Wisconsin v. Yoder (1972)

Background

Orthodox Amish and your more conservative Mennonites are a fairly traditional bunch. While popular culture tends to oversimplify their beliefs and caricaturize their lifestyles, it's fair to say that in general they prefer to avoid excessive entanglement with the modern world. The Amish tend to be a bit more separatist overall, preferring to remain in their own communities and interact with the world as little as possible. Contemporary Mennonites, on the other hand, can be difficult to spot until you notice the social justice bumper sticker on their hybrid parked tranquilly in the church lot.

Even these are overgeneralizations, however. Both faiths encompass a wide range of approaches to appearance, behavior, technology, and interactions with outsiders. What's fairly consistent across the spectrum is a prioritization of family and community over wealth, convenience, or individual accomplishment, and of course a particularly devout commitment to their Christian faith. From these ideals stem all the rest – the horses and buggies, the dashing hats and svelte black coats, the aversion to technology, and that wacky love of hard work and simple living.

In short, it's not about whether electricity or shopping at Target is "evil;" it's about what best serves the spirit over the flesh and the community over the individual. As it turns out, that was the issue in the early 1970s when Jonas Yoder and Wallace Miller, both Old Order Amish, and Adin Yutzy, a Conservative Amish Mennonite, pulled their children out of public school in Wisconsin after the children had successfully completed the 8th grade. The parents argued that while a basic education was fine – maybe even necessary – high school itself was too full of behaviors, ideologies, and subject matter which brazenly violated their religious beliefs and priorities. Rather than expect the school system to change to accommodate their faith (that wouldn't be a very Amish approach), they simply removed their children from the system.

It's not like the Amish or Conservative Mennonites let their kids lay around in their underwear eating Doritos and playing video games all day. Teenagers were expected to help care for animals, raise crops, cook and sew, or otherwise labor their little hearts out while learning essential skills for a long, healthy life in their respective communities. It seems unlikely their counterparts at the local high school could claim the same.

Amish You So Much

Wisconsin law required that kids be in school somewhere – public or private was up to the parents – until they were at least 16. Yoder, Miller, and Yutzy were prosecuted for violating state law and the case went to trial with Jonas Yoder acting on behalf of the group. While he was no doubt a capable individual, the Amish and Conservative Mennonites aren't big on using the court system to resolve their difficulties. They do not, by and large, sue people for

damages or seek legal recourse for minor infractions. An "Amish Lawyer" would be about as common as a "Shiite Stripper" or a "Hindu Butcher."

The original court, in an effort to remain consistent with existing Supreme Court jurisprudence, determined that the requirement that parents keep their kids in school until the age of 16 was a valid secular state function. While there was no doubt that the Amish and Mennonites had genuine religious objections (they weren't using religion as a pragmatic excuse for illegal behavior), that didn't override the larger needs of the state as a whole. The families were convicted of violating Wisconsin law regarding mandatory school attendance, and each fined $5.00.

$5.00, as it happens, was the minimum penalty allowed by the statute in question. It doesn't seem like too much of a leap to infer that while the court was willing to adhere to the letter of the law, they perhaps lacked the passion to make an example of these bearded rebels.

It was at this point that a Lutheran minister by the name of William C. Lindholm came on board. While he may not have shared the defendants' precise theology, he supported their claims to religious freedom. The case was appealed to the Wisconsin Circuit Court, which affirmed the lower court's decision, then to the State Supreme Court, which reversed it on the grounds that Wisconsin hadn't actually demonstrated that there was anything about going to high school which was so essential to the public good that it justified overriding the "free exercise" of the families involved.

It was now the State of Wisconsin's turn to appeal (which is why their name is first in the title), and the case reached the Supreme Court.

The Decision

The Court, in a sort-of-unanimous decision, supported the Amish. Chief Justice Warren Burger wrote the Majority Opinion. Two Justices (Lewis F. Powell Jr. and William H. Rehnquist) abstained, as they'd joined the Court after the case had been heard. Justice Stewart wrote a very brief (and odd) concurrence, in which he was joined by Justice Brennan. Justice White added a longer (and slightly less odd) concurrence, in which he was joined by both Brennan and Stewart. And Justice Douglas filed a dissent, in which he was joined by no one, and in which he supported the Court's majority decision.

Imagine if it *hadn't* been unanimous…

Chief Justice Burger's Majority Opinion took a three-step approach in explaining the Court's rationale. First, he addressed the question of whether the beliefs in question were legit (as opposed to being conjured up pragmatically to justify illegal behavior or otherwise falling outside commonly accepted definitions of "religion"). After sharing a history lesson on the Amish, Burger determined that they and their spin-offs were widely-recognized and well-respected forms of traditional American Christianity.

Since this had never actually been challenged, it's worth asking why Burger would devote so much energy to "establishing" the validity of the Amish and their ilk as religious communities. The most obvious explanation is the Court's constant awareness that everything they say and do becomes precedent for every other court, both present and future, at every level across the nation. Thus, a degree of respectful delineation is often appropriate. One can't help but suspect, however, that there's a secondary motivation for Burger's cautious venture into historical apologetics. He was in many ways laying the groundwork for the Court's almost paradoxical decision: "Look, we agree with the State in theory – in most circumstances they'd be correct and we don't want anyone else to get carried away and think they can do whatever they want in the name of religion. But, dude… this is the AMISH."

He simply put it a bit more jurisprudentially than that.

Step two was to examine whether or not the law in question created a substantial burden for the beliefs validated in step one:

> *The impact of the compulsory attendance law on respondents' practice of the Amish religion is not only severe, but inescapable, for the Wisconsin law affirmatively compels them, under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs... It carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent…*
>
> *[T]he unchallenged testimony of acknowledged experts in education and religious history, almost 300 years of consistent practice, and strong evidence of a sustained faith pervading and regulating respondents' entire mode of life support the claim that enforcement of the State's requirement of compulsory formal education after the eighth grade would gravely endanger, if not destroy, the free exercise of respondents' religious beliefs.*

So that would be a "yes."

Finally, the Court asked whether or not the state's interest in pushing public education beyond 8th grade was substantial enough to justify overriding the rights of Amish parents to keep their kids home doing other things. At that point, there was no way to avoid substantial subjectivity, despite the Court's effort to frame its response in terms of precedential cases and constitutional reasoning. Despite the substance of its decision, the Court seemed uncomfortable straying too far from the "belief-action" distinction established in *Reynolds v. United States* (1879).

Beliefs v. Actions (Place Your Bets)

Reynolds was a polygamy case. Mormons insisted the practice was part of their "free exercise" of religion. It didn't hurt anyone and involved only consenting adults. Dominant American culture countered with "Eeewww! Weird!" and the courts were inclined to agree. Given that "Gross!" was a rather weak constitutional argument, the Court instead proffered the

"belief-action" theory – you can believe whatever you like, thanks to the First Amendment, but the law can still set limits on what you can do. In other words, freedom of religion is not absolute. The State has a right and an obligation to pass rules that help hold society together, which includes not letting people just go and marry whoever they want as many times as they want and then go about their business like it wasn't totally "OMGWHAT?!"

Again, the Court put it a bit more formally.

Strictly construed, this same reasoning would prescribe that while the Amish and their ilk were welcome to believe whatever they liked about public schooling and the values of the modern world destroying their youth, that didn't mean they could act on it without consequences. The Court wasn't quite ready to go there, however, instead choosing to remind us a half-dozen more times what nifty folks the Amish were and how well they seemed to get along without telephones or nuclear power or public assistance. All the usual reasons given for why kids needed to stay in school – to get good jobs, to become informed voters, to grow into productive members of society – the Amish already had covered quite convincingly.

The Court had already been quietly pulling back from this "belief-action" ideology, despite paying it clarified respects in Wisconsin and then becoming infatuated with it again in subsequent cases. Major decisions were finding more and more instances in which sincerely held religious beliefs were enough to offset otherwise valid laws or policies. (In the most famous of these, *Sherbert v. Verner* (1963), the Court required the State of South Carolina to pay unemployment to a Seventh Day Adventist who was fired for refusing to work on Saturdays, despite specifically guaranteeing protection for those who might object to working on Sundays. The burden thus imposed on Seventh Day Adventists exclusively violated their right to "free exercise" of their faith.)

Aftermath

The ultimate import of *Wisconsin v. Yoder* was – and is – to some extent "in the eye of the beholder." It's easily read as strengthening parental rights over their children's education, a principle established in prior cases but without the overtly religious motivation seen here. It was certainly a major victory for the Amish and their ilk, but to what extent similar exemptions would apply to other religious groups was uncertain.

On the other hand, the Court's written opinion certainly suggested that one of the primary reasons the Amish didn't have to obey this particular law was because their theology, lifestyle, and work ethic already fit so closely with the larger ideals of traditional American culture (despite their unwillingness to participate in the modern version of that culture more than necessary). In other words, the decision was specifically tailored to the exact circumstances before the Court – circumstances unlikely to be duplicated thereafter.

Name: _____ Hour: _____

Wisconsin v. Yoder (1972) Article - Questions *{Please respond ON YOUR OWN PAPER and staple this page TO THE TOP. Make sure your full name and correct hour are filled in above. All questions relate to the article, but not all answers are IN the article - you may need to look up some outside info!}*

1. Define "jurisprudence." *{It will help as you read - I promise.}*

2. What does it mean to be "orthodox"?

3. In what ways were these Amish and Mennonite families "orthodox"?

4. What does it mean to "caricaturize" something?

5. According to this article, why do many conservative Amish or Mennonites avoid using electricity?

6. What did the Amish in this article not like about public high schools?

7. What point was the author trying to make with the absurd analogies of "Shiite Stripper" or "Hindu Butcher"? (In other words, why would it be unusual to find a Shiite Stripper or a Hindu Butcher?)

8. What inference does the author make based on the $5.00 fine from the original court?

9. What does it mean for something to be "unanimous"?

10. What does it mean to "abstain"?

11. Who abstained from this opinion, and why?

12. What does it mean for something to become "precedent"?

13. Why is it important for the Supreme Court to explain its decisions clearly? USE THE TERM 'PRECEDENT' CORRECTLY IN YOUR RESPONSE.

14. The Court's first step was to establish whether or not the Amish's beliefs were sincere. (They were.) What was the <u>second</u> question they addressed?

15. The third issue was the hardest - whether it was more important that the Amish be allowed to raise their kids the way they wanted or for the state to send them to high school. The article says the answer to this had to be a little "subjective." Define "subjective."

16. What is "polygamy"?

17. In *Reynolds v. United States* (1879), the Court determined that states could outlaw polygamy without violating the First Amendment separation of church and state. What does the author of this article think about that decision and how can you tell? *{Make reasonable inferences based on the WAY they write about it.}*

18. Explain the distinction between freedom of belief and freedom of religious action in the eyes of the law:

19. Is the case *Sherbert v. Verner* very important to understanding this article? Explain.

20. Why was it OK for the Amish to take their kids out of school when everyone else had to go?