

# Old Order Amish Education: The *Yoder* Decision in the 21<sup>st</sup> Century

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## Abstract

Prior to the 1972 ruling by the U.S. Supreme Court in *Wisconsin v. Yoder, et al.*, parents found themselves in court in a number of states. This essay explores the *Yoder* decision and its relevance for the Amish today, contrasting the understanding of Amish life implicit in the Supreme Court decision with the reality of the twenty-first century Amish world. In particular, it notes that the agency afforded the Amish by the Supreme Court's decision in the *Yoder* case means that, as the Amish increasingly engage with the mainstream, education has for many become less about isolating children from the world than it is about shaping their interaction with it. It also notes that, in contrast to the court's findings, those communities most closely meeting the court's understanding of the Amish world are generally the least able or willing to provide an education judged "adequate" by external standards, largely because they are uninterested in evaluating their schools by any standards except those of their own community. Finally, it explores the legacy of *Wisconsin v. Yoder, et al.* for future litigation and for today's Amish schools.

## Keywords

Amish education; *Wisconsin v. Yoder, et al.*; Technology; Social change; Children; Open future; Diversity

## Introduction

In mid-September, 2013, the Assessor for the Town of Richmond in upstate New York, site of a growing Swartzentruber Amish settlement in the Pulaski-Williamstown area, wrote that there were a number of reasons he could not grant tax exempt status for an Amish school.<sup>2</sup> For one thing, he argued, the school was built on property owned by a member of the community and only leased (albeit for 99 years) for the school building. More importantly, he wrote, the organization—the Amish church-community—“is currently not recognized by the Internal Revenue Service (IRS) with a federal id number showing [. . .] tax exempt status.” Finally, in an apparent dismissal of the Amish community’s standing as a church, the assessor noted that tax exemptions were limited to corporations and associations and that, while an association need not be incorporated and could include a variety of organizational structures, “informal groups of individuals, without any organizational structure, would not qualify for exemption.”

There were other objections. The assessor also noted that the “organization”—the board elected to administer the school in question—held neither a charter from the New York Board of Regents nor a certificate of incorporation. Moreover, “the current building does not have electricity or running water and does not meet the current building codes for any educational facility, and therefore, most likely was not issued a certificate of occupancy.”

The obvious first amendment issue and, perhaps, the final reference to the building’s failure to meet current building codes caused the office of the local state senator, Pattie Ritchie, to move swiftly on behalf of the Amish applicants. After all, the senator also represents the Town of Morristown, which only recently settled a lawsuit filed by the Becket Fund for Religious Liberty<sup>3</sup> on behalf of Swartzentruber Amish in the area who had been denied the opportunity to purchase building permits because they would not agree to install smoke detectors and meet other code requirements. According to one observer, the senator, a Republican, spoke quickly to the Commissioner of Tax and Finance, a Democrat, pointing out that, based on the cited New York State tax regulations, the Amish would never qualify for tax exempt status and noting what a public relations problem this might represent in an election year.

Yet, while the school got built and the Amish got the tax exemption, Amish schools have not always had secular authority come so easily to their aid. Prior to the 1972 ruling by the U.S. Supreme Court in *Wisconsin v. Yoder, et al.*, Amish parents found themselves in court in a number of states. This essay explores the *Yoder* decision and its importance for future litigation and for today’s Amish schools.

### ***Wisconsin v. Yoder, et al.***

The twentieth century challenged the way in which the Amish educated their children, as mainstream Americans consolidated local, one-room schoolhouses and raised the age at which children were allowed to leave school. The Amish, who had routinely sent their children to small

local public schools, began to establish their own, meeting resistance from local and state governments.

In 1968, the school board in New Glarus, Wisconsin, charged three Old Order Amish fathers with violating the state's compulsory school attendance law. It was not the first time the Amish had found themselves pitted against state educational authority; in fact, there had been a number of conflicts in several states since the 1920s (Dewalt 2006; Johnson-Weiner 2007; Keim 1975, ch. 5). While some asserted the state's special interest in educating its citizens, others asked whether religious groups that saw social isolation as key to their religious survival should be required to send their children to public schools. As John A. Hostetler (1969) put it,

Is it the purpose of state schools to promote the socialization of all children of all nationalities, of all cultural backgrounds, of all ethnic groups, into one American mold and to promote conformity at the expense of cultural diversity? [...] The state cannot assure an adequate education for all children without setting instructional requirements for all schools, public or non-public. The non-public schools cannot fulfill their distinctive educational goals if these standards preclude them from independently following their own cultural goals. How is balance to be achieved? (33).

Or, as Donald Erickson (1969) asked, "What disparate goals shall we allow and even encourage in education?" (160).

The New Glarus case went further than the others, however, ultimately arriving before the United States Supreme Court, and both Hostetler, who was raised Amish, and Erickson testified. Their words were persuasive. In May 1972, arguing for the majority of justices in the "Opinion of the Court," Chief Justice Warren Burger noted that,

Old Order Amish communities [...] are characterized by a fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence. This concept of life aloof from the world and its values is central to their faith (*Wisconsin v. Yoder, et al.* 1975, 152, quoted from "Opinion of the Court" in Keim 1975, 149-81).

The Supreme Court's decision in *Wisconsin v. Yoder, et al.* relieved the Amish of the need to send their children on to high school after they had finished the eighth grade. For all intents and purposes, it also legitimated the Amish insistence on educating their children in the local one-room schoolhouses that were being abandoned by mainstream society as public schools were consolidated.

Liberated by the *Yoder* decision to educate their children their way, the Amish embarked on school building. Ironically, the diversity of today's Amish, reflected in the very different ways church-communities build their schools, educate their children, earn their livelihood, and define their separation from the world, challenges the assumptions on which the *Yoder* decision was

based. Arguably, the importance of the *Yoder* decision lies not in its lasting effect on litigation, but in its empowerment of Amish communities and its encouragement of Amish diversity.

## Diversity and Old Order Schools

The number of Amish schools grew rapidly after the Supreme Court's decision. The 1967-1968 "School Directory" published by the *Blackboard Bulletin*<sup>4</sup> was only slightly more than six pages long and listed only 217 Amish parochial schools in the United States and Canada. (It also listed 38 Old Order Mennonite schools.) The 2007 to 2008 school year was the last in which Pathway Publishing produced the "School Directory," as the task was becoming too onerous (see May 2008 issue of the *Blackboard Bulletin*). At that time, the directory was 21 pages long and listed 1,830 schools of which 1,475 were Amish and 355 Old Order Mennonite (an Amishman from Fertile, MN has since published a school directory). By 2012, there were an estimated 55,000 Amish pupils being taught by 3,000 teachers in 2,000 private Amish schools in North America (Kraybill, Johnson-Weiner, and Nolt 2013, 255, 447 fn 17).

More importantly, as the number of Old Order schools has grown, Old Order education has diversified (Johnson-Weiner 2007), an outcome of changes in the Amish world itself as technological diversity and the move away from agriculture by many in Amish communities have transformed Amish society in ways that would have been unimaginable a century ago. In the twenty-first century, there are multiple ways of being Amish, and these have implications for economic interaction with non-Amish society, family life and community relationships, and, of course, the education of Amish children (Johnson-Weiner 2014).

Today, although the majority of Amish children continue to attend small school houses with one or two teachers instructing grades one to eight, others attend larger Amish schools with more than two classrooms. Although teachers in the most conservative schools likely teach only one or two years and have little to no training, those in more progressive settlements attend regular teachers meetings and benefit from the mentorship of more experienced teachers, some of whom make a career of teaching. In the most progressive settlements, new teachers may take correspondence courses and even pass the GED High School Equivalency Test or the Standardized 12th Grade Achievement Test. Some Amish families continue to send their children to public elementary schools, where Amish students may or may not be in the majority and the teachers are clearly not Amish.

The range of subjects taught in Old Order schools also varies widely. While children in the most conservative settlements today study little more than English spelling, reading, arithmetic, and German, those in more progressive, change-minded communities have a curriculum that includes art, social studies, and health. Even within subject areas common to all, there is a clear lack of homogeneity. Ultra-conservative Swartzentruber children, who rarely speak English before starting school, learn German spelling and the *Fraktur* script, and so, by the eighth grade, they are reading from the New Testament. Their most progressive counterparts may

also be studying German grammar and answering questions posed in German about stories focused on everyday life. And in some schools, German has become a controversial part of the curriculum, suspect because it is considered a religious subject for which parents should be responsible in the home. For example, a teacher in a conservative Swiss Amish community in upstate New York was concerned that her use of a German workbook would cause a problem for their school. “Some parents don’t want us to teach German in the Schools,” she lamented. “They think it’s for the parents to do in the home.” “But,” she added, “they *don’t* do it!” (personal communication, December 2014).

Not only is there little standardization in the curriculum, but the texts used in schools and even the pedagogy differ from one Amish community to another. Clinging to McGuffey’s Readers, children in the most change-resistant communities study an archaic English and learn their spelling words by rote repetition, while their progressive counterparts use texts that encourage Standard English, do grammar exercises, write compositions, and learn phonics (Johnson-Weiner 2007).

### **Shifting Educational Goals**

Church-communities may even disagree on the goals that shape education itself. The attorney who argued the case for the Amish before the Supreme Court, William Ball, noted that “The purpose of Amish education is not to get ahead in the world, but to get to heaven” (Keim 1975, 3), implying that what is taught in Amish schools is shaped not by the demands of mainstream society but by the needs of the church-community and its attempt to resist the world outside its borders. Similarly, writing in 1993, John A. Hostetler asserted that the *function* of an Amish school “is to teach the children the three R’s in an environment where they can learn discipline, basic values, and how to get along with others” (174). In other words, Old Order schools were supposed to prepare children for Amish lives and not lives *outside* the church-community.

This notion that Amish education is to shield children from the world is explicit in the Burger opinion, which asserted that the isolation of Amish children from worldly influences was essential to the survival of the Amish. Similarly, arguing that parents, not the state, should be responsible for their children’s education, one Old Order Amish writer asked, “How can we parents expect our children to grow up untainted by the world, if we voluntarily send them into a worldly environment, where they associate with worldly companions, and are taught by men and women not of our faith six hours a day, five days a week, for the greater part of the year?” (Stoll 1975, 28). As Kraybill (2001) put it, the Old Orders “intuitively grasped that modern schools would immerse their youth in mainstream culture” and “separate children from their parents, their traditions, and their values” (175).

Ironically, however, the agency afforded the Amish by the Supreme Court’s decision in *Wisconsin v. Yoder, et al.* means that, as the Amish increasingly engage with the mainstream,

education has for many become less about isolating children from the world than it is about shaping their interaction with it. For example, in describing the growing use of technology by Amish students enrolled in Ohio public schools, reporter Jonathan Scholles (2015) notes that “at Mount Hope Elementary, a public school with a 100 percent Amish population, students are immersed with technology” and that the “Amish students are highly proficient in terms of tablet usage and enthusiastically open to learning via nontraditional formats.” Further, Amish parents have been very supportive, he adds, asserting that

At the end of the day, the subject of whether or not to embrace the growing presence of technology in schools is not an Amish thing, or an English thing, for that matter. It's the desire for children to be successful, not just in the classroom, but in life. And that's an innate aspiration for every parent. One that transcends all cultural boundaries.<sup>5</sup>

Scholles (2015; cf. Pratt 2014) goes on to note that in Fredericksburg, Ohio, where 40% of the public elementary school enrollment is Amish,

[...] it's clear to see there are no cultural differences. English and Amish students alike are connected [...] and technologically proficient. All students have their own laptops connected to Smartboards, and thanks to a supportive Parent Teacher Organization, most have their own iPads.

Even when Amish children go to Amish schools, their education may be focused on preparing them to maintain Amish values as they work in non-Amish settings. Some schools in more progressive communities actively bring religious instruction into the classroom through bulletin boards, Bible verse memorization, and devotions (Johnson-Weiner 2007, esp. chapter 6). As one teacher put it:

Do we read the Bible and have devotions? Yes. Why? If we expect future generations of our people to be Christians, they must be taught Bible stories and principles. If the fathers leave for the factory at 4:30 a.m., before the children arise, when will they get the Bible story? I know they should take time in the evening, many do [...] Yet, way too many times it is left to teachers. They need to form convictions early in life (139).

In other words, as Amish parents have turned to earning a living off the farm and even in mainstream factories, some Amish schools are preparing children to compete economically with their non-Amish counterparts on a playing field outside the Old Order community.

## **Education and Amish Diversity**

This diversity of Old Order education and the technological innovation that many Amish parents are embracing for their children challenges the *Yoder* decision's portrayal of the Amish as a homogeneous agricultural folk, devoted, according to the Burger opinion, “to a life in harmony with nature and the soil, as exemplified by the simple life of the early Christian era which

continued in America during much of our early national life” (*Wisconsin v. Yoder, et al.* 1975, 152). No longer do “Amish beliefs require members to make their living by farming or closely related activities,” as the Chief Justice asserted.

Indeed, while the Chief Justice argued in the Opinion of the Court that Amish “religious beliefs and attitude toward life, family, and home have remained constant—perhaps some would say static,” and further that “their religious beliefs and what we would today call ‘life style’ has not altered in fundamentals for centuries” (*Wisconsin v. Yoder, et al.* 1975, 158), it is doubtful that the Amish world was ever as homogeneous as testimony in the *Yoder* case suggested. For example, by December 1971, when the *Yoder* case was argued, schisms had fractured Amish society, resulting in such different church-communities as the Swartzentruber Amish and the New Order Amish. Despite the bucolic picture of the Amish world painted by expert witness John A. Hostetler, some Amish church members in northern Indiana were already leaving the farm to take industrial jobs. Today, in some settlements, the percentage of Amish heads of household engaged primarily in farming is well below 50% (Kraybill, Johnson-Weiner, and Nolt 2013, 282).

As *Ordnungs* have changed, permitting a greater range of occupations, so too have the behaviors that characterize Amish life. Indeed, historian Shawn F. Peters suggests that internal ideological differences may be much more challenging to the Amish than external forces. He notes that, in the aftermath of the *Yoder* case, the Amish community in New Glarus, Wisconsin, suffered increased internal dissension and many, including defendant Jonas Yoder, moved away. As Peters (2003) put it:

Over time, the colony centered in New Glarus had attracted both conservative and more progressive members of the faith. Though bound together by many core religious beliefs, conservatives and progressives sometimes failed to see eye to eye on such potentially divisive issues as the acceptability of modern technology (167-68).

Observing technological change in the Arthur, Illinois, Amish settlement, sociologist Judith Nagata (1989) noted that “one result of Amish involvement in a highly specialized production with a growing emphasis on extreme commercialization lies in a changing ethic that pervades many aspects of their behavior” (125). The Amish, she argued, had surrendered “some of their economic distinctiveness [...] and] are constantly walking the narrow tightrope between accommodation and separation” (142). They were still, Nagata asserted, committed to “most of the underlying principles [...] notably the core-value of separation,” but, clearly, non-conformity was taking on new meaning. Nagata noted, in particular, changing religious attitudes, commenting that “more conservative Amish,” or “hard-core” Amish, “are generally intolerant of economic innovations.” In contrast, she asserts, “those Amish who are more liberal in their support of technical innovations” support more “spontaneous and personal prayer,” favor expanded education, and encourage more discussion of the faith (125).

In short, while the Supreme Court's decision in *Wisconsin v. Yoder* emphasized the importance of Amish separation from the world, Amish church-communities are not all "separate from the world" in the same way. Today, some allow church members to carry cell phones so that they can be easily reached by non-Amish clients or employers while others discourage church members from talking on any telephone "except in an emergency." Conservative church-communities continue to privilege the small family farm and low levels of technology, emphasizing the activities of family and church over events in the outside world, while other, more progressive Amish church-communities, with different understandings of appropriate Amish behavior, challenge the understanding of Amish life that is the basis of the *Yoder* decision. Rather than emphasizing "Informal learning-through-doing, a life of 'goodness,' rather than a life of intellect; wisdom, rather than technological knowledge; community welfare, rather than competition; and separation, rather than integration with contemporary worldly society" (*Wisconsin v. Yoder, et al.* 1975,153), progressive Amish enterprises showcase cutting edge technology, engage internationally in manufacturing and commerce, and cater to a non-Amish clientele.

### **Today's Amish World and the *Yoder* Decision**

Because today's Amish world is, for the most part, not the Amish world of the *Yoder* decision or, more precisely, not the Amish world presented in expert testimony before the United States Supreme Court (Peters 2003, 95), it is not surprising that the assumptions of the decision are no longer valid. One of the issues addressed in *Wisconsin v. Yoder, et al.* was compulsory schooling to the age of 16, which would, on average, be two years after completion of the elementary eight grades but before the age at which most completed secondary school. Writing shortly after the *Yoder* decision, lawyer and professor Stephen Arons (1975) noted that, "the Amish agricultural community makes ample provision for training its adolescents in farming and other skills and values necessary to the community's survival" (130), and, in the "Opinion of the Court," Chief Justice Burger referred to "their long established program of informal vocational education (*Wisconsin v. Yoder, et al.* 1975, 162)." Yet while some communities hold vocational classes for those who have completed eighth grade, many others make no formal provision for education after the child leaves school. Moreover, what vocational programs there are vary widely, some requiring the child to simply attend school an additional three hours a week until his/her sixteenth birthday while others have the child work at home under parental supervision—what they would have done without any formal requirement to do so. Indeed, many parents simply start their children in school at an older age so that they will be older when they complete the eighth and final grade.<sup>6</sup>

Of course, a problem in a number of communities is that there are few agricultural chores to keep children busy when they finish school because agriculture is, as already noted, no longer key to community survival. Moreover, when parents are no longer working together on the farm and may even be spending their days some distance from the family home, it is increasingly



difficult for them to train children in key tasks that will sustain them as they grow to adulthood. Facing this problem, the Weaverland Mennonite Schools, established by members of the Old Order Weaverland Mennonite Conference, or Horning Mennonites, who benefited from the *Yoder* decision, have expanded the curriculum in a way that implicitly recognizes the changing world that young folks in the church face. For example, the Weaverland Mennonite Schools offer such practical courses as typing and incorporate craft projects that provide training in skills such as electrical wiring and sewing, thereby helping students acquire skills they may not be able to learn at home and enabling them to compete in a more diverse and technologically job market (Johnson-Weiner 2008). While public schools serving more progressive Amish communities have expanded their curricula—some offering their Amish students vocational courses such as welding and small engine repair (Mykrantz 1994, cited in Dewalt 2006, 92)—and many private Amish schools now use texts produced by evangelical Christian publishers, the Amish have not yet begun offering additional coursework in their own schools to train children explicitly for jobs outside the community (see also Johnson-Weiner 2014; Johnson-Weiner 2007, ch. 6). Nevertheless, some in more progressive communities see this as a possibility. One Indiana teacher noted:

Do I look for more grades being added? [...] Yes, eventually I look for more grades. I don't think we'll be a better community for it, but it will very likely happen. Already a factory has this policy: you must have a high school diploma to apply here [...] unless you are Amish! I don't think that is a very good plan. It is not fair and will result in bitter feelings toward Amish (Johnson-Weiner 2007, 241).

Given that a key assertion of the *Yoder* decision was that the Amish object to formal education beyond the eighth grade because the values it teaches are in marked variance with Amish values and the Amish way of life, that some contemplate just this change is shocking.<sup>7</sup>

### ***Yoder's Contradictions***

The *Regulations and Guidelines for Amish Parochial Schools of Indiana* asserts that Amish schools “have won the trust and confidence of the Indiana State Department of Public Instruction. We enjoy tolerance from local officials. We currently sense no opposition from the outside.” Nevertheless, there’s a warning:

Are we thinking the courts will always rule in our favor? If another Amish school case ever comes up [...] the ruling could go against us. We could lose all we had struggled for and gained in the past. [...] Let's accept our responsibilities to the fullest, not only because of a concern for government intervention, but also to the honor and glory of God and to benefit the next generation (2-3).

In part, the fear in some Amish communities that the government will intervene in the way it did before the *Yoder* decision is motivated by the expert testimony on which the decision is based. John A. Hostetler, noted sociologist and expert on Amish life, was persuasive in his

appearance before the high court (cf. Fischel 2012; Peters 2003; Rosen 1977), but his argument was two-part. First, as noted above, he characterized the Amish as a homogeneous religious group whose way of salvation required them to remain separate from mainstream society and nonconformed to the world. However, he also argued that, in Amish schools, children received an education comparable to that offered them by the public schools. In a later essay about the case, Hostetler asserted, “As judged by educational testing standards the overall performance of the Amish is similar to that of a representative sample of rural school children in the United States” (Hostetler 1975, 109).

Concerned about public perception of Old Order schools, some Amish communities, particularly in Iowa and northern Indiana, continue to use standardized tests to measure student performance, and, in general, Amish pupils continue to perform comparably to their non-Amish counterparts in the public schools. But the church-communities carrying out such testing tend to be more progressive, as was likely the case in the 1960s and early 1970s when the *Yoder* case was making its way through the courts. Economics professor William A. Fischel (2012) notes, for example, that the testing upon which Hostetler based his testimony focused only on those subjects taught in Amish schools, which excluded any coverage of the sciences, and was limited geographically and only to those schools that agreed to the research—likely schools in communities similar to those that continue to use standardized tests today.

In fact, were *Yoder* to be revisited by today’s Supreme Court, there would be little statistical evidence to support the claim by Hostetler and Huntington (1992) that

[...] standardized test results indicate that the Amish parochial schools, now taught by teachers educated in Amish schools, are continuing to give their students an adequate academic education, even when judged by measures designed to test students in our modern, technological society. Amish parochial schools are preparing their students for successful, responsible adulthood within their own culture and within the larger society (94).

As Kraybill, Johnson-Weiner, and Nolt (2013) note:

[...] evidence suggests that Amish school students in higher communities are proficient in reading and writing English, and in basic math skills. There is no available evidence that indicates the skill levels of students in the most traditional Amish schools (263).

It is important to note that the *Yoder* decision is based on two potentially contradictory findings. The first is that the Amish are a virtuous people whose way of life is “one of deep religious conviction, shared by an organized group, and intimately related to daily living.” In writing the Opinion of the Court, Chief Justice Burger explicitly referred to the testimony of Hostetler and others, noting that

[...] as the expert witnesses explained, the Old Order Amish religion pervades and

determines virtually their entire way of life, regulating it with the detail of the Talmudic diet through the strictly enforced rules of the church community.

Given this, Amish children must be protected from consequences of secondary education, which would expose them “to worldly influences in terms of attitudes, goals, and values contrary to beliefs” and thereby interfere substantially with their “religious development [...] and integration into the way of life of the Amish faith community at the crucial adolescent state of development” (*Wisconsin v. Yoder, et al.* 1975, 158-159).

Secondly, however, the Opinion noted that the Amish “continue to provide what has been characterized by the undisputed testimony of expert educators as an ‘ideal’ vocational education for their children in the adolescent years” (*Wisconsin v. Yoder, et al.* 1975, 164). It added further that

the Amish in this case [...] carried out the even more difficult burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education in terms of precisely those overall interests that the State advances in support of its program of compulsory high school education (*Wisconsin v. Yoder, et al.* 1975, 171).

Unfortunately, those communities that most limit worldly influences—those most closely meeting the Burger court’s understanding of the Amish world—are likely to be the least able or willing to provide an education judged “adequate” by state standards. For example, technologically conservative, privileging the small family farm, and maintaining strict boundaries between the church-community and the world, the ultra-conservative Swartzentruber Amish are, perhaps, most like the agrarian Amish of the *Yoder* decision. Moreover, Swartzentruber schools, with their limited curriculum, archaic texts, and an emphasis on rote pedagogy clearly represent the Amish education that the *Yoder* decision would preserve, for they do strictly limit their children’s exposure to the “worldly values” that might “interfere with their development in the Amish community [...]” (*Wisconsin v. Yoder, et al.* 1975, 154; cf. Johnson-Weiner 2007, chapter 3). Swartzentruber schools offer nothing more than, in the Chief Justice’s words, “basic skills in the ‘three R’s’ in order to read the Bible, to be good farmers and citizens and to be able to deal with non-Amish people when necessary in the course of daily affairs” (*Wisconsin v. Yoder, et al.* 1975, 154). Ironically, they succeed in this because they are uninterested in evaluating their schools by any standards or in any terms except those of their own community.

The *Yoder* decision protects the private Amish schools by acknowledging their role in maintaining the separation of the church-community from mainstream influences. On the other hand, it appears to assume that those schools will perform in ways comparable to their public counterparts, and comparing Amish education to that available in public schools ignores the fact that Amish education is designed to be different. As Amish writer Joseph Stoll (1975) noted, “The public schools are not striving for the same goal Christian parents are. We are not interested

in building missiles and jet aircraft. They are not interested in building Christians. We must go separate ways” (42).

Consequently, while some Old Order children will take standardized tests and perform comparably to their public school counterparts, many Old Order children will not and may leave school ill-equipped to interact with the non-Old Order world in any but the most basic social and economic intercourse. Educating children for life in an Amish world means not preparing them for a non-Amish life.

## For the Future

Commenting on the legacy of the *Yoder* case, historian Shawn F. Peters suggests that the decision has benefited the Amish in other legal matters. For example, he specifically notes the application of *Yoder* to cases involving the orange slow-moving vehicle triangle, which many more conservative Amish refuse to use on the grounds that it is too “worldly” (Peters 2003, 171-72). Peters also notes that William Ball, the attorney who argued the case for the Amish before the Supreme Court, successfully used the *Yoder* precedent in arguments on behalf of fundamentalist Christians seeking to set up their own private schools. Similarly, the *Yoder* case has helped support the homeschooling movement.

More recent decisions suggest, however, that the *Yoder* case will have a limited impact. For example, the Burger Supreme Court ruled against Amishman Edwin Lee, who had argued (citing the *Yoder* decision) that his religious beliefs precluded paying social security taxes for his non-Amish employees. In *that* Opinion of the Court (*United States v Lee* 1982), Burger concluded that, although there was a conflict between the Amish faith and the requirement to pay Social Security taxes, this “is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional.” Burger went on to add that

The Court has long recognized that balance must be struck between the values of the comprehensive social security system, which rests on a complex of actuarial factors, and the consequences of allowing religiously based exemptions. To maintain an organized society that guarantees religious freedom to a great variety of faiths requires that some religious practices yield to the common good. Religious beliefs can be accommodated, [...] but there is a point at which accommodation would “radically restrict the operating latitude of the legislature.”

In subsequent cases, Peters argues, the Supreme Court “effectively sounded the death knell for *Yoder*” by abandoning the requirement that states demonstrate a compelling interest, the standard used in the *Yoder* decision;<sup>8</sup> instead “a statute’s surface neutrality toward religion was enough to substantiate its constitutionality” (Peters 2003, 176-77).

More recently, several articles and notes in law school reviews have gone even further, arguing that *Yoder* should be overturned (cf. Cheng 2010; Davis 1997; Raley 2011). Drawing on

Feinberg (1980), Cheng (2010) suggests, for example, that *Yoder* would be decided differently were it to be argued today because children are now recognized to hold substantive constitutional rights separately from their parents, including the right to an “open future,”<sup>9</sup> a right he claims is “omnipresent and can only be violated,” in this case by “limiting the child’s access to the free flow of information and competing ideas” (Cheng 2010, 14; Davis 1997).<sup>10</sup> An Amish child, according to Cheng (2010), “must be exposed to competing ideas [i.e. through attendance at high school] before he can make any meaningful decision about whether to follow the Amish way of life or a secular lifestyle” (15). Cheng argues that, in deciding on behalf of the Amish in *Wisconsin v. Yoder*, the government became complicit in violating the rights of Amish children because it allowed parents to isolate their children from the secular world and so deny them the opportunity to make intelligent, informed choices as adults. The state, he continues, must assure that children receive an education that will make it possible for them to enjoy personal and political freedom.<sup>11</sup>

That the Supreme Court will revisit *Wisconsin v. Yoder* to ensure that minor children have access to an education that exposes them to ideas their parents find threatening appears doubtful at this time. Moreover, as Cheng points out, in recent years the decision in *Wisconsin v. Yoder* has remained intact because of the so-called “hybridization of rights theory,” proposed by Justice Scalia in the 1990 case, *Employment Division, Oregon Department of Human Resources v. Smith*. This theory prevents the enforcement of neutral law if it adversely burdens two constitutional rights. According to Cheng, enforcing high school attendance, the issue in the *Yoder* case, would burden both “Amish parents’ Free Exercise right and their right to direct the upbringing of their children” (Cheng 2010, 37). If, as some have argued, hybridization theory came about *in order to* protect the *Yoder* decision, then that decision seems even less likely to be revisited at this point (Cheng 2010, 38, 41-43).

## Conclusion

The *Yoder* decision may be of limited value in litigation today or in the future. Nowadays, it also seems to have little impact over the way many church-communities run their schools. Based on a homogeneous Amish culture that no longer exists and likely never did, the decision assumes that Amish schools will perform in particular ways, when, given the Amish religious beliefs that gave rise to Amish schools in the first place, they unsurprisingly do not.

Nevertheless, in legitimizing Amish education, the Supreme Court empowered Amish church-communities, and the message to secular authority seemed to be “back off.” Today, local and state authorities seldom interfere with Old Order schools and Old Order education, even where *Wisconsin v. Yoder, et al.* gave secular authority the right to intervene. For example, the *Yoder* decision explicitly acknowledged that

Nothing we hold is intended to undermine the general applicability of the State’s compulsory school attendance statutes or to limit the power of the State to promulgate

reasonable standards that, while not impairing the free exercise of religion, provide for continuing agricultural vocational education under parental and church guidance by the Old Order Amish or others similarly situated. The States have had a long history of amicable and effective relationships with church-sponsored schools, and there is no basis for assuming that in this related context, reasonable standards cannot be established concerning the content of the continuing vocational education of Amish children under parental guidance, provided always that state regulations are not inconsistent with what we have said in this opinion (*Wisconsin v. Yoder, et al.* 1975, 171-72).

Nevertheless, as noted above, although most Amish children continue to engage in informal apprenticeships after the eighth grade, working at home or in shops owned by family members, there is little regulation of formal vocational programs, and many have been abandoned.

Nor do public officials in most regions of Amish settlement involve themselves to any great extent with Amish elementary education. While children in some settlements are bussed, and so the Amish school cooperates with the public school district in terms of setting school starting and dismissal times and vacation days, others seldom encounter public school representatives. Amish teachers keep attendance records, and families may turn to the public schools for children with special needs. But, for the most part, there is little interaction between the day-to-day operations of Amish schools and those of their public counterparts. Indeed, William A. Fischel asserts that “many state officials are grateful not to have to play the bad cop in negotiating with the Amish,” as many did before the *Yoder* decision (Fischel 2012, 127).

In short, it is unlikely that the decision will be revisited or that the Amish need fear that government will again attempt to assert authority over how the Amish educate their children. “State educators now know,” Fischel argues, “that the Amish have a powerful fallback position if officials were to press for more formal education. Even though the Amish are reluctant to litigate, the *Yoder* decision could make states leery of pressing the Amish beyond any educational standards mentioned in the Court’s opinion” (Fischel 2012, 126)—which, as noted above, are contradictory.

In fostering private Amish schools and helping Amish communities maintain control over the education of Amish children, *Wisconsin v. Yoder, et al.* has helped to ensure the vitality of the Amish world in the twenty-first century, for it has enabled Amish communities to realize their own educational goals rather than those of the dominant society. More importantly, it has allowed the Amish both a means of isolating themselves from mainstream society and a way of facilitating their interaction with it.

Further, *Wisconsin v. Yoder, et al.* has facilitated widely varying patterns of Amish interaction with the world and divergent notions of what it means to be Old Order. Free to establish their own schools, each Amish community has attempted to hold to educational

practices that best characterize for its members key values of community responsibility, appropriate economic and social interaction with the world, and church-community discipline. In the increasingly diverse Amish world, Amish education helps to change the culture of the church-community even as it reproduces it (Johnson-Weiner 2007).

What this means for the future is that, without the interference of secular authority, Amish schools may well contribute to the growing divide between progressive, change-minded church-communities and more conservative ones. As sociologist Thomas Meyers put it, “the development and maintenance of Amish schools is essential to the preservation of Amish culture” (Meyers 2003, 105). But Amish schools don’t preserve or maintain the “static” culture of the *Yoder* decision.

## Endnotes

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<sup>2</sup> This letter, dated September 12, 2013, and sent from Warren J. Wheeler to Dan Herschberger, was shared with me by the office of New York State Senator Pattie Ritchie. Quotes in this paragraph and the following one are taken from this letter.

<sup>3</sup> The Becket Fund for Religious Liberty and the New York City law firm of Proskauer and Rose filed suit in federal court in 2009 alleging that the Town of Morristown had violated both state and federal protections for religious exercise.

<sup>4</sup> An Amish publication serving Old Order teachers, parents, and schools, the *Blackboard Bulletin* was founded in 1957 as a monthly teachers’ journal and had, as a primary goal, the development of Old Order schools that would ensure the spiritual survival of the church-community. The *Blackboard Bulletin* aggressively promoted the Amish school movement in editorials and articles.

<sup>5</sup> Scholles writes that the school used computers and smartboards in the classroom before introducing LearnPads, tablet computers similar to the Apple iPad. While Mount Hope Elementary School has one LearnPad for every six students, each of the students at nearby Winesburg Elementary, where 60% of the students are Amish, has one.

<sup>6</sup> For example, the *Regulations and Guidelines for Amish Parochial Schools of Indiana* stipulates that students who are not 15 within 60 days of the term after they complete the eighth grade attend school for three hours weekly. In addition,

the rest of the school week shall be used in a gainful occupation under the supervision of the parents. A daily record shall be kept by the pupil to report [the] nature and progress of work being done. This should be entered in detail into a composition book showing good penmanship, proper grammar, correct spelling and punctuation marks. Let it be a

complete project report on worthwhile work done at home (13).

Yet the *Indiana Amish Directory* noted in 1995 that “since most children pass the eighth grade by the time they become fifteen years of age, the vocational school that had been organized before, with few exceptions, has been discontinued” (Miller 1995, 13).

<sup>7</sup> Writing in the *Virginia Law Review*, Raley (2011) argues that “Many Plain communities invoke the ruling [*Wisconsin v. Yoder, et al.*] to hinder the economic and religious mobility of Amish-raised individuals” (683). Ignoring the diversity of the Amish world and how decision making occurs in Amish communities, this assertion is as overly simplistic as the characterization of the Amish in the *Yoder* decision. Equally simplistic are Raley’s assertions that “The Amish could observe compulsory education laws through high school, as well, by keeping their children in the private Amish schools for a few more years” and that the Amish have access to an appropriate curriculum, thanks to Rod and Staff, “a leading textbook publisher for Amish and conservative Mennonite schools” which “already carries high school curricula for the Mennonite schools that allows students to continue their education [...]” (Raley 2011, 688-89). For example, many communities would find the Rod and Staff curriculum unacceptable because of its religious content; others object, not simply to formal education in public schools, but to continued formal education itself. As a group of Amish clergy argued before the Holmes County (Ohio) Board of Education in 1954,

We believe that such time spend [*sic*] in the schoolroom, beyond the eighth grade or the age of fourteen, will often lead to indolence and an inclination for types of work which require less manual labor, without regard for spiritual and sometimes physical welfare; often resulting in becoming entangled with things that are not edifying (quoted in Johnson-Weiner 2007, 23).

Fifty years later, a Swartzentruber Amish bishop argued that, “By fourteen you’ve pretty much learned all you need to in schools, but you can’t wait ‘til then to start learning what you need to live” (Johnson-Weiner 2007, 23).

<sup>8</sup> In the Opinion of the Court in the *Yoder* case, Chief Justice Burger argued that

in order for Wisconsin to compel school attendance beyond the eighth grade against a claim that such attendance interferes with the practice of a legitimate religious belief, it must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause (*Wisconsin v. Yoder, et al.* 1975, 156; cf Cheng 2010).

<sup>9</sup> Rights of “open future,” proposed first by Feinberg (1980), are defined by Archard (2014) as “the rights given to the child in the person of the adult she will become.” In reference to the decision in *Wisconsin v. Yoder*, for example, Feinberg argued that



The case against the exemption for the Amish must rest entirely on the rights of Amish children, which the state as *parens patriae* is sworn to protect. An education that renders a child fit for only one way of life forecloses irrevocably his other options [...] [C]ritical life-decisions will have been made irreversibly for a person well before he reaches the age of full discretion when he should be expected, in a free society, to make them himself (as cited by Davis 1997, 95).

Interestingly, the appearance of John A. Hostetler as an expert witness would seem to counter the extent to which limitations placed by Amish parents on their children's education hinder Amish children in achieving success outside of the Amish community.

<sup>10</sup> Cheng (2010) and other recent commentators are not the first to focus on the failure of the majority decision in *Wisconsin v. Yoder, et al.* to consider the rights of Amish children. In his dissent, Associate Justice William O. Douglas argued that "the right of Amish children to religious freedom is not presented by the facts of the case, and he noted that the lower courts "treated the religious interest of the child as a factor in the analysis" (*Wisconsin v. Yoder, et al.* 1975, 175). He went on to add that

If the parents in this case are allowed a religious exemption, the inevitable effect is to impose the parents' notions of religious duty upon their children. [...] As the child has no other effective forum, it is in this litigation that his rights should be considered. And if an Amish child desires to attend high school, and is mature enough to have that desire respected, the State may well be able to override the parents' religiously motivated objections (176).

Cheng (2010) argues that "The Court may have been justified in giving children's rights half-hearted consideration in 1972, but there should be greater judicial scrutiny today" (13).

<sup>11</sup> Davis (1997) points out that an education that exposes Amish children to a wide variety of ideas might make it impossible for them to remain Amish. As she notes, "Even if [the Amish child] envies the peace, warmth, and security that a life of tradition offers, she may find it impossible to turn her back on 'the world,' and return to her lost innocence" (96).

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