

2007

# The In-Between Places Where Children Are Socialized

Anne Dailey

*University of Connecticut School of Law*

Follow this and additional works at: [https://opencommons.uconn.edu/law\\_papers](https://opencommons.uconn.edu/law_papers)



Part of the [Family Law Commons](#), and the [Law and Psychology Commons](#)

---

## Recommended Citation

Dailey, Anne, "The In-Between Places Where Children Are Socialized" (2007). *Faculty Articles and Papers*. 54.  
[https://opencommons.uconn.edu/law\\_papers/54](https://opencommons.uconn.edu/law_papers/54)

# HEINONLINE

Citation: 156 U. Pa. L. Rev. PENNumbra 38 2007



Content downloaded/printed from  
HeinOnline (<http://heinonline.org>)  
Mon Aug 15 16:50:16 2016

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.

THE IN-BETWEEN PLACES WHERE  
CHILDREN ARE SOCIALIZED

ANNE C. DAILEY<sup>†</sup>

In response to Laura A. Rosenbury, *Between Home and School*, 155 U. PA. L. REV. 833 (2007).

Professor Rosenbury's splendid article makes an important contribution to the field of family law by drawing our attention to the places in which "childrearing" occurs outside the traditional arenas of school and home. Family law scholarship typically recognizes a dyadic system of childrearing where authority is shared between parents and the state. Older children might exercise some independent authority in certain areas, but, for the most part, they remain under the control of their parents and the state until they reach the age of majority. In her article, Professor Rosenbury adds a third sphere of childrearing to this existing system: the realm "between home and school," exemplified by "playgrounds, parks, child care centers, churches, community gyms, sporting fields, dance studios, music rooms, after-school clubs, and cyberspace."<sup>1</sup>

Her article focuses on the Supreme Court's treatment of one such in-between space in *Boy Scouts of America v. Dale*.<sup>2</sup> She offers a thoughtful reading of *Dale* that allows her to explore how certain cultural environments foster children's moral and civic development in ways that differ from the kinds of socialization that take place in schools and families. The unique nature of these in-between realms of childrearing, Professor Rosenbury argues, should allow them "to operate largely free from state control, subject only to limited inclusion-oriented, or pluralism-enhancing, regulations."<sup>3</sup> Under this standard, she concludes, *Dale* was wrongly decided. Because New Jersey's public accommodations law promotes diversity, the Boy Scouts should have been prohibited from excluding a homosexual scoutmaster from its troop.<sup>4</sup>

---

<sup>†</sup> Evangeline Starr Professor of Law, University of Connecticut School of Law.

<sup>1</sup> Laura A. Rosenbury, *Between Home and School*, 155 U. PA. L. REV. 833, 834 (2007).

<sup>2</sup> 530 U.S. 640 (2000).

<sup>3</sup> Rosenbury, *supra* note 1, at 895.

<sup>4</sup> *Id.*

Professor Rosenbury draws our attention to the ways in which law regulates and does not regulate physical places, other than home and school, where children spend significant periods of time. When she refers to the places “between home and school,” the reference to geography is not simply a trope. The concept of place here is borrowed from the social science literature where children’s experience is studied *in situ*—i.e., in the physical environments where children actually live and play. As Professor Rosenbury observes, this social science research provides a rich resource for understanding the important socializing effects of these environments on children.<sup>5</sup> The article makes a fine contribution to the emerging legal scholarship on the influence of cultural contexts on children’s socialization. Scholars in this field have begun to study the effects on children of the media, peer relationships, civic institutions, and early caregiving environments.<sup>6</sup> Professor Rosenbury’s is a bold new voice in this genre offering a normative paradigm of space to replace the traditional dyadic model of state-parent authority over children.

At the heart of the spatial paradigm is the view that in-between spaces socialize children in ways that differ both procedurally and substantively from the kinds of socialization that take place at home or at school. Professor Rosenbury sets out to show how “the spaces between home and school may be distinct from both home and school, rendering analogies to either concept ultimately inapposite.”<sup>7</sup> This is an ambitious thesis. In this Response, I explore briefly the unstated assumptions about both the mechanisms of socialization and the substantive content of socialization that underlie her claim that the socialization of children between home and school is unique and thus

---

<sup>5</sup> *Id.* at 841-46.

<sup>6</sup> See MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* 228-36 (1994) (discussing the lack of governmental support for the childrearing process); LINDA MCCLAIN, *THE PLACE OF FAMILIES: FOSTERING CAPACITY, EQUALITY, AND RESPONSIBILITY* 85-114 (2006) (discussing the lack of governmental support for the childrearing process); Emily Buss, *The Adolescent’s Stake in the Allocation of Educational Control Between Parent and State*, 67 U. CHI. L. REV. 1233, 1253-276 (2000) (exploring the significance of identity formation to adolescents and the influence peer relationships have on that process); Anne C. Dailey, *Developing Citizens*, 91 IOWA L. REV. 431 (2006) (discussing the relationship between child development and democratic citizenship by examining the importance of early caregiving relationships); Barbara Bennett Woodhouse, *Reframing the Debate About the Socialization of Children: An Environmentalist Paradigm*, 2004 U. CHI. LEGAL F. 85, 97-119 (2004) (analyzing the effects of “mass-media marketing” on the culture of childhood).

<sup>7</sup> Rosenbury, *supra* note 1, at 875.

deserving of special treatment in family law. I also consider the right of parental “exit” from these in-between places, a factor not discussed in the article but one which seems to raise questions about her claim that childrearing in these in-between places offers a reliable venue for exposure to values different from those at home.

### I. THE MECHANISMS OF SOCIALIZATION

As noted, one of the major contributions of this article is the attention it brings to the important role of places other than home and school in the socialization of children into successful adults and citizens. An approach to family law that takes into account these in-between places, however, entails more than a simple shift in physical environment. The model also implies a subtle shift in the process by which socialization takes place. The emphasis on physical space suggests a form of socialization that turns on children’s exposure to socializing influences rather than direct inculcation of moral or civic values. The paradigmatic example of environmental socialization is the media, an area of recent interest to family law scholars.<sup>8</sup> Professor Rosenbury’s list of in-between spaces includes several in the environmental genre, such as playgrounds, parks, community gyms, and cyberspace, all of which involve passive exposure to cultural values as the mechanism of socialization.<sup>9</sup> In the mall, the playground, and the neighborhood, children are exposed to a wide variety of messages and information. Legal regulation in these contexts tends to involve restrictions on the form or content of the messages being conveyed. For example, Congress is currently trying to regulate, with limited success, the information available to children on the Internet.<sup>10</sup> Similarly, fundamentalist Christian parents have asked courts, also without success, to shield their children from the socializing effects of exposure to public school reading curricula.<sup>11</sup> Place matters in these venues because the primary mode of socialization is exposure to ideas in the en-

---

<sup>8</sup> *Id.* at 849-50 (citing Kenneth L. Karst, *Law, Cultural Conflict, and the Socialization of Children*, 91 CAL. L. REV. 967, 1002-11 (2003); Woodhouse, *supra* note 6, at 104-11).

<sup>9</sup> *Id.* at 834.

<sup>10</sup> *See, e.g.*, *Ashcroft v. ACLU*, 542 U.S. 656, 661 (2004) (noting “COPA is the second attempt by Congress to make the Internet safe for minors” and again holding Congress’s attempt to be unconstitutional).

<sup>11</sup> *See Mozert v. Hawkins County Bd. of Educ.*, 827 F.2d 1058, 1070 (6th Cir. 1987) (holding that exposing children to a secular curriculum does not constitute a burden on the free exercise of religion); Nomi Maya Stolzenberg, “*He Drew a Circle That Shut Me Out*”: *Assimilation, Indoctrination, and the Paradox of a Liberal Education*, 106 HARV. L. REV. 581 (1993) (analyzing *Mozert*).

vironment.<sup>12</sup>

A theory of socialization that turns primarily on place lends itself most to situations where the primary socializing mechanism is exposure to environmental influences. Geography does a less good job of accounting for the kind of socialization that involves direct forms of inculcation and that turns more on relationships of authority than on place. The paradigmatic example of socialization in this vein is parental childrearing, although many other relationships—such as teacher-student, clergy-follower, doctor-patient, and club leader-member—fit the category.

Ironically, the socialization process at issue in *Dale* is precisely the kind of direct inculcation of values for which the geographic paradigm seems least suited. As the Supreme Court noted, the Boy Scouts' mission statement reads: "It is the mission of the Boy Scouts of America to serve others by helping to instill values in young people and, in other ways, to prepare them to make ethical choices over their lifetime in achieving their full potential."<sup>13</sup> In concluding that the Boy Scouts' mission of instilling values was expressive activity protected by the First Amendment, the Court noted that the Boy Scouts' method of instilling values involves intimate relationships of authority: "During the time spent with the youth members, the scoutmasters and assistant scoutmasters inculcate them with the Boy Scouts' values—both expressly and by example."<sup>14</sup> While inculcation through example or role-modeling might look like exposure, role modeling involves an intimate relationship of authority the purpose of which is, in part, to instill values. That is the Boy Scouts' stated mission. From this perspective, the socialization process that characterizes the Boy Scouts rather closely resembles the parent-child relationship and the teacher-student relationship. All involve the direct inculcation of values by way of intimate relationships of authority. From a model of socialization, the important dividing line is not between school and home, on the one hand, and in-between places on the other. The important dividing line is between exposure and inculcation, or, to put it another way, socialization through place and socialization through relationship.

The inculcation process could be viewed as weakly determined by

---

<sup>12</sup> See Woodhouse, *supra* note 6, at 118-119 ("The real action in the socialization of children . . . is in children's bedrooms (where parents do not intrude), in the halls of schools (where teachers are visibly absent), and in shopping malls and streets.")

<sup>13</sup> 530 U.S. 640, 649 (2000) (internal quotation marks omitted).

<sup>14</sup> *Id.* at 649-50.

place, as I think Professor Rosenbury means to suggest. The intensity of the relationship could be seen to lie along a continuum of place (home—school—clubs). But where the relationship is the primary mechanism of socialization, the geographic paradigm does not seem to add much to our understanding of the process of socialization, except to highlight that important socializing relationships can exist outside the usual venues. Some childrearing relationships are associated with particular places—such as teachers with school and parents with home—but the mechanism of socialization is not obviously determined by its location. It is possible that further inquiry along these lines might reveal a meaningful connection between place and socializing relationships. For example, it would be useful to know if the social science literature investigates how place affects the quality of authority relationships in ways that determine the socializing effects on children. In the absence of social science research on this point, it is not clear in what way the socializing mechanisms of childrearing vary from place to place.

Professor Rosenbury clearly recognizes that parent-like inculcative methods of socialization sometimes characterize these in-between places. Indeed, an inculcation model of socialization becomes the focus of her analysis of *Dale* and the defining feature of her proposed legal treatment of these places. She refers to the Boy Scouts' socializing activity as "childrearing,"<sup>15</sup> and the term is quite apt to the extent childrearing implies intimate relationships of authority, the purpose of which is, in part, to instill values. Childrearing, defined as the purposeful inculcation of values, is not obviously contingent on place, as noted above. It would be possible, as Professor Rosenbury herself observes, to read *Dale* as falling within a long line of Supreme Court cases addressing the childrearing rights of non-traditional parents and third parties.<sup>16</sup> Childrearing relationships may be organized around love, honor, faith, or health, but the socialization process is rooted in the same underlying purpose and authority. There does not seem to be a good reason to differentiate childrearing at home and school from childrearing in other places, if what we mean by childrearing is the active inculcation of values. To the extent Professor Rosenbury wants to emphasize the significance for law of the unique nature of childrearing in venues other than home and school, she cannot rely on the mechanisms of socialization alone.

---

<sup>15</sup> Rosenbury, *supra* note 1, at 851.

<sup>16</sup> *Id.* at 862-63, 881-82.

What makes this such a good article is that she doesn't.

## II. THE SUBSTANCE OF SOCIALIZATION

In Professor Rosenbury's view, the uniqueness of the childrearing that takes place outside of home and school ultimately derives from the fact that the values instilled in these places are not the parents' or the state's values. In-between places promote a child's exposure to different ways of life. They serve as an important bulwark against the "standardization" of children by the family.<sup>17</sup> These socializing relationships are unique, she argues, because they embody an authority free from the unifying effects of state and parental values. "Childrearing between home and school," she concludes, "can expose children to other ways of life, thereby making the promise of pluralism more meaningful to children."<sup>18</sup> In substance, then, childrearing between home and school offers children different perspectives on life, and thus promotes the values of diversity and pluralism central to our democratic way of life.

This view of in-between places as socializing children in diverse viewpoints is quite reasonable. My only reservation has to do with the scope of this claim and its empirical basis. Do in-between spaces such as the Boy Scouts really promote children's exposure to different ways of life? Do these spaces do a better job than the state in opening up the marketplace of ideas to children? Professor Rosenbury has nearly convinced me that they do, but a few questions remain.

Professor Rosenbury argues that what sets apart the socializing that occurs in these in-between places from home and school is the nature of the messages that children receive in these venues.<sup>19</sup> The observation is plausible, although the childrearing at issue in *Dale* seems the least likely to impart diverse values to the scout children. Exposure to competing points of view seems much more likely to happen in public places such as parks, malls, and even city sidewalks than in childrearing relationships such as religious groups or the Boy Scouts. The question raised here is whether socialization through exposure to the media or other public venues is more likely to lead children to acquire different points of view than inculcative forms of childrearing practiced by third parties such as the Boy Scouts; the lat-

---

<sup>17</sup> *Id.* at 894.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 843-44, 898.

ter seem singularly ill-equipped to introduce plural values into a child's life. Most of these childrearing relationships are chosen by parents with the purpose of educating their children in a particular set of values or skills, and the messages conveyed, we might reasonably assume, are unlikely to clash significantly with parental values.

It is true, as Professor Rosenbury notes, that when parents voluntarily enroll their children in groups like the Boy Scouts, the groups acquire informal authority over the children.<sup>20</sup> But this is a delegated authority. If parents do not like the message being inculcated by the group, they can exercise their right of exit and pull their children out. The right of exit is weaker in playgrounds and malls, practically non-existent with respect to the media and internet, and clearly not available in the realm of state law.<sup>21</sup> But with respect to children's participation in childrearing relationships, the parental right of exit is all but absolute. Parents may not have full control over what goes on at Boy Scout meetings or on camping trips, for example, but parents are free to withdraw their children at any time. Messages may be communicated to children of which the parents are unaware, but it would be surprising if these messages involved major challenges to the parents' world view.

Professor Rosenbury's thesis is particularly pertinent to the issue of older children's participation in associations and groups against the wishes of their parents. To what extent should older children be accorded the legal right to set limits on the parental power of exit? The Supreme Court and state legislatures have conferred an increasing array of rights on children appropriate to their developmental stage. One might imagine a constitutional doctrine under the Due Process Clause that protects older minors' decisions to participate in non-school, non-family activities. Many groups of this sort already exist in after-school settings, but independent groups not beholden to either school or parents would seem to have the most to offer older children. Such rights would operate, in effect, as a partial emancipation from the socializing authority of parents and state. Of course, once children have reached the age of choosing for themselves where they want to spend their time between school and home, the formative years of socialization have likely passed. Yet Professor Rosenbury's article encourages us to consider the ways in which in-between places

---

<sup>20</sup> *Id.* at 867.

<sup>21</sup> Relevant state regulations include curfew laws, drinking laws, abortion laws, driving laws, marriage laws, statutory rape laws, neglect and abuse laws, and juvenile delinquency laws, among others.

can serve as socializing forces for years, if not a lifetime, to come.

From the perspective of family law, the spatial paradigm Professor Rosenbury invokes has much to recommend it. The paradigm helps to identify the important family-like role that non-family groups such as the Boy Scouts can play in the lives of children. In so doing, the paradigm serves to expand and reconstitute the domain of family law by bringing cases such as *Dale* within the family law canon. It also helps us to see connections that might otherwise have been overlooked. By bringing out the family law elements in the constitutional doctrine of expressive association, for example, Professor Rosenbury highlights the way in which *Dale* and similar Supreme Court decisions in disparate areas rest on underlying family law principles and doctrines.<sup>22</sup> Her interdisciplinary approach brings together a long tradition of Supreme Court decisions using developmental research, including *Brown v. Board of Education* and other cases decided under the 1st, 8th and 14th Amendments.<sup>23</sup> The paradigm of place also helps to break down the long-standing but increasingly obsolete family law framework that pits the state against parents in a war over the control of children. In Professor Rosenbury's able hands, geography serves an expanding, connecting, and reconstituting function for family law. Questions remain about the mechanisms and substance of child socialization in the places between home and school. But Professor Rosenbury fully succeeds in persuading the reader that these in-between places are well worth the attention that her original and compelling article gives them.

---

<sup>22</sup> See *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 15-18 (2004) (looking to custody status to resolve a First Amendment challenge to the content of the Pledge of Allegiance, recited at the petitioner's daughter's school); *Ankenbrandt v. Richards*, 504 U.S. 689, 692 (1992) (deciding whether there is a domestic relations exception to federal jurisdiction that permits abstention).

<sup>23</sup> *Roper v. Simmons*, 543 U.S. 551 (2005) (Eighth Amendment); *Lee v. Weisman*, 505 U.S. 577 (1992) (First Amendment); *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (Fourteenth Amendment).