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PUBLIC LAW AND LEGAL THEORY WORKING PAPER NO. 08

Without Peers? The Blind Spot in the Debate over How to Allocate Educational Control between Parent and State

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Without Peers? The Blind Spot in the Debate Over How to Allocate Educational Control Between Parent and State

Emily Buss*

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Introduction

Few problems have puzzled courts and theorists more than those presented when parents object to state educational requirements on religious grounds. Parents challenge the use of course materials,¹ the distribution of condoms,² and attendance requirements for sexual education courses.³ At the extreme, they seek to cut short their children's education⁴ or avoid enrolling them in school at all.⁵ On one side of the balance is the conceded interest of the State in playing some role in shaping children through education. On the other is the interest in allowing parents to control the upbringing of their children,

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¹ *Mozert v. Hawkins County Board of Education*, 827 F.2d 1058 (1987).

² *Curtis v. School Committee of Falmouth* 420 Mass. 749 (1995).

³ *Brown v. Hot, Sexy and Safer Production, Inc.*, 68 F.3d 525 (1995).

⁴ *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

⁵ *Murphy v. Arkansas*, 852 F.2d 1039 (1988).

particularly on matters of religion. Although they vary on the particulars, most courts and theorists have agreed that the state intrusions on family control of religious upbringing should be narrowly limited to those necessary to serve the State's most central interests. This qualified deference seems appropriate in light of the important work parents do on behalf of their children and the risks inherent in the State's intrusion on these efforts. Where courts and theorists have erred, however, particularly in the cases involving adolescents, is in their account of the state interests at stake.

Courts and theorists alike have focused nearly exclusively on the substance of the school curriculum encompassed by the challenged requirements and ignored the requirements' effects on the nature of children's interactions with one another. They have asked whether the State has an interest in imparting certain information and skills, but not whether it has an interest in facilitating certain interactions. This focus on substance is striking, in light of its relative lack of importance to adolescent development. What matters to adolescent development is relationships with their peers, for it is largely through these relationships that the difficult and important work of identity formation—the sorting and selecting of values, tastes and talents that will define their adult selves—will be completed. The importance of these peer interactions is not lost on the parents, indeed, it motivates much of their litigation. But the courts fail to look beyond the parents' complaints of burdens imposed by their loss of associational control to consider what benefits adolescents may derive from these contested interactions.

This article adds this important missing piece to the puzzle. By drawing on the literature of child development, it joins a lengthy, thoughtful discussion with some new information—information that goes to the heart of what is at stake for adolescents in these parent-state contests for control over their education. In Part I, I begin by setting out the state of the law in a range of contexts in which religiously motivated parents battle the State for educational control. This discussion of the cases, and the parallel theoretical analysis of the issues raised, manifests a consistent, narrow focus on the State's interest in curricular content, and the lack of consideration of the State's interest in facilitating peer interaction. In Part II, I discuss the developmental literature's emphasis on the importance of peer interaction to the adolescent's identity formation process, and the relationship of peer and parental influences on a child's identity development. This literature suggests that affording children an opportunity to explore identity choices through peer interactions will facilitate children's development of the capacity for autonomous choice, which many consider central to political participation and the exercise of rights in our democracy. In Part III, I consider the implications of this more sophisticated understanding of adolescent development for the resolution of the problems posed by the cases. I conclude that a State interest in fostering the capacity for independent thought in its children could justify policies encouraging and even, perhaps, compelling some amount of exposure to unlike peers, and that fears that such policies might wrest control of religious upbringing from parents can be minimized by limiting the reach of the policies to the oldest adolescents.

I. The Current Discourse

These conflicts between religiously motivated parents and the State present particularly difficult and important problems for courts and theorists, for they ask the most basic questions about the role of the State and the parent in determining the fate of the child. In this Part, I will demonstrate how the courts and the theorists, in addressing these questions, have remained remarkably narrow in their focus. They have framed the State's interests in purely curricular terms, entrusting control of the child's associations to the parents.

A. The Cases

In resolving these cases in which parents seek to exempt their children from a state's educational requirements by asserting their constitutional right to control their children's religious upbringing,⁶ the courts ask whether the challenged state requirement burdens genuine religious practice or belief and, if burdensome, whether the requirement is narrowly tailored to serve a compelling state interest. The test, itself, is relatively uncontroversial, in large part because it gives no direction about how to evaluate the burdens and interests in question, leaving resolution to a case-by-case application.

The structure of the test is significant, however, in one respect: It vests the claim against the State with the parent,⁷ who is not the intended subject of the State's intervention.⁸ In this sense, the right is exceptional. It is the right to control another's access to state benefits. While some theorists have taken the position that affording parents such rights is constitutionally suspect because it protects parents' interests at the expense of their children's,⁹ the predominant view, which I share, is that considerable deference to parents on matters of religious upbringing serves children's interests overall, and can only be justified if the effects of this deference are at worst neutral for children.¹⁰

⁶ The right to an exemption is asserted under the free exercise clause of the First Amendment, and the due process clause of the Fourteenth Amendment, and the Court has recently explained that it is only the combination of the religious exercise right with the right of parental control over upbringing that entitles parents to exemptions from facially neutral requirements. *See Employment Division v. Smith*, 494 U.S. 872, 881-82 (1990).

⁷ Many of these cases also assert the free exercise claims of children, but it is the parents' claims that the courts address in their decisions. This is surely due, in part, to the lack of clarity about the nature and extent of children's constitutional rights in this area, and the lack of perceived need to resolve this uncertainty in the context of these cases where the children's claims mirror those of the parents. Even if children are assumed to have rights coextensive with those of adults, however, the Court's decision in *Smith*, *supra* note , suggests that a religious objection to a State's facially neutral educational requirement would not justify an exemption if not accompanied by a claim of a due process right of parental control.

⁸ The parent is, however, often the party held responsible for failing to ensure the child's participation. *See, e.g., Pierce v. Society of Sisters*, 268 U.S. 510 (1924) (considering Oregon law requiring parents to send their children to public school and authorizing fines or imprisonment for failure to do so); *Wisconsin v. Yoder* (reviewing constitutionality of convictions of Amish parents for failing to send their children to school after the eighth grade).

⁹ *See James G. Dwyer, Religious Schools v. Children's Rights* (1998).

¹⁰ *See, e.g., Stephen Gilles, Hey Christians, Leave Your Kids Alone!*, 16 Constitutional Comm. 149 (1999) (reviewing Dwyer's *Religious Schools v. Children's Rights*).

Children are generally perceived as ill-prepared to make good judgments about their own interests,¹¹ and therefore the law looks for the best surrogates to act on their behalf. Parents are thought to be especially well qualified to act in their children's interests because they feel a deep emotional attachment to their children and know their needs well.¹² The State, in contrast, seems an especially poor candidate to act on children's behalf on matters of religious upbringing, both because the establishment prohibition prevents the State from making such religious judgments and because it lacks any child-specific expertise. Although the test tips the balance heavily toward the parent to reflect the importance of the parent's work and the threat to its accomplishment posed by state interference, it does not resolve all claims for the parent. The compelling state interest inquiry recognizes that it is appropriate to consider what lies on the other side of the balance, to consider what benefits the state requirement offers, both for the children whose parents are challenging it and for society as a whole.¹³

The test can therefore best be read to establish a means of balancing the claims of two surrogates, each asserting authority to act on the child's behalf.¹⁴ In determining whether a parent is entitled to an exemption, the court is, indirectly, deciding whether the child will be at least as well off under the control of the parent surrogate. The assessment is indirect because a primary effect of the parental rights conception of the protection is to take away from the courts the authority to make case-specific inquiries about whether the parent is making the best possible choices for her child. The courts cannot, however, eschew the more generalized question of the extent to which the value of deferring to parents for this sort of decision-making is counterbalanced by state educational interests. Where the right at stake is grounded in a conception of children's interests and the countervailing interests of the State are focused on the same children, any "balancing"

To say that vesting the right to control the religious upbringing in parents serves children's interests is not to say that these are the only interests served by this rights allocation. In asserting this right of control, parents clearly also serve their own interests, *Yoder*, 406 U.S. at 209 (noting that the "Amish believed that by sending their children to high school, they would not only expose themselves to the danger of the censure of the church community, but ... also endanger their own salvation and that of their children"); and the interests of their religious community, *id.* at 212 (referring to expert testimony suggesting that sending children to high school would jeopardize the "continued survival of Amish communities as they exist in the United States today"). However, neither of these interests, in my view, would be sufficient to justify vesting control of the child in the parent if these interests were believed to run counter to the child's own interests.

¹¹ Whether they are in fact ill-prepared to identify their own interests, and, if so, at what ages and under what circumstances, is an important, underdiscussed issue that exceeds the scope of this article.

¹² Cf. William Blackstone, 1 Commentaries on the Laws of England 447 ("The municipal laws in all well-regulated states have taken care to enforce this duty [to support one's children] though Providence has done it more effectually than any laws, by implanting in the breast that natural ... insuperable degree of affection, which not even ... the wickedness, ingratitude, and rebellion of children can totally suppress or extinguish").

¹³ *Prince v. Massachusetts*, 321 U.S. 158, 166, 168 (1944) ("the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. ... Acting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor and in many other ways").

¹⁴ The State, of course, also acts on behalf of other citizens. My focus in this article, however, is the extent to which the State can take action on behalf of the very child whose parents oppose that action.

going on in the resolution of the case amounts in large part to the balancing of one sort of interest of the child against another.

In the end, the test provides courts with no assistance in determining how to ascertain whether a state has a strong enough interest to overcome the traditional deference shown to parents. This assessment of the nature and strength of the state interests at stake is left to the courts, in their application of the test to the specific cases before them. In my discussion of some of these specific cases, which follows, I will argue that the courts' assessments have been consistently deficient in their failure to consider the core of the adolescent experience, and therefore a primary potential mechanism of state influence. In focusing exclusively on the substance of the school curricula in question, the courts take inadequate account of the State's interest in facilitating interactions with peers.

1. *Pierce v. Society of Sisters*

In 1925, the Court held in *Pierce v. Society of Sisters*¹⁵ that a state could not require all children to attend public (rather than private) schools.¹⁶ Although it was brought by two corporations that run schools whose economic survival was threatened by the law, the case now stands as one of two pillars¹⁷ upholding the well-recognized due process right of parents to “direct the upbringing and education of children under their control.”¹⁸ Declaring that “those who nurture and direct [a child's] destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations,” the Court hinted at the benefit to children that flows from deferring to parental control.¹⁹

While the particular holding in *Pierce* is now taken for granted, its implications are tremendous. Whatever the state can do to control the *content* of education,²⁰ the state cannot control *with whom* children are educated. Parents are given authority over their children's school associations, particularly along ideological lines,²¹ and may prevent them from reaping the benefits that might come from mixing with unlike peers. *Pierce* was decided on due process rather than free exercise grounds. As subsequent cases have

¹⁵ 268 U.S. 510 (1925).

¹⁶ The Oregon statute in question made it a misdemeanor, subject to fines or imprisonment, for a parent to fail to send his children to public school between the ages of 8 and 16. 268 U.S. at 530.

¹⁷ The other pillar, *Meyer v. Nebraska*, 262 U.S. 390 (1923), was pressed, on due process grounds, by a teacher who was convicted for teaching German to a ten-year-old child, in violation of Nebraska's prohibition of the teaching of foreign languages to children in the first eight grades of school.

¹⁸ 268 U.S. at 534.

¹⁹ *But see “Who Owns the Child?”: Meyer and Pierce and the Child as Property*, 33 William and Mary Law Rev. 995, 1112-13 (1992) (arguing that the conception of parental rights enshrined in *Meyer* and *Pierce* “had a strong property component”).

²⁰ Two years after the *Pierce* decision, the Court made clear that this authority over content was also circumscribed by the Constitution. *Farrington v. Tokushige*, 273 U.S. 284 (1927).

²¹ In *Runyon v. McCrary*, 427 U.S. 160 (1975), the Supreme Court upheld Congress's authority, under § 2 of the Thirteenth Amendment, to outlaw racial discrimination in private school admissions. As in *Pierce*, no free exercise claims were pressed in *Runyon*.

made clear, however, the protections afforded to parents under the due process clause are only strengthened in the context of free exercise claims.

2. Wisconsin v. Yoder

The case most clearly establishing this principle, and most influencing courts' analysis of parent's religiously based challenges to state educational requirements, is *Wisconsin v. Yoder*, which upheld the right of Amish parents to remove their children from school two years shy of the period mandated by Wisconsin's compulsory attendance law. Here the parents were explicit in seeking, among other things, to prevent contact between their children and non-Amish peers.²² Unlike in grade school, where children attended local Amish schools, or local public schools whose students were predominantly Amish,²³ requiring high school attendance would have forced the Amish children to learn alongside significant numbers of non-Amish peers. Forcing this exposure against a parents' wishes, the Court concluded, would impose a significant burden on the parents' exercise of their religion through the control the religious upbringing of their children.

In considering what state interests lay on the other side of the constitutional balance, however, the Court took no account of the potential value Amish students might derive from interactions with non-Amish peers in high school. Instead, the Court engaged in a relatively hollow inquiry that appears to be about curricular content: The Court's emphasis on the basic skills of reading, writing and arithmetic already secured in grades 1-8, the incremental nature of any value added by the two additional years,²⁴ and the comparative advantage of the hands-on vocational skills training offered by the Amish, all suggest that the Court was thinking only about the usefulness of the substance of a high school education. Even this curricular assessment was shaped by the Court's deference to the parents' associational choices. Because parents intended that these children would grow up to be part of an Amish community, the Court reasoned, the two additional years of study, while surely important for other children,²⁵ were unnecessary for the Amish children.

²² 406 U.S. at 211 (noting that "[f]ormal high school education beyond the eighth grade is contrary to Amish beliefs, not only because it places Amish children in an environment hostile to Amish beliefs ... and with pressure to conform to the styles, manners, and ways of the peer group, but also because it takes them away from their community, physically and emotionally, during the crucial and formative adolescent period of life").

²³ *Wisconsin v. Yoder*, 406 U.S. 205, 217.

²⁴ This point, and its content-focused grounding, is expressed more clearly in Justice White's concurrence, in which he notes the appropriateness of a state's setting substantive educational standards and explains that the exemption requested is appropriate "[s]ince the Amish children are permitted to acquire the basic tools of literacy to survive in modern society by attending grades one through eight and since the deviation from the State's compulsory-education is relatively slight." 406 U.S. at 238.

²⁵ *Wisconsin v. Yoder*, 406 U.S. 205, 222 ("It is one thing to say that compulsory education for a year or two beyond the eighth grade may be necessary when its goal is the preparation of the child for life in modern society as the majority live, but it is quite another if the goal of education be viewed as the preparation of the child for life in the separated agrarian community that is the keystone of the Amish faith.").

The two, related, themes found in *Yoder* re-appear throughout the cases in this area: (1) Court's afford tremendous deference to parent's choices about their children's current and future associations and (2) courts limit their consideration of potential countervailing state interests to curricular (rather than associational) concerns. Before considering the developmental implications of this analysis, I will review some of the contexts in which these themes appear.

3. Home Schooling

Parents who seek to educate their children at home are generally seeking control over both the substance of their children's education²⁶ and their children's peer interactions.²⁷ Litigation arises when a state educational requirement imposes limitations on the parents' authority to home school, or requires reporting or assessment viewed as threatening to the parent's authority.²⁸ In the past, states commonly had statutes that made it difficult or impossible²⁹ for parents to educate their children at home, and in at least one case, a court justified interpreting an ambiguous compulsory attendance law to exclude home schooling by pointing to the importance, to child development, of peer interaction.³⁰ More recently, courts and legislatures have significantly eased the relevant requirements, opening the door to a burgeoning home schooling movement.³¹

In analyzing the State's interests in regulating home schooling, the courts now focus exclusively on substantive issues: The courts uphold mandatory achievement tests because these tests allow the State to assess whether children are learning sufficient

²⁶ See, e.g., *Duro v. D.A./2d Judicial District*, 712 F.2d 96 (1983) (listing, among reasons for home schooling, the parents' desire to protect children from secular humanist teachings and to eschew medical treatment).

²⁷ See, e.g., *State v. Patzer*, 382 N.W. 2d 631 (1986) (noting that the parents' desire to home school was tied, in part, to their fear of negative peer influences which would prevent their children from acquiring the right religious values and achieving salvation); *Duro v. D.A./2d Judicial District*, 712 F.2d 96 (1983) (listing, among the reasons for home schooling, the parents' desire to shield their children from exposure to different religious beliefs and corrupting influences).

²⁸ Those motivated by religious beliefs to home school frequently contend that their God has directed them to take full responsibility for their children's upbringing. See, e.g., *Murphy v. Arkansas*, 852 F.2d 1039 (1988) (parents believed they were required by scriptures to exercise complete control over their children's education); and that any exercise of state supervisory authority over their children's education therefore amounts to a usurpation of divine authority. See, e.g., *Fellowship Baptist Church v. Benton*, 815 F.2d 485 (1987) (parents believed that even the state's reporting requirements compromised the "headship of Christ"); *People v. DeJonge*, 442 Mich. 266 (1993) (parents believed that submitting to the state's authority, rather than God's, on matters of their children's education was a sin).

²⁹ *State v. Edgington*, 663 P.2d 374 (1983) (concluding that a statute that expressly prohibits home schooling by excluding such arrangements from the list of permissible private schooling arrangements did not violate the equal protection clause).

³⁰ *Knox v. O'Brien*, 72 A.2d 389 (1950) (concluding that home schooling did not provide the required "equivalent" education as the public schools because it did not offer the same opportunities for social interaction but rather "cloister[ed] and shelter[ed] children"); cf. *State v. Edgington*, 663 P.2d 374 (1983) (concluding, in a case not addressing religious claims, that the state has a legitimate interest in exposing children to other "attitudes, values, morals, life-styles and intellectual abilities").

³¹ See N.Y. Times, Oct. 29, 1998 (noting that estimates of the number of home-schooled children range from 500,000 to 1.5 million, and stating that numbers have tripled in the past decade).

information and skills.³² “Equivalency” requirements are also found appropriate, interpreted as they now are, to assess curricular rather than interactive equivalence.³³ Teacher certification requirements get a more mixed reception,³⁴ because they are not as clearly tied to the substance of the curriculum. Courts that strike down certification requirements point to the lack of clear linkage between certification and the quality of teaching, and courts that have upheld them point to the specialized training and experience in teaching they reflect. The general message from the courts is that parents have a right to control their children’s associations by keeping them out of school, so long as they ensure that they learn the information and skills required to function in society as adults.

As significant as the courts decisions on home schooling are the legislative trends. Increasingly, states are abandoning educational requirements such as certification that make it difficult or impossible for parents to home school their children.³⁵ Increasingly, regulations are crafted to serve the limited purpose of ensuring that children acquire the basic knowledge and academic skills offered in school.³⁶ Increasingly, states are enacting provisions which expressly recognize parents’ right to home school,³⁷ so long as they provide an “equivalent education,” or teach for an equivalent period of time.³⁸ Where

³² See *Murphy v. Arkansas*, 825 F.2d 1039 (1988); *Care and Protection of Charles*, 399 Mass. 324, 504 N.E.2d 592 (1986) (noting that the superintendent, in overseeing home schooling program, may require standardized testing to ensure “educational progress and the attainment of minimum standards”).

³³ See, e.g., *Blount v. Department of Educational and Cultural Services*, 551 A.2d 1377 (D. Me. 1988) (finding that the requirement that a home schooling program be pre-assessed to ensure that it provided an “equivalent education,” was the least restrictive means of meeting the State’s compelling interest in ensuring that children received a quality education); see also *Battles v. Anne Arundel County*, 904 F.Supp. 471 (D. Md. 1995) (upholding a requirement for State monitoring of the content of home schooling programs); *Care and Protection of Charles*, 399 Mass. at 601-602 (noting that the superintendent, in assessing whether a home schooling program is “equal ‘in thoroughness and efficiency,’” should focus on “the proposed curriculum and the number of hours of instruction in each of the proposed subjects,” but may not dictate “the manner in which the subjects will be taught”); *Matter of Raymond Falk*, 441 N.Y.S.2d 785 (1981) (concluding that state’s Education Law requires no instruction “designed to enhance a student’s learning experience by the free association with other children in the classroom, on the athletic field or on the bus,” but rather asks only “whether [the child’s parents] have furnished a substantially equivalent instruction in 12 specific subject areas as that afforded in the public schools”).

³⁴ *Compare People v. DeJonge*, 442 Mich. 266 (1993) (determining that a teacher certification requirement was unnecessary to meet the state’s legitimate goal of ensuring that children are educated for self-sufficiency and political participation) with *State v. Patzer*, 382 N.W. 2d 631 (1986) (determining that a teacher certification requirement was narrowly tailored to meet the state’s interest in providing children with an education adequate to prepare them to undertake the responsibilities of citizenship); see also *Care and Protection of Charles*, 504 N.E.2d at 601.

³⁵ *People v. DeJonge*, 442 Mich. 266 (1993) (reporting that 20 states have repealed teacher certification requirements in the past ten years); Jack MacMullan, Comment, *The Constitutionality of State Home Schooling Statutes*, 39 Villanova L. Rev. 1309, 1336-37 (reporting that as recently as 1983, roughly half of the states did not permit home schooling, whereas all states now allow home schooling under certain circumstances).

³⁶ *Id.* at 1347-48 (noting that standardized testing and the review of teaching materials constitute two primary means of assessing the appropriateness of home schooling).

³⁷ *Id.* at 1341 (reporting that 30 states now expressly exempt home schooled children from the compulsory attendance laws).

³⁸ *Id.* 1338 (reporting that 13 states allow an exemption from the compulsory attendance laws for children receiving an “equivalent education,” and describing equivalency in substantive terms).

home schooling is permitted, school districts, for their part, sometimes resist parents' efforts to include their home-schooled children in intra-scholastic athletics.³⁹ Government action in the home schooling context makes plain what is only implicit in the other contexts I discuss: The states, themselves, frequently define their interests in narrow, substantive terms.

4. Specific Curricular Objections

Inspired by the broad protection afforded in *Yoder*, many parents have sought to assert some control over their children's education by asserting free exercise objections to their children's exposure to specific ideas,⁴⁰ texts,⁴¹ or activities⁴² in the public schools. Unlike in *Pierce*, *Yoder*, and the home schooling cases, these parents do not seek to control with which peers their children interact, and their curricular objections are often narrowly crafted.⁴³ Despite the relative modesty of their requests, however, courts often deny these parents' curriculum-specific challenges.⁴⁴ Having ceded their authority to control their children's associations to the State by sending them to public school, parents find there is little left of their right to control their children's education in that setting.

The disparate protection courts afford to curricular and associational objections plays out in the courts' analysis of the religious burden imposed in the two contexts. In *Yoder* and the home schooling cases, courts find that requiring the objectionable exposure would impose serious burdens on the parents' religious exercise. In the context of curricular challenges, in contrast, the courts trivialize the burden associated with the

³⁹ See, e.g., *Bradstreet v. Sobol*, 650 N.Y.S.2d 402 (1996) (upholding the school district's exclusion of a home-schooled child from an interscholastic sports program against the due process and equal protection challenges of the child and her mother); *Davis v. Massachusetts Interscholastic Athletic Association*, 1995 Mass. Super. LEXIS 791 (enjoining the athletic association and school district from excluding a home-schooled child from athletic participation); see also *Swanson v. Guthrie Independent School District*, 942 F.Supp. 511 (W.D.Okla.1996) (finding that the school district's refusal to allow a home-schooled child to attend public school part time did not violate the parents' free exercise rights).

⁴⁰ See, e.g., *Brown v. Hot, Sexy and Safer Production, Inc.*, 68 F.3d 511, 516 (1995) (challenging a school's requirement that plaintiff children attend an assembly that included crude sexual gestures and remarks).

⁴¹ See, e.g., *Mozert v. Hawkins County Board of Education*, 827 F.2d 1058 (1987).

⁴² See, e.g., *Curtis v. School Committee of Falmouth*, 420 Mass. 749 (1995) (challenging condom distribution in the schools).

⁴³ See, e.g., *Brown v. Hot, Sexy and Safer Production, Inc.*, 68 F.3d 525 (1995) (challenging the attendance requirement at a single assembly); *Curtis v. School Committee of Falmouth*, 420 Mass. 749 (1995) (seeking authority only to restrict the access of their children to condoms without their consent). Note that the parents' claims are not always narrowly limited to a request for a child-specific exemption to particular material. In some cases, the parents seek to eliminate objectionable material from the curriculum altogether. *Grove v. Mead School District No. 354*, 753 F.2d 1528 (1985) (objecting, on free exercise grounds, to the inclusion of a book in a high school English program, despite receiving permission to opt out of the reading and discussion); *Smith v. Ricci*, 446 A.2d 501 (N.J. 1982) (objecting to a "family-life education program that included education on human sexuality, despite the fact that parents were allowed to excuse their children from objectionable parts of the curriculum).

⁴⁴ See, e.g., *Mozert v. Hawkins County Board of Education*, 827 F.2d 1058 (1987); *Brown v. Hot, Sexy and Safer Production*, 68 F.3d 525 (1995); *Curtis v. School Committee of Falmouth*, 420 Mass. 749 (1995).

objectionable exposure.⁴⁵ The difference appears to be one of degree: Compelled exposure to the entire school experience is construed as burdensome, whereas compelled exposure to only pieces of the curriculum is not.⁴⁶ Setting to one side the analytic problems with this distinction,⁴⁷ I note here its effect: While not expressed in these terms, the effect of the courts' analysis is to find heavy burdens (requiring the State's interest in imposing these burdens to be compelling) on religious exercise where the state interferes with parental control over peer associations and relatively insignificant burdens (imposing no constitutional constraint on the State) where the State interferes only with parental control over content.⁴⁸ Indeed, in the leading case of *Mozert v. Hawkins County Board of Education*,⁴⁹ the Sixth Circuit even suggests that part of the reason exposure to curricular specifics in public school cannot be said to impose unconstitutional burdens is that the parents always have the option of removing their children altogether and educating them in a private religious school or home school setting.⁵⁰ The message of these cases is clear: States are to be given broad discretion in fashioning a curriculum that serves its educational purposes, but the control of children's associations is left up to their parents.

⁴⁵ See, e.g., *Curtis v. School Committee of Falmouth*, 420 Mass. 749, 759 (1995) (noting that mere offensive exposure is not enough to establish a burden invoking free exercise protection).

⁴⁶ In *Mozert v. Hawkins County Board of Education*, 827 F.2d 1058 (1987), the court concedes that in *Yoder*, too, the parents' goal was to protect their children from objectionable exposure, and focuses on this issue of degree: "Unlike the plaintiffs in the present case, the parents in *Yoder* did not want their children to attend any high school or be exposed to any part of the high school curriculum ... [They] attempt[ed] to shield their children from all worldly influences." In contrast, the *Mozert* parents "want their children to acquire all the skills required to live in modern society ... [but to] have them excused from exposure to some ideas they find offensive." *Id.* at 1067.

⁴⁷ The courts' analysis in this and other similar cases might be read to suggest a distinction between a sect whose religion expressly forbids the exposure in question and one that merely forbids certain values and practices, which might be undermined, indirectly, by exposure to certain ideas. But such an interpretation is problematic. First, it probably does a disservice to parents who object to particular curricular offerings, who surely feel directed by their faith to shield their children from the troubling influences. Second, it is a slippery distinction to maintain here, where the right at issue is the right to control religious upbringing. In many faiths, the dictate is to secure the transmission of one's faith to one's children. Precisely how the parent achieves this end may be left to the parent, but the parent will certainly feel religiously compelled, even in exercising her discretion, to achieve the religiously mandated end.

I note that finding that the exposure to specific texts or activities imposed a significant burden on a parent's religious exercise would not force courts to allow the requested exemptions. Rather, it would require the court to consider what lies on the other side of the balancing test—the state's interest in maintaining uniformity in the curriculum and exposing all students to the challenged portions. Arguing against the exemption would be the disruptive effect that the exemption would cause to the school's ability to teach other children and even the child subject to the exemption. The distraction and time loss associated with frequent excusals and re-entries, the costs of developing a parallel curriculum, the loss in opportunities for group learning processes would all be appropriate to consider.

⁴⁸ Parents may still be successful in asserting free exercise challenges in the context of public schools, where the school more directly compels conduct prohibited by the beliefs of the child's family. See, e.g., *Altman v. Bedford Central School District*, 45 F. Supp.2d (1999) (finding that school project requiring students to design and make a Hindu God violated parents' free exercise rights).

⁴⁹ 827 F.2d 1058 (1987).

⁵⁰ *Id.* at 1067 ("The plaintiff parents can either send their children to church schools or private schools, as many of them have done, or teach them at home.")

B. The Theorists

Resolving these parent-state educational disputes, particularly those motivated by parents' religious convictions, has become a central focus for theorists interested in describing the scope of legitimate state authority over individual conduct in a diverse society. Many of these "liberal" theorists have addressed *Yoder* directly, treating it as the paradigm case in which a community's pursuit of its distinct conception of the good life is pitted against the state's interest in cultivating certain attributes in its citizens.⁵¹ Although the theorists often criticize the Court's analysis, particularly of the state interests at stake, they ultimately fall into the same trap as the courts in considering how those state interests are to be achieved. Like the courts, they focus on the substance of curricular offerings and ignore the importance of peer interactions.

Liberal theorists have identified a host of state interests implicated by educational policies, many of which parallel the interests identified by the courts.⁵² They also focus considerable attention, however, on an interest largely ignored by the courts--the interest in fostering children's ability to act autonomously, to make decisions "for themselves,"⁵³ determined by their particular values and dispositions.⁵⁴ Despite their greater ambitions

⁵¹ See, e.g., Richard Arneson and Ian Shapiro, *Democratic Autonomy and Religious Freedom: A Critique of Wisconsin v. Yoder*, in *Democracy's Place* 137 (Ian Shapiro ed. 1996); Gutmann, *Democratic Education; Civic Education and Social Diversity*, 105 *Ethics* 557, 558 (1995); Stephen Macedo, *Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?*, 105 *Ethics* 468, 488-89 (1995); Jeff Spinner, *The Boundaries of Citizenship: Race, Ethnicity and Nationality in the Liberal State* 88-92 (1994); William A. Galston, *Two Concepts of Liberalism*, 105 *Ethics* 516, 516 (1995) (noting that his essay was inspired by his "long-standing interest in the case of *Wisconsin v. Yoder*"); Martha Nussbaum, *The Role of Religion*, in *Women and Human Development, the Capabilities Approach* (expected publication date: January, 2000). Others appear to be addressing the case, without naming it. See, e.g., John Rawls, *Political Liberalism* 199 (1993) ("[v]arious religious sects oppose the culture of the modern world and wish to lead their common life apart from its unwanted influences. A problem now arises about their children's education and the requirements the state can impose.")

⁵² See, e.g., John Rawls, *Political Liberalism* 199 (1993) (describing as the legitimate aims of education to "prepare [children] to be fully cooperating members of society and enable them to be self-supporting; it should also encourage the political virtues so that they want to honor the fair terms of social cooperation in their relations with the rest of society").

⁵³ What constitutes an autonomous act is far from easy to define. As we shall see, the psychological literature on identity formation focuses on subjective perceptions, and the experience producing those perceptions, in determining which decisions can be considered a person's "own."

⁵⁴ Arneson and Shapiro at 156 (describing their position as arguing for "the moral imperative of educating for autonomy"); Amy Gutmann, *Democratic Education* at 30 (arguing that "[t]he same principle that requires a state to grant adults personal and political freedom also commits it to assuring children an education that makes those freedoms both possible and meaningful in the future."). To some, this capacity for autonomy has intrinsic value, for others, the capacity is justified in instrumental terms (autonomous choice facilitates an individual's pursuit of the good), Richard Arneson and Ian Shapiro, *Democratic Autonomy and Religious Freedom: A Critique of Wisconsin v. Yoder*, in *Democracy's Place* (Ian Shapiro, ed. 1996) (listing this instrumental value as one among three justifications for making the capacity for autonomous decision making a central aim of education); Gutmann, *Democratic Education* at 44 ("contending that "a democratic state must aid children in developing the capacity to understand and to evaluate competing conceptions of the good life and the good society") and for still others, possession of the capacity to exercise independent choice is considered a necessary prerequisite to the political participation expected of citizens in our system of democracy. See, e.g., John Rawls, *Political Liberalism* (suggesting that the state's championing of autonomous decision-making, grounded on rational

for state educational influence, however, theorists championing education for autonomy maintain the courts' narrow focus on imparting information as the primary, if not the only, means of exerting educational influence. Joel Feinberg, in his seminal piece "The Child's Right to an Open Future," is perhaps the most explicit in his single-minded attention to substance. Although he calls for the protection of children's "anticipatory autonomy rights" through education, he suggests that the means of ensuring that the fewest possible options are foreclosed is to fill a child with "knowledge and skills that will help him choose whichever sort of life best fits his natural endowment and matured disposition,"⁵⁵ and with "a great variety of facts and diversified accounts and evaluations of the myriad human arrangements in the world and in history."⁵⁶

Other theorists focus more specifically on the importance of children's acquiring critical reasoning skills in their education for autonomy. In the words of Richard Arneson and Ian Shapiro, "[t]he autonomous person is ... one who is capable of standing back from her values and engaging in critical reflection about them and altering her values to align them with the results of that critical reflection."⁵⁷ In the words of Amy Gutmann, education "makes choice meaningful," by developing the intellectual skills necessary to evaluate ways of life different from one's parents'.⁵⁸ As Gutmann's statement makes plain, these theorists equate the state's facilitation of critical reasoning and self-reflection with skills training: Schools teach children how to reason, which they can then apply, outside of the school context, in making choices about how to live their lives.

It is worth noting that the centrality of autonomy as an educational goal is the subject of much debate among liberal theorists. Though the "political liberals" led by John Rawls eschew the State's championing of the ideals of autonomy or individuality over other comprehensive conceptions of the good, they nevertheless call for the State to protect children's opportunity to exit from the community of their parents if they so choose,⁵⁹ and they, too, rely on the *substance* of curricular offerings to secure this exit opportunity. In the words of Rawls:

deliberation, should be limited to the context of the political realm). Gutmann, *Children, Paternalism, and Education: A Liberal Argument*, 9 *Philosophy and Public Affairs* 338-58 (1980).

⁵⁵ Feinberg at 134-35.

⁵⁶ Feinberg at 139; cf. Stephen Macedo, *Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?*, 105 *Ethics* 468, 487 n.59 (1995) (noting that "knowledge of the diversity that constitutes our history and the importance of tolerance are clearly among the core civic aims," and are more central to the civic mission of schools than science classes).

⁵⁷ Arneson and Shapiro at 162.

⁵⁸ Gutmann, *Democratic Education*, at 30. Note that she does not embrace a pure "state of individual" approach—where state control of education is limited to preparing children for independent choice making.

⁵⁹ The tension created by the attempt to avoid promoting autonomy, while preserving children's capacity to exercise it, is evident throughout discussions of political liberalism. See, e.g., Stephen Macedo, *Liberal Civic Education and Religious Fundamentalism: The Case of God vs. John Rawls?* 105 *Ethics* 468, 488 ("While the state has no business promoting broad ideals like personal autonomy, moreover, to allow Amish parents to withdraw their children from high school could thwart the children's ability to make adequately informed decisions about how to live their lives"). Rawls concedes that, in at least some cases, "requiring children to understand [his proposed] political conception in these ways is in effect, though not in intention, to educate them to a comprehensive liberal conception" which embraces autonomy as an ideal.

Political liberalism will ask that children's education include such things as knowledge of their constitutional and civic rights so that, for example, they know that liberty of conscience exists in their society and that apostasy is not a legal crime, all this to insure that their continued membership when they come of age is not based simply on ignorance of their basic rights or fear of punishment for offenses that do not exist.⁶⁰

While limiting the state's role to the provision of basic information may help prevent the state from intruding upon parents' control over the development of their children's "comprehensive doctrine,"⁶¹ it will do so at a big cost in effectiveness. Giving children mere information about their right to leave will do little to facilitate their actual capacity to leave. Unless the State is committed to facilitating that capacity, the provision of the information will be little more than a rhetorical gesture.

In fairness to the theorists, I should acknowledge that a few of them have made brief mention of the value of peer interactions in the educational process.⁶² Even to the extent that the interactive value identified in these discussions can be distinguished from the value of exposure to diverse ideas (a substance-focused value achievable through texts as well as personal interactions), that interactive value is not recognized to include the central direct role the interactions themselves play in the identity formation process.⁶³ Instead, theorists point to two other values: first, the skill-building value provided by the opportunity to practice critical reasoning and political deliberation,⁶⁴ and, second, the tolerance-teaching value provided by the exposure to different opinions and their defenses. While the first of these values at least concedes an indirect influence on

John Rawls, *Political Liberalism* at 199 (1993); and even William Galston, who argues that the political liberals do not go far enough in deferring to the educational choices of diverse communities, concludes that the State has an interest in preserving individual's opportunity for "meaningful exit" and that this interest "brings us back some distance toward policies more typically associated with autonomy concerns." 105 *Ethics* 516, 534 (1995).

⁶⁰ John Rawls, *Political Liberalism* 199 (1993).

⁶¹ John Rawls, *Political Liberalism* xvi (explaining that "Political liberalism assumes that, for political purposes, a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime").

⁶² Martha Minow, *Not Only for Myself* 114-17 (1997); Amy Gutmann, *Democratic Education* 107 ("However students have been socialized outside of school, there should be room within school for them to develop the capacity to discuss and defend their political commitments with people who do not share them").

⁶³ Martha Minow comes the closest to addressing the issue. In *Not Only for Myself*, she acknowledges the link between educational choices and identity formation, and she specifically notes that school choices include choices about peers as well as about curriculum. *Id.* She does not, however, address the relationship between peer interaction and identity formation, and it is clearly not her aim to consider how the process of identity formation actually occurs.

⁶⁴ Gutmann, *Democratic Education* at 106 (concluding that "[t]he most relevant result" of a course that encouraged students to debate political issues among themselves would be "an increase in the ability of students to *reason*, collectively and critically, about politics, an ability ... essential to democratic citizenship," and citing to a study that suggested that students exposed to extensive classroom discussion "demonstrated better reasoning capacities and more factual knowledge").

identity (interaction teaches critical reasoning, critical reasoning is then applied to life choices) the second is built on an assumption that there will be no such effects. Learning toleration suggests a change in attitudes about difference, but not a diminution of the differences themselves.⁶⁵

None of these theorists focus on the value of peer interactions for their direct effect on an individual child's identity development. Overlooking the developmental significance of these interactions is not simply a problem of academic incompleteness. The theorists' incomplete account serves to justify policy positions that a better understanding of adolescent development suggests may disserve these theorists' own principles. Most particularly, the facts and skills focus leads even those most eager to facilitate children's achievement of the capacity for autonomy to condone private religious schools, so long as those schools comply with certain curricular standards.⁶⁶ Without acknowledging the price,⁶⁷ they cede to parents control over precisely those peer interactions that may most influence children's opportunity to develop the capacity for independent choice-making.

⁶⁵ Minow at 126 (suggesting that "integration across varied divides would not eradicate difference, but instead nurture self-conscious acknowledgement of identities, and the grounds for tolerance itself. For tolerance has no occasion to be tested, or strengthened, in the absence of differences that trigger genuine disagreement"); Gutmann, *Democratic Education* at 33 (suggesting that exposing children to "ways of life different from their parents [will lead children to] embrace certain values, such as mutual respect among persons, that make social diversity both possible and desirable"); Gutmann, *Civic Education and Social Diversity*, 105 *Ethics* 557, 567 n.17 (1995) (citing empirical support for the conclusion that formal education is correlated with children's development of tolerance, and that both the content taught and the pedagogical methods employed, influence how successful attempts to teach tolerance are).

⁶⁶ Arneson and Shapiro, Gutmann, *Democratic Education* at 116 (arguing that "[a] better alternative to prohibiting private schools would be to devise a system of primary schooling that accommodates private religious schools on the condition that they, like public schools, teach the common set of democratic values"); Gutmann, *The Importance of Not Establishing Religion* draft at 31 (asserting that "[d]emocratic authority over education also has important limits, which permit religious and irreligious parents alike to send their children to private schools, which may teach their religion or irreligion in addition to the state requirements of civic education"); Stephen Macedo, *Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?*, 105 *Ethics* 468, 486 (1995) ("I would concede the right to opt out of public schooling, but that right should be understood to be conditioned by a public authority to regulate private schools to insure that civic basics are taught"). This position echoes that of John Stuart Mill, who contended that the role of education was to maximize a child's future choices, that private/parental control of the schools would better serve this end, but that such control must be subject to the supervision of the state, in the form of public examinations testing a child's knowledge of "facts and positive science exclusively." *On Liberty*, ch. 5, para. 14.

⁶⁷ Gutmann does consider whether outlawing private schools could be justified, but her assessment of the risks posed by parents' ability to remove their children from public schools focuses on the potential depletion of resources and academic performance the removal would cause, rather than the diminution of opportunities for unlike peers to interact. See Gutmann, *Democratic Education* at 116. Indeed, Gutmann expressly concedes that allowing private schools will facilitate parents' segregation of their children from peers who do not share their religious beliefs, but does not consider this problematic, so long as the children are taught a "common set of democratic values." *Id.* at 117.

II. The Developmental Stakes

The courts' and commentators' account of the State's interests in educating adolescents demonstrates a lack of attention to the core tasks of adolescent development and how the schools can influence that development. By early-adolescence, much of the hard work of *cognitive* development is behind children.⁶⁸ What lies ahead, as the developmental preoccupation of late adolescence and early adulthood, is *identity* development. Adolescents are engaged in the process of figuring out who they are—particularly how they are like and unlike the models established for them by their parents—and their relations with peers play a major role in the process. It is this identity formation process, and the path it takes through peer interactions, that is most effected by the courts' decisions in these cases. An understanding of this development is therefore essential to careful law making in this area.

In this part, I will pursue this developmental understanding, first by discussing the significance of the identity formation process to adolescents, generally, and second by considering the relative influence of parents and peers on that process. My discussion of adolescent identity formation will highlight the value attributed by many developmentalists to the process of identity exploration, which has been correlated both with more successful functioning, and with an individual's greater sense of personal control over her choices. The State's interest in children's development into healthy and productive adults and into autonomous participants in the democratic process are therefore both implicated by policies affecting children's opportunity to engage in identity exploration.

How the State might facilitate exploration takes us to our second developmental topic, namely the influence of parents and peers on the identity formation process. My survey of the relevant literature reveals that both parents and peers profoundly affect the adolescent's identity development but that their influence operates in significantly different ways. Where parents tend to exert the primary influence over the *substance* of adolescent's choices, particularly about the important issues that are our focus here, peers play a critical role in the *process* of identity formation. Peer interactions offer the best opportunity for exploration, and this opportunity will be considerably enhanced if the peers with whom the adolescent interacts differ in background and convictions from herself. This literature suggests that ceding control over adolescents' peer associations to parents could significantly limit the State's ability to facilitate adolescents' identity exploration.

A. Why Social Science?

My ultimate task, which I will take up in Part III, is to consider how, if at all, a more sophisticated understanding of child development should change how we analyze

⁶⁸Doris R. Entwisle, *Schools and the Adolescent*, in *At the Threshold, The Developing Adolescent* (S. Shirley Feldman and Glen R. Elliott eds. 1993) 197 (asserting that, by adolescence, the pace of cognitive development has slowed to one tenth of its elementary school pace).

parents' attempts to control their children's education for religious reasons. Before digging into the developmental literature, I therefore wish to consider the appropriateness of this interdisciplinary inquiry.

Put simply, an understanding of development is important because the law affecting children is grounded on developmental assumptions.⁶⁹ The law frequently treats children differently from adults, and this difference in treatment is justified by the perception that children's cognition, social skills, moral values and functional competencies are not fully⁷⁰ developed.⁷¹ Courts and commentators point to children's immaturity and related dependency to justify placing control of important decisions on their behalf in the hands of parents and the state, and to justify the allocation of surrogate decision-making between parents and the state.⁷²

To say that children's incomplete development serves to justify their special treatment under the law is not to say that decisions about how the law should treat children are well grounded in an understanding of how children actually develop. Indeed, much of the law affecting children rests on simple assertions that children are developmentally different, or unsupported assumptions about the nature of those differences.⁷³ The value of turning to the developmental literature is, therefore, the

⁶⁹ In analyzing the law as it applies to children, developmental assumptions come into play in two ways that roughly correlate with discussions of children's legal rights on the one hand, and children's needs and interests, on the other. In considering the proper scope of children's right to exercise decision-making control, the courts make express or implied assumptions about children's capacities and rely on assumptions about children's insufficient development of relevant capacities to justify curtailing children's rights. See, e.g., *Bellotti v. Baird*, 443 U.S. 622 (1979) (justifying state imposition of special restrictions on minors' abortion rights that would be unconstitutional if applied to adult women on the basis of minors' lesser capacity for decision making and their relationship of dependence on their parents). In this context, the assumptions are about developmental *status*, and differences in status serve to justify a diminution in rights. In contrast, the developmental assumptions underlying consideration of children's needs and interests, such as the educational interests at issue in our cases, go as much to *process* as to status. In this context, the ongoing nature of children's developmental process justifies special legal rules aimed at affecting and protecting that process. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 221 (noting the importance of the state's educational role in developing children's capacities to support themselves and participate in the political process); *Prince v. Massachusetts*, 321 U.S. 158, 168 (asserting that the State has an interest in securing "the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies").

⁷⁰ I note that the concept of "full" or complete development is simplistic. The term "development" is increasingly used to describe the ongoing process of change over the course of a lifetime, see, e.g., Paul B. Baltes, Ulman Lindenberger and Ursula M. Staudinger, *Life-Span Theory in Developmental Psychology*, in *Handbook of Child Psychology* (William Damon, ed. 1998), but the legal concept of development draws a clean line at adulthood.

⁷¹ See, e.g., *Bellotti v. Baird*, 443 U.S. 622, 634 (1979) (explaining that "[w]e have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children, their inability to make critical decisions in an informed manner, and the importance of the parental role in child rearing").

⁷² See, e.g., *Parham v. J.R.*, 442 U.S. 584 (1977) (concluding that children's interests were best served by refusing to recognize their due process right to an independent hearing prior to a mental health commitment, instead leaving parents with "plenary authority to seek such care for their children, subject to a physician's independent examination and medical judgment").

⁷³ For example, compare *Parham v. J.R.*, 442 U.S. 584, 603 (1977) (asserting, without support, that "most children, even in adolescence, simply are not able to make sound judgments concerning many decisions,

simple value of improving the understanding of children that serves as the basis of their legal treatment.

While simple in its value, the developmental inquiry is far from simple in its application. There are many ways in which this social science literature could be misread or over-read, and a brief consideration of the limitations of this literature will help ensure its proper use in our inquiry. In general, objections to the reliance on social science literature can be roughly divided into two categories—the first focuses on the indeterminate nature of available information, and the second on the information’s contextual dependence. The first category of objections points to the lack of any direct testing of many of the specific questions the law confronts, the potential methodological weaknesses of studies, the limitations on the conclusions that can be drawn from even the best studies, and the inconsistency of results from one study to the next.⁷⁴ The second category of objections focuses on sampling issues, and the role context, and particularly cultural context, plays in shaping how studies are designed, what results are obtained, and how those results are interpreted.⁷⁵ We worry about the first category of objections because they call into question how much we can learn from the professionals about how *any* child develops, and we worry about the second category of objections because they suggest that whatever we can learn from the literature says at least as much about our culture’s expectations and values as about inherent capacities.

Both categories of objections are important, but neither, in my view, counsels against giving the developmental literature careful consideration. While developmentalists surely do not have all the answers, they are asking important, relevant questions, and as incomplete and uncertain as their answers are, they are far better grounded, or more carefully qualified, than the answers guessed at by lawmakers. Moreover, to the extent the law is premised on developmental assumptions that remain untested, only a careful consideration of the developmental literature can illuminate these gaps.

As for the contextual concerns, while developmentalists’ conclusions will inevitably reflect the culture in which their studies are conducted, these conclusions will

including their need for medical care or treatment”) with Thomas Grisso and Linda Vierling, *Minor’s Consent to Treatment: A Developmental Perspective*, 9 Professional Psychology 412, 424 (1978) (concluding, on the basis of a literature review, that “[t]here appear to be no psychological grounds for maintaining the general legal assumption that minors at age 15 and above cannot provide competent consent to treatment”).

⁷⁴ See, e.g., Sarah H. Ramsey & Robert E. Kelly, *Using Social Science Research in Family Law Analysis and Formation, Problems and Prospects*, 3 S. Cal. Interdis. L. Rev. 631 (1994) (listing, among other methodological problems with social science research, problems of measurement, assessing causal linkage and skewed interpretation by biased researchers).

⁷⁵ See, e.g., Sally L. Archer, *A Feminist’s Approach to Identity Research*, in *Adolescent Identity Formation* (Gerald Adams, Thomas Gullotta, and Raymond Montemayor, eds. 1992) 26 (citing numerous examples where the most influential developmentalists relied heavily, if not exclusively, on studies in which the subjects were white boys from academically and professionally successful families); Martha Fineman and Anne Opie, *The Uses of Social Science Data in Legal Policymaking: Custody Determinations at Divorce*, 1987 Wisc. L. Rev. 107 (contending that social science research on topics related to custody focuses disproportionately on fatherhood which has the effect of devaluing mothers’ contributions).

at least tell us something about developmental possibilities, if not necessities. As important, these studies can tell us a great deal about developmental influences. How much we as a society choose to value various developmental ends will ultimately be a moral and political rather than a developmental inquiry, but ascertaining how to achieve the ends we value will require an understanding of these developmental influences.⁷⁶

The objections, of course, are not so much to the studies themselves as to their misuse and manipulation in the hands of their interpreters.⁷⁷ In light of the seriousness of this risk, it is worth clarifying the nature of my task. My intention is to stimulate interdisciplinary discussion, not to provide the final word on children's development. I consider my inquiry from law to development part of an ongoing process of interdisciplinary work that should run in both directions. Just as the legal inquiry should be informed by the current state of developmental knowledge, so should the developmental inquiry, going forward, take better heed of the legal issues to be resolved, and the legal context in which development occurs. A better discussion between the disciplines should, over time, produce better answers to both methodological concerns, and the larger issues driving the inquiry.

While the objections I have discussed do not argue against pursuing the developmental inquiry, they should be put to work to guard against any suggestion that the answers are clearer than they are. The value of the inquiry is not that it can simplify the analysis, but rather that it can facilitate a more intelligent consideration of complexities.⁷⁸ The law's special treatment of children should be developed with as subtle an understanding as possible about what is known, and what is not, about the relevant stakes for children of that treatment. Deciding what should be made of that understanding is then the hard task of law making.

I have argued that the courts' analysis in the cases we are considering can best be understood to reflect an attempt to weigh the relative costs and benefits to children, generally, of allowing the state to enforce its educational requirements, on the one hand, or deferring to particular parents' religiously motivated judgments, on the other. Although not so articulated, this weighing is, at its core, a developmental inquiry—it considers who can and should have what influence over how children grow up, and by

⁷⁶ In looking to the literature for this understanding, we must, of course, take care in distinguishing correlation from causation. See Ramsey and Kelly, *supra* note __ at 648.

⁷⁷ See, e.g., William Gardner, David Scherer, and Maya Tester, *Asserting Scientific Authority, Cognitive Development and Adolescent Legal Rights*, 44 *American Psychologist* 895 (criticizing the misuse of developmental theory and data in *amicus* briefs to argue for the elimination of restrictions on a minor's right to an abortion).

⁷⁸ Understanding children's development can lead to more sophisticated lawmaking on several levels: Most obviously, to the extent legal rules are grounded exclusively on developmental assumptions, a better understanding of development will produce better-justified rules and, where assumptions are shown to be incorrect, better rules. The developmental inquiry can also have other beneficial analytic effects: Where developmental effects point in one direction, but the law in another, the developmental inquiry may help to illuminate what other considerations are at stake, and what relative weight is being afforded to these various considerations. Moreover, the precision required to frame a useful developmental inquiry can help to clarify the nature and scope of the various interests at stake, whether or not that inquiry produces definitive social scientific conclusions.

what means that influence is exercised. In the next section I will bring the developmental inquiry to the fore, focusing particularly on adolescence, where the balancing problem becomes most complex.

B. The Developing Adolescent

The major developmental work of adolescence in western cultures⁷⁹ is identity formation. A major means by which the work is accomplished is peer interactions. Who those peers are, and the nature of those interactions, will inevitably have considerable effect on who adolescents become. In light of the evident importance of the choice of peer associations to children's development, it is striking how little consideration is given, by courts and commentators alike, to the associational implications of their decisions and policies.

In this section I will begin by describing developmentalists' understanding of the adolescent process of identity formation, and how it can vary in its path and its endpoints. After discussing identity formation in general terms, I will consider, more particularly, adolescents' development of a religious identity, noting that this development can be understood to include both the development of a sense of group affiliation and the development of a sense of personal religious values and commitments. I will then go on to consider the influences on the different aspects of identity development, focusing on the comparative influence of parents and peers. I will conclude that, while both parents and peers exert significant influence over the identity formation process, interactions with parents are central for much of childhood, whereas peer interactions become increasingly influential in middle and late adolescence. The difference in the timing of these interactional influences corresponds to some differences in the nature of the influence. While parents exert the primary influence over adolescents' choice of long-term goals and values and their sense of group affiliation, peers play an important role in influencing how adolescents engage in and perceive the choice-making process. How this choice-making process is experienced, I will argue, may affect the extent to which choices made can be characterized as autonomous.

1. Identity Formation

Sorting out our identities is a life-long project.⁸⁰ Infants discover that they are distinct from their caregivers and that they can exercise some control over their bodies,

⁷⁹ While there is a considerable variety in the groups represented in the cases we are addressing, they all appear to recognize a developmental transition period between childhood and adulthood that spans a considerable portion of the teenage years.

⁸⁰ Jane Kroger, *Identity in Adolescence, The Balance Between Self and Other* 18 (1996) (describing the Eriksonian view that "identity evolves through earlier stages of development and continues to be reshaped throughout the life-cycle").

and their environment.⁸¹ Young children discover what they are good at, what they like to do, and with whom they like to play.⁸² But it is in adolescence that the concept of self—the integrated composite of personality, tastes, values, skills, and behaviors—is most thoroughly and self-consciously developed.⁸³ This identity formation concentrates in adolescence in part because of preceding cognitive advancements: By mid-adolescence, most individuals have developed the capacity to engage in abstract thinking,⁸⁴ which allows for a consideration of overarching principles and alternative hypothetical worlds,⁸⁵ and the capacity for the coordination of multiple viewpoints, or “perspectives,”⁸⁶ which facilitates reflection and self awareness. The identity formation process is also inspired, at least in western cultures,⁸⁷ by what lies ahead: The imminence

⁸¹ See Eleanor E. Maccoby, *Social Development* 251 (1980) (noting that, while the time of discovery cannot be identified with any precision, it appears that children begin to pull together sense impressions of their own bodies, movements and cries in a single perception of bodily self early in infancy).

⁸² See William Damon and Daniel Hart, *Self-understanding in childhood and adolescence* 59 (1988) (describing early childhood identity descriptions as descriptions of categories such as group membership, typical activities and physical characteristics).

⁸³ See Harold D. Grotevant, *Assigned and Chosen Identity Components: A Process and Perspective on their Integration*, in *Adolescent Identity Formation* 73 (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992) (describing identity development as a “key developmental task of adolescence in Western societies”); Jane Kroger, *Identity in Adolescence, The Balance Between Self and Other* (1996) (noting the importance of adolescence for identity development).

⁸⁴ Carol Markstrom-Adams, *A Consideration of Intervening Factors in Adolescent Identity Formation*, in *Adolescent Identity Formation* 179-80 (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992) (noting that both Erikson and Piaget contended that the ability to engage in “formal operational” thinking was necessary to engage in the identity formation process, and that some, but not all, studies considering this question have supported this contention).

⁸⁵ *Id.* (noting that “[a]n inability to examine several possible identity alternatives” circumscribes the identity formation process).

⁸⁶ Harold D. Grotevant and Catherine R. Cooper, *Individuation in Family Relationships, A Perspective on Individual Differences in the Development of Identity and Role-Taking Skill in Adolescence*, 29 *Human Development* 82, 86-87 (1986) (citing Robert Selman, and other developmentalists, for their work documenting the development of socio-cognitive, perspective-taking skills through adolescence). The complexity of the following passage by Erik Erikson captures the sophistication of social cognition demanded by the identity formation process:

Identity formation employs a process of simultaneous reflection and observation, a process taking place on all levels of mental functioning, by which the individual judges himself in the light of what he perceived to be the way in which others judge him in comparison to themselves and to a typology significant to them; while he judges their way of judging him in the light of how he perceived himself in comparison to them and to types that have become relevant to him.

Identity: Youth and Crisis 22 (1968); see also Ray R. Buss and D. Enright, *Helping Adolescents Improve Their Ego-Identity*, in *Working with Troubled Children* 153 (Coleman, ed. 1987) (contending that “social perspective taking is key to identity formation”).

⁸⁷ Note that the very concept of adolescence, let alone the developmental significance of this stage, is culture-specific. In many cultures, individuals are expected to take on adult-like roles when they reach puberty, and whatever developmental work is required to prepare them for these roles will occur earlier in childhood. See Mary Ellen Goodman, *The Culture of Childhood* 3 (noting that there is considerable variation among cultures in the behavior of adolescents, and attributing that difference to “culturally patterned expectations, in training, and in social controls”). While there is considerable variation among the cultural groups represented in our cases, adolescence in all these cultures is a period during which

of independence from parents, and the resulting necessity of making important decisions about work, friendships, lifestyle and family, all focus the adolescent's attention on her identity.⁸⁸ Of course, identity formation continues beyond adolescence (indeed, the very decisions in question will as much shape as be shaped by an individual's concept of identity). But in no other period will identity formation be as intense or as central.

Erik Erikson was the primary pioneer in the study of identity development, and his theory of identity formation, first articulated four decades ago, still serves as the starting point for much contemporary analysis of the subject. Erikson suggested that a major shift occurs in adolescence, when the earlier childhood process of "identification," (the assumption of the values and roles associated with admired others) is replaced by the process of identity formation. During this latter phase, the adolescent selects among these earlier identifications, embracing some and rejecting others, and in the process develops and reveals her⁸⁹ own, integrated set of values and tastes. Erikson suggested that this process of identity formation—the development of a "subjective sense of invigorating sameness and continuity"⁹⁰—was essential to healthy development. Facing, and resolving, the "identity crisis" enabled individuals to make important life choices that would serve their unique needs and talents, gave them a kind of stability and security that equipped them to remain faithful to their commitments and handle life's vicissitudes, and prepared them to enter relationships of intimacy.⁹¹ Put simply, Erikson contended that how the identity formation process unfolded in adolescence and young adulthood would have a dramatic effect on the entire life-course of individuals.

individuals prepare for, but do not for the most part yet undertake, adult responsibilities. This similarity across these cultures may be, in part, because they are all governed by the same legal structure, which sets the age of adulthood at 18 for most purposes.

⁸⁸ Note that the developmental focus on identity need not be equated with a focus on individuality. In cultures oriented toward a group rather than individual identity, an adolescent's identity work may be heavily focused on discovering her fit within the group.

⁸⁹ Those familiar with Erikson's work may take note of my choice of "she" as the generic pronoun. Erikson's empirical work focused heavily on males, and when he turned his attention to identity formation in females, he developed a theory of the "inner space" that has been soundly criticized on the level of both method and theory. See, Serena Patterson, Ingrid Sochting, and James Marcia, *The Inner Space and Beyond: Women and Identity*, in *Adolescent Identity Formation* (Gerald Adams, Thomas Gullotta, and Raymond Montemayor, eds. 1992) (describing Erikson's "Inner Space" theory, and subsequent studies of women's identity development). I choose the pronoun advisedly, on the view that Erikson's work that focused on males is now thought to have broad application to adolescents of both sexes in western cultures. Cf. David R. Matteson, *Exploration and Commitment: Sex Differences and Methodological Problems in the Use of Identity Status Categories*, 6 J. of Youth and Adolescence 353, 354 (1977) (criticizing poor design of studies ostensibly aimed at capturing differences between man's and woman's identity formation process).

⁹⁰ Erik H. Erikson, *Identity, Youth and Crisis* 19 (1968).

⁹¹ In Erikson's view, where the identity formation process was most successful, individuals would enter adulthood with a "sense of psychosocial well-being ... a feeling of being at home in one's body, a sense of 'knowing where one is going,' and an inner assuredness of anticipated recognition from those who count." Erik Erikson, *Identity, Youth and Crisis* 165 (1968); Jane Kroger, *Identity in Adolescence, The Balance Between Self and Other* (1996) (setting out the link between identity formation and subsequent preparedness for intimacy, in Erikson's 8-stage scheme of crises and resolutions).

Erikson perceived of the identity-formation process as a considered choice-making process, and his use of the term “crisis” attempted to capture the necessity of confronting and making these choices. Building upon Erikson’s theories, James Marcia suggested that the identity formation process reflected development along two different axes—the experience of crisis (doubt and indecision accompanied by an awareness of multiple competing possibilities) and the undertaking of commitments (resolution of these doubts and selection among the possibilities)—which, considered together, allowed for the categorization of all individuals into four identity statuses: Individuals who had gone through a crisis period and then undertaken commitments were labeled identity achieved, or *achievements*. Individuals who had confronted the crisis but not yet undertaken commitments were labeled *moratoriums*. Individuals who had undertaken commitments without ever experiencing the crisis period were labeled *foreclosures*, and individuals who had neither experienced crisis nor undertaken commitments were labeled *diffusions*.⁹² Marcia contended, and numerous subsequent studies have confirmed, that the number of achievements increases with age, as more individuals passed through the crisis and commitment processes.⁹³

Both Erikson and Marcia concluded that there were more and less healthy ways of developing an identity. In Erikson’s terms, the most healthy adults were those who had confronted and resolved the identity crisis, in Marcia’s, the healthiest adults were identity achieved.⁹⁴ Like Erikson, Marcia placed particular emphasis on the value of the crisis experience, suggesting that through this experience individuals acquired an understanding of self that equipped them to make decisions driven by genuine personal preference rather than externally imposed obligations and expectations. In contrast, individuals who resolved their identity issues without questioning and experimentation were likely to be inflexible, conventional, and authoritarian adults.⁹⁵ The identity work of moratoriums

⁹² James E. Marcia, *Development and Validation of Ego Identity Status*, 3 J. of Personality and Social Psychology 551 (1966).

⁹³ Jane Kroger, Identity in Adolescence, The Balance Between Self and Other 39 (1996) (citing longitudinal studies showing a progression from non-crisis statuses of foreclosure and diffusion to the mid and post-crisis statuses of achievement and moratorium); Wim Meeus and Maja Dekovic, *Identity Development, Parental and Peer Support in Adolescence: Results of a National Dutch Survey*, 30 Adolescence 931 (1995) (citing studies showing “a consistent increase in commitment and exploration by age); A. Waterman, *Developmental Perspectives on Identity Formation: From Adolescence to Adulthood*, in *Ego Identity: A Handbook for Psychosocial Research* (J. E. Marcia, et. al., eds. 1993) (finding that the number of achievements increases with age and that the number of foreclosures, and especially diffusions, decreases with age).

⁹⁴ See Jane Kroger, Identity in Adolescence, The Balance Between Self and Other 36 (1996) (summarizing Marcia’s findings that achievements showed “flexible strength,” and openness); Alan S. Waterman, *Optimal Psychological Functioning*, in *Adolescent Identity Formation* 56 (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992) (noting that, for identity statuses other than identity achieved, there were both healthy and pathological aspects and that, even some subset of those with achieved status completed the process prematurely); (Bersonsky, , in *Adolescent Identity Formation* 194 (arguing that achievements and moratoriums are more prepared to adapt to life’s vicissitudes because, they, unlike foreclosures or diffusions, engage in an information-oriented process of decision-making).

⁹⁵ Michael D. Berzonsky, , in *Adolescent Identity Formation* 197 (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992) (contending that foreclosures possess rigid belief systems, are intolerant of ambiguity, resist dissonant information, and have difficulty evaluating or integrating information from multiple perspectives); Jane Kroger, Identity in Adolescence, The Balance Between Self

was perceived as incomplete,⁹⁶ but they were expected to eventually advance to the status of achievement, whereas foreclosures were perceived as potentially locked in to a deficient identity resolution that stifled their ability to engage in autonomous action.⁹⁷ Although the term “crisis” has gradually been replaced by the term “exploration”⁹⁸—to capture the relevant process and to emphasize the developmental normality and appropriateness of the experience—Erikson’s and Marcia’s theories are still extremely influential.⁹⁹

Many subsequent studies have supported the correlation between identity exploration and subsequent successful functioning, and some have tied this successful functioning to an increased perception of personal control over choices made.¹⁰⁰ Others, however, have emphasized that the value of this process of exploration is largely context

and Other 37 (1996) (summarizing Marcia’s findings that foreclosures tended to be rigid, defensive, approval-seeking, and authoritarian); cf. Gerald R. Adams, Introduction, in *Adolescent Identity Formation 1-2* (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992); Cf. Waterman in *Adolescent Identity Formation 56* (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992) (reporting conflicting conclusions from studies of foreclosures: some finding them steadfast, some rigid; some finding them cooperative, some conforming; and some finding them committed, and others dogmatic).

⁹⁶ Cf. Jane Kroger, *Identity in Adolescence, The Balance Between Self and Other 36* (1996) (summarizing Marcia’s findings suggesting that moratoriums were more anxious than either achievements or foreclosures).

⁹⁷ Wim Meeus, *Toward a Psychosocial Analysis of Adolescent Identity: An Evaluation of the Epigenetic Theory(Erikson) and the Identity Status Model (Marcia)*, in *Social Problems and Social Contexts in Adolescence* (Klaus Hurrelmann & Stephen F. Hamilton, eds. 1996) (noting that individuals with a foreclosed identity status were self-confident, but failed to show autonomous or independent action); Cf. Waterman in *Adolescent Identity Formation 64* (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992) (reporting findings in some, but not all, studies that foreclosures, as well as diffusions, were less likely to perceive themselves as personally responsible for their actions).

⁹⁸ See, e.g., Harold D. Grotevant and Catherine R. Cooper, *Individuation in Family Relationships, A Perspective on Individual Differences in the Development of Identity and Role-Taking Skill in Adolescence*, 29 *Human Development* 82, 86(1986) (suggesting that “exploration more accurately captures the typical identity formation experience”); David R. Matteson, *Exploration and Commitment: Sex Differences and Methodological Problems in the Use of Identity Status Categories*, 6 *J. of Youth and Adolescence* 353, 354 n.3 (1977) (“The word ‘crisis,’ used by Marcia and Erikson, unnecessarily evokes the storm-and-stress view of adolescence, focusing on rebellion against the parents. I think it is more descriptive to refer to this variable as ‘exploration.’”); Wim Meeus and Maja Dekovie, *IdentityDevelopment, Parental and Peer Support in Adolescence: Results of a National Dutch Survey*, 30 *Adolescence* 931, 932 (1995) (following “convention” to replace crisis with exploration).

⁹⁹ See Michael D. Berzonsky, *A Process Perspective on Identity and Stress Management*, in *Adolescent Identity Formation 193* (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992) (stating that, while not without its critics, Marcia’s identity status paradigm has “dominated the field of identity research for two decades”).

¹⁰⁰ See Wim Meeus and Maja Dekovie, *IdentityDevelopment, Parental and Peer Support in Adolescence: Results of a National Dutch Survey*, 30 *Adolescence* 931, 932 (1995) (summarizing literature associating identity achievement and moratorium with positive characteristics, including high levels of self-esteem, autonomy, and reasoning in terms of moral values, and foreclosure and identity diffusion with low levels of those characteristics); Cf. Alan S. Waterman, *Identity as an Aspect of Optimal Psychological Functioning*, in *Adolescent Identity Formation 62-65* (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992) (reporting study results suggesting that, overall, achievements function at the highest level, but that foreclosures also show high self-esteem, clear goal setting and low levels of anxiety).

dependent: How being afforded this opportunity to explore affects a child will surely depend, at least in part, on whether that child grows up in, and is expected to remain within, a culture that anticipates the opportunity for making choices.¹⁰¹ The more narrowly circumscribed those choices, the more potentially meaningless, even destructive, a process of exploration might be. Of course, the extent to which it is appropriate for the state to influence a child's very cultural context (by, for example, increasing the child's opportunity to exercise choice) lies at the heart of any consideration of how to allocate educational control between parent and state.

A consideration of the value we might want to place on giving an adolescent an opportunity to engage in extensive identity exploration requires us to address several interrelated empirical and normative questions: To what extent will the process of exploration lead individuals to make a broader range of choices, even if they have grown up in communities where such choices are discouraged? To what extent will the process of exploration change how children see themselves and how they function in such communities, should they decide to stay? How highly should we value a child's identification with the religious beliefs and practices of her parents, and why? And finally, how highly should we value the exploration process itself and the choices that grow out of such exploration, and why? In this Part, I focus on the empirics, in the next I will take up the normative questions.

Of particular interest for our inquiry is how children develop a religious identity and how that particular aspect of identity formation interrelates with identity formation as a whole. After briefly considering what is encompassed within the concept of a religious identity, I will turn to an examination of two important influences over the progress of identity development—parents and peers.

¹⁰¹ Cf. Harold D. Grotevant & Catherine R. Cooper, *The Role of Family Experience in Career Exploration: A Life-Span Perspective*, in *Life-Span Development and Behavior* 242 (Paul Baltes, David L. Featherman, and Richard M. Lerner, eds. 1988) (noting that the value of the identity exploration process depends upon cultural norms and that the equation of family health with adolescent exploration "is most prevalent in societies in which high value is placed on individuals' opportunities to have control over choices that affect their lives."); Harold D. Grotevant and Catherine R. Cooper, *Individuation in Family Relationships, A Perspective on Individual Differences in the Development of Identity and Role-Taking Skill in Adolescence*, 29 *Human Development* 82, 86 (1986) (noting the importance of exploration to identity formation when adolescents "have many options from which they must choose"); Carol Markstrom-Adams, *A Consideration of Intervening Factors in Adolescent Identity Formation*, in *Adolescent Identity Formation* 147 (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992) (reporting studies showing correlation of family, ethnicity, race, and religiosity with differing degrees of exploration); Bersonsky, in *Adolescent Identity Formation* 194 (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992) (arguing that the adaptive value of various "socio-cognitive processing styles" cannot be evaluated without considering the cultural context in which the processing styles are manifested); Grotevant in Damon 1120 (suggesting that the equation of autonomy and emancipation from parents with maturity reflects a cultural bias in developmental psychology); Jane Kroger, *Identity in Adolescence, The Balance Between Self and Other* 31, 33 (1996) (discussing Erikson's critics, generally, and the potential cultural limitations of his identity crisis theory).

a. Religious Identity Formation

The development of a sense of religious identity is an important piece of the adolescent's larger identity formation process.¹⁰² Going as it does to the core of one's beliefs, values, practices and affiliations, sorting out one's own religious identity from that of one's parents is as important as any other sorting that occurs in the identity formation process. This sorting may be especially important because it is in the area of religion that parents generally care the most about reproducing their identities in their children.¹⁰³ If the language of "crisis" is ever appropriate, it may be here, where the prospect of a child's embracing a religious identity that diverges from that of her parents is likely to be considered especially significant to parent and child alike.

While the identity choices made in this area may be of particular importance, the process of forming a religious identity looks much like the identity formation process in other domains, and the developmentalist is interested in the same questions: What, if any, commitments has the adolescent made? Through what process did the adolescent make those commitments? What correlations can we draw between the answers to these questions and indicators of well being? Numerous studies of adults suggest that the possession of religious convictions and affiliations correlates with positive health and mental health outcomes.¹⁰⁴ As in other areas of identity formation, however, many developmentalists have concluded that the process leading to commitment matters more than the ultimate commitments made.¹⁰⁵

An adolescent may embrace religious beliefs with or without first passing through a period of critical exploration. People can be "foreclosed" in their religious

¹⁰² Elizabeth Weiss Ozorak, *Social and Cognitive Influences on the Development of Religious Beliefs and Commitment in Adolescence*, 28 J. for the Scientific Study of Religion 448 (1989) ("For almost a century, psychologists have focused on adolescence as a particularly sensitive and important time in the development of religious faith or disengagement"); Raymond H. Potvin & Che-Fu Lee, *Adolescent Religion: A Developmental Approach*, 43 Sociological Analysis 131 (1982) (describing adolescence as a "critical stage" in the development of religious commitment).

¹⁰³ The same generally cannot be said of choices of occupations, hobbies, or non-religious associations. While parents may hope their children will follow in their footsteps in any of these areas, they are unlikely to care as much about reproducing these aspects of themselves as they do about the transmission of religious beliefs, nor are they likely to be motivated by a sense of religious obligation in their attempts to secure an identity match in these other areas. Of course, sometimes religious choices are directly connected with professional or associational choices, in which case these other choices may take on the same significance as the religious choices themselves.

¹⁰⁴ See Christopher Ellison and Jeffrey Levin, *The Religion-Health Connection: Evidence, Theory, and Future Directions*, 25 Health Education and Behavior 700 (1998) (concluding, on the basis of a literature review, that religiosity is generally associated with positive health and mental health outcomes). The psychological literature is, of course, far from one-sided on the question. Foremost among religion's skeptics was Freud, who perceived of religion as an unhealthy product of self-deceit. Sigmund Freud, *Civilization and its Discontents* (1930); see also E.S. Chesen, *Religion May be Hazardous to Your Health* (1974).

¹⁰⁵ See, e.g., A.E. Bergin, *Values and Religious Issues in Psychotherapy and Mental Health*, 46 American Psychologist 394 (1991).

commitments, just as in other areas of commitment.¹⁰⁶ In this context, as in others, psychologists have found indications that those who embrace religion out of an unreflective sense of obligation to achieve approval or to avoid feelings of guilt, manifest more negative mental health outcomes than do those who experience their embrace of those beliefs as a volitional, self-determined act that has been assimilated into an integrated sense of self.¹⁰⁷

In addition to this belief-focused aspect of religious identity, there is also an affiliation-focused aspect of religious identity that can best be viewed as a form of ethnic identity.¹⁰⁸ The strength of this affiliation-based identity will vary considerably among religions, but it is worth noting, albeit somewhat tautologically, that this group identification is likely to be particularly strong in religious groups who hold themselves apart from the rest of society. Appreciating the distinction between the belief-based conception of religious identity and the affiliation-based conception is important, because the developmental course of these two aspects of identity formation does not appear to be identical.

Belief-based religious identity-formation largely awaits adolescence,¹⁰⁹ and for many continues well beyond adolescence.¹¹⁰ This is, as with other aspects of identity formation going to important values,¹¹¹ in part because it requires the late-developing ability to think abstractly and in part because it is in adolescence that important life choices that will be driven by an individual's values and tastes begin to loom large.¹¹² In

¹⁰⁶ See Mitchell S. Parker, *Identity and the Development of Religious Thinking*, in *Identity in Adolescence: Processes and Contents* (A.S. Waterman, ed. 1985) 47 (reporting results of study suggesting that adolescents' religious identity reflect the same distribution over Marcia's identity statuses as other domains of identity development).

¹⁰⁷ See, e.g., Richard M. Ryan, Scott Rigby, and Kristi King, *Two Types of Religious Internalization and Their Relations to Religious Orientations and Mental Health*, 65 *J. of Personality and Social Psychology* 586, 594 (1993) (noting that those whose religious beliefs and practices are perceived as "personally chosen and valued" test high on indicators of well-being, whereas those whose beliefs and practices are undertaken out of a sense of obligation test lower); cf. Carol Markstrom-Adams and Melanie Smith, *Identity Formation and Religious Orientation Among High School Students from the United States and Canada*, 19 *J. of Adolescence* 247, 258 (1996) (noting a high correlation between "extrinsic" religious focus--defined as religiosity motivated by self-interest rather than principled conviction--and identity diffusion, described as the "least healthy of the identity statuses").

¹⁰⁸ See Jean S. Phinney & Doreen A. Rosenthal, *Ethnic Identity in Adolescence: Process, Context, and Outcome*, in *Adolescent Identity Formation* 147 (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992) (defining ethnic identity as the "sense of belonging to an ethnic group").

¹⁰⁹ David Elkind, *The Development of Religious Understanding in Children and Adolescents*, in *Research on Religious Development* (Merton P. Strommen, ed. 1971) (describing five stages in a child's religious development culminating in mid-adolescence).

¹¹⁰ James Fowler, who has written extensively about the "stages of faith," describes this developmental process continuing over the life-span. *Stages of Faith* (1981).

¹¹¹ See *supra* at ____.

¹¹² Carol A. Markstrom, *Religious Involvement and Adolescent Psychosocial Development*, 22 *J. of Adolescence* 205 (1999) (suggesting that the acquisition of the ability to think abstractly, the desire to confront important questions and their overall engagement in the process of identity formation incline adolescents to address issues of religion and spirituality); David Elkind, *The Child and Society* 277-78 (1979) (suggesting that the "search for comprehension" inspired by the development of abstract reasoning skills leads adolescents to turn to religion for answers); Everett L. Worthington, *Religious Faith Across the*

contrast, there is evidence to suggest that affiliation-based identity formation starts much earlier in childhood.¹¹³ This affiliation-based spiritual identity may be fairly firmly established by mid-adolescence, when many embrace their religious affiliation through some form of ceremony, such as a confirmation ceremony or a bar or bas mitzvah. Clearly a child's early sense of affiliation will have some effect on her subsequent development of a belief-based identity, and her development of her belief-based identity will affect her sense of affiliations. To explore the nature of these effects I turn to a consideration of the connection between association and identity.

2. The Influence of others on Identity Formation

a. The Role of Parents

Children's earliest conceptions of themselves are heavily entangled with their conceptions of their primary caretakers, most commonly their parents. Early perceptions of self are dominated by parental influences not simply because of the disproportionate amount of time spent together, but also because of the particular nature of the relationship between parent and child. The child begins life abjectly dependent on her parents to meet her most basic physical and emotional needs, and the parents meet their responsibilities by asserting considerable authority over the child. Childhood perceptions of self reflect a heavy identification with parents' beliefs, values and tastes,¹¹⁴ and a conception of morality driven by what will inspire parental approval and disapproval.¹¹⁵

Life Span: Implications for Counselling and Research, 17 *The Counselling Psychologist* 555, 560 (1989) (noting that their new-found ability to manipulate abstract concepts leads adolescents to engage in abstract thought about religion and, in many cases, to embrace a formal religion).

¹¹³ A. Khalique, M.K. Jabbi, L. Chatterjee, *Development of Religious Identity and Ethnocentrism in Indian Children—A Pilot Study*, 29 *Psychological Studies* 18 (1984) (citing numerous studies suggesting that ethnic identities develop as early as five years of age). While the issue of ethnic identity development has been studied most thoroughly in the related, but distinct, context of race, *see, e.g.*, Jenny Laishley, *Skin Color Awareness and Preference in London Nursery School Children*, 13 *Race* 47 (1971), the question of group identity development along religious lines has received some separate attention, *see, e.g.*, M.K. Jabbi, *Development of Religious Identity and Prejudice in Sikh Children*, 12 *Social Change* 20 (finding that awareness of group religious identification among Sikh children begins as early as four or five years of age, and is well-established by eight or nine years of age). There is some evidence to suggest that awareness of group identity develops earliest among children who are members of minority groups. *See* H. Rahman Khan, *A Study of the Development of Religious Prejudice in Children*, in *Prejudice in Indian Society* 128 (1979).

¹¹⁴ Indeed, the youngest children are seen to frequently confuse their own thoughts and viewpoints with those of their parents. *See* William Damon, *The Social World of the Child* 179-80 (1977) (describing children's confusion of their own wishes with those of their parents', and vice versa); Eleanor E. Maccoby, *Social Development: Psychological Growth and the Parent-Child Relationship* 262 (1980) (describing a two-year-old's inability to distinguish her own sensory experience and dreams from the experiences of her mother).

¹¹⁵ *See* Lawrence Kohlberg, *The Development of Children's Orientations Toward a Moral Order: Sequence in the Development of Moral Thought*, in *Social and Personality Development* 388, 390 (William Damon ed. 1983) (noting that young children's perception of morality is associated with the avoidance of punishment and disapproval).

This conception of self can be viewed as highly adaptive while children remain in a condition of dependence, but it must be altered, at least to some degree, before an individual can leave the household of her parents and assume adult responsibilities. It is important to emphasize that this process of “individuation” does not require a child to reject her parents or their values. Indeed, a close parent-child relationship has been found to facilitate, rather than impede, the individuation process.¹¹⁶ Through individuation, the adolescent discovers herself as a person distinct from her parents, but, in doing so, she may very well embrace the choices of her parents.

In considering the nature of the individuation process it is, again, impossible to divorce development from context. While some of the drive to form an identity separate from one’s parents’ is thought to come from cognitive and biological changes, this process of individuation is also inspired by societal expectations.¹¹⁷ In all the cultural contexts considered in our cases, children are expected to remain dependent upon, and under the ultimate authority of, their parents until the late teen years, after which they are expected to function independent of parental control.¹¹⁸ Even in communities where children are expected to grow up to assume roles and values identical to those of their parents, children must go through a process of internalization,¹¹⁹ of assuming values as their own, that will make such role fulfillment possible. To assist with this developmental shift, adolescents turn from their parents to their peers.

This is not to say that parents lose all influence over their children’s identity choices. Far from it. Many studies suggest that parents typically exercise more influence than peers over many of their adolescent’s most important, long-term decisions,¹²⁰

¹¹⁶ Harold D. Grotevant and Catherine R. Cooper, *Individuation in Family Relationships, A Perspective on Individual Differences in the Development of Identity and Role-Taking Skill in Adolescence*, 29 *Human Development* 82, 96 (1986) (finding support in the individuation literature supporting thesis that “the co-occurrence of individuality and connectedness in family relations contributes to the adolescent’s ability to explore identity-related choices and co-ordinate multiple perspectives”).

¹¹⁷ Bradford Brown, *Peer Groups and Peer Cultures*, in *At the Threshold, The Developing Adolescent* (S. Shirley Feldman and Glen R. Elliott eds. 1993) 174 (noting the role of puberty, socio-cognitive development and the change in social structures accompanying adolescence in initiating the drive to separate from parents);

¹¹⁸ Indeed, the very legal arguments asserted are premised on a special relationship between parent and child that is extinguished at or around the legal age of majority. This is surely in part due to the fact that the law establishes such a minority-majority line, but there is no reason to think parents could not or would not assert a free exercise challenge to the enforcement of that age-limit to their authority, if they believed that they were ordained by a divinity to continue to control the upbringing of their children until, say, 25.

¹¹⁹ See Wim Meeus and Maja Dekovic, *Identity Development, Parental and Peer Support in Adolescence: Results of a National Dutch Survey*, 30 *Adolescence* 931, 932-33 (1995) (describing Blos’ theory of the “second separation-individuation process,” during which the adolescent becomes independent of her parents). Note that the internalization process need not produce exploration. See Richard M. Ryan, Scott Rigby and Kristi King, *Two Types of Religious Internalizations and Their Relations to Religious Orientations and Mental Health*, 65 *J. of Personality and Social Psychology* 586 (1993) (breaking the internalization process into two types—identification and introjection—which roughly track Marcia’s categories of achievement and foreclosure, respectively).

¹²⁰ Bradford Brown, *Peer Groups and Peer Cultures*, in *At the Threshold, The Developing Adolescent* (S. Shirley Feldman and Glen R. Elliott eds. 1993) 174 (noting that adolescents look to their parents for guidance in making important long-term decisions); D.E. Hamachek, *Development and Dynamics of the Adolescent Self*, in *Understanding Adolescence: Current Developments in Adolescent Psychology* 22, 32

including religious choices,¹²¹ particularly where the parent-child relationship is perceived by the adolescent to be close and supportive.¹²² The intensity of the parent's religious practice,¹²³ and the strength of the parent's religious group affiliation¹²⁴ have also been found to correlate positively with the transmission of religious values to adolescent children.

While parents maintain a strong influence over the content of children's identity choices, it is through peer interactions that much of the identity formation work is done. How the process unfolds, and how the choice-making is perceived by the adolescent, will therefore have much to do with the identity of those peers and the nature of the interactions. After considering the role peers play in facilitating identity formation,

(J.F. Adams, ed. 1976) (teenagers are "more likely to follow adults' than peers' advice in matters affecting their long-term future"); W.W. Hartup, *Peer Relations*, in *Handbook of Child Psychology Vol 4* 103-96 (E. M. Hetherington, ed., 1983) (suggesting that adolescents tend to agree with parents on matters of basic moral principle, future educational and career aspirations and goals); Frank A. Fasick, *Parents, Peers, Youth Culture and Autonomy in Adolescence*, 19 *Adolescence* 143 (1984) (noting primary role of parents in instilling values, and reinforcing effect of peer interactions).

¹²¹ See, e.g., Elizabeth Weiss Ozorak, *Social and Cognitive Influences on the Development of Religious Beliefs and Commitment in Adolescence*, 28 *J. for the Scientific Study of Religion* 448, 450 (1989) (reporting studies finding considerably greater influence from parents than from peers over adolescents' religious beliefs); David A. DeVaus, *The Relative Importance of Parents and Peers for Adolescent Religious Orientation: An Australian Study*, 18 *Adol.* 147 (1983) (finding that parents had much greater influence than peers over religious beliefs); but see Dean R. Hoge, Gregory H. Petrillo & Ella I. Smith, *Transmission of Religious and Social Values from Parents to Teenage Children*, 44 *J. of Marriage & Fam.* 569 (1982) (finding little evidence of value transmission from parents to children).

¹²² See, e.g., Elizabeth Weiss Ozorak, *Social and Cognitive Influences on the Development of Religious Beliefs and Commitment in Adolescence*, 28 *J. for the Scientific Study of Religion* 448, 451 (1989) (concluding that children are more likely to embrace their parents' religious beliefs where parents and child are emotionally close); B. Spilka, R.W. Hood & R. Gorsuch, *The Psychology of Religion* (1985) (contending that parents have a stronger influence on children's religious development than either peers or religious teachers, in part because of the depth of the emotional relationship between parent and child); Thomas Berndt, *Transitions in Friendship and Friend's Influence*, in *Transitions Through Adolescence* (Graber and Petersen, eds. 1996) (noting that adolescents are less likely to be influenced by their friends when they have close relationships with their parents).

¹²³ Dean R. Hoge, Gregory H. Petrillo & Ella I. Smith, *Transmission of Religious and Social Values from Parents to Teenage Children*, 44 *J. of Marriage & Fam.* 569 (1982) (finding strongest evidence of value transmission where parents "had definite religious beliefs and agreed on them, and carried out conscious religious socialization in the home"); Ian McAllister, *Religious Change and Secularization: The Transmission of Religious Values in Australia*, 49 *Sociological Analysis* 249, 250 (1988) (citing studies emphasizing the "predominant influence of parents on adolescent religion, and, more particularly, the importance of the general religious atmosphere of the home");

¹²⁴ Elizabeth Weiss Ozorak, *Social and Cognitive Influences on the Development of Religious Beliefs and Commitment in Adolescence*, 28 *J. for the Scientific Study of Religion* 448, 451 (1989) (concluding that children are more likely to embrace their parents' religious beliefs where the parents belong to a faith with a strong group identity); cf. Dean R. Hoge, Gregory H. Petrillo & Ella I. Smith, *Transmission of Religious and Social Values from Parents to Teenage Children*, 44 *J. of Marriage & Fam.* 569, 578 (1982) (suggesting that value socialization takes place in cultural subgroups more than in nuclear families"); Ian McAllister, *Religious Change and Secularization: The Transmission of Religious Values in Australia*, 49 *Sociological Analysis* 249, 261 (1988) (suggesting that religious groups which "encapsulate their members in the life of the church through overlapping and reinforcing memberships will retain the commitment of their members more effectively" than those that have a looser policy on membership and participation).

generally, I will take a closer look at how that process might be affected by the choice of peers.

b. The Role of Peers

One of the most important changes that occurs in adolescence is the shift in relational focus from parents to peers. It is with peers that adolescents spend an increasing portion of their time¹²⁵ and share confidences,¹²⁶ and it is through these peer interactions that much of their identity development occurs.¹²⁷

Peer interaction facilitates the development of individual identity on social, cognitive, and emotional dimensions: Most obviously, our very social choice of friends helps define who we are in a way that our involuntary association with our parents cannot. Who we choose as friends tells our broader social group something about our values, talents and tastes,¹²⁸ and how we are perceived by others affects how they relate to us. These interactions, in turn, affect how we perceive ourselves.¹²⁹ Moreover, in the

¹²⁵ B. Brown, Nina Mounts, Susie Lamborn and Laurence Steinberg, *Parenting Practices and Peer Group Affiliations*, 64 *Child Development* 467 (1993) (noting a significant shift in adolescent's reference group from parents to peers); Ritch C. Savin-Williams and Thomas J. Berndt, *Friendship and Peer Relations*, in *At the Threshold: The Developing Adolescent* 78 (1990) (noting that the frequency of interactions with peers increases, as it decreases with parents, throughout adolescence); Harold D. Grotevant, *Adolescent Development in Family Contexts*, in *Handbook of Child Psychology* (William Damon, ed. 1998) 1113 (reporting "dramatic drop" in the time spent with family between the ages of 9 and 15); Raymond H. Potvin & Che-Fu Lee, *Adolescent Religion: A Developmental Approach*, 43 *Sociological Analysis* 131, 134 (1982) (noting that the peer group becomes salient in mid-adolescence, and therefore the influence of parental religious practice becomes less influential on adolescent religious practice).

¹²⁶ Ritch C. Savin-Williams and Thomas J. Berndt, *Friendship and Peer Relations*, in *At the Threshold: The Developing Adolescent* (1990) (suggesting that teenagers "are far more likely to be self-disclosing and open, to 'tell everything' about the self, to friends than to parents"); Thomas Berndt, *Transitions in Friendship and Friend's Influence*, in *Transitions Through Adolescence* 57 (Graber and Peterson, eds. 1996) (noting that the biggest change in friendships in adolescence is the emergence of intimate friendships in which personal information is openly disclosed).

¹²⁷ B. Bradford Brown and Wendy Theobald, *Learning Contexts Beyond the Classroom: Extra Curricular Activities, Community Organizations and Peer Groups*, in *The Adolescent Years: Social Influences and Educational Challenges* 126 (K. Borman & B. Schneider, eds. 1998) (noting that peers "routinely assist" adolescents with the primary task of identity formation); Wim Meeus and Maja Dekovic, *Identity Development, Parental and Peer Support in Adolescence: Results of a National Dutch Survey*, 30 *Adolescence* 943 (1995) (reporting findings, based on adolescent self-reporting, that peers were named as the primary supports in the identity development process).

¹²⁸ B. Bradford Brown and Wendy Theobald, *Learning Contexts Beyond the Classroom: Extra Curricular Activities, Community Organizations and Peer Groups*, in *The Adolescent Years: Social Influences and Educational Challenges* 126 (K. Borman & B. Schneider, eds. 1998) (suggesting that peer crowds offer adolescents provisional identities which "articulate all features of an identity in stereotypic form"); Harold D. Grotevant, *Adolescent Development in Family Contexts*, in *Handbook of Child Psychology* (William Damon ed. 1998) 1115-16 (noting that the group stereotyping that goes on among adolescents in school helps children to understand alternative social identities available to them).

¹²⁹ Erikson suggested that a central aspect of identity formation was reconciling one's own perception of self with the perceptions of others. *Identity, Youth and Crisis*, *supra* note.

process of choosing friends, we learn something about what we enjoy and value.¹³⁰ Disappointments in friendship may tell us as much about ourselves as about the erstwhile friend.

As a matter of cognition, peer interactions facilitate the adolescent's ability to engage in self-reflection about her own identity. Because peer interactions are perceived as interactions among equals, they allow an adolescent to objectify her experiences, behaviors, values and attitudes in a way that her interactions with her parents do not.¹³¹ An adolescent can explore her own identity by talking to a peer about her experiences, behaviors and values, and by comparing herself (along these dimensions) to that peer.¹³² In this way, adolescents use their relationships with peers to scrutinize themselves, and this peer-facilitated objectification eventually evolves into a more internalized ability to self-reflect.¹³³

And finally, forming close relationships with peers provides a kind of emotional support that helps adolescents make the transition from parental dependence to autonomous action.¹³⁴ Adolescents practice separating from their parents by attaching

¹³⁰ B. Bradford Brown, *Peer Groups and Peer Cultures*, in *At the Threshold* 174 (Shirley Feldman and Glen R. Elliot, eds. 1993) (describing adolescents' search for a peer group whose attitudes and interests match their own as a piece of the identity exploration process).

¹³¹ See Raymond H. Potvin & Che-Fu Lee, *Adolescent Religion: A Developmental Approach*, 43 *Sociological Analysis* 131, 132 (1982) (noting that the equality of authority among peers allows for an objective discussion of religious affiliation and identity that facilitates independence from adult rules); Harold D. Grotevant and Catherine R. Cooper, *Individuation in Family Relationships, A Perspective on Individual Differences in the Development of Identity and Role-Taking Skill in Adolescence*, 29 *Human Development* 82, 85 (1986) (noting that, "particularly in their friendships, preadolescents increasingly view themselves as distinctive persons in relation to others, with peers serving as external reference points that allow children to see how they are both similar and different from others"); Wim Meeus and Maja Dekovic, *Identity Development, Parental and Peer Support in Adolescence: Results of a National Dutch Survey*, 30 *Adolescence* 933 (1995) (noting that "since youngsters have no formal power over each other, interaction among peers is based on the principle of symmetry and equality"). Harold D. Grotevant, *Adolescent Development in Family Contexts*, in *Handbook of Child Psychology* (William Damon ed. 1998) 1115 (noting that the equality of authority among peers, as compared to between parents and children, helps adolescents learn to take another's perspective, as well as to negotiate to an agreement); see also Jean Piaget, *The Moral Judgment of the Child* (1948) (recognizing the importance of peer relationships to the facilitation of the development of a child's moral reasoning).

¹³² Ritch C. Savin-Williams and Thomas J. Berndt, *Friendship and Peer Relations*, in *At the Threshold: The Developing Adolescent* 279 (1990) ("by allowing oneself to become vulnerable around a coequal, adolescent friends share with one another their most personal thoughts and feelings, become sensitive to the needs and desires of others, and, in the process acquire a deep understanding of the other and the self."); cf. Berzonsky, in *Adolescent Identity Formation* 198 (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992) (finding that moratoriums looked to others for ideas about information and alternatives to consider).

¹³³ Raymond H. Potvin & Che-Fu Lee, *Adolescent Religion: A Developmental Approach*, 43 *Sociological Analysis* 131 (1982) (describing late-adolescent religious practice as "more autonomous" than earlier practice, because a product of "co-construction" with peers).

¹³⁴ Ritch C. Savin-Williams and Thomas J. Berndt, *Friendship and Peer Relations*, in *At the Threshold: The Developing Adolescent* 277 (1990) ("For many adolescents relations with friends are critical interpersonal bridges that move them toward psychological growth and social maturity"); Bradford Brown, *Peer Groups and Peer Cultures*, in *At the Threshold, The Developing Adolescent* (S. Shirley Feldman and Glen R. Elliott eds. 1993) 179 (describing adolescents' temporary dependence on their peer groups as a

more intensely to peers, from which relationships they can gradually distance themselves as they become increasingly comfortable with their independence. Peers offer transitional support, in part by simply offering the opportunity for close relationships with those other than parents,¹³⁵ and in part by reacting less personally, and therefore less judgmentally than parents, to an exploration of options viewed as departures from parental wishes.

Note that all three of these forms of peer influence bear primarily on the *process* of identity formation, rather than to the substance of choices made by the adolescent. Although direct peer influence over important choices is greatly feared by parents and the public at large, this fear appears to be exaggerated. As already mentioned, studies suggest that adolescents are more influenced by parents than peers in the making of important, far-reaching choices,¹³⁶ and to the extent adolescents take direction from their peers, that direction tends to be limited in its scope and duration.¹³⁷ Finally, whatever

means of transitioning from psychological dependence on parents to “fully autonomous” functioning); Wim Meeus and Maja Dekovic, *Identity Development, Parental and Peer Support in Adolescence: Results of a National Dutch Survey*, 30 *Adolescence* 931, 933 (1995) (noting that children’s achievement of independence from their parents is accomplished through the “restructuring [of] their network of significant others, during which friends, and later a partner, gradually take the place of parents as the most important reference persons); Jane Kroger, *Identity in Adolescence, The Balance Between Self and Other* 55 (1996) (Noting, in the context of psycho-analytic “object relations” theory, that “It is the peer group which, under optimal conditions, supplies support during the loss of the childhood psychic structure,” namely the “internalized parental image” that constitutes the core of the child’s identity prior to adolescence).

¹³⁵ Ritch C. Savin-Williams and Thomas J. Berndt, *Friendship and Peer Relations*, in *At the Threshold: The Developing Adolescent* 278 (1990) (“friends increase one another’s self-esteem; provide information, emotional support, and advice and help and support one another”); Frank A. Fasick, *Parents, Peers, Youth Culture and Autonomy in Adolescence*, 19 *Adolescence* 143, 150 (1984) (describing the “extension of strong emotional bonds to peers in preparation for the movement of the closest emotional relationships to one’s family of procreation”); M. Luisa Pombeni, Erick Kirchler and Augusto Palmonari, *Identification with Peers as a Strategy to Muddle Through the Troubles of the Adolescent Years*, 13 *J. of Adolescence* 351 (1990) (describing the reliance on interactions with peer groups as a source of support in dealing with a range of problems confronted in adolescence).

¹³⁶ See *supra* at . Some of these studies also emphasize that, by late adolescence, individuals rely more on their own judgment than on the advice of either parents or peers. D.E. Hamachek, *Development and Dynamics of the Adolescent Self*, in *Understanding Adolescence: Current Developments in Adolescent Psychology* 22, 32 (J.F. Adams, ed. 1976)) (teenagers are more likely to rely on their own judgment , than on the advice of either peers or parents); see also, Jean Piaget, *The Intellectual Development of the Adolescent*, in *Adolescence* 23 (G. Caplan & S. Levovici, eds. 1969) (suggesting that formal operational thought, generally achieved by mid-adolescence, equips individuals to disagree with others and to engage in an independent action based on their own principles). Ritch C. Savin-Williams and Thomas J. Berndt, *Friendship and Peer Relations*, in *At the Threshold: The Developing Adolescent* 278 (1990) (noting that in self-report studies of adolescent influences, “a significant number of adolescents ‘abandoned the provided response categories and spontaneously added ‘myself,’ ‘personal opinion,’ ... to emphasize independent choice”). Of course, this observation begs the question of whence those independent judgments were derived.

¹³⁷ Donna Rae Clasen & B. Bradford Brown, *The Multidimensionality of Peer Pressure in Adolescence*, 14 *J. Youth & Adolescence* 451 (1985); John C. Coleman, *Friendship and the Peer Group in Adolescence*, in *Handbook of Adolescent Psychology* 408, 422 (Adelson ed. 1980); Frank A. Fasick, *Parents, Peers, Youth Culture and Autonomy in Adolescence*, 19 *Adolescence* 143, 150 (1984) (noting that conformity to peer group pressure “peaks at about 12 to 15 years and then declines”).

influence peers exert over these choices is at least as likely to have pro-social as anti-social effects.¹³⁸

Far more important than this direct influence over substantive choices (“I will do *x* because my peers do so or want me to do so”) is their influence over the process through which an adolescent makes choices (“I will do *x* because of what I have decided about myself, as a result of my interactions with my peers”). This process influence is also a matter of great concern to parents, for it, too, can inspire a departure from parental values, albeit more indirectly. This threat is likely to increase with the diversity of the peer group, not because unlike peers will simply inspire an adolescent to follow along, but rather because they may inspire, through the social, cognitive, and emotional effects mentioned, a broader process of exploration that produces deeper questioning of values inherited from parents and more careful consideration of how those values fit with the adolescent’s emerging sense of self. Whether the State has some countervailing interest in promoting precisely this process of exploration is the important question unaddressed by the courts.

i. Which Peers?

The parents in our cases are not seeking to prevent peer interactions from occurring altogether—a parenting practice that courts might well find abusive or neglectful—but rather to control the nature, extent and composition of those peer interactions. In this way, a parent seeks to put the child’s peer interactions in service of reinforcing sameness. Where a parent limits the pool of peers to those raised in the parents’ own traditions, the child’s choice of peers, the self-reflection facilitated by peers, and the emotional support provided by peers in that pool will all help to point the child in the direction of the parent’s religious community.¹³⁹

¹³⁸ See, e.g., Donna Rae Clasen & B. Bradford Brown, *The Multidimensionality of Peer Pressure in Adolescence*, 14 J. Youth & Adolescence 451, 465-67 (1985) (recording adolescent perceptions that peers exerted more pressure to behave well, as defined by school authorities, than to behave badly); Paul A. Osterrieth, *Adolescence, Some Psychological Aspects*, in *Adolescence: Psychosocial Perspectives* 11, 18-19 (Gerald Caplan & Serge Lebovici, eds. 1969). Applying this pro/anti-social distinction in our context is complicated. In one sense, these studies counter parental fears that exposure to unlike peers will produce bad behaviors and attitudes. They also suggest that children with strong values, tied with their religious upbringing, may influence unlike peers as much as those unlike peers are likely to influence them. At a general level, however, parents object not because their children will be exposed to anti-social values and choices, but simply because they will be exposed to *different* values. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 211 (noting Amish parents’ objection to their children’s high school attendance, in part because “it places Amish children in an environment hostile to Amish beliefs with increasing emphasis on competition in class work and sports”).

¹³⁹ Cf. Jean S. Phinney & Doreen A. Rosenthal, *Ethnic Identity in Adolescence: Process, Context, and Outcome*, in *Adolescent Identity Formation* 155 (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992) (reporting findings suggesting that the more comprehensive and cohesive the subculture’s presence in a child’s life the greater the child’s ethnic identity). Note that, for the sake of clarity, this discussion assumes, artificially, that the values of the adolescent’s peers remain fixed while those of the adolescent being discussed are in the process of development. In reality, of course, the peers would be simultaneously undergoing the same process of identity formation.

While these relationships will still offer the child an opportunity to “try on” an identity by acting independent of parents and reflecting on that identity through peer interactions, this opportunity for exploration will be more narrowly circumscribed. The child’s choice of friendships may offer some range in personality types, but not in value structures or long-term ambitions. The child’s conversations with friends may allow her to understand her own value structure better, but they will not push her to question her own choices by comparing her values and plans with any others. The emotional support provided by these similar peers will help her make the transition to independence, but, at least typically, would not extend to support a serious questioning of the common values of the community.

Although most would consider a child’s embrace of her parent’s religious faith a valuable, at least a neutral, end for the child,¹⁴⁰ we should consider whether our valuation of that end might be tied to how it was achieved, and what it reflects about the child’s sense of self and the commitments she makes. Returning to Erikson and Marcia, we might worry about a “foreclosed” individual, whose sense of religious identity was an unthinking adoption of parental beliefs, driven by a desire to please, or to avoid disapproval. As discussed above, some of the literature suggests that this path to religious commitment may produce less healthy adult functioning.¹⁴¹ Even without getting into the soft world of well-being indicators, we might worry that such a basis for belief is inconsistent with the conception of autonomous choice that undergirds common conceptions of what it means to exercise civil rights. In contrast, we might expect that facilitating an adolescent’s interaction with a wider range of peers might produce a more thorough exploration of her identity which, in turn could produce the critical reflection about values, practices and beliefs and the greater awareness of personal preferences associated with more autonomous decision making.¹⁴²

Not surprisingly, in the context of religious development, there is no direct proof that increased interaction with unlike peers produces more autonomous choice making. This is in part due to the fact that the law has protected parents’ right to shield their children from this exposure. It is also in part because, unless counteracted by the State, self-selection in communities and in high school friendships¹⁴³ tends to reduce the

¹⁴⁰ This conclusion could be grounded on a perception that sharing a parent’s religious affiliation will promote children’s well-being, or on a more theoretical commitment to a pluralistic society.

¹⁴¹ See, e.g., Richard M. Ryan, Scott Rigby and Kristi King, *Two Types of Religious Internalizations and Their Relations to Religious Orientations and Mental Health*, 65 J. of Personality and Social Psychology 586 (1993) (reporting findings suggesting that children whose internalization of their religious identity is driven by a sense of obligation and outside expectations show a higher rate of negative psychological adjustment).

¹⁴² Michael D. Berzonsky, in *Adolescent Identity Formation* 194 (Gerald R. Adams, Thomas P. Gullotta and Raymond Montemayor, eds. 1992) (noting positive correlation between achievements and moratoriums, on the one hand, and those with an “internalized locus of control,” that is, those that perceive themselves as in control of relevant outcomes in their lives).

¹⁴³ Ritch C. Savin-Williams and Thomas J. Berndt, *Friendship and Peer Relations*, in *At the Threshold: The Developing Adolescent* 283-84 (1990) (speculating that the increasing similarity among friends in adolescence may be caused by a combination of community and educational segregation, self-selection in activities, and a preference for familiar social interactions); Bradford Brown, *Peer Groups and Peer*

opportunities for peer interactions among religiously diverse individuals. There is, however, ample evidence of the more general connection between the opportunity for exploration and greater independence in choice making and of the important role played by peers in the exploration process, particularly when those peers are different from the adolescent engaged in the exploration. There is also support in analogous contexts for the proposition that structured interaction with unlike peers has significant affects, not only on perceptions of others, but also on perceptions of self.¹⁴⁴

The litigating parents fear that facilitating these interactions will undermine their ability to foster the child's sense of affiliation and commitment to the parent's religious community. To the extent the trade-off is inevitable, a consideration of adolescent identity development suggests that the real choice courts are called upon to make is between the State's interest in facilitating a child's more thorough, reflective, identity exploration, on the one hand, and the parent's interest in cultivating the child's connection with their own religious community and world view, on the other. In the next Part, I suggest that, at a minimum, the courts have an obligation to confront this trade-off in their free exercise analysis. I then go on to suggest an approach, grounded in the developmental empirics, that could minimize the trade-off.

III. Implications

Focusing on adolescent development does not suggest simple answers, but it does significantly reframe the question. This focus reveals that a primary developmental project of adolescence is the working out of identity issues, and that a primary developmental process employed in adolescence is peer interaction. Because identity formation is such an important preparatory step toward adulthood,¹⁴⁵ and because peers play such an important role in assisting adolescents to take the step, those with the responsibility for children's development—State and parent alike—have every reason to be concerned about who those peers are, and the nature of those interactions.

The parents are well attuned to these concerns. Indeed, their attempt to control these peer interactions drives much of the litigation discussed in this article. Controlling these interactions, they have concluded, is a key piece of controlling the development of their children's group identification, spiritual beliefs, and value system. Although the courts acknowledge the parents' concern, they fail to recognize any countervailing state interest in exerting control over a child's peer environment. Instead, the courts focus

Cultures, in *At the Threshold, The Developing Adolescent* (S. Shirley Feldman and Glen R. Elliott eds. 1993) (noting that adolescents, left to their own devices, will seek out peers who are similar to themselves).

¹⁴⁴ See, e.g., Jeanne Watson and Ronald Lippitt, *Cross-Cultural Experience As a Source of Attitude Change*, 2 J. of Conflict Resolution 61 (1958) (concluding, that the exposure to a foreign culture through travel frequently prompted self-reflection about the traveler's own culture); see also 45 Educational Record 173 (1964) (concluding that structured orientation program facilitated influence of foreign travel on attitudes).

¹⁴⁵ Ruthellen Josselson, *The Theory of Identity Development and the Question of Intervention*, in *Intervention for Adolescent Identity Development* 12-13 (Sally L. Archer, ed. 1994) ("Because identity forms the foundation of adult life, as a society we have a large stake in seeing that it takes place as optimally as possible").

woodenly on the State's interest in the substance of the curriculum—pondering the importance of teaching children information and methods of thinking abstracted from any consideration of the company in whom these lessons are learned. As a result of this omission, courts undersell the State's interest in keeping children together in school and oversell the value of curricular control over both those who leave the public system for private and home schools, and those who remain in the public system.

In my attempt to take better account of these values, let me begin by reviewing the nature of the State's interest in facilitating unlike peer interactions that is highlighted by the developmental literature. The message from this literature is not that peers will constitute the primary influence over which choices an adolescent ultimately makes, especially on issues of long-term importance. Studies suggests that parents have more outcome influence than peers on these important choices.¹⁴⁶ The peer influence is more subtle: Interaction with peers affects the process by which choices are made and this, in turn, influences the adolescent's attitudes about those choices and how they fit with the adolescent's evolving subjective sense of self. By facilitating unlike peer interactions, the State can stimulate adolescents' engagement in a process of identity exploration that can yield benefits for these adolescents, regardless of the ultimate identity choices they make.

Consider the example of an Amish adolescent who embraces her family's religion as her own. She might reach this point through a process of exploration and resolution (producing, in Marcia's words, an "achieved" identity status) or she might reach this point through an unreflective fulfillment of expectations (producing "foreclosure").¹⁴⁷ Both processes can produce Amish adults, but those two adults will perceive of their choice to remain Amish differently, and those differences will, in turn, affect their perception of themselves and of the values adopted. To oversimplify for the purpose of clarity, a developmentalist would predict that an "achieved" Amish person would have a real understanding of the opportunity to exit, would nevertheless choose not to exit, and would appreciate why she made that choice and how it fits with the rest of her sense of self, whereas a "foreclosed" Amish person would have no real understanding of what it would mean to exercise other options, and would feel compelled by various social forces to stay Amish, regardless of the fit.¹⁴⁸

¹⁴⁶ See *supra*.

¹⁴⁷ See, *supra*.

¹⁴⁸ Of course, a process that makes the prospect of exit meaningful is also a process that makes exit more likely, but for many, exposure to the process of exploration produces a changed perception of one's religious choices and religious identity, without a change in religious affiliation. Raymond H. Potvin & Che-Fu Lee, *Adolescent Religion: A Developmental Approach*, 43 *Sociological Analysis* 131, 142 (1982) (suggesting that, after a period of "co-construction" of religious values with peers at roughly 15 or 16, the 17 or 18-year old will demonstrate greater autonomy in the practice religion, even if he confirms the beliefs and experiences of his parents); James W. Fowler, *Stages of Faith* (1981) (describing advancements in faith inspired by a process of exploration that further critical reflection that leads to a maturation of faith within the same belief system). It is worth noting that even some Amish communities create an opportunity for identity exploration through "Rumspringa," or "running around" during which adolescents, beginning at roughly 16, are allowed to experiment with non-Amish ways, including, in some communities, drinking, drugs and sex. Most, but not all, of these adolescents eventually decide to stay within the community and be baptized as Amish..

The State might wish to promote identity achievement for two interrelated reasons. First, there is considerable support for the Eriksonian equation of identity achievement with psychological health and successful adult functioning.¹⁴⁹ A State interested in maximizing the self-sufficiency of its adult citizenry--frequently identified as a compelling state interest,¹⁵⁰--might well seek to promote a process of choice making that correlates with such positive mental health outcomes. I am unwilling to argue, however, that a State's interest in facilitating adolescents' identity exploration should be grounded on these well-being indicators. There is some evidence to suggest that a foreclosed identity status can be highly adaptive in cultures which offer individuals few options, and this pragmatic qualification supports a more principled reluctance to embrace well-being indicators that cannot be easily disentangled from qualitative judgments about the merits of various religious practices and beliefs. In the absence of more unequivocal data suggesting a marked difference in the quality of basic functioning between individuals with achieved and foreclosed identity statuses across cultures, I would not favor tying the State's interest in facilitating exploration and identity achievement to these well-being indicators.

The same literature, however, suggests another reason a State might wish to promote identity achievement, a reason tied to the State's interest in promoting democratic participation, which is also frequently identified as compelling.¹⁵¹ The literature suggests that identity exploration tends to produce a greater sense of autonomy in subsequent decision making. That is, those who make commitments after engaging in a process of identity exploration are more likely to experience choice making as a deliberate, self-reflective, selection among options and are more likely to perceive themselves as the authors of their own choices.¹⁵² The identity development literature

¹⁴⁹ See *supra* note .

¹⁵⁰ See, e.g., *Wisconsin v. Yoder* 406 U.S. at 205 (acknowledging State's interest in "prepar[ing] individuals to be self-reliant and self-sufficient participants in society"); *Prince v. Massachusetts*, 321 U.S. 158, 168 ("A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens").

¹⁵¹ See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 221 (acknowledging State's interest in providing the education "necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence").

¹⁵² Philosophers and psychologists both use the term "autonomy" to capture self-determined action, but the use of the term in the two disciplines takes on a somewhat different emphasis. While philosophers often focus on the rationality of the choice-making process (asking whether the individual engaged in a process of critical reasoning based on good information about a full range of options), the psychologist focuses more on the subjective experience of choice making and the detail of the process producing that experience. In particular, the developmental psychologist asks whether the individual had an opportunity to explore alternatives by, among other things, talking to peers about a range of possible roles and by interacting with peers who have assumed some of those alternative roles. Cf. James W. Fowler, *Stages of Faith* (1981) (suggesting that the movement from a stage three "synthetic-conventional faith" to a stage four "individuative-reflective faith" during adolescence can be inspired by experiences or encounters with perspectives that promote critical reflection about one's own beliefs). In assessing the extent to which autonomy in choice making is actually achieved, psychologists look to the subjective experience of that choice making, asking whether the individual perceives her actions as self-determined and true to the comprehensive sense of self she has generated through the exploration process. Richard M. Ryan, Scott Rigby, and Kristi King, *Two Types of Religious Internalization and Their Relations to Religious*

frequently equates this sense of autonomy with emotional and functional well-being,¹⁵³ but the State need not rely on such outcome measures to justify its interest in nurturing a sense of autonomy among adolescents. The State might seek to cultivate this sense of self-determination in its citizens, regardless of effects on well-being, in order to promote their effective democratic participation both as voters and, more indirectly, through their exercise of civil rights.

Whether self-reflective choice making is important to the functioning of our democracy is, itself, of course, a question. Classic liberal theory clearly assigns autonomy a central role,¹⁵⁴ and even political liberalism, which attempts to define a common political core that does not demand the embrace of autonomy by all citizens, nevertheless makes important assumptions about citizen's *capacity* to engage in autonomous decision making.¹⁵⁵ Our cases, too, capture a concept of rights that appears to associate their exercise with autonomous action.¹⁵⁶ Indeed, a classic justification for the circumscription of children's rights is their reduced capacity to engage in autonomous decision making.¹⁵⁷ If our expectations for citizens' political participation and exercise of civil rights are grounded in assumptions about citizens' capacity to act autonomously, as many suggest they are, encouraging identity exploration through unlike peer interactions offers a promising means of fulfilling these expectations.

Promoting the development of children's capacity for autonomy is easy to embrace in the abstract. Courts might nevertheless conclude that this goal is insufficiently compelling to justify constraining parents' control over their children's associations, particularly where those associational choices are driven by religious beliefs. Because courts are likely to consider parental control of peer influence an important means of transmitting religious values to their children, courts will be loathe to

Orientations and Mental Health, 65 J. of Personality and Social Psychology 586, 594 (1993) (characterizing as autonomous action that action which is perceived by the actor as volitional and "emanating from himself or herself").

¹⁵³ See Wim Meeus and Maja Dekovic, *Identity Development, Parental and Peer Support in Adolescence: Results of a National Dutch Survey*, 30 *Adolescence* 931, 932 (1995) (summarizing literature associating identity achievement and moratorium with positive characteristics including autonomy). This same correlation between sense of self-efficacy and well-being is also noted in the separate psychological literature of "attribution." See, e.g., Virginia C. Crandall & Beth W. Crandall, *Maternal and Childhood Behaviors as Antecedents of Internal-External Control Perceptions in Young Adulthood*, in 2 *Research with the Locus of Control Construct* 53, 53-54 (Herbert M. Lefcourt ed., 1983) (summarizing literature suggesting that an "internalized locus of control" facilitates positive functioning in learning, achievement, interpersonal skills, emotional adjustment, and contentment).

¹⁵⁴ See, *supra*.

¹⁵⁵ See, *supra*.

¹⁵⁶ See, e.g., *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944) (describing the State's interest in protecting the welfare of children as "the interest of youth itself, and of the whole community, that children be ... given opportunities for growth into free and independent well-developed men and citizens").

¹⁵⁷ See, e.g., *Ginsberg v. New York*, 390 U.S. 629, 649-50 (1968) (Steward, J., concurring in the judgment) ("a State may permissibly determine that, at least in some precisely delineated areas, a child ... is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees"); cf. *Bellotti v. Baird*, 443 U.S. 622, 634 (1978) (pointing to children's "inability to make critical decisions in an informed, mature manner," as one of three justifications for refusing to equate their constitutional rights with those of adults).

diminish that control by requiring the parent to share peer control with the State.¹⁵⁸ The courts' analysis does not, however, reflect any considered choice between conflicting interests in peer control. Instead, the court fails to take any account at all of the State's interest in facilitating interactions with unlike peers.

The omission is particularly remarkable, in light of the courts' willingness to recognize this interest in other contexts, particularly the context of state attempts to restrict students' religious proselytizing.¹⁵⁹ In that context, the courts have emphasized the benefit high school students in particular can derive from interactions that force them to engage with students with whom they are likely to disagree. In the words of one court:

Most importantly, the mission of public education is preparation for citizenship. High school students ... must develop the ability to understand and comment on the society in which they live and to develop their own sets of values and beliefs. A school policy completely preventing students from engaging other students in open discourse on issues they deem important cripples them as contributing citizens. Such restrictions do not advance any legitimate governmental interest. *On the contrary, such inhibitions on individual development defeat the very purpose of public education in secondary schools.*¹⁶⁰

¹⁵⁸ See *Wisconsin v. Yoder*, 406 U.S. 205, 232 ("it seems clear that if the State is empowered, as *parens patriae*, to "save" a child from himself or his Amish parents by requiring an additional two years of compulsory formal high school education, the State will in large measure influence, if not determine, the religious future of the child"). The interest in avoiding this trade-off also probably accounts, at least in part, for the liberal theorists' inclination to confine the state's educational control to the substance of children's curriculum. See *supra* . Unlike the courts, these theorists stress the importance of ensuring that children grow up to make independent choices rather than simply to embrace their parents' religious values because they lack the capacity to do otherwise. But while these theorists have high ambitions for the State's ability to ensure the development of autonomous thinking in its students, they, like the courts, propose to leave the State ill-equipped to achieve that aim. In the end, the courts and theorists embrace roughly the same approach: Courts limit state control to substance, without regard to how this may affect the State's ability to facilitate students' autonomous choice making, and the theorists limit state control to substance on the unsupported hope that this will be sufficient to allow students to develop the capacity for autonomous choice making. Both leave associational control with the parents, in the interest of avoiding interference with parents' transmission of religious values.

¹⁵⁹ The cases considering attempts to achieve racial integration in education offer another example Cf. *Regents of the University of California v. Bakke*, 438 U.S. 265 n. 48 (1978) (recognizing, in the higher education setting, the educational value of interaction with a diverse group of peers).

¹⁶⁰ *Rivera v. East Otero School Dist. R-I*, 721 F. Supp. 1189, 1194 (D. Colo. 1989) (emphasis added); see also *Thompson*, 673 F. Supp. 1379, 1387 (quoting *Tinker*, 393 U.S. 503, 508-509) ("Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an arguments or cause a disturbance. But our Constitution says we must take this risk ... and our history says it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society"); *Clark v. Dallas Independent School Dist.*, 806 F.Supp. 116, 121 ("A blanket prohibition on high school students' expression of religious views and even proselytizing on campus is unconstitutional and contrary to the purpose of secondary schools"); see also *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 512 (contending that, "personal intercommunications among the students ... is not only an inevitable part of the process of attending school; it is also an important part of the educational process").

The decisions in these cases carry two strong messages that bear noting in our consideration of parents' attempts to block their children's exposure to all or part of the State's educational offerings: First, interaction among peers with different viewpoints is valuable for children's development into effective adult citizens, and, second, that value increases with children's age, particularly as they near adulthood.¹⁶¹

In the context of student proselytizing, the educational interest in facilitating interactions with unlike peers is counterbalanced by the school's interest in maintaining order and avoiding the erroneous attribution of student viewpoints to the school.¹⁶² In our context, in contrast, the counterweight may well be heavier. If a trade-off between the State's interest in developing children's capacities for independent choice making, on the one hand, and parents' interest in transmitting their religious values to their children, on the other, is inevitable, we might well choose to protect parents' interests over those of the State. With this much potentially at stake, however, it is incumbent upon the courts to at least own up to the choice they are making, a choice between two aspects of our free exercise conception which are generally assumed to be mutually compatible rather than in conflict for protection under the free exercise clause. It is a choice between a conception of the free exercise clause that best facilitates a child's ability to grow up and make independent decisions on matters of religion, and a conception of the clause that best facilitates a child's sense of affiliation that would motivate her to assert the right. One interpretation bolsters the child's chance to choose at the possible cost of a depletion of her religious connection, the other bolsters the chance of religious connection, at the

¹⁶¹ The courts' assessment of the harms and benefits associated with student proselytizing make clear distinctions based on age. For children in elementary school, the courts focus on children's likely confusion about the source of the religious viewpoint, and conclude that prohibiting such proselytizing is appropriate. See, e.g., *Bell v. Little Axe Independent School District*, 766 F.2d 1391, 1404 & n. 11 (1985) (citing expert psychological support for the conclusion that "[e]lementary school children are vastly more impressionable than high school or university students and cannot be expected to discern nuances which indicate whether there is true neutrality toward religion on the part of a school administration."); *DeNooyer v. Livonia Public Schools*, 799 F.Supp. 744, 751 (finding reasonable the school authorities' concern that students "would infer the school's endorsement of the speech presented during class," and noting that "[t]he maturity level of the second grade students was a significant concern"). For children in high school, however, the court dismisses the risk of confusion and focuses on the benefits children derive from exposure to one another's ideas. See, e.g., *Gregoire v. Centennial School Dist.*, 907 F.2d 1366, 1381 (1990) ("Centennial has made a decisive judgment concerning the maturity of its high school and junior high school students and their ability to understand that granting access to a group does not imply endorsement of the message presented."). These cases take their lead from *Board of Education v. Mergens*, 496 U.S. 224, 228 (1990), which states that "[t]here is a crucial difference between government and private speech endorsing religion, and, as Congress recognized in passing the [Equal Access] Act, high school students are mature enough and are likely to understand that a school does not endorse or support student speech that it merely permits on a non-discriminatory basis").

¹⁶² See, e.g., *Thompson v. Waynesboro Area School District*, 673 F. Supp. at 1388-89 (M.D. Pa. 1987) (noting that, among school authorities' concerns were that "the distribution of the papers [would create] congestion of traffic in the school's hallways and disruption of school activities and that "parents would object to their children being exposed" to the religious materials" and that a failure to regulate distribution would subject them to establishment clause challenges); *Hedges v. Wauconda Community United School District No. 118*, 9 F.3d 1298 (1993) (considering school district lawyer's contention that the policy restricting distribution of religious literature was tied to a concern that students would perceive the distribution as a school-endorsed activity).

cost of some opportunity for personal reflection. Where the courts choose to privilege religious connection over the facilitation of autonomous choice making, this preference should be made plain in their decisions.

But the developmental literature offers more, I think, than a better understanding of which interests are facilitated through which means. It also suggests a way to minimize the trade-off between the two important interests—the interest in developing children’s capacity to exercise autonomous choice and the interest in transmitting a parent’s religious values and affiliations to her child—that we have considered. The literature provides a more sophisticated account of the means as well as the timing of a child’s development bearing on these two interests and this account, in turn, suggests a means of enhancing both.

In the context of our cases, the law treats childhood as monolithic and for the most part only accounts for development by distinguishing childhood from adulthood. When all of childhood is treated as the same, trade-offs among developmental influences will inevitably be perceived as abundant, for anything that influences a child is likely to be in direct competition with every other influence. Of course we know, without resort to the literature, that development is ongoing through childhood, and that influences change over the course of that development. Indeed, influences can build on one another rather than clash, and some influences occur early in life, and exert long-lasting effects, despite a child’s lack of ongoing exposure to that influence.

There is no particular reason to think that the influences over a child’s development of a sense of group identity and spiritual values are in direct competition with those influences over a child’s development of a capacity for autonomous decision making, despite the fact that both sets of influences may be felt by a child sometime in adolescence. Indeed, I find considerable support in the literature for the conclusion that differences in the source and timing of these influences suggests that a child could get the benefit of both types of influences if these influences are allowed to be temporally disaggregated.

I have noted that the literature suggests that the primary source of a child’s values, especially important values affecting long-term choices and group affiliations, is the child’s parents. Peers play a considerably larger role, however, in an adolescent’s process of internalizing those value choices as the adolescent shifts from a conception of parental authority to one of personal independence. I also noted evidence suggesting that group identity formation is well advanced by middle adolescence,¹⁶³ whereas the more self-focused, value-selecting aspect of identity work tends to occur later in adolescence and even into early adulthood. Together, differences in the source and timing of the two sets of influences suggest that an age-sensitive approach to the balancing of state and

¹⁶³ For the most identifiable groups, exposure to a diverse group of peers in high school may serve to reinforce, rather than undermine, group identity. See Bradford Brown, *Peer Groups and Peer Cultures*, in *At the Threshold* 183 (1993); cf. H. Rahman Kahn, *supra* note at 128 (finding that Indian children attending religiously integrated schools developed a sense of religious identity earlier than those children who attended segregated schools.)

parental interests might yield a result that better serves both interests: The law's absolute deference to parental control of a child's associations could be modified in late adolescence to account for the state's distinct interests in exerting some associational control during those years.

While the cases on which we are focusing make no intra-childhood age distinctions, we have seen, in the cases considering student proselytizing activity, the courts' greater willingness to make age-based distinctions about the appropriateness of unlike peer interactions. Indeed, in that context, courts are willing to show less deference to parents' desire to protect their children from unlike peer interactions as those children mature. These cases reflect a greater level of attention to children's changing needs and roles, noting a decreased vulnerability to confusion or trauma associated with ideological discussions among peers and an increased value of these interactions as these children approach adulthood.

A strong developmental case can be made for the proposition that the State's interest in facilitating unlike peer interactions—particularly along the axis of religion where parents are most concerned about securing associational likeness—is greatest when minors reach late adolescence, and that this waxing of the state interest is accompanied by the waning of the parental interest in blocking those interactions. In doctrinal terms, the burden on the parent's religious exercise can be said to be reduced when her child reaches late adolescence, because she has had sufficient opportunity to transmit her religious values and affiliations to her child, and the threat to successful value transmission that can come at this stage from interaction with peers who do not share those values and affiliations is relatively minor. Conversely, the State's interest in preparing children for independent choice making (whether that interest is limited to the political realm, or defined to include choice making in all aspects of life¹⁶⁴) is at an all-time high, because they will soon be called upon to make these choices. Moreover, the means of achieving this interest, namely the provision of opportunities for unlike peer interactions, is particularly suited for late adolescence, when children rely on these interactions to hash out their sense of identity.

Before going on to consider how this disaggregation of developmental influences might be accomplished, I want to insert two qualifications to my endorsement of this approach: First, I note that my contention that these influences can be disaggregated is necessarily speculative. This is in part because developmentalists have never seen a reason to frame the question in these terms and in part because the law has never given them a good opportunity to study the question. As long as the law rests associational control in the hands of parents, alone, the harms and benefits of doing otherwise cannot be tested.¹⁶⁵ I therefore build my argument from what is known about child development

¹⁶⁴ See, *supra*, at __ for a brief discussion of the disagreement between political and comprehensive liberals on this point.

¹⁶⁵ While we can learn something from families whose parents voluntarily arrange their children's education according to this model (controlled and religiously homogenous in their younger years, then integrated with unlike peers sometime in high school), the differences between a voluntary and involuntary arrangement seem considerable.

to the unknown, in the hope that this informed speculation will push lawmakers to reconsider their assumption that the trade-off is inevitable, and developmentalists to develop a better understanding that will help them do so.

Second, I want to emphasize that my message is not one of absolutes. I am not suggesting that the opportunity to engage in identity exploration and to develop the capacity for autonomous decision making is an all-or-nothing proposition either facilitated or precluded depending upon whether an adolescent interacts with sufficiently unlike peers. Instead, I argue that adolescents' interactions with peers who hold different values and engage in different practices is one important piece of a child's identity formation process that will help push her in the direction of autonomous decision making. Interactions with unlike peers will no more single-handedly guarantee the development of this capacity than the reading of Shakespeare will guarantee the development of creativity or greater wisdom about the ways of the world. I have kept things simple to make the point that the facilitating of unlike peer interactions, like the teaching of great poetry, adds something important to a child's education.

One example of this oversimplification for the sake of clarity worth special mention is my use of the term "unlike." Of course, peers can be like and unlike one another in an infinite number of ways, and I am not attempting to capture a quantifiable degree of difference along particular characteristics, but rather to describe the range of peers that a parent wishes to exclude from her child's social world on grounds of ideological unlikeness. The fact that like and unlike are not absolute concepts would make the State's job more complicated in execution, but it need not obscure the goal, which is to facilitate interaction among peers with a broad range of viewpoints and experiences bearing on matters of importance.

Assuming that I am right in contending that the parent's interest in religious value transmission and the State's interest in facilitating autonomous decision making can both be served by reserving the State's associational control until late adolescence, there are various ways the influence split could be put into effect. At one extreme, the State could eliminate all exemptions from school attendance requirements, even compel public school attendance or some other form of associational activity with unlike peers, in the last one or two years of minority. Such compulsory public education might be applied universally, or, perhaps, as a form of compensatory education for children, such as those who had been home schooled, whose peer exposure had been most dramatically circumscribed. The diminution of parental burdens, and the enhancement of the State's interest in these last years provide a basis for limiting the application of the holdings in both *Pierce* and *Yoder* to children under 16 or 17.¹⁶⁶

¹⁶⁶ Note that this suggests that the holding in *Yoder* would be limited to a small window—stopping school earlier than eighth grade would, as the Court makes clear, raise serious concerns about the State's ability to meet its obligation to ensure all children receive the most basic reading, writing and arithmetic skills, and extending the exemption beyond (roughly) the tenth grade would undermine the State's interest in facilitating unlike peer interactions.

Limiting parents' control over their children in late adolescence is not, itself, a radical move. The law shifts control over a number of important decisions to minors over the course of adolescence.¹⁶⁷ Moreover, the shift of control from parent to State suggested here is relatively minor: Up until 16 or 17, parents would have the full level of educational control protected in *Pierce* and *Yoder*, and even after this age parents would still have legal authority over all other aspects of the child's religious upbringing. The State could compel a kind of compensatory education to make up for the restrictions placed on peer interactions, but it would otherwise be required to defer to parental decision making. Indeed, as I argue below, parents could have broad authority to exempt their children from particular curricular content, so long as those exemptions did not interfere with the State's ability to facilitate the profitable peer interactions.

Such an approach, however, while legally justifiable, might come at too great a cost—in educational disruption accompanying school shifts in the middle of high school, in costs associated with transporting children long distances to secure a sufficiently diverse student body, and in the symbolic effects associated with forcing parental compliance with educational programs they found so objectionable. In addition, compelling attendance could interfere with minor's exercise of their *own* educational choices, choices the State's attendance requirements were designed to promote. Less drastically, the State could encourage the desired peer interactions by eliminating supports, such as vouchers, for segregated alternatives in the late teenage years, or by subsidizing the pursuit of integrative interaction by individuals or institutions through tax benefits or other means.

As noted, the State might also make the peer integration in public schools more attractive by affording parents more authority to make curriculum-specific adjustments. Fundamentalist parents such as those in *Mozert* are more likely to keep their children in the public school setting where they have an opportunity to interact with unlike peers, if they can exercise some control over the content of some of those interactions.¹⁶⁸ The excusal itself might also facilitate valuable interactions among peers, if handled appropriately, for allowing such excusals could draw students' attention to the fact that some of their peers' families found the materials they were studying objectionable. Finally, home-schooled children could get the benefit of some interaction with unlike peers if they were allowed to attend public school part time, or at least participate in after school activities, such as sports.¹⁶⁹

¹⁶⁷ In the abortion context, girls under 18 have the right to obtain an abortion without their parent's notification or consent if they can establish their maturity, see *Bellotti v. Baird*, 443 U.S. 622 (1979), and numerous state's shift control of minor's mental health treatment to the minor in mid-adolescence. See, e.g., Pa. Stat. Ann. Tit. 50 §7201 (Purdon 1999). The constitutional protection of parental rights is never defined in age-specific terms. Indeed, the only age line expressly drawn by the constitution is the requirement that individuals be 18 to vote. U.S. Const. amend. XXVI § 1

¹⁶⁸ See Amy Gutmann, *Democratic Education* 110 (1987).

¹⁶⁹ As noted above, some school districts have resisted inclusion of home-schooled children in school-day and after school programs. Cf. *Swanson v. Guthrie Independent School District*, 942 F.Supp. 511 (W.D.Okla 1996) (finding that the school district's refusal to allow a home-schooled child to attend public school part-time did not violate the parents' free exercise rights); *Bradstreet v. Sobol*, 650 N.Y.S.2d 402 (1996) (upholding, against due process and equal protection challenges, State's authority to bar home-

Of course, it will not be enough for the State to require or support public school attendance if families can select for religious homogeneity in their communities, and students can select for homogeneity in their choice of peer interactions.¹⁷⁰ On both scores we can learn a great deal by looking to the history of the schools' attempts to integrate their educational programs along racial lines. White parents were able to prevent their children from interacting with African American children by simply moving out of the racially integrated areas or by sending their children to racially segregated private schools, and attempts to thwart such actions by restructuring school authority and busing children long distances met with serious practical, political and legal resistance. Similarly, within a school attended by both African American and white students, segregation often continues, both because academic systems of tracking minimize class contact, and because students' selection of friends and larger social groupings reinforce the separation.

Policy makers are still struggling to find more successful ways of bringing students together across racial lines in the public schools and to ensure meaningful interaction among these racially unlike peers.¹⁷¹ The fact that securing the goal of racial integration has proved difficult, however, has not altered the view of courts that the goal is an important one. Unless we determine that integration, even in the late teenage years, is not an appropriate goal in our context (a view I rely on the developmental literature to dispute) then the focus shifts from the whether to the how.

Conclusion

At the most basic level, the State's interest, like a parent's, is in preparing the child for a successful adulthood—successful in the eyes of society, the parent and the (erstwhile) child. Success will surely include the ability to engage in an occupation or otherwise be self-supporting as well as the orderly and responsible participation in public activities including the democratic process. Many theorists suggest that success should also be defined to include the exercise of independent judgment in the making of decisions, a goal largely unaddressed in this context by the courts. Like the courts, however, the theorists shy away from giving the State any authority over the peer associations that are likely to facilitate the development of that decision-making capacity.

schooled child from participation in school district's interscholastic sports program); *Davis v. Massachusetts Interscholastic Athletic Association*, 1995 Mass. Super. LEXIS 791 (enjoining athletic association and school district from excluding home-schooled child from athletic participation);).

¹⁷⁰ See Bradford Brown, *Peer Groups and Peer Cultures*, in *At the Threshold, The Developing Adolescent* (S. Shirley Feldman and Glen R. Elliott eds. 1993) (noting that adolescents, left to their own devices, will seek out peers who are similar to themselves);

¹⁷¹ Doris R. Entwisle, *Schools and the Adolescent*, in *At the Threshold, The Developing Adolescent* (S. Shirley Feldman and Glen R. Elliott eds. 1993) 213 (discussing the value of cooperative learning techniques, where children of mix-raced groups engage in non-competitive problem solving for improving achievement, self-esteem, and inter-group relations by fostering positive peer interaction). These techniques were first championed by Gordon W. Allport in his seminal work, *The Nature of Prejudice* (1954).

Driven, in my view, by an unsupported fear that interference with a parent's associational control of her child at any age will seriously interfere with her ability to transmit her religious values and affiliations to the child, courts and theorists, alike, avoid any consideration of what benefit the State can confer upon children by providing them with an opportunity to interact with unlike peers.

While the developmental literature hardly holds all the answers, it offers a response to this fear on two levels. First, it suggests that, whatever threat is posed to parental control by children's exposure to unlike peers comes with considerable compensating developmental benefits to the individual child, and, second, it suggests a possible means of achieving these benefits at minimal cost to the parent's control over the transmission of religious values. The developmental literature does not, of course, come with guarantees. It does, however, suggest that courts and theorists alike have missed a big piece of children's developmental experience, which, when taken into account, demands a fresh look at how we strike the balance between parent and State in the battle over educational control.