

When Legal Moves Become Illegitimate: Exploring the Limits of Civic Education in Minority Groups

To the surreptitious dismay of many, religious (and other) fundamentalists, too, make children, and what is more, desire to raise them in their image, in their likeness. One of the most distinct tenets of religious education is aversion to autonomous thought and choice, and most liberal theories find it most difficult to accept. Indeed, autonomy (i.e., independent rational reflection) is invoked by all branches of government in liberal democracies when ruling against restricting features of religious education. The State then usually stresses the necessity to develop autonomy in children, so that when they become adults, they are able to choose a “good life” that suits them.

But is the autonomy-development argument in fact used by policy-makers and judges to facilitate autonomous choice? My paper will show *how* and *why* both liberal and republican regimes fail to take the right to autonomy seriously in the context of education. Drawing on some of the most contentious case-law in the American, French and Israeli systems I will argue that the theory employed by educational policies is incongruent to the achieved outcomes. I demonstrate this argument on two distinct types of cases: The first type includes instances of using *liberal* rhetoric to justify *a-liberal*, and at times even *illiberal*, state interests. Thus, schools are required to expose children to alternative world-views only when those alternatives are aligned with democratic-majoritarian needs, such as increasing employment (Israel, France, US), supporting nationalist or republican goals (Israel, France) or establishing a de facto state religion (Israel).

The incongruence of the second type derives from two possible understandings of autonomy – as being of *intrinsic* or merely *instrumental* value. The first option¹ implies that choice itself, regardless to results, makes life worth living, and thus requires ongoing rational reflection; the second² suggests that autonomy is simply a way to compare different ways of life and choose any desired outcome, including to stop the process of reflection. I will claim that in some cases State officials internalize the first but – not being able to do so openly, as this option implies that non-autonomous life is inherently inferior – formally state only the second. Such method allows to prohibit religious practices under the disguise of “political liberalism” while in fact promoting a comprehensive liberal theory. This fallacy is manifested, for instance, in the French “hijab law” banning religious attire in public schools. The law’s declared intent is allowing students to decide freely whether to follow their parents’ convictions but essentially, it aims to lead children to the *rational, secularist* choice (especially as its interpretation often allows to ban even skirts that are too long for the school taste).

Hence, my paper will demonstrate *how* courts and policy-makers (mis)use the principle of autonomous choice to expedite the “right” – rather than informed – outcome, and *what* specific educational policies cannot be justified by this principle in liberal democracies.

¹ Held by Kant, Mill, and recently, Raz.

² Promoted by Rawls (in *Political Liberalism*), Galston, Charney, Ackerman, MacMullen and others.