OPEN OPTIONS EDUCATION AND CHILDREN’S RELIGIOUS UPBRINGING: A CRITICAL REVIEW OF CURRENT DISCUSSIONS TAKING PLACE IN THE UK PARLIAMENT.

ABSTRACT

Ensuring open minds and open options education has recently been suggested by the UK House of Lords as a State role that can and should override parents’ decisions in relation to their children’s religious upbringing and education. Yet the language used in their Lordship’s debates risks failing to respect the nature and purpose of legally enshrined parental rights in this area and of being perceived as potential bias that rests on a set of assumptions difficult to adequately determine. Through reference to various writings and case law on the interplay between parents’ rights relating to religious upbringing and the State’s obligations to education, along with an in-depth analysis of the notion of indoctrination, this paper critiques their Lordships’ discussions over this complex and highly charged issue by highlighting some of the problems confronting their discussions.

Key words: Parental rights – freedom of religion – education – indoctrination- open futures

INTRODUCTION

To what degree should the law accommodate parents’ wishes to control their child’s education, specifically in relation to parents’ attempts to pass on their chosen religious beliefs to their children? This question relates to a long-standing discussion on the role of education, both as a means of supporting parents’ attempts to pass on their beliefs and as a means of countering those attempts where they appear in some way harmful to the child or to society as a whole. It has re-emerged quite recently in two discussions that took place in the UK House of Lords. In February 2018, Lord Storey sought clarity over what steps the government were taking to deal with what he described as the potential indoctrination of children through education.[[1]](#footnote-1) The ensuing discussion largely focused on the risk posed by the transfer to the child, either in schools or via home schooling, of extremist views that could radicalise the child with the potential of them subsequently going on to resort to violent extremist actions in support of those views. However, in setting out factors that might contribute to the risk of radicalisation, Lord Storey suggested that part of the problem was what he described as extreme forms of religious education that ‘narrow the minds’[[2]](#footnote-2) of children. In support of this view, Lord Singh of Wimbledon suggested that children be taught all major religions in schools in a modern context and not in the language of what he called outdated texts.[[3]](#footnote-3) This suggestion invoked a reminder from Lord Agnew of Oulton of a distinction between extremism that indoctrinates for hatred or violence and conservative faiths that teach a narrow curriculum.[[4]](#footnote-4) For Lord Agnew, the concern was not over any specific religion but rather over education that failed to impart the necessary degree of tolerance required in a pluralist society.

In somewhat similar vein, a few months earlier Lord Soley introduced a private members bill to the House of Lords on the regulation of home schooling.[[5]](#footnote-5) In discussion taking place at the bill’s second reading, there was little mention of national security concerns or the issue of toleration. Instead, the debate turned its attention to the rights of the child. These were primarily understood in terms of welfare-rights relating to physical and mental safeguarding. However, Baroness Morris of Yardley introduced into the discussion the child’s right to education, pointing out that where parental choice over education may once have trumped State determined education, the child’s right to education now plays a more prominent role in determining the scope of parental choice.[[6]](#footnote-6) Baroness Morgan of Hyton noted how guidance and case law dictated that a child’s education ‘primarily equips a child for life within the community of which he is a member, rather than the way of life in the country as a whole.’[[7]](#footnote-7) This was bound by a caveat that the education ‘does not foreclose the child’s options in later years to adopt some other form of life if he wishes to do so’.[[8]](#footnote-8) Subsequent discussions as the bill passed through various stages in the House of Lords touched on issues such as how to ensure tolerance through home schooling and the thorny issue of teaching so called teaching British values.[[9]](#footnote-9) At the time of writing, the bill is still on its journey through the UK Parliament.

Issues generated by the kind of questions their Lordships are asking have been described as being ‘formidably complex and highly charged.’[[10]](#footnote-10) They engage with, among other things, the role of the State in a pluralist and broadly secular society in which various human rights are assigned through law to individuals, including choice rights over beliefs and values. At the same time, they are posed against the reality that, although the State has a duty to educate the child, it does not and should not have monopoly in this process but rather needs to recognise its role alongside the natural role of parenting. As such, a balance is called for that seeks, as far as possible, to ensure multiple and possibly competing interests are met. Going deeper into the questions reveals the thorny issue of future choice rights of the adult that the child will become. The suggestion is that how the balance is struck during a child’s upbringing and education will affect how real and accessible future choice options are.

Under human rights law, the questions engage with the right to education as set out under Protocol 1 Article 2 of the European Convention on Human Rights (ECHR). This Article gains legal effect within the UK through the Human Rights Act 1998. The Article guarantees the right to education. However, it incorporates the following proviso:

In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. [[11]](#footnote-11)

The proviso does not favour an accommodation or integration approach[[12]](#footnote-12) to education where pluralism in values exists. Rather, it recognises that the parental role of educating the child is particularly relevant where religious and philosophical convictions are engaged.

To date, literature has considered the question of how to balance the right to education owed the child with the parental right in greatest depth from the perspective of the philosophy of education. An extensive series of discussions taking place in the 1980s and 1990s focused on theoretical justifications for parental rights, the nature of religious formation, the nature and importance of child autonomy and the dangers posed to this autonomy by overzealous influence or indoctrination.[[13]](#footnote-13) As such, the discussions have often reflected something of a conflict between liberalism on the one hand and religious values on the other.[[14]](#footnote-14) Where the discipline of law has been applied, no clear picture on what the optimal or even permissible balance between relevant competing rights and interests engaged has emerged. Rather, it is stated there exists an unresolved issue as to the interplay between the child’s right to education and religious education rights granted to parents.[[15]](#footnote-15)Some have gone as far as to conclude that the circumstances in which a State may intervene in the religious upbringing of a child are not capable of exact definition.[[16]](#footnote-16)

In the discussions, their Lordships acknowledged that determining the balance between parents’ rights and the child’s right to education is difficult. [[17]](#footnote-17) On the one hand, an education that contributes to a child’s inculcation into an extreme conservative religious belief was seen by some of their Lordships as of concern, not only on national security grounds but also through a perceived negative impact inculcation into more extreme conservative religious belief might have on the child’s own mind. Evident in both discussions cited is the view that ‘open-minded’ or ‘open options’ approaches to education might therefore need to be rigorously applied in spite of parental objections. On the other hand, however, respect for pluralism requires protection of the transgenerational transfer of religious belief from parent to child and those beliefs do not exclude conservative variants. Nor does it assume such variants as necessarily reflecting a closed mind that might limit access to a sufficient number of choice options, whatever those might be. Two significant questions therefore arise in relation to the current discussions taking place in the House of Lords: Bearing in mind the parental right is assigned in law for a purpose, is an open-minded or open options education approach firstly definable for the purpose of law and secondly truly compatible with the object and purpose of the parental right?

This paper does not attempt to categorically answer these questions. As noted, the issue surrounding them are formidably complex and highly charged. What it does do, however, is pose a series of considerations around these questions in light of their Lordship’s discussions that help to show why the issues are formidable complex and highly charged and how language used might give the perception of failing to recognise these complexities sufficiently. These considerations are ones their Lordships would be wise to consider when seeking to legislate in this area of law so as to avoid possible accusations of liberal bias, aggressive secularism or stigmatisation in their outcome.

‘OPEN-MINDED’ OR ‘OPEN OPTIONS’ EDUCATION – A CONCEPTUAL UNDERSTANDING

As a point of departure, it is useful to consider whether or not ‘open minded’ or ‘open options’ education can be adequately defined within pluralist societies. Exactly what their Lordship’s have in mind when using such terms is not made wholly clear by their discussions. The risk of radicalisation and terrorism is noted. However, the discussion is not limited to this risk but rather a broader impact on the child certain forms of upbringing are considered as having the potential to bear. Evident is a perceived linkage between openness of mind and the degree to which this openness is conducive to making use of choice options. Reference by their Lordships to the child’s future shows that this is not simply with regard to a child’s present choices but also, and perhaps more specifically, to their ability to make use of future choice options available to them on maturity. Some of the complexities and challenges posed by believing and acting on such a perspective will be addressed later in the paper, including over the question of how to determine open mindedness. To start, however, it is useful to look at ‘open options’ at a conceptual level and how they might relate to both education and the parental right.

The most relevant writer to look to here is probably Joel Feinberg. In what has become an influential paper on a child’s right to what he calls an open future, Feinberg seeks to determine the role of both State and parents by considering anticipatory rights that the child will come to possess as full rights at some point in time in their development. His model suggests the child as being in a fiduciary relationship with their parents who hold in trust a large body of rights that belong to the child largely in terms of the future adult the child will become.[[18]](#footnote-18) These rights-in-trust resemble adult autonomy rights even though they cannot be exercised fully until adulthood.[[19]](#footnote-19) As a trust, the beneficiary’s interests (the child’s) are to be the primary concern of the trustees (the parents). If the State is to become involved in this relationship, it would be to protect both the parents’ and child’s rights to the degree that they complied with this relationship and its requirements. Education would be one of the means of achieving this. That is to say, the education the child receives would need to ensure, as far as it is possible to do so, that natural constraints upon futures that any form of upbringing and education inevitably entail[[20]](#footnote-20) do not become excessive. The premise on which Feinberg bases his argument is that rights that are saved for the child on maturity can be violated in advance,[[21]](#footnote-21) for example by depriving the child of their full right’s potential in adulthood. This violation cannot always be established by checking the child’s present interests due to the unknowable future dimension. Nor can it be established by determining the child’s present desires or preferences. A degree of determination of the child’s interests - the future dimension - must therefore be left to the adult the child will become.[[22]](#footnote-22) Underpinning Feinberg’s argument is a commitment to the development of autonomy of the individual through which they can later exercise self-determination.[[23]](#footnote-23) Autonomy is thus not considered merely in the sense of agency but also in the sense of achieving autonomous capacity.[[24]](#footnote-24)

The immediate and obvious benefit in Feinberg’s approach is that it captures the reality that the child has choice rights, irrespective of whether they can immediately and fully act on these rights, and that these rights have a future dimension where their majority status will remove limits placed upon their choices as minors. That is to say, the rights cannot be ignored simply by virtue of a lack of legal capacity of the child due to their status as a minor. Feinberg’s approach still places the control over the child’s rights in the hands of adults. The child is recognised as not having full legal capacity during the years the parental right is being applied. However, the child is considered to have an inherent right to open choice options.[[25]](#footnote-25) These adult-to-be’s choice options would be recognised as being influenced or predicated according to the extent of options left open, with this being determined by the degree of natural and unforced growth of the child.[[26]](#footnote-26)

In concrete terms, what distances Feinberg’s approach from earlier approaches to parent/child relationships is that the parents no longer have total domination over the child but have domination circumscribed by a broader set of conditions relating to the child’s anticipatory autonomy rights. This need not necessarily be considered in terms of a positive obligation on the parents to provide the child with multiple choice options. Rather it may assume a negative obligation on the parents to allow the child access to and awareness of options.[[27]](#footnote-27) It might do no more than allow the child exposure to variety rather than an experience of variety.[[28]](#footnote-28) Then again, it may require this exposure to be meaningful in the sense that the child can reflect on the significance of what they are exposed to. Under this understanding, teaching specific ends, even religious ends, need not be inimical to a child’s open future.[[29]](#footnote-29) However, as Henley notes, if taken seriously by the parents, as trustees of the child’s rights, including the religious liberty of the child in future terms, they will not attempt to limit drastically the child’s access to competing experiences and knowledge.[[30]](#footnote-30) Furthermore, within the child’s development they would teach that affiliating with a specific religion is not obligatory.[[31]](#footnote-31) Lastly, if the child of mature years started to turn from their parents’ religion, the parents’ commitment to the child’s open future would direct them to accept this.[[32]](#footnote-32)

In terms of how their Lordship’s seem to envisage ‘open options’ education, Feinberg’s theory appears to fit reasonably comfortably. However, Feinberg’s approach is not problem free. Although his approach may appear preferable to one that sees the parents as wholly sovereign over their child’s education, specifically their religious and moral education, Feinberg seems to meet his own dilemma of being unable to ascertain in advance what a child’s future interests are. That is to say, the chief problem for Feinberg’s argument is determining exactly what future options to ensure for the child and what weight each of these options should be given once identified.[[33]](#footnote-33) To try to ensure that every conceivable future choice option is equally available to the child and in equal measure on reaching adulthood would place an unrealistic burden on parenting.[[34]](#footnote-34) Focusing merely on significant choice options, such as over religion and belief, some writers suggest that education should be neutral and devoid of any mention of religion[[35]](#footnote-35) or other comprehensive doctrines.[[36]](#footnote-36) In that way, all religions and none might be said to have equal weight and be equally available to the adult. Yet, as others have pointed out, specific choice options largely gain value to people through them being attuned to a baseline value system that comes significantly via the upbringing they have had.[[37]](#footnote-37) Without a baseline value, even it were possible to raise a child with no baseline value, how would that child or later adult be able to weight the various choices and thus make a meaningful choice? Feinberg recognises that bias in favour of parental values is therefore acceptable. As such, he stops short of advocating more strongly liberal arguments for the widest possible degree of choice.[[38]](#footnote-38) His concern is to simply avoid the circle being closed tight.[[39]](#footnote-39) The focus for Feinberg appears to be more over ensuring the child at adulthood has achieved sufficient capacity to realise significant choice options than to overly focusing on ensuring a bundle of options are secured.

Some of the problems just raised with Feinberg’s argument will be returned to and further developed later in the paper. For now, if one accepts Feinberg’s position as normatively convincing, what follows is the basis on which to pursue an argument that the parental right is tempered by the rights of the child or, more importantly, the future adult the child will become. The parent does not simply become the instrument for their child’s good any more than the child is the instrument for their parents’ goods.[[40]](#footnote-40) That each has rights reflects the fact that each has interests worthy of protection. In the child’s case, these rights relate to future interests as well as present interests. Education becomes the means for tempering the parental right should its use threaten the child’s future interests. The parental right can therefore be considered a conditional liberty right, qualified by the competing rights of the child and, crucially, their future adult selves. Protecting these future rights would fall within a legitimate aim of education that a State would be compelled to pursue under its educational obligations to the child. Such aims are captured by the treaty monitoring body for the Convention on the Rights of the Child where it expresses the view that education should allow children to acquire basic life skills, such as ‘the ability to make well-balanced decisions…, critical thinking…, and other abilities which give children the tools needed to pursue their options in life’.[[41]](#footnote-41) As law grants parents a degree of control over their child’s religious and moral education, these educational aims must be met in a way that does not unduly interfere with the right granted the parents. That is to say, granting the parent the ECHR Protocol 1 Article 2 right indirectly creates a new aim of education that can be said to run parallel to the general aims[[42]](#footnote-42) and is to be determined by the parents and endorsed, or at least accepted, by the State, provided it is sufficiently reasonable rather than an obvious abuse of the parental right. This indirect aim permits and even endorses the forming of religious identity and belief in children or the forming of non-religious identity and belief children in accordance with parents’ convictions in the name of protecting pluralism. Thus, Feinberg’s acceptance of a religious bias allowed parents is not at odds with the aims of education but rather carves out a space for allowing, or not interfering with, the transgenerational transfer of beliefs.

Ackerman provides an example of how balancing the parental right with a Feinberg style approach might be realised, both in terms of the parental right and the child’s future interests. Ackerman’s model, designed primarily as a model for liberal education, recognises that in the very early stages of a child’s upbringing it has no cultural, moral or religious affiliations in its own right. Nor can it be said to have yet acquired any conception or characteristic of autonomy.[[43]](#footnote-43) As the child develops, however, it will come to be aware of the immediate context occupied by the parent. This micro-context will thereby come to form the child’s initial understandings of the world.[[44]](#footnote-44) One can think of the child’s world therefore as one in which initial choices are inevitably and legitimately circumscribed by the context in which they are raised. The primary context or culture is not merely the source of the child’s early learning but also the arena for providing an initial determinate and stable context of belief, practice and value.[[45]](#footnote-45) It is, according to Ackerman, an important element in the process of the child achieving autonomy.[[46]](#footnote-46) From the young child’s interests’ perspective, the need for stability and a correlate need for cohesion is what justifies granting the parent the right to both determine the character of this initial upbringing and protect it from challenges that could lead to a disorientation of the young child that exposure to competing value systems at this early age might present.[[47]](#footnote-47)

Within the family and very likely the parents’ immediate wider community, this early socialisation might take the form of intentional religious enculturation, including through the child’s formal and informal primary education. Westerhoff defines this as ‘a process of lifelong, intentional and unintentional, formal and informal mechanisms through which persons and communities sustain and transmit their faith and lifestyles.’[[48]](#footnote-48) It can be thought of as beginning with the determination by the parent of the child’s religion at birth and then proceeding actively from this point. As such, it reflects the parental right along their correlate right to freedom of religion under Article 9 ECHR. This right not only respects the religious beliefs and conscience of the parents but also allows these beliefs to be manifested in community with others, albeit that manifestation can be subject to limitations under the right. However, Ackerman notes out that at some point in time the child begins to achieve the competence for ‘dialogic’ challenge to be presented to the primary education.[[49]](#footnote-49) The child begins to question.[[50]](#footnote-50) It is the advent of this evolving competence that calls for a corresponding change in the socialisation process, including with regard to the child’s education. At this point, the primary education should stop being the only education of relevance or interest to the child. Wider educational socialisation should now be introduced that allows challenges to the primary socialisation to emerge and be given voice.[[51]](#footnote-51) Initially the parents may still heavily control the child’s access to alternative voices. However, as the child matures so the level of parental control should decrease.[[52]](#footnote-52) That is to say, the parents retain a considerable degree of control but do not retain exclusive voice.[[53]](#footnote-53)

Through this process, one can envisage the possibility for resocialisation processes taking place whereby the child/adult completely breaks with their previous value system. That does not mean, however, that this kind of approach is hostile to the parental right. The child is likely to be predisposed through their upbringing to remain within the primary culture in which he or she was raised. The child will have acquired an interest, identity and sense of belonging in that culture more than in any other and this will influence their choice favourably towards that culture. As the primary cultural or religious group’s survival within which the child is raised will also, in most cases, constitute the interests of the individual members of the group, the dominance of the primary socialisation process functions as a means of protecting pluralism. Yet, in this model, the circle is not tightly closed.

‘OPEN-MINDED’ OR ‘OPEN OPTIONS’ EDUCATION – BRINGING SOME CONCERNS TO BEAR

Feinberg’s argument seems conceptually convincing when children’s education as a right embracing a future dimension is factored into their upbringing. Coupled with Ackerman’s example, Baroness Morgan’s view of education as having a primary social function in relation to an individual’s membership of their immediate community, rather than the way of life in the country as a whole, is captured by the two writers work. Equally covered is the view that education should not prevent or impair the child from enjoying, in later years, the freedom to depart from the life of the immediate community in which they were raised. Such a position aligns with the right to education set out in the United Nations Convention on the Rights of the Child (CRC) 1989, [[54]](#footnote-54) to which the UK is a State party. Article 29 of the CRC sets out two broad objectives for education. The first objective, or perhaps more accurately bundle of objectives, is the development of a level of respect in children for their parents and for their own cultural identity, language and values. [[55]](#footnote-55) This is augmented by the development of a similar respect for the national values of the country in which the child is living, as well as those of the child’s country of origin, and for civilizations different to their own.[[56]](#footnote-56) The second objective is the child’s preparation for responsible life within free society, in a spirit of understanding, peace, tolerance, equality of the sexes and friendship among all peoples and groups.[[57]](#footnote-57)

On the face of it, an education meeting these objectives seems sensible. It seeks to satisfy the requirements of pluralism with the requirements of liberty and equality of opportunity. However, what is not evident is exactly what is needed to make each of these requirements sufficiently realisable. That is to say, what is not clear is the point at which the boundary between acceptable inculcation that keeps futures sufficiently open moves into unacceptable inculcation that closes futures excessively. Coupled to this question is one over the very identification of what these futures might be or should be. As noted earlier in the critique of Feinberg, what an open future requires within pluralist society is not self defining. Where multiple interests are to be included, achieving a balance poses significant difficulties. Such concerns were raised already during the drafting of CRC Article 29. For example, the Canadian representative on the drafting committee noted that the terms ‘(the child’s) cultural identity’ and ‘national values’ were ambiguous as to whether it was the child’s, the parent’s or the State’s identity or national values which were to be respected, noting that in the multicultural State it would be difficult to answer this question. [[58]](#footnote-58) The French representative had similar reservations, pointing out that national values could clash with the guarantees given minorities in Article 30 of the CRC.[[59]](#footnote-59) As it is a State’s duty to remain politically neutral with regard to pluralist disagreements amongst its constituents,[[60]](#footnote-60) States are not permitted to impose their preferred values on society irrespective of the impact that would have on those who identify with competing or contrasting values.

The problem therefore facing their Lordships is how to navigate this complex and highly charged debate in a way that not only accurately identifies legitimate concerns but responds to those concerns while respecting pluralism. This includes protecting pluralism through countering tendencies to stigmatise certain groups, such as Muslims. For example, it has been argued that religious minority schools may positively contribute to countering such stigmatisation and alienation within society.[[61]](#footnote-61) The State’s duty to provide education is clear, as Morgan clearly states. However, the parental right specifically sets a boundary on what a State is allowed to do through education where the parental right is being engaged. As becoming a religious person, even a very devout religious person, is not prohibited in the UK, a child emerging into adulthood with a strong religious affiliation, even of a conservative nature, cannot be seen to be in some way a failure of the State’s educational duty. Human rights bodies have acknowledged that the term religions or beliefs, and consequently the religious or beliefs dimension of the education, is to be broadly construed under the right to freedom of religion and belief.[[62]](#footnote-62) It would seem therefore that, in order to place the kinds of limits on religious education aired by some of their Lordships, a clear risk of harm to the child, their future adult selves or society as a whole must be identified. That risk must not relate to whether the child or future adult becomes religious or not, conservative or otherwise, cognisant of the fact that all forms of upbringing and choices of direction in education made by parents for their children are likely to impact on the child and their future adult self’s beliefs, values and direction.[[63]](#footnote-63) Thus the question turns to one of what, if any, dimensions of the transgenerational transfer of religious belief from parent to child falls on the side of the boundary that warrants it being classed impermissible and justifiable subject to State interference?

Against this backdrop, there appears some lack of clarity over exactly what it is some of their Lordships are seeing as of concern, prompting a number of questions. For example, where, if at all, does the aim of the parent fit into the education process? Does the nature of that aim determine the validity of State sanctioned interference with the parent’s action? Is holding a strong, unwavering and irrational religious belief ever a problem warranting State interference and, if so, when? Must religious belief be arrived at through liberal choice focused approaches if it is not to have the effect of closing the mind of the child or reducing their future options? Is there something specific about religious inculcation in closing certain future options that does not equally apply to other forms of inculcation of beliefs and values? Is there a minimal amount of future options left open to the child that the State is bound to secure? Are some of these options more valuable than others, and so on? To explore some of these points, and show how they engage the complex and highly charged dimensions of the debate, picking up on and unpacking one of the concepts used in their Lordship’s discussions is useful. That concept is indoctrination; a concept that has also featured quite heavily in academic debates on the role of education when confronting the parental right.

Indoctrination is a word often used in such debates but rarely elaborated on. It is one of those terms that seems to rely on the idea that one will know it when one sees it.[[64]](#footnote-64) Webster defines indoctrination as ‘to cause to be impressed and usually ultimately imbued (as with… partisan or sectarian opinion, point of view, or principle…; cause to be drilled or otherwise trained (as in sectarian doctrine) and usually persuaded.’[[65]](#footnote-65) It has been seen as having certain criteria, including content, methods, intention and effects.[[66]](#footnote-66) In Lord Storey’s discussion, indoctrination connects to a risk of radicalisation. Although radicalisation is not well-defined in law or elsewhere,[[67]](#footnote-67) the UK Government sees it as ‘the process by which people come to support, and in some cases to participate in terrorism.’[[68]](#footnote-68) To counter this, in the UK Government’s view, interrupting a potential radicalisation process includes challenging ideologies behind violent extremism as well as addressing the misuse of religious ideology by radicalisers. [[69]](#footnote-69) Indoctrination, as Webster defines it, would constitute one tool a radicaliser might use. However, it must be noted that their Lordships have not limited themselves to this particular possible causal link between indoctrination and radicalisation, as Lord Agnew was quick to point out. Nor have they clearly distinguished conservative forms of religious education from the misuse of religious ideology, whatever that might be. Rather, there is concern over certain forms of upbringing and education where religion is a central feature, irrespective of either an intention or attempt to indoctrinate the child to support or pursue a terrorist agenda.

It seems fair to say that in general usage, indoctrination is a word that has generally been understood pejoratively. Its attachment to notions of radicalisation or brain washing is obvious. Less obvious, however, is its relationship to education or to a child’s inculcation into a society or belief system. For example, their Lordships identify the closing of a child’s mind, and a correlate risk of reducing that child’s future options, as a potential harm to the child and the future adult the child will become. This, one might assume, they envisage as relating to the degree to which the parent or others seek to impart a certain religious or comparative belief as ‘truth’ to the child and the role education plays in either supporting this or challenging it. As such, a link to indoctrination, in Webster’s sense, could be drawn that would not require any further causal connection to radicalisation as defined by the UK Government. Rather, indoctrination would be seen as a process adopted by the parent with either the support from their education, such as in faith schools establishing a climate of religious commitment,[[70]](#footnote-70) or, at least, insufficiently countered by the education system.

Indoctrination’s ‘harm’ in this case is against the individual rather than society and would appear to constitute a restriction on the indoctrinated individual’s ability to perceive new ideas or perspectives that conflict with those to which they have been imbued.[[71]](#footnote-71) As such, it can be said that indoctrination raises concerns over the adequacy of the recipient’s capacity in terms of the way they might utilise competing knowledge or views to those they have been indoctrinated with. Using religious education as an example of how this concern might manifest, particular strong forms of religious instruction that permeate all aspects of the child’s education,[[72]](#footnote-72) one might reasonably see as having potential to indoctrinate the child with unshakeable beliefs that does not reflect the contestable nature of those beliefs.[[73]](#footnote-73) This form of religious instruction has therefore been described as seeking ‘to deprive a person of personhood through conformity to “correct” ideas that must override individual judgement.’[[74]](#footnote-74) Others have gone further suggesting that some strong forms of religious instruction might burden the child with an infringement of liberty, educational deprivation, intellectual suffocation and emotional harm.[[75]](#footnote-75) For these reasons, indoctrinating a child with religious beliefs has been described as anathema to the liberal ideal of personal autonomy[[76]](#footnote-76) and as the antithesis of liberal education.[[77]](#footnote-77) Even where the child or later adult endorses the religion in which they were raised, this endorsement might be considered unsatisfactory where indoctrination is suspected due to the power that has been exerted on the child. Therefore, the premise for intervention by the State is a rejection of the assumption that ‘if men feel no grievances, then they have no interests that are harmed by the use of power’.[[78]](#footnote-78) The suggestion is that a potential exists for children to become ‘victims’ of their own backgrounds that continues into adulthood.[[79]](#footnote-79) It therefore becomes incumbent on the State to circumscribe the parental control through education in order to remedy what would otherwise be a deprivation of education that is difficult or even impossible to address later on once the child becomes an adult.[[80]](#footnote-80) Similarities with Feinberg and Ackerman are evident, albeit that the notion of indoctrination and the use of words such as ‘victim’ is adding a somewhat sinister understanding to what is happening to the child through their education and upbringing.

Notwithstanding this latter caveat, the argument above may appear quite compelling. It is, for example, reasonable to accept that an individual’s terms of reference can distort the information they receive in order to fit the terms themselves. This is particularly so where the terms applied fall within the categories of significant values. Berger described these as ‘closed’ frames of reference[[81]](#footnote-81) while Festinger notes how individual’s beliefs can be so strong as to lead them to cognitive dissonance with regard to modifying their positions to adapt to conflicting inputs, choosing rather to distort the inputs in order to make them fit within their frame of reference.[[82]](#footnote-82) As a consequence, their interests predispose them to select favourably towards things that accord with, or can be made to accord with, those interests while ignoring threatening ‘skeletons in the cupboard’.[[83]](#footnote-83) They create, without an individual’s awareness, what Gadamer has called a ‘concealed dogmatic base’.[[84]](#footnote-84) A child’s formal education might exacerbate this, for example, where a particular religious perspective permeates all subjects. If compounded by limited exposure to alternative viewpoints at home or in their immediate community, the child’s upbringing can be seen as very closed, at least where the belief being imparted is concerned. Thus, education can be seen as offering a counter balance through diluting the otherwise singular belief focus.[[85]](#footnote-85)

There are, however, a number of problems in arriving at this conclusion. In spite of the fears around indoctrination and its generally pejorative conception, educationally the concept raises difficult questions about the rights of children and the role society has in determining how that education is to be approached.[[86]](#footnote-86) This has particular significance with regard to moral, religious and political education[[87]](#footnote-87) in terms of whether or not indoctrination is in fact necessarily a wrongful action or is even a possible action. For example, in terms of wrongfulness, as religious beliefs cannot be supported by evidence, they therefore must be imparted in another way. Faith is different to fact and may even justify a departure from reason and a ‘leap into the absurd’.[[88]](#footnote-88) Thus, Hand suggests, teaching for faith inevitably involves a degree of indoctrination; indoctrination being to him ‘to impart beliefs to her in such a way that she holds them non-rationally, or without regard for the evidence.’[[89]](#footnote-89) In educational terms, this may appear to be problematic.[[90]](#footnote-90) However, as faith does not require proof, and would become unnecessary in the face of proof, there can be no reason to insist that a person’s belief is defendable on clearly discernible rational grounds. Furthermore, as MacIntyre notes with reference to pluralistic disagreements, any claim to reasonableness will be determinable only by reference to some end to which the reasonable response is appropriate.[[91]](#footnote-91) Where that end is of a metaphysical and non-provable nature, reason becomes tied to, or can only be made sense of, against a moral dispositional backdrop.[[92]](#footnote-92) Others elaborate further this view. Gardner, for example, points out that beliefs themselves are rarely chosen but are rather arrived at.[[93]](#footnote-93) This arrival occurs where ‘an adequate explanation of why they believe what they do can terminate with their own conscious ratiocinations and with what they regard as good reasons.’[[94]](#footnote-94)

Turning to the very possibility of indoctrination, if indoctrination means instilling unshakeable beliefs, the fact that many individuals subjected to indoctrinatory forces as children are able to shake off their beliefs suggests either indoctrination has not occurred or it does not have unshakeability as a necessary feature.[[95]](#footnote-95) That is to say, if, ‘[I]ndoctrination logically necessitates that someone is indoctrinated’,[[96]](#footnote-96) where people are subjected to the same indoctrination forces and yet some leave the religion while others do not should not be seen as implying that if the individual changes their beliefs then the indoctrination is overcome but if they do not then it has not. Maintaining the beliefs one grew up in is no indication of an unshakeable adherence to that belief resulting from indoctrination or even from limited choice options.[[97]](#footnote-97) Nonetheless, exposing children to temporal challenges to the faith being imparted is certainly one method put forward for reducing the risk of indoctrination.[[98]](#footnote-98) Some take this as far as meaning that children must be exposed to a variety of faiths so as to ensure that the choice the child or future adult makes over their beliefs is sufficiently critical. Clayton, for example, makes the claim that following a life that has a shape that follows one’s convictions is not sufficient for autonomy.[[99]](#footnote-99) For him, a fairly robust process of deliberation is therefore called for. Generally, this is assumed to require criticalreflection on one’s choices.[[100]](#footnote-100) As critical reflection from within a particular narrow frame of reference may appear to some as not critical at all,[[101]](#footnote-101) exposure rather than exclusion is necessary under his reasoning. One might thus assume that critical reflection of worth requires good understanding of alternatives for comparison[[102]](#footnote-102) and a constrained understanding of any one particular value claim.

However, there are those who suggest that one cannot adequately reflect on faith in the absence of something to reflect upon,[[103]](#footnote-103) meaning that critical reflection on faith is only possible if one believes. This view implies that a comprehensive understanding of one particular religion must therefore be pursued and even achieved if faith is to be critically reflected upon. Instead of seeing religions or beliefs as merely equally accessible objects of choice, it is the saturation in one particular religion that provides the child with the framework necessary for religious choice.[[104]](#footnote-104) Others point out that conscious ratiocination or meaningful critical thinking does not necessarily require extensive knowledge of various choice options.[[105]](#footnote-105) Still others discount arguments around autonomy, citing the much contested nature of what autonomy is.[[106]](#footnote-106)

Translating this into rights terms, Alexander and Carr capture the emerging dilemma well in the following:

…if the rights of those on the receiving end of such education [to initiate their children into particular spiritual traditions] are only recognized at the age of legal majority (from 18 to 21), then they may by that point have already been denied the possibility of challenging of refusing the value to which they have been exposed. On the other hand, if the right of challenge or refusal is extended at an earlier age, then they may not have been sufficiently well exposed for full appreciation of the tradition they are challenging or refusing.[[107]](#footnote-107)

Although Alexander and Carr are primarily writing on whether or not a child should be permitted to challenge their parents’ choice over their religious inculcation through education, the concerns identified in the dilemma they present can equally apply to the balance between the parents’ right and the State’s obligations to the child’s education. Implicit on both sides of this dilemma is the potential to restrict or impair the individual’s free choice, either with regard to a specific religion or with regard to a more open spirituality or disengagement with religion. Thus, ensuring a broad section of choice options in a smorgasbord sense can never be achieved. Some pre-determining preferences will inevitably emerge from any upbringing. No one is suggesting the parental right is unlimited. For example, a State may legitimately act to curtail a pre-determining preference for terrorism or similar actions on grounds of national security. Manipulating religious ideology may be a factor in that process. However, that is not the same as saying that acting to curtail the pre-determining of preferences toward religious or comparative beliefs is legitimate.

This point is important and is that the heart of why the parental right is in place. Where no national security risk can clearly be identified, to base an interference with the parental right on the assumption that strict religious upbringings themselves are sufficient grounds for interference can meet accusations of itself constituting a form of indoctrination.[[108]](#footnote-108) Such accusations can be of promoting aggressive liberalism or secularism that is hostile to religion[[109]](#footnote-109) or of assuming a superiority of one’s own perceived ‘open mindedness’; something that could be justifiably levied against a number of writers cited in this paper. The risk in following a choice base approach that presents the child with a smorgasbord of beliefs from which to choose, rather than those chosen by the parent, is that it is seen not as open but rather as a subtle or indirect form of force that can impair an individual’s ability to adopt or maintain a religion.[[110]](#footnote-110) Critics of such intervention might remind the authorities that it is indoctrination by the State and not by the parent that has generally been considered to warrant limitation in law. The parental right came about as a reflection of the fact that States are in a position to influence the religious or ideological beliefs of the child[[111]](#footnote-111) and have often done so through controlling a child’s religious education for State rather than the individual’s interests.[[112]](#footnote-112) This is in spite of some writers believing governmental indoctrination never to be as grave a threat to the child as indoctrination by parents, at least when it comes to the child’s religious freedom in the sense of freedom of choice.[[113]](#footnote-113)

To avoid accusations of State indoctrination, actions by the State that risk interfering with the parental right must therefore be seen to be neutral and objective in terms of specific religious or ideological values. In an arena of competing values, achieving this needs to take account of where bias may, unconsciously, be being applied. For example, the shift from the historical view of religion as a social good, including in education,[[114]](#footnote-114) to a view that emphasises secular goods such as autonomy and choice is not a value free shift.[[115]](#footnote-115) The danger with downplaying the importance of the religion rather than the choice is that the State is potentially influencing or even indoctrinating the child with ideological views of a non-religious nature.[[116]](#footnote-116) Ideologies bear similarities to religions. Siegal, for example, concludes that ideology represents ‘a general framework that shapes individual consciousness, guides and legitimates belief and action, and renders experience meaningful.’[[117]](#footnote-117) Ideological convictions have been suggested as being able to become ‘doctrines’ and thus fall within the content element of indoctrination.[[118]](#footnote-118) Freeden notes how ideologies apply a method of decontesting the meaning of key words to make them fit the ideal at which they are aiming.[[119]](#footnote-119) Schwarzmantel gives an example where liberalism, as ideology, might decontest ‘freedom’ to give it a certain privileged meaning that denies the validity of alternative interpretations.[[120]](#footnote-120) For example, not all individuals view individual choice as necessarily having primacy over religious obligation and commitment and thus may downplay the importance of choice for the exercise of the right to freedom of religion.[[121]](#footnote-121) Freedom, therefore, to the degree that it exists, might be envisaged differently to liberal versions; namely the freedom to serve God.[[122]](#footnote-122) Moreover, assuming choice to be a universal and overriding human value does not provide an answer as to how to weigh up choice options.[[123]](#footnote-123) Simply put, deliberation does not occur from a place of nowhere and focusing simply on choice fails to sufficiently recognise what religion means to believers.

Neatly partitioning indoctrination as a threat existing only in the domain of religion or similar ideologies is therefore not only failing to recognise that States have been the greatest perpetrators of indoctrination but also that indoctrination need not be conscious or even aimed at for it to have occurred under the definitions offered earlier. Moreover, assuming indoctrination to be merely negative fails to fully capture what the concept might imply. Stolzenberg for example, suggests that some form of indoctrination is implicit in the public function of education aimed at imparting values conducive to inclusive citizenship.[[124]](#footnote-124) Callan identifies a benefit in indoctrinating a child with the Green Cross Code on road safety.[[125]](#footnote-125) This suggests that if it is the end state that determines the value of indoctrination, to view religious indoctrination as largely negative is to see religion itself as largely negative, or at least give that impression. It also poses a challenge to those who see the difference between education and indoctrination as largely coming down to an issue of not only content but also and pedagogical method, such as challenging or critiquing beliefs.[[126]](#footnote-126) Lastly, it presents a serious challenge to established religious doctrine. For example, in Judaism there is the proverb obligating the parent to train his/her children in the observance of mitzvot,[[127]](#footnote-127) for it is written: ‘Train up a childe in the way he should go: And when he is olde, hee will not depart from it.’[[128]](#footnote-128) Similarly, for Muslims, Sarwar describes the purpose of education as being to ‘make man a true servant of God.’[[129]](#footnote-129) The Islamic *Tarbiyah* obligation to develop the child’s character and understanding is orientated towards their spiritual and moral development in accordance with the Islamic faith.[[130]](#footnote-130) This point was even raised during the drafting of what was to become ECHR Article 2 Protocol 1 where representative Rehling reminded her fellow representatives of the duty Christian parents verbally accept at baptism to do their best to raise their children within the Christian faith.[[131]](#footnote-131) Editing religious texts used in education to remove such references would seem to be very far removed from a neutral and objective approach to religion.

SOME CONCLUDING COMMENTS, DRAWING ON RELEVANT JUDGMENTS AT THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights (hereafter the Court) has had to consider a number of cases where ECHR Protocol 1 Article 2 has been engaged. As is often the case with the Court, its decisions are not always consistent. Nor does it offer definitions on some of the terms it adopts, such as indoctrination. Notwithstanding these comments, to understand the rationale of the Court when determining the boundaries of the parental right and what the State may permissibly do where the parental right is engaged, of crucial importance is recognition of the underlying principle of pluralism.[[132]](#footnote-132) Pluralism is seen as the accommodation of diversity necessary both within a democratic society and as a mainstay of human rights generally.[[133]](#footnote-133) It is specifically seen as indisocciable from the right to freedom of religion.[[134]](#footnote-134) Regarding religious diversity, the Court has reminded States that they are prohibited from adopting measures that would favour one interpretation of religion over another.[[135]](#footnote-135) This does not, however, obligate the State through its courts to accept a freedom of religion claim where the applicant’s belief failed to attain ‘a certain level of cogency, seriousness, cohesion and importance’.[[136]](#footnote-136) Nor does it prevent the State from regulating education, including regulation of private schools.[[137]](#footnote-137) The Court has made clear that education, by its very nature, calls for regulation by the State.[[138]](#footnote-138) Moreover, the parental right is seen as an adjunct to the right to education and not something that extinguishes that right but is rather dominated by it.[[139]](#footnote-139)

What the Court has, however, consistently maintained is that pluralism prohibits indoctrination by the State through education.[[140]](#footnote-140) As such, education that can be seen to be non-neutral or non-objective with regards to parents’ religious convictions must allow those parents an opt-out for their children from those parts of the education. Determining what is neutral and objective, or ‘duly impartial’[[141]](#footnote-141) is a decision the courts have on occasion been called upon to make. However, case law indicates that such things as teaching the history of religions or general ethical theories are likely to be permissible regardless of the cultural, ethnic, religious or ideological make-up of the student body.[[142]](#footnote-142) The Court has also accepted that education can aim at ‘enabling pupils to develop a critical mind with regard to religion.’[[143]](#footnote-143) However, implicit is that this is not seeking to displace students’ attachments to those cultural, ethnic, religious or ideological backgrounds. [[144]](#footnote-144) The State is under an obligation to protect pluralism in schools[[145]](#footnote-145) rather than undermine it. Moreover, if religious education is given in the school, besides allowing an opt-out to parents, the Court has required States to ensure, as far as it is possible, that students do not end up facing a conflict between that religious education and the religious or philosophical convictions of the their parents.[[146]](#footnote-146)

Until the case *Çiftçi v Turkey,*[[147]](#footnote-147) the Court’s position was consistently looking at what the State could permissibly do to remain within the boundaries of objectivity and neutrality and thus avoid the risk of State indoctrination. However, in *Çiftçi*, the Court supported the respective State’s concern about religious indoctrination of the child, not coming from the State but rather from parents’ actions. The *Çiftçi* case does engage with, but not really answer, the question as to at what time do parents’ actions move from permissible religious inculcation to impermissible religious indoctrination. In this case, Muslim parents were objecting to a national law stating that the attending of Koranic study classes was only permissible if a child has ‘obtained the primary-school leaving certificate.’[[148]](#footnote-148) Although the applicants in *Çiftçi* brought the case under Article 9 and Article 14 ECHR, in dealing with the issues the Court in fact applied Protocol 1 Article 2. Finding the parents’ claim inadmissible, the Court supported the respective State’s concern about indoctrination of the child, irrespective of its source. The State based its decision on the need to protect the young and vulnerable child from indoctrinatory forces coming from a private education institution chosen by the parents. The Court did this by accepting the State’s position in ensuring that such education could only be applied to a child who had reached a certain maturity; notably not full majority. The case can be said to support the view that some forms of religious schooling at certain points in the child’s life could be contrary to the child’s right to education.[[149]](#footnote-149) Notably, it is at odds to the approach Ackerman suggested earlier, albeit Ackerman’s views on such extreme forms of inculcation are not known from his cited works.

Unsurprisingly, the *Çiftçi* decision has its critics. Langlaude, for example, suggests that the Court is so concerned with indoctrination of the child that it virtually ignores the fact that a parental right exists for the very purpose the Court seemed ready to dismiss.[[150]](#footnote-150) This, she claims, shows that ‘the Court’s approach has shifted from respecting parental convictions in education to protecting the child against indoctrination.’[[151]](#footnote-151) Langlaude makes a valid point. However, one might criticise this view for failing to adequately take account of other rights’ considerations the Court had to bear in mind, such as the right education to which the parental right attaches, or the specificities of the context against which each decision is made by the Court. In particular, the Court is bound to protect the rights of everyone.[[152]](#footnote-152) Moreover, the essence of the parental right is to safeguard pluralism *and* prohibit indoctrination.[[153]](#footnote-153) If the latter is considered as strictly limited to State indoctrination, it would seem to suggest a parental right to indoctrinate their child rather than a parental right to limit what the State may do through education. That is not what the wording of Protocol 1 Article 2 specifically provides for. Nonetheless, Langlaude’s point cannot be ignored if the transgenerational transfer of religious belief is to be respected, as Protocol 1 Article 2 clearly implies. Of perhaps greater concern is that nothing in the *Çiftçi* case makes clear where the boundary between acceptable inculcation and unacceptable indoctrination occurs. The Court has simply deferred to the respective State to decide under the margin of appreciation doctrine.

What can be drawn from this brief review of some ECHR case law and legal commentary is that the parental right does not provide a guarantee that parents will be successful in imparting their religious beliefs to their children. Nor does it give them unlimited authority over the State where education engages with religion or beliefs. Rather, it compels the State to seek to ensure that the right is not interfered with unduly and certainly not to the degree that the right is deprived of its essence and effectiveness. Any interference therefore should be proportionate to the pursuit of a legitimate aim and that aim should be clearly identified as falling within the state’s obligations toward the education of the child. A margin of appreciation is granted the State in how it provides education. However, where the parental right is engaged, case law shows that the principle of pluralism and objectivity must be maintained.[[154]](#footnote-154) At the same time, however, the *Çiftçi* case reveals once again the difficulties surrounding the issues this paper presents.

Conclusion

At the beginning of this paper it was stated that no categorical answers would be offered on how their Lordships should determine any legislative measures to address the concerns raised in the discussions cited. The *Çiftçi* case illustrates well why. What the paper has sought to do is to tease out some of the complexities facing their Lordships in their current deliberations. It has deliberately taken something of a devil’s advocate approach by challenging the more mainstream views on indoctrination found in many of the relevant writings. It has done this by showing how a hidden liberal or other might be perceived as impacting upon their Lordship’s actions even if not actually present.[[155]](#footnote-155) Focusing on the dangers of religious upbringing while making no reference to other forms of parental upbringing risks contributing to such a perception, especially in a climate where certain religious groups feel alienated or stigmatised. Seeking to determine what religious texts religious schools are allowed or not allowed to adopt similarly raises concerns about true neutrality and respect for pluralism is another example. Any tendency, real or perceived, that sees a religious adult as potentially a victim of a closed or indoctrinatory mis-education they received as a child both denigrates that individual and makes a judgment on the value of religion within a pluralist society. Implying open mindedness is measurable according to the degree to which that belief has a ‘liberal’ or moderate flavour equally risks being seen as prejudice.

There is a balance to be drawn between ensuring children are inculcated into their immediate community and, at the same time, prepared for the wider community in which their futures will likely be played out. As Baroness Hale has noted after many years as a Supreme Court Justice, getting that balance right is difficult and it is not always easy to reconcile neutrality with the notion that inculcating certain religious beliefs can be harmful.[[156]](#footnote-156) Great sensitivity and significant thought is therefore called for, recognising, as stated, that the issues raised by their Lordships’ discussions in this area are ‘formidably complex and highly charged.’[[157]](#footnote-157)

1. HL Deb 06 February 2018, vol 788. [↑](#footnote-ref-1)
2. ibid, col 1909. [↑](#footnote-ref-2)
3. ibid, col 1910. [↑](#footnote-ref-3)
4. ibid, col 1912. [↑](#footnote-ref-4)
5. Home Education (Duty of Local Authorities) Bill [HL] 2017-19. [↑](#footnote-ref-5)
6. HL Deb 24 November 2017, vol 787, col 445. [↑](#footnote-ref-6)
7. ibid, cols 449-450. [↑](#footnote-ref-7)
8. ibid, col 450 and supported in *R v Secretary of State for Education ex parte Talmud Torah Machzikhei Haddass School Trust Crown Office,* Times 12-Apr-1985. [↑](#footnote-ref-8)
9. HL Deb 27 April 2018, vol 790. [↑](#footnote-ref-9)
10. Rex Ahdar, ‘The Child’s Right to a Godly Future’ (2002) 10 The International Journal of Children’s Rights 89, 104. [↑](#footnote-ref-10)
11. Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, entry into force 18 May 1953, Article 2. [↑](#footnote-ref-11)
12. See Lorenzo Zucca, ‘The Classroom as a Tolerance Lab’ in Mirriam Hunter-Henin (ed.), *Law, Religious Freedoms and Education in Europe* (Ashgate 2012) 37-53. [↑](#footnote-ref-12)
13. For example, Peter Gardner, ‘Religious upbringing and the liberal ideal of religious autonomy’ (1988) 22(1) Journal of Philosophy of Education89; Michael Hand, ‘Religious Upbringing Reconsidered’ (2002) 36(4) Journal of Philosophy of Education 545; Eamonn Callan, ‘McLaughlin on Parental Rights’ (1985) 19(1) Journal of Philosophy of Education 111; Raymond Godfrey, ‘John White and the Imposition of Autonomy’ (1984) 18(1) Journal of Philosophy of Education115; Peter Hobson, ‘Some reflections on parent’s rights in the upbringing of their children’ (1984)18(1) Journal of Philosophy of Education63. [↑](#footnote-ref-13)
14. See for example Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State* (2nd edn, Oxford University Press 2013). [↑](#footnote-ref-14)
15. Sarah Joseph, Joseph Schultz and Melissa Castan, *The International Covenant on Civil and political Rights: Cases, Materials and Commentary* (Oxford University Press 2004) 628. [↑](#footnote-ref-15)
16. Carolyn Hamilton, *Family, Law and Religion* (Sweet and Maxwell 1995) 147. [↑](#footnote-ref-16)
17. HL Deb, (n.6) col 435. [↑](#footnote-ref-17)
18. Joel Feinberg, ‘The Child’s Right to an Open Future’ in William Aiken and Hugh Lafollette (eds), *Whose Child? Children’s Rights, Parental Authority and State Power* (Adams and Co 1980). [↑](#footnote-ref-18)
19. ibid, 125. [↑](#footnote-ref-19)
20. Claudia Mills, ‘The Child’s Right to an Open Future?’ (2003) 34(4) Journal of Social Philosophy 499, 501-503. [↑](#footnote-ref-20)
21. Feinberg (n 18) 126. [↑](#footnote-ref-21)
22. ibid, 127. [↑](#footnote-ref-22)
23. ibid, 143. [↑](#footnote-ref-23)
24. See See John Christman, 'Autonomy in Moral and Political Philosophy', *The Stanford Encyclopedia of Philosophy* (Spring 2011 Edition), (Edward N Zalta ed, The Metaphysics Research Lab

    Center for the Study of Language and Information, Stanford University 2011) <http://plato.stanford.edu/archives/spr2011/entries/autonomy-moral/> last accessed 17 October 2019. [↑](#footnote-ref-24)
25. Feinberg (n 18) 143. [↑](#footnote-ref-25)
26. ibid, 127. [↑](#footnote-ref-26)
27. Mianna Lotz, ‘Feinberg, Mills, and the Child’s Right to an Open Future’ (2006) 37(4) Journal of Social Philosophy 537, 543. [↑](#footnote-ref-27)
28. ibid, 544. [↑](#footnote-ref-28)
29. David Archard, ‘Children, Multiculturalism and Education’ in David Archard and Colin Munro Macleod (eds), *The Moral and Political Status of Children* (Oxford University Press 2002) 150-158, 157. [↑](#footnote-ref-29)
30. Kenneth Henley, ‘The Authority to Educate’ in Onora O’Neill and William Ruddick (eds), *Having Children: Philosophical and Legal Reflections on Parenthood* (Oxford University Press 1979) 254-264, 261. [↑](#footnote-ref-30)
31. ibid, 261; see also Callan, (n 13) who adopts a similar approach to Feinberg. [↑](#footnote-ref-31)
32. Hobson (n 13) 70. [↑](#footnote-ref-32)
33. See the criticisms raised by Mills (n 20) 499. See also Joseph Millum ‘The foundation of the child’s right to an open future’ (2014) 45(4) Journal of Social Philosophy 522. [↑](#footnote-ref-33)
34. Millum (ibid) 525. [↑](#footnote-ref-34)
35. See for example James G Dwyer, Religious Schools v. Children’s Rights (Cornell University Press 2001) 20-44. [↑](#footnote-ref-35)
36. Matthew Clayton, *Justice and Legitimacy in Upbringing* (Oxford University Press 2006) 103. [↑](#footnote-ref-36)
37. Will Kymlicka, *Liberalism, Community and Culture* (Clarendon Press 1989) 49. [↑](#footnote-ref-37)
38. See for example Dwyer (n 35); Richard Arneson and Ian Shapiro, ‘Democratic Autonomy and Religious Freedom: A Critique of *Wisconsin v Yoder*’ in Ian Shapiro and Russell Hardin (eds), *Political Order: NOMOS XXXVIII* (New York University Press 1996) 137-174. [↑](#footnote-ref-38)
39. Feinberg (n 18) 147-8; see also Brian V Hill, ‘Will and should the religious studies appropriate to schools in a pluralistic society foster religious pluralism?’ (1990) 12(3) British Journal of Religious Education, 126. [↑](#footnote-ref-39)
40. Archard, (n 29) 151; see also Eamonn Callan, *Creating Citizens: Political Education and Liberal Democracy* (Oxford University Press 1997) 144-5. [↑](#footnote-ref-40)
41. Committee on the Rights of the Child, CRC General Comment No. 1 (2001), Article 29 (1), The aims of education 17/04/2001, UN Doc. CRC/GC/2001/1, para 9. [↑](#footnote-ref-41)
42. John Wilson, ‘Taking religion seriously’ in Jeff Astley and Lesley J Francis (eds), *Critical Perspectives on Christian Education: A Reader on the Aims, Principles and Philosophy of Christian Education* (Gracewing 1994) 29-39, 37. [↑](#footnote-ref-42)
43. Bruce Ackerman, *Social Justice in the Liberal State* (Yale University Press 1980) 140. [↑](#footnote-ref-43)
44. Note that Trevarthan has included a need to learn or become part of a culture amongst the fundamental early interests of the child, Colwyn Trevarthan, ‘The child’s need to learn a culture’ in Martin Woodhead, Dorothy Faulkner and Karen Littleton (eds.) *Cultural Worlds of Early Childhood* (Routledge 1998). [↑](#footnote-ref-44)
45. Ackerman (n 43) 141. [↑](#footnote-ref-45)
46. ibid; a similar view is arrived at by Hobson, suggested as being more important for morality than religion, Hobson (n 13) 69. [↑](#footnote-ref-46)
47. Ackerman (n 43) 140-141. [↑](#footnote-ref-47)
48. John Westerhoff, ‘Formation, education, instruction’ in Astley and Francis (n 42) 61-72, 61. [↑](#footnote-ref-48)
49. Ackerman (n 43) 147. This can be compared to the early stages of acquiring a cognitive capacity to offer opinions, see Esparanza Oschaíta and Mariola Espinosa ‘Children's participation in family and school life: a psychological and developmental approach’ (1997) 5 *The International Journal of Children's Rights* 279, 291. [↑](#footnote-ref-49)
50. Ackerman (n 43) 151. [↑](#footnote-ref-50)
51. ibid, 155. [↑](#footnote-ref-51)
52. ibid, 157. [↑](#footnote-ref-52)
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