

## CHAPTER 7

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# WHY HOME SCHOOLING SHOULD BE REGULATED

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Everyone now knows that home schooling has gone mainstream in the United States. Once a fringe phenomenon, home schooling is legal in every one of the 50 states and is widely considered the fastest growing sector of K-12 schooling. Because education in the United States is a matter delegated to the states—the U.S. Constitution does not mention education—each state has different provisions for regulating home schooling. This patchwork regulatory environment shows a clear trend across the country, however: regulations that 30 years ago either forbade or strictly regulated home schooling have been lifted or eased. According to the Home School Legal Defense Association (HSLDA), an advocacy group for home schooling that has been instrumental in getting more permissive home school legislation passed in many states, 25 of the 50 states have no regulations governing home schooling except a requirement that parents notify a local public authority that they have set up a home school. Ten of these 25 states do not even require parental notification (Klicka, 2004).

Home schoolers are now a diverse population. No longer the preserve of left wing unschoolers and right wing fundamentalists, the great range of people who have chosen to home school their children make it very difficult to draw even broad generalizations about the phenomenon. Indeed,

it is easy to observe a kind of internecine warfare among the two most prominent advocacy groups, the Christian-based HSLDA and the more secular and inclusive National Home Education Network (NHEN). Nevertheless, one article of faith unites all home schoolers: that home schooling should be unregulated. Home schoolers of all stripes believe that they alone should decide how their children are educated, and they unite in order to press for the absence of regulations or the most permissive regulation possible.

Home Schooling should be a permissible educational option, but I believe that home schooling must be strictly regulated. In this chapter, I shall discuss and defend the need for regulating home schooling far beyond the measures taken in most states today. Regulations are necessary for a number of reasons. These reasons can be usefully classified under two separate headings: theoretical and evidentiary. I proceed by arguing for the theoretical and evidentiary basis for regulating home schooling, and I conclude with a provisional list of appropriate regulations.

### **THE HOME SCHOOL DEBATE**

Let me begin, however, by identifying two very common pitfalls in debates about home schooling. First, arguments in favor of regulating home schooling are not hidden arguments about the virtue of public schools. Nothing I write here is a defense of public schooling in the United States. Indeed, I have argued elsewhere about the need to provide new options to children who are forced to attend failing public schools, and I have defended a version of a school voucher system that would radically reorganize the current system of public education in the U.S. (Reich, 2002, ch. 7). Moreover, my experience with home schoolers leads me to believe that the availability of quality public schools in their neighborhood would not motivate the vast majority of them to send their children into the public school system; they home school for different reasons. Thus, to say that people need permission to home school because the public schools are woeful is a red herring. Second, arguments about regulating home schooling ought not be a war of conflicting anecdotes about home schooling's glorious successes or horrible tragedies that so often make headlines in the United States. To promote unregulated home schooling on the basis that home schooled children often win the National Spelling Bee and annually win coveted admissions spots to Stanford and Yale is poor argumentation. It is equally poor argumentation to defend regulations on home schooling because several children each year are found starved, abused, and even killed by their home-schooling parents. These extreme and unrepresentative cases—both positive and negative—ought not to be

the basis of policymaking, and they distort the public representation of and debate over home schooling. Conservative estimates place the number of home-schooled students in the United States at 1.1 million in 2003 (National Center for Educational Statistics, 2004). It is the vast middle that is worth discussing, the children who do not enroll at Stanford and who have loving, caring parents.

### **THEORETICAL ARGUMENTS FOR REGULATING HOME SCHOOLING**

Home schooling is the education of children under the supervision of parents. In no other educational setting are parents as able to control and direct all aspects of education, for in home schools they are responsible for determining not only what children are taught, but when, how, and with whom children are taught. Home schooling therefore represents the apogee of parental authority over schooling. Unregulated home schooling is nothing less than total and complete parental authority over schooling. The theoretical arguments for regulating home schooling begin from this point, questioning whether the schooling of children should ever be under the total and complete control of parents.

Some will find this a tendentious way of framing the question. Parents, they will say, are the appropriate authority over their children. What needs defending is not parental authority over schooling but whether the state should have any authority over the upbringing of children. So let us ask two separate, but related questions: What justifies, if anything, government authority over the education of children?; and what justifies parental authority over the education of their own children?

It is important here to recognize that parents ought indeed to possess wide-ranging authority to raise their children as they see fit, including wide-ranging discretion over the education of their children. This is so for many reasons, chief among them that parents are responsible for the care of their children and they know their children better than anyone else. Let us take it as given, therefore, that parental authority over their children is legitimate and desirable.

What reason is there, then, to think that the government ought to have any authority over the education of children, an authority that could in certain circumstances curtail the authority of parents? I think there are two answers to this question. Call the first the “citizenship argument” and call the second the “freedom argument.” The citizenship argument seeks to justify providing children with a civic education and thereby avoid the development of civically disabled adults. The freedom argument seeks to justify providing children with an education that cultivates their freedom

and thereby avoid the development of what I will call “ethically servile” adults. Together these arguments justify some state authority over the education of children and rule out total parental control of education.

### Citizenship Argument

The citizenship argument is the most familiar reason for justifying state regulation of schooling, and for this reason I shall only provide the barest outline of it here. Versions of it can be found in a number of important Supreme Court decisions and in state laws governing education (see *Pierce v. Society of Sisters* [YEAR??], *Brown v. Board of Education* [YEAR??], and *Wisconsin v. Yoder* [YEAR ??] decisions). Children are the youngest citizens of the state, and the state has an interest in assuring that children receive a civic education. Citizens are created, not born. And though people differ about what it means to be a citizen and can argue a long time about the catalogue of civic virtues it is proper to instill in children, the point I make here is merely that the state has a legitimate interest in trying to convey some basic ideas about citizenship through schoolhouses. It needs to convey basic facts—the structure of government, some rudimentary history.

And it needs to convey some basic procedures about political participation—that being a citizen carries certain ground rules, such as one person, one vote, that no citizen can be excluded from the political process simply because he or she has different beliefs, or a different color skin. Finally, the state needs to ensure that basic literacy and numeracy is learned so that children can become self-sufficient, productively employed citizens, not relying on the state—that is, on the taxes of other citizens—for support. In short, the state is justified in requiring that all children—regardless of the school they attend, public, private, or home school—receive a civic education.

### Freedom Argument

The freedom argument is more complicated and less evident in legal and legislative history. In this sense it is more speculative. Nevertheless, it is the heart of the moral argument that I believe is most compelling when we consider the need to regulate home schools. Begin from the first principles of a democratic state. One of the chief aims of a democracy—especially a *liberal* democracy, where liberal is understood in its classical not contemporary and partisan sense—is to protect the freedom of individuals. One of the salutary consequences of a liberal democracy that protects

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individual freedom is that the choices individuals make about how to lead their lives lead to social diversity, or value pluralism. It would be shocking if in a society that protected the freedom of individuals it turned out that everyone believed the same thing. Simply put, protecting the freedom of individuals is the main engine of diversity—diversity of religious belief, diversity of belief in general.

Under what circumstances should freedom be limited? The standard classical liberal response is that liberty should be restrained when the exercise of one person's liberty interferes with or harms another person. This is generally called the "harm principle" among philosophers. The liberal democratic state can legitimately pass laws that restrict your liberty to harm other people.

What is key to understand is that liberal democracies enshrine the individual, not groups or collectives. Each child is an individual, and while no liberal democrat wants children to have the same status as an adult, the fact remains that children have the same interest in freedom as adults do. That is, children are born to freedom, though are not born in the condition of being free.

The liberal democratic state therefore ought to protect the interest of children in being free, or as I have put it elsewhere, in becoming autonomous adults (Reich, 2002). The interests of children are separable from the interests of their parents, and the interests of children in becoming free or autonomous—in becoming self-governing and self-determining persons—are as important as the interests of parents in being free or autonomous. Thus, the freedom argument is at bottom about ensuring that children acquire the capacity to lead the lives they wish, to believe what they want to, and to be free, when they become adults, from the domination of other people and institutions (from their own parents as well as from the state). In other words, I seek to prevent both governmental and parental despotism over children, even a benevolent, loving despotism.

What does this have to do with home schooling? The answer is that one of the most effective and least intrusive ways the state has of discharging the obligation to protect and promote the prospective freedom of children—a freedom that they will exercise fully as adults—is to ensure that children receive an education that develops them into free or autonomous individuals, that is to say, persons who can decide for themselves how they wish to lead their lives and what sort of values they wish to endorse. Such an education, I believe, requires exposure to and engagement with value pluralism, the very social diversity that is produced in a liberal democratic state which protects individual freedom. Unregulated home schooling opens up the possibility that children will never learn about or be exposed to competing or alternative ways of life. Home-

schooled children can be sheltered and isolated in a way that students in schools, even sectarian private schools, cannot be. Parents can limit opportunities for social interaction, control the curriculum, and create a learning environment in which the values of the parents are replicated and reinforced in every possible way. With little or no exposure to competing ideas or interaction with people whose convictions differ from their parents', children who are home schooled can be raised in an all-encompassing or total environment that fails to develop their capacity to think for themselves. Parents can control the socialization of their children so completely as to instill inerrant beliefs in their own worldview or unquestioning obedience to their own or others' authority. To put this in language commonly used by political theorists, the capacity of children to "exit" their parents' way of life is undermined and they run the risk of becoming "ethically servile" (see Callan, 1997; Reich, 2002). In short, children become unfree, unable to imagine other ways of living. This is not to say, of course, that home-schooling parents are always motivated to create such total environments, though empirical evidence suggests that a large percentage of home-schooling parents are motivated by a desire to control the moral and spiritual upbringing of their children (National Center for Education Statistics, 2004, p. 3). It is just to recognize that home schooling is the only educational environment in which it is possible to do so.

Let us be honest about the implications here: protecting and promoting the prospective freedom of children by providing them an education that exposes them to and engages them intellectually with the diversity of a pluralist democracy can be threatening to parents. The social critic Bell Hooks has written of her own childhood, for example, "School was the place of ecstasy—pleasure and danger. To be changed by ideas was pure pleasure. But to learn ideas that ran counter to values and beliefs at home was to place oneself at risk, to enter the danger zone. Home was the place where I was forced to conform to someone else's image of who and what I should be. School was the place where I could forget that self and, through ideas, reinvent myself" (Hooks, 1994, p. 3). But these are risks that must be accepted, for children have an interest in being free persons and parents cannot be entitled to ensure that their child grows up to be exactly the kind of person they want her to be.

Thus, the freedom argument leads to the conclusion that the education of children ought to be regulated in such a way as to guarantee that they learn about and engage with the diversity of ways of life in a democracy. Receiving such an education is one very important way the state can attempt to protect and promote the future freedom and autonomy of children. It is also important, I would add, for civic reasons that go beyond what I described in the section above. The reason is that citizenship in a

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culturally and religiously diverse liberal democracy requires that each citizen be prepared to recognize that the values that guide his or her life will not be shared by all other citizens. Therefore, each citizen needs to learn to be able to participate democratically with citizens of diverse convictions.

The justification of state authority over the education of children is rooted in developing children into citizens (or avoiding civically disabled adults) and in developing children into free persons (or avoiding ethically servile adults). This is the structure of the theoretical argument that warrants regulation of home schooling.

### **Evidentiary Arguments for Regulating Home Schooling**

Home schoolers and the mainstream media have publicized the idea in recent years that the academic performance of home-schooled students is better or equal to that of publicly schooled students. Advocates have used various studies to reach the conclusion that home schooling works. But contrary to popular opinion, very little if anything is known about the actual academic performance of the typical home-schooled student, the vast middle that I suggested ought to be the appropriate basis for debates about home schooling. Research on home schooling is in its infancy and what little research currently exists is either of poor quality or is capable of reaching only very limited conclusions. As a result, the very best we can say about the academic outcomes of home schooling is that we have no evidence to suggest that home schooling fails. But neither do we have any evidence that it succeeds.

One would think that the increasing number of home schoolers would attract the interest of both social scientists and policy makers. Home-schooled children, after all, are a larger population than the number of children who attend charter schools, a phenomenon that receives extraordinary attention from researchers, public policy makers, and the media. Why is it that home schooling is so little studied? A large part of the explanation has to do with resistance from the home-school community and the unregulated nature of the enterprise.

Start with one of the biggest problems: the fact that we have no accurate data on what one would think is the truly easy question, the number of children who are home schooled. The U.S. Department of Education study referenced earlier is the most scientifically rigorous and most conservative, pegging the number at 1.1 million in 2003 (NCES, 2004). Brian Ray of the National Home Education Research Institute (an advocacy organization, not an impartial research institute), however, estimates the number at 1.7 to 2.1 million (Ray, 2002). The variation in estimates here

is unusually wide. How can it be that the data is so imprecise? A simple answer emerges. Because home-schooling regulations are either so minimal or so little enforced, many parents do not notify local educational officials when they decide to home school. Recall that 10 states do not even require parents to register their home schools. A great deal of home schooling occurs under the radar, so to speak, so that even if local officials wished to test or monitor the progress of homeschooled students, they would not even know how to locate them. Researchers and public officials have, quite literally, no sense of the total population of home-schooled students. This is the primary obstacle to studying home schooling.

A further concern is that an appalling amount of the research conducted on home schooling and given publicity in the media is undertaken by or sponsored by organizations whose explicit mission is to further the cause of home schooling. Even this very volume contains several chapters by advocates—Brian Ray and Scott Somerville. Of course, that research is conducted by persons whose pay comes from organizations dedicated to promoting home schooling is no reason to reject the findings out of hand. I would suggest, however, that we treat the findings of their research on home schooling in the same way the people treat the research on nicotine addiction funded by tobacco companies: with a very large dose of skepticism.

Consider one of the most widely publicized studies in the home-school research literature, the 1999 report by Lawrence Rudner titled “Scholastic Achievement and Demographic Characteristics of Home Schooled Students in 1998” (Rudner, 1999). Rudner’s study was funded and sponsored by the Home School Legal Defense Association. It analyzed the test results of more than 20,000 home-schooled students using the Iowa Test of Basic Skills, and it was interpreted by many to find that the average home-schooled student outperformed his or her public school peer. But Rudner’s study reaches no such conclusion, and Rudner himself issued multiple cautionary notes in the report, including the following: “Because this was not a controlled experiment, the study does not demonstrate that home schooling is superior to public or private schools and the results must be interpreted with caution” (p. 33).

Rudner used a select and unrepresentative sample, culling all of his participants from families who had purchased curricular and assessment materials from Bob Jones University. Because Bob Jones University is an evangelical Christian university (a university which gained a national reputation in the 1980s for its policy of forbidding interracial dating), the sample of participating families in Rudner’s study is highly skewed toward Christian home schoolers. Extrapolations from this data to the entire population of home schoolers are consequently highly unreliable.

Moreover, all the participants in Rudner's study had volunteered their participation. According to Rudner, more than 39,000 contracted to take the Iowa Basic Skills Test through Bob Jones, but only 20,760 agreed to participate in his study. This further biases Rudner's sample, for parents who doubt the capacity of their child to do well on the test are precisely the parents we might expect not to volunteer their participation. A careful social scientific comparison of test score data would also try to take account of the problem that public school students take the Iowa Basic Skills Test in a controlled environment; many in Rudner's study tested their own children.

Rudner himself has been frustrated by the misrepresentation of his work. In an interview with the Akron Beacon Journal, which published a pioneering week-long investigative series of articles on home schooling in 2004, Rudner claimed that his only conclusion was that if a home-schooling parent "is willing to put the time and energy and effort into it—and you have to be a rare person who is willing to do this—then in all likelihood you're going to have enormous success." Rudner also said, "I made the case in the paper that if you took the same kids and the same parents and put them in the public schools, these kids would probably do exceptionally well" (Oplinger & Willard, 2004, p. 12).

Absent rigorous, social scientific data on the outcomes of home schooling, we are left in the realm of glorified anecdote—the home schoolers who win the National Spelling Bees—and the occasional ethnographic study of small populations of home schoolers (see Stevens, 2001). But neither can give us any picture of whether home schooling works. The very best research on home schooling—the combination of random samples of large populations and ethnographic studies, yields some good information about the reasons why people home school and demographic characteristics of their households. But when we look at the academic performance of home-schooled children, the bottom line is that we know virtually nothing.

Because in the context of this volume I will be seen as a critic of home schooling, I wish to make my point very clear here. I do not suggest that home-schooled children do worse than publicly or privately schooled children. I do not accuse home-school parents of failing to teach their children well. I want to say simply that we know almost nothing about how the average home-schooled child fares academically.

Why does an absence of evidence about the academic outcomes of home schooling lead to an argument in favor of regulating home schools? Children whose parents fail to teach them to read and to write, to be capable of minimum basic skills, are suffering educational harm. In order to be sure that home-schooled children, who have no opportunity to protest

or seek academic assistance elsewhere, do not suffer educational harm, home schools must be regulated.

### **A PROVISIONAL REGULATORY FRAMEWORK FOR HOME SCHOOLING**

Recall that the purpose of these regulations is to help ensure that the state's interest in providing a civic education for children is met, and to protect the independent interest of the child in developing into a free or autonomous adult. The result is that authority over children's education will be shared between parents and the state. Or more precisely, enormous deference ought to be paid to the authority of parents in choosing and supervising the education of their children. So long as the actions of parents do not thwart the education for citizenship or the education for freedom that children ought to receive, the state need not intervene in the educational decisions and actions of parents.

I propose three minimal regulations. The results of the democratic process might yield additional regulations, which would not necessarily be inconsistent with my views, but these seem to me the bare minimum, as follows:

1. All parents who home school must register with a public official. The state needs to be able to distinguish between truants and home-schooled students, and it needs a record that specific children are being home schooled so that its other regulations can be enforced.
2. Parents must demonstrate to educational officials that their home-school curriculum meets some minimal standard. The minimal standard will include academic benchmarks as well as an assurance that children are exposed to and engaged with ideas, values, and beliefs that are different from those of the parents. For instance, every home-school curriculum should include information about a variety of religious traditions (I believe this should be the case, as well, for public and private schools.) Parents are free to teach their children that their own religious faith is the truth, but they cannot shield children from the knowledge that other people have different convictions and that these people are, from the standpoint of citizenship, their equals.
3. Parents must permit their children to be tested periodically on some kind of basic skills exam. Should home-schooled children repeatedly fail to make progress on this exam, relative to their public or private school peers, then a case could be made to compel

school attendance. Label this educational harm. (The same kind of educational harm surely exists in some public schools, of course. And this is one reason that I believe parents should have the authority to hold the state accountable for public schools by pulling their children from failing schools and enrolling them elsewhere.)

In short, these regulations amount to the following:

- The state registers who is being home schooled.
- The state insists upon a curriculum that meets minimal academic standards and that introduces students to value pluralism.
- The state tests students periodically to ensure that minimal academic progress is being made.

Would many home schools be unable to meet these regulations? I suspect not that many, but I do not really know the answer to the question. It is worth finding out, and indeed, as I have endeavored to show, it is both theoretically and practically necessary to regulate home schools. If creating and enforcing regulations would prevent even a few children from suffering educational harm or from receiving an education that stunted or disabled their freedom, the regulations would be worthwhile.

Strictly enforced regulations ensure that parents do not wield total and unchecked authority over the education of their children. What is at stake here is not a question of social utility or stability, whether home schooling could threaten democracy. What is at stake is the justice that we owe children, that they receive an education that cultivates their future citizenship, their individual freedom, and that teaches them at least basic academic skills, skills that are necessary for ably exercising both their citizenship and their freedom.

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The four references citing court decisions are incomplete. See the APA Publication Manual for the correct way of citing court decisions.

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