With divorce occurring in over 50% of Australian families there are many children who experience the associated anger, confusion and loss. Everyone says that we must do what is in the best interests of children, but in the reality that I have seen over years of appearing in the Family Court as an expert witness on home education, children are primarily used as pawns to get at the other spouse or to bargain for a greater share of the loot. That is as true for home educating families as it is for others, and only an exceptional parent really puts the needs of children first.

Children can do little to prevent their parents from falling out but they have their own particular path of suffering when it comes. I know that one does not want to anticipate a divorce experience, but is there anything that can be done to strengthen children’s ability to cope, should it ever come to that?

Yes there is and home education is the first step, but let’s establish a background before we move into the detail. Historically governments have never “seen” children. Rather, they deal in populations and manipulate their populations according to their own goals. Recently the Australian government sought to boost our population, by money grants to potential mothers, in order to balance the perceived negative effects of multicultural immigration. Population boosting social policy is routinely developed to make up for losses after wars but in times of peace attempts are made to limit population in order to boost material wealth. Authoritarian governments simply legislate a one-child policy, for example. Other governments achieve similar results by manipulating cultural expectation through schooling. Thus Germany makes individual economic prosperity the carrot offered for involvement in its school system, but oversees an economy in which one not only has to be well certificated but also to work very hard indeed to finance personal realisation of the lifestyle routinely promoted in the media. People are encouraged by the socialisation they receive through state schools to forego having children in order to enjoy the hedonistic, consumer-driven lifestyle that powers the national economy in a debt based financial system.

Erich Fromm, a philosopher of the Frankfurt School, argues that there are only two modes of human existence and they depend upon how people operate. One he called “having”. These people find their identity in what they own, be that material possessions, identity, academic or economic qualifications etc. Other people are less concerned with their status and what they possess and more focussed on who they are - the “being” mode. They live life fully and creatively, ignoring the status trap, accepting their limitations but finding ways to work around them. Fromm felt that such people are more likely to develop altruistic love and experience deep satisfaction in their lives.

It is just as easy to develop a “having” personality through home schooling but my observation is that Australian home educators are much more likely to be “being” people than “having” people. “Having” people are more vulnerable to divorce because they are almost entirely dependent upon the opinions and approbation of others. When the crunch comes they fight bitterly for a bigger share of the loot and for confirmation of their status as good partners and parents while slanging off their spouse. A first step, then, might be to develop families in which “being” is more important than “having”.

Other research shows that while adults generally hate children, having children of one’s own has definite personal value, boosting feelings of self-esteem and well-being. For their own reasons governments routinely claim ownership of children and reduce parents and families to the role of government agents in the production and raising of citizens. This is accomplished in two ways. The media and the world of entertainment most commonly present images of dysfunctional parents and families and governments reserve to themselves the right to intervene and adjudicate when there are perceived problems. Strong, successful families and responsible parenting barely get any exposure. Yet the record of government institutional responsibility is poor beyond belief.

Children belong in families and are the primary responsibility of parents whose personal love for their own children is balanced by the rewards of parenting noted in the research. When this balance is upset by government through legislation and cultural policy both children and parents miss out and society’s investment in childhood is diminished.

Don Edgar, when researching for the Australian Institute of Family Studies (AIFS) wrote, We deny or reduce their (children’s) achievement of competent self-worth, and we weaken the chances of greater social investment in childhood itself. A return to meaningful tasks, to learning skills and doing things that are useful to others, now as well as later on, is essential if our children are to learn a sense of responsibility for others and a sense of self respect. p. 15.

The key is that children need to be immediately embedded in the adult world at various levels and ways from...
the intimacy of their own family to a small, local community and through family networks and out into the wider world. They have a valuable contribution to make which is lost when they are isolated in peer groups through the school system. Moreover, they never develop the idea of personal responsibility or experience the rewards and self respect that come with that, but they do become more easily manipulated, government-dependent citizens.

Home educating families are different in many ways but primarily in that children are expected to work for the common good, as appropriate, from an early age. To the extent that they do, they are accorded a gradually expanding degree of independent personal regard and respect within the family, until a point is reached where they become autonomous adults, able to live as mature people in the familiar world of adult society responsible and equipped to start their own families.

These children, these adults are “can do” people; competent, confident “being” types. They will make better spouses and parents, and in the meantime will better cope with such difficult situations as their own parents’ divorce. Indeed, one would expect that in families where the responsibilities and rewards of family living, voluntarily entered into, are so immediate and strong, divorce would be less likely.

The difficulty comes where one parent has not wholeheartedly entered into that style of living, or has not been so immediately involved as to receive the rewards or has been seduced by the illusions of the “having” society promoted by governments. This may be of little comfort to people currently in that situation, but the focus of this article is the children and the expectation is for generational change.

The ability to stand apart from societal pressures is as important as playing a contributory role within society. Historically, this has most often been achieved by the development of a strong personal ethic through a form of spiritual experience that acknowledges some authority or authorities as superior to the temporal rulers of the day. The state education system is, by law, secular in form. This is a legitimate attempt to avoid the partisan support of one perspective above another in a democratic, pluralist society. However, when acquisitive materialism becomes a form of state-backed religion that actively undermines the development of other perspectives, the opportunity for personal freedom is diminished and the rule of abject conformity strengthened. Home education allows children to stand aside from the propaganda and to develop their own perspectives.

How then can one strengthen children to deal with such extreme experiences as divorce? By actively and holistically involving them in the world from the secure base of an engaged family in which they can earn the value of independent regard in the sense that David Reiss mentioned.

[These] families [have] a particular kind of relationship between [their] members: each member accords to the others the power of independent regard. As a consequence each member’s construction of social and physical reality must be coordinated with others’. In other words, members in families of this kind depend on collaborative engagement of all its members in the joint construction of reality. P.170

Children who are treated thus will manage the trauma of their parents divorce with much less personal pain.

References
* I am grateful to Glenda Jackson for drawing my attention to Erich Fromm.
* Fromm, Erich (1976) To Have or To Be.
When I started home-educating my children, I had no idea how much I would learn and grow during the process. The children asked me so many questions that I’d never asked myself and my knowledge and understanding of the world continually grew.

Unfortunately my husband had other interests and distractions outside the family environment and wasn’t as involved in the children’s home education, although it was something he wanted us to do. Consequently, his outlook on life remained the same, while my views changed completely. We finally separated and then divorced.

He then decided to spend more time with our children, which I thought was wonderful, but there were soon problems with the contact and it eventually became an issue for the family court.

We both attended family court counselling and discussed many issues including the children’s education. My husband wanted the children to go to school. I was pleased he was interested in their education, but I felt that the change at such a time would be traumatic for them, and school was something that I had researched thoroughly and just didn’t believe in.

It was a difficult decision for me but I agreed to the children attending school if their father became involved and assumed responsibility for the outcome. This meant helping the children with their homework and helping out at the school, but he wouldn’t agree. I explained to him that it was like wanting them to observe a religion and then expecting me to go to the church, and he still wouldn’t agree. It became more apparent then that his interest in their education wasn’t entirely genuine.

When we went to court, home education was of course used to create the impression of the ‘not normal, over-protective parent’. However home education had previously been dealt with in the family court, so it wasn’t an issue, although I’m sure there were still some prejudices.

When the final orders were made, the older children were of school-leaving age but it was agreed our youngest child would continue his home education. He was however, to attend an annual assessment chosen by his father at his request, to which I agreed. My son was happy to be assessed and as long as he was treated well, I was happy too.

For a few years, my husband arranged a private assessment and as long as our son was doing well it continued. I also arranged to have an assessment by the education department to keep it balanced.

The last time our youngest child was assessed, he was ahead of other children in language but he wasn’t doing well with his maths. It was then that my husband dropped it and no longer requested an assessment. It seemed after all that his only interest was in finding fault in home education, which is understandable because he may have seen it as the cause of his loss.

Our older children now have children of their own and our youngest child, who has always had regular contact with his father, is almost grown up. He is a happy, healthy well-adjusted youth with a great future.

Home education is a wonderful experience and it does promote growth. I think that anyone about to embark on this journey should encourage everyone around them to participate.

If two people grow together or don’t grow together they will nearly always stay together, but if one person grows and the other one doesn’t they may part.

Because home education is seen by some as not ‘normal’, it is usually where partners try to regain lost ground. If there is a genuine interest and input from both parties in their children’s education, then I believe there should be a compromise.
It is a sad reality that many marriages end in divorce these days1 but where does that leave home educating families? The answer is not simple and seldom pretty.

If you are in a happy marriage, looking after your relationship may be the single most effective thing you can do to ensure the ongoing stability of your children’s home education – quite apart from avoiding the rest of the disruption and heartache that divorce almost inevitably brings.

**Staying out of Court**

In the event of a marriage breakup, do your best to reach an amicable settlement outside the court system. Obviously, this is not going to be easy; if you and your spouse had been able to reconcile your differences you wouldn’t be separating! However, if you can reach a mutual agreement about property settlement and custody issues you will save yourselves and your children a draining experience.

Reaching an agreement out of court has advantages in terms of flexibility and self-determination as opposed to dealing with subsequent court rulings that may not meet the needs of either marriage partner or the children. If you are able to talk to your ex-spouse, it may be worth suggesting that staying out of court will save both of you time and money and that you may be able to reach a mutual agreement that way.

It is wise to get some legal advice even if you do not intend to go to court. An initial consultation is generally cost free and, even if you decide to ignore the offered advice (which you are quite entitled to do), you will know your rights and have had some experienced input on your decisions.

**Home Education and the Family Court**

The reality is that in many cases an amicable settlement cannot be reached. Your case will then proceed to the Family Court.

At this stage, animosity can quickly develop or escalate - spurred on by claims and counter claims by each party. Relations between ex-partners may descend to recriminations and accusations they have never before sunk to.

For home-educators, the actual home education only becomes an issue in the Family Court if raised by one party.

There are many personal grievances that come up at such times, and behind a disgruntled parent’s sudden wish for the children to attend school may lurk a whole minefield of emotional trauma that comes with separation. They may just want to lash out at the thing that would hurt their ex-spouse the most, and home education could be high on their list. However there may be complex underlying factors including one or more of the following situations in which there is one partner who:

- a) Has never been happy with home education or has had doubts about it all along.
- b) Sees home education as an obstruction to the custody arrangements they are seeking.
- c) Fears that their ex-spouse will use the time and opportunity provided by home education to turn their children against them.
- d) Wants their ex-spouse to put the children in school and get a job in order to reduce child support payments.
- e) Decides to use home education as a bargaining tool in order to limit the property settlement. (In this case they attack home education but intend to back off as part of a trade-off for a better financial deal.)

In some cases, home education may not even be mentioned, but it can become a bone of contention between estranged marriage partners as they each struggle to get the best deal for themselves, and a home-educating parent needs to prepare for this possibility in case it arises.

**Preparing Your Case**

For a parent defending home education in the Family Court, it is important to be registered as a homeschooler with the VRQA (or applicable body in your state). Non-registration will give your ex-partner ammunition against you and make it easy for them to paint you as irresponsible and negligent if they wish.

Once a court case becomes unavoidable, be aware that discussing your pro-home-education arguments with your ex-spouse may give them a better opportunity of formulating counter-arguments or evidence. Some home education parents therefore choose to save their own arguments to present to the court rather than trying to persuade their ex-partner with them. Only you can judge whether this is appropriate to your case.

Choose and brief your lawyer well – make sure he/she
understands home education and will argue strongly in favour of it on your behalf. If you suspect that your lawyer really considers school to be in your children’s best interests, change lawyers.

Once you are happy with your lawyer, emphasise that home education is legal and that you are registered in accordance with the Education and Training Reform Act and fully compliant with the regulations. Direct him/her to the relevant sections of the Act and regulations. However, be aware that the legality of home education is not in question. Home education is only a Family Court issue when there is a disagreement between parents about what is best for these particular children. The Family Court treats this situation in a similar way to that in which parents disagree about which school their children should attend. There is however the added dimension of home education being something out of the ordinary and therefore ‘suspect’. Judges tend to be conservative people and, like most in mainstream society, believe that school is normal and homeschooling is a bit weird. This is why it is important to show that home education is expressly approved of by the government (in the Education and Training Reform Act); considered an equally valid educational method by the government and that you are fully complying with legal requirements.

It is possible for the children to have their own lawyer to represent them. A court-appointed children’s lawyer usually sides with the non home educator. If the children had their own lawyer their own views would be better represented but this does cost extra.

It is wise to prepare a history of your home education for the case. If the children were being home-educated before the breakup, you may be able to show that your partner approved of it and didn’t have any concerns. If their objection has only arisen as a result of the separation, it may be seen as being all about them, not the children. If home education has begun since the separation, then you may be able to show that they have shown no concern about it up to now.

It can be a good idea to see if an expert would be available to give evidence for you about your home education program. Experts can testify that home education is a valid form of education. It will also help if you have records of your home education that the expert can examine so that they can give evidence that they have examined your home education method and records etc. and are satisfied with them. Judges value documentation and having records will improve your chances of making a favourable impression. Experts need to be recompensed for all expenses involved in appearing in your case.

If the children were withdrawn from school you may need to show why (e.g. bullying which wasn’t being properly dealt with); and that home education was approved of by your then spouse as being in the best interests of the children. You will also need to demonstrate that home education is working academically (with testimony from an expert in home education), and also socially (another witness who can say that the children are now happier and are well adjusted). It may also be a good idea to show that the children have social contact and are not isolated.

Finally, it comes down to the court’s decision and they more often make a decision in favour of the parent who wants the children in school as it is the more conservative option. However, decisions can go either way and some families survive the Family Court with their home education status intact. The new Education and Training Reform Act in Victoria will certainly be of assistance to parents in this situation as home education is now more explicitly legal and officially referred to as equally valid as school attendance.

If the Family Court makes a ruling that the children must attend school you will be unable to continue home educating legally as registration with the VRQA requires you to state that there is no court order preventing home education.

Other Considerations

Try to keep at the front of your mind what is best for your children and listen to their views. In some cases it may be more beneficial for them to go to school than to have their parents fighting for months over their education. Carefully weigh up the advantages of home education against the torrent the fight will involve for the children. Be honest with yourself about what is best for your children and be wary of engaging in manipulative games with your ex-spouse where the real needs of the children can easily be overlooked.

Afterwards

Once much of the emotion of separation dies down many parents resume home educating their children as they did before. There are now two homes instead of one and new partners may appear on the scene. The partner not as involved in home education as the other may lose touch with the home education world - especially if the new partner just doesn’t get it.

Separated parents will have issues to negotiate about their children for years. As they go their separate ways, they change and often find completely different lives. The challenge is to keep on doing what is best for the children and that often may mean a little give and take with the ex-partner. It is always better to give just a little than to lose what is really important to you.

References

1 40% of Australian marriages end in divorce within 30 years according to The Australian Institute of Family Studies http://www.aifs.gov.au/institute/pubs/fm1/fm35facts.html

2 For Victorians: Parts 2.1.1 and 4.3.9 of the Education and Training Reform Act 2006 - Full details of the requirements under both the legislation and the regulations can be downloaded from the HEN website or contact us to be sent details in the mail. For those in other states: Be familiar with the laws covering home education in your state. Your state organisation or experienced local home educators should be able to help. Some basic information on interstate home education laws can be found on the HEN website legal page.

This article is not legal advice. Every case has its own peculiar requirements and it is wise to get legal advice about your particular circumstances.

Illustrations: Steve Parsons