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Title Page

HOME-SCHOOL AGREEMENTS: ON THE GROWTH OF JURIDIFICATION AND CONTRACTUALISM IN SCHOOLS

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HOME-SCHOOL AGREEMENTS: ON THE GROWTH OF JURIDIFICATION AND CONTRACTUALISM IN SCHOOLS

1. INTRODUCTION

Since 1998 all maintained schools, academies and city technology colleges in England and Wales have been required to publish a home-school agreement (School Standards and Framework Act, 1998). The *Department for Education* describes it as a statement explaining ‘the school’s aims and values’, ‘the school’s responsibilities towards its pupils’, ‘the responsibility of each pupil’s parents’ and ‘what the school expects of its pupils’ (DfE, 2013, p.1). Its content is the formal responsibility of the governing body but, ‘before adopting or revisiting a home-school agreement, ‘all parents of registered pupils at the school must be consulted’ and ‘schools must review the agreement from time to time’ (ibid. p.1). In practice the agreement is tripartite involving schools, parents and pupils. It will vary in content from school to school depending upon the outcome of consultation but pupils will often end up signing a promise to ‘take care of other people’s belongings’, for example, parents to ‘get our child to school on time’ and schools to ‘provide a happy and secure learning environment’. Agreements differ from ‘parenting contracts’ that are imposed by a court to secure ‘an improvement in the child’s attendance and behaviour’ (DfE, 2012), but both are contractual in nature for they make explicit what the various parties have signed up to and imply there would be recrimination, legal or otherwise, should there be deviance (see Bastiani, 1996, p. 9; Norman Waterhouse Lawyers, 2004).

The agreement came into being during Prime Minister Blair's administration as part of a wider offensive on irresponsible parents. Their flagship policy *Every Parent Matters* suggested that 'parents unwilling to accept help and fulfil their responsibilities must be compelled to do so' (DfES, 2007, para. 4.28). This 'responsibilisation agenda' (see Ball, 2009) became progressively more strident towards the end of the decade so that by June 2009 the Secretary of State for Children, Schools and Families was warning: 'Once their child is in school, the parents will be expected to sign the agreement each year and will face real consequences if they fail to live up to the responsibilities set out within it, including the possibility of a court-imposed parenting order' (DCSF, 2009, p. 3 *my italics*; see also Gibson & Simon, 2010). While such a threat is indicative of the political backdrop to the formation of agreements it amounted to no more than ministerial bravado, for the parental and pupil signature has remained voluntary till this day and without legal teeth: 'Any breach of the agreement will not be actionable through the courts; no pupil can be excluded because a parent refuses to sign the agreement; no pupil can be refused a place because a parent refuses to sign' (ISCG, 2007, p. 142).

Research on home-school agreements is sparse, dated and in some cases insufficiently interpretative. Blair and Waddingtons' study of the legal consequences of contracting with parents concluded: 'The rhetoric of choice and partnership is used as a smoke screen for control and discipline and the imposition of a model of 'good parent' is being superimposed over the ordinary obligations that all parents share' (1997, p. 30; see also Crawford, 2003). Vincent and Tomlinson argued that 'contracts have become... a mechanism for enforcing school discipline' and 'contain an inherent social class bias' (1997, p. 369; see also Vincent, 2012). In 1999 Hood suggested that home-school agreements were underpinned by implicit and dubious

models of parents as ‘problems’ and as ‘consumers’ (Hood, 1999, p. 427) and her identically named paper two years later lent ‘little support to the government’s view that home-school agreements w[ould] provide a framework for improved partnership between parents and schools’ (Hood, 2001, p. 7). In contrast, from a limited survey of agreements in inner-city schools, Sykes concluded that ‘parents and children overwhelmingly expressed that they thought home-school agreements were useful and helped to enhance trust’ (Sykes 2001, p. 273). Such a conclusion is contestable, however, in the light of evidence from Coldwell and colleagues in 2003 whose investigation of 360 schools found that ‘in almost all cases, the parents interviewed had a very low level of awareness of the home-school agreement’ (DfES, 2003, p. 81). In essence the corpus on agreements is limited in extent and by its explanation of the broader cultural and political backdrop to their rise.

This paper tries to do four things. First, to explain tensions in the nature of a statutory requirement for schools to obtain non-obligatory signatures from parents and pupils; to raise questions regarding the evident asymmetry between parties in the construction, implementation and consequences of the agreement; and to query the authority and capability of pupils as young as four to challenge the content of an agreement or presume their loyalty to it. Second, it presents evidence of the procedures, practices and attitudes towards the agreement emerging from recent interview data with headteachers, teachers, pupil, governors and parents in four maintained schools. Their narratives and explanations are rich and detailed but limited space here involves abridgment. Third, it tries to show how the agreement signifies the emergence of new forms of interaction and relationships in schools that symbolise a shift in cultural practice. Here the paper draws upon Habermas’s concept of ‘juridification’ that describes the expansion of explicit and written formal

law in modern societies (Habermas, 2006) and implies that juridification can help explain how agreements do not merely supplement socially integrated contexts but herald their conversion to the medium of law. The forth section questions assumptions of subjectivity that underpin agreements by reference to social contract theory (Hobbes, 2008). It critiques contractarianism insofar as it encapsulates the way formal agreements symbolise the cool, distanced relationships between fearful strangers that disregard, and would displace, the web of trust that tie moral agents to one another in a multitude of complex and composite ways.

2. CURRENT PRACTICE

2.2. Methodology and method

Two primary and two secondary schools were selected for their institutional differences but demographic proximity. All were in the west of England:

Voluntary Controlled Primary (school A: 175 pupils, 4-11 year old)

Roman Catholic Primary (school B: 200 pupils, 4-11 year olds)

Secondary Community College (school C: 1190 pupils, 1-16 year olds)

Secondary Academy (school D: 630 pupils, 11-18 year olds)

In total forty-three interviews were carried out mostly individually. This included 128 pupils in groups (Pu) , 8 parents (Par), 8 teachers (T), 3 Headteachers (HT), 1 Vice Principal (VP) and 5 members of Governing Bodies (GB), including 3 Chairpersons (CGB). Interviews were semi-structured, lasted from thirty minutes to an hour and were audio recorded. These were transcribed and scrutinised for dominant themes. Categorisation of these themes centred on the three groups of agreement signatories,

viz. the school (headteachers, governors, teachers), parents and pupils. Qualitative analysis involved inductive coding by sifting the content of the interviews for key discursive themes. These were formed in part by the questions asked but also as a result of the two-way flow of conversation and respondents' reactions to supplementary questioning. Once these were identified, transcripts were scrutinised more systematically in order to classify similar and consistent responses from across the whole sample. Responses were then used to form sub-headings and paragraph themes and interviewees' verbatim responses incorporated where poignant to capture the richness and tenor of their utterances.

2.2. Schools' perspective

A number of core themes emerged from interviews with school officials. The first is that whereas headteachers and senior managers knew about the legal requirements for agreements, governors were often unsure about whether pupils and parents had a choice to sign or even if their school had an agreement: 'I don't know legally what the...' (B-GB); 'I don't know if the Academy has one. I assume that they do. I would need to double check that' (D-CGB). Teachers were aware of the home-school agreement but, like governors, were also unsure of its legal status. Knowledge of the procedures for the construction, revision and monitoring of the agreement was often vague. We have already seen how current legislation entitles parents to be co-constructors and yet this did not happen in any of the four schools except indirectly through representation on governing bodies. None of the home-school agreements had ever been revised or updated since ratification and therefore failed to reflect the new annual intake of pupils or parents and their wishes, despite the rather amorphous statutory requirement to do this 'from time to time'. When asked why,

one governor replied: ‘No... No... (laughter)... Although it’s a legal requirement we’ve never had to act on it. It’s never been an issue’ (B-GB). Thus while schools are currently obliged to take ‘reasonable steps to ensure the parental declaration is signed’, the monitoring of this was cursory despite pressure to do so within the first weeks of the academic year.

The majority of teachers interviewed were dismissive of the agreement but were under pressure from senior managers to enact the policy. One Reception teacher argued:

The agreement is not ‘agreed’ by children. We just get them to sign it. I personally would say it’s not that valuable.

So why do it?

Because it’s a legal requirement. I wouldn’t do it if we didn’t have to. (A-T)

One who was more favourably disposed to home-school agreements tried to justify its lack of co-construction and revalidation by parents and pupils by arguing: ‘But it is an agreement if they (i.e. the parents and pupils) agree to it’ (B-T). School staff who oversaw the management of home-school agreements divided into two camps. On one hand were those who intentionally minimising their time and effort upon it, seeing it as an imposition and superfluous to their functioning as an institution (A, B & D). On the other was one vice-principal (C-VP) who justified its worth insofar as it could be used as a fillip to enact other school policies. Teachers entrusted with securing parents’ and pupils’ signatures likewise fell into these camps. There were those who were pragmatic in ‘getting it done and dusted’, as one put it, and those who saw it as functional insofar as it formed the basis of rules for parental or pupil behaviour and was therefore expedient to the school. School governors also vacillated

between these two positions, for while none spoke enthusiastically of the agreement one concluded:

It is only the school that has any real interest, a statutory one in making sure it has one made. It's not really on anyone else's agenda to have one. It could be if there was a better engagement with the notion of it and a more widespread understanding of 'agreement' (D-GB).

In sum, schools lived pragmatically with the statutory requirement and managed it at least cost so that the procedural aspects of completing the agreement and acquiring signatures was performed without generating undue tension or overt surveillance. While one senior school manager (C-VP) valued it explicitly this was not for reasons of partnerships with parents and pupils but for expediency in implementing other school policies. Moreover, it belied the lack of monitoring or awareness of teachers obliged to implement it and who were critical or dubious of its value. The other three schools clearly saw it as a procedural necessity ('ticking boxes') and suggested that there were far more constructive and positive ways of establishing relationships with parents and pupils. It is a snapshot of schools' attitudes to the home-school agreement that correspond well with recent comments from OFSTED:

Home-school agreements had a low profile and their impact on the day-to-day work between parents and the schools was very limited... Although one secondary school considered that a signing event of the home-school agreement each September created a 'common understanding' between home and school, the headteachers of fewer than half the schools visited considered that this was an important document for their school. They did not see it as driving the school's work with parents and it was seen by some as tokenistic. (OFSTED, 2011, p. 5 and 8)

What OFSTED does not offer, however, is an interpretation of broader issues concerning levels of mutuality, the autonomy and power of school actors or questions concerning the maintenance of loyalty and trust in schools, nor, indeed, an interpretation of the political assumptions that maintain the legal requirement for home-school agreements to this day. We come to these issues later.

2.3. Parents' perspective

The first theme that emerged from parent interviews was a general sensitivity to the school's predicament. Parents often appeared to be both sceptical of the value of home-school agreement but sympathetic towards the school in pursuance of its duty to enact a statutory obligation. One loyal mother reported that her children's primary school was simply:

...ticking the box... ticking boxes. That's all they're doing. Doing the bureaucratic thing the government say they have to do. In many ways they haven't got time to sit up and say "I'm terribly sorry this is not the right thing for this school" because it takes so much more effort to do that. It's a lot easier to tick the box and get it out the way. And that's not because they necessarily want to do that, it's just that changing something in that situation means taking time away from educating the child. Teachers don't have time for that.

(B-Par)

The reasons parents gave for signing or not signing the agreement fell into four categories. *Refusers* objected to the idea of it *per se*, although the distinction between a 'principled parent' (one who refused to sign on principle) and a 'difficult' one (who might be cast as 'irresponsible') would be difficult for a school to assess without subsidiary information. *Forgetters* said they simply overlooked signing despite

reminders from school but for whom it was clearly an unimportant or irrelevant event. *Active* signatories were those parents who believed the home-school agreement to be worthy of support. And *reluctant* signatories describe those who disliked the procedure, or saw it as an unnecessary external imposition upon the school, and yet who took what one described as a ‘trivial’ stand (‘I choose my battles carefully’) by signing for fear of not being seen as a ‘good parent’ by the school or concerned that they may embarrass their child.

Reluctant signatories were a particularly noteworthy group. Schools generally could not easily distinguish between reluctant and active signatories (both of whom ended up signing) or between noiseless refusers and forgetters (both of whom ended up not signing) nor had considered what implications this might have for home-school partnership. One school governor was clear that parents ‘have the right to say “I don’t want to sign this”... but I’ve no awareness of anyone... refusing to sign it’ (B-GB). The headteacher of the same primary school was, however, more circumspect:

They (parents) can refuse to sign it. I believe. Obviously it’s in our interests to know why. To be very very honest, in our school we’ve never had parents who have been unwilling to sign it... If one refused, our position would be that we’d need to talk it over with the parents to find out exactly what the issues were.

(B-HT)

Many parents remarked that there was both explicit and tacit pressure to comply and sign. This came home in the form of reminders, via School Newsletters or verbal prompts from the child, that were viewed as pressure to conform to what one called ‘the good parent syndrome’ or the wish for the school to recognise the home as responsible: ‘*So why did you sign? For support really... I can’t justify why*’ (D-Par). Signing formed part of a flurry of activity at the start of the academic year, especially

as new groups of children started school in Reception (primary) or in Year 7 classes (secondary), and formed part of an initiation ceremony of entering the institution. A secondary governor suggested that it was often an automatic and unquestioned response to a request from the school to a mindless process that was performed by parents unreflectively: 'Just another obligation placed on parents like their children turning up in uniform and turning up on time' (D-GB). Often parents confirmed that they had signed because of 'form overload' at the start of term and 'to get the paper work out the way' (C-Par) or 'for the sake of a signature' (D-Par). When asked if the home-school agreement was not, therefore, taken very seriously one parent answered: 'That's right. A lot of parents would probably not pay attention to what was on the form and send it back. I have been guilty of that with the others at primary school' (D-Par).

Another of the reluctant signatories who still opted to sign despite qualms about the idea of the home-school agreement said:

I don't think it's worth bothering about... dropping your...umm...you know... the child into it by not signing it. You obviously want to toe-the-line a bit on this one. It's not worth putting pressure on... to rock the boat in the first few weeks of term. That to me seems like common sense anyway... That's what I mean by it's not worth worrying about. Because I wouldn't want to use my children as my tool...to be one of those parents who says I don't particularly want my child to do this, that or the other. I'd rather deal with it myself. (C-Par)

The same parent suggested that because places were limited and the school oversubscribed, home-school agreements had also been used as 'a control mechanism':

But who's in control? I think the school. We're oversubscribed. As I say, any student who doesn't 'toe-the-line'... they make it very clear that there are other people that would like to take their place' (C-Par).

Others said very much the same thing: 'I think that... well... parents will sign because they want their children to come here so much' (B-T). The few parents who actively refused to sign included a Chair of Governors who argued vociferously that the agreement was actually a list of expectations:

I wouldn't want to call it an agreement. It's almost like a list of expectations ... what's expected... agreed expectations... It's like making it seem really like a legal document and that you're signing your name to it so that you'll comply with it. It puts people like me off signing the thing, if you see what I mean. (A-GB)

And yet, despite her worries, she suggested that she had signed her older daughter's agreement at secondary school because of pressure from the child. She differentiated her actions because as a governor she felt more secure in the relationship she had with her younger child's primary school. It is a case that demonstrates well the delicate judgements parents make in refusing to sign in one context but not in another, or in choosing to sign the agreement with reluctance despite worries about its purpose and content.

There are, then, a complex set of issues in tension that underlie the nature of parental compliance. A small number saw it as providing clarity for school procedures and providing expectations for them as parents, that may be connected with social class (see Vincent & Tomlinson, 1997; Gerwitz, 2001). The majority, however, saw it as a tolerable or what one called an 'inexpensive' part of entry-membership into a school they valued. Only a handful were decided non-signatories.

What is significant is that all the schools were unable to differentiate between reluctant and involved signatories both of whom signed, or between noiseless forgetters and animated behind-the-scene refusers who chose not to sign. This has implications for home-school relationships. Only the senior management in both the primary schools clearly indicated that they valued other less legalistic channels of communication so that they could assess the attitudes and reactions of wary or unhappy parents, a point to which we return.

2.4. Pupils' perspective

Two related issues emerged from interviewing pupils. The first centres on the consequences of their non-involvement in the construction and revision of the agreement and the second upon the degree of pressure they felt to ratify it. One fifteen-year-old described it as 'a one sided agreement in a way. We agree to do what the school wants us to do but they won't let us do everything that we want in return' (D-Pu). A seventeen-year-old similarly suggested that:

Agreements are a bit unclear. It keeps coming up but... uniform! Sixth formers are supposed to dress 'smartly'. But you can't put down rules which actually say what is smart. One teacher interprets it one way... then another comes along. (D-Pu)

One teacher called this the 'fluffy' problem, as we shall see, that encapsulates the problem of ambiguity and interpretative struggle regarding the meaning of what has supposedly been agreed. An issue here was the age and maturity of pupils. In one primary school a ten-year-old reflected back upon his time in Reception when he was not yet five and described the problem thus:

You sign it in Reception but now in Year 5 or Year 6 you read back and you think, well now... Now I'm this age I don't actually want to sign it but you can't really undo the signing... When you're young most of it will seem *UTTER* gibberish. In Reception they don't know what they've agreed to. (A-Pu)

Teachers and parents of Reception-aged pupils in both primaries also saw the difficulty of asking children as young as four to sign:

I don't think that Bradley would have been able to write it. So... you know. He couldn't write his name at four. (B-Par)

I think at four, to be quite honest with you, they will sign it if they are asked to by their teacher... because children do what they're told generally. (B-T)

They'll sign anything. But at four if asked to sign it by teachers they will do so. Not 'forced' to sign. But 'will'. (B-T)

For me, personally, it's absolute nonsense. (B-T)

A four year old's signature? Looking at it as a contract... well let's face it. The child will write that because an adult says to them 'just do it'. (B-HT)

So why get them to sign it?

Yea I wonder that sometimes. Lots of them can't write their name at that age. (A-T)

At the other end of schooling one sixth-form tutor suggested that the insistence of a signature from a student could 'jeopardise delicate relationships' (C-T). Parents too were sensitive to the nature of pressure upon pupils from the school for conformity when the cost of not signing was 'falling out with their tutor over something they're going to have to do anyway':

From the perspective of a parent they can't just be chucked out for not bringing the right equipment. But if you're an eleven year old you'd be very worried if you hadn't brought this (agreement) in. I've certainly bumped into

children who are in floods of tears because... you know... they've forgotten their pencil. They see this as some sort of a threat if they don't sign it. (C-Par)

In sum, while there is no legal obligation for pupils to sign there was evidence from the pupils themselves, as well as from parents and teachers, that there was pressure to do so. One headteacher reflecting upon the practice of securing signatures threw up her hands and declared, 'Ohhh... for goodness sake! (laughter)' (B-HT), acknowledging she felt under pressure to obtain evidence of agreement from her pupils but that at the same time considered she was taking advantage of their lack of understanding of what becoming a signatory meant. In secondary schools too there was general distrust of the process by pupils who felt under pressure to sign by the end of second week of first term and, despite a substantial proportion suggesting they had forgotten, the outcome appeared unmonitored or fairly inconsequential. One parent of a secondary-aged child believed that: 'A lot of students will forge their parent's signatures... A lot of these (agreements) will not actually come out of their bags' (C-Par).

2.5. Asymmetrical undercurrents

What emerges from this synopsis of current practice is that while home-school agreements appear tripartite and equitable there is clear evidence to suggest that they are asymmetrically structured in both their assemblage and implementation. We have seen that it was common for headteachers or deputies to script the agreement and then pass it through the governing body for formal ratification. None of the agreements was recent (one was eleven years old) and since their inauguration had not been discussed by staff nor reconstructed with parents despite the

mandatory obligation so to do. In both primary schools, once home-school agreements were completed they were boxed and stored where they remained untouched. The annual negotiation between teachers and pupils of 'classroom rules' was said to supersede that which had been agreed, with one teacher admitting she manipulated the outcome:

To quote you 'I do twist things a bit' and I just wonder if that would also apply to the formal agreement. So what's its function? You say its function is to encode the school rules. Maybe those rules are set by teachers pretending negotiation then?

I couldn't possibly agree with that...

...but for the record she's smiling (mutual laughter) (B-T)

One sixth-form pupil voiced his concern for the imbalance by suggesting the need for an ombudsman to enact the agreement: 'If teachers failed their side of the agreement who would we turn to? We would need a person outside the school who'd have to be accessible' (D-Pu). Asymmetry was also found in the semantic switching of 'agreement' to it denoting 'rules':

But then you're surely implying that it's a set of rules... But that's not an 'agreement'?

But it is an agreement if they agree to it.

Is it therefore a one-way 'agreement'?

But if they didn't agree with what's on the paper they wouldn't sign it. It's like a 'set of rules' for behaviour for those entering the school. (B-T)

In the comment by a headteacher below, her pronoun shift ('I' - 'we' - 'us') is revealing as is her slippage from 'agreement' to 'contract':

From the parent's point of view I would consider this more of a contract.

There are parents we don't see every day. There are parents that we don't see

at all... Although it doesn't have huge legal weight with regard to penalty... it's something that is sort of a support to the school. To say "Well now, look, you did sign this". I think that's actually what you're doing... You're actually giving rules to parents. Saying that phrase is quite shocking but actually that's what we are doing. You're saying that to be part of this school community we need you to share our values and our vision and our... you know... what's important to us. (B-HT)

Asymmetry was found therefore not only in the *procedures* for the construction but also in the composition or *content* of promises made by each party. Schools reported no example of a parent using the agreement to challenge them for failure to deliver on a specific part of it. One parent said, because the wording made it so ambivalent and self-evident, 'there's not much they could argue about – '... "attend school regularly", "bringing the right equipment", "wear school uniform", "tidy appearance", and so on' (C-Par). Similarly, a governor talked of the lack of equivalence in the outcome for each party, such that one would never find a school agreeing to guarantee that a pupil reached a certain violin grade, acquire the requisite exam grades to enter university, or simply ensure that a child emerged from school literate and numerate:

There is no guarantee that the school will ensure that the child is literate and numerate. And I have to say if a kid can't do the basics after eleven years of schooling there is a huge issue within the education profession of a child whose needs are not being met.

And if this requirement were itemised in the home-school agreement?

I would be inundated with parents asking why John or Susan had not achieved a 'C' grade in English or achieved a grade 1 maths. They certainly

wouldn't accept the appalling 50% of kids failing English and maths. It would make teachers accountable... makes the education system accountable. (C-GB)

Keeping the parental part of the home-school agreement vague was important said one primary teacher. In principle, she could see that 'they (parents) could use it. But it's not phrased to allow this. It's 'fluffy' for them... and, personally, you wouldn't want it made too 'un-fluffy' ... (laughter)' (B-T1).

One outcome was that disciplinary action based upon the home-school agreement only ever emanated from the school to parents or pupils. One headteacher explained that she had twice referred parents to the signed agreement that formed a reference point to address their apparent misdemeanour:

The second one was a stepfather...umm... who was very aggressive and threatening and so again we said: "Look, we've enclosed a copy of your home-school agreement signed earlier this month by your partner that you will show respect for all members of the school community..." We highlighted that bit...and also said that, you know, before any future meeting we'd get him to sign a code of conduct. (A-HT)

When asked post-interview what she would do if the parent hadn't signed the agreement she said: 'Probably show him the agreement and say something like "And we note you didn't sign it"... (laughter)' (A-HT).

Issues of asymmetry coincide with the possible impact of the home-school agreement upon the fabric of school relationships. One of the conclusions from the 2003 survey was that a majority of respondents thought they 'had no impact' on schools (DfES, 2003, p. 23). We have already seen that more recently OFSTED has also concluded that home-school agreements were not 'driving the school's work with parents and it

was seen by some as tokenistic' (OFSTED, 2011, p. 8). This is borne out by the evidence above. However, that agreements are thought to have no impact is ambiguous. For some headteachers home-school agreements are clearly not permitted to impact upon the life of their school in the sense that they are side-lined as efficiently as possible: 'The way it stands at the moment at school is that that piece of paper (the agreement) is signed and then that's history... that piece of paper gets superseded by what we do in the classrooms' (B-HT). The same head acknowledged, however, that the agreement had an impact. Because of the importance she placed upon relationships in school, that formed 'a sort of agreement... a contract of trust', she argued that it brought with it a sense of formal legality that 'just muddied the water' (B-HT) and put delicate relationships in jeopardy. A Chair of Governors, considering the impact of signage and the surrogate legal obligations that home-school agreements represented, agonised about its effect upon trust, motivation and human responsibility. This he attributed to the political backdrop at the time of its emergence suggesting it had been 'a very controlling era in social understanding':

My personal belief is that we shouldn't get pupils to sign. This is highly hostile to relationships based on what is genuine rather than obliged. It doesn't change inner motivation... Clearly, we need laws and restrictions to make a society function. We need rules of some kind. But I don't think they function better because you make people sign things so they'll do something... You're no better off. If they agree to do it, but still didn't like doing it, you haven't changed their inner motivation anyway. Surely, what we're seeking to do in a healthy institution is encourage better results, better behaviours, better motivations... Trust is fundamental. You have to give people the responsibility to get it wrong... We've have had a very controlling era in social understanding... Massive erosion of longstanding civil liberties, desperate

urge to lock everyone up, criminalise certain behaviours and to restrict people's autonomy... The whole thing is made contractual and top down, which is a very alien notion of society to me. (D-GB)

3. Habermas and juridification

The agreement can be theorised in a number of ways. A Foucauldian analysis would see it in terms of the shaping and redistribution of power within schools seen as carceral institutions 'swarming with disciplinary mechanisms': 'Thus the Christian school must not simply train docile children; it must also make possible to supervise the parents, to gain information as to their way of life, their resources, their piety, their morals' (Foucault, 1977, p. 211; see also Foucault, 1988; 1990; Vincent & Tomlinson, 1997). As part of a technology for delivering a new form of regulatory management, agreements would then be read as part of the enactment of 'modest, suspicious power' in order to 'normalise judgements' (ibid., p. 177) where 'toeing-the-line', as one parent put it, would be read as part of an abundance of humble modalities and micro-penalties that encouraged self-censure through fear of isolation or embarrassment for refusal to endorse that which had been (allegedly) agreed (see Ball, 2013, p. 51; Ball, 1990). Here the price of straying is conveyed through 'petty humiliation', carried through institutional 'coldness, a certain indifference, a question' (Foucault, 1977, p. 178), as well through more direct accusations of disloyalty or the threat of reprisal like the imposition of a code of conduct. A comparison of the content of home-school agreements with *Prisoner Rule and Regulations* display remarkably similar edicts and language (see Winder, 2012).

Habermas's theory of juridification (*Verrechtlichung*), however, is less frequently applied in educational contexts and better explains the significance of the agreement in terms of the spread of surrogate-legal pronouncements and shifting cultural practices that currently augment law-based forms of social management.

Juridification is the consequence of the *expansion* and the *densification* of formal law. The former describes the 'legal regulation of new, hitherto informally regulated social matters' and the latter 'the specialized breakdown of global statements of the legally relevant facts into more detailed statements' (Habermas, 2006, p. 357). It originates from two sources. First, through the requirement of capitalism to ensure the dependable regulation of business, something Weber had observed as part of the broader sweep of rationalisation in the industrial world, and second through political struggle that gave rise to 'situational freedoms' (Weber, 1930) or 'freedom-guaranteeing juridification' (Habermas, 2006, p. 361) in areas like employment law. Habermas then couples juridification to the idea that as the economy and state become more complex they penetrate ever more deeply into the symbolic reproduction of communities that originate in the *lifeworld* (*Lebenswelt*). This is described as 'the reservoir of taken-for-granted, of unshaken convictions that participants in communication draw upon in cooperative processes of interpretation' (ibid., p. 124), and constitutes the realm of tradition, custom and convention and is the sole source of norms and values. This differs fundamentally from *systems media* that are driven by instrumental rationality (see Gibson, 2011) and survey the world in terms of quantities, like money and votes. Significantly, because systems media tend to overwhelm or colonise the lifeworld, Habermas argues spheres of legitimacy-generating 'communicative interaction' are displaced in the process. Colonisation describes the surging of instrumental rationality beyond the bounds of the economy and state bureaucracy into areas of communicatively structured life where it achieves

dominance 'at the expense of moral-political and aesthetic-practical rationality' (Habermas, 2006, p. 304-305). Colonisation, in other words, is a consequence of juridification and helps account for the withering of the lifeworld and the increasing marginalisation of 'norm-conforming attitudes':

In modern societies, economic and bureaucratic spheres emerge in which social relations are regulated only via money and power. Norm-conforming attitudes and identity-forming social memberships are neither necessary nor possible in these spheres; they are made peripheral instead. (ibid., p. 154)

Juridification also accounts for changes in the nature of formal law insofar as it straddles the lifeworld and system. This is because law, on the one hand, only gains social validity by having its legitimacy sourced by the lifeworld: 'They need substantive justification, because they belong to the legitimate orders of the lifeworld itself and, together with informal norms of conduct, form the background of communicative action' (ibid., p. 365). Law, on the other hand, operates as a coercive system with predictable and dependable procedures that stand apart from the content of particular value judgements. Law, in other words, makes claims to *legitimacy* and to *legality*. The problem today, says Habermas, is that when there is a weakening of the normative base upon which law is formed, substantive justification through communicative interaction is diminished and problems of legitimation arise (see Habermas, 1988). Not only are large swathes of 'technicized and de-moralized' (Habermas, 2006, p. 366) law relieved of the problem of legitimacy but legalism starts to supplant that which had hitherto been assumed to be un-formalised consensual social agreement. Ominously, warns Habermas, 'the trend toward juridification of informally regulated spheres of the lifeworld is gaining

ground along a broad front' (ibid., p. 368). Home-school agreements exemplify this trend and there are three reasons why.

First: the spread of juridification in schools is greater than the mere rise of home-school agreements. Today a plethora of laws extend from the legal requirement for schools and communities to be (quite literally) *Working Together* (DCSF, 2008; Education Act, 2002, section 176; Education Act, 2005, section 7), through to regulations that recognise a child's rights against their school. Such legal requirements are evident in burgeoning procedures for Criminal Record Bureau checks, the right of parents to receive written reports and to have access to their children's records, the legal surveillance of a school's standards, as well as an abundance of health and safety law frequently ridiculed for generating 'regulatory myths' (HSE, 2013), like the banning of triangular-shaped flap jacks in schools (BBC News, 2013). Even the Prime Minister has acknowledged that the consequences of juridification in this domain are often bizarre and misguided:

Something has gone seriously wrong with the spirit of health and safety in the past decade. When children are made to wear goggles by their headteacher to play conkers... What began as a noble intention to protect people from harm has mutated into a stultifying blanket of bureaucracy. (Cameron, 2009; see also Almond, 2013, p. 199)

Second: While the PM does not extend his anxiety regarding juridification to the home-school agreement it too is part of the trend towards law-based forms of regulation in schools. While its *legality* is manifest, both in its statutory nature and in its adoption of a legal-contractual format, its *legitimacy* as we have seen is contested. Parents who found no validity in the agreement were concerned how their

reactions might be read by the school and so chose to negotiate their way past it inaudibly in an attempt to minimise risk to themselves or the embarrassment of their child. A governor who disapproved of the way ‘the whole thing is made contractual and top down’ condemned it for supposing ‘a very alien notion of society’. We heard a sixth form teacher suggest that if he were to enforce specific aspects of the agreement with his tutor group (like the requirement – ironically - for students ‘to have the agreement accessible to tutors at all times’) it would be counterproductive and ‘jeopardise delicate relationships’. We learnt how some pupils reacted to one teacher’s judgement that agreements needed to be ‘fluffy’ (‘One teacher interprets it one way... then another comes along’) and heard of their solution, the need for an ombudsman to give a legal interpretation of what had supposedly been agreed. We also heard one headteacher protest that because the agreement mimicked a contract it ‘just muddied the water’ and endangered trust within her community. In short, there were many examples where pupils and parents signed an agreement they had not jointly constructed, were too young to understand, did not value or with which they disagreed.

Third: This not only makes the legitimacy of agreements questionable but also endangers ‘norm-conforming attitudes and identity-forming social memberships’ (Habermas, 2006, p. 154). Because agreements do not supplement socially integrated contexts but escalate surrogate-legal arrangements between families and schools, they usher in new forms of relationships by converting them over to ‘the medium of law’ (ibid., p. 369). Currently schools are Janus-faced, looking toward their legal obligation to enact the agreement while surveying the deleterious effect this may have upon their community and beneath this tension lies a paradox. Agreements might (in part) be thought to protect pupils’ and parents’ by offering

them the right (in principle) to be included in decision-making and extend their rights against institutional negligence and malpractice. This provision might be thought to deliver clarity and protection through agreed and well-broadcasted disciplinary procedures and penalties, welfare directives on health and safety, and so on. On the other hand, many of these legal rights within current legislation would be won at the cost of increased bureaucratisation in which social membership would be broken down further into a mosaic of legally contestable administrative acts. Here relationships would become dependent upon litigation-proof procedural certainties underpinned by ‘depersonalization, inhibition of innovation, breakdown of responsibility, immobility, and so forth’ (ibid., p. 372-373) and that inhibit the legitimacy-generating activities of the lifeworld. In other words the paradox of agreements lies in the way they promise communicative action and situational freedoms while colonising relationships.

4. Hobbes and contractualism

Much of the discussion concerning juridification so far has made assumptions about the types of relationship implicit in agreements. We have seen one governor argue they were ‘highly hostile to relationships based on what is genuine rather than obliged’, that it is a view reminiscent of the problems commonly associated with Hobbes’s theory of self and association. It prompts us to question the assumption that human agreements are dependable only if underpinned by contract. In what follows, I elide subtle distinctions between contractarianism and contractualism because of space.

Hobbes published the *Leviathan* in 1651 shortly after the English civil war. In it reflected upon a hypothetical state of nature where people lived ‘in continual feare, and danger of violent death’, where he famously characterised ‘the life of man (a)s solitary, poore, nasty, brutish and short’ suggesting it was a state of war in which ‘every man is enemy to every man’ held sway (Hobbes, 2008, p. 86). While he entertained the possibility that there might be mutual agreement amongst warring parties for self-interested gains, Hobbes’s position was that ‘covenants without the sword are but words, and of no strength to secure a man at all’ (ibid., p. 116). In other words, agreements based on mutual consent and trust could not work because, although humans always acted in their own self-interest, they often failed to act rationally. Because of the predilection of human nature to be self-interested and brutal, a condition in which no one could be trusted to refrain from stealing or harming another, Hobbes was led to the conclusion that only in a civil society led by a powerful sovereign would there be peace. A leviathan was the product of that pact, brought into being by a social contract in which individual rights were exchanged for more dependable relationships and security.

The limitations of Hobbes’ account of contract parallels apprehensions with its modern derivative, the home-school agreement. Not only do both rely upon cryptic signs of tacit consent with one-way directives that makes ‘consent quite like succumbing to force’ (Evers, 1977, p. 193), but some have argued that the preoccupation with contracts centres upon a particular characterisation of subjectivity that is taken to be universal:

Hobbes’s analysis of human nature, from which his whole political theory is derived, is really an analysis of bourgeois man; that the assumptions, explicit and implicit, upon which his psychological conclusions depend are

assumptions peculiarly valid for bourgeois society. (Macpherson, 1973, p. 239).

In other words, Hobbes's account of human nature that makes the need for a contract alluring is actually a characterisation of a type of person living at a time of nascent capitalism emerging in early-modern Europe. He thus presents an unpleasantly accurate account not of human nature as such but of 'man' during the rise of bourgeois society imbued with his proclivity for atomistic, self-seeking and mercantile activity. It is the person Held described in *Feminist Morality* (1993) as 'economic man' who first and foremost maximised his own individually-considered interests and entered into contract to do so. It is the man of Weber's *Protestant Ethic* who, with adjudicating and administering procedures at hand to establish the dependable regulation of business, rationalised his productivity.

However, what this depiction of contract man fails to do is adequately represent the more subtle links that connect people. This is the place where non-obligatory trust and moral obligation reside. Hobbes's model of contract cannot adequately represent the relationship, for example, between children and those who care for them, be they parents at home or teachers at school in loco parentis. Since such carers are mostly women (see Friend, 2004), Baier has argued that contractualism is actually a model of human interaction founded upon a specious view of human nature and typically created by men-philosophers. These she depicts historically as 'a collection of gays, clerics, misogynists, and puritan bachelors' (Baier, 1986, p. 248) who, in choosing to focus upon the cool, distanced relations between more-or-less free and equal adult strangers, ignored the web of trust that tie moral agents to one another in a multitude of infinitely complex and composite ways (see Hampton, 1993). Contractarians, she argues, are like 'the members of an all-male club, with

membership rules and rules for dealing with rule breakers and where the form of cooperation [is] restricted to ensuring that each member c[an] read his *Times* in peace and have no one step on his gouty toes' (ibid., p. 247-248). In essence, says Baier, 'contract is a device for traders, entrepreneurs, and capitalists, not for children, servants, indentured wives and slaves' (ibid., p. 247).

Some would argue that modern society is caught in the grip of juridification and 'contractual thinking' (see Held, 1993, p. 193). Its attraction lies in its explicitness and dependability, but the escalation of surrogate-legal arrangements between families and schools brings new forms of relationship where 'rules and regulations' apply. For example, in acceding to the home-school agreement parents at *Beechwood Sacred Heart School* are expected to accept 'terms and conditions' much as they would a computer software upgrade: 'I/we have read the parents' information booklet and I/we agree to all the terms and conditions stated or implicit in it' (Beechwood Sacred Heart School, 2013). The inadequacy of contractual thinking lies in its disinclination to concern itself with non-explicit relationships that it fails to trust and whose actions it would supplant. These bypassed forms of trust and faithfulness are for Baier 'the very basis of morality' (Baier, 2004) that if made explicit and contractual would end up dissolving social capital further (see Putman, 2000). In other words, education policy that brings contractual thinking from the periphery to the fore through home-school agreements jeopardises these affective, vulnerable and less formal relationships.

5. Conclusion

In practice we have seen that schools get by and often deal with these dilemmas pragmatically. We have seen from interview data that primary schools frequently ask pupils as young as four to sign the agreement but do so by discharging their legal obligation through stealth and placidity to minimise that which they see as potentially damaging to their communities. While we have seen one headteacher refer to the home-school agreement as a reference point for disciplinary action in order to formalise proof of contravention by a parent, there is evidence in interview to suggest that others resist recourse to the agreement, such as when a child fails to arrive at school on time or in the appropriate uniform, for fear of the social cost of moving from communicative interaction and persuasion to more legalistic encounters. We have also seen that the agreement is clearly asymmetrical in its construction, composition and implementation and that there is evidence to suggest that the statutory requirement for schools to engage parents and pupils in the construction of it illusory but that their voice is faint *despite* policies that would enhance it. Whitty and Wisby have suggested that one of the reasons for this is that ‘genuine provision for pupil voice requires some power and influence to be passed to pupils, at which point it becomes unpredictable’ (2007, p. 4). The unpredictability to which they refer is the epistemic uncertainty of where encounter may roam, a foible of un-policed argument and untrammelled communicative action that could lead to *very* different kinds of agreements. This presents a conundrum for the policy surrounding agreements. While it is clearly thought that pupils can and should learn through engagement with the skills, values and knowledge that would make encounter genuine, the content of the agreement would then be unpredictable for the outcome would not be known. However, if pupils (and parents) are deemed insufficiently knowledgeable or rational the edifice of voice and the enactment of human rights through consultation collapse. There is a tension, then, between

legislating for voice and reaching agreement while appearing to neuter it as a site of potential struggle (see Jessop, 2003, p. 160-161). Presumably this is why interviewees gave no evidence of pupils or parents engaged in a process of negotiating the content of this ill-named agreement nor of using it to seek redress against a school, such that parents and pupils seemed destined to hallmark the knowledge-constitutive interests contained by them. Either that or they connived with schools to render the process sterile by engaging at levels that are predictable, sanitised and controllable (see Blair & Waddington, 1997). To suggest that home-school agreements are merely 'tokenistic' (OFSTED, 2011) or have 'had no impact' (DfES, 2003, p. 8 & 23) is, therefore, misguided for they are symptomatic of the rise of legal-contractual relationships that symbolise a concerning decline in levels of trust within school communities:

The point is to protect areas of life that are functionally dependent on social integration through values, norms, and consensus formation, to preserve them from falling prey to the systemic imperatives of economic and administrative subsystems growing with dynamics of their own, and to defend them from becoming converted over, through the steering medium of the law, to a principle of sociation that is, for them, dysfunctional. (Habermas, 2006, p. 371, 372-373; see also Gibson & Backus, 2011)

References

- Almond, P. (2013) *Corporate Manslaughter and Regulatory Reform*. Basingstoke, Palgrave.
- Baier, A. (1986). Trust and antitrust. *Ethics*, 96, 231-260.
- Ball, S. J. (ed.) (1990). *Foucault and Education: Discipline and Knowledge*. London, Routledge.

Ball, S.J. (2009). Privatising Education, Privatising Education Policy, Privatising Educational Research: Network Governance and the 'Competition State'. *Journal of Education Policy*, 24:1, pp. 83-99.

Ball, S. J. (2013). *Foucault, Power and Education*. London, Routledge.

Bastiani, J. (1996). *Home-School Contracts and Agreements – opportunity or threat?* London, RSA.

BBC News Essex (2013). *Canvey Island school bans triangle shaped flapjacks*. Available at: <http://www.bbc.co.uk/news/uk-england-essex-21923218> (accessed 25 March 2013)

Beechwood Sacred Heart School (2013). *Home-School Agreement*. Available at: http://www.beechwood.org.uk/uploads2/1/Home_School_agreement_2012.pdf (accessed 3 April 2013).

Blair, A. & Waddington, M. (1997). The home-school 'contract': regulating the role of parents, *Education and the Law* 9(4) 291-305.

Cameron, D. (2009) *Speech to Policy Exchange* (1 December). Available at: <http://rcsrecycling.co.uk/david-cameron-accused-of-recycling-health-and-safety-myths/> (accessed 22 March 2013).

Crawford, A. (2003). 'Contractual Governance' of Deviant Behaviour. *Journal of Law and Society* 30(4) 479-505.

Department for Children, Schools and Families (2008). *Working Together: Listening to the voices of children and young people*. London: DCSF.

Department for Children, Schools and Families (2009). *Your child, your schools, our future: building a 21st century schools system* (Cm.7588). London: The Stationery Office.

Department for Education and Skills (2007). *Every Parent Matters*. Nottingham: Crown Copyright.

Department for Education (2013). *Home-school agreements - Guidance for local authorities and governing bodies*. Available at: <http://www.education.gov.uk/schools/pupilsupport/parents/involvement/home-school-agreement/a0014718/home-school-agreements> (accessed 22 March 2013).

Department for Education (2012). *Parental measures for behaviour and attendance*. Available at: <http://webarchive.nationalarchives.gov.uk/20110218194057/http://www.teachernet.gov.uk/wholeschool/behaviour/> (accessed 7 May 2012).

Department for Education and Skills (2003). *Evaluation of Home School Agreements* (RR455), Nottingham, DfES Publications.

Education Act (2002). Section 176. Available from:
<http://www.legislation.gov.uk/ukpga/2002/32/contents> (accessed 22 March 2013).

Education Act (2005). Section 7. Available from:
<http://www.legislation.gov.uk/ukpga/2005/18/contents> (accessed 22 March 2013).

Evers, W.M. (1977). Social contract: A critique. *Journal of Libertarian Studies* 1, 185-194.

Foucault, M. (1977). *Discipline and Punish: The Birth of the Prison*. London, Penguin.

Foucault, M. (1988). *Politics, Philosophy, Culture: Interviews and Other Writings 1977-1984*, trans. A. Sheridan and others. New York & London, Routledge.

Foucault, M. (1990). Power and Sex (Interview by Bernard-Henri Levy), trans. David J. Parent, *Michel Foucault: Politics, Philosophy, Culture: Interviews and Other Writings 1977-1984*, Lawrence D. Kritzman (Ed.). Routledge, New York and London.

Friend, C. (2004). Social contract theory, in Fieser, J. & Dowden, B. (Eds.), *Internet encyclopaedia of philosophy*. Available at: www.iep.utm.edu/soc-cont/ (accessed 7 May 2012).

Gibson, H. & Simon, C.A. (2010). Every Parent Matters: Reflections from England upon new labour's parent policy, *Canadian Journal of Educational Administration and Policy*, 114. Available from:
<http://www.umanitoba.ca/publications/cjeap/archives.html#2010> (accessed 22 March 2013)

Gibson, H. (2011). Management, skills and creativity: the purpose and value of instrumental reasoning in education discourse. *Oxford Review of Education* 37(6) 699–716.

Gibson, H. & Backus, J. (2011). Trust and Rationality: Epistemic tensions in managerialism and pupil voice in schools. In (eds.) J. Satterthwaite, H. Piper, P. Sikes, & S. Webster, *Trust in Education: Truths and Values*. Stoke on Trent: Trentham.

Habermas, J. (1988) *Legitimation Crisis*. Cambridge, Polity.

Habermas, J. (2006). *The Theory of Communicative Action: Volume 2*. Cambridge, Polity.

Hampton, J. (2001) Feminist Contractarianism. In *A Mind of One's Own* (2nd edition). Louise M. Antony and Charlotte E. Witt (eds). Oxford, Westview Press.

Held, V. (1993). *Feminist Morality: Transforming Culture, Society and Politics*. University of Chicago Press.

Hobbes, T. (2008 [1651]). *Leviathan*. Oxford University Press.

Hood, S. (1999). Home-school agreements: a true partnership? *School Leadership & Management* 19(4) 427-440.

Hood, S. (2001). Home-school agreements: a true partnership? *School Leadership & Management* 21(1) 7-17.

HSE (Health and Safety Executive) (2013) *Myth Busters Challenge Panel findings*. Available from: <http://www.hse.gov.uk/myth/myth-busting/index.htm> (accessed 22 March 2013).

ISCG (Information for Schools and College governors) (2007). *A Manual for Governing Bodies and their Clerks*. Available from: www.governors.uk.com (accessed 7 May 2012).

Jessop, B. (2003) 'The Gender Selectivities of the State', published by the *Department of Sociology, Lancaster University, Lancaster LA1 4YN*. Available at: <http://www.lancs.ac.uk/fass/sociology/papers/jessop-gender-selectivities.pdf> (accessed 22 March 2013).

Macpherson, C.B. (1973). *Democratic Theory: Essays in Retrieval*. Oxford, Clarendon.

Norman Waterhouse Lawyers (2004) Contract-V-Agreement. In *Agreement* 44 September. Available from: http://www.normans.com.au/news/business_issue48_sept2004.html (accessed 22 March 2013)

OFSTED (2011). *Schools and parents* (Reference: 100044). Available from: <http://www.ofsted.gov.uk/resources/schools-and-parents> (accessed 7 May 2012).

School Standards and Framework Act (1998). *Part IV - Home-School Agreements* (Paragraphs: 110-1). Available from: <http://www.legislation.gov.uk/ukpga/1998/31/contents> (accessed 22 March 2013).

Sykes, G. (2001). Home-school agreements: a tool for parental control of for partnership? *Educational Psychology in Practice* 17(3) 273-286.

Vincent, C. & Tomlinson, S. (1997). Home-school relationships: 'The swarming of disciplinary mechanisms'? *British Educational Research Journal* 23(3) 361-377.

Vincent, C. (2012). *Parenting: Responsibilities, Risks and Respect*. London: IOE Press.

Whitty, G. & Wisby, E. (2007). Whose voice? An exploration of the current policy interest in pupils' involvement in school decision-making. *International Studies in Sociology of Education* 17(3) 303-319.

Weber, M. (1930). *The Protestant ethic and the spirit of capitalism*. London, Unwin

Winder, J.M. (2012). *Prisoner Rules and Regulations - Salt Lake County Sheriff's Office*. Available from: <http://www.slsheriff.org/metro-jail/prisoner-rules-and-regulations> (accessed 22 March 2013).