

Should the State Fund Religious Schools?

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ABSTRACT *In this article, I make a philosophical case for the state to fund religious schools. Ultimately, I shall argue that the state has an obligation to fund and provide oversight of all schools irrespective of their religious or non-religious character. The education of children is in the public interest and therefore the state must assume its responsibility to its future citizens to ensure that they receive a quality education. Still, while both religious schools and the polity have much to be gained from direct funding, I will show that parents and administrators of these schools may have reasons to be diffident toward the state and its hypothetical interference. While the focus of the paper is primarily on the American educational context, the philosophical questions related to state funding and oversight of religious schools transcend any one national context.*

Notwithstanding a broad coalition of choice advocates in American education, political appeals to state funding for religious schools generally meet an icy reception. Constitutional matters are only the proverbial tip of the iceberg. Should we not expect that funding and its corresponding oversight will alter the character of religious schools? Assuming changes may occur, are they attributable to funding or are there other pertinent factors that might explain them? Need one worry about the state sanctioning various forms of unjustifiable discrimination when one considers that religious schools routinely make hiring decisions on the basis of doctrinal beliefs? Finally, are not religious schools in the United States *already* subject to state oversight, thus rendering the concern extraneous?

It is true that religious schools are already accountable in most American states in important ways. The legal basis for this minimal oversight begins with the *Pierce* decision,¹ an Oregon Supreme Court case that upheld the Fourteenth Amendment in guaranteeing equal protection and opportunity to parents in making discretionary choices regarding the type of school their children ought to attend. *Pierce's* ruling repudiated 1922 legislation that demanded compulsory public schooling of all Oregon children of school-attending age and countered that 'the child is not the mere creature of the State'. However, *Pierce* did not give parents *carte blanche* in directing their children's education. Indeed, its signers argued, 'Liberty of all is subject to reasonable conditions deemed essential by the governing body to the safety, health, peace, good order and morals of the community'. The decision further stipulated that the state reserves the right to mandate some schooling and to regulate schools to ensure that children are provided an adequate service. Even so, the boldness of *Pierce* had been attenuated within a few years² and today its import is widely understood to mean simply that the state does not have a monopoly in socializing the young to citizenship. Accordingly, state oversight of religious schools has been minimal in most of the eighty years since. Specifically,

oversight has largely been limited to: mandatory attendance, health and safety adherence, financial reporting requirements, and compliance with non-discrimination laws. Many states also impose requirements on the length of the school year, teacher qualification and curriculum content.

Yet, beyond the few aforementioned items, there is virtually no state interference in private education unless the school actively seeks accreditation (and this, as in other matters — e.g. credentialing teachers, determining completion criteria, reporting performance data — falls entirely to *individual* states). This is because academic compliance is typically voluntary and self-reported. Thus while the majority of religious schools use textbooks widely in circulation in public schools and endeavour to maintain rigorous academic standards (knowing that parents may opt to put their children in other schools), there is no hard and fast rule requiring it. The analogy is imperfect but one could say that private schools operate rather like large corporations which announce that they will maintain environmentally responsible practices without pressure or sanction from citizen action groups and the Occupational Safety and Hazard Administration (OSHA). Many will, but we may also safely assume that others will not.

Conversely, state funding and oversight of religious schools is normal in Europe. This does not, however, mean there is a consensus concerning the defensibility of such funding. Indeed, some religious schools (often but not always Islamic ones) are singled out as just the type of school the state ought *not* to support. Nevertheless, in most Western countries the state takes a central role in governing and funding religious schools. In some countries education is highly centralized (e.g. the Netherlands), regionalized (e.g. Belgium) or reflects the requirements of both local and national authorities (e.g. Britain). In these same countries, some religious schools have been historically privileged. Yet as the reach of state funding has slowly extended to include Christian minority (e.g. Greek Orthodox, Adventist) and non-Christian groups (e.g. Sikh, Hindu), many of their religious schools receive varying amounts of state funding and oversight (*a*) as a matter of constitutional even-handedness and (*b*) on the understanding that religious schools are an important means of recognizing parental choice in education.

So the United States is an exception. Each state government funds its own schools according to its constitutional standards. The federal government assumes a tiny fraction of the financial burden of public schooling and none, strictly speaking, of the burden of religious schooling. However, as I will argue, there are strong reasons for the state³ to take a more central role in funding education in keeping with the democratic educational ideal of equal opportunity. The central question I am asking in this article is whether, in light of certain philosophical and ethical considerations, the state ought to fund religious schools in the United States in light of some reflections on the experience of other countries.

There are many arguments for funding religious schools. Here are two: pluralism, which allows for the exercise of one's conscience, must also allow parents the prerogative to choose the type of school their child attends provided these choices enhance the interests of children. Yet while intuitively plausible, the claim overlooks the facts that many parents, and *a fortiori* many schools, do not do well by their children and their interests are not enhanced. The second argues from empirical research showing that some religious schools have produced impressive academic success and civic preparedness in their students compared to some public schools. To these arguments we might add

the important judicial precedents and constitutional guarantees that allow religious schools to exist and for parents to send their children there. For the purposes of my argument, I will accept both arguments as well as the judicial basis for religious schools. I will argue that:

- The refusal of the state to provide funding and oversight is to beg the question concerning why it is allowable for parents to choose these schools for their children in the first place, particularly if some of them fail to educate children adequately or militate against the public good (e.g. through indoctrination or decidedly anti-civic commitments).
- Second, the education of *all* children is in the public interest⁴ and therefore the state must assume its responsibility to its future citizens to ensure that they receive a quality education. Quality education goes beyond the three R's and a capacity for economic self-reliance; it also entails facilitating a capacity for reasonableness and autonomy.

Reasonableness describes those inclined to be fair, sensible and proportionate in their exercise of rationality. The absence of reasonableness signals the collapse of dialogue and the conditions necessary for most meaningful forms of social cooperation. Therefore, reasonableness is necessary in order to ensure legitimacy. Autonomy matters because it describes individuals able to reflect upon freely chosen commitments and the actions that derive from them. Moreover, autonomous selves are those who possess the capacity to make evaluative judgments in light of counterfactual evidence and are capable of revising their views if and when there is warrant for doing so. Let me be clear: autonomy per se is not the ultimate aim. Yet one need not personally value autonomy as an end in itself for it to have important instrumental value conducive to human flourishing and identifying with a way of life from the inside.⁵

In what follows, I will argue that the state has an obligation to fund and provide oversight of *all* schools that are allowed to operate, irrespective of their religious or non-religious character. Equal educational opportunities cannot be left to private interests or charitable good will. A state concerned with fairness and equity must, in the final analysis, act as guarantor of these provisions if the children of the less advantaged or the inordinately doctrinaire are to have access to both competitive (e.g. jobs) and non-competitive (e.g. satisfying pursuits of various kinds) goods. The state has these responsibilities because, as Harry Brighouse notes:

Morally, the state is an agent for all members of society. Above all, it delivers on the obligations we all have toward each other, especially toward strangers. The state structures our interactions with one another, and a just state structures them justly.⁶

Contestable legal constraints in no way absolve the state of its ethical responsibilities. (I will leave to more qualified persons the constitutional analysis in order to focus exclusively on normative claims.)

While my arguments call for the funding and oversight of religious schools, this will depend in no small way on a more equitable method of funding *public* schools. Further, though I will argue in favour of state funding and oversight of religious schools, I will take care to show how the feasibility of my proposals depends on a number of relevant empirical realities. For example, parents and administrators of religious schools may

have reasons to be diffident toward the state and its hypothetical oversight. Because certain conditions may fluctuate or hinder their implementation, my conclusions — for the moment — must be a kind of thought experiment, though they are not as far-fetched as some would like to think.

Finally, while my arguments have particular salience for the United States and its almost unique conception of church and state separation, my conclusions have universal relevance and applicability. Thus, the philosophical questions related to state funding and oversight of religious schools transcend any one national context.

Why the State Should Fund Religious Schools

Perhaps the most common moral argument to be made for state funding of religious schools is that freedom of conscience requires it. The fact is that many parents want their children to enjoy an education with a religious or spiritual dimension. If parents are to have the liberty to choose religious schooling for their children (on the assumption that basic civic requirements are met), the justification for the exercise of this liberty rests, at least in part, on the great importance attached to freedom of conscience and the interest that parents have in transmitting their most fervently held values to their children. The capacity to exercise one's liberty to send a child to a religious school should not turn on something morally arbitrary from the standpoint of freedom of conscience, *viz.*, whether parents have the money to afford it. Dictates of conscience should not hang on the size of one's pocketbook.

Now if accountability of schools were principally about the educational opportunities of the parents, this argument would wield greater force. Yet what is at issue here is the quality of education that children deserve, not the appeasement of parental preferences. Placating parents will be particularly contentious when schools are chosen in order to reinforce the values of the parent, as is often the case with selection of religious schools. My concern, however, lies with equity not for the benefit of the parent but for the *welfare of the child*.⁷ The interests of children are not always best served by the convictions parents espouse or the choices that derive from them. We must look elsewhere for more compelling arguments.

As I see it, funding and oversight ought to be extended to religious schools for the following reasons. First, education supplies intrinsic benefits, among which is the capacity for autonomy whereby one may freely form or adopt a conception of the good, thereby contributing to personal wellbeing. Second, education, like health, is vital to seizing worthwhile life opportunities.⁸ These are its instrumental benefits. Yet opportunities are unevenly distributed among society's members owing to disparities in ability, effort, prejudice and wealth. Therefore, educational justice requires that the state provide basic educational opportunities to all children irrespective of social class background or ability, knowing that opportunities are normally contingent on the enabling effects education typically affords. Thus with a sufficient amount and quality of education one may take up meaningful vocational pursuits and forms of leisure as well as the relationships that derive from these. Third, education is also a prerequisite to achieving an enlightened public, and such a public is infinitely better equipped to sustain the democratic arrangements a free society affords. Hence, education supplies individuals with the capacity to meet the various minimal demands that citizenship requires.

Should the state provide funding and oversight of religious schools there would likely be several effects. First, the availability of sectarian schools known for their decidedly intolerant views and indoctrinatory practices would be dramatically reduced. Second, it is not inconceivable that more non-religious parents interested in their children's autonomy (for the purpose of interacting with those of different perspectives) may be interested to use religious schools, thereby diversifying the student body.⁹ The result is likely to be more interaction between children of different backgrounds, though of course the quality of that interaction will matter infinitely more than interaction *tout court*. More opportunities for religious and non-religious children to interact may or may not foster higher rates of autonomy, reasonableness and tolerance, but such an arrangement is certainly more likely to result in the breakdown of stereotypes and misunderstandings that may lead to mistrust, religious segregation or conflict.¹⁰

Third, equitable state involvement (which includes correcting the vastly unequal funding problem in American public schools) is likely to stabilize and more equally distribute the quality of education in schools. This cannot be left solely to the individual states to resolve. The federal government, which funds a paltry 7% of American education, can not simply issue achievement mandates through inducement schemes of some kind. Further, the state has an obligation to do more than merely tighten the monitoring procedures for overseeing the allocation of school funds.¹¹ Of course, equitable funding, while it is a necessary start, does not guarantee comparable outcomes. Well-trained and committed staff, state-of-the-art facilities, and curricular materials will not ensure positive educational results. Too many other factors come into play, notably racial stratification in society (too often reflected in the schools themselves), poverty (thus influencing preference adaptation and social aspirations) and the low educational attainment (thus affecting parenting styles and employment prospects) of parents and their children.

Nevertheless, the state must demonstrate that it has the best interests of all children at heart, and, in light of the above, the state shirks its responsibility to children in religious schools if these schools enjoy a *bona fide* legal status without corresponding oversight. To not hold schools accountable that the state permits its children to attend is to show unmistakable disregard for the academic and socialization outcomes these schools provide. Religious schools can both be funded as a matter of equity and be held to reasonable requirements which ensure that as few schools as possible are retreating from their responsibilities to educate future citizens for autonomy and reasonableness but also economic self-reliance.

Legitimacy and Oversight

In order for state oversight to have any teeth, the United States must first have a satisfactory system of school funding and regulation, one that has oversight in curricular and pedagogical matters but also that honours the basic requirements of legitimacy. Let me explain what I mean by these.

Legitimacy

By *legitimacy* I mean soliciting the willing participation of a society's reasonable members. Reasonable persons would be those who are amenable to the burdens of

judgment and reciprocity, which means they are 'disposed to propose fair terms of cooperation to others, to settle differences in mutually acceptable ways, and to abide by agreed terms of cooperation so long as others are prepared to do likewise'.¹² Obviously a state eager to win the approval of its constitutional norms and policies will do more than simply *avoid* coercive action; an absence of coercion describes only a minimalist conception of legitimacy. Particularly if the state is to hold religious schools to account for evidence of reasonableness and autonomy, it must provide publicly acceptable reasons for doing so. Religious or not, reasonable persons deserve nothing less. If the state meets the demands of legitimacy (and this need not require a consensus, but merely compelling reasons to which the majority assent),¹³ its intervening role will be justified in the maintenance of schools in ways that do not usurp the duties and prerogatives of parents. Legitimacy thus secured, the state must fund religious schools directly and provide the corresponding oversight needed to ensure that certain educational goals are being met.

Oversight

By *oversight* I mean a system of accountability that would equitably allocate the funds and governance for staffing and maintaining the general mechanisms necessary for safety, quality of learning and self-reliance. Quality of learning and self-reliance naturally imply developing a capacity for autonomy and reasonableness.

As I see it, oversight has two different dimensions. The first concerns both the hiring procedures and the certification requirements that schools must adhere to if they are to receive state money directly. At first glance it appears rather straightforward that the government would be able to carefully regulate the terms under which religious schools could hire and terminate employees. Cases such as *Bob Jones University v. United States*, 461 U.S. 574 (1983) have set important precedents that uphold Civil Rights legislation, prohibiting overt discrimination that obstructs equal opportunity. Indeed, the state's interest in eradicating discrimination in employment may override free exercise claims.¹⁴ Religiously based employment requirements, like all other employment requirements, which function as a means of carrying out status discrimination are forbidden,¹⁵ and religious schools can be held to this.¹⁶ Constitutional protections are only one of the considerations one must take under advisement. Other interests must be balanced as well, including the duty-prerogative that parents have to guide their children's education, and, to my immediate purposes here, the compelling educational interests of the state, which include a well-informed and reasonable public.

More controversially, the second dimension of oversight concerns the need for the state to regulate and control the *actual operation* of religious schools, including in most classroom subjects the number of hours and precise content of its instruction. (The state need not regulate religious content except where such instruction is found to promote bigotry, sedition or barefaced intolerance or where evidence points to physical or psychological harms or violations of the free exercise of individual conscience. In these cases, the state must follow the dictates of judicial precedent and civil rights legislation in seeking tolerance, equal protection and equal opportunity¹⁷ although in some cases it may be necessary to close the school.)¹⁸ Private schools have interests that generally coincide with the interests of parents, and it seems accurate to say that the individual interests of parents acting on behalf of their own children will not always

suffice to meet broader societal interests. What are these interests exactly? Walter Feinberg summarizes what some of these are:

Public schools are engaged in shaping and reshaping the citizen base of the nation. They are responsible in a way that parents are not¹⁹ in passing on the basic outlooks, values, and skills required to function in a self-forming democratic community, and democracy requires that the agents of this reproduction ultimately be accountable to a representative citizen body.²⁰

To the extent that society is committed to providing its future leaders with the tools to appropriately engage with democratic values, philosophical liberals maintain that public schools are the locus where these responsibilities are best fostered. The trouble with this description is that it describes not a reality but an *ideal*.

Now ideals serve an important regulative function. They describe goods and aims to which we may reasonably aspire. Therefore, I am not suggesting that ideals are not important, or that we ought to be constrained by less-than-ideal realities. Yet, the idealized portrait of public schools assumes three things: (a) all children in public schools receive an autonomy-facilitating education equally or to a comparable degree; (b) public schools are better equipped than private religious schools to offer children the resources for thinking rationally and making comparative judgments; (c) finally, there is the (corresponding) assumption that, in contrast, religious schools do not, or cannot, facilitate autonomy-friendly objectives. I am arguing (1) that these are contestable claims, and (2) that very little is illuminated by comparing idealized public schools with non-idealized private ones. It is perhaps true to say that public schools are more *likely* to provide students with the 'intellectual resources to see beyond the horizons set by immediate family, community, and religious circumstances and to take on the attachments and concerns of the larger national community,'²¹ but this is by no means obvious.

Accountability and Public Support

Beyond the arguments I have made, public opinion in some measure even appears to support the allocation of federal dollars to religious organizations that provide important social services.²² Yet, while opinion polls often reveal that the public is generally sympathetic to state monies allocated for religious organizations that provide housing, job training and drug counselling, these same polls reveal widespread disapproval of funding for more marginal religious groups (e.g. Scientology, Hare Krishna Movement, Children of God). If the state is not to discriminate in favour of certain religious organizations, deciding thereby which is more 'orthodox' or 'appropriate,' it must be willing to fund equally and without prejudice. Yet this is where the difficulty emerges. Laura Underkuffler observes:

Most citizens in the United States would probably not feel a tremendous violation of conscience or other anxiety if they were compelled, through taxation, to fund mainstream Christian, Jewish, or Islamic schools, as long as those institutions adhere to the mainstream values which the majority of citizens believe are critical to the formation of future citizens and with which

they feel culturally comfortable. . . . What if — instead — recipient institutions adhere to the tenets of radical sects, or reject the idea of civil authority, or teach ideas of religious hatred or racial bigotry? Would the funding of such schools be viewed so benignly?²³

Of course governments at all levels attach conditions to the allocation of funds, yet it would appear difficult to refuse some groups and not others if the Establishment Clause is breached and the door is opened to direct aid for religious groups. Underkuffler continues, ‘It is difficult to justify greater opprobrium for “sectarian” belief than for “theistic” belief or belief of another description.’²⁴ Difficult indeed. Resistance to state monies going directly to religious organizations of any kind has come from many different quarters, including from religious organizations themselves. In fact, some politically dominant religious groups eager to enjoy state largesse in order to advance their own schools and faith-based agendas on occasion have been incensed to discover that other religions are equally eligible for funding on the basis of equal treatment under the First Amendment.

In the final analysis, the fact that some conservative religious groups view equal treatment of other religious groups unfavourably is not sufficient warrant to exclude them. Moreover, politically dominant religious groups that aim to discriminate against other religious groups reveal an egregious double standard, for it can be easily shown that many of the historically privileged groups which are likely to oppose equal treatment of other religions have, even in the recent past, publicly and systematically opposed equal rights for racial and ethnic minorities, women, and gays and lesbians. Thus, the moral and legal onus will be on the religiously dominant groups to demonstrate why their eligibility for state funding merits less scrutiny than religious communions with which they see themselves in opposition.

What Must Accountability Entail?

Accountability assumes many guises. Here are three. First, one could simply separate funding and public accountability. In other words, the state could demand that religious schools comply with certain educational norms even in the absence of funding, just as it does with safety requirements. For example, private schools must abide by fire codes and zoning restrictions quite apart from any funds they may or may not receive, including tax exemption. Similarly, the state reserves the right to intervene in cases involving harm or neglect of children. As previously mentioned in the Bob Jones case, the state has justified such moves in terms of pursuing an overriding good, *viz.*, to counter racist attitudes and dispositions. If a good and just state were to hang its argument for holding religious schools accountable on the need to ensure equal education opportunities, I have little doubt that it would enjoy strong public support. Nevertheless, if in so doing the state employs political strategies that both alienate citizens and lessens the chances of fostering reasonableness and autonomy, institutional policies are less likely to be legitimate than those which do.

A second approach to accountability would be to deny funding to religious schools of a ‘fissiparous’ and ‘unpredictable character’. Pondering the challenges that some non-Christian schools pose in the United Kingdom, Harry Judge avers the following:

And if it is concluded that, as matter of public policy, [that state arrangements rooted in historical compromise, which fund religious schools] should *not* be extended [to other kinds of schools], it follows that a contraction of the present arrangements is to be preferred to *any* measures having the effect of diverting additional funds from publicly maintained and managed schools to those schools attached to particular faiths or denominations.²⁵

This position has a number of strengths. In particular, funding religious schools that do well by their students in promoting tolerance and facilitating reasonableness and autonomy is a strategy likely to promote the civic virtues a democracy has reason to value. But Judge's diagnosis confuses things. In the first place, he argues without evidence that continued funding for religious schools will provoke dangerous tensions that are incongruous with 'integration'. Further, he believes that continued funding of religious schools will result in problems that are 'occluded by the cloudy and fashionable belief that "public" has failed and that "private" will resolve all difficulties'.²⁶ This seems, however, to needlessly overstate the point. First, Judge assumes that nurturing cultural identities is hopelessly incompatible with whatever 'an orderly process of integration' is supposed to mean. Yet such incompatibility is hardly obvious to lots of people who navigate quite successfully across and between cultural borders. Second, while I would agree that *favouring* the private over the public augurs badly for democracy and for civic responsibility, there are ways to tame the private.²⁷

A third approach would be to fund religious schools and to regulate what they do. If the concern is with objectionable content or methods of instruction, particularly where an individual's capacity to reflect critically upon her commitments is being intentionally impaired, or curricula are used to incite hatred or sedition, the existence of some schools, as I argued above, could well be deemed impermissible. Yet a responsible state will be concerned with the welfare of its citizens, and, guided by the axioms of equality of opportunity, fairness and tolerance, must aim to protect their compelling educational interests. As the guarantor of last resort the state must ensure that children receive 'a basic education sufficient to allow them to become adults capable of independent functioning'.²⁸ But the state has its own compelling educational interests as well. Indeed, an education that facilitates reasonableness and autonomy will have a direct impact on the deliberative processes necessary to sustain a healthy democracy. In other words, the state will have compelling interests in educating children toward ends designed to serve the common good. This necessarily includes the capacity to engage with those with whom one does not agree and to show oneself capable of deliberating about those differences.

State interference will not eliminate all inequalities or ensure equal outcomes; yet this is no argument against attempts to alleviate unnecessary inequities. The fact that some inequities 'cannot be eliminated never justifies abandoning attempts to mitigate [them]'.²⁹ The state must play the role of guarantor of last resort not because parents' wishes for their children are somehow intrinsically untrustworthy, but simply because all children are entitled to have a quality education. And, since most education occurs within schools,³⁰ it falls to the state not only to ensure that the education on offer is up to par, but that the conditions of learning are conducive to the facilitation of autonomy and reasonableness.

A Hypothetical Accountability Scheme

Whether motivated by the educational goals of fairness and equality of opportunity or just plain prejudice, philosophical liberals routinely rail against the potential dangers (e.g. indoctrination, sectarianism) of religious schooling. I happen to share many of the same concerns with those who criticize religious education that distills all learning through an extremely narrow ideological framework or which encourages children being raised exclusively within an ‘all encompassing moral community’.³¹ I am even inclined to agree that a school which places an immoderate emphasis on ‘non-transferable goods’ (e.g. scripture study, prayer, ritual observances) is potentially detrimental to the intellectual development of children. Moreover, what may be said of extremely insular community environments may also be said of certain forms of home-schooling that are hostile to difference or which aim to control the exposure of children to different perspectives.³² Indeed, an education of this kind may actively neglect the facilitation of autonomy and reasonableness in children by undervaluing rational, critical reflection, while choosing instead to rely on inerrant doctrine and non-rational means of persuasion.

Be that as it may, philosophers of education and policy makers need to imagine a different approach to religious schools, one mostly (but not entirely) unconcerned with how well religious schools measure up to public schools. In other words, what is most important is *not* the public or private (or, religious or non-religious) status of a school; nor is the academic success or ‘civic preparedness’ of religious school students paramount.³³ Rather, what is crucially important are the *regulatory features of schools* or the lack thereof. So what is distinctive about a specific private school need not be removed or radically altered to mirror the ethos of a public school. Instead, I would argue that what matters is the contribution religious schools might be expected to make to a broader accountability system in which they participate. If one looks to Europe, for example, it is implausible to say that religious schools, simply because they have a religious orientation, are less likely to promote the best interests of children. If this were so, it would certainly be the case that a majority of Dutch or English children would be the worse for it.

In order to move beyond the public-private rift that currently describes American education, I want to develop a conceptual framework that incorporates both public and private schools into its ambit.³⁴ At the risk of oversimplifying what are at best conjectural outcomes, an accountability scheme might look something like this. The state, interested to enjoy the consent of as many of its citizens as possible, will seek to work in concert with reasonable participants in public debate, including, but not limited to, the education of the citizenry. The underlying purpose of education will be to promote autonomous and reasonable citizens, and the citizenry has a stake in these aims irrespective of where children attend school.

This accountability scheme will include religious schools to preclude certain highly variable yet likely outcomes. Specifically, one can expect that at least some children educated in some religious schools will be less likely to become autonomous citizens, i.e. holding their views freely and without coercion, or to articulate their views in the vernacular of reason before the critical judgment of others. In such an arrangement, exclusion of religious schools will make some views *more* dangerous by lessening the possibilities that certain beliefs are ever held up to public scrutiny.

But even where religious schools succeed fairly well in fostering autonomy and reasonableness in their students, a system of accountability will lessen the chances that public schools will be compromised by the successes of some religious schools. This is so because non-religious children have as much to gain from learning about religious ways of life, particularly from those who hold their beliefs autonomously (i.e. after seriously considering alternatives), as religious children are likely to in being exposed to secular alternatives. This accountability scheme is not meant to discriminate against those who hold religious beliefs. On the contrary, such a system would implicitly respect the rights of citizens to have these beliefs but would call upon believers — with appropriately designed incentives to that end — to dissolve boundaries between themselves and the wider culture. In doing so, the hope is that reciprocity will occur benefiting both religious and non-religious persons. Mutually beneficial effects will likely result by exhibiting different points of view — including religious ones — fairly and reasonably. Exhibiting different points of view will be most effectively done, I would argue, when students have the opportunity to interact with others who genuinely espouse different points of view and can articulate the significance of those views to others. Naturally this would mean avoiding tokenistic gestures and stereotypes, preferring instead to engage one another on terms of mutual respect.

Now it follows from the above that boundaries between the public and the private, or between the secular and the religious, are more likely to dissolve if the state funds religious schools. One cannot operate on the prejudice that only public schools are capable of promoting autonomous and reasonable citizens. Nor is it tenable to fund public schools while merely *allowing* private schools, as is presently the arrangement in the United States. To do so is to ensure the effect of undervaluing the importance of an education that promotes autonomy and reasonableness irrespective of the type of school a child attends. The state surely is capable of harming children just as much when it does little or nothing as when it pays attention to them. Obviously, accountability measures will need to be equally applied if they are to have legitimacy, and, faithful to at least one reading of the Establishment Clause, no religious group will be able to enjoy state funding more than another. Yet given that many religious schools are likely to fail to promote autonomy and reasonableness in their students, accountability regarding the content or the method of instruction is not likely to materialize if funding is not provided.

There would be practical ramifications of this accountability scheme as well. It would, for instance, entail not only that religious schools be more open to non-religious students among its school members, but also that public schools be more accommodating to the perspectives offered by religious persons. (Multicultural education has a ways to go in this regard.) Discussing views openly and honestly, provided it is done in the appropriate forum and there is an insistence on respectful dialogue, is more desirable than not doing so. This is because a more diverse student population, coupled with a curriculum design and committed staff that would facilitate authentic engagement with student differences, is more likely to provide opportunities to be better informed about the outside world owing to the assortment of beliefs and varied opinions of students. Put another way, exposure to more diverse opinions better disposes children not only to consider the views of others whose ideas, habits and beliefs may differ strikingly from one's own, but also better facilitates the critical — though not necessarily detached — examination of one's *own* ideas, habits and beliefs in light

of this new information. This, in turn, will likely conduce to autonomously held views resulting from greater awareness and the freedom (but not compulsion) to change one's mind that ought to logically coincide with it. On this view, what may mitigate the parental demand that children have the right to attend a school that reflects the family's values is the fact that religious schools will have become a *public resource*. Indeed, religious schools will simply become one of several ways of contributing to the common good because it has fallen to the state to guarantee that all of its children receive an education that facilitates autonomy and reasonableness.

If this argument holds, this framework, which essentially advances a social justice claim, does much to fortify the argument that religious schools ought to be funded on the grounds that pluralism and limited parental prerogative claims merely allow for them. This is so because the state must justify in some way why it is that it simultaneously allows schools over which it provides minimal oversight to operate, only to consign some children, following the wishes of their parents, to an education that may potentially fail them. First, however, the state must justify why it consigns tens of thousands of children to a public education that in many instances decidedly fails them, an education over which individual states and school districts already allegedly provide oversight. Of course, funding will not solve all of the difficulties schools face. Indeed, even in countries where generous funding is provided to poorer school districts, an alarming achievement gap persists. Nevertheless, where the state is able to redress inequities, it must.

Objections

An accountability scheme that funds religious schools and provides an appropriate amount of oversight, is one that I think bodes well for society generally though it clearly has implications for the governance of many public schools as well. Nevertheless, my conceptual framework is likely to be strenuously resisted owing to certain empirical realities. There are a number of objections one might make, but I want to briefly consider two. I will call these the opt-out objection and the heavy-handedness objection.

The opt-out objection is this: both parents and schools are well aware that a great many requirements come attached to funding that will, ultimately, alter the character of the school in some elemental way. Provided that religious schools have a critical mass necessary to staff and matriculate, many may simply choose to opt out of such a system as a small number of private schools already have in the Netherlands and the United Kingdom, where government controls are among the strictest. Opting out of a system of funding and oversight is a threat of considerable strength in the United States, where there has not been a long history of *direct* funding of private education and accordingly where private religious schools have become accustomed to making do without state assistance.

But consider the following. First, a majority of private religious schools already submit themselves to state oversight when voluntarily seeking accreditation. Private schools know that they stand to gain at least as much as they think they lose when raising their standards to meet state requirements. In the United States, where most fledgling private schools anxiously seek out state accreditation, it seems a small stretch to make certain educational norms compulsory for all schools. Second, I believe we

can consider the state funding and minimal governance in Cleveland and Milwaukee, where means-tested vouchers are given to poor parents that enable them to attend schools of their choice. Many, but not all, voucher recipients choose to enrol their children in private religious schools. Participating schools are not allowed to discriminate on the basis of civil rights laws and the fundamental character of participating schools changes very little if at all. While state oversight in these schools is quite minimal, I believe that these highly imperfect experiments hint at possible outcomes if greater state oversight was the norm. Restrictions on what private religious schools can do would probably increase, yet many changes would require only minimal compliance, such as allowing opt-out provisions for religious activity participation.

On the objection of state heavy-handedness, the United States would do well to consider cases of state governance from abroad.³⁵ Sometimes these cases demonstrate that multiple levels of bureaucratic governance capriciously change with the politics of the time — thereby creating greater *instability* in the process.³⁶ What is more, greater government oversight, for all that it offers in the way of seeking to ensure just outcomes for all children, may nevertheless exercise this oversight in highly discriminatory ways. Because one does not need to look far to document abuses of power unduly concentrated in the state, a system of checks and balances will need to be built into the exercise of public authority in order to avert discriminatory action and heavy handedness. To the abiding American concern about local initiative and control of schools and the fear of monopolization I can say the following. First, state governance does not mean that options become fewer or that local variation will become stifled. Vast panoply of educational options will continue to exist, albeit circumscribed by an inclusive accountability scheme with expectations for all schools. Second, living as we do in the age of Guantanamo, the fear of too much government control need surely give us pause. Yet, in education and health care (and there may be other crucial areas), I sense a much greater threat in concentrating power in *private* hands, accountable to no one but parents and investors.

Conclusions

In this article, I have argued that the education of all children is in the public interest and therefore it is the state's responsibility to ensure that its children receive a quality education. I have called for funding and oversight of religious schools on the grounds that the state does as much potential harm to children by refusing to monitor what schools do. This is because some parents and schools actively work against the promotion of autonomy and reasonableness in children. I have also attempted to provide a conceptual framework for understanding the benefits that are likely to accrue to children regardless of the type of school they attend.

Even so, I am aware that many will have reason to argue against both the *feasibility* and, for many parents, the *desirability* of such state oversight for several reasons. These range from: a perhaps radically altered school character (e.g. the 'distinctive mission' crisis of the modern Catholic school³⁷); to parental choice (which often regrettably takes the form of its crudest expression, 'white flight'); to stubborn local control (teachers' unions often being the most resistant to change the status quo).³⁸ Finally, if we are serious about the role that public schools ought to play, we shall have to

appraise the accountability mechanisms themselves before we apply them broadly to religious schools. If the state is structured in such a way as to lend itself to unfairness and inconsistently applied accountability measures, advocates for religious schools would want to be doubly cautious about seeing that system extended onto their own schools, which may struggle financially but nevertheless enjoy relative administrative autonomy.

Many will object to my arguments, claiming, for instance, that the solution is not to fund religious schools but to uncouple the public school from local property taxes or to raise the accountability expectations on ‘failing’ school performance. *I unreservedly support these proposals*. From all that I have argued, I fully endorse a move toward national accountability of all state supported schools. Yet given the reality of many public schools in the United States, an idealized view of public schools seems at the very least naïve. Public schools certainly play a special role in fostering democratic forms of expression, but one must not conflate an idealized liberal education with what is unevenly on offer in actual public schools.

All indications are that the current schooling structures in the United States are unlikely to change in the near future. In the meantime, some parents will insist not only that they have a duty to educate their children but also that they have a prerogative to do so in religious schools. Such claims are buttressed by appeals to pluralism and judicial decisions favouring parental prerogatives. Many of these parents are also arguing that the state ought to assist in funding these schools as a matter of fairness. I am arguing (a) because not all religious schools can be counted upon to cultivate a capacity for reasonableness and autonomy, and (b) because parents do not unfailingly choose what is best for their children, *state oversight is necessary*.³⁹

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NOTES

- 1 *Pierce v. Society of Sisters* 268 U.S. 510 (1925). The case was brought before the Oregon Supreme Court by a religious organization, the Society of Sisters, devoted to the education and care of orphaned children in response to the Compulsory Education Act of 1922. The Act had been promoted by reactionary groups opposed to immigration and non-Protestant minorities on the grounds that sectarianism would abound and disrupt the assimilation process. While the Court unanimously struck down the Act, it nevertheless shared with the framers of the Act a broadly assimilationist ethic and took a dim view of non-naturalized persons, making various references to ‘poor, ignorant foreigners’.
- 2 This attenuation would lead to the First Amendment ban on governmental interference with respect to the free exercise of religion.
- 3 A strong federalist position is implied here, but I am not committed absolutely to this. For example, I can envision a coalition of federal and individual state oversight, with individual states playing the central regulatory role.
- 4 I do not mean to say that every subject taught in school is necessarily in the public interest. This might include some religion classes, but it may also include many other subjects as well.
- 5 I acknowledge that there are other values by which one may decide to live; and, certainly a generous conception of human flourishing must include ways of life that do not value autonomy and reasonableness. Nevertheless, autonomy plays an important enabling role in facilitating lives that matter to persons according to different conceptions of the good. That is, autonomy either enables one to identify in important ways with interests and pursuits central to a meaningful and flourishing life or to quit those pursuits and choose another one should it come to that. Thus, while autonomy per se may be of little apparent use to some individuals, the *capacity* for autonomy seems to me to be a sufficiently important aim to warrant its place at the center of my argument vis-à-vis desirable educational aims.

- 6 H. Brighouse, 'Why Should States Fund Schools?' *British Journal of Educational Studies* 46, 2 (1998): 145.
- 7 See chapter 5 in M. Merry, *Culture, Identity and Islamic Schooling: A Philosophical Approach* (New York: Palgrave, 2007), where I develop these ideas in a more robust way.
- 8 This assumes, of course, that worthwhile opportunities are available in the first place. However, what counts as worthwhile will vary considerably according to time and place. Determining what counts as a worthwhile pursuit will not be 'obvious' in the same way as determining what counts as robust health.
- 9 If public schools did a better job at including discussions on religious points of view (with the aim to inform and not persuade), I would wager that fewer religious parents would be inclined to exit public schools.
- 10 See B. Subedi, M. Merryfield, K. Bashir-Ali & E. Funel, 'Teachers' and Students' Experiences Working with Religious Issues in U.S. Schools', In *Religion and Multicultural Education* vol. 4 in series F. Salili & R. Hoosain (eds.) *Research in Multicultural Education and International Perspectives* (Greenwich, CT: Information Age Publishing, 2006), pp. 215–238.
- 11 See K. McDermott, 'Dubious Sovereignty: Federal Conditions of Aid and the No Child Left Behind Act'. *Peabody Journal of Education* 80, 2 (2005): 39–56; L. McDonnell, 'No Child Left Behind and the Federal Role in Education: Evolution or Revolution?' *Peabody Journal of Education* 80, 2 (2005): 19–38.
- 12 E. Callan, *Creating Citizens: Political Education and Liberal Democracy* (Oxford: Oxford University Press: 1997), p. 175.
- 13 Indeed, a complete consensus is the stuff of utopia. Some groups implacably opposed to interference, will remain unreasonable, opposing any reasons on offer and inveighing against the godless state and its dominions.
- 14 Here the state threatened to rescind the tax-exempt status of the school if it did not change its policy on not admitting black students, but also its dating policy, which forbade interracial relationships on 'biblical grounds'. In cases like these, the state is able to demonstrate a 'compelling government interest' to impose its anti-segregationist agenda on a school set against it.
- 15 L. Underkuffler, 'Discrimination on the Basis of Religion: An Examination of Attempted Value Neutrality in Employment', *William and Mary Law Review* 36 (1989): 620.
- 16 I am aware that matters quickly become complicated when it is recognized that religious institutions may enjoy important exemptions from religious discrimination claims under civil rights laws. The relevant passage (42 U.S.C. Sec. 2000e-2(e)[2]) under Title VII of the Civil Rights Act of 1964 allows an employer to discriminate on religious grounds if the educational institution 'in whole or in substantial part, [is] owned, supported, controlled, or managed by a particular religion or a particular religious organization, or if the curriculum of the institution is directed toward the propagation of a particular religion'.
- 17 Of course this will not remove the problem of *principled* objection to certain beliefs or behaviors. Each incident must be considered on a case-by-case basis.
- 18 This has happened in the United Kingdom, for instance, where certain all-girl Islamic schools were shown to be offering a horribly substandard education and girls were being taught to expect only a life of mothering.
- 19 It is unclear to me why parents would be less suited to pass along these basic outlooks.
- 20 W. Feinberg, 'On Public Support for Religious Schools', *Teachers College Record* 102, 4 (2000): 850.
- 21 *Ibid.*, p. 851.
- 22 66% of those polled responded affirmatively to a *New York Times*/CBS News poll on the role of the federal government in providing direct aid to religious organizations that provide important social services. The figure fell sharply to 29% when more marginal religious groups were included in the provisions. Cited in L. Underkuffler, 'Public Funding for Religious Schools: Difficulties and Dangers in a Pluralistic Society', *Oxford Review of Education* 27, 4 (2001): 585.
- 23 *Ibid.*
- 24 L. Underkuffler, 'The Separation of the Religious and the Secular: A Foundational Challenge to First Amendment Theory', *William and Mary Law Review* 36, 3 (1995): 978.
- 25 H. Judge, 'Faith-based Schools and State Funding: a partial argument', *Oxford Review of Education* 27, 4 (2001): p. 469.
- 26 *Ibid.*
- 27 Briefly, there are at least two problems with the private/public distinction. One is to see them as irremediably opposed. I believe this distinction is unnatural for it supposes that public agencies are in the business of providing services (e.g. job training, child care, drug counseling, etc) that the private sector is not. The other mistake is to suppose that the private is invariably an improvement on the public. The latter

- view is erroneous because often — but not always — privatization schemes (and the efficiency arguments invoked to defend them) are tilted in favor of those able to pay. Indeed, to privatize education (or health care, social security, water provision and dozens of other basic services) is to sanction the widening gap between rich and poor and to countenance the dastardly result of tens of millions already going *without* an education. Furthermore, efficiency does not trump educational concerns for fairness and equal opportunity.
- 28 R. Reich, *Bridging Liberalism and Multiculturalism in American Education* (Chicago: University of Chicago Press, 2002) p. 152.
 - 29 Brighouse, 'Why Should States Fund Schools?' op. cit., p. 146.
 - 30 At first glance it may appear that homeschooling falls outside of this argument. Yet this does not follow. For if states license parents to educate their children at home, this is no argument for abdicating on its responsibility to ensure a quality education. Rather, it is further justification for regulating what homeschoolers are allowed to do.
 - 31 See M. Hand, 'The Problem with Faith Schools', *Theory and Research in Education* 2, 3 (2004): 343–353; G. Walford, 'Classification and Framing of the Curriculum in Evangelical Christian and Muslim Schools in England and the Netherlands', *Educational Studies* 28, 4 (2002): 403–419; M. Apple, *Educating the 'Right' Way: Markets, Standards, God and Inequality* (New York: RoutledgeFalmer, 2001); S. Rose, *Keeping Them Out of the Hands of Satan: Evangelical Schooling in America* (New York: Routledge, 1988); A. Peskin, *God's Choice: The Total World of a Fundamentalist Christian School* (Chicago: University of Chicago Press, 1986).
 - 32 See J. Spinner-Halev, *Surviving Diversity: Religion and Democratic Citizenship* (Baltimore: Johns Hopkins Press, 2000); Reich op. cit.; B. Barry, *Culture and Inequality: An Egalitarian Critique of Multiculturalism* (Cambridge: Cambridge University Press, 2001).
 - 33 Whether public schools do a better job in fostering autonomy-facilitating objectives is an empirical matter that, in any case, has been contested by many researchers. See M. Chaves & P. S. Gorski, 'Religious Pluralism and Religious Participation', *Annual Review of Sociology* 27 (2001): 261–281; R. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Harvard University Press, 2000); G. Short, 'Faith-Based Schools: A Threat to Social Cohesion?' *Journal of Philosophy of Education* 36, 4 (2002): 559–572; G. Grace, *Catholic Schools and the Common Good: What this Means in Educational Practice* (London: Routledge, 2000).
 - 34 Also see H. Brighouse, 'Religious Beliefs, Religious Schools and the Demands of Reciprocity', in D. Kahane & D. Weinstock (eds) *Deliberative Democracy: Theory and Practice* (Vancouver: University of British Columbia Press, 2007) for a somewhat different articulation, and A. Gutmann, *Democratic Education* 2nd edn. (Princeton: Princeton University Press, 1999), pp. 117–121 for an illuminating discussion on a 'mixed system' that accommodates religious schools (thus requiring that the state show some restraint) yet holds them to educational standards that develop democratic character.
 - 35 See chapters 2 & 6 in Merry op. cit.
 - 36 G. Walford, 'Funding for Religious Schools in England and the Netherlands: Can the Piper Call the Tune?' *Research Papers in Education* 16, 4 (2001): 359–380; also, chapter 2 in Merry op. cit.
 - 37 See G. Grace, *Catholic Schools: Mission, Market and Morality* (London: Routledge, 2000).
 - 38 See T. Loveless, *Conflicting Missions? Teacher's Unions and Educational Reform* (Washington DC: Brookings Institution Press, 2000).
 - 39 I would like to thank Harry Brighouse, Ann Davies, Jon Dolle, Walter Feinberg, Katariina Holma, Heath Massey and Adam Nelson for comments on earlier drafts.