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Introduction

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SYMPOSIUM: RELIGIOUS EDUCATION AND THE LIBERAL STATE

INTRODUCTION

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Even a cursory glance at a given day's newspaper headlines suggests that religion and education are a combustible combination.¹ Whether one perceives American education as having embraced a pervasive disrespect for traditional religious belief or as having been victimized by the persistently brazen intrusion of religious dogma, passions are stirred. This comes as little surprise, for the intersection of religion and education implicates our most fervently defended ideals: our conception of life's meaning, and the well-being of our children. On one side of the ideological divide, religion represents the background against which any meaningful educational project must be understood; on the other side, religion represents an anachronistic threat to the child's proper formation.

In much of Europe, this volatility has been the impetus for the modern state to consolidate its power over the articulation and pursuit of educational norms. Whether a mandatory secularist dress code,² or a universalist approach to sex education,³ the brand of liberalism espoused in Europe seems to be premised on minimizing the capacity of religion to cultivate a vision of education that diverges from the state's.

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¹ See, e.g., Pete Shellem, *Dover teachers may present evolution alternative*, HARRISBURG PATRIOT-NEWS, Jan. 6, 2005.

² See Daniel Williams, *Most comply with scarf ban but new French law draws more criticism*, SEATTLE TIMES, Sept. 3, 2004, at A18 (discussing France's new law banning Muslim head coverings in public school).

³ Paul Hutcheon, *Labour 'cave in' on Catholic sex education Ministers' bid to exempt faith schools sparks fury*, SUNDAY HERALD, Jan. 16, 2005, at 1.

Americans cannot feign immunity to such a mindset, as it has deep roots on these shores. Collective impositions of secularism may not have found fertile ground here, but collective impositions of the majority's religious norms have been common. In the nineteenth century, state legislatures driven by anti-Catholic animus enacted blanket prohibitions on government funding of private schools.⁴ In several states, private schooling itself was outlawed.⁵ Such efforts amounted to a de facto educational enshrinement of the dominant Protestant culture, which manifested itself in the public school curriculum.

This majoritarian impulse was checked, at least in the educational sphere, by the Supreme Court's robust conception of due process and free exercise rights as applied to parental decisions related to child-rearing. In *Meyer v. Nebraska*,⁶ the Court struck down a state law banning the teaching of foreign languages to students before they graduated from eighth grade, reasoning that there was insufficient justification for state interference "with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own."⁷ In *Pierce v. Society of Sisters*,⁸ the Court held that the state could not require parents to send their children to public schools, for "[t]he fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only."⁹ Finally, in *Wisconsin v. Yoder*,¹⁰ the Court repelled the state's efforts to compel high school education for Amish children on the ground that such efforts threatened the group's religious liberty, recognizing that a "State's interest in universal education" must be balanced against the reality that "the values of parental direction of the religious upbringing and education of their children in their early and formative years

⁴ See generally Kyle Duncan, *Secularism's Laws: State Blaine Amendments and Religious Persecution*, 72 *FORDHAM L. REV.* 493 (2003); Richard W. Garnett, *The Theology of the Blaine Amendments*, 2 *FIRST AMEND. L. REV.* 45 (2003).

⁵ See *Meyer v. Nebraska*, 262 U.S. 390, 395, 402 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, 529–31 (1925).

⁶ 262 U.S. 390.

⁷ *Id.* at 401.

⁸ 268 U.S. 510.

⁹ *Id.* at 535.

¹⁰ 406 U.S. 205 (1972).

have a high place in our society.”¹¹ Together, this triumvirate has been understood to establish space in which divergent visions of education may be pursued with minimal state intrusion.

Built on this foundation of constitutional protections, the American educational marketplace offers a vast array of options, but only to those families who can afford to pay for them. Driven in part by an effort to extend meaningful educational choice to all students, the school voucher movement has heated up debates over state involvement in religious education. Proponents of religious education generally resist any significantly increased state regulation of private schools, even of those private schools accepting state voucher funds. Others see vouchers as a potential vehicle by which to allow the government to begin regulating the illiberal religious content espoused at traditional Catholic, Muslim, Jewish and evangelical Christian schools. Even religion-friendly politicians see some role for government regulation of voucher schools. They, like many Americans, are uncomfortable allowing a school receiving government funds to deny students admission based on religion, or to fire openly gay teachers, or to teach students that women are subservient to men. Compounding the concern is the perception that young students, lacking the knowledge or authority to exercise authentic educational choice themselves, are best served by the imposition of state standards.

The school vouchers debate thus leads to more fundamental questions about religion and education in this country. Should the provision of education proceed in keeping with a marketplace model, maximizing parents' freedom of choice among a full range of pedagogical, religious, and ideological approaches? Or do children's own interests demand that the state place limits on the educational choices available to parents? Are there certain non-negotiable educational norms mandated by our collective notions of individual autonomy and equality? If so, to what extent are these norms inconsistent with the values inculcated within the long educational traditions of this country's faith communities?

This symposium is premised on the belief that such questions can best be answered by straightforward engagement

¹¹ *Id.* at 213–14.

with the views on education espoused by our various faith communities, and that these views are presented at their most authentic through the lens offered by the understanding and experience of the community's own members. The robust articulation of the various strands of religious education, in turn, facilitates more meaningful exploration of modern liberalism's expectations. The exercise is not premised on the presumed validity of liberal norms, but on the importance of understanding the relationship between liberal and religious educational norms.

Seen in this light, the following essays are best seen as part of a broader conversation aimed at deepening our common understanding of education's aims. The conversation ideally will multiply the points of connection across our red-blue divide, but short of that, value is to be found in a richer, more nuanced disagreement. Rather than talking at each other from afar in language unfamiliar, often unrecognizable, the participants in this symposium have brought their distinct worldviews to bear on a single task: articulating—in a normative, aspirational sense—the relationship between religious education and the liberal state.

The symposium centers on the work of James Dwyer, whose skepticism toward a reflexive embrace of parental rights has opened up new fronts in the debate over religion and education.¹² Building on a Rawlsian understanding of liberalism, Dwyer has constructed a theoretical framework for the proposition that the state must take a more aggressive role in protecting children's well-being, and that such well-being must embody certain universally applicable ideals of human flourishing, regardless of the religious convictions that may hold sway over child-rearing decisions in a given family. Unlike many liberal theorists, Dwyer welcomes—indeed demands—the widespread implementation of school vouchers, as he recognizes their potential to improve the quality of the secular education provided at the many religious schools that currently lack adequate resources. Dwyer also sees the regulatory strings accompanying vouchers as playing a valuable role in ensuring that children are not precluded from meaningful self-

¹² See, e.g., JAMES G. DWYER, *VOUCHERS WITHIN REASON: A CHILD-CENTERED APPROACH TO EDUCATION REFORM* (2002); JAMES G. DWYER, *RELIGIOUS SCHOOLS V. CHILDREN'S RIGHTS* (1998); James G. Dwyer, *School Vouchers: Inviting the Public Into the Religious Square*, 42 WM. & MARY L. REV. 963 (2001).

development simply by the accident of their birth into a family that rejects the educational promises of modern liberalism.

Dwyer's proposition, of course, has not been met with open arms in all circles. Critics insist that Dwyer's vision threatens to elevate a distant, faceless state bureaucracy over the intimacy and immediacy of parental love as the locus of child-rearing authority. Others claim that Dwyer's secularized conception of a child's best interests reflects an eviscerated understanding of the human person, and that his argument that the healthy formation of children is compromised in some religious traditions emanates from a caricature of religious education. The symposium's participants now have the opportunity to supplement Dwyer's portrayal of liberalism's expectations of religious education with their own understandings of religion's expectations of education.

Michael Scaperlanda, writing from the Roman Catholic tradition, argues that Dwyer's framework is grounded in anthropological presumptions that ignore the spiritual dimension of the human person. He extols the virtues of Catholic education as deriving from a holistic conception of the person, embracing and shaping body, mind, and spirit. By marginalizing the educational relevance of the spiritual, Scaperlanda fears that Dwyer's brand of liberalism stands to produce children who are disconnected from their true selves.

David Smolin sets out the requirements and objectives of a sound education from the perspective of evangelical Christianity. One obvious source of tension with modern liberalism is evangelicalism's covenantal approach to child-raising, under which parents and their chosen agents are charged by God with teaching children self-mastery through the enforcement of fixed moral and ethical norms. Smolin sees the viability of this approach threatened by Dwyer's call for the state to ensure each child's moral autonomy. He finds Dwyer's secularist framework to be more than inhospitable to the evangelical vision; he takes it as a call for cultural genocide.

Islam, in Asma Afsaruddin's view, has a rich educational tradition that in many ways shares liberalism's emphasis on critical thinking skills. Buttressed by a sweeping historical overview, Afsaruddin suggests that liberal values such as tolerance, pluralism, and equality are evident in the Islamic tradition, and provide a basis for optimism going forward. In

this sense, Afsaruddin seeks not to challenge the substance of the educational values articulated by modern liberalism, but instead implicitly questions the premise that such values need to be transplanted from outside the Islamic tradition.

Michael Broyde emphasizes Judaism's conception of education as a lifelong obligation, equally applicable to children and adults. Modern liberalism, by contrast, appears preoccupied with the education of children as a matter of right, eviscerating the demands that education rightfully places on its citizenry. Rather than extracting from the Jewish tradition a defensive stance toward the state, Broyde mines his tradition for standards that call the state and its citizenry to expect even more from education.

Finally, Dwyer responds to these religious perspectives by revisiting his call for certain non-negotiable educational norms to be articulated and enforced by the state. He focuses his attention on the absence of compelling justifications for allowing parents' religiously shaped preferences to deprive children of the tools necessary to develop their own autonomy. Emphasizing that his approach does not call for transforming children into "creatures of the state," Dwyer recasts parental authority as a fiduciary relationship akin to stewardship, rather than an absolutist exercise of constitutionally protected power. At the boundaries, parental authority is checked by state authority. The objective, in Dwyer's view, is not to produce generations of state-approved, cookie-cutter children, but to ensure that children have the opportunity to define and pursue their own conceptions of the good.

None of the essays appearing in this volume are inconsistent with the marketplace model of education. The essays suggest that the authors would not deny the value of offering a full range of educational choices when it comes to the development of young people. Disagreements arise not so much as to the importance of choice, but as to who should exercise the choice. One vision of education maintains that parents are the relevant decision-makers because the child's best interests are intimately connected to the parents' understanding of the child's best interests, and that the parents are entitled to select an educational path that leads the child in a direction that is consistent with the family's worldview, beliefs, and traditions. The other view discounts familial context in constructing a vision

of the child's best interests, focusing on the child's prerogative to control her own destiny, and insists that the child must be equipped with the skills and opportunities to exercise a meaningful choice whether or not to follow in the ways of her parents.

The complication underlying this debate, of course, arises from the fact that children cannot identify or articulate their own interests, much less discern how those interests relate to a particular school's environment and curriculum. As such, decision-making authority must rest somewhere: the current debate turns on the respective roles we envision for parents and for the state. In the end, the greater the degree of parental liberty in the educational sphere, the greater sway religion may have over the shaping of children; to the extent that the state provides boundaries on education, religion is not left out of the equation, but its role is circumscribed by liberal norms.

By no means does this symposium purport to present an easy or obvious bridge between these perspectives; its aspiration is simply to provide a deeper understanding of the debate, and a richer appreciation of its stakes.

