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TAKING PRECAUTIONS WHEN SHAPING A CHILD'S VALUES

Scott Altman*

Parents' discretion to shape their children's values is limited both by society's interests in the people those children will become and by their children's own interests. This article examines the limits that children's interests impose on parental rights and the propriety of laws to protect children from parental efforts to shape their children's values.¹ Consider the following example based on a current dispute:

Talmud to Tech:

Two ultra-Orthodox parents in Israel maintain a largely separatist existence, interacting as little as possible with anyone except other ultra-Orthodox Jews. They send their son to a school that does not teach secular subjects beyond an elementary-school level. The parents reject secular education because they see it as a waste of time. Ultra-Orthodox men in Israel often do not work, but instead spend their time studying religious texts (while they are supported financially by both their wives and the state). The parents also regard secular education as part of a broader threat posed by contact with outside influences—influences that might tempt people away from their separatist religious community. When their son does not remain ultra-Orthodox, his poor education makes it difficult to enter the workforce or to participate in public life.²

* Virginia S. and Fred H. Bice Professor of Law, University of Southern California, Gould School of Law. This paper benefitted greatly from suggestions by Elizabeth Brake, Carol Bruch, Kurt Eggert, Sam Erman, Ron Gare, Ariela Gross, Greg Keating, Dan Klerman, Colin Macleod, Andrei Marmor, Bob Rasmussen, Stephen Rich, Ram Rivlin, Daria Roithmayr, Elyn Saks, Dan Simon, Nomi Stolzenberg, Gary Watson, and participants at USC Law School faculty workshop.

¹ I have argued elsewhere that parents have a right to shape their children's values, subject of course to opposing rights of children and of society. See Scott Altman, *Parental Control Rights*, in PHILOSOPHICAL FOUNDATIONS OF CHILDREN'S AND FAMILY LAW 209 (Lucinda Ferguson & Elizabeth Brake eds., 2018). The claim that parents have even a prima facie right to direct their children's upbringing is, of course, controversial. See, e.g., Colin Macleod, *Conceptions of Parental Autonomy*, 25 POL. & SOC. 117, 137 (1997).

² This example is based on a class action suit in Israel against the government for allowing such schools to exist. The chair of the nonprofit bringing this suit (Out for Change) estimates that about half of the boys in ultra-Orthodox Israeli families go to schools that teach math to a level typical for third graders in secular schools. These schools teach no science, no English, and conduct their classes only in Yiddish. The other half of ultra-Orthodox boys do not fare much better, however, learning secular subjects to the level equivalent of sixth graders in secular schools. For details on the lawsuit in Israel, see Meirav Arlosoroff, *In Case of Second-Rate Ultra-Orthodox Education, the State Blames the Victims*, HAARETZ (May 26, 2016), <http://www.haaretz.com/opinion/premium-1.721448>. Similar claims have been made about education in New York. See Jennifer Miller, *Yiddish Isn't Enough: A Yeshiva Graduate Fights for Secular Studies in Hasidic Education*, N.Y. TIMES, Nov. 22, 2014, at MB1. This concern has also been raised about fundamentalist Christians and Jehovah's Witnesses. See, e.g., Darren E. Sherkat & Alfred Darnell, *The Effect of Parents' Fundamentalism on Children's Educational Attainment: Examining Differences by Gender and Children's Fundamentalism*, 38 J. SCI. STUD. RELIGION 23, 24-33 (1999); see generally *Religious Landscape Study: Educational Distribution*, PEW RESEARCH CTR., <http://www.pewforum.org/religious-landscape->

The stark facts of “Talmud to Tech” might seem exotic. Although they resemble an extreme version of the Amish education practices litigated in *Yoder v. Wisconsin*,³ they appear to have little connection to the lives of most parents. But in some ways their structure mirrors other parental efforts to shape children—efforts that can be religious or secular, extreme or commonplace. Examples include:

- Parents who aggressively pressure their child to excel in academics and extracurricular activities to gain admission at an elite college, even though such pressure can lead students to cheat, to abuse Adderall, or to suffer from long-term mental anguish.
- Parents who encourage their child to specialize early at a single task, such as piano, chess, or gymnastics. They allow the child to neglect academic study, even though the child might not have a career in this specialized field and, if so, would be unprepared for any other career as a result of his poor education.
- Hearing parents of a deaf child who consent to cochlear implants. Though the parents learn to sign, they do not send their child to a deaf school, opting instead for a public school. They hope that this will provide their child with useful skills and opportunities in the hearing world but recognize that it might impair her ability to be fully at home in the deaf community.
- Feminist parents whose teenage daughter wants to be a fashion model. They think this career is degrading. The child wants plastic surgery and modelling lessons. Without these, she will be far less likely to have a career as a model. But plastic surgery and modeling lessons may increase the chance that she rejects her parents’ feminist values.

The decisions made by these parents—decisions about what values to teach and what instructional methods to use—can be understood from many perspectives. In this article, I offer an unusual analogy: these decisions all resemble decisions about risk and safety. Such decisions can be made by individuals deciding for themselves or their families whether to engage in risky behavior, or by manufacturers selecting safety precautions for their products.⁴

How do parental decisions about value inculcation resemble risk impositions? Parents planning for their children’s future must make decisions

study/educational-distribution/ (last visited Oct. 3, 2018) (according to a Pew Study, only 12% of Jehovah’s Witnesses have completed college. This is the lowest among the religious groups studied).

³ 406 U.S. 205 (1972).

⁴ By invoking the image of manufacturing, I do not mean to suggest that parents should be regulated in the same way as manufacturers. I mean only to draw attention to the similarity of risk assessment required. Insofar as the manufacturing analogy is useful, the children are not the goods being produced, but the consumers of goods that parents provide.

before knowing what their children will eventually need or want. Some decisions are easy: parents should provide goods that will be useful to their child in any possible future; they should also provide goods that will often be useful but will never be harmful.⁵ But parents cannot limit their decisions to this do-no-harm approach. Rational people planning for uncertain futures regularly invest in goods that might be helpful or might be harmful. For example, some homeowners store extra gasoline for a generator in case of a power outage even though that gasoline would prove dangerous in case of a fire. Similarly, manufacturers often make safety trade-offs that harm some people but help others. For example, airbags in cars save many lives. But they also injure and kill some people, particularly short or small drivers and passengers. The devices could be made safer for those of small stature. But doing so would make them less effective for most everybody else.

The parents in my examples had to make similar trade-offs. When parents allow their child to neglect schoolwork to focus on a single talent, they hope to make her future career (or other life prospects) more successful, even though doing so puts at risk her ability to pursue alternatives. The “Talmud to Tech” parents believed that forgoing secular education would free up time that their child could use for religious study, even though doing so put him at risk of failure should he want a secular life or a less-separatist religious life. Indeed, in all of the examples above, any choice the parents make will deprive their child of opportunities that might later be important. All of these resemble the decision to keep gasoline on hand in case of power loss or to install airbags for average-sized drivers.

Evaluating parents’ choices about value inculcation resembles risk assessment. Wise choices reflect sensible trade-offs between uncertain harms and benefits. In the case of value inculcation, these decisions might depend upon whether a child who grows up to need a good (such as education) but does not have it is worse off than a child who grows up to have it but does not need it, as well as on the likelihood of each outcome.

On this way of thinking, the wisdom of the decision in “Talmud to Tech” depended on how likely their child was to leave their separatist group, and whether the child would be worse off if he grew up to depart the group and lacked secular education than he would be if he grew up to be religious and separatist and lacked a childhood devoted primarily to religious texts. A reasonable decision would

⁵ Robert Noggle, *Special Agents: Children’s Autonomy and Parental Authority*, in *THE MORAL AND POLITICAL STATUS OF CHILDREN* 97, 107-08 (David Archard & Colin Macleod eds., 2002). Comparing this uncertainty to a Rawlsian veil of ignorance, Robert Noggle says that parents should prioritize primary goods—those aspects of childhood that will prove useful to whatever adult the child ultimately becomes. *Id.* Noggle also proposes a list of secondary goods, which he defines as a good that does not “harm anyone to whom it is provided . . . though it will be useful to a variety of people with a wide variety of conceptions of the good, life-plans, and world-views.” *Id.* A very different invocation of the veil of ignorance can be found in MATTHEW CLAYTON, *JUSTICE AND LEGITIMACY* 106 (2006).

minimize expected harms (or some related calculation).⁶ Social scientists might describe this as an expected-value calculation.⁷

In a prior article, I addressed two objections to the claim that religious parents have any duty to prepare their children for life outside of their separatist sect.⁸ First, such alleged duties seem to rely on the value of an open future—which itself depends on the importance of personal autonomy.⁹ Since ultra-Orthodox parents reject the importance of autonomy, a liberal state cannot legitimately impose on them a duty based on this controversial value.¹⁰ Second, religious parents might argue that secular education is obviously harmful, insisting on their own religious measure of harm. As they see it, keeping boys from having a secular education reduces the chance that they will leave the community, both because they will have fewer job options and because they are less likely to be tempted by secular ideas. From their religious perspective, this benefits the child. If the child remains faithful to religion and its separatist commitments, he will go to heaven or will live a life that is close to God, which is infinitely valuable. Otherwise he will burn in hell or live apart from God, which is infinitely harmful. Therefore, any steps that increase the chance of remaining in the religion is justified because it has infinite positive expected value.

I offered responses to both claims (which I will presuppose in this article). First, I accept the position that the state may not impose duties based on controversial values such as autonomy.¹¹ But autonomy is not the only value advanced by education. Parents' value-shaping actions can make it either easier or more difficult for children to live authentic and identified lives. By authenticity I mean participating in activities that reflect one's values. Children sometimes grow up unable to pursue projects that match their values because their parents have made those projects difficult to pursue. Denying education to children risks this impairment for adults who want a life outside a separatist sect. By

⁶ For purposes of simplicity, this paper refers to expected-harm minimization as the appropriate goal. But I do not mean to take a position on debates between minimizing harm and maximizing the position of the worst-off person or other variations on expected value.

⁷ By invoking risk assessment, I do not mean to be advocating cost-benefit analysis as the primary way we must assess risk. There are many ways of assessing the reasonableness of risk imposition, only some of which resemble traditional cost-benefit calculations. My argument does not depend on adjudicating among them. See, e.g., Greg Keating, *Is Cost-Benefit Analysis the Only Game in Town?*, 91 S. CAL. L. REV. 195 (2018) (assuming only that some form of expected-welfare assessment is needed).

⁸ Scott Altman, *Reinterpreting the Right to an Open Future: From Autonomy to Authenticity*, 37 LAW & PHIL. 415 (2018).

⁹ *Id.*

¹⁰ Opposition to autonomy derives from the view that Jews should be subservient to divine command. See Samuel Heilman, *SLIDING TO THE RIGHT* 144 (2006); Nurit Stadler, *Is Profane Work and Obstacle to Salvation? The Case of Ultra Orthodox (Haredi) Jews in Contemporary Israel*, 63 SOC. REL. 455, 466 (2002).

¹¹ Stadler, *supra* note 10, at 418 (political-liberalism precludes the state from presuming that a person's life is better just because it is self-directed or because the person rationally reflects on her values).

identification, I mean having values that we regard as our own.¹² If the values and desires we have strike us as foreign (i.e., as not our own), we are less likely to find satisfaction in the connection between our projects and our values, since we will be alienated from both.¹³ Religious parents cannot reasonably object to the value of authenticity and identification in the way that they object to autonomy.

Second, I argued that parents must consider a child's future welfare based on that child's adult perspective, rather than based on their own values. My argument relied on the idea that in circumstances of pluralism, even people who believe that their religious views are the only true path to salvation should be seeking reasonable terms of cooperation. This includes taking seriously the views of the secular adult their child might become. The arguments outlined above (about loss of religious faith being infinitely harmful) do not take this view seriously. The secular (or non-separatist) adult does not regard his life as infinitely harmful.

This paper begins where the prior one ended. That paper aimed to establish two points: (1) that parents who aim to inculcate values ought to consider the possibility that their efforts could fail in ways that harm their children, and (2) that they should interpret these harms from the perspective those children ultimately adopt. These conclusions, however, leave many important questions unaddressed, which this article aims to address. These as-yet unanswered questions include: (1) whether in particular cases (such as "Talmud to Tech") the expected harm to children from specific value-inculcation efforts exceeds the expected benefits; (2) whether parental rights to direct their children's upbringing are sometimes more important than children's future interests in authenticity and identification; (3) how parents can protect the future interests of their children while simultaneously trying to affect what kind of adult the child becomes; and (4) at what point do a child's interests take precedence and warrant state regulation of parental value inculcation.

¹² These terms are notoriously disputed. See, e.g., Harry Frankfurt, *Identification and Wholeheartedness*, in *THE IMPORTANCE OF WHAT WE CARE ABOUT* 159 (1988); Gary Watson, *Free Agency*, 73 J. PHIL. 205, 219 (1975); Michael Bratman, *A Desire of One's Own*, 100 J. PHIL. 221, 225 (2003). Frankfurt seems to equate alienation with a failure of identification, but others have suggested that alienation is an unpleasant experience, perhaps due to a conflict between self-image and actions or feelings. Non-identification is not necessarily accompanied by this feeling. See Timothy Schroeder & Nony Arpaly, *Alienation and Externality*, 29 CANADIAN J. PHIL. 371, 381 (1999); Harry Brighouse & Adam Swift, *Parents' Rights and the Value of the Family*, 117 ETHICS 80 (2006); cf. Felicitas Kraemer, *Me, Myself and My Brain Implant: Deep Brain Stimulation Raises Questions of Personal Authenticity and Alienation*, 6 NEUROETHICS 483 (2013).

¹³ Alienation is a possible outcome for an ultra-Orthodox Jew without secular education. This might be the result if he stays in his community with no commitment to the life he now leads or to any particular other life. Perhaps he identifies with secular impulses but cannot rid himself of the intense feeling that departure would be disloyal. Or perhaps he finds his impulse to leave the sect to be foreign. In either case, he is alienated.

I. WHAT PRECAUTIONS ARE REASONABLE?

Like anyone who puts others at risk, parents who aim to shape their children's values should take reasonable precautions against harms. I have identified two harms associated with shaping a child's values: harms to authenticity and harms to identification.¹⁴ These harms arise when parents fail in their efforts to inculcate values. If the ultra-Orthodox child remains permanently committed to his separatist community (i.e., not tempted by life outside and fully identified with his religious values), he will not suffer from inauthenticity or alienation.¹⁵

Parents cannot take precautions against unforeseeable harms and sometimes should not take precautions against unlikely harms. What outcomes are foreseeable and sufficiently likely to require attention? Although parents cannot anticipate every goal, preference, or value their children might come to embrace, some outcomes are more likely than others. In a diverse society, it is not at all unlikely that children will be influenced by ideas that the parents reject. Parents must anticipate this even if they take steps to shelter their children, since no parent can completely or permanently insulate a child from all outside influence. This is especially so for parents who are part of minority or highly demanding religious or political groups—groups that experience significant departures from one generation to the next. The same principle applies to both secular parents and parents in majority religious, as well as to parents with strong political views, whose children also defect from their parents' viewpoints in significant numbers.¹⁶ Of course, as the child grows older and the parents gain

¹⁴ These are not, of course, the only duties parents owe or the only ways parents can harm their children. For discussions of other interests that are distinctive to children, such as an interest in play, see Colin Macleod, *Primary Goods, Capabilities, and Children*, in MEASURING JUSTICE 174 (Harry Brighouse & Ingrid Robeyns eds., 2005); Colin Macleod, *Agency, Authority, and the Vulnerability of Children*, in THE NATURE OF CHILDREN'S WELLBEING: THEORY AND PRACTICE 53 (Alexander Bagattini & Colin Macleod eds., 2015); Anca Gheaus, *The 'Intrinsic Goods of Childhood' and the Just Society*, in THE NATURE OF CHILDREN'S WELLBEING: THEORY AND PRACTICE 35 (Alexander Bagattini & Colin Macleod eds., 2014).

¹⁵ Does this mean that parents who guess right about their children's future values (or who engineer those values effectively) have fulfilled their duties, and that parents who guess wrong (or engineer poorly) have wronged their children? These conclusions are too quick. As I will discuss below, parents who guess right (or engineer well) may not have harmed their child, but nonetheless have wronged the child by exposing her to an unreasonable risk; "no-harm, no-foul" is not a principle of morality. Similarly, parents who guess wrong (or engineer ineffectively)—and whose children thus face difficult circumstances—may be blameless because they took reasonable precautions. Good parenting requires risk management, not risk elimination.

¹⁶ See PEW RESEARCH CTR., AMERICA'S CHANGING RELIGIOUS LANDSCAPE, at 39 (2015), <http://assets.pewresearch.org/wp-content/uploads/sites/11/2015/05/RLS-08-26-full-report.pdf>.

According to this Pew Research Center report, the percentage of people who no longer identify with their childhood religion ranges from 20-25% for Hindus, Muslims, and Jews; 35-40% for Evangelical Protestants, Mormons, and Catholics; and 55-65% for Mainline Protestants, Buddhists, and Jehovah's Witnesses. *Id.* Relatively little data is available on retention rates among Amish communities, but some sources claim that it is as high as 85%. See *Population Trends 2008-2013*,

insight into the child's interests and character, the futures that are foreseeable will shift, and perhaps narrow. But even so, much will remain uncertain.¹⁷

Based on this principle of foreseeability, ultra-Orthodox parents must anticipate that their children might become secular (or, at a minimum, simply less observant or less separatist). The hearing parents of a deaf child must anticipate that their child might grow up to find assimilation unappealing and to yearn for a connection to the deaf community (or the opposite). Academically aggressive parents and parents who allow their child to specialize must anticipate that their child may have a future very different from the one the parents foresee—outside an educated elite or unrelated to the child's early talent. Feminist parents must anticipate that their child might someday reject their values and occupy a job they find demeaning to women. None of this is to say that these parents chose inappropriately; rather, it is only to say that they needed to anticipate predictable possibilities.

What precautions must parents take to reduce the risk of harms to authenticity and identification? Answering this question turns on addressing three separate questions, which I will address in turn. First, how should parents make trade-offs among different foreseeable futures? Second, do parents' rights override their children's interests in authenticity and identification?¹⁸ And third, how do parental duties change if the precautions taken might alter which future is most likely?¹⁹

The first question addressed is: how should a child's parents trade off options in different possible futures? Because we are uncertain about the future, we must sometimes choose options that have the potential both to benefit and to harm us. Consider three scenarios: (1) the gifted child whose education suffered because she specialized; (2) the pressured child whose parents insisted on only excellent outcomes; and (3) the previously described "Talmud to Tech." To help with analysis, let me specify a few more details and offer names for each these scenarios.

Steinway to STEM:

The parents of a talented young pianist persuade (or allow) her to stop studying math and science after two years of high school so she can

AMISH STUDIES, <http://groups.etsu.edu/amishstudies/statistics/population-trends-2008-2013/> (last visited Oct. 3, 2018). Retention rates among ultra-Orthodox Jews in Israel are also extremely high; one study put the rate at 94%. See *Israel's Religiously Divided Society*, PEW RESEARCH CTR. (Mar. 8, 2016), <http://www.pewforum.org/2016/03/08/religious-affiliation-and-conversion/>. Departures from parental positions are even more dramatic for viewpoints other than those on religion. Although rates of departure vary over time, by level of family commitment to the issue, and by issue, rates of political similarity between parents and children rarely reach 70% and are often far lower. See M. Kent Jennings, Laura Stoker & Jake Bowers, *Politics Across Generations: Family Transmission Reexamined*, 71 J. POLITICS 782, 789-90 (2009).

¹⁷ See Noggle, *supra* note 5, at 107.

¹⁸ Part II, *infra*.

¹⁹ Part III, *infra*.

concentrate on music. The pianist then goes to college and discovers that she wants a STEM career and cares little for her former musical passion. Clearly, she is at a disadvantage in pursuing her new plan. But the opposite choice might have been equally bad or worse had her goal not changed.

Scared to Scarred:

Parents demand that their daughter get all A's and that she excel at extracurricular activities designed to gain entrance into a top college. They tell her that failure is due to weakness and that weakness is unforgivable. They constantly threaten her with punishments. To achieve all that they demand, she works tirelessly. Unable to keep up, she occasionally cheats on tests and uses Adderall, to which she eventually becomes addicted. This leads to other drugs, a small crime spree to pay for them, and a criminal conviction. It also leaves her emotionally scarred. As an adult, she despises her parents' attitudes toward failure and weakness. But she is unable to forgive her own failures or to feel empathy toward others who do not succeed.

What decision was reasonable in "Steinway to STEM"? Setting aside the possibility that the teenager's preferences should alter this decision, the choice depends on the likelihood that the child would ultimately pursue her passion for piano or would instead (or in addition) want a career in a STEM field requiring math or science. It further depends on who is worse off (from the child's own perspective): a person wanting a career in science who must take remedial courses, or a person wanting a musical career who did not practice enough because she was spending time studying math and science.

These are difficult questions that are, in real life, almost certainly not answered based on precise estimates of a harm's likelihood or severity (or indeed on reductionist views that focus only on careers, rather than the lifelong pleasure of musical training). Rather, they depend on intuition and judgment. All this gives us reason not to criticize harshly parents who make mistakes. But it does not mean parents can do no wrong.

The "Steinway to STEM" parents likely did not impose an unreasonable risk on their daughter. Success as a professional pianist, or even high achievement as an amateur, requires long hours of practice. Perhaps the time taken from math and science and devoted to piano would not have mattered toward this goal. But plausibly it would have. At the same time, the daughter has fallen only a few years behind in these subjects and has discovered the deficit when she still has parental support sufficient to make up the loss. Indeed, her music training may even have helped develop her mind for later work in math. For all these reasons, the parents likely took a reasonable risk. On the other hand, we could alter the facts to reach a different conclusion. For example, her educational deficit might have been much more severe, perhaps because she was carelessly home schooled, or the risks imposed might have included other dangers, such as serious injury from intense dedication to a childhood sport.

What about “Scared to Scarred”? We do not know the exact likelihood of drug use, cheating, and emotional scarring that these parents risked. There are significant benefits to clear and high expectations. And children of demanding parents often grow up without cheating, turning to drug use, or struggling with debilitating self-hatred.²⁰ But it is very unlikely that the marginal expected benefit of threats and demeaning talk about weakness exceeds the expected harms, which (unlike the “Steinway to STEM” scenario) seem permanent—or at least much more difficult to reverse.

This example might appear different from the others because the harm imposed comes from bad parenting techniques (threats and demeaning talk) rather than from decisions about what values a child is exposed to. But as I will illustrate below, many of the risks parents impose on their children’s ability to lead authentic and identified lives stem as much from the techniques of value inculcation as they do from the lessons parents teach.

At first glance, the “Talmud to Tech” parents seem to have made the wrong choice. The parents are not trading off equally serious harms among possible futures. For instance, if the child grew up wanting a career within (or even just interaction with) the secular world, his limited education would render him significantly disabled in trying to lead the life he wanted. But if the parents provided their child with education in secular subjects, they would not have rendered the future religious adult disabled—or even significantly challenged—in pursuing a religious life.

Perhaps, though, this last claim is mistaken. Might educating boys in secular subjects render them significantly disabled if they remain in a separatist religious sect? In some ultra-Orthodox communities, Jewish scholarly achievement is required for access to prestigious jobs (such as a rabbi or a teacher) and plays a key role in finding a desirable spouse.²¹ It is unclear whether marginal hours devoted to secular education for teenagers would really affect scholarly achievement in early adulthood (when ultra-Orthodox men marry) or later adulthood (when they might become ordained as a rabbi). But such deficits are possible and would have serious consequences. On the other hand, if the state required education in secular subjects for everyone, no one would be disadvantaged by it in seeking a spouse or a job. This provides a strong reason for mandatory education in secular subjects. By requiring everyone to take secular classes, the state protects children who leave the separatist sect without disabling the children who remain.

Religious parents might question this conclusion, claiming that even accounting for the secular (or non-separatist) adult’s perspective, the balance still

²⁰ See John Buri, Peggy Louiselle, Thomas Misukanis, & Rebecca Mueller, *Effects of Parental Authoritarianism and Authoritativeness on Self-Esteem*, 14 PERSONALITY & SOC. PSYCH BUL. 271 (1988).

²¹ See Yoel Finkelman, *Ultra-Orthodox/Haredi Education*, in INTERNATIONAL HANDBOOK OF JEWISH EDUCATION 1063, 1071 (Helena Miller et al. eds., 2011).

tips against secular training. Study of Talmud is viewed as among the most important things a man can do because it is a way to be closer to God.²² On this assumption, time to study Talmud is infinitely (or at least extremely) valuable to the future adult who remains ultra-Orthodox. Even accepting that not having a secular education is significantly harmful to the future secular adult, the balance still falls against secular education.

The argument that time away from religious study imposes a serious harm is not frivolous. Although practices vary, many ultra-Orthodox Jewish men forego activities that take time away from religious study, including work, entertainment, exercise, and sports, suggesting they place a very high value on each hour of additional study. Nonetheless, the argument relies on an unacceptable form of self-preference. Even if added hours of study are remarkably important to ultra-Orthodox men, they are nonetheless marginal hours within a life devoted to study—a life whose main objectives remain intact without the benefit of these hours. The loss of this time is therefore a small harm compared to a lifetime without meaningful work that might confront a secular or non-separatist Jew when left without adequate secular education.

It might be argued that this marginal-hour analysis misunderstands the harm to religious people. Secular study is sometimes forbidden because it is thought to create significant risks. Among these is not only the risk that the child will become secular (which, as I have already explained, cannot count as a harm because it is not a harm from the adult child's perspective), but also the risk that it will lead to doubts or sinful thoughts among those who remain separatist. This harm to the future adult might be comparable to lifetime unemployment for a secular Jew. Indeed, it might be the same harm—alienation—that I claim is caused by some practices of religious parents.²³ The key question about this harm concerns its likelihood compared to the likelihood of secular outcomes. I do not think that secular education is apt to cause alienation very often, at least not nearly as often as non-education leads to unemployment. This is especially so for education in subjects such as math and English, although the issue is ultimately empirical.

A related argument relies on moral purity. One animating principle behind ultra-Orthodox Judaism is an intentional separation from a sinful world.²⁴ On this interpretation, time spent on secular study is not merely wasted or risky, but rather it is a source of moral pollution, which leaves the student in a state of sin. This argument is problematic because it is not clear that many ultra-Orthodox Jews believe this.²⁵ After all, they provide substantially more secular education to their daughters than to their sons and do not regard their daughters as impure because

²² Heilman, *supra* note 10 at 83; Finkelman, *supra* note 21 at 1065.

²³ See discussion *supra* note 13.

²⁴ Heilman, *supra* note 10 at 82.

²⁵ According to one commentator, studying secular subjects is not said by ultra-Orthodox Jews to be against religious law. See Lotem Perry-Hazan, *Court-Led Educational Reforms in Political Third Rails: Lessons from the Litigation over Ultra-Religious Jewish Schools in Israel*, 30 J. EDUC. POL'Y 713 (2015).

of it. As well, individuals who have secular education are not typically treated as outcasts in the way apostates are treated. So whatever impurity attaches to secular education seems not to be serious or permanent enough to justify withholding it as a matter of course.

Thus far, I have argued that parents who try to shape their children's values sometimes impose on those children a serious risk that they will have difficulty leading authentic lives. i.e., lives that are true to the child's own interests, passions, and values. This risk arises when efforts at value-inculcation fail. Although the case of "Talmud to Tech" is complicated, I believe that the parents in this case imposed an unreasonable risk on their child. Before turning to the question of parental rights that might justify such a risk imposition, I should emphasize that not all parental efforts to inculcate norms pose this kind of risk. For example, insisting that children daily read religious texts and pray likely has no effects that, should the child grow up to want a secular life, will make that life notably harder to live. On my account, parents may insist on a regimen of religious reading and prayer simply in order to increase the chance that the child grows up to be religious.

II. PARENTAL RIGHTS

Religious parents might acknowledge a *prima facie* duty to prepare their children for various possible futures, but nonetheless claim a right not to take certain precautions. One argument relies on a right to avoid complicity with evil. Even if parents must take precautions that will be useful to their child should he leave their religious sect, they should not be compelled to take steps that increase the chance of that outcome occurring.

We should be careful not to dismiss this argument too quickly. It might be tempting to respond that all complicity is removed from the parents if the state mandates secular education because parents bear no responsibility for state mandates. But this argument misunderstands the nature of complicity-based claims for accommodation, which demand that people be allowed to avoid close connections with evil, not merely that they be able to avoid blame.²⁶ We would recognize this point if the state required unwilling doctors to perform abortions or to assist in executions. Moreover, we do expressly recognize it by allowing conscientious objectors to avoid military conscription.

A better response focuses on the harms imposed by accommodating the parents' complicity complaint. We typically do not accommodate complicity concerns when doing so harms third parties.²⁷ Allowing parents to invoke

²⁶ Some writers reserve the word complicity for morally blameworthy behavior. They describe blameless association with wrongdoing as moral taint. See CHRISTOPHER KURTZ, *COMPLICITY* 45 (2000); GREGORY MELLEMA, *COMPLICITY AND MORAL ACCOUNTABILITY* 27-28 (2016).

²⁷ See Douglas Nejaime & Reva Siegel, *Conscience Wars: Complicity-Based Conscience Claims in Religion and Politics*, 124 *YALE L.J.* 2516 (2015); Amy Sepinwall, *Conscience and Complicity: Assessing Pleas for Religious Exemptions after Hobby Lobby*, 82 *U. CHI. L. REV.* 1897 (2015); but

complicity as a reason not to teach their children secular subjects makes it extremely difficult to protect their children from resulting significant harms.

Relatedly, religious parents might argue that their right to direct their child's upbringing is being unreasonably limited if they must facilitate an outcome they regard as abhorrent. Perhaps parents have a duty to take precautions if doing so does not undermine the parents' core goal as a parent, but their duties cannot be so constraining as to undermine their own central aims. This concern for parental rights is not limited to the religious context. Consider an elaboration of facts mentioned at the beginning of this article:

Feminist to Fashionista:

Feminist parents refuse to allow their fifteen-year-old daughter to get plastic surgery or attend modeling school. The surgery would be paid for by insurance (and would be low risk), so the parents cannot be worried about money or danger. Instead, they think the sexualized female beauty that interests their daughter is degrading. They worry that indulging her interest will lead her to permanently reject their feminist values and perhaps become involved with even more degrading activities. Not getting plastic surgery and early training will reduce the chance of their daughter succeeding as a fashion model.

In both the "Talmud to Tech" and "Feminist to Fashionista" scenarios, parents are being asked to facilitate a future for their child contrary to their own core parenting goals: a future that they regard as anathema. Their own lives will have gone less well if their child reaches this future because they will have failed at an important project that gives their own lives meaning.

As I noted at the outset, parents' rights sometimes conflict with children's rights. When rights conflicts, all we can do is balance, looking to see who has a greater interest or a greater potential loss. The "Talmud to Tech" case is wrenching in part because the stakes are high on both sides, but they seem higher for the child. Ultra-Orthodox parents will have led less successful lives if one of their children becomes secular or leaves their community. But the secular adult without adequate education as a child will face a life-long disability. The "Feminist to Fashionista" case involves a smaller harm to the child: perhaps she will be unable to be a fashion model. But those careers are difficult to achieve even with the best training. A vision of an authentic life that depends on success in such a narrow field is not plausible. Once we consider a more sensible vision of authenticity—say a life connected to fashion and beauty in some way—the harm to the child if she chooses to pursue that path looks far smaller.

Of course, not all parental decisions involve sharp conflicts between parental goals and children's futures; not every parent is unequivocally committed to one outcome. The "Steinway to STEM" parents may have had no particular

see Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n, 138 S. Ct. 1719; 584 U.S. ____ (2018).

preference between music and math. Similarly, the earlier discussed example of parents who chose cochlear implants for their deaf child may have been torn between what they perceived to be two possible futures for their child, either of which would allow their child an authentic and identified life. With cochlear implants, she would feel reasonably at home in a hearing world, where she could accomplish most any task that mattered. Without the implants, she would be part of a deaf community, somewhat distant from the hearing world, but also happy with her life and able to live well.

III. HOW CAN PARENTS PLAN FOR OUTCOMES WHILE ALSO TRYING TO INFLUENCE THEIR LIKELIHOOD?

Taking precautions based on expected value becomes more complicated if the precautions that help a child in one possible future might increase the likelihood of that future becoming real. This complexity has an analytical counterpart in safety precautions. The theory of risk compensation suggests that some safety measures lead to less added safety than one might expect, or even undermine safety completely, because they encourage risky behavior.²⁸ To see how these safety cases resemble parental decisions, consider the following example:

Slippery Slopes:

My teenage son plans to go skiing in a place that does not require helmets. About 0.3% of skiers are injured each year. Among them, about 20% (six in 10,000) suffer serious head injuries. Wearing a helmet significantly reduces the risk of serious head injury when accidents occur. But it is also thought to make teenage boys more reckless on the slopes.

Should I want my son to wear a helmet? This depends on several offsetting effects: how much more careless will he be if wears a helmet than if he does not? And how much safer will the helmet make him if he does have an accident? If helmets cut his risk of serious head injury in case of an accident from 20% to 5% but increase the likelihood of an accident from 0.3% to 0.4%, I would certainly want him to wear the helmet. His chance of a serious head injury would fall from six in 10,000 to only two in 10,000.²⁹

²⁸ This worry has been expressed about needle-exchange programs, condoms, preventative HIV drugs, Naloxone, and many transportation safety devices. The bulk of persuasive evidence suggests that increased risky behavior rarely, if ever, exceeds the safety benefits of these interventions. For a literature review on the topic, see James Hedlund, *Risky Business: Safety Regulations, Risk Compensation, and Individual Behavior*, 6 INJURY PREVENTION 82 (2000), <http://injuryprevention.bmj.com/content/6/2/82.long#sec-7>.

²⁹ For a review of evidence on this topic, see A.H. Haider et al., *An Evidence Based Review: Efficacy of Safety Helmets in Reduction of Head Injuries in Recreational Skiers and Snowboarders*, 73 J. TRAUMA ACUTE CARE SURG. 1 (2012).

A similar analysis applies to parental efforts to shape a child's future. Consider a hypothetical in which providing secular education to religious children would shift the likelihood of a religious outcome:

Wedding or Working:

In a given community, young religious adults with secular education cannot easily find a spouse, while secular adults without such education cannot easily find a job. Without secular education, children remain religious in 85% of cases, but with secular education, they remain religious in only 50% of cases.

The appropriate decisions in this case depends on the following: is it worse (from the perspective of a religious person) to have a 50% chance of being unable to find a spouse than it is (from the perspective of a secular person) to have a 15% chance of lifetime unemployment? If these estimates (which are fictional) were roughly right, most people would conclude that denying education is reasonable.³⁰

What does this way of thinking mean for parents trying to shape their children's values? Despite the importance of authenticity, and the complexity of taking precautions that might affect a child's future preferences, parents can still take steps to increase the likelihood of their preferred outcome, even if those steps make the life of their child somewhat worse should the parents fail. But they are limited in their ability to do so by how much worse it makes the child's life and on the likelihood of each outcome with and without the proposed intervention. In doing so, they must take care not to overstate the extent to which their efforts will increase the chance of success.³¹ And they must consider the harm to their child if they fail from that future person's perspective.

Parents may impose small expected harms on their children. The duty to protect children from inauthentic or alienated lives is very narrow. Parents need not provide their children with the easiest possible path toward an authentic and identified life. But they must take reasonable steps to reduce the risk of serious disability, i.e., the risk that the child will face unreasonable difficulty in leading authentic and identified life. Allowing a religious child to reach adulthood with the secular education of a small child counts as such a disability. Refusing to pay for college (when student loans are available) or expressing a desire for the child to remain religious does not render the child disabled from pursuing an authentic

³⁰ As noted earlier, if secular classes were mandated, then all potential mates would be equally stigmatized, and therefore none would be at a disadvantage in finding someone to marry.

³¹ Despite evidence that many children adopt religious views that differ from their parents', people may overestimate their own ability to instill values. For a review of this phenomenon, and controversy about its causes, see Jonathon Brown, *Understanding the Better than Average Effect: Motives (Still) Matter*, 38 PERSONALITY & SOC. PSYCHOL. BULL. 209 (2012); Paula Rosales & Patricia Allen, *Optimism Bias and Parental Views on Unintentional Injuries and Safety: Improving Anticipatory Guidance in Early Childhood*, 38 PEDIATRIC NURSING 73, 73-79 (2012).

life. These acts might make the choice to leave a religious community more difficult. But not every difficulty is a harm.³²

Why should my argument be limited to disabling harms rather than to all losses? Shouldn't parents be obligated to maximize their children's chance at pursuing projects that match their values by minimizing the expected difficulty of doing so? I see four reasons against this proposition. First, parents have a right to direct their children's upbringing.³³ Although this right must be balanced against the child's contrary interests, the parent's right will not always be subordinate. This means that parents should sometimes be permitted to make negative expected-value decisions for their children. Second, we usually cannot be confident that some expected outcome is bad unless it is quite severely bad. When the expected outcome is not clearly harmful (because we lack information³⁴ or because of incommensurability³⁵) parents should be entitled to discretion.

Third, some parenting choices—such the one in “Talmud to Tech”—require parents to facilitate outcomes that they regard as morally objectionable. Parents have reasonable claims not be compelled to be complicit in such outcomes.

³² Some theories of harm distinguish actions that render a person unable (easily) to pursue meaningful projects from those that merely set back a person's interests. See JUDITH THOMSON, *THE REALM OF RIGHTS* 264-65 (1990); Seana V. Shiffrin, *Harm and its Moral Significance*, 18 *LEGAL THEORY* 357 (2012).

³³ See *Wisconsin v. Yoder*, 406 U.S. 205 (1971).

³⁴ I do not mean to understate the difficulty of making informed decisions. There are clearly challenges to making interpersonal comparisons. Usually these stem from difficulties of empathy, which requires good will, imagination, and substantial information about other people. See generally Mozaffar Qizilbash, *Needs, Incommensurability and Well-being*, 9 *REV. POL. ECON.* 261 (1997) (These challenges can be serious. Secular people cannot easily understand the extent of harm suffered by interferences with religious practices. They may not have sufficient imagination, concern, or detailed knowledge. Sometimes this will require translation by someone who has lived in both worlds. And no doubt sometimes it will fail. But sometimes we can know enough to make a decision).

³⁵ It might be thought that the expected-value inquiry I recommend is generally impossible because of incommensurability. I do not agree. Despite incommensurability, we can often make reasoned choices among options that instantiate incommensurable value. See Donald Regan, *Value, Comparability, and Choice*, in *INCOMMENSURABILITY, INCOMPARABILITY, AND PRACTICAL REASON* 135 (Ruth Chang ed., 1997) (“a highly successful life of one kind may be more valuable than a modestly successful life of another kind, even though modestly successful lives of the two kinds might be incommensurable. So far as I am aware, no one in this volume claims that plural values are always incomparable.”). The reason that this choice seems easy is debated by philosophers, with some suggesting that there is no real incommensurability. See *id.* at 129. Others urge that incommensurability is really a form of vagueness, which is not present in all choices. See John Broome, *Is Incommensurability Vagueness?*, in *INCOMMENSURABILITY, INCOMPARABILITY, AND PRACTICAL REASON* 67, 67-89 (Ruth Chang ed., 1997). Still, others see the example as proof that there are sometimes overarching values that allow for comparison of seemingly incommensurable values. See Ruth Chang, *Introduction*, in *INCOMMENSURABILITY, INCOMPARABILITY, AND PRACTICAL REASON* 1, 4-13 (Ruth Chang ed., 1997). When incommensurability does prevent reasoned choices, we should permit parental discretion (i.e., we should only ask parents to take precautions when one option is worse in expectation). No demand is made if options remain neither better nor worse. See Nien-he Hsieh, *Is Incomparability a Problem for Anyone?*, 23 *ECON. & PHIL.* 65 (2007) (treating any choice exhibiting incommensurable values as justified so long as it is not worse than the others).

Although those claims must be subordinated to children's rights or interests when there is no other way to prevent serious harm, when these harms become less serious, the right of non-complicity may dominate.

Fourth, even if a precaution seems important for ensuring an authentic life, other values may prove more important. For example, in the cochlear implant case, the parents might have been concerned with more than just their child's ability to live an authentic and identified life. Perhaps they worried that without cochlear implants, she would need to attend school far away and would not establish close ties with them. This fear may be unfounded, but if the risk were real, it could be relevant to their decision. If improving the chances for an authentic and identified life also reduces the chance of family intimacy, there will be some cases where it makes sense to risk authenticity to protect intimacy.³⁶

The parental duty not to impose an unreasonable risk of inauthenticity must also be narrow for another reason: it does not create a duty to preserve all options for their children. This is so because, for most people, there is more than one path toward authenticity. Parents cannot know all of the things a child might grow up to want and therefore cannot prepare their children well for every conceivable path a child might choose. While failure to offer French horn lessons might be disabling to a career as a French horn player, foreclosing a single career is not necessarily the same as wholly precluding an authentic life. A person whose core values include musical excellence can find more than one possible path to act on those values. In this example, the single career goal of performing on the French horn for a living is simply not the only way to authenticity. For that reason, narrowly defined options will rarely be essential to leading an authentic life. Parents thus need not preserve all feasible options in order to protect authenticity.

IV. EXAMPLES AND LEGAL REGULATION

Thus far, I have argued that when parents try to influence their children's values, they should take precautions in case their efforts fail. These precautions can be evaluated based on their expected value. Doing so is complicated both because the precautions can themselves impose harms in cases where value inculcation succeeds and because precautions can affect the likelihood of inculcation succeeding.

Although parental duties can be assessed through expected-value calculations, the wisdom of governmental intervention to enforce those duties is more complex. Allowing governments to monitor parental decisions has well-

³⁶ It might be thought that values unrelated to authenticity and identification are also important in the "Talmud to Tech" case. For example, might state intrusion into parental decisions about education undermine parent-child intimacy? I have written elsewhere about why I do not think this a serious worry. See Altman, *supra* note 1. Intimacy is not fragile. If it has survived mandatory seat-belt laws and mandatory vaccinations, there is no reason to think it will succumb to mandatory education. *Id.*

known disadvantages. Furthermore, government intervention could itself cause alienation.³⁷

Nevertheless, governments can sometimes prevent unreasonable risks. Some interventions will protect authenticity by preserving important opportunities. One likely example is mandating education in secular subjects and enforcing those mandates against both religious schools and religious parents who home school.³⁸ Supporters of this idea must acknowledge that only a small percentage of ultra-Orthodox Jews leave their religion.³⁹ Nonetheless, if precautions that impose relatively low costs on those who remain satisfied with their religion can protect a non-trivial minority from significant harm, we owe it to that minority to protect them.

Might a parallel argument be made for mandating religious instruction by secular parents? After all, their children might grow up to become religious and be at a disadvantage if they lack religious training. Although my argument has implications for secular parents, it does not imply a widespread duty to provide religious instruction. First, for most religions, lack of childhood instruction creates no barriers to full participation as an adult. Second, for the religions where such barriers exist—including perhaps ultra-Orthodox Judaism—the chance of a secular child growing up to join such a religion is, in reality, very small. Even in Israel, where the ultra-Orthodox population is large, only about two percent of people raised as secular Jews become ultra-Orthodox.⁴⁰ For the vast majority of children, then, the expected benefit of religious training would not be large enough to warrant spending the time. There might, however, be exceptions. For example, a secular Jewish child in Israel who shows a strong and persistent interest in becoming ultra-Orthodox might be entitled to religious training based on the reasonable expectation that he may become religious and the significant hardship he would face in doing so without early study in language and religious texts.

³⁷ As William Galston remarked, “liberal freedom entails the right to live unexamined as well as examined lives—a right the effective exercise of which may require parental bulwarks against the corrosive influence of modernist skepticism.” WILLIAM GALSTON, *LIBERAL PURPOSES* 254 (1991); see also Nomi Stolzenberg, *He Drew a Circle that Shut Me Out*, 106 HARV. L. REV. 581, 609 (1993) (stressing parental fear in *Mozert v. Hawkins Cty. Bd. of Educ.* that if religious children were forced to consider other perspectives, they “would nonetheless feel alienated from their religious tradition. Exposed to competing ideas, they might feel torn and confused, ashamed of their parents’ heritage, skeptical, questioning, desirous of being ‘other than what they are,’ but still tenuously attached to their parents, community, and faith”); MELISSA MOSCHELLA, *TO WHOM DO CHILDREN BELONG? PARENTAL RIGHTS, CIVIC EDUCATION, AND CHILDREN’S AUTONOMY* 124, 130-31 (2016); Eamonn Callan, *Autonomy, Childrearing, and Good Lives*, in *THE MORAL AND POLITICAL STATUS OF CHILDREN* 118, 127 (David Archard & Colin M. Macleod eds., 2002) (suggesting that autonomy training needed to evaluate whether to revise one’s view of the good may prejudice one against a decision to retain one’s view of the good).

³⁸ See Robin West, *The Harms of Homeschooling*, 29 PHIL. PUB. POL. Q. 7 (2009).

³⁹ In Israel, this appears to be about 6%. *Israel’s Religiously Divided Society*, *supra* note 16. Of course, we do not know how many others retain their affiliation without genuine commitment and how many of them suffer from alienation.

⁴⁰ See *Israel’s Religiously Divided Society*, *supra* note 16.

Other applications of risk assessment focus on identification in addition to authenticity. Some ways of influencing children have a high risk of producing alienation if the influence does not work or does not last. These include (a) efforts that rely heavily on fear, guilt, and shame; (b) efforts to make exit from the religion difficult; and (c) efforts to hide information.

A. Fear, Guilt, and Shame

Many parents teach with fear, guilt, or shame.⁴¹ But some do so in extreme ways that risk alienation.⁴² One common use of fear is the threat of eternal damnation for those who sin or who leave a religion. According to some psychologists, former fundamentalist patients often experience trauma, depression, and a specific sort of alienation from their values: “[d]espite intellectually renouncing fundamentalist theology, some experience vivid fears of Hell or nagging anxiety that somehow God will avenge their leaving.”⁴³

Guilt-based education can also produce alienation. Although the following example from my own life hardly amounts to a debilitating loss, it mirrors examples that can be far worse. The teachers in my Jewish Sunday school spent weeks each year reviewing historical efforts to exterminate Jews. They showed us gory concentration-camp photos and then explained that Jews are now doing to ourselves what our persecutors failed to do: destroying ourselves by marrying outside our faith and raising children who leave the community. As an adult (who married outside my faith), I reject this message. But I cannot rid myself of the feeling that if my children pick another religion, I will have betrayed my people and done my enemies’ work.

Shame is often used as a teaching tool by both religious and secular parents.⁴⁴ Many uses, while regrettable, are unremarkable—such as pointing out a child’s misbehavior in front of other people—while other uses of shame harm people who reject or become conflicted about their parents’ values. One tragic

⁴¹ See CLAYTON, *supra* note 5, at 106-09. Clayton notes the prospect of guilt as something that might inhibit rational reflection on one’s view of the good. *Id.* This possibility is given as one reason to forbid parents from giving their children any religious or other comprehensive moral instruction. *Id.*

⁴² For evidence that guilt-inducing behavior towards children can sometimes predict depression when these children reach adulthood, see Aaron Rakow et al., *The Relation of Parental Guilt Induction to Child Internalizing Problems When a Caregiver has a History of Depression*, 18 J. CHILD FAM. STUD. 367 (2009); cf. Jenny Chen, *Childhood Guilt, Adult Depression?*, ATLANTIC MONTHLY (Jan. 5, 2015), <http://www.theatlantic.com/health/archive/2015/01/childhood-guilt-adult-depression/384176/>.

⁴³ Gary Hartz & Henry Everett, *Fundamentalist Religion and its Effects on Mental Health*, 28 J. RELIGION & HEALTH 207, 210 (1989).

⁴⁴ For an argument advocating for restricting shaming within families because it undermines the primary good of self-respect, see Elizabeth Brake, *Feminism, Family Law, and the Social Bases of Self-Respect*, in RE-READING THE CANON SERIES: FEMINIST INTERPRETATIONS OF RAWLS 57 (Ruth Abbey ed., 2013).

example is the epidemic of homelessness and suicides among LGBT youth, sometimes attributed to negative messages from families and religious leaders.⁴⁵

Although instruction with fear, guilt, and shame can impose unreasonable risks of harm, these examples raise problems both for government intervention and for public criticism. In some cases, the risky behavior is not merely a technique parents use to inculcate values; it is a core tenet of belief. Fundamentalist parents cannot be prevented from telling their children that sin leads to eternal damnation or that non-procreative sex is a sin. Likely, the most we can expect from the government is targeted limits on parental actions. For example, some states have banned conversion therapy for LGBT youth.⁴⁶ States might consider other steps to protect LGBT children from hostile parents, such as giving a preference to a supportive parent in custody disputes or providing generous rules for emancipation of gay youth.⁴⁷

B. Causing External Options to be Costly or Unappealing

Religious parents can make exit from the faith or religious community less appealing by limiting education so that a secular life is likely to be one of poverty and struggle. For those who want to leave, the harm is a barrier to authenticity. For those who do not want to leave, the harm risked is alienation.

Alienation and inauthenticity are not, however, inevitable outcomes of a restricted exit. Limiting education encourages people to remain religious by making it hard to live a rewarding secular life. Some people will react to this obstacle by coming to view a secular life as undesirable, a phenomenon known as sour grapes⁴⁸ or adaptive preference formation.⁴⁹ The sour grapes reference comes from Aesop's fable about a fox who could not reach some grapes and therefore declared them to be unripe and sour.⁵⁰ Adaptive preferences need not risk long-term failure and alienation. If the grapes remain forever out of reach, the fox may always regard them as unripe. Similarly, religious people who lack secular opportunities may always regard secular life as undesirable and thus never become alienated or develop a desire to exit.⁵¹

⁴⁵ See Jennifer Hirsch, *A Scientific Look at the Damage Parents Do When They Bully Their Gay Kids*, WASH. POST (Apr. 14, 2015), http://wapo.st/log8TGz?tid=ss_tw&utm_term=.6ce6f0a0d55c.

⁴⁶ CAL. BUS. & PROF. CODE § 865.1 (2013) (forbidding mental health providers from engaging in efforts to change a patient's sexual orientation).

⁴⁷ For an argument favoring emancipation rules that do not cut off parental support duties as a way to reduce the problem of homelessness among gay youth, see Caitlin Judge, Comment, *Thrown Away for Being Gay: The Abandonment of LGBT Youth and Their Lack of Legal Recourse*, 3 IND. J.L. & SOC. EQUALITY 260 (2015).

⁴⁸ See JON ELSTER, SOUR GRAPES 133 (1983).

⁴⁹ Experimental support for sour grapes can be found in Aaron Kay et al., *Sour Grapes, Sweet Lemons, and the Anticipatory Rationalization of the Status Quo*, 28 PERSONALITY & SOC. PSYCHOL. BUL. 1300 (2002).

⁵⁰ ELSTER, *supra* note 48.

⁵¹ One suggestive study along these lines finds that when national emigration is perceived to be

But alienation and inauthenticity might be a common response to exit restrictions. Unlike the out-of-reach grapes, which are a simple fact encountered by the fox, the challenge of leading a secular life is engineered by the denial of secular education. If I come to interpret my limited life chances not simply as part of my surroundings, but as something my parents manipulated in order to make me not want a secular life, I may come to find that very secular life desirable, or to find my lack of desire for it to be foreign.⁵²

Similar risks arise from shunning—whether by a religious community or by a single family. Shunning makes outside options less attractive not by crippling the person's ability to make a life outside, but by depriving him of precious goods currently available within the family or community. Some examples are truly shocking in their cruelty, such as when parents who leave a religious community are never again permitted to see their young children.⁵³ In some respects, shunning and education denial work in tandem to make exit doubly unappealing.

Although the threat of shunning likely imposes as much risk of alienation as does denial of education, it includes the added complexity that some forms of shunning may be protected by the religious and associational rights of the shunners.⁵⁴ In this respect, shunning more closely resembles teaching children about damnation. There is little the state can do to prevent shunning—though some victims have successfully sued shunners for damages.⁵⁵ The state might take

difficult, people regard the home country more favorably. See Kristin Laurin et al., *Restricted Emigration, System Inescapability, and Defense of the Status Quo: System Justifying Consequences of Restricted Exit Opportunities*, 21 PSYCHOL. SCI. 1075 (2010).

⁵² Some experiments try to predict when deprivation leads to sour grapes and when it leads to forbidden fruit. Some findings include that people are more likely to regard the unavailable option as desirable: (1) when its unavailability is not absolute, see Kristin Laurin et al., *Reactance Versus Rationalization: Divergent Responses to Policies that Constrain Freedom*, 23 PSYCHOL. SCIENCE 205 (2012); (2) when their attention is drawn to the deprivation, see Kristin Laurin et al., *Response to Restrictive Policies: Reconciling System Justification and Psychological Reactance*, 122 ORG. BEHAVIOR & HUMAN DECISION PROCESSES 152 (2013); (3) when the perceived reasons for constraint is blameworthy, see Sarah G. Moore & Gavan J. Fitzsimons, *Yes, We Have No Bananas: Consumer Response to Restoration of Freedom*, 24 J. CONSUMER PSYCHOL. 541 (2014); and (4) when the rationalizing individual has a particular personality type, see *id.*

⁵³ See Allyn Fisher-Ilan, *For Ultra-Orthodox Women in Israel, Losing Their Religion Can Mean Losing Their Children*, HAARETZ (July 13, 2016), <http://www.haaretz.com/israel-news/premium-1.730536>. Similar issues arise in the United States. See, e.g., Debra Nussbaum Cohen, *Deb Tambor Child-Custody Woes Common Among Parents Who Leave Hasidic World*, FORWARD (Oct. 13, 2013), <http://forward.com/news/185474/deb-tambor-child-custody-woes-common-among-parents>.

⁵⁴ Within religious groups, there is often debate about whether, when, and how shunning is religiously required. See Michael Broyde, *Forming Religious Communities and Respecting Dissenter's Rights: A Jewish Tradition for a Modern Society*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: RELIGIOUS PERSPECTIVES 203 (John Witte Jr. & Johan D. van der Vyver eds., 1996).

⁵⁵ For a review of legal disputes that can arise from religious shunning, see Justin Miller, *Damned if You Do, Damned if You Don't: Religious Shunning and the Free Exercise Clause*, 137 U. PENN. L. REV. 271 (1988); Nicholas Merkin, *Getting Rid of Sinners May be Expensive: A Suggested Approach to Torts Related to Religious Shunning Under the Free Exercise Clause*, 34 COLUM. J.L. SOC. PROBS. 369 (2001); Broyde, *supra* note 54, at 203.

steps to mitigate the consequences of shunning. For example, some courts inadvertently facilitate shunning by granting custody to the more religiously-observant parent, either as a way to maintain continuity for children who have grown used to an observant home, or because the parents have signed a spiritual custody order agreeing that the child will be reared in a specific religious tradition.⁵⁶ Doctrines that soften these preferences when shunning is credibly alleged, or generous visitation rules in cases of shunning, could reduce the overall harms of shunning. More controversially, judges could examine the behavior of custodial parents for inappropriate alienation as a reason to deny custody to a shunning parent,⁵⁷ or could even enjoin parents from making derogatory comments about the less religious parent.⁵⁸ Although these strategies are worth considering, they would face constitutional challenges and might, in the end, do more harm than good for children.⁵⁹

C. Hiding Information

Discussions about sheltering children sometimes portray parents as intending permanently to hide information about the outside world from their children. However, this is not necessarily an accurate understanding of how and why most parents shelter their children. The strategy of hiding information with

⁵⁶ See Nomi Stolzenberg, *Spiritual Custody: How American Courts Enforce Jewish Law in Divorce Case*, in *THE JEWISH ROLE IN AMERICAN LIFE: AN ANNUAL REVIEW VOL. 3*, at 1, 26-29 (Barry Glassner & Hilary Lachoff eds., 2004).

⁵⁷ Parental alienation syndrome alleges that children who resist visiting a non-custodial parent often have their minds poisoned by the alienating behavior of a custodial parent. Granting custody to the rejected parents is sometimes recommended as a solution. Opponents reject the scientific basis for this claim, pointing out that it is often the case that the children who resist visitation have other reasons and that potential harm can come from forced visitation. See Carol Bruch, *Parental Alienation Syndrome and Parental Alienation: Getting it Wrong in Child Custody Cases*, 35 FAM. L. Q. 527 (2001); Carol Bruch, *Sound Research or Wishful Thinking in Child Custody Cases? Lessons from Relocation Law*, 40 FAM. L.Q. 281 (2006). The suggestion in the text does not rely on a psychological syndrome, or indeed on a child's attitude about visitation or custody. Instead, it asks about one parent's behavior toward the other parent. But this inquiry too is controversial. The suggestion resembles the much-criticized "friendly-parent rule" which generally preferred for custody whichever parent was perceived as more open to cooperation. See Margaret Dore, *The "Friendly Parent" Concept: A Flawed Factor for Child Custody*, 6 LOYOLA J. PUB. INT. L. 41 (2004). This preference was thought to create bad litigation incentives, especially in the context of domestic violence. *Id.* It also was thought to discriminate against religious parents. *Id.*

⁵⁸ For a discussion of the free speech difficulties in preventing divorced parents from making derogatory comments about each other to their children, see Eugene Volkh, *Parent-Child Speech and Child Custody Speech Restrictions*, 81 NYU L. REV. 631, 704-06 (2006).

⁵⁹ The solutions mentioned in the text might cause several harms. For instance, if a child does not want to visit with a noncustodial parent, forced visitation may undermine the potential for long-term reconciliation. Doctrines that allocate custody or abrogate spiritual custody agreements to punish shunners may harm children by depriving them of continuity. As well, doctrines that disadvantage shunners in custody or visitation disputes may create incentives to allege shunning where none is taking place.

the hope of keeping a long-term secret seems doomed to failure, both because secrets about widely-known information cannot be kept forever and because their eventual revelation might lead to anger and eventually to departures.⁶⁰ For this reason, separatist groups often do not aim permanently to prevent their children from becoming aware that there are other ways of life or from knowing a bit about them. The Amish and Mennonite practice of Rumspringa attests to this idea.⁶¹ Although Jehovah's Witnesses aggressively shelter their children and minimize outside contacts as adults, they also proselytize widely and, in doing so, come into regular contact with outsiders.⁶²

Instead, sheltering might be better understood as trying to manage children's exposure to ideas at times, or in formats, that they are not yet ready to evaluate.⁶³ For example, the parents in *Mozert v. Hawkins*, who sought to shelter their children from exposure to other people's religious beliefs, did not imagine that their children would forever remain unaware that outsiders lived differently or that others questioned moral norms.⁶⁴ Rather, they worried that authority figures presenting this idea to young people would undermine parental efforts to teach the opposite lesson and would lure the children from their religion. This approach seems little different from widespread parental practices by secular and religious parents alike, such as preventing children from using alcohol, gambling, or viewing sexually explicit materials.

Perhaps this temporary-sheltering interpretation is naïve. The goal of sheltering children from outside influence might not be to protect them while they are vulnerable, but instead to shelter them until exit becomes infeasible. On this interpretation, sheltering works in concert with poor education and shunning. By hiding the benefits of life outside the religious community until someone is married with children and without secular education, the religious group has sheltered its children until that information is practically useless. As well, sheltering sometimes seems to work in tandem with shame and guilt, such as when young people are told that it is sinful to use the internet or that secular teachers aim to destroy their religion. This shelter-until-captive interpretation suggests that sheltering exacerbates the alienation risk associated with other harmful practices.

⁶⁰ GALSTON, *supra* note 37, at 253-56.

⁶¹ Rumspringa is the tradition of allowing teenagers to violate traditional rules, often leaving family supervision, for a period of months before deciding whether to be baptized and join the religion. For a review of Rumspringa and its significance for moral theory, see Steven Mazie, *Consenting Adults? Amish Rumspringa and the Quandary of Exit in Liberalism*, 3 PERSPECTIVES ON POLITICS 745 (2005).

⁶² Some sects of ultra-Orthodox Judaism do seem to aim at keeping information about the outside world permanently secret, for example by banning television, radio, and internet use for adults.

⁶³ See Shelley Burtt, *Religious Parents, Secular Schools: A Liberal Defense of an Illiberal Education*, 56 REV. OF POLITICS 51, 66-67 (1994); see also Callan, *supra* note 37, at 134 (arguing that avoiding the temptation of non-rational influences may require "shielding children from experiences one believes would confuse or corrupt them").

⁶⁴ *Mozert v. Hawkins Cty. Bd. Of Educ.*, 827 F.2d 1058 (6th Cir. 1987).

V. CONCLUSION

This article analyzed parental efforts to shape their children's values as an example of risk imposition, arguing that parents owe their children a duty not to impose unreasonable risks. Specifically, this article has argued that denying secular education to ultra-Orthodox Jewish children unreasonably risks harms to those children (even if that harm does not actually occur), and that similar risks imposed by secular parents are similarly unreasonable. Additionally, the article pointed out that various parental rights—including the right to control a child's upbringing and the right not to be made complicit in evil—weigh against the child's right to authenticity.⁶⁵ Lastly, this article suggests that even though parental efforts to shape their children's values affect the likelihood that their children will share their parents' values, the expected-value analysis I recommend can sensibly be applied. In some cases, children's interests in authenticity and identification justify state intervention to protect them.

These conclusions raise many potential objections; I wish to acknowledge and address two of them. First, my argument might find acceptable aggressive forms of manipulation that many liberals would condemn for undermining autonomy. The extent to which this proves true will ultimately depend on empirical questions. But still, my position might lead to uncomfortable conclusions. For example, if denying secular education to a child dramatically reduces the already small chance that she will become secular, parents might reasonably deny that education because of the small chance of a secular future. My argument also suggests that extreme isolationists may have fewer duties to prepare their children for secular futures than their less extreme counterparts, insofar as extreme isolation actually works to prevent children from desiring another life. This idea could even create incentives for fundamentalist groups to become more aggressive in their indoctrination to avoid the duty to move in the opposite direction. Furthermore, my objections to specific techniques for indoctrinating children depend on predictions that those techniques produce alienation. Insofar as my suggestions turn out to be empirically wrong, techniques associated with brainwashing might be vindicated.

Second, empirical uncertainty poses a practical problem for my theory. We currently lack reliable data on questions that my theory makes central to parenting decisions, such as the respective percentage of ultra-Orthodox Jews who would become secular or who would become alienated if educated in secular subjects. The expected-value inquiry I recommend does not require precise calculations. But insofar as we lack even rough data on these questions, my suggestion will be impractical. Ultimately, I do not regard this a decisive objection to my theory—which can still sometimes be applied—so much as a reason for more research.

⁶⁵ However, in cases of severe harm, such as denying ultra-Orthodox children any secular education, these parental rights should be subordinate, while in cases where harms to children are smaller, parents are entitled to sometimes exercise their rights, even to their child's potential detriment.

