Homeschooling, freedom of conscience, and the school as republican sanctuary: An analysis of arguments representing polar conceptions of the secular state and religious neutrality

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ABSTRACT

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This paper examines how stances and understandings pertaining to whether home education is civically legitimate within liberal democratic contexts can depend on how one conceives normative roles of the secular state and the religious neutrality that is commonly associated with it. For the purposes of this paper, home education is understood as a manifestation of an educational philosophy ideologically based on a given conception of the good.

Two polar conceptions of secularism, *republican* and *liberal-pluralist*, are explored. Republican secularists declare that religious expressions do not belong in the public sphere and justify this exclusion by promoting religious neutrality as an end in itself. But liberal-pluralists claim that religious neutrality is only the means to ensure protection of freedom of conscience and religion, which are moral principles. Each conception is associated with its own stance on whether exemptions or accommodations on account of religious beliefs have special legal standing and thereby warranted. The indeterminate nature of religion and allegedly biased exclusion of secular beliefs, cited by some when denying religious exemptions, can be overcome by understanding all religious and conscientious beliefs as having equal standing as conceptions of the good.

Analyses of court documents from the Uwe Romeike et al asylum case are guided by these understandings, and relationships among themes are explored.

In summary, some stances regarding home education may depend on one's view of secularism, particularly in relation to whether one views religious neutrality as a *means* to ensure protection of freedom of conscience or an *end* in itself.

Keywords: *homeschooling, education policy, freedom of conscience, value pluralism, diversity, secularism, human rights, nation-building*

CONTENTS

1 INTRODUCTION

Many populations worldwide live in societies experiencing increasing diversity. In addition to domestic causes, there are many global factors contributing to this increasing diversity, such as the increase in the number of refugees as a result of conflict, poverty, or political persecution. Not only is there more diversity, but the diversity itself is more diverse. There are many *sorts* of diversity, besides the "traditional" forms identified by ethnic, religious, and ideological differences. Many of these other forms of diversity are linked with personal beliefs, attitudes and orientations of thought that often do not coincide with the aforementioned "traditional" categories. Thus some observers talk about a "diversity within diversity" (Jupp, 2001, p. 3441, quoted in Sinagatullin, 2003, pp. 5-6)[1].

Associated with this increasing diversity is a proportional need for policy makers and other leaders to formulate and implement policies to accommodate and otherwise address it. There are many sorts of challenges that diversity presents for leaders in the public sphere. These challenges are often complex and multidimensional in nature. Some manifestations of diversity may be considered threats to the pursuit of civic integration, which many states prioritise.

Additionally, such challenges can be viewed as dilemmas. Sometimes the solution results in a political compromise between competing interests, such as those of the individual versus those of the state. In many cases, an examination of the assumptions, argumentation, and conclusions of each position may yield a new understanding of the problem, thereby making possible a solution that would have been difficult if such a moral dilemma hadn't yet been understood in this light.[2] The nature of dilemmas is such that decisions related to them are

[1] This diversity within diversity will be described in section 2.

[2] In the field of law, it is common for such decisions to be guided by the history of legal precedents that are relevant to the one at hand. Such an examination of legal precedents must be appreciative of, and account for, the historical context in which such decisions were made. The rationale for such past decisions must also be critically analysed in order to determine the degree to which these decisions should be brought to bear on the current dilemma.

usually inadequate when they are merely based on a rigid understanding and application of norms without a historical understanding of the reasoning behind such norms. Dilemmas demand thorough deliberation on the historical context, assumptions, and justifications for past decisions that are pertinent to the dilemma now under consideration. The resolution of a moral or ethical dilemma may require a weighing of the often conflicting values imbuing the dilemma; a value-judgement based on such an evaluation; and a justification for why some values should be prioritised above others. From a public policy and public management perspective, one of the most challenging forms of diversity is religious diversity, which may be understood as one kind of ideological diversity.

There is a wide range of religious and ideological diversity expressed within a given society, and there are a range of responses to them. For instance, the wearing of a *burkah* may elicit a very different public reaction in comparison to the wearing of a *hijab*. Some forms of religious expression that are not perceived to be harmful to others are generally considered to be deserving of legal protection. Thus there appears to be widespread support for the legal protection for the practice of wearing headscarves in some countries. Other manifestations of diversity may be considered harmful by people who have different or conflicting values. For instance, in countries such as Germany, there are groups that seek to establish legal enclaves where *sharia* law is enforced. Human rights and gender rights advocates, particularly in liberal democratic states, may denounce such practices. In short, when religious practices and other religious expressions take place in the public arena, tension or conflict may arise with those who have different belief systems and values.

The general public and the state's various governance bodies may react with apprehension or animosity toward people having different belief systems. Their reactions may be largely due to their assumptions about what is fundamentally at the core of a liberal democratic state that promotes religious neutrality. While some people may believe that religious expressions should be

confined to a person's private life, there are some religious belief systems[3] that would make such confinement very difficult. Some belief systems govern all of life, both private and public[4]. Many of those who adhere to such belief systems may feel that practicing their religion even in public is integral to their moral identity as, say, a Christian, Muslim, Jew, Hindu, Buddhist or Sikh. For those who adhere to such all-encompassing belief systems, the very distinction between private and public may not be one that impacts on their observance of what they believe. They may even regard the living of life itself to be tantamount to religious practice.

Naturally, the all-encompassing nature of such a belief system may have profound implications for the way one views the nature, mission, and role(s) of education. People who believe that their belief system governs the totality of life may feel that educational objectives and content must align with their religious convictions. In cases where the implicit values promoted in schools are deemed irreconcilable with their own, such people may be faced with an important decision.

One possible decision may be to withdraw one's child from school and to personally direct the education of this child instead by, for instance, implementing home education. But can such a decision be justified by an appeal to any known principles of the liberal democratic states where such a choice is often made? On the other hand, can opinions opposing home education be based on other principles that are associated with these same political traditions? Alternatively, can the differences in opinion hinge on different normative assumptions about the mission and role of the secular state? Can even different definitions on certain key tenets of secularism account for the different positions?

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[3] As one definition of *religion* is "a specific fundamental set of beliefs and practices generally agreed upon by a number of persons or sects" ("religion," n.d.), this definition can be more broadly understood to include those systems of belief that are not commonly associated with any particular establishment of religion. It is this broader meaning that I am using here – and such a definition may apply even to secularism – though of course it cannot be denied that many such systems of belief are often not regarded as religious in nature.

[4] The following exemplifies a creedal expression of this sort of total sovereignty:
"The earth is the LORD's, and all it contains,
The world, and those who dwell in it." (Psalm 24:1, NASB)

This research work examines how any particular stance on whether home education[5] is morally justified can depend largely on one's ideas about what a secular state ought to be and how a secular state ought to function. As the majority of home educators have been found to be professing evangelical Christians[6], religious and other ideological considerations have often largely shaped their decision to educate at home. Additionally, such notions about what constitutes the core principles of secularism may impact on how one views the place of religion and conscience in a state that propounds the importance of being neutral toward religion. In fact, the very manner in which religious neutrality is implemented may be indicative of the sorts of notions one has.

This thesis will employ the understanding of parent-directed education as an implementation of an educational philosophy that is ideologically based on a given conception of the good. Each such conception of the good is only one among the numerous possible conceptions of same that exist. Moreover, each conception of the good is shaped by one's beliefs, whether religious, conscientious, or secular in nature.

In the present paper, I consider arguments either in support of or against the notion that parent-directed education is an educational approach worthy of equal state protection. I interpret such arguments by employing two perspectives pertaining to the normative role of the secular state in relation to religion: a *republican* conception and a *liberal-pluralist* one[7] (Maclure & Taylor, 2011). It is

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[5] I prefer the phrase *home education* or *parent-directed education*. Unlike *homeschooling*, there is no implication that the school is the model for home education. *Home education* is the term that seems to be favoured by some researchers such as Spiegler (2003, 2010). However, as *homeschooling* (or home-schooling (hyphenated) or home schooling (with a space between the words)) seems to be the most popular lingo, especially in North America, the title of this paper has used this term. It is important to note that all the above terms can be used interchangeably, as they all refer to the same practice, which will be defined more precisely in Section 2, titled "Background and Significance". Those who direct the home education will be most often referred to as *home educators*, which is a term I prefer over the term *home-schoolers*.

[6] as I will explain in my discussion about the motives and ideological reasons for home education, which is in Section 2

[7] I am aware that there is a debate between liberals about whether liberalism necessarily follows from value pluralism (cf. Crowder, 1998, 2002, 2015; Galston, 2009; Thunder, 2009; Weinstock, 1997; Gray, 1998; Talisse, 2005). Nevertheless, for the purposes of this paper, the author has chosen to adopt the perspective of Maclure and Taylor (2011), at least as the author has understood it, that a liberal-pluralist position is one that is ontologically defensible.

thus necessary to explain the central philosophy and the underlying rationale characterising each conception, and to discuss the practical implications for each respective position. Simply stated, the republican conception typically emphasises the primacy of the state while the liberal-pluralist tradition typically emphasises the notion that it is the citizenry who collectively authorises the state to exist and act as a guarantor and protector of human rights, which are often said to be natural and inalienable[8] rights.

The present thesis is based on an inductively drawn[9] proposition: that such differences in priorities, emphases, and assumptions between the aforementioned conceptions of secularism might be somewhat mirrored in the respective arguments of supporters and opponents of home education. Perhaps such differences would be highlighted especially on the question of whether home education has moral legitimacy under civil and human rights traditions, as espoused in the academic literature. In order to test this prediction, I have decided to perform an empirical analysis of a single case of a German home educating family named the Romeike family. This will be done by analysing the content of court documents that emerged from a petition for political asylum in the USA. The petition was made on account of the fear that this family would, were they to return to Germany, again face persecution for continuing to practice home education while defying laws mandating compulsory school attendance.

This thesis is focused on the question of how the philosophical debate pertaining to freedom of conscience can illumine the debate about home education. This thesis will be limited to the following: 1) an analysis of the above mentioned arguments to see whether and how they have any points of similarity with the two concepts of secularism; and 2) whether the pre-defined characteristics comprising moral identity, conceptions of the good, and other matters related to freedom of conscience can be identified in the case under examination.

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[8] See Wolterstorff's (2012, pp. 183–184) assertion that there are two criteria that provide suitable and sufficient grounding for human dignity and human rights: 1) the *ineradicability condition* and 2) the *uniqueness condition*

[9] based on some background reading on issues pertaining to home-schooling

Thus, a detailed discussion about particular *implementations* of home education, along with their sundry advantages and disadvantages, is beyond the scope of this study. Rather, the subject of analysis can be identified as the moral principle and concept of parents' directing the education of their children.

I now present an outline of the present paper. Before I perform the empirical analysis of the Romeike family asylum case, it is necessary to introduce some of the important past research on home education and to develop a few frameworks that will be employed in the empirical analyses. In the next section, I introduce some background literature on home education, with a focus on the prevalent motivations home educators have. This discussion is intended to help the reader understand that both pedagogical and ideological considerations have been found to be associated with the choice to do home education. It is also meant to help the reader understand how these reasons tend to differ between American and German home educators. This is significant, especially in light of the fact that home education is prohibited in Germany while legal in all states of the USA. The observations of a researcher named Spiegler (2009, 2010) are particularly valuable in that he provides a few detailed frameworks for a few of the analyses I will later perform on the content found in the Romeike asylum case documents. These frameworks, namely civil disobedience and value-rational action, are strongly linked with themes that I explore in sections 3 and 4.

In section 3, I discuss secularism's most essential moral foundations. I mention that value pluralism and religious neutrality are considered to be integral to secularism, and I mention the reasons why this is so, as described by several scholars. I proceed to compare and contrast the rationale and emphases unique to each of the two main conceptions of secularism: *republican* and *liberal-pluralist*. I discuss the philosophical differences between these two orientations. I mention how they tend to differ on how they tend to regard freedom of conscience.

In section 4, I discuss how exemptions from norms of general application, on account of religious beliefs, are regarded by proponents of each conception

of secularism. The discussion pertaining to how proponents of either the republican or liberal-pluralist conceptions of secularism view requests for accommodation is relevant to our discussion of home educators. This debate about the moral justification for such requests seems to be similar to that pertaining to the justification for home education. There are several reasons for this, including the following: 1) the vast majority of the research[10] on home educators' motives for choosing home education has found that most home educators report reasons based on religious, conscientious, or other ideological considerations[11]; 2) many of these considerations can be deemed essential to their moral identity; 3) hence allowing the children to continue being taught values and ideas deemed contrary to those associated with the conception of the good their guardians adhere to may be seen as a betrayal of their moral identity. Additionally, some proponents of the liberal-pluralist position contend that if a given religious, conscientious or other belief is essential to one's moral identity, this fact should qualify as justifiable grounds for exemption from, or accommodation of, laws that are generally applied.

In section 5, I explain the design of the nine analyses that I perform on the court documents that have emerged from a case where a German home educating father and mother sought political asylum in the USA in order to continue educating their children at home without fear of persecution. The themes that I chose for each analysis are pertinent to our discussion about the relationship between conscience, conceptions of the good, conceptions of secularism, religious neutrality, and moral identity.

The rest of this study presents the findings of each analysis, provides a critique, and offers some implications and suggestions for further research. Section 6 contains the findings along with a critical discussion of some of the key

[10] I cite several studies in the following section, where I discuss the background on homeschooling. Though more extensive research has been conducted based on the American context, the available studies based on the German context have not shown significant disparities in terms of the motivations of home educators, as I will explain in the following section. In fact, ideological considerations may be even more important in an environment such as Germany, where non-compliance with laws mandating school attendance is by definition, an administrative violation punishable by fines, loss of custody, confiscation of property and even imprisonment.

[11] Refer to the discussion in the following section for a more detailed discussion on these motivations.

findings. Section 7 includes a summary of the rationale, design, and implementation of the study. It also offers several insights both by myself and other writers that may cast light on some possible broader implications of the findings. I conclude this section by discussing areas of potential future research related to the topic of parent-directed education.

2 BACKGROUND AND SIGNIFICANCE

In this section, I first discuss the significance of the understandings, analyses and interpretations contained in this thesis for educational leaders. I highlight the fact that parent-directed education raises many issues pertaining to the role of religion within society. I suggest that it is important for educational leaders to be able to interpret issues pertaining to home education through the frameworks I develop here. By doing so, they can be better prepared to make a decision that can be reasoned on the basis of historical and current discussions on the constitutional rights that have served our societies for centuries. Leaders and all educational stakeholders, including parents and children, can thereby be more certain that their stances on home education are consistent with their views on other matters that have implications on the practice of individual beliefs. The discussion and understandings developed in this thesis may provide the home education debate a firmer foundation – one that shares common ground with the ideals that form the foundation and heritage of many liberal democratic societies.

Next, I introduce some of the most important findings on the mind-set and motivations of parents conducting home education[12]. I note characteristics that are common to both many German and American home educators. I also describe a few characteristics that make the German context rather unique. Apart from the fact that the German context forms a large part of the background of the case that I intend to examine, the German context is very useful to our discussion about how various groups perceive the normative place of religion in education and in the public sphere. In Germany, where home educators have clashed with school administrators and other members of the governance apparatus, issues pertaining to the following matters are etched in bold relief: freedom of conscience; the normative functions and roles of education; the scope of

[12] Of course, I am not implying that home education can only be done by parents, and I will explain further in subsection 2.2.

rights obligations[13] in general, and those that pertain to education; and the substance and implementation of religious neutrality. By the end of this section, I will have identified two main frameworks which will be employed to analyse themes found within the juridical documents I will examine in this study.

2.1 Home education as a social movement

In this subsection, I provide a survey of the literature on home education, while highlighting the situation in America. In section 2.4, I will discuss the home education situation in Germany. The literature based on the American context is valuable for the fact that it is the most extensive and has a history spanning several decades, with some of the most seminal research being done in the mid to late 1980s. Studying the German context is valuable for the fact that one can gain an insight into the psychological makeup of home educators who seem so committed to their cause that they are willing to face all the hardships associated with doing something that violates the law. Another reason I focus on these two countries is that the analyses I plan on doing later in this study employs documents from a case where a German home-educating family sought asylum in the USA due to what they argued was persecution.

Ray (2000, p. 71) defines *homeschooling* as "the practice in which the education of children is clearly parent-controlled or parent-directed (and sometimes student-directed) during the conventional-school hours during the conventional-school days of the week" (Ibid p. 71). However, as it does not necessarily have to be a parent directing this sort of education, it may be more useful to refer to a "parent or other legal guardian." "Homeschooling is in some ways the newest and most radical form of private education in the United States—and is, from another perspective, the oldest and most basic approach, as children have always learned from their families" (Cooper, 2009, p. 422). While parent-di-

[13] See the discussion in the last section pertaining to Nickel's (1993) philosophical arguments about rights and rights obligations.

rected education can be considered both an educational approach and an educational model, the range of possible variations is vast. For instance, it can be characterised by a highly structured curriculum that includes teacher guides, testing, and teacher support (Nelsen, Pawlas, & Mintz, 1998, p. 34). Or it can employ a method pioneered by John Holt, a Boston educational reformer, most often referred to as "unschooling," which can be described as "a learner-directed approach that incorporates living experiences into the learning process" (Ibid p. 34). Some have called "homeschooling" a misnomer in that it suggests that it necessarily takes place at home. But in actual practice, it usually takes advantage of a wide range of resources that exist outside the home in an eclectic manner, using structured curricula, teaching materials, books, periodicals, computer applications and media, and individual courses offered by various institutions including public and private schools. Cooper (2009, p. 424) characterises homeschooling as a return to "rugged individualism": "In important ways, homeschooling is a peek into the future, as Americans take control of their lives and work to overcome the influences of large institutions."

While home education is not a new phenomenon from a global standpoint, it is a rapidly growing development that some regard a social movement with an "elaborate organizational apparatus" (Stevens, 2001; cf. Collom & Mitchell, 2005 and Collom, 2005); and in America alone, there are millions of youth who have been home-educated.[14] It has apparently arisen from a sense that a diversion from the prevailing approaches in conventional education is needed (cf. Harding, 2011; Spiegler, 2009). There are many reasons the revolutionaries[15] can be viewed as taking what can be deemed extreme measures, if one considers the fact that the decision to implement an alternative approach is

[14] The precise number of home-schooled children is nearly impossible to attain, as the estimates depend on the methodology employed – for instance, one approach tries to ascertain the aggregate number of home-school curricula sold by most of the known relevant publishing companies. According to Ray (2016), "There are about 2.3 million home-educated students in the United States. This is up from one estimate that there were about 2 million children (in grades K to 12) home educated during the spring of 2010 in the United States". It appears the homeschool population is continuing to grow (at an estimated 2% to 8% per annum over the past few years)." According to the data provided by the National Center for Education Statistics, there was a 36 percent increase in the number of home-schooled children between 2003 and 2007 alone (Kunzman & Gaither, 2013, pp. 4–5; Planty et al., 2009).

[15] this is my own characterisation

rather risky in view of the suppression, and even persecution, they are likely to face in some countries, such as Germany, where regulations on compulsory attendance are often ruthlessly enforced (Aschmutat, 2015; Matrician, 2011; Spiegler, 2003, 2009), or Sweden, where the laws pertaining to compulsory education are interpreted in such a manner that home education is practically impossible in most cases (Villalba, 2009). Some of these reasons[16] are regarded by some observers as pedagogical while some are said to be ideological. However, some of these reasons can be considered a combination of both pedagogical and ideological considerations, some of which we will explore later. Moreover, as we will examine later, in many cases, pedagogical design and approach have arguably been guided by ideological notions. Therefore, making a distinction between pedagogues and ideologues may be overly simplistic, as Rothermel (2003) contends.

2.2 Significance, particularly for educational leaders

As I will describe more in section 2.3, there are many salient issues that come to the fore while discussing home education. Some of these issues have been debated for several decades – and they are not all limited to home education; rather they have implications for educational practice and management of it as a whole. Some issues, for instance the nature and scope of parental rights, have even broader implications. As we shall discuss in the next subsection, some critics have opposed home education based on their claim that home education tends not to provide adequate preparation for civic life. Others have claimed that home education tends not to provide adequate socialisation for children. Another reason some oppose home education is that they claim that children need to be exposed to the various forms of diversity that public schools offer. While it is beyond the scope of this paper to debate such issues in detail, the fact

[16] See Blok, 2003; Clemente, 2006; Jolly, Matthews, & Nester, 2013; Seago, 2012; Spiegler, 2010; Collom, 2005; Green & Hoover-Dempsey, 2007; Harding, 2011; J. Murphy, 2014; Nelsen, Pawlas, & Mintz, 1998; Seago, 2012; Spiegler, 2009; van Galen & Pitman, 1991; and Knowles, Marlow, & Muchmore, 1992

that such debates occur raises important issues for educational policymakers, decision-makers and stakeholders, including parents and students. This study is focused on one of these debates: the moral and ethical justification for home education as seen from the perspective of the freedoms that people have long been said to possess by right within a state that has been regarded as the protector of such freedoms.

Murphy (2012, p. 1) suggests that examining the ever-growing home education movement and the data pertaining to the social and learning outcomes of home educated children is valuable by virtue of the fact that they convey something remarkable about "the social fabric of the nation". Murphy points out that home education merits interest especially because it is another viable option in a society where school privatisation and the school choice movement are becoming increasingly prevalent (Ibid p. 2). Still another reason educational leaders should pay attention to home education is that it reveals tensions between individual members and their community. Thus new perspectives on these social constructs can be formed based on observing the phenomena characterising this movement (Ibid p. 2).

Additionally, by studying a movement having rather strong links to Christian evangelicalism (Kunzman, 2009), fresh insights on the descriptive and normative place of religion within liberal democratic states promoting secularism can be obtained. The relationships between religion, family and education come to the fore and can be readily observed – and various opinions, attitudes, and suggestions pertaining to these relationships can thus be expressed and considered. Moreover, "we can discover the possibilities of movements that attempt to reverse the segmentation of life in [a given society], of how homeschooling is both an animating force for and exemplar of efforts to provide an integrated frame for life in the postmodern world" (Murphy, 2012, p. 2). As Ahmed (2010, p. 169) asserts, if the values of freedom, autonomy and toleration are deemed valuable and should be upheld, then they are valuable with respect to religious matters as well (Garvey, 1981; Greenawalt, 2006, pp. 3–4; Laycock, 1996; Tribe, 2000, pp. 1284–300 -- cited in Ahmed, 2010, p. 169).

As conceptions of the good life vary from person to person, so inevitably must the respective approaches of each person regarding how best to pursue the good life. For many, the good life cannot be extricated from the things that transcend materialistic realities; rather, for them, the good life is highly spiritual in nature. For them it thus follows that the meaning accorded to life must go beyond mere material considerations[17]. For some, such spiritual considerations are at the very core of educational roles and mission, as Spring observes (2000, pp. 4-5)[18].

The importance of studying the numerous facets of homeschooling – including its socio-historical roots, can be better appreciated if one adopts the perspective articulated by Howe (2009, p. 766), who contends that "no fundamental epistemological dividing line can be drawn between the empirical sciences

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[17] Compare Montgomery's (1986) discussion about the freedoms that are often mentioned in popular discourse, some of which have been referred to as "inalienable rights." Montgomery states that the very existence of rights must be based on many assumptions, none of which can be proven empirically. Montgomery (Ibid p. 108) quotes Wittgenstein to explain why all attempts to establish, even in principle, "inalienable rights" have failed whenever they have depended on humanistic and other secular assumptions:

> The sense of the world must lie outside the world. In the world everything is as it is, and everything happens as it does happen: in it no value exists—and if it did exist, it would have no value. If there is any value that does have value, it must lie outside the whole sphere of what happens and is the case. For all that happens and is the case is accidental. What makes it non-accidental cannot lie within the world, since if it did it would itself be accidental. It must lie outside the world. So too it is impossible for there to be propositions of ethics. Propositions can express nothing that is higher. It is clear that ethics cannot be put into words. Ethics is transcendental (while Montgomery quotes parts of this quote, I have provided a larger excerpt of the passage here).

[18] Spring (2000, pp. 4–5) says, "In contrast to those advocating education for individual liberation, some delegates wanted basic education to stress moral and spiritual values. Moslem countries were particularly concerned about the ethical and moral aspects of education." As Professor A. Boutaleb [one of 31 international scholars consulted in the years leading up to the drafting of the UN's 1948 Universal Declaration of Human Rights (United Nations General Assembly, 1948)] observed, "The first revealed word in the Holy Qur'an is 'Read.'"[7] For Moslems, the fundamental reason for literacy was for learning the teachings of the Qur'an. Crown Prince Hassan of Jordan, the leader of a monarchical and antidemocratic nation, stated, "Education can and should be made to implant human values that should manifest themselves in the endeavors of groups and individuals, and in the struggle to improve the quality of life." Moreover, Spring provides the following about the views of a Hindu scholar who was another scholar that was consulted prior to drafting the Universal Declaration of Human Rights:

> S. V Puntambekar presented a Hindu concept of human rights that focused on the spiritual nature of humans. He also disagreed with the emphasis on reason and science that marked the emergence of human rights doctrines during the European Enlightenment. In criticizing the Enlightenment tradition for suppressing the spiritual nature of life, Puntambekar wrote, "We shall have to give up some of the superstitions of material science and limited reason, which make man too much this- worldly, and introduce higher spiritual aims and values for [human]kind."

and the humanities and that, accordingly, empirical research in education should not be cordoned off from the humanities, particularly their focus on values." All researchers must acknowledge their inherent subjectivity when studying social disciplines. As English declares, "[t]here's no way we can stand outside a social construct without being contained within it" (2008, p. ix). Thus empirically unprovable assumptions, such as value assumptions, are inevitable and often necessary. This appreciation of values is integral to leadership itself. Clemens and Wolff (1999, p. xv, quoted in English, 2008, at p. xi) declare, ". . . leadership is not solely about practice and technique. It also depends on the much more complex qualities of insight, passion, moral perception, values, and emotional balance." If individual agency is an important aspect of learning and education, the role that values play in individual agency must be appreciated. As English (2008, p. ix) declares:

> Science alone will not improve practice unless and until it is also concerned with "artful performance": That involves reconnecting to the humanities (drama, literature, history, philosophy) in order to reconsider what Eugenie Samier (2005) has so poignantly described as "individual agency" (p. 24). Unless people matter, leaders can't matter, at least leaders that are human.

English (Ibid p. x) explains why the positivistic approaches that tend to dominate most of the social sciences render them bereft when it comes to matters related to social justice and morality:

> . . . discussions regarding morality, social justice, and equity cannot be adequately taught or learned without involving the emotional side of human existence. And the social science approach works to systematically eliminate human emotion as an inherently unpredictable and destabilizing influence in understanding human interaction. It is often something to be eliminated in research designs approaching leadership because of its difficulty in being measured and its elusive nature in creating subjectivities hard to control. Yet, how can social movement be understood unless one comes to grips with the human emotion that is necessary to sustain it?

Therefore, if we are to understand social movements that impact on education and educational choice, such as the home education movement[19], we must appreciate the emotional and value considerations that undergird it.

Without understanding the beliefs and values that inform curricular and other content–related choices people make, one key aspect of education, critical

[19] See section 2.2 for a further discussion on home education as a social movement.

thinking, is left largely neglected. Noddings (2006, p. 1) observes that criticality in terms of beliefs and values is woefully lacking in our curricula, and that this situation often exists for politically expedient reasons:

> [T]he suppression of discussion and critical thinking in our educational system is widespread. Usually it is accomplished by defining the curriculum so narrowly and specifically that genuinely controversial issues simply do not arise. Without controversial issues, critical thinking is nonexistent or, at best, weak. Students are encouraged now and then to exercise a bit of critical thinking in science or mathematics as they try to solve word problems or think of alternative hypotheses, but such exercises are usually constrained tightly by the topic at hand and the limited knowledge of young students. Further, this sort of critical thinking does not challenge deeply held beliefs or ways of life.

This lack of criticality in terms of beliefs and values may be symptomatic of a new notion of tolerance (Carson, 2012), which we will explore later. This curricular deficit may also be symptomatic of a similar deficit in the popular discourse that dominates the discussions pertaining to educational policy. In the hopes of stimulating such a critical discussion, I will resist this trend – of uncritically avoiding topics related to beliefs and values – by making observations, particularly in the discussion and conclusion sections, that may be regarded by some to be controversial.

Value diversity is one of the aspects of diversity that pose formidable challenges that need to be addressed by leaders. Lumby and Coleman (2007, Preface, p. ix) identify diversity as a key aspect of educational leadership and maintain that "the most significant task of educational leadership is to support the development of learners and staff so that all can live lives they value in dignity." Some of the pedagogical literature mentions "diversity within diversity" – the notion that it is not only the traditional ethnic, religious, linguistic, sexual, ethno-geographic, socioeconomic, socio-political and cultural aspects of humans that make them diverse, but also "many other explicit and implicit aspects of human existence and behaviour" such as one's values, attitudes, aesthetics and ways and standards of life (Sinagatullin, 2003, pp. 5–6).

Hofstede (2005, p. ix) uses the analogy of learning to play an instrument to describe the demands of becoming an effective leader: "it demands persistence and the opportunity to practice".

> Effective monocultural leaders have learned to play one instrument; they often have proven themselves by a strong drive and quick and firm opinions. Leading in a multicultural and diverse environment is like playing several instruments. It partly calls for different attitudes and skills: restraint in passing judgment and the ability to recognize that familiar tunes may have to be played differently. The very qualities that made someone an effective monocultural leader may make her or him less qualified for a multicultural environment.

In order to become an effective multicultural leader, it is essential to develop cultural sensitivity and awareness to the extent that we avoid thinking that what each of us has become accustomed to in the course of our life conditioning is a norm to which everyone else is obligated to conform (Ibid p. ix). A self-examination of the values we espouse and practice as leaders is important in light of the fact that "[c]ritical practice involves learning how to engage in serious and sustained examination of practices and the underlying assumptions and theories that support them" (English, 2008, p. ix). Such (self-)examination is particularly relevant and important in a leader's pursuit of promoting diversity in an educational setting. Lumby and Coleman (2007, p. ix) declare that in the modern context where there are many "ubiquitously evident" manifestations of volatility in relations between, for instance, religious and ethnic groups, "[e]ducation is at the heart of hope for change, for it is in our schools, colleges and universities above all that society has the right to expect a model of social justice to be embedded and to be renewed for each generation" and that leaders have a "critical role in working for diversity, equality and inclusion".

On a conceptual level, leaders, including educators, can benefit from this specific prescription offered by Maclure and Taylor (2011, pp. 3–4):

> an adequate conceptual analysis of the constitutive principles of secularism is still lacking . . . [while] a more precise conceptualization allows for a better grasp of the options available to societies facing dilemmas associated with how to manage moral and religious diversity, whether these concern the appropriate relationship between the majority religion and public norms and institutions, the legitimacy of demands for accommodation based on religious beliefs, the place of religious convictions in public deliberations, or the relation between freedom of conscience and freedom of religion.

I would like to add my own assertions to underscore the importance of having the sorts of examinations and discussions I do this thesis. In our present global, national and "glocal" contexts, where diversity is increasing rapidly due

to the impact of military conflict, poverty, and the resulting migration, it is necessary for all leaders to avail themselves of some history lessons about why and how certain understandings of foundational principles identify our societies, and provide mutually respectful cohesion for its diverse individuals and groups. This is necessary before trying to teach the importance of following our revered national/territorial civic traditions, often merely for traditions' sake, without adequate consideration of the moral intent that should inform our observance of them. Moreover, while compassion is a necessary criterion, there are many others that are needed to be considered sufficient to become good multicultural educational leaders. Being a wise decision-maker requires, in equal measure, an awareness of, and ability to articulate, the moral values for any proposed action that impacts on matters related to justice, well-being, and the freedom to individually and collectively pursue life, liberty and the good.

2.3 Some objections to the parental right to direct their children's education

While the parental right to direct the education of their children, and objections to same, are not the main foci of this paper, these topics serve as important background, because such objections may prevent us from proceeding with the question of whether home-schooling is morally justifiable at all – even within a state promoting or implementing liberal-pluralist values, which presumably would be more amenable to such a practice, at least in principle. I will thus take a brief look at a few objections to such parental rights.

Opponents of homeschooling have stated their own objections for different reasons. Woodhouse (1992) and Dwyer (1994) have both advocated nullifying parental rights in regards to decisions regarding the kind of education given to children.

Dwyer (1994, p. 1403) challenges parental rights in their entirety, and argues that these parental rights can be used by parents to indoctrinate their chil-

dren in potentially dangerous ways. Dwyer declares that "parental rights constitute the greatest legal obstacle to government intervention to protect children from harmful parenting practices and to state efforts to assume greater authority over the care and education of children" (1994, p. 1372). He goes on to say that there are insufficient grounds for claiming that a parent has child-rearing rights, since there are limitations on individual rights that confine such rights to the "protection of a right-holder's personal autonomy and self-determination" and that this limitation is based on the "moral precept" that no individual is entitled to control the life of another person (Ibid p. 1373). Dwyer goes on to say that parental rights are like the "plenary rights" that husbands had over their wives in the past that were able to be enacted due to the fact that those who did so were a more powerful class of persons (Ibid p. 1373), and that such rights are based on an "outmoded view" that "members of the subordinated group are not persons in their own right" (Ibid p. 1373). Dwyer proposes that judges should settle all conflicts between parents and their communities over issues pertaining to children by exclusively deciding the matter based on what is in the best interests of the child rather than what rights parents are said to have (Ibid p. 1376)[20]. Finally, Dwyer declares the following (Ibid p. 1378):

> Justifications based on parents' interests or on societal interests, such as pluralism and the preservation of traditional communities, are morally flawed, because they implicitly adopt an instrumental view of children, treating them as mere means to the furtherance of other persons' ends.

Woodhouse (1992) likens this right to those powers slave-owners had over their slaves, which regarded slaves as property rather than humans. Woodhouse exclaims "*Meyer*[21] announced a dangerous form of liberty, the right to control another human being. Stamped on the reverse side of the coinage of family privacy and parental rights are the child's voicelessness, objectification, and isolation from the community" (Ibid pp. 1000-1001).

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[20] However, this of course begs the question of who can rightly determine what is in the child's best interest – so in essence, this argument doesn't seem to get us closer to any viable and lasting solution.

[21] *Meyer v. Nebraska* declared unconstitutional a Nebraska law prohibiting the teaching of a foreign language to children who hadn't yet completed 8th grade, and using a foreign language as a medium of instruction. In its ruling, it supported parental rights to decide on such educational matters.

But Zimmerman (2004) points out that certain state Supreme Court rulings serve as "bulwarks against *state*[22] indoctrination"; and he objects to the slave analogy by pointing out that children lack capacities that adults have. This fact/assumption is a key consideration for a long list of age restrictions and requirements – none of which can be considered to have come about as a result of viewing children as property (Ibid p. 340). According to Zimmerman, if all societies were to do away with such restrictions and requirements, many problems would likely result (Ibid p. 341). Protecting children and making decisions that may affect them in the long-term cannot be viewed merely as authoritarian paternalism; on the contrary, these are necessary for any caring parent-child relationship (Ibid p. 345). Zimmerman also points out that the potential abuse of rights cannot in and of itself constitute a legitimate justification for the elimination of the right itself (Ibid p. 344). Zimmerman contends that the appropriate reaction in cases of abuse would be to punish the abuser, not to eliminate parental rights, which were authored with the intention to promote the welfare of children, their families and their societies (Ibid p. 344).

Zimmerman (2004) points out that Woodhouse's views stand in opposition to several landmark rulings of state Supreme Courts, notably *Meyer v. Nebraska*; *Pierce v. Society of Sisters*; and *Wisconsin v. Yoder* – all of which stated that parents not only have the right, but also the duty, to make important decisions regarding educational direction. The following rationale was given:

> The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations (*Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925), as cited in Zimmerman, 2004, at p. 319).

Thus state Supreme Courts, in their support[23] for parental rights, drew attention to the fact that parents are the ones who, by virtue of their assumed caring

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[22] emphasis mine

[23] [the following reference list is a direct quote of those provided by Zimmerman (2004) at pp. 314-315] See *Parham v. J.R.*, 442 U.S. 584, 602 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children."); *F.C.C. v. Pacifica Found.*, 438 U.S. 726, 769 (1978) (Brennan, J., dissenting) ("[There is a] time-honored right of a parent to raise his child as he sees fit – a right this Court has consistently been vigilant to protect."); *Moore v. E. Cleveland*, 431 U.S. 494, 503-04 (1977) ("[T]he institution of the family is deeply rooted in

relationship, can develop the most cohesive strategy in preparing the child to face the particular obligations that would likely face this child later in life. US Supreme Court Justice Lewis F. Powell, in a ruling related to the requirement to obtain the informed consent of parents before a child is allowed to undergo an abortion, declared that "the tradition of parental authority is not inconsistent with our tradition of individual liberty; rather, the former is one of the basic presuppositions of the latter" (*Bellotti v. Baird*, 443 U.S. 622, 638 (1979) (Powell, J., plurality)).

Some argue that rights are often made explicit as a result of a process that tries to identify things that people of various cultures, traditions, political inclinations and beliefs hold in common – thus, rights come about as a result of a sort of "lowest common denominator" approach, or what Isaiah Berlin has called "a minimum of common moral ground" (Berlin, 1995, p. 25; cf. Pavel, 2007). However, as Spring (2000) observes, any consensus on what a right actually *is* has been elusive even in the years immediately following World War II. This is when, under auspices of the fledgling United Nations, thirty-one international scholars submitted papers in order to draft what would become known as the 1948 Universal Declaration of Human Rights, with the goal of articulating what universal rights actually are and what they would justifiably entail. Unsurprisingly, no common definitions of (*human*) *right,* or even *liberty* or *democracy*, could be formulated that could be deemed to hold true regardless of cultural norms, political systems, religious notions, and socio-economic conditions (Spring, 2000, pp. 3–18).

In summary, any principled objection to home education based on an appeal to a child's individual human rights against parental rights may be mitigated, if not refuted, by several possible rebuttals:

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this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural."); *Ginsberg v. New York*, 390 U.S. 629, 639 (1968) ("[C]onstitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society."); *Gordon v. Bd. of Educ.*, 178 P.2d 488, 498 (Cal. Ct. App. 1947) (White, J., concurring) ("Under our system of government the family is the foundation of the social order, it does not spring from the state but the state springs from the family."); *Thompson*, 103 P. at 581 ("Under our form of government, and at common law, the home is considered the keystone of the governmental structure.")

1) that natural rights[24], including natural human rights, themselves do not have the same ontological and epistemological value and bases, if they have them at all, for everyone across religious and cultural boundaries[25]
2) that state Supreme Court rulings have often interpreted rights in such a way that parental rights are assumed under individual rights, as described above
3) that a United Nations human rights treaty has explicitly mandated protections for parents to direct the education of their children by "choos[ing] the kind of education that shall be given to their children" (UN General Assembly, 1948, Article 26, clause 3)
4) there are some notions of rights, such as Judeo-Christian notions, where rights are de-localised from individual agents[26], which would provide a built-in safeguard against a person's pursuing their well-being at the expense of another's freedoms and similar interests, provided they are both following other mandates.

2.4 Background on the home education situation in Germany

Since this study will examine a case involving a family that made the decision to implement home education in Germany, I will briefly examine the background of home education within the German context, especially in light of historical developments that have shaped societal attitudes and government policies toward home education. The German context is somewhat unique in that

[24] I emphasise that there is a distinction between natural human rights that are often characterised as "inalienable" and human rights declarations, which are based on decrees by such organisations as the United Nations General Assembly. The question of whether one can establish natural rights cannot be resolved merely based on a sort of political consensus, which is elusive and always subject to debate. Anything approaching political consensus on human rights, and official declarations of same, are largely arbitrary; and even if such a consensus were achieved, this fact alone would have no bearing on the question of whether natural human rights are established. Political consensuses of this sort are achieved on pragmatic grounds, not on ontological and epistemological ones.

[25] Moreover, as Wolterstorff (see footnote 8 on page 10) contends, a Judeo-Christian perspective on rights may offer a grounding that is often elusive in secular notions.

[26] See Matikainen and Puolimatka's (2014, pp. 75–82) synopsis of Wolterstorff's (2008, 2012) arguments and their critical analysis of positions opposing Wolterstorff's arguments.

home education is currently not a legal educational alternative in Germany. But home education has been a growing movement, although only several hundred families practice it today.[27]

In order to better understand this alternative, it is helpful to note some important developments that contributed to codifying compulsory education regulations in Germany. The first efforts at national education in Germany were oriented toward providing religious instruction (Mors, 1986, pp. 18–26, cited in Spiegler, 2009, at p. 298); and the *Weimarer Schulordnung* (Weimar school law), codified in 1619, was the first law to sanction pressure that could be exerted by secular authorities on those who failed or refused to regularly attend school. But these early laws were not much more than words of intent: in most areas, compulsory attendance was not successfully implemented in most states until the nineteenth century (Herrlitz, Hopf, Titze, & Cloer, 1998, pp. 52–53; Mors, 1986, pp. 151–2, cited in Spiegler, 2009, at p. 298). Until 1920, private tuition or home education were deemed sufficient in fulfilling compulsory education requirements, and it was not until the time of the Weimar Republic (*Reichsgrundschulgesetz*) that the first obligatory school attendance law was enacted, but there still remained an exception allowing private and home education (Nave, 1980, p. 141, cited in Spiegler, 2009, at p. 299). Clauses in *Reichsgrundschulgesetz* stipulated that children should study with their age-level peers for at least the first four years of school.

But during the era of the so-called Third Reich, all exemptions from compulsory education were eradicated. The 1938 law mandating school attendance (*Reichsschulpflichtgesetz*) was the first national regulation in the German Reich without exceptions and delineating the criminal punishments for violators (Habermalz, 2001, p. 218, cited in Spiegler, 2009, at p. 299). According to Spiegler (2009, p. 299), "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".

[27] In the words of Spiegler (2009, p. 300): "Conservatively estimated, there are 600–1000 children being educated at home."

Presently, a minimum of nine years of attendance at a public or state-approved private school is mandated for all children from the age of roughly six, and this applies to all German states. Parents are responsible for ensuring their children attend school, and even religious or other kinds of beliefs are not deemed to constitute sufficient grounds to warrant exemptions (Avenarius & Heckel, 2000, p. 453, cited in Spiegler, 2009, at p. 299). As Spiegler (2009, p. 299) describes:

> 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 wilfully 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).

Because of the steep fines, partial loss of child custody, and the threat of losing their property, many home educating families choose to move out of Germany in order to continue their practice of home-schooling.

2.5 Reasoning behind home education

In this subsection, I will explore, in more depth, the key findings and interpretations I have gleaned from the literature on home education that will be important frameworks for understanding where the debates on home education can be situated in the context of the philosophical discussions taking place at a broader level within society.

According to Spiegler (2009, pp. 299–300), social changes within two social groups[28] having a polar orientation to each other gave rise to the home education movement in the latter half of the twentieth century:

> The early cases of home education in Germany, which attracted nationwide attention,

[28] While Spiegler does not explain the nature of these groups, perhaps they can be defined by 1) their evangelical/fundamentalist understanding of their faith; or 2) by their rather "free-thinking" tendencies, which have been observed by other home education researchers.

> 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. . . . Both sides shared the wish to reduce the state influence on education.

Spiegler also notes that the sort of "bipolar root"(Ibid p. 300) phenomenon seen in Germany is analogous to that found in America as observed by Knowles, Marlow, and Muchmore (1992), and others (cf. van Galen & Pitman, 1991).

While Spiegler (2009) concurs with Stevens' (2001, p. 108) finding that there are "heaven-based" and "earth-based" motivations for conducting home education, he adds that "it is possible to interpret all motives as criticism of the school system and to summarize them as follows"(p. 300):

> (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.

Additionally, van Galen (1988, p. 55) has found that many of these parents seek to strengthen their relationships with their children through participating more directly in their education.

In the American context, where studies on home-schooling have a much longer history and are more numerous, van Galen (1988) interpreted the data she collected in such a manner that stated that home educators can be classified as either ideologues or pedagogues. In a state-wide survey of 461 home-schooling families in Oregon, Mayberry (1988, p. 37; 1989) classified 65 percent of them as having primarily "religious" motives and stated that they "believe that it is their duty to instil particular religious beliefs and values in their children"; 22 percent of them as having primarily "academic" motives; 11 percent as having "socio-relational" motives focused on family unity with the view that home-schooling offers a more conducive social environment for education than the peer interactions in a school setting; and 2 percent as having motives aligning with their New Age philosophy, which emphasises the interrelatedness of all

life and peaceful coexistence. Later, Mayberry and Knowles (1989) harmonised their four categories into the two proposed by van Galen by including religious and New Age in the "ideologue" category and socio-relational and academic in the "pedagogue" category.

In contrast to the above attempts to classify people according to such predetermined notions, Rothermel (2003, p. 74) "explore[d] the possibility of classifying home educators according to their motives, using categories defined by earlier research" and concluded that in certain contexts, "such classifications are simplistic and misleading."

One reason that pedagogical reasons cannot always be deemed distinct from ideological ones is illustrated by the following observation by McClain (2014, pp. 42–43):

> [Besides the fact that Christian content is lacking in public schools] Christian homeschool advocates level two additional criticisms against the humanism shaping the curriculum of public schools. The first is the censorship of Christianity marked by the alleged absence of any positive messages concerning the role religion has had in history, and in particular Western civilization and America.
>
> . . . According to many Christian home educators, public schools propagate a revisionist history, with the goal of expunging Christianity from the curriculum. The claim is that public school, in effect, advances an unspoken lesson that Christianity is insignificant and that it has had little to no positive significance in the history of humankind. Many Christian homeschool advocates argue that Western civilization has been positively shaped by the prominence of the biblical worldview. A shared worldview gives rise to culture and common values and a shared morality.

Thus it is often difficult to determine whether a given reason is ideological or pedagogical, as in some cases pedagogical decisions have apparently been guided by ideological reasons.

There are many possible pedagogical reasons that a parent may choose to educate their children at home. For instance, Jolly, Matthews and Nester (2013) interviewed parents of home-schooled children their parents identified as being gifted and found that "these parents decided to homeschool only after numerous attempts to work in collaboration with the public school and that the mothers bore the primary burden of responsibility for homeschooling in these families" (p. 121). According to observations by Gaither (2009), "increasing numbers who opt to homeschool do so as an accessory, hybrid, temporary, stop-gap,

or out of necessity given their circumstances" (p. 343).

One key reason that many parents choose to educate their children at home is to become more directly involved in the education of their children (Murphy, 2012). The lack of such direct engagement of parents by schools in Germany, for instance, has been blamed for unsatisfactory learning outcomes, especially in mathematics and science (Kohler, 1998). As Kohler (1998) puts it:

> Many Germans believe that the intellectual demands that schools make on students are too great. My experiences prove that we are, on the contrary, demanding too little intellectual effort from students. The demands appear to be too much only because we do not help students develop the basic foundation of skills they need for higher intellectual performance (Ibid p. 374).

Kohler declares that fostering a more cooperative and inter-relational approach involving all education partners, including parents, is necessary to provide an excellent education, particularly in view of the increasingly complex nature of intellectual challenges we find today. He also proposes that a new relationship-focused attitude oriented more toward the humanities and social sciences should be adopted:

> Specifically, we must think of the learning process as akin to an artistic process, in the sense of releasing each person's potential, and not as a technical procedure. Such a process can be improved through cooperation (Ibid p. 374).

From a sociological standpoint, home-schooling may be viewed as socially deviant behaviour (Spiegler, 2009, pp. 300-301). To cast more light on home education and the people who intentionally violate laws pertaining to compulsory schooling, Spiegler has suggested that one may be able to apply Becker's (1968, cited in Spiegler, 2009, pp. 301-302) rational choice model, which suggests that criminal behaviour is engaged in after one has weighed the likely risks against the benefits. In the case of home education, the risks are very high as the likelihood of detection is very high. Even though many can make the case that home education is not morally reprehensible, in some contexts such as Germany, it is by definition a crime, as it is a violation of laws mandating school attendance.

2.5.1 Ideological consideration 1: Home education as a form of civil disobedience

As noted by Spiegler (Ibid p. 302), home education in Germany can also be viewed as a form of civil disobedience, which is described by Rawls 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" (1999, p. 320). According to Spiegler, several characteristics of the behaviour of home educators in Germany can be deemed acts of civil disobedience: they refuse to adhere to compulsory school attendance laws while being aware of, and willing to face, the consequences; they engage in such practices in the hopes of being a catalyst for societal change; their disobedience is limited to home-schooling while they obey all just laws; and they do not otherwise defy the legal system or other civic duties; "[t]hey 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" (Spiegler, 2009, p. 303); "[t]hey act without violence against the representatives of school authorities or the state" (Ibid p. 303); and "even if the disobedience does not take place on the streets, it is often public", and "[m]any home educators do not try to conceal it from the authorities" (Ibid p. 303).

2.5.2 Ideological consideration 2: Home education as value-rational action

Spiegler (Ibid p. 303, emphases mine) has suggested that we can view home education from yet another perspective called value-rational action:

> Home education in Germany could also be regarded as a form of value-rational action (*wertrational*) (Weber, 1980: 12)[29]. 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.

I suggest that value-rational action seems to hold great value in the belief

[29] [Spiegler's citation is given as] Weber, M. (1980) *Wirtschaft und Gesellschaft: Grundriß der verstehenden Soziologie*, ed. Johannes Winckelmann. Tübingen: J. C. B. Mohr (1st edition 1921–1922).

system of evangelical Bible-believers. The notion that right behaviour, based on reverence for the Creator, is inherently valuable and obligatory as a moral duty, regardless of whether it is met with approval or disdain, is an important theme in many Biblical narratives. One might say that the attitude described above reflects the following words of the one such adherents believe to be the Messiah:

> Blessed are those who have been persecuted for the sake of righteousness, for theirs is the kingdom of heaven. Blessed are you when people insult you and persecute you, and falsely say all kinds of evil against you because of me. Rejoice and be glad, for your reward in heaven is great; for in the same way they persecuted the prophets who were before you" (Matthew 5: 9-11, NASB).

Their attitude also brings to mind these words recorded in Matthew 16:24-27 (NASB):

> If anyone wishes to come after Me, he must deny himself, and take up his cross and follow me. For whoever wishes to save his life will lose it; but whoever loses his life for my sake will find it. For what will it profit a man if he gains the whole world and forfeits his soul? Or what will a man give in exchange for his soul? For the Son of Man is going to come in the glory of his Father with his angels, and will then repay every man according to his deeds.

As I will make clear in the subsequent section on methods, civil disobedience and value-rational action will be used as two of the interpretive frameworks for the study of the Romeike case.

2.6 Summary of key points in this section

To sum up, this survey of the literature has discussed the home education landscape in two countries: the USA and Germany. Comparing some historical features of these two countries is informative and valuable. As Spiegler (2009) noted, the motivations of home-educating families in both Germany and USA have followed similar patterns, with many reportedly citing ideological considerations as important ones impacting their choice – with a smaller percentage of home-educating families reportedly citing primarily pedagogical reasons for doing so. Although the interpretations vary to a great degree due to the design of the frameworks employed, several researchers have nevertheless made find-

ings that could be harmonised with the findings of other researchers. The rather minor variations in their findings do not seem to undermine the notion that these studies reveal general tendencies in the mind-set of home educators. Broadly speaking, studies separated across a period of several years or even a few decades, seem to show that for the most part, the same sorts of motivations are still prevalent among home educators, albeit in slightly different proportions compared to past studies.[30]

While several past studies revealed some motivation tendencies among those choosing to educate at home, other interpretations of the data are possible if different assumptions are adopted. More specifically, I have mentioned Rothermel's criticism that while motives on the part of home educators have been classified as ideological and pedagogical by several researchers, such classifications may reflect a rather arbitrary assumption on the part of the researcher: that what constitutes pedagogy and ideology can be so be simplistically ascertained.

For the purposes of this study, I think it is largely irrelevant whether any stated motivation for choosing home education is better understood to be pedagogical or ideological in nature. I propose that every educational approach, insofar as it is meant to promote the well-being of the learner and of the greater society of which the learner is a member, is a product of a given conception of the good, whether religious or secular in nature. Conceptions of the good have equal moral standing that is largely independent of whether it is secular or religious. Therefore, it would seem morally obligatory that the educational approaches based on these varying conceptions of the good require respectful consideration within a society that promotes democracy, self-determination, and

[30] In recent years, many parents have become concerned about the test-centred approach, bullying, and other issues commonly found in many schools; so this may account for the fact that there is now a higher percentage of those citing their primary motivation as other than those generally regarded as religious. According to Burgess (2013, p. 16), "[John Edelson, founder and president of Time4Learning, a curriculum provider for homeschoolers] said the number of home-school families who do so for religious reasons has not decreased, but the percentage of those who list it as a first priority has dropped as other parents join the homeschooling community for different reasons." Besides the two categories of home educators I have discussed in this section, Edelson has proposed a third category of home educators, which he calls "accidental home-schoolers" who have tried school and found that their children "do not thrive in the traditional school environment" (Ibid p. 17).

religious neutrality as a means of protecting and honouring religious and conscientious freedom.

I have mentioned observations and interpretations from peer-reviewed literature that can aid in determining whether some of those who elect to undertake home education are making what appears to be a difficult decision, for reasons of conscience they deem important in dutifully preserving their moral identity; and why they are willingly taking such measures despite the various forms of resistance and reprisals they often incur (Aschmutat, 2015; Spiegler, 2009). The reason this is necessary is that some contend that such reasons of conscience merit derogation of norms and regulations intended for general application – in this case, those mandating compulsory school attendance, at least according to principles emphasised in the "liberal-pluralist" model of secularism espoused by one ideological tradition (see Maclure & Taylor, 2011).

I discussed the frameworks through which parental motivations for homeschooling were studied. Based on several studies, I have noted that many of the objections home educators have against the content taught in public schools are based on ideological reasons related to their worldview or values. The values many home-educators have are largely based on their rather fundamentalist/evangelical interpretation of the Bible, as noted by Kunzman (2009). As mentioned earlier, every person has his or her own conception of the good, whether or not it is based on religious or secular, or humanistic, reasons. In the next section, we will see how various conceptions of secularism affect their attitudes toward religiously-based conceptions of the good, and how such ideals are exhibited in civic life, of which schools are often seen as a key component.

3 SECULARISM: ESSENTIAL COMPONENTS AND VARIATIONS

In this section, I will introduce what some have identified as the historical rationale for, and the *raison d'être* of, secularism. I will point out that value pluralism and freedom of conscience have traditionally formed the justification for the institutional design we know today as secularism. I will also describe how scholars have made a distinction between two conceptions of secularism: republican (referred to as "rigid" secularism) and liberal-pluralist (referred to as "soft" secularism). A better understanding of each can be acquired when we compare and contrast them in relation to each other.

Additionally, I will mention a view representing what some might regard as an extreme version of the republican notion of secularism. In discussing this topic, I will draw attention to the fact that this view promotes the notion that even private individuals need to be disconnected from religious beliefs so that they can embrace reason, thus becoming "enlightened." My own critique of this view will be included.

I will proceed to discuss how civic integration is cited as a justification for the republican conception and implementation of same. It is worth noting that some who emphasise the importance of civic integration say that individual differences, such as religion, ethnicity and culture, need to be made less conspicuous in order for the integration to be successful.

One way to efface such differences is to prohibit religious expression and other forms of observance in the public sphere by, for instance, banning the wearing of headscarves. But is the line between public and private spheres always so easy to draw? And is it reasonable to expect that everyone that enters the public arena should refrain from their observance of religion even if one views such observance as morally obligatory?

There are a few reasons the above discussions are relevant for this thesis. Since I want to examine how stances toward parent-directed education might

depend on whether one assumes a given normative conception of the secular state, the philosophical bases of secularism and the points of divergence between the two main conceptions need to be clear before we can employ the features common to both, and unique to each, as frameworks by which we can view the subject I want to analyse, which is the moral justification for home education as a justifiable one in the context of secular values and thought traditions.

Since home education is often practiced within the context of a liberal democratic society that promotes secularist ideals, it is important to frame the issues pertaining to home schooling more broadly in the context of the philosophical traditions that have formed the ideological foundations of liberal democratic states. There is plenty of room for discussion and debate on such issues. Maclure and Taylor (2011, p. 10) provide a reason such a discussion is necessary: whereas "an uncontroversial, overarching perspective that allowed us to hierarchize or organize the different points of view espoused by citizens" would make "tolerating the plurality of conceptions of the world and life plans" difficult, there does not seem to be any such perspective that can lay claim to that title today.

The challenge is that educational leaders may have stances, and they can make assumptions, on how a state should view religious beliefs, and the degree to which such beliefs should be accorded protection within civic and public life. These stances and assumptions may influence their perspectives in regards to what roles education should serve. These opinions may also impact on their normative concepts about the precepts educational institutions ought to observe. Such opinions may be reflected in the formulation and enforcement of policies related to public school attendance.

As I will make clearer in the following discussion, one of the topics where opinions are likely to differ based on beliefs and worldview is one's normative notion of what traits secularism ought to have within a liberal democratic state (cf. Maclure & Taylor, 2011) – assuming that they agree that a secular state

should be maintained, and thus do not support creating a theistic one or another type of state that officially adopts a given "establishment of religion" (U.S. Const., amend. I). This conception would have several facets, including an opinion about whether religious neutrality is a moral principle or an "institutional arrangement" intended to ensure equal protection of religion (Ibid pp. 36–52); whether it applies equally to individuals as to the state (Ibid p. 39)[31]; and what norms can be deduced as the given value-based dogma of neutrality is put into practice in places such as school.

As the following discussion further elaborates, it has been said that there are two broad conceptions of secularism that represent polar opposites (Maclure & Taylor, 2011). One such school of thought denies any appeals for accommodation (such as exemptions from, or adaptation of, regulations and norms of general application) made on the grounds of religious obligations and values. As I will discuss in more detail, such a political tradition, called the "republican" notion of secularism, stands in contrast to the "liberal-pluralist" tradition of secularism, which emphasises the importance of protecting freedom of conscience, and the freedom of religion subsumed under it. The liberal-pluralist position claims that such freedoms are the moral ends of establishing the institutional arrangements, such as a state's religious neutrality and functional agnosticism, which are deemed merely the means of attaining the aforementioned ends, and not ends in themselves (Ibid pp. 27–35).

In practice, such a rigid insistence on maintaining a neutral environment would support the idea that schools, as public places, should be completely void of symbols or other expressions of religious affiliation. Under such a conception, schools are intended to serve as "republican sanctuaries"[32] (cf. Jacques

[31] Maclure and Taylor (2011, p. 39) say the following: "[D]oes the fact that school is a public institution in the first sense of the term mean that, as a place for meetings and exchanges, it must be free from any presence of the religious? The two conceptions of secularism stand opposed on that question. In the liberal-pluralist view, the requirement of neutrality is directed at institutions and not at individuals. In the republican conception, individuals are also obliged to exercise self-restraint and display neutrality, by abstaining from displaying their faith when they frequent public institutions or, in the most radical view, when they enter the public sphere."

[32] See a more detailed explanation of *laïcité*, along with its "religious" dimensions, in subsection 6.5 of Section 6, titled "Secularism is itself religious, some say".

Chirac's speech titled "Le principe de laïcité dans la République", given on December 17, 2003, at the Elysée Palace, cited in Maclure & Taylor, 2011, at p. 32) which promote the rigid conception of the secularist ideal, characterised by what one observer has called a "fetishism of means" (Maclure & Taylor, 2011, p. 29), with no – or relatively little or lesser – apparent importance assigned to what some view as the actual moral ends[33] they are intended to serve. But as I have mentioned in the preceding section, people with strong religious or conscientious convictions may find it extremely difficult or impossible to extricate education from their religious beliefs. For such people, spiritual and moral formation may be considered to be integral to education and are highly prioritised, as observed by Spring (2000, pp. 4-5).

It is not only the ontological nature of education that exists on embattled ground. Even the "right to education" that is so often taken for granted seems to be one that has eluded any worldwide consensus:

> no universal justification for "the right to education" was provided when this idea was proclaimed in 1948 in Article 26 of the Universal Declaration of Human Rights. Indeed, no one had even bothered to define the meaning of education in the "right to education" except to say that everyone was entitled to elementary schooling. . . . Without a universal justification for the "right to education" and a universal definition of "education" as provided for in this right, the right is very difficult to protect and implement (Spring, 2000, Preface, p. 9)[34].

The framers of the United Nations' 1948 Universal Declaration of Human Rights were aware of the fact that a given religion and the values often associated with it largely dictate how one views the mission and role of education (Ibid pp. 4-5). It was largely due to the fact that no consensus on the nature of education and rights was attainable that most of what was said in the scholarly debate leading up to the drafting of the Declaration was expressed only in the Preamble of Article 26, which delineated education rights – and such notions

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[33] See below discussion regarding why institutional arrangements such as neutrality are not moral ends, but only the means to achieve the ends of protecting freedom and preserving equality among diverse people.

[34] In regards to the present situation, Spring (2000, p. 4) claims the following: "Despite efforts since 1948 to implement the "right to education," there is still no universal justification for the right and no universal concept of education."

were largely not found in the clauses themselves[35]. Notwithstanding such a lack of consensus, one of the clauses stipulated the following: "Parents have a prior right to choose the kind of education that shall be given to their children" (United Nations General Assembly, 1948, Article 26, clause 3).

3.1 Moral pluralism as an essential component of liberal democratic societies

Maclure and Taylor (2011, pp. 4-5) declare that "respect for the moral equality of individuals and the protection of freedom of conscience and of religion constitute the two major aims of secularism today" and that "secularism must at present be understood within the broader framework of the diversity of beliefs." In their words:

> In a society that is both egalitarian and diverse . . . [such as that of] a democratic state, the state [must] treat equally citizens who act on religious beliefs and those who do not; it must, in other words, be neutral in relation to the different worldviews and conceptions of the good— secular, spiritual, and religious— with which citizens identify. Religious diversity must be seen as an aspect of the phenomenon of "moral pluralism" with which contemporary democracies have to come to terms. "Moral pluralism" refers to the phenomenon of individuals adopting different and sometimes incompatible value systems and conceptions of the good (Ibid pp. 9–10).

A secular state must not give any explicit indication that it promotes any given establishment of religion, for this would have the effect of making those who are not adherents of this state religion second-class citizens (Maclure & Taylor, 2011, p. 9). But it is in recognition of the fact that reason alone is incapable of providing satisfactory answers about what a life worth living consists of (Ibid pp. 10-11), that the state must defer to other modes of belief, such as faith, to provide them, if for no other reason than the pragmatic recognition that everyone in society needs to feel that life is meaningful and purposeful. Macklem (2000, p. 1) says that the justification for religious freedom is not found in the

[35] Spring (2000, p. 5) observes: "In an effort to achieve agreement despite significant political, economic, and cultural differences about the meaning of education, the Preamble to the World Declaration on Education for All was written in such a manner that any group can find support for its vision of education."

articles of religious belief, nor in the practices and institutions that are associated with these beliefs. Rather, Macklem proposes that the moral justification of freedom of religion rests on a moral foundation of the belief that "faith, understood as a mode of belief distinct from reason, is capable of contributing to human well-being." It is due to the recognition of this aspect of faith that "a secular society – the most prominent and the most vulnerable site for the pursuit of faith – has guaranteed freedom of religion" (Ibid p. 1). It is for pragmatic reasons – not ontological and epistemological ones – that the state must concede that the values that various faiths espouse are valuable for society. So, as Maclure and Taylor point out (2011, pp. 9–12), while the secular state must avoid promoting the various doctrinal *reasons* for the values that various faiths espouse, the values that these faiths have in common are nevertheless valuable for societal well-being. Such values common to virtually all faith traditions comprise the *constitutive* values of liberal and democratic political systems, according to Maclure and Taylor (2011, p. 11).

But of course not all beliefs are religious in nature, and secular beliefs have played a prominent role in the discussion about the values that are most important in a democratic liberal society. Furthermore, despite the fact that liberals of various sorts would not be able to attain a consensus on what value or combination of values should override all others – for instance, Rawls (1999) described a notion of "distributive justice" as the most important value of a liberal society – some maintain that they ought to agree that there is a pluralism of incompatible and incommensurable values. Strike (2003, p. 1) mentions one view of pluralism that focuses on both secular and religious conceptions of the good:

> Some have emphasized a pluralism of conviction. Rawls[36], for example, treats pluralism largely in terms of differences in reasonable comprehensive doctrines. This includes religious pluralism, but he **expands it to encompass other secular doctrines** that play "orienting roles" in people's lives. Rawls's view is primarily a cognitive pluralism. **Groups are different because their members subscribe to different beliefs** (emphases mine).

"Pluralism is thus built into liberalism, as it were, on the ground floor" (Kekes, 1993, p. 201).

[36] (Rawls, 1993, as cited in Strike, 2003, p. 1)

A theoretical basis for a sort of functional "agnosticism" of the secular state toward religion was thus promoted by Sandel (1998, p. 1, quoted in Kekes, 1993, at p. 200):

> 'Deontological liberalism' is above all a theory about justice, and in particular about the primacy of justice among moral and political ideals. Its core thesis can be stated as follows: society being composed of a plurality of persons, each with his own aims, interests, and conceptions of good, is best arranged when it is governed by principles that do not themselves presuppose any particular conception of the good.... This is the liberalism of Kant and of much contemporary moral and political philosophy.

Similarly, Dworkin (1985, p. 127) expressed a concurrent view: "[P]olitical decisions must be, so far as possible, independent of any particular conception of the good life, or what gives value to life."

The value that liberals most often promote are the protection of human rights, freedom, equality, and the sort of distributive justice espoused by Rawls – though the one that merits being deemed the overriding one is contested (Kekes, 1993, p. 201). However, regardless of what one's conception of good may be, it is important for this person to prioritize "the right," which is conformity to the rules that define the boundaries of the normative framework within which he or she, along with his or her societal peers, can pursue "the good." As Rawls (1999, p. 31) put it:

> the concept of right is prior to that of the good. . . . A just system defines the scope within which individuals must develop their aims, and it provides a framework of rights and opportunities and the means of satisfaction within and by which these ends may be equitably pursued.

This deontologised notion of liberalism seems to be a rather pragmatic and utilitarian one which does not deem it important how or why anyone deems anything good; rather the mere fact that their belief aligns with that of almost everyone else, and that people can thus agree to follow the norms derived from such beliefs, is what is considered most important.

3.2 Protection of freedom of conscience is an essential characteristic of secularism

The protection of freedom of conscience is widely considered to be an essential characteristic of secularism. The basis for the respect of conscience arises from the recognition that there are many different conceptions of the good, each of which are often characterised by beliefs incompatible with those found in other such conceptions. According to Micheline Milot (2002), secularism is "a (progressive) development of the political realm by virtue of which freedom of religion and freedom of conscience are guaranteed, in conformance with a will to establish equal justice for all, by a state that is neutral toward the various conceptions of the good life coexisting in society" (p. 34, quoted in Maclure and Taylor, 2011, at p. 22).

While there appears to be a popular consensus within many liberal democratic societies that secularism and tolerance are essential, they are only as important as the moral values underlying them and are not moral values themselves, according to Maclure and Taylor (2011). According to this point of view, "institutional arrangements" – such as a state's neutrality in regards to religion, its refusing to grant formal preference to any given "establishment of religion" (U.S. Const., amend. I), and accommodation of religion-based values as viable conceptions of the good – are distinct from the moral principles upon which they are based, namely equal respect and freedom of conscience, which are of intrinsic value. In contrast, these institutional arrangements are derived from these intrinsic moral values and necessary to ensure that the individuals in society are free from tyranny:

> Not all principles of secularism are of the same type. Equal respect and freedom of conscience are moral principles whose function is to regulate our behavior (or, in the case at hand, the state's actions), whereas neutrality, separation, and accommodation could be called "institutional principles" derived from the principles of equal respect and freedom of conscience. To use an analogy, the separation of the executive, legislative, and judicial branches is not a moral principle. It is an indispensable institutional arrangement whose aim, as Locke and Montesquieu showed, is to safeguard the freedom of citizens and to avoid tyranny. The value of "institutional principles" is derived rather than intrinsic; they are essential means toward the realization of properly moral ends (Ibid pp. 23–24).

In summary, it would appear that at least as a historical understanding, most if not all secularists would concede that a common minimal set of values, or what Isaiah Berlin has called "a minimum of common moral ground" (Berlin,

1995) protected by rights, primarily negative in nature (i.e., to be free from violations against one's dignity in relation to rights) (Berlin, 1995), and often held due to religious conviction, is the basis upon which a civic polity is formed.

However, there are nevertheless some key differences between the respective proponents of the two main conceptions of secularism in terms of application and practice. This will be discussed in more detail in the following subsection.

3.2 What religious liberty is (and what it is not)

This subsection discusses several key attributes of religious liberty. Firstly, as Laycock (1996) contends, the constitutional understanding of religious liberty is, at its core, a liberty which does not inherently come with any prescriptions pertaining to how societies should practically implement the recognition of it, other than the fact that the liberty individuals possess by right should be protected and honoured. Secondly, as Perry (2014) asserts, religious liberty entails the right to *practice* what one believes – not only the right to believe.

Laycock (1996, p. 313) says that religious liberty, as such, is "first and foremost a guarantee of liberty" albeit within a specified domain composed of religious choices and commitments. He lists a few "equal and opposite errors" in understanding what religious liberty actually consists of and what it entails: 1) the mistake of thinking, on the one hand, that religious liberty presupposes that religion is a good thing; or on the other hand, that "faith is bad or subordinate to reason"; and 2) the mistake of thinking religious liberty makes America a Christian nation or that it establishes a "secular public moral order". In short, religious liberty, as such, is void of any prescriptive connotations about the sort of political environment necessary in order to guarantee it, although there seems to be a common tendency to draw political inferences from the fact that people are free in terms of religion.

The freedom of religion guaranteed by national and international legal instruments includes not only the freedom to hold religious beliefs but also to

practice in accordance with one's beliefs. Article 18 of the International Covenant on Civil and Political Rights delineates the essential characteristics of freedom of religion in the following manner: "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."[37]

The different positions described above are reflected in the differences between national policies toward matters pertaining to religious exemptions. Opinion is divided on the question of whether the government is obligated to grant exceptions, exemptions, adaptations or other accommodations for generally applied regulations and norms. It is especially true that not every government agrees that accommodations are warranted when such norms are not prima facie discriminatory, even when such norms prevent one from fulfilling religious obligations or from freely exercising their faith. The following represents the view that exemptions on account of personal beliefs is obligatory:

> [S]ome countries, such as Canada and the United States, maintain that public and private institutions are in certain circumstances subject to a legal obligation to accommodate minority religious beliefs or practices. That norm is a specific modality of a broader legal obligation whose aim is to better ensure the exercise of the right to equality among citizens belonging to certain categories, usually minorities. It proceeds from the observation that legitimate norms of general application can in certain circumstances prove to be discriminatory toward persons possessing particular cultural or physical characteristics (including physical condition, age, ethnicity, language, and religion). Laws and norms are generally designed as a function of the majority or of the most common contexts of application. . . . [However] fairness sometimes requires that measures of accommodation (exemptions, adjustments) be granted, even when the norm envisioned is not discriminatory on the face of it (Maclure & Taylor, 2011, pp. 66-67).

Thus courts and legislatures in several countries have decreed that a state's obligation to accommodate, as a principle, proceeds from fundamental rights such as the right to equality and freedom from discrimination, or freedom of conscience and religion. Therefore, as requests for accommodation exist in the realm of fundamental rights, they should not be treated merely as management

[37] Office of the High Commissioner for Human Rights, International Covenant on Civil and Political Rights, adopted on December 16, 1966, by the General Assembly of the United Nations, <http://www2.ohchr.org/english/law/ccpr.htm> .

and policy matters (Ibid p. 67).

3.3 Secularism comes in two "tensile strengths"

There are two dominant conceptions of secularism, and each appears to have ends that appear to be polar in orientation.

According to Maclure and Taylor (2011, p. 28), a "rigid" conception of secularism, which tends to marginalize religious beliefs, prioritizes the operative modes of secularism, which are promoted to the rank of values; thus these modes take the place of the principles of moral equality and freedom of conscience. Accordingly, there is a logical deduction that follows from the following assumptions: 1) that respect for the equal moral value of citizens and the protection of freedom of conscience are the ends of secularism; and 2) that by separating the political entities from religious ones, and by maintaining religious neutrality, such equal respect can be attained, making it possible to achieve a balance between those ends. The deduction is that the most rigid conceptions of secularism, which are quicker to set aside protections for freedom of religion, sometimes come to grant a preponderant importance to the *operative modes* of secularism, which are elevated to the rank of *values*, often *at the expense of its ends* (Ibid p. 28). The full separation between church and state, or the state's religious neutrality, then assumes greater importance than respect for individuals' freedom of conscience (Ibid p. 28). Maclure and Taylor calls this phenomenon a "fetishism of means," where such institutional arrangements are "defended at all cost rather than means that, though essential, are to be defined as a function of the ends they serve" (Ibid p. 29). Incidentally, Maclure and Taylor observe that other ends can be attributed to secularism than the above: for instance, "emancipating individuals" [from religion], or "consign[ing] religious practice strictly to the confines of private and associative life," and "civic integration" (Ibid p. 29).

Espousing a rather extreme version of this rigid secularist position, Peña-

Ruiz (2005), declares that secular emancipation requires more than secularization of public institutions:

> It requires making common cause with two sovereignties: that of the people over themselves, and that of the individual consciousness over its thoughts. Reason, a principle of autonomy, is the faculty of reflective thought that applies itself to all things, including the meaning of every particular cognition in one's understanding of the world and in one's conduct. Every man possesses reason as "natural light," a potentiality to be cultivated, but no one can spark it in himself and realize it without a labor of thought that assumes the burden of its demands. That is why the positive raison d'être for the secular ideal is to establish publicly the conditions for enlightened judgment. **It is not enough to disconnect the state from all theological custodianship. The citizenry must also be disconnected from the many custodians who may impose themselves on it, in civil society and in public political debate** (p. 225, quoted in Maclure and Taylor, 2011, at p. 30; emphasis mine).

Several observations can be made from this passage. The first is that Peña-Ruiz seems to have a rather derogatory view of (some) human beings, who are depicted as impressionable children dependent on custodians rather than as moral agents who have the capacity to make good choices for themselves. A second facet that draws our attention is that Peña-Ruiz seems to have a rather low regard for religion – some may consider it a contemptuous attitude toward religion – which may be considered difficult to reconcile with respect for religion, which secularists appear to agree is an essential component of liberal democratic states. Still another conspicuous feature is Peña-Ruiz's elevating reason to the loftiest position while theology has been vilified as a domineering custodian imposing itself on dependent, unenlightened, and powerless subjects lacking sufficient reason to critically evaluate what they are taught. In a vein similar to that of Peña-Ruiz, Debray (1991) contends that "the Republic is freedom plus reason. . . . Democracy is what remains of a republic when you snuff out the light [of reason]" (p. 356, quoted in Maclure & Taylor, 2011, at p. 30).

In addition to the above-mentioned characterisation of rigid secularism as a "fetishism of means," Maclure and Taylor (2011) caution that this so-called "republican" version of secularism can be problematic in societies where there are diverse conceptions of the good life. They claim that it is not indisputably self-evident that reason cannot serve this emancipatory function unless disconnected from all religious or spiritual beliefs, as Peña-Ruiz proposes (p. 31).

The second danger that such a concept of secularism poses is that such a value is very likely to conflict with citizens' moral equality and freedom of conscience. This is due to the fact that "[t]he secular state, in working toward marginalizing religion, adopts the atheist's and the agnostic's conception of the world and, consequently, does not treat with equal consideration citizens who make a place for religion in their system of beliefs and values" (Ibid p. 31). Maclure and Taylor further criticize this version of secularism for the following reasons: "That form of secularism is not neutral toward the core convictions that allow individuals to give meaning and direction to their lives. Yet the state's true commitment to individuals' moral autonomy entails the recognition that individuals are sovereign in their choices of conscience and have the means to choose their own existential options, whether these be secular, religious, or spiritual" (2011, p. 31).

Another justification for a more restrictive model of secularism is the need to promote the aim of civic integration, where "integration" refers to a popular allegiance to a common civic identity and the "collective pursuit of the common good" (Ibid p. 31). Some advocates of this claim that civic integration requires the effacement or neutralization of the identity markers that uniquely identify citizens, including religion and ethnicity.[38,39] Thus from a geopolitical perspective, the aims of civic integration may be seen as akin to those associated with the assimilation of minorities under the pretext of nation-building (Connor,

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[38] The promotion or inculcation of the virtue of "colour-blindness" (blindness to difference) may reflect this line of thinking, as individual differences would be difficult to ignore unless they are done so intentionally or out of an attitude of indifference.

[39] It appears that the sentiment advocating the need to obliterate differences may have contributed to Germany's 2003 ban on headscarves for Muslim teachers, which the German high court struck down in 2015 on the condition that wearing the headscarves cause "not just an abstract but a concrete risk of disruption in schools" (quoted in Brown, 2015, March 13). The following reactions to the ruling illustrate how some values such as religious freedom are in conflict with the republican notions of secularism, which promotes neutrality as a value in itself:

> Christine Lueders, head of the federal anti-discrimination agency, hailed the ruling for "reinforcing religious freedom in Germany". With education administered by Germany's 16 states, she called on local authorities to review the relevant rules.
>
> . . . But the German Teachers' Association (DL) called the ruling "problematic", saying it undermined the principle of political and religious "neutrality" in schools and public services (Brown, 2015, March 13).

1972; cf. Daskalovski, 2002; cf. Francis, 1968; cf. Guzina, 2000; cf. Jing, Sasaki, & Li, 2006).

The school's role as a so-called "republican sanctuary" (cf. Jacque Chirac's speech titled "Le principe de laïcité dans la République", given on December 17, 2003, at the Elysée Palace[40], cited in Maclure & Taylor, 2011, at p. 32) appears to be tied with the aims of civic integration and nation-building. In America, the states' interest in civic integration was one of the most important reasons nearly every state imposed mandatory school attendance laws by the end of World War I[41], beginning with Massachusetts in 1852, after roughly 35 million people immigrated to America between 1830 and 1920 (Burgess, 1986, pp. 70-71, cited in Macmullan, 1994, at p. 5). In the words of the US Supreme Court, public education was deemed the most powerful means of "promoting cohesion among a heterogeneous democratic people" (*McCollum v. Board of Educ.*, 333 U.S. 203, 216 (1948)). The implications of imposing a rigid conception of secularism on educational institutions are many and profound. Viewed from the standpoint of such a rigid notion of secularism, we might better understand why schools are often portrayed as republican sanctuaries.

Contrary to the claim that civic integration requires the effacement or neutralization of religion, ethnicity and other identity markers, some argue that it is not necessary to efface religious and ethnic differences in order to attain integration. They maintain that acknowledgement and respect of similarities and differences between people of diverse backgrounds through dialogue, mutual understanding, and cooperation are necessary for civic integration. According to this perspective, such differences should not be consigned to the private sphere (Maclure & Taylor, 2011, p. 32).

The assumption that there is a rigid line between public and private spheres may be unfounded and difficult to maintain in practice, especially as there are some settings (such as hospice care and long-term care facilities)

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[40] Chirac also declared that "secularism is at the heart of the Republic". His speech can be heard in full here: http://www.tv-radio.com/ondemand/rfi/mere/ftp/Audio/SpecialEvents/Dossier267/rfise267-chirac20031217.ram

[41] Burgess, 1986, p. 70, cited in Macmullan, 1994, at p. 5

where the distinction between public and private is indeterminate, as noted by Maclure and Taylor (2011, p. 39). Thus the expectation that all individuals should so restrain themselves may be overly harsh, particularly for those for whom belief and practice are inextricably intertwined (Ibid pp. 39-40). Maclure and Taylor (2011, p. 40) provide the following caveat and recommendation:

> The idea that religion could be "banished" from these spaces [where it is difficult to categorize them as either public or private] is morally suspect. The issues raised by that intertwining of private and public require sensible and sensitive solutions arrived at through dialogue among the parties concerned.

In contrast to this "republican" model of secularism, the "liberal-pluralist" model views secularism as a mode of governance which aims to find the optimal balance between moral equality and the recognition of freedom of conscience. Additionally, the liberal-pluralist model does not take exception to the display of religious symbols or examples of the free exercise of religious freedom. Rather, this model accepts the necessity of making accommodations for public religious expression in order to restore equity of respect toward adherents of all religions – as long as the principle of equal respect toward all conceptions of the good is not compromised (Maclure & Taylor, 2011, p. 34).

While proponents of the republican model of secularism declare that the separation of church and state entails the confinement of the exercise of religion to the private sphere, the reality is that such contrasts are not always so stark. Maclure and Taylor (2011) draw attention to two distinct major meanings of the word "public" which introduce an often overlooked complexity: 1) a term predicated of entities pertaining to society as a whole, often governed by state institutions, with the nominal aim of promoting the common good; and 2) a term predicated of "what is open, transparent, and accessible, in opposition to what is secret or that to which access is restricted" – hence "the public sphere in this [second] sense is composed of places for discussion and exchange among "private" citizens" (p. 37). While liberal-pluralists may grant that the public institutions need to maintain their functional agnosticism or neutrality toward religions, they would also defend the right of private citizens to freely exercise their religion in the public sphere (Ibid p. 37).

As schools and universities are part of this public sphere, where individuals meet and interact, from a liberal-pluralist perspective, "the essential thing, if we wish to grant students equal respect and protect their freedom of conscience, is not to remove religion from the schools completely but, rather, to ensure that the school does not espouse or favor any religion" (Ibid p. 39). The mere fact that schools are at the same time public institutions does not necessarily entail that the school must be free from anything imbued with religious meaning. The school is, after all, a place for interaction and dialogue between private individuals. In short, for the liberal-pluralist, the requirement of religious neutrality applies to institutions and not individuals; whereas for republican secularists, individuals should practice self-restraint and avoid displays of religious affiliation when they are in public institutions. Alternatively, in the more extreme view of the republican position, people should avoid such expressions whenever they are in the public sphere, including when they are in school (Ibid p. 39).

3.4 Summary of key points in this section

I began by talking about two essential ideals of secularism: value pluralism and religious neutrality. Although secular states have believed that they must avoid explicitly promoting or adopting any particular establishment of religion as their own, they have, by tradition, eclectically used some of the common values that various religions espouse to formulate a common set of values that they have pragmatically adopted as civic virtues. Most of these values are freedoms that are known as "negative rights" in the philosophical literature addressing concepts associated with rights.

Next, I described the two main conceptions of secularism: the republican and liberal-pluralist. Relying primarily on the work of Maclure and Taylor (2011), while supplementing their accounts with opinions of others, I laid out the distinct characteristics of each. The most noteworthy is that there is a different understanding of what religious neutrality actually entails and even what

it means. There seems to be a difference of opinion on whether it can be treated as an end in itself: republican secularists treat religious neutrality as an end in itself, while those who hold the liberal-pluralist declare that religious neutrality is only the "institutional arrangement" that serves as the means to ensure equal respect for people adhering to different religious beliefs.

While some proponents of the republican position claim that religious expressions do not belong in the public sphere, in practice, it is not always easy or even possible to determine where the line between public and private spheres can be drawn without arbitrariness. The expectation that people should refrain from doing what they believe they are obligated to do as a practice or observance of their religion, every time they enter the public sphere, may be an unreasonable expectation constituting a violation of their freedom of conscience or of religion. The notion that freedom of religion is the freedom to *practice* what one believes would entail that the denial of the right to practice is fundamentally a denial of the freedom. Is such a denial warranted in a liberal democratic state, whose rule has long been legitimised by the fact that people need the state primarily to protect their freedoms and to punish those who violate them? Wouldn't a failure to honour a negative right, i.e. to not be interfered with when it comes to the practice of one's religion, constitute a violation of the charter legitimising a state's own hegemony?

Finally, I discussed the fact that some proponents of the republican conception of secularism say that the characteristics that uniquely identify individuals must be effaced for the sake of civic integration. This observation may be valuable when I discuss several different possible understandings of toleration, pluralism, and the nation-building objectives that civic integration is often purported to serve.

4 RELIGIOUS EXEMPTIONS AND ACCOMMODATIONS

Many arguments justifying home education can resemble those arguing for the moral justification for accommodation or exemption on account of religious or conscientious beliefs. This thesis has pointed out that all these sorts of beliefs can be understood as conceptions of the good – and as such have a significant well-being component. The promotion of the well-being of the person and society are commonly presumed to be important roles of education as a whole.[42]

4.1 Accommodations compensate and correct for unintended biases of general norms

If we examine some works of political philosophy, particularly the literature on multiculturalism, we find that justifications for the principle of reasonable accommodation are similar to those we find in the field of law. According to Maclure and Taylor (2011, p. 67), "[o]ne of the central arguments in favor of multiculturalism as a principle of political morality is that certain public norms applying to all citizens are not neutral or impartial from a cultural or religious point of view." While norms of general application are not illegitimate, they are often indirectly or unintentionally discriminatory against minorities. This is due to the fact that they are usually those norms that favour the interests and attributes of the majority, who have instituted such norms for religious, historical and practical considerations, such as observing a particular calendar or holidays. Thus inasmuch as such favouritism exists, accommodation is necessary to re-establish equity (Ibid p. 68). Furthermore, as some political philosophers argue, recognition and accommodation of religious diversity is a social justice consideration that requires dialogue focused on social cooperation (Ibid p. 68).

[42] See Robeyns, 2006, for a discussion about various normative roles assigned to education.

Thus the issue should not be framed in terms of cultural relativism (Ibid p. 68). The courts have devised the notion of reasonable accommodation in order to have a means of correcting for indirect discrimination. While a given norm may ostensibly be impartial or neutral, it may produce effects detrimental to a particular group when it is implemented (Ibid p. 74).

4.2 Opposition to the accommodations and exemptions based on religious beliefs

Those who oppose the granting of accommodations based on religious beliefs claim that religious beliefs are not any different from other beliefs (Barry, 2001, p. 35), or that it is difficult to form a neutral definition addressing what constitutes religion itself. Barry also says that even if a generally applied law is not neutral in its effects – that is, there are those that may feel disadvantaged by such laws – the goal of making a law is to realise a given conception of good which necessitates limits on freedoms (Ibid, p. 37). As an example, Barry cites laws against paedophilia, saying that of course such a law will not be neutral toward paedophiles (Ibid, p. 34). However, such examples seem to miss the point. While laws of general application are necessary to prevent the violation of another's rights or dignity – which laws against paedophilia are meant to address – laws against behaviours that *do not* violate another's rights can be considered discriminatory if one is prevented from his or her free practice of religion while not harming others. The question is made even more complex by the fact that beliefs commonly regarded as religious vary considerably between different religions and between individual adherents of the same religion (Cornelissen, 2012, p. 86). There is also a growing trend in which individuals are more critical of the beliefs they adopt and only accept beliefs after much scrutiny. People often even form an eclectic set of beliefs from a range of available religions (Evans, 2008, cited in Cornelissen, 2012, p. 86). Cornelissen (2012), who opposes granting exemptions based on religion, asks: "if we cannot agree on what features are necessary for a belief to qualify as religious, how can we

determine if it warrants special treatment?" (p. 86).

There are those who claim, as Barry (2001) does, that religious beliefs and "metaphysical convictions" (*Mouvement Laïque Québécois*, report presented to the Commission de consultation sur les pratiques d'accommodement reliées aux différences culturelles, October 16, 2007, p. 12) should not be considered worthy of granting derogations to democratically established public norms through the granting of privileged legal and moral status to religious convictions. Additionally, there are those who oppose granting exemptions requested on the basis of religion by arguing that doing so would violate the Establishment Clause: individuals and other institutions with secular objections to the law would be left without any such option (Gedicks, 1998, cited in McConnell, 2000, at p. 3). However, McConnell's (2000, p. 3) views as a constitutional law scholar seem to be in concurrence with those of Maclure and Taylor. He argues that in cases where a request or demand for accommodation or exemption from laws of general application for religious reasons is made, we should remember the "ultimate purposes" of the Religion Clauses [i.e., those delineated in the First Amendment of the US Constitution] rather than to invoke the state's neutrality toward religion as the end in itself:

> My thesis is that "singling out religion" for special constitutional protection is fully consistent with our constitutional tradition. In fact, it is virtually impossible to understand our tradition of the separation of church and state without recognizing that religion raises political and constitutional issues not raised by other institutions or ideologies. For this reason, the First Amendment contains a special provision governing the rights of free exercise and nonestablishment of religion: precisely because there are special constitutional rules applicable to religion (Ibid p. 3).

McConnell is in agreement with Maclure and Taylor that liberal democratic states should use religious neutrality, or "religion-blindness", as an instrument to ensure that religion is free from government control or influence, good or bad:

> This statement does not require that religion must always be treated differently. Obviously, there are many contexts in which the best means of ensuring that government may not control or direct religious practice is to require equal treatment of religion[43].

[43] See EQUAL TREATMENT OF RELIGION IN A PLURALISTIC SOCIETY (Stephen V. Monsma, eds., 1998) [this footnote in the original quote has been inserted here by me as a direct quote]

> My thesis, rather, is that **"religion-blindness" should not be treated as a general, or controlling, interpretation of the First Amendment.** "Religion-blindness" is a tool, to be evaluated in particular cases according to the ultimate purposes of the Religion Clauses, to ensure that religion, as nearly as possible, is free from government control or influence, whether favorable or unfavorable. We ought to be discussing not whether religion should be "singled out," but how, when, and why it should be "singled out" (Ibid p. 3, bolding mine).

While critics point out that such requests may encourage people to make spurious requests and abuse such provisions, Maclure and Taylor (2011) contend that "it is better to seek ways to limit the scope of potential abuses than to restrict citizens' freedom of conscience before the fact" (p. 80).

4.3 The significance of the impact of religious beliefs on one's moral identity

Granted, it may be difficult to ascertain objectively whether the special legal status of religious beliefs indeed has any intrinsic validity. One of the reasons is that it is commonly acknowledged that practical reason is limited when it comes to answering questions of the meaning and ultimate aims of existence. However, this special status is derived from the role such beliefs play in people's moral lives (Maclure & Taylor, 2011, p. 81). Hence:

> It is up to individuals, perceived as moral agents capable of providing themselves with a conception of the good, to position themselves in relation to the different understandings of the world and of the meaning of human life (Ibid p. 81).

As alluded to above, observers such as Maclure and Taylor (2011) and Perry (2014) have noted that the right to religious freedom is essentially comprised of the liberty to *act* in accordance with one's religious convictions. Of course living in accordance to an all-encompassing system of beliefs often entails doing so even in public. As a matter of fact, some may think that the public vs. private distinction is one that is not important at all to the practice of one's religion.

The idea that everyone should initially be accorded an equal opportunity to choose and realize his or her conception of what constitutes a good life follows from the notion that all individuals inherently possess an equal moral

value (Maclure & Taylor, 2011, p. 71). "For all individuals truly to have access to the same range of options, the rules that delimit their choices must not favor or disadvantage any category of citizens" (Ibid p. 73). Such a capacity is inherent in the nature of humans, and it thus exists independent of any religion. In this light, it is not reasonable to claim that anyone's request for accommodation on the basis of their personal religious belief is not legitimate whenever there is not sufficient evidence that the establishment of religion this person professes does not formally proclaim such a belief as an article of faith – or when this person does not profess membership in any establishment of religion at all. Religious belief must precede religion, both chronologically and in terms of importance. Establishments of religion are dependent on religious belief, while the latter can exist independently of any establishment of religion.

4.4 Are religious beliefs worthy of special consideration?

Those supporting measures of accommodation in certain cases are required to show that religious beliefs are a unique type of belief warranting special protection (Maclure & Taylor, 2011, pp. 75-76). The necessity of demonstrating this is made even more acute by the fact that there are those like the aforementioned Barry and Cornelissen, who claim that religious beliefs are not special; and if they are right, then religious beliefs are those that are a product of one's choice rather than that of a situation over which they have no control or choice, such as physical constraints and impairments.[44] Such a perspective maintains that be-

[44] This emphasis on the distinction between a situation where one has no choice and one where one is deemed to have one is illustrated in this ruling by the European Court of Human Rights (Konrad v. Germany, App. No. 35504/03, 8 (European Court of Human Rights Sep. 11, 2006), p. 9), denying a petition filed by homeschooling parents in Germany for appeal of a ruling denying their claimed parental right to direct their children's education:

> the applicants submitted that they were being discriminated against in relation to families whose children had been exempted from compulsory school attendance on the grounds that the parents worked abroad or were not settled because their professional life required them to move around the country (Article 14 of the Convention taken in conjunction with Article 8). The Court reiterates that, for the purposes of Article 14 of the Convention, a difference in treatment between persons in analogous or relevantly similar positions is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate

cause choices can be controlled and altered, if anyone chooses to act in accordance with religious beliefs, he or she is acting while knowing the risks and responsibilities associated with making a choice of his or her own volition, while another choice could have easily been made instead that wouldn't have imposed such obligations. In light of such cases, some opponents compare religious beliefs with expensive tastes, which are superfluous and malleable (Barry, 2001; Maclure & Taylor, 2011, pp. 69-80).

Perhaps this would partly explain why requests for accommodation based on religious beliefs are often met by suspicion on the part of public opinion. As mentioned in prior sections, some argue that appeals for the granting of religious exemptions or accommodations that invoke the Bill of Rights necessarily depend on a precise definition of religion, which is incommensurable and indeterminate.

But if it is difficult to determine what religion is, it is equally difficult to determine what it is not. Thus it would be difficult to make the case that instruction in public schools is free of religion or religious overtones. As alluded to above, educating itself is a profoundly religious activity for many. Moreover, as argued above, every value we espouse is based on a certain conception of the good, religious or not. In brief, neutrality in terms of religion or values would be as difficult to ensure as to define precisely.

Some maintain that such beliefs are considered "meaning-giving" or "core" convictions which form one's moral identity, which "depends on the degree of correspondence between, on one hand, what the person perceives to be

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> aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. . . .
>
> The Court notes that there exists a difference of treatment between the applicant children and other children who have obtained an exemption from compulsory school attendance "in exceptional circumstances" . . . However, the applicants submitted that such "exceptional circumstances" had been recognised by the school supervisory authorities only in cases in which children were physically unfit to attend school or in which the parents had to move around the country for professional reasons. Such exemptions were granted by the school supervisory authorities because the limited feasibility of school attendance would have caused undue hardship for those children. Those exemptions were hence granted for merely practical reasons, whereas the applicants sought to obtain an exemption for religious purposes. Therefore, the Court finds that the above distinction justifies a difference of treatment.

his duties and preponderant axiological commitments and, on the other, his actions" (Ibid p. 76). As Maclure and Taylor (2011) contend, "The more a belief is linked to an individual's sense of moral integrity, the more it is a condition for his self-respect, and the stronger must be the legal protection it enjoys. Core beliefs and commitments allow people to structure their moral identity and to exercise their faculty of judgment in a world where potential values and life plans are multiple and often compete with one another"[45] (Maclure & Taylor, 2011, p. 69).

4.5 Summary of key points in this section

In this section, I discussed how each stance on secularism may tend to treat requests for accommodation, for generally applied rules and laws, on account of religious beliefs. This observation is especially important when we attempt to understand why some states may refuse to accommodate home-schooling, which would require such accommodation within a country where school attendance is mandatory, except in cases where, due to physical or psychological reasons, it is extremely difficult to attend school.

The discussion in this section raises some important questions. The distinction between the public and private spheres seems salient in relation to our discussion about home education. If education is being performed at home, has the home become part of the public sphere? Or has the mere fact that a parent has made an educational choice mean that this choice has been done in the realm of the public sphere? If so, why? Is it necessarily an intrusion on the prerogatives of the state for a parent to make an educational decision? Could it be considered a violation of the religious neutrality policy for a parent to make such an educational choice, especially in light of the fact that educational matters are often seen to be part of the public sphere?

[45] cf. Thomas Nagel's discussion about the multiplicity and irreducibility of values in "The Fragmentation of Value," in his *Mortal Questions* (Paris: Presses universitaires de France, 1985) (refer to English edition)

5 SUBJECTS AND FRAMEWORKS OF ANALYSES

After describing some background information pertaining to the German homeschooling family whose case I intend to analyse, I will describe the list of documents that collectively form the corpus of the data that I analyse. I will introduce the themes of each interpretive framework that I will use in each of the analyses.

The family of Mr. Uwe Romeike and his wife, Hannelore, were residents of Bissingen, Germany, in the State of Baden-Wuerttemberg until August 2008, when they decided to come to the United States in order to flee what some might consider persecution against members of a particular social group, i.e. that of home educators in the case of Mr. and Mrs. Romeike. Mr. Romeike, a classically trained concert pianist, was a freelance private piano teacher while Mrs. Romeike had formerly been a professional music teacher (Decision of the Immigration Judge ("IJ Decision") at 4 (Dec. 16, 2009)).

In the fall of 2006, Mr. and Mrs. Romeike did not send their three school-aged children (Decision of the Immigration Judge ("IJ Decision") at 2 (Jan. 26, 2010)) to the government primary school.

> The reasons they decided to homeschool their children was the fear that there were negative influences in school. They felt that school engendered a negative attitude toward family and parents and would tend to turn children against Christian values, as the Romeikes saw it. Specifically, the Romeikes objected to the teaching of evolution, the endorsement of abortion and homosexuality, the implied disrespect for parents and family values, teaching of witchcraft and the occult, ridiculing Christian values and sex education (Decision of the Immigration Judge ("IJ Decision") at 2 (Jan. 26, 2010)).

Instead of sending them to the public school, they began to conduct home education using a curriculum developed by The Philadelphia School of Siegen, Germany, a private Christian correspondence school, which had previously been accredited as a state approved private school, having had an enrolment of students studying onsite before deciding to become exclusively a correspondence school (Decision of the Immigration Judge ("IJ Decision") at 4 (Dec. 16,

2009)).

Mr. Romeike and his legal representatives formally alleged that after a few warnings given verbally and in writing,

> On 09/25/2006, Principal [Wolfgang] Rose confronted both Mr. and Mrs. Romeike at home. . . . Principal Rose insisted Mr. and Mrs. Romeike could not teach their own children. He rejected and disparaged their motives of religious conviction and their exercise of parental rights regarding educational choice. He demanded that the children attend the government school, or they would suffer consequences (Ibid p. 5).

Less than a two weeks later, Mayor Kümmerle, the head law enforcement official in the town of Bissingen, allegedly repeated the same threats while disparaging the religious convictions of Mr. and Mrs. Romeike in similar fashion[46], while adding that home education was not in the best interests of the children (Ibid p. 5). In writing three days later, Kümmerle threatened them with fines that would accumulate on a daily basis for each child that did not attend school, and "threatened to make the Romeike children attend the government school through the use of police force" (Ibid p. 5).

Some two weeks later, Principal Rose wrote that he would be reporting the failure of the Romeike children to attend compulsory school to the *Jugendamt* (Youth Welfare Office) (Ibid p. 5); and this greatly upset Mr. and Mrs. Romeike who knew that others in their situation were often forced to pay heavy fines, have their wages garnished, and in some cases be imprisoned and have their children taken away by force.

Physical harm was also alleged by parties representing the Romeike family:

> • On 10/20/2006 (Friday), at about 7:30 a.m., armed and uniformed police officers entered the Romeike home. Without a written order, the officers forcibly took the Romeike children from the home and drove the crying, traumatized children to the government school.
>
> • On 10/23/2006 (Monday), at about 8:30 a.m., armed and uniformed police officers

[46] Subsequently, "[t]he German authorities, including civil judges, continually rejected the Romeikes' arguments regarding their consciences, parents' rights, and freedom of educational choice" (Decision of the Immigration Judge ("IJ Decision") at 6 (Dec. 16, 2009)).

> again came to the Romeike home to forcibly take the children away, and would have succeeded but for the group of German citizens protesting outside the Romeike home (Ibid p. 6).

Many fines were imposed on Mr. and Mrs. Romeike, totalling well over €7,000 (Ibid pp. 6-7), and "[t]o collect these fines, the officials could begin proceedings to take away Mr. Romeike's home[47]. Mr. Romeike and his family fled Germany before these proceedings could be completed" (Ibid p. 7).

US-based attorneys employed by Home School Legal Defense Association[48] (HSLDA), who legally represented the Romeike family in their petition for political asylum, argued that "[t]he prosecution [by the German state, law enforcement and education authorities] was and is discriminatory and targeted because non-homeschooling truants are not as zealously prosecuted and exceptions to compulsory attendance are not granted to homeschoolers but are granted to others" (Ibid p. 7). Although asylum status was granted to all members of the Romeike family in January of 2010 (Decision of the Immigration Judge ("IJ Decision") at 1-19 (Jan. 26, 2010)) , the decision was later overturned on appeal (*Uwe Andreas Josef Romeike, et. al.*, No. A087 368 600 (BIA May 4, 2012)) and subsequent petitions for a US Supreme Court hearing were denied (Brief for the Respondent in Opposition, *Romeike v. Holder* at 1-27 134 S.Ct. 1491 (2014) (No. 13-471)).

5.1 The Research Topic / Subject and Approach / The Context of the Study

The purpose of my thesis is to examine how arguments addressing the moral justification for home education can be understood through the tension between two main conceptions of secularism: liberal-pluralist and republican. The focus of analysis is directed, in particular, on religious or conscientious be-

[47] [the footnote on page 7 of their pre-hearing brief in support of asylum (Decision of the Immigration Judge ("IJ Decision") at 7 (Dec. 16, 2009)) reads] "See Affidavits of Mr. and Mrs. Neubronner, Tab D. pages 98-100, previously submitted. See Affidavit of Reiko Krautter Tab G, page 246"

[48] http://www.hslda.org/about/

liefs. The main research question can be stated as follows: *How closely are arguments for or against the protection of home education on moral grounds related to those that defend either republican or liberal-pluralist normative conceptions of the secular state and the respective positions of each on the matter of religious neutrality?* A secondary question related to this main one could be stated thus: *As home education appears to be a pedagogical implementation of a given conception of the good, how can arguments supporting its legal protection on moral grounds be understood from the perspective of how the republican or liberal-pluralist positions respectively regard the tenability of requests for accommodation or exemption from laws of general application?*

The socio-historical context of the "participants" – i.e., the agents and actors described in the court documents is described below – has been introduced in Section 2. The socio-historical context of home education in both Germany and America have also been described in Section 2. This includes each state's legal positions that been taken in response to home education.

The conceptual context can be described as the ongoing dialogue pertaining to the intersection and interaction between the following: 1) educational roles and mission; 2) values and worldviews (exemplified in conceptions of the good, which include religious, secular and conscientious beliefs); 3) value pluralism; and 4) secularism and its interests/objectives.

5.2 Research Methods

In this subsection, I will outline the documents analysed and the provenance of the documents. The frameworks that will be employed will be discussed in the next subsection, 5.3.

5.2.1 Documents analysed

I will examine the following court documents[49] pertaining to the Uwe Romeike family asylum case (listed in chronological order):

[49] For a more detailed description of the documents, please refer to Appendix A.

United States Department of Justice Executive Office for Immigration Review, Immigration Court:

1) Decision of the Immigration Judge ("IJ Decision") at 1-22 (Dec. 16, 2009).

This document is dated December 16, 2009 and has been retrieved on March 1, 2016 from http://www.hslda.org/hs/international/Germany/RomeikeBrief.pdf

2) Decision of the Immigration Judge ("IJ Decision") at 1-19 (Jan. 26, 2010).

This document is dated January 26, 2010 and was retrieved in on March 1, 2016 from http://www.hslda.org/hs/international/Germany/Romeike_Official_Decision_Transcript_1-26-10.pdf

3) *Uwe Andreas Josef Romeike, et. al.*, No. A087 368 600 (BIA May 4, 2012).
This document is dated May 4, 2012 and was retrieved on March 1, 2016 from http://www.hslda.org/hs/international/Germany/RomeikeBIAOpinion.pdf

United States Court of Appeals for The Sixth Circuit:

4) Brief of petitioners-appellants at 1-90, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. Oct. 29, 2012).

This document is dated October 29, 2012 and was retrieved on March 1, 2016 from http://www.hslda.org/hs/international/Germany/RomeikeMeritsBrief.pdf

5) Brief of respondent-appellee at 1-62, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. Jan. 4, 2013).
This document is dated January 4, 2013 and was retrieved on March 1, 2016 from http://www.hslda.org/hs/international/Germany/RomeikeDOJMeritsBrief.pdf

6) Brief of petitioners-appellants at 1-39, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. Feb. 5, 2013).
This document is dated February 5, 2013 and was retrieved on March 1, 2016 from http://www.hslda.org/hs/international/Germany/RomeikeReplyBrief.pdf

7) *Romeike v. Holder*, 718 F.3d 528 (6th Cir. 2013).
This document is dated May 14, 2013 and was retrieved on March 1, 2016 from http://www.hslda.org/legal/cases/romeike/SKMBT_36113051409420.pdf

8) Brief of petitioners-appellants petition for rehearing en banc at 1-17, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. May 28, 2013).
This document is dated May 28, 2013 and was retrieved on March 1, 2016 from http://www.hslda.org/docs/media/2013/Romeike_Rehearing_Brief_3-27-2013.pdf

9) Response to Petition for Rehearing En Banc at 1-13, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. June 26, 2013).
This document is dated June 26, 2013 and was retrieved on March 1, 2016 from
http://www.hslda.org/docs/media/2013/DOJ_response_7-2-2013.pdf

United States Supreme Court:

10) Petition for writ of certiorari, *Romeike v. Holder* at 1-295 134 S. Ct. 1491 (2014) (No. 13-471).
This document is dated October 10, 2013 and was retrieved on March 1, 2016 from http://www.hslda.org/hs/international/Germany/Jones.Romeike.ret.pet.combined.PROOF.2.pdf

11) Brief for the respondent in opposition, *Romeike v. Holder* at 1-27 134 S. Ct. 1491 (2014) (No. 13-471).
This document is dated January 21, 2014 and was retrieved on March 1, 2016 from
https://www.justice.gov/sites/default/files/osg/briefs/2013/01/01/2013-0471.resp.pdf

12) Reply brief in support of petition for writ of certiorari, *Romeike v. Holder* at 1-19 134 S. Ct. 1491 (2014) (No. 13-471).
This document is dated January 29, 2014 and was retrieved on March 1, 2016 from

http://www.hslda.org/legal/cases/romeike/13-471.ret.rb.final.pdf

5.2.2 Provenance of documents

The URL link (http://www.hslda.org/legal/cases/romeike/Romeike_CourtDocuments.asp) for these court documents (Brief for the Respondent in Opposition, *Romeike v. Holder* at I-23 134 S.Ct. 1491 (2014) (No. 13-471), Brief of Petitioners-Appellants at 1-39, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. 2013), *Romeike v. Holder*, 718 F.3d 528 (6th Cir. 2013), Brief of Petitioners-Appellants at 1-295, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder,* No. 12-3641 (6th Cir. Oct. 29, 2012), Brief of Petitioners-Appellants Petition for Rehearing En Banc at 1-17, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. May 28, 2013), Brief of Respondent-Appellee at 1-62, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. Jan. 4, 2013), Decision of the Immigration Judge ("IJ Decision") at 1-19 (Jan. 26, 2010), Decision of the Immigration Judge ("IJ Decision") at 1-22 (Dec. 16, 2009), Opinion of the Board of lmmigration Appeals ("BIA Opinion") at 1-5 (May 4, 2012), Petition for Writ of Certiorari, *Romeike v. Holder* at 1-295 134 S.Ct. 1491 (2014) (No. 13-471), Reply Brief in Support of Petition for Writ of Certiorari, *Romeike v. Holder* at 1-27 134 S.Ct. 1491 (2014) (No. 13-471)) was obtained on February 26, 2016 by making a request via electronic mail to the Home School Legal Defense Association, which provided legal representation to Uwe Romeike and his family throughout their US asylum case.

5.3 Data Analysis

I will conduct a series of analyses, which are described below. Each has its own thematic framework, though some can be considered to overlap. For instance, reasons of conscience, moral identity, and conceptions of the good can all be perceived to overlap considering their common content. Thus several of these analyses are not intended to be unique and distinct from the others. They are only meant to provide a frame for the content that I found in the documents –

nothing more.

Analysis 1: Themes pertaining to conceptions of the good

In my examination of these documents, I will identify themes pertaining to the respective "conceptions of the good" of both the state and those of the home educator. I will examine to what the extent and how and there seems to be similarities, and to what extent and how they contradict each other. I will focus particularly on those conceptions that seem to demonstrate ideological conflicts between those that defend or challenge certain notions about the mission and role(s) of education, and how educational institutions should function within the nominally secular state.

As discussed earlier, conscientious beliefs and religious beliefs, are equal in the sense that both are conceptions of the good. In this sense, it will not be deemed material or relevant whether a given belief is due to religion or whether it arises from one's conscience. Thus the parts of the Romeike narrative that pertain to their conscientious and religious beliefs will be sought in order to see how they may constitute grounds for any claim that they were prohibited from the "free exercise" of religion, which is condemned in the First Amendment of the US Constitution.

Analysis 2: Themes constituting reasons of conscience or religion

I will perform this analysis by identifying and interpreting events described in the sworn testimony of, and published reports about, the Romeike family that can be regarded as constituting behaviour that could be justified, either implicitly or explicitly, by appeals to reasons of conscience or religion. I will consider it inconsequential whether the Romeike family ever explicitly stated whether any given action was for reasons of conscience or religion, as long as anyone could reasonably make such an inference based on what is known about the tenets of their profession of faith, expressed either during sworn testimony or in informal conversations with those who are acquainted with or related to them.

A recent example where home educating families cited religious grounds

for not sending children to school is the case of *Dojan v. Germany*. In 2006, five German families petitioned the European Court of Human Rights (hereafter referred to as ECHR) to allow them to temporarily stop sending their children to school on the basis that certain required sex education classes conflicted with their religious worldviews. Their petition was denied ("*Dojan v. Germany*, Fifth Section Decision as to the Admissibility of Application no. 319/08 (European Court of Human Rights September 13, 2011)").

Analysis 3: Themes pertaining to moral identity

Another important task in the present paper and the subsequent analysis is to examine the interaction between their various conceptions of the good, which largely form their ideology, and the important pedagogical choice to educate at home, especially with respect to the impact of this relationship on how moral identity is preserved. The reason moral identity is an important consideration is that the development and preservation and of one's moral identity is seen to be one of the main reasons why some say accommodations or exemptions on the basis of religious beliefs need to be protected in a liberal democratic state characterised by secularism.

Analysis 4: Themes constituting value-rational action

Spiegler (Ibid p. 303, emphases mine) has suggested that we can view home education from yet another perspective:

> Home education in Germany could also be regarded as a form of value-rational action (*wertrational*) (Weber, 1980: 12)[50]. 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.

[50] [Spiegler's citation is given as] Weber, M. (1980) *Wirtschaft und Gesellschaft: Grundriß der verstehenden Soziologie*, ed. Johannes Winckelmann. Tübingen: J. C. B. Mohr (1st edition 1921–1922).

A mind-set characterised by value-rational action is demonstrated by Dirk Wunderlich, who witnessed his four children being seized by force in August 2013 (Nazworth, 2013) and didn't regain custody until August 2014 ("Four years in prison for homeschooling?: Wunderlichs fined and warned of prison sentence," 2015):

> We wandered around Europe for years looking for a place where we could live peacefully and raise our children without this pressure," he said. "But we had to come back here. It isn't easy to get jobs in other countries always. And besides, this is our home. We are Germans—why should we have to leave our country to do home education? (Ibid)[51]

Analysis 5: Themes related to civil disobedience

I have noted Spiegler's observation that those who practice home education in Germany can be viewed as performing acts of civil disobedience. I will use Rawls' definition, i.e., 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" (1999, p. 320) and I will attempt to see whether the events described in the Romeike case and other documented cases give reason for us to understand the choice to educate at home as civil disobedience.

I assume that the reasons that one might state for disobeying what one deems unjust or immoral laws can be used to argue for exemptions, so I will treat them interchangeably. This assumption facilitates the articulation of the

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[51] Wunderlich described the seizure in the following way:

"I looked through a window and saw many people, police, and special agents, all armed. They told me they wanted to come in to speak with me. I tried to ask questions, but within seconds, three police officers brought a battering ram and were about to break the door in, so I opened it[.]"

"The police shoved me into a chair and wouldn't let me even make a phone call at first[.] . . . It was chaotic as they told me they had an order to take the children. At my slightest movement the agents would grab me, as if I were a terrorist. You would never expect anything like this to happen in our calm, peaceful village. It was like a scene out of a science fiction movie. Our neighbors and children have been traumatized by this invasion."

"When I went outside, our neighbor was crying as she watched[.]"

"I turned around to see my daughter being escorted as if she were a criminal by two big policemen. They weren't being nice at all. When my wife tried to give my daughter a kiss and a hug goodbye, one of the special agents roughly elbowed her out of the way and said – 'It's too late for that.' What kind of government acts like this?"

rationale of this thesis, which examined why exemptions and accommodation are deemed necessary from some liberal-pluralist perspectives. As mentioned above, they can correct and compensate for inequalities that exist in cases where there are no prima facie appearance of being prejudicial against any particular societal group.

Analysis 6: Themes pertaining to conceptions of secularism

In my third analysis, I will look for themes pertaining to the two conceptions of secularism, particularly those related to freedom of religion, respect, equality, rights, dignity, public/private distinctions, and neutrality. Some or all of the following may be answered:

Are the legislative, judicial and education authorities espousing notions consistent with a republican conception of secularism or a liberal-pluralist conception of same – or neither? Or do they have characteristics of both? What is the degree to which they are oriented toward the extreme end of either pole?

The following questions related to implications may present interesting challenges. Can the rationale for arguments and opinions officially expressed during the legal proceedings be considered to have a certain orientation that can be considered either a "rigid"/republican or "soft"/liberal-pluralist position, based on the common features of each respective stance outlined in the above discussion? Or do their opinions not neatly fit into either?

Do judicial authorities and legislative or education authorities promote, endorse or condone notions, gleaned via explicit statements or by inference, have characteristics of both?

Do judicial authorities and legislative or education authorities promote, endorse, or condone notions, gleaned via explicit statements or by inference, have a consistent orientation toward one of the two polar conceptions?

How polar are their beliefs? For instance, do they promote, endorse or condone similar aims as those expressed by Peña-Ruiz (2005), namely that of disconnecting even the private citizens from their "theological custodians" (this

is apparently Peña-Ruiz's metaphor for religious beliefs)?

Analysis 7: Themes pertaining to justifications for state policies and actions pertaining to home education

I will examine statements made by education and political officials pertaining to home education policies, the enforcement of same, and their justification or explanation of both policies and enforcement practices.

Analysis 8: Themes related to appeals to ideals of tolerance, pluralism and civic integration

I will examine how the government invokes the ideals of tolerance, pluralism and civic integration[52] and whether their policies can be seen to actually promote such ideals. I will proceed by comparing the government's notions of

[52] In a case where German homeschoolers filed a petition to appeal a ruling by the German Constitutional Court to deny their request for an exemption, the European Court of Human Rights ruled as follows ("Konrad v. Germany, App. No. 35504/03, 8 (European Court of Human Rights Sep. 11, 2006)," p. 7):

> the Court notes that the German authorities and courts have carefully reasoned their decisions and mainly stressed the fact that not only the acquisition of knowledge but also integration into and first experiences of society are important goals in primary-school education. The German courts found that those objectives could not be met to the same extent by home education, even if it allowed children to acquire the same standard of knowledge as provided by primary-school education. The Court considers that this presumption is not erroneous and falls within the Contracting States' margin of appreciation in setting up and interpreting rules for their education systems.

In response, Alexandra Colen of The Brussels Journal stated her opinion (2006):

> The Court's arguments resemble those which Ayaan Hirsi Ali used last year when she proposed to abolish article 23 of the Dutch Constitution, which guarantees freedom of education. She said that all children should be sent to state schools because "freedom of education hinders integration." The former Dutch politician, who has meanwhile emigrated to the United States where she now works for the American Enterprise Institute, proposed to close down confessional schools because, apart from religious Christians, Muslim immigrants, too, had begun to establish their own confessional schools. According to Hirsi Ali the state should educate children "in order to ensure that they learn tolerance."

The European Court of Human Rights even gave its support for one of the means of ensuring such civic integration, counteracting the emergence of "parallel societies" (Ibid p. 7):

same with alternative ones. Lastly, I will analyse whether the German state's implementations and enforcement of their statutes are consistent with the attitude that civic integration makes necessary the effacement of individual differences, especially religious beliefs; Maclure and Taylor (2011, pp. 31–32), as mentioned in the preceding discussion, have observed that some view such effacement or "neutralization of the identity markers that differentiate citizens" as a "necessary prerequisite" for integration and "social cohesion"(Ibid p. 32).

As background, it would be informative to look at another case involving German home-schooling families. According to the ECHR ("*Konrad v. Germany*, App. No. 35504/03, 8 (European Court of Human Rights Sep. 11, 2006)," pp. 2–3) a German court was justified in denying exemptions from mandatory school attendance on account of religious beliefs, saying in effect that children who are educated at home are "deprived" of the experience of becoming part of their society:

> The [Baden-Württemberg Administrative Court of Appeal] stressed that the decisive point was not whether home education was equally as effective as primary school education, but that compulsory school attendance required children from all backgrounds in society to gather together. Parents could not obtain an exemption from compulsory school attendance for their children if they disagreed with the content of particular parts of the syllabus, even if their disagreement was religiously motivated. The applicant parents could not be permitted to keep their children away from school and the influences of other children. Schools represented society, and it was in the children's interests to become part of that society. The parents' right to provide education did not go so far as to deprive their children of that experience.

Analysis 9: Does the state appear to see itself as having a *perfectionist* or *protectionist* role?

Wolterstorff (2012, pp. 1-3) has made a distinction between a *protectionist* role, consisting of protecting and honouring the freedoms a person possesses naturally by virtue of being human, and a *perfectionist* role that states have assumed

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> The Federal Constitutional Court stressed the general interest of society in avoiding the emergence of parallel societies based on separate philosophical convictions and the importance of integrating minorities into society. The Court regards this as being in accordance with its own case-law on the importance of pluralism for democracy

in the past[53] which consisted of inculcating the moral virtues and pious behaviour deemed important for civic life.

5.4 Reliability of the study

Whether one considers this study "reliable" would depend on how one defines the word. As one would expect in a study such as this, there is much need for subjective interpretation. Nevertheless, it can usually be presumed that there is a relatively high reliability in statements said under oath in a court of law by parties sworn to tell the truth while facing consequences for failing to do same. The Immigration Court appears to have found no reason to doubt any part of the testimony the Mr. and Mrs. Romeike provided in their petition for asylum in the USA[54].

Triangulation seems inherent in the fact that many of the same court decisions prior to the said document are mentioned, with similar or dissimilar aspects emphasised. Attempts at a sort of triangulation were made by testing the veracity of claims made in the court documents with oral interviews and news reports to verify the consistency. As the author had little means to do any direct analysis based on hard evidence, such verification was not attempted. Only consistency could be adequately tested. Such tests for consistency produced very good results, as I was unable to find any discrepancies between the claims made in the court documents, media reports, and oral interviews.

For a qualitative study of this kind, the reliability of the "data" itself is rather high, as nearly all strong claims made in the paper were supported by documentary evidence – and in the cases where the evidence was deemed lacking,

[53] Wolterstorff claims this was the predominant approach "[f]or almost a millennium, from the 600s to the 1600s" (2012, p. 1).

[54] Jerry A. Beatmann, Assistant Chief Counsel of the Department of Homeland Security stated that "the facts related to the family's experiences in Germany are not disputed. . . . The immigration Judge found the witnesses, including the adult applicants, credible" (*Uwe Andreas Josef Romeike, et. al.*, No. A087 368 600 (BIA May 4, 2012), p. 2)

it was challenged by the courts[55].

While the reliability of the data is an important consideration, a more crucial question would be how reliable my interpretations of the data through the interpretive frameworks I have chosen are. In this regard, the reliability of the frameworks themselves may be criticised by some, because to depict the liberal-pluralist conception and the republican one as a bi-polar relationship may be seen by some as an overly simplistic one that does not seem to take into account a notion of secularism that may be easily located between these poles. Another possible drawback is that a framework that characterises the republican conception as one that is a "fetishism of the means", as Maclure and Taylor (2011, p. 29) have characterised it, may appear to some as an unfair characterisation of republican secularism. Some may contend that other moral ends are actually being promoted by those supporting the republican conception. For instance, one might say that equality and impartiality are the moral ends promoted by the republican conception of secularism, and that religious neutrality is the institutional arrangement serving as the means to realise these ends. Nevertheless, as Maclure and Taylor have pointed out, a liberal-pluralist may say that true equality and impartiality cannot be achieved unless the unintentionally biased nature of many laws of general application that are not *prima facie* discriminatory are compensated by accommodations or exemptions; hence the liberal-pluralist may argue that the notion of equality and impartiality held by many republican secularists is faulty.

Apart from this possible oversimplification of this bi-polar framework, since the interpretation of the data is somewhat subjective in nature, the reliability in the interpretation is neither easy to determine nor even to create an objective standard for testing it. See below section titled "6.2 Generalizability and

[55] The Sixth Circuit Court ruled that the Board of Immigration Appeals ruled correctly when it considered the appellants' allegation that truants in Germany were not punished as harshly as homeschooling families to be anecdotal (*Brief of Petitioners-Appellants at 1-90, Uwe Andreas Josef Romeike, et. al v. Eric C. Holder, No. 12-3641 (6th Cir. Oct. 29, 2012)*, p. 15). However, it appears unlikely that other kinds of evidence or data were accessible to the public.

limitations" for a discussion on possible sources of imbalanced reporting, if indeed it occurred.

5.5 Ethical considerations

While matters pertaining to religious and conscientious beliefs are considered by some to be rather private, the nature of the topic warranted and necessitated a discussion about them in order to see how essential they are in the formation and preservation of one's moral identity, which was an important theme in this paper: those beliefs necessary for forming one's moral identity are claimed to have special value for determining whether one is entitled to religious exemptions or accommodations. Thus it was necessary to determine, upon examination of the statements offered in court, whether a given belief or conception of the good, constituted a major part of the moral identity of the home educators. Additionally, since the Romeike family has appeared in nationally broadcast interviews while their story has been reported through various media, the privacy issue never became a serious ethical hindrance. Besides, if Spiegler's observation that many German home educators are willingly engaging in acts of civil disobedience holds true for Mr. and Mrs. Romeike, then this family may not have any significant reservations about revealing their story and their motives – especially because acts of civil disobedience are most effective in changing problematic social conditions when they are done in the open. In retrospect, perhaps it would have been best if I had asked the Romeike family how they would feel about my using the court documents pertaining to their case.

6 FINDINGS AND DISCUSSION

In this section, I present the findings, which are organised according to the nine themes that I have listed in the previous section. For several reasons, I provide discussion of the findings in the pertinent subsections along with the findings. One of the main reasons is that several of these analyses are interpretations or deductions of the data, and not simply reports of the data itself. They thus require deductions and inferences from the data to be made. Therefore, it is considered best to integrate the discussion with the findings based on the analyses. As the discussion is intended to be a critical one, any flaws in argumentation, lack of supporting evidence, ambiguity in statements, and other problems will be identified and discussed. In the last subsection, I summarise the key findings.

6.1 Analyses 1-9

The following series of analyses are performed in accordance to the themes identified in subsection 5.3 in section 5.

6.1.1 Analysis 1: Themes pertaining to conceptions of the good

As described in section 5, Uwe and Hannelore Romeike objected to what they regarded as negative influences that the children were exposed to at school. Mr. and Mrs. Romeike didn't want their family's Christian values to be eroded. Like many other evangelical Christians, they regarded evolution as something antithetical to their faith tradition. They objected to content they felt undermined "family values" such as respecting parents, respecting the dignity and value of all human life, which they felt included the unborn infant. They wanted their children to remain free of content that promoted spirituality at odds with the monotheistic worship of the Judeo-Christian God. They felt that

it was important to observe Biblical prohibitions against certain forms of sexuality.[56] They may have also felt that the curricular preference for evolutionary dogma might serve to undermine belief in the narrative of origins described in the Scripture.

6.1.2 Analysis 2: Themes constituting reasons of conscience or religion

In the *Respondent's pre-hearing brief in support of asylum or withholding of removal*, which was filed in the Immigration Court of the United States Department of Justice Executive Office for Immigration Review in 2009, Uwe Romeike and his wife, Hannelore, are described as German parents "who have chosen to homeschool their children for religious and conscientious reasons" (Decision of the Immigration Judge ("IJ Decision") at 2 (Dec. 16, 2009)); and it also mentioned that "His [i.e., Uwe Romeike's] political opinion that he should be permitted to homescbool his children is motivated by his religious view of his role as a parent" (Decision of the Immigration Judge ("IJ Decision") at 13 (Dec. 16, 2009)). In the same document (Ibid p. 8), the following claim is made:

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[56] It is worth mentioning some background to the content found in the court documents analysed. Mr. and Mrs. Romeike felt duty-bound to God to instruct their children in a way that they felt God would approve. During an episode of Glenn Beck's TV program *The Blaze*, Mrs. Romeike made this clear when Beck asked why they would go through the trouble of uprooting their entire family:

> We think parents are responsible before God to raise their children in the ways of the LORD and of the Bible. And that was exactly the question I asked the principal: "Whose children are ours? Are they the government's? Or the schools? Or *our* children? We feel *we* are responsible for their upbringing" (2013).

On the same episode, the Romeikes' attorney, Dr. Michael Donnelly, expressed his fear at the growing voices in the USA advocating the need for totalitarian control of education by the state:

> This is the frightening thing: that there are a lot of voices like that in this country: elite academic intellectuals who say that the state has to control the education of children in order for democracy to *survive*. Is[n't] that perverse? And our administration is coming alongside that argument, which is the argument made by the German Supreme Court in two cases, saying that it is the state's job, *superior* to the rights of parents, to determine the values that children learn in schools. That's how they socialise children in Germany.

The perceived competition between the parent and the state is readily apparent in the views expressed by Mrs. Romeike and Dr. Donnelly. Mrs. Romeike felt morally obligated by their Creator to instil their own Christian values, and they thus felt apprehensive about what they believed to be conflicting values taught in schools.

> Germany's Federal Constitutional Court has held that the German government has a legitimate interest in targeting individual homeschoolers for the very purpose of suppressing the homeschooling movement and preventing this particular social group from flourishing.
>
> The reality in Germany is that when authorities discover homeschoolers, the wheels of the state machine begin to turn to progressively increase pressure beginning with **demands that the parents violate their consciences** and put their children in a state-approved school (emphasis mine).

Prior to the Romeike case, there had been established precedent for deeming moral identity and freedom of conscience important in relation to granting exemptions. The Sixth Circuit Court had ruled that when determining what constitutes persecution of a given particular group, "whatever the common characteristic that defines the group, it must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences"[57]

One may ask how anyone can know whether a particular decision is made on the basis of conscience. After all, some opponents of accommodation on account of religious or conscientious beliefs claim that such beliefs are matters of choice and thus can be freely changed. As described above, some argue that the question of whether that particular belief or conception of the good constitutes grounds for its protection is related to how strongly the person holds it, and how essential it is to maintaining that person's moral identity. One test we can apply to how strongly one believes something is to see what consequences they are willing to face[58]. For instance:

> [Once] an opinion of the Third Circuit . . . held that Iranian feminists who refuse to follow the government's gender-specific laws and social norms constitute a particular social group. In Fatin v. INS, then-Judge Samuel Alito explained that "if a woman's opposition

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[57] [the footnote in the Romeike family's pre-hearing brief in support of asylum or withholding of removal (US Dept. of Justice Exec. Office for Immigration Review -- Immigration Court, 2009, p. 9) cites] *Al-Ghorbani v. Holder*, --- F .3d ---, 2009 WL 3718297 at p. 11 (6th Cir. 2009) (internal citations and quotations omitted).

[58] Of course, one possible objection to such a standard is that one would not know for certain what consequences any given person are actually willing to suffer until they are actually made to suffer them. Nevertheless, tendencies of others holding to similar values and having the same "immutable" features of the social group in question should be taken into consideration, and unless we have proof otherwise, it is common practice that we trust in the self-professed claims, otherwise we would be setting a bad precedent. The best approach would be to see what the *likely* consequences of a given choice are based on similar cases, and assume that anyone taking a similar course of action would be aware of the risks involved.

> to the Iranian laws in question is so profound that she would choose to suffer the consequences of noncompliance, **her beliefs may well be characterized as so fundamental to her identity that they ought not be required to be changed**" (Al-Ghorbani v. Holder, --- F .3d ---, 2009 WL 3718297, at. p. 11 (6th Cir. 2009), as cited in the Romeikes' pre-hearing brief in support of asylum or withholding of removal (Decision of the Immigration Judge ("IJ Decision") at 9 (Dec. 16, 2009)), emphasis mine).

To put it succinctly, if one is willing to "practice what you preach" in terms of the sacrifices they must pay and the hardships they must endure, it is presumed that we can more easily trust their stated motives. As we shall see in the next analysis, conscience is inextricably linked with moral identity, which was also mentioned in the above passages.

6.1.3 Analysis 3: Themes pertaining to moral identity

Uwe Romeike et al, along with their legal representatives, argued that "their religious and conscientious beliefs are so fundamental to their identity that they ought not be required to be changed. Homeschoolers in Germany are without question a particular social group" (Decision of the Immigration Judge ("IJ Decision") at 8 (Dec. 16, 2009)).

Additionally, as described in section 5, Mr. and Mrs. Romeike's remaining faithful to the Bible and to the "ways of the LORD" in the education of their children were such important considerations that they were willing to endure much suffering, persecution and hardship in order to continue doing it. Reading about their story and hearing them speak of their devotion and commitment to the LORD[59] provides a sense that to do otherwise would have been a betrayal of who they were as evangelical Christians.

6.1.4 Analysis 4: Themes constituting value-rational action

The Romeike family and their legal representatives claimed that those involved in the home education movement in Germany are "fined exorbitantly"; their "wages are garnished"; their "homes and property seized"; "[t]heir children are taken away from them by the state"; and "some parents are even incarcerated"

[59] *LORD* is spelled in capital letters in accordance with the conventions used in many English translations, which represent the Hebrew representation of the divine name by using four consonants that can be Romanised as *YHWH* (The Hebrew letters are יהוה or *yod-hey-vav-hey*).

(Decision of the Immigration Judge ("IJ Decision") at 2 (Dec. 16, 2009)).

In order to qualify under laws pertaining to asylum, the Romeike family had to prove that they were members of a particular social group that were persecuted and that they had a well-founded fear of persecution if they were to return to Germany. In relation to US laws that guarantee protections against persecution on account of membership in a social group (among other reasons), a circuit court defined a social group as "a group of persons all of whom share a common, immutable characteristic"[60]

Based on the accounts of the Romeike family's ordeal, it would seem likely that they believed "in the absolute value of a certain action (grounded in religious, ethical or aesthetic convictions) independent of its success" – and this characteristic is described by Spiegler (2009, p. 303) as a trait of value-rational (*wertrational*) action. It is also highly likely that Mr. and Mrs. Romeike believed that it was their "highest duty" to educate their children at home, and that there was "no other way to act" to use the words of Spiegler (Ibid p. 303). Based on their professed statements, it would seem very probable that they believed that the commands of the Bible constitute absolute moral standards that are inviolable.

6.1.5 Analysis 5: Themes related to civil disobedience

Based on the passages mentioned above, it should now be apparent that the choices the parents made were based on a strong conviction that they are doing what is right. They were not ashamed of their decision and didn't seek to hide their actions. They were aware of the risks, yet they were willing to face them, as they felt that they could be instruments of change within their society. Thus they willingly violated statutes they felt were unjust. Some of their peers, such as the Konrads, chose to try to change the laws through legal petitions – unsuc-

[60] [the footnote in the Romeike family's pre-hearing brief in support of asylum or withholding of removal (US Dept. of Justice Exec. Office for Immigration Review -- Immigration Court, 2009, p. 9) cites] Al-Ghorbani v. Holder, --- F .3d ---, 2009 WL 3718297 at p. 11 (6th Cir. 2009) (internal citations and quotations omitted).

cessfully in the end. Yet, Mr. and Mrs. Romeike remained undeterred and convinced that they were doing what is right in not obeying laws that, were they to follow them, would jeopardise their relationship with the LORD and force them to compromise on their absolute moral standards.

The Nuremburg Code serves as a fairly recent precedent in German and global history that validates civil disobedience as a moral obligation incumbent on all citizens regardless of place. Cavanagh (2012, p. 85) contends that "[d]uty, as it is commonly defined in the military and civilian world, cannot reasonably be absolute and unconditional"; and because it is not unconditional, everyone has the responsibility to ask whether disobedience is obligatory.

Of course the question of whether it is morally obligatory for any given person cannot be answered without reference to the ethical belief system one has. For many evangelical Christians, such a belief system is full of moral absolutes that often generate moral obligations based on the written commands of the Bible, which are believed to be the commands of the Creator himself. They have come to believe the Creator through the Creator's acts of self-revelation, in both direct and indirect form. Thus for such believers, any duty imposed on them by the state must be carefully weighed against the moral obligations they possess as adherents to a belief system characterised by moral absolutism, which holds priority of place above all other competing dogmas.

6.1.6 Analysis 6: Themes pertaining to conceptions of secularism

Here I will examine whether the statements made by the parties to this debate align more closely with the republican or liberal-pluralist conceptions of secularism, in view of the above delineated respective traits of each.

In 2010, Judge Lawrence O. Burman of the Immigration Court in Memphis, Tennessee provided the following reasons why awarding asylum to the Romeike family was deemed appropriate and necessary (Decision of the Immigration Judge ("IJ Decision") at 6 (Jan. 26, 2010)):

> Although there may be some places in Germany where the law is not enforced at the local level, that is not a legal place of refuge, that is merely just a case of the local officials

> not taking action, so there is actually no safe place in Germany for the Romeikes, or people like them to live without having these problems.

In highlighting the risk faced by the Romeike family if forced to return to Germany, Judge Burman noted the following egregious "misuse of the psychiatric profession" which he characterised as "reminiscent of the Soviet Union treating political opposition as a psychiatric problem"(Ibid pp. 6-7):

> When [Melissa Vusekros'] parents kept her out of school she was treated as if she had a psychiatric affliction known as school phobia and she was actually placed in an asylum for the mentally ill while she was tested.

Judge Burman expressed great trepidation about the fact that the German authorities' exercise of power did not appear to be done with the best interests of children in mind (Ibid pp. 7-8, emphasis mine):

> The scariest thing that Mr. Donnelly [the attorney representing the Romeike family] testified to is **the motivation of the German government** in this matter. I certainly would have assumed that the motivation would be concern for the children. **We certainly do some odd things, in the United States, out of concern for children, but the explanation is always given that the Government has a right and an interest to look after children in their country. However, that does not seem to be the explanation**. Mr. Donnelly described the judicial decisions, in Germany, **not so much being interested in the welfare of the children, as being interested in stamping out groups that want to run a parallel society**, and apparently there is a fair amount of vitriol involved in this attempt to stamp out these parallel societies.
>
> . . . this [mandatory school attendance law that made no provisions for any exemptions] has not always existed in Germany, it was enacted in 1938, when Adolph Hitler and the Nazi Party was in power in Germany, and it was enacted specifically to prevent parents from interfering with state control of their children, and we all know what kind of state control Hitler had in mind. It certainly **was not for the good of the children**, not even facial. . . . this one incidence of Nazi legislation appears to still be in full force and effect.

Moreover, Judge Burman asserted (Decision of the Immigration Judge ("IJ Decision") at 9 (Jan. 26, 2010)) that it was immaterial whether a petition that had been made by home educators to the European Union was denied on account of jurisdictional grounds, as the Government attorney claimed, or whether it was turned down for an unknown reason, as claimed by Dr. Donnelly, who represented the Romeike family. In the final analysis,

> Regardless of who is right about that, it does not really affect the basic situation, that the European government is no more willing, than the German government, **to make an exception for homeschooling for religious or philosophical reasons**.

Judge Burman then proceeded to talk about historical interpretation of parental rights in directing their children's education (Decision of the Immigration Judge ("IJ Decision") at 9-10 (Jan. 26, 2010), emphases mine):

> In the United States, no state [bans] homeschooling. There has been a lot of litigation regarding homeschooling, **obviously the educational establishment, in many cases, wants to have control of children**. However, **the State Supreme Courts have, without exception, ruled in favor of the parents. For that reason no case has gone to the Supreme Court**. However, in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Supreme Court made very clear how it would rule in this matter. That was a case of Amish parents who, for religious reasons, wanted their children taken completely out of the school, after just getting basic reading, writing and arithmetic. That was not homeschooling; that was no school. And in that case, the Supreme Court found that there was a fundamental right of a parent to establish a home and bring up the children and worship God **according to the dictates of his own [conscience]**.

Moreover, as alluded to in Romeike family's petition for asylum (Decision of the Immigration Judge ("IJ Decision") at 11 (Dec. 16, 2009)), United Nations Special Rapporteur for the Right to Education Vernor Muñoz stated in a 2007 report that:

> According to reports received, it is possible that, in some Länder, education is understood exclusively to mean school attendance. Even though the Special Rapporteur is a strong advocate of public, free and compulsory education, it should be noted that education may not be reduced to mere school attendance and that **educational processes should be strengthened to ensure that they always and primarily serve the best interests of the child**. Distance learning methods and home schooling represent valid options which could be developed in certain circumstances, bearing in mind that parents have the right to choose the appropriate type of education for their children, as stipulated in article 13 of the International Covenant on Economic, Social and Cultural Rights (2007, p. 16, paragraph 62, emphasis mine).

Muñoz also declared "[t]he promotion and development of a system of public, government-funded education should not entail the suppression of forms of education that do not require attendance at a school. In this context, the Special Rapporteur received complaints about threats to withdraw the parental rights of parents who chose home-schooling methods for their children" (Ibid p. 16, paragraph 62).

It would appear from his comments that Muñoz is espousing a position that could be deemed consistent with a liberal-pluralist understanding of secularism, and the normative mission of education within such a system. He questions the assertion that education should be understood as tantamount to school

attendance – while urging his readers to think of the value-based aim of education: promoting the welfare of the child. Muñoz invokes one of several available United Nations rights treaties[61] in support of his stance, providing a reminder of the right of parents "to choose the appropriate type of education for their children" – a paraphrase of clause 3 of Article 26 of the UN Universal Declaration of Human Rights (United Nations General Assembly, 1948).

Regarding the orientation of the Immigration Court, it appears from the passages quoted above that their views are more in alignment with a liberal-pluralist position. Judge Burman's words condemn what he regards as violations of human rights, namely the unwillingness or failure to protect the freedom of religion and freedom of conscience; meting out harsh punitive sentences without regard to the best interests of the welfare of the child; and coercive measures that he condemns as "misuse of psychiatric profession."

As I shall discuss below, the stated views of the Sixth Circuit Court, the Department of Justice, and the Supreme Court seem to align more closely with a republican notion of secularism, in the following ways:

1) they emphasise religious neutrality as an end when claiming that they are not obligated to reconcile contradictions between the values of its education system and those of the Christian homeschooling families;
2) they prioritise civic responsibilities and state interests above individual freedoms – for instance, the state's interest in preventing the formation

[61] See also the United Nations Universal Declaration of Human Rights (United Nations General Assembly, 1948, Article 26, Clause 3) which declares "Parents have a prior right to choose the kind of education that shall be given to their children"; and The United Nations Covenant on Civil and Political Rights (United Nations General Assembly, 1976, Article 18) which declares "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching" (clause 1) and "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" (clause 4). In light of the detention of home educated children by Jugendamt and other authorities, it is also worth noting article 10, which mandates that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". Finally, it is worth noting relevant passages such as Article 1, which declares "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" and Article 23, which declares "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State".

of so-called parallel societies;

3) they claim that "the interferences with the applicants' fundamental rights" are "proportionate" considering the competing interest in counteracting the development of these parallel societies.

Now I will turn to the question of whether these judicial bodies exhibit traits that are typical of both conceptions of secularism. Since these higher courts claim to value the ideals of pluralism, tolerance and dialogue, it could be said that their stance embraces elements of both conceptions of secularism, at least nominally. However, as stated reasons for a state's actions are often not the actual reasons, it is very possible that the state is appealing to what are widely considered noble ideals in order to claim their actions were justified. As discussed in section 3, pluralism is considered to be one of the essential foundations of secularism. It is thus understandable why the state would appeal to a notion that is common to both conceptions of secularism in claiming that the means they implemented were motivated by the aim of maintaining pluralism. But it appears that the state would face a serious challenge in explaining how the actions of various state actors in multiple agencies and organisations, in response to home education, actually promote the aims they claim to support. The justifications the state actually provides are discussed further in the next subsection.

6.1.7 Analysis 7: Themes pertaining to justifications for state policies and actions pertaining to home education

The Romeike family's petition for political asylum (Decision of the Immigration Judge ("IJ Decision") at 2 (Dec. 16, 2009)) alludes to the 2003 *Konrad* case. In *Konrad v. Germany*, the German Federal Constitutional Court claimed that the German governmental authorities are justified in suppressing the homeschooling movement on the basis that "[t]he general public has a justified interest in

counteracting the development of religiously or philosophically motivated 'parallel societies' and in integrating minorities in this area." [62]

Additionally, Senior Litigation Counsel Robert N. Markle, representing the US Department of Justice in the appeal of the asylum decision that authorised the Romeike family to stay in the US as a persecuted social group, signed the government's pleading that declared "The goal in Germany is for an 'open, pluralistic society'" (Response to Petition for Rehearing En Banc at 9, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. June 26, 2013)). Quoting the opinion stated in *In re Konrad* (A.R. 760[63]), the Response went on to claim that the German government's expressly stated motivation of "counteracting the development of religiously or philosophically motivated 'parallel societies'" does not prove it is intent on persecuting anyone in particular (Response to Petition for Rehearing En Banc at 1-13, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 at 7-8 (6th Cir. June 26, 2013)):

> in the German court's view, the law has nothing to do with marginalizing Romeike based on any protected status.
>
> > The general public has a **justified interest in counteracting the development of religiously or philosophically motivated "parallel societies"** and in integrating minorities in this area. Integration does not only require that the majority of the population does not exclude religious or ideological minorities, but, in fact, that these minorities do not segregate themselves and that they do not close themselves off to a dialogue with dissenters and people of other beliefs. Dialogue with such minorities is an enrichment for an open pluralistic society. The learning and practicing of this in the sense of experienced tolerance is an important lesson right from the elementary school stage. The presence of a broad spectrum of convictions in a classroom can sustainably develop the ability of all pupils in being tolerant and exercising the dialogue that is a basic requirement of democratic decision-making process.

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[62] "In the case relating to the constitutional complaint of Mr. Konrad, German Federal Constitutional Court (1 BvR436/03, decided 04/29/03), Tab H, p. 256", cited in Decision of the Immigration Judge ("IJ Decision") at 2 (Dec. 16, 2009)). According to the European Court of Human Rights ("*Konrad v. Germany*, App. No. 35504/03, 8 (European Court of Human Rights Sep. 11, 2006)," pp. 2–3):

> The Federal Constitutional Court found that **the interferences with the applicants' fundamental rights were also proportionate given the general interest of society in avoiding the emergence of parallel societies** based on separate philosophical convictions. Moreover, society also had an interest in the integration of minorities. Such integration required not only that minorities with separate religious or philosophical views should not be excluded, but also that they should not exclude themselves. Therefore, the exercise and practising of tolerance in primary schools was an important goal. Lastly, the Federal Constitutional Court considered that **the interference was reasonable** as the parents still had the possibility of educating their children themselves outside school hours, and **the school system was obliged to be considerate towards dissenting religious beliefs** (emphasis mine).

[63] A.R. stands for "Administrative Record"

While the US Sixth Circuit Court seems to be in concurrence with the German courts, that preventing parallel societies justifies suppression of home-schooling, an important question remains unanswered: *How do they know that home-schooling would likely to lead to the development of such societies?* There seems to be nothing in the academic literature that would suggest that home-schooling has such an effect. Moreover, as Spiegler observed (2009, pp. 302–303), home educators generally obey all just laws and their disobedience has been interpreted as civil disobedience precisely because they are trying to enact change *within the existing society* through their *selective* defiance of the specific education statutes they deem immoral and unjust.

The mind-set of the German home educators in question is quite different from that of those minority populations that, for instance, attempt to set up their own judicial enclaves governed by sharia law.[64] They do not seek to create a separate theocratic society or state within Germany, but want to be free to practice their beliefs, which dictate that education of their children is one of their most important duties, as discussed above.

There is another glaring question that needs an answer. Why did neither the US nor German courts even define what they mean by "parallel societies"? Did they use such a connotation-laden term in order to elicit an emotional response while suspending rational judgement in the process? If one were to test whether their assertions are true and their stated fears warranted, one would need to know what they actually mean by the term "parallel society." Did they not offer such a definition so that the public is left to imagine the worst possible scenario that could lie at the bottom of this slippery slope made slippery by what Hiscott (2005) has characterised as a "neologism gone bad"? Hiscott explains the phenomenon of intentional obfuscation that politicians engage in to further their political aims (Ibid p. 1):

> Social scientists often engage in 'terminology-building' for the wider political arena. As the product of terminology-building, neologisms are created in order to define seemingly undefined social phenomena. These new terms are often picked up by politicians, jour-

[64] See (Broder, 2010; "German justice failures: Paving the way for a Muslim parallel society," 2007)

> nalists and the politically-active – and oftentimes end up in the public debate as 'sociological' catch phrases. In doing so, these public figures often adapt or misuse such terms in the public debate in order to further their own particular viewpoints.

The aforementioned litigator Markle (Response to Petition for Rehearing En Banc at 9, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 at 9 (6th Cir. June 26, 2013)) went on to imply his agreement with this opinion:

> . . . The European Court of Human Rights has held that parents could not refuse the right to education of a child on the basis of the parents' convictions, because the child has an independent right to education.

Thus the ECHR implies that practicing the parental right to choose a home education is tantamount to a refusal to educate, and a denial of a child's right to an education. Yet, if one looks at the numerous available studies in America, it is evident that not only are home educated children being educated, but they are performing better on standardised performance assessments (Isenberg, 2007; Kunzman & Gaither, 2013; Romanowski, 2001; Rudner, 1999; van Galen & Pitman, 1991; cf. Spiegler, 2015) such as Performance Indicators in Primary Schools (PIPS) baseline assessments (P. J. Rothermel, 2004). Moreover, other indicators of emotional and social well-being (Klugewicz & Carraccio, 1999; Ray, 2000; P. J. Rothermel, 2012; Seago, 2012; Taylor, 1986), show that they are perceived to be doing better than conventionally schooled children. For instance, Taylor (1986) found that home-schooled children scored significantly higher on all the indicators of the Piers-Harris Children's Self-Concept Scale -- fully half of the home-schooled children scoring at or above the 91st percentile globally.

Litigator Markle went on to say (Response to Petition for Rehearing En Banc at 1-13, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 at 9 (6th Cir. June 26, 2013)) the following, claiming in effect that equal suppression does not constitute persecution:

> . . . According to the court, this latter right [i.e., the right to education], by its nature, calls for regulation by the state, which enjoys a degree of flexibility in setting up and interpreting rules governing its education system. . . . The court upheld the German law, noting – importantly for purposes of this petition – that compulsory attendance does not deprive parents of their right to exercise, with respect to their children, 'natural parental functions as educators or to guide their children on a path in line with the parents' own religious or philosophical convictions.

It has been mentioned, during our preceding discussion on secularism, that often laws generally applied that are not *prima facie* discriminatory may yet be so from the point of view of a minority that is put at a disadvantage due to the law's conflict with what one believes to be religious obligations. The US Department of Justice claimed (Response to Petition for Rehearing En Banc at 1-13, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 at 5-6 (6th Cir. June 26, 2013), emphasis mine) that it is not easy to demonstrate that a government's enforcement of a law violating a protected right constitutes persecution, due to the fact that it applies to everyone:

> Romeike contends that the panel rejected "the established criteria for evaluating asylum claims arising from prosecutions of laws of general applicability." . . . . He further charges that the panel "effectively create[d] its own new rule for such cases," one that conflicts with established Sixth Circuit precedent and that of other circuits. Id. Romeike's characterization of the panel's well-reasoned decision is inaccurate. The panel first stated that when a foreign government enforces a law that persecutes on its face based on the protected categories, i.e., race, religion, nationality, membership in a particular social group, or political opinion, it is easy to demonstrate that its enforcement is a form of persecution. . . . **Most cases, however, seem not to be so easily susceptible of proof, for the law the country seeks to enforce is one that applies to everyone.** Id. The panel recognized that enforcement of even a generally applicable law can constitute persecution in limited circumstances and offered a few non-exhaustive examples. Id. (so-called "hard-way" cases).

But is it really so simple? Can the fact that a given law is applied equally to all people be sufficient grounds for calling it just? Is all discussion of persecution irrelevant or unwarranted whenever there is equal suppression of education practices motivated by conceptions of the good that conflict with the one that the state promotes?

6.1.8 Analysis 8: Themes related to appeals to ideals of tolerance, pluralism and civic integration

The Department of Justice justified the Sixth Circuit Court's decision to deny the Romeikes' petition for rehearing their asylum case based on the reasoning quoted above in Analysis 7. The justifications the German Federal Constitutional Court mention are the aims of pluralism, tolerance and dialogue. The definition of pluralism preferred by Strike (2003, p. 75) is "the idea that society legitimately contains diverse groups" stating that the meaning of the term "depends on how we understand the nature of group differences and the values

and ends that their toleration or encouragement is thought to serve" as "[d]ifferent theorists conceptualize the way in which groups are relevantly different in different ways".

Let's turn our attention to the notion of tolerance. Carson (2012, pp. 1-2) has noted that a new concept of tolerance has emerged recently. He observes how despite the fact that commonly found dictionary entries for the verb *tolerate* all include a definition denoting acceptance of the *existence* of different beliefs, the some dictionaries provide a vastly different definition for its noun form, *tolerance*:

> When we turn to Encarta's treatment of the corresponding noun "tolerance," however, a subtle change appears: "1. ACCEPTANCE OF DIFFERENT VIEWS the accepting of the differing views of other people, e.g., in religious or political matters, and fairness toward the people who hold these different views."
>
> This shift from "accepting the existence of different views" to "acceptance of different views," from recognizing other people's right to have different beliefs or practices to accepting the differing views of other people, is subtle in form, but massive in substance. To accept that a different or opposing position exists and deserves the right to exist is one thing; to accept the position itself means that one is no longer opposing it. The new tolerance suggests that actually accepting another's position means believing that position to be true, or at least as true as your own. We move from allowing the free expression of contrary opinions to the acceptance of all opinions; we leap from permitting the articulation of beliefs and claims with which we do not agree to asserting that all beliefs and claims are equally valid. Thus we slide from the old tolerance to the new (footnotes removed).

One implication of this new concept of tolerance explained by Carson is that "any sort of exclusive truth claim is widely viewed as a sign of gross intolerance. But [this view] depends absolutely on the second meaning of "tolerance."" (2012, pp. 1–2).

6.1.9 Analysis 9: Does the state see itself as having a perfectionist or protectionist role?

It appears that the German and US higher courts representing the state attempt to portray its role as primarily a perfectionist role, at least in terms of moulding children into future citizens. The state roles important to liberal-pluralists, such as the protection and respect for religious and conscientious beliefs, seem to be, at best, secondary to these inculcatory roles, if they are deemed important at all.

The attitudes expressed by the Sixth Circuit Court, the Department of Justice, and the US Supreme Court in the Romeike et al asylum case are similar to those of the of the ECHR on the topic of the necessity of children to learn tolerance, which they presume can best be learned at school and cannot adequately be learned in a homeschooling environment. ("*Konrad v. Germany*, App. No. 35504/03, 8 (European Court of Human Rights Sep. 11, 2006)," pp. 2–3):

> The Federal Constitutional Court stressed that the State's obligation to provide education did not only concern the acquisition of knowledge, but also the education of responsible citizens to participate in a democratic and pluralistic society. To hold that home education under the State's supervision was not equally effective for pursuing these aims was at least not erroneous. The acquisition of social skills in dealing with other persons who had different views and in holding an opinion which differed from the views of the majority was only possible through regular contact with society. Everyday experience with other children based on regular school attendance was a more effective means of achieving that aim.

The court did not support their stance with any research studies demonstrating their claim that regular school attendance was the "more effective means" of achieving the aim of acquiring the "social skills in dealing with other persons who had different views and in holding an opinion which differed from the views of the majority". Were such opinions based on objective studies of German home educated children? Have they adequately studied such populations that they could plausibly make such judgements? Or were these opinions based on unfounded biases that are unrelated to findings based on empirically collected data?

On the question of socialisation, Romanowski (2006, pp. 125–126) points out that while 92 percent of public school superintendents surveyed in previous research (Mayberry, Knowles, Ray, & Marlow, 1995) believed homeschooled children do not receive adequate socialization experiences, the homeschooled children they surveyed were, on average, engaged in 5.2 activities outside the home. While the tendencies of homeschoolers in America may well be different from those of their German counterparts, the fact that the overwhelming majority of education officials in America, where so many more studies are available and bigger study populations possible, hold erroneous ideas about homeschooled children should underscore the need to avoid *a priori* judgements that are yet not founded on the data.

Has the state made such an appeal to the importance of civic integration, pluralism and diversity in order to draw attention away from the fact that both the state's statutes and its enforcement of them are arguably in violation of international law, as the US courts appear to acknowledge? Aschmutat (2015, p. 10) says that the Romeike case "reveals the undervaluing of religious freedom as a right, especially when compared to others." He also observes that whereas "[a]lleged persecution on the basis of torture or even political activism presents a concrete, visible, and practical disturbance to a social order", "persecution solely on the basis of religion seems less likely to send chills down the spine of one responsible for granting a claimant legal refuge" (Ibid, pp. 12-13). Finally, Aschmutat offers the following insight: "One takeaway from the ECHR decisions and the actions of the German [governance bodies] involves the modern designation of religious freedom (and arguably moral freedom) as, in the words of Professor Mary Ann Glendon, "a second class right"[65] (Ibid p. 32).

6.2 Summary of key findings and discussion

The claimants, Mr. and Mrs. Romeike, claimed that they withdrew their children from school due to value incompatibilities that arose from conflicts between the implicit values taught in schools and their religious convictions. There was various content that they found objectionable and intolerable. Contrary to the implications of the German Constitutional Court, they didn't find it difficult to tolerate other *children* having differences. Rather they felt that the *content* of the instruction and the *values* taught were intolerable when assessed by their absolutely held belief system. It is clear that they had a different conception of the good, and of what enhanced the welfare of their children. Based on this conception of the good, what their children encountered in school was adjudged to not be conducive to promoting the interests of their children, who

[65] [footnote 193 on p. 32 of Aschmutat, 2010 reads:] See generally Mary Ann Glendon, The Harold J. Berman Lecture: Religious Freedom–A Second–Class Right?, 61 EMORY L.J. 971 (2012).

the parents felt obligated to raise as evangelical Christians[66]. Such claims were never challenged by the opposition they faced in either the Immigration Court or the Circuit Court.

Thus, Mr. and Mrs. Romeike apparently made a decision based on the dictates of their conscience and religious convictions. This decision was that they would be derelict in their duties before God to allow their children to remain in a school where they would be taught moral values and ideas that they felt undermined or contradicted the values they felt obligated to instil. So integral were their religious convictions to their moral identity, that they were willing to face many hardships in order to remain faithful to what they felt God requires: the moral instruction of one's children in accordance with the mandates communicated by God through the Bible.

Based on their statements, it appears that their resolve to fulfil their duties to God was so strong that they were willing to make a decision to do what can be interpreted as value-rational action. It can also be interpreted as an act of civil disobedience. To be specific, the value-rational action, constituting an act of civil disobedience, was to educate their children at home, instead of allowing them to be exposed to what they believed were bad influences at school.

The German Constitutional Court responded that they were justified in all their punitive actions, including using physical force. The stated justification was the ends they were claiming to achieve: counteracting of the development of so-called "parallel societies." They did not explain what they meant by this term. They also did not provide any proof that home education, as a practice, leads to the formation of such parallel societies; for such proof to have been meaningful, a definition of *parallel societies* would have been necessary – yet no such definition was provided at all.

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[66] In some disciplines, such as those that are classified as humanities, the impact of a teacher's values seems to be rather high. Stoddard (2010) has observed that the pedagogical approaches that history teachers used were affected by their respective ideology. In light of the finding that so many home educators cite ideological and religious reasons for home education, it is important to acknowledge that the content taught in schools often contain their own implicit values or the ones imposed on the content by the instructor. Therefore, any implementation of a rule that public schools, as a public space, should be free of anything deemed religious may in practice be biased toward values based toward other "conceptions of the good".

Various US courts and the Department of Homeland Security voiced different opinions in response. The immigration court heard their petition for asylum, and at first awarded asylum to all members of the Romeike family while condemning the coercive measures that the Immigration Judge felt violated the liberties delineated in the US Constitution. But later this conviction was overturned by the Department of Homeland Security. The Sixth Circuit Court ruled that the ECHR and the German Constitutional Courts had made the correct decisions. The German government claimed that it was necessary for children to be at school in order to learn the virtue of toleration and the skill of engaging in dialogue, especially with those having differences. Noticeably, the German Constitutional Court, the ECHR, the US Sixth Circuit Court, and the US Supreme Court all failed to directly address the main reasons these evangelical Christians chose to educate at home and whether these reasons are worthy of state protection. These US courts ruled that none of the numerous coercive measures taken – imposing fines totalling 7,000 Euros; forcibly entering the Romeike home and taking the children by force; and coercing the children to attend school – could be considered persecution: the grounds given were that the laws on compulsory attendance apply equally, and nobody in particular is targeted by them.

It also appears that these courts concur that the parent does not have an "exclusive" right to educate their children. It appears that this declaration was made in response to the claim made by the claimants that the parents exercised their "prior right" to choose the kind of education their children shall receive – a right that is explicitly stated in the UN's 1948 Universal Declaration of Human Rights. Does the *prior* right of choice imply an *exclusive* right to provide? It would appear that if a parent, in exercising their prior right, chose to implement home-schooling, the result would be that, as the one exercising such priority of decision, such an exclusive role could be justified, though the parent does not have any right in providing the education, but only a self-imposed obligation as a result of the prior right to decide on the kind of education they desire for their child.

If we apply the notions proposed by Nickel (1993), it is not a question of who *gets to provide* the education the child is entitled to, but who *is obligated* to provide that education. Any right one is said to possess generates only an *obligation* for someone to provide what is guaranteed by said right. The prior right to decide on the preferred educational approach, then, would generate an *obligation* on someone to provide the education that the child is said to possess by right. It then follows that under the UN's Universal Declaration of Human Rights, the one who bears the obligation is determined by the parent, who has selected the kind of education to be provided the child. In the case where the parent has borne the obligation himself or herself by choosing to provide a home education, their choice to bear the full obligation – if that is what they decided based on their priority of right to make such a decision – has been *effectively* made by their exercise of this said prior right. But assuming the duties related to full obligation is not equivalent to a claim that they have an exclusive right to provide what the right guarantees. So, while a *prior* right to choose does not necessarily entail an *exclusive* right to provide – as rights to provide what is guaranteed under a right someone else is said to possess do not exist at all – the question is rendered moot altogether by the fact that the priority of decision determines who bears the obligation to provide what one is entitled to by the right to education. That obligation of course could be shared, but if such an arrangement is made, the one making such an arrangement would be the one who has the priority of choice to make it. Of course, in the case where children are attending public schools, the parents have chosen to *allow* the state to bear the primary or exclusive obligation to provide what is guaranteed by the right to education. But no such allowance on the part of the parent is mandated by the Universal Declaration of Human Rights.

Thus the German Federal Constitutional Court's ruling on home education is problematic in that it has not correctly identified who has a right and who bears an obligation, exclusive or other. If someone such as the parent is deemed to have a prior right on educational choice, and chooses to obligate herself or himself by bearing the full responsibility of providing it, the question of

who has an exclusive right to provide is immaterial and irrelevant – because it is not a matter of rights at all, but rather of obligations. Providing an education is not a right at all, but rather an obligation to provide what is guaranteed under the right to education that everyone is said to have. Therefore, the priority of choice has no relationship at all to exclusivity of provision, as the scope of provision is a single aspect of the kind of education that the parent chooses. From a philosophical standpoint, exclusivity or non-exclusivity of provision is a red herring, because the parent chooses and the chosen education provider provides under the obligation that the right to education and the right of choice generate. If the one having priority to decide on the preferred education for their child decides to bear a full obligation himself or herself, on what grounds can anyone argue that they were unjustified in bearing it?

6.3 Generalizability and limitations

The aims of this paper had little or nothing to do with making generalisations about German home educators in general. Rather, the observations and conclusions drawn by other researchers such as Spiegler (2003, 2009, 2010), van Galen and Pitman (1991), Harding (2011), and Rothermel (2003, 2015a, 2015b) were examined critically, adapted when needed, and organised in such a way that an interpretive framework could be constructed. These interpretive frameworks were thought to be useful in helping to understand how a single case of a homeschooling family may be understood from a new perspective.

One major limitation of this study is the fact that due to some constraints, fewer sources representing the perspectives of the German state, child welfare and education officials could be gathered, examined and interpreted. Their positions are represented in the rulings made in court. And it is assumed the described events involving coercion were meant to support the state's laws mandating school attendance. Some may regard this work to be somewhat skewed toward the home educators' perspective if one simply counts the amount of text discussing each side's views. However, the weight accorded to each side seems

proportional to the focus of this thesis, which is on how freedom of conscience is related to home education, especially in relation to the positions of secular states on conscientious beliefs in general. One protection against bias is the fact that most of the factual claims were made under oath, which is something that is held in reverence by evangelical Christians. Moreover, as any statements that were found to be untrue could be damaging to the claimant's pursuit of a favorable decision, this fact would have served to greatly deter the making of false claims and accusations to one's advantage. However, since the opinions of the Sixth Circuit Court and the US Supreme Court both seem to be generally consistent with the position expressed by German officials, as attested in German court documents cited in the Romeike court documents, such an apparent disproportional balance between the claims made by both sides could be ameliorated to some degree. Third party opinions such as those expressed by Vernor Muñoz (2007)[67], the UN Special Rapporteur on the Right to Education, were also valuable in providing a greater degree of impartiality in the discussion, at least as much as one could reasonably expect under the circumstances. In summary, notwithstanding the fact that a greater proportion of the paper addresses arguments made by those representing the Romeike family, this fact alone should not lead anyone to conclude that the content itself has been reported with partiality and undue bias.

6.4 Applicability of research results

This paper was aimed at providing a better socio-political and philosophical understanding of the values and beliefs represented by both those opposing and supporting home education by seeing whether their views align with republican and liberal-pluralist conceptions of secularism.

[67] in *UN Human Rights Council: Addendum to the Report of the Special Rapporteur on the Right to Education, Mission to Germany (13-21 February 2006)* (Vol. A/HRC/4/29)

But the applicability of the implications drawn from a study such as this is not limited to home education matters. We shall look more closely at the implications in Section 6, titled "Concluding remarks". We can then see how broad the implications can be for all educational stakeholders, particularly leaders, as the numerous issues raised by home education behove everyone to be critical of the foundational assumptions we hold regarding the place of religion in education and civic life.

7 CONCLUDING REMARKS

During the First United States Congress, in the course of drafting the Bill of Rights, the House of Representatives adopted James Madison's proposal to grant exemptions to those "religiously scrupulous of bearing arms" from being conscripted as militia soldiers. Before being ultimately rejected by the Senate, proponents of the proposal declared that such a provision was necessary to "show the world that proper care is taken that the government may not interfere with the religious sentiments of any person" (Congressional Register, August 20, 1789, vol. 2, pp. 242-243, quoted in Cogan, 1997, at p. 283). Were Madison alive today, where would he stand on the question of whether religious exemptions for compulsory schooling are warranted?

Many of those who settled in America, such as Puritans, Quakers, and Huguenots, among others, had fled the oppressive church-run states in the Old World – or at least their forebears had; and for this reason, many would probably have wanted to prevent the development of another similar type of government structure in the New World. In the words of Laycock (1996, p. 316), "[I]n history that was recent to the American Founders, governmental attempts to suppress disapproved religious views had caused vast human suffering in Europe and in England and similar suffering on a smaller scale in the colonies that became the United States." These episodes of history represent how issues pertaining to freedom of conscience and religion have long been an important consideration in the understanding of the underlying normative principles that collectively serve as a guide for a liberal democracy and its most fundamental rights protections.

It would not be until the mid-nineteenth century that any form of compulsory education began in the United States. One of the primary moral justifications for public education was that it was needed in order to educate children of working class parents and others of low socioeconomic status. Those who lobbied for the creation and propagation of the public school system underscored

the charitable aims of providing a publicly funded education accessible by anyone in need of it. Thus the compulsion of compulsory education was understood as a moral obligation bearing upon the state in order to protect the welfare of society – and not any sort of compulsion against the ones who were claimed to possess the right to education. The moral bedrock and *raison d'être* of public education was its humanitarian aim of providing publicly funded education to children of parents who, for lack of learning, lack of time or other resources, could not adequately educate. If those who promoted the creation of compulsory education had openly stated an intention to compel attendance for all youth, it is highly doubtful whether it would have gained popular support, as I discuss below. It was only after the charity known as public education had become firmly ensconced, and the public school hierarchy had entrenched itself within the political economies of the West, that they could now begin to talk about the need for all youth to be forced to attend school. In the 19th century, there was much public resistance to laws mandating attendance for public education. Below are Roper's (1977, p. 240) observations about the highly controversial nature of the issue of compulsory education:

> Mandatory attendance and payment for any institution was in such direct opposition to concepts of democracy that early educators were hesitant to suggest or employ it. Americans had taken pains to insure that, for other institutions such as churches and armies, support and attendance would be voluntary. Compulsion in education was the hydrogen bomb of its day. Educators pondered the question, Do the threat and the enemy[68][i.e., the parent] really justify the use of such a repugnant weapon?

It thus took roughly half a century in America for those advocating mandatory school attendance to turn a supposed philanthropic enterprise into a profit-driven corporation (Ibid p. 241). The humanitarian intervention needed to es-

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[68] Roper (1977) declared that the parents of schoolchildren had always been regarded by "schoolpeople" as the "natural enemy". Roper noted that since parents supplied both the clients and the funding for the schools, the fledgling state school systems in America took a few important measures to ensure that the "risk" arising from such a dependency would be mitigated and managed. These measures included 1) mandatory school attendance; 2) consolidation of control that would marginalize or exclude parents from decision-making; and 3) creating the office of Superintendent, who could be regarded as the "arch-enemy" of the parent (p. 240).

tablish a new hegemon in education would require a war against parents, according to Roper (Ibid pp. 239-242).

Today, in some nations such as Germany and Sweden[69] the laws mandating attendance at a state-sanctioned school are stricter and more ruthlessly enforced than in most other countries. Against this backdrop, the rise of the home education movement can be seen as a reactionary or counter-cultural one, but only if one chooses to selectively exclude the cultural heritage that preceded the era that began with the start of state-mandated education.

When values taught in schools operating under republican notions are deemed to be in conflict with one's deeply held convictions, withdrawal may be seen as the only viable solution, especially when requests for other forms of accommodation are denied or not deemed worthy of consideration. In some extreme cases, an appeal for accommodation within the context of schools may be foregone, when one, for instance, deems the objectionable curricular content to be symptomatic of a fundamental worldview incompatibility that may make them wary of entrusting the children under their guardianship.

7.1 Religion versus moral identity

As mentioned in section 2, some say that if a given belief is integral to one's moral identity, the behaviour that constitutes practice or observance that such a belief entails ought to be protected. In some such cases where the practice of such a belief is hindered by laws applied generally, it may be argued that it is obligatory under constitutionally guaranteed freedom to allow for exemptions or other forms of accommodation. However, opponents often argue that beliefs that are not in alignment with any known establishment of religion do not merit consideration for accommodation. For instance, some express this sort of objection against religious exemptions for vaccinations (Bellafonte, 2015; Krule,

[69] See these opinions about parental education rights in Sweden: "Cookie cutter kids and state sponsored kidnappings," 2010, and "The Dominic Johansson Case," 2009

2015)[70]. For this reason, it is important to make a distinction between religion and moral identity because it is quite possible for the latter to exist apart from the former within any given person.

The following subsection deals with the distinction between religion and one's moral identity. This is relevant to our discussion about homeschooling, because the choice to do home education is usually a very personal one. There are usually no institutional directives that mandate one to adopt this particular pedagogical approach to education. Rather, for many the teachings of the Bible often collectively serve as a moral guideline that has educational dimensions. Those who adhere to this guideline may choose home education after deciding that it is best suited to fulfilling the educational obligations, including that of instilling Biblical values in the children under their care as faithful servants and stewards of their Creator.

7.1.1 The distinction between religion and moral identity, and an analogy to illustrate

Another reason it is important to make a distinction is due to the fact that it is not uncommon for a request for accommodation on account of religious belief to be dismissed on the claim that no religion, or denomination of same, actually officially declares such a belief – or conversely that they are not opposed to whatever the person requesting such accommodation objects to.

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[70] See also the opinions expressed in this critical literature review underwritten by Merck, a major pharmaceutical corporation – bearing the title "What the World's religions teach, applied to vaccines and immune globulins" (Grabenstein, 2013). Grabenstein acknowledges the fact that "[i]n contemporary cases, such objections [to vaccinations] involve blood products, porcine or bovine pharmaceutical excipients, or the remote fetal origins of cell-culture media and rubella strain RA 27/3" (Ibid p. 2011). Grabeinstein "reviews the scriptural, canonical basis for such interpretations, as well as passages that support immunization" (Ibid p. 2011); finds that the literature "revealed few canonical bases for declining immunization, with Christian Scientists a notable exception" (Ibid p. 2019); and suggests that "health professionals who counsel hesitant patients or parents can ask about the basis for concern and how the individual applies religious understanding to decision-making about medical products . . . and suggest further dialog with informed religious leaders" (Ibid p. 2011). Some may be surprised by Grabenstein's remarks in view of the fact that he acknowledges the following: "All vaccines require the use of excipients (inactive ingredients) in manufacturing. Some of these products, such as hydrolyzed gelatin or trypsin, may have a porcine (pork) origin" (Ibid p. 2018). For background, see Pew Research Center's report titled "Nearly all states allow religious exemptions for vaccinations" (Sandstrom, 2015).

Here I would like to make an analogy to illustrate how moral identity is something distinct from religion. In the field of genetics, there is a distinction between a given person's phenotype and genotype. The latter, which is formed by the precise combination and sequence of nucleotides constituting the genes – which in turn collectively constitute one's DNA – is capable of uniquely identifying an individual, while the former, which is only a phenomenal construct derived from sensory observation of physical characteristics, many of which can be found in individuals having many different genotypes, cannot precisely nor uniquely identify a person.

One dictionary defines religion as "a specific fundamental set of beliefs and practices generally agreed upon by a number of persons or sects" ("religion," n.d.). Yet underlying these broader or more fundamental beliefs – or supplementing them – may be one's own unique combination of personal beliefs. In theory, the number and possible combinations of beliefs must be exponentially higher than the number of people, as each person can have tens, hundreds, thousands, or more beliefs, and it would probably be safe to say that every person believes something, even if such beliefs cannot easily be articulated.

As DNA is a unique set of nucleotides that not only constitute information, but also provides numerous instructions necessary for development, growth, maintenance, and so on, we can use it as an analogy for moral identity, which can be seen as a sort of moral genotype consisting of a long series of beliefs (i.e., information necessary to sustain us spiritually).

I can extend this analogy further by observing that a nucleotide in itself has little meaningful information, but rather its meaning is derived from the way that it is combined with other nucleotides in a sequence specific way. Similarly, the beliefs we hold as individuals have a synergistic effect which only have meaning when the combination of these beliefs are viewed holistically rather than by myopically examining each belief in isolation without regard to how it contributes to the greater structure.

On the other hand, like phenotypes, religion is largely classified by external manifestations such as the observance of holy days, initiation rites, culture, and simply by semantic labels such as Christianity, Judaism, Islam, etc. But the range of denominations each possesses[71] -- with some estimating the total number of Christian denominations in the tens of thousands – illustrates that religious labels such as *Christian* are social constructs that may be significant mainly for what it symbolises within society and has comparatively small informative value. Moreover, the fact that examinations of the nascent phases of so-called Christianity shows the distinction between Christian and Jewish to be a rather arbitrary convention (Sim, 1998, pp. 12–26), demonstrates that common presumptions about the things that determine religious identity or affiliation warrant a much more nuanced and detailed examination.

While genes comprising DNA can supply specific instructions, the physical characteristics of an individual cannot provide us any such information, and we are left to guess whether a person who has certain traits has a set of genetic instructions different from others having similar traits. Our outward appearance and the ways people (are conditioned to) group us have no causative effect on what internal instructions are actually forming our nature and existence, and guiding our behaviour.

Similarly, often it is not until we take much time and effort and go beyond religious groupings largely derived from social phenomena, and examine the precise tenets and precepts that one subscribes to, that we are finally able to find out whether a particular person would, for instance, have moral objections to any of the following: performing what is defined as work on certain days of the week; observing certain holidays; killing or eating (certain types of) animals (without observing certain laws pertaining to slaughter); having extramarital or premarital sex; having a gay partner; having multiple partners or spouses; lying for personal gain; killing another human being – either in or outside of self-defence or other cause deemed justifiable; or having an abortion. Apart from such

[71] Bart Ehrman's (2003) work *Lost Christianities* demonstrates that at one time, there was an even wider range of theological views and traditions a few millennia ago than exist today.

a closer examination one cannot know whether a given person is likely to become a parent that inculcates their children with certain kinds of moral values and behaviour that are not necessarily commonly found in society at large.

One of the important implications is that in order to know whether someone genuinely holds a given belief, it is necessary to see what role that belief plays within the greater "instruction set" composed of other beliefs arranged and organised in a meaningful way. Our beliefs, if actually found at the core and whole of our being, not only identify the sort of person we are, but also guides how we instruct ourselves to act.[72] Obviously, the process of examining and understanding anyone's moral identity is a labour- and thought-intensive process which requires extreme sensitivity, expert training, time and the proper measurement instruments.

In short, the expectation that anyone should behave in a certain stereotypical way merely based on their religious affiliation, whether self-professed or socially assigned, appears unfounded or misguided. Similarly, any judgement that a person must formulate religious beliefs in keeping with those officially stated by a certain religious establishment or religious leader, and that the belief is otherwise not genuine or worthy of consideration, is equally misguided and unfounded.

7.1.2 Each person is an autonomous moral agent capable of formulating religious beliefs apart from religious institutions

As described above, some judiciaries such that of Canada have recognised that "It is the religious or spiritual essence of an action, not any mandatory or perceived-as-mandatory nature of its observance, that attracts protection [of freedom of religion]" on the basis that constitutional freedoms include "the freedom to undertake practices and harbour beliefs . . . in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective

[72] notwithstanding the fact that sometimes social factors such as peer pressure, conflicting desires/emotions, and other exigencies may make us act contrary to such instructions

of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials" (*Syndicat Northcrest v. Amselem* [2004], 2 R.C.S. 551, 2004 CSC 47). Maclure and Taylor (2011, pp. 81–82) further elucidate[73]:

> The "personal or subjective" conception of freedom of religion adopted by the Supreme Court of Canada can be understood as an extension of that priority given to individuals' moral autonomy. In the words of the majority in the *Amselem* decision (2004),
>
> > Freedoms consists of the freedom to undertake practices and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, **irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials**. This understanding is consistent with a personal or subjective understanding of freedom of religion. As such, **a claimant need not show some sort of objective religious obligation, requirement or precept to invoke freedom of religion**. **It is the religious or spiritual essence of an action, not any mandatory or perceived-as-mandatory nature of its observance, that attracts protection. The State is in no position to be, nor should it become, the arbiter of religious dogma** (emphases mine).[74]

7.2 The essential role of dialogue in ethical leadership

In the introduction, I have alluded to the increasingly complex challenges that educational leaders and other administrative bodies face as a result of the increasing diversity. This diversity is characterised by differences in personal

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[73] Maclure and Taylor (2011, p. 84) later mention the following rationale guiding the Supreme Court of Canada's decision in *Syndicat Northcrest v. Amselem*, a case involving Orthodox Jews who erected *succahs*, small dwelling places they intended to live in during their holy feast days called *Succot* (see Exodus 34:22 and Leviticus 23:42-43), on their balconies – thereby causing Syndicat Northcrest, the building managers, to allege the Jews of violating by-laws forbidding structures to be built on the balconies:

> the subjective conception of freedom of religion and the emphasis placed on the sincerity of belief, though in step with the phenomenon of the personalization of faith, do not necessarily put at a disadvantage religious experiences focused more on religious practices and rites. As attested by the Amselem case, people with strict or orthodox religious practices can base themselves on the subjective conception of freedom of religion to request accommodations, even if the religious authorities in their community do not agree on whether the religious practice in question is obligatory or optional.[the footnote provided by Maclure and Taylor (2011, p. 84) reads "*Syndicat Northcrest v. Amselem*."]
>
> Finally, the subjective conception of freedom of religion allows the courts to circumvent the perhaps insoluble problem of defining what a religion is. It is actually very difficult to find a common denominator for all religious and spiritual traditions.

[74] *Syndicat Northcrest v. Amselem* [2004], 2 R.C.S. 551, 2004 CSC 47, [http://scc-csc.lexum.com/scc-csc/scc-csc/fr/item/2161/index.do] (the URL in the original footnote has been updated by me).

attitudes, values and ways of life as much as by the distinctions that have been more prevalent in the past: race, ethnicity, gender, religion and the like. Such challenges need to be appreciated for their nuanced complexity and their concomitant need to recognise that every individual has their own unique belief fingerprint.

Such a situation behoves leadership approaches that are sensitive to such individual differences that defy crude classifications, stereotyping, and application of standards that may be inadequate in addressing the situation at hand. If one desires to lead others in an ethical way, dialogue is especially important in light of the following observation by Langlois (2011, p. 34): "For some, applying a standard or rule can become unethical because each situation demands analysis, rather than a blanket solution. Standards thus represent an obstacle to ethical action." It may be helpful to engage in a dialogue that does not consist only of talking about standards, policies and laws; but rather, it is important to go deeper by asking what was historically intended in making such legislation or other standards. Dialogue has been understood as a key component of enhancing social capital, which English (2008, p. 27, emphasis mine) describes as "**a relational and interactive codependency** and **mutually constructed** social network that can be called on for support when a leader must build a coalition of support or sustain a position in times of conflict". When engaging in such dialogue in a leadership capacity, some appreciation of humanities-related considerations are important. English (2008, p. ix) declares that "reconnecting to the humanities instead of continuing to be dependent on the social sciences, particularly management science, is critical to restoring a capacity to lead morally."

Among the humanities is history and political philosophy. Among the key developments in history and political philosophy are justifications for the existence of a liberal democratic state. Within liberal democracies, the state is generally understood to have the obligation to serve what Wolterstorff (2012, pp. 1-3) called a *protectionist* role rather than the *perfectionist* role states have assumed in the past within the typically church-run nation-state. As Wolterstorff observes, whatever jurisdiction the democratic state has should be limited by a

constitution or other fundamental law of the land that protects citizens from violations of their natural rights by the state (Ibid p. 2).

Another aim of such a dialogue should be to find a solution that would promote the best interests of the child, her or his family and the community to which they belong with a consideration of their holistic well-being. In light of what is at stake for home-educating families, educational policy-makers and other decision-makers arguably have a moral obligation to deliberate on the social justice and other philosophical considerations[75] that transcend those that are prioritised in much of the management literature focused on mechanistic efficiency, neo-liberalistic ideals, and economistic models.

Governmental authorities and their spokespersons often declare lofty aims in order to justify actions that are considered objectionable. However, even when the stated *ends* of enforcing any mandate such as compulsory education could be justified, the *means* by which such ends are attained also must be warranted, as the majority opinion in *Pierce v. Society of Sisters* (*Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925)) asserted.

The home education issue may best be approached as any ethical problem would: within an atmosphere of open dialogue on equal footing with appreciation of the values inherent in each respective position/option constituting the dilemma. Home educators and their children are the ones who have the biggest stake in ensuring that the policies related to compulsory education are enacted and enforced only after the due dialogue and deliberation needed. They thus are entitled to a voice in discussions pertaining to the best course for ensuring how best to implement education, which ostensibly aims to provide preparation for fulfilling one's obligations to society, self and kin and improve one's capacity to pursue well-being for same.

7.3 Are some "republicans" exploiting the indeterminate distinction between public and private spheres?

[75] Maclure and Taylor (2011, p. 5) declare as follows: "Collectively, we still have a great deal to do to understand how social justice and political unity can be achieved in societies riven by profound— and, insofar as it is possible to judge, irreducible — philosophical differences and disagreements."

According to Peña-Ruiz, in order to "establish publicly the conditions for enlightened judgment" even private individuals need to be "freed" from religion. Thus for Peña-Ruiz, the private sphere, if it exists at all, occupies a negligible territory, somewhere in the dark and unenlightened recesses of our society, and it seems to be one where the inhabitants persist in the folly in spite of the availability of better alternatives. From the viewpoint that insists on the inherent necessity of realizing the secular ideal through disabusing them of their irrational notions, it would be difficult to imagine how religion could be found to have any redeeming benefits at all for anyone anywhere. If one declares that religion should be abolished in the public sphere, it is not such a big leap to say that the citizens who are active there should be freed from so tyrannical a master. After all, beliefs and our moral allegiance to them are not the sorts of things one can simply switch on and off as one would a light switch whenever we step out of our homes.

Thus for some secularist "hardliners," the historically ontological value-basis for secularism has been effectively obliterated – specifically, the notion that states rule by the consent of people who agree that their natural rights, including their right to free exercise of religion/conscience/conceptions of the good, are to be protected and honoured by the state (cf. Wolterstorff, 2012, pp. 1–3). As mentioned above, Immigration Judge Burman declared that it is the people who ought to determine whether, and under what conditions, a state is accorded legitimacy.

As Maclure and Taylor (2011, pp. 39–40) have pointed out[76], it is sometimes not easy to draw a clear distinction between public and private spheres.

[76] "The republican position, moreover, seems to assume a water-tight barrier between individuals' private and public lives and, as a result, between public and private spaces. But can that barrier actually be maintained? Consider the example of caregiving facilities. The decline of the extended family and the development of the welfare state have resulted in a situation where some people spend decisive moments of their intimate lives in the "public" spaces of hospitals, or in long- term care facilities, or in hospice care. These moments are usually marked by suffering and vulnerability, and they may include the end of life. At such times most people want to be surrounded by their loved ones and, for some, religious contemplation and rites remain indispensable. That is why the presence of chaplains and or multi-faith meditation rooms in hospitals (and in prisons and in the armed forces) is not seriously questioned."

But it may be precisely this ambiguity, and indeterminate nature of the terms *public* and *private*, which allows those propounding a secular ideal, seeking to paternalistically re-indoctrinate the masses on the need to dispose of their guardians for their greater good, an easier way to cross as the boundary between *public* and *private* spheres can be moved whimsically. Those who love, trust and depend on this "guardian" and do not think of this guardian as a hindrance to their intellect, have sufficient reason to feel threatened.

7.4 Does the hierarchy of the republican sanctuary want to give us new guardians? Do they want to *be* our guardians?

As mentioned in section 3.3, Peña-Ruiz declares that it is not only the state that must be cut loose from their "theological custodians," but the citizens "must also be disconnected from the many custodians who may impose themselves on it, in civil society and in public political debate" (p. 225, quoted in Maclure and Taylor, 2011, at p. 30). Peña-Ruiz's forceful language begs the question of how he envisions the process of "disconnection" would occur. In cases where the relationship between the citizens to their theological guardians is a very strong one, would the attempts to sever that bond ever have to resort to such measures as indoctrination or other coercive means? How can anyone ever have the assurance that only non-coercive measures would be taken to convince people that they are lacking in reason and need to be enlightened? It would be extremely traumatic to be disconnected from anyone that we would regard as a sort of guardian, even if it happens only psychologically. Do the supposed benefits outweigh the likely harm that would be done to the "child" now stripped of his or her guardian? How would interfering in such a way in a person's life, even figuratively, be conducive to promoting his or her welfare?

Have such coercive conduct actually been implemented? It would seem that the actions of the *Jugendamt* and German legislative, judicial, and executive bodies, in deliberately suppressing home education, have been consistent with the attitude that children need to be taught a set of values the state would like

them to have, and that these have priority over the values that a parent may teach them. As Colen (2006) contends "The problem with entrusting the education of children to the state is, of course, that instead of parents "indoctrinating" their children with their own ideological and philosophical beliefs, they will be indoctrinated with those of the state – which is exactly why Hitler banned homeschooling in Germany in 1938." Along similar lines, Hafen (1983, pp. 480–481) cautions against the monolithic control of the system that teaches values:

> 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.
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> 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.

Viteritti (1998, p. 665) gives a similar opinion:

> [M]aintaining a government monopoly over [imparting and nourishing the civic values that bolster a healthy democracy] presents certain risks in a free society, especially in a democratic order that purports to value social, political, and religious pluralism. These hazards are painfully evident in the history of the American common school. . . . . The history of the common-school movement is a telling story of the risks incurred when a ruling majority is allowed to establish a monopoly over the educational process and to impose its values upon everyone else's children. . . . Under these conditions, the rights and concerns of minorities become easily dismissed, ignored, or trampled upon—often unknowingly, sometimes intentionally—but always with severe consequences. Without alternatives for the education of their children, minorities must frequently accept the majority's worldview.

Quoting Carter (1997, p. 1205), DeGroff (2009, p. 126) offers some insight why disconnecting people from their guardians, theological or literal, is destructive of both liberty and religion – and of course not respectful to either:

> The transfer of core values and beliefs from one generation to the next is inherent to the practice of the Christian faith and-as Professor Carter suggests - to the practice of religion in general. Accordingly, no matter how jealously the courts may guard the individual's right to express his own beliefs, if the state has the power through its institutions to inhibit the transfer of religious faith by parents, "then the one thing [the parents] are not enjoying is religious freedom."
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> . . . It is difficult to imagine anything more destructive of liberty than a government with the authority to override parental choices concerning the development and values of the next generation – particularly religious or moral values."

We would be well-advised to remember that well less than a century ago, Joseph Goebbels, the Nazi head of propaganda, declared "Youth belongs to us. We will yield them to no one."[77]

7.5 Secularism is itself religious, some say

While republican secularists point out the need to rid public spaces of all religious symbols and other expressions of faith, Ferrari (2010, pp. 749f) points out that secularism plays the role of a "civil religion" that comes into play when it is deemed that religions cannot provide a core set of values around which individuals can cohere:

> When a particular religion or culture cannot perform this unifying role [of providing "a nucleus of values able to create a cohesive group of individuals"], civil religion takes its place by **providing a set of values, symbols, and rituals upon which the spiritual unity and social cohesion of a nation can be rebuilt**.
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> . . . these values and principles distinguish between those who are full citizens and those who are only "legal" citizens. In this way, civil religion links itself to citizenship and provides content for its identitarian dimension.
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> . . . One of [the facets of civil religion] is the **sacralization of secular concepts and symbols** that become the axis around which political and civil society is organized. This facet is reflected in France's concept of *laïcité*, which is conceived as the general principle that includes and reconciles the particular values of the religious, racial, ethnic, cultural, and political communities living in France. *Laïcité* is seen as a cluster of universal and abstract values- such as liberty, equality, and tolerance-that every citizen and group must embrace independently from his or her origins [and other unique characteristics] (emphases mine)

This perspective may offer new insight into Peña-Ruiz's declaration that citizens must be disconnected from the custodianship of their theological guardians. Perhaps this disconnection is what is deemed necessary before they can embrace the civil religion. Seen in this light, it can be said that for Peña-Ruiz and Chirac, perhaps it is not a casting off of religion that is called for, but a religious conversion that they call "enlightenment."

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[77] *Völkischer Beobachter*, 5 August 1935, Quoted in Conway, J. S. (1968, pp. 114–115). *The Nazi persecution of the churches, 1933-1945*. Regent College Publishing.

7.6 Tolerance, pluralism, and integration on whose and what (understanding of the) terms?

As mentioned in Analysis 8 (subsection 6.1.8) of Section 6, the very denotation of tolerance, popularly understood today, may be radically different from what the same word has denoted for centuries. While it is debatable whether the actual common definition of tolerance has changed, it seems undeniable that at least the connotations of the word are usually substantially different from this attitude expressed in a quote attributed to Voltaire: "I disapprove of what you say, but I will defend to the death your right to say it" (Tallentyre, 1906, p. 199).

It is yet unclear what notion of tolerance the state has in mind. Despite the German Federal Constitutional Court's appeals to the virtue of understanding others who have differences in beliefs, the court[78] nevertheless justifies the government's suppression of groups having such differences based on an indefensible and unarticulated fear of their possibly developing a "parallel society", which they never defined. In other words, while (other) members of society must be taught to tolerate differences, in their apparent judgement, there are some differences that should never be tolerated by governments. It appears that the Court is implying that anyone who seeks to teach their children values that are by nature intolerant in the "old" sense of the term[79], in that they hold to moral absolutes, deserves to have their rights "interfere[d]"[80] with. On the topic of the relationship between freedom and interference, Pettit (2011, p. 693) says that non-interference is an unstable conception of freedom, and that it is necessary for us to make the deduction, based on the ideas of Isaiah Berlin, that

[78] as do subsequently the European Court of Human Rights and the US Sixth Circuit Court

[79] see above discussion about Carson's (2012) distinction between what tolerance used to mean and what it is understood to mean now, at least implicitly.

[80] Pettit (2011, p. 693) has this to say on the notion of freedom as non-interference:

> In Hobbes, freedom of choice requires nonfrustration: the option you prefer must be accessible. In Berlin, it requires noninterference: every option, preferred or unpreferred, must be accessible — every door must be open. But Berlin's argument against Hobbes suggests a parallel argument that freedom requires something stronger still: that each option be accessible and that **no one have the power to block access; the doors should be open, and there should be no powerful doorkeepers. This is freedom as nondomination**. The claim is that freedom as noninterference is an unstable alternative between freedom as nonfrustration and freedom as nondomination.

freedom is to be understood as nondomination. Judge Burman, who decided to award the Romeike family political asylum, alluded (Decision of the Immigration Judge ("IJ Decision") at 10 (Jan. 26, 2010)) to "the right to be left alone" – from which we can also deduce includes the negative right to be free from domination:

> the Supreme Court found that there was a fundamental right of a parent to establish a home and bring up the children and worship God according to the dictates of his own conscious. This is a central right, in America. Justice Brandeis described it as part of the greater right, the right to be [left] alone, that the Government does not own people, that people should control the Government.

Duty has been said to be neither absolute nor unconditional[81] (see subsection 6.1.5). Likewise, tolerance is also neither absolute nor unconditional. If the state deems it intolerable to have judicial or executive (including law enforcement) enclaves, such as those characterised by attempts to institute *sharia* law in places such as Germany, then they should state such conditions explicitly rather than using the rather meaningless term "parallel societies." But if they were to do this, it would immediately become apparent that the emperor has no clothes, as it were: homeschoolers are not going around the city with megaphones demanding that everyone desist from going to school -- and threatening punishments for doing so. They are merely exercising a personal choice of their own accord – a choice protected by international law – to do an activity that they feel morally obligated to do under mandates they understand as moral absolutes. The choice to follow what they regard as divine mandates is not regarded as optional, and they could not have done otherwise than they chose[82], as they have adopted an ontological framework based on the supreme sovereignty of the Creator who commands his people, in this instance, to educate their children in the way that their Creator desires. As they see it, the Creator has the right to dictate how his creatures are to live and make use of themselves; and they are thus subject to such instructions.

It does not follow that those who choose to educate children at home are depriving them of education, as the higher courts of Germany and the US and

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[81] Cavanagh (2012, p. 85)

[82] i.e., without incurring divine displeasure and punishment

the ECHR have implied. The only possible "deprivation" is that of a certain *kind* of education. But if one deems such a choice deprivation, then by such logic, a *choice* to offer my child a breakfast consisting of muesli could be seen as a deprivation of cereal, waffles, pancakes and all other possible choices -- granted this muesli were given in lieu of other possible choices. But of course, nobody would think it would be grounds for arrest or detainment, much less on human rights grounds, to offer a nutritious breakfast, especially if one could prove it equally beneficial for promoting health in comparison to other options. When it comes to home-schooling, the data has lent support to the perception that homeschooling is as effective as, if not more than, public schooling, on most or all levels, even psychological and social. Thus to consider the choice to provide what is equally beneficial as other available options as deprivation of those other things is to make a premature judgement yet unfounded on the evidence.

When it comes to homeschooling in Germany, the state, and the state alone, has dictated the terms (particularly definitions) of the vocabulary associated with it, and the terms (conditions) of the notions associated with this vocabulary. Thus the arbitrariness of their decisions is beyond challenge, as they have never been forced to provide either definitions for these lofty terms, or the terms under which these lofty ideals should be implemented in practice. But if we are to follow the state's model (theories-in-use) of tolerance, characterised by the understanding and dialogue as they propose, could anyone reasonably believe that those representing the state in various capacities of educational administration, child welfare and law enforcement were modelling what they have prescribed? It appears that Orwellian doublespeak[83] has reached extraordinary proportions.

Have the decisions of the courts offered a satisfactory solution to all parties involved? Apparently not, as there are still hundreds of German families

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[83] a definition of *doublespeak* offered by the Collins English Dictionary ("doublespeak," n.d.): "the practice of using ambiguous language regarding political, military, or corporate matters in a deliberate attempt to disguise the truth"

willing to face the consequences of keeping true to their beliefs by continuing to educate at home. If the terms of peace, and the nature of peace itself, are not mutually understood by the adversaries, there can be no confidence in the détente reached. And as the evidence shows, not everyone is willing to surrender their rights in deference to republican "nation-building" (/minority-eradicating?) interests.

Various spokespersons of the state's judicial and executive bodies have preached the virtues of tolerance, understanding, and dialogue. Given the largely indeterminate nature of the ideals they have invoked, it is difficult to see how anyone could possibly disagree with such idealistic neologisms. But it is equally difficult to *agree* as they appear to be nothing beyond emotive words – short of defining what these ideals actually mean and what they do not, particularly as they relate to practical implementations of them. If the state fails to explain their solutions or even the words that would make such proposals meaningful, can anything useful be learned from the punishments they mete out besides the lesson that they apparently believe that people can be forced to "tolerate," just as we can all have enough patience to endure something when we have no other option? Not everyone subscribes to the "might is right" doctrine.

As Argyris and Schön (1974) point out, there is often a discrepancy between espoused theories and *theories-in-use* – such is often the nature of the organisations that state them. It could well be that these courts are citing these ideals in order to appeal to the ideals commonly revered by the general public, and to conceal their actual motives. For instance, several authors (Connor, 1972; Guzina, 2000) have pointed out how nation-building, which is the end for which civic integration is a means, is often used as a pretext for suppression of minorities, and this may be the sort of pretext that is being stated here.

An important question is left unanswered here: if dialogue and tolerance are such important values for these judicial bodies, then were these values modelled during the government's (specifically the law enforcement branch) interactions with home-schoolers? Before the law enforcement officers loaded the

Romeike children onto vans and forced them to school, did they do so only after they had exhausted all other diplomatic and more peaceful measures?[84] Why did these home educators have to suffer the indignity of having the security of their homes violated and their children taken from them, if tolerance and dialogue are the values that everyone in society are to learn? Should the weaker members of society model such values while those in positions of power can use more coercive techniques to convince us of the importance of falling in line with their programme? Are they imposing a set of rules for others while they themselves do not feel the need to be bound by the same ones? It seems to me that the judiciaries in Germany operate on this *theory-in-use*[85]: that the ends justify the means; and that as long as one can make people imagine a noble end, however unrealistic it may be in practice, and however uncommitted the government may be to attaining it[86], the dehumanizing and degrading acts against certain groups that are used to deter their autonomous thinking can somehow be transformed into justified acts.

The de-ontologised nature of republican dogma has been noted by Sandel (1998) in the preceding discussion. So severed from the very historical context and authorial intent that would lend Constitutional ideals such as religious neutrality, pluralism and tolerance any valuable meaning in a moral sense, can the civic instruction that any republican-oriented state provides be but void of any actual moral value to render it meaningful? Could religious neutrality have any basis in principle, as opposed to utilitarian pragmatism, after it has been disassociated from religious freedom and respect for same? In view of the fact that it appears that religious neutrality is now functionally existing as if it had no ontological genealogy, has neutrality come to mistake its own identity

[84] According to the testimonies of the Romeike family offered in court (Decision of the Immigration Judge ("IJ Decision") at 6 (Dec. 16, 2009)) and to Glenn Beck on television (Beck, 2013), no such peaceful measures were taken.

[85] See Argyris and Schön (1974)

[86] If they were as serious about counteracting the development of "parallel societies as they claim, why would they allow the so-called "sharia law" police to remain unpunished? See "German court lets off 'Sharia police' patrol in Wuppertal," 2015.

as the progeny of functional atheism – i.e., the living of life as if there is no universal meaning-giving entity or being? It has been said "a house divided against itself cannot stand" (Lincoln, 1863)[87]. Could the same can be said for the republic(an) divided from its (his/her) moral head?

I have mentioned how the religious facet of the values comprising the civic religion advanced by some secular states has been observed. In promoting its own secular religion, have states exploited the vacuum its educational architects have created, by forbidding critical thinking about beliefs and values in the name of tolerance?

Perhaps we need to look outside of the social sciences disciplines in order to find a notion of tolerance that will be more useful. If we can use mesh filters as an analogy for worldviews, or the tenets comprising them, we may understand that each mesh filter has a degree of tolerance determined by its fineness or coarseness.[88] In a similar vein, each worldview, in theory, can have its own degree of tolerance (along with its own "filter" design meant to specify the standards for the *types* of notions it measures for acceptance or rejection). By their very nature, the possible outcomes of running a given substance through a non-defective mesh filter are binary: the said substance is either rejected or accepted, and there is no middle category, assuming the substance is consistent in composition. The only remaining question is whether we deem what is left on either side of the filter desirable or undesirable with respect to our purpose(s).

Granted worldviews and the tenets of which they are comprised are often not as precise as mesh filters. Additionally, the degree of fineness varies depending on one's moral "genotype" – which I have described as a person's specific and meaningful combination, and organisation, of beliefs. Having said this, is it reasonable to mandate that we should all be made to rid ourselves of such filters altogether, or to disable them when we are outside our homes? And

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[87] Lincoln was apparently making an allusion to the passage found in Matthew 12:25 which has the following quotation: "Any kingdom divided against itself is laid waste; and any city or house divided against itself will not stand" (NASB).

[88] An example of the importance of the fineness of filtration capacity can be observed from the fact that the very distinction between bacteria and viruses has/had long been (widely) determined by whether the entity in question is adjudged to be filterable.

if the fineness or quality of the filter depends on the quality of our training in constructing such a filter, should such training be compromised in the interests of assimilating as individuals every sort of philosophical substance? Is a tolerance without measure any more useful than a mesh filter without a mesh?

Turning back to our discussion about tolerance, we can now see how the notion of recognition of legitimate difference is relevant to both. As mentioned, pluralism can be understood as "the idea that society legitimately contains diverse groups", to use the words of Strike (2003, p. 75). But even if a certain value, philosophy or conception of the good is legitimate on a civic level, this legitimacy creates no obligation to give philosophical credence to different opinions on a personal level after testing it through our worldview filters. As some have argued, the very aim of creating a liberal democracy and of decreeing religious neutrality is to allow such individual evaluation to happen freely within a non-discriminatory society.

In regards to home educators, it has been found that many of them are not seeking to shield their children from society and the pluralism of ideas, but rather to help them develop an identity before exposing them to this "legitimate" diversity. Essentially, they feel that there is a proper stage within one's development to be exposed to the diversity of ideas, as argued by Larry Delconte (*Delconte v. North Carolina*, 1985, cited in McClain (2014, p. 13), a homeschooling parent:

> Delconte explained his sociopsychological basis for home instruction in several ways: Sending children from the home at an early age signifies to them rejection by their parents. Young children are too susceptible to undesirable influences of both teachers and other students. Children should not be exposed to the community at large, either in or out of school, until they can have more of an effect on their environment than their environment can have on them.

I contend that it is somewhat unhelpful to talk about the importance of accepting differences in a context where children are too immature in their cognitive development to critically assess whether and how a given idea is even different from their own, presuming that they have even developed their own ideas. In fact, in many cases it is difficult to even articulate their own ideas in a meaningful way that would make training for future civic life valuable. Of

course, any answer to the question of whether a given educational curriculum is conducive to preparing someone for future civic life, must necessarily rest on what good civic life consists of. Reich (2002, p. 56) voices the following objection to home education:

> considered from the standpoint of democratic citizenship, the opportunity to customize education through homeschooling isn't an unadulterated good. Customizing education may permit schooling to be tailored for each individual student, but total customization also threatens to insulate students from exposure to diverse ideas and people and thereby to shield them from the vibrancy of a pluralistic democracy.

However, Arai (1999) has found that home educated children have a different understanding of citizenship and civic life; and the idea that they lack preparation for civic life is not founded on the evidence. If this is the case, then it is important to ask why given notions of civic virtues have been preferred over alternative views. If the state is taking the perfectionist role of teaching civic virtue, what are the standards by which they judge the virtues they promote? Are such standards biased against certain systems of belief? Does the state's endorsement, in practice as well as in theory, of their version of civic virtue tend to disenfranchise those who have vastly different notions of citizenship and civic life? Are there other elements in the curricula that also have the effect of disenfranchising certain belief systems? If a liberal democratic state is not supposed to promote any given establishment of religion, does this not have any bearing on whether the state and its subordinate governance polities should disenfranchise a given belief system by promoting values contradictory to the tenets that comprise these establishments[89]? It would seem to be inevitable that whenever a given set of values, civic or other, are promoted, there is a risk that not everyone feels they can agree with them – and that such values may be inherently intolerable to absolutist notions of morals based on some belief systems based on monotheism in particular.

As mentioned in section 2, some opponents of home education have expressed or implied their fear of parental indoctrination. Yet, it appears proba-

[89] or tenets that comprise an individual's own belief system

ble that it is for the very fact of the youth's impressionableness and lack of critical analytical capacity that state and church-state powers have historically sought to indoctrinate youth. One may contend that it is far easier to indoctrinate when the underlying historical and ontological reasons for holding a certain belief are not mentioned. In the case of republican secularism, proponents have concurred with their opponents that the ontological roots that the liberal-pluralists say would lend it moral value have been severed. Thus there is a higher risk for indoctrination when it comes to republican ideals, since one can justify their failure to justify these ideals by deeming them irrelevant. Hence, to put it simply, children must all go along in order to get along. Getting along, i.e., civic integration, has been elevated to the rank of the be-all and end-all, and the ones who dictate the conditions of such integration are ones that possess the political muscle to do so.

Is the type of tolerance most needed in our republican sanctuaries that of enduring a value-less and meaning-less existence in a society being stripped of the capacity and resolve to make decisive moral judgements based on any absolutes? Such a tolerance can only impugn and repudiate tolerance itself, which by nature necessitates a measure for same, and a proportionate recognition that the measures often vary by individual as much as by religion.

7.7 A summary of the aims, rationale and concepts explored in this paper

Now I will comment on some of the methodological aspects of this study while emphasising some areas that warrant more reflection in light of this study. In doing so, I intend to assess whether the study, in its design, could be deemed efficacious in enhancing our understanding of the issues pertaining to home education as an instance of a pedagogical approach warranting state protection and recognition for the fact that it is preferred in order to best implement a given conception of the good.

Based on the corpus of literature on home education in places such as the USA, Germany, and Canada, it appears that the majority of those who choose to

educate their children at home do so out of what is commonly considered ideological reasons, while the remainder have been said to do so for primarily pedagogical reasons. However, as I mentioned, Rothermel (2003) claims that studies where such an interpretation is made seem to be somewhat biased by presuppositions prior to the study that are confirmed in a somewhat self-fulfilling way. While Rothermel mentions different reasons, it appears there are other good reasons to claim this is so, as it appears that in many of the studies, the theoretical frameworks are determined in a rather stereotypical fashion and the data seems to only confirm such stereotypes, especially in cases where researchers lacking knowledge or appreciation for such ideologies that actually motivate home educators. It would appear that there is another way to interpret the data. We may presume that the vast majority of pedagogical approaches and curricula have some underlying conception of the good, or at least the values that would constitute such a comprehensive conception, that is implicitly or explicitly promoted by teaching while employing the chosen pedagogical approach.

As noted by Spiegler, homes educators in Germany largely have ideological and pedagogical motivations similar to their US counterparts, but have an additional political one of engaging in civil disobedience in an effort to change what they perceive to be unjust laws banning it. And as civil disobedience is done for reasons of conscience, I decided that it would be informative to analyse how home education issues can be framed by employing some frames used in socio-political discourse that elucidate the aims and means of liberal democracy and secularism. This study has identified several concepts that can be used to study cases involving home education which pertain to pluralism, moral diversity, religious neutrality and what it entails in practice, and (equal) respect for freedom of religion and conscience.

One of the key concepts that is useful in our discussion is that every belief, regardless of whether it is provably religious, is nevertheless a legitimate conception of the good that merits consideration for accommodation or exemption from compulsory activities that force one to betray their identity by coercing

one to violate one's conscience and moral identity. Though not without opposition, it has been stated by some proponents of the liberal-pluralist conception of secularism that if a particular belief is an essential part of one's moral identity, it warrants accommodation or derogation of, or exemption from, laws applied generally. Moral identity is an important consideration, especially in light of the fact that even if such a law is not discriminatory on the face of it, it can be unfair for members of minority groups who would be disadvantaged or otherwise made to suffer detrimental effects as a result of the law.

Having identified and refined the frameworks most useful in understanding how the home education debate can be framed in terms of the normative aims and behaviour of secular states, I proceeded to analyse a specific case: that of a home educating family that faced so much persecution in Germany that they sought political asylum in the USA. The perceived benefits of performing such a study were presumed to include the following:

- As a researcher, I could illustrate, by example, how matters pertaining to freedom of conscience and a particular conception of the good based on religious convictions were instrumental in the parents' decision to educate their children amid growing political pressure, loss of child custody and the threat of property confiscation which have all been reported in the press.
- By relying primarily on court documents, a researcher could have greater assurance about the information contained therein, as it is largely composed of testimony given under oath in a court of law where the veracity of one's statements is promoted by the punitive actions that can be imposed when one fails to provide true testimony.
- Analysis of an actual case could help us better understand the socio-political theories pertaining to religious tolerance and pluralism and how home education issues relate to them so that we could further develop the theories themselves by being able to question whether our assumptions hold true – and adopting new assumptions or theories in the process whenever called for.

By studying home education, an ever-growing phenomenon worldwide, by using these lenses often employed by those interested in pluralism and multiculturalism, those in administrative positions within various educational settings may be able to make decisions that have a firmer foundation in ethical principle while appreciative of the legal and historical heritage of our respective nations' legislative and judicial forbears. It was with hope of realizing the above benefits that the author proposed to analyse the court documents pertaining to particular home educating families and perform a series of analyses employing them.

7.8 Challenges for further research

The findings from this study may yield several valuable insights that could be used for future research. Here are some themes that could be explored in more detail:

1) How can the statutes pertaining to home education be understood in light of the ontological and epistemological aspects of rights, as discussed in the peer-reviewed and other published literature? For instance, why should anyone suppose that a right to education equates to a compulsion to accept one provided by the state? Nickel (1993, p. 78) contends:

> one needs to distinguish between a claim-to some freedom or benefit and a claim-against some agent to act so as to make available that freedom or benefit. Joel Feinberg viewed a justified right as the union of a justified claim-to and a justified claim-against."[90] That is, a successful justification of a person's right to X requires (1) justifying that person's claim-to X, and (2) justifying a claim-against some addressee to act in ways that will make X available to that person.

Have the rights that were supposed to have been inalienably ours by

[90] [footnote 5 (Nickel, 1993, p. 78) reads:] "Joel Feinberg, Social Philosophy (Englewood Cliffs, N.J.: Prentice Hall, 1973), 59. See the discussion and development of this distinction in Rex Martin and James W. Nickel, "Recent Work on the Concept of Rights," American Philosophical Quarterly 17 (1980): pp. 165-180."

mere virtue of being members of the human species become something to be charitably[91] (or uncharitably) administered by the state under the terms dictated by the state? Are states behaving in such a manner that they can be construed as going further away from the idea that it is the people who decided to vest power in the state only insofar as they sought to protect themselves from transgressions against their liberties? How can these same liberties we inherently possess have morphed into the sorts of creatures that seem to undermine the ones who they were designed to serve -- by dictating that we are forced to accept what this liberty guarantees -- from one (the state) who has assumed the exclusive right[92] to provide it? Why even assume that the education to which a child is presumed to have a right can be strictly defined in such a way that states are the ones who dictate how it ought to be implemented?

2) How can our understanding of the value of homeschooling be altered by framing the discussion through the so-called *capability/capabilities approach* proposed by Sen and developed further by Nussbaum and

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[91] as something akin to charity

[92] According to the European Court of Human Rights ("*Konrad v. Germany*, App. No. 35504/03, 8 (European Court of Human Rights Sep. 11, 2006)," pp. 2–3):

> On 18 June 2002 the Baden-Württemberg Administrative Court of Appeal dismissed an appeal by the applicants. It found that, even though the applicant parents' right to educate their children included religious education, they were not exclusively entitled under the Basic Law to educate their children. The State's constitutional obligation to provide the children with an education was on an equal footing with the parents' right.

It seems that the European Court of Human Rights is confusing a right, or entitlement, with an obligation. A human right one possesses by natural right can only generate an *obligation* for someone to provide it, not an "exclusive entitlement" for the provider, or any entitlement at all. There does not appear to be any warrant to construe a parents' exercising their "prior right to choose the kind of education their children shall receive" -- the choice which they are guaranteed under the Universal Declaration of Human Rights (United Nations General Assembly, 1948, Article 26, clause 3) -- with the implication that they have an "exclusive entitlement" which in fact they never claimed. This appears to be an instance of what is known in logic as "poisoning the well": making the opponent's position more extreme and proceeding to attack this position rather than the position actually held by the opponent. Of course, if the parent is in a position to provide an education that is more in line with the "kind of education," in terms of values, worldview, etc., that the state is neither willing or capable of providing, then they are warranted in providing it without interference from the state. But regardless of whether this position is defensible, the state has seemingly misrepresented the position of the parents who have invoked international human rights treaties in order to claim protection. In their failure to directly address these claims, they have resorted to a sort of red herring argument along with the other fallacious argumentation mentioned by talking about exclusive entitlements where no one has made such a claim.

others (cf. Alexander, 2004; Skerker, 2004; Walker & Unterhalter, 2007)?

3) How can theological notions such as creation, *imago dei*, divinely ordained stewardship, and *shalom* enhance the discussion about the moral justification for home education? By employing such concepts, can one counter the individualistic notions of rights which are often cited in order to pit a child's rights against those of the parents? Can such theological notions offer a grounding and a new understanding of rights and dignity that would help us to gain new insights about the ethical and moral issues pertaining to homeschooling (McClain, 2014; cf. Wolterstorff, 2008, 2012)?
4) Could the frameworks developed in this work be used to help devise a sort of assessment tool that could be implemented to determine the degree to which a given belief has an essential role in forming or maintaining one's moral identity (cf. van der Walt, 2014)?
5) It would appear that both van Galen's and Spiegler's observations are related to themes related to self-determination and self-determination theory (SDT) explored by Deci and Ryan (Deci & Ryan, 1985) and others who have found that intrinsic motivation is enhanced when a learner's autonomy is promoted and they are self-determined in regards to their learning objectives. What could I expect to find if I were to analyse home education through the framework of self-determination theory (SDT) (cf. Deci & Ryan, 1985; Wehmeyer, Abery, Mithaug, & Stancliffe, 2003)?
6) How have various governments that have enacted laws mandating public school attendance treated requests for religious exemptions from public education? For states that either never enacted such laws or abolished them, what were the stated justifications for abolishing them?

Hopefully, through examining a movement that raises questions about

several of the prevalent "plausibility structures"[93] (Berger, 1967, 1979) pertaining to religious neutrality, tolerance, and the moral ends of secularism, educational leaders would find it worthwhile to find a more solid basis for their basic normative assumptions regarding education and its roles within the civic and social context, and the ways that educational leadership decisions promote the welfare of learners. In some cases, it may be necessary for educational leaders to confront their own biases in regards to certain conceptions of the good, value systems and worldviews in order to make their decisions less partial and more impervious to influence by the state authorities and their own interests, which may sometimes come into conflict with the values of learners and their families.

This paper and the ones proposed for the future form a greater project that may be fruitful for educational and political leaders who wish to better understand the people under their guidance, and to offer them the respect and appreciation due them regardless of differences of values and worldview. By better understanding the reasons families make important educational decisions, all parties can only benefit, along with education as a whole. If "the unexamined life is not worth living"[94], the lives of educational leaders, who are tasked with one of the most important roles within our societies, should be ones characterised by contemplation about ethical principles that need to be considered when they are faced with the task of finding solutions to moral dilemmas. Such contemplation can be assisted by the sort of framing I have sought to do here. Hopefully, our collective efforts at understanding the problem in a more meaningful way would ensure that the decisions made in such situations are ethically sound, coherent, and morally defensible to anyone who might challenge them.

I would like to finish with a quote by another homeschooling researcher named McClain (2014, pp. 25–26) as they eloquently express my own aims and

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[93] A plausibility structure refers to a structure of thought that is taken for granted as true throughout a given culture. Any dissent or resistance to such a structure is commonly dismissed out of hand as sheer nonsense.

[94] (Ancient Greek: ὁ ... ἀνεξέταστος βίος οὐ βιωτὸς ἀνθρώπῳ), a quote attributed to Plato at his trial (Plato, ., & In Burnet, J. (1924). *Plato's Euthyphro, Apology of Socrates and Crito*. Oxford: The Clarendon Press.).

values:

> I want to balance the cause of homeschoolers with the cause of advocates of schools, especially those individuals who identify as educators, who are devoted to helping children learn and so associate with others to form schools. I do not believe these two causes are fundamentally at odds. Rather, I believe they are complementary. I believe both causes can mutually support each other. I believe justice requires that the inherent value in each other's practices, in the practice of parent-directed education in the home and in the practice of schooling, be recognized. I believe they can co-exist and complement each other because I have been captivated by hope. My hope is perhaps best captured in the Judaic concept of *Shalom*. Shalom has been translated into English as *peace* or *flourishing*, but both of these words fail to capture its sense of the *potential for mutual beneficial cooperation*. Shalom holds forth the hope that two might work together for the good of each. Two people, with very different needs and goals, need not consider themselves adversaries. Rather, they have reason to hope that there might be a way, a path, by which they both will experience well-being; they both may improve upon their states. Philosophically, shalom can be described as the potential that diversity and unity are compatible, that individuality and universality need not be in conflict. The hope of Shalom is that there exists a way for each to serve the needs of the other, thereby allowing a universal good to be achieved while maintaining individuality. The end result is that the good performed by each [complements] the good experienced by each. In this way, universality and individuality are fully present.

REFERENCES

Ahmed, F. (2010). The value of faith as a justification for the protection of religious freedom: A critique of a new fideistic account. *Religion, State and Society, 38*(2), 169–179. http://doi.org/10.1080/09637491003726687

Alexander, J. M. (2004). Capabilities, human rights and moral pluralism. *The International Journal of Human Rights, 8*(4), 451–469. http://doi.org/10.1080/1364298042000283585

Arai, A. B. (1999). Homeschooling and the redefinition of citizenship. *Education Policy Analysis Archives, 7*(27), 1–15. http://doi.org/http://dx.doi.org/10.14507/epaa.v7n27.1999

Argyris, C., & Schön, D. A. (1974). *Theory in practice: Increasing professional effectiveness*. Jossey-Bass.

Aschmutat, J. A. (2015). Verboten: Forbidden: Homeschooling in Germany and its conflict with international religious freedom. *Emory International Law Review*, (Student Comment-Elevation Draft), 1–33.

Avenarius, H., & Heckel, H. (2000). *Schulrechtskunde: Ein Handbuch für Praxis, Rechtsprechung und Wissenschaft*. Neuwied, Kriftel: Luchterhand.

Barry, B. (2001). *Culture and equality: An egalitarian critique of multiculturalism*. Cambridge: Polity.

Beck, G. L. (2013, April 18). TheBlaze. USA. Retrieved from http://www.theblaze.com/stories/2013/04/18/german-homeschooling-family-facing-deportation-speaks-out-on-theblaze-tv-this-is-home-for-me-now/

Becker, G. S. (1968). Crime and punishment: An economic approach. *Journal of Political Economy, 76*, 169–217.

Bellafonte, G. (2015, February 13). Refuse to vaccinate? Little religious ground to stand on. *New York Times*. Retrieved from http://www.nytimes.com/2015/02/15/nyregion/refuse-to-vaccinate-little-religious-ground-to-stand-on.html?_r=0

Berger, P. L. (1967). *Sacred canopy: Elements of a sociological theory of religion*. New York: Doubleday.

Berger, P. L. (1979). *The heretical imperative: Contemporary possibilities of religious affirmation*. Garden City: Doubleday.

Berlin, I. (1995). *Liberty: Incorporating "Four Essays on Liberty."* (H. Hardy, Ed.). Oxford: Oxford University Press.

Blok, H. (2003). Performance in home schooling: An argument against compulsory schooling in the Netherlands. *International Review of Education, 38*(2), 35–37. http://doi.org/10.1023/B:REVI.0000018193.11161.42

Blok, H. (2004). Performance in home schooling: An argument against compulsory schooling in the Netherlands. *International Review of Education, 50*(1), 39–52.

Brief for the Respondent in Opposition, *Romeike v. Holder* at 1-27 134 S.Ct. 1491 (2014) (No. 13-471). Retrieved from

https://www.justice.gov/sites/default/files/osg/briefs/2013/01/01/2013-0471.resp.pdf

Brief of Petitioners-Appellants at 1-39, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. 2013). Retrieved from http://www.hslda.org/hs/international/Germany/RomeikeReplyBrief.pdf

Brief of Petitioners-Appellants at 1-90, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. Oct. 29, 2012). Retrieved from http://www.hslda.org/legal/cases/romeike/SKMBT_36113051409420.pdf

Brief of Petitioners-Appellants Petition for Rehearing En Banc at 1-17, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. May 28, 2013). Retrieved from http://www.hslda.org/docs/media/2013/Romeike_Rehearing_Brief_3-27-2013.pdf

Brief of Respondent-Appellee at 1-62, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. Jan. 4, 2013). Retrieved from http://www.hslda.org/hs/international/Germany/RomeikeDOJMeritsBrief.pdf

Broder, H. M. (2010, October 20). Germany's integration blinkers: What's so bad about parallel societies? *Spiegel Online*.

Burgess, K. (2013). Fewer homeschool parents cite faith as main motive. *Christian Century*, *130*(24), 16–17.

Burgess, K. T. (1986). The constitutionality of home education statutes. *UMKC Law Review*, (55), 69–71.

Carson, D. A. (2012). *The intolerance of tolerance*. Grand Rapids: Eerdmans.

Carter, S. L. (1997). Parents, religion, and schools: Reflections on Pierce, 70 years later. *Seton Hall Law Review*, *27*(4), 1194–1224. Retrieved from http://digitalcommons.law.yale.edu/fss_papers/2263/

Cavanagh, M. (2012). *War and morality: Citizens' rights and duties*. Jefferson: McFarland.

Chirac, J. (2003). *Le principe de laïcité dans la République* (speech at Palais de l'Elysée on 17 December 2003). Retrieved from http://www.lemonde.fr/societe/article_interactif/2007/05/15/les-discours-de-jacques-chirac_910136_3224_8.html

Clemens, J., & Wolff, M. (1999). *Movies to manage by: Lessons in leadership from great films*. Chicago: NTC/ Contemporary Publishing Group.

Clemente, D. F. (2006). *Academic achievement and college aptitude in homeschooled high school students compared to their private-schooled and public-schooled counterparts*. Regent University.

Cogan, N. H. (1997). *The complete Bill of Rights: The drafts, debates, sources, and origins*. Oxford, UK: Oxford University Press.

Colen, A. (2006, September 28). European human rights court upholds Nazi ban on homeschooling. *The Brussels Journal*. Retrieved from https://www.brusselsjournal.com/node/1389

Collom, E. (2005). The ins and outs of homeschooling: The determinants of parental motivations and student achievement. *Education and Urban Society*, *37*(3), 307–335. http://doi.org/10.1177/0013124504274190

Collom, E., & Mitchell, D. E. (2005). Home schooling as a social movement: Identifying the determinants of homeschoolers' perceptions. *Sociological Spectrum, 25*(3), 273–305. http://doi.org/10.1080/027321790518807

Connor, W. (1972). Nation-building or nation-destroying? *World Politics, 24*(3), 319–355. http://doi.org/10.1017/S0043887100009138

Conway, J. S. (1968). *The Nazi persecution of the churches, 1933-1945*. Vancouver: Regent College.

Cookie cutter kids and state sponsored kidnappings. (2010, January 4). *Skandinav I Florida*. Retrieved from http://www.skandinaviflorida.com/web/sif.nsf/d6plinks/JEIE-7ZDKVV

Cooper, B. S. (2009). Homeschooling. In *Encyclopedia of the social and cultural foundations of education, vol. 1-3* (pp. 422–424). Thousand Oaks: SAGE.

Cornelissen, G. (2012). Belief-based exemptions: Are religious beliefs special? *Ratio Juris, 25*(1), 85–109. http://doi.org/10.1111/j.1467-9337.2011.00504.x

Crowder, G. (2002). Two value-pluralist arguments for liberalism. *Australian Journal of Political Science, 37*(3), 457–473. http://doi.org/10.1080/103611402100002635

Crowder, G. (2015). Value pluralism, diversity and liberalism. *Ethical Theory and Moral Practice, 18*(3), 549–564. http://doi.org/10.1007/s10677-014-9539-3

Daskalovski, Z. (2002). Neutrality, liberal nation building and minority cultural rights. *Critical Review of International Social and Political Philosophy (CRISPP), 5*(3), 27–50. http://doi.org/10.1080/13698230410001702642

Debray, R. (1991). *Cours de médiologie générale*. Paris: Gallimard.

Deci, E. L., & Ryan, R. M. (1985). *Intrinsic motivation and self-determination in human behavior*. New York: Springer. http://doi.org/10.1007/978-1-4899-2271-7

Decision of the Immigration Judge ("IJ Decision") at 1-19 (Jan. 26, 2010). Retrieved from http://www.hslda.org/hs/international/Germany/Romeike_Official_Decision_Transcript_1-26-10.pdf

Decision of the Immigration Judge ("IJ Decision") at 1-22 (Dec. 16, 2009). Retrieved from http://www.hslda.org/hs/international/Germany/RomeikeBrief.pdf

DeGroff, E. A. (2009). Parental rights and public school curricula: Revisiting Mozert after 20 years. *Journal of Law and Education, 38*(1), 83–133. Retrieved from http://search.proquest.com.ezproxy.jyu.fi/docview/200983929/fulltextPDF/55DD9303178444F7PQ/1?accountid=11774

Dojan v. Germany, Fifth Section Decision as to the Admissibility of Application no. 319/08 (European Court of Human Rights September 13, 2011). (n.d.). Retrieved from http://www.menschenrechte.ac.at/orig/11_5/Dojan.pdf

doublespeak. (n.d.). In *Collins English Dictionary - Complete & Unabridged 10th Edition*. Collins. Retrieved from http://www.dictionary.com/browse/doublespeak

Dworkin, R. (1985). *Liberalism*. Cambridge, MA.

Dwyer, J. G. (1994). Parents' religion and children's welfare: Debunking the doctrine of parents' rights. *William and Mary Law Review, 82*(6), 1371–1447.

Ehrman, B. D. (2003). *Lost Christianities: The battles for Scripture and the faiths we never knew*. Oxford, UK: Oxford University Press.

English, F. W. (2008). *The art of educational leadership: Balancing performance and accountability*. Thousand Oaks, California: SAGE Publications.

Evans, C. (2008). Introduction. In C. Evans, Z. Robinson, & P. Cane (Eds.), *Law and Religion in Theoretical and Historical Context* (pp. 1–15). Cambridge, UK: Cambridge University Press.

Ferrari, S. (2010). Civil religion: Models and perspectives. *The George Washington International Law Review*, *41*(4), 749. Retrieved from https://www.questia.com/library/journal/1P3-2329935781/civil-religions-models-and-perspectives

Four years in prison for homeschooling?: Wunderlichs fined and warned of prison sentence. (2015, May 1). *Home School Legal Defense Association*. Retrieved from http://www.hslda.org/hs/international/Germany/201505010.asp

Francis, E. K. (1968). The ethnic factor in nation-building. *Social Forces*, *46*(3), 338–346.

Gaither, M. (2009). Homeschooling in the USA: Past, present and future. *Theory and Research in Education*, *7*(3), 331–346. http://doi.org/10.1177/1477878509343741

Galston, W. A. (2009). Moral pluralism and liberal democracy: Isaiah Berlin's heterodox liberalism. *The Review of Politics*, *71*(1), 85–99. http://doi.org/10.1017/S0034670509000072

Garvey, J. H. (1981). Freedom and equality in the religion clauses. *The Supreme Court Review*, 193–221.

Gedicks, F. M. (1998). An unfirm foundation: The regrettable indefensibility of religious exemptions. *University of Arkansas at Little Rock Law Review*, *20*(3), 555–574.

German court lets off "Sharia police" patrol in Wuppertal. (2015, December 10). *BBC News*. Retrieved from http://www.bbc.com/news/world-europe-35059488

German justice failures: Paving the way for a Muslim parallel society. (2007, March 29). *Der Spiegel*. Retrieved from http://www.spiegel.de/international/germany/german-justice-failures-paving-the-way-for-a-muslim-parallel-society-a-474629.html

Grabenstein, J. D. (2013). What the World's religions teach, applied to vaccines and immune globulins. *Vaccine*, *31*(16), 2011–2023. http://doi.org/10.1016/j.vaccine.2013.02.026

Green, C. L., & Hoover-Dempsey, K. V. (2007). Why do parents homeschool? A systematic examination of parental involvement. *Education and Urban Society*, *39*(2), 264–285.

Greenawalt, K. (2006). *Religion and the Constitution: Free exercise and fairness* (Vol. 1). Princeton: Princeton University Press.

Guzina, D. (2000). Nation-building vs. minority-destroying: Majority-minority relations in the post-socialist Serbia. *Southeast European Politics*, *1*(1), 25–40.

Habermalz, W. (2001). Geldbuße und Schulzwang – die andere Seite der Schulpflicht. *Recht Der Jugend Und Des Bildungswesens*, *49*(2), 218–224.

Hafen, B. C. (1983). The constitutional status of marriage, kinship, and sexual privacy: Balancing the individual and social interests. *Michigan Law Review*, *81*(3), 463–574. http://doi.org/10.2307/1288509

Harding, T. J. A. (2011). *A study of parents' conceptions of their roles as home educators of their children*. Retrieved from http://eprints.qut.edu.au/40931/1/Terrence_Harding_Thesis.pdf

Herrlitz, H.-G., Hopf, W., Titze, H., & Cloer, E. (1998). *Deutsche Schulgeschichte von 1800 bis zur Gegenwart: Eine Einführung*. Weinheim, München: Juventa.

Hiscott, W. (2005). "Parallel societies" – A neologism gone bad. *Financial Times*, (July).

Hofstede, G. (2005). Forward. In *Leadership in a diverse and multicultural environment: Developing awareness, knowledge, and skills* (pp. ix–x). Thousand Oaks, California: Sage Publications.

Howe, K. R. (2009). Isolating science from the humanities: The third dogma of educational research. *Qualitative Inquiry*, *15*(4), 766–784. http://doi.org/10.1177/1077800408318302

Isenberg, E. J. (2007). What have we learned about homeschooling? *Peabody Journal of Education*, *82*(2–3), 387–409. http://doi.org/10.1080/01619560701312996

Jing, T., Sasaki, M., & Li, P. (2006). Nation-building and ethnicity. In *Social change in the age of gobalization* (pp. 251–260). Leiden: Koninklijki Brill NV. Retrieved from https://www.case.edu/affil/tibet/moreTibetInfo/documents/Nation-buildingandEthnicity2.pdf

Jolly, J. L., Matthews, M. S., & Nester, J. (2013). Homeschooling the gifted: A parent's perspective. *Gifted Child Quarterly*, *57*(2), 121–134. http://doi.org/10.1177/0016986212469999

Jupp, J. C. (2001). The KO Grande Valley: Border crossing diversity and rethinking categorical language. *Multicultural Review*, *10*(2), 3441.

Kekes, J. (1993). *The morality of pluralism*. Princeton, New Jersey: Princeton University Press.

Klugewicz, S. L., & Carraccio, C. L. (1999). Home schooled children: A pediatric perspective. *Clinical Pediatrics*, *38*(7), 407–11. http://doi.org/10.1177/000992289903800705

Knowles, J. G., Marlow, S. E., & Muchmore, J. A. (1992). From pedagogy to ideology: Origins and phases of home education in the United States, 1970-1990. *American Journal of Education*, *100*(2), 195–235. http://doi.org/10.2307/1085568

Kohler, H. (1998). Parents as partners in schooling in Germany: The urgency of fundamental dialogue. *Childhood Education*, *74*(6), 372–374.

Konrad v. Germany, App. No. 35504/03, 8 (European Court of Human Rights Sep. 11, 2006). (n.d.). Retrieved from http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-76925&filename=001-76925.pdf

Krule, M. (2015, February 5). Why is there a religious exemption for vaccinations? Almost no religions object to them. *Slate.com*. Retrieved from http://www.slate.com/articles/news_and_politics/politics/2016/08/gop_denunciations_of_trump_are_soft_and_mealy_mouthed.html

Kunzman, R. (2009). *Write these laws on your children: Inside the world of conservative Christian homeschooling*. Retrieved from http://books.google.com/books?id=bdtbjIWyCMkC

Kunzman, R., & Gaither, M. (2013). Homeschooling: A comprehensive survey of the research. *Other Education: The Journal of Educational Alternatives*, *2*(1), 4–59. Retrieved from http://www.othereducation.org/index.php/OE/article/view/10

Langlois, L. (2011). *The anatomy of ethical leadership*. Edmonton: AU Press, Athabasca University.

Laycock, D. (1996). Religious liberty as liberty. *Journal of Contemporary Legal Issues*, *7*, 313. Retrieved from http://heinonline.org/HOL/LandingPage?handle=hein.journals/contli7&div=19&id=&page=

Lumby, J., & Coleman, M. (2007). *Leadership and diversity: Challenging theory and practice in education*. London: SAGE. http://doi.org/10.1017/CBO9781107415324.004

Macklem, T. (2000). Faith as a secular value. *McGill Law Journal*, *45*, 1–63.

Maclure, J., & Taylor, C. (2011). *Secularism and freedom of conscience*. (J. M. Todd, Trans.). Cambridge, MA: Harvard University Press.

Matikainen, P., & Puolimatka, T. (2014). The concept of well-being and the educational implications of Nicholas Wolterstorff's theory of justice. In H. L. T. Heikkinen, J. Moate, & Marja-Kristiina Lerkkanen (Eds.), *Enabling Education: Proceedings of the annual conference of Finnish Educational Research Association(FERA) 2013* (pp. 69–87). Jyväskylä, Finland: University Printing House, Jyväskylä.

Matrician, M. K. (2011). Germany homeschoolers as "particular social group": Evaluation under current U.S. asylum jurisprudence. *Boston College International and Comparative Law Review, 34*(2), 439–462.

Mayberry, M. (1988). Characteristics and attitudes of families who home school. *Education and Urban Society*, *21*(1), 32.

Mayberry, M. (1989). Home-based education in the United States: Demographics, motivations and educational implications. *Educational Review*, *41*(2), 171–180.

Mayberry, M., & Knowles, J. G. (1989). Family unity objectives of parents who teach their children: Ideological and pedagogical orientations to home schooling. *Urban Review, 21*(4), 209–225.

Mayberry, M., Knowles, J. G., Ray, B. D., & Marlow, S. E. (1995). *Home schooling: Parents as educators*. Thousand Oaks: Corwin.

McClain, K. R. (2014). *Homeschool and school: An inquiry into the sphere sovereignty of educational entities*. University of North Carolina at Greensboro.

McCollum v. Board of Educ., 333 U.S. 203, 216 (1948).

McConnell, M. W. (2000). The problem of singling out religion. *DePaul Law Review*, *50*, 1–48.

Milot, M. (2002). *Laïcité dans le Nouveau Monde: Le cas du Québec*. Turnhout, Belgium: Brepols.

Montgomery, J. W. (1986). *Human rights and human dignity*. Grand Rapids, Michigan: Zondervan.

Mors, A. (1986). *"Die Entwicklung der Schulpflicht in Deutschland", Inaugural-Dissertation an der Juristischen Fakultät der Eberhard-Karls-Universität Tübingen*. Eberhard Karls Universität Tübingen.

Mouvement Laïque Québécois, report presented to the Commission de consultation sur les pratiques d'accommodement reliées aux différences culturelles, October 16, 2007. (n.d.).

Muñoz, V. (2007). *UN Human Rights Council: Addendum to the Report of the Special Rapporteur on the Right to Education, Mission to Germany (13-21 February 2006)* (Vol. A/HRC/4/29). Retrieved from http://www.refworld.org/docid/4623826d2.html

Murphy, J. (2012). *Homeschooling in America: Capturing and assessing the movement*. Thousand Oaks: Corwin.

Murphy, J. (2014). The social and educational outcomes of homeschooling. *Sociological Spectrum*, *34*(3), 244–272. http://doi.org/10.1080/02732173.2014.895640

Nave, K.-H. (1980). *Die allgemeine deutsche Grundschule. Ideengeschichtliche Grundlegung und Verwirklichung in der Weimarer Republik*. Frankfurt am Main: Arbeitskreis Grundschule e.V.

Nazworth, N. (2013, August 30). Police raid home, seize children, of homeschooling family in Germany. *Christian Post*. Retrieved from http://www.christianpost.com/news/police-raid-home-seize-children-of-homeschooling-family-in-germany-103435/

Nelsen, M. B., Pawlas, G. E., & Mintz, J. (1998). Beyond the stereotypes: Home schooling as a legitimate educational alternative. *High School Magazine*, *6*(2), 32–37.

Nickel, J. W. (1993). How human rights generate duties to protect and provide. *Human Rights Quarterly*, *15*(1), 77–86. http://doi.org/10.2307/762652

Noddings, N. (2006). *Critical lessons: What our schools might teach but do not*. Cambridge, UK: Cambridge University Press.

Pavel, C. E. (2007). Pluralism and the moral grounds of liberal theory. *Social Theory and Practice*, *33*(2), 199–221.

Peña-Ruiz, H. (2005). Dieu et Marianne: Philosophie de la laïcité. Paris: Presses universitaires de France.

Perry, M. J. (2014). Freedom of conscience as religious and moral freedom. *Journal of Law and Religion*, *29*(1), 124–141. http://doi.org/10.1017/jlr.2013.1

Petition for Writ of Certiorari, *Romeike v. Holder* at 1-295 134 S.Ct. 1491 (2014) (No. 13-471). Retrieved from http://www.hslda.org/hs/international/Germany/Jones.Romeike.ret.pet.combined.PROOF.2.pdf

Pettit, P. (2011). The instability of freedom as noninterference: The case of Isaiah Berlin. *Ethics*, *121*(4), 693–716.

Planty, M., Hussar, W., Snyder, T., Kena, G., KewalRamani, A., Kemp, J., … Nachazel, T. (2009). *The condition of education 2009 (NCES 2009-081)*. Washington, DC. Retrieved from http://nces.ed.gov/pubs2009/2009081.pdf

Rawls, J. (1993). *Political liberalism*. New York: Columbia Univ. Press.

Rawls, J. (1999). *A theory of justice* (Revised). Cambridge, MA: The Belknap Press, Harvard University Press.

Ray, B. D. (2000). Home schooling: The ameliorator of negative influences on learning? *Peabody Journal of Education*, *75*(1), 71–106. http://doi.org/10.1207/S15327930PJE751&2_6

Ray, B. D. (2016). Research facts on homeschooling. Retrieved from http://www.nheri.org/research/research-facts-on-homeschooling.html

Reich, R. (2002). The civic perils of homeschooling. *Educational Leadership*, (April), 56–59. Retrieved from http://eric.ed.gov/ERICWebPortal/recordDetail?accno=EJ644892%5Cnpapers2://publication/uuid/1484D1A4-AB89-4C78-9E46-746A03599C1D

religion. (n.d.). Retrieved from http://www.dictionary.com/browse/religion

Reply Brief in Support of Petition for Writ of Certiorari, *Romeike v. Holder* at 1-19 134 S.Ct. 1491 (2014) (No. 13-471). Retrieved from http://www.hslda.org/legal/cases/romeike/13-471.ret.rb.final.pdf

Response to Petition for Rehearing En Banc at 1-13, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. June 26, 2013). Retrieved from http://www.hslda.org/docs/media/2013/DOJ_response_7-2-2013.pdf

Rinio, C. (2001). Die Verletzung der Schulpflicht durch die Erziehungsberechtigten als Straftat und als Ordnungswidrigkeit. *Zeitschrift Für Jugendrecht*, *88*(6), 221–237.

Robeyns, I. (2006). Three models of education: Rights, capabilities and human capital. *Theory and Research in Education*, *4*(1), 69–84. http://doi.org/10.1177/1477878506

Romanowski, M. H. (2001). Common arguments about the strengths and limitations of home schooling. *The Clearing House*. http://doi.org/10.1080/00098650109599241

Romanowski, M. H. (2006). Revisiting the common myths about homeschooling. *The Clearing House: A Journal of Educational Strategies, Issues, and Ideas*, *79*(3), 125–129. http://doi.org/10.3200/TCHS.79.3.125-129

Romeike v. Holder, 718 F.3d 528 (6th Cir. 2013). Retrieved from http://www.hslda.org/legal/cases/romeike/SKMBT_36113051409420.pdf

Roper, D. (1977). Parents as the natural enemy of the school system. *The Phi Delta Kappan*, *59*(4), 239–242.

Rothermel, P. J. (2003). Can we classify motives for home education? *Evaluation & Research in Education*, *17*(2–3), 74–89. http://doi.org/10.1080/09500790308668293

Rothermel, P. J. (2004). Home-education: Comparison of home- and school-educated children on PIPS baseline assessments. *Journal of Early Childhood Research*, *2*(3), 273–299. http://doi.org/10.1177/1476718X04046650

Rothermel, P. J. (2012). Home educated children's psychological well being. *Estudios Sobre Educacion*, *22*(22), 13–36.

Rothermel, P. J. (2015a). Home education: A desperately dangerous notion? In P. Rothermel (Ed.), *International perspectives on home education: Do we still need*

schools? (pp. 189–210). Hampshire: Palgrave Macmillan. http://doi.org/10.1057/9781137446855

Rothermel, P. J. (Ed.). (2015b). *International perspectives on home education: Do we still need schools?* Hampshire, England: Palgrave Macmillan. http://doi.org/10.1057/9781137446855

Rudner, L. M. (1999). Scholastic achievement and demographic characteristics of home school students in 1998. *Education Policy Analysis Archives*, *7*(8), 1–33.

Sandel, M. J. (1998). *Liberalism and the limits of justice* (2nd ed.). Cambridge: Cambridge University Press.

Sandstrom, A. (2015). *Nearly all states allow religious exemptions for vaccinations*. Retrieved from http://www.pewresearch.org/fact-tank/2015/07/16/nearly-all-states-allow-religious-exemptions-for-vaccinations/

Seago, J. (2012). A third reason to home school: Leadership development. *Home School Researcher*, *28*(1), 1–7.

Sim, D. C. (1998). *The gospel of Matthew and Christian Judaism: The history and social setting of the Matthean community*. Edinburgh: T. & T. Clark.

Sinagatullin, I. M. (2003). *Constructing multicultural education in a diverse society*. Lanham, MD: The Scarecrow Press.

Skerker, M. (2004). Nussbaum's Capabilities Approach and Religion. *Journal of Religion*, *84*(3), 379–409. Retrieved from http://search.ebscohost.com/login.aspx?direct=true&db=afh&AN=13991309&site=ehost-live

Spiegler, T. (2003). Home education in Germany: An overview of the contemporary situation. *Evaluation & Research in Education*, *17*(2–3), 179–190. http://doi.org/10.1080/09500790308668301

Spiegler, T. (2009). Why state sanctions fail to deter home education: An analysis of home education in Germany and its implications for home education policies. *Theory and Research in Education*, *7*(3), 297–309. http://doi.org/10.1177/1477878509343738

Spiegler, T. (2010). Parents' motives for home education: The influence of methodological design and social context. *International Electronic Journal of Elementary Education*, *3*(1).

Spiegler, T. (2015). Home education versus compulsory schooling in Germany: The contribution of Robert K. Merton's typology of adaptation to an understanding of the movement and the debate about its legitimacy. In P. Rothermel (Ed.), *International perspectives on home education: Do we still need schools?* Hampshire, England: Palgrave Macmillan. http://doi.org/10.1057/9781137446855

Spring, J. (2000). *The universal right to education: Justification, definition, and guidelines*. Mahwah, NJ: Lawrence Erlbaum.

Stevens, M. L. (2001). *Kingdom of children: Culture and controversy in the homeschooling movement*. Princeton: Princeton University Press.

Stoddard, J. D. (2010). The roles of epistemology and ideology in teachers' pedagogy with historical "media." *Teachers and Teaching*, *16*(1), 153–171.

Strike, K. A. (2003). Pluralism, personal identity, and freedom of conscience. In K. McDonough & W. Feinberg (Eds.), *Citizenship and education in liberal-democratic societies: Teaching for cosmopolitan values and collective identities* (pp. 75–95). Oxford: Oxford University Press.

Tallentyre, S. G. (1906). *The friends of Voltaire*.

Taylor, J. W. (1986). *Self-concept in home-schooling children*. Andrews University. Retrieved from http://digitalcommons.andrews.edu/cgi/viewcontent.cgi?article=1725&context=dissertations

The Dominic Johansson Case. (2009, October 20). *Skandinav I Florida*. Retrieved from http://www.skandinaviflorida.com/web/sif.nsf/d6plinks/jeie-7wzrh9

Thunder, D. (2009). Why value pluralism does not support the state's enforcement of liberal autonomy: A response to Crowder. *Political Theory*, *37*(1), 154–160. http://doi.org/10.1177/0090591708326656

United Nations General Assembly. *Universal declaration of human rights*, UN General Assembly resolution 217 A (III) of 10 December 1948 (1948). Retrieved from http://www.refworld.org/docid/3ae6b3712c.html

United Nations General Assembly. (1976). *International Covenant on Civil and Political Rights*, General Assembly res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. Retrieved from http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

Uwe Andreas Josef Romeike, et. al., No. A087 368 600 (BIA May 4, 2012). Falls Church, Virginia. Retrieved from http://www.hslda.org/hs/international/Germany/RomeikeBIAOpinion.pdf

van der Walt, J. L. (2014). *Measuring religious tolerance in education: Towards an instrument for measuring religious tolerance among educators and their students worldwide*. Retrieved from https://www.driestar-educatief.nl/medialibrary/Driestar/Engelse-website/Documenten/2014-VanderWalt-Measuring-religious-tolerance-in-education.pdf

van Galen, J. (1988). Ideology, curriculum, and pedagogy in home education. *Education and Urban Society*, *21*(1), 52–68.

van Galen, J., & Pitman, M. A. (1991). *Homeschooling: Political, historical, and pedagogical perspectives*. (J. van Galen & M. A. Pitman, Eds.)*Social and Policy Issues in Education: The University of Cincinnati Series*. Norwood, New Jersey: Ablex Publishing Corporation.

Villalba, C. M. (2009). Home-based education in Sweden: Local variations in forms of regulation. *Theory and Research in Education*, *7*(3), 277–296. http://doi.org/10.1177/1477878509343737

Viteritti, J. P. (1998). Blaine's wake: School choice, the First Amendment, and state constitutional law. *Harvard Journal of Law and Public Policy*, *21*, 657–665.

Walker, M., & Unterhalter, E. (Eds.). (2007). *Amartya Sen's Capability Approach and social justice in education*. New York: Palgrave Macmillan.

Wehmeyer, M. L., Abery, B. H., Mithaug, D. E., & Stancliffe, R. J. (2003). *Theory in self-determination: Foundations for educational practice*. Springfield, IL: Charles C Thomas.

Weinstock, D. M. (1997). The Graying of Berlin. *Critical Review*, *11*(4), 481–501. http://doi.org/10.1080/08913819708443472

Wolterstorff, N. (2008). *Justice: Rights and wrongs*. Princeton, NJ: Princeton University Press.

Wolterstorff, N. (2012). *Understanding liberal democracy*. (T. Cuneo, Ed.)*Essays in Political Philosophy*. Oxford: Oxford University Press.

Woodhouse, B. B. (1992). "Who owns the child?": Meyer and Pierce and the child as property. *William and Mary Law Review*, *33*(4), 995–1122.

Zimmerman, E. M. (2004). Defending the parental right to direct education: Meyer and Pierce as bulwarks against state indoctrination. *Regent University Law Review*, *17*, 311–353.

APPENDIX A

Descriptions of the court documents

1) Decision of the Immigration Judge ("IJ Decision") at 1-22 (Dec. 16, 2009).

This is a document containing the following heading and subheading: "Applicants for Asylum/Withholding"; and "Respondent's Pre-Hearing Brief in Support of Asylum or Withholding of Removal". This was the petition for political asylum that was submitted to the Immigration Court in Memphis, Tennessee. This document is dated December 16, 2009 and has been retrieved on March 1, 2016 from http://www.hslda.org/hs/international/Germany/RomeikeBrief.pdf

2) Decision of the Immigration Judge ("IJ Decision") at 1-19 (Jan. 26, 2010).

This is a document containing the following heading and subheading: "in Asylum Proceedings"; and "Oral Decision of the Immigration Judge". This document was also produced at the Immigration Court in Memphis, Tennessee. It is dated January 26, 2010 and was retrieved in on March 1, 2016 from http://www.hslda.org/hs/international/Germany/Romeike_Official_Decision_Transcript_1-26-10.pdf

3) *Uwe Andreas Josef Romeike, et. al.*, No. A087 368 600 (BIA May 4, 2012).

This is a document containing the following heading: "Decision of the Board of Immigration Appeals". This document originated from the Immigration Court in Falls Church, Virginia. It is dated May 4, 2012 and was retrieved on March 1, 2016 from http://www.hslda.org/hs/international/Germany/RomeikeBIAOpinion.pdf

United States Court of Appeals for The Sixth Circuit:

4) Brief of petitioners-appellants at 1-90, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. Oct. 29, 2012).

This is a document containing the following heading: "Brief of Appellants". It is dated October 29, 2012 and was retrieved on March 1,

2016 from http://www.hslda.org/hs/international/Germany/RomeikeMerits-Brief.pdf

5) Brief of respondent-appellee at 1-62, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. Jan. 4, 2013).

This is a document containing the following heading and subheading: "On Petition for Review from a Final Order of the Board of Immigration Appeals"; and "Brief for Respondent". It is dated January 4, 2013 and was retrieved on March 1, 2016 from http://www.hslda.org/hs/international/Germany/RomeikeDOJMeritsBrief.pdf

6) Brief of petitioners-appellants at 1-39, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. Feb. 5, 2013).

This is a document containing the following heading: "Reply Brief of Petitioners". It is dated February 5, 2013 and was retrieved on March 1, 2016 from http://www.hslda.org/hs/international/Germany/RomeikeReplyBrief.pdf

7) *Romeike v. Holder*, 718 F.3d 528 (6th Cir. 2013).

This is a document containing the following description and heading: " On Petition for Review of a Decision of the Board of Immigration Appeals. Nos. A807 368 600-606"; and "Opinion". It is dated May 14, 2013 and was retrieved on March 1, 2016 from http://www.hslda.org/legal/cases/romeike/SKMBT_36113051409420.pdf

8) Brief of petitioners-appellants petition for rehearing en banc at 1-17, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. May 28, 2013).

This is a document containing the following heading: "Petitioner's Petition for Rehearsing en Banc". It is dated May 28, 2013 and was retrieved on March 1, 2016 from http://www.hslda.org/docs/media/2013/Romeike_Rehearing_Brief_3-27-2013.pdf

9) Response to Petition for Rehearing En Banc at 1-13, *Uwe Andreas Josef Romeike, et. al v. Eric C. Holder*, No. 12-3641 (6th Cir. June 26, 2013).

This is a document containing the following heading and subheading: ”On Petitioner's Petition for Rehearsing en Banc”; and ”Response to Petition for Rehearsing En Banc”. It is dated June 26, 2013 and was retrieved on March 1, 2016 from http://www.hslda.org/docs/media/2013/DOJ_response_7-2-2013.pdf

10) Petition for writ of certiorari, *Romeike v. Holder* at 1-295 134 S. Ct. 1491 (2014) (No. 13-471).

This is a document containing the following headings: ”On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit”; ”Petition for Writ of Certiorari”. It is dated October 10, 2013 and was retrieved on March 1, 2016 from http://www.hslda.org/hs/international/Germany/Jones.Romeike.ret.pet.combined.PROOF.2.pdf

11) Brief for the respondent in opposition, *Romeike v. Holder* at 1-27 134 S. Ct. 1491 (2014) (No. 13-471).

This is a document containing the following heading and subheading: ”On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit”; and ”Brief for the Respondent in Opposition”. It is dated January 21, 2014 and was retrieved on March 1, 2016 from https://www.justice.gov/sites/default/files/osg/briefs/2013/01/01/2013-0471.resp.pdf

12) Reply brief in support of petition for writ of certiorari, *Romeike v. Holder* at 1-19 134 S. Ct. 1491 (2014) (No. 13-471).

This is a document containing the following heading and subheading: ”On petition for Writ of certiorari to the United States Court of Appeals for the Sixth Circuit”; and ”Reply Brief in Support of Petition for Writ of Certiorari”. It is dated January 29, 2014 and was retrieved on March 1, 2016 from http://www.hslda.org/legal/cases/romeike/13-471.ret.rb.final.pdf