

Creating Family-Sensitive Schools

Rachel Alyson Meltzer*

I. INTRODUCTION

The face of America's families has drastically changed over the last century; and, with the increasing accessibility to new reproductive technologies, this face will continue to change. The traditional, heterosexual, two-parent family is being rivaled by single parent families, step-parent families, adoptive families, and single or two-parent homosexual families.¹ This trend is so prevalent, that for the first time the 2000 Census included, among its categories of relationships to the householder, "adopted son/daughter"² separate from its former categories of "natural son/daughter" and "stepson/stepdaughter".³ The Census revealed that 8 percent of the 84 million sons and daughters of householders in 2000 were either adopted or stepchildren.⁴ Furthermore, the Census indicated that this is a national occurrence, with the percentage of children adopted hardly varying by region or state.⁵ In addition to adoption, families are also being created by use of reproductive technology; approximately 25,000 babies per year are born as a result of in vitro fertilization, the most commonly used form of reproductive technology.⁶

Families created by adoption or reproductive technology may diverge from the traditional biological family in a number of significant ways. For example, they permit the formation of either two-parent or single-parent homosexual families; estimates of the number of American children living with at least one gay or lesbian parent range from one million to over six million.⁷ They also permit the formation of families with racial differences between the parent(s) and the child. Transracial adoptions reached their peak of 2,574 in 1971, but by 1985 (the last year for which national statistics are available) the number had dropped to 831.⁸ International adoptions, however, are on the rise and have reached approximately 20,000 per year.⁹

While it is clear that the use of many of these alternative family-building options is increasing, it is far from clear that Americans are in consensus that this is a positive change. Debate is waged on a number of different issues. Broadly stated, some argue that these alternative family-building choices are the private domain of the adult individuals who make them, and that the resulting nontraditional families should be recognized as equal to biologically-created families in all respects. However, there are others who contend that some or all of these nontraditional family forms are not fundamentally, morally, or religiously equivalent to biological families. For example,

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Pope Benedict XVI (writing in his former position as Prefect for the Congregation of the Doctrine of the Faith of the Roman Catholic Church), stated: “Homosexual unions . . . are not able to contribute in a proper way to the procreation and survival of the human race. The possibility of using recently discovered methods of artificial reproduction, beyond involving a grave lack of respect for human dignity, does nothing to alter this inadequacy.”¹⁰ Similarly, Gary L. Bauer, the president of American Values, voices opposition to gay adoption, stating on behalf of his organization: “Adopting a child is commendable but should not come at the expense of the child’s well-being. Research demonstrates that same-sex parents subject their children to disproportionate risks including gender confusion, and increased risk of promiscuity, teen pregnancy, substance abuse, school dropout, depression, suicide, and other emotional difficulties.”¹¹ On the issue of transracial adoptions, the National Association of Black Social Workers expressed vehement opposition, stating: “We stand firmly . . . on conviction that a white home is not a suitable placement for black children and contend it is totally unnecessary.”¹²

While this debate is often waged in the political arena, as seen in the legislative battles over gay marriage and gay adoption, restriction of transracial adoption embedded in the family preservation movement, and policies limiting international adoption, it can, and does, seep into the arena of public education. Most Americans will concede that the State has a tremendous obligation to shape America’s children through public education generally, but there is little agreement as to the role of schools in the current debate on the value of various nontraditional family forms. When such sensitive issues arise, it has been argued that schools should steer clear of the controversy, leaving the teaching on these issues to individual parents. However, this paper will attempt to demonstrate why it is an essential function of public schools to socialize children to the understanding, tolerance, and acceptance¹³ of nontraditional family forms in furtherance of the teaching of democratic values, a task already assigned to public schools, and to prevent the potentially devastating effects on the individual children whose families are either ignored or denigrated. Further, this paper will explore the legal ramifications of a school’s choice to make affirmative efforts to achieve this socialization, even over parental objections. Lastly, this paper will outline the efforts a school can make to achieve the socialization desired.

The recent foray of Buster the bunny in an episode of the series “Postcards from Buster” brings this issue into stark clarity. “Postcards” is a PBS kids program produced by Boston’s WGBH with federal funds received under a grant which specifies that “[d]iversity will be incorporated into the fabric of the series to help children understand and respect differences and learn to live in a multicultural society.”¹⁴ In the controversial episode, entitled “Sugartime!,” Buster visits eleven-year-old Emma in her home state of Vermont. The episode is predominantly about making sugar and cheese, but Buster does visit Emma at her home, where she tells him

she lives with “my mom and Gillian, who I love a lot.”¹⁵ The image of a two-mom family sparked a warning letter from the U.S. Department of Education Secretary, Margaret Spellings, who wrote to express “strong and very serious concerns” about the program.¹⁶ Specifically, she stated that “many parents would not want their young children exposed to the life-styles portrayed in this episode.”¹⁷ PBS pulled the program, claiming it had already decided not to distribute the episode to its approximately 350 stations hours before the letter arrived, but at least 24 stations ran the program anyway.¹⁸ Creators of the program framed the issue as one of diversity and tolerance; those opposed to the program framed it as one of “forced normalization of homosexuality in the public schools.”¹⁹ Irrespective of how the problem was framed in the popular media or political debate, however, a crucial issue remains; the distressing message the removal of this episode sent to Emma and the thousands of children living in families like hers was that there was something inherently different, and arguably immoral and wrong, with the families they live in. “For them, Buster the bunny’s visit to two-mom families in Vermont has nothing to do with “homosexuality” or “lifestyles.” As Emma told Buster, “it’s really all about family.”²⁰

II. WHAT IS THE PURPOSE OF PUBLIC EDUCATION?

In every state, American children are legally obliged to attend school or receive some minimum level of instruction, specified by the state, within the home. The vast majority of America’s children receive this compulsory education in public schools.²¹ In the seminal education case of *Brown v. Board of Education*, Chief Justice Warren highlighted the importance of the state’s provision of public education when he stated:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.²²

While the provision of *an* education, defined by its substantive content, may now be uncontroversial, the contours of that education are still hotly contested, specifically when it comes to values and diversity education. “In a nation whose motto is *E Pluribus Unum*, the public stake in children’s development is complex. Ideals of unity and commonality compete with ideals of pluralism and particularity.”²³ The hope that common schools could simultaneously bring diverse communities together

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and foster individual freedom whereby each citizen could pursue his own vision of the good life has proved difficult, if not elusive. Nonetheless it is a worthy goal toward which public education generally should continue to strive.

In 1790, Noah Webster claimed “Education, in great measure, forms the moral characters of men, and morals are the basis of government.”²⁴ Modern philosopher Amy Gutmann modified Webster’s claim to state that “[e]ducation, in a great measure, forms the moral character of citizens, and moral character along with laws and institutions forms the basis of democratic government. Democratic government, in turn, shapes the education of future citizens, which in great measure, forms their moral character.”²⁵ The Gallup Poll has consistently shown that the majority of the U.S. public support morals education, yet few educators would readily admit that they teach moral responsibility or moral behavior because the term “moral” has become too emotionally loaded.²⁶ A vocal minority of the public has associated moral education with either the teaching of religion or secular humanism.²⁷ If the morals to which Webster and Gutman refer were universal, their claims would not likely be contested, but our nation’s citizens do not ascribe to a common moral code. It is necessary, therefore, to ascertain the shared notions behind the continued value of universal compulsory education in a democratic society because it is those values which schools should perpetuate in educating its students. This section will survey competing normative theories of education which account for many social disagreements, as well as personal uncertainties, as to the purposes of education. It will illustrate that only an intermediate position, focused on the core values of democracy, comports with our national acceptance of both individual moral codes, as opposed to a unitary national moral code, and shared educational authority among the stakeholders of parents and state.

On one end of the spectrum, some theorists claim that the main purpose of education is to create unity among the citizenry by teaching children what the good life is and inculcating in them a desire to pursue that good life above all others.²⁸ Accordingly, they claim that educational authority should remain under the sole control of the state, because it is the duty of the state to identify the appropriate conception of the good life and impart that to its children.²⁹ This theory, derived from Plato, suggests that imparting a good education first requires knowing what justice and virtue really are, beyond what society assumes by virtue of its shared social understandings.³⁰ In this conception, individual and societal good are conflated; what is good for an individual is contributing to what is good for society. Education is thereby the means by which the state creates harmony between individual and social good through imparting knowledge; the purpose of education is to teach citizens to only desire that which is good for themselves and society concurrently and that the only way to realize their own good is by contributing to the social good.³¹

However, this view of education expects a level of like-mindedness among citizens that has never been characteristic of our pluralistic American society. This theory requires that the state take complete control over education to ensure that all its citizens ascribe to the same definition of what is good, and thus to avoid degenerating out of internal disharmony. Yet, over twenty centuries after Plato first voiced his ideas, society still struggles with the identification of one supreme conception of the good for any individual, let alone for the society as a whole.³² This theory of education will continue to suffer a fatal flaw so long as we accept and wish to legitimize different conceptions of the good life, objectively defined, and believe that we must create an educational system that can accommodate the competing claims of varying parents and citizens.

In radical opposition arises the theory that the purpose of education is to enable parents, as either the holders of a natural right or as the best protectors of a child's future interests, to predispose their children to choose the good life, defined as a life consistent with the values and traditions of their familial heritage.³³ This theory rests in the Lockean notion that adults must have the freedom to choose their own good and encompassed in that freedom is the right to educate their children without state interference.³⁴ This theory assumes that the welfare of children is best reached by securing the freedom of parents. If parents were permitted to completely control the education of their children, however, a comprehensive system of education would fail to exist; in its place, a fractured system would emerge without ensuring any commonality among its students.

Some may argue that the state is the proper domain for substantive education, but that the parents should command exclusive control over the moral domain, immune from external influence. As Miss Manners once stated: "[P]arents of America should offer the school systems a bargain: You teach them English, history, mathematics and science, and we will . . . look after their souls."³⁵ What this theory fails to recognize is that even if schools avoid all instruction that dealt explicitly with morality, moral education would still be effectuated through noncurricular practices that serve to develop morality and character among its students. Examples of noncurricular practices in education include: the rules imposed on the classroom and school; characters reflected in stories chosen for classroom assignments and word problems; and afterschool activities supported or offered by the school. Substantive instruction is contextualized by the necessity to be an active participant in a democratic society. Furthermore, children are neither exclusively members of their parents' family, nor exclusively members of the state, they are both; thus, a tension arises.³⁶ In order to ensure the liberty retained for adults, the state must provide an education that makes those freedoms possible and meaningful for its children in the future.³⁷ Accordingly, the state cannot allow parents to insulate their children from exposure to ideas and

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ways of life that differ from their own, if they expect these children to be full and active participants a democratic society.

Falling somewhere between these two extremes lies the theory of political liberalism, which champions the dual goals of an opportunity for choice and neutrality among conceptions of the good life. This theory allows for both the parents and the state to retain authority over education, but focuses considerable attention on the development of autonomy in children so that they may make decisions for themselves based on their particular values and dispositions. This theory best supports our democratic foundations, because it recognizes that individuals may reasonably disagree deeply and permanently about their beliefs and ideals, but that one view is no more worthy of commanding public authority than another.³⁸ Accordingly, the job of public education is to extend the principle of toleration to all citizens and to focus attention on shared political values, without requiring or expecting consensus on ultimate ends or a comprehensive moral code.³⁹ Understandably, this requires that schools walk a tightrope, emphasizing shared political values, but abstaining from taking a position on moral or religious values. It also requires the state to stand strong in its commitment to civic goals, even in the face of parental opposition. As John Rawls states:

[P]olitical liberalism . . . [w]ill ask that children's education include such things as knowledge of their constitutional and civic rights so that, for example, they know that liberty of conscience exists in their society . . . all this to insure [that their choice as to the good life] when they come of age is not based simply on ignorance of their basic rights or fear of punishment for offenses that do not exist.⁴⁰

Additionally, as Amy Gutmann points out, society has a shared commitment to conscious social reproduction.⁴¹ Accordingly, we must educate children to be capable of participating in collectively shaping our democratic society. As a democratic state, we are committed to allocating educational authority so that children learn to participate in democratic politics, choose among the good lives, and participate in the sub-communities, such as families, that impart identity to the lives of its citizens.⁴² This acknowledges that the autonomy envisioned in political liberalism is in fact not complete, in that education both promotes autonomy and denies it by shaping and constraining present and future life choices.⁴³ The recurring problem is the need to differentiate between unacceptable constraints on individuality that stifle autonomy and creativity and the acceptable communitarian constraints that foster democracy and reduce discrimination and alienation.⁴⁴ Accordingly, any defensible standard of civic education must be committed to prepare children for the rights and responsibilities of citizenship, even over opposition to their parents or in the face of impeding some existing way of life.⁴⁵ Such an education requires the inculcation of the political virtues of toleration and mutual respect, a sense of fairness and civility.⁴⁶ Reaching this goal necessitates the discussion of many features of human life, including issues

and beliefs that are sensitive to some parents, such as the existence and value of nontraditional family forms. As Gutmann explains:

Public schooling is not deeply partisan if it aspires to teaching children to think for themselves about their lives, even on issues that have little or no explicit political content, because teaching children to understand different ways of life (or features of different lives) is almost always relevant to politics. Such teaching is consistent with . . . treating children as more than creatures of their parents and families.⁴⁷

At the same time, it is also consistent with treating children as more than mere creatures of the state. Teaching these values of toleration, mutual respect, and informed self-reflection is integral to support social diversity, and entirely consistent with our foundation of democratic justice. Exposing children to diverse positions and attitudes assimilates them into a pluralistic society and prepares them for participation in our democracy. Thus, we must embrace “indoctrination in tolerance” as necessary to both democracy and individual self-fulfillment.⁴⁸

The shared values supporting the continuation of compulsory education which emerge are those which enable children to participate fully in democratic politics and to autonomously choose among a range of conceptions of the good life. To achieve these values, children must be exposed to a variety of different ideas and individuals, at times in contradiction to the ideas and values chosen by their parents. This includes exposure to and understanding of the nontraditional family forms currently existing in our society. It is important to note that exposure and understanding does not require that children choose these family forms as their own or value them equally to their own. Exposure will, however, achieve a degree of normalization which is essential to the healthy development of the individual children and will be explored in detail in Part III.

III. WHAT IS AT STAKE FOR THE CHILDREN?

Utilizing public education to socialize children into understanding, tolerating, and accepting nontraditional family forms is not only necessary to ensure that children are equipped to participate in our democratic society, but it will also have important psychological effects on children, particularly on the individual children who are members of such nontraditional families. It is commonly understood that as much is learned on the playground as in the classroom. Schools have a distinct interactive dimension, in addition to their didactic functions, and through this interactive dimension children learn a tremendous amount from their peer and adult interactions at school; these interactions influence children’s self-perception and identity formation as well as their capacity to achieve academically. It is essential that schools create an environment which does not devalue or stigmatize children as a result of their

nontraditional family structures, but instead creates an environment in which all children can learn and prepares all children to flourish in the communities they later enter.

In particular, family and friendship ideas are a central part of young children's cognition; they are deeply concerned with people's *connections* to one another.⁴⁹ At all ages, children have knowledge of their physical, active, social, and psychological conceptions of self, but each goes through a developmental change as they mature into adulthood.⁵⁰ The recognition and validation of a child's family are crucial aspects of their self-understanding, which provide the cognitive basis for self-esteem, shame, and guilt.⁵¹ If a public school fails to recognize, or worse, devalues certain family structures, the children from such families will be at risk for low self-esteem and may internalize feelings of shame and guilt. Further, this would put schools in the position of sanctioning the development of prejudice and social stigma against those students whose families are not reflected by the traditional norm.

The learning environment plays a significant role in the development of prejudice and associated social stigma. Prejudice can be learned overtly from parents, siblings, teachers or peers, or covertly through modeling and observation.⁵² A social psychological explanation of prejudice includes many factors from the historical to the socio-cultural to the economic, but in all its explanations, prejudice is a defense to anxieties felt over one's identity and potential loss of social status.⁵³ The term stigma was resurrected in the twentieth century by sociologist Erwin Goffman to refer to an attribute of a person that is deeply discrediting, and reduces him or her "in our minds from a whole and usual person to a tainted, discounted one."⁵⁴ Prejudice is "the almost inevitable result of the socialization of the child within an environment in which prejudiced attitudes are commonly held rather than solely the consequence of individual personality dispositions."⁵⁵

Prejudice may start to develop at the time when children begin to recognize characteristic differences, as early as ages three or four.⁵⁶ The effect of this prejudice on the victim or the victimizer is not entirely clear. Classic discussions of stigmatization suggest that victims tend to either internalize the stigmatized view of themselves and thus develop feelings of self-loathing and inferiority, or they may develop less-internalized situational coping strategies to deal with the stigma, which allows them to distance themselves from the situation which poses the self-threat.⁵⁷ The predicament of the victim is the realization that they may be the object, perhaps on a daily basis, of insults, rejection, slights or even overt hostility.⁵⁸ Furthermore, a problem of attributional ambiguity arises for the victim in that they become uncertain as to whether outcomes are the result of personal merit or their devalued social status.⁵⁹ Individuals can reduce the threat of negative outcomes by attributing them to external causes, such as prejudice, or by disengaging their self-esteem from their outcomes in that domain or context,⁶⁰ or by avoiding altogether the situations in which the prejudice

could arise.⁶¹ Continual avoidance and/or disengagement can lead to the more chronic adaptation of disidentification or not taking the domain as a personal identity or a basis of self-esteem.⁶² Although this disidentification has positive implications for self-esteem, if a stigmatized child disidentifies with school, he will suffer a loss of motivation which will seriously undermine academic achievement.⁶³ “Research suggests that a major consequence of social stigma is its pernicious effect on the academic achievement of stigmatized individuals.”⁶⁴

The effect on the victimizer is not nearly as well-documented. Prejudice may help increase self-esteem, alleviate guilt, give an outlet for frustration and aggression, and project the “bad” part of one’s self.⁶⁵ But, some researchers have argued, albeit without hard data, that it “distorts and damages the core of personality.”⁶⁶ Nonetheless, not all individuals within a victimizer group adopt the prejudicial feelings, attitudes and behaviors. It has been found that these individuals (a) do not experience the psychological needs answered by prejudice; (b) have the cognitive structures to distinguish individuals from groups, see through untrue stereotypes, and understand reasons behind stereotypes; (c) have been overtly or covertly taught values of non-prejudice and how to respond to prejudiced cultural norms; (d) have self-identity and group-identity that is not dependent on prejudice; and (e) have positive multicultural experiences that are valued by important people in their lives.⁶⁷ Research has shown that “contact between different groups has generally led to lessened prejudice.”⁶⁸ Further, the school environment can be instrumental in creating an environment which models fairness and respect for individuality, thus lessening the need for prejudice as a defense.⁶⁹ “There is powerful evidence that programs of instruction are effective, at least in the short run, in changing attitudes.”⁷⁰ Thus it is imperative that schools incorporate recognition of the growing diversity of family forms into the school setting to ensure not only the healthy development of the self-esteem and self-worth of the children from these families, but also to ensure the creation of an environment antithetical to the development of prejudice and social stigma.

Another crucial aspect of development that is significantly affected by the school environment is that of identity-formation and the associated sense of morality. Identity formation predominantly occurs in adolescence (typically defined as the teenage years). Likewise, it is at this time that children move beyond the sense of morality learned from discipline and example to a sense of morality derived from reasoning and logical thinking.⁷¹ While parental influence remains strong throughout the socialization process, peer interaction becomes increasingly influential during adolescence.⁷² In adolescence, the concept of self is most thoroughly and consciously developed.⁷³ Erik Erikson, widely considered the pioneer of the study of identity development, suggested that in adolescence the former function of identification, the assumption of values and roles based on those of admired others, is replaced by

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identity formation, by which adolescents select from these earlier identifications and thus, reveal their own integrated values and preferences.⁷⁴ Erikson termed this crucial and difficult process of moving from identification to identity formation as the “identity crisis;” its successful resolution has long-lasting effects on the future stability and security of the individual and implications for their ability to uphold commitments, deal with future hardships, and sustain intimate relationships.⁷⁵ The healthiest adults resolved this crisis through questioning and experimentation which allowed them to realize that their choice and commitments were the result of their own personal control, rather than the result of imposed choices and values.⁷⁶ Because peer interactions are perceived interactions among equals, they allow the adolescent to explore their experiences in comparison to those of their peers and to scrutinize themselves in a way that leads to an internalized ability to self-reflect.⁷⁷

This peer interaction also facilitates the skill of perspective taking, which is crucial to moral development. As psychological James Rest has suggested, morality involves a two-step process; first, the cognitive task of interpreting a social situation in terms of how people’s welfare will be affected and second, the task of moral judging, deciding or reasoning what is the right thing to do before executing that intention.⁷⁸ A diverse group of peers, who have been encouraged to express and share their unique values and familial backgrounds, expands the process of exploration and understanding for adolescents and produces a deeper questioning of the values inherited from their parents and a more careful consideration of how those values fit with their emerging sense of self.⁷⁹ However, this does not necessarily mean, as many parents fear, that adolescents will reject the values and choices of his parents; in fact the adolescent may very well embrace the choices of his parents and as a result have a stronger commitment to those shared values.⁸⁰ Facilitating unlike peer interactions can inspire a process of identity exploration and a strong sense of morality that can yield significant benefits irrespective of the ultimate choices made. The value of interaction among children from different familial backgrounds and understanding of these nontraditional family choices is thus a crucial aspect of healthy identity formation for all children. Understanding the plethora of family building choices available in our society will enable children to make strong commitments to the families they later create and prosper in communities populated with families created by means other than their own.

Lastly, attention to and encouragement of diversity within the school setting has recently been given increased recognition by sociologists and psychologists as providing significant educational benefits to all students. In both *Grutter v. Bollinger* and *Gratz v. Bollinger*, the U.S. Supreme Court accepted diversity as a compelling state interest, and in *Gratz* the Court relied in part on this persuasive research.⁸¹ In reaching this decision, the *Grutter* court recognized diversity as a means not only to enrich education, but to directly promote learning outcomes and better prepare students

for an increasingly diverse workforce and society.⁸² The Court noted, “[t]hese benefits are not theoretical, but real”⁸³ While the diversity criteria in the law school admissions policy embodied a commitment to racial diversity, it did not restrict the types of diversity eligible for consideration, and instead recognized “many possible basis for diversity.”⁸⁴ Diversity has been found to enhance students’ civic values, improve student learning, improve student preparation for employment, and increase educational opportunities.⁸⁵ Children learn from their environment, not just their texts, and thus, diversity is integral to the provision of the full range of skills, knowledge, and values necessary to succeed in a diverse, democratic nation.⁸⁶ Further, studies show that students educated in diverse environments have an increased sense of civic engagement and are more likely to seek out and succeed in diverse environments in the future.⁸⁷ Diversity has also been shown to improve students’ critical learning skills by challenging their existing perspectives and encouraging them to consider issues from varying points of view.⁸⁸ The value of diversity extends beyond the classroom to enhance the individual’s effectiveness and success in employment and further education by helping to understand the value of diverse perspectives and developing the ability to communicate effectively outside one’s social group.⁸⁹ Although familial diversity differs from racial diversity in that it is not an innate characteristic, but a result of parental choice, recognizing familial diversity in addition to that of racial or ethnic diversity can only increase the benefits already identified. Particularly because familial diversity is not obviously apparent, schools should seize the opportunity to draw out this type of diversity among and to encourage the sharing of the viewpoints and experiences derived from these varied family structures.

IV. WHAT IS THE CURRENT LEGAL REGIME?

Since their earliest days, public schools have occupied a central place in American cultural conflicts.⁹⁰ One social group after another has sought to make the public schools a vehicle for translating their moral values into the generally accepted national values formally, by either legislative program or judicial decision,⁹¹ or informally, by influencing teachers, school boards, or curricular decisions.⁹² In the culture clashes of the past generation, political strategists have mobilized constituencies by sounding an emotion-laden theme: the use of law to influence the socialization of children⁹³ and thus, “family-values” has become a familiar refrain in modern debates. For some parents, one objectionable feature of the secularized public school curriculum is precisely its treatment of subjects such as marriage, family, gender roles, and sexuality. However, as identified in parts I and II, the socialization of children into an understanding, tolerance, and acceptance of nontraditional family forms, necessarily broaching these sensitive and controversial subjects, is an essential part of the public schools’ mission to prepare children for participation in American

democracy and essential as well to ensure the healthy psychological development and the opportunity for educational achievement for all children. Accordingly, public schools should affirmatively incorporate exposure to and understanding of nontraditional family forms into their curricular activities. A review of the leading jurisprudence on related issues indicates that such a decision would be upheld in court over any likely challenge by parents that such actions violate their religious or moral values.

Courts have long struggled to strike the proper balance between the interests of parents and the interests of the state in the education of its children. Precedent indicates that courts have been careful to retain the freedom enjoyed by parents to shape the morals and identities of their children. Yet, at the same time, courts have been consistent in recognizing the importance of public education for the purpose of teaching the fundamental values essential to a democratic society. As the doctrine has evolved, a few guiding principles have emerged. First, parents have the choice to send their children to public schools, private schools, or to home school them.⁹⁴ This choice enables parents to control, to a certain extent, the values their children are taught and to whom their children are exposed. In light of this choice, once parents decide to send their children to public schools, they cede some of their educational authority to the state. The states, by themselves or by way of delegation to local educational authorities, are thus given broad discretion to fashion a curriculum to further their educational goals, so long as their actions are consistent with constitutional provisions. Challenges to the use of this discretion have been subjected to a very high standard whereby the curricular choices of a particular school district are upheld so long as they are reasonably related to a legitimate pedagogical purpose. Furthermore, even if a curricular choice were found to burden a constitutional right, the courts have expressed openness to justifying such a burden by the compelling state interests in teaching students about complex and controversial social and moral issues as part of their democratic preparation.

Nonetheless, some of the earlier cases, which enlarged the scope of parental authority over a child's education, remain good law and are often cited by parents seeking to exert control over the exposure of their children to specific ideas, texts, or activities. The most notable of these cases are *Pierce v. Society of Sisters*,⁹⁵ *Meyer v. Nebraska*,⁹⁶ and *Wisconsin v. Yoder*.⁹⁷ While the holding of each of these cases emphasizes the rights of parents to control educational decisions of their children when in conflict with programs dictated by the state, each can be distinguished on a crucial ground from a likely challenge against a curriculum that includes exposure to and understanding of nontraditional family forms, making them inapplicable precedent to follow in such cases.

In its nascent form, compulsory education required that all children attend public schools for a specified number of years. Under this regime, the state could

ensure that all children received an education of a content and quality they prescribed. This system, however, came under attack in the seminal case of *Pierce v. Society of Sisters*. In its 1925 decision, the Supreme Court held that a state could not require all children to attend public, as opposed to private, schools.⁹⁸ In reaching its decision, the Court made explicit recognition of the notion that a “child is not a mere creature of the state.”⁹⁹ Nonetheless, the Court stated: “No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them . . . that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.”¹⁰⁰ Accordingly, *Pierce* established that although the state may control the basic content of what is taught, they cannot control by whom and with whom children are taught; however, nothing in the *Pierce* decision prohibits schools from including exposure to nontraditional family forms as part of its curricular objectives. If anything, *Pierce* reinforces the notion that parents always have some degree of curricular choice by way of their option to choose private or home schooling.

Likewise, while *Meyer v. Nebraska* stands for the right of parents to teach certain values and skills to their children, it does not prevent schools from also teaching values and skills essential to democracy, so long as they do not violate the “letter or spirit of the constitution.”¹⁰¹ In *Meyer*, the Supreme Court struck down a statute that imposed criminal liability on teachers, public or private, who either taught in a foreign language or taught a foreign language to children below high school level because it violated the liberty interests of the language instructor to engage in his profession and the parent’s liberty to encourage such instruction.¹⁰² The statute was borne of animus against alien groups arising from World War I and the Court found that it was arbitrary, “without reasonable relation to any end within the competency of the state.”¹⁰³ To the contrary, the desire to expose children to the existence of nontraditional family forms is demonstrably related to permissible pedagogical goals of a state educational program.

Perhaps the most extreme case of parental control is that of *Wisconsin v. Yoder*, the 1972 case in which the Court permitted children of the Old Amish Order to an exemption from the state’s compulsory attendance law for formal high school up to the age of 16.¹⁰⁴ The Amish sincerely believed that by sending their children to high school, they would endanger their own and their children’s salvation and that attendance in schools with teachers and students who were not of the Amish faith would pose insurmountable barriers to the integration of the Amish child into the Amish community.¹⁰⁵ In reaching their decision, the Court again recognized the essential function of the state in provision of public education, but stated flatly, that it must be balanced against fundamental rights and interests in freedom of religion.¹⁰⁶ However, to place *Yoder* in its proper context, one must understand that the Court

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decided in light of the unique circumstances of the Amish community, living as a separatist agrarian community within the state. As the Court said:

A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different.¹⁰⁷

It cannot be overemphasized that we are not dealing with a way of life and mode of education by a group claiming to have recently discovered some 'progressive' or more enlightened process for rearing children for modern life.¹⁰⁸

As can be inferred from these statements, the Court was foreshadowing and attempting to circumscribe the exact types of claims that have arisen in more recent cases whereby individuals wish to keep their children in public schooling and modern society, but reject or opt-out of curricular choices they find incompatible with certain religious or moral values. The holding of *Yoder* has not been extended to any other group or claim; although the holding clearly recognized parents' right to insulate their children from exposure to certain ideas and individuals, it rested on the premise that the Amish children would not become active participants in American democracy and would continue to live a separate and insulated life. This does not describe the life prospects of the children of most modern challengers to curricular choices and thus makes an extension of *Yoder* improbable.

In fact, most modern challengers are of two varieties: (1) those who challenge a broad-based curricular choice of schools or particular books or selections used within that curriculum based on their particular religious or moral values, and (2) those who challenge the removal of a particular text or selection believing that the decision to do so was improperly based on particular religious values or the desire to suppress certain viewpoints. In the former variety, the challengers hope to either force the schools to change the curriculum to correspond with their beliefs, or to mandate that the schools provide an "opt-out" opportunity for their children. While an "opt-out" seems to be a workable compromise, many schools contend that such an accommodation would not only interfere with the fulfillment of the school's objectives, but would also impose tremendous disruption and confusion in the classroom.¹⁰⁹

The first variety of challenger is exemplified by Ms. Frost and Mr. Mozert, the lead plaintiffs in the case of *Mozert v. Hawkins County Board of Education*.¹¹⁰ Ms. Frost and Mr. Mozert were fundamentalist Christian parents who challenged the use of a basal reader series because it included stories that they found religiously objectionable.¹¹¹ Mrs. Frost stated that the offending materials fell into seventeen categories which included themes hostile to her fundamentalist Christian beliefs such as evolution, "secular humanism," "futuristic supernaturalism," "pacifism," and "magic and false views of death."¹¹² Both parents testified that they objected to "passages that expose their children to other forms of religion and to the feelings,

attitudes, and values of other students that contradict [their own] religious views without a statement that the other views are incorrect.”¹¹³ The Sixth Circuit rejected their challenge by highlighting that a key purpose of education is to teach the values fundamental to a democratic society, including “tolerance of divergent political and religious views” while taking into account “consideration of the sensibilities of others.”¹¹⁴ The court endorsed the idea that schools should promote civil tolerance, which does not require a person to accept any other religion as the equal to the one to which that person adheres, but merely to recognize that in a pluralistic society we must “live and let live.”¹¹⁵ The Sixth Circuit reiterated that “an unconstitutional burden [is not created] under the Free Exercise Clause when the students are not required to affirm or deny a belief or engage or refrain from engaging in a practice prohibited or required by their religion” and where “parents can either send their children to church schools or private schools, as many of them have done, or teach them at home.”¹¹⁶ While the decision rested on the conclusion that there was no burden on the parents’ free exercise rights, a concurring judge wrote separately to express her willingness to go further. Judge Kennedy stated that even if there was a burden found, she would have found it justified by a compelling state interest; namely that “[t]eaching students about complex and controversial social and moral issues is just as essential for preparing public school students for citizenship and self-government as inculcating in the students the habits and manners of civility.”¹¹⁷

The reasoning of Judge Kennedy caught momentum and was reiterated six years later in the case of *Fleischfresser v. Directors of School District 200*, decided by the Seventh Circuit.¹¹⁸ This case presented claims similar to those in *Mozert* and achieved a similar result. The parents challenged the use of a supplemental reading series as a violation of the Establishment and Free Exercises Clauses of the First Amendment, claiming that the series “indoctrinates children in values directly opposed to their Christian beliefs by teaching tricks, despair, deceit, parental disrespect and by denigrating Christian symbols and holidays.”¹¹⁹ Utilizing the *Lemon* test,¹²⁰ the Court dismissed the Establishment Clause claim holding that although the parents may be offended by some passages in the reading series, it cannot be claimed that the diverse stories presented constituted the establishment of a religion.¹²¹ The court also dismissed the Free Exercise claim, stating that any burden on the parents in this case was minimal because there was no coercion and parents were still free to meet their religious obligation to their children.¹²² The Court cited Judge Kennedy’s concurrence in *Mozert*, stating that even if there was a burden it would be found that the State’s interest outweighed it.¹²³ Lastly, the court quoted Justice Jackson’s concurrence from *McCullum v. Board of Education*, stating: “if we are to eliminate everything that is objectionable to any [religious group] or inconsistent with any of their doctrines, we will leave public schools in shreds. Nothing but educational confusion and a

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discrediting of the public school system can result from subjecting it to constant law suits.”¹²⁴

The second variety of modern challengers seeks to ensure that minority viewpoints, ideas, or beliefs are able to be expressed and presented within the school. These challengers often contend that the school board’s curricular decisions were improperly motivated, based either on religious convictions or animosity toward a certain group, and by exercising a form of viewpoint suppression, violate the First Amendment. In deciding such cases, the courts have reiterated and retained the broad discretion of schools to choose a curriculum that they deem necessary to effectuate their goals, but have also required a showing that the decisions made were in fact motivated by a legitimate pedagogical purpose. Justice Brennan, writing for the Supreme Court’s plurality in *Board of Education v. Pico*, expressed this approach by stating that schools have a vital obligation to prepare “individuals for participation as citizens,” and to serve as vehicles for “inculcating fundamental values necessary to the maintenance of a democratic political system,”¹²⁵ but in so doing, school boards are prohibited from imposing a “pall of orthodoxy over the classroom” which implicates the state in the propagation of a particular religious or ideological viewpoint.¹²⁶

Following the standard established in *Pico*, a Kansas District Court decided the case of *Case v. Unified School District No. 233*.¹²⁷ In this case, students and their parents sought reinstatement of a library book depicting homosexual love between two fictional teenage girls.¹²⁸ In deciding to order reinstatement, the court took a hard look at the actual motivations of the school board members. The Court found that statements such as one board member’s offense at the book’s “glorification of the gay lifestyle” and another’s statement that the book “seemed to have one goal ... [t]o say that it’s okay to be gay, don’t worry about it. That seemed to be thrust. And in that sense, I didn’t think the book was well written” indicated unconstitutional viewpoint discrimination buried in the claim of “educational unsuitability.”¹²⁹

However, because the Supreme Court’s opinion in *Pico* was a plurality opinion, it failed to establish binding precedent on lower courts. Furthermore, many lower courts have not found the *Pico* decision to embody a clear standard to apply in future cases. Accordingly, these courts have often turned to the Supreme Court’s case of *Hazelwood School Dist. v. Kuhlmeier* for guidance.¹³⁰ *Hazelwood* involved the degree of editorial control a school had over the style and content of speech in a school-sponsored newspaper written as a part of the school’s journalism curriculum.¹³¹ Here, the Court employed a clearly discernible standard stating that the First Amendment is not violated so long as the school’s actions are “reasonably related to legitimate pedagogical concerns.”¹³² Lower courts have utilized this standard as applicable to all curricular decisions implicated by the classroom environment.

For example, in 1989, the Eleventh Circuit decided *Virgil v. School Board of Columbia County Florida*, applying the *Hazelwood* standard to a challenge of the

removal of a particular humanities textbook for its inclusion of works the school board deemed sexual and vulgar.¹³³ The Court concluded that the Board's decision to discontinue the textbook was curricular and related to a legitimate pedagogical purpose, but the court hinted at its uneasiness with the Board's decision.¹³⁴ In the same year, the California Appellate Court provided similar guidance on remand to a trial court by defining the constitutional standard to be applied to a school's decision to exclude books from the curriculum as the *Hazelwood* standard.¹³⁵ This court made explicit, however, its inclusion of the *Pico* plurality as well, stating the "educational unsuitability of the books, of course, must be the true reason for the books' exclusion and not just a pretextual expression for exclusion because the board disagrees with the religious or philosophical ideas expressed in the books."¹³⁶ Further, the Court explicitly defined "legitimate pedagogical concerns" as those found in the California Education Code.¹³⁷

Accordingly, it seems clear that the modern trend is for courts to support decisions by public schools to incorporate the discussion and exposure of controversial ideas into the curriculum in an effort to best prepare children for their role in a participatory democracy. This trend, coupled with the significant research on the psychological effects on children that result from the failure to recognize their family in schools, should motivate schools to take affirmative steps to include teachings about the growing diversity of family forms into their curriculums.

V. WHAT SHOULD SCHOOLS DO TO BE SENSITIVE TO THE NONTRADITIONAL FAMILY FORMS?

Accepting that a central purpose of education is to prepare children for citizenship, including toleration and mutual respect, coupled with the very real implications of stigma and prejudice for individual students, it is essential that schools address the changing face of American families. Schools need not value the nontraditional over the traditional family, but they must validate individual students and teach students to respect and live harmoniously with students from families different from their own. Schools must persevere in this task even over parental objection. As exemplified by the backlash exhibited toward Buster's visit to Emma's two-mom family, these issues are salient and potentially divisive. For the sake of the children, however, schools and teachers must eschew personal value judgments in favor of pursuing the goals of democratic education and ensuring the healthy psychological development of the children in their classrooms.

In general, the primary developmental tasks and cycles for children from non-traditional families are identical to those of their peers. However, children may be affected by their nontraditional status in two primary ways, educationally and socially. Schools can and should teach their personnel to be sensitive to these issues and to

make slight behavioral or curricular modifications to alleviate many of the existing concerns. Because many reproductive technologies are so new, most of the existing research has focused on the experience of adoptive children. Recognizing, however, that children born from reproductive technologies, outside of artificial insemination within a heterosexual marriage, will face many of the same issues as traditional adoptees (namely, a loss of a biological foundation and genealogical linkage to their parents and a need to understand and accept the circumstances of their birth and legal parent), this paper will apply the existing research equally to children of adoption to that of children from new reproductive technologies. Modifications, however, may need to be made to accommodate emerging understanding of the unique experiences of children of the varied forms of technological advancement.

The primary tasks of the educational setting should be: (1) the elimination of the negative experiences and interactions that children from nontraditional families have that may cumulatively affect their psychological well-being; (2) the increase in awareness, knowledge and understanding by others, personnel and students alike, in the school about nontraditional families; and (3) the expansion of the knowledge of resources, support systems, and action alternatives for persons involved in nontraditional families.¹³⁸ While some research has shown that adopted children are more likely than nonadopted children to have learning disabilities, particularly attention deficit disorder, it is beyond the scope of this paper to address these specific issues. As a teacher looks out as his classroom, he is probably unaware that two to four percent of his students are adopted or that at least twenty percent will be personally touched by adoption in their lifetimes.¹³⁹ The children of reproductive technologies are likely even harder to recognize, and may not themselves know of or understand the circumstances of their birth. Given the great variety of choices in family building, the teacher can assume very little about the specific circumstances of any particular child. However, given the proper instruction, the teacher can create an environment that is supportive and accepting of all students, including students whose come from nontraditional families. The specific age-appropriate methods for achieving the aforementioned goals will be discussed below.

A. Preschool/Kindergarten

Children at this age who were adopted as infants or toddlers rarely show any adjustment problems.¹⁴⁰ In fact, they may blissfully tell their adoption stories. Because most children at this age do not have racial prejudices, transracial and transcultural adoptees usually do not experience any unique adjustment issues either.¹⁴¹ Children created by new reproductive technologies are unlikely to know of the circumstances of their birth.¹⁴² Children in homosexual families, like young adopted children, will likely not hesitate to talk about their two mommies or two daddies.

Nonetheless, this may be a good time to begin emphasizing that families are formed in a variety of ways. Specifically, occasionally mentioning the words “adoption or adopted” as teachers talk about babies and families is important,¹⁴³ as well as indicating that there are different types of families. Reading stories which mention adoption, single parent or homosexual parents and making pictures and books that reflect the nation’s diversity available in the classroom are important.¹⁴⁴ Because educators may not have the adoption-specific or reproductive technology-specific knowledge or sensitivity, parents may choose to take this opportunity to come into the classroom themselves.¹⁴⁵

B. Elementary School

At this age, children begin to grasp the fuller meaning of their nontraditional family situation. Children of adoption may begin to experience feelings of abandonment and loss issues potentially associated with it.¹⁴⁶ Further, children from homosexual families may have begun to experience homophobia from their teachers or peers.¹⁴⁷ It is important for teachers and school personnel to be cognizant of these issues and be watchful that these concerns do not consume the child’s mental energies to the detriment of their school tasks. It is even more important at this age to use positive language when referring to nontraditional family forms. For example, avoid use of the term “real parent” which implies that adoptive relationships are artificial or tentative or when describing the decision making process of birthparents avoid verbs like “give up” in favor of “choose adoption.”¹⁴⁸ Or, talk about parents generally, rather than mother and father specifically. Children at this age confront the issue of whether to talk openly about their family, becoming increasingly aware of their nontraditional status. At this age, children generally want to fit in with their peers, and may not want to be singled out because of their family structure. Either way, it is important that students understand that once they share this information, they cannot take it back and thus must be prepared to deal with different reactions to the information.¹⁴⁹ Teachers, if made aware of a child’s nontraditional family form, can thus learn to be sensitive and respond appropriately. It is important to continue reading stories either about or including nontraditional families.¹⁵⁰ As teachers discuss families, they should be cognizant of always mentioning nontraditional family forms along with traditional family forms; a teacher need only establish the existence of the various family structures, without expressing value of one over another. Particular school assignments may be troublesome for the adopted child or a child aware of his/her technological creation. For example, in many elementary schools third or fourth graders are asked to make a family tree. To alleviate the stress of such an assignment, the teacher can present the family tree assignment to the class with several alternatives to accommodate the diversity of modern families.¹⁵¹ The teacher also can take this

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opportunity to emphasize that all variations are “real” families; even if they look different from the outside, they are all the same on the inside, comprised of people who love and care for each other. Particularly troubling for adoptive children are the common activities that classes undertake, like “Adopt-a-zoo animal, highway, whale, book, etc.” projects.¹⁵² While sounding innocent enough, these activities can have a negative impact on adopted children who may come to believe that adoption is little more than a cash donation, and a conditional one at that. Such projects can be easily fixed by simply changing the name without losing the valuable philanthropic message. Particularly for transracial or transcultural adoptees, whose adoptive status is usually difficult to conceal, presentations at this age of the child’s country of origin are usually well received.¹⁵³ If the individual child is not comfortable with the attention, activities that are aimed at eliminating cultural stereotypes and recognizing the diversity of our nation are helpful.

C. Middle and High School

Since teenagers are more capable of abstract thinking, discussions about nontraditional families in school can increase in sophistication. Adoption and reproductive technology advancements may appropriately be mentioned in science class in conjunction with genetics and reproduction studies or in family life and sex education classes, highlighting family building as a choice and modeling positive language in reference to such choices.¹⁵⁴ Such activities may also be entirely consistent with family planning curricula that are aimed at reducing teenage promiscuity and pregnancy. Furthermore, at this age, teens are especially attuned to working out their feelings on being adopted or may be just learning of the reproductive technology used in their birth. However, they may also be particularly susceptible to being embarrassed or rejected. Given the incredible physical changes that accompany adolescence, confusion may be added by the mirror that may reflect features which are developing rapidly, but without any known roadmap.¹⁵⁵ At this age, children tend to gravitate to others of similar ethnic background in order to meet their need to belong and feel accepted; this may be particularly difficult for transracial or transcultural adoptees.¹⁵⁶ For all teens, there is a heightened sensitivity to being identified as different which may be exacerbated for teens from nontraditional families. Accordingly, this may be a good time to suggest teens explore¹⁵⁷ and express their feelings about their family structure as one of the themes for an essay or journal writing assignment. These teens may also be particularly concerned with the dilemma of whether to seek information or contact with their birth, donor, or surrogate parents. Children may feel conflicted by the desire to obtain information and the concurrent desire not to hurt the parents they live with. Teachers should be open to listening to a student’s concerns and be equipped to facilitate a referral to a school counselor if

necessary.¹⁵⁸ This also may be an ideal time to locate a group for adolescents who express an interest in meeting other teens from similar families, where they can share feeling and thoughts about their nontraditional families and its impact on their lives.¹⁵⁹

Overall, schools should make affirmative efforts to make curricular choices in light of a goal of socializing children to the understanding, tolerance, and acceptance of nontraditional family forms, in addition to making a commitment to creating a safe and successful environment for the individual students from these families. While training and curricular choice are a significant responsibility of the school districts, successfully reaching these goals will also require the input and collaboration from the parents of nontraditional families. If parents reach out to their schools, and schools reach out to their parents, effective school-family partnerships can be created with the result of improved learning for all students and strengthened schools, families, and communities.¹⁶⁰

VI. CONCLUSION

As the face of America's families continues to change, so too should American public education. As this paper highlights, public education in America, throughout history and today, has a vital role in preparing our citizens for full and active participation in our democratic government. Part of this training requires exposure to a variety of individuals, viewpoints, and ideas, including those relating to the formation of a modern family. Exposure, coupled with the unique learning environment of the classroom, can lead to understanding, toleration, and acceptance, but in no way requires that students adopt such ideas or viewpoints as their own. Schools are a microcosm of the world which the students will eventually enter, and thus it is important that they equip students with the skills to interact with students from a diversity of backgrounds and to think critically about ideas different from their own.

Beyond the democratic ideals, public schools have another crucially important responsibility, and that is for the protection and cultivation of the individual students in each and every classroom. Avoiding controversial topics and ideas may seem like a safe, nonpartisan route for schools to take, but they cannot ignore the potentially devastating effects this can have for children by sanctioning the development of prejudice and social stigma, stifling identity formation, and perhaps limiting academic achievement opportunities.

To meet their two-fold obligations, schools should actively create a curriculum that is sensitive to all family forms, the traditional and the nontraditional. The modifications that would make a huge difference for the students are often easy to implement and serve as an addition to, not a deletion from, the existing curriculum. Schools can seize this opportunity to reach out to the families and communities whom

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they serve, and build partnerships that allow for their own edification, as well as the students.’ Achieving these goals would ensure that children from nontraditional families grow up to be the confident, successful counterparts to their peers from traditional families, and that the message being sent to America’s children would be clear: every family counts.

* * *

APPENDIX I: SELECTED ANNOTATED BIBLIOGRAPHY OF CHILDREN’S AND YOUNG ADULT BOOKS FOR USE IN A CLASSROOM SENSITIVE TO NONTRADITIONAL FAMILY FORMS¹⁶¹

A. Preschool/Kindergarten

Heather Has Two Mommies

by Leslea Newman. Los Angeles: Alyson Publications, 2000.

This minor classic presents the story of Heather, a preschooler with two moms who discovers that some of her friends have very different sorts of families. Juan, for example, has a mommy and a daddy and a big brother named Carlos. Miriam has a mommy and a baby sister. And Joshua has a mommy, a daddy, and a step-daddy. Their teacher Molly encourages the children to draw pictures of their families, and reassures them that “each family is special” and that “the most important thing about a family is that all the people in it love each other.” This new, revised version offers an enjoyable, upbeat, age-appropriate introduction to the idea of family diversity. (ages 2-8)

I Love You Like Crazy Cakes

by Rose Lewis. New York: Little Brown and Company, 2000.

A charming and beautifully illustrated picture book which tells the story of the author’s trip to China to adopt a baby girl. (ages 2-8)

Anna Day and the O-Ring

by Elaine Wickens. Los Angeles: Alyson Wonderland, 1994.

“Evan lives with his family, Mama Dee and Mama Gee and Anna Day, in apartment 2-D.” The four of them—Evan, his two mommies and their dog—are preparing for Evan’s birthday by putting up his new birthday tent. But one of the pieces, the O-ring, is missing and you can’t put up a tent without it. Most notable for its matter-of-fact presentation of an alternative family, *Anna Day and the O-ring* also grabs attention with its expressive, spontaneous photographs. The natural, everyday look of the family is realistic—it is rare to see ordinary people in children’s books, particularly adults who are not squeaky clean. A pleasing touch of humor enlivens the book’s ending: both children and adults will recognize and chuckle over the childish urge to repeat a good story over and over, “for a long time.” (ages 2-4)

Our Baby: A Birth and Adoption Story

by Janice Koch. Indianapolis: Perspective Press, 1985.

Creating Family-Sensitive Schools

Accurate and simple, a story to help parents begin sex education with children who joined their families by adoption. (ages 3-7).

Who's in a Family?

by Robert Skutch. Berkeley: Tricycle Press, 1997.

A picture book portraying families in all their diversity. Beginning with a traditional nuclear family and ending with blank spaces in which the child reader is instructed to "draw a picture of your family," this slight book catalogues multicultural contemporary family units, including those with single parents, lesbian and gay parents, mixed-race couples, grandparents, and divorced parents. (ages 3-7)

Mommy, Did I Grow in Your Tummy? Where Some Babies Come From.

by Elaine R. Gordon. Santa Monica: E.M. Greenburg Press, 1992.

Explains infertility, IVF, and all the ways of becoming a family, including donor sperm, donor egg, and surrogacy. Heterosexual focus. (ages 4 and up)

Happy Adoption Day!

by John McCutcheon, Julie Paschkis (Illustrator). 2001.

John McCutcheon has written a joyful song commemorating the wonderful day when a child joins an adoptive family. Read or sung, the excitement and love of new parents rings through in verses that reassure adopted children that they are wanted, loved and very special. Complete with musical notation, this is the perfect gift for adopted children and their families to share. (ages 4-8)

Seeds of Love: For Brothers and Sisters of International Adoption

by Mary Ebejer Petertyl, Jill Chambers (Illustrator). Folio One Publishing, 1997.

Adding a new baby to the family is an exciting time for young children. It can also be a stressful one -- especially if you're a young child whose parents will be traveling abroad without you to complete an international adoption. Lovingly written and beautifully illustrated, Seeds of Love gives parents fun and practical ideas for easing their children's anxiety prior to international adoption travel. (ages 4-8)

Allison

by Allen Say. New York: Houghton Mifflin, 1997.

When Allison tries on her kimono, she realizes that she looks more like Mei Mei, the doll she's always had, than she does either of her parents. Upset, she breaks some of her parents' things and she says she doesn't belong to them. But by befriending a stray cat, Allison subtly comes to find there are many ways to create a family. A story linked to international adoption. (ages 4-up)

Brown Like Me.

by Noelle Lamperti. Norwich, VT: New Victoria Publishers, 1999.

A simple, charming text, illustrated in photographs, guides young readers through this concept book reflecting an African-American child adopted by a white family. Child's point of view with forward by Dr. Jacqueline Wallen, Department of Family Studies, University of Maryland, whose own children are "brown" and adopted. (ages 4-up)

Our Baby From China: An Adoption Story

by Nancy D'Antonio. Morton Grove, IL: Albert Whitman & Company, 1997.

A photo essay of the author and her husband's journey to China to adopt their beautiful daughter, Ariela Xiangwei (ages 4-up).

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The Sea Chest

by Toni Buzzeo, illustrated by Mary GrandPre. New York: Dial, 2002.

Buzzeo is paired with *Harry Potter* illustrator GrandPre in a book that captures the stirring magic of a foundling babe who becomes a treasured sister. Maita says: "I longed for a time I might not be the only child the craggy island knew." The time is now. Musical and deeply affecting. (ages 4-up)

We Wanted You

by Liz Rosenberg, illustrated by Peter Catalanotto. Roaring Brook, 2002.

Parents tell young Enrique how they looked for a child and waited for him. The poetic prose and simple text are sincere and affecting. A particularly good title for those seeking interracial family and international adoption themes. (ages 4-up)

B. Elementary School

William is my Brother

by Jane T. Schnitter. Indianapolis: Perspectives Press, 1991.

This story focuses on families built by both birth and adoption through the eyes of Tony, who was born to the family. (ages 3-8)

A Forever Family

by Rosyln Banish. New York: Harper Collins, 1992.

Eight-year-old Jenny tells her story, including living with her biological parents, foster parents, and finally about being adopted in a courtroom and having a big celebration. Photos help make the story realistic.

One Dad, Two Dads, Brown Dad, Blue Dads

by Johnny Valentine, illustrated by Melody Sarecky. Los Angeles: Alyson Wonderland, 1994.

If the title of this book makes you think of Dr. Seuss, you won't be disappointed by the text, a lively story with a familiar syncopated rhyme scheme and a goofy sense of humor. Lou, who is brown, has two dads--who are blue. Of course his friend has lots of questions about what it's like to have blue dads. It's delightful to see a book about alternative families that makes its point in such a playful, entertaining way. (ages 4-8)

Tell Me Again About the Night I was Born

by Jamie Lee Curtis. New York: Harper Collins, 1996.

A child asks to be told and then tells her own joyful story. Humorous and engaging. (ages 4-8)

Mom and Mum are Getting Married!

by Ken Setterington, illustrated by Alice Priestly. Second Story, 2004.

The status of gay relationships has come a long way since Heather first came out with her two mommies--and so have picture books, thank goodness. When Rosie's mom and mum decide to get married, the main conflict is whether Rosie will get to be a flower girl and whether she and her brother Jack are responsible enough to take care of the wedding rings. Narrated by Rosie herself, the book is matter-of-fact about mom and mum's relationship, never even mentioning what the actual biological connections in her family are. All ends well and family and friends all join in the happy celebration, tenderly illustrated with glowing watercolors. (ages 4-10)

How Babies and Families Are Made: There Is More Than One Way!

by Patricia Schaffer. Palo Alto: Tabor Sarah Books, 1988.

Combines basic sex education about anatomy, conception, pregnancy, and childbirth with an explanation of family-building that includes adoption, donor insemination, and IVF. Heterosexual focus. (ages 5-9)

X,Y, and Me Series; Before You Were Born

by Janice Grimes. For purchase at://www.xyandme.com/XYMe-Books.htm.

This author offers this book with many variations including a baby born from IVF, donor insemination, frozen embryo, donor egg, donor sperm (IVF), gestational carrier, traditional surrogacy, donor embryo, same sex female parents, and same sex male parents.

Beginnings: How Families Come to Be

by Virginia Kroll. Morton Grove, IL: Albert Whitman & Company, 1994.

This is a beautifully illustrated book with six diverse stories of different types of families, told from the perspective of a child asking questions of his parents about how they got to become a family, including single parent, kinship adoption, birth family, etc. (ages 7-9)

I'm a Little Frostie

by Tim Appleton. Published by the IFC Resource Centre.

An easy to read book, full of color pictures, about a child conceived from a frozen embryo that was thawed, transferred and successfully resulted in a birth. It is suitable for children who were created from donated embryos.

Let me explain: A story about donor insemination

by Jane T. Schnitter, illustrated by Joanne Bowring. Indianapolis: Perspectives Press, 1995.

A little girl explains how she was conceived through artificial insemination and that although she has genes from her mother and a donor, her dad is her only father. (ages 4-8)

Oliver

by Lois Wickstrom. Wayne, PA: Our Child Press, 1991.

Oliver, an alligator-like creature, is mischievous and is sent to his room. He is angry at his adoptive parents and, while confined to his room, daydreams about his birth parents. He wonders what life would be like if he lived with them. Expresses the feeling of many young adopted children.

My Story

London: Infertility Research Trust/Jessup Hospital for Women, available from Donor Conception Network in England at www.dcnetwork.org.

Excellent for young children, this straightforward and gentle guide describes how Mummy and Daddy conceived their child through donor insemination. (ages 4-7)

Lucy's Feet

by Stephanie Stein. Indianapolis: Perspectives Press, 1992.

This story validates Lucy's "less than proper" feeling about and reactions to her confusion about adoption. It brings up some difficult questions asked by young children while showing that these can be balanced by the love and happiness in her life. (ages 4-10)

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Through Moon and Stars and Night Skies

by Ann Warren Turner. New York: Harper and Row, 1990.

The story of a little boy remembering his trip as a young child from an unnamed Asian country to America to join his new family. Beautifully depicts the feelings. Watercolor illustrations.

The Mulberry Bird

by Anne Brodinsky. Indianapolis: Perspective Press, 1986.

This book looks at adoption from the perspective of a birth mother considering an adoption plan for her much loved baby. Beautiful illustrations, written by an adoptive parent and an expert on children's understanding of adoption. (ages 5-10)

We Adopted You, Benjamin Koo

by Linda Walvoord Girard. Morton Grove, IL: Albert Whitman & Co., 1989.

Nine-year-old Korean-born Benjamin tells his birth and adoption story and describes his feelings. Realistic and accurate. (ages 5-10)

That's a Family

by Debra Chasnoff, Director, Women's Educational Media, available at <http://www.womedia.org/thatsafamily.htm>.

A half-hour documentary video that breaks new ground in helping elementary-school-aged kids see and understand many of the different shapes that families take today. (ages 6-10)

How it Feels to Be Adopted

by Jill Kremetz. New York: Alfred A. Knopf, Inc, 1992.

Interviews with adopted children, ages eight through sixteen. A good book to help open up discussions. (ages 8-up)

Lucy's Family Tree

by Karen Halvorsen Schreck. Gardiner, ME: Tilbury House Publishers, 2001.

Lucy, who was born in Mexico and adopted by her blond parents in the United States, tells about how she handles her family tree assignment. An excellent book for teachers to use when explaining variations of the family tree project.

A Place to Call Home

by Jackie French Koller. New York: Atheneum, 1995.

"Raggedy Anna" is the way Anna O'Dell thinks others see her. And Anna feels ragged from watching out for Mama's moods and taking care of her younger sister and brother. But when Mama doesn't come home, Anna fights to watch out for her siblings and, along the way, finds out the story behind Mama's pain. An emotionally evocative book unafraid to address Anna's concerns about her African-American and white heritage – especially as they relate to her caring for her siblings and her shifting vision of her parents. (ages 8-up)

c. Middle and High School

Ninjas, Piranhas, and Galileo

by Greg Leitich Smith, New York: Little, Brown & Co., 2003.

Creating Family-Sensitive Schools

Elias, Shohei, and Honoria have always been a trio. But suddenly it seems that understanding and sticking up for a best friend is not as easy as it used to be. Elias, reluctant science fair participant, finds himself defying the authority of Mr. Ethan Eden, teacher king of chem lab. Shohei, all-around slacker, is approaching a showdown with his adoptive parents, who have decided that he needs to start “hearing” his ancestors. And Honoria, legal counsel extraordinaire, discovers that telling a best friend you like him, without actually telling him, is a lot harder than battling Goliath Reed or getting a piranha to become vegetarian. What three best friends find out about the Land of the Rising Sun, Pygocentrus nattereri, and Galileo’s choice, among other things, makes for a hilarious and intelligent read filled with wit, wisdom, and a little bit of science. Winner of a Parents' Choice Gold Medal. (ages 10-up)

It’s Perfectly Normal

by Robie H. Harris, illustrated by Michael Emberly. Candlewick Press, 1994.

This clever book is a happy combination of straightforward text, enjoyable pictures, and a cartoon-style commentary appropriately delivered by a bird and a bee. Best of all, most of the illustrations show a beautiful diversity: one two-page spread shows a bunch of naked people of all ages, colors, sizes and physical abilities. Throughout the book, couples and families are illustrated in many different ways, including same-sex pairs (although oddly, no interracial families). This book certainly won't please everyone. It is accepting about homosexuality and masturbation, non-judgmental about abortion, and although it by no means encourages premarital sex, it stresses personal responsibility and careful decision-making. (ages 10- up)

Earthshine

by Theresa Nelson. New York: Orchard, 1994.

Twelve-year-old Slim poignantly narrates the story of her life with her father Mack and his lover Larry, during the last few months before Mack's death from AIDS. Feeling both helpless and enraged, Slim sees little point in the political activism or new age therapies espoused by the other kids in her living-with-AIDS therapy group. But when the group and their families embark on an arduous trip to see an acclaimed "miracle man," Slim, Mack and Larry find unexpected spiritual healing and renewed courage to face the inevitable. This sensitive, believable story is an important addition to the growing body of literature on this subject. (ages 10- up)

Molly by Any Other Name

by Jean Davies Okimoto. New York: Scholastic Press, 1990.

The story of Molly, an Asian seventeen-year-old child with white parents. Molly becomes curious about, then searches for her birth parents. Molly does meet her birthmother eventually, and learns about her heritage and the circumstances of her birth. A powerful novel of choices and finding oneself, appropriate for junior high readers.

To Keera with Love

by Kayla M. Becker and Connie K. Heckert. Kansas City, MO: Sheed and Ward, 1987.

A true personal story about Kayla Becker, who discovers she is pregnant while a high school senior. It relates her feelings and experiences as she continues her pregnancy, chooses adoption, and makes a plan for the baby girl, Keera.

Don’t Think Twice

by Ruth Pennebaker. New York: Holt, 1996.

Meltzer

It's 1967, and seventeen-year-old Anne finds herself someplace she never would have expected—at a home for unwed mothers. The story focuses on Anne's relationships with the other girls. A searing, stereotype-shattering book. A great read for thoughtful teens. (ages 12-up)

My Trip to the Pretty Girl Capital of the World

by Brian Yansky. Cricket, 2003.

In this journey to the self (and from Iowa to Austin), Simon's struggling to keep things together. He is skating the law, recently dumped, and dealing with a dad who just does not understand. Overwhelmed, he hits the road to find his biological parents and wisdom about evil advertisers, scary giants, witches, ETs, friendship, nature/nurture, and, well, pretty girls. (ages 12-up)

Whale Talk

by Chris Crutcher. New York: HarperCollins, 2001.

Popular young adult author Crutcher presents T.J. Jones (a.k.a. The Tao), a black Eurasian whose biological mother abandoned him in large part due to the influence of drugs and whose white hippie parents are a treasure. T.J. takes on the school's outcasts as a cause, and he helps to form a swim team to give them an outlet, a safe place, and a forum to triumph on their own terms. Meanwhile T.J.'s father, plagued by guilt over a tragic accident, faces another bully. Dark, funny, sarcastic, and thought-provoking. A rare interracial young adult book for older teens. (ages 12-up)

Am I Blue? Coming Out From the Silence

edited by Marion Dane Bauer. New York: HarperCollins, 1994.

Like most collections of short stories for young adults, *Am I Blue?* is about the pains and pleasures of growing up: dealing with parents, falling in love, and choosing a new life. But there's one significant difference between this book and other anthologies—the teenagers in it are dealing with gay parents, or falling in love with someone of the same sex, or choosing a life their friends and relatives violently disapprove of. Each of these honest, sensitively written stories—by some of the most respected and popular authors for young adults around—is about growing up while coming to terms, in some form or another, with homosexuality. The result is a powerful collection that can speak to almost any teenager. (ages 12-up)

Something Terrible Happened

by Barbara Ann Porte. New York: Orchard, 1994.

An unusual, ambitious novel about a girl learning to be happy in her new, all-white family after her West Indian mother dies from AIDS. No gay characters, but some interesting insights into the grieving and recovery process. The approach could be considered simplistic or refreshing, depending on your point of view. (ages 12- up)

From the Notebooks of Melanin Sun

by Jacqueline Woodson. New York: Scholastic, 1997.

Melanin Sun—named for his ebony black skin and for “the sun right there in the center of him, shining through”—has never had a father and has never missed one. He and his mother have always been so close, they rarely even bother to close the door that separates their rooms, and her occasional dates have never hung around long enough to disturb their harmony. But when Mama reveals that there's somebody important in her life—and that it is a white woman named Kristin—Melanin's anger, disgust and fear slams a door shut between them. Everything in his life seems suddenly threatened—their comfortable, gossipy neighborhood, his friendship with Sean and Ralph, and his crush on Angie. And worst of all is the thought: "if she was a dyke, then what did that make me?" Written in a vivid but economical prose

that is lucid and readable, this is an honest, insightful look at the thoughts of a bright and sensitive black teenager, suddenly forced to question the basic assumptions of his world. More than a single issue novel, it is a fascinating portrait of a boy struggling to reconcile many mixed messages as he forms his identity. (ages 12- up)

Hanging On to Max

by Margaret Bechard. Roaring Brook, 2002.

Sam is trying to balance a distant dad, a new girlfriend, and studying for the SATs, all while being a full-time, primary caregiver for his his baby, Max. A realistic and compelling look at life as a teenage dad. (ages 14-up)

Adopted from Asia

by Frances M. Koh. Minneapolis: EastWest Press, 1993.

Eleven adoptees from Korea, ages 14-23, discuss experiences.

The Adoption Reader

edited by Susan Wadia-Ells. Avalon Publishing Group, 1995.

This collection is for mature readers. The stories are told by birth mothers, adoptive mothers, and adopted daughters and provide valuable insights into the adoption experience.

Not the Only One: Lesbian and Gay Fiction for Teens

edited by Tony Griman. Los Angeles: Alyson, 1994.

This collection of short stories focuses on some of the common experiences of teenagers in the process of discovering what being gay or lesbian means: a first crush on someone of the same sex; discovering that a friend or relative is gay; being ostracized or threatened by others; and striving for family approval. Similar in many ways to *Am I Blue?*, *Not the Only One* takes more risks than that mainstream collection, with a few stories that are more overtly sexual and that touch on scarier issues like molestation and rape. Most of the stories are fairly upbeat, however, focusing on the joys of requited love or the exquisite relief of self-discovery and acceptance. (ages 14-up)

* * *

APPENDIX II: POSITIVE ADOPTION LANGUAGE¹⁶²

The way we talk—and the words we choose—say a lot about what we think and value. When we use positive adoption language, we say that adoption is as fine a way to build a family as birth is. Both are important, but one is not more important than the other. Choose the following positive adoption language instead of the negative talk that helps perpetuate the myth that adoption is second best. By using positive adoption language, you'll reflect the true nature of adoption, free of innuendo.

Meltzer

POSITIVE LANGUAGE	NEGATIVE LANGUAGE
Birthparent	Real parent, natural parent
Biological parent	Natural parent
Biological father	Begetter
Parent	Adoptive parent
Birthchild	Own child
My child	My adopted child, my own child, a child of my own
Child with special needs	Hard-to-place child, handicapped child
Child from abroad	Foreign child
Was adopted	Is adopted
Make an adoption plan, choose adoption	Give up, give away, surrender, relinquish, place the child
Child entrusted to adoptive parents	Child placed for adoption, unwanted child
To parent	To keep
Born to unmarried parents	Illegitimate
Waiting child	Adoptable child, free child, available child
International adoption	Foreign adoption
Adoption triad	Adoption triangle
Permission to sign a release	Disclosure
Search, locate	Track down parents
Making contact with	Reunion
Terminate parental rights	Give up
Court termination	Child taken away
The adoption	The placement

Words not only convey facts, they also evoke feelings. When a TV movie talks about a “custody battle” between “real parents” and “other parents,” society gets the wrong impression that only birthparents are real parents and that adoptive parents aren't real parents. Members of society may also wrongly conclude that all adoptions are “battles.”

Positive adoption language can stop the spread of misconceptions such as these. By using positive adoption language, we educate others about adoption. We choose emotionally "correct" words over emotionally-laden words. We speak and write in positive language with the hopes of influencing others so that this language will someday become the norm.

Notes

- * Rachel Meltzer graduated *cum laude* from Harvard Law School in May 2005 and was admitted to the Massachusetts Bar in November 2005. She currently is practicing in the litigation group at Brown Rudnick, in Boston, MA. During law school, she focused her work on education law issues by interning at the Hale & Dorr Legal Services Center Trauma & Learning Project, working on the Massachusetts Public Education Finance case of *Hancock v. Driscoll*, and serving as co-chair of Harvard's Advocates for Education. Prior to law school, Rachel graduated Phi Beta Kappa from Tulane University in New Orleans, LA.
1. For purposes of this paper, "nontraditional families" will be defined as families other than the historically traditional biological family, including families with children from domestic, transracial, and international adoptions, families with one or two homosexual parents, and families created by use of new reproductive technologies such as in vitro fertilization by donor egg and/or donor sperm and surrogacy. "Alternative family-building choices" will be defined as the means by which these nontraditional families are formed.
 2. The adoption category includes various types of adoption, such as: adoption of biologically related and unrelated children, adoption of stepchildren, adoption through private and public agencies, domestic and international adoptions, and independent and informal adoptions.
 3. U.S. CENSUS BUREAU, ADOPTED CHILDREN AND STEPCHILDREN: 2000 1 (2003), available at www.census.gov/prod/2003pubs/censr-6.pdf.
 4. *Id.* at 2.
 5. *Id.* at 6.
 6. See Sheryl Gay Stolberg, *Buying Years for Women on the Biological Clock*, N.Y. TIMES, Oct. 3, 1999, § 4, at 1 ("In 1997, the most recent year for which statistics are available, 24,582 babies were born in the United States as a result of in vitro fertilization, which accounts for most births through assisted reproductive technology. That is six-tenths of one percent of the nearly 3.9 million babies born that year.").
 7. Kenneth L. Karst, *Law, Cultural Conflict, and the Socialization of Children*, 91 CAL. L. REV. 967, 971 (2003).
 8. *Id.* at 982.
 9. Sara Corbett, *Where do Babies Come From?*, N.Y. TIMES, June 16, 2002, § 6 (Magazine), at 42 ("According to State Department figures, the number of international adoptions in the last decade has doubled, with a record 19,237 children granted orphan visas last year.").
 10. Joseph Card. Ratzinger, *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons* (approved by Pope John Paul II and adopted by the ordinary session on March 28, 2003), available at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html. Cardinal Ratzinger became Pope Benedict XVI on April 19, 2005.
 11. Press Release, American Values, Questions and Answers about Homosexual "Marriage" (July 23, 2004), available at http://ouramericanvalues.org/press_release_article.php?id=02250401.
 12. National Association of Black Social Workers, *Position Statement on Trans-Racial Adoption*, (September 1972), available at <http://darkwing.uoregon.edu/~adoption/archive/NabswTRA.htm>.
 13. Although some critics may wish to draw distinctions between understanding, tolerance, and acceptance, this paper does not make such distinctions. In teaching about families, the goal advocated in this paper is for the normalization of nontraditional families. In achieving this goal, it

seems unrealistic and insincere to draw an artificial line between tolerance and acceptance. By presenting nontraditional families in the classroom, teachers and schools would necessarily be sending the message that this is acceptable. This paper does draw a line, however, between acceptance and the further step of advocacy or assignment of personal or moral value to the various family forms.

14. Julie Salamon, *Culture Wars Pull Buster into the Fray*, N.Y. TIMES, Jan. 27, 2005, at E1.
15. Charles C. Haynes, *Buster bunny meets two mommies: Who counts as 'family'?*, Feb. 13, 2005, at <http://www.fac.org/commentary.aspx?id=14810&printer-friendly=y> (last visited Oct. 26, 2005).
16. *Id.*
17. *Id.*
18. *Id.*
19. Ellen Goodman, Editorial, *It's Time to Accept Diverse Families as a Reality*, DETROIT NEWS, Feb. 4, 2005, available at <http://www.detnews.com/2005/editorial/0502/04/A09-79120.htm>.
20. Haynes, *supra* note 15.
21. MARK G. YUDOF ET.AL., EDUCATIONAL POLICY AND THE LAW 1 (4th ed. 2002).
22. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).
23. MARTHA MINOW, NOT ONLY FOR MYSELF 106-07 (1997).
24. AMY GUTMANN, DEMOCRATIC EDUCATION, 48 (1987) [hereinafter DEMOCRATIC EDUCATION].
25. *Id.* at 49.
26. G. G. Bear, *Children and Moral Responsibility*, in CHILDREN'S NEEDS: PSYCHOLOGICAL PERSPECTIVES 365, 365 (Alex Thomas & Jeff Grimes eds., 1987).
27. *Id.*
28. See DEMOCRATIC EDUCATION, *supra* note 24, at 22-28.
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.* at 28-33.
34. *Id.*
35. Judith Martin, *Keeping the 3 R's in Mind*, WASH. POST, Oct. 21, 1984, at H1.
36. See DEMOCRATIC EDUCATION, *supra* note 24, at 28-33.
37. *Id.*
38. Stephen Macedo, *Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?*, 105 ETHICS 468, 474 (1995).
39. *Id.* at 478 (According to Macedo, political liberalism "advances an ideal of citizenship according to which we formulate and defend basic principles of justice by relying on public reasons that we can share while disagreeing about our ultimate commitments.").
40. JOHN RAWLS, POLITICAL LIBERALISM 199 (1993) (Rawls also acknowledges that "for political purposes, a plurality of reasonable, yet incompatible, comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime.").
41. See DEMOCRATIC EDUCATION, *supra* note 24, at 39.
42. *Id.* at 42.
43. See Mark G. Yudof, *Library Book Selection and the Public Schools: The Quest for the Archimedean Point*, 59 IND. L.J. 527, 527-37 (1984) ("Children are socialized through subjection

to coercive and persuasive measures that enable them to become autonomous adults—that is, they are socialized for their own good.”).

44. *Id.* at 532.
45. See Amy Gutmann, *Civic Education and Social Diversity*, 105 ETHICS 557, 567 (1995) [hereinafter *Civic Education*].
46. *Id.* (quoting RAWLS, *supra* note 40, at 122, 199).
47. *Id.* at 575.
48. *Id.* at 576.
49. CAROLYN POPE EDWARDS, PROMOTING SOCIAL AND MORAL DEVELOPMENT IN YOUNG CHILDREN; CREATIVE APPROACHES FOR THE CLASSROOM 102 (1986).
50. See WILLIAM DAMON & DANIEL HART, SELF-UNDERSTANDING IN CHILDHOOD AND ADOLESCENCE 53-76 (1988) (Social understanding of self is one example of developmental change. In early childhood, children understand themselves in terms of membership in particular social relations or groups, association with family friends or other social figures. In middle and late childhood, one’s abilities are considered in light of the reactions of other people, including approval, disapproval, or any affective response. In early adolescence, social self-scheme is understood in terms of social-personality characteristics that reflect or influence one’s interactions, interpersonal appeal, or group membership. In late adolescence, social aspects of self reflect one’s personal philosophy, ideology, moral beliefs or life plans.).
51. *Id.* at 1.
52. See Joan R. Walton, *Children and Prejudice*, in CHILDREN’S NEEDS: PSYCHOLOGICAL PERSPECTIVES 434, 434-39 (Alex Thomas & Jeff Grimes eds., 1987) (Research indicates that authoritarian parents have been posited to exhibit and teach prejudice, parents’ prejudice correlates with children’s prejudice, and siblings’ prejudice correlates even more highly.).
53. *Id.*
54. Jennifer Crocker et al., *Social Stigma*, in THE HANDBOOK OF SOCIAL PSYCHOLOGY 504, 504 (Daniel Gilbert, et al. eds. 1998).
55. Walton, *supra* note 52, at 435.
56. See *id.* at 435-436 (By ages 3 and 4 racial differences and sex differences are distinguishable, a study revealed that 4 year-old reported differential racial valuation. By middle school, differences are well noted and many children show negative affect about them.).
57. See generally Daphna Oyserman & Janet K. Swim, *Stigma: An Insider’s View*, 57 J. SOC. ISSUES 1 1 (2001).
58. See Crocker, *supra* note 54, at 516.
59. *Id.* at 520.
60. *Id.* at 521, 528.
61. See Oyserman, *supra* note 57, at 5.
62. See Crocker, *supra* note 54, at 528.
63. *Id.* at 535.
64. *Id.* at 538.
65. See Walton, *supra* note 52 at 437.
66. *Id.*
67. *Id.*
68. *Id.* at 438 (citing E. EPPS, CULTURAL PLURALISM, (1974); M. Smith, *The Schools and Prejudice, Findings*, in PREJUDICE USA (C. Glock & E. Siegelman eds., 1969); C. BULLOCK, SCHOOL

- DESEGREGATION, INTER-RACIAL CONTACT AND PREJUDICE, FINAL REPORT (1976)). *But see* B. BETTELHEIM & M. JANOWITZ, SOCIAL CHANGE AND PREJUDICE INCLUDING DYNAMICS OF PREJUDICE (1964) (suggesting that numerically unbalanced mixes of majority and minority group students may not help).
69. *Id.*
 70. *Id.* (citing P. Katz, *Modification of Children's Racial Attitudes*, 14 DEVELOPMENTAL PSYCHOL. 447 (1978); S. WURZEL, REDUCTION OF PREJUDICE AND STEREOTYPING (1980); R. WESTPHAL, THE EFFECTS OF PRIMARY GRADE LEVEL INTERETHNIC CURRICULUM ON RACIAL PREJUDICE (1974); M. GUTTENTAG & H. BRAY, UNDOING SEX STEREOTYPES (1976); B. Houser, *An examination of the use of audio visual media as an instructional technique for altering ethnic attitudes among young children*, 15 PSYCHOL. SCHOOLS 116 (1978)).
 71. *See* DEMOCRATIC EDUCATION, *supra* note 24, at 50-51.
 72. EMILY BUSS, WITHOUT PEERS? THE BLIND SPOT IN THE DEBATE OVER HOW TO ALLOCATE EDUCATIONAL CONTROL BETWEEN PARENT AND STATE 30 (Univ. of Chicago Law Sch., Working Paper No. 08, 2000), *available at* http://papers.ssrn.com/paper.taf?abstract_id=224132.
 73. *See* WILLIAM DAMON & DANIEL HART, SELF-UNDERSTANDING IN CHILDHOOD AND ADOLESCENCE 59 (1988).
 74. *See* ERIK ERIKSON, IDENTITY: YOUTH AND CRISIS 22-23 (1968) (“Identity formation employs a process of simultaneous reflection and observation, a process taking place on all levels of mental functioning, by which the individual judges himself in the light of what he perceived to be the way in which others judge him in comparison to themselves and to a typology significant to them; while he judges their way of judging him in the light of how he perceived himself in comparison to them and to types that have become relevant to him.”).
 75. *Id.* at 165.
 76. *See* BUSS, *supra* note 72, at 22.
 77. *See* Harold D. Grotevant and Catherine R. Cooper, *Individuation in Family Relationships, A Perspective on Individual Differences in the Development of Identity and Role-Taking Skill in Adolescence*, 29 HUM. DEV. 82, 85 (1986).
 78. *See* EDWARDS, *supra* note 49, at 151.
 79. *See* BUSS, *supra* note 72, at 30-33.
 80. *Id.* at 28 (citing Bradford Brown, *Peer Groups and Peer Cultures*, in AT THE THRESHOLD, THE DEVELOPING ADOLESCENT 174 (S. Shirley Feldman & Glen R. Elliott eds., 1993) (noting that adolescents look to their parents for guidance in making important long-term decisions); D.E. Hamachek, *Development and Dynamics of the Adolescent Self*, in UNDERSTANDING ADOLESCENCE: CURRENT DEVELOPMENTS IN ADOLESCENT PSYCHOLOGY 22, 32 (J.F. Adams ed., 1976) (noting that teenagers are more likely to follow adults’ than peers’ advice in matters affecting their long-term future); W.W. Hartup, *Peer Relations*, in HANDBOOK OF CHILD PSYCHOLOGY 103-96 (E. M. Hetherington ed., 1983) (suggesting that adolescents tend to agree with parents on matters of basic moral principle, future educational and career aspirations and goals); Frank A. Fasick, *Parents, Peers, Youth Culture and Autonomy in Adolescence*, 19 ADOLESCENCE 143 (1984) (noting primary role of parents in instilling values, and reinforcing effect of peer interactions).
 81. *Grutter v. Bollinger*, 539 U.S. 306 (2003) (holding that the Law School’s narrowly tailored use of race in admissions was constitutionally permissible to further the compelling interest in obtaining the educational benefits that flow from a diverse student body); *Gratz v. Bollinger*, 539 U.S. 244

- (2003) (holding that the university's use of race in admissions was constitutionally impermissible to further the compelling interest in obtaining the educational benefits that flow from a diverse student body because it was not narrowly tailored to achieve this stated interest).
82. *Grutter*, 539 U.S. at 330.
 83. *Id.*
 84. *Id.* at 316.
 85. Brief of Amici Curiae National School Boards Association at 5, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (Nos. 02-241, 02-516).
 86. *Id.* at 15.
 87. *Id.* at 16-17; *see id.* at 17 n.25 (citing studies supporting this contention).
 88. *Id.* at 18-19; *see id.* at 18 n.27 (citing studies supporting this contention).
 89. *Id.* at 19; *see id.* at 19 n.29 (citing studies supporting this contention).
 90. *See, e.g.*, LAWRENCE A. CREMIN, *THE AMERICAN COMMON SCHOOL: AN HISTORICAL CONCEPTION* (1951); D.RAVITCH, *THE GREAT SCHOOL WARS: NEW YORK CITY, 1805-1973* (1974); *Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (holding that Bible reading and school prayer in schools, even with an parental opt-out provision, was violative of the Establishment clause).
 91. *See, e.g.*, Legislative attempts to ban the teaching of evolution in science classes or to prescribe a balanced treatment for creation science with that of evolution challenged in *Edwards v. Aguillard*, 482 U.S. 578 (1987) and *Epperson v. Arkansas*, 393 U.S. 97 (1968); constitutional amendments proposed to reverse school prayer cases such as Reagan's proposed Amendment sent to Capitol Hill on May 17, 1982; Editorial, *Piety in the Schools*, *BOSTON GLOBE*, May 19, 1982 ("Nothing in the Constitution shall be construed to prohibit individual or group prayer in public schools or other public institutions").
 92. *See, e.g.*, Dennis Hevesi, *Cortines Moves to Devise New Multicultural Curriculum*, *N.Y. TIMES*, Nov. 18, 1993, at B3 (describing the controversy over the rainbow curriculum in New York City); *Schools' Books on Gay Families Stir Seattle*, *N.Y. TIMES*, Nov. 2, 1997, at 1 (describing the controversy over a bid by Seattle Councilwoman Tina Podlodowski to put books on gay families in school libraries).
 93. Kenneth L. Karst, *Law, Cultural Conflict, and the Socialization of Children*, 91 *CAL. L. REV.* 967, 971 (2003).
 94. I note that this is not a completely free choice as the costs of private education and home schooling can be prohibitive, yet the courts do not address this issue in their jurisprudence.
 95. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).
 96. *Meyer v. Nebraska*, 262 U.S. 390 (1923).
 97. *Wisconsin v. Yoder*, 406 U.S. 205 (1972).
 98. *Pierce*, 268 U.S. 510.
 99. *Id.* at 535.
 100. *Id.* at 534.
 101. *Meyer*, 262 U.S. at 402.
 102. *Id.* at 400.
 103. *Id.* at 403.
 104. *Wisconsin v. Yoder*, 406 U.S. 205 (1972).
 105. *Id.* at 209, 210-11.
 106. *Id.* at 213-214.
 107. *Id.* at 224.

108. *Id.* at 235.
109. *Compare* *Mozert v. Bd. of Educ.*, 827 F.2d 1058, 1070 (6th Cir. 1987) (Kennedy, J., concurring), *with* *Mozert v. Bd. of Educ.*, 827 F.2d 1058, 1073 (6th Cir. 1987) (Boggs, J., concurring).
110. *Mozert*, 827 F.2d 1058 (6th Cir. 1987)
111. *Id.* at 1060.
112. *Id.* at 1061-1062. (“Mrs. Frost identified passages from stories and poems used in the Holt series that fell into each category. Illustrative is her first category, futuristic supernaturalism, which she defined as teaching ‘Man As God.’ Passages that she found offensive described Leonardo da Vinci as the human with a creative mind that ‘came closest to the divine touch.’ Similarly, she felt that a passage entitled ‘Seeing Beneath the Surface’ related to an occult theme, by describing the use of imagination as a vehicle for seeing things not discernible through our physical eyes. She interpreted a poem, ‘Look at Anything,’ as presenting the idea that by using imagination a child can become part of anything and thus understand it better. Mrs. Frost testified that it is an “occult practice” for children to use imagination beyond the limitation of scriptural authority. She testified that the story that alerted her to the problem with the reading series fell into the category of futuristic supernaturalism. Entitled ‘A Visit to Mars,’ the story portrays thought transfer and telepathy in such a way that ‘it could be considered a scientific concept,’ according to this witness. This theme appears in the testimony of several witnesses, i.e., the materials objected to ‘could’ be interpreted in a manner repugnant to their religious beliefs.”)
113. *Id.* at 1062.
114. *Id.* at 1069 (quoting *Bethel Sch. v. Fraser*, 478 U.S. 675 (1986)).
115. *Id.* at 1069.
116. *Id.* at 1070, 1067.
117. *Id.* at 1071 (Kennedy, J., concurring).
118. *Fleischfresser v. Directors of Sch. Dist.*, 15 F.3d 680 (7th Cir. 1994).
119. *Id.* at 683.
120. *See* *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) (establishing the following test for alleged violations of the establishment clause: to pass muster, a challenged state action must (1) have a secular purpose, (2) have a primary effect that neither advances nor inhibits religion, and (3) not foster excessive state entanglement with religion.)
121. *Id.* at 688-89.
122. *Id.* at 690.
123. *Id.*
124. *Id.* (quoting *McCullum v. Bd. of Educ.*, 333 U.S. 203, 235 (1948) (Jackson, J. concurring)).
125. *Bd. of Educ. v. Pico*, 457 U.S. 853, 864 (1982) (quoting *Ambach v. Norwick*, 441 U.S. 68, 76-77 n. 6 (1979)).
126. *Id.* at 870 (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967)).
127. *Case v. Unified Sch. Dist.*, 908 F.Supp. 864 (1995) (acknowledging that “[t]he plurality decision in *Pico* is not binding precedent . . . however, this is the only Supreme Court decision dealing specifically with the removal of books from a public library.”).
128. *Id.*
129. *Id.* at 870.
130. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988)
131. *Id.*
132. *Id.* at 283.

133. *Virgil v. Sch. Bd.*, 862 F.2d 1517, 1518 (11th Cir. 1989) (The controversial passages were Chaucer's *The Miller's Tale* and Aristophanes' *Lysistrata*).
134. *Id.* at 1525 ("We decide today only that the Board's removal of these works from the curriculum did not violate the Constitution. Of course, we do not endorse the Board's decision. Like the district court, we seriously question how young persons just below the age of majority can be harmed by these masterpieces of Western literature. However, having concluded that there is no constitutional violation, our role is not to second guess the wisdom of the Board's action.").
135. *McCarthy v. Fletcher*, 207 Cal. App. 3d 130, 145-46 (1989).
136. *Id.* at 144. The court identified particularly suspect statements in the factual record reflecting the administrators motives in excluding the books such as "[t]his book is designed to break down a student's belief in God, government and the basic respect for the dignity of people" or that it is "negative ... to the Catholic religion." *Id.* at 141.
137. *Id.* at 146. The Education Code section 44806 enumerates what the Legislature has determined those concerns to be in California. This section provides that "Each teacher shall endeavor to impress upon the minds of the pupils the principles of morality, truth, justice, patriotism, and a true comprehension of the rights, duties, and dignity of American citizenship . . . to teach them to avoid idleness, profanity, and falsehood, and to instruct them in manners and morals and the principles of a free government." *Id.*
138. Candice A. Hughes, *Children and Adoption*, in CHILDREN'S NEEDS: PSYCHOLOGICAL PERSPECTIVES, 14-15 (Alex Thomas & Jeff Grimes eds., 1987).
139. Lansing Wood, *A Look at Adoption Today*, in ADOPTION AND THE SCHOOLS 8-10 (Lansing Wood & Nancy Ng eds., 2001).
140. NATIONAL ADOPTION INFORMATION CLEARINGHOUSE, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, ADOPTION AND SCHOOL ISSUES, available at http://naic.acf.hhs.gov/pubs/f_school/f_school.pdf (1993).
141. *Id.*
142. See, e.g., Robert D. Nachtigall, M.D., & Gay Becker, Ph.D., *Secrecy - The Unresolved Dilemma of Donor Insemination*, National Infertility Association, at <http://www.resolve.org/main/national/pro/secrecy.jsp> (last visited Oct. 27, 2005) (explaining that studies show that the majority of DI parents do not plan to tell their offspring how they were conceived.); News Release, University of Surrey, News Release of Research Carried Out by University of Surrey Psychologists Published in Human Reproduction (Aug 31, 2000), available at <http://www.surrey.ac.uk/news/releases/8-3100dono.html> (explaining a Swedish survey that found that at the time of questioning only half of parents were complying with their country's laws by telling or intending to tell their child about its biological origins).
143. See *infra* APPENDIX II.
144. See *infra* APPENDIX I.
145. See Amy Klatzkin, *How I Explained Adoption to the First Grade*, ADOPTIVE FAMILIES MAG., Mar.-Apr. 2001, at 24, available at <http://www.adoptivefamilies.com/articles.php?aid=238>.
146. NATIONAL ADOPTION INFORMATION CLEARINGHOUSE, *supra* note 140.
147. See Nanette Gartrell, M.D., et. al., *The National Lesbian Family Study: 3. Interviews With Mothers of Five-Year-Olds*, 70 AM. J. OF ORTHOPSYCHIATRY 542 (2000) (finding that despite their mothers' efforts to shield them from the harsh realities of discrimination, 18% of the index children had experienced some form of homophobia on the part of their peers or teachers by age 5).

148. *See infra* APPENDIX II; Pat Johnson, *Speaking Positively; Using Respectful Adoption Language*, in ADOPTION AND THE SCHOOLS 19-21 (Lansing Wood & Nancy Ng eds., 2001) (quoting a short poem by Rita Laws which humorously points out the negative impact of insensitive adoption language: “Four Adoption Terms Defined. Natural Child: any child who is not artificial. Real Parent: any parent who is not imaginary. Your own child: any child who is not someone else’s child. Adopted Child: a natural child, with a real parent, who is all my own”).
149. NATIONAL ADOPTION INFORMATION CLEARINGHOUSE, *supra* note 140.
150. *See infra* APPENDIX I.
151. *See* Nancy Ng, *A Forest of Family Trees, Inclusive Assignments Help Everyone Learn*, in ADOPTION AND THE SCHOOLS 75-92 (Lansing Wood & Nancy Ng eds., 2001).
152. *See* Pat Johnson, *Adopt-a-Confusion: How Using Adoption to Catch Attention, Touch Heartstrings, and Raise Big Bucks Exploits Children Who were Adopted and Those Waiting for Permanency*, in ADOPTION AND THE SCHOOLS 22-24 (Lansing Wood & Nancy Ng eds., 2001).
153. NATIONAL ADOPTION INFORMATION CLEARINGHOUSE, *supra* note 140.
154. *Id.*
155. Lansing Wood, *Understanding Adoption, Young Adolescent years: Ages 11-15*, in ADOPTION AND THE SCHOOLS 43-46 (Lansing Wood & Nancy Ng eds., 2001).
156. *Id.*
157. *See infra* APPENDIX I.
158. Lansing Wood, *Understanding Adoption, Young Adolescent Years: Ages 16-22+*, in ADOPTION AND THE SCHOOLS 48-50 (Lansing Wood & Nancy Ng eds., 2001).
159. *Id.*
160. *See* Judith Kaplan et. al., *Literature Review of School-Family Partnerships*, North Central Regional Educational Laboratory, at <http://www.ncrel.org/sdrs/pidata/pi0ltrev.htm> (last visited Oct. 27, 2005).
161. This bibliography was compiled from sources and editorial text from the following websites: *Adoption In Children's and Young Adult Books*, Cynthia Leitich Smith, at <http://www.cynthialeitichsmith.com/adoption.html> (last visited Oct. 27, 2005); Wendy E. Betts, *Reading Rainbow: Gay and Lesbian Characters and Themes in Children's Books*, Notes from the Windowsill, at <http://www.windowsill.net/gaybooks.html> (last visited Oct. 27, 2005); *Lists of Books and Videos for Children about their conception via IVF, Third Party Reproduction, Non-traditional Families, and Adoption*, CNY Fertility Center, at <http://www.cnyfertility.com/childrensbooks.htm> (last visited Oct. 27, 2005); ADOPTION IN THE SCHOOLS (Lansing Wood & Nancy Ng eds., 2001).
162. ADOPTIVE FAMILIES, POSITIVE ADOPTION LANGUAGE, available at www.adoptivefamilies.com/pdf/PositiveLanguage.pdf; *see also* Pat Johnston, *Adoption Language*, Comeunity, available at <http://www.comeunity.com/adoption/adopt/adopt-language.html>.