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Elizabeth Bartholet

James Dwyer

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# HARVARD LAW TODAY

## Faculty Scholarship

### A Q&A with homeschooling reform advocates Elizabeth Bartholet and James Dwyer

The pair recently hosted a summit, sponsored by the Harvard Law School Child Advocacy Program, to discuss meaningful homeschooling regulations to prevent abuse and promote higher educational standards

By HLS News Staff, June 28, 2021



Credit: iStock/kieferpix

***Elizabeth Bartholet** '65<sup>1</sup>, the Morris Wasserstein Public Interest Professor of Law and faculty director of the Child Advocacy Program at Harvard Law School, and **James Dwyer**<sup>2</sup>, the Arthur B. Hanson Professor of Law at William & Mary Law School, are longtime advocates for child welfare and homeschool reform. Recently, they held a summit, called “Problems, Politics, and Prospects for Reform,” to discuss homeschooling in America, which featured legal and education experts, social scientists, social workers, advocates for children, and homeschool alumni.*

*Bartholet and Dwyer spoke to Harvard Law Today about key takeaways from the conference — including the nationwide lack of regulation for homeschooling, how that can harm children, and possible reforms to improve educational standards and keep them safe.*

## **Harvard Law Today: Why did you think it was important to hold this summit? What troubles you about homeschooling in general?**

**Elizabeth Bartholet:** I have been concerned ever since I did my initial research and writing on homeschooling with the need for reform. The absence of meaningful regulation in this area constitutes a major problem, in terms of both child abuse and educational deprivation. We know that a subset of homeschooling children suffer in these ways. I thought of the summit as a way to bring together some of the most knowledgeable people about homeschooling, its history, its regulation — and lack thereof — and the best ideas about how to move forward with reform. The summit was co-sponsored by some of the nation's leading organizations addressing child abuse, including the American Professional Society on Abuse of Children (APSAC).

**James Dwyer:** There are longstanding concerns about homeschooling among not just academics, but also education experts and professionals in other fields, including those who study child maltreatment. These concerns include children's safety, health, and academic development. We decided that the problems are so apparent that it was time to move beyond academic discussion and have a serious consideration about what practically could be done to help those children.

**HLT: You've mentioned the lack of regulations around homeschooling. Could you expand on that?**

**Dwyer:** There are regulations in some states, but you have to ask how meaningful they are. In some, there is only a "notification" requirement, but there's no checking to see whether the parents are prepared or whether the child will be safe. Beyond that, in terms of qualifications to teach, the most that any state requires is a high school diploma or a GED.

A few states require presentation of a curriculum, but you have to look to see whether the superintendent has any authority to reject a plan that's presented, or whether there is some way to get around even that requirement. In Virginia, for example, if you say you're religiously



Credit: Jessica Scranton

**Elizabeth Bartholet '65 is the Morris Wasserstein Public Interest Professor of Law and faculty director of the Child Advocacy Program at Harvard Law School.**

opposed to state oversight of education, then the compulsory education law does not apply to you. In others, you might get around the requirement by affiliating with some private organization that calls itself a school — and these run the gamut from substantial programs that provide a lot of assistance and oversight, to those that are just facades, a way for homeschoolers to evade any meaningful regulation.



**James Dwyer is the Arthur B. Hanson Professor of Law at William & Mary Law School.**

Even states with the most stringent standards have requirements that can largely be evaded. New York is one, yet its sole required educational assessment in the early years can be done by the parents themselves and does not even have to be submitted to the school district. There's no required testing until fifth grade, and even then, if a child is failing miserably, the remedy is two years of probation. A child can go kindergarten through seventh grade with a grossly deficient home education before the superintendent says it can't continue — if they even take action.

**Bartholet:** Regarding abuse and neglect, there are only two states that have even a tiny bit of regulation. Otherwise, nothing. And when I say nothing, what this means is that if a parent is reported for possible child abuse by a teacher, and child protective services reacts to the report and starts asking questions, the parent is free to simply remove their child from school. There's not a single state where, when a parent decides to keep their kid at home for schooling, there is any check as to what that parent's civil or criminal history is with respect to the abuse of children.

### **HLT: What were the most important things you heard at the summit?**

**Dwyer:** Several research presentations confirmed our concerns for children's safety and academic development. Speakers presented important studies from the Connecticut Office of the Child Advocate and a small study by pediatrician Dr. Barbara Knox documenting the correlation between homeschooling and child maltreatment. And there is evidence that some subgroups of homeschoolers are way below the average academically, and that some parents — it might be a small minority, but we don't know — are grossly unprepared to educate their children.

**Bartholet:** We also know that there's a very significant group of homeschooling parents that are committed to bringing their children up in relative isolation, who are committed to a very different kind of education than the public school curriculum. They have a very different idea of what counts as fact, of what counts as reality. They differ with some of our society's most basic values regarding race and gender equality.

We also know that the kind of isolation that's characteristic of many homeschooling families is something that's very dangerous for kids. Our child protection system is built around the idea of mandated reporters — certain people in our society who have a lot of contact with children, including teachers and school personnel — who are required to report suspected abuse and neglect. It's these reports that enable child abuse to be investigated and identified, and enable child protection agencies to intervene to protect children. Homeschooled children lack the protection given to all children going to schools, since teachers and other school personnel are mandated reporters and, indeed, constitute the largest group of such reporters.

**HLT: Because of the pandemic, many more children were learning from home in the past year than ever before, though for different reasons than most homeschoolers. Did that experience add weight to your arguments?**

**Bartholet:** I think it has. We have some information that indicates more children have been at greater danger during the last year because more children have been isolated. What's our evidence? Ironically, it's that reports to child protective services have gone *down*. I don't think anybody who knows anything about child maltreatment thinks that abuse has actually gone down; the reports are down because we don't have children being seen by teachers and other school personnel who are required to report suspected abuse. We also have numerous reports from medical personnel in emergency rooms saying that the children they are seeing who have been victimized by abuse have more serious and more deadly injuries.

Additionally, as panelist Professor Emily Putnam-Hornstein<sup>3</sup> discussed, there has been an enormous increase in adult women reporting domestic violence that they had suffered during the pandemic. It's pretty obvious that it's the conditions of isolation, as well as stress related to both isolation and the pandemic, that created this. And it's these types of conditions that we worry about with homeschoolers as well.

**HLT: What did you learn from panelists who themselves had been homeschooled?**

**Dwyer:** It was important to hear the stories and recommendations from homeschool alumni; they were quite telling and moving. One person revealed how child abuse can arise out of ideology as well as dysfunction. We tend to think of abuse from parents who are out of control, perhaps because of substance abuse or mental illness. But in addition to that, there are a large number who adhere to extremist teachings about discipline, such as those of Michael and Debi Pearl<sup>4</sup>. Another person's story showed how, even when a child themselves expresses a desire to be homeschooled, it might turn out not to be a good experience for them. They might miss out educationally, socially, developmentally.

**HLT: If there are few meaningful regulations today around homeschooling, what reforms do you — and summit panelists — suggest?**

**Bartholet:** There was a strong consensus among attendees that, at a minimum, there should be background checks with child protective services and criminal record checks before a parent is allowed to homeschool. And I think there was general agreement that there should be more than that, that there should be some monitoring of children who are homeschooled, and more links between child protective services and the educational system.

In terms of educational standards, organizations like the Coalition for Responsible Home Education are pushing for regulations that other countries already have, like establishing minimum credentials for parents, compelling them to commit to a curriculum, and requiring regular testing to monitor progress.

### **HLT: Any final thoughts?**

**Bartholet:** I want to be clear that we are not critical of all homeschooling or all homeschooling parents. We recognize that there are lots of good things going on in the world of homeschooling. That said, our concern is that the absence of regulation means that parents can do what they will or not doing *anything* with respect to education, and they can do what they will with respect to abusing their kids. And that is a problem. What we need is meaningful regulation that protects homeschooled kids in the same way that we try to protect other children in our society.

**Dwyer:** If states could do a meaningful, upfront screening of homeschooling parents, that would go a very long way toward protecting children's interests. So do the background check to make sure that children are safe, and require parents to make some demonstration that they have an educational plan and a capability to carry it out. No school would hire someone just because they want to teach. You hire people that demonstrate upfront that they are capable and safe. Homeschooling has enjoyed this period of deregulation and lack of attention by legislators, but there is increasingly more evidence of the problems that result. Homeschooling could suffer in popular opinion, and perhaps also in terms of how legislators might react, if those who believe in homeschooling don't endorse reasonable regulations now.