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Problematizing Home Education: Challenging ‘Parental Rights’ and ‘Socialisation’

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ABSTRACT

In the UK, Home Education, or home-schooling, is an issue that has attracted very little public, governmental or academic attention. Yet the number of children home educated is steadily increasing and has been referred to as a 'quiet revolution'. This article neither celebrates nor denigrates home educators, its aim, rather, is to identify and critically examine the two dominant discourses that define the way in which the issue is currently understood. First, the legal discourse of parental rights, which forms the basis of the legal framework, and secondly a psychoanalytical/common-sense 'socialisation' discourse within which school attendance is perceived as necessary for healthy child development. Drawing on historical, doctrinal human rights and psychoanalytical sources and post-structural and feminist perspectives, this article suggests that both discourses function as alternative methods of governance and that the conflicting 'rights claims' of parents and children obscure public interests and fundamental questions about the purpose of education.

INTRODUCTION

“When I was seven, a big thing happened. A lady came to talk to my mother from the town school, wanting to know when I was going to enrol in the first grade. The law on this wasn’t clear, but it was the normal thing to do.”¹

[add: not a description of the law . . . nor a discussion of the arguments for and against home education . . .]

In the UK home education, or home schooling,² is an obscure issue that has attracted very little academic, government or public attention³. There are no national statistics recording the number of children home educated and the legal framework, and the central role of local education authorities (LEAs) within it, has remained effectively unchanged for over 130 years. Moreover, while a child's right to education⁴ and, although to a lesser

¹ Eva Hoffman, *The Secret* (Secker and Warburg, 2001), p 17.

² Home education in the context of this article refers solely to situations where children of school age are educated at home because the parents choose, for whatever reason, have chosen not to send them to school. It should not therefore be confused with home tuition, which refers to education within the home provided by local education authorities.

³ Education law texts no reference (Ruff?) or two lines . Harris, Bainham - incorrectly suggest that the introduction of the National Curriculum has made it harder. Petrie only one plus Childright . . . – very in favour; law texts one sentence, a footnote Governemmt guidance ; Halsbury’s Law

⁴ See for example S.Hart, C.Cohen, M.Erickson and M. Flekkoy (eds) *Children’s Rights in Education*

extent, the compulsory nature of education and the absence of children's rights within schools⁵ have been the focus of much concern, the existence or legitimacy of a child's right to attend school, as distinct from a right to education, has largely been overlooked⁶. In a context of increased concern about educational standards, growing recognition of 'children's rights', 30 years of almost continual and radical education legislation (with an extensive diminishing of LEA powers⁷) and more broadly at a time when childhood, the home and education are perceived as key sites of governance for the future well being of society,⁸ the 'silence' about this issue is perhaps surprising. To a certain extent it can be explained by the fact that it is an issue that affects a small number of children; recent estimates suggest that up to 14,000 children, only 1.5 per cent of the school population, are currently home educated⁹. However issues which affect similar numbers of children, for example school exclusions, teenage pregnancies and the education of 'looked after' children, have attracted a vast amount of media, government and public attention¹⁰. Consequently the relative silence surrounding home education can not be explained by numbers alone and, arguably, more accurately reflects the fact that it is currently not perceived as a social or educational 'problem' - either in terms of the educational and social developmental well being of the children home educated or in terms of broader public interests.

The aim here is not to argue that home education is an, 'undiscovered' form of child harm or abuse that requires and legitimises the state to override the parental right to home educate. This is not to dismiss concerns about home education or to suggest that the right to experience school life is not one that should be taken seriously but to recognize that to label home education as harmful would be an oversimplification and in particular would in effect be to claim and to impose a universal knowledge of childhood and of what is 'in the best interests of the child' and such a claim would overlook both the state's interest in education and the complexities of the concepts of child harm and abuse¹¹. Rather the aim here is to critically examine by reference to legal, historical,

(Jessica Kingsley Publishers, 2001)

⁵ T. Jeffs, 'Children's Rights in a new ERA?', in B. Franklin (ed) *The Handbook of Children's Rights* (Routledge, 1996); D. Monk, 'Children's rights in education – making sense of contradictions', (2002) *Child and Family Law Quarterly* 14(1): 45-56.

⁶ An exception to this is Andrew Bainham who argues that 'to deprive a child of the experience of school life would, in itself, be a denial of children's rights and a failure to discharge parental responsibility': *Children: the modern law* (Family Law, 1999, 2nd Edn) at p 542.

⁷ Paul Meredith, 'The Fall and Rise of Local Education Authorities' XX(I) (1998) *Liverpool Law Review* 41.

⁸ N. Rose *Governing the Soul* (Routledge, 1989); A. Prout, 'Children's Participation: Control and Self-Realisation in British Late Modernity' (2000) 14 (4) *Children and Society* 304; C. Jenks, *Childhood* (Routledge, 1996).

⁹ Richard Garner, 'Rising number of parents decide they can do a better job than the education system', *The Independent* 28 January 2002. These figures are provided by Home Education UK – a leading charity in this area. In 1995 LEA records suggested that the figure was 8000 (0.09 percent) – double the number in 1988; however as Petrie argues these figures only record those children that the LEA is aware of.

¹⁰ The number of permanent exclusions in 1997 was estimated to be around 14 000: *Truancy and School Exclusion Report*, Social Exclusion Unit, 1998. The number of teenagers becoming pregnant in 1997 was 90,000 the number of under 16s becoming pregnant (ie those of school age and below the age of consent) was 7,700 and of these only 3,700 resulted in births: *Teenage Pregnancy*, Social Exclusion Unit, 1999, at p12. The absence of any national figures moreover serves to reinforce this view; for surveillance and the accumulation of knowledge of a subject does not construct a problem but, rather, as techniques of government reflect already problematised issues.

¹¹ D. Archard, 'Can child abuse be defined?', in M. King (ed) *Moral Agenda's for Children's Welfare* (Routledge, 1999).

comparative and psychoanalytical material the contingent basis of *both* the parental right to home educate *and* the popular and widely held claims regarding the ‘socialization’ benefits of schooling. The aim is not to arbitrate between these two conflicting claims but to explore how the ‘legal’ discourse of the former coexists with the ‘common sense’ discourse of the latter; how both discourses function as alternative methods of governance; and how the rights claims of both parents and children can be used to mask public interests. It concludes by assessing possible future developments.

A RIGHT TO HOME EDUCATE?

The existence of a parental ‘right’ to home educate, the statutory basis of which is explained in detail below, is firmly established in domestic law. Commentaries that address this issue offer uncritical support;¹² but more frequently the validity of the parental ‘right’ is simply not debated. Instead, the case law and the legal commentaries that address the issue of home education at all, focus solely on the content and form of the educational provision which home educators should provide and on the powers of local education authorities to monitor the provision.¹³ Important issues are at stake here; for example, the extent to which, if at all, home educators should be required to comply with the National Curriculum and whether or not local education authorities have the power to enter the home to inspect facilities. With regard to the National Curriculum, Neville Harris and Andrew Bainham have argued that its introduction has made the likelihood of parents being permitted to home educate ‘unlikely’,¹⁴ or ‘well-nigh impossible’¹⁵. Yet while some LEAs may use the National Curriculum as a basis for assessing the suitability of the education provided by parents there is no statutory basis for this and indeed some parents opt for home education specifically to avoid the National Curriculum. The significant point here is that while emphasising or extending the conditions attached to the ‘right’ to home educate might serve to restrict the number of parents who are able to exercise their ‘right’, the legitimacy of the basic right remains unquestioned¹⁶. However, a closer examination of the legal provisions, their historical foundations and of human rights and comparative perspectives suggest that this ‘right’ is more complex and significantly less fundamental than it might appear.

Historical Perspectives and the Current Law

The current statutory basis for the ‘right’ to home educate is Section 7 of the Education Act 1996. This provision requires that:

The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable –

- (a) to his age, ability and aptitude, and
- (b) to any special educational needs he may have,

12 A.Petrie, ‘Home education and the law’ (1998) *Education and the Law* Vol 10 (2-3): 123-134, at p 134; A.Petrie, ‘Home Educators and the Law within Europe’ (1995) *International Review of Education* Vol 41 (3-4) 285-296; Paula Rothermel and Alison Fiddy, ‘The law on home-education’ (2001/2) *ChildRight* Vol 181: 19-20, at p 19; A.Thomas, *Educating Children at Home* (Cassell, 1998).

13 *Bevan v Shears* [1911] 2 KB 936; 80 LJKB 1325; *Harrison v Stevenson* (1981) Unreported no 729/81; *Baker v Earl* [1960] Crim LR 363; *H v United Kingdom* (1984) Application No 10233/83 DR 105.

14 Andrew Bainham, *Children: the modern law* (Family Law, 1999, 2nd Edn) at p 542.

15 Neville Harris, *Law and Education: Regulation, Consumersim and the Educational System* (Sweet and Maxwell, 1993), at p 209.

16 See however Bainham op cit n 6 at p 542.

either by regular attendance at school or otherwise.

It is the final two words, ‘or otherwise’, that establish the lawfulness of home education as they create a crucial distinction between *education* and *school attendance* and establish that only the former is compulsory. There is therefore no explicit statutory reference to a parental right to home educate. Strictly speaking the provision in the first place imposes an *absolute duty* on parents to provide suitable education for their child and then provides them with a right to choose how to comply with this duty. Moreover, subsequent provisions make clear that it is for the local education authorities and not the parents to determine what is or is not a ‘suitable’ education.¹⁷ The expression ‘or otherwise’, which is not defined by statute, is understood to refer not simply to home education but to a variety of non-school environments, such as hospitals and pupil referral units and to home tuition provided by local education authority employees. Collectively these alternatives to school based education are commonly referred to as ‘education otherwise’. The expression ‘or otherwise’ was first used in the Education Act 1944. However its origins can be traced to the Elementary Education Act 1870, which required parents of children aged between 5 and 13 to ‘cause such children to attend school’ but provided that a ‘reasonable excuse’ would be where ‘the child is under efficient instruction *in some other manner*’¹⁸. That the expression ‘in some other manner’ referred to situations where parents chose to educate their children at home, is clearly established by the case law.¹⁹

However in *R v West Riding of Yorkshire Justice, ex p Broadbent* [1910]²⁰ a school board - the precursor to local education authorities - attempted to challenge the lawfulness of home education. This is the only recorded case in which the right to home educate is challenged. The fact that a school board in 1910 was willing to challenge a parent’s right to home educate is significant as it serves to remind us that this right is not unquestionable. This is all the more notable because it is clear from the facts of the case that it was home education *per se* and not the content and form of education that was at stake here, as it was acknowledged by all parties that the children in question were receiving instruction which was more effective and advanced than that which they would receive in the local school. The case concerned the prosecution of a father under the Elementary Education Act 1876 for failing to send his two daughters to the local school. Under the 1876 Act the only statutory defences were sickness, unavoidable cause and that the school was not within 2 miles of the home²¹ - unlike the earlier 1870 Act there was no mention of ‘efficient instruction in some other manner’. However the 1876 Act did contain a general provision that stated that definitions under that Act should be interpreted in the same way as those in the earlier 1870 Act. The case came before Chief Justice Alverstone²² who rejected the argument of the local school board. In his judgment he commented that:

‘The case is one of difficulty and the material sections are obscure. I am not certain that it is possible to give very clear reasoning for the construction which I put upon the section we have to consider . . . *but it would be a very strong thing*

¹⁷ Education Act 1996 s 437 (1).

¹⁸ Elementary Education Act 1870 s 74 (1).

¹⁹ See for example, *Bevan v Shears* [1911] 2 KB 936. This and other pre 1944 cases are still cited in discussions of the present law and consequently it is suggested that there is no substantive distinction between the expressions ‘in some other manner’ and ‘or otherwise’. It has not been possible to establish the reason for the change in terminology.

²⁰ *R v West Riding of Yorkshire Justice, ex p Broadbent* [1910] 2 KB 192.

²¹ These defences have remained unchanged, see Education Act 1996 s 444.

²² Ref to him . . . not a great jurist . . . Ray Cocks!

to wholly deprive the parent of the right to give efficient elementary instruction to his own child . . . and I think it would require clearer language than the section contains to deprive him of that right (at p 197).

In reaching this conclusion Alverstone relied on two earlier cases which had held that in determining prosecutions of parents for school non-attendance cases it was open for the courts to interpret 'reasonable excuses' in a broad manner and that in doing so they were not limited by the statutory excuses. Neither of the cases related to home education. The first concerned a child who was working to support her family, or in the words of the judge: 'discharging the honourable duty of helping her parents',²³. The second concerned a child who was failing to attend school out of his own choice, or 'wandering' as the case describes it, and where the justices held that 'a labouring man could not be expected to employ a servant to conduct his child to school',²⁴.

Tracing the 'right to home educate' back to 1870, rather than taking 1944 as the starting point, is significant for a number of reasons. In 1870, unlike in 1944, home education was a 'normal' form of education for upper and middle class children, especially for girls and the learning of basic skills by working class children to a certain extent was still compatible with certain forms of child-labour. Consequently, in 1870 the equating of 'education' as synonymous with 'school attendance' was still evolving. Moreover, compulsory education itself was perceived as an unjustifiable infringement of a father's right, indeed as late as 1859 JS Mill wrote that while the educating of one's child, 'is unanimously declared to be the father's duty, scarcely anybody, in this country will bear to hear of obliging him to perform it'.²⁵ The motive for state intervention in 1870 was largely pragmatic, influenced by political and economic concerns. Richard Cross, the then Minister of Education, famously commented that, 'it is time to educate our masters'²⁶ and the Act 'filled in the gaps' left by existing educational provision to ensure that all working class children would be taught the skills considered necessary for economic competitiveness. In many respects it was quite distinct from the far more ambitious Education Act of 1944. Often referred to as the 'Great', Education Act or Butler's Act, after Rab Butler the Minister responsible for its enactment, the 1944 Act is frequently identified as laying the foundation for the modern education system and had an important practical and symbolic role in the development of the post-war welfare state. While it is important not to exaggerate or overstate the extent to which the Act 'revolutionized' public education, and critical commentators have challenged the rhetorical and somewhat nostalgic narratives which surround the Act,²⁷ it did herald a shift in the dominant educational discourses. In particular the 1944 Act envisaged a more interventionist role for the state in educational provision and a commitment to free universal education as a democratic right. Furthermore it cohered with developments in child psychology which emphasized the importance of school attendance for child welfare – an issue explored in more detail below. The shift in political and social thinking about education heralded by the 1944 Act is reflected in judicial decisions about

²³ *The London School Board v Duggan* (1884) XIII QBD 176, per Stephen J at 178.

²⁴ *The School Attendance Committee of Belper Union v Bailey* (1882) IX QBD 259.

²⁵ JS Mill *On Liberty* first published 1859 (Quotation reference: Dent, 1983 at p 175). JS Mill is perhaps one of the most famously 'home educated' individuals. While he argued in favour of compulsory education he was passionately opposed to state control.

²⁶ This in part was a reference to the recent to 1867 Electoral Reform Act that had extended the franchise.

²⁷ Ray Cocks, 'Ram, Rab and the civil servants: a lawyer and the making of the 'Great Education Act 1944'' (2001) *Legal Studies* 21 (1): 15-35; Clyde Chitty *Understanding Schools and Schooling* (Routledge/Falmer, 2002); M Barber *The Making of the 1944 Education Act* (Cassell, 1994).

school attendance. After 1944, the courts, while not using the concept of children's rights, consistently reject parental excuses for not ensuring their children's attendance at school and in doing so explicitly reject earlier decisions decided under the 1870 Act such as those cited by Alverstone CJ in *West Ridings*.²⁸ Similarly, in every post-1944 case relating to other aspects of home education, such as its content and the monitoring powers of LEAs, the courts have consistently decided against parents in support of the LEAs.²⁹ While it is not suggested that the *West Ridings* case would have been decided differently after 1944, it is unlikely that a court would have been able to base its decision as firmly on the principle of parental rights with no mention of the educational or developmental rights of interests of the child. The fact that the right to home education has its roots in the late nineteenth century and received judicial support in 1910 is, consequently, not surprising, but it does raise the question as to whether such an approach is still justifiable in the context of contemporary human rights culture.

Human Rights/Parent's Rights

There is no explicit reference to a right to home educate in human rights law but numerous provisions in international, European and domestic law are relied on to legitimise and uphold the lawfulness of home education. Article 26 (3) of the Universal Declaration of Human Rights 1948 states that:

'Everyone has the right to education . . . Elementary education shall be compulsory . . . Parents shall have a prior right to choose the kind of education that shall be given to their child'.

Article 2 of the First Protocol of the European Convention on Human Rights (now contained in the Human Rights Act 1998 s 1 Sch 1 Pt II art 2) states that:

'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions'

Parental rights in education are also contained in domestic education legislation. Section 9 of the Education Act 1996 states that:

'In exercising or performing all their respective powers and duties under the Education Acts, the Secretary of State, local education authorities and the funding authorities shall have regard to the general principle that *pupils are to be educated in accordance with the wishes of their parents*'.

For supporters of home education these provisions represent unequivocal support for the right to home educate; for while they uphold a child's right to education there is no mention of compulsory attendance at school. Consequently, an attempt to ban or restrict home education can be perceived as an unjustifiable form of state intervention. The representation of home education as an essential civil and parental right is particularly evident in the USA. In the famous case of *Wisconsin v Yoder* the US Supreme Court over-ruled the conviction of members of the Amish community for failing to send their children to school after they had graduated from the eighth grade on the basis that it violated their First Amendment Rights.³⁰ More recently the home schooling movement in

²⁸ See for example *Jenkins v Howells* [1949] 1 All ER 942; *Spiers v Warrington Corporation* [1954] 1 QB 61; *Hinchley v Rankin* [1961] 1 WLR 421.

²⁹ Contrast *Bevan v Shears* [1911] 2 KB 936 and *West Ridings* [1910] 2 KB 192 with later cases of *Baker v Earl* [1960] Crim LR 363; *R v Surrey Quarter Sessions, ex p Tweedie* (1963) 107 Sol Jo 555; *H v United Kingdom* (1984) Application No 10233/83 DR 105; *R v Gwent County Council, ex p Perry* (1985) 129 Sol Jo 737, CA.

³⁰ *Wisconsin v Yoder* 406 US 205 (1972).

the US has become increasingly dominated by the Christian Right movement³¹ and as a result closely associated with wider ‘anti-government’ campaigns which perceive the discourse surrounding ‘children’s rights’ as a thinly veiled liberal and secular threat to family and parental rights and as a means for justifying increased intervention by individual state and particularly federal government³². While the issue has attracted far less attention in Europe, supporters of home education utilize the same rights discourse. For example in Germany, where home education is illegal, parents have sometimes moved to other countries in order to home educate and in doing so they perceive themselves as *political* refugees.³³ From these perspectives the parental right to home educate is not simply a private matter of individual choice but has a broader political significance to the extent that, as Petrie argues, it is ‘an essential part of democracy’³⁴. This perspective clearly draws on a post-WWII model of human rights as ‘liberty’ or ‘negative’ rights where the emphasis is on protecting individuals from the state. This model is particularly evident in the liberal democratic critique of the rigid centralized control of education by totalitarian regimes; for example the censorship of books and the ‘rewriting’ of history by Soviet regimes played an important role in the rhetoric of the cold war³⁵. Similarly, enhancing parental choice and challenging the ‘politicization’ of education by LEAs were both key arguments used to justify the radical changes in education introduced by the 1979-1997 Conservative administrations.³⁶ More recent approaches to human rights have emphasised ‘claim’ rights that require states to adopt a positive role to protect and uphold the developmental rights of children. This emphasis has both required and legitimised expanding educational provision and centralized regulation by liberal democratic states.³⁷ Constructing education as a form of ‘welfare’ enables state involvement to be distinguished from totalitarian control. Consequently, in the context of home education there is a potential tension, familiar to family lawyers, between the ‘liberty’ rights of parents to educate their children as they wish and the ‘claim’ rights of children for the state to protect their right to education and to monitor how parents exercise their duty to provide education. These tensions were considered by the European Commission of Human Rights in the case *Leuffen v Federal Republic of Germany* [1992]³⁸.

Legitimising compulsory schooling and Leuffen v Federal Republic of Germany

³¹ See Mitchell L. Stevens, *Kingdom of Children: Culture and Controversy in the Homeschooling Movement*, (Princeton University Press, 2001); Larry and Susan Kraseman, ‘HR6 and the Federalization of Homeschooling’ (1991) *Home Education Magazine*, January-February. More generally see The US National Home Education Network: <http://www.nhen.org>.

³² Doris Buss, “‘How the UN Stole Childhood’”: the Christian Right and the International Rights of the Child’, in Bridgeman and Monk (eds) *Feminist Perspectives on Child Law* (Cavendish, 2000). More generally on the Christian Right in the US see D Herman *The Antigay Agenda: Orthodox Vision and the Christian Right* (University of Chicago Press, 1997).

³³ A Petrie ‘Home Educators and the Law within Europe’ (1995) *International Review of Education* Vol 41 (3-4) 285.

³⁴ Amanda Petrie, ‘Home education and the law’ (1998) *Education and the Law* Vol 10 (2-3): 123-134, at p 134.

³⁵ J.White, ‘Two National Curricula – Bakers and Stalins. Towards a Liberal Alternative’ (1988) *British Journal of Educational Studies* October 1988: 218-231.

³⁶ N Harris, *Law and Education: Regulation, Consumerism and the Educational System* (Sweet and Maxwell, 1993); Clyde Chitty *Understanding Schools and Schooling* (Routledge/Falmer, 2002); L Bash and D Coulby (eds) *The Education Reform Act: Competition and Control* (Cassell, 1989).

³⁷ D Hodgson *The Human Right to Education* (Ashgate, 1998).

³⁸ *Leuffen v Federal Republic of Germany*, Application No: 00019844/92.

In the Leuffen case the Commission of the ECHR held that a policy of compulsory schooling was compatible with the ECHR. Consequently, it represents an explicit challenge to home educators claims that the right to home educate is a fundamental ‘human right’ of parents and one that is ‘essential for democracy’. However, the case has received little attention, with advocates of home education regrettably, but perhaps not surprisingly, choosing to downplay its significance.³⁹ The facts of the case are straightforward. Renate Leuffen⁴⁰ wished to educate her son Danny (born in 1984) at home. According to the case report, she believed that God had given her the exclusive responsibility and authority to educate her child; that it would be a sin to send her son to a traditional school because of the academic and moral decline in public schools (which would cause her son to be taught obscenities and become a victim of violent behaviour and negative socialisation pressures); and, that formal schooling amounts to child abuse and would be a disaster for her son’s mental and physical health. She was opposed by the Youth Office of the City of Dusseldorf, which appointed a tutor for her son to ensure his attendance at school and threatened to remove the child from his mother by force if necessary.⁴¹ She attempted to challenge their decision in the Dusseldorf District Court (Amtsgericht), Regional Court (Landgericht), Court of Appeal (Oberlandesgericht) and finally at the Federal Constitutional Court (Bundesverfassungsgericht) but was unsuccessful at every level. Having exhausted the domestic remedies she brought a case to the European Commission of Human Rights where her central allegation was a violation of her rights under Article 2 of Protocol No 1 (see above).

In deeming her application inadmissible, the Commission held that the German authorities were justified in their actions as they had established, with the help of expert opinion, that the mother was not able to ensure the education of her son.⁴² In reaching this conclusion it relied on the decisions of the European Court of Human Rights which had held that the child’s right to education takes precedence over any parental right. In *Campbell Cosans v UK* (1982) the court held that ‘the convictions of parents must not conflict with the fundamental right of the child to education, the whole of Article 2 of the first protocol being dominated by its first sentence’⁴³. In *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) the Court described the philosophical basis of the respect for parents’ rights in the following way:

‘it is in the discharge of a natural duty towards their children – parents being primarily responsible for the education and teaching of their children – that parents may require the State to respect their religious and philosophical

39 The only known references to it are by Petrie – but no citation is provided and the Commission’s arguments are not stated: A Petrie, ‘Home education and the law’ (1998) *Education and the Law* Vol 10 (2-3): 123-134, at p 126 and ‘Home Educators and the Law within Europe’ (1995) *International Review of Education* Vol 41 (3-4) 285, at 293.

⁴⁰ Renate Leuffen is in some respects a German equivalent of Victoria Gillick; a catholic, she is a journalist and high profile parent’s rights activist. Her publications include: *Natürlich ohne Schule leben* (Bonn, Germany: Kid Verlag, 1993); *Home Education Today: A Reference Book with Basic Information*, (unpublished manuscript, 1994). (Both cited in Amanda Petrie, op cit 1995). On losing her appeal Petrie informs us that in order to avoid being separated from her son, ‘with the knowledge of Interpol’ she and her son, ‘fled’ to the UK from Strasbourg where with the agreement of Haringey Education Authority she was permitted to home educate: Petrie, 1998 at p 293.

⁴¹ The equivalent legal procedures in England would be a School Attendance Order (Education Act 1996 ss 437, 443, 444) and an Education Supervision Order (Children Act 1989 s 36).

⁴² This fact is disputed by Petrie who states that Leuffen’s ‘ability to home educate was never assessed, the school authorities stating that home education was not permitted’, ‘Home Educators and the Law within Europe’ (1995) *International Review of Education* Vol 41 (3-4) 285, at 293.

⁴³ *Campbell and Cosans v UK* (1982) 4 EHRR 293, ECHR.

convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and exercise of the right to education'⁴⁴.

Thus far, the judgment in *Leuffen* adopts a line of reasoning which in effect reflects the position in the UK; namely that the right to home educate is an aspect of parental responsibility and conditional on the provision of 'suitable' education.

Having established that in this case the mother was not able to ensure the education of her son the Commission could have stopped there. However it went on to hold that Article 2 of the First Protocol, 'does not prevent the State from establishing compulsory *schooling*' (emphasis added). This is significant, for while the article is clear in establishing a right to *education* it makes no reference to *schooling* and the distinction between the two is crucial in the case for home education. The Commission reached this conclusion in the following way. First, it argued that the first sentence of Article 2 of the First Protocol, 'by its very nature calls for regulation by the State'. This interpretation, which emphasises a positive role for the State, is problematic as the article is framed in negative terms; a fact that has been emphasised by the Court in cases where parents have attempted, unsuccessfully, to argue for particular forms of education to be provided by the State⁴⁵. In addition, the positive duty of the State to protect a child's right to education could, arguably, be adequately performed by monitoring the content and nature of home education. This is the approach adopted in the UK and its legality was confirmed in *H v United Kingdom* (1984).⁴⁶

The Commission's second argument focused on the second sentence of Article 2 of the First Protocol, that 'In the exercise of any functions which it assumes in relation to education and to teaching, the State shall *respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions*'. Here it again relied on the judgment in *Kjeldsen* where the Court held that the State was justified in making sex education compulsory against the wishes of parents as long as the aim of such education was to provide 'information' and did not represent a form of 'indoctrination'. Moreover the Court again emphasised the positive role of the State when it held that the purpose of the second sentence was to 'safeguard the possibility of pluralism in education . . . which is essential for the preservation of the democratic society', and that, 'in view of the power of the modern State, it is above all through State teaching that this aim must be realised'. These arguments are problematic. Most strikingly they fail to address the fact that it is precisely because of the power of the modern state that home education is arguably justified. Some parents may choose to home educate in order to inculcate anti-democratic and extremist views in their children – and it is this fear that partly informs the Germany policy – but the motivations of home educators are enormously varied and the absolute ban, as opposed to a conditional right, is not proportionate. In addition, while the Commission relied extensively on the 1979 case of *Kjeldsen* that upheld the lawfulness of compulsory sex education in schools, the Commission failed to note that in *Kjeldsen* the Court referred to the fact that Danish parents who objected to the policy had the opportunity to educate their children at home.

It is regrettable that the Commission did not explicitly explain why the German authorities' policy of compulsory *schooling* was justified, either in relation to the child's right to education or in relation to 'the preservation of democratic society'. This omission

⁴⁴ *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) 1 EHRR 711, ECHR.

⁴⁵ See *Belgian Linguistics* 1968; Appls Nos 6853/74 and 7782/77. For a discussion of other cases see H Mountfield, 'The Implications of the Human Rights Act 1998 for the law of education', (2000) *Education Law Journal* 146-148.

⁴⁶ *H v United Kingdom* (1984) Application No 10233/83 DR 105.

gives credence to the possibility that the Commission simply ‘confused’ schooling with education. As Petrie demonstrates in a survey of comparative literature in this area this confusion is frequently made⁴⁷. However there are two alternative ways in which the jurisdiction of the ECHR could have been applied by the Commission in order to legitimise the German policy of compulsory schooling.

School life = ‘Private Life’

As mentioned above the Commission rejected the mother’s claim that her right to privacy under article 8 of the ECHR had been violated on the basis that it was justified by reason of article 8 (2); namely that the interference was ‘in accordance with the law’ and was ‘necessary for the protection of the rights and freedoms of others’, in this case the protection of the right of the child to education. This approach reinforces the interpretation of article 2 of the first protocol whereby the parental right is deemed secondary to the child’s right. However it is significant that the Commission did not rely on the justification in article 8 (2) that interference with the right to privacy is justified if ‘necessary in a democratic society’.

An alternative and converse use of article 8 would be to argue that denying a child the right to attend school would be a violation of the *child’s* right to privacy. This speculative argument draws on the creative interpretations of ‘private life’ that have been accepted by the European Court of Human Rights; and in particular that it has been deemed to incorporate ‘a right to develop a personality in conjunction with others’⁴⁸. This approach has the advantage of bringing to the fore the crucial distinction between education and schooling. Moreover, as human rights barrister Helen Mountfield has suggested, the use of article 8 in the education field, ‘may be an area which is apt for such development’⁴⁹. In the context of *Leuffen* this approach would however be of limited value as that case concerned the lawfulness of the state imposing a policy of compulsory schooling and there are two important distinctions between this and attempting to establish a child’s right to school life. First the former concerns a power of the State and does not attempt to impose a duty; secondly, in the context of *Leuffen* claiming the right to a school life is not in effect against the State, or a public authority, but against the parent wishing to home educate. To resist this it would be necessary to emphasise both the responsibility of the State to secure the rights protected by the ECHR to everyone in its jurisdiction⁵⁰ and that the parental decision to home educate is a statutory duty and a ‘public function’.⁵¹

Schooling = Education

The second argument in support of compulsory schooling introduces the value or issue of socialisation. If the socialisation benefits of school attendance, such as social skills and interpersonal development, are understood to form part of the right to education under Article 2 of the First Protocol then it can be argued that *no* parent is capable of ensuring the education of his or her child at home and that in effect school attendance is essential

⁴⁷ Amanda Petrie, ‘Home Educators and the Law within Europe’ (1995) *International Review of Education* Vol 41 (3-4) 285-296.

⁴⁸ *Niemetz v Germany* (1992) 16 EHRR 97, at para 29.

⁴⁹ H Mountfield, ‘The Implications of the Human Rights Act 1998 for the law of education’, (2000) *Education Law Journal* 146-148, at p 149.

⁵⁰ Such an approach was used in the case of *Costello-Roberts v UK* [1994] ELR 1 against an independent school’s policy of corporal punishment.

⁵¹ See H Mountfield *op cit* for a more detailed discussion of the meaning of ‘public authorities’ in the context of education cases.

for 'education'. This approach relies on two assumptions. First, that social and developmental benefits form part of the right to education and secondly that only school attendance can provide this broad form of education.

Authority for a broad definition of education can be found in a number of sources. Most importantly the second sentence of Article 2 of the First Protocol refers to both 'education' and 'teaching' and in the case of *Campbell and Cosins* the two words were given distinct meanings. The Court argued that 'education' included, 'the development and moulding of the character and mental powers of its pupils' and referred to, 'the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young, whereas 'teaching' or instruction refers in particular to the transmission of knowledge and to intellectual development'⁵².

Support for a broad definition of education can be found in the UN Convention on Children's Rights 1989 and in UK domestic law. Article 29 of the UN Convention on Children's Rights 1989 states that, 'the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential'. In domestic law there is no clear definition of education but the Secretary of State, local education authorities, governing bodies and head teachers are required to ensure that the curriculum is:

'balanced and broadly based; promotes the spiritual, moral, cultural, mental and physical development of pupils at school and of society; and prepares pupils for the opportunities, responsibilities and experiences of adult life'⁵³.

This duty however does not apply to parents and in the case law regarding definitions of 'suitable' education there is no reference to social or developmental aspects rather a narrow traditional skills based approach is adopted⁵⁴. Indeed the House of Lords recently held that a regime that kept a pupil in complete physical isolation from all staff and other pupils of the school was acceptable.⁵⁵ This is in contrast to the approach adopted by the German domestic courts when rejecting Leuffen's appeals where the benefits of school attendance per se were emphasized. The Dusseldorf Court of Appeal argued that Leuffen's 'refusal to send her son to school was an abuse of her right to care for her son and *gravely endangered his mental and emotional health and development*', and that, 'Compared to the education provided by a single person, conventional schools had the advantage of contributing to the child's *ability to interact successfully on a social level*'. Similarly the Federal Constitutional Court stressed 'the importance for children to have school certificates and *learn social behaviour*' (emphasis added).

While there is strong support for a definition of education that incorporates 'socialisation', the second assumption, that it is only school attendance and not home education that can best provide for this broad form of education, is far more problematic. Assumptions about socialisation are crucial to establishing that school life is part of the right to education but in order to explore them it is necessary to look beyond law.

⁵² *Campbell and Cosans v UK* (1982)

⁵³ Education Act 1996 s 351 (1)(a), (b).

⁵⁴ See for example, *R v Carmarthenshire County Council, ex p White* [2001] ELR 172; *R v Vale of Glamorgan County Council, ex p J* [2001] ELR 223, QBD. Beyond these cases psychological care and social development is emphasized now in the context of PSHE and citizenship – but linked to skills – not an end in itself: D Monk (2002) Children's Rights in Education - making sense of contradictions, *Child and Family Law Quarterly* Vol 14 (1): 45-56. Beyond law this broad definition of education finds support in philosophical justifications for education: C Wringe (Quoted in Fortin p 131) *55 Re L (a minor by his father and litigation friend)* [2003] UKHL 9.

‘SOCIALISATION’

Concerns about the psychological and social developmental effects or implications of home education are widely held. An example of these concerns are the statements made by the German authorities in the Leuffen case quoted above. QUOTE ALSO FROM NEWSPAPER ARTICLE CONCERN by UK expert!!!]. However these concerns are not limited to ‘expert’ or officials, for anecdotal evidence suggests that these concerns are frequently the initial response to the issue. They can also be detected in a variety of popular narratives about home-educated children. One example is the media reporting of ‘gifted’ children such as Ruth Lawrence who like her are always home educated. In these accounts the ‘praise’ for their precocious examination successes are quickly followed by a thinly veiled expression of concern, twinned with a degree of *schadenfreude*, about their lack of friends and inability to interact with their peers⁵⁶. Similarly the obituaries of Princess Margaret frequently implied that her isolated home education was in part the cause of her unhappiness in later life⁵⁷. While being exceptionally ‘gifted’ and ‘royal’ are arguably the prime causes of these individuals distinctive ‘otherness’, what is significant in this context is the extent to which in these popular narratives home education is clearly identified as having exacerbated the ‘harm’ deriving from their ‘difference’ by failing to temper it. The clear message underlying these stories is that attending school is the ‘normal thing to do’. Despite the fact that mass school attendance in Western countries is a relatively recent phenomenon, and globally still far from universal, school attendance is perceived as an almost essential component of the experience of childhood. It is this premise that underlies assertions of the existence of a ‘right to school life’, for as the critical theorist Erica Burman argues, ‘childhood becomes an entity, the deprivation of which constitutes a violation of human rights’⁵⁸. Within this cultural paradigm home education does not simply describe an alternative form of education but a practice that robs a child of childhood. The largely unquestioned assumptions about the benefits of schooling attest to the ‘self-confidence and tenacity of contemporary western notions of childhood’⁵⁹. Moreover, commencing school represents a rite of passage of emotional, as much as educational significance and one that informs individual subjectivities; as Susie Orbach writes, ‘For many of us, long out of school, the rhythm of the year still starts in September’⁶⁰. Similarly, school reunion web sites and school uniform parties reflect what Jenks describes as the adult nostalgia in late modernity for childhood,⁶¹ but they also reinforce the importance of school as a key spatial and temporal marker of childhood and

56 See for example Danny Leigh comparing his own experiences with that of Lawrence: ‘Adolescence in all its sordid, humiliating glory was calling; but not for Ruth, busy disappearing in a quicksand of perpetual scholarship and arrested development’, ‘Ruth and me’, *The Guardian*, May 10, 2000. See also E Addley, ‘Are the kids all right?’, *The Guardian*, August 24, 2001 and S Hattenstone and E Brookes, ‘I’m not Crbaby Soo-Fi any more’, *The Guardian*, July 7, 2000. **In the Ruth Lawrence the case the father took responsibility for her education – unusual as generally the mother . . . another form of transgression. . . point to look at later . . . quote from him . . . depriving her of a childhood!.**

57 **Conversely sending of members of the royal family to schools was perceived as move towards normality. . . Ben Pimlott**

58 E Burman, ‘Innocents abroad: Western fantasies of childhood and the iconography of emergencies’ (1994) 18 *Disasters* 238, p 242.

59 H. Hendrick, ‘Constructions and Reconstructions of British Childhood: An Interpretative Survey, 1800 to the Present’, in A James and A Prout (eds) *Constructing and Reconstructing Childhood* (London: Routledge Falmer, 2nd edn, 1997), at p 34.

60 Susie Orbach, ‘Starting School’, in *What’s really going on here? Making sense of our emotional lives* (Virago, 1994).

61 C Jenks *Childhood* (Routledge, 1996).

the concerns about home education similarly attest to limits to *legitimate* childhood spaces for socialization. For while ‘socialisation’ is seen to be an important aspect of child development when it takes place at a time or place that is perceived as inappropriate then it is a problem to be dealt with. Curfew orders and truancy patrols are most recent attempts. Consequently upholding the school as a legitimate childhood space for socialization reflects a prevailing cultural resistance to constructing children as anything other than family members or school pupils.

In theoretical terms these concerns about the socialization of home-educated children (which are quite distinct from academic skills) represent a ‘common sense’ knowledge claim, an ‘a priori’ claim to truth. This is to say that it represents a dominant and largely unquestioned knowledge which functions as a powerful discourse that defines ‘normality’ (in this case that school attendance is normal and that school makes you normal). The self-evident/unquestionable status of this common sense is reinforced by silences. The relative silence about the increase in home education, the erroneous but frequent equating of education with schooling⁶² whereby the right to education becomes synonymous with a right to attend school and in doing so renders home education invisible. Most strikingly, while the rhetoric of enhancing parental choice, participation and partnership in education has been emphasized and celebrated by Conservative and New Labour governments – the option of home education has been notably absent from official discourses.

Opposite of silence!!!! . . see them!!!

A final indicator or evidence of the power of the common sense knowledge and assumptions about the benefits of school can be detected from listening to home educators themselves. They often speak of themselves in transgressive terms as, ‘free range educators’⁶³ and ‘trailblazers’⁶⁴ and a number of their key texts in the UK are published by the ‘Educational Heretics Press’⁶⁵. The use of language here is significant as it represents a defiant acknowledgment of the fact that they are challenging deeply embedded norms. They also use the language of political dissidents and refugees; this enables them to draw on the discourse of rights but also indicates a perception of themselves as a discriminated – almost persecuted - minority.⁶⁶ The construction of this minority group status is reinforced by the existence and development of an increasingly well organized national and international community which campaigns, networks and provides support for home educators.⁶⁷ Moreover within this ‘community’ the parents often speak of themselves as becoming home educators not simply as parents who home educate.⁶⁸ It becomes an identity and not simply an activity and the implications of becoming a home educator frequently go beyond the education of their children. For example in many of the narratives of the parents the decision to home educate is spoken

62 M. Freeman, ‘Children’s Education: A Test Case for Best Interests and Autonomy’, in Davie and Galloway (eds) *Listening to Children in Education* (David Fulton Publishers, 1996).

63 Free rangers . . .

64 Roland Meighan, *The Next Learning System: and why home educators are trailblazers* (Educational Heretics Press, 1997)

65 Roland Meighan, *The Next Learning System: and why home educators are trailblazers* (Educational Heretics Press, 1997); Jan Fortune-Wood, *Doing it their way: home based education and autonomous learning* (Educational Heretics Press, 2000).

66 Petrie!

67 Examples of web sites . . . publications organisations . . European and US!

68 Book review chapter 4 . . becoming

of in emancipatory life changing terms. However home educators are enormously diverse and it is important not to characterize them as a monolithic group. Amongst them are Christian right traditionalists and new age hippies who are unlikely to have anything else in common. Yet it is this very diversity that makes the construction of an identity and the development of a community more striking and can be understood to represent what Foucault has described as a 'reverse discourse' (Foucault) which is both a response and a result of the marginalization of home educators from the mainstream and reflects the extent which their choice to home educate challenges dominant norms.

Foucault's concept of a 'reverse discourse' is often associated with queer theory and lesbian and gay studies has been utilized most often in the context of queer and and this analogy has further significance in the context of home educators in particular in exploring the different responses to the issue of socialization amongst home educators themselves. Home educators not surprisingly refute the allegations about the potential harm caused by home education. In a review of research into the issue Medlin, while acknowledging the weaknesses in the methodology of the research, argues that home educated children participate in more activities of their wider communities than schooled children and grew up to be functional and happy in their chosen lives⁶⁹ . . see also Petrie . . overwhelming!!!!. Underlying the home educators claims are two distinct approaches. First in arguing that home education does not harm their children they emphasis that their children develop and function 'normally' (in this respect they emphasis friendships, interaction with peers and academic and work achievements. Alongside this approach are more radical claims that in effect their children are 'better socialized'; in this respect they emphasise that their children, compared to children who attend school, mix with a wider range of people and crucially are not restricted by age to in their social interaction. There are similarities here with the strategies adopted by lesbian mothers⁷⁰; where there is a similar tension as the strategic need to emphasise their normality can result in a reluctance to publically celebrate the radical transformative potential. While lesbian mothers claim that their parenting can challenge the gendered assumptions of the traditional family ; home educators argue that they challenge the ageism of dominant educational practices. A further similarity is the approach towards privacy . . both claim right to privacy and the right to bring up children as they wish; a sort of leave us alone . . at the same time some home educators wish to challenge the silence about the issue and argue that more parents should be informed about the fact that they have the choice and freedom to home educate. (see here repated references in h-e literature to: 'it is your right'; don't believe people who tell you you can not do it, or that it is too difficult'). The tension here is between a desire for visibility and privacy – significantly this highlights the limits to the private/public understanding of the issue.

This 'common sense' functions as a mode of governance which is quite distinct from the traditional juridical control. For while in Germany where home education is forbidden by law parents wishing or attempting to home educate are criminalized in this country parents who choose to home educate are perceived at best as somewhat eccentric or odd and at worst with a degree of suspicion and unease - to a certain extent both achieve similar ends – the norm of school attendance but in distinct ways.

69 R G Medlin, 'Home Schooling and the Question of Socialization', 2000 *Peabody Journal of Education* 75 (1) and (2) 107-123.

70 in Bainham, Richards and Day Sclater (eds) *What is a Parent? A Socio Legal Analysis*, Hart, 1999

Looking Beyond Common Sense

Despite the common sense perception that attending school is necessary for child development there appears to be remarkably little evidence or research to support this claim, rather school attendance simply appears to be ‘the normal thing to do’. However in attempting to identify a basis for the perception that home education may be harmful and more particularly in attempting to trace a genealogy of the ‘common sense’ view important clues can be found in the work of the psychoanalysts John Bowlby and Donald Winnicott.

The work of Bowlby and Winnicott has had a tremendous influence on modern understandings of child development and on parental identities and practices. In particular Bowlby’s thesis of ‘maternal deprivation’ and Winnicott’s pro-natalist approach emphasised the importance of the mother-child bond and the dangers of early separation. In the context of family law their influence is reflected in the assumption in residence disputes that young children need to be with their mothers⁷¹. Feminist and social constructivist critics of Bowlby and Winnicott have demonstrated that while this represented a shift from paternal rights to a child centred approach it simultaneously reinforced an essentialist construction of mothers as ‘innately’ nurturing and how in the post WWII era their work reinforced a

‘powerful ideology of the centrality of motherhood that supported the intentions of the government of the day to reconstruct “the family” as the cornerstone of a stable and prosperous society⁷²’.

However in the post war era alongside the family, state education was also perceived to be a key ‘cornerstone of a stable and prosperous society’ – and this is particularly evident in the ideology underlying and almost iconic status of the Great Education Act 1944⁷³. While Bowlby and Winnicott are perhaps best known for their identification of the importance of the mother-child bond in this context what is significant is that they also, albeit in different ways, emphasise the importance of breaking this bond in ways that arguably can be read to implicitly support compulsory school attendance. In short while parent and in particular mother-child ‘separation’ is problematised to support the new family, ‘attachment’ is problematised to support the new education system.

In Bowlby this understanding is most apparent in his writings on ‘school phobia’ or school refusal⁷⁴. Before addressing school phobia Bowlby takes pains to distinguish it from truancy; and in doing so demonstrates the potential problems of both anxious attachment and traumatic separation. In instances of truancy, he argues that children do not express anxiety about attending school and that truants ‘often steal or are otherwise delinquent’ and ‘commonly come from unstable or broken homes and have experienced long/and or frequent separations or changes of mother figure’ (300). So in connection with truancy we have the classic Bowlby approach blaming it on mothers and separation.

However in cases of school phobia he states that ‘Relations between child and parents are close, *sometimes to the point of suffocation*’ (emphasis added) p 300). What is immediately clear here is his linking of school phobia not with the school but once again with parenting. This point is made far more explicitly later when he states authoritatively

71 Jonathan Herring, ‘The Welfare Principle and the Rights of Parents’

72 Day Sclater, Bainham, Richards, ‘Introduction’ in Day Sclater, Bainham, Richards (eds) *What is a Parent? A socio Legal Analysis* (Hart, 1999).

73 See Cocks, Ozga

74 John Bowlby, *Attachment and Loss. Volume 2 Separation: Anxiety and Anger* (Penguin, 1978, first published 1973 Hogarth Press and The Institute of Psycho-Analysis).

that:

‘At an empirical level there is substantial agreement among . . . many authors, both in regard to the personalities, behaviour, and symptoms presented by the children and in regard to the personalities, behaviour, and symptoms presented by the parents. Furthermore, there is widespread agreement that what a child fears is *not* what will happen at school, but leaving home . . . almost all the students of the problem conclude that the disagreeable features of school, for example a strict teacher or teasing or bullying from other children, are little more than rationalizations (301).

Bowlby then proceeds to contrast this with what he describes as genuine phobias and argues that school phobia is consequently ‘an obvious misnomer’ and instead identifies its causes within four different models of ‘anxious attachment’. Within all these models the mother is key – although Bowlby does acknowledge that in rare circumstances it may be the father that is to blame. In the first model, which Bowlby argues is the commonest and may be combined with the others, the mother is a sufferer from chronic anxiety regarding attachment figures and retains the child at home to be a companion; in the other models the child fears that something dreadful will happen to the mother while he is at school and so remains at home to prevent it happening or the mother fears that something will happen to the child while he is at school and so keeps him at home or the child fears that something dreadful will happen to himself if he is away from home and so remains at home to prevent that happening.

Bowlby’s approach to school phobia is significant in relation to home education in general. For while school phobia or refusal is only of the many reasons why parents choose to home educate the motives of any parent or mother that attempts or expresses a desire to home educate are immediately suspected of being an indication of a pathological condition of the mother and not a rational assessment of her child’s best needs. In this way his work is arguably a basis of the collective common sense suspicion and unease that home educators provoke. More generally Bowlby’s refusal to see the school as in any way responsible reinforces the perception of schooling as inherently normal and unproblematic. In this respect there are similarities again with the feminist scholarship in family law nuclear family –as attempts to raise awareness of the potential harms and dangers to children within both the nuclear family and within schools causes unease and has been strongly resisted as they pose a threat to the social and political investment and construction of them as child friendly and child appropriate spaces⁷⁵. Indeed in relation to the school it is only in the last couple of years that bullying has been identified as a problem that needs to be addressed and that school refusal has been acknowledged to be a rational reaction to school.

In Winnicott’s work the home and the school represent distinct but mutually supportive sites or spaces for child development. This is most evident in his explanation of early years through the binary concepts of Excursions and Returns and of Loyalty and Disloyalty. Underlying both concepts is an understanding of the home and in particular of the mother-child bond as a uniform natural state from which the child gradually moves away from towards the father and the external objective world in order to develop as an independent individual. Within this framework Excursions away from the mother enable the child to discover the objective world but for healthy development in the early years a child needs to Return from them and merge again with the subjective environment

75 Monk, ‘Education Law/Educating Gender’ in Bridgeman and Monk (eds), *Feminist Perspectives on Child Law* (Cavendish, 2000).

represented by the relationship with the mother. Similarly in relation to Loyalty and Disloyalty, which Winnicott argues is a necessary conflict inherent in child development, the relationship within the family and especially with the mother should ideally provide the immature child with 'a situation in which loyalty is not expected' (137). School life, in contrast to the family, requires group discipline and while Winnicott argues that children have different needs and that there is no right age at which children should go to school he implies that the Excursion to school and the Loyalty that it requires are necessary for healthy development. Indeed he argues that 'the school can provide tremendous relief for the child living in the family' (139). The reference here to 'the school' is significant to the extent that it echoes his references to 'the mother' and 'the family' and in this way reinforces the construction of the school as an institution that requires no definition that it exists prior to discourse. Moreover he echoes Bowlby's idealized view of the home and simultaneous concerns about anxious attachment in his approach to the early pre school years as he argues that,

'When in doubt the child's home is the place where the richest experiences can be reached, but one has to be always on the look out for the child who, for one reason or another, cannot be creative in imaginative play until he or she spends a few hours each day outside the family'. (139)

In relation to both Bowlby and Winnicott it is important to make clear that while they pathologize parents who challenge the school and support school attendance neither of them explicitly address the issue of home education nor can their work be understood as simply justifying government policies. Indeed to the extent that Winnicott challenges a set age for compulsory education and argued that in relation to the early years 'in any one neighbourhood all kinds of provisions should be available' (139) his approach conflicts with both the contemporary and current legal and educational policy. Moreover the 'child centred' perspective which they both championed, while problematic to the extent that it bonded the child, 'only to "good" or "bad" parents, not to being a member of a wider community or kin network'⁷⁶, arguably played an important part in the recognition of the potential conflict between parents' rights and child welfare and the development of the children's rights movement. Indeed it is their child centred focus that informs their implicit concerns about home education.

It is however important not to reduce their work to a binary school education = good; home education = bad division. Both are more complex and in particular have been criticized and corrected by institutional reflexivity of their disciplines.

Consequently while their work can be used as a scientific basis for the knowledge claim about home education and socialisation its continued existence as a dominant discourse and its reduction to a simple binary truth claim is more complex.

Arguably it is maintained by through an uneasy alliance between professional interests of educational psychologists and teachers; a public demand for authoritative scientific answer in the face of the uncertainties of late modernity – where as Jenks highlights childhood is a site for particularly need for certainty. (At its extreme Wendy Brown describes this persistence faith in science as reactionary foundationalism') and, finally, broader political and economic interests in education.

In relation to this last 'interest' the failure of Bowlby and Winnicott to relate the child to the broader community is important as it implicitly silences mention of class and reduces education to a welfarist provision – excluding other educational discourses that have

⁷⁶ Juliet Mitchell and Jack Goody, 'Family or Familiarity?', in Day Sclater, Bainham, Richards (eds) *What is a Parent? A Socio Legal Analysis* (Hart, 1999).

arguably been more significant and influential in the provision of public education AND by doing so reinforces the notion of schooling as an essential good for all children. . . [At the same time in exploring the connection between their work and educational policies and common sense perceptions it is important to locate both in a broader political and historical context]. For while their understanding of healthy functional child development lends credence to and coheres with a policy of encouraging school attendance the reverse isn't true ie it does not mean that concerns about child development are or were the primary or sole motive underlying the provision of education by the state and the enforcement of school attendance. In this context it is informative to remember that at the time of the Elementary Education Act 1870 not only did psychoanalytic accounts of child development not exist but for the upper and upper middle classes home education for girls and boarding schools were the norm – both forms of education that conflict with current notions of healthy child development as informed by Bowlby's attachment/separation thesis. The motive for state intervention in 1870 was largely political and economic – as Richard Cross the then Minister for the Board of Education remarked at the time 'It is time to educate our masters'. Moreover where concern about mental development can be identified it was in terms imbuing a prescriptive traditional morality. Consequently in explaining the prescribing in 1870 of the age of 5 as the age for compulsory education – which remains unchanged today – it is not Bowlby or Winnicott's ideas about the mother child bond that were relevant. After 1944 it is possible to see the social or internal welfare of the child becoming a more significant factor in education policy. The fact that while prior to this date all cases relating to home education were decided in favour of the parents and that after 1944 the courts have consistently supported LEAs supports the view that a more child centred perspective entered the legal and political discourses at this time. However it is possible to view the increased intervention and regulation of education by the state – supported by courts - not so much as a post-war recognition of the social developmental role of education but as being informed by similar motives as the legislators of 1870; in other words the primary motives underlying, for example, the introduction, of the National Curriculum, citizenship lessons and to a certain extent even PSHE has arguably more to do with political and economic concerns than with psychoanalysis.

A further and particularly significant indication of the marginality of social or developmental concerns in educational policy is the reluctance of the state to intervene in private or independent education. The norm of home education and boarding schools in 1870 provides clear evidence of this as does the concern of the judges in *Bevan* in 1910 that central prescription of the curriculum for home educators may impact on public schools. Moreover while the 1944 Act was heralded as providing education for a new society – research into the drafting of Act reveals how public schools were again protected from intervention by the state⁷⁷.

Acknowledging the public interest in education is not fatal to the case for compulsory schooling – socialisation is clearly not the only purpose of education. But there is a risk that the socialisation argument – as a neutral best interests argument – could be used to mask traditional or collectivist and community based public interest concerns, as these concerns might not cohere with all parents or children's aspirations and expectations of education. I'm not suggesting that the public interest based concerns about home education are wrong or illegitimate – but they are inherently political and so distinct from the socialization argument.

Consequently while if the psychoanalysts are right schooling might be in the best

77 Cocks

interests of the child – middle class right.
large extended families!!!!!! . . also 1944 while progressive – not for the middle classes
– their right to educate as they wish upheld (Cocks!)

****IS learning social behaviour necessary for democracy!!! . . . is enforcing collectivity
over individualism . . . ??

CHALLENGES BY HOME EDUCATORS

Eg

Defence –home can provide for this too

Mixing with all generation

Not all learning

Plus - home ed can do this better!

Harm of school – mentally! challenge to age related standards – Piaget

Different question . . rather than is home education harmful . . where does the assumption
about the necessity, the good about schooling come from

Explore the conditions of possibility of the assumptions

CONCLUSION

Both sides claim the rights of the child . . Leuffen . . child's right to education . . not
parents . . H-Eds . . also uphold interests of child . . both overlook the broader interests . .
The left challenges home education in US . . it is anti christian right and pro state, pro
collectivism, enforced plurality . . IN Germany radicals sometimes anti state control here
(penalized hippy commune kids) . . the issue plays out differently in different contexts.
AIM here is to challenge socialization and expert arguments used v home educators not
to support them . . but rather to demand a more political argument that reaches faith and
public schools too.

Demonstrate the problems of relying on socialization arguments . . . because it reconciles
individual liberty with social control

Open up new questions and possibilities . . not to support right wing home educators
(Christina Right in US very keen) . . but to expose the public interest in school - to
improve schools, make them more child responsive . . and other possibilities of education
beyond the school – Hans Magnus Enzensburger . . reconfigure understandings of parent.

Thinking critically about the family and the school

Clear right to compulsory schooling but case for school as child's right needs to be clearer . .
the loss not substantiated . . difference in education?

Why home education tackles key issues in contemporary education policy –
standards/difference . . purpose of education . . . faith schools/private schools . . return to
silence!

Talmud case = future orientated . . .

. . how to open educational discourse to child development – not to ban home education but
to incorporate mental health into defn of suitable both in the home and in the school . .
work on children's experiences

Future developments . . . type of society . . beyond education . . beyond child welfare.

Governance

Schooling AND education . . Enzsensburger . . beyond school

- should govt wish to ban it - one option - unlikely - but still an option!! - what is more likely central control of what is required In E and W at present no question of comp schooling – indeed draft guidance from DFE states that However the issue of defining education - what is suitable is till of importance – because the right, while unquestioned is conditional on . .]

CONCLUSION NOTES . . .see Foucault quote in SLS article . . not a logical progression of history!!!

Petrie . . h-e in UK = commitment to democratic principles . . more complex than that . . motives for education varied . . compul schooling compatible with democracy . . . a bulwark for it . . citizenship etc . . tension between teaching democracy . . . and practising it!!

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