

Wisconsin v. Yoder and the Libertarian View on Publicly Funded Education

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Abstract: The 1972 Supreme Court case *Wisconsin v. Yoder* concerns the limits of state interference in fundamental rights. In the first section of this article, I will use Milton Friedman's framework of Libertarianism to assess the majority opinion in *Wisconsin v. Yoder*. I will argue that Libertarian followers of Milton Friedman would agree with Chief Justice Burger's ruling in *Wisconsin v. Yoder* because they believe that the government should be limited in administering education and that families should have more freedom of choice. Next, I will provide my strongest objection to the Libertarian reading, which is that parents do not always allow their children to develop into autonomous individuals. Then, I will argue that for this reason, the government must act as a check on the power of parents, in the same way that private enterprise must act as a check on the power of government.

I. Introduction

The state of Wisconsin has a compulsory school-attendance law requiring parents to send their children to either public or private schools until the age of 16. The Amish objected to this requirement in the 1972 Supreme Court case *Wisconsin v. Yoder*, wherein the Amish claimed that attending formal education beyond the eighth grade violated their religious beliefs.¹ In the majority opinion, Chief Justice Burger affirmed that some degree of education is necessary to preserve “freedom and independence,” but he qualified that “even this paramount responsibility must yield to the right of parents to provide an equivalent education in a privately operated system.”²

Similarly, the Libertarian Milton Friedman argues in *Capitalism and Freedom* that formal education is necessary to create a “stable and democratic society,” but that educational services ought largely to be administered through private enterprise.³ Meanwhile, the government should be restricted to subsidizing schools and ensuring that schools meet minimum educational standards.⁴ Friedman affirms that the scope of government should be limited in order to protect individual freedoms, and he contends that government should be decentralized in order to avoid the concentration of power, which he considers to be the greatest threat to individual freedoms.⁵ In Friedman’s view, a government with the power to do good is also a government with the power to do harm, and what one

man regards as good another man regards as harm.⁶ Such an arrangement of governance would preserve the freedom of individuals to pursue different goals and purposes, and by proxy, would permit their variety and diversity.⁷ As a result, for Friedman, the amplification of freedom is the best way to ensure welfare and equality.⁸ In this context, a strong private enterprise marked by voluntary cooperation can act as a check on the powers of the government and help protect the freedoms of speech, religion, and thought.⁹

Friedman's discussion of freedom applies directly to the *Wisconsin v. Yoder* case; Friedman might argue that the state of Wisconsin is depriving the Amish of their political freedom, imposing uniform standards, suppressing strongly held minority views, and as a consequence, replacing progress with stagnation. Libertarian followers of Milton Friedman would agree with the majority ruling in *Wisconsin v. Yoder* because they believe that the government should be limited in administering education; however, I believe that we must position the development of a child's freedom over and above the existent freedom of the parent. I believe that the government must be involved in a child's education so that eventually the child will be able to exercise their own liberty. Friedman would likely disagree with this analysis because he believes that parents, as the heads of families, have the freedom to decide how to educate their children. In the first section, I will provide a Libertarian reading¹⁰ of the

Wisconsin v. Yoder case. Next, I will provide my strongest objection to the Libertarian reading, which is that parents do not always allow their children to develop into autonomous individuals. Then, I will argue that for this reason, the government must act as a check on the power of parents, in the same way that private enterprise must act as a check on the power of government. I will finish by claiming that in the *Wisconsin v. Yoder* case, the government failed to assume this role.

II. A Libertarian Reading of *Wisconsin v. Yoder*

Much like Chief Justice Burger did, Friedman would argue that in the case of the Amish, the parents have a right to remove their children from formal education. Friedman allows for government action that obligates each child to acquire a minimum amount of education for citizenship because of the “neighborhood effect” and because of paternalistic concerns for children.¹¹ A “neighborhood effect” is a phenomenon where the action of one individual yields significant gains to other individuals who cannot reasonably compensate him, and as a result justifies government intervention in the form of subsidies and regulation.¹² Friedman accepts that a stable society is impossible without a minimum standard of knowledge. Consequently, educating a child does not only benefit the child and their parents but also other members of the society.¹³ Education can contribute to the development of a “neighborhood

effect” because it is infeasible to identify the specific individuals that benefit from the child’s education and charge them individually.¹⁴ Here, Friedman distinguishes the concept of schooling from that of education: he posits that not all education is schooling and not all schooling is education.¹⁵ “Education” benefits the whole society by promoting social and political leadership, whereas “schooling” is often vocational and trains students to become economically productive.¹⁶ He suggests that the government only subsidize education that yields “neighborhood effects” by preparing students for citizenship, rather than fund purely vocational training like veterinary and dentistry schools.¹⁷ My reading of Friedman would suggest that removing Amish children from formal education would be preferred because the education of an Amish child would not accrue “neighborhood effects.” Amish society emphasizes, “separation from, rather than integration with, contemporary worldly society.” Since Amish children belong to a culture that is separate from American society, Friedman might conclude that Amish children do not need to be prepared to participate effectively in American society. Further, he might conclude that formal education does not prepare Amish children for citizenship in the Amish way of life. Therefore, he would say that the government cannot compel Amish children to attend formal high school because there are not sufficient “neighborhood effects”

that would benefit the whole society by preparing the Amish for citizenship.

In addition to “neighborhood effects,” government intervention is reasonable on Friedman’s account in instances of paternalistic concern for children.¹⁹ In *Wisconsin v. Yoder*, the parents object to high school because they view secondary school as an “impermissible exposure of their children to a ‘worldly’ influence in conflict with their beliefs.”²⁰ Thus, the parents have a paternalistic concern that undue exposure to education will interfere with their children’s development in the Amish community.²¹ According to Friedman, freedom is not tenable for “children or madmen” because they are not fully responsible individuals who can care for themselves.²² While it is clear that “madmen” may receive care from the government, Friedman thinks that children offer a more difficult case. He thinks that the freedom of the family, and not the freedom of individuals, is the ultimate goal in judging a public policy because he believes that “parents are generally best able to protect their children and to provide for their development into responsible individuals for whom freedom is appropriate.”²³ Friedman ultimately favors a government subsidy of education financed by giving parents redeemable vouchers. When a parent cannot pay for the minimum required education, a child cannot divest themselves of their parents and bear the costs independently; this would be clearly

inconsistent with their reliance on the family as the basic social unit.²⁴

Chief Justice Burger makes it clear that he is interested in the rights of the Amish parents and not in those of their children.²⁵ While he affirms that the State has a paternalistic duty to protect children, he also establishes that the Amish parents are best able to protect their children and prepare them for life in the separate agrarian Amish community.²⁶ Thus, I think that Friedman would decide that the Amish parents have a legitimate paternalistic interest in facilitating their children's development into full citizens within the Amish community by shielding them from the worldly influence of formal education. Friedman would allow Amish parents to exercise their discretion on behalf of their children because it is the freedom of the family, and not of the particular child, that is his main concern.

Thus far, I have shown how Friedman would respond to *Wisconsin v. Yoder*; while he would tolerate government laws that established a minimum level of education and publicly financed that education, he would not accept a law that gave the government exclusive authority to administer that education and impose it on others because of his belief in minimal government.²⁷ He believes that denationalizing schools and allowing for the entrance of private enterprise would

widen choice for the parents, prevent the constricting of freedom of belief, and promote variety and diversity. However, I believe the autonomy of minors is inadequately considered under this interpretation, which is the main thrust of my next section.

III. Objections to the Libertarian Reading

My strongest objection to the Libertarian assessment of *Wisconsin v. Yoder* rests on the assumption that, while the family can be considered as the basic social unit of society, it should not be viewed as such when there are clear “neighborhood effects” or when there is evidence of a parent acting against their child’s interests. Justice Douglas wrote in the dissenting opinion that “it is the future of the student, not the future of the parents, this is imperiled by today’s decision.”²⁹ He argues that the Amish are barring their children from entering a world of diversity and imperiling their children’s freedom to break from the Amish tradition by disallowing their exposure to different traditions.³⁰ Justice White notes that it is possible that most Amish children will continue to live in the Amish community, but that there is evidence that many children desert the Amish tradition when they come of age.³¹ If this is the case, then the education of an Amish child could contribute to the development of a “neighborhood effect” because it is infeasible to identify the specific Amish children that would choose to integrate into American society and prepare only

these children for social and political leadership. While the preparation they receive at home would adequately equip them for Amish citizenship, it may not equip them for citizenship in the broader American society.³² While Friedman proposes that parents are generally best able to provide for their child's development into free individuals, he also recognizes that children have an inherent value and an inherent freedom that are not merely an extension of the freedom of their parents.³³ Further, while the Libertarian takes the freedom of the family as the ultimate operative unit in society, they also understand that this principle is based on the calculation that the parent can best provide for their child's development into a free individual.³⁴ I believe that the possibility of an Amish child choosing to integrate with American society poses sufficient "neighborhood effects" to warrant educating that child. The State has a verified interest in seeking to prepare Amish children for the society that they may later choose. A parental choice to withhold such preparation, in spite of knowing that their child may choose to break with the Amish tradition, demonstrates that the parents are not providing for their child's development into free individuals. As a result, the family cannot be viewed as the basic social unit of society because the parents are acting contrary to their children's interests. I reject the majority ruling in *Wisconsin v. Yoder* on

the grounds that the government may obligate Amish children to acquire a minimum amount of education for citizenship because of the “neighborhood effect” and because Amish parents are not adequately preparing their children for the lifestyle they may later choose.

IV. Conclusions

I think that Friedman would conclude that the state of Wisconsin is depriving the Amish of their political freedom, imposing uniform standards, and suppressing strongly held minority views. While Friedman recognizes that education has clearly beneficial “neighborhood effects,” he would err on the side of limiting the ability of the government to conscript a single nationalized education because his ultimate goal is the freedom of the family. As a result, Libertarian followers of Milton Friedman would agree with Chief Justice Burger’s ruling in *Wisconsin v. Yoder* because they believe that the government should be limited in administering education and that families should have more freedom of choice. However, I believe that further consideration must lend itself to a rejection of the majority ruling because there are clear “neighborhood effects” and because there is evidence that Amish parents are acting against their children’s interests.

Notes:

1. Wisconsin v. Yoder. 406 U.S. 205. 1972, Section I.
2. Ibid.
3. Friedman, Capitalism and Freedom, 86-89.
4. Ibid. 89.
5. Ibid. 3.
6. Ibid. 3.
7. Ibid. 3.
8. Ibid. 5.
9. Ibid. 3.
10. It should be noted “Libertarianism” is often used in a broad sense and generally does not refer to any single coherent theory. Instead, I will be referring to the Libertarian position developed in Friedman’s Capitalism and Freedom.
11. Ibid. 86.
12. Ibid. 85.
13. Ibid. 86.
14. Ibid. 86.
15. Ibid. 86.
16. Ibid. 86-88.
17. Ibid. 88.
18. Wisconsin v. Yoder. 406 U.S. 205. 1972, Section I.
19. Friedman, Capitalism and Freedom, 85.
20. Wisconsin v. Yoder. 406 U.S. 205. 1972, Section I.
21. Ibid.
22. Friedman, Capitalism and Freedom, 33.
23. Ibid. 33.
24. Ibid. 87-89.
25. Wisconsin v. Yoder. 406 U.S. 205. 1972, Section IV.

26. Ibid. Section III.
27. Friedman, *Capitalism and Freedom*, 89.
28. Ibid. 91.
29. *Wisconsin v. Yoder*. 406 U.S. 205. 1972, Section III.
30. Ibid.
31. Ibid., Section IV.
32. Ibid.
33. Friedman, *Capitalism and Freedom*, 33.
34. Ibid. 33.

Works Cited:

- Friedman, Milton. *Capitalism and Freedom*. University of Chicago Press, 1962.
- Wisconsin v. Yoder*. 406 U.S. 205. 1972. Rpt. Justia US Supreme Court.
- Zwolinski, Matt, and John Tomasi. *A Brief History of Libertarianism*. Princeton University Press, 2016.