

UNDER GRACE:¹ LEGAL ISOLATION AND THE CHILDREN OF THE OLD ORDER AMISH

By Jennifer Lavoie*

Largely defined by their isolation, the Amish have carved out pockets in which self-policing communities shun intrusion and view modernity as contrary to their dogma. Born into these insular communities, most children of the Old Order Amish will know only a Plain² life. This life entails simplicity in worship, dress, lifestyle, and work. Amish parents' religious beliefs dictate what experiences or practices are acceptable and few Amish children stray from such restrictions.³ Because of their idiosyncratic isolation, the Amish have been granted exceptions from certain laws,⁴ and the seclusion inherent to Amish life impedes the enforcement of others. These factors converge to create unique legal issues for Amish children.

For the Amish, religion is not simply professed, but lived; every action is devotional. Sins, even otherwise legally punishable acts, are confessed to God before the entire community. Once forgiveness has been sought, the issue is deemed resolved.⁵ To confront someone with a matter that they believe is only between God and the sinner is itself, a separate sin. Transgressions against God or the community are punished through *meidung*, or public shunning.⁶ Although this, too, varies in severity depending on the group—some treat it as a mere formality, while others enforce the ban as absolute—the temporary excommunication can mean up to six weeks of no social contact whatsoever.⁷ Shunning is meant to be redemptive; those who have broken their baptismal vows are isolated until they have atoned for their sin.⁸

Thus, Amish children do not avail themselves of the protections of the State. Not only are they often unaware of laws intended to protect them, but if they become aware, they rarely report violations.⁹ Child labor laws, for example, are not a consideration in Amish communities. According to Amish tradition, children are trained and supervised until competent.¹⁰ Working on a rural farm can be dangerous, and even though care is taken, the Amish do not prohibit children from participation in hazardous employment. Children injured do not report violations because they are taught that the community resolves issues, and they are loath to become an informant against their families. In 1998, responding to fines for labor violations, the Amish sought a Congressional exemption from child labor laws.¹¹ A bill was subsequently signed into law in 2004.¹²

State intrusion into Amish affairs is infrequent. Officials are alerted to problems only rarely and experience considerable resistance during investigations.¹³ Moreover, the public perception of the Amish is that of an idiosyncratic but peaceful and law-

abiding people, which afford the Amish certain legal exemptions. Some exemptions, such as their exemption from Social Security, affect Amish children only tangentially. Others directly affect Amish children, such as the Supreme Court decision in *Yoder*, which permitted Amish parents to withhold education from their children.¹⁴

In 1968, several Amish parents were convicted for failing to send their children to school. Although Wisconsin requires education to the age of sixteen, their tradition was to educate children only to the eighth grade. More education, they argued, caused arrogance, as it elevated an individual's intellectual interests over their community involvement and constituted a deterrent to salvation.¹⁵ Another reason cited when Amish parents

sought exemption for their children from mandatory attendance requirements was that exposure to modern culture in high school would introduce an unacceptable value system at a critical stage of development.¹⁶ As one Lancaster woman argued, "The more they know, the more apt they are to leave."¹⁷

The Supreme Court determined that compulsory attendance requirements unduly burdened the parents' free exercise of religion.¹⁸ Since everything the Amish do or refrain from doing is dictated by their religious beliefs, activities that would otherwise be secular became religious observances. Justice Burger also noted that few, if any, other sects or religions could successfully make such an argument.¹⁹ The decision in *Yoder* represents only the fifth time the Supreme Court granted a free exercise exception beyond those protected by the speech clause.²⁰

The Supreme Court previously held that a religious conviction does not nullify the state's authority within a family unit and explicitly permitted legal restriction of a parent's rights in areas such as child labor or mandatory school attendance,²¹ yet the *Yoder* decision stands. Thus the state's compelling interest in the education of Amish children is subsumed by their parents' constitutionally-protected religious beliefs. *Yoder* is so fact-specific to the Amish that it would be of little precedential value for other religious groups,²² but opens the door for further exceptions, if the Amish choose to claim them.

Even so, the Amish are hardly a litigious group poised to exploit their unique circumstances. In the decades since *Yoder*, there has not been a rush of policy-changing suits. Yet no group, however quaint, is immune from problems. When such problems arise, it is perhaps inevitable that a self-policing group that perceives "the force of law as contrary to the Christian spirit"²³ will present significant and troubling deviations from the law.

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The most striking example of a harmful deviation from the legal protection within Amish sects is the communities' response to sexual assault. Although it may contradict the popular idea of Amish lives as ones of idyllic simplicity, there are problems of statutory rape, child molestation, and incest within these insular communities. Local shelters and counseling centers have had to tailor education programs to target victims who rarely, if ever, enter schools or hospitals where such assaults might be recognized.²⁴

The problems common to prosecuting sexual battery charges are exacerbated in the Amish community. Reports of rape are discouraged in Amish communities.²⁵ When charges are filed, entire villages refuse to cooperate with investigations,²⁶ and witnesses are ordered not to testify.²⁷ One investigating officer lamented, "The moment we approach them as police, they shut up, the whole clan."²⁸ Victims find little support or opportunity for recovery and are punished for making their experiences public.²⁹

Circumstances are even more dire for those who report sexual abuse while still minors. When Anna Slabaugh, 13, reported her brothers were raping her, adults in her community threatened and beat her. Even when, as punishment for coming forward, Anna's mother and an Amish man removed all her teeth, Anna was never taken into protective custody.³⁰ Browbeaten into rescinding the accusations, she eventually ran away from her community.³¹

Similarly, Mary Byler, who until recently was a member of an Amish community in Wisconsin, was raped by her older cousins and brothers from the time she was six until she turned seventeen.³² When she sought help from her mother and clergy, she was rebuffed with instructions to fight and pray harder. Her neighbors blamed Mary for her brothers' actions and she was forbidden to discuss the subject. She was told, "He says he's sorry and you have to forgive him."³³ When Mary finally filed a police report, her brothers were arrested. One eventually was sentenced to eight years in prison; the other received ten years of probation, with one year of nights spent in county jail.³⁴

At Mary's rapists' sentencing, a large contingent of friends and family showed up to support the young men³⁵ who had already served their Amish punishment of shunning.³⁶ Mary, for her part, may no longer contact her family or childhood friends; her church voted unanimously to excommunicate her.³⁷ Soon after Mary filed her report two more women from her church came forward to report their own cases of assault.³⁸

In another case, Norman Byler molested several of his daughters and granddaughters over the course of three decades. He was eventually prosecuted and sentenced to five years in prison, but despite the terms of his release, was returned to the same family members he molested.³⁹

Victims must choose between aiding in the cover-up of their own assault or banishment and losing contact with everyone they

know.⁴⁰ Even if their attacker is convicted and imprisoned, many victims must accept their rapist back into the congregation upon release.⁴¹ With their community united in silencing them, and the state unwilling to interfere in the sphere of "The Gentle People,"⁴² young victims of sexual abuse truly have nowhere to turn.

It would be unfair to characterize the entirety of Amish society by the actions of a few. Many Amish single out childrearing as the single most important aspect of their life and entire communities participate in preparing children for adulthood.⁴³ Even those who leave the church acknowledge that Amish life is fulfilling for most born into it.⁴⁴

The decision to abandon their heritage is a harrowing one, yet some Amish do so for the sake of their children. Genetic disorders, in particular, are common among the Amish—a result of centuries of intermarriage.⁴⁵ When their children are ill and treatment is available and conflicts with the *ordnung*, some parents must choose between their children and their religion. Iva Byler left her community, her husband, and her two healthy adult children so that she might obtain treatment for her three youngest daughters who were stricken with a rare crippling disease with no known name or cure.⁴⁶

Ananius and Delia Stutzman chose to remain in their religious community when their daughter, Mary, was diagnosed with leukemia. The Stutzmans believed the illness was God's will. They would have preferred to keep her at home with their six other children, administer homeopathic remedies, and try to keep her comfortable until death—which doctors estimated to be only weeks or months away, if she remained untreated. Instead,

a Michigan judge ordered that Mary receive a spinal tap and chemotherapy. With treatment, doctors testified, she stood a 65% chance of surviving to middle age.⁴⁷

The Stutzmans objected to modern medical treatment for Mary on the grounds that it was excessively intrusive, destroyed healthy cells along with

the bad, and presumed to contravene God's will.⁴⁸ Not all Amish reject Western medicine, although their use of it remains selective.⁴⁹ The complexity of treatment, or use of electricity, is not at issue. Rather, they emphasize that although medicines may help the ill, only God can heal.⁵⁰ Amish parents do seek preventative medicine for their children, though not to the extent that mainstream Americans utilize medical care.⁵¹

In *People v. Pierson*,⁵² the Court of Appeals of New York found a man who believed disease should be cured only by divine intervention criminally liable for the death of his daughter. The Supreme Court held that the right to practice religion freely does not include the liberty to expose the community or a child to disease, ill health, or death,⁵³ parents must safeguard both society and their children. Nevertheless, Amish children are less likely to be vaccinated than their counterparts.⁵⁴

Although no religious tenets specifically forbid vaccines,

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most Amish parents choose not to immunize their children.⁵⁵ In 1979, America's last significant polio outbreak swept through Amish communities in Iowa, Wisconsin, Missouri, and Pennsylvania.⁵⁶ At that time, the Amish were almost entirely unvaccinated. Many sought immunizations, yet five more cases of polio were detected in a Minnesota community in 2005.⁵⁷ Public health officials traveled door-to-door, seeking permission to test for the disease and entreating people to vaccinate. Nevertheless, fewer than twenty children were vaccinated of a two hundred-person village.⁵⁸

Although the faith itself is not founded upon the absence of conveniences, the culture created by the Amish is so bound to religious observances that Amish belief and Amish life are indistinguishable. Thus, under the free exercise clause, both receive protection. Consequently, the Amish exist not only outside the modern world, but outside its laws, as well.

Perhaps any inherent inequality in the enforcement of laws is preferable to the alternative. Any attempt to remedy disparities may spawn new, equally troubling problems. Certainly the importance of free exercise should be clear. Applying religious freedom to all but the Amish would be an even more problematic exception than what currently exists.

While some Amish would argue that intrusion through more regulation or enforcement could end the Amish way of life, surely some issues are remediable, without mortally wounding Amish existence. Mere tradition need not subrogate the well-being of Amish children. Strict enforcement of child labor laws could be economically disastrous for the Amish, but engaging children in hazardous activities is not fundamental to a Plain life. Blaming the victim and concealing sexual battery is neither desirable nor a central feature of a religious community.

ENDNOTES

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¹ In *Romans* 6:14, Paul argues that the saved need not concern themselves with the laws of man, for the only edict that should govern them is the will of God. "Sin shall have no dominion over you, for ye are not under the law, but under grace."

² FREDRIC KLEES, *THE PENNSYLVANIA DUTCH* 11 (The Macmillan Company 1950).

³ Thomas J. Meyers, *The Old Order Amish: To Remain in the Faith or to Leave*, 68 *MENNONITE QUARTERLY REVIEW* No. 3, 390 (July 1994).

⁴ See *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (holding that Amish children cannot be compelled by the State to attend high school past age 16 due to the constitutional provisions in the first and fourteenth amendments).

⁵ Nadya Labi, *The Gentle People*, *LEGAL AFFAIRS* (Jan. 2005), http://legallaaffairs.org/issues/January-February-2005/feature_labi_janfeb05.msp; see also, Ed Hoskin, *A Question of Justice in Amish Community*, *LACROSSE TRIB. MAR.* 28, 2004, <http://www.lacrossetribune.com/articles/2004/03/28/news/00lead.txt>; Barbara Pinto, *Sex Abuse Case Shocks Amish Community* (ABC News television broadcast Oct 22, 2004), available at <http://openweb.tvnews.vanderbilt.edu/2004-10/2004-10-22-ABC-10.html>.

⁶ KLEES, *supra* note 2, at 31.

⁷ DONALD KRABILL, *THE RIDDLE OF AMISH CULTURE* 133 (John Hopkins Press 2001).

⁸ *Id.* at 137.

⁹ Brad Igou, *2002 Amish Series: People of Peace, Victims of Violence*, *AMISH COUNTRY NEWS* (2002), <http://www.amishnews.com/amisharticles/peopleofpeace.htm>.

¹⁰ Brad Igou, *The Traditional Family and the Amish*, *AMISH COUNTRY NEWS Pt. 1* (2001), <http://www.amishnews.com/amisharticles/traditionalfamily.htm>.

¹¹ Steven Greenhouse, *Foes of Idle Hands, Amish Fight Child Labor Rule*, *N.Y. TIMES*, Oct. 18, 2003, at A9.

¹² Consolidated Appropriations Act, 2004, Pub. L. No. 108-199 (allows Amish teenagers to work in apprenticeships once they have completed their formal education).

¹³ Labi, *supra* note 5.

¹⁴ *Yoder*, 406 U.S. at 207.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Labi, *supra* note 5.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Prince v. Massachusetts*, 321 U.S. 158 (1944).

²² William P. Marshall, *The Case Against the Constitutionally Compelled Free Exercise Exemption*, 40 *CASE W. RES.* 357, 367 (1990).

²³ Labi, *supra* note 5.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Labi, *supra* note 5.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Labi, *supra* note 5.

³⁴ Barbara Pinto, *Sex Abuse Case Shocks Amish Community* (ABC News television broadcast Oct 22, 2004).

³⁵ *Id.*

³⁶ Labi, *supra* note 5.

³⁷ *Id.*

³⁸ *Id.*; see also, David E. Yoder, *Equal Protection Clause in Jeopardy in the State of New York*, *Amish Abuse* (Aug. 22, 2004), <http://www.amishabuse.com/byler.htm>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Yoder v. Wisconsin Dep't of Corr.*, 03-C-193-C, 2004 U.S. Dist. LEXIS 4915, at *12 (W.D. Wis. Mar 11, 2004).

⁴² JOHN HOSTETLER, *AMISH SOCIETY*, 83 at 343 (John Hopkins Press 1963) (1993).

⁴³ Igou, *supra* note 9.

⁴⁴ RUTH IRENE GARRETT & RICK FARRANT, *CROSSING OVER: ONE WOMAN'S ESCAPE FROM AMISH LIFE* (Harper Collins 2003).

⁴⁵ HOSTETLER, *supra* note 41, at 328-31.

⁴⁶ *Genetic Disorders Hit Amish Hard* (CBS News television broadcast June 8, 2005), <http://www.cbsnews.com/stories/2005/06/08/6011/main700519.shtml>.

⁴⁷ Shantell M. Kirkendoll & Ken Palmer, *Chemo Begins for Amish Girl*, *FLINT JOURNAL* (Apr. 22, 1999), <http://www.rickross.com/reference/general/general46.html>.

⁴⁸ *Id.*

⁴⁹ HOSTETLER, *supra* note 41, at 322-28.

⁵⁰ Richard Pletcher, *Amish Children in the Hospital* *Amish Acres* (Nov. 18, 1998), http://www.amishacres.com/aa_farmstead/miscellaneous/amish_children_hospital.htm.

⁵¹ HOSTETLER, *supra* note 41, at 326-28.

⁵² *People v. Pierson*, 68 N.E. 243, 244 (N.Y. 1903).

⁵³ *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944).

⁵⁴ Alicia M. Fry, *Haemophilus influenzae Type b Disease Among Amish Children in Pennsylvania: Reasons for Persistent Disease*, 108 *PEDIATRICS* 4 (2001).

⁵⁵ Gardiner Harris, *Five Cases of Polio In Amish Group Raise New Fears*, *N.Y. TIMES*, Nov. 8, 2005 available at <http://www.nytimes.com/2005/11/08/national/08polio.html?ex=1289106000&en=3dd9b31a55c475b0&ei=5088&partner=rssnyt&emc=rss>.

⁵⁶ David Brown, *Polio Outbreak Occurs Among Amish Families In Minnesota*, *WASH POST*, Oct. 14, 2005, at A03.

⁵⁷ Harris, *supra* note 54.

⁵⁸ Brown, *supra* note 55.