Parental Rights and State Education

Joel S. Moskowitz
PARENTAL RIGHTS
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Little more than 100 years ago, arguing that parents have a primary and inalienable right to direct the intellectual and moral upbringing of their children would have been akin to arguing for the right of parents to clothe them. The role of the state was merely to facilitate the performance of the parental duty to prepare the child for a productive place in society by providing state-supported schools\(^1\) to which the parent might delegate the child's education should such be desired.\(^2\)

That the conflicting parental and state interests in control of the child were so balanced was more than an unconsciously followed folkway bequeathed to us by unsophisticated ancestors. It was not unusual for courts to remark that this parental right was a democratic freedom:\(^3\)

Law-givers in all free countries, and, with few exceptions, in despotic governments, have deemed it wise to leave the education and nurture of the children of the State to the direction of the parent or guardian. This is, and ever has been, the spirit of our free institutions.

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2. Concerning the decline of the in loco parentis and parens patriae doctrines, to the extent they are based on such delegation, see note 119 infra.

3. Rulison v. Post, 79 Ill. 567, 573 (1875). This theme was adopted by the United Nations General Assembly in The Universal Declaration of Human Rights where it was declared that “[p]arents have a prior right to choose the kind of education that shall be given to their children.” G.A. Res. 217 [III], Art. 26(3) (1948).

At common law, this right of the parent was more the right of the father. School Bd. Dist. No. 18 v. Thompson, 24 Okla. 1, 103 P. 578, 579 (1909). While interesting observations could be made concerning the predisposition of courts to award custody of children to the mother should the family break up, yet continuing to recognize the primary paternal control while the family is together, see Griston v. Stousland, 186 Misc. 201, 60 N.Y.S.2d 118 (Sup. Ct. 1946), for the purposes of this article it is assumed that the wishes of the parents do not conflict.
The right to raise one's own children was considered not only the right of a free individual, but also sound educational policy. Society had not yet reached the state where the virtues spawned by the industrial revolution—efficiency and standardization—had been transposed from their role as a necessity in mass production to a byproduct (and sometimes a doctrine) of mass education. A court could in all earnestness state:4

[T]he policy of our law has ever been to recognize . . . that the [parent's] natural affections and superior opportunities of knowing the physical and mental capabilities and future prospects of his child, will insure the adoption of that course which will most effectually promote the child's welfare.

The right to raise one's children, like many common law rights, also has strong spiritual and religious roots.5

These principles may have an alien, almost utopian ring, for current generations which have experienced a world far different from that in which these principles were established. Each year6 [parents find their] children drawn off to great schools of unprecedented magnitude and efficiency, conducted by a new caste of "educators," who seem every year to absorb a larger share of [their] income, and to play a larger part in the direction of [their] children's lives.

While one might be tempted to draw a linear projection from this state of affairs, and to share with the Supreme Court in Meyer v. Nebraska7 revulsion at the image of children assembled into barracks at seven years of age with their subsequent education and training entrusted to official guardians,8 the picture is far more optimistic.

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5. The championing of parental rights remains an enduring Catholic tradition. Pope John XXIII reaffirmed in Pacem in Terris the venerable doctrine that "[p]arents have the primary right to maintain and educate their own children." Quoted in Cortez, Religious Liberty—The Rights of Parents in the Education of Their Children, 11 Cath. Law. 285, 291 (1965). Pius XII spoke in much stronger language when he stated that "the school, influenced and controlled by the spirit of materialism, corrupts and destroys what the parents have instilled in the minds of the children." Quoted in Rooney, The Role of the Parent, 4 Cath. Law. 210, 213 (1958).
7. 262 U.S. 390 (1922).
8. Id. at 402.
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With increasing frequency, the courts have forestalled, if not reversed, this societal projection by rejecting the mechanistic and overly deferential view that "the rights of the parent in his child are just such rights as the law gives him; no more, no less." and by recognizing that "[a] child is not a creature of the state. A child's first allegiance is to his [or her] family and parental rights and responsibilities in the education of children come before the state's." However irksome the courts' more recent approach may seem to some educators, in the long run it is salutary to the educational process and essential to the maintenance of our democratic institutions.

Wisconsin v. Yoder

is the most significant recent development involving parental rights and state education. Respondents in Yoder, members of the Old Order Amish religion and the Conservative Amish Mennonite Church, were convicted of violating Wisconsin's compulsory attendance law which requires a child's school attendance until age 16, and fined $5 each for refusing to send their children to public or private school after they had graduated from the eighth grade. Respondents claimed that application of the compulsory attendance law violated their rights under the first and fourteenth amendments to the United States Constitution. Attendance at high school was contrary to the Amish religion and way of life, and respondents believed that such attendance would expose themselves and their children to criticism in the church community and endanger their own salvation as well as that of their children.

Although the trial court found that the Wisconsin compulsory school attendance law interfered with respondents' religious freedom, it denied a motion to dismiss the criminal charges, concluding that the requirement of high school attendance until age 16 was a reasonable and constitutional exercise of the state's power. The Wisconsin Supreme Court, however, reversed the convictions on the grounds that respondents' first amendment rights had been infringed and that the state had failed to prove that its interest in keeping these children in

12. Id. at 210–11. Old Order Amish communities are characterized by the belief that salvation requires life in a church community, in harmony with nature and the soil. Id.
13. Id. at 213.
school overrides respondents' right to free exercise of their religious beliefs.\textsuperscript{14} The Supreme Court of the United States agreed.

\textit{Wisconsin v. Yoder} has injected new vitality into a complaint that has been smouldering for decades, that the balance between state control and parental control over the education of children has tipped too far in favor of the state. The thesis of this article is that this control is being returned to parents, but with one crucial difference: While the older cases found parental prerogatives in the interstices of statutes or in their purposeful interpretation, the re-establishment of these same prerogatives is being manifested on a \textit{constitutional} basis, in the face of clearly drawn statutes. The article will examine several areas where this has occurred, a few where its occurrence is ripe, and will pause to reflect on the rights of the children as the state and the parents struggle for control over children and their education.

I. COMPULSORY SECONDARY EDUCATION

Although compulsory elementary education is a relatively recent development,\textsuperscript{15} it has already sparked a good deal of criticism\textsuperscript{16} and litigation. It has been, however, unanimously, if not always persuasively, upheld.\textsuperscript{17} By contrast, compulsory secondary education has fol-

\textsuperscript{14} State v. Yoder, 49 Wis. 2d 430, 182 N.W.2d 539 (1971).
\textsuperscript{15} Massachusetts enacted the first such law in 1852. Ch. 240, §§ 1, 2, 4 [1852] Mass. Laws (now MASS. ANN. LAWS ch. 76, § 1 (Supp. 1973)). By 1896 such laws were common in the northern and northwestern states, and were enacted in all southern states by 1918. Woltz, \textit{supra} note 1, at 4; see Federal Security Agency, Office of Education, \textit{Circular No. 278, Compulsory School Attendance and Minimum Educational Requirements in the United States}, 1950 (1950).
\textsuperscript{16} Recent attacks by critics, see, e.g., I. Illich, \textit{Deschooling Society} (1970); E. Reimer, \textit{School Is Dead} (1971); J. Holt, \textit{The Underachieving School} 71–79 (1969), serious questioning of its purpose and validity by government agencies, see, e.g., Assembly Office of Research, \textit{California Assembly Symposium on Services to Children and Youth—Legislative Proposals} 1, 7–8 (1974), and the desire of some states and counties to avoid racial integration by exempting some or all of their children from compulsory (and in some cases all available) education have added new fire to the running debate and promise to keep compulsory education a viable constitutional and policy issue in the years to come.

It should be noted that efforts to avoid integration by geographical exemptions to compulsory education effected by closing integrated schools while leaving segregated schools open has been invalidated as denying equal protection to both races. James v. Almond, 170 F. Supp. 331 (E.D. Va. 1959); see also Griffin v. County School Board, 377 U.S. 218 (1964); Lee v. Macon County Board of Education, 231 F. Supp. 743 (M.D. Ala. 1964); Allen v. County School Board, 207 F. Supp. 349 (E.D. Va. 1962); Hall v. St. Helena Parish School Board, 197 F. Supp. 649 (E.D. La. 1961).

\textsuperscript{17} Courts have often groped in their eagerness to uphold the validity of com-
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followed a quiet course. Less than 60 years ago, the educational requirements of almost all states were satisfied by completion of the elementary grades, at least where the child was regularly and lawfully employed.\textsuperscript{18} Statutory imposition of several years of additional school attendance was met with relatively infrequent litigation. Perhaps prospective litigants were convinced of the futility of challenging the power of the state to compel attendance to any designated age, especially in light of the vague and sweeping reasons justifying compulsory elementary education.\textsuperscript{19}

Indeed, one of the few precursors of \textit{Yoder} was \textit{State v. Garber},\textsuperscript{20} in which the facts were virtually identical to those of \textit{Yoder}.\textsuperscript{21} Amish parents in \textit{Garber} removed their children from public schools upon completion of the eighth grade and provided the children vocational and other instruction by a farmer/teacher designated by the Amish community. The court held that removal of the children violated the Kansas compulsory attendance statute because the legislature had specifically eliminated home instruction as an alternative to instruction in a “school” and the children were not in a “school” as defined by statute.\textsuperscript{22}

\begin{itemize}
  \item[pulsory education. For example, in \textit{State v. Bailey}, 157 Ind. 324, 61 N.E. 730 (1901), the court advanced the perfectly circular argument that children must attend school because the state appropriates large sums of money in anticipation of all children attending school:

\begin{quote}
To carry out the enlightened and comprehensive system of education, enjoined by the constitution of this state, a vast fund, dedicated exclusively to this purpose, has been set apart. Revenues to the amount of $2,000,000 annually are distributed among the school corporations of the state. No parent can be said to have the right to deprive his child of the advantages so provided, and to defeat the purposes of such munificent appropriations.
\end{quote}


19. \textit{See note 17 supra.}


21. \textit{See text accompanying notes 11–14 supra.}

22. 419 P.2d at 900.
The contrast with the reasoning in *Yoder* is striking. The Supreme Court in *Yoder* began by finding that the Amish parents clearly violated Wisconsin's compulsory attendance statute.\(^{23}\) This was not, however, as in *Garber*, the end of the analysis. "[T]he fundamental interest of parents, as contrasted with that of the State, to guide the . . . education of their children,"\(^{24}\) combined with the free exercise of religion claim, formed the basis of the *Yoder* Court's holding that the Amish parents had a right to remove their children from public school. Thus, the *Yoder* Court held that the parents' common law right to direct their children's education, combined with the constitutional guarantee of freedom of religion, displaces the compulsory attendance statute, at least beyond the eighth grade.

*Yoder*, then, serves to reincarnate common law rights as constitutional rights even though such rights had seemingly been abolished by statute. Without doubt, the Court placed great emphasis on the infringement of respondents' constitutional right to freedom of religion. The Court noted the long history of the Amish as an identifiable religious sect and as a meaningful and self-sufficient segment of American society.\(^{25}\) The Court suggested:\(^{26}\)

[Courts] must move with great circumspection in performing the sensitive and delicate task of weighing a State's legitimate social concern when faced with religious claims for exemption from generally applicable educational requirements.

\(^{23}\) 406 U.S. at 207.

\(^{24}\) *Id.* at 232.

\(^{25}\) *Id.* at 235. The Pennsylvania Superior Court made similar note of the history and contributions of the Amish community in upholding Pennsylvania's compulsory education law against constitutional attack in Commonwealth v. Beiler, 168 Pa. Super. 462, 79 A.2d 134 (1951). Amish parents refused to send their children to public schools beyond the eighth grade, but in contrast to *Yoder* and *Garber*, the parents apparently did not provide their children an "alternative" form of education. The court concluded:

[T]here is no interference with religious liberty where the State reasonably restricts parental control, or compels parents to perform their natural and civic obligations to educate their children. They may be educated in the public schools, in private or denominational schools, or by approved tutors; but educated they must be within the age limits and in the subjects prescribed by law.

\(^{26}\) *Id.* at 137.

*Id.*. The Court also found:

[The respondents had] convincingly demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life, the vital role that belief and daily conduct play in the continued survival of Old Order Amish communities and their religious organization, and the hazards merited by the State's enforcement of a statute generally valid as to others.

*Id.*
Nonetheless, the Court also based its decision on the fundamental interests of parents in their child's development. The interests of parenthood were clearly at stake in Yoder: 27

[T]his case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

The Court's recognition of the overriding interests of parenthood comports with the common law developments previously discussed and with the cases on which the Court relied.

In Pierce v. Society of Sisters, 28 for example, which involved a statute requiring attendance in public schools until age 16, the Court recognized a constitutional right of parents to send their children to private, rather than public schools. 29 The Court stated that a "child is not [a] mere creature of the state"; 30 the state has no right to "standardize its children." 31 The Court held that under the fourteenth amendment the state may not unreasonably interfere with "the liberty of parents and guardians to direct the upbringing and education of children under their control." 32

In Meyer v. Nebraska, 33 also relied on by the Yoder Court, a statute forbidding the teaching of foreign languages in private schools

27. 406 U.S. at 232. These rights were again stressed by the Court in Stanley v. Illinois, 405 U.S. 645, 651 (1972): "The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed 'essential,' ... 'basic civil rights of man,' ... and '[r]ights far more precious ... than property rights' ...." Both Yoder and Stanley echo Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1924), in which the Court recognized the right of parents to direct the upbringing and education of their children. See text accompanying notes 28-32 infra.


29. Both the private schools in Pierce, one with a program devoted to the secular and religious education and care of children, and the other a military academy for boys aged 5 to 21, provided a curriculum which paralleled that in the Oregon public schools. The school administrators claimed their institutions were threatened with destruction by the state's public school attendance law which exercised unwarranted compulsion over present and prospective patrons of their schools. Id. at 535.

30. Id.

31. Id.

32. Id. at 534-35.

33. 262 U.S. 390 (1922).
was held unconstitutional. The *Meyer* Court reasoned that the legislature had unconstitutionally attempted “to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own.”

The full impact of the expansion of these principles in *Yoder* is yet to be felt. Although the Court attempted to limit *Yoder* to its facts, it recognized broad parental powers which may be restricted only in certain vaguely defined instances:

To be sure, the power of the parent, even when linked to a free exercise claim, may be subject to limitation . . . if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens.

Thus, contrary to its practice in earlier cases such as *Garber*, the *Yoder* Court found that the existence of a statute merely serves to raise issues rather than resolve them. Moreover, where fundamental parental interests are involved, statutes or administrative actions will be subject to “strict scrutiny” and the normal judicial deference to legislative enactments will not apply. This shift acquires added significance in the other areas of parent-state conflicts concerning the control of children and their education.

II. THE PARENT'S RIGHT TO EDUCATE A CHILD AT HOME

Although there are numerous cases which deal with the right of a

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34. *Id.* at 401.
36. *Id.* at 233–34 (emphasis added).
37. In light of the convincing showing by the Amish parents of their fundamental interest in the upbringing and education, religious or otherwise, of their children, the Court concluded:

[W]eighing the minimal difference between what the State would require and what the Amish already accept, it was incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish. 406 U.S. at 236.

parent to remove a child from the public schools and educate the child at home, each case has been resolved by careful, sometimes tortured, readings of state statutes rather than by constitutional adjudication. This is somewhat remarkable in light of the closely related constitutional holding in *Pierce v. Society of Sisters* that parents have a right to provide an equivalent education for their children in a privately operated school of the parents' choice, and in light of the fact that the key issues of the state courts' statutory debates have been identical to those in *Pierce*, whether the home education is "equivalent" and whether it is taking place in a "school." In the wake of *Yoder*, a constitutionally-based decision on the question of a parent's right to educate his or her child at home should be imminent. It is propitious, then, to review the existent state authorities and suggest a constitutional resolution of this question.

A. The Case Law

The central issue in most home instruction cases is whether children educated at home are receiving an education in a "school" as contemplated by the particular state statute involved. The Illinois Supreme Court in *People v. Levisen* adopted a common sense approach to this issue. The relevant statute in *Levisen* compelled school attendance for children between 7 and 16, but allowed parents the choice of sending their children to a public, private or parochial school. Defendants, who were unlicensed teachers, were convicted of violating the statute for refusing to send their 7-year-old daughter to an acceptable school. They did, however, provide five hours' instruction per day to their daughter who had demonstrated a proficiency comparable to the average third grade student. On appeal, the state supreme court reversed the conviction and held that the child was indeed being educated in a "private school." The statute did not, as the court read it, require that a certain number of students attend in order to find that a school existed. Despite the fact that the Illinois Legislature had recently re-

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40. Id.
41. 404 Ill. 574, 90 N.E.2d 213 (1950).
42. 90 N.E.2d at 214.
pealed a provision expressly allowing home education, the court stated:

The object [of the statute] is that all children shall be educated, not that they shall be educated in any particular manner or place . . . . We think the term "private school," when read in the light of the manifest object to be attained, includes the place and nature of the instruction given to this child.

Contrary to the Illinois court in Levisen, the Washington courts have followed a highly curious course in addressing the issue of home education. In 1912, the Washington Supreme Court held in State v. Counort that a fully qualified and experienced teacher could not teach his children at home because he was not operating a "school" within the meaning of the state's compulsory attendance law. The court reasoned that defendant's program was not sufficiently "institutional": A school, stated the court, is a "regular, organized and existing institution making a business of instructing children of school age in the required studies and for the full time required by the laws of this state." Nonetheless, the court did not eliminate the possibility that a more institutionally-minded parent might satisfy the statutory requirements with home education:

Undoubtedly a private school may be maintained in a private home in which the children of the instructor may be pupils. This provision of the law is not to be determined by the place where the school is maintained, nor the individuality or number of the pupils who attend it. It is to be determined by the purpose, intent, and character of the endeavor. The evidence of the state was to the effect that appellant maintained no school at his home; that his two little girls could be seen playing about the house at all times during the ordinary school hours . . . . Appellant seemed to be impressed with the belief that, if he was a competent and qualified teacher and gave instruction to his children at home, he maintained a private school within the meaning of the law. Such is not compliance with the law.

43. I.LL. REV. STAT. ch. 122, §§ 26–1 to –9 (1971); see 18 U. CHI. L. REV. 105 (1950). In State v. Lowry, 191 Kan. 701, 383 P.2d 962 (1963) and State v. Garber, 197 Kan. 567, 419 P.2d 896 (1966), the parents' claims were denied on this ground alone.
44. 90 N.E.2d at 215.
45. 69 Wash. 361, 124 P. 910 (1912).
46. Id. at 363–64, 124 P. at 911–12.
47. Id.
48. Id. at 364, 124 P. at 912.
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It is unclear whether the deficiency in Counort's program of instruction was that he failed to keep the children at their studies for sufficient hours, to keep them indoors during school hours, to charge for his services, or all three.

The Washington court has recently made it even more difficult for one to offer home instruction that will comply with the statutory requirements by further elaboration on the meaning of "school." In Shoreline School District No. 412 v. Superior Court, the court held that a "school" requires a teacher and that a "qualified" teacher must possess a teaching certificate from the state. Since the parents who were conducting the home education program in Shoreline were not certificated, the court held they were not operating a "school" within the meaning of the compulsory attendance statute.

The Shoreline court's conclusion that parents in home instruction situations must be certificated served to disqualify every noncredentialed private school teacher in Washington, despite the absence of legislative standards governing private schools in the state. Other states have declined to follow Shoreline and have disqualified uncredentialed parents only in the face of more specific legislative guidance preserving the right of noncredentialed instructors to teach in private schools. On the other hand, at least two other states have accepted and applied a more reasonable rationale for Shoreline, mentioned in passing by the court, that the absence of statutorily required registration and approval of a home as a private school is an adequate basis for denying the parents' claim that they are operating a "school."

The New Jersey court, in Knox v. O'Brien, reviewed a statute which permitted a child to attend a "day school in which there is given instruction equivalent to that provided in the public schools . . .

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50. Id. at 182, 346 P.2d at 1002.
51. Id.
53. 55 Wn. 2d at 183–84, 346 P.2d at 1003.
55. 7 N.J. Super. 608, 72 A.2d 389 (County Ct. 1950).
or to receive equivalent instruction elsewhere . . . ."56 The court interpreted the word "equivalent" to require that teacher qualifications and teaching materials in private schools be identical to those in public schools so as to provide the "full advantages supplied by the public schools." Although the parent in Knox possessed a college degree in education, teaching experience and state certification in secondary education, her qualifications were held insufficient because she did not possess grammar school credentials and lacked knowledge of "new technics and methods" of teaching.57 The court also held that even though four children and another couple lived in the home where the instruction was offered, such instruction was not "education equivalent to that provided in public schools" since the children had not had an opportunity to become acquainted with other children and therefore did not have the full advantages of a school education.58 One questions whether the court would have reached a different conclusion had the parents periodically taken the children to a playground at a time when they could have met other children or if the children had chanced to have friends in the neighborhood.

The "qualifications" issue was not present, however, in the New Jersey court's analysis in State v. Massa.59 Mrs. Massa had no teaching certificate, but the state stipulated that she needed none, arguably conceding that Knox was at least half wrong. The court then rejected the "social development" theory of Knox, stating that it was utterly unsupported in the statute, and that if such a theory were adopted, one could never be educated outside of an institutional setting—a result clearly contrary to legislative intent.60 Courts supporting compulsory school attendance have suggested that while noninstitutional education may be as efficacious as institutional education, it is more difficult and/or more expensive for state inspectors to determine whether the children are being adequately educated and that noninstitutional attendance should therefore be banned.61 This argument proceeds on the basis that a parent may

56. 72 A.2d at 390.
57. Id. at 392. The instructor's materials were approved without extended comment.
58. Id.
59. 95 N.J. Super. 382, 231 A.2d 252 (County Ct. 1967).
60. 231 A.2d at 255.
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"make use of units of education so small, or facilities of such doubtful quality, that supervision thereof would impose an unreasonable burden upon the state ...." 62

This assertion is of questionable validity since its acceptance would probably result in placement of these children in public schools where the state would bear the entire cost of their education, rather than just the cost of evaluating it. Assuming that the state has a legitimate interest in assuring that its children develop a certain proficiency in such subjects as reading, writing, arithmetic and civics, their "progress" in these subjects could easily be measured by the ubiquitous, if obnoxious, standardized tests. 63 Administering such periodic tests would not create an undue hardship for state employees or cost more than the administration of such tests for institutionally educated children. Moreover, the state should not have the slightest interest in the home's educational "facilities," so long as the children are adequately educated. In fact, many well-known educational critics argue cogently that the "facilities" and other trappings of institutional education have such a stifling effect upon the intellect, creativity and natural curiosity of many children, that such facilities are rather to be shunned than made universal. 64

B. Constitutional Concern

Efficiency and expense are often sacrificed in support of our pluralistic society. The right of parents to decline to delegate the task of shaping the minds of their children to a state institution demands precedence over a claim of administrative inconvenience. The state's in-

63. Kansas followed this procedure by requiring parochial school students to pass an examination before entering high school; public school children were exempt from the examination. This practice was upheld in Creyhon v. Parson Board of Education, 99 Kan. 824, 163 P. 145 (1917). California requires students at unaccredited law schools to take a "baby bar exam" upon completion of their first year of study to judge whether they are receiving an adequate legal education. CAL. BUS. & PROF. CODE § 6060 (g) (West 1974). In addition, colleges such as the University of Southern California are participating in "CLEP" (College Level Equivalency Project) in which students receive up to two years of college credit for knowledge acquired outside of school if they can demonstrate that knowledge in an examination. Phone interview with Dr. Seymour Grietzer, President, Glendale College of Law, February 4, 1975.
terest in requiring institutional instruction, rather than adequate instruction, cannot be said to outweigh "the right of parents to have their children taught where, when, how, what, and by whom they may judge best, . . . liberties guaranteed by section 1 of the Fourteenth Amendment to the United States Constitution." Stated another way:

The object of a compulsory education law is to see that children are not left in ignorance, that from some source they will receive instruction that will fit them for their place in society. Provided the instruction given is adequate and the sole purpose is not to evade the statute, instruction given to a child at home by its parent, who is competent to teach, should satisfy the requirements of the compulsory education law.

It is submitted that the distinctions between what is or is not a "school" and what educational "facilities" are or are not provided are of no real consequence. The state should be concerned only with whether the instruction provided a child is adequate. The right of parents to send their children to a private school cannot be nullified by eccentric state statutes or statutory construction defining what constitutes a "school."

III. REMOVING CHILDREN FROM PARTICULAR CLASSES

Yoder can be expected to revitalize a host of older and, until recently, obscure cases granting parents the right to remove their children from certain classes and the study of certain subjects. Although many common law cases hold this right to be plenary, the few cases which have analyzed this issue on a constitutional basis limit this right to classes not essential to good citizenship.

A typical example of the common law right of a parent to remove a child from a given class is Morrow v. Wood. The parent in that case objected to the requirement that his child study geography. The court

67. 35 Wis. 59 (1874). See also Trustees of Schools v. People ex rel. Van Allen, 87 Ill. 303 (1877); Rulison v. Post, 79 Ill. 567 (1875).
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upheld the parent’s right to remove the child from geography class in the most forceful language:68

Whence did the teacher derive this exclusive and paramount authority over the child, and the right to direct his studies contrary to the wish of the father? It seems to us it is idle to say the parent, by sending his child to school, impliedly clothes the teacher with that power, in a case where the parent expressly reserves the right to himself, and refuses to submit to the judgment of the teacher the question as to what studies his boy should pursue.

These older cases arguably may be distinguished on the ground that attendance was not yet compulsory.69 Moreover, most modern cases involve subjects in which statutes require instruction.

A. Development of a Constitutional Right

There are several cases, however, upholding a parent’s right to remove a child from a class where both education and the classes in question are compulsory. In State ex rel. Sheibley v. School District No. 1,70 the Nebraska Supreme Court analyzed a statute which granted to school trustees the power to “cause [the children] to be taught in such schools and departments as they may deem expedient [and] ... to prescribe courses of study ...”71 A father objected to his child’s study of grammar for the sole reason that it was not taught as it was when he attended school.72 The court held that the father possessed the right to excuse his child from the study of grammar because the teacher, unlike the father, has a “mere temporary interest in her welfare” and the father knows better the physical and mental capabilities of his child. The father may know, for example,73

that all the prescribed course of studies is more than the strength of the child can undergo, or he may be desirous, as is frequently the case, that his child ... should also take lessons in music, painting, etc., from private teachers. This he has a right to do.

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68. 35 Wis. at 65.
69. See, e.g., Rulison v. Post, 79 Ill. 567 (1875). Compulsory attendance laws were not commonplace until 1896. See note 15 supra.
70. 31 Neb. 552, 48 N.W. 393 (1891).
71. 48 N.W. at 394.
72. Id.
73. Id.
Of particular note in the case is that, however correct the principles expressed, the father shared none of the court’s reasons for excluding his child, and indeed had no objection to the manner of instruction in grammar, other than its antiquity. The case, nevertheless, is important because it contains the first suggestion of constitutional issues surrounding the right of a parent to remove a child from a class. The court stated that any rule or regulation which required a child to continue in a prescribed branch of study contrary to the desire of the parent would be “arbitrary and unreasonable.”

This constitutional theme was further developed in the same state 23 years later in *State v. Ferguson*, in which the court, upholding the parent’s right to excuse his child from music class, stated:

The public school is one of the main bulwarks of our nation, and we would not knowingly do anything to undermine it; but we should be careful to avoid permitting our love for this noble institution to cause us to regard it as “all in all” and destroy both the God-given and constitutional right of a parent to have some voice in the bringing up and education of his children . . . . [W]e want to be careful lest we carry the doctrine of governmental paternalism too far, for, after all is said and done, the prime factor in our scheme of government is the American home . . . . [School authorities] should not too jealously assert or attempt to defend their supposed prerogatives.

School authorities, however, have been reluctant to surrender any of their “supposed prerogatives.” They have argued that permitting parents to excuse pupils from particular classes would destroy the discipline, efficiency and general well-being of the schools. The authorities’ protests, however, were commonly found to be more a Pavlovian response than the product of demonstrable facts.

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74. Contra, *State ex rel. Andrew v. Webber*, 108 Ind. 31, 8 N.E. 708, 712–13 (1886). In *Andrew*, a parent’s attempt to remove his child from a class was denied because the parent lacked a rational objection to his child’s presence in the class.

75. 48 N.W. at 394.

76. 95 Neb. 63, 144 N.W. 1039 (1914).

77. 144 N.W. at 1043–44.

B. The Good Citizenship Rule

The two most important cases in this area, decided in the 1920's, are strikingly similar to Yoder and provide a useful template for future adjudication. In the first case, Hardwick v. Board of School Trustees,79 a parent who was morally opposed to dancing refused to permit his children to participate in dance classes and the children were therefore expelled from school. The California Supreme Court, in no uncertain terms, reversed the expulsions and upheld the right of the parent to withdraw his children from the dance class:80

[T]he important proposition involved in this controversy . . . is a question of morals and the liberty of conscience upon a subject upon which people have the natural and constitutional right to hold and put into practice divergent opinions. . . . It also involves the right of parents to control their own children—to require them to live up to the teachings and the principles which are inculcated in them at home under the parental authority and according to what the parents themselves may conceive will be the course of conduct in all matters which will the better and more surely subserve the present and future welfare of their children. . . . Has the state the right to enact a law or confer upon any public authorities a power the effect of which would be to alienate in a measure the children from parental authority? . . . [T]o answer . . . in the affirmative would be to give sanction to a power over home life that might result in denying to parents their natural as well as their constitutional right to govern or control, within the scope of just parental authority, their own progeny. . . .

Under Hardwick, this parental right would not, of course, dispose of every case, for the views of the parents might be unreasonable or harmful to the children or society, or the matters involved might simply be none of their proper concern.81 A rule of thumb was clearly needed. That rule was supplied in People ex rel. Vollmar v. Stanley,82 in which the Colorado Supreme Court first established, as a constitutional premise, this proposition:83

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79. 54 Cal. App. 696, 205 P. 49, 54 (1921).
80. 205 P. at 54.
81. Id.
82. 81 Colo. 276, 255 P. 610 (1927).
83. Id. at 613–14.
The right of parents to select, within limits, what their children shall learn, is one of the liberties guaranteed by the Fourteenth Amendment to the national Constitution, and of which, therefore, no state can deprive them.

The limits of this rule were expressed as follows:84

[Parents . . . can refuse to have [their children] taught what they think harmful, barring what must be taught; i.e., the essentials of good citizenship.]

The Stanley court concluded that the subject under consideration, biology, was not essential to the functioning of a citizen in society and upheld the right of the parent to excuse his child from the biology class.

The "good citizenship" standard in Stanley assumes that the interest of the state in imposing compulsory education is to provide all citizens with the knowledge essential to function in society. "Nonessential" learning cannot be compelled over parental objections.85

The Supreme Court in Yoder based its holding on similar reasoning. In summing up the record, the court stated:86

The record strongly indicates that accommodating the religious objections of the Amish . . . will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society.

The Court stressed the "speculative gain, in terms of meeting the duties of citizenship, from an additional one or two years of compulsory formal education,"87 and the fact that the Amish are "capable of fulfilling the social and political responsibilities of citizenship without compelled attendance beyond the eighth grade . . . ."88 Even Thomas

84. Id. at 613 (emphasis added).
85. In Nebraska Dist. of Evangelical Lutheran Synod v. McKelvie, 104 Neb. 93, 175 N.W. 531, 534 (1917), rev'd on other grounds, Meyer v. Nebraska, 262 U.S. 390 (1922), the court stated:
   The state should control the education of its citizens far enough to . . . insure that they understand the nature of the government under which they live, and are competent to take part in it. Further than this, education should be left to the full freedom of the individual.
86. 406 U.S. at 234.
87. Id. at 227.
88. Id. at 225.
Jefferson, noted the Court, was only concerned with a basic education when he called education a "bulwark of a free people against tyranny." 89

The question remains as to precisely what knowledge is essential to enable children to fulfill the "social and political responsibilities of citizenship." The result in Stanley, measured against the test of essential knowledge, seems clearly correct, since many, if not most, citizens forget the bulk of what is learned about biology, for instance, without perceptible disability to their conduct as citizens. 90 Under the same rubric, elementary mathematics could be required, although calculus could not; handwriting could be required, creative writing could not. In any event, when the state chooses to override a parent's wishes, the burden is on the state to establish that in order to function effectively as a citizen one must be versed in the subject to which the parent objects. Nor will a perceptive court allow the academician to retreat into abstraction by claiming the virtues of a given subject-matter as fostering "well-roundedness" or "the ability to think." Finally, assuming the state has unequivocally demonstrated an interest in compelling the study of a given subject, this should not establish its concurrent interest in having the subject taught by a given teacher or in a given school, at a given time or by a given method.

C. Values v. Facts

When "public education actively attempts to shape a child's personal development in a manner chosen not by the child or by his [or her] parents but by the state," 91 the question then becomes not what the child should know, but whether the state has a right to influence the child's values contrary to those of the parents. This, in fact, was the complaint of the parents in Yoder. High school instruction, they

89. Id.
90. Indeed, a good deal of the effort of education might be questioned solely on the basis of the rapidity with which data, especially meaningless, irrelevant data, is forgotten. See G. Kimble & N. Garmezy, Principles of General Psychology 238-40 (2d ed. 1963); F. Sanford, Psychology 388-89 (2d ed. 1966). Moreover, it would be difficult for the schools to confidently predict the essentiality of any knowledge in the world the children will inhabit as adults. J. Holt, The Underachieving School 171-76, 193-94 (1969).
contended, contains a "hidden" curriculum which "tends to emphasize intellectual and scientific accomplishments, self-distinction, competitiveness, worldly success, and social life with other students." In contrast:

Amish society emphasizes informal learning-through-doing; a life of "goodness," rather than a life of intellect; wisdom, rather than technical knowledge; community welfare, rather than competition; and separation from, rather than integration with, contemporary worldly society.

The Court properly resolved the issue by deciding that the parent's value system demanded precedence over the state's substantive program.

Often the value-content and the subject-content of classroom instruction are inextricably intertwined. This is especially true when the state attempts to cure social ills through compulsory attendance of children at various presentations and classes. Sometimes the required classes are designed to impart values with which few parents would quarrel, at least in the abstract. A California statute, for example, requires instruction in "the principles of morality, truth, justice . . . [and] kindness toward domestic pets . . . ," and the avoidance of "idleness, profanity and falsehood." Other times, however, as in Yoder, the values imparted are vigorously opposed by parents.

Where the state refuses to separate the attempt to mold the child's values from the teaching of facts, the parents clearly have a right to remove their children from the class. For example, in Valent v. New Jersey State Board of Education, a case involving compulsory sex education, the court asked:

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92. 406 U.S. at 211.
93. Id.
94. CAL. EDUC. CODE § 13356.5 (West 1975).
96. 274 A.2d at 839. Several states have solved this problem by providing by statute that parents may remove their children from such portions of classes in health, sex, family life and venereal disease instruction as conflict with the parent's moral convictions, see, e.g., CAL. EDUC. CODE §§ 8506, 8507, 8701 (West 1975), and a few have even restricted asking children about their or their parents' personal practices or beliefs relating to sex, family life, morality and religion. See, e.g., id. § 10901. It is clear, however, that parents cannot demand that the children of nonobjecting parents be excused from educational practices or subjects they condemn. Medeiros v. Kiyosaki. 52 Hawaii 436, 478 P.2d 314 (1970) (sex education).
Parental Rights

Is the State, through the educational system, permitted to encroach upon the patterns and molding of a child's behavior in personal, family or religious beliefs? Parental discipline, authority and respect diminish as the great sovereign state forces its way into the home as a foster parent. Some parents may be happy to be relieved of the obligation and responsibility. Others may feel that the constant eroding of their usefulness as parents portends great danger, and youth will look to the state, rather than the parent, for guidance.

IV. SCHOOL VIOLENCE AND COMPULSORY EDUCATION

Beyond the questions of essential knowledge and instruction in values, there is the issue of the physical well-being of the child. Courts have recognized the right of parents to remove their child from a dangerous school in the face of the compulsory education laws. For example, in *In re Richards*, the New York Supreme Court held that it was not unreasonable for a parent to refuse to permit a child under 16 years of age to walk 1½ miles along a lonely, poorly maintained and unfenced road to the school bus stop. More recently, in *In re Foster*, a New York court allowed parents, despite the traditional vesting of the placement power in school administrators, to remove two children from one school and place them in another over school board objections, because the children had been beaten at the school of attendance.

In *School District v. Zebra*, all of the students graduating from Concord Elementary School, in Pittsburgh, were sent to Knoxville Junior High, in Pittsburgh, where they comprised a racial minority. Soon thereafter there were numerous and repeated incidents of physical violence. Some parents removed their children from the school

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98. 7 N.Y.S.2d at 723.
100. 4 Pa. C. 642, 287 A.2d 870 (1972).
101. 287 A.2d at 871-73. The court provided detailed descriptions of a number of illustrative incidents of stabbings with scissors, beatings, extortion and other physical and mental abuse. One 11-year-old boy, "while waiting in the hall for the school bus, had a cup of human urine thrown upon him by another student. He observed children being beaten in the halls, thrown down steps and having money taken from them, all of which took place in front of teachers who did nothing to stop or prevent such happenings." Many children, the court noted, testified:
and sought an injunction against enforcement of the compulsory education laws, based upon the irreparable harm which would occur to the children until their physical and mental well-being could be fully protected. A preliminary injunction was granted. The school board assigned the children to other schools for the balance of the year, but continued the legal fight.

Six months later the case was back in the trial court. The court reiterated its finding that the school board had failed to provide the children with an environment in which they could obtain an education without an adverse effect on their health, safety and general welfare. The court noted that since the preliminary injunction, the situation at Knoxville had deteriorated and therefore entered a permanent injunction.

Two months later, the Pennsylvania Supreme Court reversed. At the outset of its discussion, the court acknowledged the problems at Knoxville, and more importantly, stated that it could not be denied "that a parent is justified in withdrawing his [or her] child from a school where the health and welfare of the child is threatened," despite the compulsory education law and demands by the local board that they be sent to unsafe schools. Nevertheless, the court concluded, for technical and questionable reasons, that an injunction was an improper remedy in this case.

\[\text{T}他们会 too frightened to report incidents to school officials and... they were threatened with bodily harm if they did so. The record indicates clearly that threats of beatings were commonplace if plaintiffs's children failed to give money to their tormentors or had the courage to report specific incidents to their teachers.\]

\[\text{Id. at} 873.\]

The court stressed that the issues at bar were not bussing (bussing would be necessary regardless of where the students were sent) nor racial integration (for no objections were ever raised on that ground to Knoxville).

\[102. \text{41 U.S.L.W. 2167 (Sept. 14, 1972).}\]
\[103. \text{449 Pa. 432, 296 A.2d 748 (1972).}\]
\[104. \text{296 A.2d at 751.}\]
\[105. \text{Id. The court found the injunction improper on four grounds: (1) it applied to 47 students although there was evidence of incidents involving only 11; (2) the incidents in question occurred a month prior to the hearing on the injunction, additional personnel had since been sent to the school to promote safety, and the parents failed to demonstrate that the conditions had not already been corrected; (3) the board of education was not threatening enforcement of the compulsory education laws, pending determination of the case, and therefore the injunction was unnecessary; and (4) an injunction issued without a showing of bad faith, abuse of discretion or illegality would unduly interfere with the right of the board to assign students where it wished. Id. at 752.}\]
In a Philadelphia case, *Bichrest v. School District*, a federal district court suggested that parents might bring an action under the Civil Rights Act of 1871 against school officials for specified acts committed in their private capacities for the cost of private school tuition if the child were assigned to and subsequently removed from an unsafe school. An action against the school board itself, however, would not lie, as the board is not a "person" within the contemplation of the Act.

The court's reasoning is questionable. If the evidence did not justify relief for all the students, this might have been grounds for modifying the injunction, but not for invalidating it. Why, in any case, should every parent have to wait until his or her child is hurt before seeking safeguards? The trial court's specific finding that the situation had deteriorated after the injunction was granted was not mentioned by the Pennsylvania Supreme Court. Furthermore, once the parents had demonstrated a right to relief, the burden of proving the situation had changed clearly lay with the school board, especially since the parents had no access to data concerning conditions at the school after their children had been removed. In addition, a more pacific atmosphere at the school might simply have indicated that the Concord children, the objects of the violence, were no longer available to attack.

The notion that the school board's forbearance to prosecute pending determination of the case is a reason for denying the injunction is truly paradoxical; a decision by the state court of last resort itself terminates the case and leaves the school board free to prosecute. It is also clear that the parents were in fact after a ruling in the nature of a declaratory judgment. The controversy was ripe for adjudication; it is manifestly unfair to force the parents to subject themselves to criminal prosecution before being allowed to vindicate their rights.

By indicating that the lower courts had interfered with the right of the board to assign pupils, the court was apparently referring to the part of the injunction which directed the board to transfer the children to another school. If so, the court's decision demands three conclusions: (1) the board was empowered to make an unsafe assignment; (2) the parents had a right to refuse to send their children to the school designated by the board; and (3) the children, having no powers or rights, were deprived of an education. In any event, as the intermediate court noted, the interference with the board's assignment power was minimal because the board was free to transfer the children to any school fit for their attendance.

The alternative interpretation of this ground for the court's holding—that the board, pursuant to its power of assignment, could force the children to attend Knoxville despite the danger—is nonsensical. Such a reading cannot be reconciled with the admitted right of the parent to remove the child from an unsafe school, which right was deemed superior to the compulsory education laws. In addition, the parents were not protesting the assignment of their children to Knoxville or any other school; they were protesting being forced to send their children to *any* school so long as it is unsafe. Their claim would have been identical had the same conditions existed in any other school in the district.

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V. PARENTAL OBJECTIONS TO SCHOOL PRACTICES

The discussion thus far has focused on the right of parents to refuse to send their children to school, or if they do send them, to remove their children from objectionable classes or unsafe schools. These remedies are, of course, extreme, and it would be unfortunate if parents could only vindicate their right to protect their children and control their upbringing by depriving the children of state-supported educational opportunities. Indeed, several school districts have argued that if parents find the public schools unacceptable in any respect, their remedy is to send their children to a private school more consonant with their philosophy. The courts, however, have rejected this "love it or leave it" argument the few times it has been advanced.109

Courts rejecting the argument have reasoned that the right of a parent to control a child's upbringing is, as has been previously discussed, a constitutionally protected right. The state may not condition enjoyment of the statutorily vested right to a state-supported education on surrender of the parent's right of control.110 There is also an equal protection objection to the "love it or leave it" argument:111

[1]s the right of parents to guide the education of their children confined to those parents who can afford to send their children to parochial or private schools? Have the parents of children who must for financial or other reasons attend the public schools no right to guide the education of their children . . . ?

It is clear that "the Court's special concern for educational freedom in the Pierce case easily implies a corresponding concern for the child

110. See Part I supra.
whose family condition makes the exercise of that freedom impossible."\footnote{113}

Finally, the "love it or leave it" argument has no rational bounds and is antithetical to any constitutionally based decision. For example, rather than vindicating the wearing of armbands in school, the Supreme Court in \textit{Tinker v. Des Moines Independent Community School District},\footnote{114} could have advised the children to attend a private school where the authorities permit the wearing of armbands.

Recent cases shed some light on the right of parents to exempt their children from pedagogical and disciplinary methods of which they disapprove without resorting to removal of their children from school. In \textit{Glaser v. Marietta},\footnote{115} a federal district court upheld the constitutionality of corporal punishment, but also established the right of a parent to forbid school authorities from using corporal punishment on his or her child. Based on \textit{Yoder} and related cases, the court held that Mrs. Glaser's "parental right to raise her son as she thinks proper"\footnote{116} is a fundamental right which the school district had not, on the facts presented, counterbalanced.

\textit{Glaser} is one of the first post-\textit{Yoder} cases to apply a balancing test which calls upon the schools to defer to the wishes of parents unless that decision "will jeopardize the health or safety of the child, or have a potential for significant social burdens."\footnote{117} It also highlights the additional standing of the parents, as opposed to the child, to obtain judicial intervention in a wide range of school decisions. Even where no constitutional right is otherwise involved, the fact that a parent is making the request in itself mandates a constitutional analysis of the question and requires that a heavy burden be placed on school authorities in seeking to counterbalance the parent's constitutional right. In \textit{Breen v. Kahl},\footnote{118} for example, the school board claimed that it was "in loco parentis" and therefore had the power to forbid long hair on

\footnotesize{\begin{itemize}
  \item 393 U.S. 503 (1969).
  \item \textit{Id.} at 559. The court also relied on Prince v. Massachusetts, 321 U.S. 158 (1944) and Stanley v. Illinois, 405 U.S. 645 (1972).
  \item 406 U.S. at 234.
  \item 419 F.2d 1034 (7th Cir. 1969).
\end{itemize}}
students. The Court of Appeals for the Seventh Circuit rejected this argument in large measure because the parents agreed with the children on the question of their grooming, and there was, therefore, no delegation of authority to the school board.\footnote{119}

A related constitutional claim, one which seems to emanate more from fourth and ninth amendment privacy rights than from a fourteenth amendment claim of infringement of liberty, is that a school practice may not invade the "private realm of family life." Justice Rutledge wrote in \textit{Prince v. Massachusetts}:\footnote{120}

\begin{quote}
It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder \ldots. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.
\end{quote}

Thus, when a school administered personality tests to students in order to identify potential drug abusers, it was held that the parent's right to privacy concerning family matters had been violated.\footnote{121}

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\item[120] 321 U.S. 158, 166 (1944).
\item[121] Merrikin v. Cressman, 364 F. Supp. 913, 918–19 (E.D. Pa. 1973). Although the parents agreed to the test in this case, the court held the waiver invalid, requiring that both sides of the question and the consequences of the waiver must be explained. California has a statute which substantially embodies the holding of \textit{Merrikin}. CAL. EDUC. CODE § 10901 (West 1975).
\end{footnotes
Parental Rights

Where a school attempted to restrict the attendance of students at social affairs, the domain of the parents was held invaded. The power of the school to force students to study at home between designated hours has also been denied as an attempt to displace parental authority. The rationale behind these decisions has already been discussed. For example, in Valent v. New Jersey State Board of Education, the court held that compulsory sex education was an example of the state unacceptably forcing its way into the home as a "foster parent" and establishing itself, in the parents' stead, as the source of personal and moral guidance.

The "family privacy" rationale will, in most cases, be virtually indistinguishable from the "parental power" reasoning. The latter, however, may focus more closely on the issues involved as the state increasingly seeks to place upon overburdened teachers the task of curing all social ills, on the theory that, given an immature and captive audience, "man can do what God cannot, namely, manipulate others for their own salvation." While most such programs are relatively harmless and are distinguished mainly by the virtuous feeling aroused in their sponsors and by the boredom of the captive audience, jealously guarding the right of parents to object to such programs and to excuse their children will provide a necessary check on the zeal of the program developer. Finally, children whose parents are sufficiently interested in their education to register such protests will doubtless not suffer from a lack of personal or moral guidance.

VI. CONCLUSION

As suggested by Justice Douglas in Yoder, the controversies in

122. Dritt v. Snodgrass, 66 Mo. 286 (1877); State ex rel. Clark v. Osborne, 32 Mo. App. 536 (1888).
123. Hobbs v. Germany, 94 Miss. 469, 49 So. 515 (1909).
124. See Part III-C supra.
126. Illich, supra note 16, at 50.
128. 406 U.S. at 241–46 (Douglas, J., dissenting in part). Justice Douglas disagreed with the Court's conclusion that the question of attendance beyond the eighth grade was "within the dispensation of the parents alone" and that the issue of the rights of the Amish children was not before the Court. Id. at 241. Douglas argued that if the
this area sometimes resemble a vigorous tug-of-war between parents and school authorities, with the child standing mutely in between. Such a view, however, cannot be maintained in light of the rapidly growing body of cases which attempt to settle disputes between the suppliers and consumers of state education; controversies involving parental rights comprise only a small (albeit a growing) number. Moreover, the efforts of parents on their children's behalf is almost invariably complementary, rather than contrary, to similar efforts by their children. As a practical matter, children cannot effectively assert their own rights beyond a certain point without the aid of their parents. Litigation to vindicate student rights, for example, is for the most part impossible without such concurrence. 129 Finally, to the extent that there is truth in the schools' assertion that children are "not possessed of that full capacity for individual choice which is the presupposition of [constitutional] guarantees," 130 i.e., that they do not know what is best for them, their parents' traditional role as their champions is entirely appropriate.

As in so many areas of law, the natural tendency of the legislature is to regulate; the natural tendency of school authorities, like all authorities, is to consolidate their power over their charges; and the constitutional obligation of courts is to restore basic values and freedoms lost in this process. At a time when so many are urging parents to assume responsibility for the upbringing and actions of their children, and are decrying the decay of the nuclear family, the increasing emergence of parents willing to resist exclusion from any effective participation, beyond Parent-Teacher Association meetings, in the education of their children must be viewed as a hopeful sign.


Parental Rights

As traditional parental rights continue to be restored, we can look forward to the time when:\n
the directors of state-supported school systems recognize the priority parents have in the educational process, and devote their best efforts to assisting the parents in their task instead of presuming to supersede them in any degree, [and are therefore] able to make their purposes better understood, and thereby win ready cooperation from parents generally.

Only cooperation between parents and school authorities will best assure adoption of educational programs which will "most effectually promote the child's welfare."\n
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132. Trustees of Schools v. People ex rel. Van Allen, 87 Ill. 303, 308 (1877).