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The Child Welfare Agency in the Religious Community

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This paper explores the role religion plays in decisions regarding placement, custody and adoption of children. More specifically, it examines whether children of one religion are placed into foster care or put up for adoption into families of a different religion? Do parents, in general have a right to control the religion of their children? The child welfare statutes of New York and New Jersey, two neighboring States, are described, and one of which that furthers the religion of the parents, is scrutinized for possible Establishment Clause violations. Secondly, we will report the famous Texas case that involved the seizure of 450 children from a very different insular religious community. Did Texas exercise bias on the basis of the parent’s religious beliefs protected by the First Amendment? Lastly, and most importantly, the scope of the paper will broaden to justify parental rights by reframing the analysis of rights in general. Can one person
have rights to control another? The author of this paper will expound on a theory of rights to answer an attack mounted on the Constitutional right of parents. The scope of the answer will give new meaning to the cultural wars that polarize current American society. The difference between the two sides is found in fundamentally different understanding of personal autonomy. Once this is recognized as the as an explanation for the rights of parents over children, many other American legal traditions that have come under attack over the last half century will stand on firmer ground.
How does religion affect decisions regarding placement, custody and adoption of children?

“[T]he values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society. Wisconsin v Yoder, 406 U.S. 205, 213, 214 (1972). The fundamental right to bring up a child is the right of parents, not a privilege of the parent in surrogate for the right of the child. Parents have standing in their own right, even when the “parents are preventing their minor children from attending high school despite their expressed desires to the contrary.” Id. at 231 A claim by the State acting in its own interest and consistent with the expressed wishes of a high school age child, if contrary to the wishes of the parents, would “call into question traditional concepts of parental control over the religious upbringing and education of their minor children recognized in this Court's past decisions. It is clear that such an intrusion by a State into family decisions in the area of religious training would give rise to grave questions of religious freedom . . .” Id. at 231, 232.
The rights of parents against the State, outside of First Amendment protections, are limited. Parents cannot simply resist vaccination or a compulsory education law. However, the State interest, “however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children.” Id. at 214. Not every right of parental control over the welfare of their children is afforded First Amendment protection. Parents bringing “claims because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority, much as Thoreau rejected the social values of his time and isolated himself at Walden Pond, their claims would not rest on a religious basis. Thoreau's choice was philosophical and personal rather than religious, and such belief does not rise to the demands of the Religion Clauses.” Id. at 216. However, what happens to parental rights when a state child welfare agency takes temporary or permanent custody of child due to parental abuse or neglect?
Section 32 of Article VI of the New York Constitution states, “When any court having jurisdiction over a child shall commit it or remand it to an institution or agency or place it in the custody of any person by parole, placing out, adoption or guardianship, the child shall be committed or remanded or placed, when practicable, in an institution or agency governed by persons, or in the custody of a person, of the same religious persuasion as the child.” New York Social Services law requires adoptive parents to be of the same religion as the natural born parents. “In appointing guardians of children, and in granting orders of adoption of children, the court shall, when practicable, appoint as such guardians, and give custody through adoption, only to a person or persons of the same religious faith as that of the child.” N.Y. Soc. Serv. Law § 373 (2010). New York Domestic Relations law has a similar provision. "In making orders of adoption the judge or surrogate when practicable must give custody only to persons of the same religious faith as that of the adoptive child . . .” N.Y. Dom. Rel. Law § 113 (2010). The New York foster care regulations also reflect this mandate:
“[A] child cared for in a family home, agency boarding home or group home shall, when practicable, be under the care and supervision of persons of the same religious faith; other than for temporary or emergency care or under exceptional circumstances, no child shall be boarded by or with persons not of the same religious faith as the child, or placed in an agency boarding home in which the persons caring for the child are not of the same religious faith as the child, but in any case the religious faith of the child must be preserved and protected . . . . The religion of a child in care shall not be changed, except on the written request of his parents or surviving parent or legal guardian.” 18 N.Y.Comp. Codes R. & Regs. tit.18, § 441.11 (2010).

New York law has been interpreted to protect the continuity of the parent’s religion even after a child is adopted. When “in the original agreement of adoption where father of children consented to their adoption . . . [if] children would be raised in Jewish faith, and adopting
mother, subsequent to adoption, recanted on her commitment and, in fact, discouraged and prevented all Jewish training, education and celebration, so . . . father's applications to vacate prior orders of adoption would be granted. Re Sohn 507 N.Y.S.2d 969 (N.Y. 1986).

The New York provisions have been called into question over Establishment Clause claims, but on balance, “the challenged New York laws represent on their face, a fair and reasonable accommodation between the Establishment and Free Exercise Clauses of the Constitution.” Wilder v Sugarman, 385 F. Supp. 1013, 1029 (S.D. N.Y. 1974). The court recognized that “It is settled that under the Constitution a parent has the authority to determine its child's religious upbringing.” Id. The court then noted that “when the child is separated from its parents and can no longer be supported, maintained and educated by them, the State of New York has assumed the duty to step into their shoes, at least temporarily, and to provide the essential maintenance and education of the child, including its moral and religious education, until the parents are once again in a position to assume their lawful and natural role.”
Id. at 1025. Having “been placed in loco parentis, the state has no alternative, consistent with its obligation to the public, but to act as the substitute parent of the child.” Id.

The provisions requiring adoptive parents to have the same religion as the natural parents were upheld by the New York Supreme Court as a “valid exercise of the power of the State as parens patriae in regulating the manner in which the custody of children should be determined.” Dickens v. Ernesto, 322 N.Y.S.2d 581, 583 (N.Y. 1971). Even though the parental rights were terminated with the adoption, “the State may not ignore the religious preferences of the parents. The State must recognize the right of the parent to guide one's child intellectually and religiously as being a substantial part of the freedom of the parent protected by the Fourteenth Amendment.” Id. (emphasis added). Despite this strong language of the obligation under the federal Constitution, the federal court in Wilder left this as an option for the States. “While the state may not yet be under a constitutional obligation to provide such benefits, its moral obligation and right to do so cannot be doubted.” 385 F. Supp. at 1025. (citations omitted).
New Jersey does not have a constitutional provision that specifically protects the religious rights of parents when their children put up for adoption. On the contrary, the New Jersey statute does not allow religion to be considered a right of the natural parent per se, only as a right of the child.

“In the selection of adoptive parents the standard shall be the best interests of the child; and an approved agency shall not discriminate with regard to the selection of adoptive parents for any child on the basis of age, sex, race, national origin, religion or marital status provided, however, that these factors may be considered in determining whether the best interests of a child would be served by a particular placement for adoption or adoption.” N.J. Stat. Ann. § 9:3-40 (2008).

his or her child maintain their religious identity after adoption, religion can still be maintained after adoption as a right of the child, if not as the right of the natural parent. “Nevertheless, in awarding the custody of an infant, the religious training of the child is appropriately an element which may be considered among all the circumstances of gradational significance promoting the general welfare of the infant.” Id. (citations omitted). Religion is one of many factors considered in evaluating the best interest of the child. “[I]n awarding the custody of an infant, the religious training of the child is appropriately an element which may be considered among all the circumstances of gradational significance promoting the general welfare of the infant.” 245 A.2d at 222.

The parent of a child taken into custody and placed with a foster family have more right to maintain their child’s religion than a parent whose child is put up for adoption, albeit, not as great as in New York, where the caregiver has to be the same religion where practicable. The Division of Youth and Family services encourages resource families to recognize religion as part
of the identity of a child put in their custody. In testifying before before the State Senate Committee on Children's Services for a bill of rights for children in foster homes, William Waldmand, Director of the Division of Youth and Family Services said, “The principals that the Division would endorse in such legislation include the rights of children to . . . family integrity (including . . access to the family’s religion and cultural heritage . . ).” Public hearing before Senate Committee on Children's Services to examine proposals for legislation developed to address issues raised during the September 27, 1988 public hearing concerning the Division of Youth and Family Services (DYFS): Hearing on February 9, 1989, Room 407, State House Annex, Trenton, New Jersey; Trenton, N.J. : Office of Legislative Services, Public Information Office, Hearing Unit, [1989] p. 26-27. Indeed, this policy has been codified. “The resource family parent shall ensure that the child in placement is afforded the opportunity to attend religious activities and services in the community in accordance with the faith of the child's parent.” N.J.Admin. Code §10:122C-6.5 (2010).
Did Texas violate the constitution when it seized 450 Mormon children?

The precedent for the power of the state that would become the basis for involvement with families in the interest of children is the “prerogative of parens patriae.” Mormon Church v. United States, 136 U.S. 1, 57 (1890). This power “is inherent in the supreme power of every state, whether that power is lodged in a royal person, or in the legislature . . . [I]t is a most beneficent function, and often necessary to be exercised in the interests of humanity, and for the prevention of injury to those who cannot protect themselves.” In that case, the government seized the property of the Mormon Church under a statute directed at the practice of polygamy, in violation of an “act to punish and prevent the practice of polygamy in the territories of the United States and other places.” Id. at 7. Over a century later, the Texas Department of Family and Protective Services, seized all 450 children of a small community of a splinter group of Mormons that was alleged to have forced their daughters into polygamous marriage at a young age, in what the State called “the largest child protection case documented in the history of the
United States.” In re Tex. Dep’t of Family & Protective Servs., 255 S.W.3d 613, 613 (Tex. 2008). Children, infants, and teenagers, including boys, at the Yearning for Zion ranch dressed modestly, insulated themselves from that which they considered the corruption of society, believed that “[e]lectronics, including TV and radio, are prohibited.” DRAFT Cultural Awareness Guide for Children from Eldorado, April 22, 2008.

The actions of Texas raise serious First Amendment questions. Although the child welfare agency was sensitive the the group’s religious lifestyle and did not force the children to change once they were in custody, it was the belief system that lead them to seize the children in the first place. The Supreme Court, again in another early Mormon case, ruled that certainly the First Amendment is not an absolute protection for religious practice. “[I]t is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto
himself. Government could exist only in name under such circumstances.” Reynolds v. U.S., 98 U.S. 145, 166,167 (1878). However, the State in the recent Texas case acted because “the belief system of the community allowed minor females to marry and bear children. They then removed all of the children in the community (including infants) from their homes and ultimately separated the children from their parents.” In re Steed, No. 03-08-00235-CV 14 (Tex. App. 2008). The parents beliefs were protected First Amendment religious beliefs, not philosophical or political beliefs based on “subjective evaluation and rejection of the contemporary secular values accepted by the majority . . . .” 404 at 216. “[T]he Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute . . . .” Cantwell v. Connecticut, 310 U.S. 296, 303, 304 (1940). Yet, the State did not have much more than tenet of belief to support their seizure of the children, including boys were not at risk of underage or forced marriage.

“It is the imposition of certain alleged tenets of that system on specific individuals that may put them in physical danger. The Department failed to offer any
evidence that any of the pubescent female children of the Relators were in such physical danger. The record is silent as to whether the Relators or anyone in their households are likely to subject their pubescent female children to underage marriage or sex. The record is also silent as to how many of Relators’ children are pubescent females and whether there is any risk to them other than that they live in a community where there is a ‘pervasive belief system’ that condones marriage and child-rearing as soon as females reach puberty.” In re Steed at 10, 11.

The State seized the children after “the Texas Department of Family Protective Services received a telephone call reporting that a sixteen-year-old girl named Sarah was being physically and sexually abused at the Ranch.” 255 S.W.3d at 613. The Fourth Amendment requires that tips or phone calls to police are treated by “the totality-of-the-circumstances analysis that traditionally has informed probable-cause determinations.” Illinois v. Gates, 462 U.S. 213, 233 (1982). Yet, the DFPS seized all 450 children even after “[i]t never located the girl Sarah who
was the subject of the March 29 call.” 255 S.W.3d at 615. Perhaps the State was not using the totality-of-the-circumstances standard, but with a totality of the beliefs standard. “The Department’s position was stated succinctly by its lead investigator at the hearing. In response to an inquiry as to why the infants needed to be removed from their mothers, the investigator responded, ‘[W]hat I have found is that they’re living under an umbrella of belief that having children at a young age is a blessing therefore any child in that environment would not be safe.’” In re Steed, p. 6, ft. nt. 8. Child welfare agencies should learn from this case to be very careful when investigating members of religious groups. They should not make conclusions based on slander and the group’s unpopular beliefs. The rights of the most unpopular and despised among us serve as the true measures of our constitutional rights

**Defense of the Right of Parents**

This paper has assumed that parents have a right to direct the religious up-bringing of their children. The Supreme Court recognizes “the rights of parent to direct the religious
upbringing of their children. And when the interest of parenthood are combined with a free
exercise claim . . . more than merely a ‘reasonable relation to some purpose within the
competency of the State’ is required . . .” Wisconsin v Yoder, 406 U.S. 205 (1972). In Yoder, the
Court did not use the best interest of the child standard in denying the State the power to keep
Amish children in school after eight grade. Rather, the Court assumed the right of the parents to
rear children to live according to their religion, and determined that,

“[t]he Amish alternative to formal secondary school education has enabled them
to function effectively in their day-to-day life under self-imposed limitations on
relations with the world, and to survive and prosper in contemporary society as a
separate, sharply identifiable and highly self-sufficient community for more than
200 years in this country. In itself this is strong evidence that they are capable of
fulfilling the social and political responsibilities of citizenship without compelled
attendance beyond the eighth grade at the price of jeopardizing their free exercise of religious belief.” Id. at 226.

Indeed, parents have a right to keep their children out of public schools, opting for religious schools. To enforce State compulsory public education for all children “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.” Pierce v. Soc'y of Sisters, 268 U.S. 510, 534, 535 (1925). The Court said that the “child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” Id.

The remainder of this paper will defend an attack on the Yoder-Pierce doctrine against a claim that, “[t]he evolution of our social attitudes toward, and legal treatment of, children in recent decades would afford the Supreme Court an adequate rationale for departing from the rule of stare decisis and for overruling Yoder and Pierce to abolish parental child-rearing rights.”

“The courts have interpreted parental rights under the Free Exercise Clause of the First Amendment to extend the child rearing authority and independence of parents beyond what which they enjoy under the Due Process Clause of the Fourteenth Amendment. This means that in most cases courts have been unwilling to allow either the States' determination or their own judgment of a child's best interests to supplant parental free exercise rights. Indeed, only when accorded decisive weight to parental free exercise rights would threaten the child with death or grievous bodily injury or would result in the child receiving a grossly inadequate education will the State prevail under the current legal regime.”
Dwyer promotes view of personal autonomy that calls into questions the rights of parents over their children. Specifically, he says that,

“the claim that parents should have child-rearing rights--rather than simply being permitted to perform parental duties and to make certain decisions on a child's behalf in accordance with the child's rights--is inconsistent with principles deeply embedded in our law and morality. Specifically, there is in our legal culture an inherent limitation on the permissible scope of individual rights, confining them to protection of a right-holder's personal autonomy and self-determination. This limitation on legal rights embodies the moral precept that no individual is entitled to control the life of another person, free from outside interference, no matter how intimate the relationship between them, and particularly not in ways inimical to the other person's temporal interests.”
The so-called “legal culture,” with its “inherent limitation on the permissible scope of individual rights, confining them to protection of a right-holder's personal autonomy and self-determination,” represents one side of the culture wars that have become characteristic of modern American life. But, what is “personal autonomy” in the view of our “legal culture?” This paper will promote a counter-view that personal autonomy is the faculty of freedom associated with moral actors. By promoting this view, we will find ourselves on the opposite side of the culture wars.

Rights are historically held against the state. Limitations on parental rights, and in particular, their First Amendment religion rights, will increase the arbitrary power of the state, contrary to the principles of our nation and heritage. The grant to the state of the power to determine the best interests of the child is contrary to “autonomy” as it has historically been understood by moral, political and legal thinkers, as will be explained.

Dyer claims that parents have no rights over their children.
“[A] parental privilege, unaccompanied by any parental rights, would merely legally permit parents to engage in the types of behavior normally associated with child-rearing, e.g., housing, feeding, clothing, teaching, or disciplining a child. It would thus exempt parents from certain duties with respect to children generally. The privilege would not give parents themselves any legal claims against state efforts to restrict their behavior or decision making authority. Under the legal regime I propose, such claims would repose only in the child. Parents would be authorized to act as agents for the child and to assert the child's rights against inappropriate state interference with child rearing practices. From a moral perspective, a parental privilege would not convey or reflect a sense of entitlement to direct a child's life, but instead would represent a benefit contingent upon the fulfillment of attendant responsibilities.”
The Constitution of the United States is written against the backdrop of the idea that people have inalienable rights against government. Rights are held to negate government action. A right against an individual, as the so-called right of a child against his or her parent, by contrast, is a positive right that calls upon the protection of government. Certainly, the state can create that right, as when it enacts laws against discrimination and laws protecting child welfare, but as a matter for courts, “No one, in short, has asked the Court to proclaim that, as a general matter, the Constitution safeguards positive as well as negative liberties.” Deshaney v. Winnebago County Dep't of Social Services, 489 U.S. 189, 208 (1989). However, it would take more than a statute for the State to prevail over the First Amendment free exercise rights of parents and their Fourteenth Amendment substantive rights to raise a family. A Constitutional shift in favor of positive rights would be necessary, and unlikely, because “[t]he Court's baseline is the absence of positive rights in the Constitution and a concomitant suspicion of any claim that seems to depend on such rights.” Id. at 264.
Constitutions do not gain their authority from abstract theory, Edmond Burke observed, but from actual historic achievement. The concept of negative rights is reflected in the history of our nation, settled by individuals who held rights against the power of government, and when confronted with deprivation of those rights, they fought for the independence to form governments with powers limited by those rights. The abrogation or parental “legal claims against state efforts to restrict their behavior or decision making authority,” in favor of mere parental privilege, implies a new American Revolution through judicial decree to increase the power of government and create a whole new class of rights, positive rights.

If parents only had a privilege to make decisions for their children, without any right per se, then there would be little legal protection from government interference in the family. The government either would have some kind of paternalistic power floating in the air to do what is best for the child, possibly emanating from the child’s incompetency to decide his or her own interests. That power could not be the legal fiction of parens patriae, the sovereign is parent
of the child, because there would not be any *parens* right at all. The parents would not even have it. A new kind of legal fiction would have to be invented. A regime in which parents have the privilege to bring up their children, without the right, would be similar to the ancient Spartan Republic or the ideal republic of Plato, in which upbringing of children was entrusted to the State. “Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any legislature could impose such restrictions upon the people of a State without doing violence to both letter and spirit of the Constitution.” *Meyer v. Neb.*, 262 U.S. 390, 400 (1923).

In *Yoder*, the State argued in favor of compulsory secondary education for Amish children claiming “that a decision exempting Amish children from the State’s requirement fails to recognize the substantive right of the Amish child to a secondary education . . . .” Id. 406 at 229. Despite the possible benefit of the child by attending school, the Court affirmed “the rights
of parent to direct the religious upbringing of their children. And when the interest of parenthood are combined with a free exercise claim of the nature revealed by th[e] record, more than merely a ‘reasonable relation to some purpose within the competency of the State’ is required . . .” Id. at 233. America is not Plato’s Republic.

The notion of the “legal culture” that “the permissible scope of individual rights, confining them to protection of a right-holder's personal autonomy and self-determination people” is inconsistent with the concept of marriage and family. For example, the concept of marriage, in addition to the legal provisions of support found in a mere civil union, means that the spouse becomes sexually forbidden to every individual in the world. Although the criminal law no longer prosecutes individuals who, in violation of the law, fornicate with a married person, adultery is still an unlawful act because it is a violation of the legal concept of marriage. In addition to all other members of society being sexually proscribed from the married
spouse, the same spouse is also proscribed from them. Marriage, thus, can be viewed as a right of one individual over the autonomy of another individual, the spouse.¹

In the context of child welfare, the consequence of abrogating parental rights, would stretch far beyond the privilege of raising a child. In addition to restrictions on the Free Exercise clause, it would deny the decision making power of parents over the medical care of their children. Take for example, a child born with Trisomy 13, a “syndrome [that] involves multiple abnormalities, many of which are not compatible with life. More than 80% of children with trisomy 13 die in the first month.” (see http://www.nlm.nih.gov/medlineplus/ency/article/001660.htm). Six years ago, the National Institutes of Health Medline Plus also included a rather discriminatory assertion about Trisomy

¹ “[The] natural union of the sexes proceeds according to the mere animal nature (vaga libido, Venus vulgivaga, fornicatio), or according to the law. The latter is marriage (matrimonium), which is the union of two persons of different sex for life-long reciprocal possession of their sexual faculties.” Kant, E, The Science of Right, Great Books of the Western World, Encyclopedia Britannica, Inc. 1952, 419-420. Sexual autonomy is a mere expression of the “fornicatio.” The idea of “sexual autonomy,” if anything, means that individuals have the autonomy to contract marriage with whom they want.
13 babies, that were to become a state policy, would raise Equal Protection problems. The
government site said that treatment of children born with Trisomy 13 is generally discouraged.
Doctors were to recommend to let them die. In fact, this author fought against Jersey Shore
University Hospital staff and doctors, who not only recommended to let his child die, but when
the author refused their recommendation, they petitioned the Medical Ethics Committee
demanding that the parents terminate treatment of the child and let him die, since he was “not
compatible with life.” The experience was recorded by this author in a day-by-day journal and
subsequently written in an, as of yet, unpublished manuscript. The child had the most severe
anomalies associated with Trisomy 13, holoprosencephaly and lissencephaly, in addition to a
cleft palate and difficulty breathing. The doctors claimed that the relatively minor procedure of a
tracheostomy, that would allow him to breath without obstruction, and gastrostomy, which
would allow him to eat, would violate the Hippocratic Oath, to “do no harm.” In short, the
doctors held that it was not in the interest of the child to live because he was not compatible with
life. The hospital did not prevail, for no small measure, because it did not have the legal authority
to make that determination. If a child had a positive right to compel the State to act in his or her
interest, and a parent only had a privilege to act in the interest of his child, rather than his own
right, then the doctors could have petitioned the court to allow the child to die. The author
brought the child home and he thrived, interacted with others despite his disabilities, for almost
six years.

Dywer would have the state decide the best interests of the child, which would be the
decision of the medical profession in this case. He is against the fact that “[C]ourts have been
unwilling to allow either the States' determination or their own judgment of a child's best
interests to supplant parental free exercise rights. Indeed, only when accorded decisive weight to
parental free exercise rights would threaten the child with death or grievous bodily injury or
would result in the child receiving a grossly inadequate education will the State prevail under the
current legal regime.” He advocates that courts determine the best interests of the child. Would
the Board of Education determine the best interests of the children in matter of education? Would the 20,000 children in Lakewood, New Jersey religious schools, most of whom receive a less than a high school secular education, be forced to attend public schools. Would a parent have his or her child taken away even if the parent did not physically abuse the child, but only acted against the interest of the child in the opinion of a psychologist? Courts might force parents to cease and desist influence over a child suffering from repression of tendencies or desires contrary to the moral or religious teachings of his parents. The state, buttressed by the testimony or opinions of the doctors, the psychologists, and the schools of education, will become the grand parens patriae of all children, the ultimate arbiter of all matters, moral and temporal, between parent and child.

This paper promotes the counter-view that the state cannot abrogate the duty of the parent for “housing, feeding, clothing, teaching, or disciplining a child.” Our rights and duties are not derived from the government, but from fundamental worth of the individual. Humans have worth
because they are *moral actors*, because they have the capacity of freedom. However, Dwyer, and that which he calls our “legal culture,” does not understand autonomy in the Kantian or moral sense. Properly understood, autonomy is the attribute of the free will, the faculty to determine that which we mean by right and wrong.²

“[T]hough this be a state of liberty, yet it is not a state of license.”³ Indeed, when creating the substantive Constitutional right to rear one’s child and to educate him or her in the native language of the parent, the Supreme Court recognized the correspondence between rights and

² *Prudence*, is the use of maxims conditioned by the accident of inclination or desire to attain an end. *Autonomy* legislates unconditional maxims out of its own necessity. The autonomous *will* commands, for example, “Do not lie,” not because truth is the best policy, but because it postulates a universal law against lying. It does not lie for another other reason but that it is wrong to lie. This is the moral law. Prudence, by contrast, is directed towards attaining an object. It can be described as having underlying causes, including the desire for an end, and the knowledge of and diligence in its attainment. We can imagine any temperament, need or emotion, more or less caused on a cellular, societal, or educational level. These causes are empirical and possible for study through the methods of the empiric sciences. When we desire to attain an end, that end is a means to another end, and another end, in infinite regression. The moral law has no end other than itself. It is a rule that is compelled by none other than its own logical consistency. Freedom is simply the capacity to legislate or to comprehend legislation without any object as its goal other than the law itself.

³ Locke, J. *Concerning the true original extent and end of civil government* (Chapter II, Sect. 6). In Hutchins, R. M. (Ed.). *Great books of the western world*. Encyclopedia Britannica, Inc. 35.
duties. “Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life.” Meyer v. Neb., 262 U.S. 400 (1923)

The law does not recognize children as moral actors. The criminal law exempts them from a wide variety of crimes because they have not yet attained the capacity for autonomous judgement. The proposition that “no individual is entitled to control the life of another person, free from outside interference, no matter how intimate the relationship between them,” leaves children with no one responsible for their moral welfare other than the state. This kind of state control in the most intimate matters of family, is the antithesis of a free society. On the other hand, the sanctity of the family and parental control over children and religion was the original substantive right of liberty recognized under the Fourteenth Amendment, in no small measure because of its fundamentality to a free society, “The Court recognizes the right “to marry, establish a home and bring up children, to worship God according to the dictates of his own
conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.” *Meyer v. Neb.*, 262 U.S. 390, 399 (1923).