Chapter Thirteen: *Wisconsin v. Yoder* (1972)

Stop Trying to Ruin the Amish!

Three Big Things:

1. Several Old Order Amish and Conservative Amish Mennonite families withdrew their children from Wisconsin public schooling once they'd successfully completed 8th grade, arguing that high school attendance was contrary to their religious beliefs.

2. The Court determined that the parents' right to freedom of religion outweighed the State's interest in mandating a standardized education for all young people. Compelling Amish students to attend school past the 8th grade thus violated the Free Exercise Clause of the First Amendment.

3. *Wisconsin* is often cited as supporting for parental control over the education of their children and for expanding government accommodation of diverse religious beliefs, but on paper, the Court attempted to limit its decision to the specifics before it.

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.

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" is about as common as a "Shiite Stripper," a "Hindu Butcher," or a "Trustworthy Politician."

The original court, in keeping with existing Supreme Court jurisprudence, determined that requiring parents to keep their kids in school until the age of 16 served a valid secular state function. While there was no doubt that the Amish and Mennonites had genuine religious objections (they weren't using religion merely as an 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 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 ended up first when 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 written 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."

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 were keeping a similar pace.

He of course 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…*
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> *{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 a case from nearly a century before: *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. It seemed to be finding more and more instances in which sincerely held religious beliefs were enough to offset otherwise valid laws or policies.

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. The only other case to reach the Court which involved a similarly distinct religious group would be *Kiryas Joel Village v. Grumet* (1994) more than twenty years later – and that case had as many differences to *Yoder* as it did similarities.

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. Still, it did reinforce the idea that there are times that faith can and should trump otherwise general laws and expectations. The trick is figuring out when.

Excerpts from *Wisconsin v. Yoder* (1972), Majority Opinion by Chief Justice Warren Burger

{Edited for Readability}

The history of the Amish sect… [began] with the Swiss Anabaptists of the 16th century, who rejected institutionalized churches and sought to return to the early, simple, Christian life deemphasizing material success, rejecting the competitive spirit, and seeking to insulate themselves from the modern world. As a result of their common heritage, Old Order Amish communities today 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.

A related feature of Old Order Amish communities is their devotion to a life in harmony with nature and the soil… Amish beliefs require members of the community to make their living by farming or closely related activities…

Amish objection to formal education beyond the eighth grade is firmly grounded in these central religious concepts. They object to the high school, and higher education generally, because the values they teach are in marked variance with Amish values and the Amish way of life; they view secondary school education as an impermissible exposure of their children to a "worldly" influence in conflict with their beliefs. The high school tends to emphasize intellectual and scientific accomplishments, self-distinction, competitiveness, worldly success, and social life with other students. Amish society emphasizes informal "learning through doing;" a life of "goodness," rather than a life of intellect; wisdom, rather than technical knowledge; community welfare, rather than competition; and separation from, rather than integration with, contemporary worldly society…

The Amish do not object to elementary education through the first eight grades as a general proposition, because they agree that their children must have 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. They view such a basic education as acceptable because it does not significantly expose their children to worldly values or interfere with their development in the Amish community during the crucial adolescent period…

There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education. (See, e.g., *Pierce v. Society of Sisters*, 1925). Providing public schools ranks at the very apex of the function of a State. Yet even this paramount responsibility was, in *Pierce*, made to yield to the right of parents to provide an equivalent education in a privately operated system… Thus, a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children…

As the society around the Amish has become more populous, urban, industrialized, and complex, particularly in this century, government regulation of human affairs has correspondingly become more detailed and pervasive. The Amish mode of life has thus come into conflict increasingly with requirements of contemporary society exerting a hydraulic insistence on conformity to majoritarian standards…

Wisconsin concedes that, under the Religion Clauses, religious beliefs are absolutely free from the State's control, but it argues that "actions," even though religiously grounded, are outside the protection of the First Amendment. But our decisions have rejected the idea that religiously grounded conduct is always outside the protection of the Free Exercise Clause. It is true that activities of individuals, even when religiously based, are

often subject to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare, or the Federal Government in the exercise of its delegated powers… But to agree that religiously grounded conduct must often be subject to the broad police power of the State is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment, and thus beyond the power of the State to control, even under regulations of general applicability…

Nor can this case be disposed of on the grounds that Wisconsin's requirement for school attendance to age 16 applies uniformly to all citizens of the State and does not, on its face, discriminate against religions or a particular religion, or that it is motivated by legitimate secular concerns. A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion. (*Sherbert v. Verner*, 1963; *Walz v. Tax Commission*, 1970) …

We turn, then, to the State's broader contention that its interest in its system of compulsory education is so compelling that even the established religious practices of the Amish must give way. Where fundamental claims of religious freedom are at stake, however, we cannot accept such a sweeping claim…

[T]he evidence adduced by the Amish in this case is persuasively to the effect that an additional one or two years of formal high school for Amish children in place of their long-established program of informal vocational education would do little to serve those interests… It is one thing to say that compulsory education for a year or two beyond the eighth grade may be necessary when its goal is the preparation of the child for life in modern society as the majority live, but it is quite another if the goal of education be viewed as the preparation of the child for life in the separated agrarian community that is the keystone of the Amish faith. (See *Meyer v. Nebraska*, 1919) …

Whatever their idiosyncrasies as seen by the majority, this record strongly shows that the Amish community has been a highly successful social unit within our society, even if apart from the conventional "mainstream." Its members are productive and very law-abiding members of society; they reject public welfare in any of its usual modern forms. The Congress itself recognized their self-sufficiency by authorizing exemption of such groups as the Amish from the obligation to pay social security taxes.

It is neither fair nor correct to suggest that the Amish are opposed to education beyond the eighth-grade level. What this record shows is that they are opposed to conventional formal education of the type provided by a certified high school because it comes at the child's crucial adolescent period of religious development...

We must not forget that, in the Middle Ages, important values of the civilization of the Western World were preserved by members of religious orders who isolated themselves from all worldly influences against great obstacles. There can be no assumption that today's majority is "right," and the Amish and others like them are "wrong." A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different…

[W]e hold, with the Supreme Court of Wisconsin, that the First and Fourteenth Amendments prevent the State from compelling respondents to cause their children to attend formal high school to age 16. Our disposition of this case, however, in no way alters our recognition of the obvious fact that courts are not school boards or legislatures, and are ill-equipped to determine the "necessity" of discrete aspects of a State's program of compulsory education. This should suggest that courts must move with great circumspection in performing the sensitive and delicate task of weighing a State's legitimate social concern when faced with religious claims for exemption from generally applicable educational requirements…