

HOW SHOULD CHILDREN BE HEARD?

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I. INTRODUCTION

To what extent should we take children's voices to be authoritative concerning the issues that affect them? There is relatively little controversy on whether children should be heard and, if my children are anything to go by, they *will* be heard whether we listen or not. But to what extent should what we hear guide our actions with respect to them? In other words, *how* should they be heard? Despite the variety of views about the extent to which children's voices are authoritative, there is little dispute among reasonable people about whether children's voices should be taken into account in determining what happens to them. But it is not long since this view was highly disputed, and not much longer since it was uncontroversial in the other direction—disregarding children's voices was the norm. In custody proceedings for example, it is a fairly recent phenomenon that children's own views have been consulted by courts, and this practice is still not pervasive in Western democracies. My impression (admittedly only from anecdote and literature) is that until the fifties or sixties it was unusual, in the United Kingdom at least, and in those social classes that had choices, to consult children about what school they would attend. Children were seen, and perhaps heard, but not much listened to. Today, however, the literature on school choice in the United Kingdom shows that even children as young as eleven have their views consulted and taken seriously by their parents in selecting schools.¹

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1. See, e.g., SHARON GEWIRTZ ET AL., *MARKETS, CHOICE AND EQUITY IN EDUCATION* (1995); STEPHEN J. BALL, *CLASS STRATEGIES AND THE EDUCATION MARKET: THE MIDDLE CLASS AND SOCIAL ADVANTAGE* 105–07 (2002).

The increasing tendency of adults to listen to children probably constitutes a distinct moral improvement. One aim of this paper is to explain that this is an improvement because it helps adults better ensure that children's interests are well met. But I also want to resist, and argue against, an alternative explanation, which is that children have a *right* to authority over their own circumstances. This is the view promoted by some child liberationists, and although it has very little support among, for example, political or moral philosophers, and almost none among the adult populations of Western democracies, it has considerable influence among educators, social workers, and, especially, academics in related fields in the United Kingdom.² In discussions among adults about child and family policy I have even heard the term "adultist" used to describe another adult (sometimes me) who refers to what *we* (adults) ought to do for *them* (children). A more traditional term might be 'paternalistic.' The paternalist believes that there are there are morally relevant differences between adults and children that justify adults having authority over the circumstances of children. My answer to the question of how children should be heard is paternalistic in this sense: I do not dispute that they should be heard, but take the paternalist position that their voices should be taken to be *consultative*, but not *authoritative*, where their interests are at stake.

II. CONSULTATION AND AUTHORITY

First consider the distinction between regarding someone's views as authoritative and regarding them as consultative. Someone's view is regarded as authoritative when it is regarded as the view that must be taken as defining the person's interests for the purpose of decision-making. Consider a trivial example: someone goes into a shop and purchases a bottle of water. Neither the shopkeeper, nor anyone else, has any authority to ask the shopper to reconsider. The shopper's decision is, for all purposes, authoritative. In this example only one person's interests are at stake (the shopper's), so taking his view to be authoritative involves allowing him to get what he wants. In circumstances that require a collective decision we can think of someone's views as authoritative and still not think that they must get what they want. Consider a referendum on whether to adopt a new currency. We shall either adopt it or we shall not, so all voters on one side of the issue will not get their way. However, in allowing them to vote, and counting their votes equally with those of others we are treating their views as authoritative. We do not say that their views do not count for as much as other people's views, or that still others are entitled to make the decision for them. Their authentic contribution to the decision-making process is authoritative, even though it is not acted upon. Someone's view is treated as authoritative if their statement of the view is taken wholly to define their legitimate input.

2. For some examples of liberationist-influenced literature, see BERRY MAYALL, *TOWARD A SOCIOLOGY FOR CHILDHOOD: THINKING FROM CHILDREN'S LIVES* (2002); PRISCILLA ALDERSON, *YOUNG CHILDREN'S RIGHTS: EXPLORING BELIEFS, PRINCIPLES AND PRACTICE* (2000); PRISCILLA ALDERSON, *CHILDREN'S CONSENT TO SURGERY* (1993). The *locus classicus* of the liberationist position is HOWARD COHEN, *EQUAL RIGHTS FOR CHILDREN* (1980).

By contrast, to regard a view as consultative is to treat the person who expresses it as having a right to express her own view of her own interests, but not to treat that expression as sufficient grounds for action, even if only her interests are at stake. This is a typical attitude of teachers toward their students with respect to how to learn the studied skill or subject, even if their students are adults. I take someone's expressed desire to learn how to do philosophy as authoritative, but I take their views about how to do it as consultative at best. I might find it useful to know what their particular enthusiasms are (or I might not), but from the fact that they want to read Richard Rorty's *Philosophy and the Mirror of Nature* I do not infer that doing so is in their interests. It is entirely proper for me to discourage them from doing that (in so far as they want to learn how to do Philosophy) at least until they have read a good deal of Quine, Putnam, and Kripke.

My claim is that we should regard children's voices as consultative even in situations in which we would normally be obliged to regard an adult's view as authoritative. Typically, in those situations where adults' fundamental interests are at stake we are obliged to treat their expressed views about what to do as authoritative. Typically, when children's fundamental interests are at stake we are not obliged to treat their expressed views as authoritative, but, at most, as consultative. Whose views, then, are authoritative in these situations? The answer is simple: those adults who are morally charged with protecting the interests of those children. But I should make two comments about this idea. First, for the purposes of this paper I have little to say about which adults are morally charged with protecting children's interests. It does not follow from the fact that *some* adult has authority that any *particular* adult has authority: how authority over a child's upbringing should be divided between the parents and other agencies such as the state is a distinct question which I address elsewhere.³ Second, it is important to understand what is meant by authority here. Sometimes, in saying that a person has authority over something, we mean that she has unconditional license to do what she wants with respect to that thing. Feminist defenders of the right to abortion may invoke something like this sense of authority when they say that women have a right to do what they want with their bodies.⁴ Something like this is also what liberals typically mean when they say that persons have authority over their own judgments and choices about how to live their lives; and something like this is what we mean when we say that adults' voices are authoritative concerning their own interests.

But sometimes we mean something quite different when we say that someone has authority: that although the person has authority, they have an obligation to use that authority in accordance with strict rules. The teacher has authority in the classroom, but is obliged to use it to the end of promoting the children's learning in the classroom; the judge has authority in the courtroom, but is obliged to use it to facilitate due process of law. Similarly, in the view that I am arguing for, the authoritative adult is obliged to discern the interests of the child,

3. E.g., HARRY BRIGHOUSE, SCHOOL CHOICE AND SOCIAL JUSTICE 1–18, 65–111 (2000).

4. For the most articulate philosophical articulation of this idea, see Judith Jarvis Thomson, *A Defense of Abortion*, 1 PHIL. & PUB. AFF. 47 (1971).

and protect or promote those interests. The paternalistic agent, then, is not to be guided by his or her own interests, but by his or her good faith understanding of what is in the child's interests. The sense in which the assigned adult agent has authority over decisions concerning a child is not the same as the sense in which we are obliged to regard adults as having authority over decisions concerning themselves.

The paper proceeds as follows. Section III briefly notes a variety of possible positions concerning children's rights, and describes the position I take, which is that children can appropriately be viewed as having welfare rights, but not as having agency rights. In Sections IV and V, I try to vindicate this position, which supports the view that children's voices should be at most consultative. In Section VI, I look at a series of quite different decision-making arenas and both explain how the distinction I have made applies in those arenas and, by exploring the arenas, supplement the argument for it.

III. THE CONVENTION ON THE RIGHTS OF THE CHILD AND CHILDREN'S RIGHTS

One of the great victories of the international children's lobby was the passage of the United Nations' Convention on the Rights of the Child in 1989, which was signed by every (then-existing) state apart from Somalia and the United States. The Convention places myriad obligations on the signatory states with respect to the upbringing of children and is, in my view, an almost entirely positive document. My particular concern is with Article 12, which provides:

1. Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.⁵

Liberal political philosophers have not responded in great numbers to the Convention.⁶ Liberals have traditionally been suspicious of the idea of children's rights at the level of foundational theory, though, for reasons I shall go into in the next section, liberals frequently take children's interests to be extremely urgent from the perspective of justice. One set of recent responses argues that rights are

5. U.N. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., at Art. 12, U.N. Doc. A/Res/44/25 (1989), *available at* 28 I.L.M. 1448, 1461 (1989), <http://www.unhcr.ch/html/menu3/b/k2crc.htm>.

6. The liberalism I have in mind is exemplified in JOHN RAWLS, *JUSTICE AS FAIRNESS* (2001) and *A THEORY OF JUSTICE* (1971). For some recent examples of liberal approaches to issues concerning children see the essays in *THE MORAL AND POLITICAL STATUS OF CHILDREN* (David Archard & Colin MacLeod eds., 2002); *NOMOS XLIV: CHILD FAMILY AND STATE* (Stephen Macedo & Iris Marion Young eds., 2003); *NOMOS XLIII: MORAL AND POLITICAL EDUCATION* (Stephen Macedo & Yael Tamir eds., 2002).

simply the wrong category to use when thinking about children.⁷ Children, unlike other groups of human beings who lack rights, all have a ready remedy to their state: they can grow up and become rights-bearers. A different set of responses is better disposed to the idea that children have some rights, but remains unabashedly paternalistic to children.⁸ I am going to press the case for this latter kind of response by arguing that while in many contexts adults have a strong obligation to attend to children's voices about matters which concern them, these voices are not, and should not be regarded as, authoritative. To regard them as authoritative is, in fact, an abnegation of our moral responsibility toward children. I shall argue that as a general rule children do not have agency rights.

This conclusion may appear to contradict some Articles of the Convention⁹ but it does not contradict Article 12. Article 12 does not assert that the child has a right to have her voice be authoritative, but only a right for that voice to be listened to, and taken into account as is appropriate to her age and level of maturity. It might be tempting to read more into the article than that, and think, for example, that it implies that children have something like the right over their own affairs that adults do. The argument I make is for a particular, and weak, reading of Article 12, according to which reading adults (whether in the form of parents, or corporate agencies such as schools, hospitals, courts, etc.) have the ultimate responsibility for determining what will happen to children. My reading fits well with the actual English meaning of the sentences in the article. But, as with all normative legal documents, we cannot be content to look at their strict and literal meaning; rather we have to interpret them in the light of the best moral reasons we can adduce.¹⁰

Before moving to the main argument, I want to distinguish the liberal critique of children's agency rights from a communitarian critique of children's rights talk. The communitarian critique objects to attributing rights to children because it sees children, like adults, as constituted by the communities in which they are raised.¹¹ The communitarian, of course, also objects to attributing rights to adults, for the same reason. Children and adults both are constituted by, and their interests cannot be conceived of separately from, those of their community. For the communitarian, as for the liberationist, children and adults are symmetrically positioned: their interests are similarly related to rights, and for the communitarian this means they are not served by rights. The communitarian critique of children's rights downplays the significance of personal autonomy. The liberal critique of children's agency rights, by contrast, places great weight on the value of personal

7. See, e.g., ONORA O'NEILL, *CONSTRUCTIONS OF REASON* 187–205 (1989). See also LAURA PURDY, *IN THEIR BEST INTERESTS?* (1992)

8. See Samantha Brennan, *Children's Choice or Children's Interests: Which Do their Rights Protect?*, in *THE MORAL AND POLITICAL STATUS OF CHILDREN*, *supra* note 6, at 53–69.

9. See, e.g., U.N. Convention on the Rights of the Child, *supra* note 5, at Art. 14.

10. RONALD DWORKIN, *A MATTER OF PRINCIPLE* (1985).

11. For an elaboration of this sort of critique of rights, see MICHAEL SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (1982).

autonomy, and says that attributing agency rights actually jeopardizes children's prospective autonomy and their welfare.

IV. ADULTS' RIGHTS

Rights are claims that others are bound to respect or meet, regardless of their own individual or collective wills, except when they clash with other similarly strong claims (which will, normally, be the rights of others).¹² A full theory of rights will explain how to deal with conflicts among rights, but that is not an issue that need detain us here. Why do people have rights? The purpose of rights is to protect certain interests that are so important for someone to be able to live a flourishing life that they merit strong protection. Being sheltered and nourished, for example, are so essential to human flourishing that they merit protection through some right. Some rights theorists will say that the right to make contracts in relatively free labor markets gives sufficient protection to these interests, while others will say that they merit protection through a direct right to shelter and nutrition. By contrast, although I spend a great deal of time listening to BBC (British Broadcasting Corporation) radio comedy, and value that activity greatly, it does not merit protection by a direct right to listen to the BBC. But my interests in equal standing in civil society, and being able to live my life according to my own evaluation of my own interests, each of which does support a right, combine to justify that I not be prevented from accessing, on the same basis as other people, whatever BBC radio comedy is available to be heard. So, for example, if it is broadcast free over the internet I should not be charged a fee or blocked from access if other similarly situated people are not; if recordings are on sale in the United States, I should not be prevented from purchasing them.

Different rights theorists offer differing accounts of the contribution of our various interests to flourishing and, hence, of the rights that people have. But it is useful to distinguish two particular kinds of interest that are generally taken to justify rights. Amartya Sen distinguishes rights that pertain directly to well-being, which he calls *welfare rights*, from rights to act on one's own judgments, which he calls *agency rights*.¹³ Welfare rights might include rights to sustenance, shelter, education and basic healthcare. Agency rights might include the rights to vote, marry, associate freely with others, to adhere to a religion, for example. Welfare rights are rights to certain sources of well-being, which sources are taken not to be distinctive at all but to be, broadly, the same for all. Health, and pursuant to that some level of health care provision, are needed by all, whatever their distinctive life plan. Some degree of education is required for people to judge among the various opportunities in life and (more importantly for current purposes) to pursue most plans of life. Without a subsistence level of income and access to shelter, it is impossible to pursue a long-term plan of how to live, as the starving man lives hand to mouth, not according to a plan. Our interest in these particular contributions to our well-being is very urgent, urgent enough to justify our claim to

12. Allen Buchanan, *What's So Special About Rights*, in LIBERTY AND EQUALITY 61-83 (E.F. Paul et al. eds., 1985); RONALD DWORIN, TAKING RIGHTS SERIOUSLY (1976).

13. Amartya Sen, *Rights and Agency*, 11 PHIL. & PUB. AFF. 3 (1982).

a right, and it can only be said that a right has been provided (for adults) if the state provides strong guarantees of access to these goods.

Welfare rights justify themselves in some strong sense. The starving man is starving: one does not need to point to some further absence in his life which is consequent on his starving to justify the claim that he is suffering a remediable loss of welfare. But welfare rights are also valuable for the exercise of agency rights (and many other things). If we are focused on meeting our urgent needs, we lack time, energy, and attention for other pursuits. Having welfare rights guaranteed frees us up to pursue our interests in agency.

For most adults, and for many children nearing maturity, one thing that contributes to their well-being (or welfare) is being able to act on their judgments about what to do. Our lives are profoundly affected by big decisions, such as whom and whether to marry, when and whether to have children, where to live, which of our talents to develop, which of our vices to battle at a particular time, and small decisions, such as what to have for breakfast, how many layers of clothing to wear, or which novels to take on holiday. In order for these projects and activities to be rewarding—to enhance our well-being—we usually need to identify with them from the inside.¹⁴ For this to be the case we usually need to have played some role in the authorship of the decision: judgment and choice are powerful mechanisms for inducing the identification normally required for the execution of a decision to serve our interests. Our lives will usually go better if we have considerable say in the authorship of those decisions, than if we have no say. This is not to imply that decisions are ever taken in circumstances entirely of our own choosing, nor to deny that many of them are taken in negotiation with others. To take an obvious example, we do not choose whether and whom to marry unilaterally, but choose in negotiation with our potential spouse or spouses.

The agency rights of adults have implications for the institutionalization of their welfare rights. For example, even though it is publicly knowable that a particular medical procedure has a very high likelihood of benefiting some adult, it is not permissible to override an adult's preference not to have the procedure. This is because among the agency rights adults have are the rights to forgo, for whatever reason, particular sources of welfare. Adults have a conception of their own good, which they have the agency right continually to review and pursue. If, in the light of this conception, an adult judges that a particular general source of welfare will not in fact, all things considered, enhance her welfare, she is permitted to waive the right to that source. Thus, many welfare rights are waivable as a matter of agency right.

Why do adults have the agency rights to waive many of their welfare rights, that is, to act against their own welfare interests? There are two basic strategies for answering this question.

14. See RONALD DWORKIN, *SOVEREIGN VIRTUE* (2000); WILL KYMLICKA, *LIBERALISM, COMMUNITY AND CULTURE* 162–81 (1989).

The more ambitious strategy, suggested by Kant's ethics¹⁵ (and developed, for example, by Tamar Schapiro in her contribution to this volume and another important paper)¹⁶ claims that it is the status of persons as moral agents that requires us to regard them as authorities over their own lives, regardless of whether they are likely to make better choices for themselves than other possible agents. Respecting someone's mature capacity for demanding reasons of themselves and of others as justifications of their actions demands of us that we accept their judgments about their good as authoritative. This is so even if it is demonstrably true that they would be better off (in terms of their welfare) acting on someone else's judgments. I find this strategy compelling, but it is not the strategy I shall pursue, because I want to explore another strategy which, if successful, is more likely to be found compelling by people who are not drawn to Kant's ethics.

The second strategy focuses on the person's well-being, and claims that, on the whole, adult persons are better judges of their own interests and how to advance them than other available agents and, in particular, the sense of identification people have with the actions they have themselves judged to be appropriate contributes importantly to their well-being.¹⁷ In general, for mature and competent persons, their sense of identification with their own life, and the activities involved in it, is more central to their overall well-being than any particular source of well-being on offer. It is better for them, usually, to pursue an activity with which they identify than one which goes against the grain of their fundamental commitments, even if the latter is, in some sense, objectively better. The agency right to waive particular welfare rights can thus be explained in terms of its contribution to the agent's welfare. To summarize, adults have welfare interests and agency interests. The rights we attribute to them are designed to protect both kinds of interest. But the rights we attribute to them are, in their nature, waivable by their own agency, because to deprive them of the ability to waive their rights would be to deprive them of the ability to act on their own judgments, and so identify with the course of their own lives.

V. CHILDREN'S RIGHTS¹⁸

So what about children? Children differ from adults in three crucial ways. First, they are profoundly dependent on others for their well-being, because they cannot negotiate the obstacles in the social world in such a way that their needs will be met. They are often not the best available judges of what will promote their own welfare, or their future agency interests, because they lack both access to

15. IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSICS OF MORALS* (Allen W. Wood trans., ed., Yale Univ. Press 2002) (1785).

16. Tamar Schapiro, *Childhood and Personhood*, 45 ARIZ. L. REV. 575 (2003); Tamar Schapiro, *What is a Child?*, 109 ETHICS 715 (1999).

17. This is the strategy I pursue here. For the most comprehensive elaboration of this strategy, see JOSEPH RAZ, *THE MORALITY OF FREEDOM* (1986).

18. This section draws on and develops the ideas in Harry Brighouse, *What Rights (If Any) Do Children Have?*, in *THE MORAL AND POLITICAL STATUS OF CHILDREN*, *supra* note 6 at 31–52.

information and the rational and emotional capabilities to process information and act on it. In particular, most children only develop certain rational and emotional capabilities (such as processing information and self-discipline) around the age of six or seven.¹⁹ Second, they are profoundly vulnerable to other people's decisions, both because they are dependent, and because they are raised, typically and for very good reasons, in families in which adults unavoidably have quite extensive de facto power over what happens to children.²⁰ Even if those on whom children are dependent are highly reliable with respect to their welfare, whenever something goes wrong it is normally because the decisions of another have failed. Third, unlike other persons who are dependent and vulnerable, children have the capacity to develop the capabilities to meet their own needs, those very needs for which they are dependent on others. The combination of these three features—dependence, vulnerability, and the capacity to develop into non-vulnerable and independent adults—makes children unique.²¹ That children combine these characteristics forces us to look more closely at the content of their interests and the structure of whatever rights they might have in light of those interests.

Figure 1 formally outlines the interests children have. Two distinctions are important. The first, which we have already encountered, is between their agency and their welfare interests. The second is between their immediate interests (the interests they have as children, and would have regardless of whether they were to become adults), and their future interests, which for present purposes are the interests they will have as adults. We know a good deal about children's immediate and future agency interests, and about their immediate welfare interests. Their future welfare interests are harder to discern because they are partly determined by the conception of the good life the child will come to have as an adult. Because of this problem, I have distinguished between those of their future welfare interests that are universal, and those that are particular, or dependent on their particular conception of the good.

19. For accessible and comprehensive accounts of recent findings on child development, see LISE ELIOT, *WHAT'S GOING ON IN THERE?: HOW THE BRAIN AND MIND DEVELOP IN THE FIRST FIVE YEARS OF LIFE* (2000) and ALISON GOPNIK ET AL., *THE SCIENTIST IN THE CRIB: WHAT EARLY LEARNING TELLS US ABOUT THE MIND* (2001).

20. See Adam Swift, *Justice, Luck and the Family: Normative Aspects of the Intergenerational Transmission of Economic Status*, in *UNEQUAL CHANCES: FAMILY BACKGROUND AND ECONOMIC SUCCESS* (Samuel Bowles et al. eds., forthcoming); Harry Brighouse, *Do Parents Have Rights?* (unpublished) (on file with author); Veronique Munoz-Darde, *Is the Family to be Abolished Then?*, *XCXIX PROC. OF THE ARISTOTELIAN SOC'Y* 37 (1999).

21. People in comas share these three characteristics, but what must be done to develop their capabilities is quite different—the aim is to restore normal functioning, not to develop it. Some people may argue that the comatose have at least the opportunity to have expressed their preferences concerning treatment while comatose in the light of their mature conception of the good. I am skeptical of this: so-called advance directives, depending as they do on judgments about one's response to extreme and unknown hypothetical situations, lack the authority that the response to actual situations has.

This map of children's interests is not only pertinent to questions about the attribution of rights, but also for those who are charged with protecting and promoting the interests of individual children. The parent or teacher should consult this map in making decisions about how to treat the child. We usually assume that a child's immediate and future interests align rather well, that is, we believe that a flourishing childhood is no barrier to, and even contributes to, a flourishing adulthood, so we usually do not think there are pressing trade-offs to be made between immediate and future interests. If this is so, it is not because there is some conceptual connection between immediate and future interests; it is just a fortuitous fact about human nature. Adequately meeting a child's immediate welfare interests generally does serve their future welfare interests, but it is also valuable independently of that service. Liberal political theorists often appear to focus almost exclusively on the child's future interests, but there is no reason to do this: a happy and flourishing childhood is valuable in itself, even if it does not contribute to a happy and flourishing adulthood.²² We can see this by imagining a tragic world in which happiness in childhood is a serious barrier to flourishing in adulthood. In such a world we would consider those individuals who managed to overcome the disadvantages normally caused by a happy childhood to be much better off, both in childhood, and in their lives as a whole, than those who followed the more reliable route to a flourishing adulthood of having a dreary childhood. Suppose, furthermore, that in such a world there is a very reliable correlation between the degree of dreariness in a childhood and the level of flourishing in adulthood. We would not think it obvious that a parent who imposed enormous amounts of dreariness on a child was a better parent than one who conceded a certain amount of enjoyment, even knowing that the child would pay for it later on.

Finally, because adults charged with a child's upbringing are ignorant of what particular conception of the good the child will come to have as an adult, and because human beings are fortunate that thriving in childhood tends not to undermine thriving in adulthood, they have compelling reasons to focus on a child's immediate welfare interests.

22. See BRIGHOUSE, *supra* note 3 (committing this error in my own discussion).

FIGURE 1. CHILDREN'S INTERESTS

Immediate Agency Interests

(Determined by service to future agency interests, especially personal autonomy. Includes increasing opportunities for agency as child ages.)

Immediate Welfare Interests

(Shelter, nutrition, loving care, etc. serve, but are also valuable independently of, future interests. Includes increasing opportunities for agency as child ages.)

Future Agency Interests

(Personal autonomy; ability to act on conception of the good, whatever that turns out to be.)

↗ *Particular* (Depends on mature conception of good.)

Future Welfare Interests

↘ *Universal* (Independent of mature conception of good.)

Because the attribution of welfare rights does not require us to say anything about who is responsible for ensuring that these rights are met, we can straightforwardly attribute them to children. Children have interests that can be publicly articulated and attributed to all—the interests in shelter, education, basic healthcare, and to be cared for by a loving adult. If children cannot claim the rights that protect these interests, as they cannot when they are young, this does not count against their being rights; it simply indicates that when the state institutionalizes the rights, it must clearly specify who are the trustees for which interests, and devise mechanisms for holding them accountable. When children do not have these interests met, some agent, or some collectivity of agents, is morally at fault. Typically the agents at fault do not include the child herself. Thus, there is nothing at all peculiar about attributing welfare rights to children, with the rider that these rights are specifications to adult agencies of what they are obliged to do for the children.

Agency rights are different. There are two senses in which one might attribute an agency right. In one sense the attribution says that the bearer of the right is entitled to develop the relevant capacities for agency, and that specified other agents are bound to do what is necessary for those capacities to develop. In this sense, notwithstanding their differences from adults, children have agency rights. So, for example, to say that a child has a right to religious freedom is to say that she is entitled to assistance in developing the emotional and intellectual resources needed for making reflective judgments about religious matters and acting on those judgments. Children have agency rights *in this sense*, and liberal political theorists have no more difficulty making such an attribution than they do in attributing welfare rights.

But this is not the sense we have in mind when we attribute agency rights to adults. In that case we are attributing the right to be the ultimate judge of how to act. Such an attribution is manifestly a bad way of protecting the interests of young children who, if they had the standard agency rights of adults, would jeopardize

both their current welfare and their prospective agency interests. Adults, unlike children, are equipped to gauge which are the relevant possibilities to consider and entertain, and to entertain them. Adults have many avenues for accessing help in considering possibilities and how to deal with them: novels, advice, and the ability to identify experts (plumbers, doctors, parents, policemen), for example. This allows them to prepare for many of the likely eventualities that will befall them. Children by contrast usually have only their parents. The resources available to them increase dramatically as they grow older (as long as their parents act responsibly); but this is as they near adulthood, and their situation becomes more like that of adults. Furthermore adults have, or at least have access to, self-knowledge which enables them to negotiate opportunities to their own advantage. Sometimes they fail to do this, because of weakness of will, bad luck, imperfect knowledge, or other adverse conditions, or because they conscientiously prioritize the advantage of others over their own. But in general they have the resources to understand and pursue their own advantage in action, where children often do not. It is not only concerning the life-shaping matters that children lack these resources, but also concerning relatively minor matters. They do not understand, for example, that if they forgo lunch they will be ill-tempered in the afternoon, or that if they get too cold they will want to stop playing and return inside, or that rough playing with the dog will trigger an asthma attack. These are matters where they lack the simple understanding of how their bodies work, the basic self-knowledge most adults have, or, in some cases, the self-discipline that enables them to weigh costs and benefits to their own short-term advantage. In other words, attributing adult-style agency rights to children jeopardizes the development of the capacity for critical reflection that is necessary in order for adult-style agency rights to be fully appropriate.

To some readers this claim will seem so obvious as not to need justification. Others will find it inflammatory. The most common objection to denying agency rights (in the first sense) to children is that some children are as competent with respect to their interests as are some adults.²³ And this is true. But young children are rarely systematically as competent as almost all normal adults, so it makes sense to deny them agency rights (or at least, many agency rights).

But surely, it might be objected, as children age some of them acquire the levels of competence that most adults have and exceed the levels of competence that many adults have with respect to the activities the agency rights govern. For example, some adults remain remarkably incompetent about their sexuality, while some children mature (in the sense of being competent to make good judgments about sex) before they are eighteen or even sixteen. Certainly with regard to politics, some fourteen year olds seem more able to judge well than many lifelong voters. There are really two problems here: some children exceed the threshold of competence which is used to set the age at which rights are conferred, and some adults persist, after the prescribed age, in falling below the threshold level of competence used to set that age.

Consider the first aspect of the problem. Even as they approach adult levels of competence it seems reasonable to deny children the pertinent agency

23. COHEN, *supra* note 2, at 11.

rights. The state is not equipped to judge all individual cases, and so has to have a general rule about when agency rights activate. Precocious children can be told, quite reasonably, that some rule is necessary, and that because it is generally recognized that competences develop with age, all they have to do is wait a bit before they can exercise agency rights. They are not like slaves, or women in patriarchal societies, who are denied agency rights and have no avenue for acquiring them.

Even when (presumably competent) children press the second problem as an objection—that there are adult bearers of agency rights whose level of competence demonstrably falls below their own—a response is available. On the interest theory of rights, persons have particular agency rights when they are sufficiently competent that they are better positioned than others to protect their own relevant (welfare and agency) interests.²⁴ When they are below that level of competence (i.e., when feasible institutional arrangements are available in which others are more likely to protect their agency and welfare interests better), they do not have the relevant rights. Adults are normally better positioned than others to protect their own interests both because they are normally more competent in the relevant matters, and because it is harder to devise alternative feasible institutional arrangements that will protect their interests even when they are at a relatively low level of competence. Parents are, by and large, well-placed both to discern and act on the interests of their non-adult children. By contrast even if parents are well-placed to discern the interests of their adult children they are not well-placed to act on them. Similarly, welfare agencies, though less well-placed to discern anyone's interests, are better equipped to promote the interests of children than the interests of similarly competent adults.

Before turning to a specific case I want to deflect two possible misunderstandings of the above comments. First, it is often observed, and correctly, that one needs to practice skills in order to develop them, and that therefore children should be given considerable latitude with respect to particular arenas of agency in order for them to become competent.²⁵ This is true, and because it is true, authoritative adults should take care to ensure that children are regularly put in positions in which they have opportunities to develop the competences that will enable them to be mature agents. It does not, however, bear on the attribution of agency rights. Furthermore, a responsible adult agency will not simply throw the child in the deep end, but will structure situations as far as possible so that there are limits to the risks posed to as-yet undeveloped agents. This is one of the moral burdens associated with being a responsible parent. Second, I should not be taken as saying that the state has no responsibility concerning where it sets the thresholds for rights attributions. We could not reasonably say to thirty-five-year-olds, as we can to sixteen-year-olds, that they only have to wait another couple of years before they reach the age of consent; or to twenty-one-year-olds that they have to wait another couple of years before they can vote. Governments have an obligation to set the age at which rights are

24. Robert Goodin & Dianne Gibson, *Rights, Old and Young*, 17 OXFORD J. LEGAL STUD. 185 (1997).

25. *E.g.*, DAVID ARCHARD, CHILDREN: RIGHTS AND CHILDHOOD 70–81 (1993).

conferred as close as possible to the age at which it is reasonable to expect most people to approximate the relevant competences.

I would like to turn now to a specific example that illustrates the way in which attributing adult-like agency rights to children in practice undermines their prospective agency interests, at least in a world in which families are the units in which children are raised (as I believe they should be). Consider Article 14 of the Convention, which asserts in its first clause: “Parties shall respect the right of the child to freedom of thought, conscience and religion.”²⁶ In this unqualified statement it seems that the right is equivalent to the similarly expressed right that liberals grant to all adults. Think about why this is implausible. Children are raised, usually, in families, by parents who have the power to restrict considerably the access children have to information about the variety of religious beliefs and practices available, and the kinds of reasons people have for participating in, or rejecting, those beliefs and practices. According to most liberal legal systems parents have unique rights to force their children to accompany them to their own religious practices. I can take my child to church with me, but no one else can take my child to their church without consulting me. Adults with the right to religion are, in a liberal society, not subject to any such restrictions. Young children are not, furthermore, capable of rich understandings of many of the phenomena to which religion is a response (sex and death come to mind). Granting children the right to freedom of religion (understood as a standard agency right) is tantamount to giving great power over religious development not to the children, but to their parents.

Of course, Article 14 has a second clause: “Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in exercise of his or her right in a manner consistent with the evolving capacities of the child.”²⁷ This clause gives explicit license to the parent to direct the child’s use of the right. This is a funny kind of right: in what sense is one’s conscience, or religious exercise, free, if another person’s will directs it? What appeared at first glance to be a right for one person turns out to be a license for another to direct that person. And it is hard to see, for the reasons invoked above, how else this purported right could be understood. Young children cannot reasonably be thought of as having their own religious commitments—their expressions of commitment almost invariably reflect those of their parents or some other authority figures. They simply do not have the complexity of belief or the wherewithal to evaluate reasons for belief that lend authenticity to their expressions of commitment. It is just not clear how the notion of a right to religious freedom illuminates anything about the moral circumstances of the child.

Before considering children’s voices, I want to highlight the most important features of the liberal critique of children’s agency rights that distinguish it from the communitarian and conservative critiques. The first is that the liberal critique places a very heavy weight on children’s agency interests, and considers those interests to be paramount in guiding the action of those authorized to have power over children. Granting children standard rights to religious freedom is

26. U.N. Convention on the Rights of the Child, *supra* note 5, at Art. 14.

27. *Id.*

problematic precisely because in practice (and, it appears, in the intent of the whole of Article 14) such a right is at odds with the child's interest in religious freedom—being able to engage on a mature basis with religious claims and practices, and being able to make her own religious judgements. The liberal critique does not claim that those authorized to raise children are licensed to place their own interests above those of children; to the contrary, the liberal critique makes child-rearing a morally onerous task. The rearer is morally bound to scrutinize her child's interests, figure out how to advance them, give them a certain priority over his own, and ensure that his own interests are not illegitimately influencing his judgments about the child.

The second feature distinguishing the liberal critique is that although for various reasons parents hold center stage in the task of child-rearing, they are not seen as the sole bearers of authority over children's upbringings. They share ultimate responsibility with other adults in society and with the state, which represents those other adults. Although parents are responsible for having had the children, and bear heavy responsibility for their upbringing, the liberal view does not abandon children to the resources of their parents. It insists that all adults carry some responsibility for ensuring that children have what justice requires for them.

VI. CHILDREN'S VOICES

This section examines three arenas of decision-making concerning which children's voices might be sought. The first concerns what they should do with their own time. The second concerns custody arrangements in divorce proceedings. The third concerns the government's child policy.

Let's start with a child's decisions about what to do with her own time. It might seem obvious that the child should have a great deal of latitude over this, and the parent who exerts a lot of control over her child's time may seem a bit of a tyrant. Certainly it is important for a child to have some latitude, that there are times built into the day that in some strong sense are hers, in order that she have a happy childhood and develop into a mature adult. Parenting is a complex business. A parent has obligations to siblings, a house to run, an income to earn, and a life to lead. The parent who allows these other aspects of life to crowd out the child's own time is doing something wrong. But the parent is entitled—indeed, with respect to siblings, obliged—to pursue these other tasks, and to some extent is entitled to deny the child what she wants to do with her own time when that renders the other everyday tasks difficult to perform. The child's interests in shelter, housing, and having a happy family environment are not well served by allowing her complete latitude over her time, but neither are the interests of the parent and siblings, which the parent must also take into account.

Consider, now, just those periods of time which we rightly consider the child's "own time." Should she be given complete freedom of choice concerning them? No. In the interests of the child it is completely reasonable for the parent to, for example, restrict television viewing and access to computers. Until the child reaches a certain level of maturity, it is reasonable for the parent to insist that the child is under adult supervision and to insist that she remain in "safe" zones. But surely the child should be able to choose her own friends? Again, by and large,

children should choose their own friends, even from an early age, and it is an unwise parent who allows *her own* likes and dislikes to determine which children her child plays with. However, again, most children at some point in their lives will befriend, or want to befriend, a child who is not good for them. The friendship cannot be forbidden, but it can be discouraged, either through open discussion (if the child is mature enough) or through various manipulative diversionary tactics, or both. One of these tactics is making it easy for the child to play with, and thereby have opportunities to befriend, a variety of other children. The parent cannot force the child to drink, but she can lead her to the water. Ultimately, the child who is in an emotionally destructive friendship is dependent on an adult agent to either get her out of it, or to help her minimize the damage it is doing. The parent cannot escape the responsibility for this.

Compare the responsibility one has to one's child in this respect with the way one is required to treat one's spouse. Certainly, one has a duty to, and will want to, help one's spouse either to reform or to extract herself from damaging relationships, and it is entirely permissible to have preferences among her friends that do not slavishly map her own. But one has no right to manipulate her with respect to these relationships, even for her own manifest good. Such disrespect would both signify and constitute a failure to take her seriously as one's equal. To fail to behave in this way with respect to one's child, by contrast, would constitute a serious abnegation of one's special duty of care.

The second arena of decision-making to consider concerns custody arrangements in divorce proceedings. Divorce is morally complicated. In some divorces both parties want the separation, and the negotiations concern only the settlement of the arrangement. In others, one party does not even want the separation. Because we place such importance on the voluntariness of one's associations with other adults, we are inclined to think that the default is that whoever wants a divorce can have it even when their partner objects, although we may think that in some cases compensation is owed.

Although we do not know precisely what effects divorce has on the future interests of children, we have pretty good evidence that it impacts negatively on their immediate interests. We know that children of divorced parents are significantly worse off, long term, than children whose parents are not divorced, but researchers cannot distinguish whether this is an effect of divorce or of being the child of parents with a relationship that ends in divorce as long as divorce is available. Either way, the fact that children of divorcing parents have worse prospects than those of non-divorcing parents gives their interests a particular urgency from the moral point of view. It is widely thought that their views should be taken into account when parents are considering post-marital arrangements. The question is, how should these views be taken into account? Should they be taken as consultative or authoritative?

This question obviously has far-reaching significance for judges who have authority over disputed custody arrangements. But judges typically have authority only when the parents themselves do not agree about custody arrangements. Many cases do not reach judges because parents are able to come to agreement about the arrangements. But the question matters even in those cases:

how should parents, in reaching their own agreements, take children's views into account?

In these cases children's views should be consultative. Adults have authority over this matter. However, this authority does not make adults' decisions easier, but more difficult, because in taking children's voices as consultative they take on the burden of not just finding out what the child wants, but finding out what is in its interests.

One might think that children's views cannot be authoritative because it will frequently be the case that they could not get what they want. This would be wrong. As we saw when discussing the example of democratic votes, not giving people what they want is quite consistent with taking their views of their own interests as authoritative. A child may want her parents to live together, and with her, just as an adult may want the divorce not to happen. In refusing this, her parents do not necessarily take her voice not to be authoritative as to her interests, any more than a court that grants a contested divorce is taking the voice of the dissenting spouse not to be authoritative. The child is not the only person whose interests are at stake—so are those of both parents, and any number of siblings. It may be impossible to grant everyone what they want, but this does not mean that any of their voices are thereby treated as merely consultative.

Why should children's voices be treated as consultative rather than authoritative in this matter? First, the children involved are, or should be, the least well-informed parties in a divorce. Whereas the divorcing spouses can be relatively well-informed about what led to the divorce and what the divorce and the changes it brings will mean for them, the children, not being party either to the marriage or the divorce, necessarily have less information. In particular, the parties to the divorce have a responsibility, generated by the child's interest in maintaining a secure and intimate relationship with each parent, not to divulge information that will lead the child to blame one parent rather than the other. But such information may be essential for the child to arrive at a well-informed judgment about the reasons for and likely effects of the divorce. If we are guided by children's interests, but want them to make informed judgments, we are in a bind, because it is in their interests not to have the information they would need to make an informed judgment.

Second, however much information the child has, she is not emotionally equipped to process it properly. It is not clear that a ten or thirteen-year-old has the maturity to make reasonable judgments about her own interests even in the absence of the trauma of divorce. In its presence, this is too much to expect. The responsible adult (the divorcing parents or, when they are in serious dispute, the judge) has the responsibility to find out what the child wants, why she wants it, and whether what she wants will, in fact, serve her interests well.

Think about the difference between taking an adult's judgment about the outcome of a divorce and a child's as authoritative. Suppose the divorce is precipitated by the choice of one adult to re-partner. The objecting spouse might well say something like this to the divorcing spouse: "I think she will be bad for you. You can go, though I would rather you didn't. It's your choice whether to try to work this out with me or to leave me for her. But if it does not work that's too

bad—don't expect me to want to have anything to do with you again." Consider a parent speaking in an analogous way to a child who has chosen to live with her divorcing spouse. It seems an utterly reasonable response to the divorcing spouse, but the person who makes the analogous speech to her child is morally reprehensible, and has failed completely in her special duty of care to her child.

While children's views about the custody arrangements after divorce proceedings should be consultative, this does not mean that they should necessarily be consulted explicitly. Robert Emery identifies a range of ways that consulting children's views explicitly can damage them emotionally.²⁸ Parents (and, when they have authority, judges) are obliged, when possible, to avoid damaging children emotionally. If parents can discern how best to serve the child's interests without directly consulting her views, when consultation is predictably damaging, that is preferable to explicit consultation, for the reasons Emery gives,

Finally, let us consider a far less personal issue, child policy. Every government has a child policy, regardless of whether or not it considers itself as having one.²⁹ European countries tend to be more explicit about their policies than the United States, and in most of the social democratic countries of Europe there is some form of direct financial assistance for parents.³⁰ But even the United States requires that children be subject to some form of education until age fourteen (and for the vast majority of children until age eighteen), and justifies its welfare policies in part by their effects on children. Children are "dependents" for tax purposes, so that at least those wealthy enough to pay taxes receive financial support. Most states allow children to drive at age sixteen, and allow schools to require "driver's education" courses, despite the evidence that both these policies raise the mortality rates on the roads. Nobody thinks of these measures as constituting a child policy, but policy by default is policy nonetheless.

To what extent should children be listened to in the formation of this policy? An immediate response, suggested by Richmal Crompton's brilliant satire in *William—The Hero*,³¹ written in Britain toward the end of the Second World War, is not at all. The ten year old William and his friends are discussing, and trying to formulate a child-oriented alternative to, the Beveridge Report:

"Well, first of all, they're goin' to have shorter hours," said William. "So we'll have 'em too."

"Longer holidays," said Ginger.

"*Much* longer holidays," said Henry.

"As much holidays as term," said Douglas.

"*More* holidays than term," said Ginger.....

28. See Emery's contribution to this volume, 45 ARIZ. L. REV. 621 (2003).

29. The British Prime Minister's office, for example, has a Family Policy Unit, and several European Governments have Cabinet ministers with direct responsibility for child or family policy.

30. The notoriously ungenerous British welfare state, for example, currently provides a tax-free child benefit of approximately \$25 per week for the first child and approximately \$15 per week for each subsequent child.

31. RICHMAL CROMPTON, *WILLIAM—THE HERO* (1972).

“An’ no afternoon school,” suggested Ginger.

“Yes, no afternoon school,” agreed William. “Afternoon school’s not nat’ral. Well, come to that, school’s not nat’ral at all Axshally, I don’t see why schoolmasters shouldn’t teach each other. It’d give ’em something to do *an’* serve ’em right. Still, we’ll be reas’nable.”³²

The boys go on to interpret “Higher Wages” as requiring “a shilling a week pocket money,” and “Better Conditions” as requiring “no Latin or French or Arithmetic.”³³ William points out, “[T]hey’re very particular about ‘Freedom from Want an’ Fear . . .’ We’ve gotter be particular about that, too.”³⁴ They dissect the demand. The boys will be free from fear if they have “no punishments and stay up as late as we like.” And Douglas says, perceptively:

“We need somethin’ more than a shilling a week to give us freedom from want. I bet I wouldn’t feel free from want—not *really*, not *honestly* free from want—without six ice creams a day.”

“*An’* bananas—when they can use the ships for bringin’ ’em again, ’stead of havin’ to carry guns an’ things all the time.”

“*An’* cream buns.”

“Yes, *an’* cream buns.”

“An’ bull’s eyes. Lots an’ lots of them. As many as we want.”³⁵

Crompton’s story indeed suggests skepticism about even consulting children on matters of policy. But it is fiction, and Article 12 of the Convention states that those children who are capable of forming their own views have a right to be heard. Bill Badham notes, too, that children want to be consulted about matters that affect them:

Their streets and neighborhoods, community safety, traffic, parks and play areas, rubbish, transport, training and jobs—these all affect them. They tell us so The Children’s Society’s *My Vote Counts Too* internet survey . . . used questions designed by children and young people . . . [t]he overwhelming conclusion was that they sought safer communities through reduction of violence, racism, drugs, and robbery: they wanted improvements in their physical environment and greater access to facilities. They wanted to be involved in making where they live a better place.³⁶

A subsequent Children’s Society study used a similar survey methodology to elicit the views of children about what would improve their lives in what is, by most government indices, one of the most deprived areas of the

32. *Id.* at 81–82.

33. *Id.* at 82–83.

34. *Id.* at 83.

35. *Id.*

36. Bill Badham, *Count Us In!*, CHILDRIGHT 1 (Mar. 2001).

United Kingdom.³⁷ The results are instructive for our purposes. Children aged seven to fourteen ranked a number of measures, in order of importance based on which measures they thought would improve their lives. These measures had themselves been elicited from a previous survey of children. Very high on the list are items like “parks that are safe and clean for children,” “stop vicious dogs running around” and “stop bullies in school.” Slightly lower, but still significant, is “an adult to talk to.”³⁸ The mention of reducing bullying confirms what adults already believe, which is that bullying is a fairly serious problem: its absence from the list would have been similarly informative. The concern with vicious dogs is also helpful, and many of the items on the list can be used to help direct micro-level interventions. However, the lowest item on the list, which ranks as the most unimportant thing in the children’s views, is “more teachers and smaller classes”³⁹ something that we have good reason to believe would serve their prospective welfare or agency interests well. Contrary to Crompton’s speculation, the list is very helpful as a consultation in that it can tell us (adults and policymakers) something about the lived experience of these children and what their priorities are. But the list does not *determine* our obligations toward the children.

The list is defective in two ways. First, the children fail to prioritize things that we know would enhance their future agency and welfare interests. Second, the children are systematically blind to measures that we know would improve their lives considerably, because they are not well-informed about the social processes governing poverty. Nowhere on the list is there mention of any of the following: tax policy; the Working Families Tax credit (the United Kingdom equivalent of the Earned Income Tax Credit); public transport; population densities; housing policy or housing conditions; unemployment; or, strikingly, poverty. The children, predictably, are astute about their immediate needs but, equally predictably, unsophisticated about the effects of macro-economic policy on their lives. The adult making sense of their views could, of course, try a bit harder to guide their thoughts by asking leading questions, and could probably get them to acknowledge that they would like to have more money. But this would be a process of trying to shape, rather than elicit, their responses. Furthermore, one of the researchers, a social worker who has long worked in the area, said flatly, “When you ask these kids who is poor, they say ‘not us.’ They think children in Rwanda are poor, not them.”⁴⁰ The policymaker who took the children’s own understanding of their situation and the needs to which it gives rise as authoritative would be doing something profoundly wrong. She would be evading her responsibilities in substituting their judgment for her own, and she would be failing to help take the children out of poverty, as justice demands.

37. MIKE JONES & TONY DOBSON, THE CHILDREN’S FUND—WIRRAL, CHILDREN’S CONSULTATION INTERIM REPORT, 16–32 (2002).

38. *Id.*

39. *Id.*

40. Interview with Mike Jones, author of THE CHILDREN’S FUND—WIRRAL, CHILDREN’S CONSULTATION INTERIM REPORT, *supra* note 37, during the Good Childhood seminar sponsored by the Children’s Society of the Church of England, at the British Academy (Feb. 4, 2002).

Most of the studies I have seen of children's views of their own needs have focused on children in poverty, or in some sort of need.⁴¹ I have not read, and there may not be, similar studies of privileged children. I suspect that such children often have a similarly distorted view of their own needs and position, not realizing how privileged they are, and believing that they need things (fancy physical plant in schools, skiing holidays in Vail, Colorado, for example) that they not only do not need, but to which they would not be entitled if justice were implemented. Again, taking their views of their needs as authoritative would be deeply wrong.

All of this probably seems obvious; in fact I hope that it does. But it is worth saying it to emphasize that underlying it is the view I have tried to defend, that children do not have agency rights: they do not have a right that their assessment of their interests should be taken as the one on which to act. In fact in some cases their trustee is obliged to disregard the child's assessment of her own interest and how to advance them, and to act against that assessment, because the trustee knows that she has better information about both than does the child.

VII. CONCLUSION

The recurring theme in the previous section is that adults have authority over children's lives, with that authority comes the responsibility to serve children's interests well, and if an authoritative adult takes a child's voice to be authoritative she is failing in this duty. Even if, ultimately, what the child wants is what she should get, it is not the case that she should get it because she wants it. The authoritative adult is obliged to take a further deliberative step after discerning the child's wants: discerning how well they will serve the child's interests. The view that children's voices are authoritative lets adults off the hook. It makes the task of rearing children implausibly easy. Parents, grandparents, teachers, judges, social workers, and policymakers do, indeed, have to attend to what children say. But they also have the much harder task of discerning what children need. That is why these roles are morally burdensome. It is also one of the reasons that they are so rewarding.

41. See, e.g., *supra* notes 2, 36 and 37.

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