

Cambridge University Press

978-1-107-15065-2 - To Whom Do Children Belong? : Parental Rights, Civic Education and Children's Autonomy

Melissa Moschella

Excerpt

[More information](#)

Introduction

To whom do children “belong”? Political scientist Melissa Harris-Perry sparked heated controversy when she suggested in a 2013 MSNBC commercial that, in order to improve our educational system, “we have to break through our kind of private idea that kids belong to their parents or kids belong to their families and recognize that kids belong to whole communities.” Of course, children are not property and do not belong to anyone in that sense. But, like all of us, children belong to – i.e. are members of – various communities, including their families and the larger social and political communities in which their families are embedded. And they also “belong” to others more specifically in the sense of being entrusted to their care and guidance, precisely because as children they are not yet able to care for and guide themselves. When we ask the question, “To whom do children belong?” what we really mean is: Who has primary responsibility for children and decision-making authority over them? Harris-Perry’s answer – at least as commonly interpreted – is that the political community, not the family, holds primary responsibility for and authority over children. The furious public discussion that Harris-Perry’s comment ignited indicates that the question is far from settled.

To see what is at stake in the answer, consider the case of the Romeike family. Uwe and Hanalore Romeike, along with their five children, lived in a southwest German town called Bietigheim-Bissingen, where their three oldest children attended the public schools. Over time, the parents began to worry that the school curriculum and environment were having a negative impact on their children. They noticed distressing personality changes in their oldest son Daniel, and their oldest daughter started to suffer from frequent headaches and stomach aches.¹ Mr. Romeike was appalled to find that Daniel’s health textbook used slang terms, including

¹ Jane O’Brien, “German home-school families face US deportation,” *BBC News*, November 6, 2013. www.bbc.com/news/business-24804804. Last accessed on: Oct. 22, 2014.

Cambridge University Press

978-1-107-15065-2 - To Whom Do Children Belong? : Parental Rights, Civic Education and Children's Autonomy

Melissa Moschella

Excerpt

[More information](#)

foul language, to refer to sexual acts, and was concerned more generally that the values conveyed in his children's classes and readings conflicted with the Christian moral and religious values he and his wife strove to pass on to their children at home.² In 2006, the Romeikes pulled their children out of the public schools and began educating them at home, despite the fact that homeschooling is illegal in Germany. Thus began a long battle with state authorities, which included police attempts to enter the Romeikes' home and bring the children to school by force, and onerous fines adding up to 7,000 Euros.³ Fearing further legal action, including the possibility of imprisonment and losing custody of the children, the Romeikes moved to the United States where they would be free to educate their children as they thought best. Despite losing their appeal for asylum in 2013,⁴ shortly before being deported in 2014 they were granted permission to remain indefinitely in the country. Leaving aside the controversial legal question of whether or not the Romeikes ought to have been granted asylum, what ought we to think of this case? Did the German government violate the Romeikes' rights by forbidding them from homeschooling their children? Or were the Romeikes at fault for failing to recognize the state's legitimate claim to ensure the full integration of future citizens into the broader society through public schooling? The answer to these questions ultimately turns on whether or not Harris-Perry is correct in her claim that children "belong" primarily to the political community rather than to their parents.

The question has been the subject of debate at least since Plato's discussion of communal childrearing in the *Republic*. Throughout the history of the United States, there have been recurring controversies over the relative scope and limits of parental educational authority as against state educational authority, particularly as the state began to take on an increasingly more prominent educational role in the nineteenth and twentieth centuries. These controversies have given rise to famous Supreme Court cases like *Meyers v. Nebraska*⁵ and *Pierce v. Society of Sisters*,⁶ which proclaimed the existence of a fundamental constitutional right of parents to direct the education and upbringing of their children. Yet, at least from the moral perspective, the Supreme Court's ruling is

² "German family seeks US asylum to homeschool kids," Associated Press, March 31, 2009. www.foxnews.com/story/2009/03/31/german-family-seeks-us-asylum-to-homeschool-kids. Last accessed on: Oct. 22, 2014.

³ *Romeike v. Holder*, 718 F.3d 518 (6th Cir. 2013).

⁴ *Romeike v. Holder*.

⁵ 262 U.S. 390 (1923). ⁶ 268 U.S. 510 (1925).

Cambridge University Press

978-1-107-15065-2 - To Whom Do Children Belong? : Parental Rights, Civic Education and Children's Autonomy

Melissa Moschella

Excerpt

[More information](#)

INTRODUCTION

3

hardly sufficient to ground a moral right, and even if it were, the Court's doctrine still leaves much to be determined in terms of the scope and limits of that right in difficult cases.

Should, for instance, Amish parents be exempted from compulsory education laws and allowed to end their children's formal academic education after eighth grade, in order to teach their children the skills and values they need to carry on the Amish way of life? The United States Supreme Court answered yes to this question as a constitutional matter in *Wisconsin v. Yoder*,⁷ but was the decision correct as a matter of moral principle? Or what about cases in which parents find some aspect of the public school curriculum offensive to their religious or moral beliefs? Do they have the right to exempt their children from those classes and offer them alternative instruction? The plaintiffs in *Mozert v. Hawkins*⁸ sought, and were denied, just such an exemption from a "diversity-oriented" reading curriculum that conflicted with the beliefs they wanted to pass on to their children. Does this decision of the Sixth Circuit Court amount to a violation of parental rights, or was it a legitimate exercise of state educational authority? And what about homeschooling? Homeschooling is now legal throughout the United States, but for most of the twentieth century homeschooling was considered to be a violation of compulsory education laws, and debates about the practice are ongoing, both in the United States and abroad. In *Konrad v. Germany*⁹ the European Court of Human Rights (ECHR) upheld Germany's prohibition on homeschooling, arguing that the state's interest in the integration of children into the broader community outweighs the rights of parents. Was the ECHR correct in its reasoning? Should homeschooling continue to be allowed in the United States? How heavily should it be regulated?

More generally, to what extent should the state be involved in education? Should the state be in the business of running schools at all, or, as John Stuart Mill argued, should the state eschew public provision of education and limit itself to funding private educational institutions? If the state does run its own schools, should those schools enjoy a monopoly on public educational funding, or should the state provide vouchers or scholarships that parents can use to pay for their child's education at any school, private or public? Does the state have the right to regulate private schools and homeschools and, if so, to what extent? Is that

⁷ 406 U.S. 205 (1972). ⁸ 872 F. 2d 1058 (1987). ⁹ Appl No 35504/03, 18 Sep 2006.

Cambridge University Press

978-1-107-15065-2 - To Whom Do Children Belong? : Parental Rights, Civic Education and Children's Autonomy

Melissa Moschella

Excerpt

[More information](#)

regulatory power limited to relatively non-controversial academic standards, or does it extend to more controversial areas like sexual education or diversity education?

The dominant view among Rawlsian liberal theorists such as Amy Gutmann, Eamonn Callan and Stephen Macedo is that, when it comes to formal schooling, the state's educational authority is at least equal to, if not superior to, the educational authority of parents. While these theorists do not entirely deny the existence of parental rights to direct the education of their children, they consider those rights to be highly circumscribed by the educational authority of the state. When there is a conflict between parental rights and state educational goals, or when parents and the state disagree over what is in the best interests of the child, most believe that the state has the final say. Most Rawlsian liberal theorists agree, for example, with the circuit court's decision in *Mozert v. Hawkins* denying the parents' exemption request, and disagree with the Supreme Court's accommodation of the Amish in *Wisconsin v. Yoder*. Homeschooling and private schooling are accepted (in some cases grudgingly) by the majority of Rawlsian liberals, but most also call for much heavier regulations to ensure that children receive sufficient exposure to diverse ways of life, both to protect the children's autonomy and to prepare them for citizenship in a pluralistic democratic society.

In the following chapters I seek to challenge this Rawlsian liberal view and provide a robust defense of parental rights in education. Unlike other defenders of parental rights, I do not base my case primarily on the claim that, as a practical matter, parents are the ones who are best placed to make educational decisions in terms of both knowledge of their children's needs and motivation to help their children thrive, although I agree with this claim and think that it is an important one.¹⁰ Nor do I make my case on libertarian grounds, on grounds of economic efficiency,¹¹ or on constitutional grounds.¹² Rather, I seek to offer a deeper theoretical foundation for parental rights by basing them on the special obligations inherent in the parent-child relationship, and the pre-political parental authority that is the flip side of those obligations.

¹⁰ Perhaps the most prominent defense of this claim is that of John E. Coons and Stephen D. Sugarman in *Education by Choice: The Case for Family Control* (Berkeley: University of California Press, 1978).

¹¹ See John E. Chubb and Terry M. Moe, *Politics, Markets and America's Schools* (Washington, DC: The Brookings Institution, 1990).

¹² See *Pierce v. Society of Sisters* 268 U.S. 510 (1925).

Cambridge University Press

978-1-107-15065-2 - To Whom Do Children Belong? : Parental Rights, Civic Education and Children's Autonomy

Melissa Moschella

Excerpt

[More information](#)

INTRODUCTION

5

By examining the foundations of parental authority, my approach brings new considerations to the table that require a rethinking of common assumptions underlying Rawlsian liberal approaches to the topic. In her influential book *Democratic Education*, Amy Gutmann asserts that “all significant [education] policy prescriptions presuppose a theory, a political theory, of the proper role of government in education.”¹³ Yet in trying to set forth such a theory, she, like other Rawlsian liberal theorists, essentially ends up begging the question in a way that denies the pre-political authority of parents. Gutmann complains about theories that “depoliticize education by placing it as much as possible in the province of parental authority.”¹⁴ Such “depoliticization” of education, however, is only a problem if authority over children belongs primarily to the political community as a whole, rather than to parents. Gutmann makes a valid point when she claims that “because children are members of both families and states, the educational authorities of parents and of politics has to be partial to be justified.”¹⁵ The trouble, however, is that she seems to envision authority in a two-dimensional way, like a pie that needs to be divided into pieces, and she assumes that it is the state (via democratic deliberation) that should determine the size of each piece. What if, however, we were to view spheres of authority not as pieces of a pie, but as overlapping or concentric spheres, like traditional Russian nesting dolls, in which each sphere has relative autonomy over its internal affairs? This concentric sphere model of authority corresponds to a more nuanced understanding of the difference in kind between children’s membership in the family and children’s membership in the political community. On this view, which I explain and defend in the course of the book, children belong to – i.e. are members of – their families in a direct and immediate way, whereas (until adulthood) they belong to the political community indirectly, through the mediation of their parents. What this implies is that while parents and the state do both have some educational authority, their authority is not on the same plane or aimed at exactly the same goals. Rather, *parental authority is primary and aims directly at the overall well-being of the child, while the state’s authority over education in most respects is indirect and subsidiary to that of parents. Only with respect to specifically civic (rather than child-centered) aims does the state have direct educational authority. With regard to the child-centered aims of education, the state’s role is to support*

¹³ Amy Gutmann, *Democratic Education* (Princeton: Princeton University Press, 1999), 6.

¹⁴ Gutmann, *Democratic Education*, 6. ¹⁵ Gutmann, *Democratic Education*, 30.

Cambridge University Press

978-1-107-15065-2 - To Whom Do Children Belong? : Parental Rights, Civic Education and Children's Autonomy

Melissa Moschella

Excerpt

[More information](#)

parents in carrying out their obligations, rather than to bypass or usurp parental educational authority, except in cases of abuse or neglect. And even in pursuing civic educational goals, the state should avoid (when possible) policies that conflict with parents' rights to educate their children in accordance with the dictates of their consciences, rights that flow from parental responsibilities and protect parental authority.

Grappling seriously with this alternative approach to determining the respective scope and limits of parental and state educational authority – one grounded in a natural law approach to moral and political thought – can be beneficial even for those who are ultimately unpersuaded by it, or whose premises differ from my own. Indeed, most if not all of my conclusions can be defended in part on liberal grounds, and I draw on the work of Tocqueville, Mill, Galston and others in support of my arguments. More generally, I share many of the concerns and values of the theorists with whose premises and/or conclusions I ultimately disagree, in some cases drawing on the natural law tradition to provide a deeper grounding for those values than they themselves can. For instance, Gutmann, Macedo, Callan and others presume, with little or no explanation, that parents have *some* childrearing authority and that the state should not be in the business of breaking up biological families, redistributing children to those who are deemed to be more competent, or raising children communally in state-run institutions. But why not? Why presume that parents (biological parents, in the focal case) should usually be allowed to raise their own children? Why does biological parenthood have any moral relevance at all? I offer an answer to these questions in Chapter 1, analyzing the biological relationship between parent and child in order to establish that that relationship in and of itself creates personal obligations that are the grounds of parental authority. In doing so, I show that parental authority over children is *natural and original*, not (as the Rawlsian view seems to imply) *conventional or derivative* of the authority of the larger political community over its members. I also explain how the same basic principles about the connections among personal relationships, special obligations and authority can be applied to non-biological parent–child relationships as well.

Similarly, in Chapter 2 I develop an account of conscience rights in dialogue with liberal thinkers such as William Galston and Paul Bou-Habib. Galston defends conscience rights under the umbrella of “expressive liberty,” and Bou-Habib speaks of a “right to integrity” understood as a right to fulfill one’s perceived obligations. Both accounts, however, have significant weaknesses. Galston’s account grounds expressive liberty

Cambridge University Press

978-1-107-15065-2 - To Whom Do Children Belong? : Parental Rights, Civic Education and Children's Autonomy

Melissa Moschella

Excerpt

[More information](#)

INTRODUCTION

7

on subjective preferences, begging the question of why a preference for maintaining one's integrity should be given more weight than any other preference, and neither account offers much principled guidance on how to balance expressive liberty against competing rights or public interests. Drawing on premises from the natural law tradition, I offer a more robust explanation of why conscience deserves respect, and of the relative weight of conscience rights in cases of conflict. The chapter then goes on to conceptualize parental rights as a sphere of sovereignty that protects parental childrearing authority and safeguards the conscience rights of parents by providing the space within which they can fulfill their child-rearing obligations in accordance with the dictates of their consciences. This view complements – and effectively translates into the language of rights – the conclusions of Chapter 1 regarding the primacy of parental educational authority.

Having established in the first two chapters the foundations for my own view of parental rights in dialogue with liberal theorists, in the following two chapters I consider some of the strongest arguments that have been put forth in favor of more expansive state authority over education than my own account would support. Those arguments can be divided into two distinct but overlapping strands: one focuses on the state's interest in educating children for liberal democratic citizenship, and the other focuses on the need for state regulation of education in order to protect children's future autonomy. I engage with these arguments in Chapters 3 and 4, respectively. In doing so, I seek both to show how Rawlsian liberal arguments rely on premises that are controversial even among liberals, and to show how the interests of children and the concern for the future of the political community figure in my own account. I have grave concerns about general political apathy and lack of informed political participation among citizens, and I recognize that the state has an important interest in educating future citizens. However, I take issue with the controversial Rawlsian ideal of citizenship that is at the heart of Gutmann, Macedo and Callan's educational recommendations, and argue that mandating civic education in line with that ideal goes well beyond the legitimate authority of the state. I argue, instead, that state educational authority justifies the coercive imposition of only a relatively non-controversial civic minimum, and that great respect for the conscientious concerns of parents should be shown in both the crafting and enforcing of that minimum. Likewise, I am sympathetic to liberal theorists' commitment to ensuring that children learn critical thinking skills and are exposed, at the right time and in the right way, to views that

Cambridge University Press

978-1-107-15065-2 - To Whom Do Children Belong? : Parental Rights, Civic Education and Children's Autonomy

Melissa Moschella

Excerpt

[More information](#)

challenge their own. Yet I do not think that it is within the proper scope of state authority to coercively enforce any particular educational ideal. Further, an Aristotelian understanding of moral development, corroborated by neurobiological research and empirical research on parenting styles, provides reasons to think that, even in adolescence, fostering a critical attitude toward the values taught by parents may on balance be more harmful than helpful to children.

Given that my approach to the issue of parental rights in education is primarily philosophical in nature, it is beyond the scope of my account to offer detailed, positive policy recommendations. My discussion of education policies is limited to considerations regarding the extent to which parental authority over education sets principled limits on state action in this sphere. There are, of course, other factors that bear upon the justice of educational policies, such as concerns about equality, distributive justice, academic achievement, economic efficiency, and so forth. Any detailed positive policy proposals would have to take all of these relevant factors into account. Here I attempt nothing of the sort. My aim is only to establish some of the moral principles – those related to parental rights and authority – that bear on education policy decisions. These principles, however, do have some specific policy implications insofar as they set a bar that any just education policy must meet. Therefore, while detailed, positive policy recommendations are beyond the scope of this project, the moral principles I establish have specific implications about which policies it would always be unjust to pursue, even in spite of potential advantages with regard to other factors such as academic achievement or economic efficiency. In the final chapter of the book I discuss some of these implications in general terms, addressing debates over whether and to what extent parents have a right to exemptions and accommodations to educational requirements to which they have a conscientious objection, disputes over sexual education and “diversity” or “tolerance” education, and controversies regarding educational funding, particularly voucher programs and other attempts to increase effective school choice especially among those with limited financial means.

It is my hope that this book will offer stimulating and challenging food for thought to those inclined to agree with my conclusions just as much as to those inclined to disagree. For on a subject so crucial to both individual well-being and the good of society as a whole, it is well worth the effort to dig all the way to the foundations in order to find solid principles on which to base our policies.

Cambridge University Press

978-1-107-15065-2 - To Whom Do Children Belong? : Parental Rights, Civic Education and Children's Autonomy

Melissa Moschella

Excerpt

[More information](#)

INTRODUCTION

9

Foundational premises

Like everyone, I come to the question of parental rights within the context of a more general philosophical perspective that forms the basis for the presuppositions upon which my argument relies, but which are beyond the scope of the current project to defend. While I provide at least a summary defense of my most crucial presuppositions as they come up in the course of the argument, it seems worthwhile at the outset to say a few words about the larger tradition of political and moral thought from which these presuppositions are drawn, and in which they find their full explanation.

Although for the most part I approach the question of parental rights dialectically, in dialogue with contemporary liberal theorists, my foundational premises come from what Isaiah Berlin calls the “central tradition of western thought,” and particularly the work of two of its most important and influential figures, Aristotle and Aquinas.¹⁶ From this tradition, I take a number of important metaphysical and ethical presuppositions. The key metaphysical presupposition of my argument is an Aristotelian-Thomistic understanding of the human person in which the body is an essential and intrinsic aspect of personal identity, rather than a mere extrinsic instrument of the conscious, thinking, willing “I” or self. This view of the person is central to my defense of the moral relevance of the biological tie between parent and child, which in turn is central to my view of parental authority as natural and original, rather than conventional and derivative of the authority of the larger political community. Because I discuss this understanding of the person in Chapter 1, there is no need to say more about it here.

The central tradition also provides important ethical presuppositions for my account. I base my view on a general Aristotelian-Thomistic theory of value as interpreted, developed and articulated systematically by contemporary authors such as Germain Grisez, John Finnis, Joseph Boyle and Robert George.¹⁷ The work of these authors is often called

¹⁶ Isaiah Berlin, *The Crooked Timber of Humanity: Chapters in the History of Ideas* (New York: Alfred A. Knopf, 1991).

¹⁷ See, for example, John Finnis, *Natural Law and Natural Rights*, Second Edition (New York: Oxford University Press, 2011); John Finnis, Joseph Boyle and Germain Grisez, *Nuclear Deterrence, Morality and Realism* (New York: Oxford University Press, 1987); Robert George, *Making Men Moral* (New York: Oxford University Press, 1993); Germain Grisez, *The Way of the Lord Jesus, Vol. 2: Living a Christian Life* (Quincy, IL: Franciscan Press, 1993); Germain Grisez, Joseph Boyle and John Finnis, “Practical Principles, Moral Truth and Ultimate Ends,” *American Journal of Jurisprudence* 32 (1987): 99–151; Patrick

Cambridge University Press

978-1-107-15065-2 - To Whom Do Children Belong? : Parental Rights, Civic Education and Children's Autonomy

Melissa Moschella

Excerpt

[More information](#)

“new natural law theory.” However, having clarified that this is the version of natural law theory which I am adopting, I will from this point onward refer simply to “natural law theory,” rather than using the more cumbersome and controversial “new natural law” label. In what follows I will offer a brief overview of this theory insofar as it is relevant to my understanding and defense of parental rights.¹⁸

Theory of value and normative ethics

Central to natural law theory is an account of the basic goods that are constitutive elements of human well-being, and the moral norms that structure and order the pursuit of those goods both individually and as a community.¹⁹ Basic goods are goods that provide intrinsic and not merely instrumental reasons for action, goods that contribute to and constitute human flourishing in its various dimensions – physical, moral and intellectual, as an individual and in relation to other human beings as well as to the divine. These goods include life, health, knowledge, aesthetic appreciation, skillful performance in work and play, friendship, marriage, religion and practical reasonableness.²⁰ They are basic not only

Lee and Robert George, *Body-Self Dualism in Contemporary Ethics and Politics* (New York: Cambridge University Press, 2008).

¹⁸ I offer a fuller (though still brief) account of natural law theory in Melissa Moschella and Robert George, “Natural Law,” *International Encyclopedia of the Social and Behavioral Sciences*, Second Edition (Oxford: Elsevier, 2015).

¹⁹ On the new natural law view, the first principle of practical reason – that “good is to be done and pursued, and evil to be avoided” (Thomas Aquinas, *Summa Theologiae* I-II, q. 94, a.2) – should be understood as shorthand for multiple principles given the plurality of basic human goods. Thus, the principle really means that life, knowledge, friendship, practical reasonableness, etc. are to be pursued, and their opposites to be avoided.

²⁰ I believe that, if each of these goods is understood correctly, this is an accurate and complete list of basic human goods, in the sense that any other genuine human good will turn out to be a way of pursuing or realizing one or a combination of these goods. Nonetheless, the theory as a whole does not rely on the accuracy or completeness of this precise list of goods. For an explanation of the basic goods, see Finnis, *Natural Law and Natural Rights*, especially chapters III–IV. The clearest, and most updated succinct articulation of the basic goods is as follows: “(1) *knowledge* (including aesthetic appreciation) of reality; (2) *skillful performance*, in work and play, for its own sake; (3) *bodily life* and the components of its fullness, viz. health, vigour and safety; (4) *friendship* or harmony and association between persons and in its various forms and strengths; (5) the sexual association of a man and a woman which, though it essentially involves both friendship between the partners and the procreation and education of children by them, seems to have a point and shared benefit that is not reducible either to friendship or to life-in-its-transmission and therefore (as comparative anthropology confirms and