

# Home-schooling: The Right to Choose

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This article deals with the boundaries of parental rights in Israel from a liberal perspective. Specifically, it argues that 'home-schooling' ought to be recognized by Israeli law and society as a legal and socially accepted alternative to public schooling. Aside from the general arguments that are put forward in favour of legalization of home-schooling throughout Western liberal democracies, it also suggests that in Israel there are additional, specific reasons in support of such a right.

The general arguments presented here in defence of home-schooling concern parental rights and their relationship to the interests of children and society at large. The specifically local argument relates to the existing legal framework and educational practices in Israel, which, as they stand, provide a host of legal and readily available educational alternatives – ranging from various types of sectarian religious schooling to Kibbutz education – some of which are highly controversial. In these circumstances, it is argued that it is inconsistent and discriminatory for the Israeli legal system to uphold a ban on home-schooling.

## HOME-SCHOOLING

As the term implies, home-schooling is a form of child education carried out within the home rather than within any formal school structure, and is supplied and supervised solely by the child's parents (or their direct representatives) rather than by any campus-based school. While in the past children were often educated exclusively at home, whether by their parents or by tutors, in the nineteenth and twentieth centuries state-funded public schools were introduced, and the widespread passage of compulsory schooling legislation soon followed throughout the Western world.

Today, however, an increasing number of children in Anglo-Saxon societies are once more being educated at home by their parents. In the United States, the leading country in this educational experiment (with the United Kingdom following closely behind), it is estimated that there are at present over two million home-schooled children.<sup>1</sup>

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The motivations of American parents in schooling their children at home are extremely varied, as are the form and content of such education where it is implemented.<sup>2</sup> These include religious families – mainly, though not exclusively, Roman Catholics – many of whom oppose the pluralistic-relativistic value system and worldview transmitted by all available forms (state-run and private) of formal schooling;<sup>3</sup> extreme libertarians who object to any state interference in education (that is, compulsory attendance at any type of school), as well as to its public funding;<sup>4</sup> families who live in rural areas far from any formal school; military personnel who spend their lives moving from one military installation to another; handicapped children and highly gifted children whose specific needs cannot be met by the school system; and children whose parents wish to protect them from violent crime within the public school system.<sup>5</sup>

This last motivation for home-schooling is particularly prominent within the US and Canada but recent reports on the growing level of juvenile crime in Israel, particularly within schools, indicate that it may soon become a serious consideration for Israeli parents as well.<sup>6</sup> Finally, in all countries in which home-schooling exists we find parents who might be dubbed ‘elitists’, that is, educated (often highly educated) parents, many of whom are themselves professional educators, who believe they are able, and are entitled to, supply their children with an intellectually superior education to that which they can obtain through any of the formal schooling options available to them.

The methods of parentally supervised education from home are even more varied than are the motives for it. These range from semi-communal schooling organized and implemented by several like-minded parents collectively, to the more common education of one family’s children by their primary care-giver (usually the mother). Accordingly, the educational setting ranges from a small joint classroom attended at fixed hours by members of various home-schooling families (the ‘little house on the prairie’ model, if you will), to a room in the family home designated and equipped for schooling its young, all the way to the unregimented education around the kitchen or dining-room table, the home computer, or television and VCR, with or without specific spatial and/or temporal requirements: that is, learning any time anywhere (and *always and everywhere*) with no specifically designated place or time.

Home-schooling curricula are equally manifold, extending from home-made educational programmes – either designed by individual parents or co-authored with other home-schooling parents – all the way to those obtainable directly from the state’s formal educational system. Home-schooling curricula often comprise, or include, school programmes available via the internet from the many home-schooling sites. Common to all these methods is their sensitivity and adaptability to the individual needs, interests and abilities of the particular pupils.

Similarly, home-schooling is, for all its diversity, characterized by an emphasis on individual attention.

This article concentrates almost exclusively on 'elitist' home-schooling, as it is primarily this brand of home education which has begun spreading outside the United States and which is threatening universal schooling statutes throughout the West.

In Israel, compulsory school attendance legislation was introduced shortly after the founding of the state, requiring children between the ages of 5 and 16 to attend state-run schools – either secular or religious – with practically no exceptions.<sup>7</sup> Nevertheless, the law has, from its very inception, recognized the Kibbutz movement's ideologically motivated communal education of children as fulfilling the legal requirements. More recently, coalition agreements over the past decade have resulted in the expansion and development of an extensive ultra-orthodox educational network that educates children from infancy to third level exclusively in the light of religious beliefs, ways of life and customs. These involve the drastically inegalitarian education of girls and boys, as well as a strong emphasis on religious studies, often at the expense of the sciences and other secular subjects such as foreign languages, culture and current affairs. Such schools remain relatively unsupervised by representatives of the wider, more liberal society, and are not only legal but also publicly funded.

Aside from the variety of legal and state-subsidized educational options open to Israeli parents, parental authority in Israel, as in other countries, encompasses the right to make far-reaching life choices for one's children. Thus, parents may choose to reside (and send their children to school) in particularly dangerous outposts of the country, or they may refrain from inoculating their children against dangerous diseases. They are, however required by law to send their children to public school, even where their motivation for refusing to do so is to furnish them with a superior education from an academic and/or liberal point of view to that which is obtainable within any state-approved framework.

Only recently has Israel's Ministry of Education been forced to deal with this issue and make some provisions for those who totally refuse to send their children to state schools.<sup>8</sup> The resulting legal guidelines for obtaining home-schooling permits are still extremely stringent, complex and invasive, and formulated so as to deter applicants. Social, as well as legal, pressures remain almost insurmountable. Nevertheless, these advancements in Israeli law are welcome.

Unfortunately, beyond the legal educational requirements Israeli society places extreme pressure on parents to enrol even the youngest of children in day-care frameworks of a strong collectivist nature for sizeable portions of the day, even where this is totally unnecessary from the point of view of the parents' work-related needs. The near-coercive social pressure on parents to place their infants in a communal pre-school environment long before

the law requires them to do so is particularly noteworthy in view of the fact that with few, if any, exceptions Israeli nurseries fail by far to live up to the most minimal Western standards of adequate child care.<sup>9</sup>

Despite growing frustration with the shortcomings of Israeli public schools, home-schooling in Israel is at present in its gestation, or at least in its infancy. It is difficult to gauge the number of home-schooling families in Israel, as many still practise this alternative illegally, choosing to evade the law rather than confront its strict regulations.<sup>10</sup> Some home-schooling families in Israel reside in relatively remote settlements, particularly (though not exclusively) in parts of the Galilee and the Jerusalem area.<sup>11</sup> Certainly, the number of home-schooled children in Israel is infinitesimally small in relation to the number of traditionally schooled children and in comparison with this phenomenon in Anglo-Saxon countries.

Nevertheless, it is equally apparent that the number of home-schooling families in Israel is growing rapidly, while legal provisions follow slowly behind.<sup>12</sup> With developments in modern communications which enable many parents to work, at least partially, from home, along with the rapid decline in the Israeli school system and an influx of Western ideas on education, home-schooling is increasingly becoming an urban, as well as a rural, phenomenon. It is motivated primarily, if not exclusively, by the parental belief that they can supply their children with an intellectually superior education and/or one that is freer and carried out in what they take to be a more natural and liberal educational setting.

This article offers an argument in support of legalization allowing home schooling in Israel, accompanied by a non-excessive degree of state supervision. The general argument advanced here is that even a minimal account of parental rights, alongside the most widely held views on the objectives of a liberal education, yields the conclusion that a legal right to home-schooling ought to lie safely within the boundaries of parental liberty. More specifically, it is suggested, with reference to Israel in particular, that a ban on home-schooling is completely inconsistent with the wide range of school choices already available in this country. Under these conditions it is argued that any legal prohibition on the home-schooling option specifically constitutes an indefensible form of discrimination.

#### THE JUSTIFICATION OF PARENTAL RIGHTS

Determining the boundaries of parental rights hinges to a large degree on the mode of their justification. Crudely stated, the various justifications for parental rights fall roughly into three categories, ranging from the view that children are, in a very nearly literal sense, the property of their parents, all the way to viewing parental authority as no more than a set of mere

'technical' rights enabling parents to effectively discharge their duties towards their children.

The strongest account of parental rights, which conceives of them as a form of ownership right, was particularly popular in a previous era, but barely a trace of it can be found in the modern debate on education.<sup>13</sup> This archaic argument for parental rights has become practically obsolete. Nevertheless, it is worth pointing out that, even on this 'children as property' account, the scope of parental rights is not limitless. As even the strongest proponents of this view would recognize, property rights over children are more akin to the ownership of livestock than of inanimate objects. Property rights in livestock are often restricted by legal systems, as well as by certain moral codes. Moreover, the moral status of children differs significantly from that of other sentient beings in that they are, if not actual, at least potential rational agents.<sup>14</sup>

A second vein of justification claims that parents have a right to mould their children 'in their own image' as it were, that is, to rear and educate them according to their own values, personal beliefs and chosen lifestyle. Such claims typically strive to ground parental rights to educate their children as they see fit in terms of parents' own interests, such as those relating to their individual and cultural identity, their personal autonomy, freedom of belief and practice, as well as to their right to privacy.<sup>15</sup> It could be argued that the general form of justification which ties parental rights to their own identity and autonomy-related interests has more to it than is commonly conceded and that it is worthy of closer scrutiny than it has so far received.<sup>16</sup>

From a liberal perspective that places great importance on individual identity, autonomy and personal choice, this form of justification certainly has at least an initial appeal. Thus, the task of defending the parental rights to make educational choices for their children on these grounds is no doubt a worthwhile one, not least for those interested in defending parents' rights to refrain from entering their children into the mainstream educational system if it reflects beliefs and values which contradict their own.<sup>17</sup>

Nevertheless, it is not a project that will be undertaken here. As will become apparent, for the purpose of defending a right to home-schooling it is not necessary to subscribe to this particular justification for parental rights (though, admittedly, for those adhering to this justification the endorsement of a right to home-schooling will acquire additional validity). Moreover, it is preferable to approach this public policy debate from the widest possible consensus concerning the surrounding issues. For the time being, this second potential justification for parental rights is highly contested, and for many it remains suspect.<sup>18</sup>

A third, more widely held, approach to parental authority grounds parents' rights, such as they are, solely in terms of the needs and interests of their children in receiving adequate care and education. These are what

Samantha Brennan and Robert Noggle refer to as ‘stewardship rights,’ what Kathie Foster dubs ‘paternalistic rights,’ and what Patricia White and others have described as ‘enabling rights.’<sup>19</sup> In these terms parents are perceived as their children’s ‘guardians’ or ‘trusties’ empowered exclusively to act in their children’s best interest.<sup>20</sup> Yael Tamir classifies these rights as ‘other-regarding derivative rights’ and argues that this is the only type of right to educate that can be justified.<sup>21</sup>

This limited view of parental rights relies initially on the indisputable fact that children mature slowly and gradually, and that throughout much of their developmental period they are unable to guarantee the satisfaction of their own interest-based rights to care and education. As Ruddick observes, children ‘do not spring into the world like Athena from the head of Zeus.’<sup>22</sup> Or, as Locke put it, they are not born as fully grown creations like Adam.<sup>23</sup> Instead, they require a considerable amount of nurturing and rearing during their maturing process, first and foremost for their sheer survival, but also in order to attain any form of adequate development. Furthermore, the ‘parent as steward’ (or guardian) model also recognizes that, while on some principled, declarative level, we may wish to view children’s rights to be nurtured and educated as a brand of ‘human rights’ owed to them as it were by all mankind, it is clear that in practice particular agents must be singled out and assigned those duties (and the accompanying rights) necessary for carrying out this task in all specific instances.<sup>24</sup> As the editors of *Having Children* point out most eloquently, ‘Mankind, after all, is ill equipped to bathe a particular baby or to teach a particular group of children to read.’<sup>25</sup>

The final link in this defence of parental rights stipulates that, at least during a particular period of the child’s development, the people best situated to discern and discharge the particular duties corresponding to these rights are, in fact, the child’s own parents.<sup>26</sup> ‘It is they who are supposed to know him best and are believed to act in his best interest.’<sup>27</sup> Thus, ‘in most cases, the person best suited and most motivated to take on this role of care-giver, advocate, and protector will in fact be the biological parent.’<sup>28</sup>

We have already seen that even the strongest approach to parental rights – their characterization as producers’ property rights – does not render these rights unlimited. On this last, and minimal, account, it is clear that parental rights are internally restricted by their justification. These rights are granted to parents on the grounds that they need them in order to fulfil their obligation to safeguard their children’s interests. Nevertheless, the indeterminate nature of the rights and duties involved in securing children’s needs and interests in care and education, as well as the wide variety of reasonable ways in which those duties might be fulfilled and those interests promoted, indicate strongly that parents will necessarily have considerable discretion in these matters.<sup>29</sup>

Furthermore, it is important to note that, although the only type of parental rights fully acknowledged here are those that derive their justification from parents' obligations towards their children, such rights do nonetheless constitute significant rights held by the parents themselves. Though on this account the parents' right to educate flows solely from their duty to do so, 'it is nevertheless meaningful in that it allows parents to claim freedom of action, if they are threatened or obstructed in the carrying out of their parental duties.'<sup>30</sup> The more complex and interesting question is, of course, precisely how far parents' leeway in deciding how best to promote their children's interests, specifically those of an educational nature, ought to extend.

Before addressing any particular policy issue it is necessary to complete the analysis of parental rights by specifying the parties who are to bear the relevant burdens corresponding to this right. Parents' (as well as children's) rights are normally taken to form part of a trilateral relationship consisting of the parents themselves, their children, and the state. Accordingly, parents' potential (duty-based) rights to promote their children's interests in education in a particular way ought to be weighed against the possibly conflicting interests of the other relevant parties, primarily those of the children themselves, but also, so it is assumed, those of society at large: 'In fact the conflict of rights discussed in the relevant writings within the liberal stance largely reflect arguments about demarcation; the boundaries between the rights of children and those of parents and those of the representatives of society.'<sup>31</sup>

#### THE RIGHTS OF SOCIETY AT LARGE

In the section above it was noted that the attempt to ground parents' rights to educate in their own interests, rather than those of their children, is both complex and controversial. Thus, if only for the sake of argument, it is conceded (as many modern theorists positively affirm) that the only interests substantial enough to ground parental rights to educate are those derived from the children's own right to be educated. The attempt to justify society's right to educate on any basis other than the children's interests in education would appear, at least on the face of it, to be even more problematic. Thus, Tamir maintains that 'enabling rights' – that is, other-regarding derivative rights based on children's core right to be educated – which she (and others)<sup>32</sup> justify granting to parents, are the only type of right to educate which can be legitimately attributed to anyone.<sup>33</sup>

Nevertheless, the independent interests of states, or of society at large, in participating in the education of their members' children are frequently invoked in attempts to limit parental rights. Moreover, it is often taken for granted that those interests constitute at least some rights, that is, that they can, in and of themselves, justify the infringement of parental liberty.



This is perhaps particularly true in Israel, where a central aim of compulsory education is commonly taken to be the transmission of the Zionist values of the Jewish national state.<sup>34</sup>

That states, or members of society, have a vested interest in the education of future generations is indeed unarguable. Specifically, newly formed states, or societies at a revolutionary stage, naturally foster particularly strong interests in the socialization of their future citizens and in shaping their views in accordance with those of the young society. At least up to a certain degree, and so long as the values conveyed are not immoral, these interests can be legitimate and justifiable on liberal grounds. Determining the legitimate scope of state intervention based on these interests is, however, another matter altogether. Any liberal discourse must not only single out state interests in education, which no doubt exist, but also show them to be conclusively weighty enough to legitimize state interference in the rights and liberties of its individual citizens. From a liberal perspective, it would appear that states' self-regarding interests in the education of children can justify only those rights of intervention necessary for safeguarding the rights and liberties of other members of society.

Of course, there are several strands of liberalism and, correspondingly, several competing conceptions of what these rights are. The various versions of liberalism differ significantly as to the content of the rights and liberties states may legitimately step in to protect. One obvious example of this is that, in contrast with classical liberals or modern libertarianism, most contemporary liberals maintain that state interference is justified not only in order to protect a citizen's liberty but also in order to assure at least a minimal degree of equality, or material well-being for all, as a prerequisite for freedom.

Similarly, various accounts of liberalism may disagree about the interests that can justify state intervention in education. Notwithstanding such diversity within liberalism, however, and whatever the content of the citizen's rights that justify intervention is taken to be, the principle remains the one noted earlier. On any liberal account, state intervention demands substantial justification indicating that such interference in the lives of its citizens is necessary in order to protect the significant interests of others. These latter interests in turn must be shown to be legitimate and substantial enough from a liberty-related perspective to justify placing state restrictions on its citizenry. To hold otherwise would be inconsistent with liberal commitments and with other practices of liberal-democratic states that are derived from them.

What precisely are the interests of states in participating in child-rearing practices? Jeffrey Blustein argues that these include the state's interest in maintaining a certain level of procreation and in the physical care, education and socialization of children, as well as the interests in



guaranteeing that the institutions responsible for carrying out these various tasks are compatible with other social institutions.<sup>35</sup> Blustein proceeds to argue that these interests are legitimate and that they justify the allocation of some of the rights (and responsibilities) involved in care and education to the state.<sup>36</sup> But the only justification Blustein supplies for this claim is the empirical fact that this view, whereby 'child rearing is not, nor should be, the exclusive concerns of individual child-rearers,' is not a novel one and in practice it is already recognized by many legal systems.<sup>37</sup> This last fact, in turn, is attributed by him to the recognition that 'child-rearers may injure (or fail to benefit) their children, so that children sometimes need the protection of the state against those who rear them.'<sup>38</sup>

This possibility is undisputed but it is not a justification for intervention based on the interests of states. Rather, it is one grounded on the interests of children. That Blustein fails to distinguish between the two is evident from the fact that he proceeds from this first claim to what he takes to be merely a more general form of the same type of justification. After mentioning children's interests in being protected against inadequate parents, he states: 'More generally, the public has a legitimate concern with the selection of child-rearers and with the way in which children are reared, because a society's children are its future citizens and its future contributors to its material, cultural and moral advancement. Collectively, children are a social asset.'<sup>39</sup>

This latter claim does indeed include some interests of the state, but it is far from clear that these are, indeed, valid interests for the purpose of justifying interference. In order to accept them as such, we would have to concede that they outweigh parents' rights – as well as the interests of children on which those rights are based – when they conflict with them. In arguing that children are 'social assets,' Blustein comes very close to suggesting that children are the property of the state. Such a claim, which I doubt was seriously intended, would be patently indefensible in the light of the widespread and well-argued rejection of the 'children as property' model pointed to earlier. As for the list of interests in child-rearing which Blustein attributes to states, it is virtually impossible to construct a conclusive argument against any particular weighting of rival interests. For those who accept these interests of states as valid, legitimate ones that could in principle justify state involvement in education, the question of how much intervention can be justified on this basis depends on a delicate balance of the competing values and interests involved. Needless to say, such tasks are not known for their precision and the perceptible verity of their outcome.

Nevertheless, I think a few points can be made against the common leap from the existence of such interests on the part of states to granting them extensive rights concerning the education of children. The first of these is the assumption that, from a liberal stance, the burden of proof in this

matter, as in any other, must necessarily fall on the side of those claiming the state's right to intervene. The second point appeals to the need for consistency between our views on education and some of our other widely held beliefs about the legitimate scope of state intervention. Note that Blustein himself places public interests in education on a par with the interest in maintaining a certain level of procreation.<sup>40</sup>

The latter is undoubtedly among the significant interests of states, yet few of us would concede (except perhaps in the most extreme cases of overpopulation) the right of states to legislate for its individual citizens' permissible, or required, birth rate.<sup>41</sup>

Rob Reich argues that states possess a fundamental interest in educating for citizenship, though he too is hard pressed to define the appropriate boundaries of the right this might give rise to.<sup>42</sup> Here again it is somewhat unclear to what extent these interests are in essence the self-regarding interest of states and to what extent they are merely other-regarding interests, that is, derivatives of children's interest in becoming able citizens. As far as the former are concerned, we all know that states may foster a strong interest in conveying its predominant ideology to its young citizenry. It is doubtful, however, that such an interest in inculcating children with the state's ideological values can be defended on liberal grounds and used to justify a right to compel school attendance.<sup>43</sup>

In Israel specifically, the concern for national ideology can neither justify nor even explain official opposition to home schooling. As suggested by their choice of residence, many of the rural home-schooling families in Israel would in all likelihood supply their children with a stronger Zionist education than do the state public schools.<sup>44</sup>

More importantly, it is easy to envisage a potential group of home-schooling parents, particularly among minority groups or extreme left-wing members of the Jewish majority, who would choose this option specifically on the grounds of their opposition to the ultra-Zionist state curricula. It is extremely difficult, however, to see how Israel could legitimately deny such parents the right to withhold their children from Zionist state education on ideological grounds, given the fact that anti-Zionist schooling is legal (as well as publicly funded) within the ultra-orthodox sector. Consequently, even if one could construct a liberal argument for coerced schooling on the grounds of public interest in indoctrinating (or 'socializing') its future citizenry into a particular ideology, such an argument could not justify a state ban on home-schooling so long as no such ideologically motivated restrictions are placed on those brands of formal schooling which do not transmit the state ideology either.

More plausible than the argument that a public interest in ideological socialization can justify compulsory schooling is the suggestion that the legitimate interests of states, or rather society's legitimate independent

interests, in children's education amounts only to safeguarding a reasonable level of toleration among its future adult citizenry.<sup>45</sup> This minimal requirement can, however, surely be achieved without state-legislated school attendance requirements.

It has been argued further that the only direct interests of states (as opposed to children's interests) which can justify intervention in those parental liberties outlined above lie in those areas 'where the interests of other members of society are adversely affected by a certain mode of child-rearing.'<sup>46</sup> 'If parents, either through neglect or positive encouragement, allow their child to indulge in criminal behaviour, the state may have to step in and perhaps even remove the child from the home, if circumstances warrant it.'<sup>47</sup>

Admittedly, some may wish to reject this last comment, which justifies state intervention in education solely in those cases in which it is directly necessary in order to prevent criminal action. Nevertheless, a relatively narrow account of the scope of states' right to intervene based on their self-regarding independent interests is the type most consistent with the classical liberal view, whereby the only justification for state intervention in the freedom of the individual is the prevention of harm to others.<sup>48</sup>

Beyond this there is, of course, good reason to believe that states may legitimately intervene in the parental upbringing of children when this is necessary for safeguarding the child's own interest. Since no identity of interests is assumed to necessarily exist between children and parents, it is possible for the two to conflict. Parents' educational choices are, after all, 'other-regarding' acts. But state interference of this kind would be based on children's interests rather than on those of the state as such. It is only the latter that have been suggested to be insufficient for grounding intervention, except in the most extreme of cases in which such interference is necessary in order to prevent harm to others. Acts of intervention aimed at protecting or promoting the child's well-being are, by definition, grounded in the child's own interests rather than in those of the public at large.

#### CHILDREN'S INTERESTS

Children's interests in education may be divided into two categories. First, there are children's explicitly voiced desires. It is assumed here that where a child expresses a clear preference for conventional schooling (as admittedly happens at times in home-schooling families), this preference ought to be respected.<sup>49</sup> For the most part, however, children's educational interests are not expressed (or even acknowledged) by children themselves, but rather identified by adults as being in the children's interest (or best interest), that is, 'for their own good.' It is primarily this second type of interest that

justifies the limited parental rights outlined above. Parents' enabling rights derive not only from the fact that children are often unable to secure their own needs and promote those interests which they identify as their own, but also from the fact that children are frequently incapable of recognizing and effectively exercising their rights, and of making rational decisions about their interests.<sup>50</sup> Children are often too immature to do so, and someone must therefore do it for them.<sup>51</sup>

By the same token, such interests not only justify granting parents enabling rights but also open up an additional avenue for the justification of state intervention in the upbringing of children. As noted early, there is a widely held consensus whereby, at least within certain limits, the optimal candidates for the position of the child's 'trustee' or 'guardian' are the child's parents. They are also the most natural choice for this task. Nevertheless, at this point we need to consider the scope of parents' enabling rights, that is, their temporal cut-off line; whether these rights ought to be shared with others (specifically with representatives of the state); and the basis for this potential curtailment of parental rights and its legitimate extent. Ultimately, we need to ask whether parents have the right to refrain from sending their children to school, choosing instead to educate them within the home.

In general terms, parents' stewardship rights are naturally limited by their children's own rights.<sup>52</sup> Following the earlier discussion on parental rights, I assume here that these are both grounded on, and delineated by, the children's interests. It has been plausibly argued in various contexts that the test which ought to be implemented for justifying state intervention should not be so stringent as to require the maximization of children's interests but should rather be one which will guarantee children an adequate level of care and education.<sup>53</sup>

Clearly, maintaining that parental freedom in the upbringing of their children is conditional on their fully satisfying the children's very best interests would justify a degree of state intervention which would be totally unbearable from a liberal point of view. Additionally, as Hobson points out, massive state intervention endangers the values of family autonomy and all that flows from it for children themselves.<sup>54</sup> This observation leads Hobson to the opposite extreme, whereby state intervention on behalf of children is justified only in the most exceptional cases of danger.<sup>55</sup> It is doubtful whether many subscribe to this minimalist view that would limit society's right to intervene in the interest of children only to critical cases. Loosely following Samantha Brennan and Robert Noggle, then, it is suggested that an appropriate principle for the justification and demarcation of state rights to intervene in the interests of children (rather than of states) would be, if not '*the best* interest test,' at least something like '*the good, or good enough, interest test.*'<sup>56</sup>

The remainder of this essay argues that there are no conclusive grounds for maintaining that children's interests in education, even their best interests therein, require state intervention in the form of universal compulsory school attendance. This is either because there is no single matter-of-fact objective answer as to how best to promote these interests, or because, due to human limitations, we are at present incapable of discerning such truths and are instead faced with various reasonable forms of its approximation. Either way, the argument holds that the liberal *prima facie* presumption against state intervention cannot in this case be superseded on the grounds that conventional schooling is demonstrably the only reasonable way to protect children's best interests in education.

Moreover, it maintains that in Israel such restrictions on educational methods are incompatible with the legally recognized scope of parental authority in other matters (such as the right to sectarian religious and Kibbutz schooling). Thus, it is argued that compulsory schooling reveals an unreasonable and unjustifiable inconsistency and lack of equal treatment on the part of the Israeli legal system.

#### HOME-SCHOOLING AND THE 'BEST INTERESTS' OF CHILDREN

There is a general consensus among liberals that the ultimate aim of education, that is, that which promotes the 'best interest' of the child, is securing the child's future ability to act as a rational autonomous agent. At its core, this liberal educational ideal is concerned with ensuring the development of both personal and moral autonomy (understood as the ability to be self-governing as far as future choices and moral evaluations are concerned) in future adults.

Accordingly, potential rational autonomous agents ought to receive an education which will enable them in due course to become effective decision-makers as far as their life prospects and the ability to develop their own particular version of the good life are concerned. Children are to be educated in a manner likely to promote their future self-determination and prevent ethical (or practical) servility and subordination.<sup>57</sup> Thus, Tamir takes it as a liberal assumption that 'the only worthy type of education is one which secures the autonomy of the child.'<sup>58</sup> This presumption is shared not only by the liberal advocates of state schooling systems but also by many 'de-schoolers' who contest the assertion that this goal can be achieved by even the most ideally liberal school.<sup>59</sup> To this primary goal of attaining autonomy can be added those either deliberately omitted or taken for granted, that is, the sheer accumulation of knowledge, not only as a prerequisite for attaining autonomy and a means for its maximization, but also as an end in itself.

'The costs and benefits of liberal schooling [as opposed to alternative forms of liberal education] can thus be plotted and evaluated along a single

dimension – the development of children’s autonomy – and balanced out against each other accordingly.<sup>60</sup> This being the case, the justification for compulsory schooling hinges on the implausible position that it is demonstrably the only means for promoting children’s best interests thus understood. More specifically, it involves the assertion that other forms of education, particularly home-schooling, are in all instances an inadequate (or necessarily less adequate) vehicle for achieving these goals.

In view of the state of public education throughout the Western world, it might seem unlikely that anyone could argue with this. Nevertheless, this is precisely what is implied by a long list of theorists who defend compulsory schooling. This is an unsustainable position not only in light of the shortcomings of the school system as we know it, but also in light of the very idea (or ideal) of formal schooling. In what follows, the main arguments favouring compulsory school attendance – that it is in the child’s best interests – is considered.

In his reflection on parental rights, Hobson notes some of the seemingly apparent pros and cons of what he rightly perceives as ‘the most basic parental right of all concerning their children’s education – the right to teach them at home.’<sup>61</sup> ‘Considering the question from the point of view of the effects on children ... the advantages would lie in such features as the flexibility it allows, the freedom for the child to follow up particular interests in depth and the possibility of close individual attention. Some possible disadvantages would be lack of peer-group contact and a limitation in extra-familial influences in general, the danger of some families not keeping up sufficiently with new developments in various subjects and of not being able to provide a specifically broad curriculum at all levels.’<sup>62</sup>

As Hobson’s comments imply, two basic types of concern appear to prompt the variety of arguments that support institutional schooling as opposed to home education. The first concern focuses on the content and level of information conveyed to the child in the course of her education, that is, what is learned. Related arguments raise issues concerning social justice and equality in education. The second major worry concentrates on the educational environment in which the child is placed, that is, on the educational setting in which she is situated.

#### CONTENT-BASED OPPOSITION TO HOME-SCHOOLING

Some proponents of formal schooling argue, in one form or another, that schooling is essential in order to convey the variety and level of information necessary for the development of autonomy. This first group of arguments, which favours compulsory schooling on content-related grounds, comprises two further sub-sets of objections to home-schooling. The first expresses the concern that some parents will not be able to supply their

children with an adequate level of education and that this, in turn, will decrease the child's autonomy and ability to exercise his freedom, and harm his life prospects.<sup>63</sup>

The second sub-group of objections to exclusively parental education arises from the fear that parents may use this authority to indoctrinate their children into a particular set of beliefs and way of life (for instance, a religious one) which is not conducive to autonomy, while suppressing knowledge about alternative beliefs and lifestyles. By doing so, they will inhibit, if not altogether eradicate, the child's future ability to choose between alternative value systems and lifestyles.<sup>64</sup>

The first of these concerns which relates to the proficiency of the educator and accordingly to the quality of the education conveyed is undoubtedly one which should play a central role in shaping liberal legislation on education. As noted above, attaining an adequate level of education is an essential prerequisite for developing the future capacity for autonomy. However, in no way does it follow that this concern ought to be addressed by compulsory schooling for all. As Mill observed, 'the objections which are urged with reason against State education do not apply to the enforcement of education by the State, but to the State taking upon itself to direct that education; which is a totally different thing.'<sup>65</sup>

In other words, opposition to compulsory schooling does not deny the need for regulations intended to safeguard the interests of children in acquiring an education and to guarantee the academic level thereof. This distinction appears to have been lost in the modern debate on schooling. As conceded above, no doubt children's best interests require them to receive an adequate level of education both for its own sake and for the sake of developing their future autonomy. Too often, however, it is assumed that arguments that support this claim automatically justify forced schooling. This is a transition that cannot be made without further argumentation that does not stand up well to scrutiny.

As the passage from *On Liberty* clearly implies, there are good reasons to believe not only that children's best interests require them to attain a certain level of education, but also that the state should guarantee these interests in case parents fail to do so. However, this can be achieved in ways other than by the state, or its representatives in the private sector, doing the schooling and universally enforcing attendance. Mill himself proposed that the state require children to take public examinations, beginning at an early age, which would assure that all were receiving an adequate level of education and fine their parents if they were not.<sup>66</sup>

To this one could add additional or alternative mechanisms for safeguarding children's interests in education that would suit the requirements of modern times.<sup>67</sup> Furthermore, unlike Mill, neither this essay nor most home-schooling parents argue that state schooling ought not to exist.<sup>68</sup> There are convincing arguments for modern democratic



states (which are typically committed to a more socialist type of liberalism than Mill was) to provide state schooling at the taxpayers' expense. A large part of the justification for this lies in the fact that, for a variety of reasons (including a lack of time, patience, or sufficient knowledge), many, or even most, parents may indeed not be able to provide their child with an adequate education without state assistance. Some parents who choose to home-school their children may reach a point at which they cannot fulfil what we take to be their children's rights, at which stage the state ought to step in and provide for these interests. In some cases, this might mean forcing children to attend school. This, however, is no justification for mandatory schooling of all children, even those who may receive a far better education at home. It is only a justification for the state to maintain a 'back-up' position to the parents' natural role as child-rearers and educators, in order to guarantee that children's interests in education are provided for in all cases.<sup>69</sup>

Moreover, while the concern for the academic level of child education is indeed a serious one, it is not one that can be used definitively as ammunition against home-schooling parents. There is by now a considerable body of evidence – both studies and statistics – that indicates that home-schooled children actually attain considerably higher scholastic achievements on average than conventionally schooled children do.<sup>70</sup>

Admittedly, these studies, while not wholly refutable, may be contested by conventional educators on grounds of both bias and the surveying methods involved.<sup>71</sup> Such vulnerability, which applies to statistics in general, may be particularly acute in the case of home-schooling, which is a private choice often practised in some secrecy from the law. This problem of reaching the studied group (as well as the possibility of bias) applies to all statistical studies in this field and is, in fact, particularly pertinent with regard to those surveys attempted by opponents of home-schooling. In other words, if the statistical studies carried out by home-schoolers and their proponents cannot be totally relied on, official statistics cannot be relied on at all.

What can be relied on in this connection is our common knowledge of the formal school system in most Western societies, which is not vulnerable to the type of epistemic obstacles that surround home-schooling. We know, for instance, that some state-run schools fail to convey even the most basic skills of literacy and numeracy to all their students. We know that many schools succeed in conveying little, if anything, more than these skills. Most schools cannot provide intelligent children with anything resembling the level of academic education they are cognitively capable of attaining. We know that many schools are overcrowded, understaffed and even crime-ridden, none of which is conducive to attaining a high, or even reasonable, level of education.

It is therefore likely that parents who choose to home-school their children could actually achieve better results. The state of most modern public schools lends credence to those American and English studies which show that home-schooled children actually attain a far higher level of education than their formally schooled counterparts do. This is, in fact, conceded, if only implicitly, by some of the staunch proponents of compulsory schooling who argue in the name of social justice that: 'The educational free market which would exist in a de-schooled society would enable educated parents to exploit the situation to advance the interests of their offspring with the result that even greater material advantage would accrue to the children of such parents.'<sup>72</sup>

Several points can be made in reply to this last argument. First, the argument that educated parents ought to be forcibly prevented from advancing the educational interests of their offspring to the highest degree, because this will create even greater social disparity, provokes some common anti-egalitarian objections, which appear particularly pertinent in the educational context. This egalitarian approach to education implies that its objectives can, and in some cases ought to, be achieved by 'levelling down' the differences between the parties rather than improving the situation of the less well-off. Such arguments are on a par with hypothetical policies such as blinding the sighted in order to achieve equality between them and the blind, or wasting resources in order to prevent inequality.<sup>73</sup>

Moreover, coercing the children of educated parents to receive an average education in order to level the playing field amounts to using those children as means rather than ends. If we denied that parents have property rights in their children, on the grounds that children are potential rational-autonomous agents and thus ends in themselves,<sup>74</sup> how can we concede the state the right to use some of them instrumentally?

Additionally, on a factual note, it should be recognized that while *educated* parents may be capable of providing their children with a superior education at home, money is not a crucial factor in attaining this goal. As pointed out earlier, in the United States home-schooling is practised by members of social, often religious, minorities, who are far from affluent. In the United Kingdom some home-schooling parents are in fact single mothers.<sup>75</sup> In view of this, it would seem that home-schooling is far less objectionable from an egalitarian point of view than it may at first appear.

A final response to the egalitarian objection to home-schooling is the hope that legalizing alternative options for those who are able to take advantage of them might take some of the pressure off the state school system and thus improve it for those who really need it. In view of the sorry state of public education practically everywhere in the Western world (low budgets, overcrowding, lack of discipline, physically threatening

and drug-related crime, minimal educational level, etc.), it is hard to believe that there is any direction for it to move in other than upwards.

The second basic type of content- (rather than context-) based opposition to home education supports compulsory schooling as a means of preventing parents from indoctrinating their children into a particular religion or lifestyle by way of withholding information about any other option, and thus discouraging familiarity with them. The concern here is that, in the absence of school attendance legislation, some parents will educate their children exclusively in light of their own beliefs and way of life, socializing them into a particular cultural group, at the expense of the children's future autonomy and ability to make their own life choices:<sup>76</sup> 'Not surprisingly, there appears to be a universal agreement among those within the liberal stance that parents have *no* right to indoctrinate their children.'<sup>77</sup>

As far as liberal versions of home-schooling are concerned – home-schooling conducted by parents who share the liberal view of what is in the child's best educational interests – the danger of indoctrination is no more likely to occur than it is in the regular school setting. These parents believe that they can do a better job of satisfying their children's autonomy-based interests than the state can. The proposed loosening of compulsory education requirements will, however, necessarily also impact on other types of home-schooling which may not be equally liberal. As such, we must, therefore, say a few words about religious (or otherwise ideologically motivated) home-schooling.

First, following Mill, we have already conceded that states have enabling rights, based on children's interests in education (as in other fields), to guarantee that these interests are indeed satisfied. We have questioned only the justification for doing this by way of compulsory schooling for all. States' enabling rights (for example, the public examination requirement suggested by Mill) may thus include some safety valves against indoctrination, which need not necessarily (though they may in some instances) amount to forcing children to attend school. This would put states' enabling rights concerning indoctrination where they consistently belong, that is, on a par with other rights aimed at protecting children from various forms of parental abuse.

Secondly, and more importantly from a practical point of view, the present vindication of compulsory schooling (that is, on the grounds that it helps to prevent indoctrination) runs the risk of discrimination and inconsistency. So long as religious, and other ideologically motivated, schooling (for example, kibbutz education on the one hand, and right-wing-nationalist schooling on West Bank settlements on the other) is not only permitted but also publicly funded, how can religious and political home-schooling be attacked on the present grounds?<sup>78</sup>

If parents have the legal right to educate their children exclusively in light of their own religious beliefs or value system within a school system, how can they be denied the right to do exactly the same thing at home on the grounds that this may constitute indoctrination and thus impair the child's future autonomy? Surely enlisting the aid of an entire religious or political school will be far more effective for the purpose of conveying and inculcating a given value system than just educating one's child at home will be. Nevertheless, the former is both legal (as well as readily available, socially acceptable and publicly funded), while the latter is not. Clearly, the threat of indoctrination cannot justify, or even explain, this difference.

#### CONTEXT-BASED OPPOSITION TO HOME-SCHOOLING

Another entire category of arguments employed in defence of universal compulsory schooling pertains not to the content and level of education, but rather to its context, that is, to the child's educational surroundings. This second class of arguments includes two central and distinct types of concern. The first asserts children's interest in peer-group contact. The second concerns the value of pluralism. An additional, context-based objection to home-schooling has at its core the worry that, in the absence of legislation that places children outside the care of their parents for a sizeable portion of the day, some parents may exploit their children's labour for financial gain, often denying them any education at all. This latter objection is easily dispensed with. While historically speaking it is true that compulsory attendance laws did arise in part in order to complement child labour restrictions, they are unnecessary to ensure that bans on child labour are observed, nor are they totally effective in doing so. The fear that parents who are not legally coerced into sending their children to school may exploit them for financial gain ought to be, and is, allayed by additional, separate legislation.<sup>79</sup>

As for the first of the two more common arguments opposing home-schooling, it appears to rest on the questionable assumption that a child's best socially related interests are served by forcibly confining him for much of his waking hours to the company of his exact age group within a school framework. It also appears to suggest, somewhat implausibly, that peer-group contact among children and its benefits will not be achieved in the absence of compulsory schooling.

Why are we to assume, counter-factually, that home-schooled children are locked up in solitude when they do in fact enjoy constant contact with their contemporaries? These will typically include children in the neighbourhood and in the extended family; the children of their parents' friends and acquaintances; the young members of other home-schooled families; children encountered in playgrounds, parks and play groups and at a variety of other organized social and educational

activities which are particularly encouraged and promoted within home-schooling families.

Children usually gravitate towards other children (though not necessarily towards their precise age group) quite naturally and easily without the intervention (and at times added complication) of adults. Home-schooling parents in particular usually make special efforts concerning their children's social development, as they do in all other fields. Rural and religious home-schooling families tend to be larger than the average, that is, they exhibit a higher than average birth rate. For another, such families often band together, arranging a multiplicity of communal activities for their offspring.

Certainly, isolating a child and denying him the company of his peers is undesirable. Moreover, if it were to occur, it might reasonably be considered to be a form of abuse akin to false imprisonment and would have to be dealt with accordingly. However, empirically speaking, this highly hypothetical form of mistreating children by cutting them off from all non-adult company has nothing to do with the home-schooling option. Those who practise and support it argue the contrary, and present studies suggest that home-schooling is actually more conducive to developing a child's social skills than forcing him to attend impersonal, uniform, school classrooms which isolate children within their own age group.<sup>80</sup>

In fact, schools (and pre-schools) do not simply ensure peer group contact: they confine children exclusively to it. This is what home-schooling ideologues refer to derogatively as 'age segregation,' arguing that it is far from conducive to children's future welfare and their ability to develop social and communicative skills.<sup>81</sup>

Aside from the concern for ensuring peer-group contact, a second central type of context-based defence of compulsory schooling argues for the benefits of exposing children, via schooling, to diverse opinions and moral convictions and to a plurality of life choices and styles. Thus Tamir, following Gutmann, argues that 'only if the educational process children experience exposes them to ways of life different than those of their parents, and reflects the preferences values and knowledge of different educators, can children "reap the benefit of social diversity."' <sup>82</sup> This is also the primary focus of Meira Levinson's staunch opposition to home-schooling. Levinson argues that, in order to develop the capacity for autonomy, children must be placed in a school community which exhibits a plurality of backgrounds, lifestyles, beliefs and values, and which is, at least for the most part, detached from parental influence.<sup>83</sup>

Thus, the benefits of pluralism carry most of the weight of her argument for compulsory schooling as the optimal means for developing children's capacity for autonomy. Whatever the advantages of a pluralistic environment for the transmission of liberal values (such as toleration) and for the development of autonomy, such arguments remain vulnerable

to two types of criticism that prevent them from grounding a sound case for state-legislated forced schooling.

Firstly, the argument from pluralism is not essentially an argument favouring formal schooling over home-schooling. It is an argument opposing all educational settings that fail to expose children to a plurality of lifestyles and value systems. These include a wide range of legally available educational options, such as various denominational schools, elitist private schools, kibbutz education, and even many public schools that are segregated by residential districts (for instance, a public school in a dominantly upper-middle class suburb).<sup>84</sup>

In fact, some home-schooled children, particularly those of liberal parents, will be exposed to a greater degree of pluralism not only than those schooled in sectarian schools, but also than those schooled within a particular public school district. Once again, there appears to be no justification for legislation that distinguishes between parents who send their children to sectarian non-pluralist schools or to their district public school, and those who choose to educate their children at home. Surely, the value of pluralism does not supply us with any basis for this legal distinction. The expectation that liberal-democratic legal systems exhibit at least some degree of consistency and equal treatment, as opposed to arbitrariness and discrimination, indicates the reverse.

A second counter-argument which denies that the value of pluralism and its presumed contribution to the development of autonomy can justify universal compulsory schooling legislation would apply even if all schools were indeed the ideally liberal-pluralistic ones envisaged by Levinson.<sup>85</sup> If we assume, as we have, that the development of children's autonomy is the shared liberal value, or measure, for evaluating the costs and benefits of various forms of education, and even if we assume (though only for the sake of argument) as Levinson does that this cannot be achieved by home-schoolers, the merits of a pluralistic education and its contribution to the promotion of autonomy will still need to contend with those aspects of the school framework which home-schoolers reasonably regard as autonomy-inhibiting.

These include the hierarchal nature of the school structure; the near-total stripping of children's basic liberties, which would be unacceptable in the adult world; age segregation; the encouragement and even requirement of conformity, docility, acceptance and compliance; and, consequently, the misrepresentation of, and lack of preparation for, an autonomous life within a liberal society.<sup>86</sup> Such arguments hold that the very structure of the school system (even in its ideal form) is necessarily antithetical to the enhancement of autonomy. In a similar vein, Mill opposed *state*-controlled schooling, arguing that it actually decreased children's future capacity for attaining liberty, autonomy and individualism. As he put it: 'A general state education is a mere contrivance for moulding people to be exactly like one

another ... in proportion, as it is efficient and successful, it establishes a despotism over the mind, leading by natural tendency to one over the body.<sup>87</sup>

As we have seen, much of the modern debate (both by opponents and proponents of home-schooling) is expressed in terms of the autonomy-enhancing and autonomy-diminishing aspects of the various educational systems. These professional disagreements cannot, and need not, be resolved within this essay, which aims to establish a legal right to home-schooling, rather than a conclusive endorsement or condemnation of either educational alternative. In fact, it suggests that such conclusions are not readily available. The controversy concerning the optimal practical mechanisms for developing children's autonomy needs to be, and indeed is, pursued by educators rather than philosophers. For the purpose of supporting a legal right to home-schooling, it is necessary to accept only that there is considerable reasonable dissension among liberal-minded professional educators (as well as philosophers) as to the benefits of formal schooling, at least as it exists today, from an autonomy-based perspective. Both sides to this controversy enlist supporting factual evidence as well as learned arguments.

In such circumstances, it is practically impossible and normatively unreasonable for the state and its officials (who are not disinterested parties) to determine who has the upper hand in a debate that involves weighing the relative force of various autonomy-enhancing features of schooling against its alternatives. Even if it were possible to reach 'scientifically' definitive answers concerning the practical merits and demerits of various aspects of the existing school structure, we would still be faced with the task of measuring them against each other (for instance: how much pluralism outweighs the possibly autonomy-diminishing aspects of hierarchical formal schooling; how much liberty and individualism can legitimately be sacrificed in exchange for the benefits of formal schooling).

It is ironic, if not downright self-defeating, to enlist the value of pluralism in order to defend the state's right to impose one particular ranking of liberal values on its citizens and to forcibly implement one specific (and at this point highly contested) theory about the structure of education most conducive to the development of autonomy.

## CONCLUSIONS

This article has argued in favour of the legalization of home-schooling and correspondingly for a significant loosening of universal school-attendance legislation in Israel in particular and within liberal states in general. The defence of home-schooling advanced here was presented against the background of a wide set of shared liberal beliefs about the justification



of parental rights and the goals of liberal education, and in view of some prevalent Israeli practices concerning school choice. It has also been argued that, if we understand the right to educate as an enabling right intended primarily to promote children's autonomy, we have no grounds on which to deny parents the right to discharge the duties involved in educating their young. Home-schooling studies indicate that in practice parents often do a considerably better job at this than existing schools do. Moreover, as we saw, home-schoolers present plausible arguments suggesting that parentally guided education, carried out within a supportive and warm environment, is in principle a preferable means of promoting children's autonomy-related interests in education than sending them to school is. While these studies and arguments are admittedly open to scrutiny, there is certainly no conclusive argument or objective-factual evidence to indicate the reverse.

Moreover, it has been argued that there is no justification for denying parents educational rights while granting them to denominational schools and, accordingly, that the legal distinction between the two constitutes an unjustifiable form of discriminatory unequal treatment.

Notwithstanding all this, in the best interests of children – which ground parents' enabling rights to begin with – the state may legitimately hold a back-up position which enables it to intervene in those rare cases in which parents fail altogether to safeguard their children's autonomy-related interests in education. The state's enabling rights may legitimately include the authority to supervise and regulate home-schooling, and in some cases perhaps even to put an end to certain home-schooling arrangements that fail to live up to minimal standards.

One has in mind primarily regulations requiring home-schooling parents to register with their local authorities, thereby revealing themselves to the state. Such a requirement would serve to place home-schooling on a par with sectarian education that is, at least in this sense, in the public realm and under societal supervision. Needless to say, whatever form of schooling is involved, the state retains the enabling right to interfere in any case that can reasonably be described as constituting child abuse.

Beyond this, further requirements appear desirable from the point of view of the child's welfare. Following J.S. Mill,<sup>88</sup> as well as some recent legal practices in the United States,<sup>89</sup> these might plausibly include provisions which require that parents who wish to home-school their children possess a certain level of academic education; regulations requiring parents to reveal the content of their child's intended curriculum, which in turn may be required to live up to some general academic as well as liberal standard (for example, equal education for both sexes; exposure to some plurality of ideas); requiring parents to make periodic reports on the child's scholastic progress and achievements, public examinations, etc.

However, while in principle state intervention of this general type may be justified on the basis of safeguarding children's interests, their implementation can acquire legitimacy only where such requirements are applied equally to all forms of denominational schooling as well.

## NOTES

1. Roland Meighan, *The Next Learning System: And Why Home-schoolers are Trailblazers*, Educational Heretics Press, 1997, chapter 1; [www.learninfreedom.org/homeschool\\_growth.htm](http://www.learninfreedom.org/homeschool_growth.htm); Boston.com: 1 April 2004, see [www.boston.com:80/news/education/k\\_12/articles/2004/01/04/home\\_schooling\\_today\\_a\\_little\\_less\\_home\\_a\\_lot\\_more\\_help](http://www.boston.com:80/news/education/k_12/articles/2004/01/04/home_schooling_today_a_little_less_home_a_lot_more_help).
2. See Rob Reich, 'Testing the Boundaries of Parental Authority over Education: The Case of Home Schooling', forthcoming in Stephan Macedo and Yael Tamir (eds.), *Political and Moral Education*, NOMOS XLIII, New York, 2001, pp.5–9. I am also most grateful to Haia Degani, whose as yet unpublished manuscript 'Homeschooling: A Rebellion Against Society or Educational Elitism?' provides a detailed analysis of this variant of motivation and implementation of home-schooling in the US.
3. Kay M. Klark, *Catholic Home Schooling*, Rockford, Illinois, 1993; Susan S. Macaulay, *For the Children's Sake*, Wheaton, Illinois, 1984; <http://www.catholictreasures.com/descrip/10100.html>. For information on Muslim home-schooling, see <http://islamicity.com/>.
4. Libertarian Party Platform-Education in <http://www.lp.org/lp/platform/edu.html>.
5. Reich, 'Testing the Boundaries of Parental Authority', pp.5–6. Note that concrete cases of home-schooling may be based on a mixture of motivations. Thus parents who remove their children from crime-ridden school systems will often have further criticism of these institutions. The children of religious sects in particular are frequently prone to victimization through school violence.
6. For a detailed and updated news report on the increase in juvenile crime in Israeli schools, see *Yediot Achronot*, 28 Dec. 2001.
7. 'Compulsory Education Law 5709-1949', *Sefer Ha-Chukkim*, No. 26 of 24 Elul 5709 (12 Sep. 1949), p.287.
8. Home-Schooling – regulations (new), 1 Oct. 2002.
9. I refer to features such as the common absence of adequate education and professional qualifications among day-care workers; the low ratio between the number of care-givers and infants or young children in such institutions, resulting in a total lack of individual attention; the structural and spatial conditions of most nurseries in Israel, which are frequently established in totally unsuitable environments such as a room in a city apartment or a back yard. Additionally, minimal safety and licensing regulations are rarely fully complied with. Needless to say, at least as far as the intelligent children of educated parents are concerned, it is doubtful whether there is any educational advantage in attending such institutions. In fact, these conditions raise the suspicion that, however convenient and inexpensive these arrangements are for parents, they may actually be detrimental to the children's emotional and social development.
10. See [www.homeschool.org.il](http://www.homeschool.org.il) and Roni Aviram, in Roland Meighan, *The Next Learning System: And Why Home-schoolers are Trailblazers*, Roni Aviram (ed.), Masada Press, 1999, pp.145–48 (Hebrew).
11. Ibid.
12. At the beginning of the autumn 2003–04 school year 61 families had obtained permits to home-school their children in keeping with the October 2002 regulations (see note 8 above). Many more openly admit to practising home-schooling illegally.
13. Aristotle clearly held this view of parental rights. See his *The Nichomachean Ethics* (Davis Ross transl.), Oxford and New York, 1998, pp.212–13, book 8, section 12. One contemporary scholar who still adheres to a variant of the view that children are the property of their parents is Jan Narveson, *The Libertarian Idea*, Philadelphia, 1988. For the far more common opposition to this approach, see John Locke, 'The Second Treatise of Government', in Thomas P. Peardon (ed.), New Jersey, 1952, p.36. Locke describes parents as guardians and denies that parental authority belongs solely to the father. For the more recent, widespread

dismissal of the view of children as property, see Peter Hobson, 'Some Reflections on Parents' Rights in the Upbringing of Their Children', *Journal of Philosophy of Education*, Vol. 18, No. 1 (1984), pp.63–74, at p.63; Edgar Page, 'Parental Rights', *Journal of Applied Philosophy*, Vol. 1, No. 2 (1984), pp.187–203, at p.187, and pp.192–95. One should note that, while Page rejects this 'children as property' view, he believes the analogy between parental rights and property rights, specifically those of creators, is a useful one. See also Samantha Brennan and Robert Noggle, 'The Moral Status of Children: Children's Rights, Parents' Rights, and Family Justice', *Social Theory and Practice*, Vol. 23, No. 1 (spring 1997), pp.1–26, at p.10; Yael Tamir, 'Whose Education Is It Anyway?', *Journal of Philosophy of Education*, Vol. 24, No. 2 (1990), pp.161–70, at p.166.

14. On the obvious differences between the moral status of children and that of objects, as well as other forms of sentient beings, see Tamir, 'Whose Education Is It Anyway?', p.166; Page, 'Parental Rights', pp.192–95.
15. Tamir, 'Whose Education Is It Anyway?', pp.165–67, touches on one such form of justification when she questions, and rejects, the possibility of deriving parental rights either from the parents' core right to autonomy or from their right to freely choose their way of life. For an identity-related defence of parental rights, see Ferdinand Schoeman, 'Rights of Children, Rights of Parents, and the Moral Basis of the Family', *Ethics*, Vol. 91 (1980), pp.6–19. See also Jeffrey Blustein, 'Child Rearing and Family Interests', in Onora O'Neill and William Ruddick (eds.), *Having Children*, New York, 1979, pp.115–22, at p.118, who postulates three possibilities for grounding parents' rights on their own interests rather than on those of their children; Kenneth Henley, 'The Authority to Educate', in O'Neill and Ruddick, *Having Children*, pp.254–64, at p.257 and pp.260–61, discusses several parental interests in education, though he denies that they suffice to ground the authority to educate. Page, 'Parental Rights', argues that parental rights are (at least to a large extent) based on parents' interests, rather than children's. Specifically, he claims that their justification lies in the special value of parenthood in human life.
16. Reich, 'Testing the Boundaries of Parental Authority', pp.9–12 contains a brief discussion of parents' self-regarding interests in educating their children.
17. It would seem almost improper to touch on these issues without mentioning the case of *Wisconsin v. Yoder*. In this case, the US Supreme Court ruled in favour of members of the Amish community who had violated Wisconsin's compulsory school-attendance law by declining to send their children to school beyond the age of 16, on the grounds that schooling beyond the eighth grade contradicted the Amish tradition and way of life and threatened their salvation. See *Wisconsin v. Yoder* (1972) in Onora O'Neill and William Ruddick, *Having Children*, pp.280–306. For a defence of parents' right to educate their children in the light of the parents' religious beliefs, see T.H. McLaughlin, 'Parental Rights and the Religious Upbringing of Children', *Journal of Philosophy of Education*, Vol. 18, No. 1 (1984), pp.75–83.
18. See, for example, Eamonn Callan, 'Indoctrination and Parental Rights', *Philosophy of Education*, Vol. 41 (1985), pp.97–106; 'McLaughlin on Parental Rights', *Journal of Philosophy of Education*, Vol. 19, No. 1 (1985), pp.111–18; Tamir, 'Whose Education Is It Anyway?', pp.165–67.
19. Samantha Brennan and Robert Noggle, 'The Moral Status of Children: Children's Rights, Parents' Rights, and Family Justice', *Social Theory and Practice*, Vol. 23, No. 1 (spring 1997), pp.1–26, at pp.11–13; Kathie Forster, 'Parents' Rights and Educational Policy', *Educational Philosophy and Theory*, Vol. 21, No. 1 (1989), pp.47–52, at p.47; Patricia White, *Beyond Domination: An Essay in the Political Philosophy of Education*, Boston and London, 1983, p.144. As already noted, this was also Locke's view as he described parental authority as a type of guardianship which parents have over their children, to govern them for the children's good (John Locke, *The Second Treatise of Government*, chapter 6, 'Of Parental Power', pp.30–44). Locke nevertheless differs from most of the modern scholars who hold similar views concerning the justification of parental authority in that he appears to have viewed its scope as virtually limitless. Edgar Page, 'Parental Rights', is in a minority in arguing against this form of justification, which he refers to as 'the argument from necessity', claiming that it does not provide an adequate account of all forms of commonly acknowledged parental rights. Nevertheless, I doubt he would deny that it can account for many such rights.

20. For the parent as trustee or guardian model, see Locke, *The Second Treatise of Government*, p.36; Hobson, 'Some Reflections', pp.66–67; O'Neill and Ruddick, *Having Children*, p.123; William Ruddick 'Parents and Life Prospects', in O'Neill and Ruddick, *Having Children*, pp.124–37, at pp.126–28. See also Ruddick's analysis of the 'parent as gardener' metaphor in Ruddick, 'Parents and Life Prospects', pp.125–26.
21. Tamir, 'Whose Education Is It Anyway?', p.168.
22. Ruddick, 'Parents and Life Prospects', p.124.
23. Locke, *The Second Treatise*, chapter 6, p.32.
24. The UN Declaration of the Rights of the Child is, for the most part, phrased in such general terms with regard to children's entitlements, though at one point it does specify parents as those primarily responsible for safeguarding their children's rights. See *United Nations Declaration of the Rights of the Child* (1959) in O'Neill and Ruddick, *Having Children*, pp.112–14.
25. O'Neill and Ruddick, *Having Children*, p.111.
26. Hobson, 'Some Reflections', p.64; Forster, 'Parents' Rights and Educational Policy', p.47; Tamir, 'Whose Education Is It Anyway?', p.163. Locke, of course, attributed this natural aptitude of parents to God, who is also the ultimate source of parental authority (Locke, *The Second Treatise of Government*, p.36, par. 63).
27. Tamir, 'Whose Education Is It Anyway?'
28. Brennan and Noggle, 'The Moral Status of Children', p.12. Like Locke (and Tamir), they believe that the rationale for granting these rights applies not only to biological parents, but to whoever has in practice taken on the fulfilment of the complex and demanding 'parent-care giver role.' Jeffrey Blustein, 'Child Rearing and Family Interests', p.117, also makes the point that parents' rights and duties do not derive from procreation.
29. Brennan and Noggle, 'The Moral Status of Children', p.13.
30. Hobson, 'Some Reflections', p.64.
31. Forster, 'Parents' Rights and Educational Policy', p.48.
32. See, for example, Brennan and Noggle, 'The Moral Status of Children'.
33. Tamir, 'Whose Education Is It Anyway?', pp.167–68.
34. See, for instance, Israel's state education law, *Sefer Hachukkim*, No. 131, of 9 Elul 5713 (20 Aug. 1953), 137, especially Article 2, which specifies the objectives of state education in Israel.
35. Blustein, 'Child Rearing and Family Interests', p.119. See also Forster, 'Parents' Rights and Educational Policy', p.48. Like Blustein, Forster simply assumes, with no particular justification, that these interests are legitimate and that they ought to form one of the constraints on parental rights.
36. Blustein, 'Child Rearing and Family Interests'; Forster, 'Parents' Rights and Educational Policy', p.50.
37. Blustein, 'Child Rearing and Family Interests'.
38. Ibid.
39. Ibid.
40. Ibid.
41. Granted, governments enact laws concerning these matters either directly, as when they grant financial incentives or deterrents for procreation, or indirectly, as when they protect certain institutions, such as heterosexual marriage, by a variety of financial and social means. At least at some points this too may be called into question on liberal grounds (for instance, where the incentives or deterrents are such as to effectively coerce the individual into carrying out the government's policy, or where unreasonable infringements on privacy and liberty are made, such as outlawing birth control). Nevertheless, it is still very different from requiring or forbidding a certain level of procreation.
42. Reich, 'Testing the Boundaries of Parental Authority', pp.12–15.
43. This is true not only in obvious cases such as the educational indoctrination in Nazi Germany and the former Soviet Union but also in cases like our own where the state ideology may strike us as more appealing.
44. See Meighan, *The Next Learning System*, 1999 (Hebrew), pp.146, 148.
45. Reich, 'Testing the Boundaries of Parental Authority', p.13.
46. Hobson, 'Some Reflections', p.65.
47. Ibid.

48. John Stuart Mill, *On Liberty*, in Geraint Williams (ed.), *Utilitarianism, On Liberty, Representative Government*, London and Vermont, 1996, chapter 1, p.78. All references throughout to Mill's *On Liberty* refer to this edition.
49. At no point in this article do I suggest that public schooling cannot fulfil children's basic educational interests, only that it is not the only (and not necessarily the best) vehicle for achieving these goals as liberalism understands them. I therefore see no strong moral grounds for denying a child's preference to join the mainstream educational system.
50. Brennan and Noggle, 'The Moral Status of Children', p.11.
51. *Ibid.*, p.4. See also Chamberlin, *Free Children and Democratic Schools: A Philosophical Study of Liberty and Education*, p.112, who relies on similar facts concerning children's immaturity and inability to judge their best interests as part of her attempt to mount a defence of compulsory education.
52. Brennan and Noggle, 'The Moral Status of Children', p.18.
53. *Ibid.*, pp.18–19.
54. Hobson, 'Some Reflections', p.65.
55. *Ibid.*
56. Brennan and Noggle, 'The Moral Status of Children', p.18.
57. On autonomy as the major goal of liberal education, see Hobson, 'Some Reflections', pp.66, 68; Forster, 'Parents' Rights and Educational Policy', p.48; Kevin Williams, 'In Defense of Compulsory Education', *Journal of Philosophy of Education*, Vol. 24, No. 2 (1990), p.289; Chamberlin, *Free Children and Democratic Schools*, for instance p.124; McLaughlin, 'Parental Rights and the Religious Upbringing of Children', pp.75, 76; White, *Beyond Domination*, p.140; Meira Levinson, *The Demands of Liberal Education*, Oxford, 1999, chapter 2; Harry Brighouse, *School Choice and Social Justice*, New York, 2000, chapter 4; Reich, 'Testing the Boundaries of Parental Authority', pp.15–20. Eamonn Callan, 'Indoctrination and Parental Rights', and McLaughlin, 'Parental Rights', refer to this as the child's right to future self-determination.
58. Tamir, 'Whose Education Is It Anyway?', pp.162, 167–9. Locke (whom Tamir cites) also shared this assumption. Thus he believed that every parent should give his children a liberal education, that is, prepare them for future autonomy. However, unlike contemporary writers, he believed the best way of promoting future autonomy was by exerting as much authority as possible during childhood. See Locke, *The Second Treatise*, chapter 6.
59. Best known perhaps is Ivan Illich, *Deschooling Society*, London, 1971.
60. Levinson, *The Demands of Liberal Education*, p.88.
61. Hobson, 'Some Reflections on Parents' Rights', p.68.
62. *Ibid.*
63. Williams, 'In Defense of Compulsory Education', pp.288–89, with reference to Chamberlin, *Free Children and Democratic Schools*, p.111; Henley, 'The Authority to Educate', pp.261–62; Tamir, 'Whose Education Is it Anyway?', p.168; Amy Gutmann, *Democratic Education*, Princeton, New Jersey, 1987, p.33; Levinson, *The Demands of Liberal Education*, pp.60–61.
64. Williams, 'In Defense of Compulsory Education'; Levinson, *The Demands of Liberal Education*, p.60.
65. Mill, *On Liberty*, chapter 5, p.175.
66. *Ibid.*, p.176.
67. I have in mind, for instance, nationwide quizzes via computers.
68. Libertarian home-schoolers in the US are admittedly an exception to this. I have, however, no interest in defending this libertarian view.
69. The idea of the state adopting a back-up position to that of the parents is one of the many views I share with Rob Reich, 'Testing the Boundaries of Parental Authority'.
70. For a variety of such studies in the US cited by the (American) National Home Education Research Institute, see <http://www.nheri.org/>. For statistics to this effect, see <http://www.digitex.net/koinonia/homeschool/statistics.htm>.
71. Specifically, such studies may be contested on the grounds that they encompass only a select group of home-schoolers, that is families who identify themselves as such and agree to participate in the survey.
72. Williams, 'In Defense of Compulsory Education', p.289, in agreement with Chamberlin, *Free Children and Democratic Schools*.

73. For this type of 'levelling down' objection to strict, or pure, egalitarianism, see Derek Parfit, 'Equality and Priority', in Andrew Mason (ed.), *Ideals of Equality*, Oxford, 1998, pp.1–20, at pp.9–10, 14–17; Joseph Raz, *The Morality of Freedom*, Oxford, 1986, chapter 9, p.227.
74. See Page, 'Parental Rights', pp.193–95 ('children as ends in themselves'), where he denies parental property rights in their children on this basis.
75. Meighan, *The Next Learning System*, appendix 3, which, among other things, demonstrates the inexpensiveness of home-schooling materials (for example, radio, television, magazines, free pamphlets, books from public libraries).
76. On the danger of, and liberal opposition to, indoctrination, see, for instance, Forster, 'Parents' Rights and Educational Policy', p.48; Tamir, 'Whose Education Is it Anyway?', p.168; Gutmann, *Democratic Education*, p.33; White, *Beyond Domination*, p.146; Callan McLaughlin, 'Parental Rights and the Religious Upbringing of Children'. The latter argues that religious upbringing need not be indoctrination and thus in opposition to the liberal commitment to autonomy, given that certain provisions are guaranteed.
77. Forster, 'Parents' Rights and Educational Policy'.
78. Many of the theorists who oppose home-schooling on liberal grounds oppose religious schooling as well. See, for example, Levinson, *The Demands of Liberal Education*, p.58; White, *Beyond Domination*, p.146. This renders their position consistent but does not change the inconsistent reality of many legal systems, such as Israel's, in which religious schooling is legal but home-schooling is not.
79. Note that the UN Declaration (1959), section 9 of the rights of children provides protection against exploitation of this kind in a separate clause from the one requiring compulsory education (section 7). In Israel, see Youth Labour Law, *Sefer Ha-Chukkim*, No. 128 of 11 of Av 5713 (23 July 1953), 115. Furthermore, as we all know, school attendance requirements are not on their own effective in preventing such parental abuse, both because it is not that difficult to, at least partially, avoid such laws, and because the laws themselves merely restrict the possibility of exploiting the children during certain hours of the week.
80. For the many studies which indicate, contrary to popular belief, that home-schoolers actually develop superior social skills than conventionally schooled children do, and that in particular their self-confidence and subsequent ability to act benefits from being schooled within the home, see: <http://www.rru.com/~meo/hs/faq/html>; [http://www.ed.gov/databases/ERIC\\_Digests/ed372460.html](http://www.ed.gov/databases/ERIC_Digests/ed372460.html); <http://www.hsu.edu/faculty/worthf/social.html>. See also Meighan, *The Next Learning System*, chapter 2, who cites extensively from empirical studies which testify to the superior development of social skills in home-schoolers as compared with conventionally schooled children. Some of these are Larry Shyers, 'A Comparison of Social Adjustment Between Home and Traditionally Schooled Children', and T. Smedley, 'Socialization of Home School Children', both in *Home School Researcher* (1992); G. Webb, *Children Learning at Home*, Brighton, 1990; Gary J. Knowles, *Home Schooling and Socialization: Parents as Educators*, California, 1993.
81. For a few articulations of the age-segregation-based objection to formal schooling which is frequently raised by home-schoolers, see, for instance, [http://learninfreedom/age\\_grading\\_bad.html](http://learninfreedom/age_grading_bad.html) and Meighan, *The Next Learning System*.
82. Tamir, 'Whose Education Is It Anyway?', p.168, in reference to Gutmann, *Democratic Education*, p.33.
83. Levinson, 'The Demands of Liberal Education', pp.57–63.
84. Levinson, 'The Demands of Liberal Education', p.58, clearly acknowledges this and opposes not only educating children exclusively within the family but also within their home communities, 'or even solely within the bounds of schools whose norms are constituted by those held by the child's home community.' Nevertheless, the latter is legal, while the former is not, a fact which cannot be explained, let alone justified, solely on the basis of her argument from pluralism.
85. See Levinson, 'The Demands of Liberal Education', chapters 2 and 3.
86. Ibid., pp.82–91. Levinson engages in a debate with de-schoolers who voice these concerns such as Ivan Illich, *Deschooling Society*, and Nell Keddie, 'Classroom Knowledge,' in Michael F.D. Young (ed.), *Knowledge and Control*, London, 1971, pp.133–60.
87. Mill, *On Liberty*, p.175.
88. Ibid., pp.176–77.
89. See <http://www.hslda.org>.

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