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Time for religion? Liberalism, Haredi Jews, and state regulation of nonpublic schools

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Abstract

Political theorists argue that justice requires treating people's time as having equal worth. In this article, I contend that justice sometimes requires making exceptions to uniform time rules. The article focuses on New York State's regulations for nonpublic schools and how they affect Haredi (ultra-Orthodox) Jewish day schools, or yeshivas. Dissatisfied yeshiva graduates, the state education department, and several liberal political theorists assert that the state should pressure yeshivas to dedicate more time to secular studies. Reconstructing Horace Kallen's argument against the melting pot conception of citizenship and for cultural pluralism, I maintain that liberal states should be generous toward non-liberal ways of life on condition that they do not systematically abuse children or pose a danger to public safety. A liberal education landscape may sustain many kinds of schooling, including ones that outsiders think waste time.

Keywords: Education; Haredi Jews; Horace Kallen; liberalism; pluralism

Omnis determinatio est negatio. All determination is negation. — Spinoza

1. Introduction

Liberal societies tolerate and celebrate the free exercise of religion. Religions encompass instruction, prayers, rituals, holidays, sabbaths, and other activities that take time. Liberal societies, in principle, accommodate the reasonable requests of the religious to use their time as they wish. Nevertheless, giving each religious believer a veto power over uniform time rules would lead to chaos. Liberal societies must establish time rules to ensure schools, businesses, public transportation systems, courts, immigration centers, and civil associations function, and there are reasons of efficiency and equity to apply time rules consistently. This paper addresses the conundrum of how liberal societies may grant exceptions to time rules. The thesis is that liberal justice entails presumptive generosity to the time requests of religious believers on condition that they do not systematically abuse children or endanger society at large.

The event that prompts these reflections is a move to intensify regulation of nonpublic schools in New York State. Since 1895, the Compulsory Education Law has required nonpublic schools to offer instruction “at least substantially equivalent to” and “for at least as many hours” as the local public schools (Baldwin, 2022). In 2015, dissatisfied yeshiva graduates filed a complaint against the New York City Department of Education for neglecting to enforce the substantial equivalency requirements.¹ After a sequence of laws, regulations, court decisions, comment periods, and stakeholder meetings, the New York State Department of Education proposed regulations to determine substantial equivalency of instruction in nonpublic schools.² Agudath Israel, a group representing yeshivas, responded that the regulations would change “yeshivas’ daily school schedules,” “intrude upon their educational and religious autonomy,” and “jeopardize their ability to carry out the mission for which they were created.” The group protested that the state would determine substantial equivalency “without taking into account the many hours its students are engaged in the study of Chumash (Bible), Mishna, Talmud, the Codes of Jewish Law and the various other sacred Jewish texts” (Zweibel, 2022). Though the Regents approved the regulations in September 2022, yeshivas could refuse to comply with the regulations, legislators could amend the Compulsory Education Law, and governors, journalists, activists, and bureaucrats could all act in ways to change or frustrate the intended reforms.³ All of which is to say that the debate about the state’s regulation of nonpublic schools is not likely to end soon.

In the first part of the essay, I consider a political theory argument that justice requires treating people’s time as having commensurate value and reply that justice also requires carving out exceptions from time rules for religious believers. Next, I describe yeshiva education, the controversies surrounding it, and how New York’s regulations may effectively terminate one kind of yeshiva education in the state. In the third section, I explain why comprehensive liberals favor a robust secular education for all students and how the 20th century pragmatist philosopher Horace Kallen helps liberals appreciate the justness of claims for yeshiva autonomy. Next, I explain why the garden metaphor helps us imagine a healthy education system and why liberal states may intervene in schools that pose an imminent threat to children or society. Finally, I argue that liberals ought to exercise presumptive generosity toward religious believers who spend time as they wish.

2. Time, justice, and exceptions

One way to create a theory of justice is to reconstruct ideas circulating in public political culture (Rawls, 2005, Lecture III; Tampio, 2012). A widely shared political intuition is that the basic structure of society ought to treat people fairly, which is why the liberal political theorist John Rawls used the veil of ignorance to model the sense that we should not make exceptions, for ourselves or others, when determining political principles for the basic structure of society in the original position. Many people take for granted that justice means treating people without prejudice: justice is blind. In *The Political Value of Time: Citizenship, Duration, and Democratic Justice*, Elizabeth S. Cohen thinks through what it would mean to treat time as a Rawlsian basic good that must be distributed fairly. In response, I argue that there

are also widely shared intuitions in liberal societies that it is just to make exceptions to uniform time rules for the religious. Liberal temporal justice must imagine how time rules affect people and then adjust the rules to accommodate reasonable religious requests for exemptions.

The Political Value of Time opens our eyes to how important time is, as an intrinsic and instrumental good, and how the basic structure of society allocates time. People wish to use their time to read, watch a sunset, pray, or be with friends, and people need time to work, serve on a jury, vote, and become citizens. Rational parties in the original position will want more time as a basic good, to enjoy in the moment and to prepare to acquire future goods. Liberal political theorists tend to emphasize the just distribution of wealth, democratic representation, and recognition; “however, time is integrally important to each of these subjects” (Cohen, 2018, 24). The basic structure of society influences how much time one has to pursue one’s conception of the good and develop a sense of justice. Cohen argues, persuasively, that time rules permeate nearly all aspects of our lives—including the start of the school day, the voting age, the naturalization period to become a citizen, prison sentences, and so on—and political scientists ought to investigate how “time operates in all realms of politics” (Cohen, 2018, 5).

The task for political theory, according to Cohen, is to proffer “normative guidelines for how to treat the political time of individuals in a fair and egalitarian fashion” (Cohen, 2018, 5). Modern bureaucracies tend to make inflexible time rules to govern large and diverse populations. This is not necessarily a bad thing, for Cohen. Bureaucracies use the same temporal measurements and deadlines for everybody in the system, which in a way treats everybody’s time as of equal worth. In the medieval world, nobles and serfs followed different rules, and royalty made ad hoc decisions, but modern bureaucracies measure and enforce time rules in scientific, egalitarian, and impartial ways. Cohen acknowledges a long-running tradition that thinks that valuable things get lost in the process of standardization. But the force of her argument is that the primary temporal injustice today is when society devalues the time of a group of people. To devalue the time of “an entire race, gender, or class of persons” is to designate them “as lesser beings, incapable of consent, truth-seeking, loyalty, etc.” (Cohen, 2018, 142). If white high school students get 5 hours of math instruction a week, and black high school students get 3 hours of math instruction a week, then society is treating black students unfairly. Justice demands that society provide equal educational instruction, in scientifically measured time, for different groups. For Cohen, liberals need to think and make recommendations about “commensurating politically important processes” so that society honors the equal worth of everyone’s time (Cohen, 2018, 27).

Cohen identifies the roots of her thesis in the 18th-century European Enlightenment. The great Enlightenment philosophers were fighting the superstitions of religion and the privileges of royalty. They were looking for rational rules that would undermine the power and prestige of priests and kings. Measuring time in a scientific way and creating uniform time rules would be a way to make society more scientific, rational, and fair. “The Enlightenment paved the way for durational time to be incorporated into liberal democratic thought” (Cohen, 2018, 112).

In recent years, post-secular theorists have identified blind spots in secular political theories emerging out of the Enlightenment. Consider the critique of secularism made by the anthropologist Saba Mahmood. Mahmood observes that many of the Enlightenment philosophers emerged out of a Protestant religious milieu. Religion, for them, meant primarily doctrinal beliefs, and secularism was a way to bracket beliefs in the private sphere. The “Protestant conception of religiosity presupposes a distinction between a privatized interiority that is the proper locus of belief and a public exteriority that is an expression of this belief” (Mahmood, 2011, xv). Mahmood argues that the Protestant conception of religiosity fails to account for, or give respect to, Orthodox Jewish, Muslim, or other traditions that emphasize rituals and practices rather than simply beliefs. Muslims congregate together midday on Friday to pray; uniform time rules that forbid Muslims to attend jummah prayer conduct an injustice against them. For post-secularists, secularists turn a blind eye to how supposedly fair rules impede the reasonable time demands of religious believers who entwine orthodoxy and orthopraxy.

Many liberals already intuit that uniform time rules can create injustices and justify exceptions. Take religious holidays. A militantly secular society could refuse to allow religious people to miss work or school to pray, rest, or celebrate. In the United States, by contrast, legislators and the public hold that one of the founding ideals of the country is religious freedom. Title VII of the Civil Rights Act of 1964 provides employees with protections for their sincerely held religious beliefs, and the U.S. Equal Employment Commission recognizes religions that are “new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others” (Holland, 2021). Sometimes, in the United States, schools permit students to miss school for religious holidays, and other times the religious petition successfully for schools to close for religious holidays. In early 2019, a Muslim student in Detroit publicly argued that the country was founded on the ideal of religious freedom, that Muslims engage in an hour-long ceremony on the morning of Eid and then spend the rest of the day spending time with family and friends, that the school currently allows Muslims to pray and perform religious duties at school, and that the school should recognize Eid as a holiday (Muntakim, 2019). Subsequently, the Detroit school board voted to close schools for Eid (Higgins, 2019).

Liberals may disagree over whether it a wise decision to permit religious communities to amend the school calendar. Comprehensive liberals tend to favor the rights of children to a robust secular education over a community’s right to religious freedom. For comprehensive liberals worried about relaxing education rules for the Amish or Christian fundamentalists (Gutmann, 1995), religious communities may not have the right to tinker with the school calendar. Political liberals tend to emphasize the importance of tolerating religious communities that do not threaten the unity of the liberal state (Galston, 1995). Reflecting upon the lessons of the European religious wars of the 17th century, political liberals see the value of allowing religious communities reasonable accommodations such as a revised school calendar. The argument of this paper will not convince comprehensive liberals who believe the “Rawlsian argument” that schools should focus on preparing students to decide for themselves their jobs, schools, romantic partners, and faiths (Koganzon, 2020).

Hopefully, the argument appeals to political liberals who both tolerate and appreciate what devout religious believers contribute to a liberal society.

In this article, I seek to recover one of the meanings of liberalism, from the Latin *liberalis*, as “noble, gracious, munificent, generous” (“Liberal (Adj.)”, 2018). The question of how to create time exceptions for the religious cannot be decided by categorical rules. At some times and places, it makes sense to close schools for religious holidays, or to permit the religious to leave public schools for religious instruction, but in other contexts it might not. In this article, I ask liberals to reflect upon why they think it is admirable that school districts with many Muslim students close for Eid, and how this generous disposition might transfer into other policy debates. Liberals believe in religious freedom, and sometimes religious freedom entails exemptions from time rules that apply to other people.

3. Yeshivas, controversy, and state regulations

The United States has a principled commitment to religious freedom, one affirmed in the 1972 Supreme Court case of *Wisconsin v. Yoder* that permitted the Amish community to stop formal education of children at the end of eighth grade. That decision, however, concerned a community that is economically self-sufficient, does not participate in politics, and continues an agrarian way of life that many Americans practiced at the country’s founding (Koganzon, 2020). The Haredi (ultra-Orthodox) Jewish community does not fit those categories, and state regulations of their schools could effectively end one type of yeshiva education in New York.

In 2018–2019, there were 170,368 students enrolled in Jewish private schools. In total, 111,970 were in New York City, and 58,398 in the rest of the state. Since 2000–2001, statewide enrollment in Jewish schools is up by 62.6%, and there are more students enrolled in Jewish schools in New York State than enrolled in public charter schools (Domanico, 2020). There are co-educational Modern Orthodox Day Schools that send graduates to elite colleges. There are Haredi yeshivas that encourage young women to college, and there are Hasidic yeshivas that end formal secular education for boys by high school. In this article, I focus on the hardest case of the Hasidic yeshivas confident that the principles articulated will cover other Jewish schools affected by the regulations.

Some of the most strident critics of yeshivas are disgruntled graduates, including those in the activist group Young Advocates for Fair Education (Yaffed). These activists make arguments to members of the Haredi community, the public, and state officials (Katzir and Perry-Hazan, 2021). To fellow Haredi Jews, activists make religious arguments, citing passages in the Talmud that command parents to teach children a profession, and pragmatic arguments, that education will empower Jews to gain employment and gain prestige. To the public, activists argue that yeshiva students are having their rights violated and not being prepared to flourish as adults. Naftuli Moster, the founder of Yaffed, told the New York Times that he first heard the word “molecule” when he was a senior at the College of Staten Island. “I felt embarrassed and ashamed.... Every single time I didn’t know something, I thought, ‘I’m too crippled to make it through’” (Miller, 2014). Activists ask the state to enforce

the substantial equivalency law on yeshivas, including by threatening public state funding to non-compliant schools (Moster, 2021).

In 2017, Yaffed asked the state to require yeshivas to dedicate more time to secular subjects. According to their report, the average Hasidic boy studies English reading, writing, and arithmetic for 90 minutes a day, four days a week, from age 7 to 12. After age 13, a Hasidic student spends 12 hours a day in yeshiva but does not dedicate any time to English, math, or science. “Yeshivas should begin to annually increase the amount of time spent on secular studies per day by at least 30–45 minutes,” so that by September 2020, yeshiva high schools spend at least 2.5 hours a day on secular studies, including all state-mandated subjects for each grade level (Yaffed (Young Advocates for Fair Education), 2017). Defenders of yeshivas pointed out that students discuss complex texts written in Hebrew and Aramaic, debate legal and philosophical themes, learn to reason from evidence, balance perspectives, and contextualize arguments. “Skills that fall under the rubric of argumentation are central to nearly every secular domain, and the Talmud text significantly develops these skills” (Krakowski, 2018). Even if yeshivas train students to be careful, evidenced-based thinkers, yeshiva education substantially differs from the kind of education offered in public schools.

The regulations contain several provisions that may influence how yeshivas structure their school day. The regulations require local school authorities “to make substantial equivalency determinations for all nonpublic schools within their geographical boundaries” (Baldwin, 2022, 5). For yeshiva advocates, this regulation opens the door for public school administrators to impose their educational views on the Haredi community. The state responds to this objection by identifying several pathways that a school could use to demonstrate substantial equivalency. Many of the pathways, such as schools for the blind and deaf or military service academies, are inapplicable. The department might approve an accreditation organization that works with yeshivas, though that is speculation. The surest path for a yeshiva to avoid the whims of a local superintendent is to use “assessments approved by the Department that demonstrate student academic progress as they move from grade to grade” (Baldwin, 2022, 5). These regulations will pressure nonpublic schools to enter the state assessment and accountability system. High stakes testing pressures schools to dedicate time and energy to tested subjects. According to Agudath Israel, the “new regulations may result in yeshivas having to make major changes to their school day schedules to be deemed substantially equivalent. This is entirely unacceptable” (Dinowitz, 2022).

To understand the effects of the regulations, consider how the Satmar Hasidic community in Kiryas Joel structures the school day for high school men in yeshivas (Stolzenberg and Myers, 2022a, 58–59).

- 5:30–6:30 Immersion mikveh (ritual bath)
- 6:30 First Talmud class
- 7:30 Study of Hasidic works and preparation for prayers
- 8:15 Morning prayers
- 9:15 Breakfast
- 10:00 Talmud lesson
- 11:00 Chavrusa learning (with a study partner in study hall)

1:00 Lunch (depending on the season, the afternoon mincha prayer is either in early or late afternoon)

2:00 Lesson on the major code of Jewish law, *Shulhan 'Arukh*

3:00 Chavrusa study

5:00 15-minute break

5:15 Chavrusa study

7:00 Dinner

8:30 Chavrusa study

9:30 Evening prayer

Most yeshivas offer secular instruction to ensure that graduates possess sufficient English literacy and numeracy to find gainful employment (Krakowski, 2020). Still, yeshivas offer intense religious instruction in which “every hour is precious” (Saiger, 2020, 49), and yeshivas must sacrifice time to meet with local education authorities or prepare students to take state-approved assessments. Countries such as Belgium have a Constitutional right to publicly funded religious education, but the regulatory regime pressures Antwerp yeshivas to participate in centralized exams, use public school textbooks, and comply with the demands of the inspectorate (Perry-Hazan, 2014). According to Spinoza, “all determination is negation” (cited in Lazar, 2019, 240), and the new regulations may negate the kind of yeshiva education offered to high school men in Satmar Hasidic yeshivas in Kiryas Joel and Brooklyn (Deutsch and Casper, 2021). Some have speculated that the Hasidic community may decamp to a state that has a lighter regulatory hand (Stoll, 2020).

The focus of this article is on Hasidic Jews, but it is worth noting that these regulations affect Waldorf schools that might prefer to start reading instruction at a later age, homeschoolers that do not want to take state tests at the end of each year, or Catholic schools that do not want secular authorities telling them how much time to dedicate to certain topics (Donnelly, 2020; Ferguson, 2020). The question is not simply whether New York will accommodate Hasidic education. New York is a large state in a country that is a global outlier in its principled commitment to the right to nonpublic education (Glenn, 2020). If New York regulates nonpublic schools out of existence or out of the state, then that sets an example for other liberal states to impose uniform education time rules regardless of how they affect religious or philosophical minorities. John Stuart Mill warns that a public education system may be “a mere contrivance for moulding people to be exactly like one another” and argues that public schools should be “one among many competing experiments” (Mill, 2007, 119–20). Though the focus of this paper is on yeshivas, the paper makes a Millian argument that liberal societies should encourage a wide array of educational options with the limiting principle that the state may stop schools from harming children or society.

4. Comprehensive liberalism, cultural pluralism, and education

Liberalism is preeminently concerned with the liberty of the individual. Nevertheless, most liberal political theorists recognize that people find meaning in groups and that a liberal society will sustain many ways of life. One side of the liberal spectrum favors using state power to ensure that young people have the skills necessary to thrive in the

secular world, and the other side thinks that the liberal state should use a light touch when regulating religious communities and other groups in civil society. In this section, I stage a debate between comprehensive liberals and cultural pluralists over whether the state should, in practice, create room for illiberal enclave communities to run their own schools, with caveats. I enter the debate to say that state control over the entirety of the education system poses a bigger risk to a liberal society than minimally regulated nonpublic schools.

In *Tough Choices: Structured Paternalism and the Landscape of Choice*, Sigal Ben-Porath calls for liberal states to shut down religious schools that fail to prepare children for open futures. The state, she explains, inevitably exercises a certain kind of paternalism insofar as it supports some schooling models and not others. Liberals ought to make social policy to “increase the opportunities available to individuals” and “express respect to their equal standing as members of a democratic society” (Ben-Porath, 2010, 143). Ben-Porath holds that justice requires making the same opportunities available to all democratic subjects and that exceptions can often be a way to abjure the democratic responsibility to treat people fairly. It is not just, on her account, for parents to choose educational options for their children that do not train them to vote, serve on a jury, find a job, or leave their communities. Haredi activists sometimes criticize spiritual leaders who abuse their power and become rich while their community is poor and ignorant (Katzir and Perry-Hazan, 2021); Ben-Porath, likewise, thinks that the liberal state may supersede the judgment of religious communities that do not prepare children to exercise personal and moral autonomy. In the educational marketplace, “destructive choices can for the most part be eliminated from the choice set by the state” (Ben-Porath, 2010, 143). New York Commissioner of Education Betty Rosa shared the same sentiment when announcing the new regulations: “We have an obligation under the law to ensure all students receive an education that enables them to fulfill their potential and teaches them the skills and knowledge needed to contribute to society and participate in civic life” (New York Board of Regents, 2022).⁴

In the current debate, it is rare to find a principled defense of yeshivas that are not substantially equivalent to public schools (Leibovitz, 2022). In this context, it is worthwhile to go back to a crucial text in the archive of American political thought that justifies making room in the education landscape for religious schools. In 1915, the Jewish pragmatist philosopher Horace Kallen published a two-part article in *The Nation* criticizing the melting pot model of assimilation and advocating cultural pluralism. Kallen articulates a liberal perspective that making religious minorities follow the same time rules as everyone else can be unjust.

In “Democracy Versus the Melting-Pot: A Study of American Nationality,” Horace Kallen looks back to Johann Gottfried von Herder and German Romantics and anticipates later communitarians and multiculturalists who maintain that human identity emerges from living and speaking with members of a bounded group. Kant and comprehensive liberals tend to prioritize the rational side of human nature that freely chooses its moral and pragmatic principles over the animal side of human nature embedded in a particular time and place. Cultural pluralists, on the contrary, argue that blood, soil, and cultural traditions permeate and nourish our identity.

What is inalienable in the life of mankind is its intrinsic positive quality—its psychophysical inheritance. Men may change their clothes, their politics, their wives, their religions, their philosophies, to a greater or lesser extent: they cannot change their grandfathers. Jews or Poles or Anglo-Saxons, in order to cease being Jews or Poles or Anglo-Saxons, would have to cease to be. The selfhood which is inalienable in them, and for the realization of which they require “inalienable” liberty, is ancestrally determined, and the happiness which they pursue has its form implied in ancestral endowment. (Kallen, 1915, 220)

For many liberals, this passage is both inaccurate and off-putting, inaccurate because one can find many examples of so-called essential race qualities changing in new environments and off-putting because it seems to condemn the individual to certain qualities because of their genetic inheritance. Kallen himself abandoned racial essentialism and came to believe, by the 1950s, that the Jewish community included anyone who “chose to affiliate because of cultural identification and ethical intent” (Toll, 1997, 70–71). If we read the passage charitably, however, we can see a valid point. People form their identity through communication with their significant others, and the community that we are born into has a history. One does not have to believe in the permanence of the group identity to believe that erasing that identity would harm people who grew up in it and wish to pass it on to the next generations. In a time of mass immigration to the United States, it makes sense that people with shared languages and histories would congregate together and support one another and preserve their cultural inheritance in a new country.

Kallen’s article remains famous, in part, because of its stinging rebuke to the melting pot metaphor of immigrant assimilation. Kallen argues that all Americans have immigrant roots, and the calls for immigrants to become American are really a call for people to imitate Americans from the Anglo-Saxon stock. Because English immigrants arrived early, they had a chance to build the universities, industries, political structures, newspapers, and cultural institutions. Because of their power, they have been able to fashion the characteristics of a normal American: “an individualist, English-speaking, interested in getting on, kind, neighborly, not too scrupulous in business, indulgent to his women, optimistically devoted to *laissez-faire* in economics and politics, very respectable in private life, tending to liberalism and mysticism in religion” (Kallen, 1915, 192). Kallen argues that the melting pot analogy conveys something of the violence necessary to force people to shed their identities to melt into a single-flavor cultural soup. He points to the violent and unsuccessful campaigns waged in Germany and Russia to make foreigners German or Russian. What would it take to implement the melting pot program in the United States? “Fundamentally, it would require the complete nationalization of education, the abolition of every form of parochial and private school, the abolition of instruction in other tongues than English, and the concentration of the teaching of history and literature upon the English tradition” (Kallen, 1915, 219).

Kallen’s article is also important because it presses people to think about how multiculturalism is already here and ought to be sustained. His essay describes how immigrants have tended to settle in places with many people of the same nationality. He points to the Creoles in the South, the French-Canadians in the North, the Germans

in Pennsylvania, and the Belgians in Wisconsin. Even if the second generation of immigrants wanted to assimilate, their children want to recover “the spiritual heritage of their nationality” and “cultural pride” (Kallen, 1915, 217). “The institutions of the Republic have become the liberating cause and the background for the rise of the cultural consciousness and social autonomy of the immigrant Irishman, German, Scandinavian, Jew, Pole, or Bohemian. On the whole, Americanization has not repressed nationality; Americanization has liberated nationality” (Kallen, 1915, 219). To be clear, Kallen expects immigrant groups to participate in a wider democratic culture, but he wants the United States to reflect on and affirm its commitment to allowing groups to maintain national cultures, or cultures into which people were born (Latin, *natio*). Kallen envisions the country becoming a federal republic in which groups come together for matters of common concern but also leave each other alone in other matters. The article does not so much provide a blueprint of how to accomplish this but rather a “poetical exhortation for the value of differences” (Kronish, 1982, 144).

The essay describes what different ethnicities contribute to the American experiment in cultural pluralism. But the central example of the article is the Jews who have come to the United States and embraced its political culture even as they preserve their national culture.

H.G. Wells calls the Jewish quarter in New York a city within a city, and with more justice than other quarters because, although it is far more in tune with Americanism than the other quarters, it is also far more autonomous in spirit and self-conscious in culture. It has its sectaries, its radicals, its artists, its literati; its press, its literature, its theater, its Yiddish and its Hebrew, its Talmudical colleges and its Hebrew schools; its charities and its vanities, and its coordinating organization, the Kehilla, all more or less duplicated wherever Jews congregate in mass. Here not religion alone, but the whole world of radical thinking, carries the mother-tongue and the father-tongue, with all that they imply. (Kallen, 1915, 218)

Kallen had a complicated relationship to Judaism: he did not practice the Orthodoxy of his parents, he distrusted Reform Judaism, and he coined the term Hebraism to describe a Jewish way of life that is “necessarily secular, humanist, scientific, conditioned on the industrial economy, without having ceased to be livingly Jewish” (Kronish, 1982, 146). Kallen thought that something valuable would be lost if Jewish culture disappeared in the United States, and that Jewish culture could add something to the broader culture even if, especially if, it did not fully assimilate.

Kallen helps us appreciate why New York State should try to accommodate Hasidic Jews and their desire to control their own school days. Many Hasidic Jews were killed by, or fled from, German Nazis and Soviet communists (Margolin, 2021). The United States should feel proud that it has continued its founding legacy of protecting religious freedom. Haredi yeshivas are controversial in Israel because graduates often do not serve in the military or contribute to the economy. But Haredi Jews are changing their collective orientation to work, citizenry, and military service (Stadler, 2009), and it is unfair to blame American Haredi Jews for the

supposed failings of their Israeli co-religionists. People should not worry about the prospect of Haredi communities growing so large that they pose a threat to the public school system or the well-being of the state. In hindsight, nearly every such worry in American history—about immigrants from China, Ireland, Italy, and so forth—has come to naught as people try to find jobs, go to school, run for political office, and fit in society. Haredi Jews debate amongst themselves how to incorporate science and computer coding into the curriculum (Krakowski, 2020) and the Hasidic enclave community of Kiryas Joel has embraced public provisions to educate children with disabilities (Stolzenberg and Myers, 2022a, 183). Hasidic Jews use cellphones and the Internet to communicate with one another and participate in the global economy; the Internet also enables “hidden heretics” to share information and challenge rabbinic leadership (Fader, 2020). Religious fundamentalists live in the modern world and are not immune to modernizing forces (Biale *et al.*, 2020, 1). The question is not whether Orthodox Jews should change what or how they teach children: that is primarily for them to decide. The question is whether the state should enforce a narrow conception of substantial equivalency that would effectively end a certain kind of yeshiva education in New York.

State education authorities and some yeshiva critics maintain that you can have both: a robust secular education and Orthodox Jewish religious instruction. But every determination is a negation and adding 1–2 hours of secular instruction to a yeshiva school day would compromise its mission in the eyes of Hasidic Jews. From a cultural pluralist perspective, we ought to be generous toward ways of life that we eschew but that still may teach us valuable lessons about religious commitment, respect for the elderly, scholarly habits, and family life. Furthermore, one may doubt that the state education department can provide a better education than nonpublic schools, and certainly from the perspective of Hasidic Jews (Vallier, 2020).

5. The educational landscape and its limits

This article argues that liberal polities ought to create space for the religious to use their own times in ways that they wish with certain caveats. In his famous *Nation* article, Horace Kallen offers his own image of what a robustly pluralistic society looks like: an orchestra.

As in an orchestra, every type of instrument has its specific timbre and tonality, founded in its substance and form; as every type has its appropriate theme and melody in the whole symphony, so in society each ethnic group is the natural instrument, its spirit and culture are its theme and melody, and the harmony and dissonances and discords of them all make the symphony of civilization. (Kallen, 1915, 220)

The melting pot image of American assimilation suggests that all ingredients, or cultures, will become indistinguishable in the same broth, or monoculture. This view holds that nonpublic schools should become substantially equivalent to public schools in all key aspects such as teacher certification, curricular standards, daily schedule, and academic calendar. Kallen was criticizing the type of mindset

apparently at work in the creation of New York's Compulsory Education Law of 1895, and he wanted Americans to view non-English cultures as contributing to American culture in the same way that violins and drums add to the richness of sound in an orchestra. Though German philosophers such as Herder and American pragmatists such as William James had laid the philosophical foundation for cultural pluralism, Horace Kallen made a brilliant contribution at a time when many people wanted to eliminate religious schools and foreign languages from the public sphere. That said, the orchestra metaphor is problematic from a cultural pluralist perspective because the orchestra still needs to play the same tune if there is not to be cacophony. The image of the orchestra still suggests the need for a conductor keeping everyone playing the same tune.

Democracies, Jane Mansbridge suggests, ought to carve out space for groups that refuse to play the same cultural tunes as everyone else. Her argument is that power involves coercion, and there is rarely an act of coercion that does not commit an injustice. Democracies should allow countercultural groups to keep the memory of the injustice alive so that perhaps it can be addressed in the future. Democracies should "foster and value enclaves of resistance in which those who lose in each coercive move can rework their ideas and their strategies, gathering their forces and deciding in a more protected space in what way or whether to continue the battle" (Mansbridge, 1994, 53). Rather than try to destroy cultural minorities, democracies should view them as "endangered species" that have value in themselves and as reminders that there are many valuable human ways of life (Mansbridge, 1994, 68). Rather than take offense at her comparison of religious minorities to endangered species, we may appreciate her insight that there is something chilling about eradicating a way of life just because it is not your own. Given that yeshivas educate a small fraction of New York children, the state should exercise presumptive generosity toward Orthodox Jews who study religious texts for most of the school day. Part of being a liberal is not caring too much what other people do with their time.⁵

In this article, I propose a different image of healthy educational pluralism: a garden.⁶ A garden has many kinds of plants, and a healthy education landscape has room for many kinds of schools. Each faith community feels satisfied that they may teach children how they want, with their own control over the school day and the activities. Many people feel joy in spending time in a garden with different flowers, and a pluralistic education landscape nurtures healthy competition between schools for students as they dedicate more or less of the day to direct instruction, religious education, extracurricular activities, or field trips. A garden requires care and attention: there may still need to be gardeners and fences. But the image suggests that civil society will include a wide array of faith communities, and no one flower will use state power to destroy its competitors. A vibrant education garden will have room for yeshivas, locally run public schools, Waldorf schools, homeschoolers, foreign language immersion schools, outdoor schools, career and technical education schools, and schools that have not yet been created, and each of them will follow different rhythms.

The garden imagery also helps us envision the limits to educational freedom. If a community does not permit individual students from leaving their plot of land for another one, that is a warning sign. People may not enjoy the beauty of the garden

if they are trapped in a particular location. William Galston argues that political liberals believe in the “right of exit,” where exit does not simply mean being able to walk through the exit door but having enough skills to find one’s way in the wider world (Galston, 1995). I appreciate this sentiment but worry that positing a right to exit opens the door to articulating a long list of skills that students must acquire to leave a religious community and flourish in the wider world. Amy Gutmann argues that political liberals such as Galston and (late) Rawls do not actually differ much in their policy recommendations from comprehensive liberals who are just more forthright about articulating this list. In this instance, I think that it is worth recovering Mill’s harm principle to say that religious believers do not have a right to systematically abuse children. The legal definition of child abuse is “any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation” (U.S. Department of Health & Human Services, 2013). To be clear, this is a low bar for a child’s education! But the point is that a liberal state must respect families’ rights to educate children in their own way and only intervene when there is a persistent pattern of abuse (Vallier, 2020).

Critics of yeshivas have not demonstrated that there is a systematic scandal that justifies state intervention. Shortly before the Regents voted to pass the regulations, the New York Times published a front-page article on how yeshivas are failing private schools that take government money but remain unaccountable to outside oversight. The article dwelt at length about how poorly yeshiva students fared on state tests.⁷ “Only nine schools in the state had less than 1 percent of students testing at grade level in 2019, the last year for which full data was available. All of them were Hasidic boys’ schools” (Shapiro *et al.*, 2022). There is an argument to be made that private religious schools have a public responsibility to help students reach the state’s educational standards (Stolzenberg and Myers, 2022*b*). That said, Millian liberals worry that a majority may tyrannize minorities that want to educate children in a different way. The state may make yeshivas substantially equivalent to public schools by forcing them to administer and prepare students for state tests. The problem is that so doing may effectively eradicate a kind of religious education for the paltry reward of students doing a little better on literacy and numeracy tests. Part of being a liberal is letting other people spend their days doing things we would not dream of.

The state may not permit nonpublic schools to systematically abuse children mentally, emotionally, or physically. The state may also step in when schools are posing an imminent danger to society. Religious schools do not have a right to train young people to commit violent criminal acts to further ideological goals—that is, terrorism (Federal Bureau of Investigation, 2022). It is true that permitting illiberal groups to reside and grow their communities may change the existing social order. But liberals cannot live in fear of what the future may hold as people exercise religious freedom. Worrying about what Haredi Jews may do when they constitute a larger percentage of the state population recalls earlier, and pointless, debates about the American loyalty of Roman Catholics. If nonpublic schools harm children or society, then the state should intervene—otherwise, free societies should appreciate what diverse nonpublic schools contribute to the educational landscape.

6. Time for religion

A perennial question for liberalism is where to draw the line between individual or associational freedom and the power of the state. Sometimes, the state articulates uniform time rules to manage a huge system, and this can be a good thing because it treats everyone's time as of commensurate worth. On the other hand, justice also requires listening to religious believers about how they are adversely affected by time rules and making exceptions for reasonable demands. In this article, I have argued for maximum presumptive generosity to religious believers for how to structure their school day. Liberals have a longstanding fear of the state using the educational system to indoctrinate and homogenize the population, and there are good reasons to protect anti-liberal enclaves if they do not hurt children or pose a threat to public safety. If Haredi Jews want to spend countless hours reading and debating the meaning of the Torah, secular authorities should stay out of their way.

The Supreme Court will not likely protect yeshivas or religious groups that want exemptions from uniform time rules. Supreme Court justices are wary of acting as a countermajoritarian institution, in part to maintain the legitimacy of the courts and the idea of judicial review (Dahl, 1957). Even though it is possible to interpret the First and Fourteenth Amendment to guarantee the free exercise of religion in education, the courts have ruled that the state may regulate nonpublic education if it leaves some time for religious instruction. The 1990 Supreme Court Case *Employment Division v. Smith* signaled that the courts would not interpret the Free Exercise clause to grant the religious exemptions from "neutral and generally applicable" laws (Slugh and Goldman, 2020, 66–67). The Supreme Court backed the right of Catholic churches and Orthodox Jewish synagogues to remain open during the pandemic, but the majority reasoned that the state should treat houses of worship and secular facilities the same (*Roman Catholic Diocese of Brooklyn v. Cuomo*, 2020). In other words, the Supreme Court views temporal justice as requiring the consistent application of time rules, whereas this article argues that temporal justice sometimes entail carving out exemptions. The courts may protect the temporal autonomy of nonpublic schools only after public opinion and the political climate changes.

To be clear, the article does not take a particular stand on intrareligious debates about the wise use of time. I can see why members of Yaffed would be unhappy with their education and want to ensure that the next generation gets more secular education. As a political theorist who researches education, however, I want to tell them that bringing in the Leviathan to rectify the situation can make things worse. The new regulations will bring more nonpublic schools into the state's testing and accountability system and reduce the range of educational options for families.

Liberalism is a tradition with many branches, and I update a cultural pluralist line that maintains that society should grant illiberal enclaves the power to decide for themselves how to spend their days. Haredi Jews are part of the fiber of New York City and regulating out of existence their schools would reflect terribly on the American ideal of the free exercise of religion.⁸ The question of temporal justice cannot be settled with categorical moral imperatives or rigid legal rules. Instead, I am calling for the cultivation of a sense of justice that citizens should treat people how

they would want to be treated if the power dynamic was different. Haredi Jewish communities feed, house, educate, and nourish young people, and they do not pose a threat to public safety. The state should leave well enough alone.

Modern societies need uniform time rules to function, but part of being a liberal is practicing generosity to religious believers who want exemptions from those rules.

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Notes

1. In 1939, the New York Board of Regents adopted a resolution that schools that only teach in a foreign language before noon, with only an afternoon session in English, were violating the compulsory education law. On how the state threatened to revoke the charters of yeshivas, and how the yeshivas won this political and legal battle, see Schick (2019).
2. Journalists seem to take it for granted that Young Advocates for Fair Education (Yaffed) precipitated the state's interest in regulating yeshivas. Recently, however, political scientists have shown that authoritarian and democratic states build school systems to indoctrinate students in the ruling ideology (Paglayan, 2022). Given that the New York regulations cover all nonpublic schools—including Hasidic, Catholic, Waldorf, and home schools—the state may have issued these regulations regardless of vocal complaints against yeshivas.
3. On how ultra-Orthodox Jewish (Haredi) secondary schools frustrated Israeli Supreme Court decisions about curriculum and admissions, see Perry-Hazan (2015).
4. Ashley Berner advocates “the distinctive value of different schools” and “the impartation of publicly shared academic content through the schools” (Berner, 2020, 24). Berner's conception of educational pluralism does not protect yeshivas that wish to use their own curricular materials and follow their own schedule.
5. In *The Subjection of Women*, J.S. Mill compares the oppressed wife with the slave who at least is hardly “a slave at all hours and all minutes” (Mill, 2007, 166). Liberals value the prerogative of people to decide for themselves how they want to spend their hours and minutes.
6. On the image of the garden and its relevance for philosophy and political theory, see Deleuze and Guattari (1987) and Connolly (1995).
7. The New York Times article also alleged child abuse and financial malfeasance at yeshivas, but the focus was low student scores on state exams.
8. This is not to say that all New Yorkers appreciate Orthodox Jewish communities. For a critique of how Haredi Jews ran for school board in the Ramapo school district and defunded the local schools, see Justice (2016).

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