

## The Foundation of the Child's Right to an Open Future

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### 1. Introduction

A cluster of difficult ethical questions concerns the treatment of children. Some are about what it is permissible to do to children. For example, may parents take their child out of school at an early age so she can work in the family business, or so she is not corrupted by the modern world? May they modify their child's genome to make her closer to their ideal? May the state require children to be vaccinated for the good of others? Other questions concern what the state and parents are obliged to do for children. For example, must children be provided with a certain level of education? Must they be provided with summer camps and music lessons? Should medical decisions be made only in their best interests? These are difficult questions, in part, because views about how children should be raised and the scope of parental authority are frequently an important constituent of people's comprehensive doctrines.<sup>1</sup> How someone engages in parenting and how his children turn out are likely to matter a great deal to him, and his judgments about them will reflect his deeply personal views about what makes a life go well. One might expect, therefore, that disagreement about the appropriate treatment of children would be pervasive, and that resolving it would require significant work on foundational issues in moral and political philosophy.

One popular way to answer these questions about the treatment of children offers the prospect of sidestepping many of these issues by citing the child's "right to an open future."<sup>2</sup> Originally coined by Joel Feinberg in 1980, this phrase encompasses a set of moral rights children possess that are derived from the autonomy rights of adults. In brief, the right protects the child against having important life choices determined by others before she has the ability to make them for herself. The content of the right to an open future, therefore, includes restrictions on what parents (and others) are allowed to do to children, and, on some interpretations, tells us with what parents (and others) ought to provide children.

It is now common to cite the child's right to an open future in discussions of obligations to children. It is cited as a guiding consideration in discussions of issues as diverse as the ethics of vaccinating children against smoking, declining cochlear implants for deaf children, testing for late-onset genetic diseases, and genetic enhancement.<sup>3</sup> In most cases, it is simply assumed that every child has a right to an open future and that Feinberg demonstrated its existence. Occasionally,

Feinberg's argument for the right is recapitulated.<sup>4</sup> Thus, the child's right to an open future has the status of a result in applied ethics.

If Feinberg's original argument were to have demonstrated the existence of a right to an open future, then it would be a very helpful result. It would be helpful because Feinberg seems to derive the right from the autonomy rights of adults, and his derivation suggests that the *content* of the right to an open future can also be derived from the content of these autonomy rights. There is much more widespread agreement about the content of many adult autonomy rights than there is about the normative relationships between children, their parents, and the state. For example, it is generally agreed that, so long as they do not risk harm to others, competent adults ought to be permitted to practice their religion as they see fit, to move around their country, take work, possess personal property, found a family with a consenting spouse, say what they wish to in public, associate with whom-ever they choose, and so forth.<sup>5</sup> If Feinberg's derivation worked, it would be possible to answer questions about what is owed to children by reference to these relatively uncontroversial rights.

In this article, I argue that Feinberg's account of the right to an open future cannot, in fact, help us answer these questions. If Feinberg's article is to provide a method with which to derive the content of the child's right to an open future, then the right should be interpreted as a right to a maximally open future. But this strong interpretation is unjustified: the arguments that can be found in Feinberg in favor of the right are invalid, and in any case this interpretation of the right to an open future has implausible implications. A moderate interpretation of the right to an open future, according to which children have a right to acquire some reasonable range of skills and options, is more plausible. However, if a moderate interpretation is correct, there is not only no argument in Feinberg to support it, there is also no method for deriving the content of the right. Without such a method, we have to bring in other moral considerations in order to work out the limits on parental discretion and what children are owed. The right to an open future then does no normative work.

## 2. Feinberg and the Right to an Open Future

In "The Child's Right to an Open Future," Feinberg distinguishes between various types of moral right. Some rights (A-C rights) are held by both adults and children, such as the right not to be physically assaulted. Other rights (A rights) are held only by autonomous adults, such as the right to free exercise of one's religion.<sup>6</sup> Finally, C rights are held primarily by children. These include dependency rights—rights to certain goods that are owed on the basis of the child's dependence on adults for the necessities of life—and what Feinberg identifies as "rights-in-trust," which

look like adult autonomy rights . . . except that the child cannot very well exercise his free choice until later when he is more fully formed and capable . . . [they are therefore] rights

that are to be *saved* for the child until he is an adult, but which can be violated “in advance,” so to speak, before the child is even in a position to exercise them. . . . His right while he is still a child is to have these future options kept open until he is a fully formed self-determining adult capable of deciding among them.<sup>7</sup>

Thus, Feinberg argues, for each autonomy right held by autonomous adults, there exists a corresponding right-in-trust held by children who are not yet autonomous, but are expected to become so. These autonomy rights are, by definition, rights whose exercise depends on the bearer having the capacity for autonomous action, and therefore cannot be exercised by a child. However, they can be violated before the bearer acquires this capacity. In his discussion of the rights-in-trust of freedom of religion, Feinberg draws a helpful analogy. He writes:

In that general category [of rights-in-trust] it sits side by side with the right to walk freely down the public sidewalk as held by an infant of two months, still incapable of self-locomotion. One would violate that right in trust *now*, before it can even be exercised, by cutting off the child’s legs.<sup>8</sup>

Feinberg labels the set of a child’s autonomy rights-in-trust “the child’s right to an open future.”

### 3. Interpretations of the Right to an Open Future

Before assessing Feinberg’s argument in favor of the right to an open future, it will prove helpful to map out some possibilities regarding the nature and scope of the right. First, the right to an open future could be a negative or a positive right, or, plausibly, there could be both negative and positive aspects to it, so that it prohibited certain forms of interference and prescribed the performance of certain actions.<sup>9</sup> For example, as a negative right, the right to an open future might protect young children against being engaged in certain types of work or married off. As a positive right, it might include the child’s claims to be fed and to be educated.

Second, there are different parties against whom the right to an open future could be held. Many negative rights are claims held against everyone. Most positive components of the right would likely be claims against the child’s parents or the state.

Third, as discussed by Feinberg and the literature that cites the right, the right to an open future could range over different types of actions and objects. Each of the following could be influenced by parents or other actors during a child’s development and could make a substantial difference to the nature and quality of the child’s life. Each could, therefore, fall within the scope of the right. (i) *Capacities*. Normally, as children grow up, they gradually develop the capacities needed to exercise the autonomy rights that the right to the open future holds in trust. That is, they develop into autonomous adults. Parental care is needed for these capacities to develop, and parental neglect could lead to their development

being stymied. (ii) *Skills*. During development, children learn certain skills, which may be essential if they are to choose to pursue different life plans. These skills include the ability to speak one or more languages, to read, to play music, to run, to bowl, to pick up and respond to social cues, and so forth. Some skills are very hard to acquire unless they are learned during childhood; with others, the earlier one starts to learn the greater one's ultimate proficiency is likely to be. (iii) *Options* (or *opportunities*). Both children and adults can only choose from among a limited number of options. One's options are constrained by one's capacities and skills, but also by one's external circumstances. For example, someone's level of wealth constrains the range of objects she can buy. (iv) *Preferences*. When people decide what to do, they do so on the basis of their preferences, under which I include both desires and values. Preferences range from tastes in food, to moral judgments and ideals, to aspects of one's religious views.

For ease of discussion, we can distinguish three broad conceptions of the scope of the right to an open future. On a *strong interpretation*, the right ranges over all the actions and objects that adult autonomy rights protect. So with regard to options, it would require that all the options that might permissibly be chosen by the autonomous adult that a child could grow into must be protected, within the constraints of feasibility. On a *moderate interpretation*, the right requires only that the future adult be able to choose among some, perhaps particularly important, set of options. Negatively construed, this might require allowing the child to acquire certain skills and ensuring that certain options are not closed off. Positively construed, it would require helping the child to develop key skills and providing her with the resources to choose among a reasonable range of opportunities. Finally, on a *weak interpretation*, the right simply protects the child's development of her capacities. Successfully defending a weak interpretation of the right is unlikely to resolve any serious controversies among philosophers: the loci of debates about what may be done to and should be done for children concern their skills, options, and preference formation, not whether they have a claim to develop into autonomous agents who are capable of exercising their rights.<sup>10</sup>

It is unclear which interpretation of the scope of the right Feinberg prefers. Sometimes, he seems to adopt a strong interpretation. For example, he writes:

[T]he court's well-stated but misapplied principle suggests other cases where religious liberty must retreat before the claims of children that they be permitted to reach maturity with as many open options, opportunities, and advantages as possible.<sup>11</sup>

This quotation suggests a strong negative interpretation (parents simply have to permit influences on their child). In other places, it sounds as though Feinberg believes that children also have a positive claim (on parents and the state) to the provision of a maximally open future. He writes:

[E]ducation should equip the child with the knowledge and skills that will help him choose whichever sort of life best fits his native endowment and matured disposition. It should send

him out into the adult world with as many open opportunities as possible, thus maximizing his chances for self-fulfillment.<sup>12</sup>

However, other passages support a more moderate interpretation of Feinberg's conclusions. For example, he characterizes the wrong of violating the right by saying only that the "violating conduct guarantees *now* that when the child is an autonomous adult, *certain key options* will already be closed to him."<sup>13</sup>

Philosophers who cite Feinberg's argument generally adopt a moderate interpretation of the right to an open future. For example, Allen Buchanan and colleagues characterize the right as follows:

Parents must foster and leave the child with a range of opportunities for choice of his or her own plan of life, with the abilities and skills necessary to pursue a reasonable range of those opportunities and alternatives, and with the capacities for practical reasoning and judgment that enable the individual to engage in reasoned and critical deliberation about those choices.<sup>14</sup>

Likewise, Mianna Lotz concludes that parents have:

a duty to provide for their child's *agent-external* conditions by contributing toward ensuring that their child is provided with a range of feasible and valuable options . . . And they have a duty to provide for their child's *agent-internal* conditions by seeking to develop in their child the skills and capacities for information seeking, critical reflection, deliberative independence, and the like.<sup>15</sup>

#### 4. Why Feinberg's Derivation Implies the Strong Interpretation

Feinberg's characterization of the right to an open future is ambiguous between strong and moderate interpretations. But my interest in this article is not, primarily, in interpreting Feinberg's intended meaning, but in whether he provides a method for deriving the right to an open future that gives guidance about the right's content. By looking at the method Feinberg's argument suggests for determining the content of the right, we can work out the appropriate interpretation to attribute to him. This will also tell us whether other writers can reasonably rely on Feinberg's proof when they make assertions about the content of children's rights.

The methodology Feinberg seems to suggest for deriving the content of the right to an open future (or, more exactly, the various rights that fall under that umbrella term) is to take each autonomy right possessed by competent adults, and to see what set of actions it protects. Looking at those actions then allows us to see what is necessary for performing each of the actions in the set, in terms of the capacities needed to exercise the right, the skills needed to perform the action, and the options that must be available in order to do so. Each of these capacities, skills, and options that could be closed off during childhood could thereby be violated in advance. Each is, therefore, protected by the rights-in-trust. Insofar as we are

confident about the content of adult autonomy rights, this methodology could give us clear guidance about what children are owed.

If this is indeed Feinberg's methodology, then there seems to be no principled reason to rule out some of the options that an autonomy right protects in adults as not protected in advance in children by the corresponding right-in-trust. To privilege some options above others would require introducing further normative criteria to limit the content of the right to an open future. There is no suggestion of such criteria in Feinberg's article. Hence, a strong interpretation fits the method for deriving the content of the right that Feinberg suggests.<sup>16</sup>

I now turn to the central task of this article—evaluating Feinberg's derivation of the right to an open future from adult autonomy rights. I first consider two arguments that can be found in "The Child's Right to an Open Future" and argue that both fail. I then argue that a strong interpretation of the right to an open future has implausible implications, in any case, and so should be rejected. More moderate interpretations, which would be more plausible, would require an alternative argumentative strategy that would identify the particular skills and options with regard to which a child's future should be kept open. Feinberg does not supply such a strategy.

## 5. The Argument by Analogy

I quoted Feinberg earlier on the rights-in-trust of religious freedom:

In that general category it sits side by side with the right to walk freely down the public sidewalk as held by an infant of two months, still incapable of self-locomotion. One would violate that right in trust *now*, before it can even be exercised, by cutting off the child's legs.<sup>17</sup>

Dena Davis uses a similar strategy when she explains the right to an open future. She writes:

These rights [i.e. autonomy rights] can be violated by adults now, in ways that cut off the possibility that the child, when it achieves adulthood, can exercise them. A striking example is the right to reproduce. A young child cannot physically exercise that right, and a teenager might lack the legal and moral grounds on which to assert such a right. But clearly the child, when he or she attains adulthood, will have that right, and therefore the child now has the right not to be sterilized, so that the child may exercise that right in the future.<sup>18</sup>

Thus, cutting off a child's legs violates her right to free locomotion, and sterilizing a child violates her right to reproductive freedom. By analogy, we might suppose, curtailing a child's possible career options by not allowing her to have a maximally extensive education would violate her right to free choice of employment.<sup>19</sup>

But analogies to acts like cutting off a child's legs or sterilization are misleading in two ways. First, in the cases described, the infant's present rights

(i.e., her A-C rights) are also being violated, which is liable to lead our intuitions astray. In Feinberg's example, the child's right to bodily integrity is clearly violated by having his legs cut off. Even if he were never expected to walk, it would be impermissible to amputate his legs unless some pressing medical condition required it.

Second, what the children in these examples would lose are future *capacities*, not just a set of options. Feinberg's child loses the capacity to walk, not just access to a large set of possible walks. Our judgment that preventing him from walking would be a grievous wrong might be explained by how bad it is to lack that capacity (or how bad it is never to walk). It is not clear, therefore, that we can conclude anything about which options a child should be able to access when he grows up from our judgment that it would be wrong to interfere with the development of some specific capacity.

A comparison with a different right might make the normative significance of this point clearer. All competent adults (plausibly) have the right to own property, which means that they can acquire property rights over objects and that any property they legitimately acquire is due some degree of protection.<sup>20</sup> However, someone can have the right to own property without actually owning any physical property beyond her own person. The right to own property does not itself entail rights over any particular piece of property, nor rights to be provided with some reasonable amount of property, and so on. People may also have property rights over particular objects, but those rights must be justified independently.

Hence, in general, even if we think that children have the right to have their developing capacities protected or supported, this does not entail that we need to provide them with any particular opportunities to exercise these capacities.<sup>21</sup> But the right to an open future is supposed to include more than just a right to what is needed for the development of capacities to exercise one's rights. This is shown, first, by works that cite the right to an open future, which invariably assume that it includes more than just support for the child's developing capacities.<sup>22</sup> Second, if the right to an open future is to help answer contested questions about what is owed to children, its content must be more substantial than this. The disputed questions about what may be done to and for children generally do not concern whether they have a valid claim to develop the capacity for autonomous action, but often do concern the skills and options with which they should be provided and the extent to which their preferences may be shaped.<sup>23</sup>

Thus, the argument by analogy may be pumping the wrong intuitions, since the examples given involve clear cases of children's rights that are being violated that are not rights-in-trust. Moreover, even if they were apt, the analogies could at best support a very weak interpretation of the right to an open future.

## 6. The Argument from Autonomy

Feinberg also hints at a more formal derivation of the right from the value of autonomy. He describes the rights that collectively constitute the child's right to

an open future as “rights that are to be *saved* for the child until he is an adult, but which can be violated ‘in advance,’ so to speak, before the child is even in a position to exercise them.”<sup>24</sup> Later he writes that a child’s rights-in-trust protect interests that “he might come to have as he grows up”<sup>25</sup> and that it is the adult that the child may become “who is the person whose autonomy must be protected now (in advance.)”<sup>26</sup> This suggests that Feinberg might have in mind an argument along the following lines:

- (i) Autonomy rights protect certain choices.
- (ii) If someone’s choice is protected, then it may not be made by someone else without a very strong justification.
- (iii) Children, if they grow to become autonomous adults, will have autonomy rights.
- (iv) Therefore, without a very strong justification, it will be impermissible to make protected choices on their behalf at that time (from i to iii).
- (v) Therefore, without a very strong justification, it is impermissible to make those protected choices on their behalf now (from iv).

However, it is hard to see how the move from (iv) to (v) can be justified without begging the question in favor of the existence of the right to an open future. The justification for protecting choices that underlies (iv) is that there is a duty to respect people’s autonomy. However, the children mentioned in (v) are not autonomous, and so there is no autonomy there to respect. Of course, in the future, they are expected to be autonomous and their autonomy will then demand respect. But the key thing about respecting autonomy, in the sense of respecting people’s rights, is that we have to respect what autonomous people decide *now*.<sup>27</sup> Suppose Bailu asks Amitabh if she can borrow his pen for next week. She asked him yesterday and he refused. Were she to ask tomorrow, he would say no. But today he says yes. That is sufficient to give her permission; neither how he exercised his rights in the past, nor how he would do so in the future, is relevant. The distinction between present and future autonomy is therefore vitally important.<sup>28</sup> This argument is invalid.

## 7. A Reductio: The Implications of the Strong Interpretation

I argued earlier that the interpretation of the right to an open future that is most consistent with Feinberg’s argumentative strategy is the strong interpretation. On a positive reading, this interpretation says that parents and the state should provide as many skills and options as feasibility allows. On a negative reading, it says that they should permit children “to reach maturity with as many open options, opportunities, and advantages as possible.”<sup>29</sup> I now argue that either reading has implausible implications.



Consider, first, the implications of interpreting the right to an open future as a positive right, such that children have a right to the provision of the resources needed to keep their options maximally open. The options that have to be kept maximally open are all the possible choices that would be protected by adult autonomy rights. But there are an incredible number of such choices. Many, if not most, of the actions that people engage in on a day-to-day basis are protected by liberty rights, even if they are rarely infringed. But to provide the opportunity to do everything that would be protected by adult autonomy rights would beggar parents or exhaust the resources of the state.

To take one example, consider all the actions that are protected by the right to freedom of political speech: talking with other citizens, broadcasting one's views on television, publishing a newspaper, and so forth. If children needed to be able to exercise their right to freedom of political speech whenever, as adults, they wanted to, then parents or the state would have to ensure that they reached the age of majority with the means to do all these actions. But this would require each to be given a vast amount of resources. If parents were the duty-bearers, they would then lack any discretion about how they spent their time and money. If the obligation fell on the state, its commitments would have a similar effect on the citizens who constitute the tax base.

Considering the burden of providing the resources for a maximally open future might push a defender of Feinberg to construe the right to an open future instead as a wholly negative right. On the strong negative interpretation, parents simply have a duty to refrain from actions that would reduce the number of options open to their child when she grows up, where the options in question are those that adults have a protected liberty to choose. In this case, there would be no concern that the right would demand that children be provided an excessive amount of resources. However, even interpreted as a negative right, it would imply some very implausible constraints on parental liberty. Here are two simple examples.

*Baptism.* A popular religious sect in Graeme's home county only admits adherents who have been baptized as infants. The church leader offers to baptize Graeme's six-month old daughter at home and free of charge. Though she will not have to attend any church meetings, when she is an adult the option of belonging to this sect will be open to her. Graeme refuses.

*Moving schools.* Shamina has been offered an enticing job in a different city, but taking it would require moving her son to a new school. Both the new and the current school are state-funded and provide a perfectly adequate education. However, the new school does not offer music lessons and teaches its pupils one less foreign language. Although she is aware that her son's musical latent musical talents will not be nurtured and he will find picking up that language later on much harder, Shamina takes the job.

Graeme and Shamina's decisions prevent their children from taking up certain options when they become adults. These are options that would then be protected by autonomy rights—centrally in the case of practicing a religion and more peripherally in the case of speaking foreign languages or playing music. Do

Graeme and Shamina violate their children's rights by limiting their future opportunities in these ways? The claim seems implausible. It is natural to think that Graeme has the right to decide whether or not his daughter is involved in religious practices, and that above some threshold of well-being Shamina may balance her own interests with those of her son.<sup>30</sup>

### 8. A Defense of Feinberg: The Point of Autonomy

Suppose we are agreed that children have a right to the resources necessary to develop into autonomous agents. In the case where the necessary societal resources are plentiful and when we are dealing only with children who have a normal level of needs, this seems reasonable, no matter what the details of one's theory of justice.<sup>31</sup> If so, one might argue, the justification for allotting children the resources necessary to develop these capacities is that being able to exercise the rights in question is valuable. If they had no opportunities to do so, why would we think that people ought to be able to exercise their autonomy rights? There is, for example, no real point in having the right to own property, if you will never have any property to own. Hence, if children ought to be given the resources necessary to develop the capacity to exercise adult autonomy rights, they ought also to be given the opportunity to exercise those rights in a meaningful way. Thus, at least a moderate version of a right to an open future seems to follow from the value that we place on autonomy rights.

I agree that this argumentative strategy would likely lead to a sensible moderate position about children's rights—that we do not have to keep all children's options open, but we need to leave open a sufficiently valuable set, and that this is both a negative and a positive obligation. But the justification now goes in the wrong direction for Feinberg's argument to be helpful. The value of the rights, according to the response I just suggested, hinges on the value of the array of options that are available. But this implies that we first need to find out what options people are entitled to, in order to find out what rights ought to be protected (or, for children, what skills and capacities ought to be developed). We cannot, therefore, derive the entitlements from some prior knowledge of what the rights are.

### 9. A Defense of Feinberg: The Values Underlying the Right to an Open Future

Feinberg grounds the right to an open future in the same values as adult autonomy rights are grounded: self-determination and self-fulfillment. He writes:

... the two distinct ideals of sovereign autonomy (self-determination) and personal well-being (self-fulfillment) are both likely to enter, indeed to dominate, the discussion of the grounding of the child's right to an open future. That right (or class of rights) must be held in trust *either* out of respect for the sovereign independence of the emerging adult (and

derivatively in large part for his own good) or for the sake of the life-long well-being of the person who is still a child (a well-being from which the need of self-government “by and large” can be derived), or from both.<sup>32</sup>

Could we derive a particular interpretation of the right to an open future from one or both of these fundamental values, such that it would give us guidance about the content of the right? In parts of his discussion, Feinberg implies that we could. He argues that both self-determination and self-fulfillment are best achieved if parents do as little as possible to influence the direction of their child’s development. Self-determination is maximized when the child’s own contribution to the adult she eventually becomes is as great as possible, and this is achieved by respecting her natural inclinations from the earliest possible age.<sup>33</sup> Likewise, self-fulfillment is most likely when a child is brought up to develop his strongest natural talents and to pursue his natural preferences.<sup>34</sup> Feinberg writes:

At a time so early that the questions of how to socialize and educate the child have not even arisen yet, the twig will be bent in a certain direction. From then on, the parents in promoting the child’s eventual autonomy and well-being will have to respect that initial bias from heredity and early environment.<sup>35</sup>

This sounds as if it should ground a specific (and strong) interpretation of the right. However, it would also be a highly implausible interpretation. For example, most would criticize, not condone, parents who neglected to shape their child’s moral sentiments. Claiming that they wanted their child to shape her own moral character would not be a compelling defense. Thus, the value of self-determination cannot be overriding. Similarly, whether it is in a child’s interests to have her basic tendencies reinforced will vary from case to case. Sometimes it will be in her interests if her parents push her against her inclinations: a naturally slothful child will still benefit from exercise and a shy child will still benefit from practicing her social skills. While working only on one’s natural strengths may feel fulfilling, there are advantages to developing a rounded skill set, and therefore spending more time on areas in which one is naturally weaker.

Neither foundational value can support the claim that parents should keep their child’s future maximally open. It is possible that one or both provides a foundation for a moderate interpretation of the right, but without further argument it is not clear what the contours of that right would be.

## 10. A Note on Preferences

Feinberg’s discussion of the right to an open future, and some of the literature that draws upon it, also evaluates the effects parents can have on their child’s life by shaping the preferences that determine what choices she makes, not just by constraining the options among which she chooses. Through the examples parents set, through their explicit statements of values, and through the experiences to

which they expose their child, parents may influence their child's political leanings, religion, and choice of career, even if they provide her with the opportunities to choose freely among many options. Should parents try to be as neutral as possible with regard to value judgments, or is it acceptable for them to try to inculcate their own preferences in their children? Whatever the correct answer, Feinberg's argument from autonomy rights-in-trust cannot get us there either.

Early in his discussion, Feinberg is quite clear that parents "are permitted and indeed expected to make every reasonable effort to transmit by example and precept their own values to their children."<sup>36</sup> However, later he seems to endorse a more restrictive position regarding state and parental influence on what children decide to do as adults. When he discusses the grounding of the right to an open future in either self-determination or the lifetime well-being of the child, he finds the inevitable effect of upbringing on character problematic almost to the point of paradox.<sup>37</sup> Moreover, in discussing the proper role of the state, he writes:

[I]deally, the neutral state (in this "reasonable interpretation") would act to let *all* influences, or the largest and most random possible assortment of influences, work equally on the child, to open up all possibilities to him, without itself influencing him toward one or another of these.<sup>38</sup>

It might be true that the state, or parents, ought to try to be neutral with regard to the influences that affect a child's preferences. However, this conclusion cannot be derived from a right to an open future as Feinberg conceives it. Violations of the right to an open future are supposed to violate in advance the autonomy rights that a child will have as an adult. But an adult's autonomy rights do not forbid others from shaping his preferences. Thus, they cannot be violated in advance by shaping the preferences of children.

Two important points should be noted with regard to the scope of this conclusion. First, there are ways in which the preferences of both adults and children can be changed that are wrongful. For example, it would generally be impermissible to hypnotize someone without his consent in order to remove his desire for whisky. Likewise, it is morally questionable, at best, to manipulate adults in order to get them to act against their better judgment—for example, when a car salesperson uses clandestine sales techniques to trigger automatic responses.<sup>39</sup> However, there is nothing problematic about causing someone to be averse to whisky by explaining the evidence that links excessive alcohol consumption and increased risk of cancer, or selling him a car by showing how its specifications fit his stated needs. The previous actions were wrongful, not because they influenced the person's preferences, but because of how they achieved that effect.

There are many ways in which parents, while attempting to shape their child's preferences, could act wrongly. For example, they might brainwash their child so that she was literally unable to think for herself. They would thereby wrong her, not in virtue of the effect on her preferences, but by impeding the development of

her capacity for autonomous action. Further, some older children have the capacity to make their own decisions, at least within certain spheres. When a child has some ability to think for herself, even if she is not fully autonomous, her nascent autonomy deserves some respect. This respect may entail, allowing her to make some decisions for herself, and it may provide a moral reason against manipulating her, in the same way as there is a reason not to manipulate adults.<sup>40</sup> Several discussions of the child's right to an open future note cases in which it seems that parents should respect their child's preferences. For example, Lotz discusses a case in which a child with atheist parents wants to attend a church meeting.<sup>41</sup> She argues that the right to an open future implies that parents should not prevent their child from making the choice to go to church. However, recognizing the possibility that children's present preferences and values may deserve respect, not just their future preferences and values, can explain our judgments in such cases just as well.<sup>42</sup>

Second, I am not taking a position here on whether there are some moral limits to how far parents may shape their children's preferences or ways in which they ought to shape them. It seems quite plausible that parents who refuse to countenance alternatives to their views act wrongly. A parent who (culpably) raises his child with mistaken values may act as badly, or worse, than if he raised her with false beliefs. For example, instilling racial prejudices from a young age might have long-lasting effects on someone's preferences, even when she no longer avows the racist beliefs that once accompanied them.<sup>43</sup> Likewise, as I noted in the previous section, parents who declined to make any value judgments at all would seem to be failing to fulfill their responsibilities regarding the moral education of their child. My point is just that the right to an open future, insofar as it is related to adult autonomy rights, should be silent on the issue.

## 11. What Are Children Owed?

If Feinberg's classic article is to be read as providing a method with which to derive the content of the child's right to an open future, then the right should be given a strong interpretation. But the strong interpretation is unjustified. The arguments that can be found in Feinberg in favor of the right are invalid, and in any case the strong interpretation of the right to an open future has implausible implications. In response to these concerns, we might think that a moderate interpretation of the right to an open future is much more plausible. After all, it does seem to many people that there are some limits on parents' liberty to decide the future life course of their children, and it seems to many that children are owed a certain amount of care, education, and opportunities. Indeed, as I noted in Section 3, many of the people working in applied ethics who cite the right to an open future assume that it requires the provision of some reasonable range of options, not the largest possible range.

I also find these modest claims quite plausible. However, if a moderate interpretation is correct, there is not only no argument in Feinberg to support it,

there is also no method for deriving the content of the right. That is a huge gap: the great advantage that Feinberg's article promised was a way to specify exactly what is encompassed by the right to an open future. Without it, we are going to have to bring in other moral considerations in order to work out what the limits on parental discretion are and what children are owed. Talk of a right to an open future then ends up being unhelpful: it is likely to obscure the detailed arguments that must be provided to defend keeping a child's future open in some particular respect or providing her with particular skills and opportunities.<sup>44</sup> If Feinberg were right, we could derive the obligations to children relatively easily from adult autonomy rights whose content is widely agreed upon. Since he is not, we must return to more foundational discussions about the proper relationship between the children, parents, and the state.

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## Notes

- <sup>1</sup> The term "comprehensive doctrine" comes from John Rawls. One's comprehensive doctrine includes "conceptions of what is of value in human life, and 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." John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 13.
- <sup>2</sup> Joel Feinberg, "The Child's Right to an Open Future," in *Whose Child?*, ed. W. Aiken and H. LaFollette (Totowa, NJ: Rowman & Littlefield, 1980), 124–53. See also Joel Feinberg, *The Moral Limits of the Criminal Law: Harm to Self* (New York: Oxford University Press, 1986), 325–26.
- <sup>3</sup> A. Hasman and Søren Holm, "Nicotine Conjugate Vaccine: Is There a Right to a Smoking Future?" *Journal of Medical Ethics* 30 (2004): 344–45; Loretta Kopelman, "Using the Best Interests Standard to Decide Whether to Test Children for Untreatable, Late-Onset Genetic Diseases," *Journal of Medicine and Philosophy* 32, no. 4 (2007): 375–94; Rui Nunes, "Ethical Dimension of Paediatric Cochlear Implantation," *Theoretical Medicine and Bioethics* 22, no. 4 (2001): 337–49; Alan Buchanan, Dan W. Brock, Norman Daniels, and Daniel Wikler, *From Chance to Choice: Genetics and Justice* (Cambridge: Cambridge University Press, 2000), 170–5.
- <sup>4</sup> Dena Davis, "Genetic Dilemmas and the Child's Right to an Open Future," *Hastings Center Report* 27, no. 2 (1997): 7–15; Dena Davis, *Genetic Dilemmas: Reproductive Technology, Parental Choices, and Children's Futures* (New York: Routledge, 2001), 24; Mianna Lotz, "Feinberg, Mills, and the Child's Right to an Open Future," *Journal of Social Philosophy* 37, no. 4 (2006): 537–51.
- <sup>5</sup> For example, although there might be disagreement about some of the details, including whether they impose positive obligations on individuals or states, there is considerable consensus on the rights stated in the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights, 1966. Retrieved December 26, 2013, from <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>). The preamble to the Covenant also suggests that its signatories view the rights enumerated as moral rights that should be legally protected.

- <sup>6</sup> In this context, *autonomous* refers to the capacity to reason about what to do in the light of one's values and make decisions on the basis of that reasoning. This capacity is a necessary condition for the possession of autonomy rights.
- <sup>7</sup> Feinberg, "The Child's Right to Open Future," 125–26.
- <sup>8</sup> Feinberg, "The Child's Right to Open Future," 126.
- <sup>9</sup> Cf. Lotz, "Feinberg, Mills, and Child's Right to Open Future," 537–38. Roughly speaking, A has a negative right against B if B has a duty to refrain from acting toward A in some specified way. A has a positive right against B if B has a duty to act toward A in some specified way.
- <sup>10</sup> See Richard J. Arneson and Ian Shapiro, "Democratic Autonomy and Religious Freedom: A Critique of *Wisconsin v. Yoder*," in *Nomos XXXVIII: Political Order*, ed. Ian Shapiro and Russell Hardin (New York: New York University Press, 1996), 365–411, for an extended defense of children's claim to be educated to become autonomous, that is, capable of critical reflection on their values. Although I think that most philosophers accept that children have such claims, it does not follow that the implications of this right for our treatment of children are fully recognized, as Arneson and Shapiro's trenchant argument illustrates.
- <sup>11</sup> Feinberg, "The Child's Right to Open Future," 130, emphasis added.
- <sup>12</sup> Feinberg, "The Child's Right to Open Future," 134–35.
- <sup>13</sup> Feinberg, "The Child's Right to Open Future," 126, emphasis added.
- <sup>14</sup> Buchanan et al., *From Chance to Choice*, 175.
- <sup>15</sup> Lotz, "Feinberg, Mills, and Child's Right to Open Future," 547. Compare David Archard's "satisficing interpretation of a child's open future." David Archard, "Children, Multiculturalism, and Education," in *The Moral and Political Status of Children*, ed. David Archard and Colin M. Macleod (Oxford: Oxford University Press, 2002), 142–59, 156.
- <sup>16</sup> Of course, since ought implies can, the content will still be constrained by feasibility. Thus, even when he appears to be endorsing a strong interpretation, Feinberg rightly speaks of a "maximally" open future, not of keeping every option open.
- <sup>17</sup> Feinberg, "The Child's Right to Open Future," 126.
- <sup>18</sup> Davis, *Genetic Dilemmas*, 9.
- <sup>19</sup> See, for example, United Nations, *The Universal Declaration of Human Rights*, retrieved December 26, 2013, from <http://www.un.org/en/documents/udhr/>. Article 23(1).
- <sup>20</sup> United Nations, *The Universal Declaration of Human Rights*, Article 17.
- <sup>21</sup> It might be that a child needs some opportunities to exercise a capacity if she is to develop the capacity at all. For example, no one could learn to speak without some opportunities to practice. A right to develop the capacity would then entail the right to the necessary opportunities. However, this would likely be a small set of opportunities; establishing a right to it would not be enough to tell us what opportunities children have a claim to access. It would also tell us something about what children are owed as children (when they are developing their capacities), but nothing about what they must have access to when they reach adulthood.
- <sup>22</sup> See citations in Notes 3 and 4. All of these writers use the concept of a "right to an open future" to establish more substantive claims about the treatment of children than that they should be allowed or enabled to develop into adults with the capacity for autonomous action.
- <sup>23</sup> See, for example, the debate between Lotz (2006) and Claudia Mills, "The Child's Right to an Open Future?" *Journal of Social Philosophy* 34, no. 4 (2003): 499–509.
- <sup>24</sup> Feinberg, "The Child's Right to Open Future," 125–26.
- <sup>25</sup> Feinberg, "The Child's Right to Open Future," 127.
- <sup>26</sup> Feinberg, "The Child's Right to Open Future," 127.
- <sup>27</sup> As Feinberg explicitly acknowledges in the case of autonomous adults (Feinberg, "The Child's Right to Open Future," 127).
- <sup>28</sup> Of course, it is an open question whether these points regarding respect for autonomy at different times apply equally well when we are concerned with pre-autonomous individuals as with those whose autonomy persists through time. But that is precisely the question at issue in this debate and

so cannot simply be assumed in order to settle the issue in favor of the existence of a right to an open future.

<sup>29</sup> Feinberg, "The Child's Right to Open Future," 130.

<sup>30</sup> It would be open to a defender of the right to an open future to bite the bullet here and argue that our intuitions are mistaken about how extensive children's rights are. Indeed, there is good historical precedent for thinking that people may be radically mistaken about the extent of permissible parental discretion. For example, for hundreds of years, many people in Western societies appear to have sincerely believed that the male head of the household should have nearly absolute authority over his children, but most of us would not hesitate to say that this belief was mistaken. The difference in the present case, however, is that with the failure of the arguments for the strong interpretation of the right to an open future, there is no theoretical reason in favor of biting this bullet.

<sup>31</sup> I am deliberately setting aside two hard cases here. First, the case in which societal resources are so scarce that we could not provide children with what they need to develop into autonomous agents without other members of the society forgoing important benefits. Second, the case of children with developmental difficulties such that they would require many more resources in order to reach a point where they had the capacity to make their own decisions. My setting these aside for the purposes of argument should not be taken to imply any view on what should be done in these cases.

<sup>32</sup> Feinberg, "The Child's Right to Open Future," 145.

<sup>33</sup> In the ideal case:

At every subsequent stage the immature child plays an ever-greater role in the creation of his own life, until at the arbitrarily fixed point of full maturity or adulthood, he is at last fully and properly in charge of himself, sovereign within his terrain, his more or less finished character the product of a complicated interaction of external influences and ever-increasing contributions from his own earlier self. (Feinberg, "The Child's Right to Open Future," 150.)

<sup>34</sup> "Similarly, the parents who raise their child in such a way as to promote his self-fulfillment most effectively will at every stage try to strengthen the basic tendencies of the child as manifested at that stage" (Feinberg, "The Child's Right to Open Future," 150).

<sup>35</sup> Feinberg, "The Child's Right to Open Future," 149.

<sup>36</sup> Feinberg, "The Child's Right to Open Future," 133.

<sup>37</sup> Feinberg, "The Child's Right to Open Future," 140 f. For a very helpful discussion of the possibility of "approximate parental neutrality," see Lotz, "Feinberg, Mills, and Child's Right to Open Future," 541–43. Claudia Mills takes up this issue in arguing against the right to an open future, when she discusses whether parents are obliged to expose their children to as wide a range of experiences and influences as possible (Mills, "The Child's Right to an Open Future?" 500 f).

<sup>38</sup> Feinberg, "The Child's Right to Open Future," 136.

<sup>39</sup> For examples, see Robert Cialdini, *Influence: The Psychology of Persuasion*, revised ed. (New York: Quill, 1993).

<sup>40</sup> I understand *manipulation* as labeling a set of non-coercive ways in which someone can illegitimately control another's decision. The wrong of manipulation, therefore, lies in its disrespect of the manipulee's autonomy (see Amulya Mandava and Joseph Millum, "Manipulation in the Enrollment of Research Participants," *Hastings Center Report* 43, no. 2 [2013]: 38–47, for the development and discussion of this account of manipulation). With young children, who lack the ability to make decisions on the basis of reasons, concerns about manipulation will therefore not apply.

<sup>41</sup> Lotz, "Feinberg, Mills, and Child's Right to Open Future," 543.

<sup>42</sup> This might also be the best way to interpret Feinberg's discussion of how parents can help their children become as "self-determined" as possible (see note 33).

<sup>43</sup> My thanks to an anonymous reviewer for this example.



<sup>44</sup> In this regard, it is noteworthy that even philosophers who cite Feinberg's *argument* for the right to an open future do not make much use of it when they come to articulate the content of the right. For example, Lotz takes part of her task to be "to delineate the exact limits and scope of the duties imposed by a right to an open future, in terms more precise than Feinberg's own" (Lotz, "Feinberg, Mills, and Child's Right to Open Future," 537). She then lays out (and implicitly endorses) Feinberg's argument for the existence of the right to an open future, including the idea that rights-in-trust are autonomy rights that one can be deprived of the ability to exercise before having the capacity to exercise them, and that future options should therefore be kept as open as possible (538–40). However, when she works out what the negative and positive aspects of the right are, she does not return to Feinberg's methodology; instead, she draws on quite distinct arguments by Joseph Raz and Tamar Schapiro that concern helping others to develop the capacity for autonomous action (e.g., 547–49).