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PRACTICES AND CONCEPTS

When may government interfere with religious practices to protect the health and safety of children?

Quand l'intervention gouvernementale en matière de pratiques religieuses est-elle acceptable pour garantir la santé et la sécurité des enfants?

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Summary Secular states may be asked to override parental decisions based on religious beliefs when these decisions lead to concerns for the well-being of the child or welfare of society at large. Particular difficulties arise when goals of limited state importance to secular society conflict with practices that matter a great deal to members of religious groups. We propose a prudentially-based approach to resolving these conflicts by balancing the interests of the affected child, those close to the child, and society, without compromising the child's needs. This approach acknowledges the importance of children's relational interests as members of families and religious cultures. It is compatible both with legal and bioethical practice.

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Decisions are contextually framed, taking into account the degree to which the state generally tolerates risks to children's health and safety. The constraints built into our approach protect against using child welfare as a pretext for attacks on minorities. Finally, use of this approach partially addresses the imprecision of other standards that have been applied to judge the appropriateness of parental decisions.
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MOTS CLÉS
Obligation gouvernementale ;
Prise de décisions pédiatriques ;
Religion

Résumé Les états laïcs peuvent être appelés à déroger aux décisions parentales qui sont fondées sur des croyances religieuses lorsque ces décisions créent des soucis en ce qui concerne le bien-être de l'enfant ou de la société. Les difficultés surviennent lorsque les objectifs d'importance limitée pour la société laïque sont en conflit avec des pratiques qui importent beaucoup aux membres de certains groupes religieux. Nous proposons une approche prudentielle pour résoudre ces conflits, en assurant un équilibre entre les intérêts de l'enfant en question, ceux des personnes proches de l'enfant ainsi que ceux de la société sans toutefois compromettre les besoins de l'enfant. Cette approche reconnaît l'importance des intérêts relationnels des enfants en tant que membres de familles et membres de cultures religieuses. Elle est aussi compatible avec la pratique légale qu'avec la pratique bioéthique. Les décisions sont cadrées par le contexte, en considérant la mesure dans laquelle l'état tolère en général les menaces pour la santé et la sécurité des enfants. Les contraintes intrinsèques à notre approche protègent contre l'utilisation du bien-être de l'enfant comme prétexte pour attaquer les minorités. Finalement, cette approche aborde partiellement les imprécisions des autres standards qui ont été employées pour évaluer le bien-fondé des décisions parentales.
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Several families migrate to a large city in the Western world. Hassan and Nadia come from Kurdistan, and object to their daughter taking part in coeducational swimming lessons. Krish and Shanti resided in a Caribbean nation where children are subjected to frequent disciplinary spanking on the buttocks. Gideon and Yael are Jews from Israel. They circumcised their son and give him a small glass of wine at Sabbath dinner. All of these cultural and/or religion-based practices may impact on the health of the children involved, but all are treated with varying degrees of acceptance in various Western nations.

There may be tension between secular governments and minority cultural and religious groups regarding certain practices, especially those that potentially threaten the health of children. The sorts of decisions that can cause conflicts between a secular state and a religious family may involve issues other than health. Education, disciplinary practices, and even baby naming may be issues. Furthermore, religious views may be idiosyncratic, without linkage to a recognizable religious group. The focus of this essay, however, will be restricted to practices of minority religious groups that threaten the health or safety of children. While the ethical discussion at the heart of many of these practices is similar (namely, balancing religious prerogatives with a societal duty to the welfare of children), policy and legal treatment has varied. A fair and predictable rubric for addressing such practices is necessary.

In this essay, we consider the issues at stake in balancing parents' right to raise children according to their religious tradition against the state's obligation to protect children and present a rubric to consistently and fairly balance these interests. Problematic parental decisions based on religion are frequent. They present particular difficulty because of the intrinsically powerful influence of religion. Theoretical approaches to resolving these disputes range from viewing parents as mere stewards of their children on behalf of the state [1] to great deference to parental decisions, especially those grounded in minority cultural influences [2]. We propose a test that can be applied in the context of both law and the practice of clinical ethics to resolve these problems individually or collectively. Our position prioritizes the needs and interests of the child, while also respecting those of society and the family.

The paradoxes inherent in liberalism

While our position is grounded in liberalism, we believe that there cannot be a liberal consensus regarding state treatment of illiberal religious action. This is because of certain paradoxes inherent in liberalism. We live in states that aspire to liberal democratic governance. Liberalism is any political formulation that prioritizes individual autonomy and protection at least of negative liberties — those that enhance and protect autonomy. Such liberties include freedom of speech and freedom to alienate one's property. Liberalism is a cluster concept that encompasses many political formulations ranging from near-anarchic libertarianism

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