Parents, Religious Convictions, and Public School Curricula

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More and more states are recognizing same-sex marriage and civil unions, and public attitudes towards members of the lesbian, gay, bisexual and transgender (LGBT) community are becoming more positive. Some teachers and school boards may feel increased pressure to modify their public school curricula to keep abreast of some of these changes and include references to LGBT families during the school day. However, some parents may have religious objections to such changes in the curriculum, and may seek to have their children exempted from certain kinds of instruction. This talk discusses two cases in which parents sought exemptions from curricula that they found religiously offensive, suggesting that these cases illustrate some of the difficulties that would be faced by schools were they precluded from mentioning subjects that might give religious offense.

Mozert v. Hawkins County Board of Education is a seminal case pitting a school system against the right of parents to limit their children’s exposure to ideas not in accord with the parents’ religious beliefs and values. The Sixth Circuit examined whether a public school requirement that all students in grades one through eight use a prescribed set of reading textbooks violated the constitutional rights of objecting parents and students. The parents suggested that the books at issue contained material that undermined the world view that they wished their children to have.

While the parents did not frame the issue in quite this way, at least one of the problems posed was that the school system taught critical reading, which required students to develop higher order cognitive skills that enable students to evaluate the material they read, to contrast the ideas presented, and to understand complex characters that appear in reading material. The parents did not challenge whether critical reading is an essential skill, instead focusing on the particular textbook choices made by the school board. Nonetheless, the basic objection of at least some of the parents was that the exposure of the children to certain concepts and ways of looking at the world would itself undermine the religious outlook that the parents wished their children to have.

Vicki Frost was the mother of children attending the school. She found various passages in assigned schoolbooks that could be interpreted in a manner repugnant to her beliefs. Rather than take a chance that the materials would be understood by her children in a way contrary to faith, she wanted to make sure that their children would not be exposed to these potentially divisive ideas.
The complaining parents were not alleging that their children had been forced to affirm ideas contrary to faith. Rather, what was at issue here was the parents’ objection to the introduction of other people’s feelings, beliefs, and attitudes without an accompanying suggestion that those views conflicting with those of the parents were incorrect.

The possibility of divergence from Mrs. Frost’s own sincerely held views was great, because her own world view provided a basis from which all situations and beliefs should be judged, which presumably meant that any situation that might be discussed in the classroom would potentially come in conflict with a view that she sincerely held. Indeed, Mrs. Frost suggested that there were certain topics, e.g., feminism, that simply could not be broached without violating her beliefs.

One of the difficulties in understanding what was being contested in Mozert was that there was some confusion about what the parents believed their children were being taught. The plaintiffs seemed to believe that materials clearly presented as poetry, fiction and even make-believe were presented as facts that the students were required to believe, although there was absolutely nothing in the record to support that these materials were in fact presented that way. One cannot tell, then, whether the parents would have objected if they had understood that the children were not being required to affirm the truth of some of the make-believe materials. That said, however, when a parent objects to in-depth discussions of alternative belief systems and world views, it does not seem plausible to believe that her only worry is that her children might be forced to make affirmations contrary to faith. After all, the teacher could be careful to expose the children to several incompatible visions of the world, such that it would be impossible for the children to affirm all of the material presented. One infers that Mrs. Frost, for example, would not have been satisfied had her children been exposed to such a smorgasbord of ideas; on the contrary, it was the very variety of approaches that made her worry.

One understanding of Mrs. Frost’s concern was that exposing her children to different world views and to the importance of critical thinking would themselves undermine the approach that she was teaching her children to use. She might say, for example, that in future when her children were confronted with something novel or contrary to what they had been taught, she would not want them to try to analyze the issue from a variety of perspectives or even to use critical thinking to reach some resolution. Instead, she would want them to understand that all answers come from the correct understanding of the Bible. It is important to emphasize that the issue in Mozert was not whether the children could be home-schooled or receive instruction in another setting where the parents’ views were
more likely to be supported but, instead, whether the students could attend the school but nonetheless be exempted from any discussions that might undermine the plaintiffs’ religious beliefs and values.

The Sixth Circuit suggested that governmental actions that merely offend or cast doubt on religious beliefs do not on that account violate free exercise, drawing a distinction between those governmental actions that actually interfere with the exercise of religion, and those that merely result in exposure to attitudes and outlooks at odds with perspectives prompted by religion. If exposure to different ideas were enough to constitute interference with religious exercise, then many discussions of currents events would almost necessarily interfere with someone’s religious exercise.

Although there was testimony that exposure to some of the materials might lead the students to come to conclusions that were contrary to their parents' religious beliefs, the Sixth Circuit was not persuaded that this mere possibility was sufficient to establish an unconstitutional burden. Yet, one infers that the court would not have been convinced that an unconstitutional burden had been imposed even had a stronger case been made that the curriculum was attitude-changing.

Suppose, for example, that evidence were offered that students who participated in discussions at school began to reject some of the views of their parents. As long as the students were deciding for themselves what to believe rather than were being forced against their wills to accept some proposition, the state would not have violated constitutional guarantees simply by exposing the students to views that those students ultimately found persuasive. Yet, if the important factor is whether the student is deciding for herself what to believe, then the real issue is not the relative degree of likelihood that the student will reach unwelcome conclusions, which is what one might have inferred from the court’s highlighting that the student “could” or “might” make certain judgments. Rather, the focus is on whether the state is exposing the students to a variety of ideas and then letting the students reach their own conclusions rather than imposing certain beliefs on the students or coercing the students into adopting or affirming certain views.

A little over twenty years after Mozert was decided, the First Circuit was asked to address the kinds of accommodations that a school must make for parents with religious objections to some of the curriculum’s content. In Parker v. Hurley, parents sued the Lexington, Massachusetts school district because they wanted to be given the opportunity to exempt their children from religiously repugnant books. One set of parents objected to a book given to first-graders that included a discussion of diverse families including families where both parents were of the same
sex. The other set of parents objected to a second grade teacher’s reading to her class a book that depicted and celebrated a same-sex marriage. The parents did not challenge the use of these books as part of a nondiscrimination curriculum in the public schools. Instead, they wanted prior notice about the materials that would be used in class and an exemption from any instruction that they believed might be contrary to faith.

As an initial matter, it is helpful to examine some of the objectionable materials. For example, Jacob, a kindergartener, brought home a “Diversity Book Bag,” that included depictions of different families including single-parent families, an extended family, interracial families, animal families, a family without children, and a family with two dads and a family with two moms.

The Diversity Book Bag was brought home in January, 2005, which was over a year after the Supreme Judicial Court of Massachusetts had held that the state’s same-sex marriage ban violated state constitutional guarantees. Yet, as the First Circuit noted, the book did not mention anything about same-sex marriage, so it was not as if the state’s recognition of same-sex unions would somehow have been a necessary condition for a discussion of families involving parents of the same sex. Indeed, Massachusetts had recognized that two adults of the same sex could each be the legal parent of the same child a decade before Goodridge was decided. Thus, the information that was presented in this Book Bag might have been presented even before Massachusetts had begun formal recognition of same-sex marriages.

Elementary education serves a variety of goals, including promoting good citizenship and learning how to get along better with others. But getting along well with others is facilitated when one learns that other children live in families unlike one’s own, whether those families involve one parent, two parents of different races or religions, or two parents of the same sex. Further, it should be noted that even a state that does not permit second-parent adoptions within the jurisdiction would still have to recognize such a final adoption that had been validly performed in a sister state. But this means that one child might have two legal parents of the same sex in any state of the union, e.g., because the parents established their legal relationship with their child in one state but then moved to another. For example, Oklahoma does not allow two individuals of the same sex to adopt a child. However, two members of a same-sex couple who adopt a child in California and then move to Oklahoma would have their legal relationships with the child recognized, notwithstanding that such an adoption could not have been performed within the state.

The Diversity Book Bag was not offering a legal definition of family, as is evidenced by its referring to animal families. But in that event, inclusion of these families in a book does not imply that the state affords such families
legal recognition. Nor does it imply that the state is offering an endorsement of these families. Rather, inclusion merely involves an acknowledgment that such families exist. If one of the goals of the schools is to teach children that there are many types of family settings, then children should be presented with a wide assortment of households, some but not others containing children and some but not others that are afforded formal legal recognition.

Many commentators bemoan the breakdown of the family, worrying that the great number of single parents bodes poorly for society. Yet, presumably, inclusion of single-parent families within the families in the Diversity Book Bag should not be criticized as an endorsement of single-parent households. Rather, it should be understood as a representation of one kind of family. Further, refusing to recognize that alternative families exist would be to ignore an important demographic fact, even if these alternative living arrangements are not in accord with a particular religious ideal.

Consider a particular tradition does not approve of divorce. It would be a disservice to all concerned to refuse to acknowledge that many households contain children living with a divorced parent, notwithstanding that some religious traditions disapprove of divorce. Or, suppose that a particular religion disapproves of religious intermarriage. Would this mean that an elementary school teacher should consider carefully whether to mention the marriage of Chelsea Clinton and Marc Mezvinsky if that wedding were somehow relevant on a particular day?

Presumably, one of the reasons that these different types of families were included in the Diversity Book Bag was to reassure children who were living in nontraditional families. Consider a different book in the first grade curriculum that raised objections, Molly’s Family, which was about a girl who was teased because she had two mothers. Eventually, she learns to feel better about herself and her family once she appreciates that there are many different types of families. But developing an appreciation that there are many types of families and that one should not feel ashamed for living in unusual family might be helpful for any number of children. For example, children living in a very religiously conservative family might come to appreciate that they are not somehow wrong or bad for being raised in a setting that does not mirror the setting of many of their classmates.

Other plaintiffs objected to the reading of King and King, in which one prince falls in love with another. The Wirthlins did not want that book read to their second grader and wanted advance notice of what books would be covered, so that they could have their child exempted when the material would contravene their religious beliefs.
It might be helpful to flesh out what it would mean for the state to be asserting something that contravenes one’s religious beliefs. Presumably, it does not violate the Wirthlins’ religious beliefs for the state to say that some jurisdictions or religious traditions recognize same-sex marriage, even if the Wirthlins’ religious tradition does not.

Suppose that a particular religion does not approve of interracial marriage or, perhaps, does not approve of religious intermarriage. Presumably, mentioning that such couples exist would not contravene those religious beliefs, even if the religion at issue would not recognize the marriages. Or, suppose that a particular religion believes in the importance of following the Biblical command to be fruitful and multiply. Presumably, it does not contravene religious beliefs to mention that there are childless couples or that some individuals voluntarily choose not to have children, even if the religion advocates having children.

A separate question involves whether legitimate pedagogical interests are served by mentioning diverse families more generally or families involving same-sex parents in particular. The Parker court noted that the state has an interest in promoting tolerance and preparing children for citizenship. Thus, the inclusion was designed to further legitimate state objectives, and there was no evidence that the discussion of this vast array of types of families was included as a subtle or not-so-subtle attempt to undermine the teachings of a particular religious group.

Merely because the state believes that valid interests are served by informing children about the different kinds of families living in the state or the country does not mean that parents will agree with that assessment. As the First Circuit noted, parents might choose not to send their children to public schools, instead opting to send their children to private schools or to do home-schooling. However, those parents deciding to send their children to the public schools do not have a constitutional right to direct schools in how to educate their own or others’ children. Nor do the parents have a constitutional right to decide that their children will attend public school part-time, e.g., to receive instruction in only certain specified subjects, if such an option is not afforded as a general matter by the school.

Were parents to have a right to determine the content of the curriculum, many public schools would simply be unable to operate. Parents might disagree both about curricular content and about the amount of class time that should be spend on particular topics. In many cases, it would be impossible to satisfy the competing desires of interested parents. Further, even if it were possible to meet the different parental demands, designing the curriculum to meet the various desires articulated by the parents might yield a curriculum that could not be defended pedagogically.
To assess the merits of the plaintiffs’ claim, the First Circuit first sought to determine the kind of harm that the plaintiffs had suffered. As had been true in Mozert, there was no allegation of coercion in Parker. Nor was there any allegation, for example, that listening to the teacher read King and King somehow violated Joseph Wirthlin’s religious duties. Further, it was not as if Joseph’s having heard something in school would somehow prevent his parents from instructing him in a way that was more in keeping with their beliefs. While the First Circuit believed that the book was intended to promote tolerance, the court rejected that its use involved an attempt to indoctrinate.

So, too, merely because two books were made available to Jacob Parker to which his parents had religious objections did not suffice to prove a free exercise violation. Indeed, Jacob was neither required to read the books nor have them read to him. Further, when one considers that the books did not endorse gay marriage or homosexuality, but merely described how other children might come from families that look different from one's own, it was difficult to see how this would involve a free exercise violation. Thus, there was some question whether the plaintiffs had suffered a cognizable harm.

When the state describes the family settings that exist, it is acknowledging but not necessarily legitimizing those families. There is something rather unsettling in implicitly if not explicitly suggesting that various types of families should not even be mentioned unless they have the requisite religious approval. While individuals are free to believe according to their own lights, those beliefs should not determine who is even acknowledged to exist.

There is also something unsettling in suggesting, for example, that the contents of the curriculum should be determined by the taxpayers in the community or the parents of children in the schools, as if the subject matters should be chosen, say, by a vote during a Parent Teachers Association meeting. If students are going to be able to thrive in this world, they are going to have to be able to work with people both like and unlike themselves. Pretending that whole segments of society do not exist will help no one, even if those segments of society are not popular locally.

Certainly, many of the parents who were challenging what was being taught in their children’s school were not challenging the subject per se by saying that it simply should not be included in the curriculum, but were instead suggesting that they did not want their children exposed to the subjects. Yet, such a request is more difficult to grant than might first appear. Suppose, for example, that a child were excused from reading about the different types of families that exist. Even so, during a different part of the day, one student might refer to readings or a discussion from an earlier part of the day or, perhaps, from the previous week. It might be quite difficult to prevent the religious
child from being exposed to these “objectionable” ideas. Further, parents might object to a whole host of subjects that might yield understandings contrary to faith, which would both make it very difficult to anticipate when the topics would be raised and, even if possible to anticipate, might mean that the children would be exempted from a significant percentage of education activities.

While it might seem that exemptions would only affect the students who would be excused from certain activities, it seems plausible to think that the effect would be more widespread. Consider a teacher who wants to discuss or refer to something in the afternoon that had been covered earlier in the day. Suppose that this teaching moment involved a sensitive subject matter for at least some of the students in the room. The teacher would have to decide whether to excuse the students for a few moments while making the reference or engaging in a limited discussion. It would be unsurprising if the teacher would decide simply not to discuss the issue rather than spend extra class time excusing particular students and then arranging to have them return to the class.

At least two difficulties are suggested by the scenario in which the teacher forgoes saying or doing something that she believes would be pedagogically useful, because she might otherwise have to take class time to excuse particular students. First, it might mean that the curriculum could in effect be controlled by those who want their children excused, which might mean that particular subject areas would be much less likely to be addressed in class. Second, it should not be thought that very few discrete areas would be subject to this reduced coverage, as a brief consideration of some of these cases reveals.

Some parents have articulated religious objections to classic children’s authors such as A.A. Milne, Dr. Seuss, and Maurice Sendak. But this might mean that Charlotte’s Web or Winnie the Pooh would be materials that might be avoided either on the reading list or, perhaps, in later discussions. Would students be able to get an education even if these materials were not included? Yes. Would their educations be diminished if these and other works were excluded because some parents found the content religiously objectionable? Yes.

Some commentators imply that books like Diversity Book Bag, Molly’s Family, and King and King are being foisted on the schools by activists seeking to change the nature and meaning of marriage. It is especially ironic that such a claim would be made in the context of an analysis of Parker. First, the first two of those books were not even discussing marriage, so it is difficult to see how those books could fairly be characterized as seeking to foist this allegedly foreign concept on unsuspecting children. Even King v. King was read in a state that already recognized
same-sex marriage, so it could hardly be fairly described as attempting to subvert the state’s definition or understanding of marriage.

Suppose, however, that we were talking about a state in which same-sex marriage was not recognized. Even so, it must be remembered that this was a fairy tale. Many things happen in fairy tales that not only will not occur locally but are physically impossible. Yet, same-sex marriage is recognized in various states and countries, even if it is not (yet) recognized in the particular state where a book is being read. It would be at best an unusual educational principle that precluded discussion of anything that was not legally recognized within a particular state.

Regrettably, some authors seek to justify excluding certain books or subjects, because those books present a picture of the world that the authors reject, empirical evidence undermining the author’s view notwithstanding. Consider the claim that the co-parenting message of marriage is weakened when marriage is redefined to include relations among same-sex couples. Yet, it is difficult to see how the co-parenting message is undermined by couples who not only do not lack the ability to co-parent, but are in fact co-parenting. Indeed, various studies suggest that same-sex couples are parenting quite well.

Several of the plaintiffs in Goodridge were same-sex couples living with their minor children. To say that they could not co-parent is simply wrong. It seems safe to assume that some parents do not approve of the message sent in the Diversity Book Bag, not because of the message’s falsity but because of its truth. LGBT families exist and are thriving, even if certain religious groups disapprove of them.

Certainly, commentators might note that members of a same-sex married couple cannot each be biologically related to the same child. But we have long ago rejected that marriage should only be for individuals who can have a child through their union, and numerous couples both of the same sex and of different sexes find themselves parenting children to whom they have no biological connection. If this is somehow destructive of the basic understanding of marriage, then marriage is in serious trouble.

It is at best ironic that commentators seem to believe same-sex married couples who are raising their children do more to sever the link between marriage and parenting than do married couples who choose not to have children. The claim here of course is not that voluntarily childless couples should not be able to marry but merely that some of the arguments offered against same-sex couples seem much more persuasive when applied to other groups. But this suggests that even more groups are at risk of being marginalized by continuing efforts to restrict school discussions to those promoting a particular viewpoint.
How should a school’s curriculum be affected by a state’s deciding to recognize same-sex marriage? As a general matter, it should not make much difference. It is too late in the day to treat same-sex marriage as if it was a contradiction in terms. Whether or not it is recognized in one state should not affect whether the topic can be mentioned. Indeed, unless there can be agreement that mentioning a topic, without more, cannot be construed as endorsing a particular view, children will be given a woefully inadequate education, because so many subjects would be objectionable as endorsements.

As Parker and Mozert illustrate, parents may have religious objections to subjects involving legally permissible or even recognized relationships or activities. Figuring out how to acknowledge the existence of LGBT families without burdening free exercise may involve difficult line-drawing in some cases. However, for the most part, whether a particular state recognizes same-sex relationships should not determine whether the existence of such relationships should be acknowledged, and the claim that it should involves imposing a litmus test that would normally never be imposed. Children should be taught in age-appropriate ways about the world in which they live, and their exposure to the world should not be limited to those subjects that have been given a religious stamp of approval.