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# Rejecting “Controversial” Issues in Education: A Case Study of Ultra-Orthodox Jewish Schools in Belgium

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**Abstract:** In liberal democracies, fundamental rights and freedoms can conflict, and if they do, it is not always clear which right the state should prioritize. Should the right of parents to choose education in line with their own convictions prevail, or should the right of children to be prepared for a future life in a liberal democratic society be given more moral weight? While the former might lead to establishing and subsidizing orthodox religious schools, the latter implies “liberal”, “autonomy-facilitating” education. In order to make this tension concrete, we focus on a case study of an ultra-orthodox Jewish (Haredi) school in Flanders (Belgium), where “controversial issues” are excluded from the curriculum and where education is not fully in line with the core principles of “liberal education”. Subsequently, we explore the legal educational context in liberal democracies, with a particular focus on the freedom of religion and education. Then, we scrutinize several arguments for or against ultra-orthodox faith-based schools. We conclude that there are no convincing arguments for state support for these kinds of schools and that the recent Flemish policy of homeschooling might be a reasonable alternative, wherein a balance is found between children’s rights and parental rights.

**Keywords:** ultra-orthodox schools; freedom of religion; freedom of education; controversial issues; autonomy; Jewish schools; liberalism; Belgium (Flanders)

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## 1. Controversial Issues in Education: What Is *Not* Being Taught in the Classroom

Within the education research of the last twenty years, a recurring topic is the teaching of “controversial issues”. Although the debate is complex, it is reasonable to say that the main questions being addressed are the following: (1) what makes an issue controversial in an educational context, and (2) how should teachers deal with controversial issues in the classroom? In order to answer the first question—i.e., “What criteria should be used in order to determine whether or not an issue is controversial?” (Von der Lippe 2019, p. 2)—epistemic, political, behavioral, and diversity criteria have been discussed (e.g., Archard 1998; Cooling 2012, 2014; Dearden 1981, 1984; Hand 2007, 2008; Hand and Levinson 2012; McKay 1997; Petrovic 1999, 2002; Steutel and Spiecker 2004). In order to answer the second question, a distinction has been made between directive, non-directive, and procedurally directive teaching (e.g., Hand 2007, 2008; Maughn Rollins 2014).

No matter how important these questions and discussions, when dealing with controversial issues in the classroom, it is also important to have a look at what is *not* being taught in the classroom. In other words, it should also be asked why “controversial issues” should be included in the school curriculum and what a state should do when people/groups refuse to do so. Indeed, in several—mainly, if not exclusively—ultra-orthodox faith-based schools (UOFBSs), textbooks are censured, and parts of the regular—and thus compulsory—curriculum (e.g., evolution theory, sex education, popular music, historical critical reflection) are avoided because these topics are considered “controversial” by some people/groups.

In this paper, we deal with this kind of exclusion and therefore focus in particular on UOFBSs. In order to make the topic concrete, we scrutinize a Jewish UOFBS, which has been recognized and financed by the Flemish Government—and is thus authorized to deliver regular diplomas—but refuses to teach “controversial” issues. We will not address the topic from a practical or pedagogical perspective but, rather, from a legal and political philosophical perspective, with a focus on the rights and duties of the state rather than of the teachers and students. Our main research questions will thus be the following: Why should “controversial” issues be part of the compulsory curriculum in liberal democratic societies? How should the liberal state deal with “recognized” (and state-financed) faith-based schools wherein “controversial” parts of the curriculum are excluded? Should the freedom of religion of these schools (and of the respective religious communities) be given priority over the individual right to “liberal” education, and should the state thus accommodate these schools? Or, should the state rather select a less permissive and a more restrictive policy so that all children (including children of ultra-orthodox families) get a “liberal” or autonomy-facilitating education, even if this is not in accordance with the religious convictions of their parents?

In order to answer these questions, we do not rely on empirical or pedagogical studies but, instead, scrutinize several normative arguments, which have been brought to the fore in political and educational philosophy. This means that we have not only thoroughly analyzed the current political philosophical literature concerning liberalism and minority rights, but that we have also carefully studied a range of leading publications in contemporary educational philosophy.

## 2. A Case Study: Jewish Orthodox Faith-Based Schools in Belgium

With approximately 20,000 members, the Belgian/Flemish city of Antwerp has a large Jewish community of which 10,000 members belong to the ultra-orthodox Haredi community (Perry-Hazan 2014, p. 481; 2015, p. 629). Inspired by the ideas of Israel ben Eliezer (1698–1760), known as the “Baal Shem Tov” (בעל שם טוב), Haredi Jews embrace the principle of *devekut* (“adhesion”) in their daily lives, practices, and social contacts, and they are expected “to conform to their spiritual leaders’ declarations in both public and private spheres” (Perry-Hazan 2014, p. 479). Accordingly, the daily practice of Haredi Jews is characterized by stringent religious rules, for instance with regard to food, clothing, prayer, liturgy, Sabbath obligations, gender roles, and sexual morality. Adherence to the religious rules has led to voluntary social seclusion: in order to enable a life in accordance with the Haredi principles, ultra-orthodox Jews live in closed communities with their own shops, restaurants, bakeries, hairdressers, medicines, and schools.

In the Belgian/Flemish city of Antwerp, there are several ultra-orthodox Jewish schools, some of which are recognized and subsidized by the Flemish Ministry of Education. In order to obtain this recognition and state support, these schools (like all other recognized and subsidized schools) have to meet several criteria with regard to quality, infrastructure, and student policy. One of these requirements framed by the Ministry of Education is that schools have to provide education in accordance with the “educational aims” (*eindtermen*) and “aims of development” (*ontwikkelingsdoelen*) developed by the Ministry of Education<sup>1</sup>. Additionally, schools must be accessible to all students, without discrimination.<sup>2</sup> If the necessary requirements have been met, these “non-governmental”

<sup>1</sup> In order to guarantee the freedom of education in Belgium, there is no common curriculum developed by the state. Alternatively, the Flemish Ministry of Education has developed “educational aims” and “aims of development”, indicating the *minimum* that pupils in primary, secondary, and adult education should learn in terms of knowledge, insight, competencies, and attitudes. In 2019, the educational aims for secondary education (first grade) were reformed and must be integrated (in their literal form) into the curricula used by schools. The educational inspectorate controls whether and how these educational aims are reached. <https://onderwijs.vlaanderen.be/nl/eindtermen-en-ontwikkelingsdoelen>.

<sup>2</sup> According to the Flemish Decree on Primary Education, art.3bis (Belgisch Staatsblad 1997) and the Codification on Secondary Education (Belgisch Staatsblad 2011), each pupil has the right “to register in the school or place of establishment chosen by his parents”, and subsidized schools can no longer use admission policies that sort pupils according to gender or religious affiliation.

schools are subsidized on an equal basis as state schools, and they have the authority (approved by the state) to award official diplomas. If, however, the requirements have not been met, schools can neither be recognized nor supported by the state, and they will not be allowed to issue state-approved diplomas. Legally, non-recognized schools fall in the domain of homeschooling (cf. Section 5). This is, for instance, the case for ultra-orthodox primary school X.<sup>3</sup> Although it was recognized and subsidized by the Flemish Community, when the school was inspected in 2002–2003, it turned out that the educational aims of biology and the Dutch language were not being reached. For religious reasons, the school refused to teach about procreation and puberty and refused to use modern technology (radio and television) for listening exercises. Because the school did not want to change these religiously based practices, it lost its subsidies and recognition. This decision was, after the school took the state to court over the issue, affirmed by the council of state, which argued that “the right to obtain subsidies is limited by the ability of the community to make subsidies dependent on the requirement of the common good, such as appropriate education.”<sup>4</sup>

School X is, however, not the only Jewish school that faces problems with “sensitive issues”. In 2012, school Y, which is a secondary school run and populated by the ultra-orthodox *Belz* community<sup>5</sup> and recognized and subsidized by the Flemish Community, was inspected but did not obtain the required quality of education for geography, history, and the Dutch and French languages. The main shortcomings were related to teaching about pre-history and the emergence of the earth (geography/history), applying a historical critical analysis of source materials (history), and insufficient use of modern media and IT applications. In 2014–2015, the school was re-inspected. According to the inspectorate, the lacunas had largely been eliminated, and the school was able to keep its recognition and state support. In 2017, however, the school came under fire when an “internal document”, distributed among teachers by the Jewish school principals<sup>6</sup>, was leaked to the media. The document not only contained guidelines about the way teachers (who, like the students, are all female)<sup>7</sup> should dress (e.g., no trousers and short skirts, no tight clothes, no cleavage, no jewels with a crucifix), but it also listed guidelines concerning “sensitive issues” (issues opposing an ultra-orthodox interpretation of Judaism) and how (not) to deal with these issues in the classroom (cf. Figure 1). In order to facilitate these guidelines, “sensitive” issues in textbooks were censored: passages on evolution and procreation were sealed or removed; illustrations showing boys and girls together, or grandfathers and grandmothers embracing each other, were marked with a black pencil; and teachers received a list of pages and/or textbook passages that should be avoided. According to Perry-Hazan (2014, p. 487), this adjustment of textbooks is a common practice because state-subsidized Haredi schools “prefer using the public school textbooks rather than designing their own curricula, albeit with ‘limited adaptations’”.

<sup>3</sup> For ethical reasons, we anonymized the names of the schools.

<sup>4</sup> RVS (XXIIe k.) 2005-05-12, nr. 147.579, 8.

<sup>5</sup> *Belz* is a “prominent and influential” community within the broader Jewish community in Antwerp, with approximately 400–500 families. The community is very closed: members go to the same synagogue, visit the same shops, send their children to the same school, etc. Within the community, there are very stringent rules for living: women are not allowed to drive a car, and girls are not allowed to ride a bicycle. Furthermore, it is forbidden for girls and boys to talk to each other. If these or other rules of “purity” are disobeyed, families can be excluded from the community, which is often a disaster for their (social) lives (Het Nieuwsblad 2019).

<sup>6</sup> Legally and formally, the principal of the school is a Flemish man, but in daily life, the school is run by two ultra-orthodox Haredi women (mother and daughter).

<sup>7</sup> According to the Flemish Decrees mentioned in footnote 2, subsidized faith-based schools can no longer use admission policies sorting out pupils according to gender or religious affiliation. In practice, however, subsidized ultra-orthodox Haredi schools are schools for girls only or for boys only.

- Do not talk to pupils about: sex, procreation, politics, religion, racism, personal issues*
- *History: Do not talk about cults, arts (crucifixes, nude persons, etc.)*
  - *Biology: No procreation, no evolution (Darwinism)*
  - *Music: No Christian motives, no pop music*
  - *Geography: No origin of the earth, no universe, no year counting before and after Christ*
  - *Drawing and arts: Be careful with museums, excursions, illustrations*
  - *Literature: No texts with boys and girls together (in case of doubt: consult the school principal), no texts wherein kids oppose their parents, no inappropriate use of language*
  - *Physical Education: no kneeling, no music containing words, no vulgar dances [sic]*
  - *Text- and other books: New books must be approved by the Jewish school principal*
  - *Video projection: Should be approved in advance by the school principal*
- In general: Do not discuss with pupils matters that are not directly related to the pedagogical mission*

**Figure 1.** Extract from the document with guidelines from school Y.

After the leak of the document, the school was re-inspected in February 2018 and again in June 2019, but remarkably, the inspectorate concluded that there were no problems with regard to teaching material and content. Accordingly, the school retained its recognition and is still subsidized by the state. In 2019, however, several (anonymous) teachers complained that the required adaptations have not been made (De Vrijheid van Onderwijs 2019; Het Nieuwsblad 2019), that the internet is “filtered” by a rabbi, and that “sensitive issues” such as sex education, evolution theory, and arts education are still avoided. This is one of the reasons why the school was re-inspected in November 2019. According to the latest inspection report (published in February 2020)<sup>8</sup>, the school still refuses to teach about procreation and evolution. Moreover, pupils have very limited access (or none at all) to the internet; “popular” music is avoided in the music lessons; and there are also deficits in physical education (e.g., no swimming). Because the school does not meet the educational aims for science education, physical education, and music education, the school was given a negative advice (“ongunstig advies”) by the inspectorate. If the school does not succeed in implementing the required recommendations by November 8, 2020, it will lose its recognition and subsidies.

### 3. Freedom of Religion and Education: Legal Context

One of the most thought-provoking questions in the debate about the limits of tolerance in liberal democratic states is the following question, raised by Kymlicka (2002, p. 229): “What if the group (. . . ) simply wants to be left alone to run its own community in accordance with its traditional non-liberal norms?” This question points to the heart of the discussion of controversial issues at school: what should the liberal state do if religious communities choose to live their lives in accordance with their traditional, non-liberal norms and therefore refuse to teach in conformity with official teaching aims and requirements?

Unfortunately, referring to human rights legislation does not lead to clear answers, as different human rights conflict and thus need to be balanced. The European Convention on Human Rights (ECHR–1st protocol, Art.2) as well as the Universal Declaration of Human Rights (UDHR–Art. 26) for instance guarantee the “right of education”, which “shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms” (UDHR–Art. 26, §2), and in a similar vein, the UDHR (Art. 29) states that “education shall be directed to the development of the child’s personality, talents and mental and physical abilities”. However,

<sup>8</sup> The reports are available online at <https://www.onderwijs.vlaanderen.be/doorlichtingsverslagen/> (accessed 2020-04-03).

these educational aims are sometimes opposed to the “prior right” of parents “to choose the kind of education that shall be given to their children” (UDHR–Art. 26, §3) or to their “right to ensure such education and teaching in conformity with their own religious and philosophical convictions” (ECHR–1st protocol, Art. 2). Indeed, as stated in the UNDHR (Art. 26, §1), education should also aim at “the development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.”

As the cases of school X and Y make clear, the aforementioned “cultural identity” and “religious and philosophical convictions” do not always accord with the (core) values of liberal democratic states, such as the equality of sexes, freedom of speech, freedom of religion, and non-discrimination. Moreover, in the respective charters and conventions, the freedoms of thought, conscience, and religion, which also imply the freedom to practice and to change one’s opinions and beliefs, are guaranteed as well (UDHR–Art. 18; ECHR–Art. 9), but these freedoms may not always be guaranteed when parents have the right to educate their children in accordance with their own religious and philosophical convictions.

As this brief legal examination makes clear, neither the right to education nor the right to religious freedom is absolute. Obviously, there are some good arguments for a more restrictive policy concerning faith-based schools—and thus taking into consideration the right to liberal education for all and the need for integration in liberal society—but there might also be good arguments in favor of a less restrictive policy: taking into consideration, for instance, the right to religious freedom and the right to private and family life (ECHR–Art. 8), even if that entails segregation and ultra-orthodox education. In the following section, we will carefully scrutinize both positions.

#### 4. Rejecting Controversial Issues at School: Exploring the Debate

Because human rights law does not give us clear-cut answers to the dilemma, it is worth exploring different arguments in discussions about faith-based schools, children’s rights, parental rights, freedom of religion, and freedom of education. While some of these arguments have a theoretical and philosophical nature, others are more practical and pragmatic.

##### 4.1. Enlightenment Liberalism versus Reformation Liberalism

In liberal democratic states, one of the core normative principles is that all adult individuals should be treated as free and equal citizens with the opportunity “to form, to revise, and rationally to pursue a conception of one’s rational advantage or good” (Rawls 2005) and with the ability “to rationally [ . . . ] assess [their] conceptions of the good in the light of new information or experiences, and to revise them if they are not worthy of our continued allegiance” (Kymlicka 1995, p. 81). In order to enable this, the liberal state has to encourage, among other things, the “development of mental abilities and capacities” (Raz 1986, p. 372; Kymlicka 1995, 92 ff), which requires qualitative and accessible education for all citizens. As said by (Gutmann 1999, p. 30), “[t]he same principle that requires a state to grant adults personal and political freedom also commits it to assuring children an education that makes those freedoms both possible and meaningful in the future.” In a similar vein, Levinson (1999, p. 144) states that “[t]o educate for autonomy, is taken to be the primary educational aim of all schools in the liberal state”. This normative premise, which is “widely accepted by educational theorists and practitioners” (Hand 2008, p. 218) requires that students be able to think and act in a rational way: “by enabling young people to think and act rationally we optimize their prospects of leading flourishing lives” (Hand 2008, p. 218).

Critics, however, argue that this stance of autonomy-based liberalism or “Enlightenment Liberalism” does not sufficiently take into account the rights of citizens and communities that choose not to live a life according to the liberal value of autonomy and, alternatively, plead for tolerance

liberalism or Reformation Liberalism.<sup>9</sup> According to Kukathas (2003), for instance, the liberal state should accept that some (religious) communities and citizens prefer to live in an ultra-orthodox and segregated way, as long as this way of life does not infringe upon the rights and freedoms of other non-orthodox communities and citizens. Because liberal societies are characterized by value pluralism and because autonomy is not a universal value, the liberal state must define itself according to tolerance and diversity (hence the concept of “Reformation Liberalism”) rather than the promotion of autonomy. As a consequence, autonomy should not be publicly charged, and there is thus no need for an education system wherein the capacity to act and think in a critical way is developed. Moreover, because every system of education is based on a specific concept of the good life, Kukathas rejects all kinds of compulsory education: “[t]he last thing a liberal state should offer its subjects is education—even if that should be a liberal education” (Kukathas 2001, p. 323). The only—minimal—task for the state is the maintenance of the peaceful co-existence of different communities in society and guaranteeing the freedom of conscience and the freedom of association: “A free society is therefore not a society of free societies or free associations. A free society is a society of many associations, not all of which need be free—indeed, none of which need be free” (Kukathas 2003, p. 98).

In relation to this, one could also point to the importance of religious embeddedness and the maintenance of particular (religious) cultures. According to Sandel (1990), for instance, the freedom of conscience should not be understood as a freedom to choose one’s own religion in an autonomous way, but as the right to follow one’s deeply embedded religious convictions or identity. Because there is no comparable interest in the possibility of evaluating one’s own identity in an autonomous way, children of ultra-orthodox communities do not benefit from “liberal” or “autonomy-facilitating” education (cf. *infra*).<sup>10</sup>

If members of the Haredi community voluntarily choose to live in an ultra-orthodox and segregated way and if this community prefers commitment to spiritual leaders and religious texts over individual freedom to choose one’s own path of life (Perry-Hazan 2015, p. 631), the state should tolerate this choice, on the condition that other communities have a similar right to do so. Moreover, there should also be a substantial possibility for individual members to leave the community—the so-called right to exit. Remarkably, this right should, according to Kukathas, only be guaranteed in a negative and formal way and not in a positive or active way (for instance, by organizing education) because that would lead to an infringement of the freedom of conscience and association. In Kukathas’ libertarian view, people remain free to leave the group, even when they grow up in a cultural minority, have not enjoyed liberal education, do not speak the language of the dominant culture, and have been taught that whoever leaves the group will be punished in hell. The costs associated with leaving the community do not detract from the exit right: “The magnitude of the cost does not affect the freedom” (Kukathas 2003, p. 107).

It is, however, questionable whether exit options can be substantial if people remain ignorant about alternative life options—a consideration that was made by Justice William O. Douglas in his dissenting opinion in the *Yoder* case:

While the parents, absent dissent, normally speak for the entire family, the education of the child is a matter on which the child will often have decided views. He may want to be a pianist or an astronaut or an oceanographer. To do so he will have to break from the Amish tradition. It is the future of the students, not the future of the parents, that is imperiled by

<sup>9</sup> This terminology was coined by William Galston (1995); see also Kymlicka (1992) and Crowder (2007).

<sup>10</sup> See in this regard the case *Wisconsin v. Yoder* (406 U.S. 205), wherein the US Supreme Court in 1972 decided, referring to the freedom of religion, that Amish children can be exempted from compulsory education from the age of 14 onwards. However, one of the consequences of this decision is that Amish children may not be able to substantially develop the required capacities in order to make autonomous choices. Interestingly, a decision in the other direction—preferring the right to liberal education, which gives children “the opportunity to participate in ‘normal’ society” over homeschooling in a “symbiotic” family system—was made by the ECHR Great Chamber in 2019 in the case of *Wunderlich v. Germany* (appl.18925/15).

today's decision. If a parent keeps his child out of school beyond the grade school, then the child will be forever barred from entry into the new and amazing world of diversity that we have today. The child may decide that that is the preferred course, or he may rebel. It is the student's judgment, not his parents', that is essential if we are to give full meaning to what we have said about the Bill of Rights and of the right of students to be masters of their own destiny.<sup>11</sup>

Barry (2001), Kymlicka (1999) and Macedo (1995) are just a few of the many liberal philosophers who would, in the spirit of this quote, refer to the importance of descent information and of the autonomy capacity. It is, however, crucial to make a distinction here between autonomy as *a conception of the good life*, on the one hand, and as *a way of acquiring a conception of the good life*, on the other (cf. Mason 1990, p. 445; see also Barry 1995, p. 129). As stated by Levinson (1999, p. 21), liberalism is not necessarily "a strong comprehensive theory", but a form of *weak perfectionism*, wherein the value of citizens' exercise of autonomy is promoted, without discriminating against those who do not exercise autonomy in their own lives (Levinson 1999, pp. 22–23). Accordingly, autonomy-based liberalism does not deny the moral commitments of those people who do not value autonomy, as long as their moral views do not deny and/or oppose the instrumental value of autonomy for others:

What matters, after all, is that all individuals have the same opportunity to structure their lives authentically and autonomously; according to weakly perfectionist principles, it is not up to the liberal state to ensure that all individuals equally do so. (Levinson 1999, p. 142)

In a liberal society, citizens should thus be able to live an ultra-orthodox religious life, as long as they are able to autonomously choose this particular way of life, as long as this way of life does not impede co-citizens to make their own autonomous choices, and as long as there is a real exit option. Autonomy thus only provides the *form* or the minimal conditions for the good life, regardless of whatever else that may consist of (cf. Kelly 2002, p. 8). The cost of excluding children from this minimal condition would be too high:

In response to the charge that mandatory education for autonomy is unfair to certain traditional ways of life that are incompatible with autonomy, liberals must insist that the inability to make rational judgments about one's way of life is simply too high a cost to allow parents to impose on a child in order that she should be raised in the traditional culture, especially when one remembers that autonomous persons can and often will exercise their autonomy to endorse the substantive values and beliefs with which they were raised. (MacMullen 2007, p. 9)

#### 4.2. Segregation versus Social Contact

In addition to preparing children for a future life in liberal democracies and providing their "right to an open future" (Feinberg 2007), schools also have a "civic mission", which is required for the maintenance of liberal democracy. Because people are not born as autonomous and democratic citizens, they have to learn to become citizens "who have a sense of justice, are law-abiding, can form critical judgments about politics, are willing to participate in civic associational life and politics (. . . ) and can display the civic virtues of reasonableness, tolerance, and respectful deliberation with citizens embracing different viewpoints" (Boucher 2018, p. 600; also Callan 1997).

This education for citizenship is not only required "for individuals' exercise of autonomy" (Levinson 1999, p. 104), but it is at the same time "a precondition for the maintenance of a healthy liberal democracy" (Levinson 1999, p. 104). If too many citizens (voluntarily) choose to live separately,

<sup>11</sup> Available online: <https://www.law.cornell.edu/supremecourt/text/406/205> (accessed 20 January 2020).

without even knowing how democracy works and without being informed about diversity in society, the stability of a liberal democratic society might be endangered (Mason 2012; Levrau 2018). Therefore, Kukathas (2003) asserts that there should be a link between the model of a stable multicultural state (in terms of constitution, institutions, laws) and the intercultural citizen who disposes of specific knowledge, beliefs, virtues, and habits. This intercultural citizen is, to quote Kukathas (2003, p. 157), someone who

not only supports the principles of a multicultural state, but also exhibits a range of more positive personal attitudes towards diversity. In particular, it is someone who is curious rather than fearful about other peoples and cultures; someone who is open to learning about other ways of life, and willing to consider how issues look from other people's point of view, rather than assuming that their inherited way of life or perspective is superior; someone who feels comfortable interacting with people from other backgrounds, and so on.

This idea is related to what (Allport 1979) labels as the "social contact hypothesis". According to this well-documented social psychological theory, prejudice decreases and intergroup relations improve when people from different socially significant groups have positive face-to-face contacts (Pettigrew and Tropp 2006). This contact is, in its turn, a prerequisite for the survival of liberal democracies and has important implications for schools. Mason (2018) and Hewstone et al. (2018) argue for instance that the beneficial effects of intergroup contact provide a strong reason for schools not to be purely composed of pupils from the same ethnic or religious background. In other words, the evidence drawn from the social contact hypothesis is an impetus for the state to encourage schools to achieve as much diversity as possible, because these schools will become more successful in the cultivation of social virtues, such as tolerance:

So long as one is surrounded by people who share one's faith, one may still succumb to the temptation to think that everyone who rejects one's religion is somehow illogical or depraved. To learn public reasonableness, students must come to know and understand people who are reasonable and decent and humane but who do not share their religion. Only in this way can students learn how personal faiths differ from public reasonableness, and where to draw the line. This sort of learning requires the presence within a classroom of people with varying ethnocultural and religious backgrounds (Kymlicka 1999, p. 89).

However, even though schools with religiously diverse student populations might at first sight provide better opportunities for different students to know each other, there is also literature pointing to the fact that simply bringing people of different backgrounds together will not be very helpful as people are often driven by what is called the "homophile principle"—"birds of a feather flock together" (McPherson et al. 2001). The impact of this principle is "spontaneous resegregation", which is not always bad for equality and citizenship (cf. Merry 2013). Even in diverse contexts, people are not inclined to engage with people with another ethnocultural or religious background because they have no real interest in each other (Al Ramiah et al. 2015). Moreover, the lack of religious diversity in faith-based schools could be compensated for, for instance, by encouraging contact with schools of another faith (Mason 2018). Besides, there is evidence that by simply imagining intergroup relations, positive social effects might already occur (Crisp and Turner 2009). Accordingly, (orthodox) faith-based schools are not necessarily worse in terms of cultivating tolerance, openness, etc. Advocates of faith-based schools also refer to empirical evidence showing that these schools improve integration and social cohesion: children will develop confidence in their distinct religious identity, which in turn will lead them to interact with wider society without fear of assimilation (Merry 2013). Werbner (2000, p. 309), for example, writes about Islamic schools and argues that Muslim mobilizations "have been key moments in the development of a Muslim British civic consciousness and capacity for active citizenship".



While these critiques raise important nuances, they by no means undermine the importance of bringing people together in diverse educational contexts: in order to counter the “informal (re)segregation”, liberal democracies need the stimulation and reward of intercultural or interreligious relations. In a similar vein, Callan (1997, p. 177) argues for “dialogical contexts” in education: in order to prepare students for a future life in diverse societies, which is a prerequisite for the continued existence of these societies, schools should create dialogical settings where students can discuss with others and where they learn, through dialogue, the practice of reciprocity and reasonableness. For similar reasons, the ECHR points at the importance of social contact, which can be triggered in schools “where the children would not only acquire knowledge but also learn social skills, such as tolerance or assertiveness, and have contact with persons other than their family, in particular children of their own age.” (ECHR, *Wunderlich v. Germany*, §49)

#### 4.3. Religious Segregation versus Economic Prosperity

For many years, most of the Haredi Jews in Antwerp worked in the diamond industry, which provided financial security for the community. In the last few decades, however, the Antwerp diamond industry has been taken over by the Jain community and has been largely exported to India. As a result, many Jews in Antwerp lost an important source of wealth and income (Perry-Hazan 2014, p. 481; De Standaard 2010). Given these changed socioeconomic circumstances, it is of particular importance that members of the Jewish community learn the required skills in order to participate economically in broader society and to earn an income. In the context of Haredi schools in Israel, Kingsbury (2018, p. 3) similarly argues: “An education that focuses on religion rather than core subjects likely puts individuals at immediate economic disadvantage. Rejection of secular education might be a particularly acute problem in Israel.” In the last few decades, many modern-orthodox Jews have left Belgium to study and find a job abroad, while people from the ultra-orthodox Haredi community have stayed and have often remained unemployed (De Standaard 2010). According to professor in Jewish law Henri Rosenberg (De Standaard 2010), one of the main problems is that this community refuses to integrate, which excludes them from the general labor market. If we also take into consideration the fact that most Haredi families have many children, it is not a big surprise that this community belongs to the poorer segments of Flemish society.

In order to improve this situation, the state could, rather than allowing and financing UOFBSs, encourage Jewish families to send their children to more “inclusive” and “liberal” (Jewish) schools, wherein children learn the required skills and information in order to participate in broader society. Accordingly, students will be better prepared for a future life in Belgian/Flemish society, which could, in turn, lead to an improvement of the socioeconomic situation of the Haredi community. Or, as Kymlicka (2003, p. 157) argues,

There is a much higher level of interdependence today between members of different groups. No group is truly ‘self-sufficient’ any more. No group is truly ‘institutionally complete’. Even the most sizeable group, with the most extensive rights of self-government, is not self-contained, but is integrated into larger transnational economic and political structures, and subject to international forces relating to the economy, or the environment, or security. As a result, everyone today needs to be able to deal with people from outside their own group, and hence must learn how to deal with diversity.

Moreover, in liberal democratic welfare states, society offers “generous government services” (Kingsbury 2018, p. 5), including general healthcare, financial assistance, and accessible education. This welfare system, however, might be threatened if substantial parts of the population refrain from participating in the formal economic system. Even though a liberal state can afford a few free riders who benefit from a stable liberal order they do not support, it is clear that as many people as possible should contribute to the system (Kymlicka 1999). In order to enable this, a minimal form of liberal education seems to be necessary.

#### 4.4. Communitarianism versus Liberalism

In the discussion on faith-based schools and liberal democracy, it is sometimes argued that the common discourse of “liberalism” is omnipresent in society in general and in public schools in particular. This liberal discourse, which is considered to threaten particular (orthodox) religious groups, can be countered in faith-based schools. Because schools are never “neutral”, religious people fear that their religious identity will get lost if they send their children to non-religious state schools. This fear is nicely captured by Bleher (cited in Tinker 2009, p. 548): “You send them to school and they come back as enemies who despise you and regard you as a hindrance to ambitions their friends and teachers have put in their heads.” Therefore, it could be argued that if a certain religious identity or (minority) culture wants to survive, faith-based schools are necessary in order to protect and nurture the “endangered” identity, hence the existence of UOFBSs as communitarian spaces where one can “escape” the dominance of liberalism.

While one should not deny that school is a place for specific socialization, nor that minority rights might be necessary to create just societies, it should be clear that children are not only educated by teachers at school, but also (and mainly) by their parents in their (religious) communities. This is clearly the case with Haredi children, who are raised and educated in a very segregated and non-liberal setting. For them, the educational setting in common, liberal schools is probably the only place (or at least one of the few places) where they could meet peers with different (religious) convictions, could learn about the world in general, and could reflect on their own way of life.

Taking this into consideration, several authors have put forward a kind of compromise (see Tinker 2009). Snik and Jong (1995) and Levinson (1999) argue, for instance, that there are good reasons for faith-based schools in primary education, but not in secondary education. The distinction is justified by the idea that individual autonomy is best achieved when children have first been sufficiently initiated into their own cultural community. In a similar vein, Spinner-Halev (1994) argues that faith schools should receive state support on the condition that pupils meet and interact, on a regular basis, with children from other communities. Another type of reconciliation between “liberal” and “communitarian” concerns comes from Parekh (2000, p. 333), who argues that faith-based schools

instill a distinct set of moral and cultural sensibilities, increase the available range of educational options, add to the variety of collective life by producing citizens with different characters and perspectives on life, respect the wishes of parents, prevent the state from acquiring a monopoly of education and exercising total control over its content, and so on.

Parekh (2008), however, is well aware that his idea of a “community of communities” might lead to an undermining of a shared social consensus, and he therefore defends a *minimum national curriculum*. He suggests taking up creationism as an example of a “sensitive issue” that might divide communities, because it represents just one of the theories about the origin of earth that needs to be subjected to critical appraisal along with others. Leaving aside the question of whether one should indeed consider creationism on equal terms with the scientific theory of evolution, school Y even refuses this kind of compromise and provides its pupils with the message that creationism is the *only* truth, without any reference to Darwinian or cosmological theories.

#### 4.5. Internal Restrictions versus External Protections

In 2018, a Flemish nationalist politician compared ultra-orthodox Jewish schools with Islamic schools established by the Turkish *Milli Görüş* organization. This comparison was largely criticized by the Jewish community, which argued that, compared to Islamic schools, Jewish schools do not pose any danger to broader society. Whether or not this is true, in this discussion, the difference, as proposed by Kymlicka (1995), between “internal restrictions” and “external protections” has not been taken into consideration.

According to Kymlicka, the liberal state should sometimes protect minority cultures, in particular when this policy promotes fairness or equality between minority and majority groups, hence Kymlicka's plea for external protections by means of minority rights and/or state support for immigrant groups. However, these external protections are not unconditional: if the right of group members to question and revise traditional authorities is rejected within a particular minority group and if there are, accordingly, internal restrictions within the group, the state should intervene and should not support this particular (minority) culture. Accordingly, liberal defenders of multiculturalism should distinguish between "'bad' minority rights that involve restricting individual rights", on the one hand, and "'good' minority rights that can be seen as supplementing individual rights" (Kymlicka 2002, p. 340; also 1997, p. 83), on the other: "To oversimplify, we can say that minority rights are consistent with liberal culturalism if (a) they protect the freedom of individuals within the group; and (b) they promote relations of equality (non-dominance) between groups" (Kymlicka 2002, p. 342).

Following Kymlicka's line of argument, the liberal state should not tolerate that children are educated within a closed, orthodox system without having contact with basic scientific views, without getting the opportunity of optimizing critical thinking, and without having any alternatives. Even though the freedom of religion and education are fundamental in liberal democratic societies, the state should not allow youngsters' interest in autonomy to be sacrificed in the name of these liberties (cf. Barry 2001, p. 143). Although most Haredi children do not (openly) complain about their situation and even though the ultra-orthodox Jewish community would not evoke hatred and violence towards non-Jewish people, several human rights, such as the right to religion (which also implies the right to dissent); the right to education (i.e., the right to liberal and autonomy-facilitating education); and the right to privacy and family life are, within this Jewish community, not always respected, and therefore, a policy of tolerance might facilitate rather than counter these illiberal practices.

According to Merry (2018), however, such an analysis is fundamentally flawed. Although he is well aware of the potential harm of religious indoctrination, he emphasizes that a full analysis needs to take into account the harms of stigmatization experienced by the children of minority groups. Especially in secularized societies, it is not always self-evident to openly affirm a religious identity, and this situation may justify the existence of faith-based schools as "safe spaces". According to a report of the European Union Agency for Fundamental Rights (2018), nowhere in the EU (with the exception of France) do Jews experience so much hostility as in Belgium. Due to persistent stereotypes, stigmas, and (physical as well as psychological) aggression, it may well be better for Jews to establish their own schools insofar as they are able to mitigate the (anti-Semitic) harm deriving from mainstream schools and broader society. Moreover, these schools can provide good and "safe" learning environments because children will not be confused by discrepancy: education is in line with the informal education received at home. Considering the full scope of harm, as Merry (2018) argues, might thus lead to the conclusion that financial state support for separate faith-based schools can be defended on the grounds that they cause lesser harm than a uniform educational system.

It is, however, not clear whether Merry would endorse support for schools such as school Y. After all, the real point of his argument is that every harm needs to be mitigated and that justice will often require that one choose the lesser harm. However, as he admits, "[o]thers may disagree concerning how best to evaluate or rank harm—or whether this can, or even should, be done at all. However, my own view is that most kinds of religious indoctrinatory harm, when seen within the broader scope of harm, are the lesser of the two." (Merry 2018, p. 173). This, however, seems to be a rather personal and intuitive compromise. One might as well think that a government should first and foremost fight antisemitism (and other forms of racism) and trigger intercultural contacts. Moreover, the very fact that ultra-orthodox Haredi Jews live in a very segregated way is often a reason for people to nurture anti-Semitic feelings. Clearly, there is absolutely no reason to condone these feelings, but why should this situation not stimulate the Haredi community to engage with broader society rather than to live in a segregated way? In the words of Kymlicka (2003, p. 147):

The proliferation of separate religious schools is regrettable, particularly when they will be controlled by conservative religious leaders who preach that their group is the chosen people, that people outside the church are evil and damned, that intermarriage is a sin, etc. These schools may in fact generate precisely the sort of fear of ‘otherness’ that our conceptions of intercultural citizenship were intended to overcome.

### 5. Liberalism and Intransigent Minorities: Homeschooling as a Reasonable Way Out?

As the discussion above makes clear, there are some good arguments for the state to allow and even support faith-based schools, but this is not the case for UOFBSs where children are not prepared for a life in the “broader” society. However, notwithstanding the need for autonomy-facilitating education, some people are in favor of a less restrictive and more “pragmatic” policy wherein the state maintains the recognition of and support for UOFBSs. The main reason for this stance is that “it is clearly better for children to receive a slightly compromised rationality-promoting education than to miss out on such an education altogether” (Hand 2008, p. 228). Even though, in practice, several “controversial” issues are excluded in ultra-orthodox Haredi schools, the situation would, according to this view, be worse if Haredi pupils were educated at home or in private (i.e., non-recognized) schools, where the teaching of general subjects is often reduced to an absolute minimum and where state control is limited. In addition, official state recognition of schools such as school Y allows these schools to award official diplomas, which might, in turn, lead to increasing job opportunities for their students in wider society. The (imperfect) Haredi schools that are recognized by the state, then, seem to be a better alternative than home schooling for these students. Rather than restricting UOFBSs and their illiberal education programs, the state should, for the benefit of the child, tolerate these kinds of schools.

Leaving aside the question of whether children would indeed be better off in UOFBs than in a system of homeschooling, we are not convinced that the dichotomy between both alternatives should always be as strong as presented here. In order to illustrate this, the Flemish policy of homeschooling could be inspiring, as it can be interpreted as a kind of compromise between the liberal state, on the one hand, and “intransigent minorities” (cf. Taleb 2018) such as the ultra-orthodox Jewish community, on the other. According to the Flemish Decree on Education (Belgisch Staatsblad 2013), homeschooling is allowed, but only under strict conditions: homeschoolers are required to participate in centralized exams, and parents are required to authorize the review of the inspectorate. In our view, this policy is a good example of a legitimate balance between the right of parents to educate their children “in conformity with their own religious and philosophical convictions”, on the one hand, and the children’s right to education “directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms”, on the other hand. In order to create this balance, however, both parties (the state and the parents) have to make certain concessions.

First, the state allows some parents to select private or homeschooling to raise their children in a very segregated, illiberal, and orthodox way and accepts that parts of the regular curriculum are censured. However, this tolerance is not unlimited: in exchange for this freedom of religion and education, parents have to agree that these rights are not absolute and that a minimal form of autonomy-facilitating education is required. Refusing this kind of education will not only hinder the children’s right to an open future, but it could also undermine liberal democracy itself and therefore also (paradoxically) the liberal protection of minority cultures—such as the Haredi community. Even though the Flemish Decree on Education was criticized by the Haredi community, as it would not sufficiently guarantee their freedom of education and their right to religious freedom<sup>12</sup>, we see this Decree as an example of a legitimate balance between fundamental, as well as conflicting, rights. This has also been

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<sup>12</sup> According to an “emergency assembly” of Antwerp’s Haredi community, the Decree would “endanger” the community and parents are not willing to “sacrifice” their traditional education.

confirmed by the Belgian Constitutional Court, which denied a request of Haredi parents to suspend and annul certain provisions in the Decree in 2014 (Perry-Hazan 2015, p. 636).

We should, however, be aware of the fact that this policy of homeschooling is not an ultimate solution to the different problems that have been raised in the previous sections. In particular, it leaves the challenge of leaving children isolated and deprived of contact with (the mindset of the) broader society unsolved. This “inconclusiveness”<sup>13</sup> is inherent to liberal democratic societies, and it would be utopian—and anti-liberal—to aim at an overarching solution for the dilemma. Rather, different rights and freedoms need to be balanced, taking into account the particular context. In this regard, we see the Flemish policy as a convincing way out here.

## 6. Conclusions

According to MacMullen (2018), faith schools can vary a lot depending on (1) how much of the school’s standard curriculum is dependent on its religious identity, (2) whether children are taught how to engage in secular public reasoning about matters of public concern, and (3) whether the school’s membership is diverse in a way that provides opportunities for encounters between people from different religious backgrounds. Based on these criteria, school Y can be defined as an “exclusivist faith school” (Mason 2018) rather than a “moderate faith school” (Williams 1998; MacMullen 2018). The school not only focusses on an ultra-orthodox interpretation of the Jewish religion, but it also lacks real engagement with secular issues, such as evolution theory, sex education, and modern media. Moreover, it separates girls from boys (which is not in line with the official requirements of the Flemish Community) and also segregates ultra-orthodox Jewish students from their non-Haredi fellows. Even though some Haredi schools make efforts to integrate different Haredi communities (Perry-Hazan 2014), this seems to be insufficient, as the students remain segregated from their non-Haredi fellows and from “mainstream” liberal democracy. Hence, the schools do not provide the needed educational settings recommended to forge durable mutual understanding among different social, religious, and cultural groups, which is a prerequisite for the survival of liberal democracies.

As rightly stated by De Jong and Snik (2002, p. 573), “[e]ducation is a public and primary good that benefits both the individual and society. Therefore [ . . . ] in a liberal democratic society the state should fund schools for compulsory education”. Even though this by no means implies that liberal states are *obliged* to support faith-based schools (cf. Temperman 2010, p. 884), this kind of support is nevertheless *permitted by justice* (cf. Franken 2016, pp. 91–107) in order to guarantee the parental right to education “in conformity with their own religions and philosophical convictions” (ECHR–1st protocol, Art. 2) in an active or positive way (cf. Glenn and Groof 2005). A fundamental requirement for this policy is, however, that state-supported schools do not infringe on human rights principles and that several conditions in terms of infrastructure/safety and teaching content/quality are fulfilled. Because not all schools are willing to meet these conditions, not all kinds of education are deemed suitable for state funding, especially “when that education appears to offer no positive externalities” (Kingsbury 2018, p. 7).

Even if there are thus some good arguments for separate schools in liberal democracies, these arguments have no real value for schools such as school Y, which are substantially different from the more “liberal” faith-based schools endorsed by those who proclaim the advantages of separate faith-based schools. Taking this into consideration, school Y should not be supported as long as the school opposes rather than supports the ideals of liberal democracy, for instance by refusing to teach “controversial issues”, to stimulate critical and autonomous reflection, and to contribute to shared democratic citizenship. Hence the negative advice that was given by the inspectorate in 2019. If the school will succeed in implementing the required adaptations, it will, appropriately, keep its recognition and subsidies. If, however, the school does not succeed and continues with its present curriculum, the

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<sup>13</sup> For this terminology, see Laborde (2013).

decision, affirmed by the Council of State, to cancel recognition of and funding for school X, should also be applied to school Y. In this scenario, the school has several possibilities: (1) improving and starting a new procedure for recognition; (2) closing its doors and ceasing to exist; (3) continuing as a “private” school, which legally falls under the same statutes as homeschooling. In the latter case, we consider the Flemish Decree of Homeschooling as a reasonable alternative, wherein a certain balance is found between children’s rights and parental rights.

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