

# IMPACT

No.25

Philosophical Perspectives on Education Policy

## How to regulate faith schools

Matthew Clayton, Andrew Mason, Adam Swift, Ruth Wareham



WILEY

### About IMPACT

Written by leading general philosophers and philosophers of education, IMPACT pamphlets bring philosophical perspectives to bear on current education policy in the UK. They are addressed directly to policy-makers, politicians and practitioners, though will be of interest also to researchers and students working on education policy.

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# IMPACT

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# Editorial introduction

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Issues at the intersection of religion and education have long made headlines in the UK – and their grip on the national imagination shows no sign of letting up. In February this year, the BBC reported on an investigation into unregistered schools, many of which are faith-based, and revealed footage of a teacher striking a child in ‘a suspected unregistered ultra-orthodox Jewish school in Essex’ (Titheradge, 2018); the following month the government announced plans to strengthen Ofsted’s hand in closing down unregistered schools (HM Government, 2018). In May, in a belated response to a public consultation on ‘schools that work for everyone’, the Department for Education abandoned a controversial plan to remove the 50% cap on faith-based admissions to new faith schools (DfE, 2018). And in July, Charles Clarke and Linda Woodhead published a high-profile revision of their proposed ‘new settlement’ on religion and belief in schools, recommending that the subject called ‘Religious Education’ should be renamed ‘Religion, Beliefs and Values’, and that the right of parents to withdraw their children from this subject should be abolished (Clarke and Woodhead, 2018).

Behind these headlines lie some deep and difficult questions. To what extent is the state entitled to interfere with private arrangements made by citizens for the education of their children? Should the state collaborate with religious organisations in the provision of schooling – and if it does, how much room is there for compromise on curriculum, pedagogy, staffing and admissions? What sort of religious education should be provided in state-funded schools, and should it be compulsory for all?

In this groundbreaking pamphlet, Matthew Clayton, Andrew Mason, Adam Swift and Ruth Wareham set out a normative framework for tackling questions of this kind, then advance and defend answers to many of them. They propose that education policy-making should be governed by a determinate set of educational goods and distributive principles.

A sound education policy is one that strikes the best available balance between these goods and principles. Policy-makers should not fear trade-offs – both ‘between the different educational goods’ and ‘between the value of producing more educational goods and the value of distributing them well’ – but they must give due weight in their deliberations to the full range of relevant values.

The authors proceed to offer a series of concrete policy proposals for the regulation of faith schools. They advocate an outright ban on (confessional) religious instruction in state-funded schools, along with a universal entitlement to an adequate programme of civic, religious, ethical and moral education. They argue for the permissibility of schools having a ‘faith ethos’, on the grounds that a school may be ‘animated or shaped by a commitment to religious beliefs without guiding its students in their direction to such an extent that it threatens their autonomy’. They contend that the 50% cap on faith-based admissions to new faith schools should certainly not be removed, but should rather be extended to all state-funded faith schools. And they suggest that faith schools in the independent sector should only retain their charitable status if they submit to the same regulation as those in receipt of state funding: if they wish to engage in religious instruction, or to operate an unrestricted faith-based admissions policy, they should give up their charitable status.

*How to regulate faith schools* is a bold, compelling and timely intervention in the public debate about faith-based education in the UK. The author’s policy recommendations, built on a bedrock of philosophical argument rather than the shifting sands of public opinion and political expedience, are coherent and cogent. At the same time, they are sensitive to the real-world constraints and non-ideal circumstances under which education policy is made. The result is a powerful regulatory framework that is both rigorously justified and practically feasible.

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This is the twenty-fifth IMPACT pamphlet. Written by leading general philosophers and philosophers of education, the IMPACT series brings philosophical perspectives to bear on education policy in the UK. Pamphlets are addressed to policy-makers, politicians and practitioners, though will be of interest also to researchers and students whose work has a policy focus. IMPACT is an initiative of the Philosophy of Education Society of Great Britain.

Previous pamphlets have tackled issues across the spectrum of education policy. Pamphlets on the organisation, management and distribution of schooling include Harry Brighouse’s on educational

equality, Michael Luntley's on performance-related pay, Mary Warnock's on provision for pupils with special educational needs, and Janet Orchard and Christopher Winch's on initial teacher education. New perspectives on curriculum subjects are set out in Kevin Williams' pamphlet on modern foreign languages, John Gingell's on the visual arts, Philip Barnes' on religious education and Andrew Davis' on the teaching of reading. And ways for schools to address challenging topics in the public eye are explored in Mary Midgley's pamphlet on intelligent design theory, David Archard's on sex education, Michael Hand's on patriotism, and Randall Curren's on character education. A full list of previous titles can be found at the end of this pamphlet.

Each IMPACT pamphlet is launched with a seminar or panel debate at which the issues it raises are further explored. Launches have been attended by government ministers, shadow ministers and other MPs, by representatives of government departments, non-departmental public bodies, professional associations, trade unions and think tanks, by education journalists and researchers, and by teachers and students.

IMPACT pamphlets express the ideas of their authors only. They do not represent the views of the Philosophy of Education Society of Great Britain. The Society has several hundred members whose ideas and political allegiances are widely disparate.

*Michael Hand*  
*IMPACT Editor*

# Overview

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- Faith schools in England are subject to a variety of regulatory regimes that differ from those that apply to non-denominational schools. The current regulations cannot be justified. Our proposals for reform are distinctive in being grounded in a normative framework of basic values and explicitly appealing to philosophical principles. These proposals nevertheless aim to be realistic by being sensitive to existing legal frameworks, the unintended consequences of changes to current regulations, and entrenched public attitudes towards faith schools.

## *Normative framework*

- Two types of consideration should inform the regulation of faith schools: consequentialist considerations, concerning the production and/or distribution of educational goods, and non-consequentialist considerations, concerning the entitlements of parents and children. We divide educational goods into three kinds: economic productivity, personal autonomy, and civic and moral capacities.
- Policies must be sensitive to the different types of consideration, to trade-offs between educational goods, and to trade-offs between producing more educational goods and distributing them fairly. They should also be 'holistic': they should take into account the impact on the production and distribution of benefits in general across society as a whole. Parents' freedom to educate their children as they prefer should be constrained by (i) children's interest in receiving their fair share of educational goods, and (ii) the wider society's interest in the cultivation of educational goods such as democratic competence, tolerance and mutual respect.

### ***Policy recommendations***

- To safeguard the development of students' autonomy, state schools should be prohibited from teaching religion directly.
- To ensure that they develop the knowledge, skills and dispositions necessary both for autonomy and for proper participation in political and social life, children educated in state schools should receive a nationally regulated curriculum in civic, religious, ethical and moral (CREaM) education.
- The designated religious character of a school should nevertheless be permitted to influence its ethos in various important ways, including what is taught as part of its curriculum, and its rules and policies.
- The 50% cap on religiously selective admissions in new faith academies and free schools should be extended to cover all state-funded faith schools. Schools demonstrating good practice with respect to more inclusive admissions policies, and a commitment to strategies designed to foster respect and cooperation between religious groups, should receive a 'diversity premium'.
- To qualify for the financial advantages of charitable status, independent religious schools should conform to the same rules as those proposed for schools in the state sector. To retain the right to educate their children at home, parents should be compelled to register with the local authority and provide an education that attends to the development of educational goods. Home educators may use directive teaching methods with respect to religion but should nevertheless be required to ensure that their children receive the CREaM education curriculum.

# 1. Introduction

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There are well over 6,000 maintained schools with a designated ‘religious character’ in England, attended by about 25% of pupils (Long and Bolton, 2018, p. 18). Those numbers are increasing (ibid., p. 15). All maintained schools are required to provide religious education for their pupils but such schools are permitted to meet this requirement ‘in accordance with the beliefs of the religion or denomination specified in the order that designates the school as having a religious character’ (ibid., p. 7). There are also various regulatory differences relating to, for example, how they may admit pupils and recruit staff. In addition, nearly a third of England’s independent schools have a religious identity (EduBase, 2017).

We will follow common usage in referring to all these as ‘faith schools’, though that term can be misleading: the role played by religious faith varies hugely – all the way from schools that teach children to endorse a particular faith, and admit only children of parents who endorse it, to schools that admit all children and make no attempt to direct them towards the school’s own religious views. This pamphlet makes proposals for how government should regulate the ways in which a school’s religious character can influence what happens in schools, and who attends them.

Successive governments have explicitly encouraged an expansion of faith schooling in the maintained sector. For Tony Blair’s New Labour administration, support for faith schools was necessary partly to protect religious freedoms and, in an increasingly multicultural society, to afford members of other religions options already widely available to Christians. But it was also part of a broader drive to improve educational standards through the mechanism of parental choice in a diversified system – a strategy apparently supported by evidence that faith schools perform better than their non-religious counterparts. Both strands of thought continue to inform policy, as further shifts towards Academies and Free Schools have made it easier for religious organisations to enter the

education ‘market’. Attempts to expand the sector further have focused on the rule that new faith schools, if oversubscribed, may select only 50% of their pupils on the basis of religion. Introduced primarily out of a concern for ‘community cohesion’, the 50% cap had made some religious organisations unwilling to open new schools. At the time of writing, the Secretary of State for Education, Damian Hinds, has reneged on the 2017 manifesto commitment to remove the cap for new Academies and Free Schools but is offering more funding for Local Authorities to open voluntary-aided faith schools that may admit without a cap.

Public debate about the implications of faith schools for social cohesion has become inextricably linked to particular concerns about Muslim schools. These crystallised in the public consciousness in 2014, when the so-called ‘Trojan Horse’ affair claimed to uncover a plot by Islamic fundamentalists to take over the leadership and governance of a group of non-faith schools in Birmingham. The facts of the case are disputed (Holmwood and O’Toole, 2018) but, alongside wider concerns about terrorism and national security, it was clearly a motivating factor in the development of the ‘British Values’ agenda that has had wide-ranging implications for faith and non-denominational schools alike. In fact, 97% of children educated in faith schools attend Christian schools (Long and Bolton, 2018, p. 19), and, unlike those who suggest that Islamic schools require either special privileges or special monitoring, our proposals treat all religions in the same way.

There have been several other recent attempts to suggest proposals for the regulation of faith schools (Clarke and Woodhead, 2015, 2018;

Commission on Religion and Belief in British Public Life, 2015). Ours is distinctive in that we put centre stage a framework of basic values that should inform decisions about education policy, and we explicitly derive our conclusions from these fundamental normative considerations. We thus appeal more directly to philosophical principles, and are less concessive to current public opinion –

and indeed to other aspects of the status quo – than others who have engaged in similar exercises. Our proposals are correspondingly more radical.

That said, the proposed regulatory framework is entirely feasible. In moving from principles to policies, we accept the obligation to take existing circumstances into account. Unlike philosophical approaches that operate with unrealistic assumptions or engage only in ‘ideal theory’, our aim is to translate the fundamental normative considerations into practical recommendations that are sensitive to real-world constraints

**we put centre stage a framework of basic values that should inform decisions about education policy**

and could be adopted with the requisite political will. Having identified the various values at stake in questions around religious schooling, our suggestions, we believe, will provide the best overall regime realistically available, taking into account both the need to comply with human rights law and the likely effects of our proposals on relevant actors, such as religious organisations that run religious schools and religious parents who choose them. We would not expect the proposed regulations to command a democratic majority here and now, but we believe that they could obtain a mandate over time after a process of serious public debate.

Our distinctively philosophical approach is particularly apparent in our emphasis on child-centred considerations. Current legislation is too permissive to parents and insufficiently attentive to children's interests, in particular their interest in autonomy. Even commentators who actively oppose faith schooling (such as Humanists UK) seem to us overly concerned with the rights and interests of parents. There are, to be sure, good reasons to grant parents legal rights over their children, and some of those may even derive from a concern for parents' own wellbeing rather than the view that they are best placed to serve that of their children. But there is plenty of scope for a better balance between the two. One implication of an approach that takes children's interests seriously is that having very different regulatory frameworks for state and private education – including home schooling – appears less defensible. Children have certain rights that warrant protection and promotion by the state wherever they are educated and whoever is educating them.

Recent regulation requiring the promotion of so-called 'British Values' across the school system quite properly applies to both maintained and independent schools. Here, however, the aim is not directly to protect and promote children's individual interests but rather to foster a set of shared civic, liberal democratic commitments. Although the label is unhelpful, we defend the state's right to require children to be educated in ways that cultivate commitments to values like 'democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs' (Education (Independent School Standards) Regulations, 2014; DfE, 2014). We will make the case for those values, and why the state has the right to promote them in all schools, without any claim that they are distinctively 'British'.

Some will doubtless regard our proposals as reflecting a secular worldview, suspecting us of being hostile to religious believers and wanting to impose our own, rival, doctrine on them. To be sure, the regulations we advocate will be rejected by those whose religious convictions deny that the state may legitimately protect and promote children's autonomy or require children to be educated in ways that foster

tolerant and mutually respectful attitudes amongst citizens. But schools that do not direct children towards particular religions are not anti-religious, and antipathy to religion plays no role in our thinking. For us, schools that teach their pupils to be atheists, or encourage intolerance of religious believers, fall to the same objections as those that attempt to inculcate religious views.

The pamphlet is structured as follows. We begin by presenting our normative framework: in Section 2 we set out the values and principles that should inform educational policy in general, and the regulation of faith schooling in particular; and in Section 3 we explain our method for deriving concrete policy proposals from these abstract normative considerations. We then set out our proposals for maintained faith schools in a variety of key areas: we are concerned in Section 4 with religious instruction and formation; in Section 5 with religious education; in Section 6 with the idea of a faith ethos; and in Section 7 with admissions. In Section 8 we turn to the regulation of independent schools and home schooling before concluding.

## 2. Values and principles

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Schools have formative influence and distributive effects: they make a difference to the kinds of people children become and affect how well their lives go. These things matter to children themselves, obviously, but parents also have interests in such matters, as do those who live alongside – and share social and political institutions with – the products of our school system. It is hardly controversial, then, to observe that education policy raises a host of normative considerations and will inevitably be an attempt to find the best available compromise between competing values and goals. We believe that, like all education policy, the regulation of faith schools should reflect a clear understanding of the different values and principles at stake. Our aim in this section is to offer a coherent and accessible framework to structure thinking about these matters – and to argue that current policy gets the balance wrong.

As a way in, notice how arguments supporting parental choice and making it easier for organisations to enter the education ‘market’ typically slide between – or, more charitably, combine – two claims. On the one hand, parents are entitled to exercise choice over their children’s schooling. On the other hand, requiring and allowing schools to respond to demand can be expected to improve standards, especially standards at the bottom. Both considerations are particularly salient in the case of schools with a religious character. Parental choice with respect to religious education is widely regarded as especially important – more, say, than choice with respect to a school specializing in science or music – so policy should aim to allow parents to exercise their right (and there is a problem of fairness if members of some religions can do so while others cannot). Meanwhile, schools with a religious character are often claimed to be better than their non-religious equivalents, so encouraging faith organisations to open schools can be expected to increase the number of ‘good’ school places. Consider, for example, Secretary of State Damian Hinds’ claim, during his inaugural education questions session in

Parliament, that ‘Church and Faith Schools ... are consistently ... high-performing and popular schools’ (Hinds, 2018).

Already, then, we see a number of very different considerations in the mix. There are arguments about outcomes, about what makes a school ‘good’ and about which children have the most pressing claim to better schools. And there are arguments that appeal not to outcomes but to parents’ right to decide what kind of schooling their children should receive. Our framework offers a more systematic and complete way of understanding these different types of consideration, thereby helping us to show the partial and myopic approach that underpins existing regulations. With the fuller picture in front of us, we will see that some considerations are given too much weight, some too little.

### *Educational goods*

The claim that faith schools tend to be good schools supposes a particular view about what it means for a school to be ‘good’. When politicians make

such claims, they typically have in mind exam results, or test scores, of the kind reported in published ‘league tables’. These are presumably (imperfect) indicators of a good thing that we want schools to produce – call it cognitive capacity – which in turn might be valued partly because of its importance for children’s labour market prospects. But we might want schools to aim at other goals too. Perhaps, even from a labour market perspective, ‘soft skills’ are important factors we want schools to develop in children. Presumably it is also valuable that schools produce children with

certain democratic competences or liberal attitudes, such as tolerance of other religious traditions, and that they equip children to think for themselves. And so on.

One of us has recently expressed this idea that we want schools to pursue a number of different educational goals through the concept of ‘educational goods’ (Brighouse et al., 2016, 2018). These are not goods like washing machines or cars, nor can they be equated with economic resources or money. They are *goods* in the abstract philosophical sense that they contribute to wellbeing or are things to which children are entitled. What makes them *educational* is that they are the kind of goods that educational processes distinctively produce: goods that inhere in adults as a result of their education. Educational goods, in our sense, are the knowledge, skills, dispositions and attitudes to which children are

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entitled or that help their adult lives – and typically those of others – go better.

Three types of educational good are particularly relevant to the assessment of faith schools:

- *Economic productivity*  
The knowledge and skills necessary to participate in the economy and to sustain oneself and one's family financially
- *Personal autonomy*  
The capacity and confidence to make and act on one's own, independent, reasoned and well-informed judgments about what kind of life to live
- *Civic and moral capacities*  
The knowledge, skills and understanding required to participate in the political life of one's society, and the disposition to use them in appropriate circumstances; the capacity to regard others as having equal moral status and to treat them accordingly, respecting and tolerating differences

Doubtless these three types of good are closely related. Other things equal, someone with highly developed cognitive abilities is likely to enjoy all three more than someone who lacks basic literacy and numeracy. Still, once we make explicit even this limited range of different values that should properly guide education policy, the problem with a narrow focus on academic results immediately becomes apparent. Even if, by the official criteria, faith schools are more likely than their non-religious counterparts to be designated as 'good', that tells us only about schools' performance on those criteria. It tells us little about how well those schools are promoting the goods of students' personal autonomy, or their civic and moral capacities.

There is, in fact, considerable disagreement about whether faith schools do actually perform better, even with respect to test scores and exam results, than their non-religious counterparts. Several studies have found that the better outcomes achieved by such schools are entirely due to the (non-religious) characteristics of the children who attend them. They are not being compared with genuine equivalents and, in all but a small number of minority (Islamic) schools (see Agirdag et al., 2016; Driessen et al., 2016), their better results should be attributed to their socially selective composition rather than their religious character (Allen and West, 2009, 2011; Andrews and Johnes, 2016). Indeed, even when religion is a factor in superior performance, a recent study suggests that this is explained by the religious background of the children, not the religious character of their schools (Sullivan et al., forthcoming). From

our perspective, what is striking about this empirical controversy is the narrowness of its terrain.

What children learn at school, and who they go to school with, make a difference to the kind of people they become. Different regulatory regimes are going to produce different educational goods to different degrees. Suppose, entirely unrealistically, that it was known which regimes would produce which combinations of goods. That would leave questions about how to weigh the different goods at stake. Should governments favour schools that get the best academic results even if they risk producing intolerant citizens, or make it less likely that children develop the capacity for autonomy? To answer that kind of question it will not do simply to identify the range of goods at issue; one must make substantive claims about their relative importance.

### *Distributive principles*

One normative issue, then, concerns how best to balance different educational goods when we face trade-offs between them. This is a

**While parents are often concerned only with whether benefits accrue to their own children, policy-makers must take the wider view**

question about what combination of goods policy should be aiming to produce. But governments cannot regulate education by considering issues of production alone. It matters also how educational goods, and access to those goods, are distributed. While parents are often concerned only with whether benefits accrue to their own children, policy-makers must take the wider view. For example, a school turning out students with high

levels of all three goods might be doing so by selection procedures that make it harder for other schools to do the same – perhaps even to provide their children with an adequate level of them – or that distribute access to those high levels in an unfair way. Those who suggest that claims about faith schools’ superior academic performance neglect the role played by socially selective admissions policies are motivated by this kind of distributive worry no less than by a concern correctly to identify what kinds of school are most productive of educational goods. Similarly, some argue that even if permitting religious selection does indeed produce more educational goods overall, it is problematic for a child’s religious background to influence her access to those goods.

There is a substantial philosophical literature on what distributive justice requires with respect to education, with theorists debating the merits of educational equality, adequacy, and the idea of prioritising benefits to the less advantaged. For some, it matters that children have equal opportunity to achieve educational goods, while others care only

that all children receive an adequate level of – or, perhaps, adequate opportunity for – those goods. So broadly characterised, both views leave a lot up for grabs: equality of educational opportunity is notoriously amenable to widely differing interpretation, while adequacy views have to answer the question ‘enough for what?’. Similarly, those who hold that benefits to the less advantaged matter more must decide how much more they matter, and whether benefits should be conceived as ‘educational goods’ or in wider terms (Brighouse and Swift, 2014; Brighouse et al., 2018; Clayton, 2018). We do not have space to explore these issues in any detail. What matters, for current purposes, is that any proposed regulations will inevitably involve judgments about the relative significance of these different distributive principles, and should be informed by an understanding of their likely distributive implications.

Two further points are worth making. On the one hand, the benefits that result from the production of educational goods can accrue to people other than the educated person. On the other hand, those benefits need not themselves be understood as consisting of educational goods. We conceive those goods as ‘the knowledge, skills, dispositions and attitudes to which children are entitled or that help their adult lives – and typically those of others – go better’ precisely in order to leave open both possibilities. Consider, for example, the benefits achieved by educating children to be democratically competent, or to be tolerant of one another’s religious views. Here the good consequences accrue at least partly to those with whom the children do, or will, interact; they are positive externalities or ‘spillovers’. Moreover, the benefits in question are not themselves ‘educational goods’, or at least not exclusively so: they are the ways in which people’s lives go better when they live alongside democratically competent, tolerant, fellow citizens. Add the observation that how faith schools are regulated affects not only their character but also that of all the other schools with which they co-exist and it becomes clear that decisions about their regulation affect society as a whole. The impact of those decisions extends far beyond the students who attend them.

To summarise, proposals for the regulation of faith schools must keep in mind a range of educational goods and how those goods are distributed. Trade-offs of two kinds are inevitable. There will be trade-offs between the different educational goods: certain policies may make some schools – or the school system as a whole – better at producing some of those goods but worse at producing others. But there will also be trade-offs between the value of producing more educational goods and the value of distributing them well: some of the beneficial effects may go to some pupils rather than others – indeed, some may have been achieved

by denying some children access to the schools that are producing those goods. Finally, since educational goods are just one type of good amongst many, effective policy-making should be ‘holistic’: it must take account of the impact that the regulatory regime will have on the production and distribution of benefits in general across society as a whole.

### ***Parents’ rights***

For some readers, our discussion so far will seem to have missed the point. We have talked about the outcomes that might result from different regulatory regimes: which goods are produced and how they are distributed. But much thinking about religious schooling focuses not on these consequentialist considerations but rather on parents’ rights to determine the content of their children’s education. As we mentioned at the beginning of this section, those rights can be conceived in instrumental terms, so that granting parents the right to choose a school for their child is justified by appeal to its beneficial impact on educational outcomes. Typically, however, a parent’s right to choose a religious school for her child is understood as deriving more directly from her own moral standing: the thought is simply that parents’ right to freedom of religion, or perhaps to freedom of association, entitles them to raise and educate their children as members of a particular faith.

That right is formulated in non-consequentialist terms: within certain limits, parents are entitled to engage their children in educational activities or forms of schooling even if they fail to produce the best educational (or other) outcomes overall. For example, it might be argued that, as members of a religious community, parents are entitled to demand a school that selects pupils on the basis of religion, or offers a certain kind of religiously inspired curriculum, even if allowing them to do so produces worse outcomes than would denying them that option. On this view, parents’ rights operate as constraints on the way good outcomes – such as those concerning the production and distribution of educational goods – can permissibly be brought about.

Certainly, the normative terrain cannot be adequately mapped entirely by reference to the production and distribution of educational goods. Non-consequentialist considerations must be given their due weight. Still, various points about this particular – and highly influential – view of parents’ rights must be made right away.

The view in question sees a parent’s right to choose a religious school for her child as an instantiation of a more general right, such as the right to freedom of association or the right to freedom of religion. However, in the paradigm cases of these rights, what is protected is association between *consenting adults*, or an individual’s freedom to decide the

religion according to which she will live *her own* life. Schooling raises more difficult issues because it involves some (adults) deciding how others (children) are educated. Even if parents should indeed have the authority to decide how their children are schooled, that conclusion cannot plausibly be derived simply from claims about their rights over themselves.

Moreover, parents are not the only ones who might be thought to have rights that constrain policy-makers in their pursuit of desirable outcomes. Children also may be the bearers of non-consequentialist rights in education in ways that limit adults' freedom to choose their schools. One might hold, for example, that respect for children's independent moral status prevents anybody, parents or state, from acting with the intention that they should come to endorse any particular view about how to live their lives (Clayton, 2006). We mention this position for completeness, and as a corrective to what we regard as conventional over-deference to parental preferences, but it will play no further role in our argument. Our aim is to present feasible proposals and we accept that – rightly or wrongly – human rights law requires that states 'respect the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions.'

But we need not invoke children's non-consequentialist rights to see that parents' freedom to educate their children as they prefer should be constrained by a concern for children's interests.

**parents' freedom to educate their children as they prefer should be constrained by a concern for children's interests**

That concern is itself naturally formulated as a claim about children's rights, though here the right in question is precisely to one of the educational goods we identified above: personal autonomy. Children can claim, as a matter of right, an education that equips them with the capacities they need to become the authors of their own lives. Sometimes called the right to an 'open future'

(Feinberg, 1980), this reflects their vital interest in developing the ability and confidence to make and act on their own, independent, reasoned and well-informed judgments about what kind of life to live. To claim that children have such a right is not to deny that their lives are embedded in a network of social relationships – including families and communities – that are vitally important for their flourishing. Nor is it to deny that people may flourish while living their lives in accordance with the expectations of their family or community. But it is to insist that children have interests that are, at least in part, independent of these relationships, and that in general these interests are best served by ensuring that they

acquire the capacities needed for them to become the authors of their own lives.

Some regard autonomy as important because it tends to be linked to wellbeing. Here the thought is that children's lives are more likely to go well if they are able to choose for themselves how to live. Others hold that, irrespective of the likely impact on wellbeing, respect for children's moral independence means that they are owed what they need to develop the capacity for autonomous agency. On both accounts, children's right to personal autonomy properly limits parents' authority over their children's education. Only if children receive that particular educational good are they genuinely capable of living their own lives rather than those set out for them by others. It is the state's role to ensure that they get it.

But, finally, personal autonomy is not the only ground for restricting parents' right to decide how their children are educated. Children also have an interest in acquiring the knowledge, skills and understanding to participate in our collective political life, and the disposition to act on them. And we all have an interest in sharing our social institutions with tolerant fellow citizens who regard and treat one another as moral equals. Parents whose educational choices would obstruct their children's development of these capacities fail in their duties both to their children and to the rest of us. The state may legitimately promote the civic and moral educational goods required for a just society and a healthy democracy – even where that means denying parents educational options that they would prefer.

## 3. From philosophy to policy

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The previous section laid out the values and principles through which we approach the question of how faith schools should be regulated. Of course, our summary exposition has skated over many complexities and simply asserted claims for which, given more space, we would be happy to provide arguments. But we trust that it at least provides a clear structure for thinking about the normative issues that typically underlie policy disagreements – sometimes explicitly, sometimes implicitly. That said, two people could agree entirely at the level of values and principles but advocate different policies simply because they hold different empirical beliefs about the likely consequences of their adoption, or about the prospects for their being adopted, in the circumstances. We have emphasised our intention to offer realistic, feasible recommendations for England in 2018. Here we explain how the concrete proposals to be set out in the following sections are derived from the rather abstract philosophical considerations discussed above.

Policy should aim to achieve the best outcome that is realistically available in the circumstances, where ‘best outcome’ means the one that best promotes and respects the various normative considerations at stake. We have seen that these considerations can pull in different directions. One may have to choose between different combinations of educational goods, or between more goods and better distributions. Some means of producing more goods or better distributions may be impermissible because they fail to respect people’s rights. So, we are looking for the policies that will realise the optimal overall balance or combination of values and principles that is available to us given where we are now and where we can realistically get to from here. Much political philosophy

operates entirely at the level of ‘ideal theory’, or ‘theory of ideals’ – and that certainly has its place (Hamlin and Stemplowska, 2012). But policy proposals must meet different standards. They must be sensitive to a variety of empirical factors that constrain the outcomes that are actually available in the particular context for which they are proposed.

### ***Legal constraints***

While policy-makers have some power to alter the law, they are obliged to take decisions within pre-established legal frameworks. There is no point proposing a regulatory framework, however normatively compelling, that would be challenged and found to be illegal. While philosophically we might disagree with its content, our proposals must abide by existing human rights law, which grants parents significant rights to control their children’s education, especially with regard to religion. This is particularly relevant to the regulation of the private sector, and especially those ways of educating children – including home schooling – that make no claims on the public purse. While governments need not help parents realise their preference to educate their children as members of a particular religion, or as atheists, human rights law means that they may not prevent them from doing so privately (Taylor, 2009, 2015).

### ***Unintended consequences***

Different regulatory regimes create different incentive structures, so good policies anticipate, and take into account, their likely effects on affected parties. A regulatory framework that would achieve its aims if agents subject to the regulation responded with one kind of choice might be counterproductive if they responded differently. For example, tighter regulation of maintained faith schools, perhaps motivated by a concern for children’s autonomy, might cause parents to exit from the state sector into less regulated areas. In the absence of increased regulation of private and home schooling, that might jeopardise still further the autonomy of those children most at risk of failing to develop that capacity. There is a similar concern about how religious organisations involved in faith schooling would respond to any regulatory changes. If unwilling to comply with policies enforced in the state sector, they might withdraw into the private sector. This would be problematic not only for the children attending them but also, in the case of the Church of England and the Catholic Church, from a resource perspective as it would leave a massive hole in funding that the public purse is ill-equipped to fill.

There is some evidence that government policy has been motivated in part by a willingness to secure the inclusion of religious parents and organisations within the state system. While the principled nature of our

approach means that we will sometimes push back against some of the more unreasonable demands and expectations of stakeholders, we acknowledge the importance of taking their reactions seriously. One implication is that we explicitly offer our proposals as a package, not as suggestions to be considered on their individual merits. To accept some of our proposals but not others would be to increase the risk of counterproductive unintended consequences.

### ***Public opinion***

It is important that our proposals are capable of securing popular support. Policy suggestions that give no role to democratic approval are both normatively problematic and doomed to irrelevance. We believe that the values and principles – and judgments about how to combine them – that inform our proposals are valid whether or not our fellow citizens happen to agree with them. But we recognise, of course, that some degree of popular acceptance is a condition both of our proposals becoming legitimate policies and of their having any chance of being adopted in the real world.

Still, that does not mean that we feel ourselves constrained to work within the bounds set by public opinion here and now. Indeed, we are

**Policy suggestions that give no role to democratic approval are both normatively problematic and doomed to irrelevance**

confident that many – perhaps the majority – of our fellow citizens will object to our proposals and judge them prejudiced against parents and communities who wish to continue not only to raise but also to school their children as members of particular faiths. We do not expect any political party immediately to endorse our views and incorporate them into their next manifesto. What matters, for us, is that there is a plausible causal

story whereby public debate about the issues leads to a gradual shift of opinion in the proposed direction. Sometimes, as in the case of homosexuality and abortion, legislative change can itself help to foster such a shift. We believe that the considerations that motivate our views – the importance of treating children as morally independent of their parents, and of fostering tolerant and informed civic and moral attitudes – are persuasive enough that, given a fair and considered hearing, regulations that currently seem obvious and natural to many will in fact be amenable to quite radical revision. Here, we hope without grandiosity, we might cite John Stuart Mill's *The Subjection of Women* as a precedent.

In sum, the regulatory framework we propose tries to steer a middle course between wishful thinking and pragmatic acquiescence. Taking seriously the normative considerations we have identified, and getting the

right balance between them, demands substantial changes to the way our society supports religious education, and to the kinds of schooling that parents are permitted to impose on their children. But we are not demanding the impossible. We are proposing neither the abolition of faith schools, nor even that they be ineligible for public funding. Rather, we make the case for their more extensive regulation. There is nothing in our recommendations that falls foul of current human rights law; we are hopeful that the responses of parents and religious organisations will not make the suggested changes counterproductive; and there is no reason to regard our proposals as beyond the pale in terms of public opinion and democratic approval.

## 4. Religious instruction and formation

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The rest of this pamphlet consists of a set of proposals for the regulation of faith schools in England. Having outlined the normative considerations at stake, and explained our method for combining them with empirical judgments about what outcomes are feasible or realistic in the circumstances, we now draw out the implications. What kinds of religious school should the state support or permit? In what ways may its religious identity legitimately influence what happens in the school and who goes to it?

We start with and focus on publicly funded schools, which educate the great majority of children and where the case for regulation is strongest. But our holistic approach requires us to take a broad view of the likely effects that a regulatory regime will have across the board. We need to keep in mind the possibility that more extensive regulation of state schools will precipitate an increase in children being taken out of that sector, and we are in any case concerned to respect the interests of children who are already educated privately or at home. We thus conclude with suggestions for the rules that should apply in those domains too.

Our first proposal for the reform of state-funded faith schools is that religious instruction, by which we mean directive teaching towards religious commitment, ought to be prohibited. Directive teaching consists in teachers aiming to impart beliefs or commitments to their pupils. It is contrasted with non-directive teaching in which the teacher aims to introduce pupils to a debate or range of answers to a controversial topic without trying to get them to endorse a particular answer (Hand, 2008, 2018). In more commonsensical language, the difference is between teaching *a* religion and teaching *about* religion. Where religious instruction guides students towards particular views, the latter – which

we will discuss below under its familiar label of Religious Education – comes from a more neutral perspective.

Directive teaching is rightly practised across a broad range of the curriculum. It is important for children to come to understand and embrace the truths of mathematics and to hold helpful scientific beliefs. They should also be encouraged to develop a commitment to certain moral and political views, such as the importance of toleration and respect and concern for others. Teaching religious propositions as true, however, should not be permitted, even in religious schools.

## **Teaching religious propositions as true should not be permitted, even in religious schools**

There should be no classes that encourage children to believe that they are duty-bound to worship God, that Jesus is the son of God whose crucifixion and resurrection redeemed humankind, that Allah is the one true God and only He is worthy of worship, or that there is no God and human beings can find ethical and spiritual fulfillment without belief in a divinity.

The proposal is motivated by the concern for personal autonomy that we have outlined. It is important for individuals to have the opportunity to decide for themselves what kind of life to live and to reflect and act upon those decisions in a well-informed manner. Some regard personal autonomy as a constitutive feature of how one ought to live: to live well an individual must endorse the goals she pursues on the basis of serious reflection about their merits (Dworkin, 2011, pp. 209–214). For others, it has instrumental value: if individuals enjoy opportunities to form beliefs about the values and goals around which they orientate their lives, rather than take them on trust from others, it is more likely that the values and goals they adopt will be good for them. There are many different kinds of good lives and people's talents and temperaments are suited to different lifestyles. Giving individuals the space to explore and come to their own view about what kind of life would be best for them is the most effective way of ensuring that they lead flourishing lives (Mill, 1998; Raz, 1986; Brighouse, 2000; MacMullen, 2007).

We need not decide between these different defences of personal autonomy because they converge on broadly the same conclusion: that it is important for individuals to be in a position to decide for themselves how they live their lives. The place of religion within an individual's life, if it has one, should be something that is decided by the individual herself on the basis of her own unpressured and unmanipulated reflection about the merits of different religious and non-religious conceptions of what we ought to believe about the origins of the universe and what makes one's life go well. Of course, to engage with religious questions autonomously,

individuals need to be educated about religion. But that curriculum should not include directive religious teaching.

There is a more straightforward objection to religious instruction. According to this view, since education is centrally concerned with the transmission of knowledge, it is morally permissible for teachers to try to get children to believe propositions only if those propositions are justified beyond reasonable doubt. Because religious propositions lack that status – there are plausible arguments both for and against many religious claims – religious instruction is morally impermissible (Hand, 2003, 2004). Our proposal involves no such claims about religion’s lack of epistemic warrant. It is quite compatible with our argument to hold that some or all religious commitments are, beyond reasonable doubt, valuable or right. We simply rely on the thought that religious instruction can threaten the child’s development and exercise of the capacity for personal autonomy so that she is in a position to come to her own view of the beliefs, values and commitments around which she builds her life.

Our central concern about religious instruction in faith schools is that it would allow many children’s imaginative horizons to be saturated by one particular worldview and deprive them of the opportunity seriously to consider others. Although not all children who attend such schools have parents who practise the religion of the school in question, very many of them do. If religious instruction is permitted, the messages those children receive at home about what to believe, what relationships and goals are worth pursuing, and more generally the virtues one’s life should embody, are reinforced by a further set of authoritative figures, their teachers. This is problematic, because it matters that children develop the skills to understand, and have meaningful opportunities to reflect on, different conceptions about how lives should be lived. Religious instruction in schools threatens to jeopardise personal autonomy. It risks closing the minds of children to other religious and nonreligious worldviews, particularly when it reinforces similar instruction within the home.

We do not claim that religious instruction poses a serious risk to the autonomy of all children. One can imagine many cases in which a child receives religious instruction without having her imaginative horizons closed, especially where life outside school exposes her to alternative worldviews, prompting meaningful and unmanipulated deliberation and an acknowledgement of the need to decide for herself what path to follow. Our concern is simply to ensure that children’s imaginations are not overwhelmed by a single worldview, which is a clear danger if the values,

virtues and beliefs children are directed towards in school mirror those they receive from their parents and others in their social milieu. It is primarily for the sake of these ‘at risk’ children that we propose a blanket prohibition on religious instruction in state schools. Even where schools aim to foster the capacity for critical reflection and independent judgment alongside their attempt to guide children in the direction of particular views, directive religious teaching – whether ‘instruction’ or ‘formation’ (Clarke and Woodhead, 2015) – cannot help but reinforce, both cognitively and emotionally, the religious perspective that children will often be receiving from their parents.

Our proposed prohibition applies not only to formal instruction, where the aim is to impart knowledge or understanding, but also to some religiously informed rituals and customs, particularly acts of collective worship. Religion is not only a cognitive matter; it extends beyond beliefs and doctrines to include affective relations to practices. Even where a school’s curriculum is not explicitly guiding children to regard particular beliefs as true, its ways of doing things become habitual for them. Its practices are ‘formative’ in the sense that they form children’s developing identities and create deep attachments. Where they coincide with those fostered in children outside the school, these too can sometimes obstruct children’s autonomy, by significantly increasing the emotional cost of choosing a different way of being or even by making different ways seem alien and impossible. Moreover, those practices themselves tend to presume – and to foster the presumption – that certain religious claims are true. The risks here are particularly high where schools regularly assemble children to pray to a God, for children are likely to receive an emotionally powerful message that the God in question exists – even if no such view is imparted in classroom lessons. Both the curriculum and the practices of faith schools can be directive, then, in a way that bears a high risk of obstructing some children’s development of personal autonomy. This risk exists even where a school denies that it is engaging in directive religious education, even where it is making efforts to develop its pupils’ capacity for critical reflection, and even where the direction in question comes in the form of acts of collective worship rather than conventional teaching.

We do not expect school inspectors to check for autonomy itself, or to take into account what may be happening in children’s lives beyond the school gates in assessing individual schools. That would be unrealistically demanding on them and costly to the state. Rather, our proposal requires school inspectors to monitor all the various ways in which schools may engage in directive activities that, in combination with children’s life

outside school, put autonomy at risk. Currently, religious teaching in faith schools is inspected by representatives of the faith group in question. On our understanding of the purpose of regulation, that arrangement is inappropriate and the job should be done in the normal way by Ofsted inspectors.

## 5. Religious education

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If directive religious instruction and formation are not a part of state-funded religious schools, what is the place of religion in the school curriculum? It matters, of course, that children learn *about* religion. This is partly because an understanding of the differing religious traditions – including different humanist conceptions – contributes to personal autonomy simply by informing children about the range of ways of living their lives available to them. And it is partly because, whatever judgments they may end up making about such matters, they will inevitably find themselves sharing social and political institutions with others who see the world very differently. The capacity to regard others as having equal moral status and to treat them accordingly, respecting and tolerating differences – an educational good – is best fostered by schooling that teaches children about a range of religious worldviews. That said, the development of civic and moral capacities involves a lot more than knowledge about religious traditions and we see no reason to give religion any special status in the curriculum. We therefore join others who have made similar suggestions (Clarke and Woodhead, 2015, 2018; Commission on Religious Education, 2017) and call for a national entitlement to a curriculum in civic, religious, ethical and moral values (CREaM) that would subsume the current subject of Religious Education and incorporate both relevant aspects of what is currently taught as Citizenship Education and the issues covered under the ill-conceived label of ‘British Values’.

Because it is important that every child develops the knowledge, skills and dispositions the topic is designed to foster, we propose that CREaM education be common to all state schools, whether religious or not. Since the 1944 Education Act, the religious education syllabus has been determined locally, with each local authority having its own Standing Advisory Council for Religious Education (SACRE). We see the case for religious organisations being involved in devising the syllabus at national

level, alongside those with academic expertise in the study of religion, but none for local variation. Religious perspectives should be supplemented with representatives from the humanist tradition and others, such as philosophy societies, concerned more specifically with civic and moral values. Furthermore, owing to its non-directive nature with respect to questions of faith, parents should no longer be granted the right to withdraw their children from these lessons, which is in line with human rights law (European Commission on Human Rights, 1993; Jawoniyi, 2012, p. 348).

The proposed CREaM syllabus would explicitly place religion alongside a broader education in citizenship, ethics and morality.

## **The proposed CREaM syllabus would explicitly place religion alongside a broader education in citizenship, ethics and morality**

Religions provide answers to several different kinds of question: metaphysical, such as ‘Does a deity, or do deities, exist?’ and ‘Why and how did the universe begin?’; ethical, such as ‘What is the meaning of life?’ and ‘What does living well consist in?’; and moral, such as ‘How should we treat each other?’ or ‘What do we owe to each other?’. Since 1944, religion, particularly Christianity, has been given a privileged place within the English school

system and, accordingly, children have been encouraged to focus primarily on religious answers to these questions. This convention overlooks the answers offered by many non-religious approaches developed by ancient and modern philosophers. If we care about personal autonomy, then the curriculum must get children to understand and engage critically with non-religious conceptions of these important matters.

CREaM education must combine directive and non-directive aims. Its non-directive purpose is to equip children with the understanding and capacity to decide for themselves what gods (if any) there are and what goals and relationships are worth pursuing. The CREaM syllabus is also the place to teach children about how their social and political institutions work, so that they can take their place as competent, effective members of a democratic society. For reasons discussed in the previous section, they should not be guided towards particular views on questions such as whether there is a god, what a good life consists in, or what kinds of life projects are valuable.

But fostering in children the civic and moral capacities that constitute important educational goods requires directive education – education in how we ought to live with and treat others in society. The directive education we have in mind aims to impart to children the ability and motivation to regard and treat each other as equals, to promote and

comply with democratic institutions, and to trust and respect others regardless of race, ethnicity, sex, sexuality, religion or class. Direction is justified here because the considerations at stake are moral rather than ethical: they concern not what it means for an individual to live well but what she owes to others.

Religions tend to have views on both sets of questions, but, philosophically speaking, they are very different. We explained above why education on ethical matters should be non-directive: direction threatens personal autonomy, which is a good for the person who has it. It is a good either because those who make their own judgments about how to live are most likely to choose well (instrumental) or because an individual's living well itself requires that she has made her own judgments (intrinsic). But, as we see most clearly in the case of enforceable duties, moral issues are different: when it comes to doing right by others – treating them morally, or justly, or with respect – forming and acting on one's own judgment is simply less important. Of course, in proposing directive moral and civic education with a particular, liberal democratic (not 'British'!) content we are endorsing a political morality that puts citizens' equality, especially their equal claims to autonomy and well-being, centre stage. In a sense then, autonomy explains both why teaching on religious matters should be non-directive and why the state may legitimately require all children to receive the CREaM curriculum that directs them towards liberal democratic values.

We conclude by stressing that our proposals should not be interpreted as a downgrading of the importance of religious education within schools, religious or otherwise. On the contrary, we join many religious organisations in lamenting the lack of serious reflection about religion, ethics and morality in society. Indeed, our proposal would give those topics a more prominent place in the curriculum than they have recently had, particularly since the 1988 Education Reform Act.

## 6. Faith ethos

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We have argued that state schools should not be permitted to educate children in ways that direct them towards particular religious views. That prohibition applies whether the education is described as instruction or formation, and it applies to acts of collective worship given the high risks they pose to the development of children's autonomy. We recognise, however, that parents have the legal right to send their children to schools that reflect their religious views and may opt for the independent sector, or educate their children at home, if the state does nothing to accommodate their preference for such a school. In our view, moreover, there are various ways in which a school can be animated or shaped by a commitment to religious beliefs without guiding its students in their direction to such an extent that it threatens their autonomy, especially if it is delivering the CREaM syllabus just discussed. We therefore propose that the state should support schools that have a 'faith ethos'.

That label exists in the current regulatory framework to describe a school that has the support and involvement of a religious organisation and, though not enjoying the extensive freedoms enjoyed by a school with a designated religious character, may nonetheless use a religious requirement in selecting all governors and senior staff, and may put a religious slant on some aspects of the curriculum, such as sex and relationships education. Although we disagree with the details of the current regulatory framework, we accept that a school's mission statement, the content of its curriculum, its extra-curricular activities, and its rules and policies might all legitimately be influenced by religious commitments (including atheism) without losing its claim to public support – as long as students are not guided towards those commitments in a way that unduly risks their autonomy.

## ***Curriculum***

- A school with a faith ethos might devote more of its curriculum than other schools to the study of the religion that shapes it. For example, in History lessons more time might be spent educating students in what is known about how the religion emerged and gained adherents, what obstacles it has faced in attracting followers, and how states have treated it.
- The selection of some of the subjects it offers as part of its curriculum might be influenced by its religious commitments. For example, an Islamic ethos school might offer Classical Arabic, or a Jewish ethos school Biblical Hebrew, to aid students' study of their sacred texts.
- It may emphasise the reasons offered by its own particular faith for endorsing the civic and democratic values that are directly taught in the CREaM curriculum. The leading religious traditions converge in affirming civic and moral values, like toleration and respect for civil liberties, but they reach that common ground from different perspectives. As long as it delivers the CREaM curriculum in such a way that students learn that others reach the same conclusion in different ways, a faith ethos school may give special place to its own reasons for subscribing to liberal democratic ideals.
- Faith ethos schools may require attendance at assemblies that have a spiritual dimension and that give a prominent role to ideas and values drawn from the faith to which the school is committed, provided that they also give proper attention to ideas and values drawn from other faiths. Indeed, assemblies provide a valuable means for delivering the CREaM curriculum, introducing a diverse set of religious and humanistic ideas in a fair-minded way, so that students acquire a richer understanding of the variety of faith and non-faith ways of living that are available to them and endorsed by their fellow citizens.

## ***Policies***

- The values of the religion might inform the school's rules and its expectations governing appropriate behaviour. It might, for example, emphasise religious reasons for its disciplinary policy (e.g. as one Christian school's behaviour policy puts it, 'all our children are precious gifts of God and as such they all have a right to feel respected, safe in class and have the opportunity to achieve their full "God given talents"' (Trinity Christian School, 2018));

although, again, students should be aware of other reasons for the same policy.

- It might have a school dress policy that reflects its religious values. For example, an Islamic faith ethos secondary school might require students to dress modestly and offer headscarves as an example of how to do that. It may not, however, require headscarves as such or impose any sanctions on those who choose to observe the requirement in different ways.
- It might have a school lunch menu that reflects its religious values, but only where this does not impose a special burden on those from other faith traditions. Because no religion requires the eating of meat or fish, a Hindu school might thus serve an exclusively vegetarian lunch, as long as it allows those who want to eat meat or fish to bring in packed lunches. But a school could not serve only pork: parents should not have to provide their children with a packed lunch in order for them to comply with the relevant religious demands.

### ***Extra-curricular activities***

- A faith ethos school might provide various extra-curricular activities that reflect its religious values. For example, it might engage in fund-raising to support projects that are designed to alleviate world poverty, justified by reference to its distinctive religious reasons for being committed to humanitarian charity, or it might focus its fund-raising activities on alleviating the poverty of co-religionists in other countries.
- We explained above why schools should not be permitted to hold acts of collective worship as part of their official business. As long as there is no pressure from the school for children to attend, faith ethos schools may, however, express that ethos by holding acts of collective worship out of school hours. They may similarly use school premises for a variety of extra-curricular activities that reflect their religious commitments, such as preparation for religious sacraments, carol services and charity fundraisers.

## 7. Religious selection

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So far, we have talked about what happens in faith schools. But it matters also who goes to them. Sociologists of education are familiar with ‘composition effects’ – the way in which the composition of a school influences its ability to produce educational goods. Such effects are usually discussed in relation to the more familiar goods indicated by test scores and exam results, but they are perhaps even more relevant to the capacity for personal autonomy, and the civic and moral capacities, that are particularly salient in the case of religious schooling. Our proposal concerning the regulation of admissions to faith schools – that they should be permitted to select no more than 50% of their pupils on the basis of faith – is informed by sociological and psychological literature suggesting that excessive homogeneity in a school, and the segregation that implies, are inimical to children’s development of these important educational goods, particularly deterring harmonious relations between different religious and ethnic groups.

The current situation is that, when oversubscribed, established schools with a designated religious character can use religious criteria to select all their pupils, while new Free Schools and Academies may prioritise only 50% of their pupils on faith grounds. The 50% cap on new schools has, however, made some religious organisations – notably the Catholic Church, who claim such a move ‘contravenes Canon law’ (Catholic Education Service, 2016) – unwilling to open new schools and, citing evidence that the cap was failing in its objective to promote integration, the Conservative government’s manifesto for the 2017 election announced its intention to remove it (Conservative Party, 2017, p. 50). Damian Hinds, Secretary of State for Education, has subsequently reneged on that commitment but is offering more funding for Local Authorities to open voluntary-aided faith schools that may admit without a cap (DfE, 2018, p. 14).

**Schools with a very high proportion of children from one faith background are poorly placed to produce some of the educational goods we have identified**

This is a step in the wrong direction. Not only should there be no increase in the number of children educated in religiously homogenous schools, but the 50% cap should apply to all faith schools in the state sector. Schools with a very high proportion of children from one faith background are poorly placed to produce some of the educational goods we have identified. Some of these goods, particularly the capacity to regard others as having equal moral status and to treat them accordingly, depend for their production on who children go to school with no less than on what they are taught in classrooms or assembly halls. For example, higher levels of contact between

members of different religious and ethnic groups have been shown to reduce prejudice and foster positive attitudes and behaviours towards outgroups (Hewstone et al., 2017; Hewstone et al., 2018). Such capacities play an important role in creating tolerant citizens and a cohesive society.

Unduly homogeneous schools also threaten the production of personal autonomy, especially where they are continuous with similar homogeneity in children's lives outside school. Being educated in such a school may not rule out the possibility of a child's developing the capacity to make her own judgment about how she will live her life – especially if the school is regulated in the ways we have proposed above – but it exposes that development to unnecessary risk. The risk is unnecessary in the sense that there are no countervailing normative considerations, such as parents' rights to send their child to such a school, or religious organisations' rights to open one, that justify state support. Children are more likely to be in a position to make informed decisions about the kind of life they want to lead if they have meaningful opportunities to interact with those from other backgrounds. This applies just as much to those raised in secular or humanist homes as to those whose home life is informed by a particular religious tradition.

We believe that a 50% cap on religious selection meets the case of those who argue that the maintenance of a school's distinctive faith ethos depends on its reserving a proportion of places for children of co-religionists. Indeed, where this question has explicitly been considered, some propose the 'critical mass' should be closer to 30% (Brighouse, 2009, p. 90) or even as low as 10% (Marley, 2011). Furthermore, some religious organisations come close to suggesting that their purposes in providing schools can be fulfilled without the need for religious selection at all. The Church of England now actively endorses the position that the schools it runs are 'not faith schools for the faithful'

but ‘church schools for the community,’ and so should largely be open to those of other and no religion (Camden, 2016). Although critics suggest that what happens on the ground does not match up to the Church of England’s public pronouncements (Accord, 2017), this official attitude shows that our insistence on a 50% cap, and even on its extension to existing faith schools, is less outlandish than it might seem. That said, some organisations may continue to see their primary purpose as service to a particular religious community, rather than the provision of a religiously inflected education to all children. If our proposals were accepted, they might choose to withdraw from the maintained sector altogether and limit their provision to independent schools. We will present our proposals for the regulation of the independent sector – and of home schooling – shortly.

Admissions policies, as we are presenting them, are tools for influencing school compositions, which are themselves causal factors in the production of educational goods. But admissions policies are very clumsy tools, as school compositions depend on many other things, most obviously residential patterns and parental choices. A school could be composed entirely of children whose parents endorse a particular faith without using religion as a criterion of selection, and it could be very mixed while giving preference to all co-religionists who apply. As well as extending the 50% cap on religious selection to all faith schools, we therefore propose that the government should actively encourage religiously heterogeneous school intakes by introducing a system of incentives – a diversity and integration premium – to acknowledge and reward good practice with respect to inclusive admissions policies and contact between children from different faith communities. The premium should recognise that local demographics make mixed compositions harder to achieve in some places than others. It might do this partly by incorporating data on interaction between pupils at different schools that may themselves be internally homogeneous, perhaps through twinning arrangements. Similarly, while a diverse school composition will increase the likelihood that children from different backgrounds will interact meaningfully with one another, it is no guarantee. So the proposed premium should take into account the practical steps a school has taken to encourage the kinds of within-school interaction most conducive to producing citizens who respect, cooperate with and value one another irrespective of faith and other differences. To further encourage best practice, the government might also consider implementing or endorsing a nationally recognised award in diversity and integration similar to the Investors in Diversity for Schools Award (National Centre for Diversity, 2018).

## 8. The independent sector and home schooling

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Our proposals so far have concerned schools in receipt of public funding. One implication of our emphasis on children's autonomy and civic educational goals, and of our view that parents' preferences should be given less weight than they typically are, is a reduction in the significance of the distinction between state schools, on the one hand, and private schools or home schooling, on the other. There is a legitimate public interest in how children are educated, wherever that education takes place and whoever pays for it. That said, various considerations lead us to propose that religious independent schools, and religious parents who educate their children at home, should be subject to different regulation from maintained schools.

First, there is no point in our proposing changes that would simply be judged illegal by relevant authorities and, rightly or wrongly, human rights law in this area is very deferential to parents (Taylor, 2009, 2015). After asserting that all children are entitled to a free elementary education, Article 26 of the *Universal Declaration of Human Rights* states that 'Parents have a prior right to choose the kind of education that shall be given to their children' (United Nations, 1948). This position was consolidated and extended by Article 2 of the first Protocol to the *European Convention on Human Rights*, which holds that 'the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions' (Council of Europe, 1952). This provision makes it illegal to deny parents the freedom to choose a directive religious education for their children, and presumably one attended only by children of co-religionists, even if

the state need play no role in providing it. Second, we have to be realistic about the ways in which home schooling may feasibly be regulated. Existing legislation and practice in this area seem to us woefully inadequate – not all parents are required to register their children as home schooled and local authorities simply fail to act on their statutory duty to ensure that those children who are registered are receiving an appropriate education (Foster, 2018) – so we do in fact propose an increase in regulation here too. But, given that parents are free to raise their children in accordance with their own religious views, we accept that it is unrealistic to expect or require those who choose to school their children at home to comply with the same standards as maintained schools.

The UK has about 2,600 independent schools (Independent Schools Council, 2018). More than half of them are registered as charities, which gives them various tax concessions that can be regarded as public subsidies. To qualify for charitable status, schools must provide ‘public benefit’: such schools are expected to offer free or subsidised places to those unable to afford the fees or, increasingly, to ‘make provision for the poor’ in other ways – through sponsoring academies or setting up a free school (Fairbairn, 2017, pp. 3-4). The ‘public benefit’ criterion, and political debate about the independent sector generally, is thus interpreted entirely in distributive terms. We propose that, when it comes to faith schools, that criterion should be understood differently. Where such schools lead to religious segregation, the problem is not that they are contributing to an unfair distribution of educational goods. It is rather that they are making it harder to produce some goods in the first place. We have argued that religious instruction in schools composed exclusively – or even predominantly – of children from the same faith background hampers the development of tolerant attitudes towards members of other religions. Such schools do not serve the public good, however many children they may admit from deprived backgrounds. They also threaten children’s right to autonomy in a way that makes them inappropriate recipients of public subsidy. To qualify for the financial advantages of charitable status, independent religious schools should conform to the same rules as those we have proposed for maintained schools.

Independent schools that do not seek charitable status would be free to provide a directive religious education, and to select all their students on the basis of religion. But even if they are legally free to operate without the benefits of charitable status, they should be subject to an inspection regime that focuses on their potential to threaten children’s autonomy and deny them the capacity for critical reflection. Independent schools

are already required actively to promote the values of ‘democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs’ (which we regard as civic or liberal democratic rather than British). Parents do not have the right to choose schools that neglect those values, or to remove their children from the relevant lessons or assemblies. We propose that those values should be taught primarily through the same CREaM curriculum delivered in maintained schools and, like maintained schools with a faith ethos, independent religious schools should be permitted to emphasise the way in which their own particular religion supports such values. But they should also be required to meet children of other faiths in some institutional setting, for example through twinning arrangements that would involve visits to and from children at schools with a different religious affiliation. Additionally, mindful of the risk of closing minds posed by religious instruction continuous with children’s home culture, inspectors should pay particular attention to the fostering of children’s capacity critically to reflect both on the religion in which they are being instructed and on the alternative religious – and non-religious – beliefs of which they are already expected to be respectful and tolerant.

There are no precise figures for how many children are schooled at home but an estimate for 2016/17 suggested that the number was more than 30,000 – and increasing rapidly in recent years. Indeed, while noting the dearth of adequate data, a recent House of Commons Library briefing paper cites a survey by the Association of Directors of Children’s Services estimating the number at around 45,500 (Foster, 2018, p. 5; ADCS, 2017, p. 1). This represents an increase of over 21% in just 18 months.

Parents who choose to school their children at home should be required to register them and local authorities should monitor their development. A Home Education Bill (HL Bill 98, 2018) proposing this is currently under consideration by Parliament. That proposal refers to physical, emotional and educational development but, within the latter, focuses on ensuring that children are provided with supervised instruction in reading, writing and numeracy. To retain their legal right to educate a child at home, parents must attend also to the

development of other educational goods. There should be no requirement that they teach any particular syllabus, and they may emphasise religious grounds for endorsing civic values, but they should also be required to deliver the CREaM curriculum. The right to educate one’s children at home – and to provide a directive religious

**The right to educate one’s children at home does not include the right to raise them in ignorance of other ways of living**

education – does not include the right to raise them in ignorance of other ways of living, or to demand exclusive control over their education in ways that are inimical to their developing tolerant and respectful attitudes to others.

We believe that these proposals are adequately sensitive to concerns about parents' likely responses to the different rules proposed for different kinds of schooling: maintained, independent charitable, independent non-charitable, and home. We interpret governmental support for religious schooling as partly an attempt to bring into the maintained sector children who would otherwise 'exit' into private or home schooling, and are aware that stricter regulation of state schools risks encouraging such tendencies. Our strategy has been to increase the regulation of all kinds of schooling – to the extent we judge compatible with human rights law and realism about the monitoring of home schooling – so that overly permissive options are no longer available to parents. Since all children would receive the CREaM curriculum and have their capacity for critical reflection monitored, our proposals would also reduce the differences between different types of schooling in a way that, we believe, would reduce the incentive to exit from maintained to private or home schooling.

It is a further question how religious organisations would respond to the proposed regulatory regime. Perhaps some would be so keen to engage in directive education, and to admit entirely on the basis of religious affiliation, that they would forsake the maintained sector, and eschew claims to charitable status, in order to pursue those goals. We are optimistic that, perhaps after a period of serious public debate about the merits and demerits of such schools, religious groups would be content for their distinctive educational aims to be expressed through the kind of 'faith ethos' that we have advocated.

## 9. Conclusion

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Supporters of faith schools typically appeal to one or both of the following claims. On the one hand, parents have the right to decide how – and with whom – their children are educated. On the other hand, schools with a religious character tend to be good schools. Roughly speaking, the first explains why the state must allow religious schooling, the second justifies public support for it. We have argued that parents’ rights over their children’s education do not include the right to send them to a school so continuous with the culture at home that it risks depriving them of the capacity for autonomy. Nor do they forbid the state’s acting to develop the civic and moral capacities required for a healthy, tolerant liberal democracy. And the suggestion that faith schools are better than their non-faith counterparts involves, at best, a limited view about the educational goods that we properly look to schools to produce. Human rights law means that parents must indeed be free to decide their children’s education in the light of their own religious and philosophical commitments. But that does not imply that the state should support religious schooling that risks children’s autonomy and it does not prevent the state’s requiring children to learn about alternative ways of life, and about their own and others’ moral and civic status as free and equal persons, even where doing so runs counter to parents’ preferences.

Our proposals imply a radical departure from current practice and run counter to the current direction of travel. Some readers may regard them as unrealistic. If that turns out to be true, we think it will be because children’s education is at the mercy of vested interests – whether parents’ or religious organisations’ – that resist the compelling case for reforms along the lines we have suggested. In setting out, as clearly as we can, the core normative considerations at stake in debates about religious schooling, we aim at least to flush out the moral views that underpin and motivate existing policy, at best to reveal their inadequacy.

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