Human Rights Education in Scotland: Realising the Right to Education and the Incorporation of the United Nations Convention on the Rights of the Child.

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Abstract.

On September 1st, 2020 the Scottish Government introduced the *United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Bill.* This was a highly significant milestone in the realisation of children's rights in Scotland and was welcomed widely and enthusiastically in Scotland. The incorporation of the UNCRC into Scots law offers an unprecedented opportunity to improve the realisation of the right to education for all children and young people living in Scotland. Against this backdrop, I make clear the challenges to children's rights in Scotland posed by the United Kingdom's exit from the European Union, long-standing antipathy towards existing key national and international human rights legislation amongst senior UK government figures, and the potential threats to the rule of law and devolution contained in the UK Internal Market Bill 2020.

In this thesis, therefore, I clarify the nature of state obligations relating to the right to education in order to assess how successfully this right is realised in Scotland focusing on the development and implementation of policies and programmes for Human Rights Education (HRE). I argue that improvements must be made in Scotland relating to five key areas for successful implementation: 1) in the clear and comprehensive incorporation of Human Rights Education into the curriculum; 2) in raising awareness of teachers of relevant rights legislation; 3) in the promotion of adequate education in human rights for teachers; 4) in ensuring the creation of rights respecting learning environments ; 5) in ensuring that teaching practices always reflect and promote human rights values. In Part 1, I clarify state obligations for the right to education. In Part 2, I argue the positive case for HRE as a necessary component of realising this right. In Part 3, I offer a detailed analysis of human rights and education in Scotland and identify a series of challenges in the Scottish context. I make the case that the incorporation of the UNCRC into Scots law will only further magnify these issues. I argue here that programmes of HRE must be justified as a compulsory component of state education and argue for much greater attention to detail in the theoretical development of HRE as a concept and as a specific programme of education. In doing so, I identify gaps in the existing literature surrounding HRE and propose new avenues for research and clarification. Finally, I argue that there are a number of potentially radical consequences of the incorporation of the UNCRC into Scots law for education and begin to sketch their shape at the conclusion of this project.

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Author's Declaration.

I declare that, except where explicit reference is made to the contribution of others, that this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

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Abbreviations.

ASL - Additional Support for Learning.

ASN - Additional Support Needs.

BEMIS - Black and Ethnic Minority Infrastructure in Scotland

CESCR - Committee on Economic, Social, and Cultural Rights.

CfE - Curriculum for Excellence.

CoE - Council of Europe.

CPD - Continuing Professional Development.

CRC - United Nations Committee on the Rights of the Child.

CYPCS - Children and Young Peoples Commission Scotland.

ECHR - European Convention on Human Rights.

ECtHR - European Court of Human Rights.

EDC/HRE - Education for Democratic Citizenship/ Human Rights Education.

EHRC - Equalities and Human Rights Commission.

EIS - Educational Institute of Scotland.

GCE - Global Citizenship Education.

GIRFEC - Getting it Right for Every Child.

GTCS - General Teaching Council for Scotland.

HRA - Human Rights Act.

HRE - Human Rights Education.

ICCPR - United Nations International Covenant on Civil and Political Rights.

ICESCR -United Nations International Covenant on Economic, Social and Cultural Rights.

IDL - Interdisciplinary Learning.

ITE -Initial Teacher Education.

LTS - Learning and Teaching Scotland (now Education Scotland).

OHCHR - Office of the United Nations High Commissioner for Human Rights.

RTE - Right to Education.

SHRC - Scottish Human Rights Commission.

SNAP - Scottish National Action Plan for Human Rights.

SNSA - Scottish National Standardised Assessments.

SYP - Scottish Youth Parliament.

UDHR - Universal Declaration of Human Rights.

UNCRC -- United Nations Convention on the Rights of the Child.

UNDHRET - United Nations Declaration on Human Rights Education and Training.

UNWPHRE - United Nations World Programme for Human Rights Education.

1. Introduction and Methodology.

Successive Scottish Governments have expressed a clear commitment to the promotion of an inclusive society that respects, and realises, the rights of all people. The Scottish Government has repeatedly made clear its aspiration that Scotland can be the "best place to grow up and live". After many years of work, and, indeed, significant advances in children's rights within Scotland, on September 1st 2020 the Scottish Government introduced the *United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Bill.* This will, to the fullest extent possible under the powers devolved to the Scottish Parliament, write the provisions of the UNCRC into domestic law. For the first time this will make the UNCRC justiciable within Scottish courts, offering a significant and substantial step forward in domestic protections for children's rights. This is a hugely significant milestone in the realisation of children's rights in Scotland and has been welcomed widely and enthusiastically in Scotland. More broadly, the Scottish Government has outlined an ambitious programme for the further incorporation and realisation of human rights in Scotland including economic, social, and cultural rights such as the right to education. It is clear that the Scottish Government intends not only to meet its human rights obligations but also to be seen as a human rights leader. One feature of such a commitment, we might reasonably posit, ought to be the realisation of the right to education in Scottish policy and practice. In this thesis, I argue that part of what it means to realise the right to education is to provide adequate Human Rights Education to all. However, serious questions have been raised about how successful current attempts to realise Human Rights Education within the Scottish education system have been. Moreover, there are ongoing issues with the routine violation of children's rights *within* education in Scotland. Both require responses and in this work I seek to illuminate the sources of the current failures, and what might be done to resolve them. Overall, this thesis considers how ready Scottish education is for the potential consequences of the domestication of crucial children's rights protections. With the incorporation of the UNCRC into Scots law due to take place by 2021, it seems timely as well as necessary to reflect on how well the right to education is understood and realised in Scotland. This should consider the extent to which programmes of Human Rights Education are understood and realised and the extent to which Scotland is meeting its current human rights obligations in order to clarify these issues as well to identify a way forward in Scottish educational policy and practice. To put it simply, is Scottish society and the Scottish education system ready for incorporation? In this thesis I express a critical concern that the answer is, and potentially will remain, no.

While the prospects for the development of human rights protections in Scotland may seem positive, three key legislative pillars of human rights protection in Scotland are potentially in jeopardy. The protections guaranteed by international treaties to which the United Kingdom (UK) is a signatory are potentially under strain from the UK's exit from the European Union and the Westminster government's reluctance to commit to retaining the protections of the European Convention on Human Rights in the future. Moreover, the current Conservative government of the United Kingdom has demonstrated a willingness to contemplate violating international law and its treaty obligations. [1] While the provisions of the *UK Internal Market Bill* (2020) that would have been unlawful were eventually removed before it passed into law, to countenance such a course of action and, moreover, place it before elected members of parliament to vote on, casts doubt on the extent to which the UK government believes itself to be constrained by international law. Secondly, the Human Rights Act, and indeed, to a large extent human rights themselves, have long been challenged from within the Conservative Party which is currently in power in the UK. The Scottish Government has been clear that concerns over the ongoing role of the Human Rights Act [2] and the attitude expressed by senior figures in the Conservative Party towards it may require action in Scotland to ensure the continued protection of human rights. Finally, the devolution settlement established by the Scotland Act (1998) which enables the Scottish Parliament to legislate for human rights has come under increasing strain as the shape of likely future arrangements of the UK and the EU and the United Kingdom's own internal market become clearer. The United Kingdom Internal Market Bill (2020) has widely been criticised for both courting breaches of international law and fundamentally undermining the devolution agreements secured in Scotland, Wales, and in Northern Ireland. While Scotland seeks to extend the human rights of its people, it is potentially undermined by the actions of the UK Government that threaten to roll back existing human rights protections for the children and adults of Scotland and potentially to remove the Scottish Parliament's ability to legislate for itself on these protections.

[1] See The United Kingdom Internal Market Bill (2020) and https://www.instituteforgovernment.org.uk/blog/internal-market-bill-breaks-international-law . I discuss this matter in detail in Chapter 14.
[2] The Human Rights Act (1998).

Aims of Study.

This project aims to make an intervention into debates surrounding the implications of the incorporation of the UNCRC into Scots law and Human Rights Education more broadly at a crucial time for human rights education in Scotland. It is my concern that in critical aspects relating to education, Scotland currently fails to meet its existing international human rights obligations. Moreover, I am concerned that after the incorporation of the UNCRC this problem will be further compounded. In considering the implications of incorporation for both Scottish education and society more broadly, we might reasonably ask: are we ready? Are teachers supported in their practice and in their potential future duties in respect of the profound changes to Scots law? Are children, young people, and their parents aware of their existing educational rights and how, if at all, incorporation will change this in domestic law? In this thesis, I suggest that, at the current time, the answer to these questions may well be no. Specifically, I draw attention to the current challenges faced by Scotland in realising an important aspect of the right to education; namely, Human Rights Education.

This work, therefore, aims to undertake a multidisciplinary and detailed investigation into the preparedness of Scotland to meet its human rights obligations in respect of the right to education, and more specifically, Human Rights Education (HRE). This project will aim to answer five broad questions: 1) What does the right to education entail? 2) What is Human Rights Education and what are the arguments that may be used to support its place in Scottish education? 3) How well is Human Rights Education realised in Scotland? 4) What are the implications of incorporation of the UNCRC into Scots law for policy and practice in Scotland? 5) Is Scotland prepared to meet these challenges based on current policy and practice?

The overall aim of this project, and one of its major intended contributions, is to produce a detailed and rigorous account of the place of human rights education within Scotland, the challenges faced in its implementation and realisation and the opportunities presented by the current political climate. I aim, therefore, to offer to the greatest degree possible, a comprehensive account of human rights education in Scotland in order to inform future deliberations, research, and action directed towards the promotion of HRE within Scottish education. This thesis aims to be informative about what needs to be known and addressed in approaching HRE as a concept and educational initiative in Scotland. In this sense, a major contribution to knowledge is in drawing together arguments and insights from

a wide range of disciplines and applying them first to questions surrounding Human Rights Education and then specifically to Scottish education. Underpinning all of this, I will apply the tools of analytic philosophy to questions surrounding the concept and development of Human Rights Education.

It is my intention that this work should be of value to teachers, policymakers, and HRE advocates in Scotland in addition to its theoretical inputs to HRE scholarship. I aim to build a strong case in support of the further development of Human Rights Education in Scotland drawing on both legal and philosophical arguments and make clear that the incorporation of the UNCRC into Scots law requires immediate action to address obstacles to the realisation of the right to education and human rights education in Scotland. Reflecting on the development of human rights education itself, I will highlight how the contested nature of human rights and of HRE as a concept and initiative stand as major barriers to the further realisation of HRE within Scotland. Finally, I aim to make clear the potential implications of incorporation for Scottish education arguing that taking children's rights seriously may have profound consequences for the relationships of authority governing education and in the justification of educational policy and practice not just to citizens, but perhaps to children themselves.

In reflecting on the aims of this study and my own positionality as a researcher, the development of this thesis also marks a move away from an identity as a classroom teacher to a more distanced position as a researcher. The movement during this research process has been from an insider researching my own practice in order to improve it, to an outsider considering the issues in a much wider scope at an institutional, policy, and theoretical level that no longer connects directly to my practice as a teacher. The thesis is, nonetheless, still primarily for that insider's benefit in key respects and, I hope, offers something of value for other teachers in Scotland who are inclined, as I was, to reflect on their practice in teaching and realising human rights. A core feature of the initial motivation for this project was to understand how I might better teach human rights. As things turned out, matters were considerably more complex than one might have hoped. This broadening and deepening of the scope of my own personal inquiry has directly led to the shape that this thesis has taken. This project was, therefore, inspired by the combination of my own teaching practice and pre-existing philosophical interests. In aiming to reflect on my own practice teaching about human rights within Scottish schools I realised that there were a number of issues that immediately presented themselves to me. Firstly, what does good practice in this area look

like and what are the objectives of teaching children about their rights? Secondly, what resources might I draw upon to help further develop my practice to ensure that I am able to deliver on my own professional duties in this regard? Indeed, it is to ask what is the extent of these duties?

In seeking the answers to these questions, I became dissatisfied with the lack of guidance offered in the Scottish curriculum and the odd disconnection between this fact and the wider positive and rights-respecting language used throughout Scottish educational policy. If the Scottish curriculum was to "get it right for every child" and based on the principles of the UNCRC, why were references to human rights so notable by their absence? To that end, I began the research that would eventually lead to the creation of this thesis starting in the M.Ed. dissertation that would later become Daniels (2018) and upon which this thesis has been built. In this sense, this thesis reflects both my dissatisfaction with existing guidance around the teaching of human rights within Scottish schools, and the wider and deeper questions prompted by reflection on my own practice, curriculum guidance in Scotland, and the theoretical development of human rights education in wider literature.

The approach I, therefore, adopt is the one that strikes me as the right fit for the research aims of this thesis; that is, I adopt the methodology of philosophy to address questions of a philosophical nature. Further, part of what I take to be the original contribution of this work is in the specific application of analytic philosophy to the particular theoretical issues I raise about Human Rights Education. That is, the approach to research adopted here is both necessary for the kinds of questions raised and the contribution it is intended to make to scholarship.

There are several further pragmatic and political considerations that factored into the approach taken here. The emphasis I will place on fidelity to the international practice of human rights and the more practical requirements of calibration for the Scottish context have influenced the approach taken here. I think no apologies are required for being pragmatic where necessary and realising the limitations inherent in attempting to drive deep conceptual debates in the practical political arena in which the consequences must be made clear. Hence, the approach taken here must also keep keenly in mind its intended audience beyond the multidisciplinary academic audience for whom the arguments advanced may be more familiar. As a major aim of this work is to address immediate priorities within Scottish education, I have, as far as possible, aimed to make this thesis as widely accessible as it can

be. I intend for this work to be built upon in theory and in practical work within Scottish education and believe the approach adopted here is best suited to this aim. Finally, the approach taken here draws upon my previous professional experience and previous study in philosophy. It is, therefore, the approach to research and the specific questions addressed in this thesis that comes most naturally to me. While I draw upon work making use of other methodologies in this thesis, it is, first and foremost a work of applied philosophy as I will detail shortly.

Outline of Thesis.

In Part 1 of this thesis, I outline what is required of states to meet their obligations to realise the right to education (Chapters 1-4). I detail the place and character of the right to education in international human rights instruments and I conclude in Chapter 5 by offering an account of the most basic of these obligations for states and what their violation looks like.

In Part 2, I argue that, properly elaborated, the right to education makes clear the obligation on states to provide education about, through, and for human rights - that is, what is known as Human Rights Education (HRE). Further, I highlight the strength of the legal case in support of HRE and make clear five basic requirements for the fulfilment of HRE (Chapter 6). These five requirements (HRE1-5), I argue, are a baseline measure of whether or not a state has realised its primary obligations in respect of HRE.

I then detail human rights education as a concept before turning to outlining and discussing the ongoing common sources of human rights breach in education, emphasising that it is not simply the right *to* education that is of importance but that rights *in* education must also be met (Chapter 7). I discuss four key areas in which rights are commonly violated in UK schools and make specific reference to Scottish schools in doing so to highlight the persistence of these issues.

In addition to the strength of the legal support for the implementation of HRE, I make the case that there are strong additional arguments in support of HRE (Chapters 8-11). These arguments highlight the efficacy of HRE in achieving other important educational aims. Moreover, I point to the fact that in order to realise elements of the right to education associated with HRE as described here, that alternatives such as citizenship education as it has developed in the UK are insufficient. Further, I contend that they may constitute a

miseducation about human rights. Finally, I argue in favour of the suggestion that key to human rights education is a strong focus on educating children for legal literacy around their rights.

Next, I turn to Scotland and Scottish education in Part 3. I make clear the reasonable concern that human rights protections in Scotland may be undermined by the consequences of the United Kingdom's exit from the European Union and related domestic legislation for the UK internal market (Chapter 14). I stress this point to put into stark relief the importance of work in Scotland over the last decade to improve human rights realisation and especially children's rights protections. I then discuss the right to education in law and legislation and consider the place of HRE within Scottish education. I conclude that there are key weaknesses in how HRE is developed in Scotland in relation to several basic requirements (HRE1-5) (Chapter 16). On this basis, I conclude the following: That Scotland fails to meet any of the five basic requirements for HRE that I detail in this thesis. This failure, I argue, leaves teachers unsupported in their practice and as a result that children's rights *to* and *in* education are not fully realised.

I subsequently discuss the incorporation of the UNCRC into Scots law, which I argue is a profound milestone in human rights protection for children in Scotland (Chapter18). I detail the specific proposals put forward and then begin to reflect on the implications that this landmark in children's rights will have for Scottish education and society more widely.

Following this, I point to recent research in HRE identifying general problems with the challenges of curriculum development in relation to HRE and the problematic effects of the lack of clear guidance on practice in HRE in English primary schools (Chapter 20). I note particularly, the conceptual confusion that results in teachers' own conceptions of human rights playing a far too central and potentially damaging role in the teaching about human rights values. Moreover, this research makes clear how the lack of curricular guidance, as well as lack of clear theoretical support for HRE practice against accusations of "controversy", have the potential to distort HRE practice. This distortion has the effect of changing HRE to the point where it is not recognisably *about* or *for* human rights properly understood. The replacement of explicit engagement with human rights and human rights values with "less controversial" material has been long established in the literature as a potential problem and I make the case that HRE is held back considerably by the lack of a philosophically informed theory of HRE to support and enable good practice.

These failures and/or challenges, I argue, are further compounded by the current conceptual difficulties faced by HRE (Chapter 21). I point towards gaps in the literature, begin to outline the shape of some problems for future research, and stress the need for a well-established theory of HRE to begin to address the difficulties in articulating a curriculum, providing necessary training in HRE for teachers and policymakers and making progress in the core existential question of what HRE is and what it is for. I then consider more fully the implications of incorporation for HRE in Scotland. I argue that the incorporation of the UNCRC makes even more pressing the need to address current failures in respect of the basic requirements of HRE (HRE1-5). Scottish Government ambition for Scotland to be "the best place to grow up and learn" and the legal and political commitments associated with incorporation make the case that, as a matter of priority, the challenges and deficits in relation to HRE outlined in this thesis are addressed. In this thesis I argue that the failure to realise adequate policies and programmes of HRE is a failure to realise crucial aspects of the right to education. It is, therefore, to argue that Scotland cannot currently meet its international and, in the event of incorporation, national legal requirements in respect of the right to education.

Finally, in Chapter 22 I look to future directions in both policymaking and research surrounding HRE and, specifically, HRE in Scotland. I argue that in order to ensure Scotland is able to meet its obligations after the incorporation of the UNCRC, and assist teachers in implementing HRE within Scottish classrooms, the challenges I outline here must be resolved. I argue that work is required within Scottish policymaking and civil society more widely to articulate a clear sense of the place of human rights education in the curriculum and its aims for Scottish society. I further argue that work within HRE scholarship is badly needed to address and, if possible, resolve some of the deep conceptual issues facing HRE in order to assist its development within states and globally. To conclude, I make clear that the sustained period of support and momentum behind greater realisation of human rights offers significant opportunities in Scotland. I argue that the incorporation of the UNCRC is the ideal impetus for resolving the issues in the realisation of the right to education and HRE that I detail in this thesis. Moreover, I argue that to fail to do so runs both contrary to Scotland's international (and soon to be national) legal obligations strongly against the political commitments to make Scotland the best place for children to grow up and learn, and to be a human rights leader.

Research Approach.

This project is a work of research on human rights and human rights education. Peters and White suggest that the term research in academic communities is used to refer to 'systematic and sustained enquiry carried out by people well versed in some form of thinking in order to answer some specific type of question' (Peters &White, 1969, p. 2). My approach in this research, that is, the systematic and sustained approach to enquiry, is drawn primarily from the discipline of philosophy. At the most basic level, this is educational research as applied philosophy. As Bridges (1997, p.179) suggests, however, philosophical writing can describe or represent a particular methodology, but more often than not leaves the explanation or description of this methodology 'implicit or even invisible'. Bridges (1997) argues further that there is a clear sense in which philosophising about education, generally and in reference to specific concepts used within education, itself constitutes a form of educational research. It is this form of research that I engage with here. One of the values of the philosophical analysis that I employ in this work is in making ideas explicit and revealing the assumptions behind policy in order to ensure that they are 'tenable and coherent' (Pring, 2007, p.319). This will be an argumentative and analytical piece of research, discussing and interrogating contested concepts and drawing on the tools of an interdisciplinary approach in order to tackle the issues at stake.

Much of what is discussed in this work - especially the analysis of the key concepts - is highly contested, and this is a natural consequence of the questions asked and the complexities surrounding human rights themselves. What, however, does it mean to say a concept is contested in this sense? To begin with, as Carr (2010) notes, a contested concept is evidently one over which there is some disagreement. However, 'not all disagreements would seem to deliver contestation in the relevant respect' (Carr, 2010, p.95). There is, as Carr (2010) observes, no serious contestation of the idea that the earth orbits the sun. While true that there are some who would posit that the earth was fixed in space or that it was flat, there is no *serious* contestation over the truth of the facts that the earth orbits the sun and that it is not flat; indeed, the alternatives are simply and demonstrably false. Further, however, semantic disagreement is not sufficient to secure contestation in the relevant sense. What I take to mean here by a contested concept is one where 'there is serious disagreement - or difference of perspective - with regard to some notion that cannot be settled by appeal to evidence or to dictionary definition' (Carr, 2010, p.95).

Human rights, and by extension human rights education, is just such a contested concept. Human rights education as a concept is contested in at least two ways. Firstly, it inherits the contested questions over the nature and grounding of human rights themselves. Secondly, there is the contested question over what exactly HRE is and what it is for. Even amongst its advocates there are important disagreements about how closely programmes of human rights education ought to mirror international human rights law. Further, there are questions at a conceptual level about what HRE ought to aim to achieve and indeed its very nature as an initiative. That such contestation exists is entirely to be expected. The existence of different conceptions of key educational concepts is not unique to HRE. What I aim to show in this thesis is that it is not currently recognised how important this is in the context of the development of programmes of HRE for use within state education. Moreover, that contestation about the nature and grounding of human rights exists at all seems to be unrecognised or unremarked upon in much of the debate surrounding HRE. Perhaps it need not be, but in this thesis, I show that it can, and does, matter to how we develop and justify programmes of HRE for use within state education. It matters both what we want programmes of HRE to be - education about human rights law, moral education of a sort, political education, all of the former or only some - and then how we must seek to justify its place within the curriculum. Indeed, I highlight how the most expansive paternalistic and moralistic models of HRE would, somewhat contradictorily, press against freedoms guaranteed by human rights themselves. There are, as I argue, difficult questions that advocates of HRE must seek to answer in order to establish human rights education as a justifiable educational programme and to delimit its boundaries more clearly, to defend what is important about it from being considerably watered down to avoid "controversy" in schools, but also to ensure that it is appropriate for an educational programme delivered within state-funded education. Fundamentally, the question, familiar in discussion of civic education, of whether the aims of HRE - especially teaching *for* human rights - are justifiable, matters because of the potential that they might jeopardise democratic legitimacy (e.g. Brighouse, 1998).

Drawing from a wide range of resources to answer the central research questions of this thesis means engaging with, *inter alia*, specific questions in political theory, education, law, and in more wide-ranging questions in epistemology and ontology regarding human rights themselves. This thesis is, therefore, in the most straightforward sense, a piece of applied philosophy with a strong interdisciplinary nature owing to the subject matter

addressed. Centrally, therefore, this is a philosophical work broadly situated within the family of philosophy of education and political theory.

Why apply philosophy to educational thinking at all in this way? As McLaughlin (2004, p.1132) suggests, it is clear that much educational thinking, policy and practice is 'not only apt for philosophical attention but requires it'. Central to the approach of philosophy of education that will characterise this research is 'analysing arguments, identifying and probing assumptions, assessing claims, clarifying concepts' and more (Enslin, 2010, p.1). These are the tools employed in this thesis. I seek to analyse arguments over both the extent and limitations of state obligations in relation to human rights education; arguments for human rights education as a valuable component of the curriculum in liberal democratic states; assessing claims about the best way to develop HRE as an educational programme; to clarify, where possible, what the right to education entails; the nature and extent of human rights education as a concept and educational programme, as well as a variety of related and interrelated questions. The specific educational focus of the work, the later focus on Scotland's education system specifically, and indeed the application of these broader philosophical approaches to specific educational problems also strongly situates this as a work of educational studies and/or educational theory. I will consider here questions of first and second-order discourse in education. In education, first-order discourse is characterised by discussion over classroom practice, policy, and with reference to specific issues or situations. A first-order question may therefore be: "how are human rights taught in Scotland?" Second-order discourse might, for example, seek to interrogate a specific concept in order to shed further light on both the concept itself but also its relations to other concepts and the assumptions (implicit or explicit) made in the deployment of the concept in educational discourse (Enslin, 2010). From this interrogation we may further analyse, propose, and critique the arguments made about the issues under discussion. In this case, I ask questions of both kinds in relation to human rights education. These explore both how it is realised within classrooms and questions of the appropriate content and place within the curriculum, but also, important second-order questions about the concept of HRE itself and the assumptions and arguments made by its proponents. It has been the intention of this work to adopt this wide lens in order to, as far as possible, offer a comprehensive and logical development of the key strands of argumentation in this thesis.

The methodology employed in this thesis is, therefore, to adapt McLaughlin (2004) centred around: 1) the analysis of educationally, legally, and philosophically significant terms

or concepts, aiming to provide clarity or to draw more fine-grained distinctions to enable insight on the topic under debate. Clarity, however, as McLaughlin (2004, p.1131) suggests, may not be a 'sufficient virtue in educational discourse, but (properly understood) it is a necessary one'; 2) the deployment of the clarity achieved by 1) in the philosophically-informed critical evaluation of human rights education as a programme of education, educational policies surrounding it and their relation to international and domestic human rights law, and as a concept in its own right. I make clear human rights education's links to the right to education more broadly and the related concepts of civic education and citizenship. In doing so I seek to identify 'hidden assumptions, internal contradictions or ambiguities in uses of the term and/or a disclosure of potential or actual partisan or controversial effects which the term has in professional and popular discourses' (McLaughlin, 2004, p.1131); 3) to extend 2) into a philosophical critical evaluation of educational or educationally significant practices, policies, aims, and purposes. This thesis, *inter alia*, focuses on the right to education in policy and international law, its implementation in schools (focusing on Scotland), and human rights education as an educational programme. This critical evaluation is not simply to clarify further but also to ask for *justification*. How human rights education is justified, and what justification in this context means, is a central issue in this thesis; 4) The development of positive arguments and proposals regarding the matters referred to in 3). This includes the 'philosophical articulation and justification of fundamental educational aims, values and processes'. Ultimately, this thesis looks to offer such an account of human rights education and particularly seeks to question how such a programme can be justified both by reference to the right to education as expressed in international law and the constraints placed upon the state in any liberal democracy when it comes to the education of its citizens.

A structural feature of this work is the absence of a centralised literature review. This, owing to both the interdisciplinary nature of the work and the highly specialised discussions necessary for different elements of the development of the arguments in this thesis, is entirely intentional. The decentralised nature of the literature review reflects both the distinct literatures from several disciplines that this work draws upon, and their centrality as building blocks for key elements of this work. That is to say, for example, where the issue under discussion is recent developments in the literature surrounding the efficacy of various means of implementing state party obligations under international human rights treaties, the literature for this question will be discussed in the detail necessary in order to set up my own analysis as it relates to the key issues in this thesis. A further natural consequence of the

breadth of this work is the necessity of reference to expert voices to both clarify and scaffold discussions of key technical points, both in terms of concepts and legal instruments and/or terminology. As this thesis argues that sufficient legal education to assert one's rights should the need arise ought to be seen as a central component of human rights education, it would, therefore, be somewhat contradictory to be careless about the law. Hence, I aim where necessary to make clear the legal basis for the analysis that I offer of legislation and human rights instruments by explicit reference to legal scholarship. As noted by Lundy and Martinez Sainz (2018, p.17) there is often a 'chasm of understanding' between legal scholarship and HRE - a chasm that needs to be bridged if we are to make progress in both theory and practice (Lundy & Martinez Sainz, 2018). As Lundy and Martinez Sainz (2018, p.17) discuss:

> Those who study or promote HRE have a range of choices; they can situate their understanding of human rights in a broader field of moral or political philosophy or they can focus on international human rights law or, indeed, they can draw on both.

This thesis indeed draws on both. Moreover, as is further cautioned by Lundy and Martinez Sainz (2018, p.17), if international human rights law is in the mix 'then human rights educators and scholars need to engage with it'. As I caution advocates of HRE in this thesis, resistance to engagement with international human rights law is misguided whether or not one thinks the law and indeed the international body of human rights treaties and organisation only serves to preserve the "status quo" and is insufficiently transformative. It is an intended element of this thesis that it addresses the development of scholarship and legal and political events as close to the date of submission as was possible highlighting the highly timely nature of the contributions I ultimately make.

In sum, this thesis employs the characteristic features of analytic philosophical enquiry in its emphases upon matters of meaning and justification; employment of careful argumentation; it is characterized by (amongst other things) conceptual clarification and contestation; the use and interrogation of premises and assumptions; the drawing of important distinctions (e.g., between conceptual, normative and empirical questions); and perhaps most characteristically of all 'a particular spirit of criticism and the structured development of argument' (McLaughlin, 2004,p.1131).

COVID-19.

It would, of course, be a strange omission for a thesis written in the period 2017-2021 to fail to comment on the global upheaval that has wrought scarcely imaginable suffering and disruption to the lives of so many. While clear from the outset that this thesis would be heavily influenced by the developments surrounding the United Kingdom's exit from the EU and whatever constitutional issues this may throw up in Scotland, these issues have been in almost all regards overshadowed by what will likely be seen as an era-defining global event. This is not to say that they have gone away or that the very real concerns over the effect of the UK's exit from the EU on the future for human rights in the UK have ceased. They remain as yet unresolved issues and this is not even to comment specifically on what, if any, long term effects restrictions on liberties in order to respond to the COVID-19 virus may have once some semblance of "normalcy" returns. There will be many books to be written in the near and distant future on the responses to COVID-19 and what it showed us about the political and economic arrangements on our planet in 2020 as well as where human rights were and were not protected.

While all extended pieces of academic work, particularly those that seek to engage with contemporary issues, are subject to the undulations and volatility of electoral cycles, legal, economic, and political reform, or simply progress *simpliciter*, most doctoral students to some greater or lesser degree, naively or not, hope their work will in some sense change the world. However, I find myself, as do many others, in the position as I write this that the world has fundamentally changed around me and I am asked a whole range of the most fundamental questions anew. The profundity of the consequences of the global pandemic that has affected all of our lives makes the majority of this thesis, written prior to March 2020, feel like much more of distant historical treatise upon revisiting than in its initial drafting. In a curious way, this is not just because the legislation has moved on, or because new truths about the nature and scope of human rights have been uncovered. Simply, that the world in which this thesis began feels much more discontinuous with the current time than it is with the rather more coherent period of my life prior to the first days of the UK wide lockdown. This work, as with anyone for whom the 2020 global pandemic is *the* defining historical moment of their lives, has a moment of stark division between its ordinary course and a sharp and pronounced moment of metamorphism. There is very little that can be said that does not sound cliched and my attempts here to reflect are restricted to the effects on this

work as this is all I can manage and so leave reflection on the profound sadness of this event to those better able to express it. It is of course now a feature of the thesis itself with perhaps as much weight as any of the many decisions taken about selection of materials or approach. This work will always be coloured by this fact, and indeed my reflection on the course of its creation always overshadowed by these events. This is as it should be.

Where necessary I have updated sections to reflect the profound changes that have occurred, and have, as one would expect, tracked changes to legislation as if they have been made. However, some sections have been intentionally left unaltered in tone and content to reflect the optimism surrounding the developments in Scotland relating to children's rights as recently as the start of 2020. It seems to me that it would be unduly revisionary to reinterpret this in the more sombre light of the current time. As such, while hopefully not too apparent or jarring for the reader, there are sections - mostly in Part 3 - where the impact on the world, and indeed myself during an extended period of great uncertainty, anxiety, and isolation will be evident in the writing. I am of the mind that the erasure or revision of these sections too would be unfaithful to the reality that has influenced this thesis.

I have intentionally avoided detailed analysis in this thesis of the period of school closures forced by COVID-19 and so an explanatory comment on why is necessary. The legal and moral justifiability of the long periods with only partial access to education - and no access for many of the most vulnerable children in Scotland - in terms of human rights will, and has to, be discussed at length. There is no doubt that children's right to education was not realised for most, if not all, children in Scotland during the period of full lockdown restrictions throughout the UK. [3] This is much too big a topic to add to this work even given its significance towards the end of the research process. While I have discussed the importance of children's access to education as well as how COVID-19 forces deeper reflection on our system of education generally and children's rights specifically, I have restricted this to discussion of the potentially radical consequences of incorporation of the UNCRC into Scots law and the future of human rights education in Scotland. At the time of completion of this thesis, keeping schools open in Scotland had been the central political goal of the Scottish Government for several months but has not come without cost in public health terms. The legislation introduced to incorporate the UNCRC into Scots law also made clear how the events of COVID-19 strengthen the importance of legal protections in domestic law

[3] See for discussion of this issue: Magendzo, & Osler. (2020).

for children's rights and was not used as an excuse to postpone this significant milestone. As Scotland and indeed the world as a whole seeks to rebuild, we are and will continue to be faced with difficult questions about what kind of society it is that we want to live in and whether this is the society we need.

I began this work with the intention of satisfying myself as a teacher that I was doing the best for my students in respect of both teaching them about their rights and in upholding them within my practice, and I have made comment on this above. This basic desire traced back to my own time in a classroom remains. It is now enhanced by the pressing and vital need to ensure that *whatever* political and economic consensus we arrive at in this new era, children's voices are heard, their interests taken into account, and their rights realised and respected. My modest contribution to supporting children's rights now and in the future will be in seeking to clarify their right to education and how best we may teach them about their rights through Human Rights Education and ensure their places of education support their rights at all times.

Part 1: Realising the Right to Education.

In Part 1, I consider first the question of state obligations to realise the right to education. In doing so, I aim to highlight key features of the right to education as it is understood and expressed in international human rights instruments. This includes discussion of the mechanisms for the realisation and protection of human rights and the core obligations for states in realising the right to education specifically. Part 1 is intended to serve as both an introduction to the right to education and the international practice of human rights that will form an important part of the backdrop I will draw upon throughout this thesis. In Part 1, therefore, I will outline what is required of states to meet their obligations to realise the right to education (Chapters 1-4) before fleshing out and detailing the place and character of the right to education in international human rights instruments. I conclude Part 1 in Chapter 5 by offering an account of the most basic of these obligations for states and what their violation looks like.

2.Towards a Right to Education.

On December 10th 1948, in the shadow of the atrocities of the Second World War, the United Nations General Assembly adopted one of the most significant documents of the modern period. Unified by a commitment that the 'barbarous acts that outraged the conscience of mankind' could never be allowed to happen again, a universal statement of the recognition of human rights was proposed (UDHR, 1948/2015, p.1). The Universal Declaration of Human Rights (UDHR), though non-binding, represented a clear statement of principles with Eleanor Roosevelt, Chair of the Commission on Human Rights, proclaiming that it might well become an international Magna Carta for all humankind. A declaration of rights aimed to serve as a foundation for lasting peace through a clear and unequivocal statement on the foundations of freedom and justice in the world. Human rights have, as Cruft et al (2015, p.1) note, became the distinctive 'legal, moral, and political concept of the last sixty years'. The significant departure between the UDHR and its predecessors comes in the move away from the concept of "natural rights" underpinned by the natural law tradition of religious scholarship. In jettisoning the necessity for the theological underpinning of many previous attempts at the development of rights treaties (primarily based upon citizenship), the UDHR is seen as the seminal expression of a new kind of secular consensus. This secular consensus

holds that a human right is one that pertains to *all* human beings *qua* human beings and is not premised on the citizenship of any particular nation in contrast to many of the rights declarations that preceded it (McCowan, 2013).

As Morsink (1999) suggests, the UDHR profoundly changed the international landscape. We now find a proliferation of human rights protocols, conventions, treaties and a whole manner of derivative declarations further clarifying and extending in many cases what was expressed in the UDHR. Freeman (2017) highlights the fact that there are now around 200 international legal human rights instruments including 65 that refer back to the UDHR as a source of authority. For present purposes, I will use the term "instrument" to refer to both treaties, which, as international agreements, legally bind state parties, as well as to soft-law documents, such as resolutions, declarations or standard rules adopted by international bodies. The latter, although not binding in a legal sense, often bind in a "political" sense as Beiter (2005) outlines. "State parties" here refers to those states that have ratified or acceded to whatever international treaty is under discussion; i.e. those states that are legally bound by the treaty's provisions. Importantly, the rights given expression after the Second World War through the UDHR have given us a standard which sits outside national law against which behaviour, particularly that of states themselves, can be judged (Clapham, 2015). There is, as Morsink (1999, p.x) posits, not a single nation, culture or people that is not now 'in some way enmeshed' in human rights regimes. It is very difficult, therefore, to overstate the significance of the UDHR in the subsequent six decades and noteworthy that almost all nations are now signatories to a range of rights legislation with the development of national legal frameworks, that are, more often than not, tied into the freedoms and protections first given expression in the UDHR (Cruft et al, 2015). The UDHR itself extended for the first time the community of rights holders to encompass *all* of humanity and importantly extended the range of rights that agents have. This "first generation" of rights - including those outlined in UDHR - primarily focused on civil and political rights and are generally characterised as protection from state interference in individual liberty. Since 1948 the subsequent "generations" of rights declarations and conventions have been more expansive and have extended the scope of international human rights law to focus more clearly on social, economic, and cultural rights ("second-generation" rights). This expansion of rights has been given the binding legal expressions of the spirit of UDHR in the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) and the International Covenant on Civil and Political Rights (ICCPR, 1966). This was a highly significant, but

equally contentious move. It is contentious at least in that there is, and remains, debate about the justiciability of some economic, social, and cultural rights. The right to education has not been immune from questions over what exactly it entails. Questions about what such rights obligate states to do, and how one can make sense of such claims have been common in legal discussion of the right to education. What, for example, is the nature of the obligation that corresponds with the right to education or health, for example, and who is the relevant duty bearer? Questions like this have often been posed as though they might prove significantly more problematic than they, in actual fact, have proven to be. While it is still relatively common in literature to see references to the distinction between civil and political and economic, social, and cultural rights, it will not prove particularly important in this thesis and I will not dedicate much time to it. The United Nations Convention on the Rights of the Child, which will be one of the major focuses of this work, does not draw any distinction between civil and political, and economic, social, and cultural rights. It is, I contend, therefore, reasonable similarly to embrace the possibility that there is little practical value in this distinction for current purposes. This has proven much less possible in philosophical discussion of such rights, and certainly amongst so-called orthodox conceptions of human rights and I discuss this later in this thesis.

Human rights and education have been closely linked since the UDHR. Article 26(2) of the UDHR states that education ought to be directed towards the development of human personality, respect for rights, freedoms, and the furtherance of peace and tolerance (UDHR, 1948). The right to education (RTE) gained formal recognition in the publication of the UDHR and has subsequently been reaffirmed in several international and national rights treaties. In particular, the 1960 UNESCO Convention Against Discrimination in Education (CERD), International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), and the International Covenant on Civil and Political Rights (ICCPR, 1966). These documents, amongst others in the intervening years, make clear affirmations of the right to education's centrality in human rights law (Vorhaus, 2014). Indeed, Article 13(1) of the ICESCR makes clear 'the right of everyone to education' and is widely considered to contain the most authoritative expression of the right to education (Beiter, 2005). This convention has been ratified in 160 countries and underpins the educational policies in the majority of these nations (McCowan, 2013).

As Tibbitts and Kirschlaeger (2010) suggest, the international human rights movement, in concert with a range of non-governmental organisations and international

bodies (including the UN particularly), has sought to broaden the focus of rights discourse by integration of a range of rights concepts, norms, and values within the context of education. The right *to* education and the rights one has *in* education have taken on an important dual role as both a justification for, and means of critique of, governmental policy surrounding education. This move has drawn together a range of issues including discussion of citizenship, principles of inclusion, anti-racism, environmental and development issues amongst others, into a growing body of theory, research, and practice in education (Tibbitts & Kirschlaeger, 2010). Fundamental to this movement is the recognition that education is 'not seen to be justified by a particular return' (economic or otherwise) but is seen as an entitlement for all human beings (McCowan, 2013, p.12). Importantly, access to education is seen as a fundamental human right. The UDHR states that education is both a right itself and an indispensable means of realising other human rights (UDHR, Article 26). The importance of recognising both a right to education and education's role as a means to ensure the realisation and protection of all other rights, places a significant burden on those seeking properly to determine what this right entails. If we cannot be clear about what the right to education entails, and the obligations this, therefore, has for states (and other actors), *all* rights are in some sense weakened. Education has long been seen as a source of empowerment for all people as a means to reduce discrimination and inequality as well as to serve as a means to break vicious cycles of poverty and oppression in society (Kearney, 2016; UNESCO, 2005; Amnesty International, 2012). Before beginning to outline the right to education, therefore, I set out how human rights function in politics and international law in beginning to lay the foundation for the key questions addressed in this thesis relating to the realisation of the right to education, the implementation of Human Rights Education, and later the role of HRE within Scottish Education. First, however, I specify how I intend to understand the concept of rights within this thesis. This is for the sake of clarity and to foreshadow a subsequent discussion of the importance of conceptual clarity in relation to teaching about rights in later chapters.

3. A Right to Education.

In terms of human rights discourse, the right to education as Weishart (2015, p.38) suggests, is something of a 'Johnny come lately'. Although, as suggested earlier, the links between rights and education trace back to the UDHR itself, the right to education as a "second generation" right, found itself behind the political and civil rights that dominated most of the talk, and practical struggles, of the second half of the 20th century (Weishart, 2015). The right to education, as Beiter (2005) reminds us, like other economic, social and cultural rights, is not always easy to comprehend - although as I noted above, this is often overstated. What is, of course, a complication when discussing the right to education is that the meaning and aims of education are themselves contested. It can be doubly difficult to pin down what the right to education means when the concept of education is elusive, or at least contested, as well as how best to formalise what a right *to* education might entail. Moreover, because of the close links between the right to education and other rights (specifically expression, participation, and religion), this can contribute to an unclear picture in relation to the implementation of this right. While the majority of states are willing and often make attempts to protect this right, it is often unclear what it ultimately demands of them practically (Beiter, 2005; Robeyns, 2006). In contrast to the civil and political rights, with which states are much more familiar, the right to education is said to entail significant positive duties (Beiter, 2005; Jover, 2001; Gordon, 2013). [4] Halvorsen (1990) explains that this kind of right places additional burdens on the state as a consequence of the fact that the fulfilment of this right requires both resources and time in order to be implemented; that is, it requires *active* steps on the part of state actors. Positive rights such as the right to education, obligate others to 'assist, support and promote' the right bearer in accomplishing their legitimate claim (Gordon, 2013, p.29).

McCowan (2013) highlights four important characteristics of adopting a rights-based approach to education. The first, and arguably the most significant, is the importance of unconditional access to education (McCowan, 2013). Second, the repositioning of people as agents rather than mere beneficiaries enables those who possess these rights to hold their government (and others) to account. It is not simply a matter of expediency or whim that

[4] While this convention of "generations" and strict division between civic and political and social categories of rights is commonly used, I am inclined to agree with Beiter's (2005) broader point that it refers to their historical development rather than anything fundamental about whether they entail positive or negative duties. Many first-generation rights *do* entail positive duties.

education is secured for all, but a matter of justice that individuals have legitimate claims on state resources. Importantly, as I will outline later, these claims are not dependant on the desire, nor the ease of availability of the resources needed to make this possible. Thirdly, rights-based approaches to education are necessarily attentive to the processes as well as the outcomes of education. How this result is brought about is a legitimate, and important, condition of its realisation. Finally, and of considerable importance for this research, is the condition of urgency. Rights-based approaches to education highlight the fundamental importance and urgency of the task at hand (McCowan, 2013). Universal access to education can no longer be seen simply as a laudable aspiration but is transformed into an 'absolute and immediate requirement of justice' (McCowan, 2013, p.13). Moreover, the right to education entails an immediate obligation that 'implicates us all' either directly or indirectly (McCowan, 2013, p.13). As I propose in Part 3 of this thesis, Scotland and Scottish education currently fails to meet this obligation fully with respect to human rights education, a matter that I argue ought to be addressed as a priority.

Although true that the task of providing school places, adequate staffing, and resourcing is a particularly significant one, questions of equal and unrestricted *access* to education are not the only issues one must consider. Access alone is insufficient to realise the right to education, but is, of course, a fundamental building block (Tomaševski, 2004). Countries that are more economically prosperous cannot rest on their laurels once it is assumed that near-universal access to education for its population has been secured. As Kearney (2016) notes, while many nations are signed up to a range of human rights conventions and are committed to international programs to ensure "education for all", the reality is that not all children are able to access education in a way that is consistent with these principles. In fleshing out the right to education I am interested in three different, but interrelated, aspects of this right as identified by Bajaj (2014, p.1): 1) education *as* a human right (entitlement claims); 2) education *with* rights (education that is consistent with rights principles such as equality and human dignity); 3) education *for* human rights (what kind of curriculum is required, how do we train teachers etc.). These three different dimensions taken together have broad and complex implications for policymaking and practice in education, the most obvious of which come in relation to the development of curricula and the education and training of teachers to be defenders and promoters of human rights. Before engaging with these issues, we must first turn to discussion of the right to education more generally. The first question I want to discuss is what one is to understand by "education" in the right to education.

3.1 A Right to What?

Extensive exploration of the legal framework of the right to education, its justification and its implementation have been carried out, for example, by Wringe (1986), Tomaševski (2003) and Beiter (2005). Beiter's (2005) perspicacious analysis of the right to education and especially Article 13 of the ICESCR has helped clarify these crucial areas. However, as McCowan (2010, p.510) notes, these discussions have devoted 'little space' to discussing the possible meanings of "education". Although it is true that there is widespread international agreement that all should have education, this does little to specify anything in particular about how this is achieved at a practical level or even the extension of the term "education" itself. The question here is what is meant by "education"? Is it a right to schooling and, if so, what kind of schools are and are not permitted (private and religious schools being the most obvious point of contention)? Does the right to education require schools at all, or would it be sufficient that whatever this "education" amounts to is undertaken outside of formal schooling? Moreover, what does this education seek to achieve? Is it primarily about socialisation, skills development, knowledge acquisition, inculcation into a certain way of life, preparation for the workforce? Any of these divergent aims may be what is meant by education and so it is worth endeavouring to be clear about what the right to education is a right *to*. Unfortunately, as McCowan (2013, p.68) states, international human rights law is 'a strange hotchpotch' when it comes to education. It is in places very specific and prescriptive, and in others incurably ambiguous or silent. As previously noted in discussion of international law, there are clear pragmatic and political reasons for the eventual shape that international agreements have. That there was remarkably little dissent in the formation of the right to free and compulsory education speaks to a shared conviction that *something* about education was important, but that is not yet to illuminate what it is.

The term "education" can, of course, be defined in a variety of ways. In a wide sense "education" means something like any and all activities directed towards the transmission from one group to the young of the body of knowledge, skills, comprehensive doctrines[5], customary practices, and whatever else is needed to enable the maintenance and continuation

[5] I follow Rawls (2005, p.13) in understanding a comprehensive doctrine as 'a set of beliefs affirmed by citizens concerning a range of values, including moral, metaphysical, and religious commitments, as well as beliefs about personal virtues, and political beliefs about the way society ought to be arranged. They form a conception of the good and inform judgments concerning "what is of value in life, the ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole'.

of a particular human group (or more broadly still, humanity per se) (Beiter, 2005). Understood this way, education refers to the transmission to a subsequent generation of 'those skills needed to effectively perform the tasks of daily living' (Beiter, 2005, p.18). And, further, to the inculcation of the social, cultural, spiritual, and philosophical values of the particular community (Beiter, 2005). Even as a very broad description of education, this may be seen as inadequate in many regards, but what is meant by education as it is understood in a "wide sense" is made clear by this example. Importantly, this wide meaning has been attributed to "education" in article 1(a) of UNESCO's Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms (1974) (Beiter, 2005). To quote the relevant article:

> …the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge. (UNESCO, 1974, art.1(a))

The distinction, between education in a wide and in a narrow sense, has also been drawn by the European Court of Human Rights. The European Court states:

> [Education in a wider sense refers to] the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young, whereas teaching or instruction [education in a narrower sense] refers in particular to the transmission of knowledge and to intellectual development. (ECtHR,1982)[6]

This distinction is important and I refer to this "wide sense" in discussion of human rights education later where we will find similarly "wide" understandings of the role of education (particularly in relation to education *about, for, and through* human rights). This will come in the form of direction to "educate for the whole of the human personality" which is plausibly read in a similarly wide sense. I draw attention to this now, as one of the challenges I later propose for the development of programmes of HRE is how far one can take this wider reading of education as being an appropriate aim for the state in a pluralistic democracy. To turn now to the "narrower" sense of education, here it is taken to mean formal institutional

[6] Campbell and Cosans v. United Kingdom, Judgement of 25 February 1982, Publications of the European Court of Human Rights, Series A, Vol. 48, para. 33.

instruction (Beiter, 2005). This can be instruction within a 'national, provincial, or local education system, whether public or private' (Beiter, 2005, p.19).

Generally speaking, international instruments use the term education in this narrower sense leading to the potentially unhelpful reading of education as schooling. McCowan (2010;2013) expresses concern that "education" is too often seen as synonymous with "schooling" in the context of international human rights. [7] While I have sympathy with this view, and indeed McCowan is correct to highlight the inadequacy of this conceptualisation as an understanding of education, ultimately, it will be beyond the scope of this project to work on the basis of a "wider" reading. For this reason, it will not be possible here to engage with the question of "what is education?" beyond making clear what the right to education, as understood in international human rights law, amounts to. What I will focus on here is what is required by states in relation to international human rights law. This exploration is focussed primarily on schooling and this will, therefore, limit the scope of my discussion. It is for this reason that I will restrict my discussion of the right to education and later human rights education to the context of schooling (and compulsory state education at that). [8] I develop this point in much greater detail in Part 3 of the thesis when discussing national education policy in Scotland.

Nonetheless, the right to education, as outlined in international legal instruments, refers predominantly to education in its narrower sense and I will follow that move here. As such, "education" here will connote teaching and instruction in specialised institutions (and for this project, these institutions will be part of the state education system). This will mean formal education (or instruction) covering primary and secondary education. [9] To offer four important clarificatory remarks here: firstly, while this project, and the vast majority of discussion of the right to education, considers the education of children, the right to education also applies to adults. This is demonstrable in the formulation of the right in the UDHR, as one example, that '[e]verybody has the right to education' (UDHR, art.26(1)). Secondly, mere attendance at educational institutions is not sufficient to realise the right to education. Thirdly, while there is no prescription in international law for any specific syllabi, there are broad principles and/or values that are seen as constitutive of an education that realises and

[7] McCowan (2010, p.) notes that schooling is a 'pragmatically convenient focus, but ultimately flawed, basis for the right to education. He considers whether it is possible to conceptualise the form of education underlying the right (2010, p. 74-95); see also McCowan (2013).

[8] I will, for example, not discuss any questions of private schooling nor informal education. There are important questions to ask in the context of both with relation to human rights but they fall outside the scope of this work.

[9] The right to education itself may cover post-compulsory education but I will not discuss this here. It does *not*, however, cover pre-primary education which is seen as an 'unfortunate omission' (Van Bueren, 1995, p. 234.).

supports the rights of learners. In the context of human rights education, this has had something of a hampering effect on the development of clear guidance for states, but the rationale for this omission in relation to a specific syllabus is, I take it, clear enough when one considers the limitations of international law. It is accepted that the *content* of education may 'legitimately differ' between different societies (Beiter, 2005, p.20). This recognition of pluralism is an important feature of international human rights law and, whatever practical difficulties it poses for the implementation of education in diverse settings, it is central to the practice of human rights and cannot be discarded. Finally, while education must involve the 'acquisition of knowledge and skills' there are no internationally agreed criteria as to *what* knowledge and skills are to be acquired (Beiter, 2005, p.20). This statement is, however, subject to *some* qualification. Article 26(2) of the UDHR makes clear that education must, amongst other things, be directed to the full development of the human personality. The Commission made clear at the time that the 'Declaration should not set forth directives regarding the system of education' but could indicate ways in which the development of the human personality might be supported. [10] This formulation was followed in order that it could be "universal" in the sense that all countries might be able, in principle, to accept it. As suggested earlier, the question of the development of the human personality is something I return to in discussion of human rights education. That there are some aims that education must fulfil is an important, although not entirely clear, part of international legal instruments (Beiter, 2005). To conclude the discussion of international law and human rights more generally and to shift attention specifically to the context of education, rights as Monk (2002) outlines may provide individual, already marginalised, children with additional protections. If rights in education are to be taken seriously 'the law undoubtedly has an important role to play' (Monk, 2002, p.56). Discussion of the place of human rights in international law and the mechanisms for their implementation matters in this project because as Phillips and Gready (2013) suggest, a significant area of disagreement in HRE scholarship surrounds the "appropriate relationship" between HRE as an educational project and the international human rights law framework. I discuss the importance of this relationship in later chapters, but for now it is important to note that whether this should be a closer (i.e. HRE strongly mirrors international human rights law and the associated practices) or looser relationship (HRE as a challenge to the established human rights field) has highly significant implications for the characteristics and expectations one may have of particular programmes of HRE.

[10] UN (1948b, p.15).

Having outlined how “education” is understood in international legal instruments, and by extension how I understand the term here, I can turn next to further elaboration of the right to education in international law.

4. The Right to Education and International Law.

Understanding the relationship between human rights, politics, and international law is central to understanding the range of moves available to advocates of human rights generally and also advocates of human rights education specifically. The study of human rights has, to a considerable extent, been dominated by lawyers. Indeed, prior to 1970, almost all of the academic work in human rights was done by lawyers and published in law journals (Freeman, 2017). This is, of course, no particular surprise owing to the significance of human rights law in driving debate in this area. Due to the fact that many of the advances in human rights implementation have been driven by the law and legal scholars, one cannot fail to recognise the significant contribution of legal scholars in the clarification and operationalisation of human rights values and international standards in political discourse and domestic law. However, Freeman (2017) reminds us that, while certainly beneficial in some regards, this legal focus has led the field of human rights to be somewhat distorted. As a result, an increasingly technical and legal discourse has been dominated by those with the technical ability to navigate the complexities of the legal instruments (Freeman, 2017). While lawyers dominate a lot of the discussion of rights, human rights are made and interpreted by a political process first of all (Morsink, 1999; Freeman, 2017). It is politically important that international (and national) law codifies human rights, but this does not take human rights out of politics (Freeman, 2017; McCowan, 2013). Indeed, I think Freeman (2017) is correct to argue that any attempts to depoliticise human rights are ultimately pointless. Importantly, however, as Freeman (2017) concludes, the legalisation of rights is neither necessary nor sufficient for their realisation. This may well be so, and it is worth clarifying first the place of human rights in international law and the mechanisms for their protection and realisation in order to discuss how rights are realised; that is, to ask the question, "how do human rights function?". Additionally, as I later argue, following Lundy and Martinez Sainz (2018), an often, and mistakenly, overlooked element of discussion of human rights education is the role of law and legal knowledge in protecting, preventing, and addressing human rights issues within (and outwith) education. In chapters 4 to 7 of this thesis, I set out to address this issue by engaging with, and being informed by, international human rights law in order better to establish subsequent discussion of HRE that is cognisant of these issues. I start here by considering the right to education as it is expressed in key international instruments.

4.1 Key International Instruments.

When considering the right to education as expressed in international human rights instruments, Tomaševski (2001a) reminds us, no right can exist without remedy. The counterpart to human rights are government obligations. The firm grounding of the right to education in international law provides the clarity and specificity needed for its protection in the international arena. The law is important, and as Tomaševski (2001a) suggests, when one considers the alternatives: education by those who wish to proselytise, as a gift from the wealthy, aid donors, or a country's political leaders. None of these models make education sustainable. They are in the first instance resisted, and in the second, a gift that can be taken away (Tomaševski, 2001a). International human rights law ensures education is a matter of obligation and its beneficiaries are treated as subjects of rights not as objects of charity or patronage (Tomaševski, 2001a). Crucially, the status of the right to education in law, and the obligations this places on the state are fundamental to securing the provision of education itself. If education is to be free, this requires a state to raise finance. This ensures the obligations of the citizens and individuals to pay tax. Unless parents accept the right to education, education will not be compulsory. All of this is what Tomaševski (2001a, p.15) calls the inherent balance between rights and duties, freedoms and responsibilities that orients human rights law.

There are a number of legal instruments, adopted internationally, that contain provisions on the right to education. The International Bill of Human Rights consists of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966) (Beiter, 2005). Indicative of the wealth of support for the right to education is its constant repetition and strengthening in a wide variety of international instruments including, but not exhausted by[11]:

- Geneva Declaration of the Rights of the Child (1924)
- UN Declaration of the Rights of the Child (1959).
- UNESCO Convention against Discrimination in Education (1960)
- International Covenant on the Elimination of All Forms of Racial Discrimination (1965)

[11]A full list of all relevant instruments and General Comments can be found at: http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_International_Instruments_Right_to_Education_2014.pdf

- International Covenant on Economic Social and Cultural Rights (1966)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their families (1990)
- Convention on the Rights of Persons with Disabilities (2006).

It is important to reflect on the two Declarations of 1924 and 1959 and their historical significance as earlier expressions of both the notion that children were a specific class of rights holders and key principles underpinning the expression and realisation of children's rights. Specifically, we can identify the early signs of focus on the holistic development of the child as being crucial to their wellbeing, the best interest principle, and the importance of an inclusive and equitable engagement with education to development of the whole person. Moreover, the right to education given in the UN Declaration (1959) highlights many of the key formal features that will come to characterise the way this right is given expression in international instruments even today. This includes free and compulsory education at the elementary stages, an education that promotes one's culture and enables the moral, social, and intellectual development of the child in order that they can become a 'useful member of society' (UN, 1959, art.7). Crucially, and highlighting the status of this Declaration as an important forerunner to the UNCRC, 'the best interests of the child shall 'be the guiding principle of those responsible for his education and guidance' (UN, 1959, art.7). Of this extended list, however, I will only return to the Convention on the Rights of the Child in a later chapter (Chapter 6) and in discussing Scottish education and the commitment of the Scottish Government to incorporate the UNCRC into Scots Law by 2021 in order to further develop discussion of human rights education. Prior to this I will make brief comments on the UNCRC as necessary and will focus particularly the Declaration on Human Rights Education and Training (2012) in Chapter 6.

4.2 Universal Declaration of Human Rights.

Starting with the initial formation in the UDHR, Article 26 recognises that everyone has a right to education. This right, as formulated in Article 26 of the Universal Declaration of Human Rights (UDHR, 1948), states:

> 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
>
> 2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
>
> 3. Parents have a prior right to choose the kind of education that shall be given to their children.

There are a number of points to highlight here before tackling them directly in discussion later. The first is the specificity in relation to the provision of free and compulsory education at the 'elementary and fundamental stages'. The second is the educational aim of development of the human personality and respect for human rights and fundamental freedoms. The third is the provision that parents have a prior right to choose the kind of education given to their children. The question of parental authority over education, and the wider question of authority in education *per se*, I will return to in later chapters. [12] Article 26(1) reflects what is termed the "social aspect" of the right to education. There is an expectation that the state will 'attend positively' to the realisation of the various levels of education (i.e. those outlined above) (Beiter, 2005, p.91). In order to understand Article 26(1), we must consider it in the light of Article 22 which introduces and deals directly with the economic, social, and cultural rights provisions of the UDHR (Beiter, 2005). Article 22 states that everyone is entitled to the realisation through national effort, international cooperation and in accordance with the resources of each state, the economic, social, and cultural rights that are 'indispensable for his dignity and the free development of his personality' (UDHR, art.22). This makes clear the active steps that are required in order to fulfil the entitlement. In other words, the state must make efforts (financial, technical, and otherwise) to realise the right to education. This is important, especially in this early formulation, in foreclosing avenues of avoidance in relation to reading the right to education as requiring only a passive attitude on behalf of the state. Realising the right to education requires considerable resources, and it was recognised at the time of drafting that these

[12] Particularly in Part 3 in connection with Scottish Education.

resources would be beyond a number of states. For this reason, Article 22 makes clear that the realisation of an individual's entitlement can be understood 'in accordance…with the resources of each state'. This move, as Beiter (2005, p.91) notes, thereby subjects the scope of the state's duty to the extent of the resources it has available. As the state becomes more able to provide the necessary resources its obligations can be interpreted 'ever more widely' (Beiter, 2005, p.91). This is to point to the idea of progressive realisation of rights. Generally, however, under the UDHR states have a 'wide latitude' in determining how to go about realising the right to education (Beiter, 2005, p.91).

Article 26(3) is perhaps the most eye-catching part of this formulation given the significant philosophical and legal discussion it has generated. The provision that states must respect parents' convictions concerning the character of education they wish their children to receive has several direct consequences for human rights education and so it is worth making clear what this "prior right" amounts to. The notion of a "prior right" means that the right accrues to parents in the first place meaning that state's role in this respect is of a 'subsidiary nature' (Beiter, 2005, p.93). Parents are accorded this prior right in order to ensure that pluralism is respected. This is both consistent with the general goals of human rights as well as reflecting the specific historical conditions under which the UDHR was drafted. Protection against state indoctrination was naturally a prominent part of the thinking of the drafters of the UDHR in the post-war period, recalling the abuses of the education system by the "national socialist" government in Germany particularly. As Beiter (2005) suggests, protection against indoctrination was the *raison d'être* of Article 26(3). This provision reappears as a legally binding obligation in Article 18(4) of the ICCPR which makes plain that the right of parents to ensure the education of their children can be carried out in conformity with their own convictions. More important in this later formulation is that this right is seen as so fundamentally important that it 'may not be derogated from in times of emergency' (Beiter, 2005). What is secured by this right is significant parental freedom to follow their religious, philosophical, and educational principles with respect to the education of their children. Further, the right offers latitude in the educational methods that can be employed towards this end. Importantly, both of these freedoms are not without restriction. This restriction is of conformity to the rest of what is set out in the right; that is, parents have leeway up and until their efforts undermine the realisation of the right for any particular individual. This applies also to the establishment of private schools and in general, education must conform to the 'minimum standards' laid down by the state in either case (Beiter, 2005,

p.93). While the UDHR formation is important in establishing the right to education, the stronger, both in terms of content and in its role as binding law, formulation of the UN's general position on educational rights can be found in Article 13 of the ICESCR (1966) and I will turn to that next.

4.3 Article 13.

Article 13 of the ICESCR (1966) states that:

> 1. The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Additionally, Article 13 (2) outlines a number of key points in relation to educational provision at different stages. Article 13 (3) outlines the character of parental rights in relation to the Covenant, while 13(4) details that no part of the article should be construed to interfere with the liberty of bodies or individuals to establish and direct education institutions. Some initial comments before unpacking article 13 further: Firstly, the Committee on Economic, Social and Cultural Rights, which is the supervisory body for the implementation of the ICESCR, affirms that 'education is both a human right itself and an indispensable means of realising other human rights' (CESCR, 1999, n.p.). Secondly, the right to education ought to empower, enabling the most marginalised groups in society to improve their conditions, as well as contributing to the development of all (CESCR, 1999, General Comment 13). Beiter (2005) comments on this, suggesting that the right to education is important in that it both promotes *and* greatly facilitates the enjoyment of a range of other rights. Thirdly, we can identify two important dimensions to the right to education for current purposes: 1) a social aspect; and 2) a freedom aspect (Beiter, 2005, McCowan, 2013; Tibbitts, 2002). Each of these aspects is important in understanding the right outlined, and later in shaping a plausible framework upon which we might base the development of human rights education that seeks

to meet some of these aims. In what follows I will discuss the most relevant features of the above formulation rather than all of them. [13]

To turn to the detail of Article 13, 13(1) makes clear that education should enable all persons to participate effectively in a free society. Beiter (2005, p.95) draws our attention to the fact that this aim appears to require that education is not merely theoretical, but also furnishes all persons with the knowledge and/or skills necessary to satisfy their practical needs in life. Further, I think a straightforward reading of article 13(1) makes clear a commitment to adequate civic education under the right to education; i.e. an education that enables persons to *participate* effectively in their society. Article 13(2) requires states to realise the right to education and its subsections are clear in their meaning and intention. Article 13(2) highlights two of the requirements (availability and accessibility) that I will discuss in connection with Katerina Tomaševski's "4As" in developing a framework for judging the implementation of RTE in chapter 5. It is clear from the provisions of article 13(2) that the state is expected to take active steps aimed at implementing the right to education. In doing so it must utilise the 'maximum of its available resource' to achieve implementation (Beiter, 2005, p.96). In addition, article 13(3) protects the rights of parents in much the same way as the UDHR provision, while 13(4) protects the rights of individuals (and bodies) to set up private schools.

Second, Article 13(1) states, in general terms, that the states party to the Covenant recognise the right to education. This is to make clear that once ratified, as with all other international agreements in which the right to education is protected, state parties assume obligations under international law (Beiter, 2005). Important, both in understanding the right to education but especially in understanding human rights education, is the discussion in this provision about the aims of education. Article 13 (1) repeats and *adds* to the aims outlined in article 26(2) of the UDHR. The formulation above restates that education should be directed towards the development of the human personality and a sense of human dignity. This is not dissimilar to the UDHR formulation although the focus on human dignity as the "source" of human rights is outlined there in the preamble. What is significant in article 13(1) is that it appears to *require* that education must ensure individuals are not just aware of their own inherent dignity, but also of all the human rights that accrue to them on this basis (Beiter, 2005). The focus on human dignity will be a point I will discuss in considerable detail in

[13] For a full legal analysis of Article 13 see Beiter (2005) esp. Chapter 10.

outlining challenges for the development of programmes of HRE. I will argue that a lot turns on how one aims to characterise human dignity in the context of education *about* human rights. It strikes me that, as with discussions of the nature and grounding of rights, the lack of clarity surrounding what "human dignity" is meant to amount to can be problematic for the development of programmes of HRE for inclusion in compulsory state education. It is made clear that human dignity constitutes the source of human rights in a variety of UN instruments on human rights, but much less clear what we are to make of this fact. Even less clear is what one can teach about this beyond the fact that human dignity, however this is to be understood, is said to be the source of human rights. What I mean to draw attention to here is that there is no widespread agreement on any particular *conception* of human dignity, even if the concept itself forms part of the international agreements on human rights. [14] In the context of education this, I will argue, can prove a stumbling block when considering the justifiability of any specific programme of human rights education in light of the demands and constraints of a liberal pluralistic society. Again, our attention may be drawn in this connection to article 13(3) that, like article 26(3) of the UDHR, outlines the rights of parents to have a say in the character of their child's education. This protection against excessive state influence in education stands behind my concerns over the justifiability of certain forms of HRE in state education. How to ensure that human rights education is itself consistent with this right will be a prominent feature of my discussion of the limitations that proposals for HRE must be guided by.

This limitation, I will argue, poses a potentially unique problem for advocates of HRE. If states are limited in what they can do in shaping the character of a child's education (specifically in relation to parents' rights in this matter) this has obvious consequences for what HRE can be (in terms of its curricular inputs) and what it can do (in terms of reforming practices and attitudes in society). This, broadly speaking, is to point towards considerations common in political philosophy of the division between the "public" and the "private" and how far the state is licensed to interfere in the latter. These are important considerations depending on how one is to understand this potential limitation. As suggested above, this project will need to pay careful attention to broader concerns relating to the character and values imparted in education, and the limitations on the state in this area. It may be the case that the UN Convention on the Rights of the Child (1989) goes some way to, if not resolve, at

[14] I aim to point here to a challenge I will propose for the development of programmes of HRE later.

least ease this tension by giving primacy to the child's interests (with some caveats) and I will pursue this discussion in Chapter 22.

4.4 Convention on the Rights of the Child.

The United Nations Convention on the Rights of the Child in 1989 gave us the 'fullest legal statement of children's rights to be found anywhere' (Freeman, 2000, p.277). A product of ten years of negotiation, the UNCRC became the world's first international legal instrument on children's rights. The UNCRC far surpassed previous attempts to codify children's rights such as the Declaration of the Rights of the Child of 1959 (and others predating this such as the League of Nations Geneva Declaration 1924). The distinct difference between the UNCRC and previous attempts was the recognition of a child's autonomy, the importance of children's views, and the concept of empowerment (Freeman, 2000). These were features notably absent in previous documents. The 54 articles in the UNCRC outline rights concerning children's civil, as well as political and social rights (Harcourt, & Hagglund, 2013). This, again, was a significant change in the context of previous documents on children's rights. Moreover, in contrast to other international rights documents, the UNCRC covered both welfare and agency rights at the same time (Harcourt & Hagglund, 2013) and This move was both powerful and highly controversial.

Schapper (2017, p.105) argues that children's rights conventions have been 'pathbreaking' in several respects, both in their promotion of the concept of the child as an individual, autonomous rights holder and in the widespread ratification they have received. Importantly, the UNCRC can be described as 'an important and easily understood advocacy tool - one that promotes children's welfare as an issue of justice rather than one of charity' (Veerman, 1992, p. 184). The UNCRC was important therefore both in the way it clarifies and extends some of the protections of previous documents on children's rights (McCowan 2013*;* Gerber, 2008). More importantly perhaps in many regards are its contribution to changing conceptions of childhood (Osler & Starkey, 2010), breaking from a more traditional view of children as 'the property of their parents', to a view in which children themselves have rights to self-determination and participation (Osler & Starkey, 2010, p.104). The Convention emphasised the importance of family support and prescribes that the state shall respect the liberty of the child and parent to decide on certain matters (Hammarberg, 1990). Moreover, the rights and responsibilities of the parent should be consistent with the evolving capacities of the child, so the older the child the more influence he, she or they should have

(Hammarberg, 1990). This 'triangular relationship' between child, their guardians, and the state was unsurprisingly a sensitive issue during the drafting of the CRC and will be a recurrent theme in what follows (Hammarberg, 1990, p.100). Significantly, parents and children are the 'major rights-holders under the UNCRC' and the views of the former while often thought likely to take political precedence rarely stand as a barrier to implementation of rights-based policy (Lundy, 2012, p.408). Indeed, as Lundy (2012) explains, there are very few instances in law and in practice where children's and parents' interests in education do not align. While there may be some parents and politicians who do 'baulk at the language and idea of children's rights' there are very few who ultimately object to the policies which are supported by the CRC (Lundy, 2012, p.408). Much of what is difficult about realising children's rights to (and in) education eventually turns on questions relating to what the state can and ought to do (practically, legally, and in relation to parental wishes) and the range of rights the children have and how these are realised.

The UNCRC assigns a vast array of rights to children which are the obligation of parents and the state to protect (Freeman, 2002). The rights outlined include the right to a name (Articles 7 and 8), health and health services (Article 24), freedom of expression, religion, and association (Article 14), and the right to receive an education that helps to develop a child to their "fullest potential" (Article 28 and 29). The rights given expression here mirror the general shape of the right outlined in the UDHR. As Beiter (2005, p.92) details, the full development of the human personality constitutes 'the general ethical aim of education'. Development of the human personality is seen to cover all dimensions of the human being. This includes the physical, intellectual, spiritual, psychological and social (Beiter, 2005). Crucially, the right given expression ensures a commitment that education must 'strengthen respect for human rights and fundamental freedoms' (Beiter, 2005, p.92). The UNCRC contains a few other notable provisions concerning the right to education. Amongst these is Article 23(3) which obligates states parties to ensure that children with disabilities have effective access to education and training (Beiter, 2005). The right to education expressed here secures for a child an education that prepares them for responsible life in a free society and fosters in them a spirit of 'understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups, and persons of indigenous origin' (Article 29). The UNCRC states that the child's education not only aims to develop knowledge and skills but also to develop respect and appreciation of human rights and the values that go along with them (Article 29). As a crucial means of achieving

other human rights, 'the right to education cannot only be addressed as a matter of welfare distribution in terms of having access to education' (Quennerstedt 2011, p.454). In this way, the CRC moves beyond simple considerations of child welfare into broader recognition of the status of children as holders of a broad range of rights covering political engagement and self-determination.

The right to education as declared in Article 28 with Article 29 highlights additional detail in this area outlining the 'fundamental content and values' on which education is to be based (Harcourt & Hagglund, 2013, p.287). The UNCRC details the need for considerations about educational content, pedagogy, the relations between adults and children in all educational settings, and how education can support the development of the child's capability to enjoy his or her rights and to protect the rights of others (Quennerstedt 2011; Lansdown, 2001). What has become known as "the 3 P's" form the spine of the document: protection, provision, and participation. The greatest innovation in this regard for many commentators is in allowing children participation in decisions that affect them, a move that McCowan (2013) accurately describes as highly controversial and a sticking point for many nations during the ratification process. In connection with this, a strong focus was placed on issues of equality as well as the requirement that school discipline respected basic human dignity. Set against the backdrop of high, ongoing, levels of corporal punishment in schools, this was a significant step. Finally, and of particular import for the current project, UNCRC Articles 28 and 29 reemphasised the indivisibility of rights and the connection between education and all other rights both inside and outside of education (McCowan, 2013).

Importantly for this project, human rights education is addressed directly by the Committee for the CRC with Article 29(1) of the UNCRC standing as a 'foundation stone for the various programmes of human rights education' (Morris &Davidson, 2012, p.35)[15]. Article 29(1) of the UNCRC provides some additional detail relevant for our purposes. Article 29 deals primarily with state parties, outlining the following aspects of education that are seen as important:

> States Parties agree that the education of the child shall be directed to:
>
> (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;

[15] See also General Comment No. 5 (CRC,2003).

> (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
>
> (c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
>
> (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
>
> (e) the development of respect for the natural environment.

As noted, the UNCRC is important for advocates of HRE and may be central to the discussion of HRE within the context of Scottish education as I will make clearer in Part 3 of this thesis. Having outlined the general shape of international law surrounding the right to education I will turn to discussion of the implementation of the right to education. In doing so, I will develop a framework outlining the necessary requirements for the implementation of RTE.

5. Implementing the Right to Education: Basic Requirements and Meeting the 4 A's.

Katarina Tomaševski, during her time as the UN Special Rapporteur on the RTE, worked perhaps more than anyone else to clarify the concept of the right expressed in international legal instruments as well as what was required in its implementation. As McCowan (2013) notes, one of her key contributions is in dispelling any notion that may have lingered that simple attendance in schooling would suffice to fulfil a state's obligation to the right to education. In clarifying and promoting the general right to education, Tomaševski also provided the shape of a framework for judging how well, and thoroughly, a state has implemented and realised the RTE. Towards this end, she produced her famous 4 A's as criteria for judging the implementation of RTE: availability, accessibility, acceptability and adaptability (Tomaševski, 2001a, 2003, 2006a). As Tomaševski (2001a) outlines, there could be no right to education without corresponding obligations for governments. The 4A framework she outlines highlights a series of explicit guarantees secured by international human rights treaties, national constitutions, and in domestic law regarding the right to education (Tomaševski, 2001a).

The first A, *availability* refers to the 'fundamental question of provision of educational institutions and opportunities' (McCowan, 2013, p.38). This, of course, fundamentally refers to the existence of schools, presence of teachers, and the necessary administrative mechanisms and infrastructure needed to make this possible (McCowan, 2013; Tomaševski, 2006a). Although primarily a requirement for government provision of education, the requirement also includes the right for non-state actors to both establish and run educational institutions (McCowan, 2013). *Accessibility* recognises that mere availability of schools (or other educational institutions) is no guarantee that *all* groups will have access. The requirement for accessibility ensures that all groups have equal and effective access to education. Access of children to education can be impeded in many different ways, whether administrative such as birth or citizenship certificates or practical such as a distance from school. Accessibility as a requirement ensures that the obstacles to ensuring equal access are addressed, practical, financial or otherwise (McCowan, 2013). The third A, *acceptability*, relates primarily to the curriculum in reference to Article 26 of the UDHR (McCowan, 2013). The key point as McCowan (2013) outlines, is that access to *any* kind of education is not good enough. The right to education has 'only been fulfilled if certain conditions are in

place' (McCowan, 2013, p.39). This covers both quality as well as matters such as appropriate language for instruction, preventing indoctrination, and more wide-ranging concerns about respect in education. As Tomaševski (2001a) outlines, this secures minimum standards of health and safety, professional requirements for teachers, and so forth. These must be set and enforced by the government. Further, acceptability outlaws censorship of school textbooks in the same way other forms of state censorship are seen as a rights violation in human rights law more frequently (Tomaševski, 2001a). The final A, *adaptability*, assesses how far institutions make adjustments in order to be inclusive of all groups in society. Adaptability covers issues surrounding the best interests of the child. It is often seen to play a role in court cases surrounding the right to education of children with disabilities[16] (Tomaševski, 2001a). The underlying logic and the reconceptualization of the notion of adaptability in education is the transition from the view that children must change in order to conform with the education they are provided with to the idea that education and schools[17] must adapt to serve the varied needs of the children they serve. This has encouraged a 'conceptual dissociation' between "school" and "education" that has encouraged states to think about how education can be 'taken to' children if they cannot be taken to school (Tomaševski, 2001a, p.15). In most cases, this serves as a reminder that education is not something that is simply "done to" children, but something that must take account of their needs and interests and something that they should be enabled to participate in fully.

These four features, when realised, ensure both access to education, but also a quality education directed towards the elimination of discrimination and suitable to the population it serves. As Tomaševski (2001a) notes, the obligations of the state can be easily structured into this scheme with the 4A's falling into the more general categories of rights to education, for education, and within education (Tomaševski, 2001b; Verhyde 2006). The multifaceted nature of the right to education cannot properly be described simply as a right 'to' education in the same way as a right to access to healthcare might plausibly be (Lundy, 2012). Rather, the "right to education" is commonly seen to refer to a collection of rights which together constitute rights *to*, *in*, and *through* education (Lundy, 2012; Verhellen, 1993). This three-way scheme can be developed directly from Articles 28 and 29 of the UNCRC and while the general right to education has been elaborated here already, it is worth considering what the

[16] Although as noted earlier there is much debate about what the right to education secures in terms of inclusion in mainstream schooling.
[17] Or other education providers in the case of imprisoned children for example.

rights *through* and *in* education amount to. Simply put, one has a right *through* education to the indirect promotion of all the rights contained in international law. This, in practice, means that education ought to make both children and adults aware of their rights (McCowan, 2013). The rights we have *in* education are the upholding of those rights expressed in international law. On the latter point, the issue of "pupil voice" and participation, both in the sense of school decision-making and in relation to participatory or democratic pedagogies, are foundational in realising the RTE. In an important sense, rights *in* education are distinct from rights *to* or *through* education 'as the latter represent welfare' or best interests rights that do not require an acknowledgement of child agency (Monk, 2002, p.45). In fact, the so-called "best-interest" rights can sometimes 'legitimise their denial' and the denial of children's agency and autonomy (Monk, 2002, p.45). The participatory elements of the RTE strongly support the idea of child agency (or at least some notion of agency tied to progressive competence) and this is seen nowhere more clearly than in the UNCRC.

Building on her 4A's Tomaševski (2001b, p.9) argues that education is wrongly 'perceived as inherently good' failing to recognise that questions about what and how children are taught are rarely asked in relation to the context of human rights. As McCowan (2013, p.9) suggests, echoing this point, while there may be ideological differences around aid and development work, ultimately 'water is water'. This is not so with education, particularly in light of the strong pressures exerted on policymakers by globalisation and a ready acceptance of certain economic policies that are not necessarily compatible or even consistent with rights legislation. The unifying thread of human rights policy and advocacy is to provide the kinds of safeguards in education that prevent the abuse of power, including in the content and processes that form a part of our education. What I will argue is that in order for this aim to be met, HRE ought to be taken much more seriously as the means to fulfil the cluster of rights covered under the broader umbrella of general RTE than it often is. I will argue that Tomaševski (2001b, p.9) is correct when she says that even though many would argue that children's rights in education are already met, this is simply 'not true as an empirical statement'.

Drawing all of the above considerations together I am in a position to advance what I will refer to as Table 1: **Implementing the Right to Education**. Taken together, both the progressive and immediately realisable portions of the right to education create a 'binding legal obligation that requires State Parties to take action' (Waddington & Toepke, 2015,

p.19). This obligation can be divided into a number of categories relating to the rights themselves, the conditions for their fulfilment, and conditions for failure or violation. I build on Tomaševski's work (2001a&b), Beiter's (2005) analysis of Article 13 of the ICESCR, the UNESCO (2007) report *A Human Rights-Based Approach to Education for All*, as well as McCowan (2013), Cooman's (2007a&b), and my own work on this issue (Daniels, 2018). Table 1 aims to highlight key features of the right to education; namely, as expressed in international law the key division between the right *to* education, rights *in* education, and rights *through* education. I then link these divisions to Tomaševski's 4A scheme showing how the latter map onto the former. In doing so I hope to offer a clearer picture of a state's obligations in relation to realising and implementing the right to education. Table 1 is intended to serve as a quick reference guide for assessing policy documents for consistence and/or compliance with human rights obligations. Finally, I detail what failures to realise key elements of the right to education look like. Using this as a basic summary, I will develop this framework further in order to establish a reasonable standard for judging compliance with international legislation on HRE as this project continues in Table 2. However, there the primary focus will be on the rights *through* and *in* education. I will leave to one side discussion of the practical, economic, or structural issues surrounding the availability and accessibility (at least in a practical sense) of state education. To the extent that I do discuss these issues in Chapter 7, it is in light of the common sources of rights violation in schools themselves. I argue in Chapter 6 that it is crucial to meet the aim of highlighting the extent to which Scottish education can, and indeed could, fully realise international legislation on human rights in education that a clear picture can be formed of what realisation and successful implementation entails. I will, therefore, highlight the necessary features and shape of that education and I will argue that this can best be met through HRE in Chapter 6. However, for now, Table 1 offers a helpful guide on the key features of implementation in order to serve as a reference point and building block for later discussion in this thesis.

Table 1: Implementing the Right to Education.

The Rights.	Key principles (The 4A's).	Identifying failures or violations.
<u>The Right to Education:</u> Availability and Access.	**Availability** - Education is free and state-funded. Education is adequately supported financially and the capacity of the system meets the demands of the population. Teachers receive adequate training, have labour rights, and are able to support the delivery of a quality education. **Accessibility** - Education is non-discriminatory and inclusive and accessible to all. Active efforts are made to include the most marginalised.	Failure to take steps to make education available and accessible (inclusive, non-discriminatory education required). Failure to provide sufficient training for teachers. (**Violations:** The deliberate failure or intentional undermining of any of the requirements of the key principles.)
<u>Rights in Education:</u> Acceptability and adaptability.	**Acceptability** - The content of education is relevant to the needs of the population, it is non-discriminatory and of a high quality and these standards are enforced. Instruction is given in a rights-respecting and promoting way and children are recognised as subjects of rights. Education is a safe environment and teachers are professional and adequate training is given to enable teachers to realise these aims. **Adaptability** - Education adapts in light of the changing needs of society. Education contributes towards the promotion of rights-respecting values and tackles issues such as inequalities and social justice. Education contributes towards the defence of children's rights (especially in relation to marriage, labour and violence).	Failure to ensure that features of education (nature of instruction, governance, professional values, discipline procedures etc.) are rights promoting and appropriate.
<u>Rights through Education:</u> The right to a quality and rights promoting education.		Failure to ensure content of education is relevant and non-discriminatory etc. Failure to promote rights and challenge inequalities through education.

Part 2: Human Rights Education.

Having established the character and extent of state obligations in relation to the right to education in Part 1, Part 2 begins to flesh out the relation of Human Rights Education to this more general right. I argue that, properly elaborated, the right to education makes clear the obligation on states to provide education about, through, and for human rights; that is, what is known as Human Rights Education (HRE). Further, I highlight the strength of the legal case in support of HRE and make clear five basic requirements for the fulfilment of HRE (Chapter 6). These five requirements (HRE1-5), I argue, are a baseline measure of whether or not a state has realised its primary obligations in respect of HRE. In these first five chapters I aim to clarify the place of HRE in international instruments and link this directly to the detail of Part 1. In outlining Table 2 I draw specific attention to the formal overlap between the right to education itself (Table 1) and the key features of, and requirements for fulfilling, a fully developed programme of Human Rights Education. Having made this case, I move next to outlining and discussing the ongoing common sources of human rights breach in education, emphasising that it is not simply the right *to* education that is of importance but that rights *in* education must also be met (Chapter 7). This point will be significant particularly as I move into Part 3 as an important reminder that the task we are faced with in realising children's rights in education is not simply a matter of securing access alone. I discuss four key areas in which rights are commonly violated in UK schools and make specific reference to Scottish schools in doing so to highlight the persistence of these issues.

In addition to the strength of the legal support for the implementation of HRE, I make the case that there are strong additional arguments in support of HRE (Chapters 8-11). These arguments highlight the efficacy of HRE in achieving other important educational aims. Moreover, I point to the fact that in order to realise elements of the right to education associated with HRE as described in this Part, alternatives such as citizenship education as it has developed in the UK are insufficient. Further, I contend that they may constitute a miseducation about human rights. Finally, I argue in favour of the suggestion that key to human rights education is a strong focus on educating children for legal literacy around their rights. These arguments are important in highlighting the breadth and interdisciplinary nature of the support for HRE and its potential to make a significant difference in the educational experience of children, but also the significant potential for mischaracterisation

of human rights themselves and the importance and transformational potential for legal education for children.

6. Introducing Human Rights Education.

In this chapter, I will outline the development of Human Rights Education (HRE) before outlining a general model of HRE commitments for states. [18] In doing so, I will seek to develop a general account of the international requirements covering HRE. I will draw together both the relevant UN instruments and the work of HRE scholars in interpreting their implications in order to establish what I will call "**The Basic Standard for Human Rights Education"** (Table 2). This chapter will, therefore, cover both the legal case for HRE as well as beginning to elaborate on some of the key considerations in its implementation and realisation in practice. In 6.3 I will outline a framework of the relevant requirements for the implementation of HRE as set out in international human rights law and relevant supporting documentation for use in judging education policy surrounding HRE. This will be significant later in the thesis and a modified version has been employed in previous research (Daniels, 2018) to assess Scottish education policy. I will then offer a series of arguments in favour of HRE in chapters 8-11.

As suggested in the introduction to this thesis, significant attention has been paid to the place of human rights in education, and human rights education as a concept and educational programme in its own right, over the past few decades. Nowhere more clearly has this focus been seen than in the UN World Programme of Human Rights Education (2005-ongoing). The publication of the UN Declaration on Human Rights Education and Training (UNDHRET or "the Declaration" in this chapter) (2011), may be seen as the culmination of the first phase of this broader project and will, therefore, form the basis of much of the subsequent discussion of HRE. However, as I will point out in Part 3, there are significant issues with the lack of clarity surrounding HRE as both a concept and as an educational initiative that must be addressed if we are serious about the putative role HRE may play in driving the realisation of human rights and whatever other educational goals we may identify for it. I will leave those questions to one side for the time being and focus instead on the place of HRE within the international human rights movement, its relation to international human rights law, and why one should advocate its place within school curricula at all.

In general, however, HRE has typically been categorised by the use of so-called "models". Tibbitts's (2002; 2017) and Bajaj's (2011) categorisations or typologies of HRE

[18] Parts of this chapter can be found in an earlier form in Daniels (2018).

are widely referenced in the HRE literature and have been important in serving as both a description of existing practice and a starting point for reflection. The two accounts differ in some respects but offer an important sense of what HRE is about and what it aims to do as I will discuss later. With Tibbitts' initial work on models of HRE (2002) exerting significant influence over the field it is worth spending some time here briefly sketching her account in order to offer context for what will follow. Tibbitt's work here, of course, predates the UN's clearest expression of HRE in the 2011 UN Declaration on Human Rights Education and Training but has been highly influential in shaping the discussion and exploration of HRE in literature. Tibbitts identifies three models of HRE: 1) values and awareness model; 2) accountability model; 3) transformational model. While elements of the three may overlap in various ways, as a typology of HRE this has been very important in framing discussions. Taking each in turn, I will briefly outline the key features of these models here before discussing models again in Chapter 17.

Starting with the Values and Awareness model, Tibbitts (2002) describes this as primarily a philosophical-historical approach to HRE focusing on formal schooling and public awareness campaigns. The general topics of such a programme will include information about the content and history of human rights documents, international court system, global human rights issues (Tibbitts, 2002). In terms of the intended audience of such a programme of HRE, it would be the general public and schools specifically. Under this model the strategic aims of HRE are in socialization, the development of a cultural consensus around human rights, and the setting expectation for social change and legitimizing the international human rights framework. This model is often seen as the "dominant" model of HRE and reflects in large part the efforts of the UN itself and would cover the introduction of human rights topics in, for example, history, citizenship, religious and moral education, classrooms in schools.

Second, the accountability model adopts a more legal or political approach to HRE. Under this model HRE is primarily delivered through training sessions and networking events for (largely) professional audiences. Typical topics would include 'procedures for monitoring, court cases, codes of ethics, dealing with the media, and public awareness' (Tibbitts, 2002, p.165). The aim of this model is to develop professional competence amongst lawyers, human rights advocates and monitors, professional groups working with vulnerable populations, civil servants, medical professionals, journalists, to develop and hold the state accountable an develop a legal and political culture consistent with human rights.

Finally, the transformational model offers a 'psychological-sociological approach' to HRE (Tibbitts, 2002, p.166). Human Rights Education under this model is delivered in 'informal, non-formal and popular education and self-help' (Tibbitts, 2002, p.166). Such a programme might include topics such as human rights as part of women's development, community development, economic development, and minority rights (Tibbitts, 2002). The common audiences for this model are vulnerable populations, victims of abuse and trauma, post-conflict societies, amongst others. The primary aim is personal empowerment and the development of a human rights activism directed at personal and societal change. Key themes are empowerment and the transformational potential of human rights for driving change in society as well as personal empowerment gained from knowing and claiming one's rights.

In the remainder of this chapter, I detail and discuss the expression of HRE in international human rights instruments before drawing all that has preceded this chapter together in Table 2 making clear the key obligations for the realisation of HRE within schools.

6.1. The United Nations Declaration on Human Rights Education and Training.

The adoption of UNDHRET by the UN General Assembly in 2011 heralded an 'international consensus on the integral importance of human rights education' as essential to the realisation of human rights and fundamental freedoms (Morris & Davidson, 2012, p.1). This international agreement represents a consensus that everyone has the right to know, seek and receive information about all human rights and fundamental freedoms and should have access to human rights education and training (UNDHRET, Preamble). Adoption of the declaration by the General Assembly and state ratification in 193 states signals acceptance of specific duties to ensure HRE. Crucially, as Morris & Davidson (2012, p.95) suggest, the Declaration reflects the reality that 'all of the major UN human rights treaties' adopted since 1948 contain provisions requiring states to ensure education and training about the treaties themselves as necessary for the realisation and enjoyment of the rights protected therein. The duties outlined in UNDHRET are either already included in existing widely ratified treaties or have been made clear through further comments or observations by the relevant treaty monitoring bodies (Morris & Davidson, 2012). This highlights the strong legislative backing of HRE

both through the UNDHRET itself, but also as part of the broader and widely accepted shape of international human rights law.

The Declaration itself makes clear that states and relevant governmental authorities have the 'primary responsibility' to promote and ensure human rights education and training. This education and training is to be developed and implemented in the spirit of participation, inclusion, and responsibility (Article 7.1). Further, the Declaration 'emphasises and affirms' an important role for civil society with states being required to create a safe and enabling environment for the engagement of civil society (and other stakeholders) in human rights education and training (Article 7.2) (Morris & Davison, 2012). The definition of human rights education and training found in the Declaration includes both domestic and international rights. Further, it involves commitment to a general education about tolerance and respect in line with the principles of UDHR and further relevant treaties and instruments (Article 4). Identifying state obligations to provide education and training about the 'substance, purpose and enforcement of rights' protected by UN treaties ratified by the relevant state is crucial to the realisation and enjoyment of the relevant rights (Morris & Davidson, 2012, p.6). As Mary Robinson, United Nations High Commissioner for Human Rights (1997-2002), is quoted as saying:

> The importance of the role of human rights education in the global context of the realization of human rights cannot be ignored. Universal and effective human rights protection can only be achieved through an informed and continued demand for human rights protection by the people; only through knowing the rights of all and the means to ensure their respect can we defend and ultimately realize them.

An important strand found in the Declaration (and human rights education advocacy more widely) is that a broad-based public knowledge of international human rights standards and mechanisms and their impact on domestic law 'should play a key role in restraining abuses by governments and non-governmental actors' (Morris & Davidson, 2012, p.7) Further, HRE can play an important role in keeping expressions of conflict within 'peaceful bounds' that respect established international human rights law (Morris, & Davidson, 2012, p.7). Articles 2.2(a) and (b) offer comment on the content and purposes of HRE as well as teaching methods. The definition of HRE, taken from Article 2(2) of the UNDHRET (2011), states the following:

Human rights education and training encompasses education:

> (a) *About* human rights, which includes providing knowledge and understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection;
>
> (b) *Through* human rights, which includes learning and teaching in a way that respects the rights of both educators and learners;
>
> (c) *For* human rights, which includes empowering persons to enjoy and exercise their rights and to respect and uphold the rights of others.

It is clear from this definition that HRE, as set out here, aims to foster a human rights culture with the recognition that knowledge of human rights is essential to this process. The result of this capacity building and focus on a human rights culture is to enable the development of a society that voluntarily respects and upholds international human rights. As Morris and Davidson (2012, p.9) note, the key goal is '[a]ttitudinal transformation'. This seems correct, but it is another question whether the state is justified in promoting this as an aim in state education, a point I will discuss in Part 3.

Gerber (2011) highlights a number of key points that arise from the definition offered in UNDHRET. First, it is clear that HRE as an initiative is about empowerment, meaning that it would not be sufficient for pupils to simply rote learn a list of human rights (Gerber, 2011). What is required is the kind of participatory learning associated with rights and characterised by its ability to transform learners (and teachers) into 'active citizens who respect and promote human rights' (Gerber, 2011, p.246). A further notable feature of this definition is the role of HRE as a "preventative tool". Article 2 expressly acknowledges that HRE empowers individuals to contribute to the prevention of rights abuses through their role in the development and protection of a human rights culture. Article 4 similarly acknowledges the role of HRE in the prevention and combating of discriminatory practices and attitudes (Gerber, 2011). A further key feature is how the definition of HRE provided in UNDHRET makes clear that it requires the promotion of all human rights; i.e. one cannot be selective about which rights are included, ruling out narrow constructions of HRE focusing solely on civil and political rights (Gerber, 2011). In practice this decision means that while school curricula might include lessons on citizenship and democracy, this is not *all* HRE is about. To fail to mention a right to food or shelter would represent a failure to follow this provision of the Declaration (Gerber, 2011). However, as Gerber (2011) notes, this should

have been made explicit to minimise the opportunity for states to interpret their HRE obligations in the more limited sense.

One of the key strengths of the Declaration is that it recognises that there is 'unlikely to be effective implementation of HRE within a state without' the adoption of legislative and administrative measures and policies (Article 7(3)) (Gerber, 2011, p.246). This again reflects views expressed in connection with the CRC such as General Comment No.1 that states that in the absence of any specific formal endorsement (in law or policy) it is unlikely that the principles of human rights instruments will be used to genuinely inform educational policies. The lack of clear guidance in national policy is generally recognised as a serious impediment to the realisation of HRE and I will outline in Chapter 16 that this is also true in the context of Scottish education. Article 7(3) of the Declaration does offer 'further impetus' for governments to ensure that commitments to HRE are translated from 'rhetoric to policy' and I will make this argument in relation to Scotland (Gerber, 2011, p.246). Further strengths are the recognition of the important role that civil society plays in the provision of HRE (Article 10) and the call for UN human rights bodies to include consideration of HRE in the relevant reporting processes surrounding state implementation of human rights (Article 13). In practice, as Gerber (2011) notes, this means that states should report on their HRE initiatives not just in periodic reports to treaty bodies, but also as part of the Universal Periodic Review. While reporting and enforcement procedures leave much to be desired, it is notable that the Declaration makes comment on this at all, highlighting as it does the importance placed on HRE as part of broader efforts to realise rights. While Gerber (2011) also notes that this declaration could have gone much further and there are important weaknesses in the way it was drafted[19], this is the clearest expression of HRE on the part of the UN and should inform much of our discussion of it.

6.2. The UN World Programme for Human Rights Education.

The UN World Programme for Human Rights Education (2005-ongoing) was agreed on the 10th of December 2004 to advance the implementation of HRE programmes in all sections. The World Programme builds on the UN Decade for Human Rights Education and 'seeks to promote a common understanding of basic principles and methodologies of human rights education, to provide a concrete framework for action and to strengthen partnerships and

[19] See Gerber (2011) for a discussion of the strengths and weakness of UNDHRET as drafted.

cooperation from the international level down to the grass roots' (OHCHR,2019b). The World Programme has several phases covering different sectors/issues: The first phase (2005-2009) focused on human rights education in the primary and secondary school systems. The second phase (2010-2014) focused on human rights education for higher education and on human rights training programmes for teachers and educators, civil servants, law enforcement officials and military personnel. The third phase (2015-2019) focused on strengthening the first two phases and promoting human rights training for media professionals and journalists (OHCHR, 2019a&2019b).

The fourth and current phase (2020-2024) will focus on youth with special emphasis on education and training in equality, human rights and non-discrimination, and inclusion and respect for diversity with the aim of building inclusive and peaceful societies, and to align the fourth phase with the 2030 Agenda for Sustainable Development and specifically with target 4.7 of the Sustainable Development Goals (OHCHR, 2019a). Substantial comment is made in the draft plan of action for the fourth phase on what is to be *taught* in relation to HRE and I will detail this in discussion of programmes of HRE in due course. One particularly important direction offered by UNWPHRE for understanding the implementation of HRE more broadly comes in the form of the 2014 Plan of Action for HRE (OHCHR, 2014). The Plan of Action (2014) identifies the five key components for successful realisation of HRE as:

1. Clear and comprehensive educational policies
2. Effective implementation of those policies
3. The fostering of rights respecting learning environments
4. Ensuring teaching practices that reflect human rights values and
5. Effective teacher training in HRE.

Drawing together the detail outlined thus far I will move next to outlining a general overview of the implementation requirements for HRE as expressed in international human rights law and supplementary materials sketched here. It is worth noting here that teacher "training" has historically been referred to as "teacher education" within the Scottish system. I will, therefore, often refer to it in this way, apart from when referencing that nomenclature used explicitly elsewhere. I make the point later that "training" in the context of HRE and human

rights generally may be a bit of a misnomer in any case. It is a philosophical and semantic preference that teachers are *educated* about human rights in my estimation.

6.3 Establishing Obligations for Human Rights Education.

Building on Table 1 in Chapter 5, Table 2 further refines and makes clear the key features of successful implementation of HRE described in international instruments above. In this sense, Table 2 is a further refinement of Table 1 focusing specifically on how HRE contributes to the realisation of the three key elements of RTE sketched there and Tomaševski's 4A scheme for implementation. In both of these respects HRE can be seen as strongly aligned with what is detailed in Table 1 falling under rights *through* education and rights *in* education. As HRE is not itself primarily targeted at addressing the economic and structural work necessary to establish and make evaluable education to children, nor in ensuring access, the right *to* education understood in terms of those two of the 4A's falls out of the picture in this sense. In that way, programmes of HRE and their development only assume the existence of and access to state schooling for children. All of which is to say that Table 2 offers more granular detail about specific features of the realisation and implementation of the right to education as detailed in Table 1.

In 6.2 I outlined the five key components for the successful realisation of HRE as outlined in the 2014 Plan of Action. For current purposes then, let us assert that the following (non-exhaustive) criteria constitute compliance with the relevant standards identified above in relation to formal education: **HRE1**) Clear and comprehensive incorporation of HRE into educational curricula; **HRE2**) Teachers must be aware of relevant rights legislation; **HRE3**) States must promote adequate training in human rights for teachers; **HRE4)** States must ensure rights respecting learning environments ; **HRE5)** States must ensure teaching practices that reflect and promote human rights values. While this is by no means an exhaustive list, it is reasonable to conclude that these criteria together represent a good measure of compliance with international requirements that can be identified at the policy level. This will be important in the assessment of Scottish compliance with international requirements on HRE as well as offering a simple means to consider necessary policymaking in the wider Scottish context. As noted, human rights education represents one element of the right to education that states must realise to meet their obligations.

These five key features will serve as a means to evaluate Scottish education in Part 3, but for now, they can be mapped alongside broader requirements for realising both the right to education and HRE itself. This mapping process, as in Table 1, serves as a reference tool for evaluating policy and is applied directly to the Scottish curriculum (and wider policies) in Chapter 16. Indeed, a more detailed analysis of this sort is done in Daniels (2018) where policy analysis conducted using a modified version of Table 2 is reported on. In developing this quick reference guide for HRE, I hope first to show how HRE's key elements of education about, for, and through human rights strongly align with key features of the right to education, but also make clear how these three elements of HRE are to be understood in practice. I do so by drawing attention to features of content and pedagogical approach that are necessary to fully realise HRE within schools.

Table 2: The Basic Standard for Human Rights Education.

<table>
<tr><th>General Right</th><th>UNDHRET</th><th>Content</th><th>Pedagogy</th><th>Policy and Training</th></tr>
<tr><td rowspan="3">Rights in Education: Acceptability and adaptability.

Rights through Education: The right to a quality and rights promoting education.</td><td>About human rights</td><td>• Must provide knowledge and understanding of rights norms and principles.
• Must provide knowledge of the values and mechanism for the protection of rights</td><td rowspan="3">• Learning and teaching must occur in a way that respects the rights to both educators and learners.

• Directed towards the development of a child's personality and talents.</td><td rowspan="3">• States must have clear and comprehensive educational policies for HRE.

• These policies must be effectively implemented.

• Effective teacher training/education in HRE.

• States must ensure that teaching practices reflect human rights values.

• HRE is an explicit entitlement within curricula and should be included within all curriculum areas.</td></tr>
<tr><td>Through Human rights</td><td>• Development of respect for environment/cultural identities/values/nations that are one's own and others.
• Preparation of the child for responsible life in a free society in the spirit of UN Values (peace/friendship)</td></tr>
<tr><td>For Human Rights</td><td colspan="2">• Education must empower persons to enjoy and exercise their rights.
• Must enable learners (and educators) to respect and uphold the rights of others.</td></tr>
</table>

7. Human Rights Breaches in Education.

As suggested in the introductory remarks to this thesis, this project is, *inter alia*, a response to Lundy and Martinez Sainz's (2018) call for greater engagement with legal scholarship when discussing HRE. Moreover, as detailed in remarks on the approach to research adopted in this project, in lieu of a traditional literature review chapter I have addressed key works and pieces of legislation as they become necessary to drive the main themes of this thesis. In this chapter, I turn towards consideration of Lundy and Martinez Sainz's (2018) recent work on HRE as the basis for this discussion. In this Chapter, I will, therefore, emphasise a point I will further argue in Chapter 11 and 12 that programmes of HRE are uniquely or, at the very least, particularly well placed to respond to the *in* education aspect. This issue is the continuing rights abuses of children *within* education. Having outlined these issues, I will argue in the next chapter, following the work of Lundy and Martinez Sainz (2018), that HRE as a programme of education, and indeed HRE advocates themselves, ought to pay much more attention to the role of international and domestic human rights law and the considerable transformative power that knowledge of one's rights and how to claim them can have. This is, I believe, what clearly marks out HRE from other alternatives (i.e. citizenship education in the context of the UK) and should receive much greater emphasis in accounts of HRE than it currently does. In what follows I will detail some of the main areas in which children's human rights are violated within formal state education.

7.1 Realising Rights *in* Education.

The most recent report from the Committee on the Rights of the Child on the state of children's rights in the UK, the Concluding observations (CRC, 2016, makes a number of important recommendations (including for Scotland specifically). These recommendations include ensuring the full implementation of the 2009 *Do the Right Thing* action plan and the National Action Plan for Human Rights (2013-2017) (SNAP). Further, the Committee recommends the introduction of a:

> …statutory obligation at the national and devolved levels to systematically conduct a child rights impact assessment when developing laws and policies affecting children, including in international development cooperation. (CRC, 2016, §10. Para.2)

Further, it is recommended that the publication of the results of such assessments and the demonstration of how they have been taken into consideration in law and policymaking also take place. In the context of education specifically, the UN Committee, other treaty bodies, and the 2017 Universal Periodic Review (UPR) have made a number of recommendations for Scotland and the UK to improve the realisation of the right to education for all children ensuring they receive a high-quality and inclusive educational experience (Together, 2019;2017). These include:

> …reducing the effects of social background on school achievement, ensuring access to quality early childhood development services, delivering children's rights education and funding play and recreational activities, and involving children in the planning and design of play activities[20]. (Together, 2017, p.68)

Together (the Scottish Alliance for Children's Rights) in its State of Children's Rights 2017 report on children's rights in Scotland makes clear several further recommendations outlined by the Committee that would be important to progressing children and young people's rights in Scotland. These recommendations include:

> a ban on informal school exclusions and the use of permanent or temporary exclusion as a last resort, ending the use of isolation (or 'time out') rooms in all educational settings, ensuring play and recreational opportunities for all age groups, and providing children with a disability with safe, accessible spaces for play and public transport to such spaces. (Together, 2017, p.68)

Below I will detail the most recent review and what, if any, progress has been made on these key recommendations. In considering this list we can see overlap with the most frequent sources of rights violations in schools detailed in Lundy and Martinez Sainz' (2018) work particularly in relation to disciplinary procedures. As I will outline, while the rate of exclusions in Scotland has been reduced over the last decade, it remains the case that exclusion rates continue to impact the most vulnerable groups of children and young people disproportionately and informal exclusions are still in use in schools even while permanent exclusion remains very rare (Together, 2019, 2017). The commitment of the Scottish Government to close the educational attainment gap is to be welcomed and has direct links to children's rights but considerable work remains necessary. Further, important steps have been

[20] For specific references to the relevant Concluding Observations, see CRC (2016); CERD (2016); CEDAW (2016) for details and Together (2017, p.68).

taken through the ongoing Education Governance Review to strengthen pupil participation in schools (Together, 2019, 2017). All of this is broadly positive, but it remains the case that we must consider carefully what, if anything, incorporation will mean for how Scottish schools function.

With incorporation just over the horizon in 2021, and the stark relief COVID-19 has cast existing educational issues and inequalities into, it is important to consider what, if anything, we must change about how education is delivered in Scotland in light of children's rights. The incorporation of the UNCRC represents an important step forward for children's rights in Scotland. However, like other nations, Scotland does not always meet its obligations with respect to children's rights *to* or *in* education. The incorporation of the UNCRC does not stop rights violations occurring in schools by itself. Policy and practice must change and, indeed, will be required by law as an almost inevitable consequence of the duties placed on ministers and local authorities. A significant implication of the incorporation of the UNCRC into Scots law is, therefore, that eliminating the common sources of rights violations in schools in Scotland becomes an absolute and immediate policy and legal priority. Regardless of the warm rhetoric around human rights in much education policy, human rights abuses persist within Scottish education today. Using Together's State of Children's Rights reports 2017 and 2019 in conjunction with the key themes identified by Lundy and Martinez Sainz (2018) makes it possible to identify a number of key issues. Scotland is no different than any other jurisdiction even given the considerable advances made in realising children's rights over recent decades in struggling to ensure that children's rights are not breached during the course of their education. Lundy and Martinez Sainz (2018) identify rights violations in relation to five key themes: access to education; curriculum; testing and assessment; discipline; and respect for children's views. Taken collectively, the violations identified here would violate the requirements outlined in Chapter 6 and labelled as **HRE4** and **HRE5**. In my discussion below I will focus on access, testing and assessment, discipline, and children's views. I exclude curriculum from this discussion owing to its discussion elsewhere in this thesis. As Lundy and Martinez Sainz (2018) suggest, it is difficult to imagine any country outwardly disagreeing with this vision of education. However, monitoring of the UNCRC often highlights how far some countries fall short of these standards and often most obviously in relation to the treatment of girls where clearly discriminatory aims are included in the curriculum itself (Lundy & Martinez Sainz, 2018).

7.2. Access and Exclusion.

Beginning with access to education, the reasons children do not (or cannot) attend or stay in schooling are, of course, varied. However, as Lundy and Martinez Sainz (2018) note, they are more often than not connected to issues surrounding poverty and broader forms of social exclusion within a society. Access to education is highlighted as one of the key implementation criteria by Tomaševski (2001a) of the right to education. Article 2 of the UNCRC, the non-discrimination principle, is not a stand-alone right and cuts across all other provisions of the Convention, including Article 28 (Lundy & Martinez Sainz, 2018). Article 28 of the UNCRC requires access to full and compulsory primary education and the expansion of secondary and vocational education. Even though the numbers of children attending school globally have steadily increased in the wake of the Millennium Development Goals (Unterhalter, 2014) it is important to remember that even in countries that have achieved 'universal' primary and secondary enrolment, there are always groups who do not fully attend school. As Lundy (2012) notes, this is very often girls, children with disabilities, and children from minority groups. In Scotland, pupils from the most deprived backgrounds, care experienced children, those from minority ethnic backgrounds (including gypsy/traveller children), Additional Support Needs (ASN), and Lesbian, Gay, Bisexual, and Transgender (LGBT) children are most likely to have difficulties accessing education (Together, 2019). This is not an exhaustive list, but its breadth is indicative that there are many children in Scotland who may sometimes or often be unable to access education. As noted in Chapter 5, access is not secured simply by the building of schools. A number of forms of exclusion that prevent the realisation of the right to education occur at the point of entry. However, breaches of the right to access to education are not solely restricted to barriers to gaining entry, but also take place within the school itself. These forms of exclusion may be direct and explicit removal or restriction of access or in more subtle forms that speak to systemic issues with an education system or its taught and hidden curriculum. Starting with the more obvious, the temporary or permanent expulsion or suspension of a child is clearly a violation of their right to access to education. No matter how one may want to split hairs about this topic, the removal of access to education for any period of time is to breach the right to access guaranteed in UDHR, ICESCR, and the UNCRC. [21]

[21] This, of course, equally applies to the necessary public health action taken to close schools during the first wave of the COVID-19 pandemic. As suggested in Chapter 1, I will not directly address the impact of COVID-

Moreover, as is well known at this point, these exclusions fall disproportionately on children with special educational needs/additional support needs and those from certain ethnic backgrounds (Morris & Perry, 2016). Research has shown that permanent disciplinary exclusion often has many negative long-term consequences for all aspects of young people's lives (McCluskey et al, 2019)[22]. For the sake of examples relevant to this project, in the UK 97.4% of *all* children permanently excluded in 2016/17 were from schools in England (McClusky et al, 2019). This is, as McCluskey et al. (2019, p.1440) suggest, 'striking' even taking into account the numbers of children in England in relation to those in Scotland, Wales and Northern Ireland. While the numbers of permanent exclusions are rising in England and Wales, national data suggests that permanent exclusions (meaning removal from the register) have been 'almost eliminated' in Scotland (McCluskey et al, 2019, p.1143). The position of the Scottish Government in relation to exclusion is made clear in recent guidance that builds on legislation outlined in previous chapters including the Children and Young Persons (Scotland) Act detailing that exclusion should only be used as a last resort and a reminder that Scottish ministers are under a duty to give due consideration to the UNCRC when proposing legislation in this area. In Scotland, the power exists to exclude children and young people from school where it is considered that 'to allow the child or young person to continue attendance at school would be seriously detrimental to order and discipline in the school or the educational wellbeing of the learners there' (Scottish Government, 2017b). In practice, this meant five cases in 2014/15 and the same again in 2016/17 with this amounting to an improvement from the 'already low' figures recorded in 2010/11 (McCluskey et al, 2019, p.1143). In 2018/2019 there were 14,990 cases of exclusion in Scotland, down from 18,381 in 2016/17; 21.7 cases of exclusion per 1,000 pupils in 2018/19, down from 26.8 in 2016/17. [23] There were only 3 permanent exclusions (removal from the register) in the same period. This is, of course, a positive trend and potentially evidence that a more children's rights-based approach to exclusions of this sort - and education policy more widely - as has been developed since 2014 has played its part. But there is no room for complacency, nor does it mean that other forms of exclusion short of removal from the register do not occur in Scottish schools.

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on children's rights, given that it is an ongoing situation. I will, however, discuss how it may affect decisions taken in future and the implications the problems it has further magnified have for Scottish education.

[22] See also: Daniels and Cole (2010); Parsons (2009); Scottish Government (2017b, pp. 16–17).

[23] See Scottish Government (2017c; d;e;f) for detail on exclusions, looked after children, and behaviour policies in more depth.

As is well established at this point, disproportionately high exclusion rates of children in vulnerable groups continues to be an issue in Scotland (Together,2017; 2019). In fact, rates of exclusions per 1,000 pupils are more than five times greater for pupils living in the most deprived areas, compared to pupils living in the least deprived areas (Together, 2019). Further, the exclusion rate for pupils who have an additional support need is more than four times higher (per 1000 pupils) than those who have no additional support needs (Together, 2019). Indeed, this is despite the calls for the abolition of exclusions altogether from Scottish children's organisations and indeed the UN itself (Together, 2017;2019). The report *Not included, not engaged, not involved: A report on the experiences of autistic children missing school*, undertaken by Children in Scotland, The National Autistic Society Scotland, and Scottish Autism (hereafter Children in Scotland, 2018), provides important data on the exclusion of autistic pupils in Scotland. A survey of 1,434 parents of autistic children aged 3-19 years old, reported that their child had at some point been formally excluded from school (Children in Scotland, 2018). 91% said that their child had not received any support to catch up with school work during the exclusion period (Children in Scotland, 2018; Together, 2019). Additionally, almost half said that the school had not discussed their child's support needs with them before returning to school. This is clearly insufficient to meet the needs of these learners, or to realise their rights. Further, the rate of exclusions of care experienced children is also 'much higher than in the general school population' and is 'especially high' in secondary and special schools (Together, 2019, p.121). However, the exclusion rate of care experienced children for all stages has, thankfully, fallen steadily since 2010-11. As Together (2019, p.121) suggest, this 'decrease is happening faster than the decline in the exclusion rate for all pupils, meaning that the gap between these groups is narrowing'.

As noted, the significant decrease in *formal* exclusions in Scotland is no reason for complacency. The role of *informal* exclusions also constitutes a breach of children's rights and must equally be addressed in the context of incorporation. The national guidance requires 'all exclusions to be formally recorded and that children "must not be sent home on an 'informal exclusion' or sent home to 'cool-off'"' (Together, 2019, p.122; Scottish Government, 2017b). Moreover, the guiding principles outlined in the Scottish Government's updated national policy on school exclusions calls for exclusions only as a proportionate response. That is, where there is no alternative and where the views of children and parents have been taken into account (Scottish Government, 2017b). There is clear evidence, as I will detail, that this not the case in too many instances, resulting the in the breach of children's rights. Children's organisations continue to report that informal exclusions are still

being used by schools in Scotland and that children with ASN are disproportionally affected by this practice (Together, 2019). The *Not Included, Not Engaged, Not Involved* survey found that '37% (478) of respondents' autistic children had been unlawfully excluded from school' (Children in Scotland et al, 2018, p.19; Together, 2019). Moreover, as further identified in the same research, the vast majority (78%) of these exclusions occurred in mainstream schools, with almost a quarter (22%, 105 parents) reporting that this had happened multiple times per week. To quote the experience of one respondent in the report:

> This happens regularly. If they don't have sufficient staffing levels, they can't support him, so we are asked that he stays at home. (Children in Scotland et al, 2018, p.20)

In its *No Safe Place* report, the Children and Young People's Commissioner Scotland expressed concern that use of seclusion in schools was having the effect of 'unlawfully excluding some children from education without the legal protections provided by appeal rights' (CYPCS, 2018, p.28). Indeed, the use of seclusion and isolation rooms in Scotland has been noted as a key concern by children's rights advocates in Scotland. The Scottish Government stated in its 2018 *Progressing the Human Rights of Children* report that seclusion of a child within a separate space should only be used as a last resort to ensure the safety of the child or others (Scottish Government, 2018a). However, this is to somewhat miss the point and reality of practice in Scottish schools. While the guidance couches talk of such interventions as being of 'last resort', decisions taken on what is required by the "safety" of the child or others offers an implausibly wide scope of interpretation if one intends seclusion to be a limited practice. This is a form of exclusion by segregation and, as highlighted, does not require the barring of access to school itself but ultimately has the effect of preventing a child accessing the education to which they are entitled. Given the informal nature of these interventions, they do not show up in any official data nor are they always supported by state policy itself. These ad hoc arrangements, generally as the result of persistent misbehaviour, are certainly a human rights concern even setting aside questions of proportionality and school discipline which I will discuss later. However, it is important to note that similar arrangements are often made in order to "support" some pupils (usually those with additional support needs) and these are no less potentially problematic from a human rights perspective. To understand why, one need only ask: in whose best interest are these decisions made? If the answer is not the individual child affected then one can easily

identify the problem. This is to put to one side questions of who and how one judges best interests in this matter. The reality is that "difficult" children very often miss out on the education they are entitled to. Various justifications are offered such as: on utilitarian grounds for the best interests of the other children they may disrupt; in their interest with fewer distractions they may do better; on grounds of exhaustion in dealing with an already challenging class with inadequate support or resources. Whatever reasons are offered, it is, in fact, almost never better *educationally* for the child themselves to be removed. CYPCS has further expressed concerns regarding the Scottish Government's guidance for several reasons, including, as Together (2019) discuss in some detail:

> 'the framing of it around behaviour management and exclusions, which suggests that the need for physical intervention including seclusion results from the child's behaviour rather than their unmet needs or unrecognised trauma'. (CYPCS, 2018, p.20)

This framing is 'mirrored in the language used by many local authorities, who frequently describe children's behaviour as aggressive or violent when discussing use of seclusion' (Together, 2019, p.122). This strikes me as a deeply problematic way to consider the issues especially considering, as Together suggests, the very real and well-recognised fact that children with disabilities or other additional support needs may 'show anxiety or distress through behaviour which appears as challenging to some adults' (Together, 2019, p.122). In sum, it is clear that a common source of children's rights violations in Scottish schools remains in the use of exclusion, seclusion, and isolation. Together are clear in their recommendations that the Scottish government should:

> • Ensure that the number of exclusions is reduced, informal exclusions are never used, and permanent or temporary exclusions are only used as a last resort. The over-representation of particular groups of children should be addressed and the quality of alternative provision monitored and improved;
>
> • Ensure that children have a statutory right to appeal against school exclusions with legal advice, assistance and representation. This should include the right to mediation and to make claim to ASN tribunals;
>
> • Ensure that schools provide evidence of what steps they have taken to ensure care experienced children have inclusive rights-based education. (Together, 2019, p.122)

All of this seems not just best practice in protecting children's rights, but what will be necessary after the incorporation of the UNCRC. The implication of this is that Scotland has some distance to travel to meet its obligations in this regard. It is clear that these actions were required *prior* to the incorporation of the UNCRC and the strength of these arguments is made considerably stronger by that fact in light of the coming domestic legal force that may be rallied in their support. I cannot add anything to this careful and well-established set of recommendations. It is clear to me that as a matter of realising children's rights in Scotland the force of these arguments is irresistible.

7.3. Testing and Assessment.

As Lundy and Martinez Sainz (2018) detail, the key UNCRC consideration relating to any testing and assessment regime in education, as in many cases, is Article 3 (the best interests clause). Article 3 states that:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (Article 3, UNCRC).

Testing and assessment, as with anything else, is subject to this requirement, although it has been largely neglected thus far as a human rights issue (Lundy & Martinez Sainz, 2018). Tomaševski (2006) has suggested that the challenge for many education systems is that testing systems do not always have the child's best interests at their core. Instead, these systems can be used to select between children rather than for the purposes of assessing and recognising learning (Lundy & Martinez Sainz, 2018). Tomaševski observes that:

> The basic feature of every education system is that it selects the few who make it to the pinnacle of the education pyramid and excludes the many who start at the bottom but do [not] make it all the way up … failures are necessary because each step upwards the education pyramid accommodates fewer people. To avoid becoming a failure, small people whom we call children have to adapt to what is required of them to move up. (Tomaševski 2006, p. 103)

The increasing emphasis placed on high-stakes testing in the context of both national and international 'competition' in education seems particularly questionable as a human rights matter. Certainly, it is far from obvious that the assessment regimes of many states are set up in the best interests of the child. Indeed, there is growing evidence to show that some systems of testing are harmful to children to an alarming degree. In its most pronounced form, a culture of high-stakes testing as the primary function of schooling can lead to schools being turned into "exam factories" with 'adverse consequences for children's mental health and access to leisure' (Lundy & Martinez Sainz, 2018, p. 12). Brown and Carr (2019) argue that rather than addressing the recognised issues of mental health in children and young people, recent policy changes in England (to take one UK example) both in the testing regime and the national curriculum have only further intensified a system of education that may, in fact, contribute towards children's mental ill-health.[24] Such is the scale of concern in England particularly that a 2015 National Teachers Union (NUT) report concluded that:

> Children and young people are suffering from increasingly high levels of school-related anxiety and stress, disaffection and mental health problems. This is caused by increased pressure from tests/exams; greater awareness at younger ages of their own 'failure'; and the increased rigour and academic demands of the curriculum. (Hutchings, 2015, p. 5)

The findings of this research are further supported by data from the WHO (2012) and ChildLine (2014, 2015) that highlights that children and young people in England are suffering from 'increasingly high levels of school-related anxiety and stress, disaffection and mental health problems' (Brown & Carr, 2019, p.257). Further, research undertaken by the Association for Teachers and Lecturers (ATL) found that 82% of educators believed that children and young people were under more pressure now than they were 10 years ago, with 89% considering that testing and exams were the greatest causal factor (ATL, 2016, p.12). Most worryingly of all perhaps, as Brown and Carr (2019) report, some research has further indicated a direct link between the pressure to perform in the educational system and the development of suicidal thoughts and behaviour (ChildLine, 2014, p.37) as well as self-harming (Hutchings, 2015, p.59). Strikingly, the NUT report concludes that the children and young people who suffer most from the impact of accountability measures in schools

[24] Further clear expression of this concern can be seen in: https://www.tes.com/news/tests-and-narrow-curriculum-behind-explosion-mental-ill-health-says-union

(including the current testing regime) are those who are disadvantaged or have special educational needs (Hutchings, 2015, p.66). There has been political recognition of this issue with the Health and Education select committees of the UK Government undertaking a joint inquiry into the role of education in children's mental health (2017). As with most things over the period following the UK's referendum on exiting the European Union and subsequent issuing of the Article 50 notice to begin the process of exit, this has lost considerable momentum. Nonetheless, it was acknowledged by the committees that schools can play a part in creating or exacerbating mental ill-health in the form of stress and anxiety and that should this be the case then policies responsible for it would be self-defeating (Commons Select Committees, 2017).

Moreover, excessive emphasis on testing has the potential to significantly distort the allocation of resources in education and the nature of the curriculum itself. These consequences are often described in the literature as a narrowing of the curriculum towards "that which is tested". Such moves clearly run against the direction in the UNCRC to develop a child's whole personality as well as the best interests provision of Article 3. Indeed, the Committee on the Rights of the Child has criticised countries where this exam and/or qualification focused orientation of education is happening. As one example, the Committee has expressed concern that in Japan, the highly competitive school environment may contribute to bullying, mental disorders, truancy, drop-out and suicides among children of school-going age (CRC, 2010; OHCHR, 2019c). The Committee has, therefore, recommended that the Japanese government review its school and academic system with a view to combining academic excellence with a child-centred approach (CRC, 2010; OHCHR, 2019c).

Poverty and the poverty-related attainment gap in Scottish schools has consistently been recognised by the UN and other human rights agencies as one of the major human rights issues facing Scotland (Together, 2017; 2019). As Human Rights Consortium Scotland have made clear, there is no doubt that that poverty is one of the 'biggest drivers of human rights' infringements in Scotland' (HRCS, 2018, p.1). Moreover, poverty is one of the most significant indicators of the lack of human rights in people's everyday lives (HRCS, 2018). It is 'clear that living in poverty has an effect on the family unit which then can impact on a child's education'(Education and Skills Committee, 2018). Data shows that by age 5 the attainment gap between low and high-income households in Scotland is 10-13 months and lower attainment in literacy and numeracy is linked to deprivation throughout primary school.

By age 12-14 (S2), pupils from better-off areas are more than twice as likely as those from the most deprived areas to do well in numeracy' (Joseph Rowntree Foundation[25]). Only 43% of school leavers in the most deprived areas are qualified to Higher level or above, compared with 81% of Scottish school leavers in the most affluent areas (Scottish Government, 2018b). The attainment gap between children living in the most deprived and least deprived areas increased at SCQF levels 4 and 5 between 2016-17 and 2017-18 (Together, 2019). The gap at SCQF level 6 has reduced slightly however 'due to improving performance of those living in the most deprived areas' (Together, 2019, p.117. However, qualitative research suggests that children find their wider development and support needs are disregarded in schools due to a strong focus on attainment and qualifications with this having a negative impact on their wellbeing (*Young Scot & SQW, 2017).* The Education (Scotland) Act 2016 places clear responsibilities on Scottish Government and local authorities to consider how best to reduce inequalities of outcomes arising out of socioeconomic disadvantage when exercising their functions relating to school education (*Education (Scotland) Act 2016, §.1).*

The Scottish Government, recognising this issue and responding to recommendations made by the United Nations Committee on the Rights of the Child, has taken a number of steps to attempt to reduce poverty in childhood. These are, amongst other things, the Child Poverty (Scotland) Act 2017, key elements of the Social Security Act (2018), and the Scottish Attainment Challenge and Pupil Equity Fund to tackle the attainment gap between the most and least deprived children in Scotland. The Scottish Attainment Challenge was launched in 2015 as a project directed towards achieving equity in education. By ensuring every child has the same opportunity to succeed, with a particular focus on closing the poverty-related attainment gap, its aim is to ensure key human rights commitments and linked to The National Improvement Framework, Curriculum for Excellence, and GIRFEC (Getting it Right For Every Child). The Attainment Challenge has used the Scottish Index of Multiple Deprivation (SIMD) to identify and prioritise spatial communities to receive targeted assistance. This index is a calculation drawing on an amalgam of demographic attributes and indicators that flag hardship or 'deprivation' in seven domains: housing, health, employment, education, service provision, crime and income. In addition, significant work and expenditure has been committed to improve the school estate in Scotland (£1.8bn), as well as

[25] See Sosu and Ellis (2014) / Joseph Rowntree Foundation, Closing the attainment gap in Scottish education. https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/education-attainment-scotland-summary.pdf

an £88m investment in the 2018-19 local government settlement expanding the education workforce in order to meet the needs of all learners. The National Improvement Framework and Improvement Plan for Scottish Education which underpins all of this work, in line with the 2014 Children and Young People Act, places Scottish Ministers under a statutory duty to plan, publish and review the Framework each year. [26]

Additionally, provision for and discrimination against children with Additional Support Needs has also been identified as a serious concern. While it is certainly positive that 95% of children with ASN go to mainstream schools (Audit Scotland, 2019), it remains a concern that even though attendance and qualifications rates have improved since 2011, pupils with ASN still have a lower attendance rate than pupils without ASN (Bramley, 2018; Together, 2019). Moreover, this gap widens in secondary school and data shows that pupils with ASN achieve significantly lower levels of qualifications and are less likely to leave school with SCQF qualifications at levels 4 to 6 than children without ASN (Together, 2019). There remains much to be done in relation to the provision and staffing to support ASN pupils in mainstream schools as well as in ASN schools (and other educational settings) and I will highlight this as a key recommendation in this thesis for addressing outstanding human rights issues in education in Scotland.

Further, I believe there is need for greater clarity regarding the purpose(s) and envisaged future purpose(s) of Scottish National Standardised Assessments (SNSA) in reference to the principles of Curriculum for Excellence (*CfE)***.** The SNSAs are a form of large-scale standardised assessment intended to be taken nationally in all state schools. The Scottish Government introduced SNSAs in the 2017-18 academic year. The assessments are taken by students in state primary schools and secondary schools once in P1, P4, P7 and S3. The results of the assessments are intended to assist teachers, as a diagnostic and formative assessment, in supporting children and young people in their learning. There are concerns with the Scottish Government's lack of clarity surrounding the purpose(s) of SNSAs. Concerns that have been raised by, amongst others, the Education Institute Scotland (EIS), the largest Education Union in Scotland (EIS submissions to Education and Skills Committee, 2019[27]). There are concerns both in relation to P1 and the principles of a play-based curriculum and in general relating to a lack of clarity about why the SNSAs were introduced and the shift in policy surrounding them between 2015 and their introduction into

[26] http://www.gov.scot/Publications/2016/12/8072
[27] Hereafter, simply "EIS submission, year".

schools (from national performance data to supporting teacher judgement). This has contributed to potential misunderstanding both amongst the teaching profession and the wider public about the purpose(s) of the SNSAs. Indeed, the influential Independent Report on SNSAs at P1 (The Reedy Review) and calls for greater clarity in this area. [28] A key principle of the Scottish curriculum is that that assessment must be for the benefit of learners in the classroom. All assessment must align with what is taught to ensure its validity and must also align with the values of Curriculum for Excellence (C*f*E). The principles that underpin the curriculum are explicitly intended to align with the UNCRC. It is, therefore, reasonable to consider to what extent the use of assessment in Scotland can plausibly be considered either in - or at least to take account of - children's best interests.

The incorporation of the UNCRC ought to serve as a prompt for greater clarity on what information the government's assessments can provide that contributes to improving the educational outcomes of children and young people and the evidence base for the re-introduction of national assessments in support of closing the poverty-related attainment gap. Moreover, clarity is needed about what case there might be that such assessment policies support children's best interests. In the necessary audit of existing educational legislation and guidance associated with the realities of incorporation, any future statements on the compatibility of the SNSAs with the UNCRC and any children's rights impact assessments on the policies are vital in this regard. EIS members report that it was not clear from the first year of implementation what "added-value" SNSAs offer in supporting professional judgement. Moreover, many teachers commented in the EIS survey 2017-18 that the SNSAs provided 'little to nothing in the way of new information to inform their understanding of children's progress and next steps in learning. Some explicitly referenced them as a waste of valuable time for this reason' (EIS, 2018). The Education and Skills Committee recognise that it is a potential weakness in the SNSA system in its current form if a sizeable number of teachers are of the view that the information generated by the assessments is not telling them anything new. Concerns have been expressed by the EIS as to whether there is not already sufficient information present in the Scottish education system to inform teacher judgement in the "broad assessment bank" that already exists (EIS submissions to Education and Skills Committee, Feb 2019). My principal concern in relation to SNSAs and their relation to children's educational rights, is in ensuring steps are taken to safeguard against any drift towards high stakes testing and potential for misunderstanding and misuse of data generated

[28] See https://www.gov.scot/publications/scottish-national-standardised-assessments-review-2019/

by SNSAs. Importantly, teacher feedback in EIS survey work on the assessments reflected that whether the SNSAs were perceived as low or high stakes was dependent on how people considered the data could be used (Education and Skills Committee, Feb 2019). Moreover, the initial implementation of the SNSAs involved a failure to ensure that all local councils gave appropriate guidance about the use and timing of SNSAs. Indeed, the contrary was seen to happen with some Local Authorities/Councils mandating the tests to run at certain times of the year rather than when the child was ready, which is one of the foundational principles of the assessment.[29] It is crucial to guaranteeing that the use of SNSAs respects the rights of children that all local authorities ensure the use of standardised assessment is focused on the formative and diagnostic role of the assessments and allows teachers to use their professional judgement in determining when testing is carried out for individual pupils rather than any moves towards whole cohort testing at set times of the year. The alternative is surely to run against the principles of assessment in *CfE* and to be counterproductive for both teachers and individual pupils. Moreover, it has clear potential to violate the best interests principle of the UNCRC. High-stakes testing has considerable potential to distort teaching and learning resulting in a "narrowing" of the curriculum. There is a strong evidence base that large-scale standardised testing/assessment negatively impacts efforts to raise equity in education (contrary to principles of *CfE* and efforts to close poverty related attainment gap) (EIS Submission, 2018).

Further, there is an established link between the prevalence of high stakes testing in education systems and damaging effects on the mental health of both teachers and learners as discussed above. Finally, as Lundy and Martinez Sainz (2018, p.12) crucially remind us, whether 'the problem lies with the test, the tester or both, the human rights imperative is to test in a way that does not unfairly discriminate against certain children'. The case of England as an example in the UK demonstrates that some forms of testing have potential to contribute to the mental ill-health of children generally *contra* the best interests of the child and that this is especially prevalent amongst the most marginalised children, representing a disproportionately exclusionary scenario *contra* the UNCRC non-discrimination commitment. Moreover, a case can be made that such testing regimes, given the potential to contribute to or exacerbate mental health issues, are likely to further undermine the human rights of children in education.

[29] See https://www.eis.org.uk/Latest-News/SNSAIndependentReview

7.4. School Discipline.

Turning next to the ever contentious topic of school discipline, the UNCRC is clear that:

> States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention (Article 28(2), UNCRC).

There are several important questions to ask surrounding punishment, both about the proper scope of punishable behaviour in schools, when (if at all) children are liable for punishment, and what (if any) punishments are appropriate and how they may be justified. [30] As a human rights matter, Article 28(2) of the CRC makes clear that any answers to these questions must be consistent with the child's human dignity and the rest of the Convention itself (cf. Articles 3 and 12 being of considerable relevance). The use of actual punishment in schools, and education itself, must according to the CRC respect the limits on discipline outlined in article 28 (2). As Lundy and Martinez Sainz (2018, p.13) make clear, from a human rights perspective schools 'should never use physical punishment'. Most countries have banned it in law, although it is regrettably apparent that many continue to use it in practice (Malak et. al., 2015; Sawhney, 2018). In 1982 *Campbell and Cosans* v *United Kingdom* was brought before the European Court of Human Rights by two Scottish mothers whose children were at risk of experiencing corporal punishment at their schools. The Court ruled that their right to ensure the education of their children in line with their philosophical convictions had been breached. This ruling would eventually lead to the abolishment of corporal punishment in state schools in the UK in 1986 (Lundy, 2005; Nolen, 2009). This has subsequently been challenged in 2005, Williamson v. Secretary of State for Education, where a group of teachers and parents from private schools sued the Secretary of Education claiming the ban on corporal punishment violated their ability to freely practice their religion and was unconstitutional (Nolen, 2009). Nonetheless, the ban has remained in place in state schools and extended to private schools since 1997, with the ban on corporal punishment widened in Scotland to include the home in 2019. The Committee on the Rights of the Child has made it 'absolutely clear' that the use of corporal punishment fails to respect the inherent dignity of the child and has been expressly clear that this invariably degrading treatment includes:

[30] For current interdisciplinary work on the topic of school punishment and these questions in particular see the pedagogies of punishment research project at https://www.pedagogiesofpunishment.com/

> "Smacking", "slapping", "spanking" children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. … kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, caning, forcing children to stay in uncomfortable positions, burning, scalding, or forced ingestion'. (CRC, 2006, para.24)

Corporal punishment is, of course, not the only type of punishment that can lead to a breach of children's rights. Lundy and Martinez Sainz (2018) identify cases of the humiliation of children as equally liable to constitute a breach of the UNCRC. With a ban on corporal punishment in schools long-established, it will be consideration of other forms of punishment I will return to in Part 3 in discussing education *through* human rights. I will raise questions at that time about the entire common suite of punishment and sanctions used in schools in reference to UNCRC rights in order to interrogate how justifiable they are in any jurisdiction that claims it upholds the rights of the child.

Aside from physical punishment and other degrading punitive action taken in schools, one area that has received considerable attention both in educational and legal literature has been the issue of school uniform policy. It remains the case that the setting and enforcement of uniform policies is open to challenge on human rights grounds of freedom of religion and expression (Lundy, 2005). Legal challenges to school uniform codes have met with varying degrees of success but are persistent in a variety of jurisdictions (Lundy, 2005). For example, in *Stevens* v *UK*, a parent's claim that that punishing her son for failure to wear a school tie amounted to an interference with family life under Article 8 of the European Convention on Human Rights was declared inadmissible by the European Commission on Human Rights (Lundy, 2005). However, for most part, parental objections to uniform policies typically focus on race and religion. As one example, in *Mandla* v *Dowell Lee* the headmaster's refusal to allow a Sikh boy to wear a turban to school was considered to amount to unlawful discrimination on the grounds of race. (Lundy 2005). [31] Most commonly issues of this sort come to prominence in relation to the wearing or proscribing of religious dress (including religious symbols) but also no less contentiously in connection with other forms of expression, notably hairstyles (for both religious and non-religious reasons). Starting with the latter, there are serious questions to ask about the legality and justifiability of the

[31] See [1983] 2 AC 548: http://www.hrcr.org/safrica/equality/Mandla_DowellLee.htm

enforcement of school dress codes that explicitly prohibit - to use one common example - the wearing of what is described as "natural hair". In the context of the UK and the US particularly, the wearing of naturally occurring hairstyles of black and minority ethnic students including but not limited to, afros, dreadlocks, "skin fades", has been the subject of both societal and institutional discrimination in both jurisdictions. [32] To highlight one prominent recent example in the UK, in September 2017, 12-year-old Chikayzea Flanders was deemed to be in violation of the uniform policy of the Fulham Boys School and was placed into "isolation"; i.e. a disciplinary measure was taken against him typically reserved for the removal of disruptive pupils from classrooms for a limited period of time as per DfE (2014) guidance. He was further instructed that in order to comply with the uniform policy he would need to cut his dreadlocked hair. The Equality and Human Rights Commission (EHRC) in the UK supported a case against the school, demonstrating that the school had failed to recognise that as Chikayzea's dreadlocks were a fundamental part of his Rastafarian religion, they should be exempt from any school policy. Indeed, the expression of religious belief was covered under the Equality Act (2010) which the school failed to comply with. While in this case the protected characteristic discriminated against was religion, it seems equally plausible that the case would have identical legal merits on the ground of race discrimination which is also covered by the Act. David Isaac, the EHRC chair discussing the Flanders case, said:

> At the heart of this issue is a young boy who is entitled to express his religious beliefs and access an education…"[the EHRC] funded this case because no child should be prevented from attending their chosen school because of inflexible uniform policies that discriminate against children on the basis of their race or religious beliefs. (EHRC, 2018[33])

States are afforded a high degree of freedom as to their uniform policies. However, they have to show 'good reason to justify any restrictions on freedom of conscience or expression'. (Lundy & Martinez Sainz, 2018, p.13). The House of Lords, which was at the time the supreme court in the UK, considered a case raised by a pupil (the *Begum* Case[34]),

[32] For a helpful overview of the issue in the US context see https://daily.jstor.org/how-natural-black-hair-at-work-became-a-civil-rights-issue/ In the UK: https://www.theguardian.com/commentisfree/2019/may/22/white-teachers-policing-black-pupils-hair-uk-schools

[33] For further discussion of this case: https://www.equalityhumanrights.com/en/our-work/news/school-discriminated-against-rastafarian-boy-telling-him-cut-his-dreadlocks

[34] R (SB) v Denbigh High School [2006] UKHL 15.

who elected not to attend school as the uniform policy did not allow for the wearing of a *jilbab.* In this case the school in question had a school population of nearly 80% Muslim pupils and a uniform policy that permitted the wearing of a *shalwar kameeze* and a *hijab* after 'cross-cultural consultations' including with representatives from the Muslim community (Howard, 2009; Smith, 2007, p.305). Ultimately, the House of Lords concluded that in this case the pupil's freedom of religious belief had not been infringed and that the uniform policy would be considered justified under Article 9 of the ECHR. The majority of the Law Lords held that there was no interference with her freedom to manifest her religion under Article 9(1) ECHR because she had been fully aware of their uniform policy of the school and had attended in any case when she could have gone to an alternative school (Howard, 2009). In this case, the interference with the right to manifest one's religion under Article 9 was seen to be justified owing to the lengths the school had gone to in accommodating religious dress more widely and in its consultation efforts with two local mosques who offered the advice that the uniform policy in question did not offend against Islamic dress code (Howard, 2009). The case provoked considerable controversy, including from the court of appeal that had previously concluded that the school had acted inappropriately (Smith, 2007).[35] As Smith (2007) notes, the decision by the House of Lords appears consistent with cases from other jurisdictions although not the case from Trinidad and Tobago cited above. It strikes me that the logic of the EHRC support in the Flanders case might equally apply to the Begum case. If it does not, it is important to understand why and what salient differences there are between the two.

I think these cases when taken together point towards the complexity of this issue but have no answers to offer about how best to adjudicate these matters in a way consistent with human rights. The relevant question for our purposes is how issues of this sort will be dealt with in the event of full and direct incorporation of the UNCRC into Scots Law. Moreover, how, if at all, will knowledge and understanding of these limitations on, for example religious expression, form a part of programmes of human rights education in schools? A central thought here is that part of what it is to fully enjoy one's rights is to be empowered to claim them. In order to do so, one must not only be aware of what one's rights are but also of the

[35] For further discussion of cases and the reasons offered for and against the prohibition of religious dress see Howard, E. (2009). School bans on the wearing of religious symbols: examining the implications of recent case law from the UK. Religion & Human Rights, 4(1), 7-24 and Poulter, S. (1997). Muslim headscarves in school: Contrasting legal approaches in England and France. *Oxford Journal of Legal Studies, 17(1),* 43-74.

mechanisms for remedy and redress when they are not realised. I will suggest later that there is something to be said here and certainly questions to ask about how school policies in Scotland, in general, will respond to these sorts of potential conflicts of rights and interests when under the direct legal obligation to give due regard to the UNCRC. This general concern is perhaps amplified in the Scottish context by the fact that there exists no legislation on school uniforms[36], in contrast to England for example, leaving considerable space to be filled by the interpretation of schools and/or local educational authorities (the latter of which will be under further direction obligations after the incorporation of the UNCRC into Scots Law in relation to Articles 12,13, and 14). In sum, the complexity of issues around school discipline and uniform make them prime candidates for any potential future litigation in Scottish courts after the incorporation of the UNCRC.

As a final comment on this topic at this stage, I believe that there are potentially radical implications for formal education if we are to take children's rights seriously. These are implications I believe may be inescapable for Scotland as it incorporates the UNCRC into Scots law, but are also implications that may have even more wide-reaching consequences for education and how children are conceived of within it. One example I will highlight here to give an indication of the scope of the (formal and informal) policies and practices that may require revision in light of children's rights is in how access to toileting facilities are administered in schools. There are of course many potential human rights issues relating to the health and wellbeing of children in this regard, but I will highlight one here briefly: the relatively common practice of denying children, without prior arrangement and/or medical certification, access to toilets at the time of their choosing during the course of the school day during "class time". The logic of such decisions are often couched in terms of safety or in relation to the potential abuse of what is seen, by implication, as a privilege. However, from a human rights perspective, I question whether a standing policy on the general prohibition of class time toilet use will stand up to legal challenge if brought before a Scottish court after the incorporation of the UNCRC. Such policies have demonstrably and disproportionately negative effects on girls' health and on that basis alone are highly discriminatory, and particularly so in the context of realising children's rights *through* and *in* education. While it is not only girls that such policies harm, it is clear that such policies are evidentially discriminatory in their consequences violates important elements of Tomaševski's 4A scheme

[36] https://www.cypcs.org.uk/advice/cases/school-uniform

at minimum. Moreover, Article 3 of the UNCRC specifies that the best interests of the child shall be a primary consideration and that institutions responsible for children's care shall conform with the standards established by competent authorities, particularly in the areas of safety and health. Further, in relation to Article 28 can we say that the provision of education including set toilet times is consistent with the child's human dignity? It is hard to conclude that they are. I cannot fully develop the legal or philosophical point here and merely seek to point towards how significant I think the incorporation of the UNCRC may be for wide-ranging aspects of Scottish education.

7.5. Respect for Children's Views.

Finally, I will offer a brief comment on the importance of respect for children's views in realising the right to education. This is a topic I will return to in great detail in later chapters concerning programmes of HRE. As Lundy has famously noted, Article 12 of the CRC has been one of the most cited but least understood provisions of the Convention as a whole. She suggests that its import is 'often lost' in the abbreviated formulations such as "the voice of the child", with such formulations failing to capture the full extent of the obligation (Lundy, 2007). [37] The Committee for the CRC has made clear that if the adults around children (parents, relatives, teachers, carers) do not understand the implications of the Convention, it is unlikely the rights of children will be realised (CRC, 2003, para.66[38]). This seems particularly so in the case of Article 12 given how little is understood about its full extent. While the import of Article 12 extends well beyond the walls of the school, schools represent a crucial venue for the expression of children's views and, moreover, for those views being taken seriously. As Lundy (2007) makes clear in her seminal article on the topic, "voice" is not enough. Article 12 makes clear that:

> States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. (Article 12, UNCRC)

[37] See also Robinson et al (2019).
[38] See General Comment No. 5 (CRC,2003).

Article 12 is especially interesting in that it provides children with ‘an additional right that adults do not have in human rights law’ the right to have their views given due weight (Lundy & Martinez Sainz, 2019, p.15). The right exists in recognition of the important power imbalance between children and adult decision-makers leading to the restriction of children’s opportunities for meaningful self-determination (Lundy & Martinez Sainz, 2018). As Freeman (2000) argues, participation makes possible the realisation of other rights and is the “cornerstone” of the Convention. It is in effect a “passport” to those rights and if we ignore children’s views on their education, we undermine the more general realisation of their rights in school (Lundy & Martinez Sainz, 2018; Lundy, 2007; Osler, 2010). Freeman (1996, p. 37) observes that Article 12 is significant ‘not only for what it says, but because it recognises the child as a full human being with integrity and personality and the ability to participate freely in society’. This recognition was partly responsible for the significant controversy that surrounded Article 12 at the time of drafting and, indeed, continues today. As Kilbourne (1998) suggests, its perceived potential to undermine adult authority was a key reason why the United States did not ratify the Convention. Article 12 was, however, embraced ‘unambiguously’ by the UK Government which is, therefore, legally obliged to give effect to it in full (Lundy, 2007, p.928). However, there is, as Lundy (2007) cautions us, a recognised gap between this international commitment and what happens in practice in educational decision making in the UK.

While the topic of children’s voice, pupil councils, and so forth have received considerably more coverage over recent years, as Lundy stresses, the lack of clear understanding of what the rights of participation for children amount to can result in little substantive progress being made (Lundy, 2007). Moreover, it is crucial to avoid tokenistic implementations of partial elements of Article 12 (such as just “voice” ignoring other elements of the right). As Lewars has observed, the consequences of a tokenistic student voice results in '… disaffected, cynical students; ineffectual processes; and a genuine lack of many of the potential benefits of successful participation’ (2009, p. 271). Children’s rights to participate in decision-making that affects them as individuals both in education and in their wider lives simply does not happen on a consistent enough basis. Every day, decisions are made for children without their input. Children are excluded and ignored in clear breach of their international human rights (Harris, 2009). Children with disabilities experience a ‘double disadvantage’ here even with the existence of an extended version of the right to be heard that omits any reference to capacity, as set out in the UN Convention on the Rights of

Persons with Disabilities (Lundy & Martinez Sainz, 2018, p.14; Byrne, 2012). The decisions from which children are excluded are many and various. They include: 'decisions about the school they get to attend, the subjects they study, the examinations they sit, the special educational provision they receive and the disciplinary measures to which they are subjected' (Lundy & Martinez Sainz, 2018, p.14). With Article 12 as the passport to the realisation of other rights, it is little surprise that when children's right to participate is not realised, violations of their rights in each of the themes discussed thus far in this chapter continue. In practice, children's enjoyment of Article 12 is 'dependent on the cooperation of adults' (Lundy, 2007, p.930). As a result, it is dependent on people who may not be committed to it, or worse, have a vested interest in not complying with it (Lundy, 2007, p.929). Adult concerns with Article 12, as Lundy (2007) highlights, generally fall into three groups: scepticism about children's capacity (or belief it is lacking); fear that giving children more control will destabilise the school environment and undermine teacher/parent authority; and, a concern that compliance is too burdensome, and the resources should be used on education itself. In recent years, there has been much valuable work which has addressed these concerns and identified the benefits of consulting with children (Lundy, 2007). Moreover, in direct connection to discussion over the justification of programmes of HRE I will discuss whether it is sustainable, in light of the UNCRC, to continue to offer arguments in support of compulsory educational programmes that are directed to the parents of children and to the adults those children will one day become whilst excluding children themselves (Fives, 2013). If part of what it is to have the right to participate realised under the UNCRC is to be consulted on *all* matters that affect them, what, if anything, does this mean for how we justify the compulsory curriculum in state schools (programmes of HRE included)? Again, it is worth noting at this stage the "closeness" of the mechanisms for redress for those in Scotland after the incorporation of the UNCRC into domestic law. The short time scale left before incorporation makes serious consideration of these issues even more pressing. Whether a domestic legal duty to realise Article 12 will require state education policy to not just consider the best interests of children (it certainly will) but also to enable children to *participate* in the process of its formation. This is an issue policymakers in Scotland need to address.

In this chapter, I have outlined common sources of human rights breaches in education. I have discussed these breaches in relation to access, testing and assessment, discipline, and respect for children's rights. I have detailed the relevant rights and discussed

some of the difficulties surrounding these issues. I have done so to make clear the common areas in which human rights are breached in education both in order to highlight specific problems that fully implemented policies and programmes of HRE will aim to address, but also to furnish us with key reference points when discussing specific policy developments in later chapters. While I will primarily focus on the curriculum and respect for children's views there, each of these themes is closely linked in how the full range of education policy is developed and implemented and so will receive some attention. As Lundy (2005) details, cases like those discussed above, and I would suggest the key themes themselves, are the areas in which the potential for clashes between parental rights to choose, children's rights, and the interests of society as a whole may come into conflict. It is an important question for the development of policies and programmes of HRE that we are able to weigh up these potentially competing rights and interests in response to the right to education, but also specifically in relation to how programmes of HRE are understood and justified. Having outlined common sources of rights violations in schools what, if any, value is human rights education in tackling them? First, it should be made clear that programmes of HRE alone are not sufficient to tackle issues in policymaking, nor is this what I will claim. However, in conjunction with existing legal obligations in relation to education policymaking via the UNCRC, I believe there is significant scope to address human rights violations within and outwith state education via education itself. I will argue that programmes of HRE that recognise the importance of legal literacy are *necessary* in empowering children to claim their rights as part of this broader project and make this argument in Chapter 11 as one of a number of strands of argument in support of HRE. As Scotland seeks to incorporate the UNCRC into domestic law, *all* of these issues require consideration as a matter of urgency. If I am correct in my characterisation of the extent of these issues, action is necessary. If Scotland is to take its human rights obligations seriously these issues should be addressed, as far as it possible, *before* they become unlawful and potentially subject to legal challenge. This seems the unambiguous consequence of taking children's rights seriously and recognising the ongoing breach and violation of these rights in the context of education itself.

8. Arguing for Human Rights Education.

In the final three chapters of Part 2, I turn finally to the positive arguments for human rights education. As an important note, I think it is wise to avoid the temptation to posit that HRE is itself a distinct right rather than simply an element of the broader RTE. This is not borne out by examination of what is expressed in international human rights instruments. Indeed, as Morris and Davidson (2012) outline, during the process of drafting of UNDHRET there was debate over whether there was a right to HRE, *per se*, that is distinct from the right to education. Amongst those who objected to defining HRE as a right *per se* were the United Kingdom, Canada, and the United States. This objection was, as I also argue above, to question the basis in international law to recognise a specific right to HRE. As a result 'acceptance of the Declaration…did not import an acceptance of a right to HRET' (Morris & Davison, 2012, p.51). The consequence of this objection was a change in the proposed language of Article 1 of UNDHRET from 'everyone has a right to human rights education and training' to the more qualified 'everyone has the right to know, seek, and receive information about all human rights and fundamental freedoms, and should have access to human rights education and training'. As outlined in previous chapters, there is substantial legal support for HRE as an educational initiative, although arguments in support of HRE do not typically proceed on this basis alone. I will argue that human rights education, broadly construed, is central (and perhaps even necessary) to realising some of the key elements of the RTE identified in Chapter 6 (specifically, rights in and through education). Further, I think there are good reasons to think that programmes of HRE are particularly well placed to respond to ongoing rights violations *within* schools themselves as detailed in Chapter 7. Taken together I think these arguments are sufficient to establish the importance I place on both clarifying what HRE as an educational initiative is and what it can legitimately propose to do within state education. However, this is an argument that needs to be made. This is, of course, one of the central aims of this thesis. Moreover, I think considerations of this sort offer strong motivation to carefully consider how policies surrounding HRE and individual programmes of HRE can be justified as a compulsory component of state education in a liberal democracy. The latter issue strikes me as following naturally if one is convinced that the legal obligation to realise the right to education requires the development of programmes of human rights education in order to do so. Further, the requirement that states must have clear and comprehensive educational policies for HRE as outlined in the UN's position on the

matter (see Chapter 7/ **HRE 1**) makes clear the need for greater clarity in relation to both what HRE as an education programme aims to achieve and how this can be made compatible with reasonable limitations on what the state can do in education. Further, we must consider how well policies surrounding HRE and the specific programmes to realise them in state education are justified. In Part 3 of this thesis, I will develop these points in much greater detail, but the broad point is this: if it is the case that fully developed policies surrounding HRE are a reasonable legal requirement on any state that seeks to fulfil its obligation to realise the right to education, then we must attend carefully to what is and is not licensed by this. In addition, I will ask questions about the theoretical basis for curriculum and policy development in response to HRE.

To provide a more fully developed argument in favour of the inclusion of HRE within the compulsory curriculum, more must be said about its potential efficacy in achieving specific educational goals, its role within the wider context of civic or moral education in a liberal democracy, and the primacy of educational programmes where human rights are an explicit focus in meeting the obligations of international human rights law in education. I will offer just such a series of arguments in what follows. A natural question when considering the desirability and viability of programmes of HRE within state education is: why would any state want to include a programme of HRE within its compulsory education? There are more and less cynical answers one may offer here. The most obvious answer is that it is a legal obligation on states to do so. It is therefore in the interest of states to comply with this obligation. This is undoubtedly true even given the unlikely event that any sanction would be forthcoming for failing to do so. Certainly, as a matter of international perception, there is a significant benefit in being seen to fulfil these obligations. [39] Less cynically, what reasons might a state have for pursuing the development of HRE policies within education? According to its proponents at least, 'HRE should appeal to states because it promises to foster social tolerance, a democratic citizenry, and a climate wherein human rights abuses are less likely to occur' (Cardenas, 2005, p. 364). Indeed, but as Cardenas (2005, p.364) further asks: 'Why would states, most of which violate human rights to one degree or another, encourage dissent and run the risk of undermining their very legitimacy?'. The next three chapters will highlight the case for the first answer sketched by Cardenas, even while the latter is undoubtedly true. I will, therefore, detail and discuss three arguments in support of HRE. These arguments involve some degree of overlap and may be considered as strands of

[39] For an example see Vesterdal, K. (2019).

one larger argument. However they may best be characterised, each of the arguments offers a partial answer to the question of: "why human rights education?". The first line of argument will point to the growing body of empirical research suggesting that HRE plays an important role not only in developing awareness and respect for human rights but also several other valued educational goods and/or outcomes (Chapter 8). The second line of argument will identify an important role that programmes of HRE can play in the development of programmes of civic education; that is, that HRE can "add value" to or complement programmes of civic education by offering an important and perhaps unique contribution (Chapter 9). Finally, the third strand of argument is to highlight again what I will claim is the centrality of HRE in realising elements of the right to education. There are four elements to this strand of argument: 1) HRE of some form is a requirement of the full realisation of the right to education; 2) HRE contributes to the broader goals of the UN and international human rights movement as expressed in international law in a way current models of civic education may not; 3) there are theoretical reasons to prefer HRE over alternatives owing to the fact that they do not necessarily capture what is important about human rights, that is, that alternatives may constitute a "miseducation about rights" (Howe & Covell, 2010) (Chapter 10); and then finally, 4) legal literacy is necessary to fulfil rights obligations and necessary to empower children and to address rights abuses within education (Chapter 11).

To highlight a few key points before developing these arguments further: firstly, as noted, HRE as a specific educational initiative does, and likely will continue to have, strong statutory backing both internationally and in the context of many liberal democracies (Jerome et al, 2015/UNICEF). As something that is already finding its way into the curricula and broader education policies of liberal democratic states, we have an immediate practical impetus to consider the question of fit. Secondly, we might gesture towards the difficulties of other programmes of civic education - specifically programmes of citizenship education in England and Scotland - to adequately capture the importance and character of human rights (Daniels, 2018; Struthers, 2015; Howe & Covell, 2010; Kiwan, 2005). It strikes me that there are intuitive reasons to think that human rights ought to form a central component of the education provided in a modern liberal democracy. Not just that almost all liberal democracies are signatories to, and advocates of, a wide range of human rights legislation (domestic and international), but also as some (more or less minimal) understanding of rights forms a plausible component of most liberal accounts of civic education. However, it is far from clear that current policy surrounding citizenship education in the UK as a whole is

capable of adequately educating *about* human rights; certainly, at the very least, it is unclear that these policies meet up to the requirements set out in UNDHRET for example. These two key points offer at least *prima facie* reasons to consider how best to implement HRE even if it is only minimally important to realise the right to education fully. [40] If we accept that education is both a right and a facilitator for the realisation of other important rights, the necessity of getting things right in this connection is clear. Taken together, I believe there are sufficient reasons to pursue the case in support of the implementation of policies and programmes of HRE within state education.

8.1. Developing the Empirical Case for Human Rights Education.

The recent interest in HRE as a concept and programme of education has understandably led to a growing body of research on the social and educational benefits of such education (Covell et al, 2011). In what follows, I will summarise this research and argue that this growing body of evidence offers an important argument in favour of the inclusion of HRE within educational curricula. Indeed, apart from fulfilling educational requirements under articles 29 and 42 of the UNCRC as outlined in chapter 6, the educational benefits found in research include, as Covell, Howe, and Polegato (2011) outline: deeper understanding of human rights; greater levels of support for rights; greater understanding of the relationship between rights and responsibilities, improvements in the "climate" in schools, and improvements in the practice of citizenship within the school community (Covell, Howe, and McNeil, 2008, 2010; Covell & Howe 1999, 2001; Decoene & De Cock, 1996[41]; Howe & Covell 2007). Additionally, research has also found that when children are better educated about their rights they are 'more likely to be engaged in school' and thus 'likely to do better at school' (Covell 2010; Covell, McNeil, and Howe 2009). Relatedly, Covell and Howe (2008) suggest that children's rights education may be of particular benefit to socially disadvantaged children who are at high risk of school failure. [42] The argument is that if children's rights education can make a 'significant contribution to engaging disadvantaged children in school' it could make a significant contribution in other areas for disadvantaged

[40] In this sense I will maintain that HRE is *necessary* but not sufficient for the realisation of the right to education.
[41] Decoene and DeCock. (1996)
[42] To be clear, this is the phrasing used by Howe & Covell in the discussed literature. I have concerns over the use of "failure" in this context but will not press the issue here.

children (Covell et al., 2011, p.194). Additionally, Bajaj (2012, 2011, 2010) conducted a large-scale evaluation of rights education in India where she focused on an NGO which promotes HRE in a network of 4000 schools. Data was collected from over 100 teachers, 625 students and 80 HRE trainers or policymakers. Bajaj concludes that the benefits (especially for marginalized students) include: enhanced sense of efficacy; heightened human rights consciousness; collective action; ability to situate their personal experience in a broader framework of rights.

In addition to this body of evidence, we might turn next to consider the reported impact of the Rights Respecting Schools Award (RRSA) in the UK. The RRSA was introduced by UNICEF UK in order to support the implementation of the UNCRC and to further knowledge of it. This is in line with the relevant articles of UNCRC covering the State obligation to ensure children and adults are aware of the rights set out in that convention (Article 42 most notably). The overall purpose of the RRSA is to provide a framework to support schools in embedding 'the Convention into the philosophy and values of the school' (UNICEF, 2009). The RRSA not only provides an understanding of human rights, specifically the rights of children but also includes learning and experiencing being a rights holder (UNICEF 2009). In general terms, the RRSA is, therefore, a vehicle for the development of HRE[43] policies and practices at school level and offers a framework to enable schools to translate the principles of the UNCRC into all areas of school life. After gaining the Award, a school can then call itself a Rights Respecting School. Once achieved, the Award continues for three years after which time a school must be reassessed to continue holding the award and/or move to a higher level (UNICEF, 2009). Attaining the Award incurs a financial cost to the school for both levels of the award[44] and for reference, the most recent costing for the Bronze level award is £1000 for any school with a roll over 1000 pupils (the cost scales with school roll with this as the maximum). Importantly for the current project, in Scotland, several councils have taken on 'a leading role in developing the RRSA within the local authority and supporting schools, currently covering registration and assessment costs and ensuring regular contact with Scotland's Commissioner for Children and Young People' (UNICEF, 2014). UNICEF (2014) note that Scotland has made respecting rights central to its new Curriculum for Excellence and provides a supportive context for the

[43] The "three strands" of the RRSA map directly onto the about, for, and through elements of the UNDHRET (2012) for example. https://www.unicef.org.uk/rights-respecting-schools/the-rrsa/the-rrsa-strands/
[44] Costs detailed at: https://www.unicef.org.uk/rights-respecting-schools/wp-content/uploads/sites/4/2018/02/New-RRSA-costs-from-January-2018.pdf

development and sustainability of the RRSA. Additionally, the Children's Commissioner for Wales and Scotland's Commissioner for Children and Young People have worked to support schools in developing rights-respecting approaches to education (UNICEF, 2014). [45]

However, the development of RRSA is undertaken at school and in some cases as noted at the local level and does not alter overall national policy in education though one may consider the potential for the Children's Commissioners of Wales and Scotland having some role in this regard. This is, I will argue later, an important point in assessing a state's efforts to implement the right to education fully. Most crucially, the state itself has no direct role in how the RRSA is interpreted by schools, nor does it judge these efforts or offer guidance or resources at a national level in their realisation and implementation. The good work that can be achieved by the RRSA in connection to HRE and the realisation of the right to education, is entirely dependent on whether a school decides to submit itself for certification in line with RRSA procedures. In this sense, it is largely determined by the desire of schools themselves and certainly not a compulsory part of the curriculum nor a statutory requirement on schools. Nonetheless, the RRSA is currently at the forefront of efforts in the UK as a whole to incorporate HRE within British schools. With over 5000 schools in the UK working towards levels one or two of this award at the last count, this represents the most widespread and systematic attempt to drive HRE within the UK (UNICEF, 2018[46]). In 2018, 1256 schools were newly registered, adding to the overall total that now includes: 1712 schools that were Bronze: Rights Committed; 1546 schools that were Silver: Rights Aware; 490 schools that were Gold: Rights Respecting.

Qualitative and quantitative research undertaken by UNICEF found that children's rights education through RRSA 'often enhances and strengthens effective practice within a school' (UNICEF, 2018). It is worth noting that UNICEF also references school inspection reports from OFSTED (in England), ESTYN (in Wales) and HMIE (in Scotland) as well as feedback from parents and teachers (including headteachers) as part of its evidence-gathering procedures. This may be a relatively minor point, but it does indicate wider support amongst relevant stakeholders for RRSA[47]. To get into the detail of the report, UNICEF (2018, p.4) found that:

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[45] There is no comment in the UNICEF *Good Practice Review* of arrangements in England or Northern Ireland. https://www.unicef.org.uk/rights-respecting-schools/wp-content/uploads/sites/4/2014/12/RSSA_Good_Practice_Review.pdf

[46] This is up from 4000 schools in the 2015 UNICEF report (UNICEF, 2015).

[47] 'This report represents the views of over 80,400 children and young people from over 700 schools across the UK. Schools are asked to sample a minimum of 10 per cent of pupils. Also represented are 12,800 teachers,

- 82% of children and young people at Gold schools say they are taught about their rights, a rise of 40% from before work began.
- 71% of children and young people at Gold schools say they can help others locally and globally, a rise of 22% from before work began.
- 97% of adults at Gold schools are comfortable talking about rights, a rise of 9% from before work began.

Further, it was reported that: children in "Gold (rights-respecting)" RRSA schools felt safer in school; there was a 'noticeable' reduction in exclusions and bullying; children and adults felt more respected, felt more self-respect, and had more positive relationships; there was a 'significant impact' on positive attitudes towards diversity and overcoming prejudice; and children were more engaged in their education, more listened to and had a greater influence on decision making in school (UNICEF, 2018, p.4-14). The findings of this research, and the previous survey of 2017 paint a highly encouraging picture of the effect RRSA can have in schools.

Taken together, this growing body of research on HRE in schools represents an important, although I think limited, argument in favour of the full development of programmes of HRE at a national level. The body of research on HRE/CRE and rights-based programmes of citizenship education in the UK, Canada, and Belgium, is of significant interest in providing a basis for an empirical case regarding the efficacy of HRE in meeting the various and valued educational aims outlined above. However, it is right to be cautious as an advocate of HRE about placing too much emphasis on this limited empirical data. That is, I think we might ask for clearer grounds upon which we can assert that it is human rights education *itself* that is uniquely capable of producing these results and what it would mean to assert so; namely, what if anything is unique or distinct about HRE as a concept that means it offers this contribution? The problem persists regardless of whether one conceives of HRE as an entirely separate educational programme or as a component of a broader programme of civic education. If the latter is true, and that HRE may be "dissolved" as an initiative just in case its aims are equally well met by any programme of civic or moral education that gives sufficient attention to human rights, then our attention shifts to the wider question of how best

teaching assistants and staff from over 600 schools provided school-level adult survey results. When the findings refer to per cent of children or adult views, it means the mean proportion of respondents within schools'. In addition, 325 headteachers or senior leaders were surveyed (UNICEF, 2018).

to secure this aim and what civic or moral education of that sort must look like. If the former is true and that only explicit programmes of HRE such as the RRR initiative developed in Hampshire schools or the RRSA - both with some caveats about how far they properly constitute *programmes* of education - are capable of securing these valuable outcomes we must ask both how this is so, and importantly, why? The question is, therefore, how could one judge in either case? As I have stressed, the lack of conceptual clarity surrounding HRE makes this a difficult task and one I intend to address in this thesis in order to establish how we might answer this question satisfactorily. To put it somewhat bluntly, if one is convinced that there is something about HRE that "works" in education in pursuit of a range of educational goals, what is it about HRE either as a concept or in the way it would be enacted through the curriculum, pedagogy, and wider school policies that makes this so? My contention, and one of the main themes of this thesis, is that it is not clear in the research outlined above, nor in wider literature on HRE, what the contribution of HRE actually is beyond bringing explicit focus on rights themselves in the curriculum and in school policies and practice. To take one example: what are we teaching about when we teach *about* human rights? It strikes me that if we are teaching that human rights simply are those rights outlined in international human rights law, we are teaching something importantly different from if we are teaching that human rights are indivisible, inalienable, moral claims secured on the basis of some feature of humanity. For now, we might simply ask: what theory of human rights serves as the basis for the development of the principles and taught content of, for example, the RRSA? If it matters that we can offer an answer to this question, as I will argue, then do we currently have anything to offer in this regard? I will return to this issue in Part 3, highlighting the complications in this area owing to the "dual aspect" of HRE as both a concept and as an initiative with a potentially distinct kind of educational programme.

In conclusion, while one must certainly be cautious about drawing any general conclusions from the above evidence, there appears to be a growing body of evidence of the efficacy of programmes of HRE in both raising awareness of rights through education as well as contributing more broadly to the civic educational goals of the relevant education systems and, in addition, potentially offering an effective means to address other longstanding educational issues. This is, of course, not conclusive by any means but it does offer reasons to take HRE seriously and highlight the need for greater clarity about what HRE as a concept and educational programme aims to achieve and what, if any, limitations on these goals there may be in light of other values in a pluralistic liberal democracy. What I think is clear here is

that given the large number of schools in the UK as a whole undertaking work related to HRE via the RRSA, serious consideration should be given to the need for theory informed practice and policies for HRE. My point here is simply that, as things stand, there is something to be said in favour of programmes of HRE as evidenced by the above research, but that this does not on its own provide a compelling argument in favour of HRE. Indeed, I think more needs to be said and I will attempt to offer this further comment in the next two sections to build a stronger argument for HRE.

9. Human Rights Education and Civic Education.

I turn next to the argument that human rights education has considerable potential to complement and contribute to civic education in a liberal democracy. In this section I will use "civic education" and "citizenship education" interchangeably. While Kerr (1999) and others have discussed whether McLaughlin's (1992) minimal-maximal model should be used to differentiate between civic education and citizenship education I will not follow this convention here. Where a distinction is relevant, I will make it clear. McLaughlin's reminder that this is to be understood as a continuum attempting to divide things by conception will not be helpful here. I will generally use 'civic education' and will detail what is to be understood by that term below. This discussion will primarily offer an argument for the value of HRE in contributing to wider liberal aims in education. In discussion of how programmes of HRE may be justified, I will return to the question of whether this, on its own, is sufficient or even commensurate with the aims of HRE as an initiative. For now, I will seek to establish the claim that programmes of HRE can contribute to the wider civic goals of social stability, cohesion, and democratic participation. Further, I will argue that this function is an explicit component of how HRE is conceptualised as an educational initiative by the Council of Europe as a prominent and especially relevant example of how the link between civic education and HRE can be made and why one might be inclined to do so. I will argue that this is an important consideration in the development of HRE and should not be overlooked. In Part 3 of this thesis, I will discuss civic education in Scotland in greater detail, but I will briefly offer here a general account of civic education to frame the current discussion.

A broad definition of "civic education" would include all means and processes that affect people's beliefs, commitments, capabilities, and actions as members (or prospective members) of communities (Crittenden & Levine, 2018). Civic education need not be intentional or deliberate and takes place throughout society, not just in the context of schooling. While generally seen as a good and necessary component for a stable democratic society, civic education can, of course, also be employed for harmful goals and in order to disempower the population (Crittenden & Levine, 2018). In this discussion, I will restrict focus to consideration of civic education as part of formal state education in liberal democratic states. Further, I will restrict this to whatever intentional means and processes are employed within state-funded education of children; that is, I will not consider what we

might term passive civic education that may be transmitted through, for example, the organisational features of the school. However this is all to be understood, it has long been argued that education was important for citizenship and that the state should provide education with '... the requirements and the nature of citizenship definitely in mind' (Marshall, 1950, p. 16)

As Enslin and White (2002) note, to bring some order into the growing field of work on citizenship and relatedly citizenship education, various dichotomies have been introduced. The first of these common distinctions made is between 'minimal' and 'maximal' notions of citizenship. This distinction is to be understood on a continuum rather than as two discrete conceptions and is related to the underlying political beliefs and understanding of democracy itself. The second distinction worthy of comment is between "active" and "passive" accounts of citizenship. Starting with the former, as McLaughlin (1992, p.236) notes in his seminal work on citizenship, much of the ambiguity and tension contained within the concept of citizenship can be roughly mapped in terms of 'minimal and maximal' interpretations of the notion. In the simplest terms, we can contrast minimal and maximal interpretations of citizenship in reference to several features. First, on minimal views, the identity conferred on an individual by citizenship is seen merely in 'formal, legal, juridical terms' (McLaughlin, 1992, p.236). A citizen is someone who has a certain civil status and the rights associated with this status in a community of a certain sort that is governed by the rule of law. On maximal views, however, this identity is seen as much richer, and considered in social, cultural, and psychological terms (McLaughlin, 1992). This maximal identity is more dynamic and richer. In terms of identity it extends beyond simple possession of a passport and an unreflective "nationality" and into the development of a consciousness of one's membership in a community (McLaughlin, 1992). Crucially as McLaughlin (1992, p,.237) himself notes, more nuanced discussion is needed and these contrasts are not the end word on the matter. As one example, one must not fall into the trap of assuming that "minimal" conceptions of citizenship are 'more free' than their "maximal" counterparts of ideological content or significance (McLaughlin, 1992, p.237). One of the most salient points of contrast when considering what educational interventions may be appropriate in relation to these conceptions of citizenship is the degree to which critical understanding and questioning is seen as necessary to citizenship (McLaughlin, 1992). Maximal conceptions require 'a considerable degree' of explicit understanding of democratic principles, values and procedures on the part of the citizen. This must further be coupled with the dispositions and

capacities required for participation in democratic citizenship (McLaughlin, 1992). In either case, minimalist and maximalist interpretations of civic education are controversial. Minimalist interpretations are open to accusations of uncritical socialisation and failing to examine the political culture and values they may embody. Maximalist interpretations, on the other hand, are controversial partly given the wide range of controversial questions they open up, but also in virtue of the fact they are, as McLaughlin (1992, p.241) puts it 'in danger of presupposing a substantive set of "public virtues" that goes beyond any principled consensus that does or could be achieved in society'. This debate will be important later as I discuss the justification of programmes of HRE and reflect thereupon these issues in more detail. [48]

Secondly, as Arthur and Davison (2000, p.11) detail, it is possible to locate versions of citizenship on 'a continuum' with 'the poles passive and active'. Passive citizenship education is, roughly, an education that seeks to only develop the knowledge, understanding, and behaviours necessary to enable an individual to participate in whatever version of democracy one lives within (Arthur & Davison, 2000). Active citizenship seeks to develop all of that, but also aims to encourage participation and to empower individuals by 'developing in them levels of criticality' that passive citizenship education would not (Arthur & Davison, 2000, p.11). While one may be tempted to conclude that maximal/active citizenship ought to be preferred by liberal democratic states, this is not necessarily so even given the apparently unattractive way in which minimal/passive citizenship is generally discussed (Enslin & White, 2002).

When it comes to determining the extent to which the state may be in the business of educating *for* citizenship[49] - that is, citizenship or civic education- matters are no less controversial. Civic education, as Brighouse (1998) notes, enjoys a wide consensus amongst liberal scholars over its permissibility but is not without its objections. To believe in liberal democracy is, as Callan (1997) says, to believe in free and equal citizenship. Free and equal citizenship also requires adequate care in considering what kind of people we become and what kind of people we encourage (or allow) our children to become (Callan, 1997, p.2). At least part of this task is captured in what programmes of civic education aim to do. While generally seen as permissible, there are considerable and long running debates between the

[48] This will naturally involve discussion of the possibility of maximalist and minimalist accounts of HRE and what if any difference this makes to the justifiability of such programmes of education within the curriculum.
[49] Kerr (2000) draws a distinction between education about, for, and through citizenship that closely mirrors the same distinction drawn in HRE literature.

likes of Brighouse (1998), Callan (2000), Gutmann (1993), Galston (1989), Macedo (1995), and others who argue for variations of civic education distinguished by the extent to which they, amongst other things, believe the inculcation of values and development of skills (generally relating to autonomy) are a permissible part of education in a liberal democratic state. For current purposes, the details of these accounts are not material, what is important here is to see the *general* role civic education is meant to play in a liberal democracy and how human rights education may contribute to it. In general, civic education is directed towards whatever roles, functions, virtues or attitudes one expects the citizenry of any particular state to have or fulfil in order to be good citizens/good democrats/good persons. One plausible general account of the function of civic education might be to educate for *whatever* is necessary to ensure the stability and health of a liberal democratic state. What this is, is the subject of considerable debate but *whatever* it is, one consequence (or intended outcome) is the promotion of social cohesion in the interests of both accepting the plurality in modern liberal democratic states and ensuring stability of such states over time. This may amount to engagement with the history of the nation, its constitutional arrangements, and whatever other skills and/or dispositions are deemed necessary to promote/protect/strengthen the stability of the state and its key institutions. This can, as this general description suggests, cover a wide range of potential interventions for several different and sometimes considerably divergent purposes. However, as suggested above, one common thread in most accounts of civic (or citizenship) education is the necessity of efforts to improve or maintain social cohesion in an ever-changing pluralistic society and to encourage political participation.

Human rights education as it has been developed in many countries overlaps or intersects with, for example, programmes of democratic citizenship education by taking the core concepts of the former and 'applying them both more universally and more critically' (Tibbitts & Fernekes, 2011, p.90). While not all forms of civic education would be compatible with HRE - one can think of historical and contemporary situations where civic education is intended to inculcate obedience to the unquestioned state - civic education in liberal democratic states is in general compatible with HRE, or rather enriched by it, so long as one is aware of the important differences between the two. This linking of the two is not to suggest they have identical aims or that they approach the same key concepts, issues, or facts in the same way, but rather that they can act as useful complements to one another. Like civic education, HRE is intended to foster social responsibility amongst students (Tibbitts, 2002). As Tomaševski (2003, p.33) notes, education consistent with the right to

education should 'prepare learners for political participation' and should 'enhance social cohesion'. I will follow Tomaševski here and focus on these two specific aspects and how they relate to accounts of civic education more generally in order to develop this as a case for HRE.

To turn directly to questions of the role of HRE within civic education, the foundational question we might ask is whether HRE is able to assist with the wider liberal aim for educational institutions in fostering the wide acceptance of common norms, principles and procedures that contribute to the preservation of a well-ordered liberal democracy (Costa, 2004). It seems plausible to see human rights generally, and certainly international human rights law as functioning in roughly this way albeit at an international level. In principle then, one would expect human rights education, an educational initiative developed along these lines in order to promote this international practice, to be well suited to this task. The practice of international human rights, as suggested in chapters 4 and 6, can be understood as, amongst other things, actively contributing to the promotion and defence of a set of common norms. Common norms that are at the very least the subject of Donnelly's (2013) "international legal universality" in the form of ratification of instruments that give expression to a range of shared norms and values and perhaps even something approaching a shared international consensus. This feature of the international practice of human rights is highly significant and surely central to whatever successes the international human rights movement has achieved. That international human rights are capable of functioning this way *politically* may even be constitutive of human rights themselves depending on whether one subscribes to an orthodox or political conception of rights.[50] In either case, we can begin to see here the kernel of the argument I aim to develop in this chapter: that programmes of HRE, discrete or embedded within civic education, as the embodiment of the international human rights practice within education, ought to be able to contribute to fostering the wide acceptance of a set of common norms, principles and procedures that contribute to a well-ordered society.[51] Although this is not perhaps always seen as the *primary* purpose of human rights education it is certainly a feature of it and can been seen expressed in the UDHR itself and more recently UNDHRET. Recall again the direction in UNDHRET (art.2(a)) that education *about* human rights provides knowledge and understanding of human rights norms

[50] This distinction will become much more important in Part 3 where I will discuss it in connection with developing a theory of HRE to inform the creation of a curriculum for HRE.
[51] The key question might be if these are the same norms and values a liberal democratic state will want to promote.

and principles, the values that underpin them, and the mechanisms for their protection. Importantly, it seems unquestionable that education *for* human rights involves the promotion of democracy, democratic participation, and the preservation of peace and social stability. These values were fundamental to the initial framing of the UDHR and a central component of the international human rights movement in the post-WWII era. While of course the potential for transformation of society has always been central to the human rights movement a commitment to establishment and protection of a lasting peace through recognition and protection of the individual civic and political rights of all persons is perhaps more than anything else close to the *raison d'être* of the UDHR. In discussing the justification of programmes of HRE in Part 3, I will argue that HRE has a dual role as instrumentally valuable in promoting and protecting civic interests, but also that it has an intrinsic value in realising children's rights. I will, therefore, argue that we must offer both a public-centred and child-centred justification for HRE.

9.1. Civic Education, Social Cohesion, and Political Participation.

In discussing the role human rights education might play in civic education, it is necessary to begin with some reference to whether HRE is actually conceived of as playing this role. It has been relatively common in the literature to claim that UN Convention on the Rights of the Child (UNCRC) is 'an ideal basis for citizenship education' (Alderson, 2000, p. 115). It is on this contention that the following discussion will proceed, although I will raise some concerns with some consequences of misunderstanding this link in 10.1. Alderson (2000, p.115) continues, arguing that 'rights are central to concepts of citizenship and democracy in clarifying the standards which the citizens agree to share'. As with much of the debate surrounding HRE within the literature, there is considerable divergence amongst scholars in this area, with some preferring both a "looser" relationship with both international human rights law and citizenship or civic education as it is typically understood. These debates can in many ways be unilluminating given they rely on radically different conceptions of the character and purposes of both HRE and civic education and so they can often obscure what is actually a point of contention or divergence between the two. Indeed, as I will argue in Chapter 10, a powerful means to transform society can be delivered through an engaged and legally and politically literate citizenry and in addressing human rights violations in schools themselves. This is an outcome that requires exactly the sort of interweaving of HRE and

programmes of civic education I will detail below. What can be problematic, as I discuss in Chapter 10, is misunderstanding the difference between the concepts of "citizenship" and "human rights" (Kiwan, 2005). Nothing I will claim below should be read as going further than claiming that human rights have a place as a component of civic education and then identifying an example of how this may work. What I outline below should certainly not be read as claiming that human rights are a theoretical basis for citizenship; the reason for this will be made clear in the next chapter. Moreover, I do not claim here that HRE assists in developing an understanding of one's citizenship status nor one's civil rights, simply that programmes of HRE are able to contribute to those elements of civic education that are directed towards the sharing of common norms and the development of a democratic culture in a society. In short, I claim that *both* civic education and human rights education are important for meeting democratic aims in education and that the two complement each other well. Importantly, the two are not identical and the basis for civil rights is distinct from human rights with the former granted on the basis of membership in a particular community and the latter not. Importantly, while human rights may be translated into civic rights, this does not alter the need to understand both and their distinction.

The aim of achieving higher levels of civic knowledge and engagement has been the subject of considerable interest over the past few decades in political discourse, and certainly in the context of research on citizenship. In Europe, North America, and indeed many other places, concerns have been raised over issues of low voter turnout, general political apathy, poor civic engagement, and a wide range of other issues that citizenship education is often seen as the primary means to resolve. Even for what we might think are the core functions of citizenship education such as democratic awareness, knowledge of the institutions of state, some development of civic values, and more or less than that brief list depending on one's conception of citizenship, the evidence is not strong for the widespread success of these programmes globally. The International Association for the Evaluation of Educational Achievement (IEA), for example, concluded that '[s]tudents in most countries have an understanding of fundamental democratic values and institutions - but depth of understanding is … often superficial' (Torney-Purta et al., 2001, p.180).

Coupled with this are persistent concerns over social stability and cohesion in the light of increasingly pluralistic societies as well as fears over the radicalisation of children and citizens in the post 9/11 political climate. A desire to reaffirm core "liberal democratic" values and to deradicalise and/or prevent extremism has been a high priority in many states.

As the Council of Europe (2017, p.7) points out, education is increasingly recognised as a tool for 'tackling radicalisation leading to terrorism, for successfully integrating migrants and refugees and for tackling disenchantment with democracy and the rise of populism'. A variety of different and in many cases overlapping proposals for addressing these two problems have been developed including: citizenship education; democratic education; peace education; human rights education; and any combination of the former in global or national varieties. I will look at one such proposal in 9.2 that I believe has considerable merit in order to both elucidate the important role I believe HRE can play in broader efforts to develop programmes of civic education and make clear a plausible model for doing so that can contribute to social cohesion and political participation. Before doing so I want to engage more generally with discussion of social cohesion and political participation in education in order to set up the issues I think the proposal I will discuss later can respond to.

The idea of social cohesion is a 'fuzzy' and politically loaded concept (Green et al, 2003, p.455). Whilst widely used in literature and policy, there is no clearly defined or common meaning for the term (Green et al, 2003). It can, as Green et al (2003) suggest, be employed in different contexts to emphasise variously: shared norms and values; a shared identity/belonging to a common community; a sense of continuity and stability; a society with institutions that pool risk and provides collective welfare; something about the distribution of rights, opportunities, and wealth; and something like a strong civil society with an active citizenry. We may have in mind all of these or only one when we discuss the role HRE might play in assisting the development of social cohesion. It seems plausible to think that HRE as an educational initiative and the proposals for Education for Democratic Citizenship and Human Rights Education discussed shortly, capture something of all of these various conceptions in their stated aims. As hinted at earlier, there is often a tension in discussion of HRE about the extent to which it *should* contribute to social cohesion when understood as promoting stability or continuity. The argument typically runs that HRE is, by its nature, about change and therefore it should seek to change society rather than ensure its stability (part of the issue is, of course, that "change" and "stability" in discussion of political arrangements are imprecise terms without further clarification). I think this argument is mistaken and misunderstands an important sense of stability that programmes of HRE surely must contribute to: the working of the democratic institutions of the liberal state and defence of the rule of law which are both necessary to ensure the realisation of human rights. As I will discuss later, it strikes me as wrongheaded to fail to recognise the significant potential

for critique of the status quo and the working of the institutions of state opened up by a good working knowledge of the institutions of the state and understanding of one's own human rights. The international human rights movement and international human rights law is, *inter alia*, an attempt to ensure a level of stability in international relations and a limit and means of critique of the conduct of states towards their citizens. It seems perfectly plausible to me to understand HRE as contributing to social cohesion but this being both distinct from it aiming to preserve the status quo or any sense of social cohesion which prioritises the collective rather than individual rights of citizens.

Turning to the question of preparation for participation in political life, there are two closely related questions in the context of education relating to political participation and political socialisation. In response to the concerns sketched earlier about low levels of civic engagement and political participation (understood most often in relation to voting patterns) consideration has been given to the role of schools and civic education in particular in both preparing citizens to participate in politics and the extent to which schools do and are able to contribute towards the political socialisation of young people. During the 1990s there was a renewed interest in political socialisation, and more generally the roots of civic engagement. If political socialisation processes start at a young age, what are the mechanisms through which children learn about politics (Neundorf & Smets, 2017)? Children learn directly (or indirectly) about social and political issues from a variety of socialising agents including their parents, schools, (social) media, and their peers. Importantly, there is a 'mobilising' element to political socialisation that can 'influence, encourage, or discourage our political behaviour' (Neundorf & Smets, 2017 p.4). This is particularly important if we consider the possibility of socialisation in schools, for example, to contribute to the formation of political habits. The mechanisms for habit formation in relation to individual voter turnout has been a focus of interest amongst political scientists. This is so primarily because it is argued that citizens learn the habit of voting or not voting 'in the early stages of their adult lives' and that, unsurprisingly, past voting behaviour is a good predictor for present and future political engagement (Bendor, Diermeier, and Shachar 2003; Green and Shachar 2000). Besides parent-child transmission of values and behaviours, the influence of schools has been the focus of much research precisely because education itself 'is highly correlated with political knowledge, interest, voter turnout, and other forms of political participation' (Neundorf & Smets, 2017 p.7). However, as Campbell (2008, p.438) suggests, 'we know relatively little about the civic development of adolescents'. Specifically, 'we have a limited understanding

of how schools do, or do not, foster political engagement among their adolescent students' (Campbell, 2008, p.438).

What we do seem able to say is that schools socialise young people in a variety of ways and political involvement is one form of socialisation they engage in (directly or not). There is a variety of empirical evidence showing a positive connection between education and civic engagement that indicates the importance of the former in promoting the latter and the correlation between an educated population and maintaining the stability of democratic societies (Glaeser, Ponzetto & Shleifer, 2007).[52] As Dudley and Gitelson (2002, p.178) put it, if political knowledge is a necessary precondition to civic engagement, it follows 'that more and better education is the solution'. What sort of education is required is the next logical question to ask. Research has found 'strong associations' between curricular approaches that promote a climate of openness in the classroom, engagement in service-learning, and the use on the one hand of simulations and students' civic commitments and capacities on the other (Kahne & Sporte, 2008, p.742; Torney-Purta, et al 2001).[53] Youniss and Yates (1997) offer a conceptualisation of factors that promote the development of a civic identity that are of particular relevance here. They identify three kinds of opportunities that can spur such development: opportunities for Agency and Industry; for Social Relatedness; and for the development of Political-Moral Understandings. Kahne and Sporte (2008) build on this conceptualisation in their empirical research and outline a number of interesting findings relevant here. First, they find that experiences that focus directly on civic and political issues and ways to act are 'a highly efficacious means of fostering commitments to civic participation' (Kahne & Sporte, 2008, p.754). This finding is consistent with previous research by Torney-Purta et al., (2001) and with other studies that have examined the association between varied classroom practices and commitments to civic participation (Gibson & Levine, 2003). Indeed, Kahne and Sporte (2008, p.755) conclude there is evidence that 'schools appear able to help lessen the participatory inequality that exists in our civic and political life'. What strikes me as most interesting about this finding is that one can reasonably speculate that a similar outcome would be likely both in schools and outwith them if students are regularly exposed to rights-respecting behaviour and that direct participation in

[52] See Glaeser, Ponzetto & Shleifer (2007) for a discussion of their own empirical research on education and democracy and a summary of some other important findings. Also, Robert L. Dudley & Alan R. Gitelson (2002) Political Literacy, Civic Education, and Civic Engagement: A Return to Political Socialization? for further summaries.

[53] See Gibson & Levine (2003) for a review of the literature.

a rights-based education is likely to encourage this in a similar way. Indeed, the research outlined in 8.1. seems to partially support this sort of conclusion. This, if correct, has important consequences for how we may address the rights violations outlined in Chapter 7, and what steps should be taken in education to address those issues and build a rights-respecting culture more broadly.

Now, while there may be a growing body of empirical research that supports the efficacy of civic education in developing the knowledge, skills, and dispositions necessary for civic participation, this does not yet answer any questions about what kind of interventions in state education are necessarily desirable or permitted towards this end. Nor indeed does it settle the question of what sort of citizen the school aims to develop. What I want to say finally before turning to the Council of Europe's proposal for Education for Democratic Citizenship and Human Rights Education is where HRE fits into this picture. In doing so I will, admittedly, be offering some speculation on the findings outlined above and how one may plausibly draw a connection to the role human rights knowledge, values, and the agency promoted by knowing (and being able to claim) one's rights may have for civic and political participation. Importantly, political efficacy (and one's perception of it) has long been considered a fundamental political attitude and a significant factor in determining actual political participation (Pasek et al, 2008).[54] Political efficacy is said to have two elements: 1) internal efficacy relating to one's beliefs about one's own competence to understand and participate in political life; 2) external efficacy which is one's beliefs about how likely the government is to respond to citizens' needs and demands (Pasek et al, 2008). Both contribute to motivation to engage and participate in politics in later life and should, if we are serious about improving political participation, form part of the civic education of children and young people. So too we might argue with human rights. Knowledge and understanding of one's rights has long been argued to be central and perhaps necessary to the effective claiming of one's rights and the defence of other's justified rights claims. Moreover, it seems reasonable to think that the extent to which one considers the state to be responsive to the rights claims of its citizens and to protect human rights may have important consequences for political engagement (although this may cut both ways with low levels of trust potentially promoting challenge rather than disengagement with human rights struggles). It strikes me that the relationship between human rights and political participation is likely to be close and that judgements of efficacy in relation to both will be intimately linked. Further, both would

[54] See Paesk et al (2008) for discussion of the supporting research.

surely contribute to cohesion in society. In a liberal democratic state that has a number of human rights obligations, including the provision of opportunities for political participation, this link seems hardwired into the make up of the obligation itself. As I will argue in this thesis, commentary on the UNCRC is clear that attempts to depoliticise competent adolescents (at the very least) is inconsistent with the rights of children. I think we are licensed on this basis to argue that attempts to depoliticise civic education in the sense Expósito (2014) sketches are a mistake and they potentially violate the rights of children and young people. The point I aim to make here is not just that human rights education can contribute to political participation by offering a framework for developing a sense of internal (and perhaps external) efficacy in education, but that it may be central to a defence of the political in civic education itself by pointing to the obligation to enable children and young people to *participate* meaningfully in their lives (both now and in the future). I will further develop this point in arguing for the importance of the law and political and legal knowledge in programmes of HRE in Chapter 11.

9.2. Education for Democratic Citizenship and Human Rights Education.

Next, I want to move onto discussion of a proposal that I think is well suited to contribute to the democratic aims of education by combining civic education and human rights education. Education for Democratic Citizenship and Human Rights Education (EDC/HRE) is recognised by Council of Europe (CoE) member states as 'an essential element in the education of everyone, particularly young people' (CoE, 2010, p.7). Indeed, it is 'integral to the core mission of the Council of Europe in promoting human rights, democracy and the rule of law' (CoE, 2010, p.7). The aim of EDC/HRE is, therefore, the establishment of sustainable forms of democracy in society based on respect for human rights and the rule of law. As the Council of Europe put it:

> In a period of rapid and unprecedented change, EDC/HRE is one of society's strongest defences against the rise of violence, racism, extremism, xenophobia, discrimination and intolerance and is a preventative mechanism. It also makes a major contribution to social cohesion and social justice. (CoE, 2010, p.7)

For purposes of clarity, I refer to the definitions of the two key terms "Education for democratic citizenship" and "Human rights education" as used in the CoE Charter:

- "Education for democratic citizenship" means education, training, awareness-raising, information, practices and activities which aim, by equipping learners with knowledge, skills and understanding and developing their attitudes and behaviour, to empower them to exercise and defend their democratic rights and responsibilities in society, to value diversity and to play an active part in democratic life, with a view to the promotion and protection of democracy and the rule of law.

- "Human rights education" means education, training, awareness raising, information, practices and activities which aim, by equipping learners with knowledge, skills and understanding and developing their attitudes and behaviour, to empower learners to contribute to the building and defence of a universal culture of human rights in society, with a view to the promotion and protection of human rights and fundamental freedoms.

The main objective of EDC/ HRE is to help 'all people play an active part in democratic life and exercise their rights and responsibilities in society through exposure to educational practices and activities' (CoE, 2010, p.7). Approaches to EDC/HRE are said to involve a combination of teaching and learning, through experience or "doing", 'that emphasise democratic learning, active participation and partnership learning' (CoE, 2010, p.7). EDC/HRE is seen as lifelong learning process by the CoE that takes place in connected "sites of citizenship", in the classroom, education institution and local and wider community. In these respects, EDC/HRE as many programmes of civic education do, involves a number of core concepts including both civic knowledge and the civic skills seen as necessary for "learning to live together". Indicative of what is in mind here, Tibbitts and Fernekes (2011, p.90) quoting Schuetz (1996, p.1) characterise these participatory civic skills and dispositions as:

> '(a) helping students become self-confident, well-informed citizens who are able to think rationally and who are committed to the values of human dignity and human rights;
>
> (b) fostering a willingness and capacity to participate in political affairs on local, national and international levels;
>
> and (c) developing a strong recognition of the need to balance individualism and self-interest with human interdependence and social as well as environmental responsibility'.

Taken together, this model for EDC/HRE reiterates, I think, much of what I have detailed so far in relation to the UN World Programme for HRE and UNDHRET (2011) but, importantly, it reemphasises the link between both education about rights and that learning about human rights is an important part of children and young people's preparation for life in a pluralistic democracy.[55] It appears plausible to draw this link between programmes of civic education and HRE, and while one can plausibly infer from the above the importance that both civic education generally and education about rights specifically play in considerations of preparation for political participation and in fostering social cohesion in a pluralistic democracy, the details of such a fleshed-out programme of education to do so are still necessary. In what is detailed above we see evidence of the centrality of both preparation for political participation and socialisation, active participation as encouraged both within the school and outwith, and a focus on the development of the knowledge, understanding, and values necessary to foster social cohesion. All of these elements are present within the UN's own characterisation of HRE as outlined in this thesis. The argument here is, therefore, that HRE and programmes like EDC/HRE are well suited to play an important role in the civic education of children and young people in liberal democratic states. As a result, there are public-centred arguments to justify the development and introduction of programmes of HRE within national curricula.

At the time of writing the EDC/HRE proposals developed by the CoE remain, I believe, the most substantial and plausible characterisation of how a fully comprehensive programme of HRE might be developed for use within liberal democratic states. In both its breadth and detail, it represents a highly serious and wide-ranging proposal covering policy, curriculum, pedagogy, and assessment. One key point to stress at this stage, and one I believe is highly central to the approach to HRE I will show in this thesis is preferable and plausible, is the emphasis placed on the development of political and legal literacy through programmes of civic education and human rights education. In Chapter 11 I will make this case fully but will highlight the key passages from the CoE proposals here in order to signpost this move. The CoE (2009) guidance for teachers in developing EDC/HRE makes clear that there are a number of teacher and student competencies that the programme aims to develop. Amongst these is political and legal literacy which in the view of the CoE requires knowledge and understanding of rights and duties vis-à-vis the political system and the rule

[55] The Committee of Ministers issued Recommendation R (85) 7 to Member States of the Council of Europe to this effect as far back as 1985.

of law. For the CoE understanding of the political/legal domain implies knowledge and understanding of the international frameworks and the values that underpin them. Students should 'be able to reflect on values, develop attitudes and take action to defend and promote human rights' (CoE, 2009, p.22). Perhaps most interestingly and, as I will discuss shortly, central to realistic and empowering proposals regarding HRE, this political and legal literacy, far from just being 'heavy' and 'dry knowledge for teachers', is knowledge that is to be 'applied' in the classroom (CoE, 2009, p.22). In Chapter 7 I drew attention to the common sources of rights breaches within schools and suggested that programmes of HRE are one plausible response to these ongoing issues. The application of knowledge and understanding of political and legal literacy in the classroom - and one can assume the EDC/HRE proposals do not restrict its applicability to that setting - is in enabling children and young people to claim their rights and for teachers to be educated about how to ensure rights violations do not occur in schools.

To draw this chapter to a close, I have argued that HRE can play an important role in supporting the broader aims of civic education in a liberal democracy through the specific roles Tomaševski identifies in driving social cohesion and political participation. I have described the close links between HRE and citizenship education while noting the differences in scope and emphasis. I have detailed an existing proposal in the form of Education for Democratic Citizenship and Human Rights Education to illustrate this point. The key feature of the proposal here is that it clearly outlines the potential benefits of the "infusion" of HRE within programmes of civic education in order to realise both the goals of HRE as set out by the UNDHRET as well as the specific civic goals of democratic participation and social cohesion. Moreover, I think the inclusion of HRE within programmes of civic education is one important way to prevent the erosion of the political elements of civic education; that is, I believe that one cannot depoliticise human rights and human rights issues as they are an inherently political practice (Beitz, 2011; Donnelly, 2013). As far as one is convinced by this argument, this seems a strong reason to favour the inclusion of HRE within civic education generally, and certainly within any programme of civic education tasked with improving the conditions for democratic participation and social cohesion. I have also argued that while this is certainly an important consideration in favour of HRE, this role may not sufficiently capture all of what HRE as an educational initiative seeks to achieve. In conclusion, I have offered here a second argument in support of HRE premised on the important and well-suited role it is able to play in support of important aims for educational institutions in fostering the

wide acceptance of common norms, principles and procedures that contribute to the preservation of a well-ordered liberal democracy.

9.3. Learning About Our Rights in School.

In the second half of this chapter, I turn to what I believe is a potentially very strong argument for HRE: that human rights education is the best way to ensure that children learn about their rights and to prevent rights breaches in education and is, therefore, very well placed to assist in efforts to realise the right to education. There are three strands to this argument[56]: 1) HRE of some form is a requirement of the full realisation of the right to education; 2) there are theoretical reasons to prefer HRE over alternatives owing to as they do not necessarily capture what is important about human rights; 3) that alternatives may constitute a 'miseducation about rights' (Howe & Covell, 2010).

To begin this chapter I will first discuss, or rather briefly recap, the legal basis for HRE as a distinct and explicit component of state education. In Chapters 5 and 6 I outlined international human rights instruments detailing the right to education and HRE. It is clear that there is considerable legal support for HRE and that it plausibly forms an element of the state obligation to realise the right to education for all citizens. What I will seek to make clear in the remainder of this chapter is that only *some* forms of educational intervention are appropriate in achieving this aim. Human rights education in schools can variously be developed as a standalone subject, part of citizenship education, a cross-curricular theme, and conceivably any other means of delivery that is practical within schools. The point I aim to stress here is that while this is possible, not all that might be termed human rights or rights-based education can do the job. In discussing Kiwan's (2005) argument that human rights cannot underpin citizenship education (Chapter 10) I will demonstrate how HRE (or simply learning about one's rights) cannot simply be appended to existing programmes of citizenship without important theoretical alterations. In Chapter 11, I will make clear how some contemporary practice in linking rights and responsibilities in an inappropriate way when teaching about human rights constitutes a miseducation about rights. I will demonstrate there that it is explicit focus on rights themselves, the mechanisms for their protection, and the knowledge and understanding to claim one's rights that is crucial. I will argue, therefore, that our proposals should place rights first rather than in service to something else recognising

[56] These strands will be developed throughout this chapter and should not be seen as corresponding directly to the sections that follow.

that the *primary* responsibilities in relation to rights are with the state itself. I will argue that taken together we have good reasons to argue that a fully developed and explicit programme of human rights education is necessary in order to adequately educate children about their rights and meet state obligations on the right to education and HRE.

9.4. Citizenship Education and Human Rights.

Human rights discourses have over the last few decades been increasingly coupled to discourses on citizenship and citizenship education (Kiwan, 2005). Indeed, as noted in the previous chapter, calls to see the UNCRC as the ideal basis for citizenship education or that human rights should *underpin* citizenship education have been common (Alderson, 1999; Kiwan, 2005). However, as Kiwan (2005;2012) notes in her challenge to this practice, there is an important conceptual distinction between citizenship rights on the one hand and human rights on the other. An initial comment before I engage with the substance of this claim: the claim that there is an important conceptual distinction between citizenship rights and human rights is crucial. It is a serious mistake to treat the two as identical and especially so when it comes at the cost of teaching *about* human rights through the lens of citizenship rights alone and I will develop this point in this section. This is, what I will later discuss as a potential miseducation about rights.

The key point here is that human rights in contrast to citizenship and the rights that go with it, are not derived from the state. However one conceives of human rights, they are seen as universal and not contingent on membership of any particular state. Underpinning human rights is the notion of common humanity, 'based on ethical and legal conceptualisations of the individual' (Kiwan, 2012, p.2). Whilst citizenship is also a contested concept (Kiwan, 2008), citizenship rights are underpinned in relation to a particular political community, based on political and legal understandings of the individual (Kiwan, 2005). One issue one may raise here is whether or not we necessarily must conceive of human rights in this way. I think it is enough here to point out the important distinction between the particularist and universalist scopes of the two in order to motivate the larger point. In Part 3 I will discuss why this matters and what is at stake when it comes to *teaching* about human rights.

Kiwan (2005) argues that calls that human rights should *underpin* citizenship education have been common but should be resisted. In order to develop the main point of this section, I will begin by discussing Kiwan's (2005) argument that human rights cannot provide a theoretical underpinning for citizenship. This is an important argument for two

reasons: 1) If correct, it offers reasons to think that citizenship education will be insufficient to realise state obligations in relation to HRE owing to the way "rights" are conceptualised and presented. Learning about citizenship alone and even civic rights is not enough to constitute learning about human rights. 2) If (1) is correct, then we have a strong argument for the incorporation of programmes of HRE within state curricula in order to meet state obligations to provide education about, for, and through human rights. In Chapter 9 I discussed the combination of Education for Democratic Citizenship and Human Rights Education as proposed by the Council of Europe, this being a clear example of the coupling of citizenship education and HRE. However, what is important to remember about that proposal, in particular, is the way that it does not conflate the two distinct discourses in the way that Kiwan (2005) argues against. This, I believe, is one of its merits. It is precisely because EDC/HRE makes clear the distinction and relies on distinct theoretical underpinnings for each component in its formulation that it does not fall foul of this critique and why I believe it is a good example of how programmes involving HRE may be developed for use in state education. To briefly put the point, because EDC/HRE includes and distinguishes both the particularist discourse surrounding the development of citizens and the universalist discourse about or membership of a global community underpinned by international human rights, it does not, as far as I can see, conflate the two in the way Kiwan objects to.

The starting point for this argument is to note the distinction in theoretical terms between "citizenship" and "human rights". Importantly this argument will not, as noted above, argue that human rights should not form a component of citizenship education. Rather, it will argue that the theoretical underpinning between citizenship and human rights is not identical and the latter cannot theoretically underpin the former. Moreover, Kiwan (2005, p.38) argues that attempts to present human rights as the theoretical underpinning for citizenship may 'potentially obstruct the empowerment and active participation of individual citizens'. Children's rights do not derive from the state nor does citizenship status within a jurisdiction affect a state's obligations in this regard. As Kiwan (2005) notes, the crux of the conceptual confusion is in misunderstanding the implications of the UNCRC's inclusion of civic and participatory rights for children. Participation or civic rights are 'a theoretically different kind of right' to other rights documented in the UNCRC, such as the right to life (Article 6), the right to freedom of religion (Article 14) or the right to education (Article 28) (Kiwan, 2005, p.45). Civic rights, unlike human rights, are of course based on membership

of a political community and do not apply in virtue of membership of the human race. Whilst it is important, as Kiwan (2005, p.46) suggests, that human rights are discussed in the context of citizenship, the theoretical distinctions between citizenship rights and human rights must be made in the curriculum documentation in order that teachers should have a 'clear conceptual understanding of citizenship' and be able to communicate this effectively to pupils.

In making this conceptual incoherence clear Kiwan (2005) categorised conceptions of citizenship in terms of five main categories: moral, legal, identity-based, participatory and cosmopolitan.[57] Human rights, Kiwan (2005) argues, cannot serve as a theoretical underpinning for citizenship for any of these five categories.[58] To briefly summarise the key arguments: human rights are accorded to all human beings based on their common humanity and, therefore, universal human rights cannot underpin citizenship based on nationality, legal status, particularistic concern with one's community, or even membership of a global political community.[59] Kiwan's (2005) argument is that the universalistic nature of human rights makes them a poor theoretical underpinning for any understanding of citizenship and citizenship education that is premised on political membership (national or global) and a particularist orientation. Kiwan's (2005, p.47) key claim is that this is because, fundamentally, citizenship is always 'defined in terms of membership within a political community', in contrast to human rights, which are 'based on membership of common humanity'. As Kiwan (2005, p.48) concludes, whilst it is important to acknowledge the important role of human rights 'within the practice of active citizenship and to recognise that the practice of human rights occurs within a political community', it is inaccurate to conflate the two concepts.

There are two key points I want to make here about what this means for the development of programmes of HRE: firstly, that the addition of human rights topics to existing programmes of citizenship education will not be enough to constitute human rights education. Whilst there is space for overlap, particularly with cosmopolitan or globally orientated forms of citizenship education, there is still an important theoretical distinction between them. As a consequence, claims that citizenship education as it is currently

[57] See Kiwan (2005) for discussion of these categories. Nothing will turn here on the detail of the accounts as the argument addresses all of them equally.
[58] The case is perhaps least clear in relation to cosmopolitan citizenship, but this perhaps turns on the extent to which one is willing to entertain a political conception of human rights rather than an orthodox one.
[59] Kiwan (2005;2012) does note that global or cosmopolitan citizenship and the idea of a global political community comes closest to how we might understand the role of an international political community in relation to the practical realisation of human rights.

constituted in the UK are enough to fulfil obligations to realise HRE should be rejected. Secondly, and following the first point, in order to meet obligations in relation to HRE where human rights education is introduced into the curriculum it must be introduced in a way consistent with its theoretical underpinnings and this should be made clear to teachers in order to enable them to teach both HRE and citizenship effectively. This means either revised programmes that can accommodate both (as in the EDC/HRE proposal) or the two should be dealt with separately in order that they are not conflated.

10. A Miseducation About Rights?

In this Chapter, I outline the argument against the claim that human rights can underpin citizenship education theoretically. As Kiwan (2005) notes, this entails conceptual incoherence that may result in a miseducation about rights. I will develop the argument that some forms of citizenship education constitute a miseducation about rights in order to further make the case that distinct and explicit human rights education is necessary to fulfil state obligations to educate about, through, and for human rights. What is the source of this potential miseducation? In a similar sense to the criticism levelled by Kiwan, the issue is misunderstanding the theoretical basis for human rights. In this case, it is by misunderstanding the link between rights and responsibilities and again attempts to depoliticise education at the cost of undermining children's learning about their rights. As a way of setting up the argument, I will begin by considering a specific example to draw out some of the key issues.

Previous research on the place of human rights within the Scottish curriculum highlighted the co-occurrence or interchangeability between statements on rights and those on responsibilities (Daniels, 2018). While noting that the two cannot be separated entirely, one of the findings of the analysis undertaken in that work was that mention of rights does not occur consistently or explicitly enough to fulfil some of the HRE requirements considered (requirements reproduced here in Chapter 6) (Daniels, 2018). With rights and responsibilities run together in this way it can obscure the key fact that states themselves bear the *primary* responsibility for realising human rights (Howe & Covell, 2011). There are specific issues highlighted by Howe and Covell (2011), and in my own research (Daniels, 2018) relating to: 1) the interchangeability of rights and responsibilities in traditional citizenship education (in the UK); 2) the attempts to depoliticise taught content in curricular documents and fear of human rights. HRE requirements as set out in international human rights instruments clearly state that it is *rights* that must be the explicit feature of curricula (Daniels, 2018; BEMIS, 2013). There has been a long-standing general criticism of citizenship education which suggests that while capturing some sense of rights, what is actually taught in classrooms often translates into an explicit and unhelpful focus on responsibilities (Howe & Covell, 2011). Scholars investigating this issue, and the general link between HRE and citizenship education, have posited that the latter is rarely, if ever, sufficient to fulfil the goals of the former when it is responsibilities that are prioritised (Cassidy et al, 2014; Bromley, 2011; Covell & Howe, 2011). Tibbitts (2002, p.291) argues that citizenship education fails to

'promote a critical awareness that results from exploring human rights' and is potentially a miseducation about rights and an unhelpful conflation for practitioners (Howe & Covell, 2010; Kiwan, 2005). In Part 3 I will outline and analyse the current challenges facing the development of HRE within Scottish education but for now I will focus on the broader issues. The issues identified here I will discuss are: reluctance to teach human rights; emphasis on responsibilities rather than rights; the consequences of focus primarily on responsibilities for the learning of rights; fear of human rights and attempts to depoliticise education; failure to respect children's rights. Taken together, I will argue that programmes of HRE are best placed to meet state obligations in relation to teaching children about their rights and that alternatives in the form of citizenship education as it is normally constituted in the UK fail to do so and may result in miseducation about rights.

The UNCRC makes no mention of the responsibilities of children. When it refers to responsibilities at all it is in connection to the duties and obligations of the state, parents, and other adult authorities to respect, protect, and provide for the rights of the child (Howe & Covell, 2011). All human rights imply correlative duties; this is in effect part of what it means to assert something as a right. This link, the 'correlativity thesis' means that inherent in the concept of rights is the linkage between having rights and having duties, obligations, or responsibilities (Donnelly, 2013; Shue, 2006,1980; Feinberg, 1973). This is a necessary and positive thing. If someone has a right, others (usually the state) have a corresponding duty to provide for that right or to ensure it is not breached. As Howe and Covell (2010, p.94) ask, however, does this mean that rights and responsibilities are of equal importance? Certainly, in terms of learning about one's rights it is the case that it is the rights that are of primary importance. As Howe and Covell (2010, p.94) quite elegantly put it, we have a Convention on the Rights of the Child that 'serves to protect children as a vulnerable class of persons' rather than a Convention on their responsibilities. Children's rights, and human rights generally, do not depend on children or adults fulfilling their responsibilities. That would be simply to misunderstand what human rights are. This is not to say that they are not important. Responsibilities are important as they are a necessary component of a healthy democratic and rights-respecting society (Howe & Covell, 2005; Kymlicka & Norman, 1995). However, citizenship education is interested in civic responsibilities and their relation to civic rights or citizenship status. These sort of responsibilities, however, are not, and should not be linked to human rights. The conceptual incoherence I discuss in connection with Kiwan's argument (2005) in 10.1 is to make this link when teaching about human rights themselves. It is certainly true that a well-ordered and healthy democratic society requires

citizens who appreciate they have responsibilities, but this should not be confused with the human rights they have which are unconnected to their civic engagement entirely, and conceptually and necessarily so.

However, as Howe and Covell (2010, p.93) make clear, in public discourse and policy discussions much of the attention is given to responsibilities and to the responsibilities of children themselves. According to Osler and Starkey (2005), a major factor in this is that a focus on rights is often seen as provocative or inflammatory, inviting political controversy and questions about the extent and limits of rights and potential clashes between different groups of rights holders. To minimise controversy, therefore, reference is made to responsibilities as well as rights in order to depoliticise claims about rights (Osler & Starkey, 2005). To point to one example from Scotland, we can see the direction that pupils are able to exercise 'rights appropriately and accept the responsibilities that go with them' (LTS, 2009; p. 24[60]). As one of a very limited number of references to rights (not even human rights) found within guidance for Scottish teachers surrounding policy, this is something of a concern (Daniels, 2018).[61] How one exercises rights *inappropriately* and what comes of not accepting the responsibilities that go along with them I leave open for speculation. As Struthers (2015) notes reflecting on the Black and Ethnic Minority Infrastructure in Scotland (BEMIS) (2013) survey of HRE within Scottish education, some teachers misunderstood the basic idea of rights-respecting learning environments, believing this concept to relate only to behaviour management in the classroom.[62] The potential explanation for this I will discuss further in outlining the deficiencies in HRE in Scotland in Part 3 but guidance such as outlined above is likely to have some role. What is of great concern particularly is the potential for considerable confusion if the responsibilities focused on are not responsibilities in the sense of the correlative duties we or others have in relation to our rights, but rather generic responsibilities that are more or less arbitrarily tied to rights, typically in misguided attempts to link children's rights and behaviour policies. This is both bad practice and a fundamental miseducation about rights and should be strongly challenged. Clear guidance in policy and effective professional learning to enable teachers to more clearly understood what

[60] Learning and Teaching Scotland is now known as Education Scotland.
[61] I will say more about the lack of explicit guidance surrounding human rights in Scottish education in Part 3.
[62] BEMIS is the national umbrella body supporting the development of the Ethnic and Cultural Minorities Voluntary Sector in Scotland. BEMIS was established in 2001 to promote the interest of voluntary organisations, develop capacity and support inclusion and integration of ethnic minority communities (https://bemis.org.uk/about-us/).

HRE is and how it should be developed within schools is vital in preventing errors of this sort.

To return to the research undertaken by Howe and Covell on the RRR initiative discussed in 8.1, the findings of this project are helpful in clarifying how and why miseducation about rights may occur. Again, with the necessary caveats about the generalisability of the findings of their research, it is useful to consider the contrasts they uncovered between schools which had fully implemented (FI) the RRR model and those that had only partially done so (PI). First, in comparison to teachers and principals in FI schools, teachers and principals in PI schools were 'more reluctant to educate children about their rights in a systematic and comprehensive way' (Howe & Covell, 2010, p.97). Second, Howe and Covell (2010) found that teachers in PI schools were much more comfortable in teaching responsibilities or giving emphasis to responsibilities in the overall teaching of rights and responsibilities. Thirdly, the effect of such a focus on responsibilities was seen to 'compromise the power of teaching children's rights' and to undermine the success of the RRR initiative itself (Howe & Covell, 2010, p.97).

10.1 Reluctance to Teach Children About Their Rights.

The reluctance to teach children's rights is a recurring theme in the literature, although the potential cause for this reluctance is varied (Howe & Covell, 2010; Cassidy et al, 2014). Howe and Covell (2010, p.97) in discussing the experience of the RRR initiative suggest that one explanation for reluctance to teach children's rights is inadequate knowledge and understanding of the rights of children and 'lingering myths about the nature of children's rights'.[63] Such misunderstandings and myths rather unsurprisingly lead to attitudes that do not support the teaching of children's rights, nor the acceptance that they, in fact, do have them (Covell et al., 2002; Howe and Covell, 2005). The source of this reluctance may also result from a belief that children are insufficiently mature to exercise their rights, or perhaps that children are incapable of being the bearers of rights. There are, of course, long-standing debates over the status of children and whether or not they should be considered as fully, partial, or incapable of being citizens in any sense. What matters most here is the fact that legally children have rights. Little else matters in the context of the state fulfilling its

[63] See also Howe and Covell (2005) and Lundy (2007).

obligations in this regard, nor the obligations of teachers themselves, even if the nature of the political status remains unresolved. Indeed, one has no legal right to withdraw from teaching children that they have rights just in case it conflicts with one's deeply held religious or philosophical beliefs about their political status. It is nonetheless important and has implications for both how programmes of citizenship education may be justified and the nature of what is taught; if children are not just future citizens, citizenship education is no longer solely about preparation for their future role in society, it must contend with their participation and rights now. Human rights education is directed always to the rights of children *now* and questions of the citizenship status of children has no bearing on their rights nor their right to participate now. The Convention is clear, children are the proper bearers of rights, they have rights, and they are not the property of their parents. Further, as referenced previously, a general trend of depoliticising education and children themselves in education is also in evidence in beliefs that teaching children their rights is to inappropriately politicise children (Exposito, 2014; Kulynych, 2001).

There are, alternatively, some more practical considerations that may lead to reluctance to teach children about their rights centring on fears over lack of control precipitated by empowering children (Struthers, 2016; Cassidy et al, 2014; Alderson, 1999; Torney-Purta et al., 1999). The persistent myth that "all hell will break loose" (Cassidy et al, 2014) nicely captures the position. Again, it is worth recalling that a similar reluctance was expressed in some quarters (and indeed still is) to the abolition of corporal punishment in schools. Any culture or institutional reliance on the necessity of *dis*empowered children is worth reflecting on to the extent it persists in contemporary practice. As identified in chapter 7, children's rights are still routinely violated within schools, suggesting significant work needs to be done to address the causes of this failure. It is worth noting again the curious and potentially highly suggestive fact that schools are reluctant to identify injustices and inequities in schools as breaches of human rights even when they demonstrably are (Lundy & Martinez Sainz, 2018).

One further important factor that may account for reluctance to teach rights is the 'insufficient training teachers typically receive in the participatory pedagogy that is required by the Convention' (Howe & Covell, 2010, p.97). The evidence throughout the literature is 'that teachers are poorly prepared to teach in non-traditional ways' (Howe & Covell, 2005). A logical consequence of this fact is that schools tend to continue to lack rights-consistent democratic practices and ethos (Osler & Starkey, 2006). Hence the continuing reluctance to

teach human rights and the failure to address rights violations in schools are unlikely to be altered unless positive steps are taken to address these issues. I will discuss these issues directly in connection to Scotland in Part 3 where lack of knowledge, training, and clear guidance in the curriculum, have similar results. Positively, however, Covell et al. (2002) note that attitudes that limit support for teaching children about their rights tend to change when teachers have a good understanding of the Convention and are able to see the educational and social benefits of HRE. It must be remembered that most of the advances I advocate here in relation to HRE as it relates to children necessarily also have implications for the programmes of HRE that are required for teachers to enable them. I will return to this issue in discussing concerns I have about how this would be possible beyond a very truncated form without much greater development of theories of HRE and theories of HRE pedagogy. I will argue that to develop such theories HRE literature needs to engage with theories of human rights (orthodox and political). I will argue that in order to prepare teachers to teach HRE we must offer them some understanding of what human rights are and what we can and cannot teach as *true* about them. Given this is a matter of reasonable disagreement we require some principles to guide our decisions on this issue. This point can also be extended to children. What do we teach as true about human rights and how do we justify this? As I note in Chapter 6, in order to fulfil existing requirements for HRE: teachers must be aware of relevant rights legislation, promote human rights values in a respectful environment, and perform their duties in a way consistent with children's rights. This, however, is not possible without training and it must be remembered that states must promote adequate training in human rights for teachers in order to achieve this.

10.2. Linking Responsibilities and Rights.

To return to the findings of Howe and Covell's work on the RRR initiative, they found that a focus on teaching responsibilities rather than rights has 'important implications' for children's understanding of the nature of rights (Howe & Covell, 2010, p.99). In their analysis of the differences between schools in which RRR was fully or partially implemented, children from the latter group of schools when interviewed showed 'little knowledge' of the nature of rights (Howe & Covell, 2010, p.99; Covell, Howe, & Polegato, 2011). As they note, 'a striking majority were unable to describe what rights were' (Howe & Covell, 2010, p.99; Covell, Howe, & Polegato, 2011). This is importantly to fail to meet obligations in line

with the right to education and requirements for HRE (see 5 and 6.3). When asked to explain what their classroom charter was about, many children in partially implemented RRR schools reported that 'it listed the classroom rules' and with further questioning, that they had been taught that 'that rights are contingent on responsibilities - only children who fulfil their responsibilities enjoy their rights' (Howe & Covell, 2010, p.99; Covell, Howe, & Polegato, 2011). To quote an eye-opening passage, Howe & Covell found that children in these schools were of the belief that those were the rules: '[c]hildren who are naughty…, do not get rights'. Howe & Covell, 2010, p.99; Covell, Howe, & Polegato, 2011). In contrast, children from schools in which a programme of HRE was fully implemented were able to demonstrate an understanding of their rights and that they were not dependent on behaviour (nor anything else for that matter). In summarising their findings, Howe & Covell (2010, p.99) note that these data suggest that focus on responsibilities may actually compromise children's capacity to understand their rights. This amounts to a serious miseducation on children's rights and a failure to realise their right to education itself.

We have reason to conclude on the basis of this research data that a focus, primarily, on responsibilities may, comprise children and young people's capacity for understanding their rights (Howe & Covell, 2005; 2010). Further, it has been argued that overemphasis on responsibilities tends to be negative and demoralising, focusing more on a sense of what is owed to others rather than what one is entitled to (Howe & Covell, 2005;2010; Damon and Gregory, 1997). Moreover, it is reasonable to think that focus on responsibilities at the expense of rights will both curtail the ability of children to assert or claim their rights, which will again be to violate their rights in connection with the UNCRC specifically. Crucially, it seems evident both theoretically and in the limited empirical data on the matter that the best way to ensure that learners develop rights-respecting attitudes is through *explicit* focus on the rights themselves, the means for the protection and realisation, and the kind of participatory activities that goes along with them (Bajaj, 2011; Howe & Covell, 2010). I will develop a closely related point in discussing the need for legal literacy in conjunction with explicit focus on learning about rights shortly. It remains the case that there is significant potential for miseducation about human rights and in order to address this I contend that programmes of education, like the RRR initiative, UNICEF's rights respecting schools award, the EDC/HRE proposal in Chapter 9, and any sufficiently developed alternative proposal for HRE, are necessary in order to first fulfil the obligations on states to provide education consistent with their treaty obligations *and* ensure adequate education about rights for

learners. I contend there are clear reasons therefore to ensure that citizenship and human rights are not run together inappropriately in education. If they appear jointly the important conceptual differences between the two must be made apparent and reflected in the organisation of the programme of education and its purposes (I believe EDC/HRE is a model of good practice in this regard). Further, when this distinction is not upheld and human rights are understood as identical to civic rights or contingent on responsibilities this results in a serious miseducation about human rights that undermines children's learning about their rights and their ability to claim them. In conclusion, I have detailed reasons to support the claim that programmes of HRE with an explicit focus on rights themselves are required to prevent miseducation about human rights within schools. Consequently, I have detailed reasons to conclude that in order to fulfil existing requirements for HRE in relation to the right to education, fully developed programmes of human rights education for both children and teachers are necessary.

11. The Importance of the Law and Legal Literacy.

In this chapter, I will discuss a powerful and novel argument proposed by Lundy and Martinez Sainz (2018) on the role of the law and legal literacy in transformative HRE. I will begin by discussing the importance of legal knowledge both in shaping proposals for HRE before turning to discuss the importance of legal literacy as part of programmes of HRE in order to both empower children to claim their rights and to address ongoing rights violations within school. In Chapter 10 I argued that there are theoretical reasons to prefer HRE over alternatives because they do not necessarily capture what is important about human rights and that alternatives may constitute a miseducation about rights. As I conclude this final chapter of Part 2, I will offer what strikes me as the strongest answer to this question by both making clear the unique contribution programmes of HRE can make in education, and also that it is necessary to fulfil obligations made clear in the UNCRC. I will argue here that legal literacy is necessary to fulfil HRE obligations and necessary to empower children and to address rights abuses within education.

As Lundy and Martinez Sainz (2018, p.15) detail, the discourse around children's rights is often a 'rosy one' focusing on positive images. This 'chicken-soup' approach to children's rights, a term coined by Sloth (1996), has contributed to a presentation of children's rights as uncontentious. This is not the case. In reality, just like all other human rights, children's rights are sources of conflict and tension (Lundy & Martinez Sainz, 2018). The perhaps overly optimistic presentation of children's rights is found in several HRE models and programmes included in the work of the UN (Lundy & Martinez Sainz, 2018). Indeed, it can be identified in the characterisation of HRE as detailed thus far in this thesis. The point to emphasise here is that this "rosy picture" of HRE is lacking in one key aspect: that the capacity to identify and address human rights abuses in schools is given too little attention. Further, as Lundy and Martinez Sainz argue (2018, p.15), the knowledge of legal mechanisms proposed as a central feature of programmes of HRE 'does not take into consideration or address as a relevant starting point the reality of human rights breaches and violations, in general, and those affecting children within schools, in particular'. This point can be extended further when one takes note of the fact that many models of HRE emphasise the 'ethical and moral' aspects of children's rights over the legal components; this is, in effect, to underemphasise the fact that these rights are legal entitlements that ought to have concrete legal consequences (Lundy and Martinez Sainz, 2018). Lundy and Martinez Sainz

(2018, p.15) remind us, even given the existence of legally binding instruments such as the UNCRC, it is common for human rights educators to present rights as something 'much more than a law'. If rights in education are to be taken seriously 'the law undoubtedly has an important role to play' (Monk, 2002, p.56). However, a significant area of disagreement in HRE scholarship surrounds the "appropriate relationship" between HRE as an educational project and the international human rights law framework itself, with some HRE advocates proposing a much looser relationship with the law than Lundy and Martinez Sainz suggest is appropriate.

A close relationship with human rights law is vital because mere adherence to a body of safe human rights "values" can, as Lundy and Martinez Sainz (2018, p.18; Lundy, 2007) posit, 'dissipate as soon as it emerges that children's rights clash with the rights of others (such as their parents) or cost money or promote their self-autonomy'. The reality is that such clashes and breaches will and do occur. Human rights are messy and to proceed as if they are not is to do a great disservice to the purposes of international human rights law and it seems clear that to fail to fully educate children on their rights and especially the mechanisms for their protection. International human rights standards do, of course, promote values like respect, dignity, tolerance and equality, but this not all they do. Perhaps equally importantly, they exist to 'expose breaches' of these standards and to enable states to be 'held to account for their actions' (Lundy and Martinez Sainz, 2018, p.15). Human rights both make clear the limits of tolerable behaviour by states and their agents towards citizens (including children via UNCRC) but also, and equally importantly, they serve to *expose* what is intolerable and unacceptable (Lundy and Martinez Sainz, 2018). Education about, for, and through human rights should surely do the same.

When we consider what is necessary for human rights education to occur as it is detailed in international instruments and clearly expressed by the Committee on the UNCRC, it is apparent that learning about, through, and for human rights involves seeing human rights valued and embodied in the lived experiences of children. This means children should 'learn about human rights by seeing human rights standards implemented in practice, whether at home, in school, or within the community' (CRC, 2001, para 15). Human rights education should be a 'comprehensive, life-long process, and start with the reflection of human rights values in the daily life and experiences of children' (CRC, 2001, para 15). As detailed in Chapter 7, this is not always the case and many children's schools do not provide opportunities for children to claim their rights to participate, these human rights values are

not in evidence in children's interactions with their teachers, and children's rights are still regularly breached in a variety of ways. If schools are to model the behaviour and values necessary to develop a rights-respecting culture, there appears to be a long way to go. As Lundy and Martinez Sainz (2018, p.16) elegantly put it, the lived experiences of children of injustice, exclusion or discrimination 'should not be disregarded as less valuable for the overall purpose of learning about their rights'. On the contrary, they note, these should be addressed as 'key opportunities for children to develop the legal knowledge required to identify, handle, and act on violations and breaches of their rights within and beyond school' (Lundy and Martinez Sainz, 2018, p.16). The best human rights education cannot exist in an artificial bubble coloured by the overly rosy picture of children's rights that we might like to paint. The "dark side" of human rights, that is, their contested nature, their violation, the struggle to claim them, is equally important in providing an education about and for human rights. Schools are of course reluctant to consider this "dark side" and especially where it implicates the existing practice in those very institutions themselves. While it is crucial that schools engage with the 'safer, positive concepts' involved in HRE such as democracy, tolerance, and respect for diversity, this is not and should not be *all* that human rights education is. Aside from the fact that such an education would be incomplete, it simply fails to accurately capture what is meant to be special about human rights education; namely, that it has the potential to enable children (and adults) to claim their rights and to build a rights-respecting culture where rights violations are decreased and people are supported in seeking legal remedy where appropriate. Without engagement with this "dark side" and the importance of understanding the law itself, HRE will remain *merely* an aspirational but safe enterprise. Both the aspirational character of the human rights movement and the realities of the struggle for human rights are key elements of HRE. Part of the significance of HRE as Lundy and Martinez Sainz (2018, p.16) remind us is precisely 'that it takes into consideration challenges and barriers for the enjoyment of rights as well as the empowerment -through knowledge and skills- to exercise them'. Human rights law and legal knowledge is 'essential' for such empowerment (Lundy & Martinez Sainz, 2018, p.16). Moreover, this legal literacy seems vital in order to fulfil one of the main aims of HRE as detailed in UNDHRET (2011) which is to contribute:

> to the prevention of human rights violations and abuses and to the combating and eradication of all forms of discrimination, racism, stereotyping and incitement to hatred, and the harmful attitudes and prejudices that underlie them. (Article 4, UNDHRET)

I believe this is a powerful argument for the importance of legally informed programmes of HRE. I will make the case in Part 3 that the incorporation of the UNCRC into domestic law in Scotland strengthens the necessity for legal knowledge serving as the basis for the development of HRE further. I move next to discuss the role that legal literacy can play within programmes of HRE and why this should be seen as vital.

11.1. Legal literacy for Transformative Human Rights Education.

Human Rights Education, like most educational initiatives, is subject to a number of different approaches. How programmes of HRE are to be developed and implemented has been the subject of considerable discussion in the literature and several alternative models have been proposed. I will discuss these in detail in considering my own proposals for HRE in later chapters, but it is sufficient for now to point to the important characteristics of transformative HRE in order to motivate the current argument. Transformative HRE is distinct from other approaches in that it 'exposes learners to gaps between rights and actual realities and provokes group dialogue on the concrete actions necessary to close these gaps' (Bajaj et al, 2016). This is, in effect, to intentionally engage with the "dark side" of human rights detailed above. The aim of transformative HRE is to 'bring rights to life', to address their violations and to 'foster their protection and promotion through individual and collective action' (Lundy & Martinez Sainz, 2018, p.17). Whether this is an appropriate and justifiable aim for programmes of HRE within state education is a question I will return to in discussion of how HRE may be justified as component of the curriculum, but I will leave it to one side for now. Transformative HRE, therefore, requires transmission of the legal knowledge but 'goes beyond an awareness of the local and international instruments of human rights.' (Lundy & Martinez Sainz, 2018, p.17). In order to empower individuals and communities to recognise and address breaches and violations of human rights, knowledge and understanding of both the law and the legal avenues open to them is necessary (Lundy & Martinez Sainz, 2018). It is only legally-literate individuals and communities who will have the capacity to transform breaches and violations of rights - including children's rights in education - 'into actionable principles for their protection'. (Lundy & Martinez Sainz, 2018, p.17). Crucially in the context of programmes of HRE within schools, children themselves must become legally literate and develop the knowledge and skills necessary to identify breaches of rights in their own lives and where appropriate seek redress. I, as indicated previously, agree with Lundy

and Martinez Sainz that a bridge must be built between legal scholarship and scholarship in HRE in order to advance theory and practice in both. Further, I think they are correct to argue that theories of HRE and programmes of HRE ought to credit the law, binding instruments such as the UNCRC, and legal literacy as necessary conditions for 'the transformative, emancipatory and critical learning required for the prevention and elimination of human rights violations' (Lundy & Martinez Sainz, 2018, p.17). It is my contention that legally literate HRE is uniquely capable of promoting awareness of the primary purpose of international human rights standards, and in enabling rights-holders (including children) to claim their rights and when necessary seek redress for wrongs. This I believe is the crux of the argument here and what can enable HRE to stand apart as a powerful component of the curriculum and a crucial part of states meeting their obligations and in implementing the right to education fully.

It is important that children's lived experiences, good and bad, are part of their education in human rights. It is one thing to know that one experiences injustice, another thing entirely to be equipped to specify the nature of this injustice in terms of one's rights or to be empowered to take action to address this fact. Children have a right to know what their schools and others should be doing to support their rights, but equally what they should not be doing to them. Human rights education is one place to help to ensure that this occurs (Lundy & Martinez Sainz, 2018). Of course, this may be resisted by schools over fears such a programme of education will be disruptive to education more widely as it is currently constituted, but, as Lundy and Martinez Sainz (2018) note, that is perhaps the point.

I return now to the motivating question of Part 2 and ask: "Why human rights education?". The answer I offer at this point is: precisely because nothing else can fulfil the role in its entirety within state education of equipping children with the knowledge, understanding, and tools to address breaches and violations of their rights. Moreover, HRE is an undervalued way of educating children and young people *in* human rights (Lundy & Martinez Sainz, 2018, p.18). To conclude, I have outlined arguments in support of human rights education in Chapters 8-11. First, I drew attention to the positive effects fully developed programmes of HRE can have in schools outlined in recent empirical work. Second, I detailed the important role programmes of HRE can play in driving social cohesion and contributing strongly to democratic goals of education in liberal democratic states. I then made the argument that programmes of HRE are necessary to fulfil elements of the right to education; that alternatives have proven incapable of doing so thus far and may, in fact,

contribute to miseducation about rights; and finally, that programmes of HRE are best placed to contribute to the important need for legal literacy in education in order to address rights violations both within and outwith formal schooling. Taken together I believe these arguments offer a strong multifaceted case in favour of HRE and in the next part of this thesis I will turn my attention to the place of HRE within Scottish education, to assess how HRE has been developed in the Scottish curriculum (and wider policy), the challenges posed by the incorporation of the UNCRC into Scots law, and the potentially radical rethink of education that may now be required.

Part 3: Human Rights Education in Scotland: Challenges and Opportunities.

As outlined in Parts 1 and 2 of this thesis, the right to education has become a mainstay of international education policy debates over the past several decades. Successive Scottish Governments have expressed a commitment to the promotion of a society that is inclusive, respects, and realises the rights of all people. The publication in December 2018 of the recommendations of the First Minister's Advisory Group on Human Rights Leadership outlines an ambitious programme for the further incorporation and realisation of human rights in Scotland including economic, social, and cultural rights such as the right to education. Additionally, building on several decades of work, on the 1st of September 2020 the Scottish Government introduced the *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill*. This Bill will incorporate the UNCRC into Scots law. One feature of such commitments, we might reasonably posit, ought to be the realisation and implementation of Human Rights Education (HRE) within Scottish educational policy. As I establish in Part 2 there are strong arguments both that provision of HRE is part of a state's obligation to realise the right to education, and that there are several further arguments in favour of HRE as an educational programme. However, serious questions have been raised in the literature about how successful current attempts to incorporate HRE within the Scottish education system have been (Daniels, 2018; Struthers, 2015a; BEMIS, 2013).

With this in mind, it is timely to reflect on the current status of HRE in Scotland in order to highlight any issues as things stand and to identify a way forward in Scottish education policy and practice. To this end, I will outline the current strategy for the realisation and implementation of HRE within Scottish education, highlighting deficiencies identified in the literature in: 1) the incorporation of HRE within the Scottish curriculum; 2) levels of confidence and preparedness of teachers in implementing HRE; 3) a lack of clarity surrounding HRE both as a concept and programme of education. Having highlighted these challenges, I will discuss a number of steps that can be taken in order to improve the realisation of HRE within Scottish education and discuss the necessity of doing so if the Scottish government is serious about both strengthening the realisation of human rights in Scotland and becoming a human rights leader. Having identified these specific issues in relation to the Scottish context I will then turn to several broader and, I will argue, more serious issues with HRE as both a concept and as an educational initiative. These issues will revolve around the lack of theoretical clarity surrounding HRE and its lack of justification.

This will build on general points established thus far in the thesis but will primarily focus on the Scottish context although the broader conceptual points raised are, I would think, applicable in any liberal democratic state.

I will make clear the reasonable concern that human rights protections in Scotland may be undermined by the consequences of the United Kingdom's exit from the European Union and related domestic legislation for the UK internal market (Chapter 14). I stress this point to put into stark relief the importance of work in Scotland over the last decade to improve human rights realisation and especially children's rights protections. I then discuss the right to education in law and legislation and consider the place of HRE within Scottish education. I conclude that there are key weaknesses in how HRE is developed in Scotland in relation to several basic requirements (HRE1-5) (Chapter 16). On this basis, I conclude the following: That Scotland fails to meet any of the five basic requirements for HRE that I detail in this thesis. This failure, I argue, leaves teachers unsupported in their practice and as a result that children's rights *to* and *in* education are not fully realised.

I subsequently discuss the incorporation of the UNCRC into Scots law, which I argue is a profound milestone in human rights protection for children in Scotland (Chapter18). I detail the specific proposals put forward and then begin to reflect on the implications that this landmark in children's rights will have for Scottish education and society more widely.

Following this, I point to recent research in HRE identifying general problems with the challenges of curriculum development in relation to HRE, and the problematic effects of the lack of clear guidance on practice in HRE in English primary schools (Chapter 20). I note particularly, the conceptual confusion that results in teachers' own conceptions of human rights playing a far too central and potentially damaging role in the teaching about human rights values. Moreover, this research makes clear how the lack of curricular guidance, as well as lack of clear theoretical support for HRE practice against accusations of "controversy", have the potential to distort HRE practice. This distortion has the effect of changing HRE to the point where it is not recognisably *about* or *for* human rights properly understood. The replacement of explicit engagement with human rights and human rights values with "less controversial" material has been long established in the literature as a potential problem and I make the case that HRE is held back considerably by the lack of a philosophically informed theory of HRE to support and enable good practice.

These failures and/or challenges, I argue, are further compounded by the current conceptual difficulties faced by HRE (Chapter 21). I point towards gaps in the literature, begin to outline the shape of some problems for future research, and stress the need for a well-established theory of HRE to begin to address the difficulties in articulating a curriculum, providing necessary training in HRE for teachers and policymakers and making progress in the core existential question of what HRE is and what it is for. I then consider more fully the implications of incorporation for HRE in Scotland. I argue that the incorporation of the UNCRC makes even more pressing the need to address current failures in respect of the basic requirements of HRE (HRE1-5). Scottish Government ambition for Scotland to be "the best place to grow up and learn" and the legal and political commitments associated with incorporation make the case that, as a matter of priority, the challenges and deficits in relation to HRE outlined in this thesis are addressed. In this thesis I argue that the failure to realise adequate policies and programmes of HRE is a failure to realise crucial aspects of the right to education. It is, therefore, to argue that Scotland cannot currently meet its international and, in the event of incorporation, national legal requirements in respect of the right to education.

Finally, in Chapter 22 I look to future directions in both policymaking and research surrounding HRE and, specifically, HRE in Scotland. I argue that in order to ensure Scotland is able to meet its obligations after the incorporation of the UNCRC, and assist teachers in implementing HRE within Scottish classrooms, the challenges I outline here must be resolved. I argue that work is required within Scottish policymaking and civil society more widely to articulate a clear sense of the place of human rights education in the curriculum and its aims for Scottish society. I further argue that work within HRE scholarship is badly needed to address and, if possible, resolve some of the deep conceptual issues facing HRE in order to assist its development within states and globally. To conclude, I make clear that the sustained period of support and momentum behind greater realisation of human rights offers significant opportunities in Scotland. I argue that the incorporation of the UNCRC is the ideal impetus for resolving the issues in the realisation of the right to education and HRE that I detail in this thesis. Moreover, I argue that to fail to do so runs both contrary to Scotland's international (and soon to be national) legal obligations strongly against the political commitments to make Scotland the best place for children to grow up and learn, and to be a human rights leader.

12. Human Rights in Scotland: An Introduction.

The Scottish Government has long made clear its commitment to the promotion of a society that realises the rights of all people (BEMIS, 2011). In its 2017-2018 Programme for Government, the Scottish Government reaffirmed its commitment to children's rights, in particular, saying that:

> 2018 is Scotland's Year of Young People, which presents an opportune moment to realise more fully the rights of children and young people and further embed a rights-based approach in all that we do.…[we will undertake] a comprehensive audit on the most effective and practical way to further embed the principles of the UN Convention on the Rights of the Child into policy and legislation. (Scottish Government, 2018a)

This commitment continues a trend over the past several years where the Government has repeatedly used the strapline "making rights real" as part of its key policy commitments in a range of areas (Gadda et al, 2019, p.2). In relation to children's rights in particular, and especially in conjunction with the UNCRC, this highlights a commitment to strengthening provision and realisation within Scottish policy and practice. This commitment represents a level of prominence, as Gadda et al (2019) suggest, that we have never seen before in Scottish national policy. Indeed, we can see at least as far back as 2013 (and certainly further) signs of the move in Scotland in this direction. The 2013 launch of Scotland's National Action Plan for Human Rights (SNAP) was to act as a route map of sorts in 'realising the full potential of human rights' within Scotland (SHRC, 2013, p.17). As Ferrie et al (2018) outline, there have been a number of questions and challenges raised surrounding the realisation of international rights in practice that have become increasingly significant as the international human rights movement has changed and developed over time, moving from law-making to implementation and enforcement at the national level. Many of these issues have been demonstrated in the Scottish experience surrounding the development of SNAP itself. Ferrie et al (2018, p.2) draw our attention to Scotland's emergence as a strong pro-rights voice within the UK. Given the programme of economic austerity that has characterised successive UK governments (2010-2020), as well as the shifting and uncertain place of the UK outside of the EU, Scotland (or at least the Scottish government's) commitments to the maintenance and enhancement of the legal status of regional and

international human rights interests, stands 'in sharp contrast' to the ongoing UK government position.

From a legal perspective Scotland, as a constituent nation within the UK, has certain obligations in relation to human rights treaties that the UK has ratified (for current purposes the UNCRC is the most important of these concerning HRE). Scotland is itself party to the seven core UN human rights treaties and several Council of Europe treaties. Further obligations under a variety of other international conventions and protocols also apply to Scotland. At the current time, only those rights derived from the European Convention on Human Rights (ECHR) have been given effect in domestic law. These rights are set out in the Human Rights Act (1998) and also form an important part of the Scotland Act (1998) which, *inter alia*, makes clear the devolved capabilities of the Scottish Parliament. Prior to the UK's exit from the EU, the EU Charter of Fundamental Rights also provided important human rights safeguards in connection with EU law that could be applied at a domestic level. On January 31st, 2019, the UK left the European Union, casting doubt on the ongoing protection of these rights. This is, of course, a considerable worry for many and what, if any, future steps are taken regarding the state of human rights within the UK as a whole are taken over the next few years remains to be seen (I emphasise the already profoundly troubling developments in the period 2017-2020 in Chapter 14). As I will detail here, the Scottish Government has been proactive in anticipating this outcome and has sought to put in place measures to ensure a measure of continuity for these existing protections but also, and importantly, to extend them.

As Gadda et al (2019, p.2) highlight, while the UK is bound by international law, ratification of the *United Nations Convention on the Rights of the Child* (UNCRC) in 1991 does not permit rights in the UNCRC *itself* to be 'justiciable nationally'[64]. A consequence of this fact, and an ongoing reluctance on the part of the UK Government over the intervening period, is there are important and significant gaps relating to the implementation of the UNCRC in domestic law[65]. Necessarily, therefore, there are several pressing questions about how well the rights outlined in the UNCRC are realised in the UK. While Scotland has its

[64] Instead, rights must be written into domestic legislation while reference can also be made to the European Courts of Human Rights or Justice.

[65] Matters vary in Scotland (as noted) and in Wales where moves have been taken towards a closer relationship with the UNCRC perhaps even including incorporation into domestic legislation. I will return to this matter later.

own legal system, it is limited in what it can do in this regard[66]. Currently, there are a number of options available for the immediate protection of economic, social, and cultural rights in Scotland and importantly, there is already precedent for Scotland going further than the Westminster Parliament in subscribing to international commitments (Boyle & Hughes, 2018). In Chapter 19, I will discuss plans for the incorporation of the UNCRC into Scots law, but at this stage, I will focus on the picture as it stands. The Scottish Government has made moves in this direction such as the introduction of the Children and Young People (Scotland) Act 2014, which places duties on the Scottish Government and public bodies regarding the UNCRC. While the protections for children's rights in Scotland will be greatly improved by the passing of the UNCRC Incorporation (Scotland) Bill (2020), and I will return to this point shortly, it is currently the case that Scottish Ministers are under a duty outlined in the above Act (Section 1(1)):

> (1) to keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and
> (2) if they consider it appropriate to do so, take any of the steps identified by that consideration.

Further:

> (3) … Scottish Ministers must promote public awareness and understanding (including appropriate awareness and understanding among children) of the rights of children.

These duties are, of course, highly significant in the discussion of HRE I will pursue here. But it is important at the offset to be clear about how far these commitments go legally. While these duties are to be welcomed, and particularly the direct reference in Scottish domestic legislation to the UNCRC[67], these duties are 'vague and weak legally' and would require further forms of 'accountability and persuasion' to ensure the realisation of children's human rights (Gadda et al, 2018, p.3). However, all of these incremental moves towards greater realisation of rights in Scotland culminated (or at least converged) in the publication on the 10th of December 2018 of the recommendations of the First Minister's Advisory Group

[66] For a good discussion of the Scotland's legal position in relation to international human rights law and considerations of the devolved and reserved powers in the UK see Boyle and Hughes (2018) and Gadda et al (2019).

[67] For example, section 3 above roughly mirrors UNCRC Article 42: "*States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike."*

on Human Rights Leadership. The group was set up by Scotland's First Minister to make recommendations on how Scotland can 'lead by example in the field of human rights'[68]. More significant for this thesis is the commitment that this would include economic, social, cultural, and environmental rights. The group sought to produce recommendations that served both to mitigate the risks created by the UK's exit from the EU and UK Government proposals to revise or repeal the Human Rights Act, but also to further extend the range of rights covered in domestic legislation in Scotland. In her recent discussion of the future of Economic, Social and Cultural Rights in Scotland and the prospects for meaningful enforcement, Boyle (2019, p.113) reminds us that, even if the political impetus exists to establish Scotland as a human rights leader, this will require a 'reformed legal system' as well as a culture that is better equipped to protect these rights. This latter point, I will argue in what follows, makes up, if not the primary, then certainly a central function of a programme of HRE in the context of Scotland. I will argue that the development of a culture of the sort required to ensure that rights are respected and protected necessarily requires the greater realisation of the right to education more broadly, and human rights education specifically. As we are reminded by the UN (CESCR, 1999), and worth reiterating here, education is both a human right itself and a crucial means of the realisation of all other human rights.

[68] https://humanrightsleadership.scot/

13. Human Rights, Devolution, and Scots Law.

In 1997 the Labour Party was elected as the new UK Government with an overwhelming majority ending a period of Conservative Party dominance in British politics from 1979-1997. Responding to calls for devolution that had been made within the UK for several decades and only marginally, and controversially, blocked in 1979[69], the UK Government's white paper on Scottish devolution, *Scotland's Parliament* (July 1997)[70] would lead to a referendum held on the 11th of September 1997 to ask the Scottish people[71]: 1) Whether there should be a Scottish Parliament; 2) If so, whether it should have tax-varying powers. The outcome of the referendum in Scotland was a convincing victory for those who had supported devolution, with 74% voting in favour. On the additional question of whether the devolved parliament should have tax-varying powers, 64% of voters in Scotland voted yes[72]. Crucially, the result of this referendum gave the UK government a mandate to introduce the necessary legislation to allow for the creation of a Scottish Parliament. Elections to this Parliament were held in May 1999, with the official opening of Parliament, when it assumed its power to legislate on devolved matters, taking place on the 1st of July 1999. This occasion was memorably marked by the oldest serving MSP and long-time advocate of Scottish independence Winnie Ewing MSP declaring 'The Scottish Parliament adjourned on the 25th day of March 1707 is hereby reconvened'[73]. These highly significant events took place over the relatively short period from the 1995 publication of the Scottish Constitutional Convention's report, *Scotland's Parliament, Scotland's Right* which served as the basis for much of what the UK Government did, and the reconvening of a Scottish Parliament after a 292 year adjournment. Moreover, it is not hyperbole to say that the devolution of powers to Scotland, Wales, and later Northern Ireland as part of the Good Friday agreement[74]

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[69] An earlier devolution referendum took place in 1979. Scotland returned a slim majority "yes" vote but failed to meet a threshold condition of 40% imposed and supported by many backbench Labour MPs. The consequences of this event – and subsequent fall of the Labour Government - have shaped Scottish politics ever since for all political parties. Indeed, the speculation of who did what and how it resulted in Thatcher as PM is one of the animating discourses for much animosity between various political factions not simply limited to supporters of independence and Unionists. https://www.open.edu/openlearn/people-politics-law/1979-the-first-scottish-referendum-on-devolution

[70] I will not discuss Wales here. See https://www.assembly.wales/en/abthome/role-of-assembly-how-it-works/Pages/history-welsh-devolution.aspx

[71] This, is should be noted, was in stark contrast to the previous Conservative Government's fundamental opposition to Scottish devolution considering the "Scottish Problem" settled in 1979 and the opinion of the majority of Scottish Conservative MPs at the time.

[72] https://www.parliament.scot/help/61877.aspx

[73] http://news.bbc.co.uk/1/hi/special_report/1999/06/99/scottish_parliament_opening/378105.stm; https://www.parliament.scot/help/61877.aspx

[74] https://www.gov.uk/government/publications/the-belfast-agreement

fundamentally changed the nature of politics within the four nations of the UK. Indeed, it has been the catalyst for a much wider debate of further constitutional questions in the subsequent years. Two comments at this stage will be of considerable importance as this Part of the thesis develops: Firstly, that devolution was a significant political shift in the UK, returning decision making and legislative power to the Scottish Parliament. However, Scottish education as well as the Church and law had never been integrated into the English system and remained independent throughout the entire 292 years of the Union of Parliaments. Education has traditionally been seen as one of these three key institutions that mark most clearly the social and cultural distinction between Scotland and England, or simply what is distinctive about Scotland itself as a nation (Humes & Bryce 2018; Arnott & Ozga, 2016). Secondly, it is, I believe, highly significant that amongst the first Acts of the new Scottish Parliament was legislation specifically on education, but also on the rights of children to and in education. Indeed, the first provision of the *Standards in Scotland's Schools etc. Act (2000) is:*

> 1.Right of child to school education.
>
> It shall be the right of every child of school age to be provided with school education by, or by virtue of arrangements made, or entered into, by, an education authority.

The other highly significant piece of legislation of the 1997- 2001 Labour Government in the context of this project was the incorporation of the European Convention on Human Rights (ECHR) by means of the Human Rights Act (1998). I will discuss the HRA and devolution shortly, but to expand on the sketch of how human rights are implemented in the UK and Scotland currently provided thus far in the thesis, the UK Government signs and ratifies international conventions, and therefore has primary responsibility for coordinating and submitting the reports to the various Committees. However, Schedule 5 of the Scotland Act 1998 empowers the Scottish Government to observe and implement international obligations itself. As regards reporting, the Scottish Government also drafts its own reports which feed into the UK wide submissions to the various UN committees. The ECHR was incorporated into UK domestic law through the HRA in 1998, granting all people within the UK the ability to protect their ECHR rights through domestic courts. Further, if this avenue for action is exhausted petition could be made to the European Court of Human Rights. The HRA itself applies to all public bodies, including the Government and courts. The Human

Rights Act has been applied in several legal cases affecting children and young people some of which have been detailed in Chapter 7 of this thesis.

An important point to keep in mind is that the rights outlined by the ECHR affect Scots law 'at two levels' (Boyle, 2002, p.3). Firstly, while public authorities and courts in Scotland 'have the same duty to give effect to these rights under the Human Rights Act 1998 as public authorities and courts elsewhere in the United Kingdom', the United Kingdom Parliament's legislative powers with respect to Scotland remain 'formally unconstrained by the Act' (Boyle, 2002, p.3). Secondly, however, the 'devolution of certain legislative powers to a Scottish Parliament is limited by the Convention rights' (Boyle, 2002, p,3). Scottish legislation inconsistent with ECHR rights is 'to that extent unconstitutional' (Boyle, 2002, p.3). Put another way, the competence of the Scottish Parliament to legislate is 'constitutionally limited' by the duties imposed in the ECHR (Edwards, 2002, p.202). It is worth clarifying a few aspects of the relationship between the HRA and Scotland Act (1998) and devolution and human rights in general given its salience to this project. I will offer some brief comments to help place discussion of human rights in Scotland in a clearer context but will not seek to offer more than that here.

The "specialness" of the devolution arrangements in the UK - as opposed to federal-state relationships found elsewhere - is twofold, as Himsworth (2012) notes. Firstly, unlike federal-state relationships that are governed by an overarching written constitution that guarantees 'autonomy protection' to both tiers, there is no such protection for the devolved administrations beyond convention (Himsworth, 2012, p.233). The second important feature of the devolution arrangement in consideration of human rights is that both devolution and human rights protection within the UK were both projects of the UK Government and Parliament and remain 'formally subject to the overall supervision and regulation of the UK Parliament' (Himsworth, 2012, p.233). Taken together, the supremacy of the UK Parliament means it *can* legislate on any devolved matter it so chooses but by convention does not do so.[75] This, of course, includes legislation in relation to human rights. Moreover, when the UK Parliament *does* legislate on matters within the competence of the Scottish Parliament, it by convention will seek legislative consent from the Scottish Parliament before proceeding. However, the option to subsequently reject the answer given (as has happened most clearly

[75] This is known as the Sewel Convention. An agreement that the UK parliament, while ultimately sovereign, will "not normally" legislate with regard to devolved matters without the consent of the devolved legislatures. See https://www.parliament.uk/site-information/glossary/sewel-convention/gh

with respect to the EU (Withdrawal) Bill (2018) and UK Internal Market Bill (2020) which I will discuss in more detail elsewhere[76] is within the power of the UK Parliament with no further recourse on the part of the devolved administration. As the UK Parliament remains sovereign this contravention of convention raised considerable ire amongst those keen to see a significant alteration in the constitutional status of the devolved nations within the UK including, of course, the current Scottish Government. However, the important point is that the UK Parliament is capable of legislating on behalf of Scotland against the express wishes of Scotland's elected representatives in both Parliaments. This is significant, as I will discuss shortly, when one considers the divergent paths concerning the Human Rights Act the elected governments in London and Edinburgh appear to be on. To put the point starkly here, on the basis of the nature of the relationship between the parliaments of Scotland and the UK, it is perfectly possible within the law for the latter to repeal the HRA without the consent of the former and thus strip all people in the UK of their domestic legal protections under this act. Whether such an action is politically possible whilst maintaining the Union is another matter entirely. Should the people of Scotland fear such an outcome? In 14.1 I will explore this question, making clear that the answer is (or at least was in 2020) a resounding yes. Before getting to this matter, I will offer a touch more detail on the specific relationship between devolution and the HRA, as it merits some unpacking.

As noted, the incorporation of the ECHR by way of the HRA has the same effect in Scotland as elsewhere in the UK. As Himsworth (2012, p.235) reminds us, however, the 'superimposition of devolution' does make some differences. One example is that if:

> …a court makes a declaration of incompatibility in respect of a provision in a UK Act within a sector of legislative competence now devolved under the Scotland Act to the Scottish Parliament, then any obligation to legislate to remove the incompatibility falls on that Parliament and the power to make a 'remedial order' is available to the Scottish Ministers rather than to a UK-level minister (Himsworth, 2012, p. 235)

More straightforwardly, if the UK passes legislation in an area now devolved to the Scottish Parliament, MSPs are able to "fix the problem" rather than needing to go back to Westminster. However, there are more interesting consequences than this. I noted earlier the way in which the HRA constrains the Scottish Parliament in a way it does not the

[76] See https://www.gov.scot/news/internal-market-bill/ or https://www.holyrood.com/news/view,scottish-parliament-refuses-consent-to-eu-withdrawal-bill_8724.htm

Westminster Parliament and I will say more on that here. The Scotland Act itself imposes on the Scottish Parliament human rights obligations 'over and above those imposed by the HRA' (Himsworth, 2012, p.235; Boyle, 2012). In particular, the Scottish Government is prohibited by law from legislating in a way that is incompatible with Convention rights.[77] This is a point I have touched on before and I return to it to offer this addition point: in the event of the incorporation, the Scottish Government will effectively be adding a *further* constraint of this kind on its activities and that of the Scottish Parliament. It will remain the case that the Scottish Parliament is prohibited from passing legislation incompatible with ECHR rights, and additionally will no longer be able to pass legislation incompatible with UNCRC rights either. This is highly significant and will have obvious and wide-ranging effects on how the Scottish Parliament and the Government itself prepares and develops legislation. I will return to this in discussion of incorporation in Chapter 19 where it plays a significant part in the development of the bill introduced to incorporate the UNCRC.

[77] In this case the ECHR.

14. Should We Worry About the Future of Human Rights in Scotland?

As noted, the Scottish Government has been clear that concerns over the ongoing role of the Human Rights Act and the attitude expressed by senior Conservative ministers towards it may require action in Scotland to ensure the continued protection of human rights. The divergence Ferrie et al (2018) notes between the governments in Westminster and Edinburgh both in rhetoric and substance lends credence to a perception that, if Scotland is serious about realising rights for all in Scotland, Scotland must legislate as far as possible within its competence to do so rather than rely on UK wide legislation. Why is this significant in the context of the current project? Simply put, I share the grave concerns expressed about the future of human rights within the UK and while this Part of the thesis will focus on the opportunities presented to Scotland through the incorporation of the UNCRC, I remain mindful that it may be necessary that a Scottish Human Rights Act is created simply to maintain the existing protections the people of Scotland enjoy. This is not to say anything about the potential for the disruption of the Scottish Parliament's capacity to legislate after the UK exits from the European Union. Central to all of this is the fact that Scotland has always retained a separate legal system from England and Wales with Scottish courts playing an important role in supervising human rights in Scotland as per the terms of the Scotland Act 1998. Human rights in Scotland themselves are a devolved and not reserved matter[78] and, therefore, any actions taken by the UK government that may impinge on or restrict the competence of the Scottish parliament to legislate on human rights, or the supervisory role of Scottish courts over human rights in Scotland have the potential to undermine the rights of those living in Scotland. It is with this in mind, that we must consider threats to human rights in Scotland.

On January 31st, 2019, the UK formally left the EU and entered into a transition period to negotiate the future relationship between the UK as a "third country" and the EU. While an agreement on the future of UK-EU trade was finally secured on the 24th December 2020, the often-fractious character of the political and legal debates surrounding the nature and consequences of this future relationship will, undoubtedly, continue.[79] From a human rights perspective, the at times adversarial tone of language used by the UK government in

[78] For an explanation of reserved and devolved powers in Scotland see https://www.parliament.scot/visitandlearn/Education/18642.aspx

[79] This thesis was submitted on or before December 31st, 2020 and is, therefore, unable to provide greater clarity on this matter.

connection to the Human Rights Act, the European Convention on Human Rights and indeed the oversight of the European Court of Human Rights has been noted with concern by many commentators[80]. The EU, while the UK was a member state, took several steps to reference children's rights in its founding objectives and principles (Together, 2016). Article 3 of the Lisbon Treaty, for example, outlines the EU's commitment to promote the protection of the rights of the child. Article 24 of the Charter of Fundamental Rights guarantees the protection of children's rights by EU institutions and in EU countries when they implement EU law (Together, 2016). As the formal process to leave the EU has now been concluded, any children's rights advances made by the EU no longer have effect in the UK, unless and until domestic legislation to replicate them passed.

The consequences for children and young people of the exit from the EU in terms of their human rights are yet to become clear, but there is considerable reason for caution. It is important to recall that while 52% of those voting in the 2016 referendum on the EU voted to "leave", neither Scotland's nor Northern Ireland's electorate voted to leave, and the decision to leave clearly fails to reflect the views of the majority of children and young people. [81] While I will not discuss the constitutional questions this decision, and the decision to ignore the devolved parliaments of Scotland, Wales, and Northern Ireland who withheld legislative consent for the terms of the UK's exit from the EU may have for the future shape of the UK, as Together (2016) make clear, it is essential that, whatever happens next, that children and young people's rights are central to any further discussions relating to Scotland's place in Europe. [82]

Former Attorney General[83] Geoffrey Cox MP (2018-2020), a supporter of a "British Bill of Rights", made clear his support for reform of the Human Rights Act partly premised on his perception that 'there is a sense in which the [European] Convention on Human Rights doesn't feel like it's owned by the British people'[84]. Whether accurate in reflecting the

[80]To offer a small sample see http://theconversation.com/uk-human-rights-act-is-at-risk-of-repeal-heres-why-it-should-be-protected-111368; https://www.independent.co.uk/news/uk/politics/theresa-may-human-rights-act-repeal-brexit-echr-commons-parliament-conservatives-a8734886.html

[81] It is clear that the overall vote for the UK to leave the EU went against the views of the majority of children and young people. Throughout the UK, it has been estimated that 73% of voters aged 18-24 voted to remain in the EU. In Scotland, only 11% of the 72,744 responses from young people aged 12-25 to the Scottish Youth Parliament's recent Lead the Way Manifesto wanted to leave the EU. (Together, 2016, p.17).

[82] There was little evidence that the UK Government intends to consult the Scottish Government on the future relationship of the UK with the EU during the transition period and certainly not children and young people in Scotland.

[83] Her Majesty's Attorney General for England and Wales is one the Law Officers of the Crown. There is a separate Advocate General for Scotland.

[84] https://www.telegraph.co.uk/politics/2020/02/12/attorney-general-calls-british-bill-rights/

feelings of the British people - such that there is a settled majority view on such things - or not, the key point is the consistent representation by senior members of the Conservative Party of the ECHR as something "other" or "alien" to the British people. The appointment of Suella Braverman MP as the new Attorney General following a cabinet reshuffle in February 2020 marked a continuation of this outlook. Braverman (2020, n.p) criticising the apparent role of the HRA as a catalyst for a "proliferation" in the use of judicial review challenges in the UK, suggested that whilst 'noble in its intentions, the concept of "fundamental" human rights has been stretched beyond recognition'. Further in the same article Braverman critiques the "prolific rights industry" the HRA has "spawned". I leave analysis of such political declarations to others, and time will tell how things develop. More concretely, while the Conservative Manifesto in 2017 outlined that the party would not seek to repeal or replace the HRA *during* the process of the UK exiting the EU, the 2019 Manifesto committed to 'update the Human Rights Act and administrative law to ensure that there is a proper balance between the rights of individuals, our vital national security and effective government' (Commons Library, 2019). Before turning to the subject of Scotland, which is the main focus of this thesis, it is helpful to make explicit exactly what the Scottish Government is both anticipating and seeking to diverge from in order to make plain the trajectory of human rights in Scotland and later the place of Human Rights Education within this course of travel. Where can we most clearly see the divergence that Ferrie et al (2018) note and what relevance does this have to the realisation of rights within Scotland? What seems evident from the above manifesto pledge on the Conservatives linking human rights to national security is that the significant potential to weaken or make exceptions around the rights of some in name of national security remains very much alive within the Conservative Party. [85]

[85] One may point here to the Private members' Bill presented to Parliament by Christopher Chope MP and others in February 2020. The Bill aimed to require persons bringing claims or proceedings under the Human Rights Act 1998 to satisfy a test of reasonableness and equity; and for connected purposes. The Bill has been dropped by its sponsoring MP and will not progress any further, but readers may draw their own conclusions on the likely effect if such a Bill became law:https://services.parliament.uk/Bills/2019-20/humanrightsandresponsibilities.html

14.1 The United Kingdom Internal Market Bill (2020).

On September the 8th 2020, Northern Ireland Secretary Brandon Lewis MP made a statement in the House of Commons that the UK Government intended to break international law in a 'limited and specific way'.[86] While the declaration that the Government's disregard for international law and its treaty obligations would be "limited and specific", what was contained within the UK Internal Market Bill (UKIM), as introduced, allowed for the possibility of rather widespread and indiscriminate unlawful action. This was deeply worrying considering the very direct implications this may have posed for the Good Friday Agreement and peace in Northern Ireland. Turning to the question of Scottish devolution, the Sewell Convention details that the UK Government would not normally legislate with regard to devolved matters without the consent of the devolved legislatures.[87] In relation to the UKIM Bill, the UK Government would, therefore, by convention be expected to seek legislative consent in this matter from each of the devolved legislatures. The Scottish Government made it explicitly clear at the time of the Bill's introduction that this would not be forthcoming and indeed - along with the Welsh and Northern Irish administrations - it withheld consent. Nonetheless, as with the UK Withdrawal Bill that put the terms of the UK's exit from the EU into statute, the UK Government ignored these refusals and continued undeterred. The Scottish Government's Constitution Secretary Russell MSP said of the Bill shortly after its publication:

> It beggars belief that the UK Government is asking the Scottish Government to recommend consent to the Internal Market Bill. This is not a genuine partnership of equals and we couldn't recommend consent to a Bill that undermines devolution and the Scottish Parliament, and which, by the UK Government's own admission, is going to break international law[88].

Even giving serious consideration to granting a power to act in contravention of international law, including international human rights treaties and the Human Rights Act, is a great threat to the human rights of all persons living within the UK and undermines the UK's authority in protecting human rights abroad through the use of international diplomacy and the work of NGOs. Both reputationally and in practical terms, to be seen to violate international law in such a blatant manner would be a hammer blow to the UK's international standing and its

[86] https://www.bbc.co.uk/news/uk-politics-54073836
[87] See again: https://www.parliament.uk/site-information/glossary/sewel-convention/
[88] https://www.gov.scot/news/uk-internal-market-bill/

long-established role as an advocate for an international rules-based order. [89] In the days after the Bill was introduced, the difficulties legally and politically of pursuing such a bill were made clear by former Prime Ministers, eminent legal scholars, former Attorneys General for England and Wales, and many other commentators. I will not reproduce the totality of this critique here but note that Elliott (2020a) and Dougan's (2020) contemporary commentaries on the Bill and its effects provide an excellent summary of the Bill and its constitutional implications[90].

None of these difficulties can have been unknown at the time of the Bill's introduction and, indeed, the head of the Government Legal Department resigned before the publication of the Bill, such was his discomfort with its contents. [91] The (former) Advocate General for Scotland Lord Keen - the UK Government's chief legal officer in Scotland at the time of the Bill's introduction - resigned after sustained pressure on his position saying, 'I have found it increasingly difficult to reconcile what I consider to be my obligations as a Law Officer with your [the UK Government's] policy intentions'[92]. For the UK Permanent Secretary of the Government Legal Department and the Advocate General for Scotland to resign over the same issue is a telling indictment of the Bill both legally and politically. While amendments were tabled to ensure that the Human Rights Act was protected, and the threat of unlawful behaviour was diminished - assuming one accepted that the Government's actions in attempting to pass the Bill did not already violate parts of the Withdrawal Agreement and thus international law[93] - none of this did anything to resolve the broader issues the placing of this Bill before parliament caused. Although the Government was eventually forced to back down on the most explicitly unlawful elements of the Bill in order to secure agreement with the EU[94], its overall effect in relation to raising questions about devolution and the long-term reputational damage done to the UK cannot yet be calculated. What is most relevant here is that the Bill, as introduced, further inflamed already deeply challenging constitutional issues. It is additionally highly concerning that any government

[89] The extent to which this is an accurate reflection of the UK's role in international politics is another question entirely. It has, traditionally, been perceived along these lines however.
[90] See https://publiclawforeveryone.com/2020/09/09/the-internal-market-bill-a-perfect-constitutional-storm/ ; https://www.liverpool.ac.uk/media/livacuk/law/2-research/eull/UKIM,Briefing,Paper,-,Prof,Michael,Dougan,15,September,2020.pdf
[91] https://www.instituteforgovernment.org.uk/blog/treasury-solicitor-resignation-rule-law;
[92] https://www.bbc.co.uk/news/uk-scotland-scotland-politics-54179745
[93] The European Union the other party to the Withdrawal Agreement certainly did not and began legal proceedings against the United Kingdom on October 1st, 2020. See https://www.bbc.co.uk/news/uk-politics-54370226
[94] https://www.bbc.co.uk/news/uk-politics-55229681

should so blatantly pursue an agenda premised on behaving unlawfully. Shortly before the submission of this thesis, on the 17th December 2020, The UK Internal Market Bill passed its final legislative hurdle and became law. The most controversial provisions - i.e. those that would be unlawful - (Part 5) of the Bill (as introduced) have subsequently been removed following a series of amendments. However, attempts to amend the Bill to safeguard devolution, objections raised by both the members of the Scottish Parliament and Senedd Cymru and the refusal of legislative consent of those two bodies have all been ignored and the Bill has now gained Royal Assent. There will undoubtedly be consequences both political and practical from the passage of this Bill and the reader will perhaps have a better sense of them than can be captured at the time of writing. [95] What one can confidently speculate upon, however, is that a significant and perhaps existential debate over the devolution settlement and the UK's constitutional arrangements is unavoidable.

Shortly after the publication of the Internal Market Bill, reports emerged that UK Government Ministers were 'drawing up proposals to severely curb the use of human rights laws in areas in which judges have "overreached"'. [96] Lord Faulks, who is leading the separate Independent Review of Administrative Law, has himself previously advocated that the UK should leave the Council of Europe altogether, repeal the Human Rights Act and allow British courts and Parliament to protect human rights.[97] This itself says nothing about the potential outcome of that review, but is perhaps suggestive of some of the broader factors at play and the UK governments expectations around the outcomes of these reviews. While true that domestic law may be capable of providing adequate protection for human rights, withdrawal from the ECHR would remove any international law component. This international component currently serves 'in effect, to disincentive the use of parliamentary sovereignty to override fundamental rights given that doing so would involve a breach of international law' (Elliott, 2020b, n.p.). [98] As details began to emerge of what the scope of this further review into the operation of the Human Rights Act would be and its goals, welcome clarification was offered by the Lord Chancellor that the UK, in fact, *did not* intend to opt-out of the ECHR. [99] In terms of the HRA, this important clarification regarding the

[95] See Armstrong (2020)
[96] See https://www.telegraph.co.uk/politics/2020/09/12/boris-johnson-set-opt-human-rights-laws/ and https://www.independent.co.uk/news/uk/politics/brexit-human-rights-act-uk-europe-convention-boris-johnson-b433013.html
[97] https://www.conservativehome.com/platform/2017/04/edward-faulks-this-opportunity-to-repeal-the-human-rights-act-quit-the-echr-and-bring-justice-home-may-not-come-again.html
[98] https://publiclawforeveryone.com/2020/09/13/the-constitutional-state-were-in-a-week-in-british-politics/
[99] See https://www.lawgazette.co.uk/news/government-to-review-human-rights-act/5105899.article

ECHR is significant. The ECHR requires - under Article 13 - that the UK provides citizens with an effective remedy under its domestic law. As the HRA gives domestic legal effect to the ECHR, to remove it would be to breach Article 13 of the ECHR. This clarification by the Lord Chancellor in October 2020 does something to lessen the immediacy of the threat to the HRA, but lingering doubts remain over the security of human rights protections in the UK in the future. The overarching picture that emerges is, as Elliott (2020b, n.p.) notes 'of a Government intent on shielding itself from the application of legal standards'. Taken together, these two reviews *may* recommend serious changes to the constitutional arrangements in the UK with direct consequences for human rights in the UK. There are several ongoing and developing strands that have considerable potential to alter the constitutional arrangements of the UK: 1) the review of judicial review (judicial oversight of the Executive) after alleged "overreach" by judges in declaring the unlawful actions of the Government unlawful[100]; 2) a review of the HRA[101]; 3) the weakening of Parliamentary scrutiny of the Executive that has characterised the "Brexit" period of UK Parliamentary politics and especially legislation passed during COVID-19. Taken together, the narrative that human rights and international oversight over them impede justice in the UK, speak of a worrying centralisation of power within the UK with the Executive. As Elliott (2020b, n.p.) neatly puts it, the wider strategy appears to be to 'enhance the Executive's "right to govern" by displacing or diluting the efficacy of independent judicial oversight, whether in the service of domestic or international law'. In summary, the current trajectory of the UK Government in relation to international law and human rights potentially bodes ill for the future human rights protections of UK citizens and residents. Moreover, it does not speak of a liberal democracy in good health. Most importantly, the divergence between the approach adopted to the realisation of human rights by the Scottish and UK governments, highlights the considerably different political objectives of the two and the danger that human rights themselves may become part of the ongoing constitution tension between the two administrations. While Scotland will shortly incorporate the UNCRC into Scots law, England will not, meaning that a child growing up in Carlisle will have (potentially) fewer human rights protections than one in Lockerbie.[102] These now quite divergent trajectories in relation to human rights protections do not look likely to begin to converge at any time soon,

[100] https://commonslibrary.parliament.uk/decision-of-the-supreme-court-on-the-prorogation-of-parliament/
[101] https://www.lawgazette.co.uk/news/government-to-review-human-rights-act/5105899.article and https://www.theguardian.com/law/2020/dec/08/review-of-human-rights-act-asks-the-wrong-questions
[102] The two are consecutive stops on the West Coast Mainline railway (London – Glasgow/Edinburgh) crossing the border between England and Scotland.

meaning that human rights protections may become variable across the UK and the source of a hotly contested constitutional debate over the competencies of the Scottish parliament and courts. Neither of these options seems politically or legally beneficial to the children of Scotland or the rest of the UK and time will tell how this situation develops. As a final note of caution, while the Scottish parliament will in all likelihood offer its unanimous support for the bill to incorporate the UNCRC into Scots law (Chapter 19) when it comes to its final stage, any alteration to the devolution settlement or indeed any legal challenge to the competence of the Scottish parliament to legislate in such a fashion could undermine these efforts entirely. Put simply, the nature of the constitutional arrangements of the UK still leaves open the possibility that the UK government could seek to disrupt, delay, or block the passage of the bill into law regardless of the expressed will of the Scottish Parliament. Whether it will choose to do so, and whether there is legal merit in such a challenge, we will find out in due course. There is, however, precedent in recent years of the UK government challenging legislation from devolved parliaments and we must be mindful of this fact given everything else discussed above.[103]

There are, as I have sought to demonstrate here, three key elements to Scotland's human rights protections: 1) The international treaties to which the UK is a signatory; 2) The Human Rights Act; 3) The devolution settlement established by the Scotland Act which enables the Scottish Parliament to legislate for human rights. All three of these are, as I have shown above, under strain. Should Scotland worry about the future of human rights protections for its residents? It seems reasonable that it should and, moreover, as a matter of some urgency. I move next to briefly discuss the right to education in Scotland and Human Rights Education in Scotland before dedicated chapters on a range of related issues that will follow subsequently.

[103] See for discussion of UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill https://www.gov.uk/government/news/devolved-brexit-legislation-referred-to-the-supreme-court; https://brodies.com/insights/brexit/uk-supreme-court-rules-parts-of-scottish-brexit-bill-to-be-outside/

15. Education Legislation in Scotland.

One may trace the development of education legislation in Scotland as far back as the Education Act 1496. Matters have changed considerably since then both in terms of who is to be educated, whose responsibility it is, and how this is to be achieved. To turn to more relevant legislation, the Education (Scotland) Act 1980 will mark the beginning of this brief overview. The Education (Scotland) Act 1980 sets out the basic legal framework for the provision of education in Scotland, including the duties of local authorities and rights of parents. Education is provided at pre-school, primary and secondary levels in both mainstream and special schools. In accordance with the Education (Scotland) Act 1980, the provision of education is the responsibility of local authorities who perform the function of education authority. Education has to be flexible to fit individual needs, be tailored to 'age, ability and aptitude' (Education (Scotland) Act 1980). The *Standards in Scotland's Schools etc. Act* 2000 sets out the rights of children to education and the related duties of education authorities. This includes a duty to make sure that a child's education is directed to the development of their personality, talents and mental and physical abilities to their fullest potential. It also makes clear that local authorities and schools must have due regard to children's views in decisions that significantly affect them. This Act also introduced the policy of 'presumption of mainstreaming', i.e. that in the first instance all children will attend a mainstream school (unless certain circumstance apply). Of particular interest for current purposes is section 2(1) of the 2000 Act which makes clear that the duty of each education authority in Scotland is to provide education that is directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential' (Standards in Scotland's Schools etc. Act 2000). This formulation is drawn directly from Article 29 of the UNCRC as previously detailed. Importantly this represents in domestic legislation the requirement for State education to be focused on the individual needs of the child with no financial or policy qualifications or caveats found in section 2(1) that would diminish this duty in any regard.

Building on the Act of 2000, the Education (Additional Support for Learning) (Scotland) Act 2004, as amended, provides a framework for local authorities (and other agencies) to support all children with their learning needs. It is here that the conception of additional support needs (ASN) was introduced, marking a move away from talk of "special" educational needs in Scotland. Crucially, the "ASL act" makes clear new rights for both

pupils and parents in Scotland and places additional duties on local authorities as well as making clear the processes for the resolution of differences between families and local authorities including via the Additional Support Needs Tribunal. More recently the *Children and Young People (Scotland) Act 2014* and *Education (Scotland) Act 2016* have further clarified and extended children's rights in Scotland. The former, as suggested above, established a ministerial duty to keep under consideration what steps may be taken to better secure or further the effect of the UNCRC in Scotland. Additionally, the Children and Young People (Scotland) Act 2014 makes clear that Scottish ministers must promote public awareness and understanding of the rights of children. Further, the Act also puts responsibilities on Scottish Ministers and public bodies to consider how they can promote children's rights and requires them to report on their progress on this every three years. Overall, the Act concerns more widely the provision of services and support for children and young people (including adopting, child hearings, for example). The Act of 2014 is seen as a key part of the Scottish Government's strategy for making Scotland the best place in the world for children to grow up. The Education (Scotland) Act 2016 aims to support a range of improvements in Scottish education and includes provisions for the strategic planning to tackle socio-economic barriers to learning; that is, to address the poverty-related "attainment gap" in Scotland. The Act also includes provisions which extend again the rights of children aged 12 and older with capacity under the ASL Act. In effect, this is to extend the rights of children with additional support needs in important ways including empowering children, who are able to do so, to claim rights on their own behalf and to have a say in decision making that affect them.

Finally, Scotland is, of course, obligated to respect the rights detailed in the UNCRC and to act in accordance with the UK Equalities Act of 2010 which places a duty on schools and education authorities not to discriminate against pupils with protected characteristics including sex, disabilities, sexual orientation, and ethnicity. This includes both access to education and in the character of education. With this overview of legislation in mind, I turn next to discussion of the right to education in the context of Scotland as things currently stand.

As detailed above, current laws and primary legislation in Scotland already protect and promote children's rights including, of course, the Human Rights Act 1998 and the Children and Young People (Scotland) Act 2014. Looking at the HRA in more detail is illuminating in understanding the current position of the right to education in Scotland (and

the UK as a whole). In ratifying the ECHR and incorporating it into domestic law through the HRA, all persons in the UK have a fundamental right to education as set out in the ECHR. The fundamental right to education is expressed in Article 2 of Protocol 1 of the ECHR which states:

> No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. (ECHR)

How do things stand currently, then? At least as far back as the 1980 Education Act, Scotland has attempted to reflect commitments to a child-centred education system directed towards the development of the child's full personality. Subsequent legislation has further clarified this and extended the rights of children within Scotland. Importantly, it is not just legislation that we might consider in this context but also the policy commitments of the Scottish Government. In the period 2007 to the current day, and indeed since devolution in 1998, Scotland's education legislation and policy has diverged from England in increasingly clear ways. The politics of *why* this has occurred are not particularly salient for this project. However, the character of this divergence as it relates to children's rights[104] certainly is. A large part of the potentially profound changes brought about by the incorporation of the UNCRC into Scots law is in making the rights of children enforceable in domestic courts. At the current time, an increasing focus on children's rights has come to permeate a significant part of decision making in the working of the Scottish parliament and other public bodies. This will almost certainly only be strengthened after the incorporation of the UNCRC into domestic law.

Education legislation in Scotland has for several decades now included reference to the "best interests" principle of the UNCRC. However, this has not been the case for all Scottish legislation and, importantly, it is not 'always included in every policy or court decision affecting children' (Together, 2017, p.20). As Together (2017) detail, Child Rights and Wellbeing Impact Assessments (CRWIAs) have been used by Scottish Ministers as part of implementing their duties under the 2014 Act. The use of CRWIAs has 'helped increase the consideration of children's rights when developing new laws and policies' (Together,

[104] For discussion of the divergence between England and Scotland in education see Britton, Schweisfurth & Slade (2019).

2017, p.12). Consequently, the Scottish Government has also taken steps to increase the involvement of children in policy development itself, with local organisations playing a vital role in developing participation programmes and obtaining young peoples' views (Together, 2017). However, Scottish Ministers have 'discretion' as to what views they consider "appropriate" and "relevant" when determining the extent to which children and young people's views are taken into consideration (Together, 2017, p.20). Despite the use of CRWIAs in policymaking, and all that has been detailed on children's rights in Scotland thus far, there remains 'no specific remedy' for children in Scotland whose CRC rights have been violated. Further, the UNCRC has a number of Optional Protocols, with the UK signed up to two[105], but has made no signal that it intends to sign up to the Optional Protocol on a communications procedure.[106] This Optional Protocol, amongst other things, recognises:

> … that the best interests of the child should be a primary consideration to be respected in pursuing remedies for violations of the rights of the child, and that such remedies should take into account the need for child-sensitive procedures at all levels…. (OHCHR, 2011)

Moreover, the Optional Protocol encourages state parties to develop 'appropriate national mechanisms' to enable a child whose rights have been violated to access 'effective remedies at the domestic level' (OHCHR, 2011). For example, if we consider the common sources of rights violations in schools detailed in Chapter 7, as it stands, children have no specific remedy in domestic courts. In practice, children in Scotland (and the UK as a whole) find it difficult to challenge violations of their rights *unless* their ECHR rights have also been breached (Together, 2019, 2017). Indeed, the rights covered by the ECHR, and certainly the right to education, are in many ways less well developed or articulated than what is detailed in the UNCRC. As highlighted previously, concerns over the repeal of the HRA in the UK potentially remove even this avenue for remedy for the children and young people of Scotland.

[105]On the involvement of children in armed conflict and on child trafficking, child prostitution, and child pornography.
[106] See https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPICCRC.aspx and https://www.cypcs.org.uk/rights/uncrc/optional-protocols/communications-procedure

16. Human Rights Education in Scotland: Current Challenges.

To reiterate what is detailed in earlier chapters, Human Rights Education (HRE) as an initiative is about the provision for, and development of, awareness and protection of human rights (Struthers, 2015a; Bajaj, 2011; Lapayse, 2005; Tibbitts, 2002, Flowers and Shiman, 1997).[107] In practice this means that HRE must include both 'content and process' relating to human rights (Bajaj, 2011, p.482); that is, it is not enough that children learn *about* their rights, but that education itself must be participatory and rights-respecting (Bajaj, 2011). Human Rights Education as expressed by the UN involves education *about*, *for*, and *through* rights. As highlighted in Chapter 8, research shows improved attainment levels when rights-based education is adopted into school policies. Further, research in Scotland has shown improved attainment levels when a rights-based approach to education covers all aspects of school life and is interwoven in mainstream education rather than as an addition to it (CYPCS, 2015)[108]. In Chapter 8 I discussed the role of UNICEF UK's Rights Respecting School Award (RRSA) and will make specific comment on the role of RRSA within schools in Scotland here. As detailed in Chapter 8, evidence shows that RRSA can have a profound impact on pupils, schools, and the wider community (Together, 2016,2017; Sebba & Robinson, 2010). Indeed, research has shown that schools in areas of deprivation 'scored higher than expected' in attainment when there was evidence that the school addressed pupils' participation (Together, 2016; CYPCS, 2015). This is important both in potentially addressing the poverty-related attainment gap in Scotland and as further evidence of the beneficial consequences of more fully developed policies of HRE within schools. With this in mind it is a positive sign that 50% of schools in Scotland[109] and more positively still that over 100 schools in Scotland have reached "Gold: Rights Respecting", the highest level of the Award granted to schools that have 'fully embedded the principles of the UN Convention on the Rights of the Child into their ethos and curriculum'[110]. Whilst certainly the case that some progress has been made in Scotland with certain aspects of HRE, there is still work to be done. As made clear by a number of commentators, work is required to ensure that there is a systematic and embedded approach to rights-based education throughout Curriculum for

[107] An earlier version of parts of this chapter can be found in Daniels (2018).
[108] CYPCS (2015). How Young People's Participation in School Supports Achievement and Attainment. http://bit.ly/2Bcbgky
[109] https://www.unicef.org.uk/rights-respecting-schools/scottish-success-international-visit-rrsa/
[110] https://www.unicef.org.uk/rights-respecting-schools/the-rrsa/awarded-schools/gold-schools/; For reference, there are 473 Gold: Rights Respecting accreditations in the UK as a whole and 5,046 schools within Scotland.

Excellence (Daniels, 2018, 2019; Together, 2016; Struthers, 2015a; BEMIS, 2013). As Together (2016, p.124) note, although there are current gaps in the provision of rights-based education, there 'is enthusiasm for embedding children and young people's information rights in the curriculum across Scotland'. Indeed, this is a view shared by 'children, young people and adults' (Together, 2016, p.124).

With this in mind, let us turn to recent research on HRE in Scotland in order to more clearly articulate some of the challenges. Questions have been raised in the literature about how successful current attempts to incorporate HRE within the Scottish education system have been (Daniels, 2018, 2019; Struthers, 2015a, 2015b; Cassidy et al, 2014; BEMIS, 2011,2013). With the above requirements in mind, and drawing on the existing body of research I will argue in what follows that: 1) HRE has no clearly defined place in the Scottish Curriculum; 2) teachers in Scotland lack adequate training and confidence in teaching HRE and implementing programmes of HRE within schools; 3) (As a consequence of 1&2) Scottish education policy fails to meet UN requirements for HRE (i.e. **HRE 1-3**). If the policy of the Scottish Government is to meet all UN requirements in relation to the UNCRC by the time of incorporation it is clear that, at least in this regard, it will be unable to implement such a policy until these issues are resolved.

16.1 Human Rights Education in Curriculum for Excellence.

With the necessity of clear and comprehensive educational policies seen as fundamental to the development of HRE, an obvious starting point for discussion is, of course, the formal curriculum in Scotland. While it is reasonable to suggest that the nature of a curriculum is to be a means to enable the fulfilment of educational goals, rather than the means to fulfil them itself, it seems logical to consider the curriculum (and related educational policies) as the only universal means of influence on practice that can be exercised by the Scottish Government in aiming to promote HRE. It seems sensible, and justified, therefore, to examine the Scottish curriculum for evidence that it is: 1) adequate to the task of supporting education *about, for, and through* human rights; and 2) explicit in its commitment to human rights values. In what follows I will highlight that while it is possible that the Scottish curriculum can meet the first of these conditions in a limited capacity, HRE's lack of visibility within the curriculum means it cannot currently fulfil the second nor the *about* and *for* elements of the first. Indeed, as the BEMIS (2013, p.12) report concludes, HRE as a

discrete concept is simply "not visible enough" within the Scottish curriculum. The conclusions drawn indicated that Scotland currently fails to live up to its obligations in the provision and implementation of HRE within formal education. As BEMIS (2011) note, proposals in the UNESCO Plan of Action (2006) are clear that national curricula should be designed for HRE with HRE being defined within the curriculum and included in all curriculum subjects. This, it is suggested, is currently not happening in Scotland (Struthers, 2015a; BEMIS, 2013), with Struthers (2015a, p.69) suggesting that the lack of HRE in Scotland is 'largely attributable' to the lack of clear guidance within the curriculum.

The Scottish curriculum, *Curriculum for Excellence* (*CfE*) was developed as a flexible curriculum focusing on outcomes and experiences rather than tightly, centrally mandated content. The intention was to enable a wide range of teaching and learning strategies to be employed as well as to strengthen teacher autonomy (Scottish Executive, 2004). In relation to HRE and human rights more generally, the Scottish Government considers 'human rights' and 'a rights-based approach to education' to be concepts relevant to the provision of education under *CfE*. Indeed, this connection is made clearer in that Getting it Right for Every Child (GIRFEC)[111] is explicitly recognized as being founded on the principles of UNCRC (Scottish Government, 2013). Turning to the contents of *CfE* (and related supporting materials), research has shown that aspects of HRE are found, to some extent, across the three teaching areas of: 1) interdisciplinary learning; 2) freestanding subjects; and 3) themes across learning (Struthers, 2015a; Daniels, 2018). Although one finds few explicit requirements in *CfE* to educate about human rights themselves, several experiences and outcomes reflect ideas relevant to the fulfilment of the UNDHRET (2011) Article 2(2). However, the major issue identified in research by BEMIS (2013), Struthers (2015a), and Daniels (2018) on HRE in Scotland is that nowhere in *CfE* is there a requirement that learners develop a basic understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection as per UNDHRET; that is, there is very little engagement on questions about what rights are, how they are protected and promoted, nor what sort of values are associated with the human rights culture that is intended to be developed as a result of HRE. This point can be further elaborated by noting that Religious and Moral Education's (RME) express reference to 'human rights' is the only

[111] GIRFEC is the national approach in Scotland to improving outcomes and supporting the wellbeing of our children and young people by offering the right help at the right time from the right people. It supports them and their parent(s) to work in partnership with the services that can help them (https://www.gov.scot/policies/girfec/)

one within any freestanding subject in the curriculum. Moreover, it is characterised as the requirement that learners *develop views* about values such as fairness, equality and human rights (Struthers, 2015a, p.62). As the sole *explicit* reference to human rights, this is, of course, rather weak support for any notion that HRE as an educational programme is strongly supported or enabled by *CfE*. The declared position of the Scottish Government concerning the incorporation of HRE within *CfE* is that 'human rights are embedded within the curriculum' as a cross-curricular theme (BEMIS, 2011, p.15; Scottish Government, 2010). This more interdisciplinary approach towards the fulfilment of HRE through cross-curricular engagement is demonstrated in the promotion of Global Citizenship within *CfE*. Global Citizenship as a focus of the curriculum and a responsibility for all teachers provides the strongest evidence of engagement with HRE within the curriculum as a whole but is not unproblematic itself. Analysis of this policy and the general strategy of aiming to realise HRE within Scotland through means of global citizenship education has highlighted important deficiencies with both (Daniels, 2018). In addition to raising concerns about the ability of *CfE*, as it stands, to meet relevant HRE requirements (as outlined above), Daniels (2018) highlights broader concerns with the conflation of HRE with global citizenship education in the Scottish context (though this point can and has been made about citizenship education more broadly in the UK).

I have argued that the clearest deficit in current policy in Scotland is the lack of explicit content *About* human rights within *CfE* (Daniels, 2018). This argument is borne out by detailed analysis of Scottish educational policy, highlighting an overall trend towards the promotion of general liberal and democratic values rather than specific and explicit reference to human rights as being the closest to direct engagement with education *about* rights within *CfE*. In terms of expected outcomes relating to knowledge *about* human rights, there are a number of statements, largely restricted to Religious and Moral Education and the Social subjects, that reference rights (or human rights) but lack further in-depth expectations for coverage. In particular, as BEMIS (2013) and Struthers (2015a) have previously concluded, and Daniels (2018) also notes, there is limited coverage of content relating to human rights throughout *CfE* generally, and the analysis of the role global citizenship education plays in *CfE* found the same. In general, the majority of the evidence for support for HRE requirements *About* Human Rights found in curriculum guidance on developing global

citizenship education[112] refers to democratic values or even more generic "values" as important aspects of the taught curriculum. While these are likely consistent with HRE, they are not explicitly so, and consequently cannot be judged as providing good evidence of support for the HRE requirements. Further, I raise concerns in Daniels (2018) highlighting a tendency to run rights and responsibilities together, a feature of policy and practice that has been strongly criticised by advocates of HRE and from a more general philosophical perspective of failing to accurately reflect the nature of human rights (Howe & Covell, 2010, 2005; Cassidy et al, 2014; Bromley, 2011; Covell & Howe, 2011; Kiwan, 2005). (See Chapter 10 above for further discussion).

While there is much that was identified as positive and explicit in relation to guidance surrounding pedagogy and taught content delivered *through* the lens of human rights in Scottish educational policy, the lack of explicit focus on teaching *about* rights is a concern, and evidence that Scotland currently fails to meet the requirement for clear and comprehensive incorporation of HRE within the curriculum (HRE1)[113]. Crucially, I argue that the foregoing offers sufficient evidence to conclude that HRE has no clearly defined place in the Scottish Curriculum and thus Scotland currently cannot demonstrate its ability to fulfil **HRE1**.

16.2. Teacher Education and Confidence in Teaching Human Rights Education.

In the absence of explicit direction from the curriculum, development and promotion of HRE, such that it occurs at all in any explicit sense, must come through engagement with training, either pre-service in initial teacher education (ITE) or as part of continuing professional development (CPD). It should be clear that as an alternative this would be clearly insufficient based on the problem raised above, but nonetheless, adequate training for teachers (and their own confidence in delivering HRE) are crucial. As identified previously, UNDHRET (2011) Article 7(1) states that:

[112] Learning and Teaching Scotland (2011) *Developing Global Citizens within Curriculum for Excellence*. Available at: https://issuu.com/ltscotland/docs/dgc_resource.
[113] See Daniels (2018) for a detailed analysis and exploration of Scottish Educational policy surrounding Global Citizenship education as a means to realise HRE.

> States, and where applicable relevant governmental authorities, have the primary responsibility to promote and ensure human rights education and training…

Moreover, as Cassidy, Brunner, and Webster (2014, p.23) suggest:

> Given that HRE relies on individual teachers acknowledging its import and being confident in delivering [it], it would seem appropriate that ITE students receive some input in this area on their course, experience teaching HRE and observe teachers on placement teaching human rights.

The obvious questions in this connection are, therefore: 1) to what extent is training (of any sort) given for teachers in Scotland about HRE and, 2) is this training adequate to enable teachers to be confident in incorporating HRE in their own practice? There are important questions to be asked about what is required in terms of knowledge to accurately and adequately teach *about* and *for* human rights. Moreover, there are questions to ask about what "training" means here also[114]. Human rights education, both as an initiative and in relation to its development in national contexts, has struggled in this regard. This is perhaps driven by the difficulties of translation of a concept devised and principally shaped by lawyers and legal academics into an educational one (BEMIS, 2013), but also, as I will argue shortly, in lacking clarity surrounding philosophical issues of importance in education. What seems uncontroversial in relation to training for HRE is that whatever this input amounts to, the result ought to be that teachers have a clearly developed sense of HRE as a broad educational initiative, the character of any specific national programme of HRE to be implemented, and the goals of both as well as the kind of pedagogy consistent with these ends **(HRE2).** This is, to be clear, a quite demanding task. There will be no quick fixes possible and the challenges will potentially be profound, with children's rights requiring a fundamental rethink of the education system. In discussing my recommendations and detailing my arguments about the more substantive questions in developing a programme of HRE suitable for Scotland, I will make clear that there are important implications of UNCRC incorporation for the education system (See Chapter 21).

Before outlining the findings of the empirical research addressing these two questions, it is again worth clarifying what is required, in the broadest sense, for human rights education and training. Jennings (2006, p.289) posits that human rights education is the deliberate

[114] I thank Prof. Louise Hayward for stressing this point during discussion of earlier drafts of this thesis.

practice of preparing individuals, groups and communities with 'the content, attitudes and skills that contribute towards the recognition, promotion and protection of human rights'. This holds for both HRE as it might be delivered in schools themselves but also what would plausibly be required so as to enable such a practice; i.e. HRE *for* teachers mirrors the practice teachers themselves would adopt. As Jennings (2006) continues, HRE requires that teachers understand human rights issues, serve as models of human rights advocacy, and contribute to the development of a human rights culture, both within the classroom environment and outwith. Adequate training in HRE, we might conclude, would result in human rights becoming a fundamental organising principle for professional practice with all (prospective) teachers coming to see themselves as human rights educators (Flowers & Shiman, 1997).

The most detailed research on the current state of HRE in Scottish education was conducted by BEMIS in 2013. This mapping exercise aimed to map both the extent of teachers' knowledge of HRE as well as their experiences in incorporating this into classroom teaching (BEMIS, 2013). The goals of this exercise were, *inter alia*, to identify current practice in schools, gaps and barriers to the realisation of HRE, as well as professional development needs for teachers and other educators in Scotland (BEMIS, 2013). As part of this exercise, a survey of teachers from different sectors regarding HRE was conducted. Whilst acknowledging that this research cannot be taken as fully representative of HRE practice within formal education in Scotland owing to the practical limitations of the project, a return of 351 questionnaires from across Scotland allowed BEMIS to offer 'a suitably representative sample' (BEMIS, 2013, p31). What goes without saying is that there is a clear need for further empirical research on HRE in Scottish schools and I hope that this thesis will make a strong case for interrogating existing good practice as part of developing proposals for HRE within *CfE*.

Beginning with the extent of training in HRE (including training relating to the UNCRC) reported, of the 346 respondents to the relevant question only 22% reported that they had ever attended CPD on HRE, with the remaining 78% reporting they had received no training in this area (BEMIS, 2013, p.35). Those reporting they had received training at all referenced HRE training within ITE within Higher Education at the Universities of Strathclyde, Glasgow, Edinburgh and Aberdeen, (BEMIS, 2013, p.36).[115] However, most

[115] Further references were made to: local authorities; Education Scotland; Scotland's Commissioner for Children and Young People (on the UNCRC); and by the British Council.

reported that this training was simply one lecture or tutorial on the topic and it often fell under the headings of Global Citizenship or Health and Wellbeing (BEMIS, 2013, p.36). As I have already argued, there are reasons to think this is insufficient to count as training in HRE specifically as understood in line with UNDHRET, particularly in relation to Global Citizenship (Daniels, 2018). The authors conclude that with such a small percentage of teachers having received training in HRE, it is likely that the remaining majority of respondents, if they have any knowledge of HRE at all, have gained this through self-study or other informal sources leading to considerable variation in interpretations (BEMIS, 2013, p.35).[116] All of this points again to the key issues identified in this chapter. With a lack of explicit guidance in the curriculum, teachers may thus be likely to interpret HRE as a matter of perspective rather than of specific teaching content. This problem is only further compounded by the low levels of training offered to clarify what HRE is and to exemplify good practice. Further, even the most diligent self-study would be met with the considerable lack of clarity and agreement amongst advocates of HRE as to what is required beyond a broad consensus around some organising principles; that is, the literature is not sufficiently illuminating on HRE as a concept nor about how it may be translated into everyday practice. Interestingly, most of the teachers surveyed, while not familiar with HRE as a concept, believed they were incorporating some aspects in their daily classroom practice (BEMIS, 2013). When asked to outline how this was manifested, the greatest number of responses (11%) focused on classroom rules or charters and other matters relating primarily to behaviour management (BEMIS, 2013, p.41). A reasonable conclusion was drawn on this basis that HRE has become associated by many teachers with promoting a respectful classroom environment and specifically as a form of behaviour management (BEMIS, 2013, p.39). The latter is troubling as it is clear that some forms of behaviour management are both contrary to the spirit of HRE and indeed at odds with the UNCRC itself (as made clear in Chapter 7, the ongoing use of restraint and isolation are clear examples). While true the HRE has the ambition of building a rights-respecting environment in the classroom and the wider school, its primary aim is not behaviour modification in *that* sense; i.e. it is not a scheme for the clarification and subsequent punishment for infractions held against a human rights framework. This would be antithetical to the practice of human rights and the aims of HRE as a programme of education. The purpose of HRE is to educate children, teachers, and other

[116] This will, of course, be further compounded by the lack of clarity over what HRE is and how one may go about introducing it into the curriculum (see Chapter 20&21).

duty bearers about the rights of children and to enable children and young people to claim them when the need arises (this general point applies to all rights-holders and HRE in the broader sense, but as noted I restrict myself to consideration of HRE in schools here). To be clear, HRE is not, nor should it be used as the basis for developing behaviour management policies. I believe the ease with which children's rights are immediately tied to speculative concrete responsibilities (none exist in relation to rights) and the creep of behaviour management talk into consideration of whether one's rights are realised are, I argue, indicative of both the concerns raised about the lack of clear guidance in the curriculum regarding HRE, and the reported poor levels of training in this area. While HRE has elements relating to the promotion of a respectful environment, it certainly should not be seen as synonymous with policies regarding behaviour management. Finally, and puzzlingly in light of the Scottish Government's focus on using Global Citizenship as a means to drive HRE, only 3% of teachers deemed this to incorporate human rights (BEMIS, 2013, p.74).

Additionally, as part of the BEMIS (2013) survey teachers were asked to rate their confidence in teaching HRE. The findings were rather surprising given the lack of training reported, with 50.1% of respondents "Fairly Confident" while 46.2% rated themselves as "Not Confident" (BEMIS, 2013 p.33). The authors suggest such findings may be anomalous, with the very low percentage of teachers reporting themselves as "Very Confident" (3.7%) seeming more congruent with the levels of training received (BEMIS, 2013, p.36). One general explanation for the lack of confidence expressed by many is proposed by Howe and Covell (2010) who found that teachers are not confident in the teaching of human rights if they are poorly prepared for this in ITE (Initial Teacher Education). Moreover, the kind of participatory pedagogy required by HRE is considerably undermined when it receives little to no attention in training (Howe and Covell, 2010, p.97). What was more interesting, and characteristic of the issues raised in the BEMIS research was the additional feedback provided by the teachers who self-report as "Not Confident". Taking two particularly telling contributions highlighted in the BEMIS report, a lack of confidence was combined with suggestions that HRE was not 'a topic for my curriculum area', and fear there would be repercussions for teaching about human rights (BEMIS, 2013, p.39). Recent work on the attitudes of student teachers towards human rights has the latter as a common theme (Cassidy et al, 2014). This fear has been further manifested through active encouragement to avoid human rights issues because they are seen as too political for fear of parental complaint (BEMIS, 2013; Cassidy et al, 2014). With all of this in mind, it is striking that in the research

literature there appears to be a broad consensus amongst teachers in Scotland about the importance of teaching children about human rights. Indeed, the BEMIS (2013, p.39) study, for example, highlights that 59.4% of the teachers surveyed reported that they strongly agreed with the statement: 'Curriculum for Excellence should enable understanding of and respect for human rights'[117]. While one must be careful not to overgeneralise such a finding, it does not seem unreasonable to suppose this is a plausible representation of teachers working in Scotland more widely.

Finally, we must ask what, if any, barriers or gaps to HRE were identified? Encouragingly only 12.9% of the 334 respondents who answered this question identified experiencing explicit barriers to HRE.[118] Nonetheless, it is important to consider the issues highlighted by those articulating difficulties. The most prevalent issue highlighted was the lack of knowledge and training in ITE and CPD (62%) leading to a lack of confidence in classroom teaching. This is consistent with the findings reported above and seems the crux of the shortcoming in Scottish education elaborated on here. Importantly, 89.3% of respondents indicated that they would find CPD on HRE helpful (BEMIS, 2013). Other responses of note relate to common barriers to teaching such as overburdened curricula, lack of time, and lack of appropriate resources (BEMIS, 2013). Worryingly, as BEMIS (2013, p.45) report, some teachers (16%) indicated that they felt they had been dissuaded from teaching about human rights either by "ITE lecturers, school management leaders or because of religious reasons". Much can be said in this connection, and it is again indicative of a common perception identified in the literature cited previously that human rights are seen as controversial in some sense or liable to cause complaint when discussed in formal education. This, if true, is, of course, a significant worry and considerable barrier to the implementation of HRE and perhaps speaks to a more widespread perception of a conflicted view of human rights within the context of the UK as a whole.[119] As noted, however, the majority of teachers responding to this BEMIS (2013) survey and 42% of Scottish populace as a whole (SHRC, 2018) are supportive of human rights. By contrast, only 13% were found to be opposed to human rights

[117] 205 of the 345 respondents who answered the question Strongly Agreed with the above statement regarding HRE in the curriculum. No teachers reported that they strongly disagreed with this statement (BEMIS, 2013, p.40)

[118] One may of course point here to the fact that the low levels of training in HRE would sufficiently hamper recognition of barriers of certain sorts.

[119] Recurrent discussions of Conservative politicians about scrapping the HRA and tabloid reporting around human rights issues are indicative of, or perhaps drive, this perception (See UN discussion of British tabloid coverage of human rights https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15885).

with that meaning they agree with negative statements and disagree with positive statements about human rights. The remaining groups fall somewhere in between or are 'disengaged' from the issue and lack firm views (SHRC, 2018). In the context of the UK as a whole Bell and Cemlyn (2014, p.830) report on the Equally Ours UK attitude survey highlighting that only 22% were supportive and 26% opposed. Certainly, in connection to teacher attitudes at the very least, any common conception of hostility towards human rights seems overstated (BEMIS, 2013).

One final important and very welcome development is in the draft Professional Standards 2021 published by the General Teaching Council Scotland (GTCS). While still at the draft stage there are substantial improvements within the standards concerning the explicit reference to children's rights and the necessity for teachers as professionals to:

> Embracing locally the global educational and social values of sustainability, equality, equity, and justice and recognising children's rights.
>
> Promoting and engendering a rights-respecting culture and the ethical use of authority associated with one's professional roles
>
> …contribute to a rights-respecting culture where learners meaningfully participate in decisions related to their learning, wellbeing, learning environment and their school (GTCS, 2020, p.4-7).

This is a considerable improvement on the current (2012) GTCS Standards although I would welcome further references in the final version and sufficient CPD and input in ITE in what exactly 'promoting and engendering a rights-respecting culture and the ethical use of authority associated with one's professional roles' might actually amount to. As detailed above, without the necessary support to fulfil their professional duties, teachers will struggle to meet these standards through no fault of their own.[120]

In summary, research seems to indicate therefore that the lack of clear guidance in the curriculum, and the lack of training on HRE, has led to many teachers lacking confidence in the teaching of HRE and potentially developing misapprehensions about what HRE is and what it entails (BEMIS, 2013; Struthers, 2015a). Taken together, these issues provide strong evidence to support the claim that Scottish Government is currently unable to demonstrate that it clearly and comprehensively incorporates HRE within the curriculum (**HRE1**), that

[120] Again, work here by Robinson (2017) is helpful when considering teacher's professional obligations surrounding HRE.

teachers are sufficiently aware of the relevant rights legislation (**HRE2**), nor that adequate training in human rights for teachers is provided (**HRE3**). If the policy of the Scottish Government is to meet all UN requirements in relation to the UNCRC by the time of incorporation it is clear that at least in this regard, it will be unable to implement such a policy until it addresses the issues I have raised above.

Finally, it is important to reflect on the dated nature of empirical research drawn on here on HRE within the Scottish context. While the BEMIS review stands as a crucial snapshot of practice in Scotland, this research is now nearly a decade old. This would be a long period of time under any circumstances, but as CfE has been considerably altered over the last decade and considering the continued rise of the prominence of the Rights Respecting Schools Award, it is vital to get a more up to date account of HRE practice in Scotland. I will return to this point again in my recommendations in Chapter 22, but it seems clear that more up to date data will be vital both in assessing and analysing current practice (good or bad), but also in planning for the further development of HRE within Scotland. After all, some sense of what is and is not currently happening in schools and what, if any, are the major barriers to the development of HRE is necessary for any further advancement.

17. Clarifying Human Rights Education.

Having established reasons to consider the lack of clear direction in the curriculum and the low levels of training as important barriers to the realisation of HRE in Scotland, I turn now to broader issues relating to HRE as a concept and educational initiative itself.[121] While there has been recognition both nationally and internationally that HRE remains a fairly poorly defined concept, I argue here that this, in fact, undersells the difficulties that HRE as an initiative, and any prospective programmes of HRE in schools will face (Struthers, 2015a).[122] These difficulties are twofold: firstly, prospective models of HRE reflect different understandings of the appropriate relationship between HRE and international human rights law. This again requires further engagement at some level with debates within the HRE literature to better enable the creation of clear and comprehensive policies surrounding HRE as a component of Scottish education. Secondly, HRE as a concept and educational initiative needs much greater clarity to be effectively translated into policy and practice at a national level. Of a range of issues in this area I will outline two relating to the development of HRE in the curriculum and the attendant question of values education. There is a significant discussion to be had around these questions but for the purposes of this project, I will only offer a flavour in order to highlight the need for *some* engagement with it with a view to driving HRE realisation in Scotland. The most obvious reason for this is that the difficulties outlined above cannot be addressed unless we are clearer about what HRE is and what it requires. One cannot hope to offer adequate training for HRE, for example, if it is unclear what HRE as an initiative is and what it aims to achieve in education. The crucial point and the rationale for the inclusion of these more general questions is that if Scotland is to genuinely be a "leader" in relation to human rights (and by extension HRE), this is exactly where attention should be directed. There is no international best practice to be adopted as things stand, but there are a series of questions that can help to shape the direction that national policy might take.

[121] An earlier version of parts of this chapter can be found in Daniels (2019).
[122] I will identify two issues here, but they are not the only ones worthy of consideration. Phillips and Gready (2013) offer an overview of the current issues surrounding HRE in a special issue dealing with the same topic.

17.1 Determining the Relationship With International Law.

As Phillips and Gready (2013, p.216) remind us, the proliferation of HRE initiatives in recent decades has been characterised by the variety of positions that thinkers, activists, and educators have taken on questions about the "right relationship" between HRE and the international human rights legal framework. A key question here is whether international human rights law is the 'indisputable basis' for the global rights project and, thus, a foundation on which educational interventions should be grounded if they are to have 'coherence, rigour and legitimacy' (Phillips & Gready, 2013, p.216). Or, as is often suggested in discussion of HRE, should HRE's relationship to international law be more 'fluid, creative, or even somewhat detached'? (Phillips & Gready, 2013, p.216). This more detached relationship accompanies a criticism of the relationship between HRE and international law, specifically in the direction of human rights and HRE being "too legalistic". Characteristic of the sometimes critical tone expressed in discussion of HRE and international law is the insistence that HRE needs to set itself up as in contrast to or even in opposition to international human rights law. Programmes of HRE with a closer relationship with international law are derided as reflecting 'mere human rights legalism' (Phillips & Gready, 2013, p.217). It follows that it can on occasion seem as though human rights and HRE inhabit two, parallel worlds. This is highly significant in determining the appropriateness and applicability of models of HRE for incorporation within liberal democratic societies and especially within liberal state education generally and in Scotland specifically.

Discussions of the correct relationship between the law and programmes of HRE have been coloured in the literature by an often unhelpful division between 'all law' and 'no law' views of HRE (Phillips and Gready, 2013, p.219). Neither of these positions appears particularly promising as they stand. In the former, there are reasonable criticisms that this could lead to the delivery of HRE that is too formulaic and inadequate for the proposed goals of HRE. On the latter, far too much work is thought to be done by 'rather vague talk' about human rights values and the creation of a human rights culture. Concepts like 'equality, dignity, and non-discrimination' are often invoked 'endlessly' to the point of imprecision (Phillips & Gready, 2013, p.217). An additional technical question of this sort is: how far would it be possible to attempt to adopt a "looser" relationship between HRE and international human rights law if the latter is substantially translated into or incorporated in

Scots law? On the face of it at least it would seem rather odd to both recognise the importance of the international human rights framework by directly incorporating the UNCRC into Scots law but also reject it as the basis for human rights education. It is important to note that the 'other end of the spectrum', so to speak, that focuses primarily on the 'formulaic delivery of international human rights standards' also seems inadequate (Phillips & Gready, 2013, p.217). Resultantly, to move too far in either direction is also unlikely to produce a viable programme of HRE for Scottish education. There are no easy answers here, with the foregoing demonstrating some of the considerations that will necessarily frame the debate if HRE is to find a more fully developed role in Scottish education and policy.

17.2. Models of Human Rights Education.

Disagreement about the right relationship between HRE and international human rights law is often reflected through the existence of different "models" of HRE as I discussed briefly in Chapter 6. It is unsurprising that HRE, like almost any other educational initiative, admits of a variety of models for implementation. Less surprising still is that HRE scholarship reflects a variety of philosophical, legal and, sociological positions that significantly colour both the proposals made in relation to HRE and how HRE as an initiative is situated in wider debates within and outwith education scholarship. With the aforementioned lack of clarity around HRE as a concept and initiative itself, this is a natural consequence. Felisa Tibbitts, director of the Human Rights Education Associates (HREA) stated over a decade ago in 2002 that if HRE is to become a genuine field:

> … then we are challenged to become more coherent (even among our diversity of models), to be unique (offering value and outcomes that other educational programs cannot), and to be able to replicate ourselves. (Tibbitts, 2002, p.168)

More recently, Russell and Suarez (2017, p.39) describe guidance around a HRE curriculum as 'at best opaque and at worst so underdeveloped as to include only "mentions" of something called "human rights"'. This is indicative of the wider problems in the field of HRE itself. This fits with the challenges faced by the Scottish curriculum identified previously. One explanation for this is the reluctance of the UN and the World Programme for Human Rights Education (2005 onwards) to offer a curriculum or even concrete general

guidance. While calls were made to develop a curriculum of knowledge, skills, values, and action, no such curriculum has been developed. This, itself, is not a surprise. Parker (2018, p.5) notes that stopping short of curriculum development may be a wise strategy, with HRE curricula needing to be developed locally where they 'make sense, enjoy legitimacy, and get enacted'. This is sensible, but the result is that at the international level there does not exist anything approaching an HRE curriculum. What guidance there is, is 'scattered, ill-defined, and too variable to be robust' (Parker, 2018, p.5). In the absence of any international template for HRE in the curriculum, one can turn to attempts to categorise and offer models or typographies of the varieties of HRE. Although models are not national curricula, they do offer a helpful sense of how one might construct one and what considerations are relevant in doing so.

Several attempts have been made to categorise the varieties of HRE proposed in the literature, with Tibbitts's (2002; 2017) and Bajaj's (2011) categorisations or typologies being the most widely referenced. The two offer slightly different, but in many ways overlapping, accounts of how HRE has developed. Starting with Bajaj's (2011) account, she identifies three different outcomes based on models of HRE that differ in approach, content, and directedness towards action. Importantly, Bajaj (2011) draws our attention to the fact that while almost all models of HRE offer a generally universal vision for HRE, some scholars have strongly emphasised the importance of context and the makeup of the society in which any proposed programme of HRE is to be introduced as strongly determining the characteristics and focus of HRE. Bajaj's (2011, p.489) survey identifies three forms of HRE that are not 'mutually exclusive with the others' but offer different ways to conceptualise the primary rationale for HRE. Her contention is that while programmes of HRE can embody aspects of any of the three approaches the 'ideological orientations of most HRE initiatives are generally rooted' in one of the three categories she outlines. These are: 1) HRE for Global Citizenship; 2) HRE for Coexistence; or 3) HRE for Transformative action (Bajaj, 2011, p. 489). Taking each in turn, HRE for Global Citizenship is said to emphasise individual rights as part of an international community. This may or may not be seen as a direct challenge to the state itself. HRE for Coexistence is typically found in post-conflict settings and reflects this in its emphasis on minority rights and pluralism. Finally, HRE for Transformative Action is primarily concerned with 'understanding how power relationships

are structured' and the possibility for collaboration across grounds in order to enable greater respect for human rights (Bajaj, 2011, p.494).[123]

Returning next to Tibbitts's (2002; 2017) models of HRE, we might consider how HRE proposed in line with the "values and awareness" and "activism-transformation" models might fit into this picture.[124] Roughly speaking, these two would overlap to a considerable extent with Bajaj's (2011) HRE for Global Citizenship for the former and HRE for Transformative action for the latter respectively. To briefly outline the difference, the values and awareness model aims towards the 'socialisation and legitimisation of human rights discourse' (Tibbitts, 2017, p.15). Typical features include, amongst other themes, education about the content and history of human rights, the international legal system, global rights issues (Tibbitts, 2002). In this model, the main focus of HRE is the transmission of basic knowledge of human rights and human rights issues and to 'foster its integration into public values' (Tibbitts, 2002, p.163). It is common that school curricula that include human rights link this closely with fundamental democratic values and practice (Tibbitts, 1994). Human rights education so conceived is to 'pave the way for a world that respects human rights through an awareness of and commitment to the normative goals laid out in the Universal Declaration and other key documents' (UNCRC). This is plausibly both consistent with the detail and spirit of UNDHRET (2011) and importantly what the Scottish Government has said about human rights more broadly. The values and awareness model is seen as the "dominant" model of HRE as things stand though it is not without its critics.

These criticisms relate to the claim that the former model reflects an "overly legalistic" understanding of human rights. Moreover, it is argued, it fails to disrupt the status quo or be sufficiently individually empowering. As Tibbitts (2002, p.1634) suggests, the concern many in favour of HRE would have with this model is that it 'does not directly relate to empowerment'. The criticism often levelled at the values and awareness model is that 'the agency of the learner is not encouraged nor empower[ed] to take action to reduce human rights violations' (Tibbitts, 2017, p.8). An alternative, the activism-transformation model is thought to address the most serious difficulties of the values and awareness model. In the original Transformation Model described by Tibbitts (2002), a theory of change was seen to be very prominent with a close association with methodologies of transformative and

[123] For further detail see Bajaj (2011).
[128] An additional model - the "Accountability-professional development" model - is worthy of consideration within the context of Scottish teacher education (specifically in relation to reforming elements of ITE) but I will not discuss it here for reasons of time.

emancipatory learning (Tibbitts, 2017; Bajaj, 2011; Keet, 2010). Such methodologies incorporate critical pedagogy and involve a 'critical reflection on society and the conditions that result in injustice' (Tibbitts, 2017, p.9). It is important to note that this model is *primarily* employed in informal education. However, suggestions have been made by Tibbitts (2002; 2017) and others that it could or indeed should be applied to formal education. Tibbitts for example argues that "it is possible to attempt a transformational model of HRE if links are made between the school and family life" (2002, p.167). Keet (2017, p.12) raises concerns about the prospects for HRE as a continuing educational initiative directed at social change in cautioning us that 'HRE does not exist insofar as it is modelled on an uncritical relationship with human rights universals'. A broader concern with human rights doctrine as being both powerful but potentially 'unthinkingly imperialist in its claims to universality' has been voiced by Ignatieff (2001, p.102) and others as a way in which human rights doctrine has opened itself to attack. Challenges of this sort have raised important questions about the authority of human rights norms and whether claims to universality are indeed justified (Ignatieff, 2001). Such a thought has long been given expression in a wide range of traditions including feminist and post-colonial scholars (Osler, 2015). [125] In the current context, this leads us to ask whether models of HRE, such as the transformative model outlined above, share this concern and, indeed, what implications this has for how such a programme of HRE fulfils its obligations to education *about, for* and, *through* rights and whether this makes them suitable candidates for fulfilling the goals of HRE as an educational initiative as outlined in UNDHRET.

However, even the transformation model of HRE which has been seen as the remedy to many of the overly legalistic or formal proposals for HRE has come under recent scrutiny for remaining 'locked in a formalised understanding of human rights that is entrenched in universal declarations, legal mechanisms, and institutional rules' (Ahmed, 2017, p.11). It is not immediately clear to me that this is true but, nonetheless, it points to a growing number of voices in the HRE literature that outline scepticism of both HRE and the international human rights movement. Ahmed (2017, p.11) goes much further than even the most critical of voices in arguing that to limit HRE to 'legally sanctioned activities…and call this "transformative" constrains the potential radicalism of human rights discourses'. While I do not take Ahmed (2017) to advocate *that* as an appropriate goal for HRE within the context of formal state education, it demonstrates what I believe is a trend in HRE literature towards

[125] See especially: https://repository.usfca.edu/ijhre/ for recent examples of work in these areas.

increasing rejection of the model of HRE one might derive from the UNDHRET (2011) itself and the UN's work on the right to education more widely. This scepticism or rejection of the efficacy of the human rights movement to eradicate human rights violation or drive social change at a great pace may well prove to be correct (although I am deeply sceptical it is). However, the increasing focus on 'radicalism' in HRE strongly points towards a direction of travel in some of the development of HRE within the literature that I think is problematic not just for its plausible fit within Scottish education, but for *any* liberal democratic society. Indeed, I argue that underlying much of the criticism of the 'dominant' form of HRE and the move towards more radical forms of HRE stands a commitment (to a greater or lesser extent) to a form of anti-universalism and rejection of the international legal framework that, *inter alia*, is both mistaken and entirely inappropriate in the context of developing a programme of HRE for liberal democratic states. I think there are reasons to be extremely cautious about the appropriateness and practicability of the some of the proposals put forward around some of these models in the context of formal state education. However, this is not the focus of the current work. The main issue to is that endorsing either of these models as the appropriate way to incorporate HRE within Scottish education would require careful consideration on the part of policymakers.

To conclude this chapter, I will reiterate the broad underlying questions that motivate it. To develop and successfully implement a programme of HRE in Scotland we must ask: what exactly is needed to translate the knowledge, skills, and values 'nurtured in an educational setting' into everyday life for the wider population and professionals themselves? (Phillips & Gready, 2013, p.218). Do considerations of national or local context matter, and what, if anything, does this mean for the design and delivery of HRE? (Phillips & Gready, 2013, p.218). How do we develop a programme of HRE that is relevant to the needs of Scotland - both in terms of contextual factors relating to the law as well as specific needs of citizens- and what relationship does this have to international human rights law? My argument here is that given the absence of consensus in the field and thus no easily imported solutions, as well as the importance that however HRE is to be developed in the curriculum it must involve engagement at the national level to 'make sense, enjoy legitimacy, and get enacted' there seems a strong rationale to advocate greater engagement with these wider issues surrounding HRE in order that policymaking in Scotland can be better informed (Parker, 2018, p.5).

18. Opportunities for Human Right Education in Scotland.

Having outlined a range of challenges facing Scotland in realising HRE, I turn now to the opportunities the current political climate provides in addressing this task.[126] While the preceding sections could make the task of realising and promoting HRE within Scottish education look a particularly challenging task, I will contend here that while certainly difficult there are several immediate steps that can be taken that could substantially improve matters while the more complex questions I have outlined in this thesis are grappled with. As suggested in this thesis, there are a number of reasons for optimism about both the realisation of human rights more broadly in Scotland, but also of the important role that HRE might play in this task. The creation of a national task force[127] to take forward the recommendations made by the First Minister's Advisory Group on Human Rights Leadership in addition to the parallel initiative the incorporation of the UNCRC into domestic law highlights the particularly fertile environment in which proposals about the implementation of HRE within Scottish education can be made. This new task force will focus on the development of new legislation which would 'enhance the protection of the human rights of every member of Scottish society' and in keeping with this aim must surely come steps to improve the realisation of HRE within Scotland (Scottish Government, 2019). Alongside these welcome developments, we can consider the strategic goals of the Scottish Human Rights Commission for the period 2020-2024 to gain an insight into how the SHRC as a national human rights institution is seeking to assist in the realisation of rights in Scotland. The SHRC states that to advance towards the goals of 'our vision and mission', the SHRC strategic priorities for 2020 - 2024 are:

- Strategic Priority 1: Progressing understanding and strengthening legal protection of economic, social and cultural rights.
- Strategic Priority 2: Strengthening accountability for meeting human rights obligations.
- Strategic Priority 3: Building wider ownership of human rights.
- Strategic Priority 4: Advancing best practice locally and sharing our learning globally (SHRC, 2020, p14).

[126] An earlier version of parts of this chapter can be found in Daniels (2019).
[127] A new National Taskforce to lead on human rights in Scotland was announced on the 12th of June 2019 (https://www.gov.scot/news/new-national-taskforce-to-lead-on-human-rights-in-scotland/).

One can draw several immediate conclusions from these priorities about the role HRE may be able to play in all four of these strategic priorities and I will highlight a few here. I want to emphasise here that education about human rights can and perhaps necessarily must play a role in progressing understanding of economic, social, and cultural rights both in the course of education in the formal sense of schooling and also by more widely enabling the citizens of Scotland to engage fully with the human rights culture to be developed. Of particular importance here I might again suggest, as the UN has reiterated, that the right to education (and by extension HRE) is central to the realisation of other rights and that knowing about one's rights is the key to claiming them. Education crucially functions as a 'multiplier' enhancing all other human rights when it is guaranteed, and conversely, foreclosing the realisation of most others when denied (Tomaševski, 2003, p.1)

Focusing on Priority 3, an obvious connection may be to suggest that part of building wider ownership of human rights requires adequate levels of knowledge and understanding of those same rights, the mechanisms for their protection, and the norms and values that underpin the human rights movement itself. As Boyle and Hughes (2018, p.44) discuss, the experience in Scotland surrounding the creation of SNAP involved building up capacity for rights holders, civil society, and the government to be involved in developing national action plans creating 'a sense of ownership and awareness' over the standards required to meet international obligations as well as being 'undoubtedly' an example of best practice. It is here, I contend, that a fully developed and realised programme of HRE within Scottish education might offer perhaps its greatest merits in extending this process beyond the development of national action plans to the education system itself. If nothing else, the clear focus in compulsory education on learning about and for one's rights, the mechanisms for their protection, and the overall importance of "human rights values" seems an essential component of this capacity building. Importantly in this connection, I shall reference the work of Elaine Webster and Deirdre Flanigan (2018) on localising human rights law in Scotland. One of the concerns I raised earlier was about how best to understand the relationship between HRE and international human rights law. As way of a partial response, we might consider the exact process discussed by Webster and Flanigan (2018) where 'local ownership of international rights language' is a key aspect of 'making rights real'. Such a process may also serve as something of a middle ground between the "no law" and "all law" poles which HRE Phillips and Gready (2013) identify. It is important to remember that the legal formulation of rights can be 'just one aspect of a broader conceptualisation of human rights as a transnational discursive practice' (Webster & Flanigan, 2018, p.24). It is prudent,

therefore, not to overlook the role that legal standards can play in offering 'official stamps of validity, accountability and remedies' (Webster & Flanigan, 2018, p.24). It seems prudent to keep this in mind when deciding the kind of relationship we might prefer for HRE and international human rights law in Scotland.

Webster and Flanigan (2018, p.24) further suggest it is important that rights-holders feel able to, and are supported in, "appropriating" rights language evident in both 'public outreach programmes and rights education campaigns'. This idea has the flavour of what one might contend programmes of HRE ought to seek to do (to a greater or lesser extent in relation to the audience) in education and is crucially reminiscent of the direction that, '[h]uman rights can only be achieved through an informed and continued demand by people for their protection' (OHCHR, 2011). Gesturing towards broad human rights ideas (the underlying values perhaps) or specific invocations of standards (human rights legislation, mechanisms for reporting and enforcement for example) represent these two different usages, both of which seem vital in the development of a human rights culture and, importantly, both of which comprise a form of public practice that could be the subject of HRE. It is my contention that HRE can play a vital role in enabling this translation or "appropriation" process, in empowering the citizens of Scotland to claim their rights and to use human rights as a powerful tool in public debate. It is worth reiterating that while this thesis is focusing on HRE as it is to be developed for formal education, the world programme for HRE in its different phases makes clear that HRE is much more expansive than this, including politicians, members of the emergency services, journalists and many more. Finally, to offer a brief comment on priority 4, I believe the challenges outlined in this thesis build a strong case to suggest that Scotland does not currently show global leadership with relation to human rights education, nor therefore with how successfully the right to education is realised. To begin to address this deficit, there are a number of potential directions I will highlight below. These range from steps that can be taken relatively straightforwardly and immediately, as well as those that require more time and reflection in order to formulate a coherent and practical response to some of the more complex difficulties I have outlined in this thesis. However, the central opportunity for the better realisation of children's rights (and by extension HRE) comes through the incorporation of the UNCRC and I discuss that next.

19. Incorporation of the United Nations Convention on the Rights of the Child into Scots Law.

Previously, I identified serious concerns with the implementation of human rights education and children's rights more generally both globally and in Scotland specifically. As McCall-Smith (2019) makes particularly clear, international human rights law maintains 'a patchy record' of implementation in national systems with some approaches being highly selective or sporadic, others misguided at best, and a "middle ground" affecting a 'demeanour of sustained non-commitment to human rights' (McCall-Smith, 2019, p.425). It is reasonable to posit that whatever else the incorporation of the UNCRC into Scots law is meant to achieve, primary among the goals of the Scottish Government will be to significantly improve the implementation of children's rights within domestic law. International human rights treaties universally contain a call to states parties to implement or give legal effect to the obligations found in the treaty text - a fact well established and well understood by State Parties. The UNCRC is, as has been highlighted in this thesis, no different. While widely ratified, it is equally apparent that most states have been selective in which, if any, provisions of the UNCRC are implemented or given legal effect in national law. Indeed, as McCall-Smith (2019, p.425) details, while true that most states have made some effort to incorporate the Convention, many have also opted for 'an á la carte selection of rights protection rather than the full menu of rights'. All of this may lead us to ask what is required of states to meet their obligations under international law and what differences of approach can and are demonstrated in practice in pursuing these obligations? Moreover, what difference does it make? The former question I have answered in Part 1 of this thesis. The latter I will now seek to answer in discussing implementation, incorporation, and Scotland's commitment to incorporate the UNCRC into national law. On the 30th anniversary of the adoption of the UNCRC (20 November 2019), Deputy First Minister John Swinney announced the intention to introduce a bill during the current parliament to incorporate the UNCRC, saying:

> Our Bill will take a maximalist approach. We will incorporate the rights set out [in the] UNCRC in full and directly in every case possible - using the language of the Convention. Our only limitation will be the limit of the powers of this Parliament…
>
> This approach will mean that the Convention on the Rights of the Child is enshrined directly into Scots law. This represents a huge step forward for the protection of child rights in Scotland.

The Scottish Government officially introduced the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill on the 1st September 2020, beginning the process towards becoming law. This earlier statement of intent and the text of the Bill, as introduced, contain an unambiguous commitment to full and direct incorporation. Fleshing out what such a commitment entails will be the primary focus of the remainder of this chapter.

19.1 Understanding Incorporation.

As with many of the key terms under discussion in this thesis, incorporation as a legal concept and, indeed, incorporation as it relates specifically to the UNCRC, covers a range of potential actions. Before assessing exactly the nature of the proposals put forward in Scotland in relation to incorporation, it is worth further clarifying the processes by which international human rights treaties may be implemented by State Parties. This is both important in a general clarificatory sense and in later analysing the shape of the Scottish Government's commitment to incorporation.

Lundy, Kilkelly, and Byrne (2014, p.443) remind us that international human rights treaties, do not, in general, 'specify how State Parties are to give effect to their obligations at the domestic level'. UNCRC Article 4 makes plain that 'States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the [UNCRC].' Therefore, as McCall-Smith (2019, p.426) notes, 'implementation' here is a broadly conceived and 'all-encompassing term denoting how states give effect to the CRC provisions'. This is defined by the UNCRC as 'the process whereby states parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction' (UN, 2003[128]). To a large extent then, when it comes to the question of how best to implement their international treaty obligations, states are required to take all appropriate measures, but beyond that, it is up to the states themselves to determine the most appropriate means, so long as the relevant obligations are actually realised in practice. As has been detailed in earlier chapters, there can be considerable variation from what is detailed in international human rights treaties and how (and even if) states choose to implement part or all of a treaty in domestic law. What is crucial to understand when it comes

[128] See CRC (2003) UN Committee on the Rights of the Child General Comment No. 5 General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), 27 November 2003, CRC/GC/2003/527, para. 1.

to implementation and therefore incorporation in any form, is the different ways national and international law work. Firstly, national and international law, of course, operate on separate planes. This is why translating international law (such as the UNCRC) into national law (as the Scottish Government intend in 2021) is particularly complex (McCall-Smith, 2019). I will say more about the specific case of Scotland but will focus on the general issues here first. This translation process is an 'imprecise art'. However, due to the 'increasing regulatory nature' of international law, how obligations such as those detailed in international human rights law are given force at the national level is a topic of significant interest in legal, political, and social discourse (McCall-Smith, 2019, p.428). As Aust makes clear, it would be a mistake to assume 'that once a treaty has entered into force for a state it is then in force in that state; in other words, that it has become part of its law' (Aust, 2013, p.173). While, as noted, international law demands that states comply with their obligations in good faith, this is not to specify how at the national level this "becomes" law (McCall-Smith, 2019). Incorporation itself is both a concept and a collective term for a 'range of legal processes that implement international law into national law' (McCall-Smith, 2019, p.428). This again highlights the high tolerance levels for flexibility in the implementation of human rights law.

In the majority of national legal systems, even after the ratification of international human rights treaties further legislative action is required to realise these legal obligations.[129] It is important to note that international treaties can become binding *on* states without necessarily at the same time becoming binding *in* states. This is to say that, in all dualist states and many monist ones[130], international law needs to be transposed or incorporated into domestic law in order to have *direct* legal effect within that jurisdiction. The UK has a dualist approach to incorporation of international treaty obligations and utilises 'various legislative techniques to give such obligations effect in domestic law' (Williams, 2012, p.23). In some cases supremacy has been given to a treaty's legal system (i.e. section 2 of the European Communities Act 1972)[131], in others the more qualified translation of the ECHR into the Human Rights Act 1998 gives 'further effect but not superior status' to Convention rights under the ECHR (Williams, 2012, p.23). Further, as noted previously, the Scotland Act 1998

[129] As McCall-Smith (2019) notes, this is even the case in monist states where international law is generally automatically viewed as part of the national legal system (e.g. Belgium).
[130] Roughly, a monist state makes international law part of domestic law. Dualist states see international and domestic law as separate. The terms describe differing constitutional arrangements in relation to international law.
[131] The Act was repealed on 31 January 2020 by the European Union (Withdrawal) Act 2018, although its effect was "carried over" under the provisions of the European Union (Withdrawal Agreement) Act 2020.

puts beyond devolved competence any action which is incompatible with the UK's obligations under EU law or with Convention rights under the Human Rights Act 1998. One can make this clearer still by considering how the UNCRC has been, thus far, implemented within the Scottish legal system. The UNCRC itself does not have direct effect and cannot *itself* be used in Scottish courts. It is only through further legislation (e.g. the Children's Act, 1990 and Children and Young People (Scotland) Act, 2014) that this is made possible and even then only those provisions of the UNCRC that are *expressly* written into domestic law. Indeed, where the CRC is not automatically incorporated, other factors will determine the legal status of the Convention in national law. As Lundy, Kilkelly, and Byrne (2014) note, where the CRC sits in the hierarchy of the legal system can make a huge difference. For example, in some jurisdictions, 'the CRC is equivalent to national statute law, whereas in others it will have constitutional status, superior to legislation' (Lundy, Kilkelly, and Byrne, 2014, p.446). Further still is the question of whether the Convention is justiciable and whether it can be used as a 'binding authority' in the courts (Lundy, Kilkelly, and Byrne, 2014, p.446). In previous chapters, I have detailed the current situation in relation to these issues in Scotland and the UK as a whole (see Chapter 16). As things stand, however, Scotland has pursued a strategy (as has the UK to a lesser extent) of indirect incorporation of the CRC. Indirect incorporation of any international human rights treaty takes place when:

> rather than giving substantive status to the treaty provisions within the national legal system, a State Party instead prescribes action in a constitutional or legislative instrument that aims to give further effect to the treaty's implementation. (Kilkelly, 2019. p.329)

The measures introduced in the Children & Young People (Scotland) Act 2014 to require Scottish Ministers to 'keep under consideration' whether there are any steps they could take which might better secure and further realise UNCRC requirements in Scotland is one such example. While, as Kilkelly (2019, p.329) suggests, such measures stop short of direct incorporation, they have two important consequences: 1) they introduce and recognise 'the direct relationship between the exercise of ministerial duty and the implementation of the CRC'; 2) such measures can create awareness and support for more far-reaching implementation measures among decision-makers through exposure to the potentially even greater benefits of further incorporation.

19.2 Incorporating the United Nations Convention on the Rights of the Child.

Incorporation of the UNCRC into national law is strongly encouraged by the Committee on the Convention on the Rights of the Child[132], who have welcomed all developments in this direction including the creation of statutes to emphasise the Convention's principles in Scotland, Wales, and Northern Ireland over recent years. The Committee has long expressed its desire to see the CRC's principles mainstreamed in domestic law and the provisions of the CRC find themselves throughout *all* sectoral laws (education, health, and justice for example) within the domestic arrangements of signatory states (Kilkelly, 2019, CRC, 2003[133]). Moreover, the Committee has recommended the inclusion of sections on the rights of the child in national constitutions and regards the justiciability of children's rights, including where children themselves can claim their rights through effective remedies, as important to Convention implementation (Kilkelly, 2019, p. 325). Roughly, we can categorise types of incorporation along the following lines: direct incorporation (the CRC becomes part of domestic law) and indirect incorporation (where there are legal obligations which encourage its incorporation); and full incorporation (where the CRC has been wholly incorporated in law) and partial incorporation (where only some elements of the CRC have been incorporated) (Lundy, Kilkelly, & Byrne, 2014). In what follows I will discuss direct incorporation, covering both constitutional and statutory incorporation, piecemeal or sectoral incorporation, and indirect incorporation.

Direct incorporation.

Direct incorporation is, in the simplest terms, when the Convention, either in full or in part, is incorporated *directly* into the domestic legal system. As Lundy, Kilkelly, and Byrne (2014) highlight, this can happen either at the constitutional level or at the level of statute, parliamentary instrument or act. Through the transformation or transposition of the international treaty (in this case the UNCRC), part or all of the treaty will form part of national law, becoming binding on the public agencies of that state and become enforceable

[132] I will use "Committee" here as referring to the Committee on the Convention on the Rights of the Child.
[133] See (CRC, 2003) Committee on the Rights of the Child, General Comment No 5, General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6).

in court (McCall-Smith, 2019). Direct incorporation can occur both in states whose monist legal systems are set up to give automatic "direct effect" to certain kinds of treaties, but also in those states that take specific legislative action to incorporate a treaty within domestic law. With this in mind, we can further identify two models of incorporation: one through constitutional change and the other through statutory instrument. The latter is, owing to the nature of Scotland's current constitutional arrangement, what is proposed in Scotland.

Constitutional Incorporation.

Incorporation of the UNCRC into the constitution of a nation is evidence of a very strong commitment to the recognition, if not implementation, of children's rights at the highest legal level (Lundy, Kilkelly, and Byrne, 2014). The constitution is, of course, the most important instrument in the domestic legal order and so changes to a constitution are of far reaching significant. The trend over the last decade has been towards the enshrinement of children's rights in the national constitutions of several nations (Tobin, 2015; Lundy, Kilkelly, and Byrne, 2014). As Lundy, Kilkelly, and Byrne (2014) highlight, of the 12 countries studied for UNICEF, they found that six had taken or were taking steps to incorporate provisions of the UNCRC into their constitutions. Of the countries studied only Spain could be said to have incorporated the Convention into its constitution in its entirety, although interestingly this constitutional provision predates the UNCRC itself (Lundy, Kilkelly, and Byrne, 2014).

Much more common is for countries to incorporate select provisions of the UNCRC into their constitutions, with examples being Belgium, Ireland, South Africa and Sweden (at the time of the study) (Lundy, Kilkelly, and Byrne, 2014; Lundy et al, 2012). Of note is the general consistency in the selection of the key provisions to be incorporated into the national constitutions of the states surveyed. As Lundy, Kilkelly, and Byrne (2014, p.448) highlight, the most common practice has been to incorporate the best interest principle (Article 3) and the right of the child to be heard (Article 12). These are widely accepted as absolutely key to the realisation of children's rights and so it is little surprise that they are emphasised in this way.

Statutory incorporation.

Next, and by far the more common method of incorporation is through the use of domestic legislation. The 2012 study for UNICEF-UK identified that all of the 12 countries studied had taken steps either in full or in part to incorporate the UNCRC in domestic legislation (Lundy et al, 2012). Furthermore, three states - Belgium, Norway and Spain - had

incorporated the Convention in its entirety into national law (Lundy, Kilkelly, & Byrne, 2014). This is the path Scotland intends to embark upon very shortly. In 20.4 I will outline in greater detail what this means and reflect upon the experiences of other countries who have pursued this goal in order to identify the challenges and opportunities Scotland will be faced with.

Relatedly, sectoral or piecemeal incorporation entails various provisions of the treaty being integrated into national laws but at a lesser level than incorporation of the full treaty. There is some debate owing to the "cherry-picking" nature of this approach as to whether this constitutes incorporation proper. However, given the broad definition of incorporation as whatever means of implementation is employed to realise treaty provisions in national law it falls under the definition used here (McCall-Smith, 2019). Currently, piecemeal or sectoral approaches to incorporation are the most prevalent way in which provisions of the UNCRC are given effect in national legal systems (McCall-Smith, 2019).

In summary, while direct incorporation is often a very clear sign of commitment to children's rights protection, it is also important to remember that direct incorporation 'does not equate to consummate rights protection' (McCall-Smith, 2019, p.432). In discussing the challenges of incorporation within Scotland I will stress again that simply bringing the UNCRC into Scots law is not a panacea for the myriad of issues with the realisation of children's rights found within Scotland (which have, of course, been considerably exacerbated by the COVID-19 pandemic). The UNCRC provides a strong framework upon which to build but much more is required to realise children's rights in practice and their right to education. As I have argued, Human Rights Education plays an important role in this wider task and I shall make the case that the Scottish Government has much more to do in this regard alongside the incorporation of the UNCRC which will make this work obligatory.

Indirect incorporation

The second approach is indirect incorporation which involves giving the relevant treaty some effect in national law by means of 'another legal mechanism' (Lundy, Kilkelly, & Byrne, 2014, p.433). Rather than giving substantive status to the provisions in the international treaty within the national legal system, the State Party instead undertakes action through alteration of the constitution or via further legislation in order to give further effect to the treaty's implementation (Kilkelly, 2019; Harrington, 2007). This is generally achieved through

reference to ratified human rights treaties but the overall effectiveness of this will be significantly determined by whether or not the provisions have "direct effect". Again, it is left to states to a large degree to determine whether ratified human rights treaties take precedence over domestic law and disagreements between, for example, France and the UN have been long running over France's interpretation and implementation of the UNCRC. If a treaty like the CRC is not seen as self-executing, then it will not become justiciable in domestic courts without further action by the legislature.[134] Common mechanisms for indirect incorporation would be the constitutional requirement for the enactment of legislation 'to give effect to a specific duty or right 'or to give constitutional or legislative status to a prescription, often aimed at courts or other decision-makers, to "take account" of UNCRC rights (Kilkelly, 2019, p.329). The Scottish approach has been to incorporate elements of the UNCRC indirectly over time through 'relevant statutory provisions' (e.g. Adoption and Children (Scotland) Act 2007, sections 2, 9.15, 20, 31, 32, embedding aspects of Articles 3, 12, 7, 9, and 21 of the UNCRC) (Barnes MacFarlane, 2020, p.484). However, and crucially, without full and direct incorporation there is no requirement that courts or authorities apply the provisions of the UNCRC itself, nor that they consider them in decision making (Barnes MacFarlane, 2020). However, the most salient point about indirect incorporation is that without further comprehensive implementing legislation efforts to enforce the provisions of the treaty in national law will be severely undermined.

In summary, incorporation is something of a 'malleable concept' which may, on one hand, involve a variety of processes to internalise international norms into national law and practice (Hoffman & Stern, 2020, p.148). Alternatively. it may be a more prescriptive process involving the reform of constitutional systems and the processes for making international treaties applicable and justiciable at the domestic level (Hoffman & Stern, 2020; Kilkelly, 2019; Lundy, Kilkelly, & Byrne, 2014). In either case, what emerges strongly from the literature is both this diverse use of the term (and the associated differences in practice), but also the importance of effective implementation and/or enforcement regardless of what form incorporation takes (Boyle, 2018; Hoffman & Stern, 2020). Ultimately, as Boyle (2018, p.10) notes in the SHRC report on incorporation of ESC rights in Scotland, the test of effective implementation of human rights is that incorporation reaches a 'sufficient threshold' that, *inter alia*, ensures that the international normative content of the relevant treaty is not

[134] A self-executing treaty would be one where its ratification automatically leads to judicial enforcement within the national legal system.

diluted or undermined (Boyle, 2018). Furthermore, meeting this threshold involves ensuring that effective remedies are made available for human rights violations (Boyle, 2018). Importantly, the flexibility in the definition of incorporation, rather than being a hindrance, is helpful in terms of ensuring that 'rights are able to flourish within the legal regime in which they are embedded' (Boyle, 2018, p.10). Having now discussed the two broad approaches to incorporation and fleshed out some specific details of how they may manifest in practice[135], I will move on to detailing the proposal put forward by the Scottish Government for full and direct incorporation and spell out what this means and why it is important.

19.3. Incorporation in Scotland.

Incorporation matters and increasingly research and the experience of those working to promote and protect children's rights internationally is offering a clearer sense of how and why. Research has indicated that in State Parties where the UNCRC has been incorporated (in this case Belgium, Norway, and Spain) children are 'more commonly' perceived as rights holders (Kilkelly, 2019, p.332; Lundy et al, 2012). Moreover, it was found that in such countries there was a greater level of respect for children's rights generally (Lundy et al, 2012). In much the same way, there is some evidence that the political debate and procedures surrounding incorporation (both indirect and direct) kickstarts a process whereby the important engagement and political deliberation surrounding children's rights and the necessary legislative and practical actions needed to realise them can begin in earnest. This is to say that even the process of discussing the possibility of improving children's rights within a State can have the effect of further attuning a variety of important stakeholders to the benefits of doing so and where already convinced, the benefits of going further. As suggested earlier in this chapter, this has been the experience of both Scotland and Sweden where a slower process of indirect incorporation of various elements of the UNCRC over time has only strengthened commitment to children's rights. Moreover, this process has widened awareness and understanding of children's rights issues both within Government and other institutions but also more widely. We might indeed say the process of implementation of any

[135] For a further detailed discussion of this topic see Hoffman, S., & Stern, R. T. (2020). Incorporation of the UN Convention on the Rights of the Child in National Law. The International Journal of Children's Rights, 28(1), 133-156.

form can be highly educative for stakeholders (including children themselves) about children's rights (Kilkelly, 2019, p.332).

Finally, and key to successful implementation of any sort, is the development of a culture of support for children's rights in civil society, the public, and in the media (Kilkelly, 2019). I have previously highlighted how central the development of a human rights culture and the raising of awareness about children's' rights is both to the CRC generally and as part of the goals of Human Rights Education. Indeed, I have argued in this thesis that a strong programme of HRE is necessary to the task of both educating children about their rights, but also in building a strong civil society awareness and respect for children's rights. One of the largest barriers to children's rights progress generally - Scotland being no exception - is that there must be:

> [a] profound cultural transformation that requires changes in the relationship between parents, children, and the state, [that]…needs to be sustained by a legal framework as well as by the implementation of policies, plans, and institutions truly inspired by the CRC—not a minor issue for policy-makers and for society at large. (Mauras, 2011, p.63)

It is important for the realisation of children's rights that all of the general measures of implementation are in place. The general measures of implementation include as per UN Committee, General Comment No. 5: reform and jurisprudence; budgeting; national plans of action; monitoring processes and mechanisms; education, awareness and training; independent national human rights institutions; coordination efforts and mechanisms; participation of civil society; international cooperation; and ratification and implementation of other relevant international standards (Collins, 2019). Incorporation, even full and direct incorporation, covers only a fraction of these measures. While incorporation is highly significant and an important step forward for Scotland in realising children's rights, it does not resolve all issues with the realisation of children's rights. Crucially for this project, incorporation establishes a crucial legal framework but does not itself ensure that children's rights to and in education are secured nor offer guidance about how programmes of HRE ought to be developed and justified, as I will go on to discuss in Chapter 22. Incorporation can be an important symbol even beyond its legal implications but is only one of a suite of steps that must be taken together in order to realise children's educational rights and build a culture of human rights in Scotland.

Having detailed why incorporation matters in a general sense, I will conclude this section by outlining three reasons for my claim that incorporation matters in Scotland in a specific way by returning to earlier threads in this thesis. Firstly, direct incorporation is important, and indeed, *urgent* to protect children's rights because legal protections for children's rights may be lost at the end of the transition period of the UK's exit from the EU. Secondly, and more positively, incorporation is important because there is strong evidence that it is what the children and young people want. Children and young people's desire for incorporation has been made clear through the work of the Scottish Youth Parliament's (SYP) campaign *Right Here, Right Now*. SYP's 2016-21 youth manifesto, *Lead the Way*[136], received more than 70,000 consultation responses, finding that 76 per cent of children and young people surveyed agreed that:

> The United National Convention on the Rights of the Child (UNCRC) should be fully incorporated into Scots law, and the rights of children and young people should be protected and promoted. (SYP, 2016, p.13)

Children and young people have continued to make their voices heard on this matter through the SYP and directly to ministers at the annual cabinet meeting with children and young people.[137] Whilst children's voices on this matter are of crucial importance, it is illuminating to see just how widespread support for full and direct incorporation is amongst respondents to the 2018 Scottish Government consultation on incorporation. Taking some key feedback, when asked what was the preferred model for incorporation, two-thirds of those who responded identified a preference for direct incorporation (Scottish Government, 2019b, p.44).[138] In written responses to the same question, just under a third of respondents (43 respondents) commented that the model proposed by the Incorporation Advisory Group convened by Together and the Children and Young People Commissioner Scotland is an appropriate model of incorporation. The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, as introduced, builds on the draft Bill created by the Incorporation Advisory Group and adopts the same model. In terms of timing and priority, 70% of respondents to the survey agreed that it was best to push for the incorporation of the UNCRC before the development of a Statutory Human Rights Framework for Scotland

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[136] https://syp.org.uk/wp-content/uploads/2019/09/Lead_The_Way_Manifesto.pdf

[137] For reports of the 1st and 2nd meetings see https://www.gov.scot/publications/actions-agreed-cabinet-meeting-children-young-people-28-february-2017-9781788515733/; https://www.gov.scot/publications/second-annual-meeting-of-ministers-with-children-and-young-people/

[138] The report covers a considerable range of questions and detailed responses to them. I will not discuss all of the points here but one can see more detailed commitment to the model proposed by the Advisory Group even above other models of direct incorporation in the feedback provided.

(Scottish Government, 2019b). The final finding I will comment on is the almost unanimous (89.79%) support for the statement that the UNCRC rights should take precedence over provisions in secondary legislation (Scottish Government, 2019b, p.72). The most commonly expressed rationale for this, provided by just over a quarter of respondents, was that it is essential to maintain consistency with the approach to wider human rights set out in the HRA (Scottish Government, 2019b, p.72). As was noted in written responses, this legal status of taking precedence over secondary legislation (as is the case with the ECHR via the HRA) is seen as important for the UNCRC lest it be allocated a lower status in law. The totality of the responses in the consultation on incorporation paints a picture of widespread and substantial support for direct incorporation from a range of stakeholders in Scotland.

19.4 United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill.

On September 1st 2020, the Scottish Government, as part of its new programme for government, introduced the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (hereafter "The Bill" or Incorporation Bill, 2020). As noted previously, the Bill has been the culmination of several years of work and builds on the foundational work undertaken by the Incorporation Advisory Group. The Bill will now pass through several stages of scrutiny and potential amendment before finally becoming law. It is no small thing to reflect that during the course of writing this thesis the idea of full and direct incorporation has moved from a seemingly distant and aspirational goal to now entering the final legislative furlong, as it were. It is hard to state quite how significant a milestone this is for children's rights in Scotland and the debt owed to the advocates who have worked tirelessly for many years to lobby and educate those in power of the great value of children's rights protections and where Scotland can do better. This milestone again reiterates the broad commitment to children's rights and to making Scotland the best place to live and grow up that I have discussed on several occasions thus far. The Bill as introduced is worthy of more than a few comments particularly in relation to the stated policy objectives published alongside the Bill. The extensive legal and policy commentary offered by the Scottish Government to accompany the Bill is highly illuminating but I will not summarise it in its entirety here, rather opting to select a few key features for the purposes of this thesis.

Further, there are potentially very significant implications of Sections 20 and 21 of the Bill as introduced that I will make a brief comment on first.

Starting with the most basic detail of the Bill, the Bill will incorporate the following articles of the UNCRC and first and second optional protocols - as far as is possible within the legislative competence of the Scottish Parliament:

> Articles 1 to 42 of the UNCRC; Articles 1 - 11 of the first optional protocol; Articles 1 - 7 of second optional protocol.

It is crucial to recall here that the Bill cannot incorporate rights and obligations within the articles of the UNCRC and first and second optional protocols where 'their inclusion would take the Bill outside the legislative competence of the Parliament' (Policy Memorandum[139], 2020, p. 46). As the UK has not ratified Optional Protocol 3, for example, the Scottish Parliament does not have the power to incorporate it into Scots Law even if it so chose. The stated policy intention of the Bill is, therefore, to achieve the 'highest protection for children's rights possible within the boundaries of the devolved settlement as provided for in the Scotland Act' (Policy Memorandum, 2020, p.46).[140] The Bill will, therefore, ensure that all legislation and practice aligns with children's rights. Moreover, the Bill will ensure that where breaches of rights occur, these are not allowed to persist and are remedied (Policy Memorandum, 2020). The Scottish Government outlines its preferred policy approach as requiring *all* legislation, past and future, to be compatible with the incorporated UNCRC rights and obligations (Policy Memorandum, 2020). In order to achieve this goal, the Bill provides for courts having the power to "strike down" incompatible provisions, including primary legislation. The Bill provides for two different remedies in respect of legislation which is found to be incompatible. Concerning legislation which pre-dates the Bill, the Bill enables the courts:

> …to declare that the incompatible provision ceases to be law from the date of the court's declaratory (a "strike down declarator")(Policy Memorandum, 2020, p.30-31).

The effect of striking down legislation under section 20, as outlined in the *Explanatory Notes*[141] for the Bill is that from the point at which it is struck down 'the legislation no longer forms part of Scots law' (Explanatory Notes, 2020, p.16). Where the incompatibility is

[139] See Scottish Parliament (2020c)
[140] The developments of September 2020 put this settlement under renewed strain (See Chapter 14.1).
[141] See Scottish Parliament (2020b)

identified in legislation which postdates the Bill, the Bill enables the courts to declare that the provision is 'incompatible with the UNCRC (an 'incompatibility declarator')' (Policy Memorandum, 2020, p.31). Section 21 of the Bill allows a court to declare certain legislation 'to be incompatible with the UNCRC requirements, where it has found it impossible to interpret the legislation compatibly with those requirements in accordance with section 19' (Explanatory notes, 2020, p.18). These are important protections for children's rights ensuring that breaches of children's rights in legislation both pre-dating and post-dating the Bill cannot continue. What is of perhaps much more constitutional significance is the further elaborated detail in the Bill itself in Sections 20 and 21 of the extent to which this ability to strike down or declare incompatibility may extend. The limit to all outlined in the Bill is whether the legislation is within the legislative competence of the Scottish Parliament (i.e. what is outlined in section 29 of the Scotland Act 1998). However, a provision may be contained within part of an Act of (the United Kingdom) Parliament that extends to Scotland and another UK jurisdiction. Section 21(6) of the Bill makes clear that 'that fact alone *does not* mean that the provision is to be regarded as outside the legislative competence of the Scottish Parliament for the purpose of ascertaining the legislation that is covered by section 21(5)(a)' [My emphasis] (Explanatory Notes, 2020, p.19.) What this all appears to indicate is that Acts of either the Scottish or United Kingdom Parliament enacted after the Bill comes into force are subject to judicial declarations of incompatibility. This is a move that presents an important defence against future erosion of children's rights by Acts of Parliament that require, by convention, the consent of the Scottish Parliament - and perhaps even beyond this - but, equally, sets up a potentially highly significant constitutional debate. I will leave further analysis of the legal implications of the Bill to legal scholars and turn to an analysis of the policy memorandum accompanying the Bill for further relevant details to this thesis. It is worth considering these remarks in detail given how significant the introduction of this Bill is for children's rights in Scotland and to this project itself.

Amongst the key highlights is the reiteration of the Scottish Government's commitment to 'fully realising the human rights of all people in Scotland' (Policy Memorandum, 2020, p.1). This is a commitment to building a Scotland where respect for human rights forms 'the bedrock of society and the institutions which govern and deliver public services for the people of Scotland' (Policy Memorandum, 2020, p.1). The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill represents a significant step on the road to fully realising that future for Scotland. This is a future based

on tolerance, equality, shared values and respect for the worth and human dignity of all people (Policy Memorandum, 2020, p.1). The Bill is part of a commitment to a 'revolution' in children's rights in Scotland and recognises the dual impacts of the COVID-19 pandemic and the United Kingdom's withdrawal from the European Union. It is seen that both of these events 'underline the importance of human rights being built into the fabric of society' (Policy Memorandum, 2020, p.2). This is of most evident importance in relation to the lives and futures of children and young people.

The UNCRC is, we are reminded, the global "gold standard" for children's rights and by incorporating the UNCRC, the Bill will deliver a 'fundamental shift in the way children's rights are respected, protected and fulfilled in Scotland' (Policy Memorandum, 2020, p.2). It will ensure that children's rights are built into the fabric of decision-making in Scotland and that these rights can be enforced in the courts (as highlighted previously this is one of the key consequences of direct incorporation). The approach which the Bill takes is "maximalist" as has been previously described (to reiterate, maximal simply meaning to the full extent of the Parliament's powers). Significantly, the Bill will 'ensure that there is a proactive culture of everyday accountability for children's rights across public services in Scotland' (Policy Memorandum, 2020, p.2). Public authorities should be required to take 'proactive steps to ensure compliance with children's rights' in their decision-making and service delivery. Overall, this will mean that the structures within which decisions are made in Scotland will be required both to be compatible with children's rights and to enable children and young people to be heard *and* take an active role (Policy Memorandum, 2020). To address additional barriers that children and young people face to realising their rights and accessing justice there will be, as a result of the Bill, greater accountability and transparency regarding the proactive realisation of children's rights in practice. Moreover, the provisions of the Bill empower the Children and Young People's Commissioner in Scotland to 'raise claims in the public interest and provision requiring the Scottish Ministers to make a Children's Rights Scheme' (Policy Memorandum, 2020, p.2). Fully realising the 'fundamental human rights' of children and young people is 'essential to building the more 'prosperous, equal future which the Scottish Government wants for Scotland' (Policy Memorandum, 2020, p.3). Indeed, as is made clear, it is the belief of the Scottish Government that only through respecting and fully realising the rights of all children and young people 'can all of Scotland flourish' (Policy Memorandum, 2020, p.3). The Scottish Government's intention is to give children's rights 'the highest status within Scotland's constitutional framework' (Policy Memorandum, 2020,

p.31). This is, in addition to an important legal protection for children's rights, an important symbolic act. The significance of doing so in the Norwegian example as part of the development of a broader public culture of respect of children's rights offers an important insight into what we may hope to achieve in Scotland. As noted elsewhere in this thesis, the UK has not ratified the third optional protocol to the UNCRC which allows children to submit directly to the CRC a complaint claiming that their rights have been violated. Importantly, the Scottish Government 'believes that all of the rights in the UNCRC and the optional protocols should be enforceable across the UK' (Policy Memorandum, 2020, p.31), and further that the UK Government should ratify the third optional protocol. The Bill contains a power which would allow Ministers to take account of the third optional protocol if this is ratified by the UK Government in the future and to do more in the Scottish Parliament should the powers of that parliament change.

As suggested in the literature international experience highlights the necessary mix of law, policy, and practice as the best way to ensure successful implementation of the UNCRC. [142] This fact is both outlined and recognised in the text accompanying the publication of this Bill (Policy Memorandum, 2020, p.11). Additionally, it is noted that non-legislative measures (i.e. non-legal measures) have an important role to play in the implementation of the UNCRC and that Scotland has 'a strong foundation of existing policy, practice and legislation in Scotland which has sought to embed children's rights' (Policy Memorandum, 2020, p.11). Further, recognition is given to the fact that evidence increasingly suggests that in several countries incorporation has:

> had a positive impact in providing a platform for the development of other legal and non-legislative measures, underpinned by systematic children's rights training and a robust infrastructure designed to monitor, support and enforce implementation. (Policy Memorandum, 2020, p.11)

There is wide recognition in Scotland that incorporating the UNCRC directly will significantly advance the protection and realisation of children's rights. Therefore, the Scottish Government considers that 'now is the right time to directly incorporate the UNCRC

[142] To discuss what we may learn from the South African experience see Kilkelly and Liefaard's (2019) recent analysis of the constitutional incorporation of the UNCRC, Binford, (2015) and Tobin (2005). For the Norwegian experience see Haugi (2019) and Sandberg (2020).

and make the rights and obligations contained within it enforceable in the Scottish courts' (Policy Memorandum, 2020, p.11).

19.5 Human Rights Education and the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill.

My analysis turns now to a highly significant quote:

> The Scottish Government wants a Scotland where policy, law and decision-making take account of children's rights and where all children have a voice and are empowered not just to know and understand their rights, but also to assert and defend those rights and the rights of others. (Policy Memorandum, 2020, p.3)

This is certainly a highly significant political aspiration associated with the Bill. While the commitment to "voice" and empowerment generally are familiar features of discussion around children's rights in Scotland, the explicit reference to knowing, understanding, and asserting one's rights here is worth comment. This is, on my reading, to explicitly make the case for some form of HRE within the policy memorandum accompanying a Bill of the Scottish Parliament. To be clear here, it is - as I have argued in this thesis -part of a State's obligation to realise the right to education for children that it educate them about, for, and through their rights. I have further argued that, consequently, it is incumbent on State parties to provide sufficiently developed programmes of HRE within state education in order that children know, understand, and can claim their rights. The above quotation is highly significant both as a political commitment and in the context of this thesis for several reasons I will detail below. I have demonstrated earlier in this Part that the commitment that: '[children]...are empowered not just to know and understand their rights…' is not currently realised within Scottish education and that Curriculum for Excellence (*CfE)* does not provide for its fulfilment in its current form. With this in mind, to reiterate this commitment when introducing the Bill is surely also a commitment to address the failure identified given the legal duties that will now be associated with inaction within the national legal system. It seems to me an obvious consequence of the incorporation Bill that failure to provide meaningful human rights education to children in Scotland will be to fail to meet domestic legal duties. Relatedly, I take as a further consequence of the political commitment quoted above that the Scottish Government - and the Scottish Parliament should the Bill successfully

pass scrutiny - will then be committed to seek guidance on how to improve the realisation of children's right to education at both national and local level as per provisions in the Bill. I have demonstrated that significant work is required in relation to the curriculum and the preparation of teachers to achieve the aim that all children in Scotland learn about, through, and for their human rights. I will make explicit recommendations of this sort at the end of this thesis. If this initial point is granted, we may turn to the further commitment that children in Scotland be able to 'assert and defend those rights and the rights of others'. At the current time, there is simply no educational programme in place in Scotland at the national level that could even conceivably achieve this aim. I argued previously, building on the work of Lundy and Martinez-Sainz (Chapter 12), that this certainly is a key part of a wider programme of human rights education and I welcome this commitment from the Scottish Government, but again note how far away from realisation this aim is in practice. My central claim here is therefore thus: This thesis establishes that a programme of human rights education is required to achieve both of the goals outlined in the quotation above; i.e. 1) knowledge and understanding about rights; 2) sufficient education in how to assert and defend one's rights to be capable of doing so. Neither of these goals can be achieved without a commitment to developing a Scottish programme of HRE. The thesis to this point has sought to establish these premises as true. If one accepts these premises, the logical conclusion is that a requirement of realising the right to education in Scotland as per Article 13 of the ICESCR, UNDHRET (2011), and Articles 28,29, and 42 of the UNCRC - which will become part of domestic law upon the passing of this Bill - is a programme of HRE fit to the above-stated goals. The next necessary step is to begin the process of determining how best to develop a programme of HRE within Scotland and *CfE* and, crucially, what this will entail and how we may justify this as a component of state education (I will address these points in the following chapter). My key point in focusing on this quotation is that if, as appears the case, the Scottish Government accept the premises of the argument I have recapped above and made in detail throughout this thesis, then it ought also to accept the conclusion I have stated above. I take this as a clear political declaration that the Bill should, and will facilitate, this explicit HRE goal and that it is the interpretation therefore of the Scottish Parliament (and Government as sponsors of the Bill) that this is what the UNCRC requires. As I have argued previously, this is indeed my understanding of UNCRC requirements surrounding the right to education and, more specifically, human rights education, that this is the case. I again highlight the failures to fully realise this obligation in

Scotland as detailed in Chapter 16 and will raise further issues in the next Chapter questioning how exactly this can be achieved in Scottish schools.

However, in the next Chapter I intend to highlight in considerable detail a family of problems relating to the primary focus of this thesis. There has, at the time of writing, been growing recognition of issues that stem from this family of problems either within HRE literature but little evidence in any of the discussion over the incorporation of the UNCRC in Scotland or the right to education specifically. This thesis has taken great care in developing a wide and interdisciplinary approach to this issue but will now turn to an element that has been considerably underdeveloped in HRE literature and advocacy: the need for a philosophy of human rights education. As I have indicated throughout this project, there are serious and complex questions for advocates of HRE to answer on both the proper subject matter and justification of programmes of HRE within state education. These are questions that have received little attention at the level of specificity I intend to subject them to. This is to say, while there is an awareness that the content of programmes of HRE matters, there has not been any sustained discussion of how one determines what *matters* here nor what one is permitted to teach in line with well-established constraints on a liberal democratic state in education, even in pursuit of children's rights perhaps. This is importantly separate from the debate over the legalistic or non-legalistic models of HRE and represents a more fundamental question about the logic of the development of programmes of HRE *qua* a form of education about and for rights. I will argue that as with all other programmes of education, advocates of HRE ought to have a lot to say about the *objects* to be studied, which in this case means what we do and can teach children to believe about human rights and how we might decide.

20. Reflecting on Recent Research on Human Rights Education: Addressing Difficult Questions.

There remains considerable disagreement surrounding HRE as a concept and as a practice. In the next two chapters, I will engage with what I think are particularly challenging questions for HRE, consider a number of important recent examples of grappling with how to improve the development of HRE, and respond to existing issues in its realisation. What is noteworthy about this series of questions is that as well as being particularly challenging issues to resolve, they point towards even more fundamental and potentially obstinate issues for HRE as an educational initiative. Recent research has considered the consequences of translation of the UNCRC into legislation in different jurisdictions (Robinson, Quennerstedt, & I'Anson, 2020); on developing a theoretical understanding of teachers' responsibilities in HRE (Robinson, Phillips & Quennerstedt, 2018; Jerome, 2018); and in translating human rights principles into classroom practices (Robinson, 2016). This is an important reminder of the potential benefit of direct incorporation of the UNCRC into Scots law; that is, there should, in theory, be less room for the narrowing of (for example) Article 12 owing to its status in domestic law. This, at the very least, strikes me as a plausible way to understand how incorporation may play into the translation process. In pursuing a very different approach to HRE from that advanced here, Zembylas and Keet (2019) advance their case for what they call "Critical" HRE[143]. There also continues to be a flourishing of HRE scholarship in both the journals *Human Rights Education Review* and *The International Journal of Human Rights Education* recently considering the implications of COVID-19[144] and on decolonising HRE[145] respectively.

However, even with the growing maturity of the field there remains an important gap in HRE scholarship relating to the development of analytic philosophy of education about HRE; that is, the kind of theory of HRE I have argued is necessary here. Or to put it slightly differently, while broad issues with HRE are now clear, the means of diagnosing and seeking to address them are drawn from different disciplinary directions emphasising different features of what needs to be improved with HRE. What I aim to do here is to make clear issues with HRE that might occur to an analytic philosopher of education. Worryingly,

[143] Zembylas & Keet (2019). As noted in Chapter 17, I am sceptical of these proposals in the context of formal education but cannot develop these points here.
[144] Magendzo & Osler (2020).
[145] Williams, Hakim Mohandas Amani and Bermeo. (2020)

amongst all of these advances in HRE scholarship, research has found that there is 'no evidence that national legislations developed in response to the various UN initiatives have resulted in HRE being embedded in school-based policies and practices within any nation' (Robinson et al. 2020, p.238). We might then consider why.

First, I shall consider W.C Parker's work to highlight the lack of an 'epistemic framework' for HRE. This makes HRE unlike other established curriculum subjects and should sensibly be considered as a significant barrier to the development of both plausible versions of HRE as a programme of education and the likelihood of gaining support for their inclusion within the curriculum. Parker's argument here is that in order to develop HRE, a much clearer and more organised system of meaning - including a scheme for the sequencing of teaching and the delineation of the core knowledge claims made by HRE - is required to support HRE as an educational initiative. As Parker (2018, p.1) puts it, the main problem is 'HRE's lack of an *episteme* - a disciplinary structure created in specialist communities - and, related to this, the flight of scholars from the field of curriculum practice, redefining it away from subject matter'. To address this challenge and make possible a more "robust HRE" within schools requires not just advocacy but, crucially, a curriculum. Knowledge, as Parker notes, matters here. I believe that the lack of widespread engagement in the HRE literature with questions relating to the appropriate legal relationship between HRE and international human rights law, a significant theoretical blind spot over the need for the development of clear curricula, the need for engagement with difficult questions over the justification of HRE as part of state education, and too much reliance on what can be delivered by advocacy and participatory methods in education alone, stultifies the development of plausible and robust theoretical apparatus to further develop HRE theory and practice. My contribution to resolving these issues will be in identifying some of the theoretical constraints on HRE entailed by other valuable commitments in education (i.e. to non-indoctrination, to limitations on the state's influence on the moral formation of children, etc.) that ought to lead to the kind of robust theory of HRE that is necessary to inform curriculum development of the sort Parker argues is necessary.

Second, Keith Barton (2020, p.189) points to the need for an HRE curriculum that focuses on 'principles of human rights protection that extend beyond personal attitudes and interventions'. As Barton (2020, p.189) puts it:

> [HRE needs] …curricula that help students construct understandings of specific mechanisms and procedures for protecting human rights - and of

> students' own potential role in supporting these - could play a significant part in bringing about more just and equitable societies.

That is, the HRE curriculum must pay attention to the institutional and policy mechanisms that are part of the global practice of protecting human rights. As I have noted in this thesis previously, Beitz's more general call for conceptions of human rights to reflect the *practice* of human rights can be seen again in Barton's suggestion that the HRE curriculum must also reflect important features of the international practice of human rights. This is not just important in ensuring fidelity to the actual practice of human rights internationally but, as Barton (2020) argues, in enabling or supporting students' own potential role in defending human rights and working towards a more just and equitable society. This stands as a strong counter-argument to what I have previously called the "no-law" position in HRE advocacy. As Barton makes clear, research has shown that students may recognize 'broad causes of human rights violations and be committed to addressing them', even while their knowledge of practical means for doing so is limited (Barton, 2020, p.211). It is crucial to learn about the role of institutions such as 'legislatures, governmental agencies, international courts, monitoring systems, diplomatic arrangements, regional agreements, and nongovernmental organizations' (Barton, 2020, p.210). Although perhaps not necessarily as compelling or immediately motivating, without a clear understanding of these institutions it is unlikely that students will develop an awareness of the importance of holding such institutions to account - a crucial action in a democracy- and in realising the potential for individual action to ensure the government's obligations with respect to human rights are met (Barton, 2020). In many respects, Barton's call here picks up on similar themes discussed in Lundy and Martinez Sainz (2018) and I have discussed their argument for the centrality of legal literacy in programmes of HRE previously in this thesis (Chapter 11).

Finally, Alison Struthers' (2020) recent work on the teaching of HRE within English Schools identifies several important questions for the further development of HRE. Struthers' *Teaching Human Rights in Primary Schools: Overcoming the Barriers to Effective Practice,* builds on her previous work in England referenced in earlier chapters as well as much of the empirical evidence about HRE practice and teacher attitudes in Scotland discussed in this thesis. Struthers' work is important for this thesis in two main regards. The first is in the presentation of more recent research on teacher attitudes towards the teaching of HRE, perceived barriers, and the self-reporting of HRE practice in English primary schools. While,

of course, the English primary school context is in many ways importantly different from the primary setting in Scotland, the data and the conclusions drawn from it are also instructive here (and reflect the older findings in Scottish schools in many regards). As such, I will discuss and analyse some of Struthers' key findings and further make the case for my central claims in this chapter in relation to Scottish education. The second crucial contribution is a further expression of the importance of engagement with more complex theoretical questions that may inform the development of HRE and help teachers themselves overcome issues in implementing HRE within schools.

Struthers' (2020, p.114) finds that the complexities of HRE practice make education *about* human rights a 'challenging enterprise'. Moreover, teachers consider HRE as particularly likely to 'antagonise parents', and this is something largely to be avoided (Struthers, 2020, p.114). Struthers identifies two key questions that may be considered "cousins" to two of the questions I pose here[146]. Struthers asks in connection with education *about* human rights: how do teachers' theoretical conceptions of human rights affect their practice in the teaching of human rights values?; further, whether human rights can, or should, be taught in a neutral manner?[147] Again, I will discuss her important findings and conclusions here before broadening these questions to encompass what I think are even more fundamental issues with HRE that these issues point towards.

Starting with the first question, Struthers (2020) reports an interesting split between teachers' conceptions when asked directly about the meaning of the term "human rights" and their understanding of human rights when discussing their own practice. When detailing what they understood by "human rights", many of the teachers interviewed offered examples of specific rights, while some referred to broader categories such as "basic rights" or "basic needs" (Struthers, 2020). Interestingly, as Struthers (2020, p.85) notes, this data is indicative of positivist thinking and finds support in academic scholarship on human rights. Roughly, the positivist tradition focuses more on international instruments, whereas the alternative naturalistic conception(s) consider human rights to derive their authority from a deeper order of values (Struthers, 2020). This picks out the same distinction I discuss at length below (Chapter 21) between orthodox (naturalistic) and non-naturalistic or political (roughly the same as positivistic here). Interestingly, however, some teachers interviewed expressed

[146] I use this term to reflect the related but distinct characteristics of the questions and the issues they highlight as well as their origin.
[147] See also Robinson (2017) who highlights the potential scope for teacher variation in thinking about key human rights principles as they are translated into the English National Curriculum which is instructive here.

views in keeping with naturalist theories 'in their definition of human rights' (Struthers, 2020, p.86). This included referencing values-based entitlements that are not currently recognised as human rights - such as rights to be happy for example (Struthers, 2020). Most interviewees, however, betrayed their more naturalistic leanings most clearly in their discussions of HRE. In this case, the interviewees considered HRE 'to extend beyond teaching on the human rights values included in international doctrine' (Struthers, 2020, p.89). This included a wide range of values under the banner of HRE. While some of these values are, in fact, associated with the human rights framework - including respect, tolerance and equality - others were neither human rights values nor necessarily values *per se* , such as kindness, courage and humility (Struthers, 2020, p.89). The result is that 'more complex and abstract' values associated with the human rights framework are unlikely to be sufficiently well addressed (if at all) (Struthers, 2020, p.115). Even given this fact, this misunderstanding about what values count as human rights values may lead teachers to feel that the requirement to teach in this area had been properly met in practice, when, as suggested, it has not. If teachers are not informed by clear guidance and instead must rely on their interpretations of what is required by HRE, the requirements of the international HRE framework are highly unlikely to be met and, further, any express teaching about specific human rights and their relevant instruments and protection mechanisms is likely to be 'somewhat serendipitous' (Struthers, 2020, p.115). As naturally follows, happenstance is not sufficient to demonstrate that the state, whose primary responsibility it is to ensure children are educated about their rights, are fulfilling their obligations in this regard. As Struthers (2020) discusses, these findings indicate confusion around the concept and formulation of "values". The misunderstandings of the nature of values identified in Struthers' research indicate that it is insufficient for the international framework of human rights to state, but not further elaborate on, what human rights values are to be taught. This elaboration is required both in relation to *what* human rights values are and *how* they are to be taught. As Struthers (2020, p.89) outlines:

> … teachers are ostensibly instilling certain values and personal qualities in their classrooms, such as resilience and happiness, that would not reasonably be recognised in human rights terms, and thus that consequently lie outside any sensible categorisation of human rights values.

This is a highly significant point. As I have indicated previously, without clear guidance in the curriculum HRE is liable to be either more or less than what is expressed in

international instruments, and in either case poses significant justificatory problems as a component of state education; that is, on what basis are teachers able to justify such practices and particularly in instilling *values* of this sort? Without guidance, it is left to teachers to import their own conceptions of human rights and the purposes of HRE in their practice. Crucially, this is not a failing on the part of teachers, and indeed Struthers' research is a further indication that many (perhaps most) teachers are supportive of HRE and aim to do their best both to teach about human rights and to empower children and young people with knowledge of their rights.

However, even in cases where teachers are supportive of HRE, good intentions without adequate guidance places a significant burden on teachers and a clear barrier to supporting children's rights and the professional practice of teachers. While the research discussed here focuses on English schools - where there is little appetite at the governmental level to drive HRE - as I note there is a similar lack of guidance or support for teachers in the Scottish curriculum itself. While, as suggested, the work of RRSA and other nongovernmental bodies to support the realisation of children's rights in education in Scotland has been important, there remains no widespread programme of CPD for HRE nor evidence in the major ITE programmes in Scottish Universities of its place (Struthers, 2015b). This is almost certain, as Struthers' (2020) work outlines, to result in fundamentally different conceptions of human rights informing teaching *about* and *for* human rights and HRE practice more widely (including in Scotland). Leaving to one side, for now, the more fundamental problem I will discuss shortly, as a practical issue, such theoretical divergence in the teaching of a subject is a considerable flaw and a clear and significant barrier to the realisation of the right to education. The issue is not simply that one or other conception of human rights is preferable and that a mistake has been made, it is that there is no guidance nor adequate training offered on the matter. Proper support, training, and curricula and policy guidance are crucial to the successful development of HRE and particularly now in light of the pending incorporation of the UNCRC into domestic law (See Chapter 6 and HRE 1-5). As I detail in Chapter 11 there are grave risks that a miseducation about rights can occur within schools *in lieu* of such support. Struthers' recent research highlights a further important potential source of miseducation about rights in relation to the role that conceptions of human rights play informing teacher understanding and practice of HRE.

Having identified this problem, what is the solution? Normally, the obvious solution to a significant theoretical confusion on behalf of teachers in the teaching of a subject, as

sketched, would be to provide the requisite training and to ensure that teachers understanding of HRE is informed by a clear theory of HRE that is developed in connection with an appropriate understanding and representation of the international practice of human rights and a clear conception of human rights.[148] The basic argument runs thus: In order to support teacher practice in HRE clearer guidance on the mandatory content of HRE is necessary. Clear guidance in the curriculum requires (as Parker suggests) a disciplinary structure created in specialist communities offering a clear and organised system of meaning - including a scheme for the sequencing of teaching and the delineation of the core knowledge claims made by HRE. The development of this curriculum is, necessarily, informed by an underlying theory of human rights education that shapes the development of this disciplinary structure. A theory of human rights education needed to inform the curricula development of HRE must be informed by considerations about theoretical questions about human rights; that is, it must be informed by debate over which conception of human rights should be adopted as the basis for the organisation of HRE. Conceptions of human rights are themselves fundamentally contested, and no such theory of HRE exists that could inform contemporary HRE in the way required. While I discuss the existence of models of HRE, these do not offer nearly enough *theoretical* heft to do the job I am suggesting is required here. They are, at most, categorisations of existing HRE practice with some reference to theoretical considerations. Above all else, models do not offer justifications of the sort I argue are required. Moreover, the UN (and by extension the international practice of human rights) eschewed commitment to any particular conception of human rights and thus the practice cannot inform our choice here. Therefore, the solution of offering more theoretically informed policies for HRE is still somewhat hampered by the scarcity of theoretical input of the sort I have in mind.

First, we need to develop a plausible theory of human rights informed by debates surrounding conceptions of human rights to even begin this task. This is exactly what I mean when I say the problem Struthers identifies here runs even deeper for HRE. As I have pointed towards throughout this thesis, HRE faces a lot of problems that it inherits owing to the fundamentally contested nature of human rights; problems that cannot be resolved easily, nor without significant engagement in wider debates in philosophy of education and political theory. In the next chapter, I will address the question of whether or not such theoretical support ultimately matters. I will argue that the answer itself depends on one's conception of

[148] There is a further question to be addressed in future discussion of what "training" here could even mean.

the proper scope of HRE; that is, at some stage, we must unavoidably deal with this issue if we want to advance HRE theory and practice.

Next, I turn to the question of neutrality and so-called "controversial issues"[149]. However, there are multiple senses of "neutrality" that have important consequences in education including the legal neutrality guaranteed by law. State neutrality in education is guaranteed by human rights instruments to, *inter alia*, prevent indoctrination and ensure freedoms of expression and conscience. While it is more typical for questions over neutrality to be raised in connection with religious and moral education, is teaching about human rights equally susceptible to falling foul of any neutrality constraint? I will argue yes, in specific circumstances, HRE has the potential to violate such a constraint as part of compulsory state education. In discussing this point I will identify a yet a more fundamental issue relating to neutrality and justification in education when we expand our consideration to these other conceptions of neutrality; that is, I argue in this thesis that the problem is considerably more complex and intractable than it might appear at first and that this has had insufficient attention in HRE literature. Again, as above, I will point to the need for a theory of HRE to support a justificatory argument for the compulsory inclusion of HRE within the curriculum. To be clear, *both* the questions posed in Struthers' work of this sort and the questions I will soon consider are important issues for the advancement of HRE. Struthers' research on neutrality and teacher perception of bias here highlights again a major challenge for HRE, particularly in terms of overcoming attitudinal barriers both within and outwith schools to teaching children about their rights. The questions simply operate at different levels of abstraction from the actual practice of HRE within classrooms.

To begin then, a straightforward sense of why neutrality, or the attempt to secure it, matters in education. As Temperman (2010, p.865) argues, 'State neutrality in the field of Education is first and foremost mandatory because primary school education is compulsory; individuals are within these public premises whether they like it or not.' There are clear expressions of this form of neutrality in both the UDHR and the ECHR. As I have suggested throughout this thesis, arguments for the compulsory inclusion of HRE within the curriculum require justification on such grounds. Neutrality in the sense discussed in connection with the teacher interviews in Struthers (2020) seems to mean something like being impartial with respect to "controversial" issues and/or avoiding accusations of indoctrination. The concerns

[149] See Hand & Levinson. (2012).

interviewees express in relation to potential controversy associated with teaching human rights reflect worries about rebuke from parents, senior managers, or accusations of improper partiality or bias (Struthers, 2020). These are reasonable, although rather depressing, concerns and are borne out in related research covered in this thesis (see Cassidy et al, 2014). It is the case that pressure from senior management and from parents, or at least the fear of parents' objection, remains a significant barrier to the widespread realisation of HRE in schools in the UK[150].

That being said, are human rights controversial in any sufficiently important sense to run the risk of such strong opposition? In the sense that they are a *contested* concept, then straightforwardly yes, if this is what is meant by controversial; that is, they admit of reasonable disagreement. As I suggest in chapter 1 however, disagreement does not always represent *genuine* fundamental contestation. However, what is meant in the context of Struthers' work by "controversial issues" is any issue 'on which society at large (or the local community, or even the school itself) is clearly divided and for which different groups offer conflicting explanations' (Stradling, 1984, p.121). Topics, as Struthers (2020, p.80) makes clear, risk being labelled as controversial if 'they cannot be settled by an appeal to objective evidence'. This, therefore, includes a wide range of current and historical political, economic, and social issues. This is a seemingly much wider sense of "controversial" and has considerable potential for the restriction of teaching in that it does not seem to rely on only *reasonable* disagreement, although there may be relevant criteria for judging controversy[151]. Furthermore, even guidance issued by Amnesty International (2011[152]) can be seen to articulate a similar concession to the fact that HRE is "controversial" owing to the fact that, for example, opinions can differ 'on how human rights should be upheld, when it is acceptable to restrict them, and how to balance conflicting rights' (Struthers, 2020).

What makes human rights controversial, if at all, then? A partial answer at this stage relates back to Struthers' work on the questions above; i.e. in the teaching of *values*. It is implausible and far too concessive to accept that genuine controversy exists in the school setting or society more widely over the facts of the existence of human rights, their

[150] This is supported by research in both England and Scotland. For example, Struthers (2020; 2015) and Cassidy et al (2014).
[151] I will make more of this point shortly when retuning to the issue of "controversial issues" and whether and when we should teach them.
[152] Amnesty International (2011) 'Teaching Controversial Issues'. Available: www.amnesty.org.uk/sites/default/files/teaching_controversial_issues_2.pdf

appearance in international and national legal texts, or that states have obligations in respect of them. Even Bentham would surely accept that today, nonsense on stilts or not human rights exist canonically in international law and the details of what they are is clear. Where *contestation* over human rights occurs is, therefore, not necessarily in teaching that human rights exist, nor in teaching about the international or national legal instruments that give them effect; that is, in teaching basic factual information about human rights and the mechanisms for their protection. The controversy surely resides in the extent to which, for example, it is believed that teaching about human rights themselves or human rights issues and values is either to cultivate assent to or dissent from particular comprehensive doctrines, an improper form of influence on children's moral development, or an inappropriate intrusion into the home (or private sphere). However, as I will make clear, what propositions we teach as *true* about human rights and human rights values can prove equally problematic if we lack a justification for doing either. While we may be more than capable of providing good reasons to support such practices, this is, again, to ask for justification of aspects of HRE that is not currently forthcoming from HRE literature. Beyond a certain relatively "safe" body of human rights knowledge, we run into more complex cases. For example, I have previously noted that teaching that "human dignity is the source of human rights" would begin to touch on genuinely contestable territory. What is the likelihood of such a proposition being taught as true in schools? Given that this proposition forms the basis for the UN's understanding of human rights, I would conclude very high. Straightaway we are pressed then to consider: firstly, what such a proposition expresses and secondly, whether or not we can justify its inclusion in the curriculum. As a factual statement regarding the UN's stated position on the sources of human rights, there seems little issue. This simply is what the UN has had to say since 1948 and is the result of a negotiated agreement that all the drafters could live with. As a means to explore how human dignity may be further elaborated, or any moral rather than legal obligations that follow from recognition of the inherent dignity of all persons, we are on much less safe and easily justifiable ground. The concept of human dignity, like much else discussed in this thesis, is contested. There are multiple conceptions of human dignity drawing from a range of comprehensive doctrines. The UN again does not go into further clarificatory detail about "human dignity". Therefore, which, if any, of the conceptions of human dignity do we draw on in the HRE classroom? The answer is not obvious, and this, I argue is a significant problem for HRE. It is clear that it may be tempting for schools with a religious character, or teachers with personal religious convictions, to - intentionally or not - frame human dignity in reference to their own comprehensive doctrines. This would

straightforwardly pose questions about constraints on neutrality and, moreover, fail to reflect international human rights framing and practice. It simply is not the case that the UDHR rests on a conception of human dignity that relies on a religious conception of personhood, dignity, or anything else. Such a teacher would, therefore, have made an error in their practice. However, without adequate guidance, what else is there on offer? There is simply too much space to be occupied in the planning and teaching of HRE that can, and as Struthers (2020) research shows, be down to serendipity if it even roughly approximates what would be recognisably an education, about and for human rights. If, as all advocates of HRE agree children learning about their rights is of vital importance both at an individual and societal level, then one cannot rely on individual teachers making informed decisions in a potentially hostile environment when there is a dearth of information on which they can make these decisions and justify their practice. It is to ask too much of teachers and to do far too little to ensure children's rights are met to leave matters, and the realisation of programmes of HRE, so open to chance.

Finally, to return to a troubling example sketched by Struthers regarding the effect of concerns about controversy and neutrality. Concerns about appearing neutral are:

> seemingly translating in primary classrooms into teachers being loathe to promote democracy, denounce Nazi atrocities, confirm that racism is unacceptable, or refute prejudiced views about Muslims. (Struthers, 2020, p.110)

Struthers notes that while alarming this is unsurprising for a number of reasons. Firstly, is the unique position primary school teachers have in respect of their authority and influence over children; second, is an inability to teach neutrally in relation to other contextual factors (such as conflicting school principles). To quote the interview response directly rather than paraphrase:

> I was teaching from a Church of England stance on women bishops, and I was saying there should be equality … it would all depend … what party line I was meant to be promoting. (Interview 6/ Struthers, 2020, p.110)

Ultimately the consequences of these barriers to HRE are that teachers:

> … either water down their HRE provision or avoid using the terminology of human rights altogether, instead educating in this area through informal teaching practices or the general ethos of the classroom or school…

> Furthermore, due to concerns about appearing unbiased, some interviewees can be seen to be providing HRE that is so ostensibly neutral as to challenge the internationally accepted values that underpin them. (Struthers, 2020, p.114)

What does all of this tell us about what needs to be done to improve the realisation of HRE? As in other settings, lack of direction in the curriculum (73%), followed by: absence of available time (55%); lack of appropriate resources (42%); lack of relevant training (41%); insufficiency of personal knowledge (32%); and personal reservations about teaching human rights (6%) were identified as major barriers to the realisation of HRE within English primary schools (Struthers, 2020, p.81). This reflects previous empirical data gathered in similar settings in both England and Scotland. Again, it is worth reiterating the five central requirements for the realisation of HRE: **HRE1**) Clear and comprehensive incorporation of HRE into educational curricula **HRE2**) Teachers must be aware of relevant rights legislation; **HRE3**) States must promote adequate training in human rights for teachers; **HRE4)** States must ensure rights respecting learning environments; **HRE5)** States must ensure teaching practices that reflect and promote human rights values.

How can we resolve these issues and ensure the above requirements are met? As I have noted above, more theoretical work needs to be done so that HRE can provide a plausible and coherent curriculum; can inform teacher education both in-service and pre-service; enable teachers to feel secure in the knowledge and justified in their practice of teaching human rights. All of this, as I will next contend, will be particularly difficult owing to the contested nature of human rights and the difficulty of the questions we must answer in order to provide this guidance. I have sketched in this Chapter several threads I intend to further develop in the subsequent chapter(s) that point towards both the depth of the issues I believe HRE faces, but also what is required to address them. It is evident that there is now a growing awareness in the HRE literature of the difficult challenges facing the further development of HRE as a programme of education. Additionally, the long-recognised confusion at the level of concept and theory that has characterised the development of HRE from the beginning has only further compounded these issues. In this light, I begin my detailed analysis of a range of issues I believe seriously inhibit the development of HRE.

21. Developing a Theory of Human Rights Education.

In this chapter, I identify several further gaps in the literature and outstanding questions for advocates of Human Rights Education (HRE). To be clear, as a research project with a philosophical core, my focus here is on additional work that can be done in that area specifically. At this stage, my aim will be simply to lay the groundwork for future research and to identify the problems themselves. This is necessarily so given the scope of the work required and so my remarks here will be exploratory rather than complete. The questions raised are important in three respects: Firstly, their persistence makes it more likely that Scotland will be unable to address the issues identified in this thesis in a theory-informed way without further theoretical elaboration on HRE by experts. Addressing these challenges will be a crucial part in better realising the right to education in line with the new domestic obligations through incorporation. Secondly, teachers in Scotland will be left unsupported in their practice without a clear theory of HRE to guide them. There is an important gap in teacher education and continuing professional development that can only be filled by reference to a theory of HRE of the sort I argue for here. Without clearer theoretical guidance, the existing issues will remain and how successfully children are taught about, through, and for their rights will remain a matter of serendipity. The state and local authorities will, after incorporation, have a clear obligation to provide adequate training of this sort (see Chapter 6) and so awareness of the relevant issues will be vital for planning and implementation of future education policy. Thirdly, I believe that without their resolution, HRE cannot progress beyond its current level of conceptual confusion and will thus be unsuccessful as an initiative. The former two issues are a rather more immediate problem given concerns over how capable Scotland will be in meeting its new domestic obligations after incorporation. I have already expressed concerns over the readiness of Scottish education for the changes incorporation will bring. The third of these issues identified above is a more deep-seated and stultifying one to the development of HRE scholarship more widely. In what follows I articulate a series of issues for the development of HRE within liberal democratic states with reference to a series of philosophical considerations I believe are highly illuminating.

Whether one thinks that the human rights project and human rights education is primarily a moral, political, or a legal enterprise (or all three) makes a profound difference to what sort of educational enterprise it is seen to be. While this point seems trivial, it has

significant implications when it comes to decision-making and then policymaking around the development of HRE. The questions we ask when we determine how and whether it is permissible to teach children to *be* moral are very different than if we teach them to follow the law and to understand political and legal obligations of the state and their role as citizens. Relatedly, in the same sense in which teaching *about* morality is of course different from teaching to be moral, teaching *about* HRE prompts different questions than teaching *for* HRE. The definition of HRE detailed in the *United Nations Declaration on Human Rights Education and Training* (2011) makes clear that human rights education involves both. In this chapter, I discuss problems associated with teaching *about* human rights, starting with the question of what we teach about when we teach *about* human rights. I then extend this question further to reflect on questions surrounding neutrality in education and the teaching of "controversial issues" foreshadowed in the previous chapter. First, I argue first that key claims about human rights themselves remain contested and thus prompt questions about their suitability for inclusion within state education curricula. I want to say more here about whether or not teaching *about* human rights is in any sense controversial. Moreover, I want to highlight how even the "uncontroversial" aspects of teaching about human rights are not uncontested; that is, I mean to highlight how deep I think the issues with establishing the core content of HRE go. Second, I point to the fact that advocates of HRE do not agree about what the central claims of HRE ought to be. This fundamentally undermines any attempt to develop a HRE curriculum as argued for by Parker (2018) and Barton (2020) previously and therefore further compounds the first problem. With a lack of clarity on what to teach about human rights, what conception of human rights should inform this, and what the appropriate way to understand HRE as a concept and initiative is, there is little hope for progress. It is, I argue, one of the many pieces of theoretical work that the HRE literature would benefit from and certainly decision making in Scotland cannot be well informed without progress on these issues.

As I have emphasised throughout the thesis, education, as with all other policy areas, is subject to constraints on what a legitimate democratic state can do. Some of these constraints are legal, others relate to democratic values themselves. As suggested in the previous chapter, neutrality in education is a legal requirement outlined in the ECHR and aims to ensure that, amongst other things, state indoctrination of children is prevented. However, not all of the relevant constraints on what a state can do in education are as

obvious. I want to briefly articulate some of these considerations here that inform my thinking in relation to HRE and to spell out why I think they matter.

21.1 Education in a Pluralistic Liberal Democratic Society.

Recent work on education in a liberal democracy has proposed a variety of answers to questions of the appropriate role of the state in legislating for, and providing, education. To believe in liberal democracy is to believe in free and equal citizenship (Callan, 1997). Part of what that demands of us is the development of public institutions that function in ways that 'we can justify on the basis of that ideal' (Callan, 1997, p.2). Indeed, as Callan (1997) continues, much of our politics is about 'how well we have succeeded or how badly we have failed in that project'. One of the central considerations for the liberal state in relation to education is in the kind of people we become and the kind of people we encourage or allow our children to become (Callan, 1997). These issues themselves turn on broader questions over the purposes of education and extent to which the state has a mandate to legislate for these ends amongst a range of potentially competing interests. These interests, relating to the authority of parents and the freedom to pursue commitments to different forms of life, are seen as limits on what a liberal state can mandate in education. The former concern raises questions about the proper division of authority in providing education - that is, not merely schooling- while the latter focuses on the potential conflicts between civic virtue, competing forms of life, and the important value of tolerance central to liberalism. Foremost amongst these issues are the perennial questions about liberal legitimacy and justice. Crucial to understanding the role of education in a liberal democracy is how the legitimacy of education policy may be secured as well as its links to justice. As Callan (2000, p.141) suggests, legitimacy and justice are taken to be 'the defining normative commitments of liberal democratic government'. Principles of justice 'prescribe how individuals should treat each other' with the additional, independent condition of legitimacy that requires that justice must not only be done but consented to freely and authentically by those who are governed (Brighouse, 1998, p.719). While the exact definition of liberal legitimacy is a matter of debate, a standard construal involves the free consent of citizens (Callan, 2000); that is, to be legitimate a state must seek the consent of the governed (Callan, 2000; Brighouse, 1998). As Brighouse (1998) notes, as *unanimous* consent is unlikely, and perhaps an unreasonable expectation, the state is susceptible to a weaker condition of 'hypothetical consent'. Under this weaker condition, it must be the case that reasonable, well informed, non-self-interested,

citizens would give their consent (Brighouse, 1998). It is not enough for a state to show that citizens *could* have given consent under various hypothetical conditions, or even that most actually do consent, a state must show that the actual consent given is 'free and authentic' (Brighouse, 1998, p.721). Importantly, as Callan (2000, p.141) argues, liberal legitimacy and justice have 'distinct educational implications'. Broadly, legitimacy presupposes that citizens have learned whatever is needed to be able to give free consent to political authority, while justice requires that citizens are taught to participate in 'collective self-rule' in a manner that is conducive to justice itself (Callan, 2000, p.141). How either of these two goals are achieved is the matter for considerable debate. What matters here is how they relate to questions about the development and implementation of programmes of HRE.

As Corngold (2011) outlines, significant work in political and educational theory has been dedicated to attempts to balance a number of distinct interests in education. For Corngold these interests can be divided in the following way:

> 1. The expressive interests of parents in transmitting their particular values to their children (interests that derive from the value of parents' autonomy);
>
> 2. The developmental interests of children (including their interest in developing a capacity for future autonomy);
>
> 3. The civic interests of society (including its interest in cultivating citizens who can deliberate about the common good under terms of mutual respect). (Corngold, 2011, p.68)

The potential conflict between these three interests is particularly complex. Not least is the potential for clashes between seemingly opposing sets of rights for children on the one hand to have a say in matters that affect them, and for parents on the other hand to determine what sort of education is appropriate for their children (UNCRC, 1989; UDHR, 1948). In addition, policymakers must also consider the interests of society as a whole and what, pursuant to these interests, this necessitates from the educational system. Much turns on whether one conceives of education, and specifically civic education, as necessarily requiring value-neutrality in order to ensure liberal legitimacy or whether justice demands the development of autonomous citizens capable of freely choosing between many distinct ways of life. Whether the latter is to be prioritised even at the expense of the former, or whether this is in fact necessary at all, dominates the debate in philosophy of education and political theory on education.

Starting with the former, the plurality found in liberal democracies necessitates a stance on education that does not assign ultimate educational authority to any one group. The most profound problem that education as a function of the state poses for any pluralistic society with democratic aspirations is how to reconcile individual freedom and civic virtue (Gutmann, 1993; 1999). Questions of educational governance, therefore, revolve around a complex balancing act involving parental, professional, and public authority. How one balances the various stakeholders in education with claims to authority over education in a way that is consistent with the ideals of a representative democracy is the major difficulty. One must provide an account of education and educational governance, which is consistent and supportive of the basic liberties that all adult members of society are due. Whether this requires deference to parental interests as Burtt (1994) suggests, the interests of democratic society as a whole (e.g. Gutmann, 1999), or the interest of the child is a particularly complex issue. Human rights education is not outside of this debate. Teaching *about* and *for* human rights quite evidently has considerable potential for conflict between children's and parental rights to choose in education; questions of civic virtues and human rights values; and whether teaching *for* human rights in order to build a culture of human rights in a state is an appropriate goal for the liberal state in a pluralistic society in which some citizens' comprehensive doctrines will clash with such a culture. I cannot, of course, hope to address the totality of these issues here but will try to make comment where possible in order to highlight space in the HRE literature where I think these debates are necessary.

Finally, and relatedly, a comment on justifying education policy. I have at various points spoken of the need for justification of HRE throughout this thesis. I mean this in both the ordinary sense of providing reasons to people, but also relating to what I have sketched above. We can say that justifications depend on reasons and that these reasons may be either theoretical or practical. In discussing the justification of an education policy, we may be talking about either. We may be talking about the reasons that count in favour of the beliefs, and/or the reasons that count in favour of doing or not doing something (Quong, 2018). Both of these aspects will be important here. The question here is about both what justice requires in education and who has the legitimate authority to bring this about? The modern liberal state is often assumed to have the exclusive moral right to coercively enforce commands to its population (within limits) (Quong, 2018). One of the central questions of political philosophy is how any state could come to possess such a power? When can such a power be used, and what justifies this use in such cases? To talk of justification in this latter sense is to

talk about the legitimacy of the exercise of state power and the justification that can be given for it. Debates about justification usually focus in either of two areas: 1) the problem of justifying educational interventions that 'interfere with global or local autonomy of developing agents'; 2) more generally on the value of education as such or its specific educational aims (Dreup, 2015, p.65). To a large degree, all of the gaps identified here have some relation - directly or indirectly- to the more basic questions of justification sketched above.

21.2. Conceptions of Human Rights, Theories of Human Rights Education.

As Beitz (2011) outlines, there are two clear observations one may make about contemporary human rights: 1) that human rights has become an elaborate international practice; and 2) that the discourse and practice of human rights provokes a considerable level of scepticism even amongst its defenders. This is, of course, a problem. As Brown (2002, p.103) suggests, 'virtually everything encompassed by the notion of "human rights" is the subject of controversy'. The idea that individuals have or should have rights is controversial, as is the claim that these rights are associated with individuals solely by virtue of their common humanity. There is very little one can say about human rights before running into controversy of some sort, and in many cases penetrating criticism from a wide range of varied legal and philosophical positions. Would a programme of HRE developed without any attention paid to these questions be able to achieve its primary goals? I struggle to find grounds on which to conclude that it could if I am correct about how such incoherence at the level of development of such a programme would ultimately be self-defeating. Human rights education cannot be all the things its advocates propose as its proper and primary aim(s). When deciding between these multifarious aims and more granular clarifications of them, what questions matter and how can we decide?

There is no lack of healthy debate over what we should be doing with Human Rights Education, and indeed the importance of context-sensitive answers to this question; that is, the recognition that HRE must be developed in a way that is suited to particular states and their histories as colonised or coloniser, new or old democracy, or something else entirely. What I mean to identify here is a specific set of problems that I believe have been overlooked

and that are important in Scotland but equally applicable to any other liberal democratic state.[153] These problems, in most respects, can be tied back to the failure of explicit engagement with questions about the appropriate conception of human rights that should inform our theoretical deliberations about HRE. My contention is not that the theoretical work currently being done in HRE is necessarily misguided. Indeed, I make no judgement on this other than to say that, as referenced in discussion of models earlier (Chapter 18), arguments for versions of "radical HRE", often characterised by a rejection of the existing international human rights framework, are ill-suited for the Scottish context. To put it plainly, no liberal democratic state could seek, without seriously undermining its legitimacy, to include such a programme of education in state curricula and certainly not as part of the compulsory curriculum. One of the major theoretical fault lines I have referenced in this thesis is between the polar "all law" and "no law" positions within discussion of HRE.[154] What conception of human rights one holds is surely the central deciding factor between which of these poles one is attracted to. For instance, if one is deeply dissatisfied with, amongst other things, the menu of human rights outlined in international human rights instruments, one often has in mind some account of human rights that is more expansive, more demanding of states and individual agents, and not necessarily concerned with questions of justiciability and enforcement. Or to put it slightly differently, if one thinks human rights ought to do more than legally obligate states to secure a standard below which no minimally just society should fall, this offers a very different potential role for HRE than if one thinks human rights capture much more of, or in fact all of, the moral sphere. Moreover, such accounts of HRE tend to be pessimistic of the transformative power of human rights law in securing any standard of justice whatsoever. Arguments in favour of these more expansive accounts of human rights are to express, at least tacitly, a commitment to a naturalistic or orthodox conception of human rights; that is, that there is something deeper and beyond the scope of the law that human rights legislation captures. This is, ultimately, that the law simply reflects rather than makes true human rights claims. This is an oversimplification of such a position, of course, but I think it illustrates the point. If one holds the alternative position - what I call a political conception of rights and Struthers (2020) labels positivistic - one would hold that human rights are best understood by reference to the

[153] I stress this point to recognise both that liberal democratic states are constrained in certain ways, and that the conception of HRE one might seek to develop in such a state may be importantly different from a state with a different political arrangement.

[154] I will say more shortly on the topic, but here we might draw a direct line to questions of legitimacy here.

international human rights framework and movement. A theory of HRE based on a political conception of rights would therefore be informed by considerations of fidelity to the practice and the practice-dependent nature of human rights. These two theories may differ on highly significant questions when it comes to developing the curriculum, training teachers about human rights and especially what teaching *for* human rights is to be taken to mean in the context of schooling. There simply is no question of significant divergence from international human rights law and norms under a political conception of HRE; that is just what human rights are. Consequently, education about this practice is therefore one of the major goals of HRE under such an account. Again, I want to emphasise here that, as I detailed in Chapter 9, I think the Council of Europe's model for *Education for Democratic Citizenship/Human Rights Education* (EDC/HRE) is a strong template for what Scotland might do and it engages to some extent with many of the issues that I raise here.

In a very important sense, it is often the case that the source of theoretical disputes in the HRE literature is that of people completely talking past each other with regards to "human rights". People simply fail at the most basic level to employ the concept of "human rights" in the same way. This is a major problem for HRE and certainly for efforts to translate HRE into domestic education policy. As identified by Struthers (2020), conceptual divergence can and does affect classroom practice. To prevent this - assuming we wish to - we need to offer a clearer theory of HRE. This theory must be informed by decisions taken about which of those conceptions of human rights we choose to underpin any specific programme of HRE. This strikes me as obvious owing to the very clear differences these alternative conceptions will have for deciding what constitutes the core content of HRE and for then actually teaching it. To be transparent, not only do I think a political conception of human rights is correct, I believe it is preferable for the development of HRE as a concept and for any specific programmes developed for use in Scotland or other liberal democratic states. This, however, is not the main point here. The point is that failure to engage with this crucial theoretical debate in philosophy and to make such commitments transparent in discussion of HRE holds back its development in Scotland (and elsewhere).

21.2.1. Differing Conceptions of Human Rights.

While rights-based legislation and rights discourse often dominates the political and legal discussions surrounding questions of justice, the concept of human rights and human rights discourse is not uncontested, as highlighted in this thesis thus far. The proposed universality of the rights expressed in the *United Nations Declaration on Human Rights* necessitated that the justificatory basis of human rights had to be abstracted from particular religious and ideological beliefs in order to respect fundamental disagreement (Freeman, 2017). However, the character of this abstraction was not clear and the UDHR says almost nothing about the grounding of these rights (in any sense) (Freeman, 2017). If one accepts that programmes of HRE ought to be justified by reference to theories of HRE that are informed by theories of human rights, there are two sets of terminological distinctions that we might consider. The first is between moral ("orthodox") and political conceptions of rights and the second is between naturalistic theories and agreement theories (with considerable variation in each of these categories). On one side of the debate over the grounding of rights stand the "orthodox" theorists who support "naturalistic", "humanist" or "philosophical" accounts of the grounding of rights. On the other, those holding a political conception of rights, many of whom advocate agreement theories of various sorts, are referred to as offering "practical", "institutionalist" or "functional" accounts of human rights (Etinson, 2018). It is worth noting at this stage that I am sympathetic to the argument that this division is overblown and serves mostly to help clarify relevant issues rather than accurately representing diametrically opposed and incommensurable positions (see Liao and Etinson (2012) for an example of this claim). Indeed, part of what I will later argue is that there may in fact be multiple complementary roles for human rights (political, legal, and moral for example). In any case, "orthodox" accounts argue that human rights are fundamentally natural *moral* rights, "political" that human rights play some kind of specific and distinctive role in international politics (Etinson, 2018). As Beitz (2011, p.11) characterises this larger debate between naturalistic and political conceptions of rights:

> There are many questions that might be asked about human rights. We might ask, for example, which values count as human rights, which agents have responsibilities to act when a right is violated, and what kinds of actions these agents have reason to **c**arry out. We might also ask… what kind of object a human right is or… what an ordinarily competent participant in the discourse of human rights would understand herself to be committed to if she were to acknowledge that a human right to such-and-such exists.

How one answers these questions has significant consequences both for how one develops a theory of human rights but also, as argued here, how one develops a theory of human rights education. The former point I think is well understood, while the latter I think, thus far, has received insufficient attention in the literature surrounding human rights education. I aim to offer a corrective to this. We see in Struthers' (2020) work that these conceptions do characterise how teachers understand human rights and how they then teach them. This is evident especially in connections with teaching human rights values. Acknowledging this fact makes it clear that as advocates of HRE we cannot simply let whichever of these conceptions of human rights informs practice simply be left to chance alone.

Naturalistic views of human rights see human rights as objects that closely resemble or mirror natural rights. Common here is the idea that human rights are possessed simply in virtue of one's humanity and that their character is determined by features of human nature. One has human rights as a human being "as such". Crucially, human rights in naturalistic theories are distinct from "positive rights" and their existence is not contingent on relevant laws or practices[155]. What grounds human rights on naturalistic accounts is something available to everyone; namely, their human nature. This makes human rights claimable by everyone on the grounds of their humanity. On such accounts, international human rights law and "human rights" derive their identity and authority from these more basic rights and values (Beitz, 2011). At least historically, views which ground human rights in common characteristics of human beings borrow heavily from the natural rights and natural law traditions that preceded them in evincing specific commitments to comprehensive doctrines. The grounding of rights in, for example, the special character of humanity as a creation of an all-powerful deity, necessarily expresses a range of values drawn from the specific religious doctrines from which they are derived (respect for rights because people are made in the image of God, being one obvious example). Contemporary accounts of human rights rarely make appeals to natural law or the divine judge in this way. Recent examples might include Griffin's (2008) attempt to base human rights on agency and autonomy. For Griffin, as one example, the ability to form, revise and pursue conceptions of the good or worthwhile life that one selects are of paramount value. Whatever the merits of this proposal, at the very

[155] This distinction points to the fact that human rights, on this view, are not identical to the rights guaranteed in law and indeed need not overlap at all.

least it demands more of us to justify teaching commitment to the value of autonomy within compulsory education if it were to be how human rights were conceptualised within programmes of HRE.

Over recent years, the adequacy of these naturalistic accounts of human rights has been increasingly questioned. Liberal political philosophers have outlined doubts about the appropriateness of a theory of human rights simply reproducing natural law principles (Valentini, 2011). The key thought here is that the reason we care about human rights has a lot to do with their political reality (Valentini, 2011). This is to draw attention to the fact that human rights are a political-legal construct that has emerged under particular conditions and that theories of human rights should be responsive to this fact. A variety of liberal theorists including John Rawls (1999b), Thomas Pogge (2002), Joshua Cohen (2004), Joseph Raz (2010), Charles Beitz (2001; 2009), Andrea Sangiovanni (2008) and others have, with this thought in mind, advocated an alternative conception of human rights referred to as a "political conception"[156]. While different advocates of this view offer variations in their characterisations, they all share the basic commitment to the view that the function of human rights is connected to their political role. To understand what human rights are, and what their justification is, we need to identify and understand the roles they play in politics. While there are differences amongst the theorists of this approach, they generally hold a shared belief that 'human rights are not usefully conceived as natural rights' (Bayes, 2009, p.374). Advocates of the political conception of rights look primarily at how human rights function in the already existing practice and discourse. In doing so, the idea is not to see how this international human rights movement conforms to theories of natural rights (or any other comprehensive doctrine or philosophical conception of rights) but to clarify 'the understanding (or understandings) of human rights with respect to its own aims and purposes' (Bayes, 2009, p.374). As a consequence, when deciding what qualifies as a human right, we cannot simply make appeal to, for example, the value of personhood or any specific idea of what a good life amounts to. Instead, what we have to do is to look at the role that human rights actually play in international politics. While the natural law approach to human rights characterised in some naturalistic theories of human rights is "practice-independent", the political conception of human rights understands the function and justification of rights as intimately linked to practice, that is, "practice-dependent" (Sangiovanni, 2008; Valentini,

[156] How these authors name their own theories "practical" in the case of Beitz and "institutional" in the case of Pogge as two examples will not matter here.

2011). I think this alone makes plain how the two conceptions would result in very different accounts of HRE, but I will say more below and make use of a few specific examples relating to curriculum planning and classroom practice to further emphasise the point.

21.2.2. Conceptions of Human Rights and Human Rights Education.

With the above established, how does this affect Human Rights Education (HRE)? I sketched in the introduction to this chapter some ways in which conceptions of human rights matter a great deal in building theories of HRE and I will now further press those points. The question of what values are human rights values is key here. We might broadly identify non-discrimination, mutual respect and tolerance as the principles of the UN - as specified in the UN Charter and UDHR - and Audigier suggests that human rights values are centred on freedom, equality and solidarity (2000, p.22). As Struthers (2018; 2015a) outlines, a plausible and reasonable interpretation based upon relevant human rights instruments would be that human rights values are: equality, justice, non-discrimination, dignity, freedom, fairness, tolerance, respect for others and solidarity. One example I have pointed to in Chapter 21 as highlighting how this can be highly significant I return to now by discussing teaching about and for values and the place of the concept of "human dignity" in HRE[157]. Turning to the question of values in education, it seems reasonable to question what values programmes of HRE seek to transmit or inculcate, why those values are important, and on what basis these rather than any other values are promoted and justified. Human rights education, as an "essential" part of the promotion of "universal respect" for, and observance of, all human rights and fundamental freedoms is directed towards:

> the full development of the human personality and the sense of its dignity, [to] enable all persons to participate effectively in a free society and promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace, security and the promotion of development and human rights. (UNDHRET, 2011, p.2)

[157] For a detailed analysis of how one may conceive of human dignity in HRE see Bowie (2009).

There are a few points worth highlighting in this preamble to the Declaration which reaffirms much of what has preceded it in UN conventions and declarations tracing back to the UDHR. The first is the centrality of the values promoted in the rationale and purposes of HRE. HRE as an initiative and the human rights movement itself are fundamentally underpinned by a range of commitments to values such as non-discrimination, egalitarianism, tolerance and so forth. This is not particularly controversial or worthy of comment apart from in its relation to the second of the points that I will raise. This second comment is the reminder that, amongst other things, the right to education (and human rights education) is directed towards the development of the human personality and recognition of human dignity. The latter of these two elements is, of course, very important here. How one characterises dignity, and where or what it is derived from, cuts to the heart of many of the concerns raised both in this chapter and throughout the rest of this thesis. The idea of human dignity, as Beitz (2013) states, is "ubiquitous" in the contemporary discourse of human rights and indeed has been a prominent feature of rights discussion since the Universal Declaration on Human Rights. Indeed, the UDHR states that human rights derive from the inherent dignity of the human person. Most of the international human rights instruments subsequently adopted have also included similar provisions (Beitz, 2013). This is significant and importantly moves discussion of dignity into focus in both understanding human rights practice more widely as well as, for current purposes, HRE as an educational practice. Indeed, it is crucial if one accepts that human rights 'constitute a public, normative practice' that one should take seriously an idea that occurs so often in the public discourse surrounding it (Beitz, 2013, p.260). Consequently, we ought to be very clear about what we have in mind by dignity in relation to both its *formal* features that may be legally and politically understood (universality for one) and any further *normative* features we might associate with it. This is a complex issue and the subject of a wealth of debate in philosophical and legal literature and it further muddies the water for advocates of HRE. There are longstanding concerns over the alleged indeterminacy of 'dignity' and what role it plays in understanding human rights *in lieu* of any consensus on their philosophical foundations (Beitz, 2013).

In the case of HRE, it is clear that human dignity plays a central role in the framing of the purposes and goals of the enterprise itself; human rights education is, *inter alia*, about recognition and protection of the inherent dignity of the human person. As with many of the difficulties outlined here, the fact that the initial framers of modern human rights declined to give an account of the foundations of rights has led many to believe that we cannot understand 'their special importance without a grasp of human dignity' (Beitz, 2013, p.259).

Framed as it seems to be in the UDHR as the value from which human rights are themselves derived, a lot turns on what role the concept (or conception) of human dignity is to play in how we develop HRE. In the context of human rights education, this is of vital importance in determining not only what we teach *about* human rights, but also what we teach about the special significance of rights. To offer a justification for the inclusion of HRE within state education in a liberal democracy we need to tell some story about both, or at the very least be clear about what we can and cannot appeal to in this area. However, we might worry that human dignity is far too abstract a value to be of much use in either explaining the importance of human rights or their content (Beitz, 2013). This poses a potential problem for the development of HRE, and specifically its development within the constraints of a pluralistic liberal society. If one is unable to offer an account of human dignity that does not derive from or constitute a comprehensive conception of the good, the resources available are more limited than one might hope. Advocates of HRE cannot to my mind avoid the issue if one takes the UDHR at face value and sees the inherent dignity of persons as the key value vital to the human rights project. While more or less plausible accounts could be provided for the inclusion of a range of human rights-related values within programmes of HRE, the "inherent dignity of persons" provides a much greater challenge in offering an account of HRE that can be justified in light of the constraints on the liberal state in education. It seems clear that *most* conceptions of human dignity have wide-ranging religious, philosophical, and moral implications for most of one's life, and, moreover, when conjoined with human rights, seem to offer a determination that the value of human dignity outweighs any other consideration should they come into conflict. One might indeed be sceptical about the prospects of further clarity concerning "human dignity" as it features in accounts of human rights given the lack of consensus on the proper conception of dignity in wider debates. Further, even if we accept that the value of autonomy stands behind and does most of the heavy lifting for references to human dignity in human rights instruments (Beitz, 2013), that also poses a problem as teaching *for* autonomy is not without its challenges as an aim of education. To shift focus from dignity to autonomy is simply to move the issue rather than resolve it. There seem good reasons to conclude, as Formosa and Mackenzie (2014) do, that the idea that there could be a cross-cultural consensus about the importance of the *concept* of human dignity as the basis of human rights principles is plausible. Indeed, this seems borne out by the near-universal agreement about the basis of human rights in human dignity in the UDHR for example. However, Formosa and Mackenzie (2014) caution us to remember that what we must show is that any particular *conception* of human dignity can be the object of

such an overlapping consensus. This is the general problem raised here and has obvious implications for the development of HRE theory and practice.

An example here may be of service at this stage. Let us envisage a classroom teacher tasked with delivering a programme of HRE in a secondary school in Scotland. Let us stipulate that this is a class of 13 and 14 year olds. Human Rights Education has for the purposes of this example been made compulsory as part of the Scottish curriculum and is delivered in line with the text of the UN Declaration on Human Rights Education and Training (2011). This teacher is a keen advocate for children's rights and has read widely on HRE as a concept and practice and so is as well placed as any teacher without formal training in HRE could be in delivering it. However, they have a problem. As they move beyond discussion of the UNCRC into a discussion of how one may seek to live in a way that respects human rights, our teacher is faced with an inquiry. The class is learning about how respecting human dignity is an important part of building a rights-respecting school and country, and is questioned as follows:

> **Pupil A**: "I have been raised to believe that what is special about humans is that we are made in God's image. Is that why we have human rights because God made us with them?"
>
> **Teacher**: "Some people might believe that, yes"
>
> **Pupil A**: "Is that what the UN meant when you were talking about the source of our rights last week?"
>
> **Teacher:** "The UN tries not to show a commitment to specific religions or other belief systems. It tries to stay neutral so all people can accept what it says from their own perspective."
>
> **Pupil A**: "So is that what *you* mean when you teach us about human rights coming from just the fact we are human?"
>
> **Teacher:** "Me? No."
>
> **Pupil A**: "So what do *you* mean? What are we supposed to understand when you talk about this stuff?
>
> **Teacher**: "What is most important to remember is that your rights are protected under the law. If your rights are violated someone has acted unlawfully."
>
> **Pupil A**: "Immorally too?"
>
> **Teacher**: "You might think that depending on your beliefs about morality and human rights? Is that how you understand them?".

> **Pupil A**: "So when the country does something that breaks my rights, they have acted immorally?"
>
> **Teacher**: "Well…".

While it is normal for some discussions to end in the realisation that there is no entirely satisfactory answer that we can give, given the limitations of the classroom, what answer might we offer here? More crucially, to what extent does it rely on the teacher's conception of human rights? I think questioning around these issues strikes to the heart of my concern. Do we want HRE to be a form of political/legal education, or moral education? The thought experiment here is to consider whether there is a better answer our teacher could give and the extent to which that is dependent on a particular conception of human dignity or human rights. Recall, part of what it is to teach *for* human rights is surely to enable children and young people to claim their rights and to understand when they have been violated. It seems plausible to me that at least part of what this might involve is coming firstly to understand one's rights as expressed in human rights instruments, the mechanisms for their protection and common sites of violation. This seems generally unproblematic and, in the context of Scotland after incorporation, surely an easily justifiable part of civic education. There is nothing particularly controversial about teaching children and young people their rights as outlined in domestic law, nor how to access remedy through the legal system when their rights are breached. In general, to the extent to which "human dignity" is clarified, it is clarified by decisions reached in court. Whether some action or policy violates a child's dignity is established by legal argument. This process is often, in itself, an avenue for the employment of different conceptions of "human dignity". The point is that this negative definition of a sort - we learn more only by seeing when it is violated - has clear limitations in the context of teaching about human dignity and for the respect of it. However, under an orthodox or naturalistic conception of human rights, might our theory of HRE and, therefore, our classroom practice feel the need to say more here? Under such a conception, one might see the centrality of not just knowing that one has rights but of being able to articulate why (beyond simply that the law was broken). This might, variously, involve further conceptual elaboration surrounding "human dignity". The most straightforward of these claims might involve teaching that when one's human rights are violated, the state or other actor has acted immorally. This is a logical conclusion of believing that human rights are rooted in human dignity and that human rights pick out moral ones. Other things being equal, in such a

scenario one could rightly assert that an injustice has been committed against them, and, moreover, that the violator has acted immorally and is morally blameworthy. It seems plausible to me that a teacher may see their role as an HRE educator to be clarifying matters in exactly this way. After all, if you believe that human rights pick out more basic moral rights, it is not just the law that one thinks is broken. Would this be taught in a classroom and what would be the consequence? I think it is reasonable to think that at least some teachers of HRE would believe that they are primarily conducting a form of moral education and that, therefore, the scenario sketched above would be entirely appropriate and in fact required in order to fulfil duties to deliver HRE.

Of course, even under a theory of HRE that is based on an orthodox conception of rights, one might still think it is beyond the scope of state education to teach directively for morality in this way.[158] The key point, and the gap that we must fill in the literature, is: what are we to do about this fact? Human dignity is the concept at the centre of both the human rights movement and international human rights law. However, there is no obvious sense in which we have a coherent story to tell about how to teach *about* this key concept beyond that it is the key concept in the international human rights framework. Nor is it clear how this key concept factors into how we teach children and young people *for* human rights. More generally, how do we decide between conceptions of human rights as we develop our theories of HRE to support the practice that we know is a legal obligation on states? If we do not need to decide, how do we determine both the content of the curriculum - if it extends beyond rote learning of what is in legal instruments - and what values are human rights values proper?

To draw these points together, in line with the constraints on the liberal democratic state, if the values that programmes of HRE seek to inculcate are drawn from and supported by specific comprehensive doctrines, then we have an obvious question of neutrality to address. Importantly, conceptions of human dignity have often relied on comprehensive doctrines of various sorts and so this is not a small matter to resolve. The framing of this issue in relation to development of the full human personality and respect for the inherent dignity of persons seems the crux of the matter. To offer a programme of directive education *for* a specific value (human dignity) that reflects a specific conception of the good from which we are able to derive human rights is not entirely straightforward to justify in a

[158] See Hand (2017) for detailed discussion around this point and the difference between directive and non-directive forms of moral education.

pluralistic society. Equally, the point holds even if one is convinced that the UN itself works on a 'fuzzy' notion of human dignity. Regardless of that fact, which may well be an accurate summary of the UN's position during the drafting period of a range of treaties, an educational programme of HRE cannot hand-wave away ambiguity in one of its core philosophical concepts given that so much can be thought to turn upon it. It can and must offer some clarity in this regard. If, however, these values and the notion of dignity on which they are premised can be reasonably understood as reflecting the 'common values' of a liberal democracy, that is, values implicit within the public culture, we will find ourselves in a much stronger position when seeking to offer a justification for the incorporation of these values within a programme of state education. Indeed, to teach *for* those values, that is to seek to ensure the development of a citizenry that recognises and respects such values, *may* form an acceptable aim of a programme of civic education. This, of course, would be what a political conception of HRE would characterise HRE properly as doing; that is, HRE has a role to play as part of what it is to prepare future citizens for their role in a democratic society. It seems plausible to understand many human rights values (toleration, respect for others, equality etc.) as reflecting the broader values held in a liberal democracy. However, it is much less clear that there is an equally generic account of human dignity within public discourse that can fulfil this role. None of this is decisive, but I aim here to show that there are questions to be asked and answered by advocates of HRE in these areas.

To conclude this section, I have argued that conceptions of human rights play a significant role in determining the content of HRE, and that there are important questions to answer in relation to teaching *for* human rights values. I argue further that potential avenues to respond to these questions rely on further engagement with the theoretical implications that adherence to particular conceptions of human rights have for the development of theories of HRE. This area of research in HRE is undertheorised and stands in need of either an explanation of how to proceed or an argument to deflate the concerns raised here. In the Scottish context, a decision should be made at the appropriate level to select a theory of HRE informed by the considerations that I have sketched in order to improve the realisation of HRE within Scottish education and thus improve the realisation of the right to education itself. I will say more about this process and its importance in the next section.

21.3. Teaching About and For Human Rights: Further Questions.

In seeking to detail and analyse the place of Human Rights Education in Scottish education, I have attempted to sketch the issues that might be most relevant to the future development of HRE within Scotland; that is, given the prevailing political and legal culture, I have endeavoured to make clear what criteria might be relevant to how HRE will be developed in Scotland. While not possible to develop here a theory of HRE of the sort that I argue is required, two factors are important to consider: 1) whether programmes of HRE, and what is taught about human rights, need to accurately and adequately reflect the intentions of the drafters of the international human rights law and thus the international human rights practice it aims to represent; 2) that both the theory of human rights, and the model of HRE developed, are suitable for inclusion in the *compulsory* curriculum of a liberal democratic state (in this case Scotland specifically); that is, that HRE policies and practices can be justified in a way that is acceptable in a pluralistic liberal democracy. This will not be a straightforward task, but if I have made the case clearly here, it is a necessary one.

As Costa (2004) suggests, it is a consequence of liberalism of a certain kind and the requirement that one accepts the diversity of doctrines held by reasonable citizens therein, that there are certain limits on state action both generally, and specifically in relation to education.[159] What we can call the neutrality constraint of liberalism holds that 'political decisions must be, so far as possible, independent of any particular conception of the good life or what gives value to life' (Dworkin, 1978, p.127). The rationale for this that we have comes in recognition that the state cannot hope to gain universal endorsement of partisan policies, even amongst reasonable citizens. Of course, if the state were to rely on partisan and controversial judgements of any sort, it is inevitable that the social unity and the sense that citizens consider themselves free and equal in pursuit of their conceptions of the good would be lost. Vitally for discussion of education policy, this is not simply an argument of consequence only to those interested, but the legal position held by the European Court of Justice is that education must exhibit neutrality and impartiality between comprehensive doctrines (Clayton & Stevens, 2018)[160]. This is particularly significant and certainly brings

[159] This form of liberalism known as political liberalism and associated with, amongst others, John Rawls, is not the only form of liberalism but as it provides some of the strongest restrictions on what a state can legitimately do, it provides a good benchmark for testing education policy; that is, anything that would be acceptable under a politically liberal account of education would almost certainly be permitted in a more comprehensive one.
[160] See also R (Fox and ors) v Secretary of State for Education, 2015).

into focus the importance of clarity in relation to 'neutrality' here. Are programmes of HRE going to be consistent with stronger or weaker versions of any neutrality constraint?

I believe certain ways of characterising HRE may be in tension with this commitment and, in being so, highlight important features of both. Two issues are worth stating clearly. Firstly, that HRE as a programme of education appears directed towards raising awareness, as a fundamental principle, of the character and the common sites of rights violations that ought to be redressed as a matter of social change (and legal obligation in relation to the state). Many of these sites are found in the home or in the community and are characterised as violating or at least severely restricting the likelihood of the full realisation of a range of rights for their members (domestic violence, gender hierarchies, child marriage, etc.). In seeking to combat rights violations and to enable children and young people (or future citizens) to realise their rights and the rights of others, are programmes of HRE committed to, in essence, ruling out certain ways of life for which these rights violating features persist (or at least strongly discouraging membership in them)? This aspect can be strengthened further if one conceives of HRE (or human rights advocacy generally) as explicitly or tacitly endorsing claims that certain ways of life (because they always, often, or more often) violate the rights of their members are impermissible in a society that respects human rights. This does not seem beyond the realms of possibility. Or should we conceive of the role of HRE as being the promotion or facilitation over time of the alteration of such ways of life as, for example, Okin (1989) suggests?[161] Secondly, the strong emphasis on personal autonomy necessary for the full realisation of rights and their protection, as well as advocacy against rights violations and injustices, is both a very substantial task and one that requires justification against a neutrality requirement. An obvious point here may be that a political conception of rights can offer justifications of the form that point to the fact that all the content and values of a programme of HRE are drawn from public culture and do not rely on any specific conceptions of the good.

Education must seek to exert a 'complex two-fold influence' (McLaughlin, 1995, p.241). On 'common', 'universal', or 'public' matters, education seeks to achieve a 'strong, substantial influence on the beliefs of pupils and on their wider development as persons' (McLaughlin, 1995, p.241). However, on 'diverse', 'particular' or 'non-public' matters, education seeks to achieve a "principled forbearance of influence" (McLaughlin, 1995,

[161] This will be of considerable importance in determining the suitability of HRE and political liberalism. The former seems strongly ruled out while the latter is much less problematic.

p.241). In relation to non-public matters, as McLaughlin has it, education does not seek to shape either the beliefs or personal qualities in light of any comprehensive conception of the good which is significantly controversial. While this latter caveat may be important in the analysis, I will focus on the supposed consequence of this restriction. For McLaughlin (1995), this means that education is either silent about such matters, or it will encourage pupils to come to their own reflective decisions about matters relating to non-public values. It is almost self-evident that education stands in a position of interface between the public and the private and so decisions made relating to state education policy are particularly susceptible to charges of overstepping the bounds of state power in either interfering with the family itself, parental rights in education or to raise their children in a way they see fit in the home, as well as more specific claims surrounding the character and purposes of education itself. It is acknowledged amongst human rights advocates that explicit recognition of the ongoing inequalities faced by specific groups require additional protections and mechanisms to ensure that their rights are realised. This is in large part due to the significant risk that their rights will not be met without action. These additional protections codified in the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), the *Convention on the Elimination of all Forms of Racial Discrimination* (CERD), and the Convention on the Rights of Persons with *Disabilities* (CRPD) outline that both formal and substantive equality is required in society to fulfil state obligations in relation to the rights expressed in the conventions noted.

This is, of course, an area in which a programme of HRE has a considerable amount to offer if one can be clear about what, exactly, HRE involves as it relates to children's status in society and to the nature of their rights. Crucially, as Tomaševski (2006) suggests, if rights-based, education can be a means to attain gender equality. Otherwise, she argues, education tends to transmit gender inequality to the next generation. Rights-based education as a corrective is, therefore, a passkey for full and equal enjoyment of all human rights (Tomaševski, 2006). I think we can plausibly extend this to any form of inequality more broadly, with this offering a hint at what the added value of a form of civic education that takes human rights seriously might be and even more obviously programmes of HRE specifically. As Tibbitts (2017, p.7) outlines, the goals of HRE as preventing human rights violations, and human rights activism, exist as a subset of activities within a 'broader social change effort'. Human Rights Education as an educational programme can, as Tibbitts (2017) posits, therefore, be oriented towards changes in the public domain, but, importantly,

also be directed towards changes in the private/non-public domain (including non-public institutions such as the family). Tibbitts (2017) argues that the former calls for activism and collective action while the latter can occur through individual (non-legal) actions taken in the non-public realm (as well as in schools of course). This would, naturally, be controversial to a number of groups within a pluralistic society.

While it is certainly true that human rights themselves (such as the right to a family life, the right to privacy, freedom of religious expression etc.) certainly form protections for individuals from the interference of the state, HRE's commitment to human rights advocacy and to the challenging of rights violations surely applies equally to the public and non-public realms if it is to contribute to wider social change in support of rights (Tibbitts, 2017). When considering the aims of HRE, as Tibbitts outlines:

> …consistent with the higher aim of HRE to reduce human rights violations, HRE can be oriented towards changes in the public domain (the behaviour of governments) but also changes in the private domain (the behaviour of individuals). The former calls for activism and collective action whereas the latter can occur through individual (non-legal) actions taken in the privacy of one's home, school or community. (Tibbitts, 2017, p.7)

Interpreting this two-fold orientation, and its consequences presents itself as another complex area in which the totality of the human rights project and its aims, HRE as an educational enterprise, and the limitations on the state's role in education seem far from straightforward to reconcile. Whether this can be accommodated as part of the promotion of civic or political virtues, or whether it necessarily goes beyond a 'principled forbearance of influence on non-public' matters, requires further comment (McLaughlin, 1995, p.241). What does this mean for HRE? It appears that Enslin (1997, p.73) is correct to argue that McLaughlin's proposal is likely, on application, to endorse "by default" unreasonable features of the domestic as components of the comprehensive doctrines it will seek to illuminate rather than criticise. As Enslin continues:

> If girls as well as boys are to be sufficiently prepared in the course of their education to exercise the qualities of citizenship, such as knowledge of their rights, to be self-supporting, to understand and participate in their political culture and its institutions, and to be cooperating members of society who respect fair terms of cooperation, then it seems that schools have no option but to counteract unreasonable aspects of the domestic or familial context from which pupils come to school, that undermine these goals. (Enslin, 1997, p.75)

This seems correct and certainly aligns with what I argue HRE intends to do, and what I think almost all advocates of HRE would see as a key part of the initiative. Moreover, we might add the extra consideration that this be done when it is known that the unreasonable aspects of the domestic or familial context from which pupils come to school directly impedes or violates the realisation of their rights, as those rights have been framed in the analysis presented in this thesis. If we understand preparation for the quality of citizenship relating to knowledge of one's rights as including knowledge that one's rights cannot be violated in the home either (and that one should not accept it when this occurs) it is arguably consistent with the spirit of CEDAW that states act to modify the social and cultural patterns of conduct of men and women that contribute to prejudice and discrimination[162]. Connecting this point to the concern raised earlier about whether or not programmes of HRE will (ultimately) rule out certain ways of life on this basis, the answer is surely yes. This seems an inevitable implication of taking our legal and political obligations to the fulfilment of human rights themselves in society seriously. Whether we embrace this as an intentional aspect of HRE or an added bonus or simply concede that it is a bullet worth biting, it follows that this argument needs to be made by advocates of HRE clearly and explicitly.

Ultimately, at this stage these are partially fleshed out concerns and potential gaps in the literature that need to be filled. All or some of the concerns I have raised here may be easily dealt with. That they are such, in itself addresses an important absence in the HRE literature. Alternatively, I may be going wrong in my diagnosis and there may be some simple argument for why HRE, unlike civic education, moral education, and religious education, does not need to engage with questions of this sort. A clear justification for HRE can do important work in advancing the realisation of HRE within schools. This is an area in which the well-rehearsed debates in the philosophy of education may advance scholarship in HRE significantly. It is, of course, my hope then that those tools can further be brought to bear in this area.

[162] Again, we might refer back to Okin's (1989) idea of cultural alteration as a specific example of what one might have in mind here.

21.3.1. Justifying Human Rights Education.

Briefly, to conclude this section, I outline a potential avenue to explore further and some of the rationale behind it. Justifications of the sort we are interested in typically come in two kinds, public and student-centred justifications. A version of a public centred argument for education might run as follows: 1) A liberal democratic state is committed to arranging social institutions in a way that is acceptable to all *reasonable* citizens within a pluralistic society (neutrality constraint on legitimacy). In order to count as a neutral reason it must be, first and foremost, *political* rather than tied to any particular comprehensive doctrine (religious, philosophical, or other). 2) Public education can be defended if it offers a neutral justification for financing and making compulsory education within a pluralistic society. 3) The health and stability of the liberal democratic state is a goal that citizens can agree to whatever (reasonable) conception they have of the good life because it protects and promotes their capacity to pursue such lives. (Neutral justification). In conclusion, compulsory public education can be justified by the neutral value of the health and stability of the state.

A student-centred argument would, by contrast, focus on the interests of children themselves rather than public interests. For relevance to the current project, a student-centred justification for HRE must be justified independently of any particular conception of the good life or what gives value to life (Neutrality constraint of legitimacy). Where I think there may be most benefit in this direction for HRE is in the possibility of developing a dual-justification for HRE, emphasising both its important contribution to the stability of the state and other civic goals (see Chapter 9), but also its crucial role in realising children's interests. In this sense, we may be able to construct both a public and a student-centred justification of HRE.[163] It is reasonable to consider the place of a student-centred justification in connection with the development of HRE. After all, a criticism of public-centred justifications for citizenship education, for example, is that the students themselves fall entirely out of the picture (only what is *publicly* valuable counts). This is straightforwardly inconsistent with both the spirit of the human rights movement and Articles 3 and 12 of the UNCRC, at the very least. It is important then that there must be a student-centred component of the justificatory story we tell about the inclusion of HRE within the curriculum. However, student-centred justifications for education typically fall to accusations of being too perfectionist - especially if they involve non-neutral judgements about the value of autonomy

[163] For an example of this in the case of civic education see Schouten (2018).

- and thus breach the neutrality constraint discussed earlier. However, Schouten (2018) offers a promising argument that may sidestep this issue and that may be of use to advocates of HRE who take this requirement seriously. This is indicative of a potential way forward in research, but I cannot develop the point here in full. It is, of course, then an area in which I encourage scholarship in the future.

Picking one of the challenges in justifying aspects of HRE, its status as either promoting or facilitating autonomy appears to fall foul of neutrality constraints in the same way accounts of civic education have in debate for the last several decades. [164] However, from these discussions might we be able to draw solutions to assist the conceptual development of HRE? I believe so and argue that there is a significant body of debate to be had amongst HRE advocates drawing on the well-established lines identified in philosophy of education and political theory surrounding education generally and moral, civic, and political education specifically. In that vein, we might tentatively posit that: insofar as the health and stability of the state requires that students are educated for citizenship, and insofar as being a good citizen in Scotland requires rights-respecting attitudes, and insofar as education for autonomy is an unavoidable component of HRE, we have a justification for human rights education that respects the neutrality constraint. This is, roughly, a public-centred argument that can justify the promotion or facilitation of autonomy as part of programmes of HRE by reference to the health and stability of the state. While Human Rights Education represents a novel form of justice-focused education, it is not *sui generis* in any meaningful respect that makes it less in need of justification. In can, and should, therefore seek where possible to advance arguments of its own, as other prospective components of the compulsory education do, for its unique and valuable role and how this can be justified. [165] Relatedly, the prospects for the development of adequate and compelling justificatory arguments in support of HRE are presumably as good as for more standard versions of political, civic, or moral education. The strength of the legal arguments in favour of HRE may, in some states - I think Scotland would be a prime candidate in future- translate very clearly into the public and political culture of that society making the public-centred justification highly obvious to outline. Human Rights Education remains in many ways an "immature" field in relation to other more

[164] See Brighouse (1998) for why the difference is relevant in civic education. Gutmann (1999) and Callan (1997; 2000), and Schouten (2018) amongst others also. More widely any discussion of the *Wisconsin v. Yoder* case on which most of these issues orbit.

[165] See Bell (2004) who seeks to make the case for environmental education against the constraints of political liberalism.

established curricular subjects. I argue here that there are important gaps that we must seek to address in order to enable the field to continue to develop and to provide policymakers and teachers with guidance, and crucially, contribute to the realisation of children's rights.

21.4. Looking Beyond Incorporation.

Finally, I offer some more speculative remarks on what I see as potential implications of incorporation for children's rights in Scotland. The first of these relates to children's status as citizens and the second, more closely relates to broader implications surrounding children's meaningful participation, but particularly to do with whether education policy should be justified to (at least) some older children.[166] The points are, of course, closely related and so I will deal with them in tandem to highlight what I think may be a particularly radical consequence of incorporation. [167]

Little has seemingly changed since Marshall (1950) characterised children as citizens in the making. As Cohen (2005, p.221) notes, children in democratic polities inhabit an 'uncertain space between alienage and full citizenship'. While children are regarded as citizens in that they hold passports and receive nationality at birth, they are also judged as ill-suited to, or incapable of, full citizenship owing to the fact that they fail to meet standards of rationality that are characteristic of self-governance or fail to demonstrate a 'bundle of capabilities' that we might term 'political maturity' (Rehfeld, 2011, p.143; Cohen, 2005). Two prominent ways of thinking about children's political status are: 1) the paternal view and 2) the minor view. The former allows 'adult ownership of children's higher-level interests' (Cohen, 2005, p.224), while the latter treats children as a 'means to achieve adult ends', often resulting in children's own interests being 'obscured or elided with those of adult society' (Cohen, 2005, p.224). Both significantly influence both how policy making around education is understood and consequently how it may be justified. The current focus on children through the prism of pending adulthood and the fact that their status as minors is temporary and preparatory can lead to the design of policies and laws that affect them but do not take

[166] The arguments in this section were presented at the Annual Conference of the Philosophy of Education Society of Great Britain at New College Oxford in 2018 in the form of a poster presentation titled "Assessing justifications for compulsory civic education in light of children's rights". I am grateful for the helpful discussions with attendees during this period.

[167] A related discussion about how children's rights may press us to reconceive the status of children when thinking about policymaking can be found in Robinson (2017).

into account the individuals themselves (Fives, 2013; Cohen, 2005; Coleman, 2002). Questions have been raised about how arbitrary distinctions between some adolescents and some adults may appear (in relation to competency etc) and whether or not this can be maintained in light of the principles of democratic inclusion inherent to liberalism (Fives, 2013; Cohen, 2005; Coleman, 2002). While there are good reasons to want to maintain a distinction between adults and children in relation to citizenship status, how good are our reasons to continue to view children (and especially some adolescents) as primarily future citizens/ future adults? A common response to these concerns surrounding the rights of children is that the 'undemocratic circumstances' created for children are justifiable because they will eventually become citizens. At that time they may understand and appreciate the restricted citizenship of their childhood (Cohen, 2005). If Cohen et al. are correct that children inhabit a position of partial or semi-citizenship, what implications, if any, does this have for education? Moreover, how will incorporation factor into our answers to these questions in Scotland; that is, to what extent does the political status of children as expressed in the UNCRC align with how they are currently conceived of in Scottish law and policy? What changes might we need to make if we have a more nuanced position in relation to children's status as citizens? There would inevitably be implications for how best to understand children's rights and this may favour a gradualist or developmental approach to children's rights, moving from protections towards participation in line with their capacities. If we accept this status of partial citizenship, and Fives's (2013) suggestion that we should offer more in our arguments concerning children's current status and interests in education, what might this require of us? If we reject this position do we have non-arbitrary grounds for doing so? As Cohen (2005) suggests, do liberal democracies 'owe children' a more carefully defined and judiciously governed political status? This seems to fit well with a plausible reading of the rights outlined in the UNCRC and so may, indeed, be what is required to take children's rights seriously. These questions seem particularly magnified in contexts in which the voting franchise has been extended to 16 and 17-year-olds. In Scotland, for example, does the existence of *some* 16-year-olds who remain in school, and thus are subject to a compulsory curriculum, but also have the right to vote in all national (i.e. Scottish) and local elections, prompt a rethink of how we understand their status as citizens and how civic and political elements of their education are consequently conceived and justified?

Relatedly, should society's interest in the preparation of future citizens be the primary aim of the relevant aspects of education? There exists a consensus amongst many liberals

that this claim is broadly correct. An important part of the justification for public education (and specifically civic education) is the contribution it makes to the preparation of future citizens (i.e. a public-centred justification). However, as Fives (2013, p.589) argues, civic education must not 'approach the current generation of children and young people as if they were merely the means to bring about the future adults and future citizens they will hopefully one day be'. Children and young people have a higher-order interest in education as a necessary element of development (Fives, 2013). They also have an interest in their future lives *and* an interest in their current experience; that is, an interest in their own experience in education that shows adequate respect for their status now and not simply what they will later become (full citizens and adults). When these interests of children now, children *qua* future citizens, and citizens now diverge what is the most judicious balancing of them? Moreover, what is required of an education that shows adequate respect for children's evolving political status now? We might argue, as does Corngold (2011), that in order to do justice to the "developmental interests" of children, then their interests should take precedence. Article 3 of the UNCRC as we know imposes a positive duty on states to ensure that 'in all actions concerning children…the best interests of the child shall be a primary consideration'. The UN's General Comment 14 on Article 3 makes clear that 'an adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention.' (CRC, 2013, p.3). Moreover, the child's views are listed first in the proposed hierarchy for making best interest decisions (CRC, 2013, p.13). One could argue that determining what is in a future adult's interests, and what might be justifiable to them then, might not be sufficient to take seriously children's interests *now*. Moreover, it is not clear how such future orientated considerations give effect to their right to have their voices be adequately considered now (either merely consultatively or authoritatively).

Finally, I turn to a broader question about how children are treated in a rights-respecting democracy that has incorporated the UNCRC into domestic law. A standard position in liberal democratic policymaking is that paternalism is always justified for children, but never for adults. Summarising a common argument, Archard (2015, p.7) notes:

> . . . an adult's own good is never a sufficient warrant for a limitation of her freedom, whereas in respect of children the child's best interest is the only consideration in the making of decisions that determine what shall be done to or for her. Adults should always be allowed to make self-regarding decisions, children never.

What is the basis for this and is it consistent with the UNCRC? One reason might be that children are not citizens and lack the capacity for citizenship. However, as I note above, does the potentially radical changes made possible by incorporation call for a rethink of this status? Is this paternalistic *status quo* consistent with a plausible understanding of children's rights? While it would be inappropriate and illiberal in the case of adult citizens to institute a programme of compulsory education (perhaps even if society could benefit from such an intervention), this is not so for children. Again, using civic education as an example, Coleman (2002, p.1) argues that the idea that civic education should be compulsory for younger persons but not for adults 'cannot be justified by appeal to the supposed incapacities of the former'. The key issue is whether 'younger persons - particularly adolescents - might view some forms of liberal civic education as too paternalistic' (Coleman, 2002, p.1). Does the incorporation of the UNCRC require us to think much more broadly about whether or not some young people might view elements of their compulsory education as too paternalistic and/or not in their best interests? Coleman (2002) provides a thought experiment focusing on a pupil known as Susan who objects to the character of her civic education. The Susan vignette highlights an interesting example of a hypothetical 15-year-old whom we might think meets various 'thresholds' normally proposed for citizenship. In such cases, what arguments do we have to justify the compulsory status of civic education for her that would not also apply to many adults? Moreover, we might think Susan fulfils the criteria set out in Articles 3 and 12 of the UNCRC to be heard and have her interests taken into account as a *primary* consideration in decisions affecting her, perhaps even *authoritatively* owing to her level of competence? Concerns about the need for a more nuanced understanding of children's status as citizens and the inadequacy of current accounts of children's citizenship status may prompt a rethink in this area. Fundamentally, the point here is to whom ought we to address and justify educational arguments and policies? Traditionally education policy is justified to parents, other citizens, and future citizens (in a retrospective sense of sorts) but never to children. Post-2021, does a duty to consider the best interests of children and to allow meaningful participation in matters that affect them extend to the consultation and justification of educational policy *to* (at least *some*) children and young people?

Human Rights Education has the potential to rebalance legal and political considerations in favour of children's immediate interests in their own education and rights, but the case must be made at the policy level much more strongly than it seems to be at the current time. These speculations on what the more radical implications of incorporation may

require in Scotland may be exactly that: speculative and radical. However, I hope to have shown here that engagement with them is unavoidable as Scotland incorporates the UNCRC into domestic law. Moreover, it is a task that a nation that seeks to be a "leader" of human rights and that has made repeated political commitments to the realisation of human rights for all cannot easily shy away from. Furthermore, I hope to have highlighted some sources for future consideration about the political status of children and young people in Scotland post-incorporation along with wider questions about how educational policy is made and justified in a rights-respecting landscape.

To conclude this chapter, I have argued that there are important gaps in our understanding of HRE that require further engagement with conceptions of human rights in order to develop appropriate theories of HRE. I have argued that this is a problem for HRE more widely, but a particularly pressing one in the context of incorporation in Scotland. Until these outstanding issues are addressed, I am deeply sceptical about whether progress of the sort necessary to fulfil the basic HRE obligations that I outlined in Chapter 6 (HRE 1-5) can be met in Scotland in full. While there are some immediate actions that can be taken to address this problem, certainly starting with the clear and explicit incorporation of HRE within Curriculum for Excellence, beyond this, the conceptual issues identified here will remain an obstacle. I have also highlighted some potentially radical implications of incorporation and questions to consider as we move beyond 2021. With this in mind, I consider more immediate and practical future directions in the final chapter of this thesis.

22. Future Directions and Conclusions.

In this thesis I have sought to be informative about what needs to be known and addressed in approaching HRE in Scotland.[168] In doing so, I have offered a detailed and rigorous account of the place of human rights education within Scotland, the challenges faced in its implementation and realisation and the opportunities and obstacles presented by current political and legal developments. I have argued that fully realised programmes of Human Rights Education (HRE) are an important component of meeting obligations regarding the right to education more broadly. In doing so, I have shown, and argued for, the strong legal and philosophical case for HRE. Furthermore, I have argued that incorporation of the UNCRC into Scots law requires immediate action to address barriers to the realisation of the right to education and human rights education in Scotland. Crucially, I have argued that there are serious issues facing HRE in its development owing to the contested nature of human rights and of HRE as a concept and initiative itself. I have argued that these issues are much deeper and more intractable than is typically understood and is a very serious impediment to the fruitful development of HRE both within Scotland and, indeed, in any liberal democratic society. It has been my intention that this account will make clear not only the current state of HRE within Scotland, but also what relevant parties need to consider in both moving HRE forward within Scottish education, but also meeting the challenges posed by the incorporation of the UNCRC. I have sought, therefore, to offer timely and important contributions with regards to the realisation of HRE within Scotland, the field of HRE itself by detailing a number of gaps within the conceptual development of HRE, and the important work that will be necessary as Scotland incorporates the UNCRC into domestic law.

22.1. Future Directions.

Although there are no simple answers to the issues raised here nor, as suggested, any existing exemplar[169] from which Scotland can take direction wholesale, I want to offer a number of suggestions here for future directions for HRE within Scotland. The growing body of literature on HRE in Scotland strongly supports the need to ensure clear and comprehensive incorporation of HRE into the curriculum. This can and should be achieved even simply for

[168] An earlier version of parts of this chapter can be found in Daniels (2019).
[169] As noted I think the CoE's EDC/HRE model is a good start and there are a number of examples of good work on HRE in Portugal, India, and Canada to name a few that may offer guidance.https://www.ihrec.ie/download/pdf/human_rights_education_in_ireland_an_overview.pdf

purposes of clarity in relation to the Scottish Government's position on HRE. While the position expressed in 2010 about HRE and Global Citizenship education specifically has been discussed here and in BEMIS (2013) and Struthers (2015a), this is based on the fact that this guidance has never been superseded. Whether the position has changed or is considered at all is entirely outwith publicly available discussion on the part of the Scottish Government or Education Scotland. Recognition that there is *something* to be said here will be an important first step in improving the realisation of HRE within Scottish education. A clear statement of intent that the Scottish Government is committed to realising human rights education would send an important signal to teachers in support of their own efforts. Being supportive of, and recognising the achievements of schools, in relation to the UNICEF Rights Respecting Schools Award does not quite fulfil that role. Whatever the merits of this award, the Scottish Government itself has no responsibility for it, nor does it form part of any official reporting on the Scottish Government's efforts to realise HRE. It is important to recall here the obligation for states to ensure clear and comprehensive incorporation of HRE into the curriculum (**HRE1**). This means that it must be made clear to teachers, parents, and pupils where HRE fits within Curriculum for Excellence and how education about, through, and for rights is a central feature of children's and young people's education in Scotland. All educational policy is subject to "translation" at various levels and to reinterpretation as it makes its way from curricular text into classroom practice. This is inevitable and ensuring that guidance is as explicit as possible in the first instance is the main lever that the state has for aiming to ensure that classroom practice mirrors, as far as possible, what is required to meet obligations regarding HRE. As Robinson (2017) notes, human rights principles are themselves subject to three stages of translation. First as stated in instruments, then as translated into curriculum documents, and then again as they are translated into responsibilities for practitioners. It is my contention that in order to support each of these "translations" the kind of additional theoretical work pointed to in Chapter 21 is particularly necessary. [170] Above all else, my aim in this thesis has been to put the issue of human rights education firmly onto the agenda in Scotland and in particular into its place in wider efforts to improve the realisation of human rights for all those living in Scotland. The first step in this journey is for the right to education, and human rights education specifically, to take its place amongst the vibrant and constructive work being done on housing, health, poverty, and many other areas through a lens of human rights. Education has been, and should continue to be,

[170] See also Robinson et al (2019) for a more granular discussion of this process in relation to Article 12.

situated amongst these crucial discussions as a driver for change, but also as an invaluable means to protect and empower citizens to recognise and claim their rights.

Further, it does not seem unreasonable to consider how the successful ongoing work in relation to Scotland's national action plan for human rights may have a further role to play in driving HRE and making accountability and good practice clearer in meeting this obligation. *Equality and Human Rights Impact Assessments for Education and Training* as an element of SNAP would be a plausible avenue for embedding further considerations in relation to HRE. In particular, this should consider how such assessments may be revised or made more robust in line with the criteria for HRE realisation outlined here (**HRE1-5**[171]). With the incorporation of the UNCRC due to happen in 2021, this seems an opportune moment to consider how HRE may factor into the next iteration of Scotland's National Action plan on Human Rights and wider efforts to realise rights in Scotland. Assessment of provision in education and training about human rights should surely consider human rights education (i.e. education about, for, and through rights) as part of assessments of human rights *impact*; that is, specific focus should be placed on 'Child Rights Impact Assessments' (CYPCS) taking into account HRE. [172] There are sufficient grounds to argue that in direct relation to UNCRC Articles 28,29, and 42, assessment of Child Rights impacts in education should focus on the provision and realisation of human rights education. This, of course, becomes even more important when incorporation of the UNCRC into Scots law takes place. In this connection, we are prompted to look in two additional places for specific areas that may be crucial for realising HRE in Scotland. Both the detail on the incorporation of the UNCRC into Scots Law (see Chapter 19) and guidance and strategic priorities outlined in Scottish Government's "Progressing the Human Rights of Children in Scotland: 2018-2021 Action plan" have identifiable elements of direct significance to the promotion and development of HRE. [173] Indeed, there are a number of specific areas of planning that already appear to reflect a commitment to something approximating human rights education and training. Amongst other necessary steps, one example of drawing such a connection might be the 2018-2021 action plan which outlines the following as a strategic priority:

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[171] HRE1) Clear and comprehensive incorporation of HRE into educational curricula; HRE2) Teachers must be aware of relevant rights legislation; HRE3) States must promote adequate training in human rights for teachers; HRE4) States must ensure rights respecting learning environments; HRE5) States must ensure teaching practices that reflect and promote human rights values. (See Chapter 6)

[172] https://www.cypcs.org.uk/policy/cria

[173] Work undertaken in the devolved Assembly of Wales in this area has been of considerable interest for the Scottish Government.

> [to] develop through co-production, an ambitious programme to raise awareness and understanding of children's rights across all sectors. (Scottish Government, 2020a)

My impression here is that such a commitment covers both HRE for children, and also the necessity of human rights education and training for those working with, or with organisational responsibility for, children across all sectors. I conclude that the suggestions I have made here and specifically the type of contribution HRE is envisaged as being a crucial factor in fulfilling this aim. Similar reflections could be offered for a range of statements outlined in the action plan, but I will highlight one more for illustrative purposes:

> …working alongside Education Scotland to strengthen awareness and understanding of children's rights through a range of activities which supports the development of a right based culture and ethos in schools and early learning and childcare centres. (Scottish Government, 2019)

Even with this, and the considerable potential overlap one can discern with the aims of HRE, it is striking that the 2018 *National Improvement Framework and Improvement Plan for Scottish Education: Achieving Excellence and Equity* contains four explicit references to "rights". Three relate to parental rights, one to Headteacher's rights, and no mention whatsoever is made of children's rights nor Human Rights Education. Given the proximity of such policies and priorities to those of HRE, as I have discussed it here, there seems to be a strange disconnection. This is further magnified in light of the Scottish Government's intention to strengthen awareness and understanding of rights and to develop a rights-based culture and ethos in schools without the existence of any specific proposals to do so. How this is to be achieved remains unclear, a point I emphasise again as needing to be addressed as soon as is practically possible.

However, these suggestions relate to the most easily solvable of the issues that I have outlined in this project. The complexity of some of the issues raised here highlights the need for much wider consultation on how to develop national guidance for the implementation of HRE in schools as part of wider SNAP efforts and identifying clear links with ongoing initiatives in Scotland to further realise economic, social, and cultural rights. The work undertaken by the Irish Human Rights Commission (IHRC) on HRE (2011) represents a substantial survey of the legal obligations surrounding HRE in Ireland as well as specific educational provision and policy in primary and secondary schools. This is a very substantial

body of work and an initiative that Scotland should aim to replicate, both for its robust nature and also for its comprehensiveness. While not necessarily resolving the type of questions I raise here, there is considerable engagement with different models of HRE and discussion of them in the Irish Human Rights Commissions' report on HRE. [174] Ultimately, this work by the IHRC resulted in a series of recommendations covering human rights education and training throughout Ireland as well as discussion of a national action plan for HRE. I believe it is absolutely central to efforts to improve HRE in Scotland that a similar project is set up, building on and considerably expanding the work undertaken in conjunction with the BEMIS (2013) report on HRE. [175] The BEMIS report, along with Struthers' (2015b) work on ITE, represent two important building blocks for a wide-ranging analysis of HRE in Scotland. Such an analysis is both crucial to addressing the concerns raised here, but also vital to the process of ensuring Scotland meets its human rights obligations. At the current time, and especially with one eye towards incorporation, this work seems a matter of some urgency. There is no existing recent empirical work on HRE in Scottish schools beyond what is reported in connection with the implementation of the UNICEF Rights Respecting Schools Award. There is, therefore, no clear sense of how widespread HRE is within Scottish schools, how successfully it is being delivered, or of the barriers to its implementation. Therefore, I recommend a wide-ranging empirical investigation into the state of HRE within Scottish schools (primary, secondary and the ASN sector) both to highlight existing good practice and to serve as the basis for the further development of HRE policy and practice within Curriculum for Excellence and Scottish education more generally.

Taking into consideration the wide-ranging and complex questions identified here, the establishment of a working group including teachers, lawyers, academics, and activists (at the very least) seems vital in beginning to shape what role HRE should play in Scottish education, and what this will look like in the future. Scotland has had success with similar initiatives; recently one can point to the work of the LGBTI Inclusive Education Working Group which has had its 33 recommendations accepted in full by the Scottish Government, with work underway to embed LGBTI education throughout the curriculum. This is, of course, a very positive sign and indicative of the receptiveness of the Scottish Government to taking these issues seriously. The process surrounding this initiative, and the warm reception with which recommendations were received, appears to me a good model for how wide-

[174] See IHRC (2011) pps. 57-69
[175] This was a recommendation of the BEMIS (2013) report itself.

ranging discussions surrounding HRE (such as those I have highlighted here as challenges) may be conducted by involving a range of stakeholders and experts. This, while amounting to a considerable project, equally represents an opportunity to show the kind of leadership that the Scottish Government claims is its aim regarding human rights. Moreover, as I have argued, it may be the best way to ensure that Scotland is able to meet its international obligations to realise the right to education. Finally, for initial teacher education, Struthers (2015b) offers a thorough and thoughtful analysis of the current state of ITE in Scotland and how it may be improved in relation to human rights education and training. In the current work, I will have nothing further to add to her specific institutional recommendations but will reiterate two broader conclusions drawn by Struthers. The first of these is that HRE has a central role to play in building a universal culture of human rights and in empowering learners to stand up for their own rights and the rights of others (Struthers, 2015b). The second is that the provision of HRE within Initial Teacher Education is a key requirement of the international HRE framework. One of the more complex but necessary directions for future research within the HRE community is in providing answers to the questions that I pose in Chapters 20 and 21. Alternatively, it may be shown that answering those sorts of questions is not necessary for HRE to be successfully realised and justified as a compulsory component of state education. Either outcome would be valuable in driving the realisation of HRE within Scotland, although I am, of course, sceptical of the prospects of the latter.

Taken together, all of the above suggestions for future directions for HRE in Scotland represent opportunities for the Scottish Government and NGOs in Scotland to help drive forward HRE. There now exists a growing body of literature highlighting problems with the current provision of HRE within Scotland. To be a leader one must, of course, lead in areas that are currently underdeveloped in order to, amongst other things, show leadership. With education both an arena in which the state has considerable influence and surely central to the project of developing a human rights culture in Scotland, to overlook it in consideration of national action plans for the promotion and protection of human rights lacks credibility or sense. For this reason, there is a clear need to consult widely on how best to develop national guidance for the implementation of HRE in schools both for its own sake, and also in the context of any revisions to SNAP as we move towards the creation of the next action plan. It cannot be for lack of ambition that the full scope of education about human rights is so often overlooked in these discussions. That the potential for human rights education is obscured

because of the conceptual difficulties it still faces is one possible explanation for this fact and I have demonstrated in Chapter 21 how deeply these problems may run.

22.2. Conclusions.

While there are considerable challenges in relation to the realisation of HRE within Scottish education, these are not insurmountable. Many of them can be resolved in the short term and are within the competence of the Scottish Government to deliver. The current political climate in Scotland offers significant opportunities for strengthening the realisation of the right to education (and HRE) within Scotland. While at the time of writing there are real and not insubstantial threats to human rights in Scotland posed by the UK's exit from the EU, the UK Government's Internal Market Bill, and the ongoing global pandemic, the nucleus of an important and hard won consensus on human rights and the desire to realise rights for all in Scotland remains unshaken. The more immediate issues posed by the UK's exit from the EU and to some extent COVID-19 may resolve themselves, but the systemic constitutional tensions within the UK as a whole are unlikely to admit of easy resolution. Indeed, it seems likely that these will continue to be ever more magnified and fractious over coming years as the UK and its constituent nations find a new place in the global political order. However, as Miller et al (2018, p.3) suggest, 'there is a sense of ambition and Scotland is ready to take those [human rights] leadership steps'. As the right to education - and HRE as a central element of it - is seen as central for the realisation and protection of rights more broadly, this perhaps ought to be a central feature of policymaking if Scotland wants to be, and be seen to be, a human rights leader. Indeed, it is, I think, highly likely that Scotland will continue to seek to incorporate further international human rights instruments into Scots law over the next decade. Against such a backdrop the time could hardly be better for serious consideration of the role of human rights education in these strategic aims.[176] Finally, to quote from the foreword of the consultation on the incorporation of the UNCRC into Scots Law:

> Arguably it has never been more important for human rights, not least the rights of our young people, to be defended and promoted and this is a chance for the Scottish Parliament to show leadership. (Scottish Government, 2019b, p.1)

[176] https://www.gov.scot/news/new-national-taskforce-starts-work-on-human-rights/

This is a sentiment that I agree with entirely and I have sought to show here the challenges and opportunities for Scotland in realising one critical aspect of this task. The incorporation of the UNCRC into Scots law will be a seminal moment for children's rights in Scotland. However, children's rights to be educated *about, through,* and *for* their human rights are currently not successfully met within Scottish education, nor can we say that common sources of rights breaches *within* education are insignificant to the everyday lives of Scottish children and young people. As I have highlighted here, many of the barriers to the process of better realising rights to and in education are found in the lack of clarity within HRE as a concept and as an educational initiative itself. For Scotland to meet its obligations and, moreover, show leadership in human rights, it is necessary that we seize the opportunity and begin the important work of developing a Scottish programme of HRE suited to the needs of Scottish children and reflecting the commitment to human rights values at the heart of the positive work of many years in Scotland towards the realisation of all of our rights. This will require the complex theoretical work that I have pointed towards here but, as has been my argument in the latter stages of this thesis, this work cannot be avoided if one hopes to develop robust and justifiable policies for HRE. It would be an important improvement tomorrow if the Scottish Government offered clear guidance in policy of the place of HRE and how it envisages its realisation through Curriculum for Excellence. Current policy that HRE is met through global citizenship is, as I have shown, inadequate at best. The underlying principles of Getting it Right for Every Child, and the architecture of *CfE* itself make considerable room for meaningful engagement with human rights education. In Chapter 9 I discussed the Council of Europe's Education for Democratic Citizenship/ Human Rights Education programme and I think there is a lot to recommend this proposal as the basis for beginning work in Scotland in this area. However, this welcome step alone would not meet all of the challenges I have identified here for HRE, nor children's rights in education more broadly. To meet its international obligations, and to fulfil the political commitment to be 'The Best Place to Grow Up and Learn' the Scottish Government, Parliament, and the Scottish education system surely must ensure that Human Rights Education takes its place clearly and explicitly in the national curriculum as the UNCRC is incorporated into Scots law (Scottish Government, 2018a, p.83). The four UK Children's Commissioners have made clear in a report to the United Nations in December 2020 (Children's Commissioners UK, 2020), that children's rights and human rights education

should be a compulsory part of education throughout the UK. While clear that I agree with this, I also make the case here in chapter 21 that to establish the *compulsory* status of HRE within the curriculum we must offer sufficient justification for this status. Moreover, the unresolved questions raised in this thesis about *how* we teach HRE remain. Additionally, teachers must be provided with adequate education/preparation in human rights and human rights education, and the common sources of children's rights breaches in education itself in order to facilitate the practical realisation of this goal.

The deadly COVID-19 global pandemic has been an important reminder of the fragility of the protections for the most vulnerable in our society. While children need the special protection that the rights expressed in the UNCRC and soon to be enacted in Scots law affords to them, we must not forget the centrality of empowerment and participation to the realisation of children's rights in education and beyond. In recognising the dual threats of the United Kingdom's exit from the European Union and COVID-19 to children's rights the Scottish government made clear it would not be dissuaded from its intention to incorporate the UNCRC within the current parliamentary term. To fail to make the most of this important opportunity to make rights real in Scotland and to enable all children and young people to understand and claim their rights and to participate in the building of a rights-respecting culture throughout Scotland would be to fail to show the human rights leadership on which this government prides itself. It would, moreover, be to fail in the underlying and animating goal of education policymaking in Scotland of getting it right for every child. The Scottish Government must, therefore, show leadership in driving forward Human Rights Education and seek to take another important step in the realisation of children's rights in Scotland.

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