Treating Adolescents Differently

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Consider the following two cases.

> *Sam's blood transfusion*. Sam is 16 years of age. Sam is rushed to hospital after being hit by a car on the way to school. She sustains serious, life-threatening injuries and loses a lot of blood. Her physician concludes that she needs a blood transfusion to survive. The physician asks for Sam's consent to this course of treatment. Sam understands and appreciates her medical options. She consents to the blood transfusion on grounds it is best for her given her values. Sam is deemed to possess the decision-making capacity to decide on her medical treatment.

> *Hilary's blood transfusion*. Hilary is 16 years of age. Hilary has Crohn's disease. He is admitted to hospital with lower gastrointestinal bleeding. According to the physician in charge of Hilary's care, the bleeding poses a significant threat to his health and life. His physician concludes that a blood transfusion is necessary to survive. Hilary understands and appreciates his medical options. He refuses the blood transfusion on grounds that it fails to cohere with his values. Hilary is deemed to possess the capacity to decide on his medical treatment.

It is plausible that Sam's consent has the power to permit the blood transfusion offered by her physician and that no one else need provide consent on her behalf. Sam's consent would be considered normatively (and legally) determinative. It is equally plausible that Hilary's refusal would *not*, however, *be* normatively (or legally) determinative. His refusal might justifiably be overridden by consent to the blood transfusion provided by either a parent or a court; these parties would *share* (with Hilary) the power to consent to his treatment and thereby render it (morally and legally) permissible for a physician to provide it.

In the case of adolescents, consent and refusal (in these kinds of situations) are, then, plausibly treated *asymmetrically*. By contrast, in the case of adults and young children, consent and refusal are treated *symmetrically*. Were Hilary and Sam younger and unable to demonstrate decision-making capacity, neither their consent nor their refusal would be normatively or legally determinative in the above cases. Consent or refusal in this case would fall to the natural or legal person exercising parental responsibility. Were Hilary and Sam aged 18 years, their choices in the above cases would be treated as normatively and legally determinative, whether they consent or refuse.

An asymmetry of the sort described above cannot merely be asserted or considered a brute normative fact. In Hilary's case, an adolescent's *valid* refusal is overridden, and an invasive medical intervention is imposed on them for their own good, even when the procedure contravenes their most fundamental and reflectively considered convictions. Such paternalistic treatment would, if carried out on an adult with capacity, constitute a grave insult, if not a serious legal wrong. Hence, the asymmetrical treatment of consent and refusal in the case of minors with capacity requires justification.

In previous work, we developed a philosophical justification of the 'concurrent consents' doctrine in English Law, which would yield the results we found plausible in the medical treatment cases of Sam and Hilary, respectively.[1] For ease of reference, this doctrine is that in the case of adolescents whereas consent is treated as normatively (and legally) determinative, refusal is not always treated as normatively (or legally) determinative. Our defence of differential and paternalistic treatment of adolescents—compared to adults and younger children—rests on a distinct conception of adolescent wellbeing vis-à-vis these other welfare subjects.

In this chapter, we extend our treatment of adolescent decision-making. We consider the question of what justifies the differential treatment of adolescents more generally. We clarify our (wellbeing-based) view and defend its commitments regarding the nature of wellbeing over the life course.

This chapter has five sections. In section I, we clarify our focus. In section II, we quickly dismiss two justifications for the differential and paternalistic treatment of adolescents. In section III, we articulate a theory of what is fundamentally and non-instrumentally prudentially good for adolescents. This theory of wellbeing explains why adolescents may share normative powers (including asymmetrically) with other parties. In section IV, we discuss our wellbeing-based approach to the differential treatment of adolescents through critical comparison with two recent attempts to support the differential and paternalistic treatment of adolescents. In section V, we deflect the objection that our view is flawed since it assumes (and inherits the shortcomings of) variabilism about wellbeing.

I

It is important to clarify two things at the outset.

First, the cases of Sam and Hilary above concern medical decision-making. It would be a mistake to think that the intuitions and asymmetry above about the normative determinacy of consent and refusal are operative in other domains, for example, the family or work. Second, asymmetry in the normative determinacy of consent and refusal, respectively, need not always cut in the same direction. In the case of the 'concurrent consents' doctrine, it is consent that is normatively (and legally) determinative, whereas refusal is not. We may, however, envisage situations that invert the consent–refusal asymmetry. Consider the following examples illustrative of these two clarifications.

> *Teen Marriage*. Alex is 16 years of age. Alex has been in a relationship with her partner for two years. The relationship is supported by both sets of parents. Recently, Alex's partner—who has just turned 18 years of age—proposed marriage. Alex is in love and can foresee a long and happy marriage. She understands and appreciates the implications of marriage. She has agreed the proposal as the best expression of her values. Alex has the capacity to marry.

[1] Anthony Skelton, Lisa Forsberg, and Isra Black, 'Overriding Adolescent Refusals of Treatment', *Journal of Ethics and Social Philosophy,* 20 (2021), 221–247.

> *Paper Round*. Lindsay is 13 years old. Lindsay is looking to make more money to save for a new bike. He applies to the local newsagent for a paper round. Lindsay understands and appreciates what the work entails (including early mornings, physical exertion, and customer care). Lindsay sees this job as the best means to the end of a new bike.

In *Teen Marriage*, it is plausible that Alex's consent to marry would not be normatively determinative. Rather, her parents or an official (or court) would have a say in whether her wishes should prevail.[2] However, were Alex to refuse her partner's proposal, it is plausible that her decision would be determinative—otherwise, we would be on the terrain of forced marriage.[3] For *Paper Round*, the situation may be legally complex,[4] but morally, the newsagent might plausibly require Lindsay's parents' approval of the paper round job. Whereas in the situation in which Lindsay's parents had arranged with the newsagent the offer of a paper round, it seems that his refusal to work would be normatively determinative.

II

What might be said in favour of treating adolescents differentially and paternalistically—by giving their consents and refusals asymmetrical normative power, according to their perceived better interests? There are a range of views on the justification of differential (and paternalistic) treatment. We shall briefly consider and reject two views prior to subjecting our own view to critical discussion in section IV.

The first view focuses on the situational vulnerability of adolescents during the transition between childhood, on the one hand, and adulthood, on the other hand.[5] Adolescence is a period in which individuals are attempting to assert themselves in accordance with their values yet remain vulnerable—for example, because their values are provisional, or their decisions are more prone to risky behaviour or regret, or they are more susceptible to peer pressure—which in turn elicits reliance on and responsibility on the part of others. This vulnerability would justify the (transitional) paternalism expressed in differential treatment. Vulnerability works to justify the asymmetry in normative powers across consent and refusal, since the adolescents in question possess the capacity to choose among various courses of action.

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[2] See e.g., French Civil Code, @Titre V : Du mariage. In France, marriageable age is 18 years (article 144), but the State procurator [procureur de la République] in the relevant locality may dispense of this requirement for serious reasons [motifs graves]. However, even with official dispensation, parental consent (or the consent of one parent in the case of disagreement) is required (article 148).

[3] See, e.g., French Civil Code, article 146: 'There is no marriage without first-personal consent' [Il n'y a pas de mariage, lorsqu'il n'y a point de consentement].

[4] For example, in English law, contracts made by minors are generally voidable and parents are usually unable to contract on behalf of their children.

[5] See e.g. Johannes Giesinger, 'Vulnerability and Autonomy – Children and Adults', *Ethics and Social Welfare,* 13 (2019), 216–229.

However, vulnerability alone cannot justify differential treatment. First, some adults are vulnerable (not necessarily for the same reasons,[6] but) in the same manner as at least some adolescents—including the elderly, the severely ill, the disabled, and marginalized members of society—many of whom may well possess the capacity to take medical and other kinds of decisions. Yet, we do not typically think that we may treat vulnerable adults' decisions as akin to those of adolescents. Rather, we ought to respect their autonomy or agency and work with these capacities to help an individual deliberate towards a choice aligning with their perceived interests, recognising that the final decision is up to them.[7] To treat them otherwise—by imposing asymmetrical normative powers on the relevant choices—would be to fail to respect their status. If this is true, vulnerability alone cannot provide the answer why differential treatment is permissible in the case of adolescents.

The second view says that the main justification for differential treatment of adolescents is justified by the severity of the potential outcomes of deciding one way rather than another (for example, in the cases of Sam and Hilary).[8] Here, the idea is that when consenting or refusing to do something has significant costs to the adolescent making the decision, it is justified to consider the consent or refusal—whatever the case may be—as not normatively determinative. That is, it is capable of being overridden by the consent or the refusal of another party capable of (and empowered to provide) valid consent or refusal—for example, a parent or court.

While intuitively appealing, this view (again) cannot account for the differential treatment of (valid) adult and adolescent decisions. There are cases in which adults validly refuse to accept or to do certain things and in so doing visit significant (even irreversible) costs on themselves.[9] In many such cases—especially, but not uniquely, in medicine—we respect the adult's choice, despite the fact that the decision is hard to fathom or reckless or deadly. The question is why respect such a decision when made by an adult but not when made by an adolescent?

Further, as the case of *Paper Round* suggests, we might be happy to endorse sharing of normative powers in the case of adolescents when the stakes are relatively low. In Lindsay's case, the difference between the possible outcomes does not seem especially great, and in any case, it would be relatively easy to retreat from any of the options chosen. Therefore, the

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[6] Giesinger, 'Vulnerability'5; cf. Emma Cave and Hannah Cave, 'Skeleton Keys to Hospital Doors: Adolescent Adults who Refuse Life-Sustaining Medical Treatment', *Modern Law Review,* 86 (2023), 984–1010.

[7] For example, the 'vulnerability' jurisdiction of the English High Court operates on the basis that the court's powers are, at least in the first instance, there to be 'facilitative' of an individual's autonomy: *L v J* [2010] EWHC 2665 (Fam). And while the Court of Appeal in *A Local Authority v DL* [2012] EWCA Civ 253 held that the High Court's inherent powers go beyond 'providing interim relief designed to permit the vulnerable individual the "space" to make decisions for themselves', it is clear that the Court will not routinely impose (and has not imposed) a decision on individuals who have or may come to have the capacity decisions for themselves.

[8] See e.g., Nigel Lowe and Satvinder Juss, 'Medical Treatment—Pragmatism and the Search for Principle', *Modern Law Review,* 56 (1993), 865–872.

[9] See e.g., *Re C (Adult: Refusal of Treatment)* [1994] 1 WLR 290 (Fam).

potential severity of outcomes cannot provide a justification for treating adolescents differently across all cases in which asymmetrically shared normative powers may be in play.

There has to be some feature of the decision-making context, then, that is present in the case of adolescents but lacking in the case of adults that clarifies why it makes sense to treat them differently, and this feature must be supplementary to vulnerability or the risk of significant harm.

III

In 'Overriding Adolescent Refusals of Treatment',[10] we offered a wellbeing-based justification for the concurrent consents doctrine in English Law. We argued that it is the unique features of adolescent wellbeing that justify the asymmetry in the normative power of adolescent consent to and refusal of medical treatment. We submit that our approach might be invoked in defence of differential and paternalistic treatment of adolescents more generally.

A theory of wellbeing tells us how well or poorly things are going for an individual both at a time and across time. It provides an account of what makes something fundamentally, non-instrumentally *prudentially* good for (bad for) an individual and to what degree.[11] Some prudential goods that make one better off may fall into the category of so-called 'subjective' prudential goods, while others may fall into the category of so-called 'objective' prudential goods.[12] The former are good (bad) for the individual because and in so far as that individual has a favourable attitude toward them (e.g., a desire), while the latter are good (bad) for an individual regardless of whether they have a favourable attitude toward them. Were, for example, autonomy an objective non-instrumental prudential good, its possession or exercise would be non-instrumentally good for an individual even if that individual did not value or want it.

A theory of wellbeing is subjective if it makes an individual's wellbeing depend at least in part on that individual's 'set of attitudes or concerns'.[13] A theory of wellbeing is objective if it denies this dependence.[14]

On our conception of adolescent wellbeing, an adolescent individual's wellbeing comprises a distinctive plurality of (objective and subjective) goods, including happiness, autonomy, supportive and caring relationships, and—most important to our defence of the differential

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[10] Skelton, Forsberg, and Black, 'Overriding'.1

[11] Guy Fletcher, *The Philosophy of Well-Being: An Introduction* (New York, Routledge, 2016); Ben Bradley, *Well-Being* (Cambridge, Polity Press, 2015); James Griffin, *Well-Being: Its Meaning, Measurement, and Moral Importance* (Oxford, Clarendon Press, 1986).

[12] For helpful discussion of the distinction between subjective and objective theories, see, L. W. Sumner, *Welfare, Happiness, and Ethics* (Oxford, Clarendon Press, 1996), pp. 26–44; Fletcher, *Well-Being*, pp. 65–75; and Eden Lin, 'Well-Being, part 2: Theories of Well-Being', *Philosophy Compass*, 17 (2022), 1–23.

[13] Sumner, *Welfare*, p.12 81; also pp. 38, 42, 82, 163FN29.

[14] Sumner, *Welfare*, pp. 38, 43.

treatment of adolescents—what we call 'shielding'. Shielding is the non-instrumental prudential good of being protected from the full effect of one's decisions or possessing a variety of freedom from making certain kinds of decisions in the absence of a safety net. Appeal to the non-instrumental prudential good of shielding helps us articulate what is plausible in our intuitive judgements about the cases we have considered, as well as the asymmetrical sharing of normative powers.

If we take the blood transfusions of Sam and Hilary in tandem, we can see how the non-instrumental prudential good of shielding comes into play and how it may have asymmetrical application respecting the normative powers of interested parties. In the case of Sam, the choice to receive a blood transfusion aligns not only with her own values, but also with what her physician (discharging their own professional duty of care) expect would be best. Here, we might think that the demands of the prudential value of shielding are met by the structural features of the scenario; there is no need to safeguard Sam from the full force of her decision given her choice to consent. This is because in medical contexts, the offer of treatment in accordance with the physician's duty of care ought to reflect, other things equal, a professional judgement as to the patient's best interests.[15] There is, then, a kind of antecedent safety net inherent in the medical domain. This ex-ante safety net explains why Sam's consent may well be normatively (morally or legally) determinative, and why there is no need for another party (such as parents or a court) to second-guess her choice.

In the case of Hilary—who, recall, is refusing a blood transfusion—his choice coheres with his own values, but it conflicts with what his physician expects would be best. Here, the prudential value of shielding demands more of us because the refusal of life-prolonging treatment is out of step with the safety margin built into the offer of treatment. As such, we might expect Hilary's refusal not to be normatively (morally or legally) determinative and require the scrutiny of another authoritative party (for example, a parent). It seems reasonable, given shielding, that the decision would not be Hilary's alone to make.

In the case of *Teen Marriage*, given the risks of marriage in general (including relationship breakdown)—risks that may be amplified by marriage at a young age[16]—it is perhaps unsurprising that Alex's first-personal consent to marriage would be subject to further layers of approval (by officials and parents). Conversely, there is no real risk in Alex not getting married at a young age, and indeed there is risk in outsourcing consent to marriage to another party. As such, we can think of the value of shielding as providing a safety net for the choice to consent, whereas the best mode of protecting Alex's wellbeing (especially the element relating to autonomy) gives her refusal decisive force. As in the medical treatment cases above, shielding explains why consent or refusal might not be determinative and why the sharing of normative powers may be asymmetrical across the options.

Paper Round is less clear cut (in part because the stakes are lower). In *Paper Round*, assuming that the newsagent is interested in Lindsay's welfare (if only instrumentally), it

[15] See e.g., *R (oao Burke) v General Medical Council* [2005] EWCA Civ 1003.
[16] Philip N Cohen, 'How we really can study divorce using just five questions and a giant sample' (2015) https://familyinequality.wordpress.com/2015/07/22/how-we-really-can-study-divorce/ accessed 24/10/01.

seems correct to require parental approval of employment, since this may bring to light any reasons why Lindsay may not deliver newspapers. It might be good for Lindsay to be free from making the decision alone, that is, to be shielded from the full effects of taking on a job, which may include opportunity costs like less time for study, family, friends, and hobbies. Again, shielding affords Lindsay a choice, but not without a safety net. Whereas similar to the case of *Teen Marriage*, Lindsay's refusal of work can be safely allocated to him alone, and indeed there are good protective reasons to think that the refusal ought to be first-personal alone. The discussion of the cases reveals how the prudential value of shielding might yield shared normative powers—through its connection to freedom more broadly, which also comprises an adolescent's wellbeing. Recall that, on our view, shielding is a variety of freedom (to take decisions) comprising a safeguarding backstop (to have those decisions scrutinised by a trustworthy party). Being free from making certain decisions in the absence of a safety net involves such decisions being shared with others in supportive and caring relationships (the possession of which is itself non-derivatively prudentially good for adolescents).

Let us now turn to consider how decision-making power might be shared between adolescents and those with whom they have caring and supportive relationships in particular domains of life.

One option would be to place decision making in some domain (e.g., education) beyond the scope of adolescents' decision-making authority altogether—call this the 'restricted scope' option.[17] There is, in this case, a domain in which neither an adolescent's consent nor their refusal is definitive. A second option would be to give adolescents full decision-making authority in the relevant domain—call this the 'unconstrained power' option. In this case, an adolescents' consent and refusal are treated like an adult's in a particular domain. A third option is to give adolescents some decision-authority in a particular domain, but subject their choices in this domain to review—call this the 'constrained power' option.[18] This option is the one in which the asymmetries discussed above take place and that—crucially—our view supports.

We might envisage that each of these options instantiates the plural goods comprising adolescent wellbeing to different degrees. Take the value of autonomy. The unconstrained power option exemplifies this value the most, the restricted scope option the least (or perhaps not at all), and the constrained power option somewhat (to the extent that the adolescent's decisions are afforded 'consideration', but not 'compliance' respect).[19] There may be sound

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[17] Neil C. Manson, 'Transitional Paternalism: How Shared Normative Powers Give Rise to the Asymmetry of Adolescent Consent and Refusal', *Bioethics,* 29 (2015), 66–73 at 71. See also Tamar Schapiro, 'What Is a Child?', *Ethics,* 109 (1999), 715–738 at 734: 'we can imagine agents at an intermediate stage—agents who have established their authority over some of the constitutionally essential domains but not over others… many of the people we conventionally call children… can be thought of as falling into this intermediate category; they have adult status with respect to some domains of discretion, but not others'.
[18] Manson, 'Transitional', 71.
[19] Suzanne Uniacke, 'Respect for Autonomy in Medical Ethics', in David Archard, Monique Deveaux, Neil Manson, and Daniel Weinstock (eds.), *Reading Onora O'Neill* (London, Routledge, 2013), pp. 94–110.

prudential reasons to opt for the restricted scope option, ceding autonomy for other values. Likewise, there may be sound prudential reasons not to select the unconstrained power option. Too much autonomy may be risky.

The constrained power option breaks the dichotomy between the choice of maximal autonomy and none at all. Importantly, attention to the flavour of freedom allows for nuance in the specification of the constrained power option. In some cases, concern for an adolescent's overall prudential good requires us to attenuate individual autonomy. We might impose review of an adolescent's decision-making in a particular context across all the options available to the agent. In such a case, we opt for symmetrical shielding. However, it may not always be necessary (and it may be counterproductive) for autonomy always to give way to shielding and vice versa. It is plausible that we might opt for an asymmetrical mix of autonomy and shielding for a particular domain of decision-making—for example, when the risks attached to a particular option are low or when there is value in the adolescent's decision having full normative power (and entailing, other things equal, full responsibility). Thus, in the medical domain, the *ex-ante* safety net afforded by the physician's duty of care lowers the risk of consent to treatment and provides a good opportunity to practise the exercise of autonomy.[20]

While concerning *Teen Marriage*, permitting consent without further review might jeopardise the goods comprising adolescent wellbeing other than autonomy, whereas allowing refusal to be decisive seems to pose little threat to non-freedom related non-instrumental prudential goods, and more protective of freedom overall than imposing symmetrical shielding across the options (which would expose adolescents to forced marriage). Shared normative powers and the asymmetry in the normative power of the options available to the agent emerge as a function of the value of shielding among other non-instrumental prudential goods.

A final, clarificatory point flows from our characterisation of shielding as a variety of freedom distinct from the value of autonomy. Not all circumstances of constrained (and shared) normative powers involve shielding. Consider the following example.

> *Communal Cottage*. Charlie, Sam, and Vivian own a cottage in common. They agree that any one or more of them may use the cottage, but all of them must agree each instance of use. If one dissents, no one may use the cottage.

In *Communal Cottage*, the sharing of normative powers and the limitation of each of party's decision-making authority is a result of the exercise of autonomy: the use agreement. This is

[20] See Skelton, Forsberg, and Black, 'Overriding', 238–39, where we argue that 'the rule according to which consents always have the power to render treatment permissible is justified by the fact that it involves promoting instrumentally beneficial exercises of autonomy without the threat of serious costs.' What Schapiro, 'Child', 736 argues with regard to the value of exercising autonomy within restricted domains of discretion might also hold for situations in which an adolescent is asymmetrically shielded, '[t]he aim here is not simply to give them practice at decision making, as if decision making were a skill. Instead, it is to put them in a position where they are forced to come up with provisional principles of deliberation, principles whose applicability is likely to extend beyond the limits of the questions at hand'.

not necessarily the explanation for sharing of normative powers when shielding is in play. It is the non-instrumental prudential value of the adolescent's exercise of decision-making authority paired with the insurance of another party's review that gives rise to the allocation of decision-making authority to, for example, parents or officials. An adolescent need not agree to share normative powers in order to possess the freedom that comes from being shielded.

IV

In the previous section, we articulated a theory of adolescent wellbeing, comprising a plurality of items considered non-instrumentally prudentially good for adolescents, including shielding—or freedom from making certain kinds of decisions in the absence of a safety net of scrutiny—autonomy, caring and supportive relationships, among others. Shielding, considered among other non-instrumental prudential goods, explains why in certain decision-making contexts, adolescents may share normative powers with others, including asymmetrically across the options available.

We now turn to assessing how our view fares in explaining the differential (and paternalistic) treatment of adolescents and adults. We do this by way of comparison of our view with two recent rival accounts of differential treatment defended by Andrew Franklin-Hall and Monica Betzler.[21]

Andrew Franklin-Hall argues that the differential treatment of adolescents and adults arises from the application of two different conceptions of competence (or capacity) that ground the individual's decision-making authority—the decision-based conception and the abilities-based conception, respectively.[22] These competing conceptions of capacity capture two distinct values protected by autonomy: authenticity and agency.[23]

> Whereas *authenticity* is the value of choosing in a way that expresses or conforms to one's enduring values, *agency* is the value of being able to make one's own choice, to exercise one's will, especially over one's own life and affairs.[24]

According to Franklin-Hall, the decision-based conception protects the value of authenticity, whereas the abilities-based conception protects the value of agency.[25] On the one hand, the decision-based conception grounds an individual's decision-making authority in the ability to understand and appreciate information relevant to a decision *and* to make a choice coherent with their own values. As Franklin-Hall observes, '[c]ompetence, therefore, is tied to

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[21] Andrew Franklin-Hall, 'Competence for Minors in Medical Decision-Making: A Life-Stage Approach', in this volume; Monika Betzler, 'The Moral Significance of Adolescence', *Journal of Applied Philosophy*, 39 (2021), 547–561.
[22] Franklin-Hall, 'Competence', page citation to follow.
[23] Franklin-Hall, 'Competence', page citation to follow. See Daniel Brudney and John Lantos, 'Agency and Authenticity: Which Value Grounds Patient Choice?', *Theoretical Medicine and Bioethics*, 32 (2011), 217–227.
[24] Franklin-Hall, 'Competence', page citation to follow.
[25] Franklin-Hall, 'Competence', 21page citation to follow.

subjective rationality'.[26] On the other hand, the abilities-based conception grounds an individual's decision-making authority just when he is '*capable* of making an autonomous decision in the… [decision-based] sense, even if his decision is not at all consistent with what is important to him'.[27]

> What matters, therefore, is not the character of the actual decision, but certain properties of the decision-maker at the time of the decision, namely, that one possesses, to a sufficient degree, the epistemic and deliberative abilities for understanding and appreciating the information relevant to the decision, for effectively comparing the pros and cons of different courses of action, for evaluating those options in the light of one's enduring values, for resisting contrary inclinations, and so on….[28]

Franklin-Hall claims that for adults, the abilities-based conception of capacity is the appropriate standard. Adults possess a '*robust* right to autonomy',[29] which blocks the withdrawal of decision-making authority on grounds that an individual is failing to make the better choice from the point of view of their own values.[30] Rather (and in virtue of the status of adults as 'reasoning agents in a relation of basic practical equality'),[31] 'we ...[may] interfere only when we cannot sufficiently attribute the choice to the person's agency—it was not really *her choice* at all'.[32]

For adolescents, Franklin-Hall proposes that we accept an attenuated decision-based conception of capacity, for two reasons. First, endorsing the abilities-based standard applicable to adults would yield results that are 'hard to accept' in adolescents, that is, we may be unwilling to accept 'extremely harmful… and subjectively unreasonable' decisions on the latter's part.[33] Second, employing a decision-based conception of capacity while tempering its rigour during adolescence is an element of the instrumentally beneficial endeavour of instilling in young people the capacities and insight necessary for successful 'life-authorship'.[34] On Franklin-Hall's view, each individual has a right to life-authorship, a right to manage their life according to their choices. It is consistent with respecting this right that adolescents may be treated paternalistically even beyond the point at which they develop the abilities constitutive of agency, provided it is made clear that their right to life-authorship will be respected in the not-too-distant future.

We have two sets of objections to Franklin-Hall's account of the differential treatment of adults and adolescents. The first set of objections targets the merits and plausibility of the abilities-based conception of capacity. For one, it is not clear to our minds that the abilities-

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[26] Franklin-Hall, 'Competence', page citation to follow; see Isra Black, 'Asymmetry of Adolescent Decision-Making Capacity and Rational Choice' in this volume for a defence of this kind of view.
[27] Franklin-Hall, 'Competence', 21page citation to follow. (original emphasis).
[28] Franklin-Hall, 'Competence',21 page citation to follow. (original emphasis).
[29] Franklin-Hall, 'Competence', page citation to follow. (original emphasis).
[30] Franklin-Hall, 'Competence', 21page citation to follow.
[31] Franklin-Hall21, 'Competence', page citation to follow.
[32] Franklin-Hall, 21'Competence', page citation to follow (original emphasis).
[33] Franklin-Hall, 21'Competence', page citation to follow.
[34] Franklin-Hall, 'Competence', page citation to follow.

based conception requires deployment of the relevant agential properties by an agent making a decision to a degree that plausibly meets Franklin-Hall's own criterion that—to ground decision-making authority—an individual's choice must be sufficiently attributable to their agency. It seems important not only that agents have the *ability* to reason through to a choice consistent with what they value, but that to some extent they *do*.[35]

According to Franklin-Hall, in order to have capacity on the abilities-based conception, it is not necessary that, but merely possible for, an individual to use the reasons given by deliberation over the relevant courses of action to choose between the available options. One *need not*, but *may* use the epistemic and deliberative abilities Franklin-Hall articulates in support of one's decision. One may well choose the most valued option (given one's credences regarding the options and their expected outcomes and one's subjective values), but one might equally ignore one's subjectively rational reasons for action and choose on entirely different grounds. Understood in this way, the robust right to autonomy that Franklin-Hall suggests adults possess is a function of a somewhat undemanding threshold for agency. On Franklin-Hall's view, for adults it suffices to have the status of reasoning agent to hold decision-making authority. There is a divorce between one's status as a reasoning agent, and one's being an agent making reasoned choices. The issue is that by distinguishing reasoning agent status from action on reasons—and making the former what matters for decision-making capacity and authority—Franklin-Hall thins out the attributability of a choice to an agent. We might agree that insofar as you are a reasoning agent, the choices you make are attributable to you—they are the issue of your will. But they may be to a flimsy degree only; the choices are yours, but to the extent that you set aside your subjectively rational reasons for action, not much of your will—your inventory of values and modes of thought—need feature in your decision-making. We might doubt, *pace* Franklin-Hall, whether this conception of agency is sufficient to ground the robust respect for adult decision-making authority he envisages.

Franklin-Hall asks whether the agent's choice was 'her choice *at all*'.[36] But that may be the wrong question, for it allows for a gap between an individual's synchronic possession of the properties commensurate with agency and meaningful exercise of *their* will. The right enquiry, we suggest, is 'whether the agent's choice is her choice *enough?*'. Hence, we expect translation of the agent's will into their choices. The *sufficiency* of attributable agency depends on the connection between the reasons for action deliberation yields (in the presence of sufficient abilities)—reasons informed by what the agent values or cares about at the relevant time (which may, but need not be *authentic* concerns)—and the reasons on which the agent acts. To do so rests a robust—albeit not necessarily decisive—right to autonomy on more robust agential footings than Franklin-Hall's abilities-based conception of capacity.

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[35] See Catriona Mackenzie, 'Three Dimensions of Autonomy: A Relational Analysis', in Andrea Veltman and Mark Piper (eds.), *Autonomy, Oppression, and Gender* (Oxford, Oxford University Press, 2014), pp. 15–41.
[36] Franklin-Hall, 'Competence', page citation to follow (original emphasis).

For another, Franklin-Hall suggests that the abilities-based conception is reflected in our social practices. But the example—of former Apple CEO Steve Jobs—he offers to support this claim is of dubious value. Following his pancreatic cancer diagnosis, Jobs declined standard (and potentially successful) treatment in favour of self-help and alternative remedies—much to consternation of friends and family.[37] Despite this opprobrium and the apparent inconsistency of Jobs' behaviour with his enduring values, no one seriously doubted his capacity to decide. Franklin-Hall takes this as evidence that our social practices give adults final decision-making authority, even when their decisions are subjectively irrational and extremely harmful.

But Jobs' case can be explained in more plausible ways. First, if we hold a sufficiency (decision-based) conception of capacity, an individual need only offer some subjectively rational reasons (rather than a full or coherent set) in order to have decision-making authority.[38] As such, Jobs' dislike of 'the idea of his body being "opened"' may have sufficed to ground his decision-making authority. Second, it is not implausible that Jobs may have benefitted from (or fallen prey to) the deference accorded to privileged white men. Stories do not abound of unprivileged people, for example, women and racial minorities of any gender, demonstrating capacity merely on the abilities-based conception. Our social practices do not seem to reflect the abilities-based conception in respect of all adults;[39] and—as we have argued—neither does the abilities-based capacity exemplify the ideal of agency.

Putting Jobs' case aside in the spirit of charity, Franklin-Hall may be correct that adults enjoy a 'robust right to autonomy' as a matter of social practice, whereas adolescents do not. But it need not always be the case that the agent's decision-making authority takes for its grounding their decision-making capacity. Perhaps decision-making authority has its own, ungrounded value.[40] Or, more practical considerations—for example, the stakes of the decision (or of its context) and the difficulty of interference to withdraw decision-making authority—may be in play. *Pace* Franklin-Hall, invoking different operative conceptions of capacity may not be the most plausible route to explaining the differential treatment of adults and adolescents.

Our second set of objections to Franklin-Hall's account of the justification for treating adults and adolescents differently targets his argument for accepting the decision-based conception of capacity for adolescents, albeit tempered by the postponement of the adolescent's 'ability to enter into certain adult paths' because of the instrumental benefits that attend on having

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[37] Franklin-Hall,21 'Competence', page citation to follow.

[38] See *Re SB (A Patient) (Capacity to Consent to Termination)* [2013] EWHC 1417 (COP).

[39] There is clear evidence, at least in England and Wales, that the test of decision-making capacity is applied with uneven rigour. As Marie Fox and Jaime Lindsey observe, for example, '[pregnant] women's decisions are more likely to be overridden on the basis of incompetence [than men]' Marie Fox and Jaime Lindsey, 'Health Law, Medicine and Ethics: Are Women More Likely to Have Their Healthcare Decisions Overruled?', in Rosemary Auchmuty (ed.), *Great Debates in Gender and Law* (New York, Bloomsbury Publishing, 2018), pp. 121–125 at 123–124. See also Zaina Mahmoud and Elizabeth Chloe Romanis, 'On Gestation and Motherhood', *Medical Law Review*, 31 (2023), 109–140.

[40] Isra Black, Lisa Forsberg, and Anthony Skelton, 'Transformative Choice and Decision-Making Capacity', *Law Quarterly Review*, 139 (2023), 654–680 at 679.

extended preparation for adulthood and the stage of life at which the postponement occurs.[41] Our worry is that Franklin-Hall allows the concept of postponement to bear too much normative weight. That a decision is susceptible to deferral into adulthood does not to be seem to be a morally relevant feature rendering paternalistic treatment of adolescents (im)permissible.

To illustrate, consider Franklin-Hall's discussion of '*forced, momentous choices*', that is, 'important decisions that arise… that cannot be postponed without effectively deciding the matter one way or another'.[42] The cases of Sam and Hilary above seem good examples. Franklin-Hall argues that an adolescent's subjectively rational decision ought to prevail, even if it is (objectively) harmful. Thus, both Sam and Hilary's medical decisions would prevail, notwithstanding that in Hilary's case his refusal of treatment entails death. We might reasonably disagree with Franklin-Hall that adolescent decisions ought to be normatively determinative when faced with forced, momentous choices. The outcome he would recommend—arising from his unmoderated commitment to the decision-based account of competence for adolescents in the case of forced, momentous choice—in Hilary's case is hard to swallow on the evidence available to us. (Though it would not be in the case of adults.) There seem to be grounds for paternalistic intervention that Franklin-Hall's view cannot accommodate. Recall that Franklin-Hall rejects the abilities-based view for adolescents on grounds that it would have implications that we would be unwilling to accept. Yet his own view of how we should treat adolescents' decisions has implications we would be unwilling to accept and so we should reject it, too.

We think that appeal to the distinctness of adolescent wellbeing and the prudential value of shielding is superior to Franklin-Hall's competence and life-stage account in three ways. First, shielding is agnostic as to the operative conception of capacity and does not commit us to thinking that there are different standards of capacity that adults and adolescents must meet to ground their decision-making authority. Second, shielding provides an explanation for the asymmetry in the normative determinacy of different adolescent choices (for a set of options). Third, shielding delivers the right verdicts on when paternalism towards adolescents is justified in hard cases, without undermining our considered judgements about the authority of autonomous adults.

Monica Betzler argues that 'the aim of adolescence is to develop autonomy'.[43] This aim grounds the differential treatment of adolescents and adults: whereas adolescents *need* autonomy-supporting relationships, adults do not. As Betzler puts it:

> what marks the relevant distinction between adolescents and adults is that the former, but not the latter, need to have autonomy-supporting relationships if they are to become skilled autonomous agents. Adolescents would not be able to develop their autonomous capacities if they did not receive such relational support.[44]

[41] Franklin-Hall, 'Competence', 21page citation to follow.
[42] Franklin-Hall, 'Competence', 21page citation to follow.
[43] Betzler, 'Significance', 9.
[44] Betzler, 'Significance', 6.

Betzler argues that, in the usual run of things, the type of stance towards adolescents characteristic of autonomy-support—the 'Relational View'—will recommend against paternalism; such measures amount to a 'relational wrong', which impedes development of autonomy.[45] However, Betzler does not exclude paternalistic intervention in the lives of adolescents in some cases, for example, when they commit 'acts of extreme self-harm or seriously [endanger] their lives [broadly, construed] in other ways' that cast doubt on the autonomous quality of the relevant decision.[46] Here, Betzler allows scope (at least) for the asymmetrical sharing of normative powers between adolescents and adults across the options available.[47] She concludes that provided cases of paternalistic interference

> remain infrequent and are well justified, they should not prevent an adolescent from becoming a skilled autonomous agent and so they do not affect the Relational View's commitment to autonomy support.[48]

Concerning adults, Betzler concedes that close relationships may be valuable in developing or improving an individual's autonomous agency. However, 'we should be wary of treating adults as adolescents', since behaving in this way risks undermining equal respect between adults in favour of 'some kind of therapeutic relationship'.[49]

We have four objections to Betzler's account of the moral significance of adolescence and the justification for treating adolescents in ways different to adults. First, we might agree with Betzler that one of the aims of adolescence is to develop autonomy. But she writes as if the latter is the former's only aim. Another aim of adolescence might be to transition to the next phase of life without the practice or exercise of autonomy having led to serious misfortune or harm. This aim might temper autonomy-supporting measures that license risk-taking and mistake-making on the part of adolescents. And provide support for paternalism.[50] Likewise, there may be goods available in adolescence that are worth having irrespective of their impact on (and potentially in tension with) the development of autonomy.

Second, Betzler admits that paternalism is warranted in the case of adolescents when the stakes are high (such as in the cases of Sam and Hilary), *and* when their 'level of autonomy [is]… difficult to ascertain'.[51] This is not sufficient grounds for differentiating between the treatment of adults and adolescents, since there are cases with these features involving adults where we think interference is legitimate. (Although we might doubt whether intervention in

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[45] Betzler, 'Significance', 9.
[46] Betzler, 'Significance', 10.
[47] Betzler, 'Significance', 10.
[48] Betzler, 'Significance', 10–11.
[49] Betzler, 'Significance', 12.
[50] See *Re W (A Minor) (Medical Treatment: Court's Jurisdiction)* [1993] Fam 64 (CA) 81–82 (Lord Donaldson MR): 'Prudence does not involve avoiding all risk, but it does involve avoiding taking risks which, if they eventuate, may have irreparable consequences or which are disproportionate to the benefits which could accrue from taking them'.
[51] Betzler, 'Significance', 10.

the case of marginal autonomy is paternalistic.)[52] This seems to suggest that a deeper explanation is called for.

Third, Betzler's discussion of paternalism seems to leave room for intervention only when the stakes are high, *and* the adolescent's autonomy is in doubt. This might seem under-capacious. In the cases we discuss above, the autonomy of our adolescents is not in doubt, yet we might think there are compelling grounds for parental or official intervention in at least some cases due to the potential harm that lies in letting an adolescent decide what to do. It is not only cases in which the stakes are high and autonomy is unclear that we think paternalism is warranted. Finally, we find it implausible that adults in close personal relationships may not need to relate to each other in autonomy-supporting ways. Further, we doubt that mutual engagement in this way necessarily or even probably undermines the moral equality of adults.

All of this is to say that our wellbeing-based account fares better than Betzler's in explaining the differential treatment of adults and adolescents. Attention to the prudential value of shielding is consistent with measures supportive of the development of autonomy. Our view allows for more capacious paternalistic intervention in cases in which the adolescent exercise of autonomy poses an all things considered threat to wellbeing (and as such is more plausible). We can accommodate the asymmetrical sharing of normative powers between adults and adolescents across the options available to the agent (an attractive feature of Betzler's view). And our account does not require us to take a stance on what makes for egalitarian relationships between adults.

V

Invariabilism is the view that the same theory of wellbeing is true for all welfare subjects (adults, children, newborns, non-human animals, and so on).[53] Variabilism is the view that invariabilism is false. According to variabilism, a theory of wellbeing may be true for adults, but not for small children and vice versa. Our welfarist defence of differential and paternalistic treatment of adolescents is variabilist.

We hold that adolescent wellbeing consists in a distinctive plurality of (objective and subjective) prudential goods. Adult wellbeing comprises primarily subjective goods—for example, the satisfaction of informed preferences,[54] or authentic happiness[55]—and young

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[52] Betzler, 'Significance', FN3 writes that she adopts a capacious conception of paternalism. We suggest that an agent's being regarded as autonomous is a condition of paternalistic interference.

[53] Hedonism about wellbeing seems a good candidate for an invariabilist view, since it appears to fit all individuals plausibly thought to qualify as welfare subjects. Hedonism about wellbeing is the view that at bottom only pleasure is non-instrumentally prudentially good for an individual and only pain is non-instrumentally prudentially bad for an individual. For defence, see Roger Crisp, 'Hedonism Reconsidered', *Philosophy and Phenomenological Research*, 73 (2006), 619–645 and Sharron Hewitt, 'What Do Our Intuitions About the Experience Machine Really Tell Us About Hedonism?, *Philosophical Studies*, 151 (2010), 331–349.

[54] See e.g., David Sobel, 'Full Information Accounts of Well-Being', *Ethics*, 104 (1994), 784–810.

[55] Sumner, 'Welfare', 138–83. 12

children's wellbeing comprises primarily objective goods. For children, while the satisfaction of (some) preferences is non-instrumentally good for them, there is, in addition, a range of other things that are non-instrumentally prudentially valuable, including unstructured play and valuable, supportive relationships.[56] For adolescents, the relevant non-instrumental prudential goods include happiness, autonomy, supportive and caring relationships, and (of course) shielding. Subjective attitudes matter more to adolescent wellbeing than the same for a younger child's. Yet in at least in some cases, objective goods matter more to adolescent wellbeing than they do to adult wellbeing.

Our variabilist view holds that wellbeing may consist in different non-instrumental prudential goods (bads) across adults, adolescents, and younger children. Even when the same goods (or kinds of goods) feature across welfare subjects, these may have differential prudential (dis)value. Indeed, our view is gradualist (more on which below) insofar as wellbeing moves from being more objective to being more subjective as one matures (albeit maturity is not linear with age and may not occur in all welfare subjects). As such, it speaks (directly) to the permissibility of differential treatment of adults, adolescents, and children. If adult wellbeing is more subjective—what is non-instrumentally prudentially good for them is a matter mainly of their subjective attitudes—and adolescent wellbeing more objective—not mainly a matter of their subjective attitudes —we might permissibly treat the latter in ways that leave the treatment of the former undisturbed.

The philosophical literature, to the extent that it takes typical adults to be the standard welfare subject against which to develop theories of wellbeing, tends to assume the truth of invariabilism. As such, the debate between variabilists and invariabilists is relatively new. We consider two recent defences of invariabilism.

Andree-Anne Cormier and Mauro Rossi argue for a version of *generalism*: the invariabilist view that 'the same theory of wellbeing applies to both children and adults'.[57] Cormier and Rossi challenge variabilism in a number of ways. Here we focus on their thesis that opponents of generalism—variabilists—have difficulty accounting 'for the existence of a *fundamental* change in children's and adults' prudential standards'.[58] An individual's development from childhood, through adolescence, and into adulthood is typically progressive, albeit non-linear. As such, Cormier and Rossi contend that it is implausible to think that there is a 'tipping point' that shifts what is fundamentally, non-instrumentally prudentially good for a particular agent from what is fundamentally, non-instrumentally prudentially good for

[56] Anthony Skelton, 'Utilitarianism, Welfare, Children', in Alexander Bagattini and Colin Macleod (eds.), *The Nature of Children's Well-Being: Theory and Practice* (New York, Springer, 2015), pp, 85–103; Anthony Skelton, 'Children's Well-Being: A Philosophical Analysis', in Guy Fletcher (ed.), *The Routledge Handbook of Philosophy of Well-being* (New York, Routledge, 2016), pp. 366–377; Anthony Skelton, 'Children and Wellbeing', in Anca Gheaus, Gideon Calder, and Jurgen De Wispelaere (eds.), *The Routledge Handbook of the Philosophy of Childhood and Children* (New York, Routledge, 2018), pp. 90–100.
[57] Andrée-Anne Cormier and Mauro Rossi, 'Is Children's Wellbeing Different From Adults' Wellbeing?', *Canadian Journal of Philosophy,* 49 (2019)*,* 1146–1168 at 1146. It is unclear whether Cormier and Rossi are invariabilists as such. They do not, for example, defend invariabilism about human and non-human animal wellbeing.
[58] Cormier and Rossi, 'Different', 1156.

children to what is fundamentally, non-instrumentally prudentially good for adults.[59] Moreover, Cormier and Rossi deny gradualism about wellbeing over the life course. They argue that there is:

> no non-*ad hoc* rationale for holding that some constituents of children's wellbeing cease to determine the individual's wellbeing when the individual moves from an area of indeterminate adulthood to an area of determinate adulthood.[60]

We agree with Cormier and Rossi that there is no abrupt change in the nature of wellbeing as an individual matures. However, *pace* Cormier and Rossi, we hold that gradualism offers a promising approach to dealing with the worry about the transition between accounts of wellbeing over the life course.

In his discussion of the ethics of abortion, L. Wayne Sumner argues that a plausible view of the moral status of the foetus must be 'gradual, differential, and developmental'.[61] It is gradual if it allows for moral status to be acquired gradually over a period of time rather than at some specific point (e.g., conception or birth); a gradualist view of moral status sets 'not a threshold point, but a threshold period or stage' during which moral status is acquired.[62] It is differential insofar as the allocation of moral status it accords a foetus before and after the threshold period or stage is different (for example, none before the threshold period and some or full status afterward); and developmental insofar as it grants significance to fact that a foetus develops during pregnancy.[63] The upshot of this approach is that:

> [a]n adequate view of the fetus promises a morally significant division between early abortions (before the threshold stage) and late abortions (after the threshold stage). It also promises borderline cases (during the threshold stage).[64]

Sumner's account provides a plausible model for developing theories of wellbeing for individual welfare subjects over time. An appropriate theory will have to place weight on the fact that humans typically develop and change across childhood and adolescence. The fact that children's and adolescents' development is non-linear and variable across different capacities and domains of activity makes judgements about which life-stage theory of wellbeing is applicable to them less *ad hoc* and more *hard*. We might think that, as in the case of the foetus, there are borderline cases where it is indeterminate whether an individual has passed the threshold stage from childhood to adolescence or from adolescence to adulthood. But this does entail that it will sometimes be clear that some of goods present in earlier stages of life (for example, the good of shielding for adolescents) have fallen away in significance.

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[59] Cormier and Rossi, 'Different', 1156–1157.
[60] Cormier and Rossi, 'Different', 1157.
[61] L. W. Sumner, *Abortion and Moral Theory* (Princeton, Princeton University Press, 1981), p. 126.
[62] Sumner, *Abortion,* p. 125.
[63] Sumner, *Abortion,* p. 126.
[64] Sumner, *Abortion,* p. 126.

Cormier and Rossi think that approaches of the sort we have articulated fail. Imagine, they say, that hedonism is the correct theory of wellbeing for children but that the correct theory of wellbeing for adults consists in the development of their higher-level capacities. It follows from this set of views that once a child translates to adulthood, their wellbeing will depend on the higher-level capacities not their capacity for pleasure. But, they ask, why should the translation to adulthood 'alter the prudential status of the capacity to experience pleasure and pain or of the experiences themselves?'[65] The opponent of generalism, they go on to say, must explain the change in the prudential value of pleasure (pain).

The right counter to Cormier and Rossi is to argue that we need not deny that pleasure (pain) may have a salient role in the wellbeing (illbeing) of an adult. The important point is that the development of a novel capacity (for rational reflection) may alter our view of the prudential value of pleasure (pain), though it may be hard to say in the threshold stage between childhood and adulthood exactly to what this amounts. If it turns out that the satisfaction of informed preferences is what the wellbeing of adults consists in, for example, then the prudential value of pleasure will turn out to be a matter of what an individual wants or desires (contra hedonism). The onset of a new capacity for rational reflection on and adjudication of one's desires will provide an explanation of why the prudential value of pleasure (pain) has altered in adults and perhaps why in this transition an individual may go from high to low wellbeing.

Cormier and Rossi reject this kind of counter, by claiming that to hold that adult wellbeing consists in the prudential goods of childhood and goods specific to adulthood jointly would violate the principle according to which:

> if the exercise of a fully developed capacity is intrinsically good for an individual (i.e., good in itself, in virtue of its internal properties), then the exercise of the same capacity is intrinsically good for that individual even when such a capacity is only partially developed.[66]

It is not necessary for us to take a position on whether this principle is valid, though we have our doubts. It is plausible that adults, children, and adolescents share non-instrumental prudential goods in common (for example, the prudential goods of pleasure and loving relationships). Yet to the extent that there are childhood-specific (or indeed adolescence-specific) prudential goods, Cormier and Rossi's principle does not rule them out. We might think that there are non-instrumental prudential goods specific to childhood or adolescence (but not adulthood) that compete with the development of certain capacities or the value of certain pleasures (pains) in childhood or adolescence. Shielding may be one of them.

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[65] Cormier and Rossi, 'Different', 1157.
[66] Cormier and Rossi, 'Different', 1158.

Eden Lin argues that we should accept invariabilism for two main reasons.[67] First, Lin argues that we should favour invariabilism in virtue of its simplicity compared to variabilism. Second, Lin argues that 'there appear to be no significant reasons to favour variabilism'.[68]

On simplicity, Lin says invariabilism offers a simpler 'picture than the one available on variabilism, and the greater simplicity of a view is a reason to favor it':[69]

> According to variabilism, at least one theory is true of some subjects but false of others, and there could even turn out to be a large plurality of true theories, each of them true of different subjects. By contrast, according to invariabilism, welfare is 'one size fits all'.[70]

Lin does not make too much of this reason to resist variabilism. Rightly so. Appeals to simplicity are not decisive. First, we might follow W. D. Ross in thinking that what matters most to developing a theory in ethics (including, we think, a theory of wellbeing) is what 'reflection on our . . . convictions seems actually to reveal'. As Ross emphasises:

> [l]oyalty to the facts is worth more than a symmetrical architectonic or a hastily reached simplicity'.[71]

If the more complicated picture seems to reflect the prudential facts more adequately, it is the one we ought to accept. At best, simplicity might provide a reason to favour one theory over another, if both seem *equally* loyal to the facts, *and* the former is simpler than the latter. Second, it is not clear how facts about simplicity affect or dictate facts about what has non-instrumental prudential *value*. Suppose one theory of wellbeing were to fit our prudential convictions more adequately than another, simpler theory of wellbeing. It is not clear how the latter's simplicity would by itself indicate that it is better *theory of prudential value*. To think that it is, we would need to have concluded in advance of our search for a theory of wellbeing that a simpler theory of prudential value is a better theory. But we have not drawn this conclusion. On the contrary.

Lin's second argument against variabilism is that 'it is difficult, on reflection, to see what could explain why a theory of welfare might be true of some subjects but false of others'.[72] Lin concedes the variabilist intuition that 'it is natural to suppose that the many differences in the natures or capacities of welfare subjects could explain why different theories might be true of them'.[73] Thus differences in nature and capacities of typical dogs and typical adult humans might explain differences in what is non-instrumentally, basically prudentially good (bad) for these subjects. A typical adult human possesses, for example, the capacity for higher order contemplation and the appreciation of beauty (whereas dogs do not), which suggests

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[67] Eden Lin, 'Welfare Invariabilism', *Ethics*, 128 (2018), 320–345.
[68] Lin, 'Invariabilism', 334.
[69] Lin, 'Invariabilism', 324.
[70] Lin, 'Invariabilism', 324.
[71] W. D. Ross, *The Right and the Good* (Oxford, Oxford University Press, 1930), p. 23.
[72] Lin, 'Invariabilism', 325.
[73] Lin, 'Invariabilism', 325.

that it might be non-instrumentally, basically prudentially good for a typical human adult but not for the typical dog to view paintings in the National Portrait Gallery. Lin argues, however, that the variabilist view is mistaken, for a number of reasons. We consider two of the reasons he offers.

Lin first seeks to undermine the argument that what is non-instrumentally, basically prudentially good for some subjects is not non-instrumentally, basically prudentially good for others. Here, he targets what he terms the variabilists' 'Inaccessibility Strategy' (see the National Portrait Gallery example above):

> the observation that, among the kinds that might turn out to be basic goods for us, there are kinds that are *inaccessible* to certain welfare subjects, in the sense that those subjects lack the physical or psychological capacities that are needed to possess, or to otherwise be suitably related to, tokens of those kinds.[74]

Lin argues that the Inaccessibility Strategy fails for it relies on a false assumption:

> *Inaccessibility Excludes Goodness* [IEG]: If a subject *S* is incapable of possessing (or otherwise being suitably related to) tokens of a kind *K*, then *K* is not a basic good for *S*.[75]

To demonstrate the falsity of IEG, Lin relies on an analogy to moral requirements. He stipulates that Rossian pluralism holds that there is a *prima facie* duty not to lie. He imagines a moral agent for whom lying is impossible. Lin says that even for an agent with this nature, the *prima facie* duty not to lie would obtain in their case:

> Rossian pluralism merely implies that, for any acts of lying, if this agent were to perform those acts, each of them would be prima facie wrong. Lying—the kind—can be prima facie wrong for an agent, even if the agent is incapable of performing any action of that kind.[76]

We might demur. It is hard for us to imagine an agent for whom lying is impossible. They would have a will and a psychological make up quite different from our own. They would be the kind of agent for whom certain temptations do not register or for whom certain goods lack the power to motivate. They would be the kind of an agent who would, for example, not tell a small lie to save someone they love from murder. Given their make-up, one might think of such an agent that it is simply not true that they have an obligation not to lie. In the same way we think a foetus has no such obligation since they cannot lie. If the argument that there exists some invariable list of morally wrong act types fails, then it cannot be employed (analogically) to support the claim that IEG is false.

The failure of Lin's analogy may not be sufficient to impugn his rejection of IEG. Suppose Andie is anhedonic in the actual world. It does not follow that it would not be non-

[74] Lin, 'Invariabilism', 324–325.
[75] Lin, 'Invariabilism', 325 (original emphasis).
[76] Lin, 'Invariabilism', 326.

instrumentally good for her to (say) experience pleasure in some possible world where experiencing pleasure was accessible to her. Lin argues that this is all one needs to secure the point that pleasure is non-instrumentally good for Andie in the actual world. This latter claim just is the claim that pleasure would be good for Andie were she to experience it in some possible world (however remote).

On Lin's view, then, one may hold that (for example) the satisfaction of informed preferences is non-instrumentally good for a child in the actual world where they cannot form such preferences. For this claim amounts only to the claim that the satisfaction of such preferences would be non-instrumentally good for a child in a possible world (however remote) in which they had such preferences satisfied. This implies that there is a large inventory of possible items that might be non-instrumentally good for an individual (whether an adult, child, or dog). As long as there is a possible world in which something is accessible to an individual, it remains true that it may be non-instrumentally good for that individual in the actual world, however they are constituted.

We admit that this is one way to secure theoretical invariabilism. But it has the cost of making invariabilism irrelevant in practice, where our focus is on what makes individuals non-instrumentally better (worse) off in the actual world and nearby possible worlds. While variabilism might not be true in theory, it seems to us to yield identical implications to invariabilism in practice. All we need for our purposes is *practical* variabilism. Lin does not seem to reject this latter position, noting that the inaccessibility of a prudential good may exclude 'its practical relevance' to wellbeing assessments and attempts to promote wellbeing.[77]

In addition to arguing for the falsity of IEG, Lin attacks variabilism by rejecting the argument that:

> Even if the same list of basic goods and bads is true of all welfare subjects, different theories could be true of different subjects because the basic prudential values of the tokens of some basic good or bad are fixed differently for different subjects.[78]

Citing the example of how pleasure might be more or less good for different welfare subjects (e.g., humans and dogs), Lin argues that there is no plausible explanation for such a view.[79] Suppose, he says, that the value of a pleasure for cognitively typical adults is a matter of its intensity, duration, and quality. The quality of a pleasure might be fixed by an intellectual capacity that adults possess, but that children do not. So, in children the value of a pleasure would be fixed only by its intensity and duration—what we might describe as quantitative concerns. For cognitively adults, then, the non-instrumental prudential value of pleasure would depend on both quantitative and qualitative considerations, whereas this would not be the case for children. This would be a form of variabilism, at least with respect the value of the goods constitutive of well-being.

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[77] Lin, 'Invariabilism', 327.
[78] Lin, 'Invariabilism', 333.
[79] Lin, 'Invariabilism', 333.

Lin's reply to this putative argument for variabilism relies on the same (analogical, counterfactual) approach he employs to show that IEG is allegedly false, namely, that were the nature and capacities of welfare subjects relevantly similar to the 'benchmark' welfare subject (in some possible world), the degree to which what is non-instrumentally good for the former would be fixed in the same way as it is for the latter.

We think this a rather desperate way to secure invariabilism.[80] But we need not quarrel with it. Suppose we accept that the prudential value of whatever is non-instrumentally good is theoretically fixed for all welfare subjects. This still leaves us needing to determine the differences in non-instrumental goods in practice for various welfare subjects, for example, children, adolescents, and adults. Lin concedes that in practice what is non-instrumentally good for some welfare subjects is not non-instrumentally good for others. So, what may be good for children or adolescents in practice may not be good for adults.

For our position about adolescent wellbeing to be viable we need only to defend practical variabilism. We might argue that even if it is true that certain prudential goods not applicable to non-human welfare subjects or younger children are good for them in theory (or in some possible world), they are not applicable to them given their actual constitution and thus irrelevant to them in practice. We can ignore these inaccessible non-instrumental prudential goods and focus on determining which among the accessible are non-instrumentally prudentially good for individuals and by how much. We might do this by appeal to something like the reflective equilibrium approach on which Lin relies for assessing the truth of certain counterfactuals about wellbeing.[81] So far as accessible goods go, even if their weight is theoretically fixed, it may be that—practically—the relevant prudential goods matter more or less to different classes of welfare subject (for example, adults and adolescents, respectively).[82] In practice, even if not in theory, something like variabilism may hold.

VI

The differential and paternalistic treatment of adolescents requires justification. In this chapter, we argued that this treatment of adolescents—compared to adults and younger children—rests on a distinct conception of adolescent wellbeing vis-à-vis these other welfare subjects. In section I, we clarified our focus. In section II, we quickly dismissed two justifications for the differential and paternalistic treatment of adolescents. In section III, we articulated our theory of what is fundamentally and non-instrumentally prudentially good for adolescents, which included the prudential value of what we called shielding. This theory of wellbeing, we argued, explains why adolescents may be treated differential and paternalistically in numerous domains. In section IV, we argued that our wellbeing–based justification of differential treatment is superior to the justifications offered in recent work

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[80] This Morning, 'If My Grandmother Had Wheels She Would Have Been a Bike' (2016) https://www.youtube.com/watch?v=2G9ZGIOiPjY accessed 2024/10/01.

[81] Lin, 'Invariabilism', 67329. For an excellent discussion of reflective equilibrium, see T. M. Scanlon, 'Rawls on Justification,' in S. Freeman (ed.), *The Cambridge Companion to Rawls* (Cambridge, Cambridge University Press, 2003), pp. 139–167.

[82] See Skelton, Forsberg, and Black, 'Overriding', 242–43.

by Franklin-Hall and Betzler. In the final section, we defended our commitment to variabilism about wellbeing against recent attacks from Cormier and Rossi and Lin. We think our view of the justification of differential and paternalistic treatment of adolescents has attractive implications for a range of cases and holds up well in the face of philosophical criticism.