

conscription (military or otherwise) morally justifiable; even if citizens have a moral right not to be conscripted, they may be justifiably conscripted. But because conscription violates many people's rights, and violates them extensively (causing prolonged loss of liberty and opportunity and risk of death), justifying emergencies must be very real and very serious indeed. And in order to be justified, the benefits of

conscription must not only outweigh its costs, but conscription must be far enough better than the next best alternative policy in reaping these benefits that its higher probability for success outweighs the infringed rights that it involves. So even if conscription might otherwise be defensible, it would almost certainly be unjustifiable in virtue of the moral superiority of alternative non-coercive policies.

Children and the Constitution

In considering the conflicting claims of children, their parents, and the state, the Supreme Court has ruled that:

- parents have the authority to commit their children to mental institutions without any formal hearing
- parents do not have the authority to limit their children's legal access to contraception devices and abortion services
- some form of due process procedure is owed to students in cases of suspension
- no form of due process procedure is owed to students in cases of corporal punishment
- parents' religious interests override the state's interest in requiring compulsory education through high school
- parents' religious interests are overridden by the state's interest in regulating and limiting child labor.

According to David A. J. Richards, Professor of Law at New York University, this hodgepodge of inconsistent decisions signals the lack of any explicit underlying principle justifying the Court's conclusions. In "The Individual, the Family, and the Constitution," (*NYU Law Review*, April 1980), he takes on this task: "To assess what is valuable and what is mistaken in this incoherent body of case law we must do what the Supreme Court has failed to do. We must philosophically conceive and explicate the conflicting rights of children, parents, and society as a matter of general moral and constitutional principle."

The moral and constitutional principle needed, Richards proposes, is the principle that every person has a right to equal respect and concern in the pursuit of autonomy. That is to say, every person has an equal right to develop his capacity for determining his own goals and life purposes, for deciding independently the content of his own desires, needs, choices, projects, and aspirations. One practical implication of this deeper principle is a principle of equal opportunity in the broad class of external circumstances that bear

upon personal development. These include opportunities for emotional nurture within the family and educational opportunities for training in basic skills and cultivation of self-critical faculties.

This principle provides both the justification and the limitation of what Richards calls "liberal paternalism" in child rearing. Parents and educators are required to exert a certain amount of control over young children, and, to a much lesser degree, adolescents. The aim of this power is to guide the child into mature, independent rationality, to protect the child's interests so that she becomes able to choose and defend her own interests in adulthood. While parents do of course rightly impart their own values and concerns to their children, liberal paternalism requires that "they must do so in ways that acknowledge and foster the child's critical rationality in making decisions on her or his own." To achieve this end, "appropriate nurturing and education should be supplied, notwithstanding the child's resistance, that will lead to rational autonomy."

This, then, is the principle by which the Court's decisions should be evaluated: autonomy and equal opportunity preserved through liberal paternalism. If the Court had explicitly relied on this principle in its deliberations, Richards suggests, it might well have reached some rather different rulings.

Compulsory Education and School Discipline

Since Locke and Rousseau, education has been at the heart of the liberal tradition, education designed to foster the child's emerging intellectual independence and to fit him for defining the meaning of his own existence. From this perspective, Richards finds the Court's educational record a disappointing one: "The Supreme Court's decisions regarding both the requirements of compulsory education and rules governing speech and discipline in educational institutions fail to meet the demands of liberal paternalism. The Court has been overly lax in enforcing compulsory education laws that are critical to the develop-

ment of capacities of autonomy and has failed to take a consistent view of school discipline that coincides with the legitimate purposes of education in effectuating capacities for autonomy."

In *Wisconsin v. Yoder*, the Court ruled that Wisconsin's compulsory education law violated the prerogative of Amish parents to decide on religious grounds whether their children should attend school. The Amish families resisted exposing their children to values and attitudes outside the confines of their religious community, arguing that such exposure was incompatible with full community assimilation. The Court endorsed their argument. Richards does not. "No parent has the right to immunize the child from a diverse and stimulating education which will enable the child to develop rational independence [and] some perspective on their lives and those of their parents." Amish children must be able to accept or reject membership in the community for their own reasons, and not have it thrust upon them for lack of perceived alternatives. The Court's decision, furthermore, is flatly incompatible with *Prince v. Massachusetts*, which upheld the application of child labor laws to the sale of religious literature under parental supervision. If labor regulations override parents' religious interests, so should cultivation of independence of mind.

The Court has considered several cases involving school discipline and arrived at contradictory opinions on the extent of student rights and school authority. In *Tinker v. Des Moines Independent Community School District*, it affirmed the right of students to wear black armbands in protest of the Vietnam War. Richards applauds this ruling: "Allowing adolescents to take and defend controversial moral positions . . . cannot be regarded as anything but the kind of moral education in independence, conscience, and sensitivity to rights that is . . . the aim of education under liberal paternalism." Likewise, he sides with the Court in *Goss v. Lopez* for requiring that students about to be suspended receive an explanation of the reasons for their suspension and an opportunity to present their side of the matter. Even such minimal due process shows respect for the rationality of students and provides an example of "how authority can be exercised reasonably." But in *Ingraham v. Wright*, the Court refused to require the same observance of due process as a condition of inflicting corporal punishment, seemingly a much more severe violation of the dignity of the person. On the principle of respect for autonomy, this is simply perverse, for the argument for due process as an instrument of liberal education is as compelling here as in *Goss v. Lopez*.

Access to Contraception and Abortion

Some of the Court's most controversial rulings have extended constitutional rights of privacy to adolescents, permitting them access to birth control and abortion without the prior consent of their parents. In *Planned Parenthood v. Danforth*, the Court struck down a Missouri statute that required parental

consent for a child to have a legal abortion. In *Bellotti v. Baird*, it declared unconstitutional a Massachusetts statute requiring notification to parents in every case of a non-therapeutic abortion. In *Carey v. Population Services International*, it overturned a New York statute prohibiting the sale of contraceptives to minors under sixteen.

On Richards's analysis, these decisions are in keeping with the autonomy principle. Paternalistic control is already questionably justified for adolescents, whose rational capacities may be considerably developed, and liberal paternalism insists that control may be exerted only in the service of protecting the child's ability to determine her own future values and interests, not to impose any particular morality. Claims Richards: "The right to use contraceptives and to have an abortion are associated with the protection and enhancement of personal autonomy in making strategic life decisions . . . involving the central issues of sex, love, and procreation . . . Adolescents, using contraceptives, can explore their sexuality and its role in relationships without fear of procreation for which they, of all age groups, may not be ready."

Institutionalization of Minors

The Court's decisions on contraception and abortion for minors set new limits to paternal authority in order to protect the interests of children. In striking contrast is *Parham v. J.R.*, in which the Court ruled that minors may be institutionalized by their parents subject only to a corroborative judgment of mental illness by the hospital superintendent. No formal hearing is required. While specific rights to privacy and to the autonomous development of moral values are not at stake in *Parham*, the child's rights to equal respect and concern and to what autonomous rationality he is capable of developing certainly are. Richards argues: "It is unconscionable that a Court committed to equal concern and respect for the individuality of children should publicly legitimate their total institution without evolving some appropriate burden of justification, reflective of the rights of children."

The Court faces a formidable task in adjudicating among the rights of children, parents, and the state. It has been more successful, Richards suggests, in defending the interests of children where these are in direct conflict with the interests of their parents and much less successful where the state has combined with parents to exceed the limits of liberal paternalism. It will have to do better in these other areas if the theory of human rights implicit in the Constitution is to apply to this most vulnerable class of Americans: our children.

We gratefully acknowledge the permission of the *New York University Law Review* to extensively quote from Richards, *The Individual, the Family, and the Constitution: A Jurisprudential Perspective*, 55 N.Y.U.L. Rev. 1 (1980).

Announcing a Summer Workshop

The fourth annual Workshop on Ethics and Public Policy will be held June 21-27, 1981, in Brunswick, Maine, on the campus of Bowdoin College. The workshop is sponsored by the Center for Philosophy and Public Policy, in collaboration with the Institute of Society, Ethics, and the Life Sciences (the Hastings Center).

The purpose of the workshop is to bring together individuals from different backgrounds with a common interest in public policy. The program is built around an examination of specific policy problems from a normative and philosophical point of view, with both academics and policymakers contributing to a better understanding of the concepts and values inherent in these problems.

This year's program consists of three sections: (1) an analysis of three current policy issues: military service, legal and illegal immigration, and risk and consent; (2) a discussion of what applied ethics is and what it is capable of achieving; (3) a look at public policy within the theoretical framework of liberalism and conservatism.

The session on military service focuses on the fair distribution of the burden of military service. Is the All-Volunteer Force viable or should we return to a conscripted military force? Should women be included in any possible future draft? The session on immigration policy includes the question of how many aliens should be allowed to seek temporary work in the United States and how they should be treated while working within our borders. It will also include some questions about the obligations of the members of a community to individuals outside the community: may Haitians be admitted to stay in this country with fewer rights than traditional refugees? The session on risk and consent examines such questions as how different risks can be compared and estimated, how subjection to risk should be compensated, the economic value of human life, and the role of individual consent in decisions made by centralized authorities that affect the personal safety of many individuals.

The program includes speakers from government agencies, research institutes, and faculty members with experience in ethics and public policy. Readings will be distributed in advance, and there will be extended small-group discussions and panel discussions. The sessions are designed to be especially useful to persons from both academic and policymaking institutions.

For further information and program agenda, contact Elizabeth Cahoon at the Center for Philosophy and Public Policy, (301) 454-6604. An advance registration form appears on the facing page.

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The Reverse Discrimination Controversy: A Moral and Legal Analysis, by Robert K. Fullinwider (Totowa, N.J.: Rowman and Littlefield, 1980—\$22.50; paper, 1980—\$9.95).

Income Support: Conceptual and Policy Issues, edited by Peter G. Brown, Conrad Johnson and Paul Vernier (Totowa, N.J.: Rowman and Littlefield, 1981—\$27.50).

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