

## *Wisconsin v. Yoder* and the Relationship between Individual and Group Rights

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Bertram Bandman presents a nuanced discussion of the conflict between a parental right to negative liberty and the child's right to positive liberty. He further articulates a subtle distinction between the child's rights as a right to an open future versus a right to self-development. In this distinction he adds to our understanding of positive liberty as a right to self-development. This brief response cannot do complete justice to the complexity of this treatment, therefore, given that his test case for children's rights is *Wisconsin v. Yoder*, this response will be framed in terms of the issues pertaining to *Yoder*.<sup>1</sup> At least three kinds of rights conflicts are involved in *Yoder*: (1) a conflict between a parental right to negative liberty and the child's right to positive liberty; (2) a conflict between a minority group right to cultural reproduction and the liberal society's emphasis on individual rights to independent self-development; and (3) a conflict between minority and majority group rights. The discussion below will explore the conflict between the individual rights that Bandman has clearly articulated as well as the conflict between individual and group rights. It will be argued that the crucial issue in *Yoder* is the adjudication of the conflict between group and individual rights and ultimately between groups. These group considerations further illuminate the individual rights issue. My central concern with Bandman's analysis is that the child's development is treated in the abstract, disconnected from culture and community.

As Bandman suggests, *Yoder* can be understood as pertaining to a choice between a right to negative parental liberty and the child's positive right to self-development. The Amish parents can be understood to be asserting a right of negative liberty in the sense that they are claiming that they should be free from the coercive interference of the State in deciding the kind of education that their children will receive. They do not ask for any kind of public support for their choice; they only ask to be left alone in order to determine their child's education. A negative liberty right to parental educational choice is clearly established by *Pierce v. Society of Sisters* (1925).<sup>2</sup> Following Justice Douglas, Bandman reads the *Yoder* decision as a foreclosure of the opportunities the child has for independent self-development, thereby violating the right to positive liberty, the right to the means necessary to achieve self-determination and development. Thus, they view the choice made by the Amish parents as a form of repression. On the surface *Yoder* seems to present a significant conflict of individual rights.

A right to freedom from coercive interference entails, however, as all rights do, particular obligations which limit its claims. Specifically, negative liberty is limited by the harm principle.<sup>3</sup> One has a legitimate claim to be free from interference as long as one does not cause harm to others. Bandman in essence argues that the withholding of a particular kind of educational opportunity constitutes harm; the harm in this

case is the foreclosure of developmental opportunities inherent in a liberal education, which thereby limits the life expectations of the student. However, this assertion presumes that Barbara's life would have been better if she were allowed to continue attending public high school. It presumes that a liberal education is more consistent with a developmental right than an Amish education. The assumption here is that a liberal society is superior to an Amish one and thus the liberal society's imperatives should take precedence. However, to argue that withholding the opportunity to pursue a liberal education constitutes harm is to prejudice a particular conception of the good life over another and thus to violate the principle of state neutrality upon which liberal rights, both negative and positive, are founded.

Perhaps this problem is caused by the failure of this interpretation of *Yoder* to acknowledge a central consideration: the existence of minority group rights to cultural reproduction. It can be argued that implicit in the Amish parents' claim to negative liberty is the assertion of a right to cultural reproduction, a group right which is implemented through individual parental choice. This perspective is illustrated by reference to another case: *Mozert v. Hawkins County Board of Education*.<sup>4</sup> *Mozert* involves a parental request to have students excused from class because the parents assert that a required text containing "sinful" material threatened to undermine their children's religious identity. A federal court ruled against the parents on the grounds that exposure to alternative views did not constitute a violation of parental right to transmit their religious beliefs to their children. In *Mozert* the federal court acknowledges, as Bandman and Justice Douglas would, a problem with denying students exposure to alternative ideas. The court here seems to be acknowledging the importance of a liberal exposure to alternative ways of life for the developmental good and general enlightenment of the student. What accounts for the different rulings in *Yoder* and *Mozert*? Is it merely an example of contradictory court rulings? No, there is a fundamental difference. The difference is that the *Mozert* parents are not a distinctly identifiable minority cultural group whereas the Amish are. Both groups are invoking a right to negative liberty; however, the Amish's invocation is grounded in the assertion of a group right to cultural reproduction.<sup>5</sup> This group right fundamentally alters the issue. The central question in *Yoder* is not which individual rights should have priority but whether the group's right to cultural preservation should trump the child's right to liberal development coupled with the public school's obligation to provide a liberal education in accordance with that right. The existence of group cultural rights significantly complicates the question of parental and child's rights.

However, even this formulation of the issue may be deceiving in that it is still based upon the assumption that the child's development is some how threatened by giving priority to the preservation of the minority culture. Implicit in the right of cultural reproduction is the communitarian proposition that human development is necessarily inseparable from culture. It is asserted that we do not develop in isolation but are formed through dialogical interaction with our cultures.<sup>6</sup> From this perspective, to allow the child to continue in high school may in fact be developmentally harmful. In other words, from the communitarian perspective cultural reproduction

is not antithetical to self-development but is a necessary condition for it. It can be argued, therefore, that to deny a right to cultural reproduction does harm to both the culture and the developmental interests of its children.

In conclusion, what this response has tried to demonstrate is that when considering, within the context of a liberal society, the right to self-development of minority children, group cultural rights must be taken into consideration. The questions raised here hinge upon the nature of human identity and development and the legitimate place of cultural minorities in a liberal society. In the final analysis, is it legitimate for a rights-based liberal society to tolerate the cultural reproduction of groups? Would doing so violate the rights of the children of the insulated group?

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1. *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

2. *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925).

3. John Stuart Mill, *On Liberty* (New York: Random House, 1947).

4. *Mozert v. Hawkins County Board of Education*, 827 F.2d 1058 (1988).

5. Walter Feinberg, *Common Schools/Uncommon Identities: National Unity and Cultural Difference* (New Haven: Yale University Press, 1998), 158-60.

6. Charles Taylor, "The Politics of Recognition," in *Multiculturalism: Examining the Politics of Recognition*, ed. Charles Taylor and Amy Gutmann (Princeton: Princeton University Press, 1994), 25-73.