschooling.

The principle of moral equality might tempt us to think that the relationship between parents and children ought to be modeled, as much as possible, on that between equal and competent adults. While the realities of children’s needs necessitates their being raised by adults empowered to act on their behalf, the thinking goes, genuine respect for children as individuals demands that parental authority recognize the same boundaries that exist between autonomous adults. Specifically, choices which in a liberal democracies are reserved to adults—and that certainly includes the choice of what, if any, religion to practice—should be reserved to children as well. Anything less seems to slight their moral standing and individuality. As Dwyer pointedly puts it, if we do not allow adults coercive powers to intervene into the religious beliefs and practices of other adults, why should we allow parents the power to do so with their children? To allow such things, Dwyer argues, is to adopt a decidedly “adult centered” ways understanding of things that, he suggests, “treat children as appendages of their parents, morally and conceptually indistinct from

parents, presumed to have identical interests and rights.”²² Similarly, Fineman and Shepherd identify in the Constitutional jurisprudence on education an assumption that “children [are]...’owned’ by their parents.”²³

In what sense do children ‘belong’ to their parents?

The idea that children “belong” to their parents in the sense of being their property began to fall out of favor in the 17th century with John Locke’s explicit attack on the idea in the *First Treatise on Government* and by now has few defenders of any note.²⁴ Nor would it be easy to find defenders of the claims Dwyer attributes to those who would defend “adult-centered” thinking about child rearing. Melissa Moschella, who offers a detailed and forceful rejection of the popular “Rawlsian” proposals for educational reform while affirming that children do indeed “belong” to their parents, claims without hesitation that “[o]f course, children are not property and do not belong to anyone in that sense.”²⁵ It is also worth noting that the Supreme Court cases which recognize parental rights to control a child’s education identify these as liberty or expressive rights, and not as property rights. What seems to suggest to critics of the legal and cultural status quo that such noxious views are being assumed is, I suspect,

²² Dwyer (1998). See also Clayton (2004).

²³ Fineman and Sheperd (2016) pg. 93.

²⁴ A version of the idea is found in Hobbes, while Locke explicitly targets the view as defended by Sir Robert Filmore. Among contemporary philosophers, the view that children are the property or in some sense a “part” of their parents is defended by Robert Nozick and Jan Narvisan, though in both cases the claim is so thoroughly qualified as to have few of the implications many find so noxious. It is other wise routinely—and in my view very rightly—rejected out of hand.

²⁵ Moschella (2017) pg. xii. Note too that Moschella explicitly confirms children’s moral equality.

a failure to recognize any space between the view that children are property and the view that they are to be treated as fully autonomous individuals.

Towards a Family Centered Model

To appreciate that there is a *via media* available we need to take more seriously the relationship between parents and their children as a specific kind of relationship, one that it is by its nature quite different than any existing between capable adults.²⁶ This relationship is not generic or defined only loosely according to vague conditions. To the contrary, someone is recognized as the parent of a child only when he or she is willing and in a position to play a very specific role in the life of that child.²⁷ That role, in turn, is naturally understood to include at its core a basic and unique responsibility for the child's care and upbringing. Given the cognitive limitations and general immaturity of (small) children, it is widely recognized that living up to the responsibilities of parenthood requires parents to make decisions on their behalf. This in turn necessitates that parents have some manner of control over the daily lives of their sons and daughters. So it is that we can ground parental authority in some basic considerations about the relationship between parents and children as it is commonly understood.

We might call the picture just sketched the Relational Model of the parent/child relationship. As conceived in the Relational Model, parental authority is hardly absolute.

²⁶ I here draw on arguments presented in Arjo (2017) Chpt. 1. Similar arguments are offered by Moschella (2016), though there are important differences and I disagree with a number of her conclusions.

²⁷ There is an ambiguity here, as we also use "parent", "father", "mother", and the like to signal purely a biological relationship. There has been much discussion about the connection between biological parenthood and being a parent in the sense of playing the role of a parent. That is a matter for another time. To be clear, I am not referring here to parenthood as a biological relationship.

Being rooted in responsibilities to children, parental authority will not extend to actions and practices that are harmful to children, or incompatible with their care and successful upbringing. Positively, to the extent we can identify goods children must enjoy if we are to say they have been properly cared for and raised, the Relational Model provides a robust basis for parental duties.

At first glance this may seem to suggest the relationship between parents and children is essential fiduciary, and that parental authority is predicated upon and limited to the needs of children to have their individual interests protected and appreciated. Exactly this idea is widely embraced in contemporary philosophical of education. It is important to appreciate, however, that what is being sketched here grounds parental authority on much broader considerations. Many childhood goods, including many of the most important, are not amenable to a fiduciary analysis because they do not turn on easily discerned individual interests.

Many childhood goods involve experiences and opportunities that are possible only when they are shared or pursued collectively, by the parent and child together, by a larger family as a whole, or by a community of which the family is a part. Some of these may be pursued purely for shared enjoyment, as when a parent and child share a book together. Others may come when significant events are recognized and shared together, such birthdays and graduations, and some may arise when family work through difficulties together, as when a family faces a child's serious illness. Most often, however, such shared endeavors are woven into the fabric of everyday life as parents and children navigate a shared world, attending to one another's needs and

responsibilities and sharing one another's company.²⁸ In such cases, it evinces a deep misunderstanding to suppose there must be a balancing of independent interests, or that cooperation emerges by way of mutual compromise for the sake of individual benefits. Rather, these are time when there is a shared interest that must be pursued collectively as with other collective goods like ensemble musical performances or team sports. It is these contexts and for the sake of such goods, I am suggesting, that legitimate parental authority is more typically and rightfully exercised than it is in contexts that plausibly suggest a fiduciary relationship.²⁹

Before turning back to the matter of religious education, we need to mark one more feature of these goods of childhood, which is that at some point they become controversial. While we can expect broad agreement on some of the things that enrich and enhance a child's life or contribute to her flourishing, liberal democracies are marked here as elsewhere by considerable disagreement. Some of these may reflect matters of tastes and preferences—there are families that enjoy professional sports and those that do not—while other turn on ethically charged disagreements. Hunting remains popular in Kansas, for example, and many people cherish growing up with the sport and learning to hunt with a parent. Of course others (like me) find the sport quite objectionable. In the case of these controversial goods like this one would think the

²⁸ Examples of these would include things like sharing meals, household chores, and care of family pets.

²⁹ It is clear, I hope, that I am sketching a normative picture here. In real life, and in family that are mostly flourishing, things can go wrong, and stresses to family relationships or material difficulties can undermine the collective dimensions of family life. It is in these times that doing right by one's child can feel like a demand to sacrifice one's own interest or well being. Nor am I denying that parents do have responsibilities that mirror or literally are fiduciary duties. Parents should protect a child's health for the child's sake, not just because it benefits the family as a whole. My point is that it would be a very impoverished family if concern for a child's welfare was limited to furthering the child's interests alone.

liberal position would be to urge tolerance and state neutrality. Jointly this would seem to support the conclusion that decisions about such matters is properly left to parents. Parents who value hunting ought to enjoy the freedom to pass on the tradition to their children, while those with moral objections should be free to not allow their own children to hunt even if they want to.

I cannot argue it here, but I would contend that healthy family life is marked by these kinds of goods of childhood. It also seems to me that the education and socialization of a child occurs routinely and seamlessly within and through the pursuit of these kinds of goods. Formal schooling, wherever it happens, will likewise be a part of the shared endeavors that make up a child's overall care and upbringing. It is odd to suppose that when a parent decides to send a child to school it is either for her sake or the child's, and that it is only fortune that leads these two to coincide. Rather, one would hope, a parent's seeks her child's education because it is good for the child and that protecting and promoting what is good for her child is good for her as a parent—that is simply one of the things parents do in the course of seeing to their child's care and upbringing. Unless something has gone seriously wrong, it is neither a case of a parent imposing her will on someone else, or a case of a parent sacrificing her own convictions for the greater good of someone whose needs and interests are separate from and greater than her own.

To see the relevance of these remarks to religious education and the controversies at hand we need to attend to two additional considerations. First, religious education, like education of any sort, will typically be woven in the fabric of family life in the manner I have suggested education and socialization is in general. If it is

even only moderately robust, a child's religious upbringing will be reflected in considerably more than what she is expressly told she should or should not believe. It will be continuous with the range of experiences shaped by the decisions and unreflective practices we rightfully expect all parents to make and engage in daily. Depending on the faith and the diligence and commitment of parents, it could color decisions about food, clothing, entertainment, and so on. Often it will involve induction into a community of like minded families, and of course, it will color the choice parents will quite rightly want to make of where a child should go to school and what she should learn there as well. Here too we should expect—indeed we should demand—that parents do their best to do right by their children.

Religion is also and quite obviously controversial. Whether it is good for children to grow up within a religious faith, and if so which faith, are matters of deep and abiding disagreement. To be consistent with what was argued above, it would seem that the decision to raise a child according to the beliefs and values of a religion should be made by parents. From this perspective, demands that religious homeschooling or religious private schooling be subordinated to the standards of secular education or banned take on a new and I think unflattering light. While proponents present these proposals as identifying a state obligation to protect children from “educational abuse”, placed into a broader context they begin to look intrinsically intrusive and disruptive because they undermine a parent's ability to make decisions that seem part and parcel of everyday parental authority. Save for those parents whose personal convictions just happen to coincide with current educational orthodoxy, the presumption begins to be that parents and children are inherently in conflict when it comes the latter's education,

making the state and parents natural adversaries in turn. This, I would urge, is a conclusion we ought to resist. Putting aside decisions that are demonstrably and uncontroversially destructive of the good that education clearly is for children, parents should be able to exert their authority over controversial educational decisions to a greater degree than anyone else.