
ON REGULATING HOMESCHOOLING: A REPLY TO GLANZER

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AGREEMENT ON PRINCIPLE, DISAGREEMENT ON POLICY

I welcome Perry Glanzer's thoughtful essay, which discusses my 2002 book *Bridging Liberalism and Multiculturalism in American Education* and criticizes portions of my analysis there of homeschooling. Glanzer provides a helpful and fair gloss of some of the main theoretical claims I make in the book concerning the nature of the interests at stake in educating children and the importance of educating for autonomy. He accepts these and focuses his criticism on my practical policy proposals concerning the need to regulate homeschooling more strongly and with much greater vigilance. Glanzer's essay provides me the opportunity to extend some of the theoretical discussion in my book and to comment at greater length on the need for increased regulation of homeschooling, a phenomenon that has continued to expand apace since I wrote about it six years ago.

Glanzer is a homeschooling defender and supporter. I am a critic of unregulated homeschooling, which is to say, a critic of the manner in which homeschooling is currently practiced in many states in the United States. Despite our very great differences here, it is notable and important to emphasize at the outset the significant areas of agreement between us. At the level of principle, there is very little, if anything, that separates us. Indeed, I am cheered to find a homeschooling defender agree, as I argue, that there are tripartite interests at stake in the education of children: interests of the child, the parents, and the state. Traditional legal analyses of schooling, by contrast, consider only the interests of parents and the state. More importantly, Glanzer agrees with me that there are limits on each party's interest in education. Neither parents, nor the state, nor the child ought to be permitted to exercise sole authority over the education of children. Many homeschooling defenders, by contrast, invoke parental rights to educate their children, effectively giving parents complete authority over education when it comes to homeschooling. This is the philosophical and legal strategy, for instance, of the Home School Legal Defense Association, the organization most responsible for the passage of legislation at the state level to loosen and in many cases eliminate regulations on homeschooling. Finally, Glanzer agrees with me that becoming autonomous is a worthy educational goal. We disagree about how educational policy ought to pursue this goal, but many homeschooling defenders reject outright that children have any interest in autonomy. Indeed, they reject personal autonomy as a valuable ideal altogether.

So we agree on a great deal. Because many defenders of homeschooling are at odds with this common framework of analysis, I believe that our agreements are

more important than our disagreements. It would constitute a very large step forward, in my view, were the debate over homeschooling to be conducted on the shared grounds of the tripartite interests in education, the shared authority of parents, state, and child over education, and the child's interest in an education for autonomy. With this common framework, there might still emerge some differences about how public policies concerning homeschooling should be structured, but the underlying and common concerns for all involved would be clear. We are regrettably very far from such clarity in the real world. Thus, while I discuss the nature of my disagreements with Perry Glanzer in the remainder of this essay, I sincerely wish that his views were typical of the usual homeschooling defenders I have encountered and debated elsewhere.

CONTRA GLANZER

Glanzer's criticism focuses not on matters of philosophical principle but on issues of policy and regulation. His "fundamental problem" is that I insist upon placing the burden of proof on parents rather than the state in ensuring that the interests of children in homeschools are being met.¹ Glanzer argues that, just as in matters of child welfare, the burden of proof ought to rest with the state before it intervenes in family life and that, to justify intervention, clear and agreed upon standards of parental deficiency must be shown. In short, Glanzer believes that the state should be able to regulate homeschooling only when it can demonstrate that the child is being educationally *abused or neglected*, just as the state can intervene in parenting only when it can demonstrate that the child is being *abused or neglected*, or just as the state can contest the health care preferences of parents regarding their children only when it can demonstrate that the child is being medically *abused or neglected*. Glanzer believes that educational policy concerning homeschooling ought to follow the same legal framework as child welfare policy generally: the burden of proof is on the state to demonstrate that parents have harmed their child (RB, 7).

I have two responses to this, one a general reflection on the relation between philosophy and public policy and the other a forthright rejection of Glanzer's analogy between the legal framework governing educational regulation and that governing child welfare policy.

PHILOSOPHY AND PUBLIC POLICY

Unless one believes in Platonic philosopher kings, a complete blueprint of public policy is not to be derived from arguments about philosophical principle. "Regulations," I wrote in my analysis of homeschooling policies, "are properly a

1. Perry L. Glanzer, "Rethinking the Boundaries and Burdens of Parental Authority over Education: A Response to Rob Reich's Case Study of Homeschooling," in this issue, 6. This work will be cited as *RB* in the text for all subsequent references.

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matter of democratic politics, not deduction from theory," and with this in mind I described the list of regulations I proposed as "tentative and provisional."²

But if regulations are a matter for democratic politics, what, then, is the relation between philosophy and public policy? The full answer to this question is beyond the scope of this reply, but, put simply, I believe that political theory and the consideration of abstract principle that is at its heart has a threefold relation to public policy. First, political theory yields a small amount of policy prescription, that is, policies that are required. In a liberal democracy, for instance, the equality of all citizens and the equal assignment of fundamental rights to every citizen is an example of such a policy requirement generated from the abstract principle of the equal moral value of every person. Second, political theory sets limits on the range of permissible policies that might be enacted. The abstract principles that animate liberal democracy do not, for instance, prescribe a particular and definitive set of laws concerning elections but these principles do rule out certain policies, such as a law that would allow wealthy political candidates to purchase the votes of citizens or a law that would count the votes of men twice and women once. Finally, political theory generates a set of norms that structure the democratic process that yields actual policies and regulations.³ Democratic debate properly strives for inclusivity, for instance, and must strike a balance among the quantity, quality, and equality of public deliberation. Overall, I follow Joseph Carens's argument that what is morally required in terms of public policy by liberal democratic political theory is very different from what liberal democratic political theory permits.⁴ Philosophy ought not efface politics in a democracy but instead properly leaves room for politics even as the abstract norms structure political debate and deliberation.

With this understanding of the relation between philosophy and public policy, it is easier to see why I described my list of proposed homeschooling regulations as "tentative and provisional." The philosophical arguments I offered in defense of the tripartite interests in education and the importance of education for autonomy do indeed prescribe certain policies with respect to homeschooling. The legal framework used by courts to adjudicate disputes about homeschooling, I wrote, had to attempt to incorporate, when appropriate, the independent voice of the child.⁵ The philosophical arguments also rule out certain policies. Even a democratic majority ought not be able to pass laws, for instance, that grant sole authority over the education of children to parents; as I argued in my book, parents must share authority over the education of their children with the state and with the child.

2. Rob Reich, *Bridging Liberalism and Multiculturalism in America* (Chicago: University of Chicago Press, 2002), 169, 170.

3. I have written at greater length about the relation between philosophy and public policy in "A Liberal Democratic Approach to Language Justice," with David D. Laitin, in *Political Theory and Language Justice*, ed. Will Kymlicka and Alan Patten (Oxford: Oxford University Press, 2003), 80–104.

4. Joseph Carens, *Culture, Citizenship, and Community: A Contextual Exploration of Justice as Even-handedness* (Oxford: Oxford University Press, 2000), 6ff.

5. Reich, *Bridging Liberalism and Multiculturalism in America*, 164ff.

Beyond requirements like these, there is no such thing as a philosophically derived set of homeschooling regulations. So when Glanzer criticizes some very specific aspects of my proposed regulations I react with a certain amount of equanimity. Let me illustrate. Glanzer claims, for instance, that my proposed requirement that children in homeschools learn from a curriculum exposing them to and engaging them with alternative views of the good life does not guarantee serious contemplation of value diversity and cannot reliably foster the development of autonomy in children (RB, 11). Perhaps he is correct. I doubt that any policy in any arena actually "guarantees" full compliance and unfailingly secures the outcomes desired. And in any case, I remain open to other proposed policies that would honor the child's independent interest in an education for autonomy. If Glanzer has proposals different from mine, I welcome them. I do not hold that my proposed list of regulations is final and definitive.

ON BURDENS OF PROOF AND THE ANALOGY BETWEEN EDUCATION AND CHILD WELFARE

What then of Glanzer's "fundamental problem" with my proposal that the burden of proof rest with homeschooling parents to show that they can meet the state's and child's interests in education? Glanzer objects because he views education as on a par with child welfare. But Glanzer is mistaken. I reject the analogy between the legal framework governing educational regulation and that governing child welfare policy. Glanzer writes, "If I claim my neighbor is abusing his or her child, I must show proof. If I claim my neighbor is educationally depriving his or her children, I should also bring proof" (RB, 7). This is misguided because it falsely equates the task of parenting with the task of providing formal schooling. The welfare of a child in the privacy of his or her home is a different matter than the educational interests of a child which are pursued in a school, even if the school, as in a homeschool, happens to be physically located within the home.

Educating a child through formal schooling is not coextensive with directing the upbringing of a child. Educating is not the same as parenting. To demonstrate this, consider first an appeal to legal argument and then an appeal to straightforward moral argument.

Even the landmark Supreme Court decisions so often cited in defense of parental rights and homeschooling are unambiguous about the right of the state to regulate schools. This authority is vested in the state regardless of whether parents have been shown to be deficient. *Pierce v. Society of Sisters*, which guaranteed to parents the right to opt out of public schools, contains the uncomplicated declaration: "No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare."⁶ I submit that this statement of regulatory authority is more demanding and comprehensive than anything I have

6. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

proposed with respect to homeschooling. Similarly, the more recent *Wisconsin v. Yoder* case, which excused Amish parents from several years of compulsory schooling laws, found that "There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education."⁷ Court decisions in the United States ascribe powers of regulation to the state with respect to education that do not parallel the power of the state with respect to parenting and child welfare. In the case of schooling, reasonable regulations are constitutional and do not demand any proof of educational misconduct. In the case of parenting, the state has to demonstrate abuse or neglect before it can intervene within the family. Such is the law in the United States, at least.

As compelling as these legal statements are, the more fundamental argument against Glanzer's analogy is a moral one. Formal education and the justification of compulsory school attendance laws are founded on the interests of the state in promoting able citizenship and, as I argued in my book, on the state's responsibility to protect the interest children have in an education for autonomy. Whatever parents do in the course of raising their children certainly has profound effects on their children's future citizenship and autonomy, but the justification of parental supervision of the general upbringing of their children is not founded on claims of citizenship or autonomy but rather on something like the fiduciary duty of parents and the family's interest in intimacy.

To put the point bluntly, the moral justification of what parents do for their children is different from the moral justification of what teachers do to educate children. In homeschools, the role of parent and teacher is combined, but just because parents in their actions as parents have greater protection from state supervision and regulation does not mean that when parents serve as teachers their actions should be similarly free from supervision and regulation.

Thus when Glanzer writes that "homeschooling parents certainly should not be considered guilty or incompetent until proven innocent" (*RB*, 7), I reject the entire premise of the claim. My proposal that parents, rather than the state, bear the burden of proof in showing that parents, in their capacity as teachers, will meet the state's and child's interests in education, has nothing at all to do with presuming parents guilty unless they can demonstrate innocence. It has to do, rather, with the different authority vested in the state when it comes to the education of children as opposed to general protection of their welfare in the home. Perhaps one way to put the point is to see the role of providing formal education for children as a privilege, subject to regulation, rather than a right.

The disanalogy between education and general child welfare is plain. The state can intervene in family lives only when it can show abuse or neglect. But the authority of the state to enforce regulations with respect to schooling is present even when parents are loving and caring. Why? The zone of liberty and privacy that protects parents' actions in the home as they raise their children is not

7. *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

equivalent when it comes to homeschooling parents' actions in the home as they educate their children. And the common welfare of society is at stake in schooling in a way that it is not at stake with respect to run-of-the-mill parenting.

Thus I reject Glanzer's analogy and continue to believe that the burden of proof for meeting the state's and the child's interests in education are properly placed on parents who wish to homeschool.

SOME EVIDENTIARY, NOT THEORETICAL, REASONS FOR REGULATION

I conclude with some additional thoughts about the need for greater regulation of homeschooling. Glanzer complains that I fail to show that public schools do a better job than homeschools in developing the autonomy of children or, perhaps, in promoting the basic competencies of children (*RB*, 12ff.) It is true that I do not attempt an evidentiary comparison of public school outcomes with homeschool outcomes. My arguments in the book and in this essay are primarily motivated by theoretical rather than evidentiary concerns. But the evidentiary concerns are important too.

How do homeschools fare if we consider the evidence of their performance? The answer is that focusing on the evidence simply reinforces my arguments for greater and stricter regulation.⁸

The reason is not that homeschool students consistently fare worse than their public school peers when it comes to academic performance. The reason is that we simply have no good evidence about the performance, academic or otherwise, of homeschool students. Contrary to the claims of its advocates (though Glanzer is not guilty here), the studies on homeschoolers do not demonstrate that homeschoolers outperform public school students. Social science research on the actual performance of homeschoolers is in its infancy and what little research exists is either of very poor quality or can reach only limited conclusions.

The very biggest obstacle to good research is the simple fact that no accurate data exists on what ought to be the very simplest of questions: how many children are being homeschooled? Estimates range from 1.1 million in 2003 (as estimated by the National Center for Educational Statistics) to the claim of the National Home Education Research Institute of 1.7 to 2.1 million.⁹ Why such wide variation in the estimate? And why estimation in the first place? The reason is that homeschool regulations are in some places so minimal, or elsewhere so little enforced, that many parents do not even notify local school authorities when they decide to homeschool. Ten states in the United States do not require parents to register their homeschools. The result is that many students are homeschooled without any knowledge on the part of the state that a homeschool exists. Thus, even if local

8. I draw in this section from my "Why Homeschooling Needs to be Regulated," in *Homeschooling in Full View: A Reader*, ed. Bruce S. Cooper (Greenwich, Connecticut: Information Age Publishing, 2005), 109–120.

9. National Center for Educational Statistics, Issue Briefs, NCES 2004-115 (Washington, D.C.: U.S. Department of Education, 2004); and Brian Ray, *A Quick Reference Worldwide: Guide to Homeschooling, Facts and Stats on the Benefits of Homeschools*, 2002–03 (Nashville, Tennessee: Broadman and Holman, 2005).

officials or researchers wanted to test or monitor the progress of homeschool students, they would not know how to locate them.

Another worry is that in every previous study of which I am aware the testing and monitoring of the performance of students was voluntary. Parents who did not wish to participate in the study were not required to do so. This obviously biases the sample of the studies, for parents who doubt the capacity of their child to do well on a test are precisely the parents we might expect not to volunteer their participation in a study of homeschool academic performance.

In the absence of rigorous, social scientific data on the outcomes of homeschooling, we are left in the realm of the glorified anecdote. Hence we read about the homeschoolers who win the National Spelling Bee, the homeschoolers who get admitted to Harvard and Stanford. But anecdotes do not constitute evidence.

Why does an absence of evidence about the academic outcomes of homeschooling lead to an argument in favor of regulating homeschooling? Despite the care with which parents undertake to school a child at home, those who fail to teach them to read and to write and to be capable of minimal basic skills are depriving their children of essential capacities that they will need in order to lead independent lives. Leave aside my arguments about educating for autonomy. If a reader needs a reason to be convinced about the importance of regulating homeschools more strongly, start with the simple achievement of core academic skills. We have to date no good evidence that homeschoolers do better or worse than public schools in this regard. And this is the problem. To get the evidence, we need to require that all homeschools are registered and that all homeschool students take basic skills tests.

The enforcement of such regulations will never ensure that every single student achieves to high standards, much less that regulations designed to ensure the development of autonomy will guarantee that all children become autonomous. This is as true of regulations in public schools as it is in homeschools. But this is no reason to reject the need for regulations.

In my book I spent considerable time discussing the problems with regulating homeschooling from a practical standpoint. Glanzer's concerns about my proposed regulations are less practically motivated; he objects to the very idea of placing the burden of proof on parents. But the argument he advances — that education and child welfare are equivalent — is misguided. And the concern he has about regulation not guaranteeing outcomes in every case is equally misguided.

I agree with Glanzer, however, that it is principle and not mere practical concerns that are at stake. Beneath our disagreements, I believe Glanzer would concur with my fundamental orientation concerning homeschooling: what matters here is the justice we owe to children, that they receive an education that cultivates their future citizenship, their individual freedom, and that teaches them at least basic academic skills. Glanzer and I may disagree about how best to construct regulations to meet these goals — and I remain convinced that my proposals are better than his — but our common ground is in the end far more important than our policy differences.

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