

Why state sanctions fail to deter home education

An analysis of home education in Germany and its implications for home education policies

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ABSTRACT

Home education in Germany is a contravention to the school law, and severe sanctions are applied against it. Despite this, a small home education movement has developed within the last 25 years. This article, after a short overview of home education in Germany, examines the reasons why a policy with sanctions fails to deter homeschooling. Then I point out why the legitimate interests of the state and the child, which are usually given to justify the prohibition of home education, might be better served if home education were legal but regulated and controlled.

KEYWORDS *crime, deviant behavior, educational policy, homeschooling,
home education*

WITHIN THE LAST 50 YEARS HOME EDUCATION MOVEMENTS have developed in many countries, where policies regarding home education range from accepting it without special regulations to making it a contravention of the school law with severe sanctions applied against it. The latter describes the situation in Germany where home education, from a sociological point of view, can be regarded as deviant behavior. The positions of educational theorists regarding home education policy differ as well. Some criticize home education (Apple, 2005; Lubienski, 2000), some argue for more regulation

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and control (Reich, 2002), and others defend the legitimacy of this approach (Glanzer, 2008; Hill, 2000). In this article I analyze the situation in Germany and point out why, in a democratic society, sanctions fail to deter parents from homeschooling and what can be concluded from this for an adequate home education policy.

This article is based on data from four years of research by the author examining home education in Germany (Spiegler, 2007). The project combined several qualitative methods such as participant observation, content analysis and qualitative interviews.

The article is divided into three sections. The first gives a short overview of home education in Germany, as this situation is in some respects unique and constitutes the basis for the analysis. The second section describes five reasons why the sanctions fail to deter parents from home education, and the third section analyzes the implications of this for home education policy and explains why the failure of the sanctions is an argument for regulation of home education.¹

A SHORT OVERVIEW OF HOME EDUCATION IN GERMANY

Home education is not allowed in Germany as an alternative to public schooling. It has been unknown to most people until recently. The educational and sociological research has only recently started to take note of this phenomenon. Yet home education exists, and the small movement has increased in the last decade.

The development of the contemporary form of compulsory school attendance was a long process with several starting points. The first efforts with national education, hundreds of years ago, were, like many that followed, primarily directed at religious instruction (Mors, 1986: 18–26). Many local school regulations originated in the sixteenth century. Their aim was to make school attendance compulsory. The *Weimarer Schulordnung* (Weimar school law) from 1619 was the first one to mention the possibility that secular authorities could exert pressure on those who neglected their school attendance. However, there are good reasons to assume that school rules until the nineteenth century were predominantly only declarations of intent. In most of the areas, they failed to put compulsory school attendance into effect (Herrlitz et al., 1998: 52–3; Mors, 1986: 151–2). Until 1920 Germany had compulsory education which could be fulfilled by private tuition or home education (Avenarius and Heckel, 2000: 450). The first obligatory school attendance arose in the Weimar Republic (*Reichsgrundschulgesetz*). The law was enacted to establish more equality of opportunities. All children should

receive some education at school, and children of all classes should be taught together for the first four years. But even this law included a small exceptional rule which was often used to maintain the possibility of private tuition (Nave, 1980: 141). The law regarding compulsory school attendance from 1938 (*Reichsschulpflichtgesetz*) was the first general regulation in the German Reich without exceptions and with criminal consequences in case of contraventions (Habermalz, 2001: 218). This law had considerable influence on the formation of the contemporary laws relating to compulsory school attendance in the German federal states after World War II.

At present school attendance is compulsory in all German federal states. Children from the age of six up (depending on the date of birth it can be five or seven) are required to attend a public or a state-approved private school for at least nine years. The parents are obliged to ensure the school attendance of their children until the children are of age (Avenarius and Heckel, 2000: 448–56). Home education is not accepted as a sufficient reason for exemption from regular school attendance. Furthermore, it is stressed at several points that even religious or other kinds of beliefs do not serve as a basis for exemption (Avenarius and Heckel, 2000: 453). The existing correspondence schools in Germany are allowed to teach children abroad, but for children living in Germany correspondence courses are usually not accepted as an alternative to school attendance. Home education is, from a legal point of view, a contravention of school law. This is regarded in all states as an administrative offense and can be punished with a fine of up to several thousand euros (Rinio, 2001). The local administration also has the possibility of using the support of the police to bring absent pupils back to school. Such enforcement of school attendance has also been used in the case of home education. If parents willfully and repeatedly keep their children away from school, the responsible court has the right to withdraw child custody partially or completely from the parents (Avenarius and Heckel, 2000: 471). Additionally, in six states it is possible to consider such cases as indictable offenses. The maximum penalty is a six-month prison sentence or a fine of up to 180 times the daily rate of income (Rinio, 2001).

The roots of the contemporary home education movement in Germany go back to the second half of the last century. Several processes of change took place in society at that time and led to a leftward shift in the educational system. The early cases of home education in Germany, which attracted nationwide attention, happened during the 1980s and occurred in two different milieus: conservative, religious-oriented parents, who considered the public school as too liberal and antiauthoritarian, were on one side, while on the other side were liberal supporters of children's rights for whom the school was still too authoritarian and rigid. (For a more detailed description

of these cases and the subsequent development of the movement, see Spiegler (2003).) At this point there exists a similarity to the American home education movement which had comparable bipolar roots (Knowles et al., 1992: 197). Both sides shared the wish to reduce the state influence on education.

Since then, the home education movement has been slowly growing. Different networks have developed and now a process of professionalization and networking is visible. New coalitions occur outside the original milieus that try to connect home educators independent of their individual motives and the question of religious orientation. Accurate numbers for the current size of the movement are not available. Conservatively estimated, there are 600–1000 children being educated at home. Parents, who face steep fines or a partial loss of child custody, often choose to move to a country in which home education is legal. The number of emigrated homeschoolers is increasing and limits the growth of the German home education movement.

The parental motives for home education in Germany are diverse, just as in many other countries. There are similarities to the range within the US movement with its two important poles that Stevens called ‘heaven-based’ and ‘earth-based’ (Stevens, 2001). Beyond this typology it is possible to interpret all motives as criticism of the school system and to summarize them as follows: (1) The *structure* of traditional schooling is considered as too inflexible and rigid. (2) Parents assume that their possibilities to impart *values* are too limited or interfered with by schooling. (3) The *process of learning* does not offer enough space for individual needs or approaches and self-determined learning, or it focuses on issues that are ‘wrong’ from the parents’ viewpoint. (4) Parents are concerned about the *well-being* of their children and speak about mobbing, psychosomatic disorders or school phobia.

Often more than one of these motives is important for the parental choice of home education, and sometimes the reasons change over the course of time.

WHY SANCTIONS FAIL TO DETER HOME EDUCATION

All of the above-mentioned sanctions, ranging from a fine and a prison sentence up to the loss of child custody, have been applied during the last decade to prevent parents from practicing home education or to force them to bring their children back to school. By these means it was possible to limit the spread of homeschooling in Germany. The German home education movement is very small, compared with those in other countries. But the sanctions failed to prevent the emergence of the movement.

From a sociological point of view home education in Germany can be regarded as deviant behavior. The sociology of crime offers a multitude of

different theories to explain deviance (Lamnek, 1993, 1994). Approaches that are based on rational choice models assume that crime is basically a function of expected costs and benefits (Becker, 1968; for an overview see McCarty, 2002). The state sanctions of deviant behavior are part of the punishment costs which are a central element of the costs of a crime. It could be expected that the impact of these costs is higher regarding home education than it is for other types of deviance, as the probability of detection is very high, and parents who choose homeschooling usually are not interested in a criminal career nor do they gain social status within their 'peer-group' due to offenses (important for young delinquents; Matsueda et al., 2006).

Taking into account the specific legal situation with its different sanctions that are at least partially a severe threat for a family, the question arises as to how a home education movement could have developed under these conditions. In the following section I am going to describe what I consider to be the main reasons why the state sanctions fail to deter home education.

The repertory of sanctions is limited

The extent of sanctions and their application are limited in a democratic state founded on the rule of law. The law is expected to follow the principle of reasonableness. This is a very vague criterion, and there might be reasons to assume that some sanctions against home education in Germany are not as reasonable as they should be. Yet, because they are only applicable after certain rule-governed legal proceedings, the sanctions are to some extent predictable and controllable. The history of the German home education movement reveals the importance of this point. The roots go back to the early 1980s, but only in West Germany. There are no indications of the existence of home education in the German Democratic Republic. Of course, this might have multiple reasons, but the pressure of a dictatorial system and the awareness that all possible sanctions could be applied against those who criticize the system can be considered as important among these reasons.

The sanctions are only partially applied

All of the available sanctions have been applied during the last decade, but the law has not always been applied to all cases, and the authorities do not always use the whole extent of possible sanctions. Some families remain undiscovered, some reach a status of tacit permission and others are fined or threatened with loss of child custody. Some proceedings last for years, while other cases are dismissed within a short time. There are convictions, but many families lodge an appeal and continue with home education until

a final decision is made. It isn't possible to make predictions concerning the unfolding of a case based on variables such as parental motives, educational level of the parents or approach to learning. Instead it seems that the decision-makers at the local authorities have decisive influence on whether a legal action is pursued and how far it is pursued.

This raises the question as to why the law is not applied to all cases in the same way. It is obvious that those home education families who are undiscovered cannot be brought to justice. Usually the school authorities know which children are of the necessary age to attend a school, but sometimes bureaucracy fails. In the majority of cases, however, somebody knows about the offense – neighbors, teachers or the principal of the school, or even a representative of the local school authority. Sometimes home educators are tolerated without any proceedings and sometimes after being fined. In both cases it differs from the way in which administrative offenses are usually treated. The fact that those who are in charge of decision-making sometimes fail to initiate sanctions indicates that they do not consider these an appropriate means in a particular case or that they, at least to some extent, understand and sympathize with the parental motives. There are several examples of this within the German home education movement. A mother reported that, after some legal defeats, the administrative head of the *Landkreis* promised her in confidence that he wouldn't impose any sanctions on her family in the future. In other cases the most stubborn parents, who refused to send their children to school whatever the sanction had been or would be, succeeded in this way, and their home education was thus tolerated. It seems as if the idea that it is adequate and helpful to sanction home educators with high fines or imprisonment does not have much more acceptance than homeschooling itself.

Home education as civil disobedience

Home education in Germany is a deviant behavior that can be regarded as civil disobedience. John Rawls defined civil disobedience as a 'public, non-violent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of government' (Rawls, 1999: 320). He limits his account of civil disobedience to nearly just and well-ordered societies, hence democratic societies, in which some violations of justice occur (Rawls, 1999: 319).

In a notable number of cases, though not all, home education in Germany meets these criteria of civil disobedience. By educating their children at home, these parents refuse to adhere to compulsory school attendance laws. They are aware of the possible consequences and accept them to a certain degree. Their

disobedience is limited to schooling; they do not question the legal system in general or other civic duties. They appeal to matters of conscience, claim a parental right of care and custody anchored in the Constitution of Germany, or appeal to the rights of the child citing international conventions. They act without violence against the representatives of school authorities or the state. And even if the disobedience does not take place on the streets it is often public. Many home educators do not try to conceal it from the authorities, and often the media pay a lot of attention to these cases and the ongoing legal proceedings.

Many social scientists and philosophers who have dealt with civil disobedience agree that it may have a positive function within a democratic society. It maintains the capacity of innovation (Habermas, 1983: 40), is regarded as a stabilizing device of a constitutional system (Rawls, 1999: 336), can draw attention to a specific problem (Kewenig, 1984: 161) or evoke a public debate and influence political decisions (Eberl, 1994: 376). If home educators understand their homeschooling as an act of civil disobedience they may feel legitimized by this and interpret sanctions as a necessary element to maintain their interpretation of the situation.

Home education as value-rational action

Home education in Germany could also be regarded as a form of value-rational action (*wertrational*) (Weber, 1980: 12). Value-rational action is based on belief in the absolute value of a certain action (grounded in religious, ethical or aesthetic convictions) independent of its success. In some cases parents see their home education as such a value-rational action. Some believe that it is God's will and their highest duty to educate their children at home. Others are so strongly convinced of their conception of man as a free, independent and self-determined human being that any attempt to enforce school attendance would interfere with their ethical basic principles. They believe that there is no other way for them to act, and they are for this reason unmoved by the legal sanctions that may be imposed.

Techniques of neutralization

People who behave deviantly often use different arguments to justify their behavior to themselves. Within the sociology of crime these arguments are called techniques of neutralization. The necessity of neutralization only occurs if the deviant person is basically oriented to conformity. It can be assumed that this is true for home education parents. Home education also takes place over an extended period of time, making the discrepancy between

conformity and deviance all the clearer. A mother described this tension in an interview as follows: 'I tell my children not to cross the street at a red light, but I do not take them to school, and I thereby make myself liable to prosecution. This is very difficult.'²

Sykes and Matza (1957) were the first who analyzed techniques of neutralization as part of a theory of delinquency. Referring to juvenile delinquency, they identified the following five major types: the denial of responsibility, the denial of injury, the denial of the victim, the condemnation of the condemners, and the appeal to higher loyalties. Sykes and Matza argued that 'techniques of neutralization are critical in lessening the effectiveness of social controls and that they lie behind a large share of delinquent behavior' (1957: 669). Home education parents in Germany use these or similar strategies to minimize their conflict. They argue that compulsory school attendance is inconsistent with the German Basic Law and that homeschooling is a parental right. They appeal to higher values or loyalties, such as God, the best interest and welfare of the child, or human rights. They transfer the responsibility to the school, claiming that it failed to fulfill its purpose. They deny their deviance causes injury, or victimizes anyone, when they interpret their behavior as a means for the development of society. Many home educators regard themselves as freedom fighters or pioneers of an enlightenment. They see themselves as reformers who have to accept resistance, while they are trying to establish a new common good. Efforts at neutralization are also aided by the fact that home education is legal in many other highly developed countries. As a result, home educators do not consider their own behavior as deviant, rather the German law is seen as deviant.

IMPLICATIONS FOR POLICY: WHY HOME EDUCATION SHOULD BE REGULATED

In the preceding section I described some important reasons why even a law that demands compulsory school attendance and includes severe sanctions cannot fully deter home education. The interplay of these limitations of the law's effectiveness enabled a home education movement to emerge and grow in Germany. All kinds of behavior which are against the law exist to a certain degree. Tax evasion, shoplifting, road traffic offenses, burglary and murder cannot be totally prevented by sanctions, whatever those sanctions might be. And nobody would conclude from this that these criminal offenses should be legalized. In this section I will show some reasons why the case of home education is different and why the fact that the state sanctions fail to deter parents from homeschooling is an argument for regulation of home education.

The issue of regulating home education is usually discussed against the background of legalized home education with little or no control and regulation (Reich, 2005). Reich (2002) has used the case of homeschooling to discuss necessary boundaries if conflicts arise between parents and the state over educational authority. His analysis is based on a distinction of a triad of interests in education: the interests of parents, the state and the child. After a detailed description of these interests, Reich concludes that all three groups have legitimate interests and no one can trump the others and justify sole authority over educational provision. 'Neither parents, nor the state, nor children themselves should unilaterally and without a countervailing balance direct and control the educational environment of children' (Reich, 2002: 295). Applying this theoretical frame to home education, Reich does not question that it is possible to satisfy all these interests by homeschooling (Reich, 2002: 296). But, to ensure this, it is necessary to regulate home education to a certain degree, Reich argues. As a minimum of regulation, he mentions that all home educators should be registered, that parents demonstrate that 'their homeschooling arrangements are up to determined educational standards', that they use a curriculum that provides exposure to and engagement with other values and beliefs, and that annual tests measure academic progress (Reich, 2002: 304f).

The details of such regulation warrant further discussion (Glanzer, 2008; Reich, 2008), but the distinction between the interests of parents, state and child is helpful. As mentioned above, discussion of the regulation of home education mostly takes place against the background of legalized home education with little or no state supervision. Therefore, the demand for regulation of home education is sometimes considered as a criticism of this unregulated approach. Home education in Germany has a totally different background; it represents the other end of the range from uncontrolled freedom to prohibition combined with sanctions. Using Reich's triad of interest, I intend to show why the latter extreme seems as inappropriate as the first one. At this point I come back to the question of why the case of home education differs from other forms of deviant behavior. Why should the fact that state sanctions fail to deter parents from home education be considered an argument for its regulation?

Certain behavior is prohibited by law, and contraventions are punished with the intention of deterring people from this kind of behavior. The reason for the law and the resulting punishment is often that this behavior violates legitimate rights of others or that it is a threat to their safety. In these circumstances, the frequency of deviant behavior will never be an argument for its legalization. Nobody would expect that a store that fails to stop shoplifting would change its policy and declare shoplifting a legitimate

type of shopping. The strongest justification for the prohibition of home education in Germany is that it is thought to violate or threaten legitimate rights of others. These others are the child (who has fundamental interests at stake) and the state or community (which has an interest in deterring the development of parallel societies, providing equality of opportunities, and ensuring the development of social and citizenship competence). According to Reich's triad, these 'rights' or legitimate interests of children and the state deserve protection. The irony of the home education situation in Germany is that legalization combined with clear regulation and control might be a better protection of these interests than the contemporary status of home education in Germany.

Today, no German educational authority knows how many home educators are in its territory and what kind of education is taking place in these families. Those whose home education remains undiscovered or undisturbed can choose any kind of education, whatever their particular beliefs might be. The legitimate interest of the child and state are least secure in such circumstances, in the sense that there is no overview and possibility of correcting problems that may occur. No one can ensure equality of opportunities or citizenship education. Other families move to another country in which home education is legal. In this way the German authorities dispose of the 'problem', but if their highest interest truly is the welfare of the child, then once again this is the worst case scenario. Article 6 of the German Basic Law states that 'the care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them'. But the state shall watch over them in the performance of this duty. This watching (German: *Wächteramt*) is impossible if parents feel forced to withdraw their children from German society by changing their place of residence.

When the relationship of parental and state authority over education is discussed, it is helpful to follow Reich's triad of interests (of parents, state and child). The aim of a democratic society should be to offer as much freedom as possible but to ensure that no party unilaterally and without a countervailing balance directs and controls the educational process. As Reich pointed out, this isn't true if home education is legal without any regulation or control (Reich, 2002). Based on the analysis of the reasons why Germany fails to deter home education, I tried to highlight that the opposite case, in which home education is forbidden and sanctioned, also fails to ensure a balance of educational authority. Within a democratic society the most appropriate way to handle home education might be to legalize and regulate it in order to promote its success.

Two fears may speak against such a policy. First, there is the fear that it would 'open the floodgates' and encourage many parents to choose home

education. No doubt, the number of home educating parents in Germany would increase if homeschooling were to be legalized. But, even if it would double or triple, it would be a very small movement. In nearly all European countries in which home education is legal, the percentage of home educated children is far below 1%. The second fear is that parents could refuse to cooperate and reject the legitimacy of state supervision of their children's education. Everybody who is familiar with home education movements knows that some would try to do so. But the research in the German movement also indicates that the majority of parents wish to cooperate. And examples from other countries (e.g. Austria) show that it is possible to regulate home education. Furthermore, the existence of a legalized option could increase the acceptance of sanctions against those who totally refuse to cooperate. At the moment all these considerations are only hypotheses about possible consequences of a change of policy. However, if state sanctions cannot deter home education and therefore fail to ensure the legitimate interests of state and child, this should be reason enough to discuss suitable forms of regulation and control, and to examine the success of home education regulations where they exist.

NOTES

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2. Quote from interview no. 10.

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Spiegler: State sanctions on home education

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