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Taking Precautions when Shaping a Child's Values

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Abstract

Parents' discretion to shape their children's values is limited both by society's interests in the people those children will become and by the children's own interests. This article examines the limits imposed by children's interests. It uses several examples, including ultra-Orthodox Jews in Israel who send their son to a school that does not teach secular subjects beyond an elementary-school level. If the son remains religious, his education will have been suitable. But if he does not, he will be ill-prepared to thrive in a secular society.

This article compares the religious parents' choice about secular education to commonplace decisions about risk and appropriate precautions. On this account, the propriety of the religious parents' choice depended on how likely their child was to become secular and whether the child would be worse off (from his own perspective) if he grew up to be secular and lacked secular education than he would be if he grew up to be religious and lacked a childhood devoted primarily to religious texts.

The paper considers various objections that might be made by fundamentalist parents who think they need not consider their child's future welfare from his adult perspective. Among the objections considered is that parents are entitled not to be complicit with outcomes they regard as evil. Unlike much of the literature in this area, the paper does not focus on the value of autonomy. Instead it emphasizes the value of authenticity.

Taking Precautions when Shaping a Child's Values

Scott Altman [11/13/16]*

Parents' discretion to shape their children's values is limited both by society's interests in the people those children will become and by the children's own interests. This article examines the limits imposed by children's interests; it does not discuss how society's interests limit value inculcation, or why parents have a right to shape their children's values.[1]

Consider the following example based on a current dispute:

> Talmud to Tech: Ultra-Orthodox parents in Israel send their son to a school that does not teach secular subjects beyond an elementary-school level. The parents reject secular education because they see it as a waste of time. Ultra-Orthodox men in Israel often do not work, but instead spend their time studying religious texts (supported financially by their wives and by the state). The parents also regard secular education as part of a broader threat posed by contact with outside influences – influences that might tempt people away from their religious commitments. When their son does not remain ultra-Orthodox, his poor education makes it difficult to enter the workforce and to create a secular life.[2]

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1 I have argued elsewhere that parents have a right to shape their children's values, subject of course to opposing rights of children and of society. Scott Altman, Parental Control Rights, in **Philosophical Foundations of Children's and Family Law**, Lucinda Ferguson & Elizabeth Brake, Eds, (forthcoming 2017). The claim that parents have even a prima facie right to direct their children's upbringing is, of course, controversial See, e.g., Colin Macleod, Conceptions of Parental Autonomy, 25 **Pol. & Soc.** 117 (1997).

2 This example is based on a class action suit in Israel against the government for allowing such schools to exist. The chair of the nonprofit bringing this suit (Out for Change) estimates that about half boys in ultra-Orthodox Israeli families go to schools that teach math to a level typical for third graders in secular schools. These schools teach no science, no English, and conduct their classes only in Yiddish. The other half of ultra-Orthodox boys do not fare much better, learning secular subjects to the level equivalent of sixth graders in secular schools. For details on the law suit in Israel, see In Case of Second-rate ultra-Orthodox Education, the State Blames the Victims, http://www.haaretz.com/opinion/.premium-1.721448. Similar claims have been made about education in New York. Yiddish Isn't Enough: A Yeshiva Graduate Fights for Secular Studies in Hasidic Education http://www.nytimes.com/2014/11/23/nyregion/a-yeshiva-graduate-fights-for-secular-studies-in-hasidic-education.html?_r=0. This concern has also been raised about fundamentalist Christians, See Sherkat & Darnell, The Effect of Parents' Fundamentalism on Children's Educational Attainment: Examining Differences by Gender and Children's Fundamentalism, 38 **J. for the Scientific Stud. of Religion** 23 (1999), and about Jehovah's Witnesses. According to a Pew Study, only 12% of Jehovah's Witnesses have completed college. This is the lowest among the religious groups studied. See, Religious Landscape Study, http://www.pewforum.org/religious-landscape-study/educational-distribution/.

The stark facts of Talmud to Tech might seem exotic. Although they resemble an extreme version of the Amish education practices litigated in Yoder, they appear to have little connection to the lives of most parents. But in some ways their structure mirrors other parental efforts to shape their children, efforts that can be religious or secular, extreme or commonplace. Examples include:

- Parents who aggressively pressure their child to excel in academics and extracurricular activities to gain admission at an elite college, even though such pressure can lead students to cheat, to abuse Adderall, or to suffer from long-term mental disabilities.

- Parents who encourage their child to specialize early at a single task, such as piano, chess, or gymnastics. They allow the child to neglect academic study, even though the child might not have a career in this specialized field and might be unprepared for any other career as a result of his poor education.

- Hearing parents of a deaf child who consent to cochlear implants. Though they learn to sign, they do not send their child to a deaf school, opting instead for a public school. They hope that this will provide their child with useful skills and opportunities in the hearing world, but recognize that it might impair her ability to be fully at home in the deaf community.

- Feminist parents whose teenage daughter wants to be a fashion model. They think this career is degrading. The child wants plastic surgery and modelling lessons. Without these, she will be far less likely to have a career as a model. But plastic surgery and modeling lessons may increase the chance that she rejects her parents' feminist values.

The decisions made by these parents -- decisions about what values to teach and what instructional methods to use – can be understood from many perspectives. In this paper, I offer an unusual suggestion: these decisions all resemble decisions about risk and safety. Such decisions can be made by individuals deciding for themselves or their families whether to engage in risky behavior or by manufacturers selecting safety precautions for their products. By

invoking the image of manufacturing, I do not mean to suggest that parents should be regulated in the same way as manufacturers. I mean only to draw attention to the similarity of risk assessment required. Insofar as the manufacturing analogy is useful, the children are not the goods being produced, but the consumers of goods that parents provide.

How do parental decisions about value inculcation resemble risk impositions? Parents planning for their children's future must make decisions before knowing what their children will eventually need or want. Some decisions are easy: parents should provide goods that will be useful to their child in any possible future; they should also provide goods that will often be useful, but will never be harmful.[3] But parents cannot limit their decisions to this do-no-harm approach. Rational people planning for uncertain futures regularly invest in goods that might be helpful or might be harmful. For example, some homeowners store extra gasoline for a generator in case of a power outage even though that gasoline would prove dangerous in case of fire. Similarly, manufacturers often make safety trade-offs that harm some people but help others. For example, airbags in cars save many lives. But they also injure and kill some people, particularly short or small drivers and passengers. The devices could be made safer for those of small stature. But doing so would make them less effective for most people.

The parents in my examples had to make similar trade-offs. When parents allow their child to neglect schoolwork to focus on a single talent, they hope to make her future career (or other

[3] Comparing this uncertainty to a Rawlsian veil of ignorance, Robert Noggle says that parents should prioritize primary goods – those aspects of childhood that will prove useful to whatever adult the child ultimately becomes. Noggle also proposes a list of secondary goods, which he defines as a good that does not "harm anyone to whom it is provided . . . though it will be useful to a variety of people with a wide variety of conceptions of the good, life-plans, and world-views." Robert Noggle, Special Agents: Children's Autonomy and Parental Authority in **The Moral and Political Status of** Children97, 107-08 (Archard & Macleod eds 2002). A very different invocation of the veil of ignorance can be found in Matthew Clayton, **Justice and Legitimacy** 106 (2006).

life prospects) more successful, even though doing so puts at risk her ability to pursue alternatives. The Talmud to Tech parents believed that foregoing secular education would free up time that their child could use for religious study, even though doing so put him at risk of failure should he want a secular life. Indeed, in all of the examples above, any choice the parents make will deprive their child of opportunities that might later be important. All of these resemble the decision to keep gasoline on hand in case of power loss or to install airbags for average-sized drivers.

Parents' choices about value inculcation can be evaluated based on risk assessment. Wise choices depend on tradeoffs between uncertain harms and benefits. For example, a sensible decision might depend on whether a child who grows up to need a good (such as education) but does not have it is worse off than a child who grows up to have it but does not need it, as well as on the likelihood of each outcome.

On this way of thinking, the wisdom of the decision in Talmud to Tech depended on how likely their child was to become secular and whether the child would be worse off (from his own perspective) if he grew up to be secular and lacked secular education than he would be if he grew up to be religious and lacked a childhood devoted primarily to religious texts. A reasonable decision would minimize likely harm (or some related calculation).[4] Social scientists might describe this as an expected-value calculation.

By invoking risk assessment, I do not mean to be advocating cost-benefit analysis as the primary way we must assess risk. There are many ways of assessing the reasonableness of risk

[4] For purposes of simplicity, this paper refers to expected-harm minimization as the appropriate goal. But I do not mean to take a position on debates between minimizing harm and maximizing the position of the worst-off person or other variations on expected value.

imposition, only some of which resemble traditional cost-benefit calculations. The argument in this paper does not depend on adjudicating among them.[5] It assumes only that some form of expected welfare assessment is needed.

Fundamentalist parents would likely object to this approach, claiming that they need not consider their child's future welfare from his adult perspective if that perspective conflicts with their own values. Asking that they prepare their child for a secular life is unthinkable, much like asking secular parents to prepare their child to become a sex worker. In a companion paper, I offered one reply to this view: that preparing a child for a secular future does not require fundamentalist parents to pursue goals that are inconsistent with their values.[6] In this paper, I offer a second response: that reasonable cooperation in a pluralist society requires respect for the future values of one's grown children.

I. Authenticity and Identification

Parents sometimes harm children when shaping their values, a harm often described in terms of a child's future autonomy. But describing the harm as diminished autonomy has little prospect of persuading people who reject autonomy as a value. In a prior paper, I took a different approach, one more in keeping with political-liberalism. That approach precludes the state from presuming that a person's life is better just because it is self-directed or because the person rationally reflects on her values.

Rather than focus on autonomy, I showed how parents' value-shaping actions might make it difficult for the child to live authentically. By authenticity I mean having activities that reflect

[5] See Greg Keating, Is Cost-Benefit Analysis the Only Game in Town?

[6] Scott Altman, Reinterpreting the Right to an Open Future: From Autonomy to Authenticity (draft).

one's values. Children sometimes grow up unable to pursue projects that match their values because their parents have made those projects difficult to pursue. Denying secular education to children risks this impairment for adults who want a secular life.

To be effective, authenticity requires a second good, often called identification. If the values and desires we have strike us as foreign, as not our own, we are less likely to find satisfaction in the connection between our projects and our values, since we will be alienated from both.[7] Alienation is a possible outcome for an ultra-Orthodox Jew without secular education. This might be the result if he stays in his community with no commitment to the life he now leads or to any particular other life. Perhaps he identifies with his secular impulses, but cannot rid himself of the intense feeling that departure would be disloyal. Or perhaps he finds his secular impulses to be foreign. In either case, he is alienated.

These harms can arise when parents fail in their efforts to inculcate values. If the ultra-Orthodox child remains permanently committed to his faith, not tempted by a secular life and fully identified with his religious values, he will not suffer from inauthenticity or alienation. Does this mean that parents who guess right about their children's future values (or who engineer those values effectively) have fulfilled their duties, and that parents who guess wrong (or engineer poorly) have wronged their children? These conclusions are too quick. As I will discuss below, parents who guess right (or engineer well) may not have harmed their child, but

[7] These terms are notoriously disputed. See, e.g., Harry Frankfurt, Identification and Wholeheartedness 159 in **The Importance of What we Care About** (1988); Gary Watson, Free Agency, 73 **J. of Phil.** 205 (1975); Michael Bratman, A Desire of One's Own, 100 **J. of Phil.** 221 (2003). Frankfurt seems to equate alienation with a failure of identification. But others have suggested that alienation is an unpleasant experience, perhaps due to a conflict between self-image and actions or feelings. Non-identification is not necessarily accompanied by this feeling. E.g. Timothy Schroeder and Nony Arpaly, Alienation and Externality 29 **Canadian J. of Phil.** 371, 381 (1999). See also Brighouse **Ethics** at 730 n19. Cf, Felicitas Kraemer, Me, Myself and My Brain Implant: Deep Brain Stimulation Raises Questions of Personal Authenticity and Alienation, 6 **Neuroethics** 483 (2013).

nonetheless have wronged the child by exposing her to an unreasonable risk; no-harm, no-foul is not a principle of morality. Similarly, parents who guess wrong (or engineer ineffectively) -- and whose children thus face difficult circumstances – may be blameless because they took reasonable precautions. Good parenting requires risk management, not risk elimination.

In my companion paper I argued that the duty to protect children from inauthentic or alienated lives is very narrow. Parents need not provide their children with the easiest possible path toward an authentic and identified life. They must take reasonable steps to reduce the risk of rendering their children disabled, that is making it unreasonably difficult for them to lead authentic and identified lives.[8]

II. What Precautions are Reasonable?

Like anyone who puts others at risk, parents who aim to shape their children's values must take reasonable precautions against harms. I have identified two harms associated shaping a child's values: harms to authenticity and harms to identification.[9]

Parents can take precautions only if harms to authenticity and identification are foreseeable. What possibilities are foreseeable? Parents cannot anticipate every goal, preference, or value their children might come to embrace. But some outcomes are more likely than others. In a diverse society, children may come to be influenced by ideas that the parents

[8] Some theories of harm distinguish actions that render a person unable (easily) to pursue meaningful projects from those that merely set back a person's interests. See Judith Thomson, **The Realm of Rights** 264-65 (1990); Seana Shiffrin, Harm and its Moral Significance, 18 **Legal Theory** 357 (2012).

[9] These are not, of course, the only duties parents owe, or the only ways parents can harm their children. For discussions of other interests that are distinctive to children, such as an interest in play, see Colin Macleod, Primary Goods, Capabilities, and Children, 174 in **Measuring Justice** (Brighouse & Robeyns eds 2005); Colin Macleod, Agency, Authority and the Vulnerability of Children, 53 in **The Nature of Children's Wellbeing** (A. Bagattini, C. Macleod eds. 2015); Anca Gheaus, The 'Intrinsic Goods of Childhood' and the Just Society, 35 in **The Nature of Children's Wellbeing.**

reject. Parents must anticipate this even if they take steps to shelter their children, since no parent can permanently insulate a child from all outside influence. This is especially so for parents who are part of minority or highly demanding religious or political groups – groups that experience significant departures from one generation to the next. The same principle applies to secular parents and parents in majority religious and political groups, whose children also defect from their parents' viewpoints in significant numbers.[10] Of course, as the child grows older and the parents gain insight into the child's interests and character, the futures that are foreseeable will shift, and perhaps narrow. But even so, much will remain uncertain.[11]

Ultra-orthodox parents must anticipate that their children might become secular (or simply less observant); The hearing parents of a deaf child must anticipate that their child might grow up to find assimilation unappealing and to yearn for connection to the deaf community (or the opposite); academically aggressive parents and parents who allow their child to specialize must anticipate that their child may have a future very different from the one the parents foresee – outside an educated elite or unrelated to the child's early talent; feminist parents must anticipate that their child might someday reject their values and occupy a job they find

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[10] According to the Pew Research Center report on America's Changing Religious Landscape from 2015, the percentage of people who no longer identify with their childhood religion ranges from 20-25% for Hindus, Muslims, and Jews to 35-40% for Evangelical Protestants, Mormons, and Catholics, to 55-65% for Mainline Protestants, Buddhists, and Jehova's Witnesses. (at p.39). Relatively little data is available on retention rates among Amish communities. But this web page claims that it is as high as 85%. http://groups.etown.edu/amishstudies/statistics/population-trends-2008-2013/. Retention rates among ultraorthodox Jews in Israel at extremely high. One study put the rate at 94%. http://www.pewforum.org/2016/03/08/religious-affiliation-and-conversion/. Departures from parental positions are even more dramatic for viewpoints other than those on religion. Although rates of departure vary over time, by level of family commitment to the issue, and by issue, rates of political similarity between parents and children rarely reach 70% and are often far lower. See M. Kent Jennings, Laura Stoker, and Jake Bowers, Politics across Generations: Family Transmission Reexamined, 71 **J. Politics** 782 (2009).

[11] See Noggle at 107.

demeaning to women. None of this is to say, yet, that these parents chose inappropriately. It is only to say that they needed to anticipate predictable possibilities.

What precautions must parents take to reduce harms to authenticity and identification? This question depends on how parents should make trade-offs among different foreseeable futures, and on how their duties change if the precautions taken might alter which future is most likely.

How should Parents Trade off Options in Different Possible Futures? Because we are uncertain about the future, we must sometimes choose options that could benefit or harm us. How should the parents in our initial examples have decided for their children? Consider three cases: The gifted child whose education suffered because she specialized, the pressured child whose parents insisted on only excellent outcomes, and Talmud to Tech. To help with analysis, let me specify a few more details and offer names for these cases.

> Steinway to STEM: The parents of a talented young pianist persuade (or allow) her to stop studying math and science after two years of high school so she can concentrate on music. The pianist then goes to college and discovers that she wants a STEM career and cares little for her former musical passion. Clearly, she is at a disadvantage in pursuing her new plan. But the opposite choice might have been equally bad or worse had her goal not changed.
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> Scared to Scarred: Parents demand that their daughter get all A's and that she excel at extracurricular activities designed to gain entrance into a top college. They tell her that failure is due to weakness and that weakness is unforgivable. They constantly threaten her with punishments. To achieve all that they demand, she works tirelessly. Unable to keep up, she occasionally cheats on tests and uses Adderall, to which she eventually becomes addicted. This leads to other drugs, a small crime spree to pay for them, and a criminal conviction. It also leaves her emotionally scarred. As an adult, she despises her parents' attitudes toward failure and weakness. But she is unable to forgive her own failures or to feel empathy toward others who do not succeed.

What decision was reasonable in Steinway to STEM? Setting aside the possibility that the teenager's preferences should alter this decision, the choice depends on the likelihood that

the child would ultimately pursue her passion for piano or would instead (or in addition) want a career requiring math or science. It further depends on who is worse off (from her own perspective): a person wanting a career in science who must take remedial courses or a person wanting a musical career who did not practice enough because she was studying math and science.

These are difficult questions, in real life almost certainly not based on precise estimates of the harm's likelihood or severity (or indeed on reductionist views that focus only on careers, rather than the lifelong pleasure of musical training). Rather, they depend on intuition and judgment. All this gives us reason not to judge harshly parents who make mistakes. But it does not mean parents can do no wrong.

The Steinway to STEM parents likely did not impose an unreasonable risk on their daughter. Success as a professional pianist, or even high achievement as an amateur, requires long hours of practice. Perhaps the time taken from math and science and devoted to piano would not have mattered toward this goal. But plausibly it would have. At the same time, she has fallen only a few years behind in these subjects and has discovered the deficit when she still has support to make up the loss. Her music training may have helped develop her mind for later work in math. For all these reasons, the parents likely took a reasonable risk. On the other hand, we could alter the facts to reach a very different judgment. For example, her educational deficit might have been much more severe, perhaps because she was carelessly home schooled. Or the risks imposed might have included other dangers, such as serious injury from intense dedication to childhood sport.

What about Scared to Scarred? We do not know the exact likelihood of drug use, cheating, and emotional scarring that these parents risked. There are significant benefits to clear and high expectations. And children of demanding parents often grow up without cheating, drugs, or debilitating self-hatred. But it is very unlikely that the marginal expected benefit of threats and demeaning talk about weakness exceeds the expected harms, which (unlike Steinway to STEM) seem permanent or difficult to reverse.

This example might appear different from the others because the harm imposed comes from bad parenting techniques (threats and demeaning talk) rather than from decisions about what values a child is exposed to. But as I will illustrate below, many of the risks parents impose on children's ability to lead authentic and identified lives stem as much from the techniques of value inculcation as they do from the lessons parents teach.

On first inspection, the Talmud to Tech parents seem to have made the wrong choice. The parents are not trading off equally serious harms among possible futures. If the children grew up to be secular, their limited education would render them significantly disabled in trying to lead the lives they wanted. But if the parents provided their children with education in secular subjects, it would not have rendered future religious adults disabled – or even significantly challenged – in pursuing a religious life.

Perhaps this last claim is mistaken. Might educating boys in secular subjects render them significantly disabled if they remain religious? If secular education is not mandated for everyone, it might cause serious harms. In some ultra-Orthodox communities, Jewish scholarly achievement is required for access to prestigious jobs (as a rabbi or a teacher) and plays a key

role in finding a desirable spouse.[12] It is unclear whether marginal hours devoted to secular education for teenagers would really affect scholarly achievement in early adulthood (when Ultra-Orthodox men marry) or later adulthood (when they might become ordained as a rabbi). But such deficits are possible and would have serious consequences. On the other hand, if the state required secular education for everyone, no one would be disadvantaged by it in seeking a spouse or a job. This provides a strong reason for mandatory secular education. By requiring everyone to take secular classes, the state protects children who end up secular without disabling children who end up religious.

Religious parents might offer a different explanation for why their choice benefits the child. Keeping boys from having a secular education reduces the chance that they will leave the community, both because they will have few job options and because they are less likely to be tempted by secular ideas. From the religious perspective, this would benefit the child. If the child remains faithful to religion, he will go to heaven or will live a life that is close to God, which is infinitely valuable. Otherwise he will burn in hell or live a life apart from God, which is infinitely harmful. Therefore any step that increases the chance of remaining in the religion is justified because it has infinite positive expected value. Or the parents may simply think they have no reason to be concerned about the welfare of their child should he turn out to be secular, as the child would no longer be a part of their community, and indeed would have betrayed them and thus be due no concern.

[12] Yoel Finkelman, Ultra-Orthodox/Haredi Education 1063, 1071 in **International Handbook of Jewish Education** (H. Miller et al eds 2011)

In this stark form, these arguments are not legitimate. Of course, religious parents should want their child to stay in the faith. And they have a right to aim at this outcome.[13] But in circumstances of pluralism, even people who believe that their religious views are the only true path to salvation should be seeking reasonable terms of cooperation. This includes taking seriously the views of the secular adult their child might become. The arguments outlined above do not take those view seriously. The secular adult does not regard his life as infinitely harmful.

To see why these parental attitudes are unreasonable, consider as an analogy two neighbors, one religious and the other secular. The secular neighbor likes to read books on his Kindle. The religious neighbor thinks this use of time endangers the secular neighbor's soul. As it happens, the religious neighbor is adept at technology. He finds a way to hack the secular neighbor's Kindle and to replace all of the secular texts with religious material. When asked to justify his behavior, the religious neighbor says that reading religious texts is commanded by God, that inducing his neighbor to read these texts will greatly benefit the neighbor if it leads him to eternal salvation, and that in any case the interests of secular people deserve no respect. If this hypothetical seems contrived, one might consider coerced baptisms as comparable.[14]

No one will have difficulty in seeing the religious neighbor's behavior as wrong – as disrespectful to the values held by the secular neighbor. Both the act and its justification

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[13] See Parental Control Rights, supra.

[14] Coerced Baptism is, of course, prohibited by the modern Catholic Church. But it was widely practiced against Jews in the middle ages and justified in ways quite similar to the example in text. A modern (if less violent) parallel arose a few years ago when it became public that the Church of Latter Day Saints was posthumously baptizing Jewish holocaust victims. http://www.nytimes.com/2012/03/03/us/jews-take-issue-with-posthumous-mormon-baptisms-beliefs.html.

violate the terms of reasonable cooperation in a pluralist society. Much the same argument applies to religious parents of the children who end up secular. When parents try to shape the values of their children, they are simultaneously providing the children with a needed good – a set of values – and imposing on the adults those children will become a risk that the values provided (or the means of providing them) will turn out to have been harmful from the perspective of that adult. Since the risk imposed is on an adult, who will have her own views and values, the person imposing the risk owes that adult the same respect she owes her neighbors.

Religious parents might question this analogy or its conclusion on several grounds.[15] First, the religious parents might claim that even accounting for the secular adult's perspective, the balance still tips against secular training. Study of Talmud is viewed as among the most important things a man can do because it is a way to be closer to God. On this assumption, time to study Talmud is infinitely (or at least extremely) valuable to the future adult who remains religious. Even accepting that not having a secular education is significantly harmful to the future secular adult, the balance still falls against secular education.

This argument is not frivolous. Although practices vary, many ultra-Orthodox men forego activities that take time away from religious study, including work, entertainment, and sports. This suggests that they do indeed place a very high value on each hour of additional study. Nonetheless, the argument relies on an unacceptable form of self-preference. Even if

[15] It might be thought that the analogy conflates positive and negative duties. The religious neighbor has no duty to provide the secular neighbor with free secular books. So why must religious parents provide their children a secular education? Joseph Millum, The Foundation of the Child's Right to an Open Future, 45 **J. Soc. Phil.** 522 (2014). I do not presume a positive duty to facilitate an authentic future. Rather I argue for a negative duty: parents should not direct their children's upbringing in a way that impedes authenticity.

added hours of study are remarkably important to ultra-Orthodox men, they are nonetheless marginal hours within a life devoted to study – a life whose main objectives remain intact without these hours. The loss of this time is therefore a small harm compared to a lifetime without meaningful work that might confront a secular Jew without adequate education.

It might be objected that this marginal-hour analysis misunderstands the harm to religious people. Secular study is sometimes forbidden because it is thought to create significant risks. Among these is not only the risk that the child will become secular (which I have already explained cannot count as a harm), but also the risk that it will lead those who remain religious to have doubts or sinful thoughts. This harm to the future adult might be comparable to lifetime unemployment for a secular Jew. Indeed, it might be the same harm – alienation – that I claim is caused by some practices of religious parents. The key question about this harm concerns its likelihood and severity compared to the likelihood of secular outcomes. I do not think that secular education is apt to cause alienation very often, at least not nearly as often as non-education leads to unemployment. This is especially so for education in subjects such as math and English. But the issue is ultimately empirical.

A related argument relies on moral purity. One animating principle behind ultra-Orthodox Judaism is withdrawal from a sinful world. On this interpretation, time spent on secular study is not merely wasted or risky, it is a source of moral pollution, which leaves the student in a state of sin. This argument is problematic because it is not clear that many ultra-Orthodox Jews believe this.[16] After all, they provide substantially more secular education to

[16] According to one commentator, studying secular subjects is not said by Ultra-Orthodox Jews to be against religious law. Lotem Perry-Hazan, Court-Led Educational Reforms in Political Third Rails: Lessons from the Litigation over Ultra-Religious Jewish Schools in Israel (forthcoming **J. Ed.** Policy).

their daughters than to their sons and do not regard their daughters as impure. As well, individuals who have secular education are not typically treated as outcasts in the way apostates are treated. So whatever impurity attaches to secular education seems not to be serious or permanent.

Second, religious parents might claim a right to avoid complicity with evil. Perhaps they will accept a duty to take precautions that will be useful to their child should he become secular. But they should not be forced to take steps that increase the chance of that outcome. Even if the action is not forbidden by their religion, the outcome that they are facilitating is.

We should not dismiss this argument too quickly. It might be tempting to respond that all complicity is removed from the parents if the state mandates secular education. Parents bear no responsibility for state mandates. But this argument misunderstands the nature of complicity-based claims for accommodation – which demand that people be allowed to avoid close connections with evil, not merely that they be able to avoid blame.[17] We would recognize this point if the state required unwilling doctors to perform abortions or to assist in executions. And we do recognize it by allowing conscientious objectors to avoid military conscription.

A better response focuses on the harms imposed by accommodating the parents' complicity complaint. We typically do not accommodate complicity arguments when doing so harms third parties.[18] Allowing parents to invoke complicity as a reason not to teach their

[17] Some writers reserve the word complicity for morally blameworthy behavior. They describe blameless association with wrongdoing as moral taint. See Christopher Kurtz, Complicity 45 (2000); Gregory Mellema, **Complicity and Moral Accountability** 27-28 (2016)

[18] See Douglas Nejaime & Reva Siegel, Conscience Wars: Complicity-Based Conscience Claims in Religion and Politics, 124 **Yale L.J** 2516 (2015); Amy Sepinwall, Conscience and Complicity: Assessing Pleas for Religious Exemptions after Hobby Lobby, 82 **U Chi. L.Rev**. 1897 (2015).

children secular subjects makes it extremely difficult to protect their children from significant harms.

Third, (and related to complicity), religious parents might argue that their right to direct their child's upbringing is being unreasonably limited if they must facilitate an outcome they regard as abhorrent. Perhaps parents have a duty to take precautions if doing so does not undermine the parents' core goal as a parent. But their duties cannot be so constraining as to undermine their own central aims.

This concern for parental rights is not limited to the religious context. Consider an elaboration of facts mentioned at the paper's start:

> Feminist to Fashionista: Feminist parents refuse to allow their 15 year old daughter to get plastic surgery or attend modeling school. The surgery would be paid for by insurance (and would be low risk). So the parents are not worried about money or danger. But they think the sexualized female beauty that interests their daughter is degrading. They worry that indulging her interest will lead her permanently to reject their feminist values and perhaps to become involved with even more degrading activities. Not getting plastic surgery and early training will reduce the chance of their daughter succeeding as a fashion model.

In both Talmud to Tech and Feminist to Fashionista, parents are being asked to facilitate a future for their child contrary to their own core parenting goals, a future that they regard as anathema. Their own lives will have gone less well if their child reaches this future because they will have failed at an important project that gives their lives meaning.

As I noted at the outset, parents' rights sometimes conflict with children's rights. When rights conflicts, all we can do is balance – looking to see who has a greater interest or a greater potential loss. The Talmud to Tech case is wrenching in part because the stakes are high on both sides. But they seem higher for the child. Ultra-Orthodox parents will have led less successful lives if one of their children becomes secular. But the secular adult without

adequate education will face life-long disability. The Feminist to Fashionista case involves a smaller harm to the child. Perhaps she will be unable to be a fashion model. But those careers are difficult to achieve even with the best training. A vision of an authentic life that depends on success in such a narrow field is not plausible. Once we consider a more sensible vision of authenticity – say a life connected to fashion and beauty in some way – the harm to the child looks far smaller.

Finally, the religious parent might simply reject the comparison between neighbors and the adults their children will become. They do not hack a neighbor's Kindle because they believe in private property and because they have prudential reasons not to interfere in other people's religious lives (lest other people interfere in their religious lives). But these reasons for respecting property and avoiding conflict in society do not apply to rearing their own children.

This final argument may indeed reflect the view of some fundamentalist parents. Although I understand the perspective, a person with this view does not qualify as a reasonable fundamentalist. The reasons given for not hacking a Kindle are, to be sure, reasons for engaging in reasonable behavior – cooperating peacefully with those in power. But they are not an effort to find terms of cooperation that can be acceptable for all. When Rawls described the aim of political liberalism, he distinguished overlapping consensus from just this kind of modus vivendi.[19]

How can Parents Plan for Outcomes while also Trying to Influence their Likelihood?

Taking precautions based on expected value is more complicated if the precautions that help a child in one possible future might increase the likelihood of that future becoming real. This was

[19] John Rawls, **Political Liberalism** 147 (1993).

clearly the worry in Yoder, where parents feared that secular education might lure children to a secular life. Similar worries likely animate many parental efforts at sheltering their children.

This problem has a counterpart in safety precautions. The theory of risk compensation suggests that some safety measures will lead to less added safety than one might expect, or will even undermine safety, because they will encourage risky behavior.[20] To see how these cases resemble parental decisions, consider the following example:

> Slippery Slopes: My teenage son plans to go skiing in a place that does not require helmets. About .3% of skiers are injured each year. Among them, about 20% (6 in 10,000) suffer serious head injuries. Wearing a helmet cuts the risk of serious head injury when accidents occur. But it is also thought to make teenage boys more reckless on the slopes.

Should I want my son to wear a helmet? This depends on several offsetting effects: how much more careless will he be if wears a helmet than if he does not? And how much safer will the helmet make him if he does have an accident? If helmets cut his risk of serious head injury in case of an accident from 20% to 5%, but increase the likelihood of an accident from .3% to .4%, I would certainly want him to wear the helmet. His chance of a serious head injury would fall from 6 in 10,000 to 2 in 10,000.[21]

What does this analysis mean for parents trying to shape their children's vales? First, in many cases it does not require great caution. Often parental efforts to shape children's values impose no significant harm if the efforts fail. So for example, insisting that children read

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[20] This worry has been expressed about needle-exchange programs, condoms, HIV drugs, Naloxone, and many transportation safety devices. The bulk of persuasive evidence suggests that increased risky behavior rarely if ever exceeds the safety benefits of these interventions. A literature review on the topic can be found in James Hedlund, Risky Business: Safety Regulations, Risk Compensation, and Individual behavior, 6 **Injury Prevention** 82 (2000), online: http://injuryprevention.bmj.com/content/6/2/82.long#sec-7.

[21] For a review of evidence on this topic, see Haider et al, An Evidence Based Review: Efficacy of Safety Helmets in Reduction of Head Injuries in Recreational Skiers and Snowboarders, 73 **J. Trauma Acute Care Surg.** 1 (2012).

religious texts and pray daily likely has no effects that, should the child grow up to want a secular life, will make that life notably harder to live. On my account, parents may insist on a regimen of religious reading and prayer in order to increase the chance that the child grows up to be religious.

Second, not all parents face this kind of dilemma because not every parent is unequivocally committed to one outcome. The Steinway to STEM parents may have had no particular preference between music and math. Similarly, the parents who chose cochlear implants may have been torn between what they perceived to be two possible futures for their child, either of which would allow their child an authentic and identified life.[22] With cochlear implants, she would feel reasonably at home in a hearing world, where she could accomplish most any task that mattered. Without the implants, she would be part of a deaf community, somewhat distant from the hearing world, but also happy with her life and able to live well.[23]

Third, when parents do face the sort of tradeoff under discussion, they can still take steps to increase the likelihood of a their preferred outcome, even if those steps make the life of their child worse should the parents fail. But they are limited in their ability to do so by how much worse it makes their life and on the likelihood of each outcome with and without the proposed intervention. In doing so, they must take care not to overstate the extent to which

[22] Lane Grodin, Ethical issues in cochlear implant surgery: an exploration into disease, disability, and the best interests of the child, 3 **Kennedy Inst Ethics J.** 231 (1997).

[23] Opponents of cochlear implants disagree in part for reasons of justice and in part over about empirical predictions. On their view, the child with cochlear implants will spend long hours trying unsuccessfully to speak and hear effectively and to fit in with a hearing community. She will end up frustrated in her ambitions and disconnected from her identity. Worse, she will give up facility with American Sign Language, easy community with deaf people, and strong connection to deaf culture. See, e.g., Harlan Lane, **The Mask of Benevolence** (1994); Robert Sparrow, Defending Deaf Culture: The Case of Cochlear Implants, 13 **J. Pol. Phil.** 135 (2005).

their efforts will increase the chance of success.[24] And they must consider the harm to their child if they fail from that future person's perspective.

To see how this might work, consider a hypothetical in which providing secular education to religious children would shift the likelihood of a religious outcome:

> Wedding to Working: In a religious community, young adults with secular education cannot easily find a spouse; secular adults without such education cannot easily find a job. Without secular education, children remain religious in 85% of cases. With secular education, they remain religious in only 50% of cases.

The appropriate decisions in this case depends on the following: Is it worse (from the perspective of a religious person) to have a 50% chance of being unable to find a spouse than it is (from the perspective of a secular person) to have a 15% chance of lifetime unemployment? Assuming that the estimates above are roughly right, most people would conclude that denying education is reasonable.[25]

Finally, even if a precaution seems important for ensuring an authentic life, other values may prove more important. For example, in the cochlear implant case, the parents might have been concerned with more than just their child's ability to live an authentic and identified life. Perhaps they worried that without cochlear implants, she would need to attend school far away and would not establish close ties with them. This fear may be unfounded. But if the risk were real, it could be relevant to their decision. If improving the chances for an authentic and

[24] Despite evidence that many children adopt religious views that differ from their parents', people may overestimate their own ability to instill values. For a review of this phenomenon, and controversy about its causes, see Jonathan Brown, Understanding the Better than Average Effect: Motives (Still) Matter, 38 **Personality and Soc. Psych. Bull.** 209 (2012). See also Paula Rosales & Patricia Allen, Optimism Bias and Parental Views on Unintentional Injuries and Safety, http://www.medscape.com/viewarticle/762693.

[25] As noted earlier, if secular classes were mandated, then all potential mates would be equally stigmatized, and therefore none would be at a disadvantage in finding someone to marry.

identified life also reduces the chance of family intimacy, there will be some cases where it makes sense to risk authenticity to protect intimacy.

It might be thought that values unrelated to authenticity and identification are also important in the Talmud to Tech case. For example, might state intrusion into parental decisions about education undermine parent-child intimacy? I have written elsewhere about why I do not think this a serious worry.[26] Intimacy is not fragile. If it has survived mandatory seat-belt laws and mandatory vaccinations, there is no reason to think it will succumb to mandatory education.

III. Examples and Objections

I have argued that when parents try to influence their children's values, they should take precautions in case their efforts fail. These precautions can be evaluated based on their expected value. Doing so is complicated both because the precautions can themselves impose harms in cases where value inculcation succeeds and because precautions can affect the likelihood of inculcation succeeding.

Although parental duties can be assessed through expected-value calculations, the wisdom of governmental intervention to enforce those duties is more complex. Allowing governments to monitor parental decisions has well-known disadvantages. Furthermore, government intervention could itself cause alienation. As William Galston remarked "liberal freedom entails the right to live unexamined as well as examined lives – a right the effective exercise of which may require parental bulwarks against the corrosive influence of modernist skepticism." [27]

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[26] Scott Altman, Parental Control Rights, supra.

[27] William Galston, **Liberal Purposes** 254. See also Nomi Stolzenberg, He Drew a Circle that Shut Me Out, 106 **Harv. L.Rev.** 581, 609 (1993) (Stressing parental fear in Mozert that if religious children were forced to

Nevertheless, governments can sometimes prevent unreasonable risks. Some interventions will protect authenticity by preserving important opportunities. One likely example is mandating education in secular subjects for all, and enforcing those mandates against religious schools and against parents who home school.[28] Supporters of this idea must acknowledge that only a small percentage of ultra-Orthodox Jews leave their religion.[29] Nonetheless, if precautions that impose relatively low costs on those who remain satisfied can protect a non-trivial minority from significant harm, we owe it to that minority to protect them.

Might a parallel argument be made for mandating religious instruction by secular parents? After all, their children might grow up to become religious and be at a disadvantage if they lack religious training. Although my argument has implications for secular parents, it does not imply a widespread duty to provide religious instruction. First, for most religions, lack of childhood instruction creates no barriers to full participation as an adult. Second, for the religions where such barrier exists – including perhaps ultra-Orthodox Judaism – the chance of a secular child growing up to join such a religion is tiny. Even if Israel, where the ultra-orthodox population is large, only about two percent of people raised as secular Jews become ultra-orthodox. So for most children, the expected benefit of religious training would not be large enough to warrant the time. There might, however, be exceptions. For example, a secular Jewish child in Israel

consider other perspectives, they "would nonetheless feel alienated from their religious tradition. Exposed to competing ideas, they might feel torn and confused, ashamed of their parents' heritage, skeptical, questioning, desirous of being "'other than what they are,' but still tenuously attached to their parents, community, and faith.'"); Moschella at 130-131; Eamonn Callan, Autonomy, Childrearing, and Good Lives 118, 127 in **The Moral and Political Status of Children** (2002) (suggesting that autonomy training needed to evaluate whether to revise one's view of the good may prejudice one against a decision to retain one's view of the good).

[28] Robin West, The Harms of Homeschooling, 29 **Phil. & Pub. Pol. Quart.** 7 (2009).

[29] In Israel, this appears to be about 6%. http://www.pewforum.org/2016/03/08/religious-affiliation-and-conversion/. Of course, we do not know how many others retain their affiliation without genuine commitment and how many of them suffer from alienation.

who shows strong and persistent interest in becoming ultra-orthodox might be entitled to religious training based on the reasonable expectation that he may become religious and the significant hardship he would face in doing so without early study in language and religious texts.

Other possible applications concern alienation in addition to authenticity. Some ways of influencing children have a high risk of producing alienation if the influence does not work, or does not last. These include efforts that rely heavily on fear, shame, and guilt; efforts to make exit difficult; and perhaps efforts to hide information.

Guilt, Shame, and Fear

Most parents and religions teach with guilt, shame, or fear.[30] But some do so in extreme ways that risk alienation.[31] One common use of fear is the threat of eternal damnation for those who sin or who leave the religion. According to some psychologists, former-fundamentalist patients experience trauma, depression, and a specific sort of alienation from their values: "[d]espite intellectually renouncing fundamentalist theology, some experience vivid fears of Hell or nagging anxiety that somehow God will avenge their leaving."[32]

Guilt too can produce alienation. Although the following example from my own life hardly amounts to a debilitating loss, it mirrors in a small way examples that can be far worse.

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[30] See Clayton at 106-109. Clayton notes the prospect of guilt as something that might inhibit rational reflection on one's view of the good. This possibility is given as one reason to forbid parents from giving their children any religious or other comprehensive moral instruction.

[31] For evidence that guilt-inducing behavior towards children can sometimes predict depression when these children reach adulthood, see Rakow et al, The Relation of Parental Guilt Induction to Child Internalizing problems when a Caregiver has a History of Depression, 18 **J. Child Fam. Stud.** 1 (2009); Atlantic article Jan 5, 2015 Childhood Guilt, Adult Depression?

[32] Gary Hartz & Henry Everett, Fundamentalist Religion and its Effects on Mental Health, 28 **J. of Religion & Health** 207, 210 (1989).

The teachers in my Jewish Sunday school spent weeks reviewing millennia of efforts to exterminate Jews. They showed us gory concentration-camp photos and then explained that Jews are now doing to ourselves what our persecutors could not do. We are committing group suicide by marrying outside our faith and raising children who leave the community. As an adult (who married outside my faith), I reject this message. But I cannot rid myself of the feeling that if my children pick another religion, I will have betrayed my people and done my enemies' work.

Shame is often used by both religious and secular parents.[33] Many uses are unremarkable (though regrettable) – such as pointing out a child's misbehavior in front of other people. Others uses harm people who reject or become conflicted about their parents' values. One tragic example is the epidemic of homelessness and suicides among LGBT youth, sometimes attributed to negative messages from families and religious leaders.[34]

Although instruction with guilt, shame, and fear can impose unreasonable risks of harm, these examples raise problems both for government intervention and for public criticism. In some cases, the risky behavior is not merely a technique parents use to inculcate values; it is a core tenet of belief. Fundamentalist parents cannot be prevented from telling their children that sin leads to eternal damnation or that non-procreative sex is a sin. Likely the most we can expect from governments is narrow limits on parental actions. For example, some states have

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[33] An argument for restricting shaming within families because it undermines the primary good of self-respect can be found in Elizabeth Brake, Feminism, Family Law, and the Social Bases of Self-Respect 57 **Re-reading the Canon Series: Feminist Interpretations of Rawls** (Ruth Abbey, ed. 2013).

[34] A scientific look at the damage parents do when they bully their gay kids, https://www.washingtonpost.com/posteverything/wp/2015/04/14/a-scientific-look-at-the-damage-parents-do-when-they-bully-their-gay-kids/.

banned conversion therapy for gay youth.[35] States might consider other steps to protect gay children from hostile parents, such as giving a preference to a supportive parent in custody disputes, or providing generous rules for emancipation of gay youth.[36]

Causing External Options to be Costly or Unappealing

Religious parents can make exit less appealing by limiting education so that a secular life is likely to be one of poverty and struggle. For those who want to leave, the harm is a barrier to authenticity. For those who do not want to leave, the harm risked is alienation.

Alienation and inauthenticity are not inevitable outcomes of restricted exit. Limiting education encourages people to remain religious by making it hard to live a rewarding secular life. Some people will react to this obstacle by coming to view a secular life as undesirable, a phenomenon known as sour grapes or adaptive preference formation. The sour-grapes reference was from Aesop's fable about a fox who could not reach some grapes and therefore declared them to be unripe and sour.[37] Adaptive preferences need not risk long-term failure and alienation. If the grapes remain forever out of reach, the fox may always regard them as unripe. Similarly, religious people who lack secular opportunities may always regard secular life as undesirable and thus never become alienated or want to exit.[38]

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[35] Cal. Bus. & Prof. Code Sec. 865 – enacted in 2012 – forbids mental heal providers from engaging in efforts to change a patient's sexual orientation.

[36] For an argument favoring emancipation rules that do not cut off parental support duties as a way to reduce the problem of homelessness among gay youth, see Casey Judge, Thrown Away for Being Gay: The Abandonment of LGBT Youth and Their Lack of Legal Recourse, 3 **Ind. J. of L. and Soc. Equality** 260 (2015).

[37] Jon Elster, **Sour Grapes** 133 (1983). Experimental support for sour grapes can be found in Aaron Kay, Maria Jimenez & John Jost, Sour Grapes, Sweet Lemons, and the Anticipatory Rationalization of the Status Quo, 28 **Pers. & Soc. Psych. Bul.** 1300 (2002).

[38] One suggestive study along these lines finds that when national emigration is perceived to be difficult, people regard the home country more favorably. Kristin Laurin, Steven Shepherd & Aaron Kay, Restricted Emigration, System Inescapability, and Defense of the Status Quo: System Justifying Consequences of Restricted Exit Opportunities, 21 **Psych Sci.** 1075 (2010).

But alienation and inauthenticity might be a common response to exit restrictions. Unlike the out-of-reach grapes, which are a simple fact encountered by the fox, the challenge of a secular life is engineered by education denial. If I come to interpret my limited life chances not simply as part of my surroundings, but as something my parents manipulated in order to make me not want a secular life, I may come to find that life desirable, or to find my lack of desire for it to be foreign.[39]

Shunning – whether by a religious community or by a single family – poses many of the same risks as education denial. In the case of shunning, outside options are made less attractive not by crippling the person's ability to make a life outside, but by depriving him of precious goods currently available within the family or community. Some examples are truly shocking in their cruelty, such as those in which parents who leave a community are never again permitted to see their young children.[40] In some respects, shunning and education denial work in tandem to make exit doubly unappealing.

Although the threat of shunning likely imposes as much risk of alienation as education denial, it raises the added complexity that some forms of shunning may be protected by the

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[39] Some experiments try to predict when deprivation leads to sour grapes and when to forbidden fruit. Among the findings are that people are more likely to regard the unavailable option as desirable when its unavailability is not absolute, Laurin et al, Reactance Versus Rationalization: Divergent Responses to Policies that Constrain Freedom, 23 **Psych. Science** 205 (2012), when their attention is drawn to the deprivation, Laurin, et al Response to restrictive policies: Reconciling system justification and psychological reactance, 122 **Org. Behavior & Human Decision Processes** 152 (2013), when the perceived reasons for constraint is blameworthy, N. Moore et al, Yes, we have no bananas: Consumer Response to Restoration of Freedom, 24 **J. Consumer Psych.** 541 (2014), and when the rationalizing individual has a particular personality type. Id.

[40] For ultra-Orthodox Women in Israel, Losing Their Religion Can Mean Losing Their Children, http://www.haaretz.com/israel-news/.premium-1.730536. Similar issues arise in the US: http://forward.com/news/185474/deb-tambor-child-custody-woes-common-among-parents.

religious and associational rights of the shunners.[41] In this respect, shunning more closely resembles teaching children about damnation. There is little the state can do to prevent shunning – though some victims have successfully sued shunners for damages.[42] The state might take steps to mitigate the consequences of shunning. For example, some courts inadvertently facilitate shunning by granting custody to the more religiously-observant parent, either as a way to maintain continuity for children who have grown used to an observant home, or because the parents have signed a spiritual custody order agreeing that the child will be reared in a specific religious tradition.[43] Doctrines that soften these preferences when shunning is alleged could reduce the harms of shunning. Similarly, generous visitation rules in cases of shunning might be useful. More controversially, judges could examine the behavior of custodial parents for inappropriate alienation as a reason to deny custody to a shunning

[41] Within religious groups, there is often debate about whether, when, and how shunning is religiously required. See Michael Broyde, Forming Religious Communities and Respecting Dissenter's Rights: A Jewish Tradition for a Modern Society, 203 in **Religious Human Rights in Global Perspective: Religious Perspectives** Witte & van der Vyver eds, 1996).

[42] For a review of legal disputes that can arise from religious shunning, see Justin Miller, Damned if you Do, Damned if you Don't: Religious Shunning and the Free Exercise Clause, 137 **U. Penn. L.Rev.** 271 (1988); Nicholas Merkin, Getting Rid of Sinners May be Expensive: A Suggested Approach to Torts Related to Religious Shunning Under the Free Exercise Clause, 34 **Colum, J.L. Soc. Probs.** 369 (2001); Broyde, supra.

[43] Nomi Stolzenberg, Spiritual Custody: How American Courts Enforce Jewish Law in Divorce Cases (draft).

parent,[44] or could enjoin parents from derogatory comments about the less religious parent.[45] Although these strategies are worth considering, they would face constitutional challenges and might do more harm than good to children.[46]

Hiding Information

Discussions about sheltering children sometimes portray parents as aiming permanently to hide information about the outside world. This does not seem to me an accurate understanding of how and why most parents shelter their children. The strategy of hiding information with the hope of keeping a long-term secret seems doomed to failure, both because secrets about widely-known information cannot be kept forever and because their eventual revelation might lead to anger and eventually to departures.[47] For this reason, closed groups often do not aim permanently to prevent their children from becoming aware that there

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[44] Parental alienation syndrome alleges that children who resist visiting a non-custodial parent often have their minds poisoned by the alienating behavior of a custodial parent. Granting custody to the rejected parents is sometimes recommended as a solution. Opponents reject the scientific basis for this claim, point out that often children who resist visitation have other reasons, and note potential harms of forced visitation. See Carol Bruch, Parental Alienation Syndrome and Parental Alienation: Getting it Wrong in Child Custody Cases, 35 **Fam. L. Q.** 527 (2001); Carol Bruch, Sound Research or Wishful Thinking in Child Custody Cases? Lessons from Relocation Law, 40 **Fam. L. Q.** 281 (2006). The suggestion in text does not rely on a psychological syndrome, or indeed on a child's attitude about visitation or custody. Instead it asks about one parent's behavior toward the other parent. But this inquiry too is controversial. The suggestion resembles the much-criticized friendly-parent rule, which generally preferred for custody whichever parent was perceived as more open to cooperation. This preference was thought to create bad litigation incentives, especially in the context of domestic violence. It also was thought to discriminate against religious parents. See Margaret Dore, The "Friendly Parent" Concept: A Flawed Factor for Child Custody, 6 **Loyola J. Pub. Int. L.** 41 (2004).

[45] For a discussion of the free-speech difficulties in preventing divorced parents from making derogatory comments about each other to their children, see Eugene Volkh, Parent-Child Speech and Child Custody Speech Restrictions, 81 **NYU L.Rev.** 631, 704-06 (2006).

[46] The solutions mentioned in text might cause several harms. If children do not want to visit with a noncustodial parent, forced visitation may undermine the potential for long-term reconciliation. Doctrines that allocate custody or abrogate spiritual custody agreements to punish shunners may harm children by depriving them of continuity. As well, doctrines that disadvantage shunners in custody or visitation disputes may create incentives to allege shunning when none is taking place.

[47] Galston, **Liberal Purposes** 253-56 ("Even sheltered children will inevitably come to be aware that there are other ways of life and other sources of authority. A certain level of reflection and critical distance will be inevitable.")

are other ways of life or from knowing a bit about them. The Amish and Mennonite practice of Rumspringa attests to this idea.[48] Although Jehovah's Witnesses aggressively shelter their children and minimize outside contacts as adults, they also proselytize widely and so come into contact with outsiders.[49]

Sheltering might be better understood as trying to manage children's exposure to ideas at times, or in formats, that they are not yet ready to evaluate.[50] For example, the parents in Mozert did not imagine that their children would forever remain unaware that outsiders lived differently and questioned moral norms.[51] Rather, they worried that authority figures presenting this idea to young people would undermine parental efforts to teach the opposite lesson and would lure the children from their religion. This approach seems little different from widespread parental practices such as preventing children from using alcohol or gambling or viewing sexually explicit materials.

Perhaps this temporary-sheltering interpretation is naïve. The goal of sheltering children from outside influence might not be to protect them while they are vulnerable, but instead to shelter them until exit becomes infeasible. On this interpretation, sheltering works in concert with poor education and shunning. By hiding the benefits of life outside until someone is married with children, but without secular education, the religious group has

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[48] Rumspringa is the tradition of allowing teenagers to violate traditional rules, often leaving family supervision, for a period of months before deciding whether to be baptized and join the religion. For a review of Rumspringa and its significance for moral theory, see Steven Mazie, Consenting Adults? Amish Rumspringa and the Quandary of Exit in Liberalism, 3 **Perspectives on Politics** 745 (2005)

[49] Some sects of ultra-Orthodox Judaism do seem to aim at keeping information about the outside world permanently secret, for example by banning television, radio, and internet use for adults.

[50] See Shelley Burtt, Religious Parents, Secular Schools, 56 **Rev. Politics** 51, 66-67 (1994). See also, Callan, Autonomy, Childrearing, and Good Lives at 134 (arguing that avoiding the temptation of non-rational influences may require "shielding children from experiences one believes would confuse or corrupt them.")

[51] Mozert v. Hawkins County Bd. Of Ed., 827 F.2d 1058 (1987).

sheltered children until information is practically useless. As well, sheltering sometimes seems to work in tandem with shame and guilt, such as when young people are told that it is sinful to use the internet or that secular teachers aim to destroy their religion. This shelter-until-captive interpretation suggests that sheltering exacerbates the alienation risk associated with other harmful practices.

Objections

Before concluding, I want to address two objections. First, my argument might valorize aggressive forms of manipulations that many liberals would condemn for undermining autonomy.

The extent to which this proves true will depend on some empirical questions. But I acknowledge that my argument might lead to uncomfortable conclusions. If denying secular education to a child dramatically reduces the already small chance that she will become secular, parents might reasonably deny that education because of the small chance of a secular future. My argument also suggests that extreme isolationists may have fewer duties to prepare their children for secular futures than their less extreme counterparts insofar as extreme isolation actually works to prevent children from desiring another life. This idea could even create incentives for fundamentalist groups to become more aggressive in their indoctrination to avoid the duty to move in the opposite direction. Furthermore, my objections to specific techniques for indoctrinating children depend on predictions that those techniques produce alienation. Insofar as my suggestions turn out to be empirically wrong, techniques associated with brainwashing might be vindicated.

A second objection is that the expected-value inquiry I recommend is either indeterminate, or even impossible because of incommensurability. On incommensurability, scholars disagree about many things. But everyone seems to agree that we can sometimes make reasoned choices among options that instantiate incommensurable value.[52] Disagreement does exist about the best way to make such choices. But my suggestion is relatively undemanding – that parents not choose the worse option when one option is worse in expectation. No demand is made if options remain neither better nor worse.[53] When the inquiry I propose is indeterminate, parents are free to inculcate values despite the risks of harm.

Of course, interpersonal comparisons have challenges other than incommensurability. Usually these stem from challenges of empathy, which requires good will, imagination, and substantial information about other people.[54] These challenges can be serious. Secular people cannot easily understand the extent of harm suffered by interferences with religious practices. They may not have sufficient imagination, concern, or detailed knowledge. Sometimes this will

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[52] Donald Regan, Value, Comparability, and Choice 135 in **Incommensurability, Incomparability, and Practical Reason** (Ruth Chang, ed. 1997) ("a highly successful life of one kind may be more valuable than a modestly successful life of another kind, even though modestly successful lives of the two kinds might be incommensurable. So far as I am aware, no one in this volume claims that plural values are always incomparable."). The reason that this choice seems easy is debated by philosophers. Some suggest that there is no real incommensurability. See id at 129. Others urge that incommensurability is really a form of vagueness, which is not present in all choices. See John Broome, Is Incommensurability Vagueness 67 in **Incommensurability, Incomparability, and Practical Reason.** Still others see the example as proof that there are sometimes overarching values that allow for comparison of seemingly incommensurable values. See Ruth Chang, Introduction 1 in **Incommensurability, Incomparability, and Practical Reason.**

[53] This idea is similar to the view advanced by Sen as maximization rather than optimization. It is elaborated in Nien-he Hsieh, Is Incomparability a Problem for Anyone?, 23 **Econ. & Phil.** 65 (2007) (treating any choice exhibiting incommensurable values as justified so long as it is not worse than the others).

[54] Mozaffar Qizilbash, Needs, Incommensurability and Well-being, 9 **Rev. Pol. Econ**. 261 (1997).

require translation by someone who has lived in both worlds. And no doubt sometimes it will fail. But sometimes we can know enough to make a decision.

One practical problem in applying my theory stems not from incommensurability or from failed empathy but from empirical uncertainty. We currently lack reliable data on questions that my theory makes central to parenting decisions, such as the percentage of ultra-Orthodox Jews who would become secular, or would become alienated, if educated in secular subjects. The expected-value inquiry I recommend does not require precise calculations. But insofar as we lack even rough data on these questions, my suggestion will be impractical. I do not regard this a decisive objection to my theory – which can still sometimes be applied – so much as a reason for more research.