

A Global Perspective on Freedom in Education through the Eyes of the Homeschool Movement

Michael P. Donnelly Esq.

Follow this and additional works at: <http://ir.stthomas.edu/ustjlpp>



Part of the [Education Law Commons](#)

Bluebook Citation

Michael P. Donnelly, *A Global Perspective on Freedom in Education through the Eyes of the Homeschool Movement*, 7 U. St. Thomas J.L. & Pub. Pol'y 51 (2012).

This Article is brought to you for free and open access by UST Research Online and the University of St. Thomas Journal of Law and Public Policy. For more information, please contact Editor-in-Chief [Patrick O'Neill](#).

A GLOBAL PERSPECTIVE ON FREEDOM IN EDUCATION THROUGH THE EYES OF THE HOMESCHOOL MOVEMENT

MICHAEL P. DONNELLY, ESQ.*

A prolific and renowned human rights attorney, international legal practitioner, and noted apologist has styled homeschooling as a “litmus test” for democracy.¹ In the shadow of hostile actions from the European Court of Human Rights, regarding the treatment of home educating families in Europe, John Warwick Montgomery writes, “when homeschooling is denied, the [European Human Rights] system may be said to lack the proper degree of flexibility; a reasonable measure of parental choice is denied; and a diverse independent educational sector ceases to have a realistic meaning.”²

A four volume series, *Balancing Freedom, Autonomy and Accountability in Education*, is edited by noted education professors Jan De Groof and Charles Glenn, who note that to deny freedom in education is “unjust and unworthy of a free society.”³ Perry L. Glanzer writes that homeschooling is *necessary* in a free society both as a “check upon public education” and to counteract the growing idea that children are political tools created for the use of the state rather than individual persons with wide ranging definitions of self-fulfillment.⁴ Glanzer argues that “the

*Michael P Donnelly (1967) is the Director for International Affairs at the Home School Legal Defense Association. Donnelly earned a J.D. from Boston University School of Law and is a Paul J. Liacos Distinguished Scholar. He is an Adjunct Professor of Government at Patrick Henry College in Purcellville, VA where he teaches constitutional law. Donnelly is an advocate for home education and serves over 15,000 families in eleven states and 200 countries working with homeschooling organizations and helping resolve disputes between authorities and homeschooling families. A father of seven, Donnelly with his wife (to whom he is eternally grateful for her support) is a homeschooling parent.

1. JOHN W. MONTGOMERY, HOMESCHOOLING IN AMERICA AND IN EUROPE: A LITMUS TEST OF DEMOCRACY 76 (2012).

2. *Id.* at 75.

3. BALANCING FREEDOM, AUTONOMY AND ACCOUNTABILITY IN EDUCATION, VOL. 4, 1 (Charles L. Glenn, Jan De Groof, & Cara S. Candal, eds., 2012).

4. Perry L. Glanzer, *Saving Democratic Education from Itself: Why We Need*

leaders of liberal democracies including educational leaders, need reminders of liberal democracy's limits and the fact that the child is not the mere creature of the state."⁵

Joseph Murphy, assistant dean of Education of the prestigious Peabody College of Education and Human Development, at Vanderbilt University, has assessed the homeschool movement in America pronouncing it a "social movement" that has achieved "remarkable" success.⁶ Combing through hundreds of research articles and studies, Murphy points out that homeschooling is a legitimate and viable educational methodology that delivers as good as or better than other educational approaches in public or private settings. Murphy explains in some detail what can only be described as a tumultuous history of home education in the United States, which has reached the significant milestone of representing between three and four percent of the school age population in America.⁷

The first scholarly analysis about home education as a modern practice dates back to the 1950s and 1960s, as initiated by Christian and secular scholars who decried the results of America's public school system.⁸ Universal and increased expansion of the compulsory school age began in 1852 and culminated in the 1920s, as all states had adopted compulsory school attendance laws.⁹ In 1925 the Supreme Court, interpreting the 14th Amendment and applying the Incorporation Doctrine for one of the first times ever, ruled in a landmark case, *Pierce v. Society of Sisters*, that it was unconstitutional for states to universally require children to only attend public schools.¹⁰ However, homeschooling was barely an acknowledged legal option, and as a practical matter, was rarely employed. Even as late as 1980, only three states formally recognized home education as a legal exemption from compulsory attendance laws.¹¹

The intensity of the legal battle in the United States, acknowledged among the world's freest democracies, may portend an uncertain future for parents around the world in countries with a more tepid commitment to

Homeschooling, 88 PEABODY J. EDUC. 342, 352 (2013).

5. *Id.*

6. JOSEPH MURPHY, HOMESCHOOLING IN AMERICA: CAPTURING AND ASSESSING THE MOVEMENT 2 (2012).

7. *Id.* at 29-52.

8. *See generally*, R.J. RUSHDOONY, INTELLECTUAL SCHIZOPHRENIA (P & R Press, June 1961); MESSIANIC CHARACTER OF AMERICAN EDUCATION (P & R Press, 1963); JOHN HOLT, HOW CHILDREN FAIL (Pitman Publishing, 1964); HOW CHILDREN LEARN (Pitman Publishing, 1967); RAYMOND S. MOORE, BETTER LATE THAN EARLY (Reader's Digest Press, 1975).

9. *See generally*, CHARLES GLENN, THE MYTH OF THE COMMON SCHOOL (University of Massachusetts Press, 1988).

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

11. CHRISTOPHER J. KLIKA, THE RIGHT CHOICE, 380 (Noble Publishing Associates, 1995).

pluralism and individual liberty.¹²

Incidents and controversy in some European democracies, particularly Germany, Sweden, Spain, and the Netherlands, suggest that the practice of home education touches deeply-rooted and reactive sensitivities within the social and governing cultures of nations.¹³ As Glenn, De Groof, and Montgomery suggest, these responses appear reflective of deeper cultural features concerning the degree to which particular nations value liberty and the degree of respect towards fundamental societal structures like the family and the interrelationships between it and the State.¹⁴

The author wishes to notify the reader that he is not a neutral observer in this discussion. Rather, he is employed as an advocate and attorney for the world's largest association with a stated mission to advance home education. Furthermore, he and his wife are active practitioners of home education, having seven children from age three through sixteen, all of whom are home educated. However, the author and his wife are graduates of the public school system. In this article, the author seeks to critically analyze social, cultural, and legal issues in the area of educational freedom, but seeks to avoid prejudicial bias. Nevertheless, he does presume that home education is a legitimate educational alternative that should be permitted in all countries. The author will not argue that regulation is proscribed but sees regulation as permissible even if unnecessary; a topic that is and should be hotly debated by policymakers.

In this article we establish a common understanding about what homeschooling is and what it is not. Then, we examine how different nations craft educational policy to accommodate this form of education. Because the concept is so new to many, we assume that few readers will be familiar with homeschooling. Therefore, we will provide some introductory

12. For more information about the battle over home education in the United States readers are encouraged to consult Christopher J. Klicka's book *Homeschooling: the Right Choice* in addition to the author's chapter in *Homeschooling in America and in Europe: a Litmus Test for Democracy*. KLIICKA, HOMESCHOOLING: THE RIGHT CHOICE: AN ACADEMIC, HISTORICAL, PRACTICAL, AND LEGAL PERSPECTIVE (2002); MONTGOMERY, *supra* note 1.

13. *Judge Blocks Emigration as Seized German Children Now Go to Government School*, HOME SCHOOL LEGAL DEFENSE ASS'N (Oct. 29, 2013), <http://www.hslda.org/hs/international/Germany/201310290.asp>; Riksföreningen för Hemundervisning i Sverige, *Homeschooling family fined 15000 USD by the Swedish Supreme Court*, MYNEWSDESK (Aug. 8, 2013), <http://www.mynewsdesk.com/se/view/pressrelease/homeschooling-family-fined-15-000-usd-by-the-swedish-supreme-court-895446>; Inès Benitez, *Homeschoolers Want Legal Vacuum Filled in Spain*, INTER PRESS SERVICE NEWS AGENCY (Apr. 24, 2013), <http://www.ipsnews.net/2013/04/homeschoolers-want-legal-vacuum-filled-in-spain/>; *Homeschooling a Topic of Discussion in the Netherlands*, HOME SCHOOL LEGAL DEFENSE ASS'N, <http://www.hslda.org/hs/international/Netherlands/201203050.asp>.

14. See generally, MONTGOMERY, *supra* note 1; see also BALANCING FREEDOM, *supra* note 3.

material before analyzing country practices.¹⁵

Although it is more established in English-speaking liberal democracies, particularly the United States, Canada, the United Kingdom, and South Africa, homeschooling is also catching the interest of parents in other countries as an educational alternative.¹⁶ In countries such as Germany, Brazil, and Sweden, the movement is creating no small amount of controversy.¹⁷

WHAT IS HOMESCHOOLING?

Homeschooling can be nonexclusively defined as the elective practice whereby children are educated directly under the personal oversight of their parents in a home setting. Advocates, practitioners, and researchers alike grapple with the terminology of this new and innovative form of education. Depending on the philosophical underpinning, country of origin, and other factors, homeschooling is also known as home-based education, home education, unschooling, home-centered learning, home instruction, deschooling, autonomous learning, and child-centered learning. Regardless of its sundry names, the decision to homeschool contains two invariable elements: “a decision by parents not to educate their child in an institutionalized setting and the decision by parents to educate their children in a home setting.”¹⁸ Homeschooling can also be defined by what a parent does *not* choose for their child’s education, a definition which incorporates the rejection of the institutional schooling found both in government schools and the majority of traditional private schools.

Far from being a simply defined and uniform practice, Murphy notes that in the United States the idea of homeschooling “has become fuzzier

15. Readers interested in learning more about this form of education are encouraged to consult the resources referenced here:

Robert Kunzman, *Homeschooling Research & Scholarship*, INDIANA UNIVERSITY (last updated Sep. 21, 2012), available at <http://www.indiana.edu/~homeeduc/index.html> (cataloguing over 1600 articles of research conducted on the subject of homeschooling).

JOSEPH F. MURPHY, *HOMESCHOOLING IN AMERICA: CAPTURING AND ASSESSING THE MOVEMENT* (Corwin, 2012) (reviewing the major research on homeschooling in America).

HOMESCHOOL LEGAL DEFENSE ASS’N, www.hsllda.org (providing information regarding home education in the United States and other countries).

16. Michael P. Donnelly, *In Pursuit of Educational Freedom*, HSLDA Court Report, Vol. XXVIII, No. 3, 6-11.

17. Thomas Schirmacher, *Compulsory Education –in Schools Only?*, in *HOMESCHOOLING IN AMERICA AND IN EUROPE: A LITMUS TEST OF DEMOCRACY* 47 (John W. Montgomery, ed. (2012)); Julio Severo, *Triumph of the state over the family: Brazilian Congress reinforces ban on homeschooling*, LIFESITENEWS (Oct. 25, 2011), <http://www.lifesitenews.com/blog/triumph-of-the-state-over-the-family-brazilian-congress-reinforces-ban-on-h/>; Michael P. Donnelly, *The Current Homeschool Situation in Sweden*, in *HOMESCHOOLING IN AMERICA AND IN EUROPE: A LITMUS TEST OF DEMOCRACY*, 77 (John W. Montgomery, ed. (2012)).

18. MURPHY, *supra* note 6, at 5.

over recent years as hybrid models of homeschooling and public schools have emerged.”¹⁹ The author’s observations as a professional, working as an international homeschooling researcher and advocate, suggest similar patterns in other countries where homeschooling has existed for some time. Murphy explains that homeschooling is just as much a social movement as it is the fastest-growing educational alternative.²⁰ He postulates that homeschooling in the United States has grown so rapidly because of the sociological context of privatization observed in post-industrial America’s social fabric in the closing decades of the twentieth century.²¹ More precisely, homeschooling could be an outgrowth of the national shift from seeing government as the solution for societal problems and towards the increasing desire of the citizenry to privatize fixtures of society.²²

Cibulka and Apple, two researchers writing in 1991 and 2000, respectively, observed that the success of the homeschooling movement represents a “wider trend toward more public influence over educational policies, in contrast to the wide autonomy professionals once enjoyed.”²³ In many ways, “the movement toward homeschooling mirrors the growth of privatized consciousness in other areas of society.”²⁴ A survey of the global landscape reveals similar patterns within other nations as well.²⁵

It is worth noting that the definition of homeschooling is not necessarily rooted primarily in the location where the child receives his education (e.g., in the home). In numerous country reports (Albania, Greece, Romania), it was noted that some children who are medically, psychologically, or otherwise unable to attend school, complete their studies at home.²⁶ These children, though they learn at home, remain under state supervision and usually receive instruction from state teachers, use a state-approved curriculum, and are monitored and assessed according to state standards.²⁷ This learning situation should not be considered homeschooling. We define “homeschooling” as the *elective* practice whereby *parents* control their child’s education. While there may be certain state controls present in an actual homeschooling environment, the bottom line is that the parent, not

19. *Id.* at 4.

20. *Id.*

21. *Id.*

22. *Id.* at 54-73.

23. James G. Cibulka, *State Regulation of Home Schooling: A Policy Analysis*, HOMESCHOOLING: POLITICAL, HISTORICAL, AND PEDAGOGICAL PERSPECTIVES 101, 117 (Jane Van Galen & Mary Anne Pittman, eds., 1991).

24. Apple, M. W., *Away with All Teachers: The Cultural Politics of Home Schooling*, HOME SCHOOLING IN FULL VIEW 75, 80 (Bruce S. Cooper, ed., 2005).

25. See, e.g., Kunzman, MURPHY, HSLDA, *supra* note 15.

26. BALANCING FREEDOM, *supra* note 3, VOL. 3, 1-17, VOL. 2, 229-44, 435-50.

27. *Id.*

the state, is in charge and responsible for providing the child's education.

WHY IS IT?

First, we must address a caveat: the population of homeschooled students in the United States has risen over the past forty years from essentially zero to between three and four percent of the school-age population.²⁸ Therefore, most of the scientific and academic research on homeschooling is gathered in the United States. The author's opinion, however, based on extensive international homeschooling experience, is that the motivations of parents who homeschool are discernibly similar regardless of cultural or political boundaries.

Historically, education had been provided primarily by families and church institutions; not the government. In the sixteenth century, the Reformation within the Catholic Church sparked a widespread interest in literacy, and introduced the idea that the state ought to provide compulsory education.²⁹ The state thus entered into the arena of education, and asserted a new and forceful means by which it shaped society; through the influence of children's minds and values.³⁰ Now, after only 160 years of experimentation with compulsory schooling, ninety-five percent of the world's 205 nations have some form of compulsory education laws requiring children to be educated for as few as four and as many as thirteen years.³¹ Although most laws provide exceptions, few explicitly recognize and even fewer encourage homeschooling. After these many decades of government-run education, parents are increasingly seeking alternative education for their children. Increasing problems with public education systems are only part of the equation in parents' decision to homeschool their children.

The decision to homeschool is idiosyncratic at the individual family level, and depends on the individual needs and desires of the parents and children involved. However, the studies devoted to researching homeschooling motivations indicate several common factors at work within the movement.³² Collum and Mitchell note the "general consensus among researchers that the decision to homeschool is motivated by four broad

28. MURPHY, *supra* note 6, at 10.

29. CHARLES L. GLENN, *CONTRASTING MODELS OF STATE AND SCHOOL* 1-3 (Continuum, 2011).

30. *Id.* at 8.

31. UNESCO, *Education for All by 2015: Will we make it?*, at 2, U.N. Doc. 2007, available at <http://www.uis.unesco.org/Library/Documents/gmr08-en.pdf>; see also, UNESCO, *Education Statistics > Duration of Compulsory Education (Most Recent) by Country (2012)*, http://www.nationmaster.com/graph/edu_dur_of_com_edu-education-duration-of-compulsory#source.

32. ISABEL LYMAN, *THE HOMESCHOOLING REVOLUTION* 14 (2000).

categories of concern,” including dissatisfaction with public schools, academic and pedagogical concerns, family life, and religious or moral values.³³ Murphy identifies two categories of “push and pull” factors: “push factors” rear negative forces relating to academics and social issues that push families away from public schooling options, while “pull factors” are the family life and religious or moral values that move parents and/or children towards home education.³⁴

One helpful study provides a seven-part motivational outline which includes instructional and curricular, safety, social, convenience, health and handicap, values, and esteem issues.³⁵

National Center for Education Statistics

Table A-6-2. Number and percentage of school-age children who were homeschooled, by reasons parents gave as important and most important for homeschooling: 2007

| Reason | Important | |
|--|-----------|---------|
| | Number | Percent |
| A desire to provide religious or moral instruction | 1,257,000 | 83.3 |
| A concern about environment of other schools ² | 1,321,000 | 87.6 |
| A dissatisfaction with academic instruction at others schools | 1,096,000 | 72.7 |
| Other reasons ³ | 485,000 | 32.2 |
| A desire to provide a nontraditional approach to child's education | 984,000 | 65.2 |
| Child has other special needs | 315,000 | 20.9 |
| Child has a physical or mental health problem | 169,000 | 11.2 |

Similar factors are referenced in a quadrennial study by the United States Department of Education. This study shows that, far from being monolithic, most parents who homeschool have multiple reasons which factor into their decision to homeschool their children.³⁶

WHO DOES IT?

Perhaps not surprisingly, homeschooling families are predominantly married couples with the mother of the children taking on the primary role of educator. This statistical generalization is borne out by numerous studies conducted in the homeschooling population.³⁷ Though this demographic makes up a significant portion of the homeschooling community, research shows that there are also a significant number of single-parent households

33. Ed Collom & Douglas E. Mitchell, *Home Schooling as a Social Movement: Identifying the Determinants of Homeschoolers' Perceptions*, SOCIOLOGICAL SPECTRUM 273, 277 (May/June 2005).

34. MURPHY, *supra* note 6 at 78.

35. Philip Dreyer, *Literacy: Building on What We Know*, 1997 CLAREMONT READING CONFERENCE Y.B., at 60-81.

36. *Issue Brief: 1.5 Million Homeschooled Students in United States in 2007*, INST. OF EDUC. SCIENCES, fig. 2 (2008), available at <http://nces.ed.gov/pubs2009/2009030.pdf>; see Table A-6-2.

37. MURPHY, *supra* note 6, at 15-27.

who choose to homeschool their children.³⁸ As the movement has continued to grow, market forces have compensated to make educational options such as private tutoring, online learning, and part-time enrollment with public schools available to homeschoolers. Demographic research also indicates that homeschooling parents tend to be somewhat better educated and of middle income, but few homeschooling parents have any formal training in education, or teacher licensing credentials.³⁹

HOW DOES IT WORK?

Methodology

In this section we explore two questions: the first addressing methodology or pedagogy of home educators, and the second regarding the outcomes of homeschooling.

Research shows that, much like motivations, homeschooling methodology is highly idiosyncratic and varies significantly among families. It may also vary within families regarding the education of each individual child, but again, general and identifiable patterns are distinguishable within family groups.⁴⁰ The two simplified approaches to homeschooling methodology can be categorized as *structured* and *unstructured*. These two broad categories describe the extent to which formal curricular materials are included in the instructional approach, and the extent to which parents shape their child's learning experience to be more or less formal. The government context of each particular family also plays a large role in shaping its homeschool methodology. For example, the requirement for homeschoolers to submit to a nationally developed assessment, necessitates that parents teach to the standardized test rather than to their own particular goals. In some cases, state regulation prescribes a course of study, meaning that homeschoolers experience less flexibility to experiment with alternative methods of instruction or subjects.⁴¹

In the early days of home education in the United States, as well as other countries where homeschooling is just beginning to emerge, the limited access to curricular materials necessarily shaped pedagogical methods. Limited resources for homeschooling families can restrain flexibility even where the legal regime might permit greater exploration. In countries where curricular materials are difficult to obtain, homeschoolers

38. Michael P. Donnelly, Single {not alone}, THE HOMESCHOOL COURT REPORT, January/February 2011, available at <http://www.hslda.org/courtreport/V27N1/V27N101.asp>.

39. MURPHY, *supra* note 6, at 15-27.

40. MURPHY, *supra* note 6, at 106.

41. See, e.g., N.H. REV. STAT. ANN. § 193-A:4 (2006) and MO. ANN. STAT. § 167.031 (West 2009).

are compelled to find creative approaches to education. Some look to extra-national sources for more formal curriculum materials; often these resources are in English.⁴² In addition, homeschoolers are often forced to rely on their public library system.

Another governing factor that influences methodology is the stringency of government regulation. In some countries, homeschoolers may be required to use the national curriculum. This requirement may be prescriptive or imposed to support the requirement for homeschoolers to participate in a national assessment or meet nationally determined standards (Albania, Azerbaijan, Finland, Georgia, Hungary, Iceland, Israel, Italy, Latvia, Malaysia, Poland, Singapore, Slovenia, and Ukraine).⁴³ In some cases, the national curriculum is the only curricular material available for parents to use with their children in their native language.

In the United States and other nations where homeschooling is maturing (e.g. United Kingdom, Australia, Canada, France, South Africa, and New Zealand), parents have access to a greater range of educational options to meet their children's needs. For example, in the United States, Canada, and Australia, online distance-learning programs serve significant numbers of the homeschooling community, either as part of the curriculum or as the entire educational program.⁴⁴ These distance-learning programs may be government-funded or privately financed.⁴⁵ However, as noted previously, distance-learning programs funded entirely by the government are not considered homeschooling even though the schooling may be conducted exclusively at home.⁴⁶ In these programs, the education of the child remains the responsibility of the state and is supervised by a state teacher, teaching the approved curriculum.⁴⁷

Overall, the educational market has expanded to provide comprehensive curriculums that may be delivered through physical materials or through online learning programs. Individual subjects are also available from specialty providers or from the comprehensive curriculum providers who

42. Based on author's personal experience in working with homeschoolers around the world for the past seven years.

43. See generally, *BALANCING FREEDOM*, *supra* note 3, VOLS. 2-4.

44. Based on author's personal experience in working with homeschoolers around the world for the past seven years.

45. *Facts about K12 Public Virtual Schools*, K12, <http://www.k12.com/facts-about-k12-public-virtual-schools>; *Online Private Schools*, K12, <http://www.k12.com/schools-programs/online-private-school>.

46. *Id.* State laws differ on the precise definition of homeschooling. However, government funded distance learning programs are public school programs which meet compulsory attendance law.

47. As a matter of law, education of children in public school programs is the responsibility of the state.

unbundle their curriculum for parents to select individual subjects. Parents can now choose from many options and can mix and match subject matter and programs.

Parents may also create hybrid programs, combining publicly funded curriculum (either materials or actual classes in the public school) with their own privately obtained curriculum. For example, a student may take calculus at a local high school, where the regulatory framework permits homeschoolers to access the public school, while taking a history class through a privately acquired online or correspondence program. At the same time, his parents provide the remainder of the direct instruction in his educational program.

Public school access is somewhat controversial in the homeschool community. Some parents want nothing to do with public institutions of learning, a sentiment often reciprocated by public schools. However, as the homeschooling movement in America grows, there is an increasing demand for access to the public school materials, classes, and extracurricular programs such as sports, theater, and music programs. Those in favor of public school access argue that, because parents pay taxes to support public school systems, they should have access to the educational programs.⁴⁸ Many educators also see permitting homeschoolers to have access as a way to serve the educational needs of the children in their communities and keep a line of communication with homeschoolers, in the event that they re-enter the public school system.⁴⁹

In a number of states in America, and in some countries described later, homeschoolers are permitted by law to participate equally in public school programs.⁵⁰ Thirty-four states in the United States have some official framework, either statutory or judicial, for determining how and whether homeschoolers may have access to public school programs.⁵¹ In a number of these jurisdictions, the decisions are left to the determination of local school authorities.⁵²

48. Christina Sim Keddie, *Homeschoolers and Public School Facilities: Proposals for Providing Fairer Access*, 10 N.Y.U. J. LEGIS. & PUB. POL'Y 603, 615 (2007).

49. Hannah Poturalski, *Local home-school families pleased with new law*, JOURNAL-NEWS (Aug. 11, 2013), <http://www.journal-news.com/news/news/local-home-school-families-pleased-with-new-law/nZjd2/>; Edith Starzyk, *Sports and clubs at Ohio public schools now open to home-schooled and private school students*, CLEVELAND.COM (July 25, 2013), http://www.cleveland.com/metro/index.ssf/2013/07/sports_and_clubs_at_ohio_public.html; Victor Skinner, *Law gives homeschoolers access to public school student activities*, EAG NEWS, <http://eagnews.org/new-law-gives-homeschoolers-access-to-public-school-student-activities/>.

50. Michael P. Farris and J. Michael Smith, *State Laws Concerning Participation of Homeschool Students in Public School Activities*, HOME SCHOOL LEGAL DEFENSE ASS'N (September 2013), http://www.hslda.org/docs/nche/issues/e/Equal_Access.pdf.

51. *Id.*

52. *Id.*

In the states which have approved charter school education, some enterprising public school districts have contracted with national online learning providers, such as K12 Inc., to offer a complete virtual online academic program, including free computers, internet access, and teacher supervision.⁵³ Families enroll their children in the program, which is delivered via the internet to a home computer. In many cases the local school district receives the full allocation of funding from their state agency, but only pays a fraction of that amount to the online provider and accrues a net profit to the school district.⁵⁴ This practice has been generally tolerated by most of the states that permit charter schools; although, in some states funding has been cut for online students.⁵⁵

Homeschooling cooperatives (“co-ops”) constitute a growing segment of the home education population.⁵⁶ Parents take on the role of teacher for groups of children in co-ops, which may include as few as two families or as many as 600.⁵⁷ Although this cooperative approach is usually available at every grade level, it is more prevalent at the secondary educational level for parents who would like to supplement home instruction for higher-level math and sciences.⁵⁸ Each child receives instruction from another parent-teacher, but the child’s parent remains responsible for the overall instruction. While these co-ops tend to spring up from parent initiatives and are parent-run, some commercial enterprises in the United States have capitalized on this innovative approach. Such commercial enterprises include Classical Conversations, which has reported over 37,000 students enrolled in its geographically-distributed classrooms, which are based on the classical education co-op model.⁵⁹

Outcomes

Homeschooling results can be broadly categorized in two ways: first, outcomes for the individual child, and second, outcomes in regard to larger societal issues (e.g. impact on social fabric, schools, families, and politics).

53. *How it Works*, OHIO VIRTUAL ACADEMY, <http://www.k12.com/ohva/how-it-works>; *How it Works*, COLORADO VIRTUAL ACADEMY, <http://www.k12.com/cova/how-it-works>.

54. Kevin P. Brady et al., *Uncharted Territory: The Current Legal Landscape of Public Cyber Charter Schools*, 2010 BYU Educ. & L.J. 191 (2010).

55. *Id.*

56. MURPHY, *supra* note 6, at 119.

57. Based on the author’s personal experience in interactions with dozens of homeschool groups around the country.

58. Kelsey Sheehy, *3 College-Prep Resources for Home-Schoolers*, U.S. NEWS AND WORLD REPORT (Sept. 17, 2013) <http://www.usnews.com/education/blogs/high-school-notes/2013/09/17/3-college-prep-resources-for-home-schoolers>.

59. Robert, *A Quick Look Back at 2011*, CLASSICAL CONVERSATIONS (Dec. 27, 2011) <http://www.classicalconversations.com/entry/aquicklookbackat2011>.

We will reserve the latter outcome assessment for later in the discussion.

The effect of homeschooling on children can similarly be outlined into the broad categories of academic achievement, social development, and post-homeschooling success. Murphy evaluates these areas in great detail in his book *Homeschooling in America*.⁶⁰ He notes that both homeschooling advocates and opponents do not consider academic outcomes to be the best evaluative measure for homeschooling.⁶¹ Indeed, research shows that parents often have multiple goals in homeschooling, some of which they consider more important than academic achievement.⁶²

Based on reviewing hundreds of studies on the subject, Murphy identifies three perspectives regarding whether accurate assessment conclusions may be gleaned from the academic outcomes of homeschoolers.⁶³ These perspectives include the opinion that: no comprehensive conclusions can be gained from academic outcomes; homeschooling is a neutral factor in academic outcomes; and finally, that academic outcomes prove homeschooling affords academic benefits to students.⁶⁴

In his evaluation of outcomes Murphy concludes that “empirically-grounded clues are visible, and tentative hypothesis are being formed,” and there is a “growing body of evidence that reveals how homeschooling students are performing academically compared to national norms on standardized tests.”⁶⁵ He states, “there is a fair amount of suggestive evidence that homeschooling can tamp down on the effects found in public schools of family socioeconomic variables,” and finally, that it is “inappropriate to privilege academic achievement in the algorithm we craft to assess the impact of homeschooling.”⁶⁶

Opponents or critics of homeschooling often raise the issue of “socialization” in their criticism. Measurement of homeschoolers’ performance in this area is difficult, since the definition itself is somewhat elusive. In his analysis, Murphy defined socialization to include areas of social skills, self-concept, and social engagement.⁶⁷ He found that homeschoolers performed as well as, and in some cases, better than public

60. MURPHY, *supra* note 6, at 133-51.

61. *Id.*

62. Patrick Farenga, *Homeschooling: Creating Alternatives to Education*, 18 BULL. OF SCI., TECH. & SOC’Y, 127-33 (1998); *see also* CHRISTOPHER J. KLICKA, HOMESCHOOLING THE RIGHT CHOICE: THE INCREDIBLE FAILURE OF PUBLIC EDUCATION AND THE RISING HOPE OF HOMESCHOOLING: AN ACADEMIC, HISTORICAL, PRACTICAL, AND LEGAL PERSPECTIVE (1995).

63. MURPHY, *supra* note 6, at 133-51.

64. *Id.*

65. *Id.*

66. *Id.* at 140.

67. *Id.* at 143-47.

and private school students in socialization aptitude.⁶⁸ These findings were based on studies that included both American and foreign homeschoolers.⁶⁹

Some argue that “socialization” concerns are not actually about social interaction and self-concept, but are merely a response to the values and beliefs that homeschoolers teach their children. Such individuals claim that critics’ complaints are rooted in the fact that homeschool values interfere with the values put forth by the government-run education system and contradict those “democratic values” that are important to the state.

Homeschools may threaten the status quo of the educational system, provoking comments such as those from Martha Albertson-Fineman, a professor at Emory University School of Law. She argues that private education must be forbidden, saying:

The more appropriate suggestion for our current educational dilemma is that public education should be mandatory and universal. Parental expressive interest could supplement but never supplant the public institutions where the basic and fundamental lesson would be taught and experienced by all American children: we must struggle together to define ourselves both as a collective and as individuals.⁷⁰

Some argue that the state may rightly possess broad authority to prescribe minimum educational standards. But others insist that inappropriate standards to evaluate socialization of homeschoolers leads to monopolization of education – which is the hallmark of a totalitarian regime:

Monolithic control of the value transmission system is ‘a hallmark of totalitarianism;’ thus, ‘for obvious reasons, the state nursery is the paradigm for a totalitarian society.’ An essential element in maintaining a system of limited government is to deny state control over childrearing, simply because childrearing has such power. Even if the system remains democratic, massive state involvement with childrearing would invest the government ‘with the capacity to influence powerfully, through socialization, the future outcomes of democratic political processes.’⁷¹

In the introduction to their series, Glenn and De Groof explain that the fundamental right of parents to educate their children is recognized internationally.⁷² In fact, human rights doctrine establishes that the right of

68. *Id.*

69. *Id.*

70. MARTHA ALBERTSON-FINEMAN & KAREN WORTHINGTON, WHAT IS RIGHT FOR CHILDREN? 235 (2009).

71. Bruce C. Hafen, *The Constitutional Status of Marriage, Kinship, and Sexual Privacy; Balancing the Individual and Social Interests*, 81 MICH. L. REV. 463, 480-81 (1983) (citation omitted).

72. BALANCING FREEDOM, *supra* note 3.

parents to control and direct their children's education is not only foundational, but also superior to the claims of the State in educating children. Therefore, several relevant human rights documents are excerpted herein.

Article 26, paragraph 3, of The Universal Declaration of Human Rights of 1948 states, "parents have a prior right to choose the kind of education that shall be given to their children."⁷³ The Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms provides that "in the exercise of any functions which it assumes in relation to education and teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."⁷⁴

The International Covenant on Economic Social and Cultural Rights in Article 13.3 states, "the States Parties to the present covenant undertake to have respect for the liberty of parents . . . to choose for their children schools, other than those established by public authorities," but still "conform to such minimum educational standards as may be laid down or approved by the State and to ensure that religious or moral education of their children is in conformity with their own convictions."⁷⁵

The International Covenant on Civil and Political Rights provides in Article 18, paragraph 4, "The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."⁷⁶

Countries which repress the right of parents to homeschool their children have been criticized by the international community. For example, in 2006 the United Nations Special Rapporteur on the Right to Education, Wernor Muñoz, criticized Germany's harsh treatment of home-educating families, stating that the right of parents to choose education outside of public schools was a necessary freedom.⁷⁷

73. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

74. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 2, Mar. 20, 1952, 213 U.N.T.S. 264.

75. International Covenant on Economic, Social and Culture Rights art. 13, *opened for signature* Dec. 16, 1966, G.A. Res. 2200A, (XXI), U.N. Doc. A/RES/2200 (XXI) (entered into force Jan. 3, 1976).

76. International Covenant on Civil and Political Rights art. 18, *opened for signature* Dec. 16, 1966, G.A. Res. 2200A, (XXI), U.N. Doc. A/2200 (XXI) (Mar. 23, 1976).

77. Special Rapporteur on the Right to Education, *Addendum: Mission to Germany*, Human Rights Council, U.N. Doc. A/HRC/4/29/Add.3 (Mar. 9, 2007) (by Wernor Muñoz).

LEGAL RECOGNITION

In countries where homeschooling is growing, it is generally recognized as a viable education option within the framework of the nation's laws. There are a number of legal approaches whereby countries recognize the practice of home education as complying with the compulsory attendance law or as a legal exception to that law. Homeschooling may be explicitly or implicitly recognized by the state's constitution, within its compulsory attendance laws, administrative regulations, or within its jurisprudence interpreting one or all of these aspects of the law.

Countries or subdivisions whose constitutions recognize and permit homeschooling either explicitly or implicitly interpreted as within the family's right to educate their children include: Austria, Finland, Georgia, Ireland, Italy, the state of Oklahoma, Peru, Philippines, Poland, and Portugal.⁷⁸ Constitutional recognition of the family's right to homeschool also exists in the Brazilian and Spanish constitutions.⁷⁹ However, courts in those countries have handed down individual case law against home education.⁸⁰ One notable constitution is that of Germany, which explicitly notes in Article 6, section 2, of its Basic Law that the care and upbringing of children is parents' natural right and duty.⁸¹ However, the Basic Law of Germany provides, "the entire school system shall be under the supervision of the state," and the Federal Constitutional Court held that home education as a category, even if under State supervision, was not an acceptable alternative to public school.⁸²

The uniform opposition of German authorities against the practice of home education is particularly egregious, and therefore has been mentioned in a United Nations educational report and a United States Department of State country report.⁸³ A German family was even awarded political asylum in the United States, on the basis that homeschoolers are a social group with the threat of persecution in Germany through excessive fines, criminal

78. See generally, BALANCING FREEDOM, *supra* note 3, VOLS. 2-4.

79. *Id.*

80. *Brazilian Couple Receive Criminal Conviction for Homeschooling*, LIFESITENEWS (Mar. 26, 2010), <http://www.lifesitenews.com/news/archive/lldn/2010/mar/10032601>; Carlos Morán, *La Audiencia resuelve que una pareja de maestros debe escolarizar a su hijo*, IDEAL (Dec. 19, 2012), <http://www.ideal.es/granada/v/20121219/granada/audiencia-resuelve-pareja-maestros-20121219.html>.

81. GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW] May 23, 1949, art. 6 § 2, available at <https://www.btgbestellservice.de/pdf/80201000.pdf>.

82. *Konrad v. Germany* (No. 35504/03), 2006-XIII Eur. Ct. H.R. 4-5 (citing GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW] May 23, 1949, art. 7 § 1).

83. Special Rapporteur, *supra* note 77; U.S. DEP'T OF STATE, 2008 HUMAN RIGHTS REPORT: GERMANY, available at <http://www.state.gov/j/drl/rls/hrrpt/2008/eur/119081.htm>.

sanctions, and removal of custody of their children.⁸⁴

However, even when a nation's constitution recognizes the explicit right of parents to homeschool their children, the legislature at the national, state, or provincial level may create additional regulatory schemes. To that effect, the Irish Legislature passed the "Education (Welfare) Act, 2000" directing the Irish National Education Welfare Board ("NEWB") to create a register for families whom, up until that time, had not been subject to specific national regulations regarding home education.⁸⁵

CLASSIFICATION

Even where official regulatory frameworks explicitly recognize homeschooling as lawful practice, enforcement personnel at the state, national, or local level may not operate under the same interpretation regarding the application of various laws and regulations. In general, the extent to which a state permits or impedes parents' ability to homeschool is indicative of that government's willingness to incorporate pluralism, parental autonomy, and freedom in education.

Evaluating the European Court of Human Rights jurisprudence on homeschooling, especially in the case of Germany's homeschool prohibition, John Warwick Montgomery, noted lawyer, professor, theologian, and author, comments: "when homeschooling is denied, the system may be said to lack the proper degree of flexibility; a reasonable measure of parental choice is denied; and a diverse independent educational sector ceases to have realistic meaning."⁸⁶

The countries below are labeled according to their regulations. Included are the states and territories within countries that function as federal republics. In these places educational authority is decentralized into political subdivisions, and in some cases they drastically affect the treatment of homeschooling families.⁸⁷ The labels below measure the extent to which the government requires parents to initiate or maintain contact with governmental authorities when they begin to homeschool as well as

84. Campbell Robertson, *Judge Grants Asylum to German Home Schoolers*, N.Y. TIMES, Feb. 28, 2010, http://www.nytimes.com/2010/03/01/us/01homeschool.html?pagewanted=all&_r=0.

85. Education (Welfare) Act, 2000, Part III § 14 (Act No. 22/2000) (Ir.), available at <http://www.irishstatutebook.ie/pdf/2000/en.act.2000.0022.pdf>; Frequently Asked Questions, NATIONAL EDUCATIONAL WELFARE BOARD, <http://www.newb.ie/faq/general.asp>.

86. John Warwick Montgomery, *The Justification of Homeschooling Vis-à-vis the European Human Rights System*, in HOMESCHOOLING IN AMERICA AND IN EUROPE: A LITMUS TEST OF DEMOCRACY, 67, 67-77 (John Warwick Montgomery, ed., Culture & Science Pub. 2012).

87. Michael P. Donnelly, *Homeschooling*, in BALANCING FREEDOM, AUTONOMY AND ACCOUNTABILITY IN EDUCATION, VOL. 1, 199 (Charles L. Glenn, Jan De Groof, & Cara S. Candal, eds., 2012).

the amount of oversight educational authorities are granted over homeschooling families.

Regulation measurement also factors in the following characteristics: whether and how often assessments are required, the methods of assessment available, public authorities' capacity to deny homeschooling, any required qualifications for homeschool instructors, where instruction may take place, length of days or hours of instruction the extent to which homeschoolers must supply certain information such as a curriculum description of the curriculum materials, record-keeping requirements, and any other home education-related laws or regulations.⁸⁸ It is important to understand that some regulations are standard even in low regulation governments. In virtually all jurisdictions with compulsory attendance laws, there are minimum prescriptions that address requirements for the content, location, and methodology of a child's education. States requiring no notice do not require a parent to initiate contact with the governing authorities when they choose to homeschool. These will be referred to as "no regulation" jurisdictions.⁸⁹ Most jurisdictions, even those in "no regulation" zones, have minimum requirements that children are taught certain subjects. Homeschooling parents do sometimes encounter prosecution under truancy or educational neglect statutes in "no regulation" jurisdictions. These jurisdictions include: Colombia, England, Wales, Finland, Georgia, India, Kosovo, Mexico, Peru; and several American states: Alaska, Connecticut, Idaho, Illinois, Indiana, Michigan, Missouri, New Jersey, Oklahoma, and Texas.⁹⁰

States with low regulation only require that a parent notify the governing authority when they begin homeschooling, and abide by the minimum standards that apply to all education options (e.g. that certain subjects must be taught). These will be referred to as "low regulation" jurisdictions.⁹¹ These jurisdictions include: the Canadian provinces of Ontario, Saskatchewan, British Columbia, Prince Edward Island, and New Brunswick; Indonesia, Philippines, Russia; and several American states: Alabama, Arizona, California, Delaware, Kentucky, Kansas, Mississippi, Montana, Nebraska, Nevada, New Mexico, Wisconsin, and Wyoming.

States with moderate regulation require notification to authorities along with a combination of other requirements, which may include regular evaluation of student performance, particular qualifications for homeschooling parents, specific record-keeping requirements, and other

88. *Home School Laws*, HOME SCHOOL LEGAL DEFENSE ASS'N (Sept. 13, 2013), <http://www.hslda.org/laws/default.asp>.

89. *Id.*

90. Donnelly, *Homeschooling*, *supra* note 87.

91. *Id.*

various conditions. These will be referred to as “moderate regulation” jurisdictions.⁹² These jurisdictions include: Austria, Australia, Azerbaijan, Belgium, Chile, Denmark, Ireland, Northern Ireland, Norway, Portugal, Qatar, Slovenia, the Canadian provinces of Manitoba and Yukon Territory; and several American states: Arkansas, Colorado, Florida, Georgia, Iowa, Louisiana, Maine, Maryland, Minnesota, New Hampshire, North Carolina, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Virginia, Washington, and West Virginia.

States with high regulations require parents to apply for and receive approval before homeschooling in addition to other requirements mentioned in “moderate regulation” jurisdictions. These will be referred to as “high regulation” jurisdictions.⁹³ A state may also be categorized as “high regulation” if approval is not required but other administrative burdens are sufficiently restrictive. These jurisdictions include: Albania, Belarus, Czech Republic, Estonia, France, Hungary, Iceland, Israel, Italy, Latvia, Lithuania, Luxembourg, Malaysia, The Netherlands, New Zealand, Poland, Singapore, South Africa, Sweden, the Canadian provinces of Alberta and Quebec; and several American states: Massachusetts, New York, North Dakota, Pennsylvania, Rhode Island, and Vermont.⁹⁴

While homeschooling is recognized in many countries around the world, there are some that prohibit or simply do not formally recognize homeschooling as an alternative to formal education. Those countries prohibiting homeschooling in this way include: Brazil, Bulgaria, China, Cuba, Greece, Germany and Spain.⁹⁵ In these jurisdictions there are families who do home educate; however, when they come to the attention of authorities they often encounter grave difficulties. Lack of recognition of homeschooling occurs in Bosnia-Herzegovina, Japan, Jordan, Korea, Malta, Pakistan, Romania, Saudi Arabia, Ukraine, and Uruguay.⁹⁶

CONCLUSION

Millions of children are educated at home by their parents for many reasons all over the world, and that research indicates strongly that home education is beneficial to children. Countries with educational policies that accommodate this form of educational choice demonstrate a strong commitment to respecting freedom and autonomy of the family unit.

92. *Id.*

93. *Id.*

94. Donnelly, *Homeschooling*, *supra* note 87.

95. *Id.* at 218-219.

96. For a more detailed analysis of the regulatory criteria and ranking, see *BALANCING FREEDOM*, *supra* note 3, VOLS. 1-4.

Studies from and experiences of nations which have grappled with the issues raised by this emerging choice suggest that it can be accommodated. It is the author's position that in all countries, home education *should* be accommodated.

If one believes that freedom and autonomy are important values in education then recognizing the right of parents to choose the kind of education their children receive, including home education, is a necessary part of the expanding educational choice set. Since a variety of accountability measures are shown to meet what most would agree is a state's reasonable interest in an educated citizenry, nations that repress or hinder home education should seriously question their commitment to freedom and autonomy. Those that legally recognize home education are to be commended.