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## The Ramifications of *Wisconsin v. Yoder*. Six Foundational Problems with a 50-Year Old Landmark Case

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## THE RAMIFICATIONS OF *WISCONSIN V. YODER*: SIX FOUNDATIONAL PROBLEMS WITH A 50-YEAR OLD LANDMARK CASE

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### INTRODUCTION

My essay introduces the 1972 United States Supreme Court case *Wisconsin v. Yoder* to readers who don't come from a legal background who want to understand the negative ramifications of the case and how it affects their individual rights. *Yoder* says that children of practicing Amish don't have a right to any education and future other than one inside the Amish Church. My essay deconstructs the case from the perspective of an Amish American woman—yours truly—who escaped in the middle of the night at age 15 because of how this ruling has shaped the Amish people. I wanted to go to high school, and *Yoder* was cited in my emancipation hearing post-escape for why I had to be on my own if I wanted an education past the eighth grade. If I waited until I was 18 to escape, I would've been prevented or discouraged from enrolling in high school and advised or required to attend an alternative program for juvenile delinquents or, at best, adult education.

What follows isn't a comprehensive write-up on all the problems with the case; it simply identifies some of the most glaring problems I see. It's a starting point for lay people on the road to understanding an issue fraught with legal complexities, all of which are nonetheless relatively simple to overcome. At the same time, this minefield of complexities is next to impossible to overcome for two reasons: 1) those who are adequately educated on the issues and have the means to intervene on the legal front appear unconcerned that they're harming children and vulnerable adults, if not intervening benefits those in power, and 2) those who care about protecting the rights of children and vulnerable adults *and* have the means to intervene on the legal front aren't adequately educated on Amish issues. There's a straight line from *Yoder* fifty years ago to social/political rightest movements and

thinking such as QAnon and the January 6 insurrection<sup>1</sup>, book bans, and censorship attempts<sup>2</sup> in public schools, and the Supreme Court's recent ruling that gives away American taxpayer money<sup>3</sup> to individuals for the purpose of paying the tuition for their children's private religious schools. But before digging into the case and connecting these dots, I share a brief version of the historical backdrop within which *Yoder* was decided in order to provide more context to my arguments.

### THE ORIGINS OF *WISCONSIN V. YODER* AND THE ERIE PARALLELS TO TODAY'S CULTURE WARS

Today's tumultuous climate mirrors the political and cultural upheavals of half a century ago when the monumental case, *Wisconsin v. Yoder*, quietly made its way into law by way of the United States Supreme Court's shadow docket.<sup>4</sup> While the National Aeronautics and Space Administration (NASA) landed astronauts on the moon in the 1960s and early 1970s and college students protested the Vietnam War (1955-1975), the Amish in

<sup>1</sup> Stroop, Chrissy. "New Report on (White) Christian Nationalism and the J6 Insurrection Shows Just How Dire the Threat Is." *Religion Dispatches*, 15 Feb. 2022, <https://religiondispatches.org/new-report-on-white-christian-nationalism-and-the-j6-insurrection-shows-just-how-dire-the-threat-is>. [Alternative source:] Jenkins, Jack. "Qanon Conspiracies Sway Faith Groups, Including 1 in 4 White Evangelicals." *Christianity Today*, 11 Feb. 2021, <https://www.christianitytoday.com/news/2021/february/white-evangelicals-qanon-election-conspiracy-trump-aei.html>.

<sup>2</sup> Álvarez, Brenda. "The Freedom to Read and Learn: Educators Respond to Book Bans." *National Education Association*, 31 Jan. 2022, <https://www.nea.org/advocating-for-change/new-from-nea/freedom-read-and-learn-educators-respond-book-bans>.

<sup>3</sup> Williams, Pete. "Supreme Court Oks Use of Public Money for Religious Education." *NBCNews.com*, 21 June 2022, <https://www.nbcnews.com/politics/supreme-court/supreme-court-oks-use-public-money-religious-education-rcna21627>

<sup>4</sup> "Shadow docket" is a term that was coined by William Baude (2015) to describe the Supreme Court's orders, such as emergency orders as opposed to merits decisions. The Supreme Court's shadow docket is "a range of orders and summary decisions that defy its normal procedural regularity", many of which lack transparency, "merit more explanation", and "should make us skeptical of proposals to depersonalize the Court."

Buchanan County, IA, fought the attempts by the Department of Education<sup>5</sup> to enforce the law requiring Amish teachers to be state-certified. These teachers taught in Amish parochial<sup>6</sup> schools and they did so with an 8th-grade-only rudimentary education, an education that wasn't comparable with the public school's basic standards even back then (Fischel 2012).

The tug of war, going on for at least a decade, between the Amish and the state of Iowa, led to the 1965 "Amish revolution," which garnered the attention of activists identifying with the Religious Right.<sup>7</sup> That's when what's now an iconic photo made national news. Not every Amish child is aware of Yoder, but I grew up hearing stories about it because the battles with Iowa — which led to Yoder — started in the community in which I was born and are part of my immediate family's history. That day, public school officials had sent a bus to Hickory Grove, an Amish parochial school without a state-certified teacher, expecting to pick up the children and deliver them to the local public school. Having been notified about this plan by the school administrators the day before, some Amish parents stood waiting at Hickory Grove that morning. When the bus arrived, one of the parents screamed, "Run! Run to the cornfields!" A photographer, who'd accompanied the delegation, snapped the famous photo of the children, one of whom was my uncle,<sup>8</sup> racing to the fields.

Hundreds of uninformed non-Amish rushed to defend the Amish Church and accuse Iowa of religious persecution.<sup>9</sup> The state cowered from the public backlash and refused to uphold its duty to protect the civil rights of vulnerable citizens, the

Amish children in this case. That cowardice paved the way for Yoder.

During this unrest in Iowa, some Amish families moved away from Buchanan County to Green County, Wisconsin. The Amish in that Wisconsin community, including Jonas Yoder, the lead respondent<sup>10</sup> in the Yoder case, sent their children to public school, until it became clear that the state would enforce the compulsory education law of age 16. Yoder had no problem with his children being exposed to non-Amish values<sup>11</sup> until it interfered with his access to free labor: he wanted his children to work for him full-time without pay after the eighth grade. The typical age of Amish eighth-graders is 13 or 14, which meant that Yoder would lose two to three years' worth of free income if Wisconsin protected his children's constitutional rights. Whether his children worked for him or for another entity, all the money would get turned over to him. What outsiders don't understand, and which of course was never revealed in the court hearings, is that in most Amish families, children and young adults aren't allowed to keep any of the money they earn until, depending on the family, the male child is 18 to 21 years old and the female child is 20 to 21 years old. Every paycheck before that age goes to the father, and none of it is deposited in a trust for the child. That's slave labor and child abuse.

The state of Wisconsin wasn't as compromising as Iowa when it came to making exemptions for children from compulsory education. In 1968, the Amish in Green County opened their own school in an effort to slide under the radar. However, public school superintendent Kenneth Glewen followed up and discovered that a number of children should have been attending ninth and tenth grades.

<sup>5</sup> The Iowa Department of Education was known as the Department of Instruction in 1965.

<sup>6</sup> Parochial schools are private religious schools, but it must be noted that religion as a curriculum isn't taught in Amish schools.

<sup>7</sup> Clayworth, Jason, and Rodney White. "1965 Amish School Photo Started Rural Revolution." *USA Today*, 12 May 2015, <https://www.usatoday.com/story/news/nation/2015/05/12/amish-lost-schools-iowa/27204767>. Also see Fischel (2012).

<sup>8</sup> According to my uncle, he's in that photo but I haven't spoken to anyone else who's confirmed that.

<sup>9</sup> Clayworth, Jason, and Rodney White. "1965 Amish School Photo Started Rural Revolution." *USA Today*, 12 May 2015, <https://www.usatoday.com/story/news/nation/2015/05/12/amish-lost-schools-iowa/27204767>.

<sup>10</sup> "The respondent is the party against whom a petition is filed, especially one on appeal. The respondent can be either the plaintiff or the defendant from the court below, as either party can appeal the decision thereby making themselves the petitioner and their adversary the respondent." Quoted from "Respondent." *Legal Information Institute*, Cornell Law School, <https://www.law.cornell.edu/wex/respondent>.

<sup>11</sup> Claiming that their children are exposed to non-Amish values in high school was (and continues to be) the refrain used by the Amish Church to demand that the state exempt Amish children from participating in activities and learning about subjects that the Church disapproves of.

In short, Glewen was motivated to enforce Wisconsin's law because his district would receive more state funding if the number of students in attendance rose. He offered to look the other way and not enforce attendance as long as the Amish children were included in the initial head count at the beginning of each year to ensure his district got extra free taxpayer funding.<sup>12</sup> While Glewen's actions were selfish, with no regard for Amish children's educational welfare, that lack of regard was no different from Yoder's and the other Amish men who refused to send their children to school past the eighth grade.

Although argued from a seemingly religious perspective, neither the Iowa nor Wisconsin conflicts were driven by a genuine concern over the spiritual welfare of the children. For both these Amish men and the non-Amish lobbying outfit — deceptively named National Committee for Amish Religious Freedom (NCARF) and created by benefactors holding conservative religious views who paid the exorbitant bill to propel the case all the way up to the Supreme Court (Fischel 2012) — the disputes were about the father's right to retain the ability to force a child to work for free, and to keep the child ignorant of their rights as a US citizen. Making it about religion was a convenient cover.

In 1972, based on just one 1-hour hearing the year before, the United States Supreme Court decided that children born to practicing Amish don't have the right to any education and future other than one inside the Amish Church. While NASA, a publicly funded program that depended on stretching the human imagination and applying intense academic rigor in order to be successful, was sending astronauts on multiple missions to the moon, the highest court in the land killed those possibilities and opportunities for one segment of the American citizenry. The all-male, all-white justices decided that some children, specifically Amish children, wouldn't ever have the right to participate in, among other projects celebrating human ingenuity, the space program simply because they were born into the wrong religion.

<sup>12</sup> Linder, Douglas. "Yoder v Wisconsin: The Amish Challenge Compulsory Education Laws." Famous Trials, University of Missouri-Kansas City School of Law, law2.umkc.edu/faculty/projects/ftrials/conlaw/YoderStory.html. Accessed 25 Mar. 2019.

## KEY TAKEAWAYS: SIX PROBLEMS WITH *WISCONSIN V. YODER*

In this section, I will demonstrate that the *Wisconsin v. Yoder* decision is widely misunderstood, by making the following points:

1. *Yoder* is not an Amish-centric case.
2. *Yoder* is not a landmark victory for Constitutional religious freedom
3. *Yoder* was not about protecting the Amish religion.
4. *Yoder* implicitly targets and attacks children born to practicing Amish.
5. *Yoder* is unconstitutional.
6. No American citizen has a federal constitutional right to any education.

As a short, non-comprehensive essay, I will elaborate on each point just enough to equip readers to start having conversations with people who are either unfamiliar with *Yoder*, have been misinformed about *Yoder*, or want to convince you that *Yoder* doesn't harm children and adults.

### Point 1: *Wisconsin v. Yoder* Is Not an Amish-Centric Case

Most Americans have never heard of *Yoder*, so before I can discuss why *Yoder* isn't an Amish-centric case, we need to understand the basic facts.

#### *WHAT WISCONSIN V. YODER IS*

In a nutshell, three Wisconsin men — Jonas Yoder and Wallace Miller, both members of the traditional Amish Church, and Adin Yutzy, identifying as "Amish-Mennonite" — refused to send their children to school after the 8th grade on the grounds that high school attendance was against the parents' religion. The U.S. Supreme Court decided that the parents' interests in the free exercise of religion under the First Amendment outweighed a democracy's interests in requiring that its children attend school until a state's minimum compulsory age (16 for Wisconsin). The Court claimed that considering the children's rights in this case was irrelevant and unnecessary.<sup>13</sup>

<sup>13</sup> *Wisconsin v. Yoder*. 406 U.S. 205. Supreme Court of the United States. 1972. Supreme Court Collection, Legal Information Institute, Cornell Law School, www.law.cornell.edu/

Based on this synopsis, it's easy to understand why most people's first reaction to the case is, "I'm not Amish. Why do I need to be concerned about this? It has nothing to do with me." This response is so pervasive that I see law schools and constitutional attorneys<sup>14</sup> routinely dismiss *Yoder* as not relevant to anyone who's not Amish (or not a practitioner or proponent of fundamentalist religion). One of my Columbia University classmates who's a constitutional scholar said, "Yeah, it took my professor all of about five minutes to cover *Yoder*. It was treated as irrelevant to us."

*Yoder* is framed as a landmark victory for religious freedom and is taught from that perspective, with typically the sole focus being on parent's rights to argue why the ruling is so wonderful. I've run across less than a handful of law professors so far who confidently teach it as a landmark unconstitutional and bigoted case that violates all American children's constitutional rights.

When students do ask the question, "What about the children's rights?", very few professors have good responses. They get trapped in the rhetoric of parents' rights to religious freedom with no consideration for the children's rights, or they believe the destructive myth perpetuated by Elizabethtown College sociology professor Donald Kraybill and other so-called experts on Amish that, during *rumspringa*,<sup>15</sup> children are genuinely encouraged to explore the non-Amish world — freely, lovingly, with no restrictions, and with the full support of our parents and the Church. This is one of the big lies that Amish children aren't violated by *Yoder*.<sup>16</sup>

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supremecourt/text/406/205. Accessed 26 June 2022.

<sup>14</sup> Constitutional attorneys are lawyers who are specialists in an area of law related to the U.S. Constitution, such as privacy rights, due process rights, or First Amendment rights (such as freedom of speech, press, and religion).

<sup>15</sup> What *rumspringa* means literally is "running around" and it refers to a period of time from age 16 or 17 (depending on the specific community) until marriage inside the Church. *Rumspringa* as portrayed in pop culture is a myth that does untold damage to children and young adults who want a different future. We don't get a choice to not leave the Church; and we're not officially allowed to party or break the rules. No matter what community we're from, it's always understood that we're never to leave the religion. I cannot emphasize this definition enough, due to the fact that reality TV, some documentary films, and so-called academic experts on us Amish outright lie about what *rumspringa* really is.

<sup>16</sup> Donald Kraybill, a Mennonite, was involved in *Yoder* as

### WHY WISCONSIN v. YODER ISN'T AMISH-CENTRIC

One of the most important things to keep in mind as to why *Yoder* isn't an Amish-centric case is that once a ruling is made, that case serves as a precedent for future cases. This means that anyone (not just Amish) can point to *Yoder* for the right to refuse to let their child receive *any* education, simply by saying that it's against their religious beliefs to let their child learn.

#### Point 2: *Wisconsin v. Yoder* Is Not a Landmark Victory for Constitutional Religious Freedom

Rhetoric from the Religious Right would lead the general public to believe that there were no private religious schools before *Yoder*, or that overturning *Yoder* will result in one's religious freedom being taken away, as if religious freedom depends on *Yoder*. That's simply not true. Both Iowa and Wisconsin frequently made reasonable religious accommodations for the Amish leading up to each state's pivotal events.<sup>17</sup> In addition, religions such as Catholic, Protestant, and Quaker had their own schools. In fact, schools in the U.S. were first started by religious organizations, not the government. For example, my alma mater Columbia University still uses its original motto, which is from a Bible verse: *In lumine Tuo videbimus lumen* ("In your light we see light" Psalms 36:9).

While *Yoder* is hailed as a landmark victory for religious freedom, University of Pennsylvania attorney and professor Marci Hamilton, in her keynote for the Amish Heritage Foundation's annual conference, noted that *Yoder* was a landmark victory for *extreme* religious freedom because it violates children's constitutional and human rights (discussed under point 3); as such, it was wrongly

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a research assistant for Dr. John A. Hostetler, the main witness for the Amish parents and religion in the *Yoder* case. Kraybill's entire work is built upon the romanticization and fetishization of the Amish.

<sup>17</sup> For example, Amish children didn't partake in portions of classes teaching Darwin's theory of evolution and did not have to wear prescribed gym uniforms. Further, the state let them have their own schools instead of requiring Amish children to attend consolidated schools; what they objected to was uncertified teachers.

decided.<sup>18</sup> Religious freedom is the right to believe and not be persecuted, while extreme religious freedom is the right to cause harm to others because of the believer's belief. As of 2018 when Hamilton gave her talk, *Yoder* had remained an anomaly in the history of the Supreme Court. It's important to distinguish between religious freedom and *extreme* religious freedom exemptions. The former is constitutional. The latter isn't.

### Point 3: *Wisconsin v. Yoder* Implicitly Targets and Attacks Children Born to Practicing Amish

The United Nations Convention on the Rights of the Child (CRC) is the most widely ratified human rights treaty in history. It says that “children must be allowed to grow, learn, play, develop and flourish with dignity” and affirms the fact that “children aren't just objects who belong to their parents and for whom decisions are made, or adults in training. Rather, they're human beings and individuals with their own rights”.<sup>19</sup>

The CRC contains 54 articles that go into detail on the rights that children have. Those rights include the right to a quality education; the right to be protected from physical, mental, and sexual abuse; the right to protection from forced labor; and the right to work in a safe environment and be paid fairly.<sup>20</sup>

Only one country in the world refuses to sign the treaty. According to Hamilton, “the reason the United States hasn't signed the Convention on the Rights of the Child is because of the power of conservative lobbyists to argue for the right to be able to hit a child”, “deprive a child of education”, or “subject a child to conversion therapy”.<sup>21</sup>

*Yoder* targets and attacks children of practicing Amish by taking away their rights and protections, but the U.S. Supreme Court denies that: “There is no reason for the Court to consider [a child who wishes to attend high school] since it is not an issue in the case. The children are not parties to this litigation.”<sup>22</sup>

By default, the children were parties to the case. To say otherwise is to say that Amish children are just objects or that federal laws apply only to adults, not children. That's the law under which I was born. I was born an American citizen but denied constitutional rights and protections.

The Court's decision agreed with the Amish Church, as represented by attorneys and “expert” witnesses, that “during [the adolescent] period, the children must acquire Amish attitudes favoring manual work ... and the specific skills needed to perform the adult role of an Amish farmer or housewife. They must learn to enjoy physical labor. ... And [they] must also grow in [the Amish] faith....”<sup>23</sup> In assuming Amish children must have an insular life for the Amish to survive, *Yoder* condones, and is complicit in, not providing rights to children, including a quality education, protection from localized abuses, protection from forced labor, and protection from unsafe work environments.

The harm doesn't stop at Amish children. As a consequence of the ruling, all American children are victims. (See Point 6 for more details.)

So what rights *do* American children have under U.S. law? According to the Legal Information Institute, “a child is a person and not a *subperson* over whom the parent has an absolute possessory interest”.<sup>24</sup> Children have an amalgam of rights that are a reflection of adults' rights, such as those under the First Amendment's Free Speech

<sup>18</sup> Hamilton, Marci. Keynote: “What About Children's Rights? Overturning *Wisconsin v. Yoder*” for the Amish Heritage Foundation's *Disrupting History: Reclaiming Our Amish Story* conference, September 28-29, 2018. Talks are accessible at [www.amishheritage.org](http://www.amishheritage.org).

<sup>19</sup> “Convention on the Rights of the Child.” *UNICEF*, <https://www.unicef.org/child-rights-convention>.

<sup>20</sup> *The Convention on the Rights of the Child - UNICEF*. [https://unicef.ca/sites/default/files/imce\\_uploads/UTILITY%20NAV/TEACHERS/DOCS/GC/CRCPosterEN\\_FA.pdf](https://unicef.ca/sites/default/files/imce_uploads/UTILITY%20NAV/TEACHERS/DOCS/GC/CRCPosterEN_FA.pdf).

<sup>21</sup> Hamilton, Marci. Keynote: “What About Children's Rights? Overturning *Wisconsin v. Yoder*” for the Amish Heritage Foundation's *Disrupting History: Reclaiming Our*

*Amish Story* conference, September 28-29, 2018. Talks are accessible at [www.amishheritage.org](http://www.amishheritage.org).

<sup>22</sup> *Wisconsin v. Yoder*. 406 U.S. 205. Supreme Court of the United States. 1972. Supreme Court Collection, Legal Information Institute, Cornell Law School, [www.law.cornell.edu/supremecourt/text/406/205](http://www.law.cornell.edu/supremecourt/text/406/205). Accessed 26 June 2022.

<sup>23</sup> *Wisconsin v. Yoder*. 406 U.S. 205. Supreme Court of the United States. 1972. Supreme Court Collection, Legal Information Institute, Cornell Law School, [www.law.cornell.edu/supremecourt/text/406/205](http://www.law.cornell.edu/supremecourt/text/406/205). Accessed 26 June 2022.

<sup>24</sup> “Children's Rights.” *Legal Information Institute*, Cornell Law School, [https://www.law.cornell.edu/wex/children/s\\_rights](https://www.law.cornell.edu/wex/children/s_rights).

Clause and Free Exercise Clause and the Fourth Amendment's Equal Protection Clause. Hamilton says that these rights are "a very dim reflection" of the rights that adults have, and that "we're literally working out what each of those rights mean as we try to raise the bar."<sup>25</sup>

#### **Point 4: *Wisconsin v. Yoder* Is Unconstitutional**

One of the many ways in which *Yoder* is unconstitutional is that it denied the children their right to due process of law. "Due process" means that the government must not violate any of the legal rights that an individual has, including the right to fair procedures.<sup>26</sup> According to attorney Laura Barbieri at Advocates for Justice Chartered Attorneys in New York City, the children were entitled to a guardian *ad litem*, someone who'd represent the children's interests in the case.<sup>27</sup> That never occurred.

A second reason that *Yoder* is unconstitutional is that it prohibits the children from exercising their right to the free exercise of religion. In effect, the Supreme Court makes it criminal for American children inside the Amish Church to have any future outside the Church. When the case was heard in front of the Wisconsin Supreme Court and decided in favor of the parents, Nathan Heffernan (the only judge to dissent) argued that the state wasn't preparing the children for "modern American life":

On the basis of the religious beliefs of their parents, the Amish children are without a hearing consigned to a life of ignorance—blissful as it may seem to the author of the principal opinion, who apparently views the Amish as 'the noble savage,' uncorrupted by the world . . .<sup>28</sup>

<sup>25</sup> Hamilton, Marci. Keynote: "What About Children's Rights? Overturning *Wisconsin v. Yoder*" for the Amish Heritage Foundation's *Disrupting History: Reclaiming Our Amish Story* conference, September 28-29, 2018. Talks are accessible at [www.amishheritage.org](http://www.amishheritage.org).

<sup>26</sup> "Due Process." *Legal Information Institute*, Cornell Law School, [https://www.law.cornell.edu/wex/due\\_process](https://www.law.cornell.edu/wex/due_process).

<sup>27</sup> Barbieri, Laura. Talk for the Amish Heritage Foundation's conference, November 2019. Talks are accessible at [www.amishheritage.org](http://www.amishheritage.org).

<sup>28</sup> *Famous Cases of the Wisconsin Supreme Court - Wicourts.gov*. <https://www.wicourts.gov/courts/supreme/docs/famouscases18.pdf>.

The case was then appealed to the US Supreme Court, which agreed with Wisconsin's high court ruling. Once again, only one justice expressed any concern for the children. William Douglas, in a partial dissent, wrote:

It is the future of the student, not the future of the parents, that is imperiled by today's decision. If a parent keeps his child out of school beyond the grade school, then the child will be forever barred from entry into the new and amazing world of diversity that we have today. It is the student's judgment, not his parents', that is essential if we are to give full meaning to what we have said about the Bill of Rights and of the right of students to be masters of their own destiny. If he is harnessed to the Amish way of life by those in authority over him and if his education is truncated, his entire life may be stunted and deformed.<sup>29</sup>

#### **Point 5: *Wisconsin v. Yoder* Was Not about Protecting the Amish Religion**

*Yoder* was not so much about this sweeping popular image of Amish people preserving their own peoplehood as it was the more immediate Amish practice of using children for free labor. For the non-Amish involved in defending the Amish, it was about exploiting an undereducated, vulnerable, minority ethnic group in an attempt to win a case that would open the doors to even more extreme religious liberty exemption wins (Hamilton 2014). The National Committee for Amish Religious Freedom (NCARF) funded this case because of the potential it had for serving as a precedent that would allow NCARF and other Religious Right organizations to push through a decades-old agenda to redefine the American constitutional separation of church and state. Hamilton says that the decision needs to be recognized "as one that was actually martyring the children because of their parents' religious beliefs" instead of being treated "as this monumental moment of religious liberty".<sup>30</sup>

<sup>29</sup> *Wisconsin v. Yoder*. 406 U.S. 205. Supreme Court of the United States. 1972. Supreme Court Collection, Legal Information Institute, Cornell Law School, [www.law.cornell.edu/supremecourt/text/406/205](http://www.law.cornell.edu/supremecourt/text/406/205). Accessed 26 June 2022.

<sup>30</sup> Hamilton, Marci. Keynote: "What About Children's Rights? Overturning *Wisconsin v. Yoder*" for the Amish

It must also be noted that before and after 1965, the Amish in Buchanan County, Iowa—and in other places<sup>31</sup>—disagreed over whether their children should be taught by state-certified teachers. My maternal grandfather, for example, disagreed with the state’s decision to not enforce that training for Amish teachers. Similarly, the practicing Amish community at large didn’t all agree that the Amish men in *Yoder* should have appealed the case, but those views weren’t acknowledged. No Amish clergy or experts trained in the Amish religion were heard in the case. And after the *Yoder* decision was made, all the defendants/plaintiffs resigned from the religion upon which the case purportedly rested. How can this court case be about protecting the “Amish religion” when Amish people themselves disagreed about educational matters and litigation, and the Amish people’s religion was inadequately represented in court hearings?

#### **Point 6: No American Citizen Has a Federal Constitutional Right to *Any* Education**

Yes, you heard that right. Education isn’t a spelled out right in the U.S. constitution. In the eyes of the U.S. Supreme Court, no American has the right to *any* education. We have the explicit right to freedom of speech, for example, but we don’t have the explicit right to learn how to speak, read, or write English (or any other language). How are we supposed to exercise our right to freedom of speech — and any other spelled out rights — if we don’t have the right to the prerequisites required in order to exercise the spelled out right?

The argument that advocates for the right to education make is that learning how to speak, read, and write, for example, is an implicit right. They say that the writers of the U.S. constitution intended or assumed such prerequisites. It’s a fair assumption to make, considering the context within which the constitution was written: for the purpose of creating a thriving, pluralistic democracy, not a theocratic or authoritarian regime. However,

this fair assumption was of no use when deciding *Yoder*.

An explicit constitutional protection for education is needed. After all, it’s also fair to say that the writers of the U.S. constitution intended or assumed that “all men are created equal” applied only to white males and therefore slavery and depriving women of rights is still constitutional, but constitutional amendments (13<sup>th</sup> and 19<sup>th</sup>) eliminated those assumptions. Clearly the original ten-article constitution is deeply flawed and that’s why we have amendments. Now we need another amendment to strike down *Yoder* and establish for once and for all that American citizens have the right to an education.

Some states (not all!) spell out a right to education in their constitution (Rebell 2018). However, the federal government overrides state law on this matter. Any parent/guardian from any state can force their child to grow up illiterate simply by claiming that it’s against their religion to send their child to public school, or any other school including homeschool. The only thing they need to do is point to *Yoder* for backing on that claim.

### **CONCLUSION**

The Supreme Court’s actions 50 years ago have resulted in stunting and deforming the lives of millions of children and adults, who could have contributed their creativity and skills to society for the continued flourishing of American democracy. The *Yoder* decision opened the floodgates for increasing demands for unconstitutional religious liberty exemptions on a wide range of issues for non-Amish groups (Hamilton 2014). Today, the results are clear. Individuals raised in educationally restrictive groups — such as ultra-Orthodox Jewish, Jehovah’s Witness, and the fundamentalist variations of the Mormon, Catholic, Christian, Muslim, and Anabaptist religions — don’t want to leave their family and culture just to lead personally meaningful lives away from a constricting, insular, and, at times, abusive setting. Most of those who do take the risk of leaving—as I did in the middle of the night (Bontrager 2021)—have no support system and give up on attaining a higher education because their religious schooling didn’t

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Heritage Foundation’s *Disrupting History: Reclaiming Our Amish Story* conference, September 28-29, 2018. Talks are accessible at [www.amishheritage.org](http://www.amishheritage.org).

<sup>31</sup> For example, in Northern Indiana (Thalheimer 2021) and in Geauga County, OH (Yoder Kuhns 2022).



prepare them for college readiness or a career of their choice.<sup>32</sup>

The irony is that the decision to make it legal to require children to stop attending school and not allow children to receive an adequate education was, and continues to be, sanctioned by highly educated individuals, people with Ph.D.s (and beyond) who value higher education—if their degrees and careers are anything to go by. Those individuals include trustees of universities, heads of lobbying organizations, professors, and educators. They and others with a vested interest in keeping Amish people in the Dark Ages have asserted that the Amish 8th grade is equivalent to public school.<sup>33</sup> That’s blatantly false. The Supreme Court pointed to a study conducted by John A. Hostetler<sup>34</sup>, the main witness for the Amish parents, to claim that Amish eighth graders were just as skilled as public school eighth graders. But on top of selecting schools in a way that “filtered out the inexperienced and ineffective teachers” and “favored the Amish”, Hostetler’s team also censored “responses from students that would have made Amish schools look bad”.<sup>35</sup> The quality of education that Amish children received back then has deteriorated exponentially, with the disparity gap widening in tandem.

In 2025, NASA aims to return to the moon for the first time since the end of the Apollo program. If successful, the first woman and first person of

color will touch the surface. But none of the children sentenced to an undereducated life by *Yoder* will be part of that mission. If we’re serious about “maintaining American leadership”, “scientific discovery”, “economic benefits”, and “inspiration for a new generation of explorers” — what the federal government says are reasons for going to the moon and then onward to Mars — we must make education a right.<sup>36</sup> It’s simple to do but it requires citizens to invest in the movement.

After graduating from Columbia University in New York City, I founded the Amish Heritage Foundation, a 501(c)(3) nonprofit, to address the harmful consequences of *Wisconsin v. Yoder*. Until I began raising awareness about this cause among the general public, almost no one was aware of it, believed it affected them, or thought it should be overturned. I’ve done groundbreaking work to educate the public, by speaking out about our issues, changing the rosy narrative manufactured by non-Amish (mostly Mennonite) academics, and encouraging my fellow Amish and conservative Anabaptists who’ve been betrayed by the Church to be proud of the good parts of our heritage. The hidden crises among the Amish as a whole, especially for women and girls, are dire. In addition to other issues, sexual abuse runs rampant and the lack of an adequate education helps to keep the voices of the oppressed silent. Through my efforts to overturn *Yoder* and make education a federal right, I hope that the time will come when American girls and women are no longer forced to escape from *within* the United States — like refugees in brutal regimes — just to have a chance at going to school, or learning beyond an average 5th grade education. Will you join me in this endeavor?

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<sup>32</sup> The Amish Heritage Foundation’s annual conferences feature stories from escapees of fundamentalist religions.

<sup>33</sup> Mennonite scholars Herman Bontrager and John Roth have told me personally that Amish children aren’t harmed by *Yoder* and aren’t at a disadvantage by being forced to stop school at the Amish 8th grade. Donald Kraybill’s work, a love letter to the Amish Church, speaks for itself but for a critical analysis, the late anthropology professor Michael Billig of Franklin and Marshall College discusses the problems in Kraybill’s methodology in his talk for the Amish Heritage Foundation’s conference (talks are accessible at [www.amishheritage.org](http://www.amishheritage.org)). See also Billig and Zook (2012).

<sup>34</sup> Dr. John A. Hostetler was an Amish-raised sociologist whose work in the 1950s and 1960s led Donald Kraybill to popularize the field of Amish studies for the general public, as indicated by the volume of books he wrote for mass consumption, not just for academia. Of all people, Hostetler should have advocated for the children.

<sup>35</sup> John A. Hostetler, *Educational Achievement and Life Styles in a Traditional Society, the Old Order Amish ii* (Department of Health, Education, and Welfare Sept 1969. As cited on p. 119 in Fischel (2012).

<sup>36</sup> “Artemis.” NASA, <https://www.nasa.gov/specials/artemis>.

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