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Homeschooling, Freedom of Conscience, and the School as Republican Sanctuary: The Romeike Family Case

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ABSTRACT

This paper examines how stances and understandings pertaining to whether home education is civically legitimate within liberal democratic contexts can depend on how one conceives normative roles of the secular state and the religious neutrality that is commonly associated with it. For the purposes of this paper, home education is understood as a manifestation of an educational philosophy ideologically based on a given conception of the good. Two polar conceptions of secularism, republican and liberal-pluralist, are explored. Republican secularists declare that religious expressions do not belong in the public sphere and justify this exclusion by promoting religious neutrality as an end in itself. But liberal-pluralists claim that religious neutrality is only the means to ensure protection of freedom of conscience and religion, the actual moral principles. Each conception is associated with its own stance on whether exemptions or accommodations on account of religious beliefs have special legal standing and thereby warranted. The indeterminate nature of religion and allegedly biased exclusion of secular beliefs, cited by some when denying religious exemptions, can be overcome by understanding all religious and conscientious beliefs as having equal standing as conceptions of the good. Analysis of court documents from the *Uwe Romeike et al* asylum case are guided by these understandings, and relationships among themes are explored. In summary, some stances regarding home education may depend on one's view of secularism, particularly in relation to whether one views religious neutrality as a means to ensure protection of freedom of conscience or an end in itself.

Introduction

Although some believe that religious expressions should be confined to a person's private life, there are some belief systems that would make such confinement difficult. Some belief systems govern the totality of life, private and public. Many of those who adhere to such belief systems may feel that practicing their religion even in public is integral to their moral identity as a believer. For those who adhere to such all-encompassing belief systems, the distinction between private and public may not be one that is salient for practice and for a way of life informed by such a belief system. They may even regard the living of life itself to be tantamount to religious practice.

Naturally, the all-encompassing nature of such a belief system may have profound implications for the way one views the nature, mission, and role(s) of education. Many who believe that their life practice ought to closely reflect their belief system may feel that educational objectives and content ought not to be in fundamental conflict with their most deeply held convictions or beliefs. In cases where the implicit values promoted in schools are deemed irreconcilable with their own, such people may be faced with an important decision. One possible decision may be to withdraw one's child

from school and to personally direct the education of this child instead by, for instance, implementing home education.

This research work examines whether and how any particular stance on whether home education¹ is morally justified might depend largely on one's ideas about what a secular state ought to be and how a secular state ought to function, particularly in educational settings. The majority of home educators have been found to be professing evangelical Christians (cf. Kunzman, 2009, p. 2), and religious and other ideological considerations have often largely shaped their decision to educate at home (Knowles, Marlow, & Muchmore, 1992). Additionally, notions about what constitutes the core principles of secularism may impact how one views the place of religion and conscience in a state that propounds the importance of being neutral toward religion.

This paper will employ the understanding that certain instances of parent-directed education may be considered attempts to implement an educational philosophy that is ideologically based on a given conception of the good.² I consider particular themes³ that appear central to justifications either in support of or against the notion that the decision to implement parent-directed education, as choice being made in accordance with one's conscience, is something entitled to equal state protection. I interpret such themes by employing two perspectives pertaining to the normative role of the secular state in relation to religion: a republican conception and a liberal-pluralist one (Maclure & Taylor, 2011). The present thesis is based on an inductively drawn proposition: that such differences in priorities, emphases, and assumptions between these conceptions of secularism might be somewhat mirrored in the respective arguments of supporters and opponents of choosing home education based on conscience. To "test" this prediction, I have decided to analyse a single case of a German home-educating family named the Romeike family. I examine the content of court documents that emerged from a petition for political asylum in the USA. The petition was made on account of the fear that this family would, were they to return to Germany, again face persecution for continuing to practice home education while defying laws mandating compulsory school attendance.

This thesis is focused on the question of how the philosophical debate pertaining to freedom of conscience can illumine the debate about home education. This thesis will be limited to the following: 1) an analysis of the above-mentioned themes to see whether and how they have any points of similarity with the two concepts of secularism and 2) whether the predefined characteristics comprising moral identity, conceptions of the good, and other matters related to freedom of conscience can be identified in the case under examination.

Background and significance

Murphy (2012) suggests that by examining homeschooling:

we can discover the possibilities of movements that attempt to reverse the segmentation of life in [a given society], of how home-schooling is both an animating force for and exemplar of efforts to provide an integrated frame for life in the postmodern world. (p. 2)

¹Ray (2000, p. 71) defines *homeschooling* as "the practice in which the education of children is clearly parent-controlled or parent-directed (and sometimes student-directed) during the conventional-school hours during the conventional-school days of the week". I prefer the phrase *home education* or *parent-directed education*: unlike *homeschooling*, there is no implication that the school is the model for home education. However, all the above terms can be used interchangeably, as they all refer to the same practice. Those who direct the home education will be most often referred to as *home educators*.

²I am not implying that there is necessarily any single conception that homeschoolers by and large hold – though the fact that many subscribe to an evangelical form of Christianity could be seen as a frequently occurring, albeit not universal, element in many such conceptions.

³These are themes that are central to arguments that were either presented in court or could reasonably be constituted by inference. I have explored some of these themes in more depth in my MA thesis (Oh, 2016), but here I will only discuss the themes as they relate to conscience.

As conceptions of the good life vary from person to person, such an integrated frame would imply that the respective approaches of each person regarding how best to pursue the good life inevitably vary accordingly. For many, the good life cannot be extricated from the things that transcend materialistic realities; rather, for them, the good life is highly spiritual in nature. For them it thus follows that the meaning accorded to life must go beyond mere material considerations. For some, such spiritual considerations have long been seen as existing at the very core of educational roles and mission, as Spring documents (2000, p. 4–5).⁴

If individual agency is an important aspect of learning and education, the role that values play in individual agency must be appreciated. If we are to understand social movements that impact education and educational choice, such as the home education movement, we must appreciate the emotional and value considerations that undergird them. Value diversity is one of the aspects of diversity that poses formidable challenges that need to be addressed by leaders. Lumby and Coleman (2007) identify diversity as a key aspect of educational leadership and maintain that “the most significant task of educational leadership is to support the development of learners and staff so that all can live lives they value in dignity” (p. ix). Some of the pedagogical literature mentions “diversity within diversity” (Jupp, cited in Sinagatullin, 2003, pp. 5–6) – the notion that it is not only the traditional ethnic, religious, linguistic, sexual, ethnogeographic, socioeconomic, sociopolitical, and cultural aspects of humans that make them diverse, but also “many other explicit and implicit aspects of human existence and behaviour such as one’s values, attitudes, aesthetics and ways and standards of life” (pp. 5–6).

Background on the home education situation in Germany

Because this study will examine a case involving a family that made the decision to implement home education in Germany, I will briefly examine the background of home education within the German context, especially in light of historical developments that have shaped societal attitudes and government policies toward home education.

In 1938, during the era of the so-called Third Reich, all exemptions from compulsory schooling were eradicated. Presently, a minimum of 9 years of attendance at a public or state-approved private school is mandated for all children from the age of roughly six, and this applies to all German states. Parents are responsible for ensuring their children attend school, and even religious or other kinds of beliefs are not deemed to constitute sufficient grounds to warrant exemptions (Rinio, 2001). According to Spiegler (2009):

Home education is, from a legal point of view, a contravention of school law. This is regarded in all states as an administrative offense and can be punished with a fine of up to several thousand euros (Rinio, 2001). The local administration also has the possibility of using the support of the police to bring absent pupils back to school. Such enforcement of school attendance has also been used in the case of home education. If parents wilfully and repeatedly keep their children away from school, the responsible court has the right to withdraw child custody partially or completely from the parents (Avenarius & Heckel, 2000, p. 471). Additionally, in six states it is possible to consider such cases as indictable offenses. The maximum penalty is a six-month prison sentence or a fine of up to 180 times the daily rate of income. (pp. 299–300)

Because of the steep fines, partial loss of child custody, and the threat of losing their property, many home-educating families choose to move out of Germany to continue their practice of home schooling.

⁴When 31 international scholars were consulted in the years leading up to the drafting of the UN’s 1948 Universal Declaration of Human Rights, “[i]n contrast to those advocating education for individual liberation, some delegates wanted basic education to stress moral and spiritual values,” according to Spring (2000, p. 5). “Moslem countries were particularly concerned about the ethical and moral aspects of education.” “Moreover, S. V Puntambekar presented a Hindu concept of human rights that focused on the spiritual nature of humans. He also disagreed with the emphasis on reason and science that marked the emergence of human rights doctrines during the European Enlightenment. In criticizing the Enlightenment tradition for suppressing the spiritual nature of life, Puntambekar wrote, ‘We shall have to give up some of the superstitions of material science and limited reason, which make man too much this-worldly, and introduce higher spiritual aims and values for [human]kind’” (Spring, 2000, p. 15).

Some ideological considerations often come to the fore. According to Spiegler (2009), several characteristics of the behaviour of home educators in Germany can be deemed acts of civil disobedience: they refuse to adhere to compulsory school attendance laws while being aware of, and willing to face, the consequences; they engage in such practices in the hopes of being a catalyst for societal change; their disobedience is limited to home schooling while they obey all just laws; and they do not otherwise defy the legal system or other civic duties; “[t]hey appeal to matters of conscience, claim a parental right of care and custody anchored in the Constitution of Germany, or appeal to the rights of the child citing international conventions” (Spiegler, 2009, p. 303); “[t]hey act without violence against the representatives of school authorities or the state” (p. 303); and “even if the disobedience does not take place on the streets, it is often public”, and “[m]any home educators do not try to conceal it from the authorities” (p. 303).

Secularism: Essential components and variations

Because home education is often practiced within the context of a liberal democratic society that promotes secularist ideals, it is important to frame the issues pertaining to homeschooling more broadly in the context of the philosophical traditions that have formed the ideological foundations of liberal democratic states. The challenge is that educational leaders may have stances and can make assumptions on how a state should view religious beliefs and the degree to which such beliefs should be accorded protection within civic and public life. These stances and assumptions may influence their perspectives in regards to what roles education should serve and the precepts educational institutions ought to observe.

One of the topics where opinions are likely to differ based on beliefs and worldview is one’s normative notion of what traits secularism ought to have within a liberal democratic state (cf. Maclure & Taylor, 2011). This conception would have several facets, including an opinion about whether religious neutrality is a moral principle or an “institutional arrangement” intended to ensure equal protection of religion (Maclure & Taylor, 2011, pp. 36–52), whether it applies equally to individuals as to the state (p. 39), and what norms can be deduced as the given value-based dogma of neutrality is put into practice in places such as school.

Moral pluralism and protection of freedom of conscience are essential components of liberal democratic societies

Maclure and Taylor (2011) declare that “respect for the moral equality of individuals and the protection of freedom of conscience and of religion constitute the two major aims of secularism today” and that “secularism must at present be understood within the broader framework of the diversity of beliefs” (pp. 4–5). In their words:

In a society that is both egalitarian and diverse ... [such as that of] a democratic state, the state [must] treat equally citizens who act on religious beliefs and those who do not; it must, in other words, be neutral in relation to the different worldviews and conceptions of the good – secular, spiritual, and religious – with which citizens identify. Religious diversity must be seen as an aspect of the phenomenon of “moral pluralism” with which contemporary democracies have to come to terms. “Moral pluralism” refers to the phenomenon of individuals adopting different and sometimes incompatible value systems and conceptions of the good. (pp. 9–10)

A secular state must not give any explicit indication that it promotes any given establishment of religion, for this would have the effect of making those who are not adherents of this state religion second-class citizens (Maclure & Taylor, 2011, p. 9). But it is in recognition of the fact that reason alone is incapable of providing satisfactory answers about what a life worth living consists of (pp. 10–11), that the state must defer to other modes of belief, such as faith, to provide them, if for no other reason than the pragmatic recognition that everyone in society needs to feel that life is meaningful and purposeful. Such utilitarian benefits for preserving the freedom to

believe as one's conscience dictates are also emphasised by Macklem (2000) who says that the justification for religious freedom is not found in the articles of religious belief, nor in the practices and institutions that are associated with these beliefs. Rather, Macklem proposes that the moral justification of freedom of religion rests on a moral foundation of the belief that "faith, understood as a mode of belief distinct from reason, is capable of contributing to human well-being" (p. 1). Consequently, as Maclure and Taylor (2011, pp. 9–12) point out, though the secular state must avoid promoting the various doctrinal reasons for the values that various faiths espouse, the values that these faiths have in common are nevertheless valuable for societal well-being.

But, of course, not all beliefs are religious in nature, and secular beliefs have played a prominent role in the discussion about the values that are most important in a democratic liberal society. Furthermore, despite the fact that liberals of various sorts would not be able to attain a consensus on what value or combination of values should override all others, some maintain that they ought to agree that there is a pluralism of incompatible and incommensurable values. "Pluralism is thus built into liberalism, as it were, on the ground floor" (Kekes, 1993, p. 201).

The protection of freedom of conscience is widely considered to be an essential characteristic of secularism. The basis for the respect of conscience arises from the recognition that there are many different conceptions of the good, each of which are often characterised by beliefs incompatible with those found in other such conceptions. According to Milot, secularism is:

a (progressive) development of the political realm by virtue of which freedom of religion and freedom of conscience are guaranteed, in conformance with a will to establish equal justice for all, by a state that is neutral toward the various conceptions of the good life coexisting in society. (quoted in Maclure & Taylor, 2011, p. 22)

Although there appears to be a popular consensus within many liberal democratic societies that secularism and tolerance are essential, they are only as important as the moral values underlying them and are not moral values themselves, according to Maclure and Taylor (2011). According to this point of view, "institutional arrangements" – such as a state's neutrality in regards to religion, its refusing to grant formal preference to any given "establishment of religion" (U.S. Const., amend. I), and accommodation of religion-based values as viable conceptions of the good – are distinct from the moral principles upon which they are based, namely, equal respect and freedom of conscience, which are of intrinsic value. In contrast, these institutional arrangements are derived from these intrinsic moral values and necessary to ensure that the individuals in society are free from tyranny (Maclure & Taylor, 2011, pp. 23–24). Moreover, Perry (2014) asserts, religious liberty entails the right to *practice* what one believes – not only the right to believe.

Secularism comes in two "tensile strengths"

There are two dominant conceptions of secularism, and each appears to have ends that appear to be in opposition to that of the other.

According to Maclure and Taylor (2011, p. 28), a "rigid" conception of secularism, which tends to marginalize religious beliefs, prioritizes the operative modes of secularism, which are promoted to the rank of values; thus, these modes take the place of the principles of moral equality and freedom of conscience. The most rigid conceptions of secularism, which are quicker to set aside protections for freedom of religion, sometimes come to grant a preponderant importance to the operative modes of secularism, which are elevated to the rank of values, often at the expense of its ends (p. 28). The full separation between church and state, or the state's religious neutrality, then assumes greater importance than respect for individuals' freedom of conscience (p. 28). Maclure and Taylor call this phenomenon a "fetishism of means," where such institutional arrangements are "defended at all cost rather than means that, though essential, are to be defined as a function of the ends they serve" (p. 29). This so-called republican version of secularism can be problematic in societies where there are diverse conceptions of the good life (p. 31).

The second danger that such a concept of secularism poses is that such a value is very likely to conflict with citizens' moral equality and freedom of conscience. This is due to the fact that:

[t]he secular state, in working toward marginalizing religion, adopts the atheist's and the agnostic's conception of the world and, consequently, does not treat with equal consideration citizens who make a place for religion in their system of beliefs and values. (Maclure & Taylor, 2011, p. 31)

Maclure and Taylor also charge that this version of secularism violates the principle of neutrality:

That form of secularism is not neutral toward the core convictions that allow individuals to give meaning and direction to their lives. Yet the state's true commitment to individuals' moral autonomy entails the recognition that individuals are sovereign in their choices of conscience and have the means to choose their own existential options, whether these be secular, religious, or spiritual. (p. 31)

Another justification for a more restrictive model of secularism is the need to promote the aim of civic integration, where *integration* refers to a popular allegiance to a common civic identity and the "collective pursuit of the common good" (Maclure & Taylor, 2011, p. 31). Some advocates of this claim that civic integration requires the effacement or neutralization of the identity markers that uniquely identify citizens, including religion and ethnicity.⁵ The school's role as a so-called republican sanctuary (cf. Jacques Chirac's speech titled "*Le principe de laïcité dans la République*," given on December 17, 2003, at the Elysée Palace,⁶ cited in Maclure & Taylor, 2011, p. 32) appears to be tied with the aims of civic integration and nation building. Along similar lines, the US Supreme Court characterised public education as the most powerful means of "promoting cohesion among a heterogeneous democratic people" (*McCullum v. Board of Educ.*, 333 U.S. 203, 216, 1948).

In contrast to this "republican" model of secularism, the "liberal-pluralist" model views secularism as a mode of governance which aims to find the optimal balance between moral equality and the recognition of freedom of conscience. Additionally, the liberal-pluralist model does not take exception to the display of religious symbols or examples of the free exercise of religious freedom. Rather, this model accepts the necessity of making accommodations for public religious expression in order to restore equity of respect toward adherents of all religions – as long as the principle of equal respect toward all conceptions of the good is not compromised (Maclure & Taylor, 2011, p. 34).

As schools and universities are part of this public sphere, where individuals meet and interact, from a liberal-pluralist perspective:

the essential thing, if we wish to grant students equal respect and protect their freedom of conscience, is not to remove religion from the schools completely but, rather, to ensure that the school does not espouse or favor any religion. (Maclure & Taylor, 2011, p. 39)

The mere fact that schools are at the same time public institutions does not necessarily entail that the school must be free from anything imbued with religious meaning. The school is, after all, a place for interaction and dialogue between private individuals. In short, for the liberal-pluralist, the requirement of religious neutrality applies to institutions and not individuals.

Religious exemptions and accommodations

Many arguments justifying home education can resemble those arguing for the moral justification for accommodation or exemption on account of religious or conscientious beliefs. All these sorts of beliefs can be understood as conceptions of the good – and as such have a significant well-being component. The promotion of the well-being of the person and society are commonly presumed to be important roles of education as a whole.⁷

⁵The promotion or inculcation of the virtue of "colour-blindness" (blindness to difference) may reflect this line of thinking, as individual differences would be difficult to ignore unless they are done so intentionally or out of an attitude of indifference.

⁶Chirac also declared that "secularism is at the heart of the Republic". His speech in full can be heard here: <http://www.tv-radio.com/ondemand/rfi/mere/ftp/Audio/SpecialEvents/Dossier267/rfise267-chirac20031217.ram>.

⁷See Robeyns (2006) for a discussion about various normative roles assigned to education.

According to Maclure and Taylor (2011), “[o]ne of the central arguments in favor of multiculturalism as a principle of political morality is that certain public norms applying to all citizens are not neutral or impartial from a cultural or religious point of view” (p. 67). Although norms of general application are not illegitimate, they are often indirectly or unintentionally discriminatory against minorities. This is due to the fact that they are usually those norms that favour the interests and attributes of the majority. Thus, inasmuch as such favouritism exists, accommodation is necessary to re-establish equity (p. 68).

Moral identity – and whether religious beliefs are worthy of special consideration

It is up to individuals, perceived as moral agents capable of providing themselves with a conception of the good, to position themselves in relation to the different understandings of the world and of the meaning of human life. (Maclure & Taylor, 2011, p. 71)

The idea that everyone should initially be accorded an equal opportunity to choose and realize his or her conception of what constitutes a good life follows from the notion that all individuals inherently possess an equal moral value (Maclure & Taylor, 2011, p. 71). “For all individuals truly to have access to the same range of options, the rules that delimit their choices must not favor or disadvantage any category of citizens” (p. 73).

Those supporting measures of accommodation in certain cases are required to show that religious beliefs are a unique type of belief warranting special protection (Maclure & Taylor, 2011, pp. 75–76). The necessity of demonstrating this idea is made even more acute by the fact that there are those like Barry (2001) and Cornelissen (2012) who claim that religious beliefs are not special, and if they are right, then religious beliefs are those that are a product of one’s choice rather than that of a situation over which they have no control or choice, such as physical constraints and impairments. Such a perspective maintains that because choices can be controlled and altered, if anyone chooses to act in accordance with religious beliefs, he or she is acting while knowing the risks and responsibilities associated with making a choice of his or her own volition, whereas another choice could have easily been made instead that wouldn’t have imposed such obligations. In light of such cases, some opponents compare religious beliefs with expensive tastes, which are superfluous and malleable (Maclure & Taylor, 2011, pp. 69–80).

Perhaps this would partly explain why requests for accommodation based on religious beliefs are often met by suspicion on the part of public opinion. As mentioned in prior sections, some argue that appeals for the granting of religious exemptions or accommodations that invoke the Bill of Rights necessarily depend on a precise definition of religion, which is incommensurable and indeterminate.

Others maintain that such beliefs are considered “meaning-giving” or “core” convictions which form one’s moral identity, which “depends on the degree of correspondence between, on one hand, what the person perceives to be his duties and preponderant axiological commitments and, on the other, his actions” (Maclure & Taylor, p. 76). As Maclure and Taylor (2011) contend:

The more a belief is linked to an individual’s sense of moral integrity, the more it is a condition for his self-respect, and the stronger must be the legal protection it enjoys. Core beliefs and commitments allow people to structure their moral identity and to exercise their faculty of judgment in a world where potential values and life plans are multiple and often compete with one another. (p. 69)

Subjects and frameworks of analyses

The family of Mr. Uwe Romeike and his wife, Hannelore, were residents of Bissingen, Germany, in the State of Baden-Wuerttemberg until August 2008, when they decided to come to the United States to flee what some might consider persecution (Decision of the Immigration Judge [“IJ Decision”] at 4, Dec. 16, 2009).

In the fall of 2006, Mr. and Mrs. Romeike stopped sending their three school-age children to the government primary school:

The reasons they decided to homeschool their children was the fear that there were negative influences in school. They felt that school engendered a negative attitude toward family and parents and would tend to turn children against Christian values, as the Romeikes saw it. (IJ Decision at 2 [Dec. 16, 2009])

Instead of sending them to the public school, they began to conduct home education using a curriculum developed by The Philadelphia School of Siegen, Germany, a private Christian correspondence school (IJ Decision at 4 [Dec. 16, 2009]).

Mr. Romeike and his legal representatives formally alleged that after a few warnings given verbally and in writing, the principal “disparaged their motives of religious conviction and their exercise of parental rights regarding educational choice” and threatened consequences if they didn’t conform to demands to send the children to the government school (IJ Decision at 5 [Dec. 16, 2009]).

Less than 2 weeks later, the mayor, who was also the town’s head of law enforcement, allegedly repeated the same threats while disparaging the religious convictions of Mr. and Mrs. Romeike in similar fashion⁸ (IJ Decision at 5 [Dec. 16, 2009]). Days later the mayor threatened them with fines that would accumulate on a daily basis for each child who did not attend school, and “threatened to make the Romeike children attend the government school through the use of police force” (IJ Decision at 5 [Dec. 16, 2009]). Some 2 weeks later, the principal wrote that he would be reporting the failure of the Romeike children to attend compulsory school to the *Jugendamt* (Youth Welfare Office; IJ Decision at 5 [Dec. 16, 2009]).

Physical harm was also alleged by parties representing the Romeike family:

- ... armed and uniformed police officers entered the Romeike home. Without a written order, the officers forcibly took the Romeike children from the home and drove the crying, traumatized children to the government school.
- ... armed and uniformed police officers again came to the Romeike home to forcibly take the children away, and would have succeeded but for the group of German citizens protesting outside the Romeike home. (IJ Decision at 6 [Dec. 16, 2009])

Many fines were imposed on Mr. and Mrs. Romeike, totalling well over €7,000 (IJ Decision at 6-7 [Dec. 16, 2009]), and “[t]o collect these fines, the officials could begin proceedings to take away Mr. Romeike’s home. Mr. Romeike and his family fled Germany before these proceedings could be completed” (IJ Decision at 7 [Dec. 16, 2009]).

US-based attorneys employed by Home School Legal Defense Association (HSLDA), who legally represented the Romeike family in their petition for political asylum, argued that “[t]he prosecution [by the German state, law enforcement and education authorities] was and is discriminatory and targeted because non-homeschooling truants are not as zealously prosecuted and exceptions to compulsory attendance are not granted to homeschoolers but are granted to others” (IJ Decision at 7 [Dec. 16, 2009]). Although US asylum status was granted to all members of the Romeike family in January of 2010 (IJ Decision at 1-19 [Jan. 26, 2010]), the decision was later overturned on appeal (*Uwe Andreas Josef Romeike, et. al.*, No. A087 368 600, BIA May 4, 2012) and subsequent petitions for a US Supreme Court hearing were denied (Brief for the Respondent in Opposition, *Romeike v. Holder* at 1-27 134 S.Ct. 1491, 2014, No. 13-471).

Research question

The purpose of this paper is to examine how themes emerging from the Romeike family case that are central to either justifications for or against home education might be interpreted through one of the key sources of the tension between liberal-pluralist and republican conceptions of secularism, namely

⁸Subsequently, “[t]he German authorities, including civil judges, continually rejected the Romeikes’ arguments regarding their consciences, parents’ rights, and freedom of educational choice” (IJ Decision at 6 [Dec. 16, 2009]).

the question of whether recognition of freedom of conscience – along with the exemptions called for on the basis of such a freedom – ought to be seen as a threat to religious neutrality. The focus of analysis is directed, in particular, on religious or conscientious beliefs. The main research question can be stated as follows:

How can themes central to arguments supporting legal protection for home education on moral grounds be understood from the perspective of how liberal-pluralist secularists – and their republican counterparts – tend to regard the tenability of requests for accommodation or exemption from laws of general application?

Documents analysed

I will examine the following court documents:

United States Department of Justice Executive Office for Immigration Review, Immigration Court:

- (1) Decision of the Immigration Judge (“IJ Decision”) at 1–22 (Dec. 16, 2009).
- (2) Decision of the Immigration Judge (“IJ Decision”) at 1–19 (Jan. 26, 2010).
- (3) *Uwe Andreas Josef Romeike, et. al.*, No. A087 368 600 (BIA May 4, 2012).

United States Court of Appeals for The Sixth Circuit:

- (4) Brief of petitioners-appellants at 1–90, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12–3641 (6th Cir. Oct. 29, 2012).
- (5) Brief of respondent-appellee at 1–62, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12–3641 (6th Cir. Jan. 4, 2013).
- (6) Brief of petitioners-appellants at 1–39, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12–3641 (6th Cir. Feb. 5, 2013).
- (7) *Romeike v. Holder*, 718 F.3d 528 (6th Cir. 2013).
- (8) Brief of petitioners-appellants petition for rehearing en banc at 1–17, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12–3641 (6th Cir. May 28, 2013).
- (9) Response to petition for rehearing en banc at 1–13, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12–3641 (6th Cir. June 26, 2013).

United States Supreme Court:

- (10) Petition for writ of certiorari, *Romeike v. Holder* at 1–295 134 S. Ct. 1491 (2014) (No. 13–471).
- (11) Brief for the respondent in opposition, *Romeike v. Holder* at 1–27 134 S. Ct. 1491 (2014) (No. 13–471).
- (12) Reply brief in support of petition for writ of certiorari, *Romeike v. Holder* at 1–19 134 S. Ct. 1491 (2014) (No. 13–471).

Data analysis

Analysis 1: Themes pertaining to conceptions of the good

I will identify themes pertaining to the respective “conceptions of the good” of the state and those of the home educator. I will focus particularly on those conceptions that seem to demonstrate ideological conflicts.

Analysis 2: Themes constituting reasons of conscience or religion, and moral identity

I will identify and interpret events that can be regarded as constituting behaviour that could be justified, either implicitly or explicitly, by appeals to reasons of conscience or religion. I will examine the interaction between various conceptions of the good, which largely form the ideology of the

parties involved, and the important pedagogical choice to educate at home, especially with respect to the impact of this relationship on how moral identity is preserved.

Analysis 3: Themes pertaining to conceptions of secularism – and their respective views on whether exemptions threaten neutrality

I will look for themes pertaining to freedom of conscience and whether its recognition is regarded as a threat to or violation of religious neutrality. Are expressed notions consistent with a republican conception of secularism or a liberal-pluralist conception of same – or neither? Or do they have characteristics of both?

Findings and discussion

Here I present and discuss the findings in the pertinent subsections, because I decided that several of these analyses are best made as interpretations of the data, and not merely reports of the data, due to the fact that analyses of such philosophical topics are by nature not merely reported observations but rather interpreted observations.

Analysis 1: Themes pertaining to conceptions of the good

Uwe and Hannelore Romeike objected to what they regarded as negative influences that the children were exposed to at school and didn't want their family's Christian values to be eroded. Like many other evangelical Christians, they regarded evolution as something antithetical to their faith tradition. They objected to content they felt undermined "family values" such as respecting parents and respecting the dignity and value of all human life. They wanted their children to remain free from content that promoted spirituality at odds with the monotheistic worship of the Judeo-Christian Creator. They felt that it was important to observe Biblical prohibitions against certain forms of sexuality. They may have also felt that the curricular preference for evolutionary dogma might serve to undermine belief in the narrative of origins described in the Scriptures.

Analysis 2: Themes constituting reasons of conscience or religion & moral identity

Mr. and Mrs. Romeike are described as German parents "who have chosen to homeschool their children for religious and conscientious reasons" (IJ Decision at 2 [Dec. 16, 2009]); and it also mentioned that "[Uwe Romeike's] political opinion that he should be permitted to homeschool his children is motivated by his religious view of his role as a parent" (IJ Decision at 2 [Dec. 16, 2009]). In the same document, the following claim is made:

The reality in Germany is that when authorities discover homeschoolers, the wheels of the state machine begin to turn to progressively increase pressure beginning with demands that the parents violate their consciences and put their children in a state-approved school. (p. 8)

Prior to the Romeike case, there had been established precedent for deeming moral identity and freedom of conscience important in relation to granting exemptions. One Circuit Court had ruled that when determining what constitutes persecution of a given particular group, "whatever the common characteristic that defines the group, it must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." (*Al-Ghorbani v. Holder*, – F.3d –, 2009 WL 3718297 at p. 11, (6th Cir. 2009).

One may ask how anyone can know whether a particular decision is made on the basis of conscience. After all, some opponents of accommodation on account of religious or conscientious beliefs claim that such beliefs are matters of choice and thus can be freely changed. As described above, some argue that the question of whether that particular belief or conception of the good constitutes grounds for its protection is related to how strongly the person holds it, and how essential it is to maintaining that person's moral identity. One test we can apply to how strongly

one believes something is to see what consequences they are willing to face. To put it succinctly, if one is willing to “practice what they preach” in terms of the sacrifices they must pay and the hardships they must endure, it is presumed that we can more easily trust their stated motives.

Uwe Romeike et al., along with their legal representatives, argued that “their religious and conscientious beliefs are so fundamental to their identity that they ought not be required to be changed. Homeschoolers in Germany are without question a particular social group” (IJ Decision at 8 [Dec. 16, 2009]). Additionally, Mr. and Mrs. Romeike’s remaining faithful to the Bible and to the “ways of the LORD” in the education of their children were such important considerations that they were willing to endure much suffering, persecution, and hardship in order to continue doing it. It appears that to do otherwise would have been a betrayal of who they were as evangelical Christians.

Analysis 3: Themes pertaining to conceptions of secularism

Here I will examine whether the claims and views expressed or implied by the parties to this debate align more closely with the republican or liberal-pluralist conceptions of secularism, in view of the above delineated respective traits of each.

In 2010, Judge Lawrence O. Burman (hereafter “Burman”) of the Immigration Court in Memphis, Tennessee, asserted (Decision of the Immigration Judge (“IJ Decision”) at 9 [Jan. 26, 2010]) that it was immaterial whether a petition that had been made by home educators to the European Union was denied on account of jurisdictional grounds, as the government attorney claimed, or whether it was turned down for an unknown reason, as claimed by Dr. Donnelly, who represented the Romeike family. In the final analysis,

Regardless of who is right about that, it does not really affect the basic situation, that the European government is no more willing, than the German government, **to make an exception for homeschooling for religious or philosophical reasons** (emphasis added).

Burman then proceeded to talk about historical interpretation of parental rights in directing their children’s education:

In the United States, no state [bans] homeschooling. There has been a lot of litigation regarding homeschooling, **obviously the educational establishment, in many cases, wants to have control of children.** However, **the State Supreme Courts have, without exception, ruled in favor of the parents. For that reason no case has gone to the Supreme Court.** However, in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Supreme Court made very clear how it would rule in this matter.... the Supreme Court found that there was a fundamental right of a parent to establish a home and bring up the children and worship God **according to the dictates of his own [conscience]**. (Decision of the Immigration Judge (“IJ Decision”) at 9-10 [Jan. 26, 2010], emphasis added)

It appears that Burman’s views are more aligned with a liberal-pluralist position than the republican one. Burman’s words condemn what he regards as violations of human rights, namely the unwillingness or failure to protect the freedom of religion and freedom of conscience.

As I shall discuss below, the stated views of the Sixth Circuit Court, the Department of Justice, and the Supreme Court in this case seem to align more closely with a republican notion of secularism,⁹ in the following ways:

- (1) they emphasise religious neutrality as an end when claiming that they are not obligated to reconcile contradictions between the values of its education system and those of the homeschooling families;
- (2) they prioritise civic responsibilities and state interests above individual freedoms – for instance, the state’s interest in preventing the formation of so-called parallel societies;
- (3) they claim that “the interferences with the applicants’ fundamental rights” (*Konrad v. Germany*, App. No. 35504/03, 8 (European Court of Human Rights Sep. 11, 2006), pp.

⁹See Zimmerman’s (2004, pp. 340–344) rebuttals to Dwyer (1994) and Woodhouse (1992) along with my summary of this debate in Oh (2016, pp. 23–27).

2–3) are “proportionate” (IJ Decision) considering the competing interest in counteracting the development of these parallel societies.

Discussion

The claimants, Mr. and Mrs. Romeike, claimed that they withdrew their children from school due to value incompatibilities that arose from conflicts between the implicit values taught in schools and their religious convictions. There was various content that they found objectionable and intolerable. Contrary to the implications of the German Constitutional Court, they didn’t find it difficult to tolerate other children having differences. Rather they felt that the content of the instruction and the values taught were intolerable when assessed by their absolutely held belief system. It is clear that they had a different conception of the good, and of what enhanced the welfare of their children. Based on this conception of the good, what their children encountered in school was adjudged to not be conducive to promoting the interests of their children, who the parents felt obligated to raise as evangelical Christians. Thus Mr. and Mrs. Romeike apparently made a decision based on the dictates of their conscience and religious convictions. This decision was that they would be derelict in their duties before their Creator to allow their children to remain in a school where they would be taught moral values and ideas that they felt undermined or contradicted the values they felt obligated to instill. So integral were their religious convictions to their moral identity that they were willing to face many hardships in order to remain faithful to what they felt their Creator requires.

The German Constitutional Court responded that they were justified in all their punitive actions, including using physical force. The stated justification was the ends they were claiming to achieve: counteracting of the development of so-called parallel societies. They did not provide any proof that home education, as a practice, leads to the formation of such parallel societies. Moreover, as Spiegler (2009, pp. 302–303) observed that home educators generally obey all just laws, their disobedience has been interpreted as civil disobedience precisely because they are trying to enact change within the existing society through their selective defiance of the specific education statutes they deem immoral and unjust.

Concluding remarks

It would not be until the mid-19th century that any form of compulsory schooling began in the United States – along with most of the West. Those who lobbied for the creation and propagation of the public school system underscored the charitable aims of providing a publicly funded education accessible by anyone in need of it, particularly children of working-class parents and others of low socioeconomic status. A key moral bedrock and *raison d’être* commonly declared by proponents of public education was its humanitarian aim of providing publicly funded education to children of parents who, for lack of learning, lack of time or other resources, could not adequately educate. If those who promoted the creation of compulsory schooling had openly stated an intention to compel attendance for all youth from the start, it is doubtful whether it would have gained popular support. Roper (1977) explains the highly controversial nature of the issue of compulsory schooling in the 19th century:

Mandatory attendance and payment for any institution was in such direct opposition to concepts of democracy that early educators were hesitant to suggest or employ it. Americans had taken pains to insure that, for other institutions such as churches and armies, support and attendance would be voluntary. Compulsion in education was the hydrogen bomb of its day. Educators pondered the question, Do the threat and the enemy¹⁰ [i.e., the parent] really justify the use of such a repugnant weapon? (p. 240).

¹⁰Roper (1977) declared that the parents of schoolchildren had always been regarded by “schoolpeople” as the “natural enemy”. Roper noted that because parents supplied the clients and the funding for the schools, the fledgling state school systems in America imposed the following: 1) mandatory school attendance, 2) consolidation of control that would marginalize or exclude parents from decision-making, and 3) creating the office of Superintendent, who could be regarded as the “arch-enemy” of the parent (p. 240).

The humanitarian intervention needed to establish a new hegemon in education would require a war against parents, according to Roper (pp. 239–242).

Governmental authorities and their spokespersons often declare lofty aims to justify actions that are considered objectionable. However, even when the stated ends of enforcing any mandate such as compulsory schooling could be justified, the *means* by which such ends are attained also must be warranted, as the majority opinion in *Pierce v. Society of Sisters* (268 U.S. 510, 535, 1925) asserted.

The home education issue may best be approached within an atmosphere of open dialogue on equal footing with appreciation of the values inherent in each respective position. Home educators and their children are the ones who have the biggest stake in ensuring that the policies related to compulsory schooling are enacted and enforced only after due dialogue and deliberation. They are entitled to a voice in discussions pertaining to the best course for ensuring how best to implement education, which ostensibly aims to provide preparation for fulfilling one's obligations to society, self and kin and improve one's capacity to pursue well-being.

Author bio

P. J. Oh is a doctoral student whose interests span the fields of history, philosophy, education and the contested origins of life. Oh is currently preparing a doctoral project that would explore whether Kant's constructivist method and philosophy could be seen as a culmination of thought representative of the pragmatic concerns of a Pietist (i.e. moral law-observant) community increasingly pushed underground by Catholic, Lutheran, and Calvinist leaders. This community, of which Kant would have been the foremost articulator, might have felt it necessary to devise such a method, which depended heavily on hearer constructions aided by Scriptural allusions, as a means of enlisting the intellectual heirs of the Enlightenment in its battle to secure cultural legitimacy in the wake of the persecution of several similar restoration groups such as Moravians, Anabaptists, and Waldensians in the preceding centuries.

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