



# Family and state in education: What role for parents' rights?

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## Parental rights in law and practice

The United Nations Declaration of Human Rights was ratified in 1948. Its Article 26 states in unequivocal terms that 'parents have a prior right to choose the kind of education that shall be given to their children'. Slightly earlier, in 1944, the British Parliament passed a landmark Education Act, section 76 of which stated that 'pupils (are) to be educated in accordance with the wishes of their parents'. As far as I know the 1944 Act has not been repealed in this respect, and the United Nations declaration still holds. What I want to do in this article is to examine the reasons why both documents are correct in placing parental rights in educational matters above those of the state. The reason for doing this now is that it is no longer clear that parental rights are recognised in practice in many places, nor is there any general understanding of why they should.

Did they ever matter? The cynic would no doubt say that, even in 1948, parents quoting article 26 in the USSR would have got short shrift. They may well have found their children, enmeshed in state schools and nurseries and pioneer palaces, denouncing them to their minders. By the end of the 1950s parents wishing to invoke Article 26 would have fared no better in Poland, Czechoslovakia, Hungary, East Germany, Romania, Albania, and in many other places, including, notably, China and Cuba. But one should not be too cynical about the rest of the world. In the Britain of the 1950s and 1960s, there was some flexibility in relation to religious schools. But parents who used the state system of education (some 93 per cent of them) who wished to exercise the right for choice of school under the 1944 Act would routinely meet massive obstacles placed in their way by the officials charged with allotting school places according to inflexible bureaucratic norms. The civil servants involved would often justify this by claiming that they knew better than parents how to fit pupils to schools and had a better understanding of what the public good required in terms of which schools should exist where.

Leaving the situation in the Eastern bloc before the fall of the Berlin Wall, we should note there are currently, in this country, disturbing signs that parental wishes may be being flouted in ways undreamed of back in the 1940s and 1950s. It is not just that parents in Britain still have extremely limited choice over which schools their children will go to, but more that within schools' doctrines and ideologies, which many parents would object to, are being promulgated and enforced through state directives and inspectorates. I say would object to here, because it is not always easy for parents nowadays to find out exactly what is being taught and advocated in their children's schools on such sensitive and disputed matters as sexuality, race and climate. This itself says something about the way some of those in charge of education, including some head teachers, view the rights of the parents of the pupils.

So why are parental rights in education important? The UN declaration talks about parents having rights over the education of 'their' children. Does this imply that the mere fact of propagating children gives the parents something akin to possession of children they bring into the world? Children do not belong to their parents as a car or a house might. Children

are living human beings, increasingly with minds of their own, moving towards autonomy and independence, which is part of what a civilized upbringing should be directed towards. Nevertheless, the intimate relationship between parents and their children means that parents are best placed to make certain decisions over the way their children should be reared and educated, and in this sense, parents have rights over and above any we may think belong to the state in this respect.

So, although I disagree with St Thomas Aquinas when he says that children ‘belong’ to their parents before they reach the age of free will, I do agree with the Thomistic view on parental rights, as expressed the landmark papal encyclical *Rerum Novarum* from 1891.<sup>1</sup> *Rerum Novarum* – ‘Of New Things’ – is an attempt by the Catholic Church to spell out what the new social order arising from industrialization should be, and what attitude should be taken to workers’ rights and the rise of socialism. In section 14 of the encyclical, parental rights are directly addressed: parental authority cannot be abolished or absorbed by the state, for parental authority has the same source as human life itself. A state setting aside the parent and setting up state supervision over the home and the family would act against natural justice. It is this view which I will expound and defend in what follows. I will show that it relies on general truths about human nature, rather than on anything peculiar to Catholic social teaching or dogma. Part of what is at issue here is the principle of subsidiarity, that is wherever possible devolving decision making to the smallest units in society, in this case the family. Referring here to the principle of subsidiarity may have a wider significance, as this principle, and indeed aspects of Catholic social teaching more generally, have from time to time been influential in the relevant policies of the European Union.

However, there have been societies in which a very different view of parental rights from the Thomistic one was taken, and there have been distinguished thinkers who have dismissed such rights entirely. We will now look at ancient Sparta and Plato, as paradigmatic examples of a society and a thinker in each case.

## Parental Rights in Sparta and in Plato

According to Plutarch in his biography of Lycurgus, the legislator credited with the development of ancient Sparta, Spartan children were held not to ‘belong’ to their fathers, but ‘to the state in common’.<sup>2</sup> They belonged to the state in the sense that boys and men were bred to fight for Sparta, while girls and women were to produce offspring for the purposes of fighting and propagating for the common good. Belonging to the state in common entailed that, on birth, a new-born child would be examined by tribal elders. If babies were flawed or deformed, they were left out on one of the surrounding mountains to die of exposure. At the age of seven, healthy boys were taken from their parents and placed in herds, as Plutarch called them, to be brutally trained and toughened up for military service under the control of sergeant-majorish figures called boy-herders. Girls were also

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<sup>1</sup> Thomas Aquinas, *Summa Theologiae*, IIa-IIae, X, 12. *Rerum Novarum* was issued by Pope Leo XIII in 1891, and sets out the Catholic Church’s teaching on social matters.

<sup>2</sup> Plutarch, *Greek Lives*, transl. R. Waterfield, Oxford: Oxford University Press, 2008, pp 9-41, esp pp 22-7.

trained in physical exercise, so as to develop their capacity to bear children healthily, and also in useful domestic pursuits. It is not necessary to go in further detail here, save to say that existence in Sparta was, as Plutarch remarks, tantamount to living in an armed camp. Everything in Sparta was subordinated to this, which explains why the ancient Spartans were such indomitable and courageous soldiers, feared throughout the Hellenic world and beyond.

If in ancient Sparta citizens belong to the state in common, this is even more dramatically the case in Plato's *The Republic*.<sup>3</sup> The Athenian Plato was in fact strongly influenced by what he knew and liked of Sparta in his picture of the ideal state. Like George Orwell in *1984*, Plato was not very interested in the proletarians, and what he recommends as far as education and upbringing are concerned is focused on the ruling elites, the guardians of the state and the actual rulers.

Because the lives of the ruling echelons of the ideal society are to be directed and devoted solely to the public good, Plato will remove from them everything which might encourage or permit any kind of self-interest as far as is possible, though interestingly, unlike Orwell, he does not seem sensitive to the way that sheer love of power can corrupt rulers as much as material wealth. However, he is very sensitive to the dangers and 'dissensions that arise among men from the possession of property, children and kin', which would no doubt include striving to give one's own children a better life and inheritance than those of others. Indeed, in later discussing disordered states, Plato inveighs about the way the rich pamper their offspring and make of them 'spoiled wantons'.<sup>4</sup> Whether this is entirely fair or not, in families there will inevitably be a tendency to favour one's children in aiding their ascent to status and position, amounting at times to nepotism.

Thus, to avoid the many abuses which Plato sees as arising from inequalities of wealth, often centred on one's family, the guardians in the *Republic* will have all their possessions in common. Their mode of life will be rigorously egalitarian. They will live entirely in common, including in their personal lives. Women will be on the same level as the men, and, as far as possible, equal in roles. As Plato sees families as giving people private, selfish and particular concerns and interests, drawing them away from the communistic way of life, there will be no families. Men and women will, of course, have to copulate so as to produce children, but this will be by means of communal breeding festivals to be held at set times according to lottery, after which the pairing couples will disperse. Children will be brought up in communal pens or crèches, taken by state officials from the mothers at birth, so that parents and children will not be able to recognise each other as such. In the communal nurseries and schools, children will then be given the type of education Plato thinks will fit them for guarding and ruling the state, though taking care to ensure that those who

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<sup>3</sup> Plato, *Republic*, transl. P. Shorey, in *Plato the Collected Dialogues*, Princeton; Princeton University Press, 1978, pp 575-843. The quotations here are from sections 454c to 465e.

<sup>4</sup> Plato, *Republic*, transl. P. Shorey, in *Plato the Collected Dialogues*, Princeton; Princeton University Press, 1978, pp 575-843. The quotations here is from section 556b.

advance to the higher stages of contemplative philosophy do not forget that they are to return to duties in the state.

What Plato is doing here is to build on those aspects of Spartan life which he finds attractive, and to push them to the limit. Plato's own attitude to what he calls Kallipolis, the beautiful city, is not altogether clear – did he really believe it to be beautiful, or was he proposing it as a dreadful warning to utopians? Whatever Plato's own position here, and most scholars have taken the Republic at face value, there is no doubt that many subsequent readers have found, and still do find, aspects of it appealing: its kibbutz-like equality, its armed readiness, its proto-feminism, its egalitarianism, and, perhaps most insidiously, its implied critique of the autonomy and privacy, even insularity, of the family. To see why Plato is wrong on this last point particularly, we cannot do better than turn to Plato's own pupil, Aristotle. In his *Nicomachean Ethics* and his *Politics*, Aristotle shows us a sense in which the family is both a natural institution and a beneficial one, generating affections, loyalties and virtues which utopian visionaries hostile to the family either wrongly dismiss or overlook completely.<sup>5</sup>

## Aristotle on the Family and the Household

Human beings, as Aristotle tells us, are naturally disposed to form couples, not only as animals do, for reproduction, but also 'for the various purposes of life', with each partner bringing particular goods to the union and fulfilling different functions. The children of such unions will naturally be loved by their parents, as being a part of themselves, while the children will love the parents as having originated from them. Because of the ties of blood, children will start life with a natural affection for their parents, and a disposition to obey. In this environment children will learn the habits of virtue, without which any moral or reflective ethical life is impossible. Aristotle strongly and correctly believes that in order to reason well about morality, you must already have dispositions to love and respect the good and be shamed by the bad, dispositions which are best nurtured in the family.<sup>6</sup> Crucial to the question of education is the fact that the bonds linking parents and children mean that parents will know their children and what suits them better than those outside the family, so 'private education has an advantage over public'. And the ties of blood, which exist between parents and children, will also extend to brothers, cousins, grandparents, grandchildren, and so on. Thus, the family engenders a small community, with links to the past and the future, ideally inculcating loyalty, virtue and love in a way that would not be possible in a larger, more impersonal and less naturally related setting.<sup>7</sup>

These considerations in the *Ethics* are resumed and developed in the *Politics*. If the union of man and woman is natural, as being required for propagation, other needs are fulfilled in the family, as we have seen, but to fulfil the needs and promote the success of single

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<sup>5</sup> Aristotle's *Nicomachean Ethics* and *Politics* are quoted in the World's Classics edition, transl. and ed Sir David Ross, (Oxford University Press, 1966) and the Penguin edition, transl. T.A. Sinclair and ed T.J. Saunders, (London: Penguin Books, 1981), respectively.

<sup>6</sup> See my paper 'Morality, Reason and Upbringing' Ratio, 33.2, June 2020, pp 106-16, in which I lay out and in the main defend Aristotle's views on the necessity for acquiring virtuous habits when young if one is to reason soundly on morality.

<sup>7</sup> See N Eth 1161b18-1162a29 and 11806b 1-10.



families, villages will be formed, and then, in order to deal with matters of justice, states. In this sense the state is natural and man is naturally a political animal. Aristotle develops this point by saying that there is a sense in which the state is prior to the individual, or indeed the family, who are not fully self-sufficient. In particular, it is only in a state, with laws and systems of justice and order beyond personal self-defence and revenge, that individuals and families can lead peaceful and productive lives.<sup>8</sup>

However, against Plato, that does not mean that property and marriage should be abolished. Ownership produces care and responsibility over what one owns, and also pleasure or enjoyment, including that of exercising generosity. Common or free sexual relationships would undermine the special affection which comes from marriage, and the bonds and loyalties which come therefrom, which are of benefit to the state. In general, and in opposition to Plato's general line on equality and lack of differentiation among the guardian classes, too much uniformity in a society would be 'to reduce concord to unison or rhythm to a single beat'.<sup>9</sup> We will have more to say later on the benefits of difference and dispersed initiative within society in general and in education in particular, for this will turn out to be one of the most important values in and brought about by parental choice. However, we do have to note that, seemingly against the general line he is taking and against what he says in the *Ethics*, at the end of *Politics*, Aristotle insists that education, being a public concern, the responsibility for the curriculum and education generally must be that of the state: 'education must be one and the same for all.'<sup>10</sup> We will suggest in what follows that Aristotle is right in saying that the state does have a responsibility for education, but that this does not require that it should lay down a universally mandatory curriculum, or that it should monopolistically provide education itself. Indeed, the state would better discharge its own responsibilities if it facilitated the parental choice recommended in the 1940s.

In pitting Aristotle against Plato on the family, and in endorsing Aristotle's position, I am not claiming that Aristotle is completely correct on all points here or elsewhere. Notoriously, in discussing the family, or what he tends to refer to as the household, Aristotle speaks approvingly of the possession of slaves, and also about the dominant role of the father. What he says about slavery should be emphatically rejected. However, what he implies about households can be fruitful in suggesting that one positive feature of the immediate family may be the way in which others not related to the family by blood may be drawn positively into its orbit; friends and others helping with child-care, school journeys, games and sports, sharing holidays and the like. In other words, families have a natural tendency to branch out to and even create other small communities, with their own virtues and sense of belonging. As far as the father is concerned, we can, of course, take issue with the Aristotelian idea that the father is or should be the ruler of the household. But there may still be virtue in seeing a degree of differentiation of role as being one of the benefits of living in a family/household – differentiation which can in part stem from basic biological differences, which it is unnecessary to spell out here. In any case, what I see, following

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<sup>8</sup> Pol, 1253a20ff.

<sup>9</sup> Pol, 1263b29.

<sup>10</sup> Pol, 1137a11-32.

Aristotle, is the virtue of the family does not depend on any hard and fast doctrine of role differentiation among the parents.

What it does depend on is the thought that the family is essentially a household, as Aristotle says, a household of a specific sort. It is a home, a place of belonging, and as such it has beneficial characteristics which will not be otherwise attainable elsewhere. We have already touched on the intimate ties of affection, dependence and care which exist, or should exist, between parents and children, and the way in which they cannot be replicated in more impersonal and less intimate settings. Building on this, we can also consider the way in which basic habits of civilized life are engendered unreflectively, quasi-naturally within a family upbringing, such as language, norms of behaviour, moral attitudes and feelings, a sense of loyalty and belonging. This is not to deny that these habits might not be produced in other settings, but only to insist on the seamless way they will be produced in a well-functioning family. Nor is it to deny that not all families are well-functioning. Some may function hardly at all, with the result that their children may reach school age without the most basic dispositions and skills. But this will be by contrast with the vast majority of families which do function well, and points to the need in the sadly deficient families for support and guidance, rather than being an argument against families as such. It also underlines the way that in most families the beneficial effects that form of life continue to be produced, in part because parents and grandparents feel instinctively what needs to be done, often despite difficulty and struggle, but with a sense of reward for the unique type of success inherent in family life. As Aristotle points out at length, happiness should be seen as a by-product of virtuous activities done well, rather than something like pleasure which we can or should aim at directly.<sup>11</sup> In this way, for very many people, living and working at family life is one of the deepest sources of happiness, and not just for parents and children as related to each other, but for other relations such as grandparents, siblings, cousins, aunts, uncles and the like.

### **Family Life: Wider Considerations**

In defending and advocating family life, as we are, we do not need to deny that families can be prone to abuses of various sorts. The very intimacy which is a crucial part of good family life can lead to child abuse. It can, but again, this is not the norm, and is regarded by most people and in most families as the more heinous as a desecration of a sacred bond and as exploitation of those who are innocent and defenceless. Families can also be a source of corruption, as Plato suggests, from the familial possession of property and wealth. But again, we can agree with Aristotle and many other subsequent thinkers that owning property is a benefit and a bulwark. Owning property is a benefit because it gives the owners a space and a resource to lead their own lives in freedom and security. But to secure these benefits, as Aristotle points out, law within a benign state system is necessary to prevent the violent seizure of one's property by other citizens, or indeed by an over-mighty state. In addition, getting and having property inculcates habits of work, responsibility and

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<sup>11</sup> See N Eth, 1098a16 and 1176a30-1177a10.

foresight – again, virtues integral to family life. But again, in Aristotelian mode, good things and institutions can lead to excess. Excessive wealth may be a bad thing; excessive pursuit of wealth certainly is, especially when it leads to corruption and nepotism. We can note that in Dante's *Purgatorio* (Canto XX), Hugh Capet is being punished for avarice. He tried too hard and too deviously to secure riches for his descendants, who went on to form the Capetian dynasty which ruled France for more than three centuries. In Dante, these Capetian rulers are themselves denounced for similar sins by their ancestor Hugh. So, avarice and nepotism are vices, worthy of punishment in the next world if not in this, but that does not mean that a responsible attitude to family property and a moderate and prudential concern for the material and social well-being of one's children and descendants are not virtuous expressions of natural family love, stemming from bonds which are fundamental to a good society. And it is clearly of benefit to society in general that there should be families who provide and care for their young, and instil in them dispositions to work, be responsible and care for their children.

Roger Scruton follows Aristotle in pointing to one very important and unique aspect of family life, one which recognises the social quality of the family and, implicitly, its extension through generations. Being a member of a family not only gives us a home, metaphorically if not literally speaking. It also gives us an identity and a motive for staying together. Well-functioning families may disagree within themselves, but they will discuss matters of general concern amongst themselves, and the members of the family will accept being bound by the final decision, even if they disagree individually. The family is part of their identity, and that does not change even if there are conflicting views. This 'shared identity' takes the sting from disagreement. It is what makes opposition, and therefore rational discussion, possible; and it is the foundation of any way of life in which compromise, rather than dictatorship, is the norm.<sup>12</sup>

So, the family is a group within the wider society. It has its own inefaceable bonds arising from blood and birth. In the family, important values and virtues are nurtured and fostered, in a strikingly effective way. This is not to say that these values cannot be developed in other contexts; but it is notable that many surveys show that children not brought up in stable two parent families on average do worse on many counts: psychological, moral, educational, and even in liability to be abused, than those who are.<sup>13</sup> In giving its members a sense of home, belonging and identity, the family is not against the state or the wider society. Indeed, as already observed, for its flourishing it needs the state, with its framework of defence, order and legality. But it is not the same as the state or to be subsumed within it. Even while recognising the legal and other benefits of the state and benefitting from them, it may disagree with aspects of state policy or with the views of the majority in a state. It may take its own path. The family is thus autonomous, one of those little platoons which Burke saw as essential to a free society, if not *the* basic little platoon.

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<sup>12</sup> Roger Scruton, *How To Be a Conservative*, London: Bloomsbury, 2014, p 33.

<sup>13</sup> See, for example, the report 'Family Structure Still Matters', London: Centre for Social Justice, 2020, for a recent survey of this evidence, and copious references to sources.

So, within a state, the family is prior, naturally and socially, for both biological and political reasons. Where it exists, or is allowed to exist, its bonds will be stronger than those of any other institution, as well as in principle affording home, belonging and upbringing of a uniquely beneficial type to its members. The family will not be hostile to the state, but it will be in important respects more cohesive than the state, and autonomous of it. It is precisely because of this last point, from which its private and partial interests and loyalties stem, that utopians like Plato, the admirer of Sparta, will tend to be hostile to the family and even want to abolish it altogether. And it is not just out and out utopians who want to minimise the reach and influence of the family. Remarkably, in 1796 in the wake of the American revolution, Benjamin Rush, one of the original signatories of the Declaration of Independence, said that ‘each youth does not belong to himself, but is public property in the cause of liberty’.<sup>14</sup> Remarkable that Dr Rush thought that liberty would be served by a regime owing more to Sparta than to what the USA was becoming at the turn of the nineteenth century. And he was also remarkably wrong if he thought that thinking of youths as public property, and hence presumably leaving their families with little or no say in their education or development, would serve the cause of liberty. To see why this is so, we can do no better than turn to what J. S. Mill, the great nineteenth century advocate of liberty, had to say on education in his classic *On Liberty* from 1859.<sup>15</sup>

### **The Family and Liberty: J. S. Mill**

Mill’s discussion of education in Chapter V of *On Liberty* may well surprise those who are not familiar with its arguments. Mill begins by asking if it is not almost ‘a self-evident axiom’ that the state should ‘require and compel the education, up to a certain standard, of every human being who is born its citizen’. Answering in the affirmative, he goes on to say that it is also a ‘sacred’ duty of parents to give to their offspring ‘an education fitting him to perform his part well in life towards others and himself’. How are these two principles to be reconciled? Mill is clear that no one should bring a child into the world without having some prospect of feeding and educating it, but that if these duties are not fulfilled by parents, the state should step in and supply them, both for the good of the child – paternalism – and for the good of society in general. And this intervention on the part of the state should be affected as far as possible at the expense of the parent.

Mill’s robustness on parental responsibility may be unfashionable in 2022, at least among public commentators and officials, though it has something to be said for it, and is probably in practice accepted by many of those about to become parents, even in 2022. However, Mill’s next point is the crucial one, and it is one which can and should be defended quite independently of whether we agree with Mill on the parent’s initial duty. While Mill accepts that it is the duty of the state to enforce universal education, he insists that is quite different

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<sup>14</sup> Quoted in E. Knight and C. Hall (eds), *Readings in American Educational History*, New York: Appleton, 1951, p 306.

<sup>15</sup> J.S. Mill, *On Liberty and Other Essays*, Oxford: Oxford University Press, 1991. All the quotations from Mill are from pp 116-9 of this edition.

from saying that the state should provide this education. In Mill's own words, the reason for making this distinction is that

'a general State education is a mere contrivance for moulding people to be exactly like one another; and as the mould in which it casts them is that which please the predominant power in the government, whether this be a monarch, a priesthood, an aristocracy, or the majority of the existing generation in proportion as it is efficient and successful, it establishes a despotism over the mind, leading by natural tendency to one over the body.'

Every one of Mill's words here is worth pondering. Mill is as passionate and eloquent a defender of liberty as any. The whole argument of *On Liberty* is that liberty in a society depends on the possibility of a diversity of view, of disagreement and discussion, and that it is only through disagreement and discussion that truth will emerge. Even, or perhaps especially, the most widely held and apparently irrefutable opinion should be tested by critical reflection, if only to bring out its true strength and validity. I suspect that Socrates might agree, although Plato, his pupil, would not. As we have seen, Plato wanted a unified state, a super-Sparta, unified in thought as much as in behaviour. But given that no one, not even a Platonic guardian, can have the whole truth on anything, as Socrates would have insisted, and given that dissent or question-free unity of this sort will be achieved only by compulsion, a state unified in the way Plato wants will indeed be a despotism. Against Plato, and against all those who dislike difference and diversity of view in a society, of faction, as they might disparagingly call it, it is worth recalling the words of James Madison, like Rush an American founding father. In *The Federalist Papers (No 10)* he says:

'Liberty is to faction, what air is to fire, an aliment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.'

And in *Federalist 51*, Madison goes on to insist that the rights of minorities, civil and religious, will be best secured against majority oppression by numbers of different interests and sects being present in a society. Justice, he says, is the end of government, which will ever be pursued until it is obtained or 'until liberty be lost in the pursuit.'<sup>16</sup>

To return directly to Mill and education, the general state education he deplores, one where liberty is lost, would today be one arising from a democratic 'majority of the existing population'. Assuming, that we may doubt in practice to be the case, that the majority is having its wishes enforced on the system of education, could such a thing truly be said to be 'despotic', as Mill says? Madison has given us reasons to think it could be in practice, and as Thomas Jefferson observed, an elective despotism is still a despotism: '173 despots would surely be as oppressive as one... As little will it avail us that they are chosen by ourselves. An elective despotism was not the government we fought for.'<sup>17</sup> A majority government would

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<sup>16</sup> Alexander Hamilton, John Jay and James Madison, *The Federalist*, ed. G.W. Carey and J. McClellan, Indianapolis: Liberty Fund, 2001. The quotations from Madison are from pages 43 and 271.

<sup>17</sup> Thomas Jefferson, Notes on the State of Virginia, Query 13, 1784, p 120.

certainly be illiberal to the extent that it admits of no divergence or exit from its methods and curricula for parents who dislike what the state is offering.

That there can be such a thing as a democratic despotism, a soft despotism, has been tellingly suggested by de Tocqueville in the second volume of his *Democracy in America* from 1840.<sup>18</sup> In such a society, the leaders will be not tyrants, but rather schoolmasters. Over the whole of society, there will stand an immense tutelary power, resembling parental authority, or rather would do, if its aim were that of normal parents, rather than that its subjects should be kept in perpetual childhood. This power 'covers the whole of social life with a network of petty, complicated rules that are both minute and uniform', and which relieve individuals of the need to think or provide for themselves. They will, in effect, be infantilised, as de Tocqueville said, from cradle to grave, we might add. It is easy to see that in such a society, parents would have no rights over the education of their children. Their say, if any, will be limited to what they might be able to persuade their elected representatives to push for within the state bureaucracy, which will amount in practice to very little. As Mill says, this will amount to a despotism over the mind, over what can be taught or thought in school, but in such a way that it may not be recognised as such. Will it establish a despotism over the body? Well, it may certainly try to, with directives about what children are allowed to eat in school, about how much exercise they must take, and about how their social and personal development is to be conducted outside the home and in school.

These reflections on liberty, both in general and specifically on educational provision, suggest that parental rights in education are not just what would be good from the point of view of the family, but they are also good from the point of view of the society as a whole, if that society has liberty as a core good. Families with independent and mutually differing views would be a strong impetus to liberty in society as a whole. Against this, it could still be urged that it would be best for children, for all children, to have the best education possible, and some or even many parents may not understand what this is. As Dewey memorably and somewhat sententiously put it back in 1889, 'what the best and wisest parent wants for his own child, that must the community want for all its children.'<sup>19</sup> Dewey does not, of course, say who he thinks the best and wisest parent might be, though one might have a suspicion as to who it is, and if it were John Dewey, it is not what I would want for my child. It would be 'the community' that imposed whatever it and Dewey wanted on my child and on all other children, so we are back in effect with a Millian despotism.

## **Public Education Policy and the Family**

No doubt too, as experience with state direction of education has shown, the mechanics of 'the community' coming to a view on what the best and wisest parent might want or who that best parent might be would not be altogether disinterested or transparent. I write here from personal experience, dispassionately I hope, as having served from 1993-97 on the British government quango charged with re-drafting the National Curriculum for England

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<sup>18</sup> A de Tocqueville, transl G. Lawrence, *Democracy in America*, London: Fontana Press, 1994, Vol 2, Part IV, Ch 6, pp 691-2.

<sup>19</sup> John Dewey, *School and Society*, Chicago: Chicago University Press, 1956 edition, p 9.

and Wales, and over-seeing public exams. First, the opinions or prejudices of the legislators involved will deeply affect educational policies on matters such as curricula and examinations and school inspection, as they certainly did from 1993-97 and subsequently, when a change of government reversed much of what had been done earlier. Then there will be special interest groups lobbying for their particular causes, in many cases with some success, given the way that these things work. There will, in addition, be the interest of the providers, as represented by teacher trade unions and their supporters in academia who continually lobbied for particular notions of how teaching should be conducted. Nor, to be totally honest, should we discount here the way advisors such as myself come to be chosen and actually influence policy. As I say, from my own experience I know the tortuous and indirect way government policy on education (and other matters) actually comes to fruition. And even though it arises through 'democratic' processes, the results, even where they may be desirable, may have little to do with what the majority in the country actually want.

Nor should we discount the bureaucratic interest; civil servants may be personally incorrupt and government departments may function impeccably, but, as in allotting school places, bureaucracies and those running them always have their own agenda. For good reasons or bad they may have their own ideas on what a smoothly running education system should be, one which may naturally and for convenience give rather more attention to the interests and wishes of the providers than they should. They will often, and in a way understandably, prioritise administrative convenience – the smooth running of a vast system dealing with millions of children and half a million or so teachers – over and above the wishes or interests of individuals, in this case, individual parents and children. As already observed, families will undoubtedly know more about the needs and interests of their children than will civil servants at some remove from them. Family wishes should not be over-ridden simply to stop good schools being over-subscribed and poor schools not having enough pupils to keep going, as happens all too often when bureaucrats have charge of school places, and typically see their role as one of maintaining the status quo as regards to school provision. Things are quite different here in the independent sector where schools which not enough parents want will, in very short order, reform themselves or have to close. But most parents will not be able to exercise that freedom; exit from the state system is just too expensive for most, and all too often poor schools are kept open with pupils in effect forced to go to them.

It might, though, be said that in a system where parental choice was the ultimate determining factor there would be schools which taught things which were out of tune with the norm or with what had come to be generally acceptable in a society. Here we have to allow that parental choice should up to a point be constrained by law. That is, schools which maltreated children physically, or which indulged in practices that seriously infringed on children's basic rights in other ways, would not be permitted and would be closed down by law. As already observed, families can flourish only in societies in which there are legal systems upholding basic rights and administering justice. So, one of the conditions of living a reasonable family life is to be in a society in which family members have to accept certain legal constraints, including up to a point on education. Beyond very basic decencies and rights, though, it is not hard to envisage cases where some families and some members of

some families hold beliefs which appear to contravene generally held principles or norms of conduct, and wish to have their children educated in conformity with their minority beliefs and principles. Should such schools be permitted to exist? Should the mere fact that schools might be teaching minority religious beliefs or operating on extreme progressive lines, or even on very traditional lines, be closed down by the state? On this question, from the perspective of what is required by liberty, Mill is emphatic: 'All attempts by the State to bias the conclusions of its citizens on disputed subjects, are evil.'<sup>20</sup> There could surely be no more blatant attempt by a state to bias the conclusions of its citizens on disputed subjects than by preventing parents with dissenting but not inhuman views from educating their children as they see fit.

## Parental Rights and Pluralism

In order to see what might be involved here, and how respecting parental rights might work in difficult cases, I now turn to William Galston's article 'Value Pluralism and Political Liberalism'.<sup>21</sup> It is relevant to note here that Galston is not only a distinguished American academic (senior fellow at the Brookings Institution), but has also served as a Presidential Advisor to President Clinton and has worked in no fewer than six US presidential campaigns. In the article, Galston considers the attitude governments should take to communities such as the Amish, Mormons and some minority Christian Churches when parents in those communities wish to educate their children according to their own principles rather than according to state norms, and who are taken to court as a result. Of course, these cases are difficult, because in the cases in question the states will be using the law to do what they believe to be in the children's interests. Here there is a clear conflict between parental rights and what the legislators and officials deem to be the state rights, acting paternalistically on behalf of the children.

The beleaguered communities in question are in general law-abiding, and, as Galston notes, often score highly on political engagement and education; he concludes that respecting value pluralism in liberal societies (that defended by Madison and Mill) requires that liberal societies should not 'casually interfere with organisations that don't conduct their internal affairs in conformity with broader political norms.'<sup>22</sup> Galston argues that there is a baseline minimum which everyone in a liberal society must conform to. So, no community would be permitted to engage in human sacrifice, for example, and less unrealistically, Galston would deny Jehovah's Witnesses the right to withhold blood transfusions from their children in life threatening situations. He also concedes that there is room for reasonable disagreement about where that baseline should be drawn, 'but the moral philosophy of pluralism should make us very cautious about expanding the scope of state power in ways that coerce uniformity.'<sup>23</sup> In line with his theoretical stance, Galston supports the parental rights of the groups he considers against legal attempts to coerce them and their children into the state

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<sup>20</sup> Mill, *op cit*, p 119.

<sup>21</sup> William Galston, 'Value Pluralism and Political Liberalism', in *International Meetings in Political Studies (Est. 1993)*, Vol 1, Lisboa: Universidade Catolica Editora, 2022, pp 131-41.

<sup>22</sup> Galston, *op cit*, p 138.

<sup>23</sup> Galston, *op cit*, p 139.



schools or in attempts to make their own schools follow the state norms where these are matters of dispute.

Galston points out that in the cases in question there are conflicts between religious faith, tradition and authority, on the one hand, and what might be called Enlightenment values, on the other. He (and I) would defend the rights of the religious parents in such cases. Unfortunately, and against Galston's caution about expanding state power in these matters, in Britain anyway the state seems increasingly to be using a combination of the law, regulation and compulsory inspection regimes to force all schools, including independent schools, to teach its own, or what may be majority, beliefs. These include beliefs on such matters as sexuality and climate change, and may well soon include beliefs on race and colonialism, with others to come. In each of these cases, present and to come, the positions taken up or maybe to be taken up, by the state are on what Mill rightly calls disputed subjects. In saying this, I am not saying where I stand on any of these matters, nor am I saying that the preponderance of argument may be on one side rather than the other, nor, incidentally does Galston in the cases he considers.

But what both Galston and I are saying is that the state should not abuse its power by enforcing its own view, or the view of those who have captured the state mechanisms in this respect, on those who disagree. It should not prevent parents from educating their children as they see fit. Galston argues his position from the point of view of political liberalism and value pluralism; I do so both from that point of view and from an analysis of the family which sees the family as a basic component of the liberal society, valuable in itself, but in its autonomy and separation from the state, a key element in a society which is essentially liberal. Liberal societies should uphold and defend parental rights in education, rather than undermining them by imposing its own views on education. Education is itself a fundamentally contested area. I would not, for example, try to impose reforms on an ultra-progressive independent school such as Summerhill in Suffolk, as was attempted by a recent Secretary of State for Education. The school had been criticised by inspectors for leaving too much 'to each child's inclination', thus allowing pupils more freedom than many, including no doubt government officials, might consider wise. Parents who sent their children to Summerhill obviously took, and indeed take, a different view of what is best for their children.

## **Current Threats to Parental Rights**

However, in 2022 it is not schools like Summerhill which are most in danger, and where parental rights are being over-ridden. Many schools, state and independent, are currently in thrall to particular ideas about sexuality and race (or colonialism), as was observed at the start of this article. These views, which include the idea that white people are inherently and apparently irredeemably 'privileged', and also a raft of doctrines centring around the notion that gender (or one's sex) is 'fluid' and that one should not be fixed in the gender one is 'assigned' at birth (rather than born with). It seems that in some (many?) cases, pupils who disagree with the orthodoxy being taught are treated roughly, reprimanded or even ostracised in school, if they have the temerity to express their disagreement. (So much for

‘critical thinking’!) More likely, dissenting pupils will not reveal what they really think. Certainly, in many cases they will be being taught, or indoctrinated more accurately, in ways and directions their parents think is wrong, even reprehensible. Worse still, there are cases where children or adolescents who are uncertain about their sexuality are being given advice and support in school, without their parents being consulted or even informed. It is not hard to envisage cases where pupils, possibly encouraged by teachers enthusiastic for the ideas in question, will denounce their parents privately or publicly for having the ‘wrong’ views, even for ‘hate crimes’.

It is not hard to envisage such cases, because this is exactly what happened in the Soviet Union and the Eastern bloc countries under communism, to the extent that in the 1930s Pavel Morozov, a 13-year-old ‘young pioneer’, denounced his parents to the authorities. As a result of this, his father was executed. Pavlik was knifed to death by his relations for his pains, and immediately became a national idol, a martyr to the cause, with an opera and many books produced in his honour. Whether what was celebrated actually happened or not is now somewhat disputed, but what is not disputed is that Morozov was for decades held up as a model for Soviet children to follow. We do not live in the Soviet Union, but there are tendencies within our society which are not completely dissimilar. We can certainly envisage parents being cautious in expressing their real beliefs to ‘woke’ children, indoctrinated in woke attitudes in school, maybe for fear of unpopularity or worse, for being denounced in school by their children, for example. What is in effect a repudiation of parental rights over what their children are taught in school will, at the very least, be corrosive to family life.

But it may be that schools themselves have little freedom of manoeuvre in this area. Kingham Hill School, a good independent school in England, has recently lost its head following failure in two mandatory compliance inspections for, in effect, not satisfying the inspectors on its attitude to homosexuality, which they described as a ‘particular biblical interpretation’. In the second report the inspectors conceded that the school had actually addressed most of their concerns from the first inspection, and had plans in place to deal with the remaining ones. That its ‘culture’ was evolving ‘positively’ was now ‘confirmed’ by inspection evidence. There was now no discrimination against LGBT (Lesbian, Gay, Bisexual and Transgender) pupils, and various measures had been introduced to cater for their needs. Whether there had actually been discrimination at the time of the first inspection may, of course, have been a matter of opinion, in this case, and crucially, the inspectors’ opinion. But it is not just my opinion that Kingham Hill is a good school: in the inspection of educational quality, undertaken at the same time as the original negative compliance inspection, the inspectors found both the pupils’ academic achievement and their personal development to be ‘excellent’. In some tension with the attitude of the contemporaneous compliance inspection, the pupils’ ‘care for each other and for their community’ was said to be a result of ‘their living out the school’s clearly defined Christian ethos’.

Despite all the positive evolution noted in the second report, the school still failed because there were some LGBT pupils who, according to the inspectors, continued to lack self-esteem or confidence. What is striking about this case is that there was no mention in either

report of the actual views of parents, who were consulted only in the first inspection and then only by questionnaire.

Suppose parents had actually wanted a particular 'biblical' view taught, even the one the inspectors seemed to object to, not perhaps an impossible supposition?<sup>24</sup> Is the implication that a school with such a 'biblical' view would not be allowed to exist, even if parents did want such a thing? Schools which fail to satisfy inspectors on the regulations governing the inspections can be struck off the official register of schools, and thus lose their right to admit pupils, so one can understand the nervousness in a school falling short on compliance. But, according to the second inspection report, the school does not discriminate against LGBT pupils, whatever some might report about their self-esteem, in itself a tricky and subjective matter, particularly during adolescence. And, disputed as the 'particular biblical view' on sexuality of its then leadership might be, it is not (yet) illegal to hold it or even to 'project' it (to use the inspectorial locution).

That, though, is the point. The matter *is* 'disputed', and not just by fundamentalist Christians. It seems to be exactly the type of case where Mill objects to state attempts to bias the conclusions of its citizens, as we have seen. Yet this is just what the state appears to be doing not by legislation, but by a less than transparent inspectorial mechanism deciding on what can or cannot be done regarding a 'disputed' matter in an independent school. Or do we now have to write in an 'independent' school? For it seems that now any school teaching in the 'wrong' way on LGBT and other matters will be failed by inspection, with potentially damaging consequences for its future.

The Morozov case, of a child denouncing its parents, might well seem exaggerated in 21<sup>st</sup> century Britain. But social services already have extensive powers to involve themselves in the doings of families, sometimes appropriate and necessary, unfortunately. But over-zealous action by social services and the manipulation of children's testimony are not unknown in this country. Notoriously, in 1991 children in Orkney were removed from their parents over what turned out to be baseless suspicions of ritualistically inspired child abuse. A particularly troubling aspect of this case was the way the authorities interrogated some of the children concerned. One lesson that should be learned from this is that extreme care needs to be exercised over attempts to solicit statements about parents from children, especially if those attempts are made by over-enthusiastic officials. Morozov may suggest a general lesson, but not the one the Soviet authorities intended.

More recently, in an attempt to constrain families even more, in 2014 the Scottish Executive proposed a Bill in the Scottish parliament to assign a 'guardian' outside the family for every child in the country, from birth until the age of 18. This state guardian would have access to all sorts of information about the children and indeed their families, and have powers to refer cases of concern to a raft of different agencies and authorities. One needs little imagination to conjecture what a guardian might do if 'unacceptable' views on race or gender were found in a family he or she was 'guarding'. The proposal eventually failed for various reasons, mainly to do with practicability, it seems. And though there was some

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<sup>24</sup> See 'Rainbow flags stir dissent at Christian school' The Times, 28/06/2022. It seems the supposition is by no means impossible.

opposition to it from bodies concerned with parental rights, it was supported by a number of charities and professional groups, as well as in Holyrood. To readers of Plato, the title 'guardian' has an ominous ring; and the proposal itself is indicative of current attitudes to parental rights among many politicians and officials, who seem to believe that families are problematic in themselves.

While in England so far there has been no talk of state guardians poking their noses into the lives of every family, 'Opportunity for all: Strong schools with great teachers for your child', the Education White Paper brought before the Westminster parliament in March 2022, is ominous. It plans to direct state education more firmly and comprehensively than ever before, under direct regulatory standards set by the Secretary of State for Education, and with the aim of putting all schools in multi-academy trusts monitored by powerful regional directors. The parental right to choose a school with a curriculum and approach which individual parents, rather than the Secretary of State, favoured is not considered. In the ensuing Bill, governmental supervision over home schooling and powers over unregistered schools and over schools failing to satisfy regulations loom large. All this is, as the White Paper has it, part of a 'once in a generation opportunity to recast the responsibilities of every actor in the system'; except, one might note, parents. They are, though, being offered a 'parent pledge' that they will be informed if their child is under-performing. The Bill has been dropped for the moment, but the spirit of the White Paper may still be alive in Whitehall, even under a Conservative government.

It is for this reason that we need not only to remember the balance in the Eastern bloc between family and state, but also to see why, here and now, parental rights are important, the ways they are currently under attack, and think how best to support and defend them. In this paper, I have attempted to lay out the reasons for strong family rights, particularly in education, as benefitting both members of families and the wider society in which families are allowed to flourish. This may well be timely, given that currently parental rights in education are under threat in a number of areas, either intentionally or simply by neglect and default.<sup>25</sup>

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<sup>25</sup> I thank John McIntosh for his advice on a number of points in this paper.