

# CHILDHOOD AND PERSONHOOD

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Are children the equals of adults, and if not, why not? The aim of this article is to defend one type of answer to this fundamental philosophical question concerning children's moral and legal status. In Part I, I lay out the conception of children's status which is implicit in our moral and legal practice. This is a conception according to which children, as a class, do not share the same status as adults. In Part II, I distinguish between two ways of attempting to justify this inequality: the proficiency argument and the attributability argument. According to the proficiency argument, children are subject to adult authority because they are incapable of making good choices. According to the attributability argument, the inequality is justified by the fact that children are incapable of making their own choices, whether good or bad. I claim that these strategies, though distinct, tend to be conflated in the literature on adult-child relations. Moreover I maintain that only the attributability argument offers a satisfying justification of our conventional adult-child distinction. In Parts III and IV, I draw on Kant's conceptions of childhood and personhood to indicate how such an argument might be developed.

## I. THE PATERNALISTIC ATTITUDE

Implicit in our moral and legal practice is the idea that children are persons, but not full ones. This is an observation about children's status, vis-à-vis other members of the moral and legal community. That status is a liminal one; it is a glass which is both half-empty and half-full. The half-full part is that children are persons, which means they make direct moral claims on adults—in particular, claims to have their interests protected and their needs met. Unlike mere things, which can be possessed as property and used as resources for promoting the aims of others, children have needs and interests of their own which put substantial limits on the way others may treat them. Lack of regard for their basic needs and fundamental interests constitutes abuse, neglect, and exploitation. Moreover, in

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view of how helpless and vulnerable children are, their needs and interests impose especially demanding obligations on adults. It takes quite a lot to avoid abusing, neglecting, and exploiting them.

The half-empty part of children's status is that they are not full persons, which means two things: first, they are not permitted to exercise the full range of rights enjoyed by adults, and second, they do not carry the full burden of adult responsibility. As for rights, although children have an equal right to have their basic interests protected and promoted, they do not have an equal voice in deciding matters that bear on their interests.<sup>1</sup> In particular, children do not have the prerogative to waive their right to be protected and helped by adults; indeed they have to be raised, whether they like it or not. In this respect children differ from adults who are in need of special assistance. For example, an injured adult who is in need of life-saving medical treatment has the prerogative to refuse that assistance, even if doing so is imprudent. A visually-impaired adult has the prerogative to decline an offer of a seeing-eye-dog. An illiterate adult is entitled to forgo literacy training. Children, on the other hand, can be compelled to go to school, live with their parents, and take nightly baths, purportedly just because they are children, and because these measures are for their own good.<sup>2</sup> Moreover, insofar as children do have some say in how their good is to be promoted, their voices are accorded at most "consultative," and not "authoritative" force.<sup>3</sup> In other words, children's opinions about what ought to be done for them are regarded as merely provisional conclusions, proposals which stand in need of final ratification by a higher, adult authority.

The other sense in which the glass is half-empty relates to responsibility. Like nonhuman animals, children are objects but not full subjects of duties. The very youngest of children have no moral or legal duties to adults or to anyone else, although adults have strong obligations to them. Even older children, who are regarded as subjects of at least a range of duties, are not held strictly accountable for them. This is so insofar as their infractions are regarded by adults as occasions for discipline and instruction, rather than resentment and blame.<sup>4</sup> Resentment and

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1. In Peter Vallentyne's terminology, the rights children have are primarily "interest-protecting" rather than "choice-protecting" rights. Peter Vallentyne, *Equality and the Duties of Procreators*, in *THE MORAL AND POLITICAL STATUS OF CHILDREN* 195, 197 (David Archard & Colin Macleod eds., 2002). See also Amartya Sen, *Well-Being, Agency, and Freedom: The Dewey Lectures 1984*, 82 *J. PHIL.* 169 (1985) (distinguishing between "welfare rights" and "agency rights"). Here I draw on this distinction in a rough-and-ready way.

2. Accounts that focus exclusively on children's need for special assistance overlook this crucial difference. See, e.g., Lawrence Houlgate, *Children, Paternalism, and Rights to Liberty*, in *HAVING CHILDREN: PHILOSOPHICAL AND LEGAL REFLECTIONS ON PARENTHOOD* 266, 266–68 (Onora O'Neill & William Ruddick eds., 1979).

3. See generally, Harry Brighouse, *How Should Children Be Heard?*, 45 *ARIZ. L. REV.* 691 (2003) for a more detailed account of this distinction.

4. The idea that child transgression merits a different kind of response from adult transgression presumably plays a part in the rationale for the existence of a separate juvenile justice system. Insofar as the philosophical basis of the adult-child distinction is unclear, the legitimacy of the juvenile justice system is vulnerable to attack. By defending the adult-child distinction, I intend to provide indirect support to those who argue that a

blame issue from the standpoint of an equal; they are the responses of an aggrieved party who stands to the offender as an equal party to a mutually binding social contract. Discipline and instruction, by contrast, issue from the perspective of a moral supervisor, one whose role it is to see to it that others comply or are made fit to comply with certain standards of conduct. It is a feature of children's less-than-full status that their violations of the moral, legal, and institutional duties to which they are subject are dealt with from a supervisory, rather than a participatory perspective.

I am going to call the attitude I just described—according to which children are persons, but not full ones—“the paternalistic attitude.” The paternalistic attitude fundamentally shapes adult-child relations in both formal and informal contexts, and were this attitude to be abandoned, those relations would lose their distinctive character. Within the family, for example, it is thought appropriate that children, however deeply loved by their parents, are not their parents' equals when it comes to having a say in how their own lives are to be lived. In households where parents strive to respect as well as love their children, this inequality is often downplayed and kept in the background, but it is nevertheless operative. Consider, for example, a father who, when putting his two-year-old daughter to bed, asks her which pair of pajamas she'd like to wear. In giving his daughter latitude to make this decision, he shows respect for her as a leader of her own life. But in the background of such an interaction there is likely to be some restriction on the range of discretion to be accorded to her, and in this respect it will not be true that the father is treating her as an equal. For example, should she refuse to wear any pajamas at all, or should she insist on wearing pajamas which are too lightweight, given the cold weather, the father will usually be ready to force her to make a different choice. He might try first to persuade her that it makes more sense to choose a set of pajamas within the range he has specified. He might, for example, explain to her that even though she likes the purple pajamas with the bunnies, those pajamas will not keep her warm and comfortable enough on this chilly winter night. To the extent that the father does resort first to persuasion rather than force, the interaction will be less paternalistic than it might otherwise be. However it will still be fundamentally paternalistic insofar as he stands ready to prevent his daughter from choosing the lightweight pajamas should she remain unconvinced by his argument.

If there is a point at which the father would be ready simply to insist, on grounds of his authority as an adult in the parental role, that his daughter not wear certain pajamas, then whether or not he is driven to this point, the interaction still manifests a paternalistic attitude to some degree. This is so because against this backdrop, the child's right to have a say in what she wears is being doled out to her as if it were a mere privilege; she is only provisionally, and not conclusively, being regarded as the leader of her own life with regard to matters affecting only her welfare. To see that this is a distinctive feature of adult-child relations, consider what would happen if the same man were to fail to dissuade his wife from wearing

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person's being a child (aside from any further exculpating or inculpating conditions) should mitigate the stringency with which he is held responsible for crimes of which he is convicted.

uncomfortable pajamas to bed. Were he to try to force her to wear different pajamas, she would appropriately object that he was treating her like a child.

A similar point can be made about responsibility. Imagine that this father finds that his older daughter, a six-year-old, has, thoughtlessly or mischievously, damaged a piece of his personal property. Suppose she has drawn with magic marker on his office desk. Assuming the child should have known better, and could have done better, the father no doubt shows respect for her by demanding that she take responsibility for what she has done. He might, for example, insist that she apologize to him and that she do what she can to repair the damage. To this extent he treats her no differently than he would his wife, were she to commit a comparable offense against him. But in the typical case, this way of responding to a child is only superficially the response of an equal. For insofar as the father regards his daughter as a child, his frustration with *her conduct* will not take the form of resentment towards *her*. Instead of feeling she has violated or wronged him, he will feel disappointed in her behavior. Notice that this attenuation of responsibility does not depend on his assuming that she didn't actually know what she was doing, or that she didn't have the capacity to control herself. The latter are general excusing conditions which apply to any agent, child or adult. Here, as I am imagining it, the father makes a separate allowance for the fact that his daughter is "only a child" by taking a supervisory, rather than a participatory attitude towards her with respect to her misconduct. As such, he expresses the view that children *qua* children are not yet fully subject to the duties which bind adults to one another.

Given that the paternalistic attitude fundamentally shapes adult-child relations, and given that our practices would be radically transformed were we to give it up, it is essential to ask whether this attitude is justified. Why think of children as second-class moral and political citizens—as persons with whom we do not stand in fully reciprocal relations? Differences in gender are properly regarded as arbitrary from a moral point of view, along with differences in religion, ethnicity, and socioeconomic background. Even differences in age are properly considered morally irrelevant, at least among those above the age of majority. What, then, is the idea of majority supposed to pick out, such that it could be the basis for dividing the human community into two unequal classes of persons?<sup>5</sup>

The philosophical tradition offers a standard answer to this question. The answer is that children, unlike adults, are as yet lacking in reason and are therefore unfit to govern themselves until they reach the age of reason.<sup>6</sup> In this paper I ask

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5. Francis Schrag poses the question at this level of abstraction in his article *The Child in the Moral Order*. Francis Schrag, *The Child in the Moral Order*, 52 *PHILOSOPHY* 167, 167–77 (1977). No doubt there are further subdivisions to be made within the class of children (e.g. between young children and adolescents, etc.)—my method is to get clear on the basic division first, in the hope that it will provide guidance in drawing more fine-grained ones. I am indebted to Schrag for his clear exposition of the fundamental problem.

6. See, e.g., ARISTOTLE, *POLITICS* 1–21 (Trevor J. Saunders trans., Clarendon Press 1995); JOHN LOCKE, *SECOND TREATISE ON GOVERNMENT* 33–35 (Richard H. Cox ed., Harlan Davidson 1982); JOHN STUART MILL, *ON LIBERTY* 81 (David Bromwich & George

how the standard answer is supposed to justify our conventional practices. I argue, first that the standard answer is ambiguous; two different interpretations of it tend routinely to be conflated in the literature on the status of children. Under the first interpretation, which I call “the proficiency argument,” a child's lack of reason consists in her being incapable of making good choices. Under the second reading, which I call “the attributability argument,” a child's lack of reason consists in her being incapable of making her own choices, whether good or bad. I argue further that even though contemporary philosophers place greater explicit emphasis on the proficiency argument, only the attributability argument succeeds in justifying paternalism in a way that is consistent with a strongly anti-paternalistic conception of adult relations.

One prefatory remark: the task of justifying paternalism can itself be thought of in two ways. We can think of it either as a task of justifying particular paternalistic actions one-by-one, or as a task of justifying a general practice which sanctions an asymmetrical distribution of authority between occupants of different positions.<sup>7</sup> I believe it makes the most sense to think of adult-child relations as, at bottom, constituting a general practice, and of the task of justification as one of justifying that practice. Compare the relation of a teacher and an adult student. If we were to ask: why does the teacher have the right to decide unilaterally what the class will read next week? The answer might be that in this instance the teacher actually knows better than the student which readings would most advance the student's education. But in this particular instance the teacher might be wrong, and the student might have a better suggestion. Nevertheless, insofar as the student has consented to participate in the practice and to take up the student role, she has consented to accept that her proposals on such matters will have at most consultative and not authoritative force. If the teacher considers but rejects her proposals, the student can legitimately be required to take this decision as authoritative.

Children of course do not consent to the practice which makes them subject to adult authority. As such the justification of that practice is not obvious. But I will be proceeding on the assumption that it is the practice as a whole, the content of which is implicit in the paternalistic attitude, that needs to be justified. Hence the test of a good justification will not be whether it allows us to see, action-by-action, why every instance of paternalistic intervention is justified. The test is, rather, whether the justification explains why the basic relation between persons who are adults and persons who are children is not fully reciprocal.<sup>8</sup>

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Kate eds., Yale University Press 2003); PLATO, REPUBLIC OF PLATO 297–320 (Francis M. Cornford trans., Oxford University Press 1945). The views of Immanuel Kant, which I discuss later in this article, are included in this tradition.

7. For the distinction between justifying a practice and justifying the actions falling under a practice, see John Rawls, *Two Concepts of Rules*, 64 PHIL. REV. 3, 3–13 (1955).

8. I believe the question of justifying *adult* authority is conceptually prior to the question of justifying *parental* authority. Once we have justified the basic practice according to which adults as a class are given special responsibility for, and authority over, children as a class, we can move on to the question of how adults are to distribute that

## II. JUSTIFYING THE PATERNALISTIC ATTITUDE: THE PROFICIENCY ARGUMENT

The traditional justification of paternalism, as I mentioned, is that children are lacking in reason and are therefore unfit to govern themselves until they reach the age of reason. What does this mean? Much of the contemporary literature in defense of the paternalistic attitude tacitly endorses this traditional justification, while giving it a particular interpretation. On that interpretation, the difference between “having” and “lacking” reason is construed as a difference in proficiency. To say that children lack reason, on these views, is not to say that children are completely unable to deliberate about what to do (although that may be true of infants and the very young), but rather that they are incapable of deliberating *well*. Accounts of what it is to deliberate well vary somewhat. On most accounts, the standard is prudential: children's lack of reason consists in their incapacity to make choices which protect and advance their own interests.<sup>9</sup> On other accounts, the claim is that children are not able to make well-reasoned choices generally, whether or not the question bears on their own interests. Finally, there are some versions of the argument that take the relevant standard to be one of moral reasoning.<sup>10</sup> Each of these standards, moreover, can be given either a substantive or a procedural interpretation. The substantive interpretation holds that children lack reason insofar as they tend to fail to arrive at good conclusions, the conclusions which are in fact demanded by prudence, rationality, or morality.

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authority amongst themselves with regard to specific children. Therefore I will only be interested in parental authority insofar as it is illustrative of features of adult authority.

9. See Samantha Brennan, *Children's Choices or Children's Interests: Which do their Rights Protect?*, in *THE MORAL AND POLITICAL STATUS OF CHILDREN* 53, 53–67 (David Archard & Colin Macleod eds., 2002); Vallentyne, *supra* note 1, at 196–98. It is worth mentioning, however, that in most cases the proficiency argument is not clearly distinguished from what I'll later call the attributability argument. Brighouse, for example, seems to appeal to a proficiency argument to justify the claim that children lack full rights of agency, while appealing to an attributability argument to justify the claim that they lack full rights of culture and freedom of expression. Brennan seems to rely primarily on a proficiency argument (“[T]he main reason speaking against rights which protect children's choices is that often children do not choose well or wisely.”), but occasionally appeals to an attributability argument (“What we want to see as parents is that our children are ready to make choices of their own.”). *Id.* at 59–62. Nonetheless I believe that in these articles as well as in the literature as a whole, the emphasis is on the proficiency argument. See, e.g., DAVID ARCHARD, *CHILDREN: RIGHTS AND CHILDHOOD* 58–69 (1993); Aharon Aviram, *The Paternalistic Attitude Toward Children*, in 41 *EDUCATIONAL THEORY* 199, 205–09 (1991); John Harris, *Liberating Children*, in *THE LIBERATION DEBATE: RIGHTS AT ISSUE* 135, 139–43 (Michael Leahy & Dan Cohn-Sherbock eds., 1996); Houlgate, *supra* note 2, at 269; Julia Rosenak, *Should Children be Subject to Paternalistic Restrictions on their Liberties?*, 16 *J. PHIL. EDUC.* 91–95 (1982). *But see* Robert Noggle, *Special Agents: Children's Autonomy and Parental Authority*, in *THE MORAL AND POLITICAL STATUS OF CHILDREN* 100 (David Archard & Colin Macleod eds., 2002).

10. See, e.g., Rosalind Ekman Ladd, *Paternalism and the Rationality of the Child*, 6 *THINKING: J. PHIL. FOR CHILD.* 15–19 (1985).

According to the procedural interpretation, children lack reason insofar as they fail to employ procedures that constitute of good reasoning.<sup>11</sup>

The fact that a person or a class of persons tends to make bad choices, or tends to make choices badly, does not in and of itself have implications for the legitimacy of paternalism. It is only in combination with some practical principle that conclusions about paternalism follow.<sup>12</sup> From a consequentialist point of view, a practice according to which one class of persons treats another paternalistically will be justified insofar as that practice serves to maximize good results. Given this principle, the relevance of the fact that children tend to make bad choices has to be that the occurrence of such choices has the effect of decreasing overall welfare. Children, in this view, are legitimate objects of paternalism because if given equal status, they would tend to cause avoidable suffering either to themselves, or to others, or both. More specifically, the claim has to be that any additional harms caused by a policy of paternalistic intervention (e.g. frustration of children's desire to act freely) are outweighed by the benefits so produced. In addition, it has to be argued that the same reasoning supports the practice of giving adults equal status vis-à-vis one another (barring special conditions like mental disease), despite inevitable variations in adults' deliberative proficiency.<sup>13</sup>

I am not going to try to argue against the consequentialist approach here. Instead I simply want to note that that approach will not satisfy a deep liberal, such as the child liberationist, Howard Cohen.<sup>14</sup> Cohen agrees with the empirical claim that children do not deliberate as well as adults, but he denies that this implies the legitimacy of paternalism. On Cohen's view, the fact that children tend to make bad choices has no bearing on whether they are entitled to do so. If children are indeed incapable of making good choices on matters that affect their interests, Cohen argues, this shows merely that children need (and perhaps have a right to demand) special assistance from adults in making their choices. But this assistance is something which must be *offered* to children, not *imposed* upon them. Children, Cohen suggests, are in a position which is analogous to that of adults who have to make complex legal or financial decisions for which they lack sufficient experience, information, and judgment. Just as adults routinely employ legal and financial advisors to help them make such decisions, so, Cohen argues, children from a very young age should have the opportunity to rely on the advice of agents to help them make decisions that they would be incapable of making well on their own.<sup>15</sup> Implicit in Cohen's argument is the claim that children's inability to

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11. John Harris argues explicitly for a procedural standard. Harris calls the standard to which he appeals a standard of "autonomy," thereby suggesting the attributability argument. However he does not distinguish that standard in any clear way from a standard of proficiency. Harris, *supra* note 9, at 139-43.

12. There is, I believe, a tendency in the literature to focus on justifying empirical claims about children's capacities for reasoning or lack thereof, while neglecting the task of articulating and defending the principles on the basis of which a given deficiency in reason is taken to warrant paternalism.

13. For a recent consequentialist defense of paternalism, see LAURA PURDY, IN THEIR BEST INTEREST? THE CASE AGAINST EQUAL RIGHTS FOR CHILDREN (1992).

14. See generally, HOWARD COHEN, EQUAL RIGHTS FOR CHILDREN (1980).

15. *Id.* at 56-60.

deliberate well is a matter of circumstance, not status; as such, children's deliberative deficiencies should not be regarded as diminishing their personhood any more than a blind adult's inability to see should be regarded as diminishing his personhood. Sighted adults do not have the right to impose unwanted help upon blind ones. Similarly, those with greater deliberative proficiency do not have the right to impose unwanted help upon those who are less proficient.

Consequentialism holds that variations in the circumstances of different persons or classes of persons (e.g., variations in the causal tendencies of bad as opposed to good deliberators) can, in principle, justify paternalism. The deep liberal holds that paternalism can only be justified by a deeper sort of difference, a difference which has a bearing on moral status.<sup>16</sup> I believe that many people who find the latter principle attractive when thinking about adult relations have a tendency to appeal to the former principle when thinking about adult-child relations. The thought is that an adult's right to make her own choices does not depend upon the likelihood that her doing so will be beneficial, whereas a child's right to do the same does. Since this position is not obviously coherent, it makes sense to look for a better one. One might do this by trying to defend a consequentialist account of adult rights, but I will not take this route. Instead my aim is to justify paternalism towards children in a way that would satisfy a deep liberal like Cohen.

I believe Cohen's view takes as its starting point a strongly anti-paternalistic principle. That principle holds that our respect for others cannot be limited by our approval of the substantive principles and values they happen to choose. For respect that extends only as far as substantive agreement holds is not, at bottom, respect for one another as *persons*. A familiar principle which captures this view is Kant's Formula of Humanity. That principle states that one ought to act in such a way as to treat humanity in oneself and in others, never as a means only, but always also as an end.<sup>17</sup> The term "humanity," as Kant uses it, refers to the power of choice.<sup>18</sup> On a *weak* interpretation of the humanity principle, one is prohibited from interfering with another's capacity to make her own choices, except when the interference is such as to protect or promote the other's interests.

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16. On this point I am in full agreement with Robert Noggle and with Francis Schrag, who argue that paternalism seems to imply the existence of a "sharp distinction" between adults and children. See Noggle, *supra* note 9, at 100; Schrag, *supra* note 5, at 177. Both are dissatisfied with the proficiency argument, and Noggle's positive view appears to be a version of an attributability argument. However I take it that Noggle's criterion of attributability is empirical, whereas the one I advocate is normative. I explain this distinction in Section III below.

17. IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSICS OF MORALS* 46–47 (Allen W. Wood trans., ed., Yale Univ. Press 2002) (1785) [hereinafter *GROUNDWORK*].

18. IMMANUEL KANT, *CONJECTURAL BEGINNING OF HUMAN HISTORY* (Emil L. Fackenheim trans., ed., 1959) (1786) [hereinafter *CONJECTURAL*]; *GROUNDWORK*, *supra* note 17, at 55; IMMANUEL KANT, *THE METAPHYSICAL PRINCIPLES OF VIRTUE* (James W. Ellington trans., Bobbs-Merrill 1997) (1797) [hereinafter *METAPHYSICAL*]; IMMANUEL KANT, *RELIGION WITHIN THE LIMITS OF REASON ALONE* (Theodore M. Greene & Hoyt H. Hudson trans., Harper Torchbook 1960) (1792) [hereinafter *RELIGION*] See also CHRISTINE KORSGAARD, *Kant's Formula of Humanity, in CREATING THE KINGDOM OF ENDS* 106, 110–14 (1996).

Clearly this principle is weaker than the one to which Cohen is committed. On a slightly stronger reading of the humanity principle, interference is prohibited except when it is necessary to promote a particular interest, namely the development of the other's power of choice itself.<sup>19</sup> But even this interpretation is too weak, for the resulting principle would permit adults to take responsibility for cultivating the capacity for choice in other adults, even at the cost of refusing to treat those others as equals. This seems incompatible with Cohen's liberalism. Moreover, it does not fit with Kant's own understanding of the humanity principle. For Kant states explicitly that humanity is not a positive end to be produced or promoted; rather it is a negative end, one which serves as a limiting condition on all of our choices.<sup>20</sup> By this he means that the power of choice is not to be regarded in the first instance as something to be brought about, but rather as something that puts a direct constraint on permissible forms of interaction.

On an even stronger interpretation of the humanity principle, certain forms of treatment are ruled out regardless of the end to be promoted thereby. More specifically, the principle rules out forms of interaction which, by their nature, deprive others of the opportunity to exercise their capacity for choice with respect to the specific proposals with which they are faced.<sup>21</sup> Primary among such forms of action are force, coercion, and deception. One who uses force or coercion to *get* another to do something deprives that person of the opportunity to accept or reject the proposed form of interaction by depriving her of the power to do otherwise. One who uses deception to *get* another to do something deprives that person of the opportunity to accept or reject the proposed form of interaction by depriving her of knowledge of the true content of the proposal. Given this version of the humanity principle, what makes paternalistic action objectionable—indeed, what makes it paternalism—is that such action consists in the imposition of a benefit, rather than the offer of one. This, I take it, is the strong form of anti-paternalism to which Cohen is committed.

Given this principle, it is worth pointing out that the question of paternalism does not arise in cases where the agent to be benefited is incapable (due to its nature or its lack of development) of engaging in anything appropriately described as deliberation or choice. Infants, for example, clearly have vital interests that they are incapable of protecting on their own. They are also not capable of forming settled opinions about what it would be worthwhile to do for the sake of protecting those interests. Where there is no will to be opposed, there is no meaningful distinction to be made between imposing and merely offering a needed form of assistance. But quite early on, human beings acquire the capacity to form and express very definite opinions about what ought to be done to and for them. A two-year-old can let her parents know in no uncertain terms that she does

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19. Occasionally this sort of view seems to be suggested by Onora O'Neill. *See, e.g.,* ONORA O'NEILL, *Children's Rights and Children's Lives*, in CONSTRUCTIONS OF REASON: EXPLORATIONS OF KANT'S PRACTICAL PHILOSOPHY 187 (1989) (describing her conception of imperfect duties).

20. GROUNDWORK, *supra* note 17, at 45–46.

21. This interpretation is put forth by Christine Korsgaard and Onora O'Neill. *See* KORSGAARD, *supra* note 18, at 106–32; ONORA O'NEILL, CONSTRUCTIONS OF REASON: EXPLORATIONS OF KANT'S POLITICAL PHILOSOPHY, 105–25 (1989).

not want to go to bed right now, or that she prefers wearing sandals to gym shoes. At this point, the difference between imposing and offering measures judged to be for the good of the child is clear. And it is implicit in our practices that even when the actions in question are purely self-regarding, we are justified in giving a child's expressions of will less force (or perhaps a different kind of force) than those of an adult. Thus the question is: given the strong version of the humanity principle, what sort of difference between children and adults could justify this?

My first point is that an appeal to a difference in proficiency will not be sufficient to answer the deep liberal. Simply noting facts about how likely it is that children will make bad or imprudent choices will seem question-begging to one who adheres to the strong form of anti-paternalism I just described. Instead, the argument has to be that the person to be treated paternalistically is *already* in a condition which deprives her of the capacity to exercise her power of choice, whether well or badly. The claim has to be that despite appearances to the contrary, there really is no will there, or rather, that the will that purports to be there is not intact or well-constituted. I believe we tacitly appeal to this sort of justification when, for example, we try to justify paternalistic treatment of the mentally ill. Imagine, for example, that you have a friend who is prone to episodes of severe, clinical depression. When she is in this condition, your friend becomes numb to the pleasures of her work and feels a strong temptation to act in self-destructive ways. Suppose that during one such episode, it seems worthwhile to her to quit a job in which she otherwise finds satisfaction, and she sets out to do so. Clearly you are entitled to try to persuade her to change her mind, but if such efforts fail, are you entitled to use manipulative or deceptive means to try to stop her from quitting? Are you entitled, for example, to get her to climb into your car on the pretense that you are taking her to work, and instead drive her to a place you know makes her feel somewhat better, so that she will be distracted and will not follow through on her intention? I believe that even one who holds to the strong anti-paternalist reading of Kant's humanity principle can admit some range of principled exceptions on grounds that the agent in question is already in an impaired condition. But if the justification is to be of the right form, the claim cannot simply be that the impairment *consists* in the agent's readiness to make substantively bad or imprudent choices. Instead the impairment has to be characterized as the failure of some independent condition that is essential to the person's ability to exercise her capacity for choice at all, whether well or badly. The claim has to be that despite appearances to the contrary, your depressed friend's "choice" to quit her job isn't really a genuine choice, and that the condition of depression accounts for its failure to be one.

In order to fill out this claim, however, it is necessary to say more about both the nature of the impairment, and the nature of a genuine choice. The right way to do this, I suggest, is to focus on the idea of attributability. In order for a choice to be genuine, it must be the agent's own. Hence in order for the impairment to make it the case that the choice isn't genuine, the impaired condition has to be seen as one that undermines the relation of attributability between agent and action. In this case, instead of seeing the situation as one in which your friend has made bad use of her deliberative capacities, you have to see it as one in which those capacities no longer constitute her will. The claim has to be that due to her

depressed condition, your friend is not herself anymore; an alien force has taken over her deliberative capacities, undermining their representative function, so that they no longer speak for her. As such, the actions your friend “chooses” are no longer expressions of her own authority. And this means that by interfering with those actions, you do not directly or straightforwardly interfere with *her*.

Paternalism towards the depressed can only be justified if depression is in this sense an alienating condition. By the same token, I suggest, the only justification of paternalism towards children that will satisfy the deep liberal is one that characterizes childhood as something like an alienating condition. The account must provide a conception of what childhood is, such that a person's being in that condition systematically undermines her capacity to make choices which are her own. Obviously depression and childhood are different, and the accounts of each will have to reflect this. Most importantly, depression is a disease, a deviation from a healthy condition, whereas childhood is a stage in the course of normal human development. Nevertheless, both conditions can be conceived as undermining attributability. If it makes sense to see depression as a condition in which a person is no longer herself, it may make sense to see childhood as a condition in which a person is not yet herself. In the remainder of this article I will try to show the plausibility of this latter claim.

### III. JUSTIFYING THE PATERNALISTIC ATTITUDE: THE ATTRIBUTABILITY ARGUMENT

Before spelling out the conception of childhood I have in mind, I need to say a little bit more about the notion of attributability which I relied on in the depression example. What does it mean to say that a person's actions are or are not her own? This notion of attributability admits two interpretations, one normative and one non-normative, and it is the former that I will need to show is lacking in the case of children's action. To see the ambiguity, consider an analogous problem. What does it mean to say that a person's possessions are or are not her own? As Kant pointed out in his discussion of property, the relation of possession can be construed in either an empirical or a normative sense, as a relation of power or as one of authority.<sup>22</sup> An object is empirically mine if it is under my physical control. But an object is my property if I have a right to use and dispose of it according to my discretion. These relations are at least conceptually independent. I can, in principle, own something that is not under my physical control, and I can have physical control over a thing that I do not own. Moreover, the two relations are structurally distinct. Whereas empirical possession is a relation of power which holds between an agent and an object, normative possession is a relation of authority which holds among agents. To own an object is to stand in a certain normative relation, not to the object as such, but to other people with respect to the use and disposal of the object. As such, when another interferes with my physical

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22. Here I am drawing on Kant's distinction between “sensible” and “intelligible” possession. See IMMANUEL KANT, *METAPHYSICAL ELEMENTS OF JUSTICE* (John Ladd trans., Bobbs-Merrill 1965) (1780). I draw on the same idea in my earlier article, “What is a Child?” but there I use it with a substantially different emphasis. See Tamar Schapiro, *What is a Child?*, 109 *ETHICS* 726 (1999).

control of an object, she interferes with me as a locus of causal power, but she does not thereby violate me as a source of interpersonal claims. However when another uses or disposes of my property without my consent, she does interfere with me as a source of interpersonal claims, whether or not she interferes with me as a physical being.

The point of distinguishing empirical and normative senses of possession is to show that an analogous distinction can be drawn with respect to the claim that an action is one's own. An action can be "mine" in either an empirical or a normative sense. This is not to say that I can literally *possess* or *own* my actions; the analogy to property is not meant to be perfect. Rather, the idea is that I can either cause my actions, or I can claim representation by them. I am going to call these relations "production" and "authorship," respectively.<sup>23</sup> Production is a causal relation which holds between a subject and an action, where both are construed empirically. Insofar as an action is my production, I am the locus of certain psychological processes (involving beliefs, desires, intentions, etc.) through which the action is produced as an effect. By contrast, authorship is a normative relation which holds among a plurality of subjects with respect to a certain action. To author an action is to identify myself with it, in the sense of claiming representation by it and taking responsibility for it. One who identifies herself with an action in this sense thereby makes a claim on others to take the action to be representative of her, and to hold her responsible for it. Hence the "I" that stands behind an authored action is not in the first instance a locus of psychological processes, but rather a source of normatively binding interpersonal claims.

It is the normative sense of attributability which is at stake the justification of paternalism. For if paternalism is to be justified to the deep liberal, it has to be the case that by interfering with a child's action, we do not thereby violate *her*. Hence the question is whether children, who are evidently in a position to produce their actions, are likewise in a position to author them. Now it seems clear that authorship need not imply production. A corporate official who takes responsibility for the ill-chosen actions of her employee thereby identifies herself with those actions, constituting them as exercises of her own authority, even if she played no causal role in their production. At issue in the justification of paternalism, however, is the converse relation. Does production necessarily imply authorship, or can it be argued that actions caused by children fail to be their own in the normative sense?<sup>24</sup>

Elsewhere I have developed one version of an argument for the latter claim.<sup>25</sup> That argument relies on a conception of children which has its roots in Kant. Its starting point is Kant's claim that children are in a liminal condition as

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23. The preceding remarks were to some extent inspired by Christine Korsgaard's unpublished Locke Lecture III, though the analogy to the property relation is mine. See Christine Korsgaard, *Locke Lecture III*, Oxford University (May–June, 2002).

24. In Locke Lecture III, Korsgaard puts forth an argument for the claim that production necessarily presupposes authorship; that in order to claim efficacy, we must claim authorship. I believe the sense of production I need here is weaker than this, and that my claims here are unaffected even if, as I suspect, Korsgaard's argument is valid. *Id.*

25. See Schapiro, *supra* note 22.

agents, a condition which distinguishes them both from nonhuman animals and from full persons. Kant writes:

Animals are by their instinct all they ever can be; some other reason has provided everything for them at the outset. But man needs a reason of his own. Having no instinct, he has to work out a plan of conduct for himself. Since, however, he is not able to do this all at once, but comes into the world undeveloped, others have to do it for him.<sup>26</sup>

Implicit in this passage is an appeal to the standard argument that children are lacking in reason, and that therefore they are unfit to govern themselves. But the details of Kant's conception of reason allow for a more satisfying interpretation of that argument than the ones we have already seen. Unlike many other philosophers, Kant does not conceive of reasoning as the exercise of a particularly useful intellectual skill. Rather, Kant conceives of reasoning as autonomy, the exercise of the capacity to be a law to oneself. Moreover, he conceives of this capacity as one we human creatures have no choice but to exercise, given that we have been liberated from the governance of instinct. On Kant's view, nonhuman animals are governed by nature's law, a law that is embodied in the animal's instincts. Those instincts are the principles upon which the animal "chooses" its responses to the various incentives with which it is confronted.<sup>27</sup> It is in this "choosing" that the animal expresses its active nature, its capacity to do things rather than merely to undergo experiences. The animal is thus most free, most fully active, when it acts on its instincts, thereby expressing the form of behavior which is most characteristic of it. But this means that even at its most active, the animal still acts on nature's authority. Its freedom is realized in conformity to its nature, but its nature is to be subject to a law it cannot and does not question.

The characteristic feature of us as human agents, Kant maintains, is our capacity to question nature's authority. The structure of our consciousness is such as to allow us—indeed, to force us—to take a reflective step back from the perceptual and motivational impulses given to us by instinct. In doing so, we demand justification for the ways in which our animal nature tends to shape our representations of and responses to the world. It is this capacity which Kant calls "humanity."<sup>28</sup> Our humanity is the source of our dignity, but it is also the source of our predicament. Since our first animal nature is no longer capable of providing us with sufficient reasons, we are forced to construct a second human nature which can. We are forced, in other words, to substitute a law of our own making for the law of instinct, and to make that law such as to satisfy the justificatory demands which we, as reflective creatures, necessarily place on it. According to Kant, this

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26. IMMANUEL KANT, *ON EDUCATION* (Annette Churton trans., University of Michigan Press 1960) (1803) [hereinafter *EDUCATION*].

27. However, those incentives are themselves shaped by instinct. See Christine Korsgaard, *Motivation, Metaphysics, and the Value of the Self: A Reply to Ginsborg, Guyer, and Schneewind*, 109 *ETHICS* 49–66 (Oct. 1998). I draw on this reply throughout this section, along with Korsgaard's Locke Lecture IV. See also *CONJECTURAL*, *supra* note 18, at 114; *RELIGION*, *supra* note 18.

28. *GROUNDWORK*, *supra* note 17, at 55; *METAPHYSICAL*, *supra* note 18, at 392; *RELIGION*, *supra* note 18. See also *KORSGAARD*, *supra* note 18, at 110–14.

task finds completion in “personality,” our capacity to act on a law which in no way derives its authority from instinct.<sup>29</sup> Such a law would be a law of freedom, because it would be expressive of our nature as creatures who must question nature's authority. Moreover, action on such a law would be more radically free than animal action, because it would be action on our own authority. The concept of full personhood, then, is for Kant the concept of one who has completed the task set for her at the dawn of her reflective consciousness. That “moment” is the beginning of her liberation from the jurisdiction of nature, and that liberation is only completed when she *constitutes herself* as the authority under whose jurisdiction she falls.

Our everyday concept of an adult, I want to claim, just is that of a full person in Kant's sense.<sup>30</sup> To treat someone like an adult is to treat her as the ultimate source of her words and deeds, as the final authority to whom those words and deeds are attributable. As such, the concept of an adult is an essentially normative concept; an adult is the *source* of her beliefs and actions in the sense that she *authorizes* them. Moreover this is the sense of full personhood which is required if full persons are to be thought of as ends in themselves. For it is only on the assumption that my actions are attributable to me in the normative sense that your attempt to interfere with them constitutes a usurpation of my authority, and it is this usurpation which is the essence of paternalism. So if full personhood is thought to put a direct constraint on paternalistic treatment, that condition has to be regarded as one in which a person's actions are attributable to her in the authorial sense. Full personhood, then, has to be conceived as a condition of autonomy, a condition in which a creature is fully subject to her own authority, such that her actions and beliefs constitute exercises of that authority.

Given this conception of full personhood, we can work out a conception of childhood as a liminal condition of emerging personhood. If a full person is one who has completed the task of liberation from nature, a child is one who has yet to complete the same task. How are we to think of this?<sup>31</sup> First, it helps to notice a very general empirical fact about the way human beings develop. Our capacity to reflect upon our perceptual and motivational impulses develops gradually. Thus those at the very beginning of human life, infants, are in an important respect more like nonhuman animals than they are like adult human beings. Infants see the world in a certain way that is shaped largely, if not completely, by instinct, and they respond to those perceptions in ways that are likewise shaped largely, if not

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29. RELIGION, *supra* note 18.

30. Kant contends that the only way to complete the task is to make the Categorical Imperative one's fundamental maxim. This is because the Categorical Imperative, according to Kant, is the only principle which can be fully justified to a being whose nature it is to demand justification. I do not believe my argument turns on the validity of this latter claim. What it does turn on is the claim that our everyday concept of an adult is shaped by the concept of a full person, and that this latter concept is Kantian to the extent that it includes the idea that a full person is one who in a position to act freely, on his own authority.

31. I answer this question in a slightly different but compatible way, by relying on an analogy between an emerging person and an emerging polity. See Schapiro, *supra* note 22.

completely, by instinct. And because they are minimally reflective, infants are minimally self-conscious; they are aware of the world, but they are only minimally aware of their own activity of representing and responding to the world. As such, infants have little if any capacity to raise anything like a question about the veridicality of their perceptions, or the legitimacy of their motivations. Like Frankfurtian wantons, infants are creatures who have, or who are close to having, only first-order perceptions and desires.<sup>32</sup> Their activity is almost wholly reactive.

But quite unlike nonhuman animals, human infants do not remain in this condition. Somewhere along the way between infancy and adulthood, or perhaps at every point along the way, human beings develop the capacity to demand reasons of themselves and of others—both reasons for belief and reasons for action. The development of this capacity is rather noticeable in toddlers, and when it emerges, we begin to see toddlers not only as persons with interests, but also as persons with minds and voices of their own. Toddlers begin to take shape as sources of their own activity, rather than mere loci of instinctual responses. And yet if our paternalistic practices are justified, it cannot be the case that toddlers are thereby full persons. Implicit in those practices, I want to claim, is the idea that childhood is a liminal stage during which a person is still on the way to constituting herself as a source of activity in the normative sense. That is, childhood has to be conceived as a condition of as-yet-incomplete liberation from nature's rule.

This is different from seeing childhood as a condition in which a certain type of proficiency—a certain type of knowledge or experience or judgment or skill—is lacking. For proficiency is a resource which a full person might happen to have or lack. It is in this sense an external good, which—in combination with a strong anti-paternalistic principle—has no bearing on a person's right to make up her own mind and to speak in her own voice about matters affecting her. But childhood as I have described it is a condition in which the personhood of the person, her capacity to have a mind and a voice of her own, is as yet ill constituted. On this view, the idea that children are people who have to be *raised* does not simply mean that they need to be trained and informed; it means, quite literally, that they need to be brought out of the animal state in which they begin their lives. Children need to abandon the wantonness of their original condition by carving out a space between themselves and their first-order desires and perceptions. The aim is not merely to learn self-control, but to establish a deliberative perspective which speaks for them. Children need, in other words, to establish the constitutions on the basis of which the words and deeds they produce will come to count as exercises of their own wills.

Implicit in the paternalistic attitude, I take it, is the thought that children are human beings who have not yet completed this task. For the essential feature of the paternalistic attitude is the refusal to take the words and deeds of the child to be (fully or straightforwardly) representative of her authority. This is clearest in the case of responsibility. As I mentioned earlier, although we refrain from resenting children for their wrongdoing, we do not simply excuse them (absent normal exculpatory conditions). The former response identifies the person fully with the

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32. Harry Frankfurt, *Freedom of the Will and the Concept of the Person*, 68 J. PHIL. 5–20 (Jan. 1971).

action, whereas the latter divorces the two entirely. The disciplinary response is intermediate between these. It is a way of identifying a person with her action for the purpose of showing her that this is not the person she should become. As such, the disciplinary response is addressed to one who is on the way to being the source of her actions, but who is not there yet. Similarly on the side of rights, although we refrain from giving children's voices authoritative force, we also refrain from dismissing what they say as mere noise. To take children's words as having consultative force is to take them as making provisional claims that are not yet fully ratified by any governing authority.<sup>33</sup> As such, the paternalistic attitude is one which takes children's words as issuing from a distinctive perspective, the perspective of a creature who is on the way to being her own person.

If children are appropriately conceived as emerging persons, then the paternalism implicit in ordinary adult-child relations begins to make sense. For if we assume that children are already in an alienating condition, a condition which makes it the case that they are not yet themselves, then our refusal to take their words and deeds to be (fully or straightforwardly) representative of their authority does not amount to a violation of them as persons. Moreover, if we conceive of children as only partially free from the governance of instinct, we can see why liberating children from adult authority would not be a way of respecting their humanity. Given that children are not yet in a position to govern themselves, they need to be protected from their own cognitive and volitional wantonness. In so protecting them, we protect them not from themselves, but from the workings of their animal nature, which in the early stages of life tends to have the upper hand on both their perceptual and motivational impulses. This, for example, should be the reason why adults can be entitled to refrain from telling children the whole truth, especially about matters that might arouse their fears. The idea need not be that children literally will not understand the information we give them. Indeed that claim is often quite implausible. Nor should the claim be that children lack the experience necessary to give the information the right weight, for we owe adults the truth regardless of how well we think they will assess its significance.<sup>34</sup> Instead, the claim has to be that children will not be able to establish their own perspective on the information, because, *given that they are children*, their perceptual imaginations have not yet been liberated from the control of the instinct

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33. According to Kant's moral psychology, our perceptions and desires constitute proposals we make to ourselves about what to think and do. They are not mere psychic noise, but in order to provide us with reasons they need to be ratified from an authoritative perspective. As such, they have something like merely consultative authority. Furthermore on Kant's view it is in virtue of our basic care and concern for ourselves, our self-love in the Stoics' sense, that we take our perceptions and desires to have automatic standing in our deliberation, if only in a consultative capacity. See Korsgaard, *supra* note 27. If children's voices have analogous standing in our deliberation—that is, a standing which is both automatic and merely consultative—this might be glossed by saying that we have a natural tendency to see children as parts or extensions of ourselves, rather than as separate agents. Like the tendency to self-love, however, this tendency has both positive and negative potential. It is both the source of intense concern for children's welfare, and, quite often, the source of their abuse.

34. Doctors, for example, owe their adult patients the truth regardless of how experienced those patients happen to be in medical matters.

of self-preservation. If children “can’t handle the truth,” this has to be because some alien force is determining their relation to it. Similar things have to be said to justify the claim that children “can’t handle freedom” in some respect or another. The argument cannot simply be that they are likely to do the wrong thing. Instead it has to be that their motivational apparatus is as yet governed largely by instinct, and that this prevents them from establishing their own perspective on the practical proposals being offered to them.

But here an objection arises: when we are deciding, for example, whether to tell children the whole truth, or to grant children the right to drive, work, or drink alcohol, the considerations we take to be salient are precisely considerations of proficiency. We do not ask, for example, whether the child’s act of crashing the car will really be his own; we ask whether he’s likely to crash the car.<sup>35</sup>

No doubt considerations of proficiency are foremost in our minds when making these decisions, but this is because considerations of attributability have already settled a more fundamental question. That question is whether we, as adults, are in a position to dole out rights to children as if they were privileges to be distributed at our discretion (or to dole out information as if it were our private property). That adults as a class are, *de jure*, in a position to decide which rights children ought to have is a structural feature of the background practice within which adult-child relations take their shape. Adult men, by contrast, were never in this position with respect to adult women, despite the fact that they had a monopoly on state power and hence were able, *de facto*, to restrict women’s rights. My claim is simply that the attributability argument is needed to justify the fundamentally hierarchical character of our background practice regarding children, both in formal and in informal contexts. Once it is determined that adults have asymmetrical authority over children, considerations of proficiency become salient. This is because (as I discuss below) adults have an obligation to use their authority well, and this means they have to restrict and expand children’s freedoms only in ways that will serve children’s interests. In deciding how to use their special authority in particular circumstances, adults have to take considerations of proficiency into account. But their having special authority is only justified by appeal to an attributability argument. Since questions about the legitimacy of adult authority *per se* seldom arise explicitly, it can be easy to miss the independent force of the attributability argument.<sup>36</sup>

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35. I am grateful to participants in the 2003 Stanford Summer Institute for Philosophy of Education for forcing me to clarify my response to this objection. Thanks especially to Katsushige Katayama, Dianne Gereluk, and Denis Phillips.

36. I see this response as a revision of a feature of the account I gave in “What is a Child?” See Schapiro, *supra* note 22. There I suggested that as children grow, they acquire authority with respect to particular domains of discretion in a piecemeal fashion, and I suggested that we make particular decisions about which rights to grant children on the basis of these more local attributability arguments. *Id.* at 733–34. I now think the attributability argument settles a background issue, thereby providing the condition under which proficiency arguments can conclusively settle matters in the foreground.

#### IV. CONSTRAINTS ON THE EXERCISE OF ADULT AUTHORITY

But more needs to be said. For even if children are not yet in a position to govern themselves, why should it follow that adults are entitled to fill the void? Why not let instinct, from whose authority children are not yet fully liberated, have the final say in determining what they can and cannot do? This might seem an absurd question, but it isn't, and it turns out that by answering it, we gain a clearer conception of the content of adult obligations to children. The question is not absurd because I have maintained all along that the problem of childhood is not lack of proficiency but lack of attributability; the problem is that children cannot make their own choices, and not that they are likely to make bad ones. But if this is the case, then the choice between rule by one's animal nature and rule by adults should be a toss-up, for both are forms of alien rule. So why should the latter be preferable to the former?

The answer is that it isn't. Adult rule is not, *in and of itself*, better than rule by instinct. Adults have to make it better, and unless they do so, their governing of children is not legitimate. So in fact there are two conditions which have to be met in order for our paternalistic practices to be justified. First, it must be the case that the condition of childhood is one in which a person's authority over herself is not yet constituted, so that self-government is not yet possible. Second, it must be the case that adults exercise their form of alien rule in a way that makes it better than the rule of instinct. Focusing now on the second condition, what would count as making one form of alien rule better than another? One answer is that some forms of alien rule are more benevolent than others—some do a better job than others of protecting the subject's interests. Certainly if self-government is not an option for a creature, then to the extent that the creature has a good of its own, an alien rule which serves to promote that good is better for the creature than one that does not. So adults must earn their right to govern children by using their power in ways that protect and promote children's interests. But because children are already on the way to becoming reflective, and hence free from instinct, it makes sense to attribute to them a distinctive interest in completing that task. As such, adult rule will be better than nature's not only insofar as it is more benevolent, but also insofar as it is oriented towards the promotion of the child's capacity to govern herself. Adult rule that is benevolent but tyrannical or infantilizing will fall short of this standard. That said, it is no small task to find the least paternalistic way of protecting children from their own perceptual and motivational wantonness. "One of the greatest problems of education," Kant wrote "is how to unite submission to the necessary *restraint* with the child's capability of exercising *freewill*—for restraint is necessary. How am I to develop the sense of freedom in spite of restraint?"<sup>37</sup>

Kant provides part of the answer to his own question when he writes, "we must prove to [the child] that restraint is only laid upon him that he may learn in time to use his liberty aright, and that his mind is being cultivated so that one day he may be free; that is, independent of the help of others."<sup>38</sup> Paternalism can be

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37. EDUCATION, *supra* note 26, at 27–28.

38. *Id.* Admittedly there is a hint of the proficiency view in Kant's language (e.g., "learning to use his liberty aright"). I do not claim that Kant himself clearly

compatible with autonomy only if it is exercised in such a way as to make the autonomy of the child possible in the long run. This is indeed one important constraint on the exercise of adult authority, and it rules out the imposition of restrictions that would hinder or prevent the development of autonomy in the future. But the view I have been developing gives rise, I believe, to a further, procedural constraint on the exercise of adult authority. If the alienness of adult rule is to be mitigated here and now, and not simply in the long run, that rule must be exercised *as far as possible* in a way that takes the same form that the child's rule of himself will take—namely the form of lawgiving. The invocation of adult authority must be presented not as an appeal to the authority of an arbitrary individual, but as an appeal to a principle that could come to be the law of a free human being. Adults must, as far as possible, present themselves as representatives and executors of the laws with which children will come to identify their own authority.<sup>39</sup> This means that as far as possible, the justifications they offer for the restrictions they place on children must be and must appear to be principled, even if the content of the principles is as yet beyond the grasp of the children to whom such justifications are addressed.

This shows that there is a further, deeper reason why adult rule is preferable to nature's. Earlier I said that adult rule is preferable to the rule of instinct insofar as adults do a better job of protecting children's interests. If we take into account only those interests that children share with nonhuman animals, then the fact that adults can do a better job is a purely contingent matter. We can imagine a system of hardwired responses that would work as well or better at insuring our survival and reproduction.<sup>40</sup> But because children have an interest in becoming "laws to themselves," they need to be governed by those who have already completed that task. Children, as emerging persons, need to learn what it means to relate to themselves on the basis of freedom, and they cannot do this unless others relate to them, as far as possible, on the same basis. Only full persons are in a position to treat them this way, because only full persons are capable of acting on principles, and of presenting their actions as having a principled form. The upshot is that adults are only entitled to govern children on the condition that they act like adults.

## V. CONCLUSION

I have argued for a certain interpretation of the traditional argument that children's "lack of reason" is what makes them legitimate subjects of adult authority. My claim has been that this argument admits of two very different

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distinguished the proficiency view from his own view in his own writings about children. I do think, however, that the account I am offering here is more consistent with his theory as a whole.

39. I believe this is consistent with Rawls' view of moral development. See JOHN RAWLS, *A THEORY OF JUSTICE* 102–60 (1999).

40. This thought is related to Kant's teleological argument in Section I of the *Groundwork*, where he claims that if the achievement of happiness were our ultimate purpose, then we would have no need for reason, because instinct could have done a better job. *GROUNDWORK*, *supra* note 17, at 10–11. However I believe that neither what I say here, nor Kant's ethics generally, need presuppose a teleological metaphysics of nature.

interpretations, only one of which is consistent with a strongly anti-paternalistic conception of adult relations. On the first interpretation, what children lack and adults have is the ability to make good choices with respect to the protection of the child's interests. Adults have a kind of deliberative proficiency or competence that children lack, and this is why they are entitled to make choices on children's behalf. I claimed that this argument would not satisfy a deep liberal like Howard Cohen, because it is tacitly based on the principle that those who are incapable of making good choices are therefore not entitled to make their own choices. The alternative is to argue that children's lack of reason consists in an inability to make choices that are their own, whether good or bad. The claim here is that children's deliberative procedures are not yet constitutive of their own authority, and so by interfering with those procedures, we are not straightforwardly violating *them*. This consideration, I argued, is the only one that can justify the basic structure of our practices with regard to children, a structure that accords adults asymmetrical authority over children. Once this basic structure is established, proficiency arguments can come into play to settle particular questions about which rights and responsibilities children should have. However, these latter arguments, though foremost in our minds at a practical level, are philosophically secondary; their justificatory force depends ultimately on the validity of the attributability argument.

To make the attributability argument more intuitive, I laid out a picture, inspired by Kant, which I believe illustrates its plausibility. The picture is of children as emerging persons—as human beings who are in the process of liberating themselves from the rule of instinct, but who have not yet completed this task, and who are therefore to some extent at the mercy of a blind and alien form of rule. If children are already in a condition which prevents them from governing themselves, then by “liberating” them from adult authority, we merely hand them over to the arbitrary governance of nature. An implication of this, however, is that adults only earn their right to govern children by governing them better than nature would. They do this by safeguarding children's interests, including their distinctively human interest in achieving autonomy. Adults are, moreover, uniquely capable of promoting this latter interest, because only a free being can show another what it is to act on the basis of freedom.