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Band 25 (2017)

Herausgegeben von
Joachim Hruschka
Jan C. Joerden



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Joachim Hruschka und Jan C. Joerden

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Vorwort

Die nicht erst seit dem Herbst 2015 andauernden Migrationsbewegungen nach Europa und auch innerhalb Europas lassen es angeraten erscheinen, den damit aufgeworfenen ethischen und rechtlichen Fragen auch in einem Themenschwerpunkt des *Jahrbuchs* näher nachzugehen. Der vorliegende Band stellt dabei in einem ersten Teil die rechtsethischen Grundfragen der Migration zur Diskussion. In einem zweiten Teil werden demgegenüber rechtliche Spezialfragen der Migration untersucht. Das *Jahrbuch* enthält weiterhin wieder ein „Diskussionsforum“, in dem in diesem Jahr Fragen des Zusammenspiels von logischer Analyse und Juristischer Argumentation zur Debatte stehen. Abgeschlossen wird das *Jahrbuch* mit einem Tagungsbericht und einer Rezension.

Für ihre Mitwirkung bei der Herstellung der Druckvorlagen für diesen Band ist den Mitarbeiterinnen und Mitarbeitern des Lehrstuhls für Strafrecht und Rechtsphilosophie an der Europa-Universität Viadrina Frankfurt (Oder), insbesondere Frau *Susen Pönitzsch*, Frau *Florina Polutta*, Frau *Carola Uhlig*, Frau *Monique Vollbrecht*, Frau *Luisa Wittner* und Herrn *Vladyslav Rak* zu danken. Frau *Florina Polutta* und Frau *Carola Uhlig* danken wir zudem wieder sehr für die sorgfältige Erstellung der Register. Für die zuverlässige technische Betreuung der Drucklegung im Verlag Duncker & Humblot sind wir Frau *Susanne Werner* zu herzlichem Dank verpflichtet.

Die Internet-Seiten des *Jahrbuchs für Recht und Ethik* finden Sie wie üblich unter folgender Adresse:

**[http://www.rewi.europa-uni.de/de/lehrstuhl/sr/
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Dort sind auch weitere Informationen zum *Jahrbuch* erhältlich – insbesondere die englische bzw. deutsche Zusammenfassung der Artikel und Bestellinformationen.

Die Herausgeber

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**Rechtsethische Grundlagen der Migration –
Legal-ethical Foundations of Migration**

Civic Education in Pluralist Democracies

Frank Dietrich

I. Introduction

The citizenry of modern democratic states typically holds a plurality of competing religious and moral views. Some minority groups even pursue conceptions of the good that do not allow for any commitment to the existing political order. The already existing diversity of beliefs is increased by the influx of immigrants from a variety of cultural backgrounds as we are currently witnessing. Those who seek access to western democracies do not necessarily appreciate the political institutions and the way of life their host societies offer. Many immigrants primarily seek to escape from violence, poverty and the lack of prospects in their home countries. Minority groups who are not ready to support the present political order pose a potential threat to the stability of democratic states. Therefore, it needs to be discussed how democratic states may deal with persons who withdraw from the wider society and reject to cooperate with their fellow-citizens.¹

One of the most disputed areas in pluralist societies is the upbringing of children which affects crucial interests of cultural and religious communities. The state's claim to regulate – to some extent – educational issues is prone to meeting with the resistance of minority groups. Their members often worry about the imparting of beliefs and values on their children which contradict their own conception of the good. They fear, for instance, that adolescents will be exposed to adverse or even sinful influences if they are compelled to attend public schools. By contrast, citizens who endorse of the present political order are usually concerned about the anti-democratic education some children receive in their families. Thus it has to be clarified how the conflicting interests of both sides – minority groups and the wider society – should be balanced.

In this paper I will explore whether and to what extent state interference into parental authorities can be justified by the need to educate democratic citizens. In the next section I will introduce the civic education argument and distinguish it from other reasons given for the restriction of educational liberties. Thereafter, I will deal with the question why democratic institutions may be imposed on persons who are indifferent or even opposed to this political system. In the fourth section I will

¹ The current philosophical debate on migration has primarily focused on the legitimacy of entrance restrictions; by contrast, relatively little consideration has been given to ethical issues of integration or assimilation (see *Carens* 2013; *Miller* 2016; *Wellman/Cole* 2011).

outline a distinction between two kinds of democratic qualifications – those every citizen needs to have and those most citizens must possess. Regarding the latter requirements, I will argue that the state may not interfere with parental authority until a critical threshold for the stability of the democratic order has been reached. As a consequence, democratic societies must widely tolerate the educational practices of fundamentalist religious communities. Subsequently, I will discuss and reject two objections that may be raised to my argument. First, one may criticize the suggested exception of religious minorities from civic education programs as being unfair towards other citizens; second, one may deny that the supporters of a democratic order may exercise political power in order to remain in the majority. In the concluding section I will briefly summarize my main findings and comment on the issue of immigration.

II. Civic Education

For at least two reasons the justification of state coercion in the field of education poses a serious challenge to liberal theories. First, within a liberal framework parents are typically granted the right to raise their children in accordance with their own ideals. Of course, parents are not accorded unrestricted authority but are seen as trustees who are obliged to act in their children's best interest. However, since in pluralist societies it is contested what the relevant interests are, they enjoy wide discretion when it comes to deciding on educational goals and practices. Second, liberal political theories do not pursue the goal of realizing social uniformity but endorse of cultural and religious diversity. State policies which aim at gaining extensive control over the educational process in order to accomplish a homogenous community are considered typical of a dictatorial system. Moreover, some thinkers, such as John Stuart Mill (1991), have even argued that a society benefits from the existence of divergent opinions and life schemes. Therefore, proponents of liberal theories usually have strong reservations against the assimilation of minority groups by means of a state's educational policy.

Basically, there are two types of argument that can be advanced in order to vindicate state interference into the educational authority of parents. On the one hand, one may refer to the crucial interests of children, such as their welfare or their future autonomy, which need to be protected (Feinberg 1980). The parents may, for instance, inflict severe corporal punishments on their children or try to indoctrinate them in order to achieve their educational goals. If a child's health or its capacity to act autonomously later in life is seriously threatened, the state authorities may be entitled to intervene.² On the other hand, one may base the justification for

² *David Archard* (2004, 154) describes the liberal standard view as follows: "(...) It is in the immediate best interests of any child to be reared by her parents as they see fit and within a family context protected against intrusion upon its privacy. However, when a family fails or the child is exposed to serious harm, the parents forgo their rights of autonomy and privacy.

state educational policies on a society's interests in the education of democratic citizens. Unless certain dispositions and attitudes are developed, the children may not be able or willing to support the political order after having reached an age of maturity. One may, for instance, regard tolerance against other world views or the propensity to participate in political decisions as important qualifications of democratic citizens. If these qualifications are missing – so one may argue – the viability and continued existence of a democratic society is seriously threatened.

The distinction outlined above is complicated by the fact that arguments referring to the interests of children can also be advanced to support the case for civic education policies. Thus one may hold that children benefit from becoming fully participating citizens of the democratic state to which they belong. This interest appears, however, to be less crucial than, for instance, the interest in developing a capacity for autonomous decision-making. While autonomy is an important component of a wide array of different life plans, it is easily imaginable to lead a fully satisfying life without engaging in political activities. A person who is indifferent towards politics may nevertheless pursue worthwhile goals and be capable of realizing her conception of the good. Consequently, although civic education programs may help children to develop valuable life plans, they mainly serve other citizens' interests in stable democratic institutions.

In this paper I will exclusively examine arguments which draw on the importance of educating democratic citizens. I will largely neglect the children's interest in receiving a kind of education that enables them to lead a good life. The focus of my investigation will mainly be on religious groups whose members are not prepared to support democratic institutions.³ Some faith communities are indifferent towards politics, as they devote their lives to God and eschew any engagement in worldly affairs, while others prefer different political institutions, e.g. a theocratic regime, but refrain from pursuing their objectives by the use of violence. In the following, for the sake of brevity, I will refer to persons falling under one of these categories as religious fundamentalists. I do not consider in much detail religious groups who are prepared to forcibly suppress conflicting opinions and world views. As I will argue shortly, a democratic society need not accept educational practices which aim at imparting – in a strict sense – intolerant values.

It may be worth noting that arguments for civic education are based on a number of empirical hypotheses which cannot be discussed within the scope of this paper. First, it has to be assumed that generally individuals are capable of developing stable dispositions which reliably determine their courses of action. If they predominantly responded to situative incentives, any attempt to inculcate specific virtues

The guardianship of a child then passes from his parents to the state which, guided by the best interest of the child, determines an appropriate course of action (...)."

³ For an instructive discussion of the specific problems cultural minorities pose for the justification of state educational policies, e.g. regarding the language of instruction, see *Kymlicka* 2003, 54–61.