https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

JUSTICE IN EDUCATION AND RELIGIOUS FREEDOM*

By Jon Mahoney

A number of divisive issues are at the center of debates about education policy.[1] Some examples include, immigration reform and education for children of undocumented workers, educational inequalities along racial and class lines, and conflicts over religious freedom and science education. There are important philosophical questions that underlie these debates. For example, who is entitled to a state-funded education? Does every child have a right to an adequate education? Should curricula be designed in ways that maximize a student's likelihood of success in a competitive labor market? Should curricula be adapted to the religious values of citizens who prefer spiritual over material interests? And if so, should a liberal state give preferential treatment to religious objections to education policy?

Apparent conflicts between religious freedom and education policy arguably represent the most unsettled of these debates.[2] Although liberal philosophers are not as divided as citizens, there is no consensus among them on questions such as whether religious values deserve preferential treatment,[3] or on what counts as an adequate education in a modern, affluent democracy.[4] Liberals are also divided over practical remedies to conflicts that center on religion and science education, among other areas. Some advocate strict limits on demands by religious citizens for special exemptions or accommodation, while others

* For comments on an earlier draft, I thank the other contributors to this volume. Thanks also to helpful comments and suggestions from Carmen Pavel and David Schmidtz, and an external reviewer.

[1] Meira Levinson discusses a number of these in her recent book, *No Citizen Left Behind* (Cambridge, MA: Harvard University Press, 2012). For an account of inequalities based on race, see Jonathan Kozol, *The Shame of the Nation: The Restoration of Apartheid Schooling in America* (New York, NY: Random House, 2006).

[2] Kent Greenawalt, *Does God Belong in Public Schools?* (Princeton, NJ: Princeton University Press, 2007).

[3] Two authors who defend preferential treatment for religious values are Martha Nussbaum, *Liberty of Conscience: A Defense of America's Tradition of Religious Equality* (New York: Basic Books, 2008) and Kent Greenwalt, *Religion and the Constitution: Volume 2: Establishment and Fairness* (Princeton, NJ: Princeton University Press, 2008). Those who reject this view include Brian Leiter, *Why Tolerate Religion?* (Princeton, NJ: Princeton University Press, 2012) and Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Cambridge, MA: Harvard University Press, 2002).

[4] See for instance Harry Brighouse and Gina Schouten, "Redistributing Education among the Less Advantaged: A Problem for Principles of Justice," *this volume*.

doi:10.1017/S0265052514000168

© 2014 Social Philosophy & Policy Foundation. Printed in the USA.

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

support a wider range of options, including voucher and school choice schemes.[5]

This essay examines religious freedom in the context of education policy. I defend an approach that serves the aims of both religious freedom and adequate education requirements. We should favor creative solutions that accommodate religious objections to education policy. However, if there is no way to accommodate these objections while upholding adequate education standards, we should favor upholding the education standards. The permissive view of religious exemptions endorsed in American law sometimes lends support to objectionable education policies. The alternative I defend opposes granting exemptions to education policy, religious or otherwise, when doing so will deprive students of an education that permits entry to higher education or to a meaningful range of opportunities in the labor market.[6] Yet when there are policy options that accommodate concerns of religious citizens that do not result in objectionable compromises on education standards, we should favor these. Applied to noncontroversial issues, such as whether civic literacy is an essential component to an adequate education, this claim is not controversial. I take on more challenging issues. One is whether religious groups should be given exemptions that allow parents to limit the formal education of their children to the equivalent of a middle school education. The other is religiously motivated skepticism about evolutionary theory and the demand that science education standards be modified in light of this skepticism.

I. Religious Freedom and Justice in Education

It is instructive to put the question, "what is the best approach to religious accommodation in education practices?" into a historical perspective. Given the Protestant majority in America it is unsurprising that before the paradigm shift in First Amendment jurisprudence in the early twentieth century, Bible readings and other forms of religious instruction were typical within public schools.[7] In the nineteenth century, support for more secular curricula was not inspired by appeals to principles of political morality such as liberty of conscience or state neutrality. Rather, as Catholics and other groups began to immigrate at higher rates it became apparent to Protestants that a local rule approach to religious education would mean that sometimes Protestant students would be outnumbered by Catholic students. Fearing a religious orientation in public education that favored

[5] Milton Friedman, *Capitalism and Freedom: Fortieth Anniversary Edition* (Chicago: University of Chicago Press, 2002), 85–107.

[6] In this sense I side with those who favor an adequacy approach to justice in education. See for example, Deborah Satz, "Equality, Adequacy, and Education for Citizenship," *Ethics* 117, no. 4 (2007): 623–48.

[7] Andrew Koppleman, *Defending American Religious Neutrality* (Cambridge, MA: Harvard University Press, 2013).

Catholicism or some other non-Protestant denomination over Protestantism, a more secular curriculum suddenly looked more appealing. We might call this the sour grapes defense of a more secular orientation in public education. Although the Protestant majority does not fully embrace a liberal ideal of religious freedom, this group affirms a more tolerant approach to the First Amendment and to religious freedom in general compared to the recent past.[8]

There are exceptions to the trend toward a more inclusive conception of religious freedom. Consider, for example, the recent controversy over the Khalil Gibran International Academy in Brooklyn, NY. Created by the U.S. Department of Education in 2007, Khalil Gibran was immediately surrounded by controversy, much of it silly, over the fact that students would learn about Islam and be instructed in Arabic.[9] It is most unlikely that a similar outcry would have erupted had the Department of Education opened an academy in which students learned Hebrew or Greek. On balance, however, the historical trend has been more favorable when it comes to the issue of accommodating unpopular religious minorities. Though Islamophobia and other forms of bigotry persist, progress in the area of religious freedom and toleration of religious minorities has been far greater than in other areas. In contrast to race, which is where some of the most shameful injustices in education persist,[10] when it comes to religious freedom, notwithstanding the religious bigotry just mentioned Americans are justified in having at least some pride.

To summarize the historical perspective, there are at least five factors that inform contemporary debates over religion and education in the United States. One is the text of the First Amendment.[11] Four others include: historical legacies traceable to the Protestant majority and its ability to influence law and policy in its favor; the fact of religious diversity; a political culture that encourages both citizens and politicians to express religious beliefs when exercising their public reason; and a judiciary with the authority of judicial review. These factors should be kept in mind when examining contemporary debates.

Wisconsin v. Yoder (1972)[12] and *Kitzmiller v. Dover Area School Board* (2005)[13] are two legal cases that exemplify perennial debates in the United States over religious freedom and education. Though widely discussed, some implications of *Yoder* will be better appreciated when examined in

[8] Frank Lambert, *Religion in American Politics: A Short History* (Princeton, NJ: Princeton University Press, 2010).

[9] Amanda Fairbanks, "At One Year Turmoil Persists at Arabic Themed School," *New York Times*, June 20th (2008).

[10] Kozol, *The Shame of the Nation;* Levinson, *No Citizen Left Behind*.

[11] The relevant clauses are, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . . " *The United States Constitution:* http://www.usconstitution.net/xconst_Am1.html.

[12] *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

[13] *Kitzmiller v. Dover*, 40 Case No. 04 (2005).

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

light of recent developments in egalitarian liberalism.[14] *Kitzmiller* raises different issues for education policy because here the debate is not about granting an exemption from education policy. Rather, the central issue in *Kitzmiller* is whether public education policy should endorse open-mindedness on the respective merits of a scientifically respectable theory about the origins of life and a religiously motivated alternative to this theory.

A. Religious exemptions and equality in education

In the early 1970's Wisconsin law required that all residents receive an education up to the age of sixteen — or tenth grade in the American education system. In the American system, non-Amish students are required by law to complete high school. This is typically accomplished in one of two ways. Either students graduate from the twelfth grade or they "test out" earlier by taking a graduation equivalency examination, as early as tenth grade. However, common practice for Old Order Amish is for children to finish education at the age of fourteen, or the eighth grade.[15] The Amish filed a suit against Wisconsin and won in the Supreme Court in a six to one decision.[16] The majority argued on "free-exercise" grounds that the Amish have a constitutionally protected right to refrain from providing their children more than an eighth grade education.

In his majority opinion Justice Burger defends three claims. First, precedent favors the Amish. Among other instances of accommodation, granting conscientious objector status to Quakers and Mennonites has for many years been regarded as sound constitutional law. Second, the burden that education law imposes on Old Order Amish is too severe. Compliance with Wisconsin education law is a threat to the Amish way of life. In Justice Burger's words, "the Old Order Amish daily life and religious practice stem from the fact that it is in response to their literal interpretation of the Biblical injunction from the Epistle of Paul to the Romans, 'be not conformed to this world'."[17] A religious practice based on convictions such as this one cannot flourish if the practice must conform to state education policy. Third, Amish educational practices are consistent with the state's interest in securing access to education for each citizen. This claim is crucial to the argument, because if true, it would establish that the state is able to accommodate Old Order Amish educational practices without

[14] For a good overview of these developments, see Elizabeth Anderson, "Equality," in David Estlund, ed., *The Oxford Handbook of Political Philosophy* (New York: Oxford University Press, 2012), 40–57.

[15] Nussbaum, *Liberty of Conscience*, 141.

[16] Justice Douglass wrote a partial dissent in which he expresses concerns about whether the Court is striking the right balance between parental authority and the educational interests of children.

[17] *Yoder*, 4.

compromising on requirements of justice in education, such as fostering skills essential to democratic citizenship.

Burger's third claim is especially relevant here because he does offer a nuanced judgment about the legitimate aims of state education policy.[18] For example, Burger points out that Wisconsin law requires all children to receive an education through the age of sixteen. Had Wisconsin law set the age at eighteen, the exemption argument in favor of the Amish would be much weaker. The contrast between two versus four years of additional education is significant, especially when we consider the impact of this difference on a student's ability to enter higher education. Burger is right to stress this point. However, as I argue shortly, our position on what counts as an adequate education should be sensitive to a number of other factors and when we consider *Yoder* in light of these, the argument in favor of an exemption for Old Order Amish is considerably weaker.

There are familiar and compelling objections to *Yoder*. Joel Feinberg raises serious concerns about the impact of this decision on Old Order Amish children's right to an open future.[19] An education that ends at age fourteen, in the modern world, is an education with far fewer open doors than a high school or equivalent education. Susan Moller Okin's primary objection to *Yoder* is that the Court was insensitive to the effects of religious and cultural pressure on children and thus did not give appropriate weight to the liberal conviction that a member of any group, religious or otherwise, should be recognized as having a right to exit and that this right should be protected in ways that provide the material resources to exercise it.[20] The approach to religious exemptions that I favor concurs with these objections to *Yoder.* My position differs, however, in two ways.[21] First, it is guided by the claim that each citizen is entitled to an adequate education, where adequacy standards are guided by an idea of democratic equality that has implications for both civic equality as well as equality of opportunity. The right to exit and the right to an open future are necessary for democratic equality, yet these other views are less helpful when considering a wider range of conflicts that center on religious freedom and education policy. This will be clear in the discussion on science education, which requires an analysis that looks for ways to reconcile a demand for religious accommodation with adequate science education standards. Second, educational outcomes should be measured in part by a standard of relational equality according to which citizens are able to interact as

[18] I thank a reviewer for a helpful suggestion on how to present this point.

[19] Joel Feinberg, "The Child's Right to an Open Future," in William Aiken and Hugh LaFollette, eds. *Whose Child? Children's Rights, Parental Authority, and State Power* (Lanham, MD: Rowman and Littlefield, 1980), 124–53.

[20] Susan Moller Okin, "Mistresses of Their Own Destiny: Group Rights, Gender, and Realistic Rights of Exit," *Ethics* 112, no. 2 (January 2002): 205–30.

[21] I consider some additional objections to *Yoder* in "A Democratic Equality Approach to Religious Exemptions," *Journal of Social Philosophy* xlii, no. 3 (Fall 2011): 305–320.

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

equals in the political domain and beyond.[22] For example, educational practices fall short when some lack access to higher education simply because their education fails to provide the opportunity to develop skills essential to succeed beyond the high school level. Though not in principle incompatible with this position on adequacy in education, the ideas of a right to exit and a right to an open future are not well suited for addressing these concerns. This is one reason to favor an approach to education policy that is guided by the idea of democratic equality.[23]

In a developed affluent state, an adequate education will include basic knowledge of the natural sciences, computer literacy, global affairs and the ability to manage personal finances in an age of credit and personal loans. Anyone deprived of skills that are required to put this knowledge into practice is at a significant disadvantage.[24] This is a compelling reason to revisit Burger's claim that an exemption for Old Order Amish can be reconciled to the aim of an adequate education. An eighth grade education might be sufficient if the aim is to enable children to read The Declaration of Independence. Yet if the aim of a state education is to provide children with the skills that will allow them to become software engineers, lawyers, accountants, or viable candidates in a small town mayoral race, then a middle school education falls below the adequacy threshold. By contemporary standards, the educational practices accommodated by *Yoder* are not acceptable. The motives of those who continue to support *Yoder* are not always malicious,[25] yet no citizen should have to confront barriers to future success, whether in higher education or in employment opportunities, that result from not receiving a high school level education.

To defend *Yoder* in a contemporary context is to put an argument for religious freedom in the service of bad education policy. The effects on an Old Order Amish child whose formal education ends at fourteen are unfair in ways similar to disadvantages that afflict minorities and the poor. The causes are different in each of these cases. Yet the point that matters here is that there is something wrong with our educational practices if by design such practices deprive some students of an adequate education. If we agree that education policies should be designed to equip students

[22] For a good discussion of this view, see Rob Reich, "Equality, Adequacy and K–12 Education," in Danielle S. Allen and Rob Reich, eds., *Education, Justice and Democracy* (Chicago: University of Chicago Press, 2013), 43–61.

[23] For reasons convincingly presented by Harry Brighouse and Adam Swift, adequacy should not be presented as the sole basis for an account of justice in education. "Educational Equality versus Educational Adequacy: A Critique of Anderson and Satz," *Journal of Applied Philosophy* 26, no. 2 (2009): 117–28. My claim here is that adequacy can help address many of the issues that are central to this paper.

[24] Providing an education that enhances the employment prospects is one of many aims of a public education. For a good discussion on why education policy should not be guided solely by concerns about the employment prospects of students, see Jennifer Morton, "Cultural Code-Switching: Straddling the Achievement Gap," *Journal of Political Philosophy* (forthcoming).

[25] Martha Nussbaum defends *Yoder* in *Liberty of Conscience,* 145.

with the ability to pursue a higher education if they choose to do so, as well as an ability to enter the labor market with decent prospects for a range of careers, then no one should be deprived of the opportunity to enjoy the benefits of a state-sponsored education.

Justice in education also requires that education policy serve the ends of civic equality. One crucial aim of adequate education standards is maintaining civic equality between citizens. However, we should be just as concerned about the effects of education policy on opportunities to enter the labor market or to pursue a university education.[26] With respect to *Yoder* this point is more compelling today than it was in 1972.

B. Religious accommodation and science education[27]

In 2004, a Pennsylvania school board adopted a policy that required teachers to present the following statement in ninth grade biology classes at Dover High School:

> The Pennsylvania Academic Standards require students to learn about Darwin's Theory of Evolution and eventually to take a standardized test of which evolution is a part.
>
> Because Darwin's Theory is a theory, it continues to be tested as new evidence is discovered. The Theory is not a fact. Gaps in the Theory exist for which there is no evidence. A theory is defined as a well-tested explanation that unifies a broad range of observations.
>
> Intelligent Design is an explanation of the origins of life that differs from Darwin's view. The reference book Of Pandas and People [a textbook promoted by the "Discovery Institute" that purports to offer a viable and scientifically respectable alternative to evolutionary theory], is available for students who might be interested in gaining an understanding of what Intelligent Design actually involves.
>
> With respect to any theory, students are encouraged to keep an open mind. The school leaves the discussion of the Origins of Life to individual students and their families. As a Standards-driven district, class instruction focuses upon preparing students to achieve proficiency on Standards-based assessments.[28]

[26] Elizabeth Anderson, "Fair Equality of Opportunity in Education: A Democratic Equality Approach," *Ethics* 117 (2007): 595–622.

[27] Some ideas defended in this section are adapted from an unpublished coauthored paper by Bruce Glymour, Amy Lara, and Jon Mahoney, "Darwin and Democracy."

[28] Cited in *Kitzmiller v. Dover*, 1–2.

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

The central legal question here is, does an official state policy that encourages students to consider intelligent design theory (ID) as an alternative theory of origins violate the Establishment Clause of the Constitution?[29] After reviewing the legal basis for rejecting the Dover policy, I present an approach to religious objections to science education. On this view, liberals should favor accommodation for religious citizens without granting exemptions from respectable standards for science education. The approach I favor shows how to reconcile a reasonable commitment to religious freedom with adequate science education standards.

Judge Jones III, the presiding federal judge in *Dover*, issued the following ruling: "We hold that the ID policy is unconstitutional pursuant to the Establishment Clause of the First Amendment of the United States Constitution and Art. I, Sect. 3 of the Pennsylvania Constitution."[30] Since there is a long history of case law and legal opinions by courts on how to interpret the prohibition on establishing a religion, Jones defends this ruling by invoking some of the most relevant precedents. Two are especially relevant. In *Lemon v. Kurtzman*, the Court promulgated what has become known as the Lemon Test for religious endorsement. This standard imposes three requirements; namely, state policy must 1) have a "secular purpose," 2) avoid promoting or disparaging a religious viewpoint, and 3) avoid creating an "excessive entanglement"[31] between state and religion. In *Edwards v. Aguillard*, the Supreme Court invalidated a state requirement to teach "creation science" on grounds that teaching creation science violates the Establishment Clause.[32]

No one should be surprised that an American court would rule that "creation science" should not be taught in public schools. Teaching "creation science," which purports to offer a theory of origins based in scripture from the Old Testament, amounts to endorsing a religious viewpoint. Defenders of ID claim that ID is not creationism. However, Jones was persuaded that ID is a label invented by creationists after *Edwards* and other legal cases had affirmed the unconstitutionality of policies requiring that "creation science" be presented as an alternative to evolutionary theory (ET). Jones in effect claimed that proponents of ID were engaged in a strategy of promoting

[29] The Establishment Clause is one central part of the First Amendment: "Congress shall make no law respecting an establishment of religion . . . " *The United States Constitution,* http://www.usconstitution.net/xconst_Am1.html.

[30] *Kitzmiller v. Dover,* 3. The relevant portion of the Pennsylvania Constitution states: "no man can of right be compelled to attend, erect or support any place of worship or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship." *Constitution of the Commonwealth of Pennsylvania*, http://sites.state.pa.us/PA_Constitution.html.

[31] *Lemon v. Kurtzman*, 304 U.S. 602 (1971), cited in Kent Greenawalt, *Religion and the Constitution: Volume 2: Establishment and Fairness* (Princeton, NJ: Princeton University Press, 2008), 45.

[32] *Edwards v. Aguillard,* 482 U.S. 578 (1987).

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

religious faith through deception. After reviewing evidence from experts[33] that exposed the strategic motives behind the Dover policy, Jones concluded that it was clear beyond any reasonable doubt that "the Board knew that ID is considered a form of creationism."[34]

The legal argument is made even stronger in light of the scientific and philosophical considerations, many of which were presented in *Kitzmiller*. First, methodological naturalism provides sufficient and compelling philosophical reason to oppose accommodating ID in science curricula. Not to be conflated with metaphysical naturalism, methodological naturalism holds that scientific inquiry is limited to the domain of the natural, which is understood to include natural causation and hypotheses that can be tested against empirical evidence.[35] Methodological naturalism can be endorsed in science education policy both because this is good science and also because state endorsement does not violate the Lemon Test or any other legal principle that requires government to remain neutral toward the religious convictions of its citizens. Second, the scientific evidence for ET is compelling.[36] There are no alternative scientific research programs that challenge ET in a way that would satisfy proponents of ID.

An optimist might predict that these legal, scientific, and philosophical considerations will eventually have a positive effect on the public's beliefs about ID and ET. This optimism is unfounded. *Kitzmiller* comes on the heels of many other cases, none of which had much impact on the wider culture. In addition, by the numbers, and this is as important as any other factor in American politics, the percentage of citizens who oppose ET for religious reasons has not changed over the last hundred years.[37] This is why anyone who is serious about adequate science education standards must focus on the political debates in addition to the legal, philosophical, and scientific arguments.

There are numerous ways we might attempt to address the political dimensions of the debate over teaching ET. One approach is to insist that science education policy should be determined entirely by the consensus among scientists without any effort to acknowledge critics' points of view, religious or otherwise. Were the participants who shape science education policy limited to experts, this would be the right strategy. In fact, the verdict in *Kitzmiller* provides a compelling legal argument for this. However, since education policy is shaped in part by local factors, such as an elected

[33] Expert testimony was provided by philosopher of science Robert Pennock, and geneticist Kenneth Miller, among others. Each made compelling arguments undercutting the claim that "intelligent design theory" is a scientific research program.

[34] *Kitzmiller v*. Dover, 112.

[35] Robert Pennock, "Can't Philosophers Tell The Difference Between Science And Religion? Demarcation Revisited," *Synthese* 178 (2009): 177–206.

[36] Sean Carroll, *The Making of the Fittest: DNA and the Ultimate Forensic Record of Evolution* (New York: Norton, 2007).

[37] Kenneth Miller, *Only A Theory: Evolution and the Battle for America's Soul* (New York: Viking, 2008), 214–15.

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

school board composed of members who are generally not experts, pressure against promoting ET as good science in public high schools will remain for as long as large numbers of the American public are skeptical of ET. As Kenneth Miller writes, "[m]ost Americans seem to think that evolution is nonsense. . . . In a June 2005 Harris poll, only 38 percent of Americans thought that human beings had developed from an earlier species, while fully 54 percent thought that we had not."[38] For this reason, public intellectuals and experts need to present arguments in favor of good science education in ways that address ordinary citizens and not just experts. This practical consideration is lost on some of the more bombastic critics of ID.[39] It is a serious political mistake to combat efforts by proponents of ID to change science curricula for the worse with heavy-handed rhetoric and ridicule. That strategy does not work.

Questions about strategy are essential to the politics behind the ID-ET debate. As a rule, philosophers are less interested in these issues than they are with methodological naturalism, political morality, and the aims of education in a democratic society. This is a mistake. To see why, consider the familiar contours of public discourse in this context. Policy debates over acid rain, smoking and cancer, climate change and many others are settled not by scientific experts, but rather through protracted conflicts among parties whose values often conflict with science-driven public policy.[40] Political philosophers cannot ignore this if they want their contributions to be relevant to real politics.

There are a number of philosophical issues concerning reasons and values often overlooked by critics of the ID movement. Philosophers of science are in the best position to address this issue,[41] yet political philosophers cannot ignore them if they hope to make proposals that are instructive for the policy debates on science education. Outspoken critics of ID sometimes claim that modest convictions about rationality and evidence are sufficient to dissuade anyone from harboring skepticism about ET. This claim is too simplistic. Instead, those who support ET should focus on how to bring about reasonable political solutions when a population is divided, as is the case with ET in the American context.

The conflict over teaching ET in public schools is not simply a matter of rational people arguing with irrational people. Some proponents of

[38] Ibid, 214.

[39] Richard Dawkins, *The God Delusion* (New York: Mariner Books, 2008).

[40] For an excellent discussion, see Naomi Oreskes and Erik M. Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming* (New York: Bloomsbury Press, 2010).

[41] Phillip Kitcher offers an excellent account of how value judgments intersect with scientific claims in the context of public policy, *Science in a Democratic Society* (Amherst, NY: Prometheus Books, 2011). As Kitcher points out, the value judgments that matter to debates over public policies that are designed to be responsive to scientific evidence, include religious, political and cognitive values, such as the commitment to subjecting one's claims about the origins of life to a public scrutiny by natural scientists, 58–62.

ET respond to critics of ET in ways that belittle and browbeat them. This strategy rests on a philosophically dubious view about rationality: it takes for granted a controversial view about the relationship between values and rationality. Many citizens affirm values, religious or otherwise, that are not going to be revised when scientific data is perceived as conflicting with these values. To reject the results of modern science is not by itself evidence of irrationality. Some philosophers of science who accept the authority of modern science acknowledge that conflicts between values and scientific evidence are not equivalent to conflicts between people who are rational and people who are not.[42] Citizens of many persuasions have convictions that guide their judgments about what matters, including the authority of science. Moreover, we can defend liberal values without having to settle philosophical questions about the relationship between the authority of science and rationality.

It is also a political mistake to admonish critics of ET by calling them irrational. This strategy will not change anyone's mind about teaching ET in public schools. If the end is good science education policy, we need to promote strategies that are effective as means to that end. Some will object to this approach to the ID-ET debate on grounds that many of the strategists who advised the Dover school board were unscrupulous in their effort to promote a religious viewpoint in a public school. Jones rightly rebuked these supporters of the Dover policy on this ground.[43] Yet many citizens affirm ID or its equivalent for nonstrategic reasons, and these citizens are the source of much of the political support for policies like the Dover ID policy. Liberals should advocate a respectful engagement with such citizens in their effort to promote good science education.

Some recent work in moral psychology looks at framing effects and the ways that values introduce bias in attitudes about complicated scientific questions. Jonathan Haidt claims that we should engage the so-called "culture wars" in American politics by trying to understand how shared values, such as religious freedom, are construed in different ways by liberal and conservative citizens.[44] Daniel Kahneman's research shows that quite often reasons are not the triggers of judgment.[45] Framing strategies informed by values often result in judgments that do not hold up against the best scientific theories. The relevance of this experimental work on rationality for understanding the ID-ET debate is clear. If we present the scientific evidence in favor of ET in ways that do not needlessly antagonize

[42] For a provocative defense of this claim see Bruce Glymour and Scott Tanona, "Communicating to Overcome Value-Based Resistance to Science: The Value of Framing," in Jean Goodwin, ed. *Between Scientists and Citizens* (Ames, IA: GPSSA, 2012): 141–50.

[43] Thanks to Harry Brighouse and Paul Weithman for helpful comments on this point.

[44] Jonathan Haidt, *The Righteous Mind: Why Good People are Divided by Politics and Religion* (New York, NY: Pantheon Books, 2012).

[45] Daniel Kahneman, *Thinking Fast and Thinking Slow* (New York: Farar, Straus, and Giroux, 2011).

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

religious skeptics, a consensus on sound science education policy is more likely.

Some science skeptics are easy prey to those who want to enlist their support for a political agenda. This is true across a range of topics including, climate science, diet and diabetes, and until recently, the harmful effects of smoking.[46] In America, religious and political values often converge to create what we might call a perfect storm for controversies that are unfortunate, when the science is clear. For this reason, we need to view the ET-ID debate as not just about science but also citizens' beliefs about religious freedom, the role of parental authority in education, and the local rule approach to education policy that has been generally favored by the courts. If we are mindful of these factors then we are in a better position to consider effective and responsible science education policies. Those who claim the debate is between rational and irrational disputants often favor good science education policies, but their tactics are guaranteed to alienate the very audience whose political support is essential to move beyond the century old debate that persists in an ossified state.

Many critics of ET are not advocating a position that is comparable to other kinds of illiberal positions, for instance, official policies that discriminate against minorities.[47] Secondly, there are a number of practical remedies that could be taken without institutionalizing the worrisome inequalities that are a result of the Yoder decision. One option would be to develop civics or current events courses in which students are encouraged to debate a range of topics. Another option, which I discuss further shortly, is school choice programs in which parents are able to use public monies to send their children to schools that have a religious orientation.

II. Enduring Issues

Some liberals, including Martha Nussbaum and Kent Greenawalt, among others,[48] support what is mostly a status quo position on the religion clauses of the First Amendment. Nussbaum does support an approach that seeks to accommodate some nonreligious citizens who demand exemptions for moral or philosophical reasons, and in this respect her position is in line with recent trends in First Amendment jurisprudence.[49] Despite this concession to those who claim that the status quo unfairly

[46] Oreskes and Conway, *Merchants of Doubt*.

[47] Thanks to Harry Brighouse and Paul Weithman for helpful comments on this point.

[48] Koppleman, *Defending American Religious Neutrality*. Koppleman argues for the claim that the state should be neutral between religious values while also affirming the importance of religious values.

[49] Nussbaum supports the legal decision in *United States v. Seeger*, 380 U.S. 163 (1965), cited in *Liberty of Conscience*, 171–73. The Court ruled that although Seeger did not self-identify as religious, his moral and philosophical convictions against killing other human beings is consistent with the legal ideal of liberty of conscience expressed in American law.

privileges religious values over nonreligious values, Nussbaum remains committed to a conception of First Amendment jurisprudence that picks out religious conscience for special treatment. Here I focus on two questions. First, should religious values be given preferential treatment over nonreligious values when considering conflicts between religion and education policy? Second, are there any good reasons that support school choice programs as a partial remedy to the unresolved debates over religion and science education?

A. Preferential treatment for religious values

Some liberals do not espouse the mainstream view. For instance, Brian Leiter rejects the idea that religious values should be given the kind of preferential legal status they enjoy under American law.[50] Brian Barry defends a considerably less accommodating approach to demands for religious exemptions compared to the mainstream view.[51] Leiter's work is especially relevant to my position on religious freedom and education policy, so that will be the focus in this section.

In *Why Tolerate Religion*? Leiter presents a convincing argument that states should not play favorites toward religious citizens when it comes to exemptions. Leiter also argues correctly that granting exemptions to religious or nonreligious citizens should be permitted only when burdens are not unreasonably shifted onto other citizens. The argument for these claims rests in part on an interesting philosophical, as opposed to legal, investigation into the nature of religious convictions.

If there is any warrant for giving preferential treatment to religious values when they conflict with state policy, we need a clear answer to the question "What is so special about religious values such that these and only these value merit preferential treatment when citizens demand exemptions or special accommodations?"[52] Leiter suggests that if religion is special, this is because religious convictions have at least one of the following four features: 1) they make categorical demands,[53] 2) they express beliefs that are insulated from evidence,[54] 3) they affirm beliefs about the ultimate nature of reality,[55] and 4) they make sense of "basic existential facts about human life, such as suffering and death."[56] For some of

[50] Leiter, *Why Tolerate Religion?*

[51] Barry, *Culture and Equality*.

[52] In his words, "If there is a special reason to tolerate religion it has to be because there are features of religion that warrant toleration, and these features are either . . . features that *all and only religious believes have* . . . or . . . features that other beliefs have, or might have, but which in these other cases possession of the features would not warrant principled toleration." *Why Tolerate Religion,* 26–27.

[53] Ibid, 33–34.

[54] Ibid, 34.

[55] Ibid, 26–47.

[56] Ibid, 52.

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

these features, e.g., "make categorical demands," there are ordinary secular moral doctrines that qualify. Therefore, if exemptions are granted to citizens on this ground, fairness and equal treatment require not giving preferential treatment to religious over nonreligious values. For others features, such as "express beliefs that are insulated from evidence," any such doctrine, religious or otherwise, does not merit preferential treatment, especially in the science classroom.

Some readers will no doubt construe Leiter's choice of framing for some of these points as a jab against people who affirm religious values.[57] For example, regarding "insulation from evidence," Leiter writes, "[r]eligious beliefs, in virtue of being based on 'faith', are insulated from ordinary standards of evidence and rational justification . . . "[58] This claim can be presented in a more or less provocative way. My own view is that many values are insulated from ordinary standards of evidence. Moral, religious, and aesthetic values are paradigm cases. The moral requirement to tolerate those who affirm such values is not undermined by this fact. Yet liberal toleration does not require giving preferential treatment to many kinds values in debates about the authority of law and public policy, so in this respect Leiter's point is cogent to religious freedom and education policy.

Debates over preferential treatment for religious values will undoubtedly continue. Some citizens agree with Augustine who says, "faith is defined as 'the evidence of things unseen'"[59] and will claim that this is a feature of religious convictions that convictions about nonreligious values lack. On this view, a citizen who espouses sincere convictions about French existentialist philosophers will not deserve the same accommodations as a Christian or a Muslim because the French existentialist does not have values that are supported by this special kind of faith. However, a liberal state cannot endorse this position without violating a fair commitment to liberal neutrality. Nor should the liberal state as a general matter prohibit endorsement of this conception of faith, except when it comes to official state policies, such as science education standards. Regardless of whether faith exhibits this special property, a liberal state should tolerate[60] those who claim to have it. Yet those who claim to enjoy knowledge by faith do not have a moral entitlement to special exemptions that nonbelievers do not. In the context of science education, faith in Augustine's sense has no

[57] This is clear for instances in reviews of the book by Robert Merrihew Adams, *Notre Dame Philosophical Reviews* (Jan. 6th, 2013) and Susan Mendus, *Political Theory* 41, no. 5 (2013), 766–69.

[58] Leiter, *Why Tolerate Religion?* 34.

[59] St. Augustine, *Enchiridion: On Faith, Hope, and Love*, trans. J. B. Shaw (Washington, DC: Regenery Publishing, Inc., 1961), 8.

[60] This is a point of disagreement between Leiter and Nussbaum. On Nussbaum's view, government should endorse the value of religion by conferring appraisal respect. On Leiter's view, government should tolerate but not endorse religious values in this way. Leiter defends the right view on this point.

place when it is offered as a source of scientific evidence that competes with ET.[61]

Liberals should of course favor freedom of expression and free exercise for any such beliefs, provided the standard liberal provisos on the limits of expression are honored. On this point the law is rightfully on the side of the scientists, political philosophers, and others who insist that science education policy should not be adapted to meet demands, religious or otherwise, when these demands require promoting claims that violate methodological naturalism. To do so is to favor education policies that fall below reasonable standards, while at the same time enlisting government on the side of science skeptics who lack credibility as scientists. Nevertheless, as discussed shortly, there may be feasible non-rotten compromises that both uphold sound science education standards while at the same time accommodating citizens for their values, when these values put them at odds with ET. To accommodate is not the same as to exempt, however, so the policy options that I propose will not give science skeptics everything they want.

B. School choice, religious freedom, and science education

There are at least three reasons liberals should be open to school choice programs. First, a school choice scheme might be better for students. When the alternative is home-schooling, which in America it often is, subsidized charter schools that are required to maintain adequate science standards should lead to better educational outcomes for students who would otherwise be homeschooled. This of course depends on a number of factors, including the teaching competence of parents and the science standards in public schools. Other things equal, we can reasonably expect that a high school teacher with an undergraduate degree in biology will be more informed about science than most citizens. Second, an experiment with school choice aimed at addressing the stalemate between religious science skeptics and their critics does not have to compromise religious freedom or science standards. The prospect of even nonsectarian religion classes could be an attractive alternative to home-schooling for some parents. A third reason is that parents and political groups quite understandably want to create options for children who attend schools whose educational outcomes are not adequate. Each of these is a prima facie reason to favor school choice programs. I provide evidence for these reasons in what follows.

Political factors limit options in education policy. Some of these include: a lack of resources devoted to studying religious traditions at the primary school level, for instance, in comparative religion courses; a public sphere

[61] Purported evidence that cannot be reconciled to methodological naturalism is not appropriate in science courses that are designed to meet reasonable adequacy standards.

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

that has been corrupted in part by science skepticism;[62] a willingness by political leaders to pander to science skeptics; and a cultural bias against a number of non-Protestant religious traditions. Under better circumstances and with a more equitable distribution of resources, school choice will be less appealing. Of course the classical and egalitarian liberals will differ over issues such as how much weight should be given to parental authority in the context of education policy.[63] Yet the political reality is that we have to contend with a long tradition in America of giving parents more authority over educational decisions than in many other Western democracies.

To fill out this reason to favor school choice, we should also consider the prima facie reasons against home-schooling.[64] There are number of concerns liberals should have about home-schooling, ranging from inadequate instruction, the promotion of values at odds with civic values essential to a democratic society, including marriage equality, and the endorsement of patriarchal values that impede educational and career options for women. The considerations against *Yoder* also apply to the case of home-schooling. However, if a school choice option provides an adequate education, then a religious parent might opt for this rather than a private or home-schooling option. This would produce less objectionable results and possibly even very good results: a school with a religious orientation and with adequate science education standards is likely to provide a better product than a home-school option, when the parents are science skeptics.

Second, school choice might strike the right balance between the liberal aims of education, including adequate training for citizenship, the labor market, and respect for the religious values of parents who are wary of typical curricula in public schools. Some egalitarians will insist that access to education is a basic right that ought not to be balanced against demands by religious parents. In an ideal context, that may be the right position. In America, however, the courts have consistently denied claims by plaintiffs that education is a fundamental constitutional right.[65] In addition, First Amendment jurisprudence aims to accommodate religious citizens. These are considerations in favor of school choice. When the real choice for a parent is either home-schooling or a public school with an official secular education in all subjects, a choice scheme could result in better education outcomes for students. When a child enters a public school with adequate science education rather than being home-schooled by a creationist or educated in a private school that provides poor training in science and other areas, we should count this as an improvement over the status quo.

[62] Kitcher, *Science in a Democratic Society;* and Oreskes and Conway, *Merchants of Doubt*.

[63] Friedman, *Capitalism and Freedom*.

[64] Randall Curren and J. C. Blokhuis, "The Prima Facie Case Against Home Schooling," *Public Affairs Quarterly* 25, no. 1 (Jan. 2011): 1–19.

[65] The landmark legal case here is *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

A third reason to consider school choice is one that has some appeal in the current political debates over education policy. Parents whose children are in Title 1 schools,[66] schools with high rates of violence and low graduation rates, might for good reason welcome school choice programs. This reason should be treated with considerably more caution than the others, but it is a reason nonetheless. The reason for caution here is: without other changes to education policy, most especially changes that effectively address significant inequalities, a school choice program may result in further stratification by race and by class. This would be an objectionable outcome, one that in practice could be far worse from the standpoint social justice than the sum of benefits to children who avoid home-schooling.

The test for school choice programs is the real outcomes they generate. What one's preferred political theory predicts does not carry the argument here. The egalitarian liberal position should be, "in principle we are not opposed, yet our support will depend on the results of such programs in practice." Classical liberals who endorse Milton Friedman's argument for voucher schemes[67] will be more favorably disposed to school choice programs than egalitarian liberals. For a classical liberal, vouchers are appealing because they reduce state authority over education, give parents more control over their child's education, and thus, according to this view, do a better job than traditional public schools at serving the ideal of liberty. An egalitarian will be less willing to endorse this approach to school choice. From her perspective a number of factors are important to consider when examining school choice and justice in education. These include: 1) the impact of inequalities of wealth on children's education, 2) whether school choice programs favor gifted or special needs children, and 3) parents' ability to make informed choices.[68] Each of these factors can impact the educational fate of children in significant ways. In a context such as contemporary America, these are "in practice" reasons to worry about the effects of school choice programs.[69] These reasons may

[66] Title 1 is a designation used by the U.S. Department of Education for schools that have especially high numbers of students from low-income families. http://www2.ed.gov/programs/titleiparta/index.html.

[67] Friedman, *Capitalism and Freedom*.

[68] Harry Brighouse, *School Choice and Social Justice* (New York, NY: Oxford University Press, 2000), 112–13.

[69] There are very good reasons to worry that school choice programs will further increase racial and class divisions within an educational system that fails to remedy inequalities. In their 2008 study, Mickelson et al. report that there are four reasons that help to explain why school choice programs do not enhance diversity, including racial diversity: 1) many choice programs are designed to provide education to selective student populations, such as the gifted or special-needs students; 2) choice programs formally and informally allow schools to select students, thereby including some youth while excluding others; 3) there is a scarcity of interdistrict choice options that could capture the diversity in larger metropolitan communities; and 4) parents exhibit preferences for schools with student bodies similar to their own backgrounds. *School Choice and Segregation by Race, Class, and Achievement* (2008), http://nepc.colorado.edu/publication/school-choice-and-segregation-race-class-and-achievement.

in fact outweigh those that support school choice. On the other hand, in the absence of a voucher or choice scheme, a parent might have to decide between a typical public school and home-schooling. If these are the options, she may well opt for home-schooling, which in some cases will be far worse for the educational prospects of her children, especially if she is a young earth creationist who favors a patriarchal conception of the family. However, if a voucher or choice program is in place, provided the options include schools that provide an adequate education, this would be preferable to a home-school option in which children are educated by poorly trained parents. Given this choice, liberals should favor a school choice program.

III. Conclusion

I have defended two claims. First, religious exemptions that are inconsistent with an adequate education should not be permitted. This claim is supported in part by the fact that current education policy creates significant barriers for some citizens, simply because their parents have religious objections to education policy. Second, I have presented several reasons in favor of school choice as a remedy to conflicts between religious values and science education. This claim is presented in a way that does not give special privileges to religious values, although in practice we can expect religious groups to be one of the main political forces behind school choice. School choice is not defended as a panacea, but rather for its potential to benefit students who otherwise suffer as a result of science skepticism.

An approach to religious exemptions from education policy should be guided by the following constraint: education policy should not by design put some students at a significantly greater disadvantage than others. Especially worrisome are outcomes that fall below the threshold of adequacy, defined in terms of economic and advanced educational opportunities. Neither parents nor government should confer this kind of inequality in status and educational resources.

Notwithstanding law and sound science, efforts by school boards that block textbooks that are deemed too sympathetic to ET will continue. The reason for this is often ignored by intellectuals who think of public discourse as a kind of battleground between the many and the wise. I have tried to show that debates over evolution and educational policy are only in part about the nature of scientific inquiry. A number of issues converge on this topic, including: the relationship between religious authority and state power, scientific methodology and scientific expertise, value judgments that inspire resistance to scientific methods, and the ethical responsibilities of scientific experts to educate the general public. One facet to this conflict that is often overlooked is that the debate over ET and ID cannot be separated from the underlying value judgments that

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press

motivate people to accept or reject scientific inquiry as a reliable source of knowledge.[70]

Those who defend the view that ET and not ID should be taught in public school science classes must decide how to respond to critics of ET. With the exception of science critics who engage in deception to promote their ends, a confrontational approach is imprudent. A more sensible approach will be mindful of both the overwhelming evidence in favor of ET and the political reality that a large number of citizens, not all of them ill-intentioned, are committed to values that lead them to be critical of ET. Some public intellectuals fail to heed what should be obvious to them: in politics it is prudent to understand why one's critics are opposed to one's position, *especially* when the critics are mistaken. Political philosophers should not eschew this simple bit of practical wisdom either.

There are considerations that weigh in favor and considerations that weigh against school choice. I have not tried to settle whether in practice school choice should be opposed because it will exacerbate existing inequalities in education that currently result in an unfair distribution of opportunities. This might well be true in the American context.[71] If it is, then education policy with respect to science education and religious freedom should not be changed in ways that result in even greater institutional complicity in racial injustice. If our goal is to defend adequate science standards in a way that will protect these standards from political pressure to compromise them, then we should seek remedies to a hundred-year political debate that has neither served the interests of students nor persuaded religious skeptics about evolution to change their minds. The fact that the controversy over evolution in education has continued for so long is evidence that neither side in the debate is satisfied with how the state tries to reconcile religious freedom with science education policy. This is a compelling reason to think creatively about alternatives to the status quo.

Finally, the emphasis on justice in education as a constraint on religious freedom might give rise to the suspicion that on my view, the question "what are its implications for education policy?" is a test for any conception of religious freedom. This is not my view. There are a number of other important considerations ranging from harm to others, stability and conflict management, and equality of opportunity. The aim of this essay is to defend a position on justice in education that can be reconciled to a reasonable understanding of religious freedom. This explains why the focus is on questions concerning religious exemptions and controversies over science education.

Philosophy, Kansas State University

[70] I have learned the most on this topic from many conversations with Bruce Glymour, Amy Lara, and Scott Tanona.

[71] For a good account of how educational opportunities are distributed unequally by race under the current "No Child Left Behind" programs, see Levinson's *No Citizen Left Behind*.

https://doi.org/10.1017/S0265052514000168 Published online by Cambridge University Press