

Parents' Rights and the Value of the Family*

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I. LIBERALISM AND RIGHTS

Fundamental to the many varieties of liberalism is some version of the idea that individuals have rights to control over their own lives, rights that may not be overridden except, perhaps, when they conflict with those of others, or to avert very great disasters. Variants of liberalism differ on exactly what these rights are and under what conditions they can properly be overridden. But the basic idea is undisputed.

Most liberals have made at least one exception. Children, especially when they are very young, do not have rights to control over their own lives. Some adult, or some combination of adults, may properly control their lives. Usually, in societies in which liberal ideals are prominent in the public culture, the adults authorized to exert control are the children's parents, either biological or adoptive. These adults do not have the power of life and death over the children—other adults hold them in check in various ways—but they are the primary bearers of authority over and responsibility for the children.

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It is natural to describe these adults as having rights over their children. They are legally authorized to exercise a great deal of discretion over the conditions in which their children are raised, the kind of education they will receive, what they will eat and do with their “spare time,” with whom they will play, and so on. But do they have rights in a more fundamental sense? If, for example, the state decided to redistribute children at, or soon after, birth, from what it deemed less suitable to what it deemed more suitable parents, would it be violating the rights of parents (as opposed to merely harming them or doing some wrong to the child)? If it interfered with parents’ ability to transmit their values to their children, would it be violating their rights? What if it prevented them from transmitting their wealth to their children?

In this article we argue that parents do indeed have rights with respect to their children.¹ This claim has two components. First, it is morally permissible for parents to pursue certain of their own interests at some cost to their children’s interests; it is wrong for the state (or anyone else) to prevent them from exercising that permission. Second, there are things that it is permissible for them to do to, for, and with their children that it is not permissible for anyone else to do; this exclusive situation is justified not merely by reference to the interests of the children but by reference to the interests of the parents themselves.

This claim may seem obviously true. We think that its truth is not obvious and that, though true, it supports far less than most people take for granted in thinking about parents’ rights. It does not, for example, imply that parents have a fundamental right to confer their wealth on their children, nor that they have extensive rights in transmitting their values to their children.² Furthermore, their rights are conditional on their succeeding in protecting their children’s interests up to a fairly high threshold. So although parents’ rights are, indeed, fundamental, they are conditional and limited.

II. CHILDREN AND THE TENSION IN LIBERALISM

Liberals have reason to be suspicious of the idea that parents have fundamental rights to direct the lives of their children. Liberalism

1. Describing the children with respect to whom parents have rights as “their children” does not commit us to the view that parents have such rights specifically with respect to their biological children (see Sec. VI). The rights in question are held by adults with respect to the children they parent. One question at stake in the article concerns what principles should determine the distribution of parenting relationships.

2. There may be other, efficiency-based, reasons for allowing parents to confer their wealth on their children and to invest in their human capital, in ways that violate fair equality of opportunity (as, e.g., Rawls understands it), but these reasons do not support considering this permission as a right. See Harry Brighouse and Adam Swift, “Equality, Priority and Positional Goods,” *Ethics* 116 (2006): 471–97.

takes individuals to be the fundamental objects of moral concern and takes the primary attributions of rights to be to individuals over themselves. Corporate entities are sometimes ascribed rights, and sometimes those rights are not in any straightforward sense reducible to the rights of the individuals who compose the corporate entity, but in liberal theory such attributions are usually taken to be in some sense secondary.³ Furthermore, such attributions usually try to avoid ascribing to some members of the corporate entity rights over other members. When such rights are ascribed, we are typically concerned that they be limited and that those subject to control have realistic options of exit from the corporate entity in question. But parental rights are rights over others, and they are rights over others who have no realistic exit option.

The standard model of thinking about rights sees them as instruments for protecting people's abilities to make what they can of their own lives. Usually, then, rights over others are justified only by appeal to the interests of those others. So, for example, elderly parents sometimes give power of attorney to their adult children for various purposes, but the person with power of attorney is charged with pursuing the interests of the elderly parent. The relationship is purely fiduciary. The agent directs the affairs of the principal but has been appointed, and usually briefed by, that principal and is guided by the principal's best interests. Liberalism has no other example than the relationship between parents and children where rights over others are considered fundamental, in the sense that they are justified, at least in part, by the interest of the right holder.

Young children are entirely dependent and incapable of having formulated or previously expressed views about what their interests are. So the oddness of ascribing rights over them to parents cannot be decisive. The standing of children reveals tensions between two values to which liberals are committed, and which are usually congruent.⁴ The principle of toleration says that we should not interfere with the moral beliefs and practices of others, as long as the practices that emanate from those beliefs do no harm to nonconsenting others. The principle of autonomy says that every individual should have the internal resources

3. For accounts of group rights that nonetheless subscribe to ethical individualism, see, e.g., Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986); Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Oxford University Press, 1989).

4. This is not to say that all liberals accept both. William Galston, e.g., explicitly argues against the commitment to autonomy in "Two Concepts of Liberalism" (*Ethics* 105 [1995]: 516–34).

and skills necessary rationally to evaluate and revise her own commitments and practices.⁵

Tolerating people in the sense described usually expresses respect for their autonomy; coercing them, without justification in terms of harm to nonconsenting others, violates both their autonomy and the prohibition on intolerance. But the claim of parents to raise their children as they see fit, even in ways that will inhibit the development of their children's capacity for autonomy, throws the tension into sharp relief.

Three strategies are available. One is to decide straightforwardly in favor of autonomy. Children are, obviously, nonconsenting others. The principle of toleration does not extend to tolerating practices that are harmful to nonconsenting others. So we can regulate child rearing to promote autonomy without being intolerant. Although this is the strategy that we will ourselves pursue, it is problematic because it is so hard to prize apart the lives of parents from the lives of children while children are being raised, and because (as we will argue) the specific interest parents have in having a certain kind of relationship with their children is extremely powerful.

The second strategy, deciding in favor of toleration, is also problematic. One version simply denies that children have a fundamental interest in developing their capacity for personal autonomy. Loren Lomasky, for example, claims that we have a fundamental interest only in becoming independent project pursuers. Children therefore have an interest only in becoming nonservile, which does not support the principle of autonomy. Proponents of this variant of the strategy must deny that the principle of autonomy is required to support the principle of toleration—so Lomasky uses an apparently weaker idea of nonservility to support it. Another version accepts the fundamental interest in developing the capacity for autonomy but claims that the interest of parents in being tolerated trumps this interest of children when they conflict.⁶

5. This commitment is elaborated in, among many others, Eamonn Callan, *Creating Citizens* (Oxford: Oxford University Press, 1997); Amy Gutmann, *Democratic Education* (Princeton, NJ: Princeton University Press, 1987); Steven Macedo, "Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?" *Ethics* 105 (1995): 468–96; Harry Brighouse, "Civic Education and Liberal Legitimacy," *Ethics* 108 (1998): 719–45.

6. William Galston equivocates between this strategy and the one described in the next paragraph. Though he rejects the principle of autonomy, Galston ingratiate himself with the proponent of autonomy by giving evidence that his favored policy of granting parents extensive rights to control their children's moral and religious development will have less deleterious effects on the children's prospective autonomy than secularists usually suppose. See William Galston, *Liberal Purposes* (Cambridge: Cambridge University Press, 1991).

The most promising variants of this strategy recognize the separateness of parent from child. But they face two problems. First, it is hard to give a full enough account of nonservility and autonomy to show how, exactly, they are distinct. More seriously, they do not in fact give any explanation of what rights parents have, why they have them, or what weight they should be given when they come into conflict with other principles. They tell us that when parental control conflicts with the value of nonservility, parental control must give way, and that when autonomy comes into conflict with parental control, autonomy must yield, but not what happens when parental control conflicts, for example, with fair equality of opportunity.

A third strategy denies the conflict. Proponents of this strategy point out (rightly) that autonomy can only be learned and practiced by children who have the emotional security provided by loving and caring parents, and these proponents argue that the deeply religious ways of life that most trouble liberals in fact contain ample opportunity to learn the skills associated with autonomy.⁷ There may well be something to this strategy in many cases, but it cannot always succeed. Conflicts can and do arise, and a full liberal theory of the family needs to have something to say about how to resolve them when and if they do.

We are not satisfied with the accounts offered by those pursuing any of these strategies. In order to determine what rights, if any, parents have, a substantive investigation of the goods at stake in the parent-child relationship is needed. What is it about the value of the family, and the parent-child relationship in particular, that makes it so important to protect it with rights, and what rights are needed to protect it? Only after answering these questions can one know the appropriate scope of toleration (with respect to parents) and the appropriate weight to give it relative to the principle of autonomy (with respect to children).

III. NON-PARENT-CENTERED ARGUMENTS FOR PARENTAL RIGHTS

A familiar, and powerful, argument for granting parents extensive permission to direct their children's lives, and for protecting them from interference by the state, focuses on the interests of children. The argument runs as follows. The nuclear family, or something like it, is the institution best suited to meeting children's interests. In order for the

7. This is the strategy pursued by Shelley Burt, and, insofar as Rawls has a strategy, it seems to be his as well. See Shelley Burt, "What Children Really Need: Toward a Critical Theory of Family Structure," in *The Moral and Political Status of Children*, ed. David Archard and Colin MacLeod (Oxford: Oxford University Press, 2002), 231–52, and "Religious Parents, Secular Schools: A Liberal Defense of an Illiberal Education," *Review of Politics* 56 (1994): 51–70.

institution to work well for children, people must have incentives to be parents and to be the kind of parents who will do well by their children. The more regulation, monitoring, and outside control parents face, the less they will enjoy parenting and will have a sense that it is serving their own flourishing and well-being. It will therefore be less appealing, and children may suffer relative to a regime in which parenting is a less regulated and monitored activity.⁸ One variant of this view conjectures that people will invest more in meeting the interests of children who are biologically their own, and so argues that redistributing children from their biological parents to other “more suitable” parents will not be an effective policy. For some, then, the biological nuclear family, with parents having extensive rights over their children’s lives, is important as an institution for promoting children’s interests.⁹

A second kind of argument appeals to the public goods created by good parenting. Well-raised children are public goods in many senses. Taxing their future income helps us to provide for the retirements of parents and nonparents alike. Their future participation in the economy as workers and consumers secures the long-term planning of the current generation of workers and consumers. Their future participation in public affairs contributes to goals that current adults have for the future. Some versions of this argument focus on how parental rights help to secure parental investment in children. Others conjecture that, without extensive powers and freedoms, parents will be unable, even if willing, to raise their children well. Still others focus on less tangible public goods than economic benefits and social order. Veronique Munoz-Darde, for example, develops an argument, which she attributes to Bertrand Russell, that the family (with the substantial array of parental rights that it involves) is necessary for maintaining the background of diversity against which people can make a wide range of choices about how to live.¹⁰ Another variant claims that the family is causally necessary for, if not itself constitutive of, a just society. One might, for example, regard personal liberty as the central value of political justice and regard the

8. Examples of this child-centered approach include Robert Noggle, “Special Agents: Children’s Autonomy and Parental Authority,” in Archard and MacLeod, *The Moral and Political Status of Children*, 97–117; Samantha Brennan and Robert Noggle, “The Moral Status of Children: Children’s Rights, Parents’ Rights, and Family Justice,” *Social Theory and Practice* 23 (1997): 1–25; Ian Shapiro, *Democratic Justice* (New Haven, CT: Yale University Press, 1998), chap. 4; and perhaps John Locke, *The Second Treatise of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), chap. 6.

9. This is an empirical conjecture, not an established fact, and it would be hard to establish it without doing morally impermissible experiments. Our argument in this article shows why the necessary experiments would be impermissible.

10. Veronique Munoz-Darde, “Is the Family to Be Abolished, Then?” *Proceedings of the Aristotelian Society* 99 (1999): 37–56.

family as necessary for the kind of moral development that will produce citizens capable of respecting the liberties of others. Parental rights, then, are not owed to parents in their own right but must be granted them in order to reproduce justice over generations.¹¹

We mention these arguments not to reject them—they may indeed provide good reasons to give parents legal rights and powers with respect to their children—but simply to distinguish them from our own. These arguments fail to show that parents have any fundamental rights with respect to their children, because they focus exclusively on the ways that the family benefits children or third parties. Interference in family life, in what parents do to and with their children, is bad, on these accounts, but it is, ultimately, bad for children, or for other people, not for parents. Our argument gives parents' interests the kind of status that these arguments rightly give to the interests of children and third parties. On our view, the interests of parents count, too, and justify some prohibitions on state intervention even when that intervention would reliably promote the interests of children or society in general.

IV. RESTORING THE PARENTS TO THE PICTURE

The child-centered and public-goods accounts of the status of parents both leave open the possibility that it could be legitimate to redistribute children en masse. Consider the child-centered account; if all that matters is ensuring that children's interests are met as well as possible, then children should be distributed to those people judged most likely to raise them best. If parents' interests play no justificatory role, what would there be to impugn a well-intentioned and efficient government agency that distributed the children, who under a *laissez-faire* system would be reasonably well raised, to adults who would be better parents, thus leaving some adequately good parents childless? The analogous question arises with respect to the public-goods account. State institutions might be better than parents at raising economically productive good citizens. Reasonable skepticism about the efficiency and good will of the hypothetical agency does not settle the moral question. Would there be fundamental moral reasons for objecting?

We think that there would. In our view, children have a fundamental interest in developing the capacity to be autonomous and have other temporary and developmental interests that the state is obliged to guarantee. We agree, too, that there is a legitimate public interest in the way that children are raised. But these interests leave room for parental rights that are genuinely fundamental, though both limited and con-

11. This is Jennifer Robak Morse's view in "No Families, No Freedom: Human Flourishing in a Free Society," *Social Philosophy and Policy* 16 (1999): 290–314, and also in *Love and Economics: Why the Laissez-Faire Family Doesn't Work* (New York: Spence, 2001).

ditional. We will give an account of the parental interest in the parent-child relationship that we believe justifies some such rights. The parent-child relationship is, indeed, a fiduciary relationship, but it is not exclusively fiduciary, and parents, as well as children, have an interest in its fiduciary character. Coming down on the autonomy side of the tension between autonomy and toleration does not require that we deny that there are (fundamental) parental rights; conversely, granting parental rights does not require denying the child's interest in autonomy.

We have said twice that parental rights are fundamental, conditional, and limited. What is it to say that a right is fundamental? We shall define a right as fundamental if it is owed to a person in virtue of their simply being a person, and its justification is grounded in the benefits it will bring to that person and not to others. The obvious examples, uncontroversial among liberals, would be the rights to freedom of conscience and of association. More controversial would be the right to vote in free and fair elections.¹² The contrast here is with rights that are merely instrumental: a right the recognition of which is desirable because it helps to protect some other rights that are fundamental, or because it benefits someone other than the right holder. We suspect that the right to a jury trial is like this; it is not fundamental but is desirable because it is the best way of protecting the (fundamental) right to due process. The theories mentioned in the previous section make parents' rights merely instrumental in this way. Our claim is that, although there may be sound instrumental justifications for parents' rights, these do not exhaust the case for them: there is a parent-centered case for some parents' rights.¹³

Any liberal theory is going to have to make parental rights conditional in some way on the interests of the child being sufficiently protected (though liberals will differ over what counts as sufficient pro-

12. John Rawls seems to regard these rights as fundamental; see his *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 224–27. Richard Arneson is against seeing them as fundamental in “Democracy Rights at National and Workplace Levels,” in *The Idea of Democracy*, ed. David Copp, Jean Hampton, and John Roemer (Cambridge: Cambridge University Press, 1994), 118–48, and in “Democracy Is Not Intrinsically Just,” in *Justice and Democracy*, ed. Carole Pateman, Keith Dowding, and Robert Goodin (Cambridge: Cambridge University Press 2004), 40–58.

13. Our use of ‘fundamental’ does not imply that the right, itself, is of fundamental importance, relative to other rights. Among fundamental rights there may be some that really are fundamentally important in the more intuitive sense of fundamental (such as the right to life) and others that are not (such as the right to vote in free and fair elections). There may also be rights that, though not fundamental in our sense, are of extreme moral importance and urgency. Furthermore, in saying that some rights are fundamental we do not mean to imply a rights-based political morality. Our use is consistent with the theories of rights on which they are moral constructs designed to protect interests, which are the truly fundamental moral considerations.

tection). This seems to have led some theorists to think that there cannot be fundamental parental rights—because fundamental rights must always be unconditional.¹⁴ But there are many rights, normally regarded as fundamental in our sense, that are held conditionally. The rights to vote, to freedom of association, and to free expression are all conditional on the individual claiming them not having committed a serious crime. Some kinds of criminal forfeit many rights, at least temporarily. Not all rights are forfeited (e.g., the right against cruel and unusual punishment and the right to freedom of conscience), but this is not usually thought of as evidence that these are the only fundamental rights we have. To be sure, the conditionality of parental rights is somewhat different from that of other fundamental rights. The threshold is different. Mere non-feloniousness is usually a much easier condition to realize than is ensuring that one's children's interests are met to some high threshold.¹⁵ But the difference seems appropriate. It seems reasonable to give great weight to the interests of vulnerable people who are involuntarily in the care of others.

Finally, we have said that the rights are limited in scope. Views about the content of parental rights fall along a continuum, granting parents less or more extensive bundles of rights. A nice example concerns schooling. Some liberals believe that parents have extensive rights with respect to what kind of schooling their children should receive and even whether they should receive it at all. They are apparently supported in this by various international human rights documents, such as the International Covenant on Economic, Social and Cultural Rights, which asserts that parents have the liberty to “ensure the religious and moral education of their children in conformity with their own convictions,” and U.S. Supreme Court decisions such as *Wisconsin v. Yoder*.¹⁶ Other liberals deny such extensive rights over education, claiming that no parental right is violated when children are required to attend public schools and to learn from a curriculum designed to teach them substantive values, possibly in conflict with those of their parents, and to facilitate their personal autonomy.¹⁷

The view that parental rights are fundamental is commonly coupled with the view that such rights are extensive. In fact, some theorists appear

14. See James Dwyer, *Religious Schools versus Children's Rights* (Ithaca, NY: Cornell University Press, 1999), chap. 4.

15. We say “usually” because an editor pointed out to us that the relative ease is dependent on context; the social environment could be so constructed to make it extremely difficult for at least some people to resist felonies.

16. For this view, see William Galston, *Liberal Pluralism* (Cambridge: Cambridge University Press, 2003), chaps. 8 and 9. For the International Covenant, see http://www.unhchr.ch/html/menu3/b/a_ceschr.htm.

17. See Callan, *Creating Citizens*, chap. 6.

to believe that establishing the former means establishing the latter. Charles Fried's comment that the right to "form one's child's values, one's child's life plan, and . . . to lavish attention on that child" is grounded in the "basic right not to be interfered with in doing these things for oneself" suggests this.¹⁸ But fundamentalness and extensiveness are quite distinct. It is possible to think that parents should be granted quite extensive rights over their children, but for reasons that are entirely instrumental. It is also possible to hold that parents' interests justify some conditional, fundamental rights over their children but that these rights are quite limited, that more extensive rights can only be justified instrumentally, and that there are quite strict limits even on instrumental parents' rights. Indeed, that is the view for which we will argue.

V. THE PARENT'S INTEREST IN INTIMACY

Our argument for fundamental parents' rights draws on a paper by Ferdinand Schoeman. In this section we outline his argument and explain why it fails. In the next section we correct it.

Schoeman's argument proceeds in two stages. He argues first, and generally, that the state should facilitate our interest in having intimate relationships with others. He then argues, in particular, that this interest must be facilitated by the state's not interfering with parents' having intimate relationships with their children. The argument for the first conclusion seems sound. While we agree with the second conclusion, his argument for it seems wrong, and even if it worked it would not be the kind of argument that would support the claim that parents' rights are fundamental.

Schoeman claims that relationships involving personal commitments to others give meaning to our lives. They constitute, as he says, our "roots in life." Intimacy is, in turn, a necessary part of any such relationships.¹⁹ But intimate sharing presupposes that the parties to the relationship have (admittedly limited) sovereignty over the terms of the relationship. If outsiders control the terms of the relationship, then the conditions for intimacy are jeopardized. If you think that an outside agent is monitoring, or dictating the terms of, a relationship, you cannot be sure of your own views or motives, or those of the person the relationship is with. So without privacy and autonomy, the relationship would be neither secure nor "on the parties' own terms."²⁰ But deep

18. Charles Fried, *Right and Wrong* (Cambridge, MA: Harvard University Press, 1976), 152.

19. Ferdinand Schoeman, "Rights of Children, Rights of Parents, and the Moral Basis of the Family," *Ethics* 91 (1980): 6–19, 14.

20. *Ibid.*, 14–15.

and authentic attachments between parents and children are vital for the well-being of both parties. Since intimacy is central to the significance of the family relationship, the state should absent itself (except where some threshold of treatment is not met).²¹

The argument so far provides a child-centered reason to ensure that children have adults with whom to have intimate relationships (their well-being is at stake). It also provides adult- and child-centered reasons to ensure that already established parent-child relationships be permitted (disruption would damage the well-being of both parents and children). But it provides no reason to ensure that such relationships are permitted to develop in the first place. As we have pointed out, child-centered reasons could justify distributing children to the most suitable parents, and adult- and child-centered reasons converge on justifying the maintenance of whatever relationship thereby occurs. But there is no adult-centered reason here to justify allowing adults (who might not, from the child-centered or public good perspectives, be the most suitable adults) to develop parental relationships with children.

If it is just intimacy per se that gives vital meaning to our lives, then adults could secure this through intimate relationships with other adults. Children could be redistributed at birth to other, perhaps more suitable or qualified, adults with whom they could have equally or more beneficial intimate relationships. So why should adults be allowed to establish intimate parental relationships specifically with children? Schoeman's answer is essential to his case: the redistribution of children suggested "does or may preclude such kinds of intimacy [with children] for those who are determined by social criteria to be not maximally fit or maximally competent to really provide children with all that they need or can use."²² He later puts it a different way: "To set terms for emotional parenting more stringent than required for the protection of children from abuse and neglect constitutes an interference in a person's claim to establish intimate relations except on society's terms."²³

This argument trades on an equivocation. Schoeman says that individuals' opportunities for intimate relationships must not be conducted on "society's terms" or in line with "social criteria." But the liberal who regards parental rights as instrumental does not seek to regulate parenting by "society's terms" if what is meant by that is "the standards

21. *Ibid.*, 15–16. For another account of the value of intimacy leading to a similar conclusion, see Schrag, "Justice and the Family."

22. Schoeman, "Rights of Children, Rights of Parents, and the Moral Basis of the Family," 16.

23. *Ibid.*, 17. And even later: "It must not be up to society in general, without there being some special cause, to decide whom one can relate to and on what terms. Other things being equal, parents consequently are entitled to maintain their offspring and seek meaning with and through them" (17).

a society would democratically adopt.” The issue of parental discretion is, for liberals anyway, what Ronald Dworkin would characterize as a “choice-insensitive issue.”²⁴ Parents and democratic decisions must both be judged against objective standards. The liberal will share revulsion at the idea of society having license to determine democratically the terms on which people can associate with their children but will nevertheless claim that there are firm and binding standards given by justice and that society should set those standards, and not any other, in law.

Schoeman’s problem, then, is this. The child-centered liberal justification for extensive intervention in the family is not based on standards that are choice sensitive, but on objective standards, grounded in the developmental and (sometimes) temporary interests of the children. Schoeman is right in saying that it would be wrong for society to intervene on its own standards, if those standards are arbitrarily chosen. But the child-centered argument for redistribution does not propose arbitrary standards, and if redistribution left some adequate would-be parents bereft of children, their interest in having intimate relationships on their own terms could still be fulfilled through relationships with other adults.

VI. FUNDAMENTAL PARENTS’ RIGHTS

How might an argument appealing to the value of intimate relationships succeed in vindicating parental rights as fundamental? Schoeman’s account fails to note the differences in quality between the intimate relationship adults can have with each other and those that they can have with the children they parent. He is driven to the second, flawed, part of his argument by observing, correctly, that adults can have intimacy with other consenting adults and so, it seems, do not need to have intimate relationships with children in order to have the intimacy so important to human flourishing. Schoeman is not alone in this. James Rachels’s defense of modest parental partiality toward children similarly appeals to the idea that “loving relationships are personal goods of great importance. To love other people, and to be loved in return, is part of what is involved in having a rich and satisfying human life.”²⁵ John Cottingham defends partiality toward loved ones on the grounds that “it is an essential ingredient in one of the highest human goods.”²⁶ In addition, it makes no distinction between relationships with children

24. Ronald Dworkin, *Sovereign Virtue* (Cambridge, MA: Harvard University Press, 2000), 198.

25. James Rachels, *Can Ethics Provide Answers?* (Lanham, MD: Rowman & Littlefield, 1997), 223.

26. John Cottingham, “Partiality, Favouritism and Morality,” *Philosophical Quarterly* 36 (1984): 357–73, 369.

and relationships with “wives, husbands, brothers, sisters, close friends and lovers.”²⁷

But the relationships that adults have with the children they parent are not merely additional intimate valuable relationships, which contribute to their flourishing in the same way as their relationships with other adults. They have a different moral quality, make a different kind of contribution to their flourishing, and so are not interchangeable with other relationships. It is not because people have a right generally to determine relationships on their own terms that the government is wrong to intervene to prevent parent-child relationships. They do not have this right; in fact the relationships between parents and children are governed by stringent and nondiscretionary moral norms. It is wrong to intervene, instead, because this is a different kind of relationship from those with adults, and one to which parents can claim a right.

Let us look at the relevant ways in which the relationships differ. First, obviously, they are not relationships among people with equal power or standing even in the minimal Hobbesian sense. Children are vulnerable to the decisions and choice making of their primary caretakers and, initially, wholly dependent on them for their well-being. Parents have power of life or death over their children, and this is not, at least when the child is young, reciprocated. But, more importantly, and less spectacularly, they have the power to make their children’s lives miserable or enjoyable (within limits, at least at the enjoyable end). We do have these powers over those with whom we engage in adult relationships, but they are usually, to some extent, reciprocal.

How reciprocal depends, of course, on the dynamics of the relationship and the background against which it is played out, but in adult-adult relationships with very unequal power, the less powerful person usually has, or should have, the power to exit the relationship by his or her own choice. Where they do not, we usually think that there is something quite wrong. So this leads us to a second difference between intimate relationships between adults and those between an adult and a child: the power to exit the relationship. Whereas adults have the power to leave relationships with other adults, children lack this power with respect to their primary caretakers, at least until they reach sufficient age to escape (which age will be culturally sensitive, since different societies will monitor and enforce parental power with different levels of enthusiasm and effectiveness). Whether parents have the power to exit the parent-child relationship depends, of course, on social arrangements and also on how closely they bond to the child. But, as Anne Alstott points out, although we think that parents have a powerful obligation not to exit the relationship, our social arrangements in con-

27. *Ibid.*, 369.

temporary liberal democracies typically give them considerable powers of exit, because the social steps required to block the option of exit would be extremely costly if not impossible (though typically, in modern societies, fathers have had considerable de facto powers of exit, mothers much less).²⁸ Again, we do not mean to suggest that all adult-adult relationships are characterized by equal power to exit, or even that in all such relationships there is one person who has the power to exit. The difference between the relationships is that young children have no resources whatsoever to exit, whereas adults usually have, or should have, some resources to execute departure from their intimate involvement with other adults.

These two features are not unique to this relationship. The prisoner is vulnerable to the warder in a way that the warder is not to the prisoner, and the powers of exit are similarly asymmetrical.²⁹ So it is only in combination with other facts about the relationship that they shape its character so as to make it a distinctive and vital contributor to our well-being.

The third feature concerns the quality of the intimacy of the relationship. The love one receives from one's children, again especially in the early years, is spontaneous and unconditional and, in particular, outside the rational control of the child. She shares herself unself-consciously with the parent, revealing her enthusiasms and aversions, fears and anxieties, in an uncontrolled manner. She trusts the parent until the parent betrays the trust, and her trust must be betrayed consistently and frequently before it will be completely undermined. Adults do not share themselves with each other in this way: intimacy requires a considerable act of will on the part of adults interacting together. But with children, while parents are prone to spontaneity and intimacy, their fiduciary obligations often require them to be less than wholly spontaneous and intimate (despite the child's unconditional intimacy with the parent). The good parent masks sometimes her disappointment with, sometimes her pride in, her child, and often her frustration with other aspects of her life. She does not inflict on the

28. Anne Alstott, *No Exit: What Parents Owe Their Children and Society Owe Parents* (Oxford: Oxford University Press, 2004), 45: "Society only has limited means at its disposal to secure continuity. Our laws and institutions can encourage continuity, but they cannot compel the intimacy and care that are its foundation." Our claim that men have considerably more power to exit the relationship does not imply any legal asymmetry; men and women typically have the same legal rights of exit. But we believe that more fathers than mothers have the internal resources that enable them to break the relationships with their children (or, to put it more contentiously, more women than men have the emotional capacity to maintain such relationships) and that more men than women who abandon their children are able to find ways of doing so that avoid social stigma.

29. We are grateful to Rob Reich for this analogy.

child, as the child does on her, all her spontaneous reactions or all her emotional responses.

So far we have outlined the moral burden on the parent imposed by these differences between parent-child and adult-adult intimacy. It is valuable to meet this distinctive moral burden. But along with the moral burden come distinctive sources of satisfaction of a much less complicated kind. There is the enjoyment of the love (both the child's for oneself and one's own for the child) and the delight in the observations the child makes about the world: the pleasure (and sometimes dismay) of seeing the world from the child's perspective; enjoyment of her satisfaction in her successes, and of being able to console her in her disappointments.

The final difference concerns the moral quality of the relationship. The parent is charged with responsibility for both the immediate well-being of the child and the development of the child's capabilities. This is the fiduciary relationship emphasized by the child-centered argument for parental power. The child has immediate interests in being kept safe, enjoying herself, being sheltered and well nourished, having loving relationships with others, and so on. She has future interests in many of these same things, but also in becoming the kind of person who is not entirely dependent on others for having her interests met and the kind of person who can judge well and act on her interests.³⁰ The parent's fiduciary obligations are to guarantee the child's immediate well-being and to oversee and ensure her cognitive, emotional, physical, and moral development.³¹ Meeting these obligations often involves the parent in coercing the child to act against her own will, and often in manipulating her will so that it accords with her interests. The parent might, for example, lock away the bleach so the child cannot get at it, even though she has displayed great interest in it, or prevent her from having a third helping of ice cream, on the grounds that neither the bleach nor the ice cream will serve her interests. The parent might persistently serve whole grain pasta in the face of the child's frequent (and reasonable) complaints that it is tasteless, in order to habituate her to frequent intake of whole grains. The parent might engineer the child's social life in order to diminish the significance of a destructive friendship. Although in relationships with other adults we are obliged

30. For an elaboration of these interests, see Harry Brighouse, "What Rights (If Any) Do Children Have?" in Archard and MacLeod, *The Moral and Political Status of Children*, 31–52.

31. The precise content of the obligations the parent has to the child is hard to specify independently of social context. What constitutes adequate care for a child's cognitive development, e.g., depends on how much cognitive development is needed in a particular society in order to have a successful life in that context. Parents in preliterate societies may have less to do in this respect than parents in complex modern societies.

to take their interests into account, we do not have fiduciary responsibilities of this kind toward them. Indeed, if one saw one's relationship with, say, one's spouse, in this way, one could reasonably be accused of being overbearing, disrespectful, or unloving. One advises one's spouse, and one's friends, and even argues with them, but one does not routinely coerce and manipulate them, even in their own interests. To do so would be to fail as a spouse or friend, just as to refrain from doing so with one's children would be to fail as a parent.

The parent's fiduciary role has been widely acknowledged since Locke.³² The point we are making here, however, is parent-centered. Parents have an interest in being in a relationship of this sort. They have a nonfiduciary interest in playing this fiduciary role. The role enables them to exercise and develop capacities the development and exercise of which are, for many (though not, certainly, for all), crucial to their living fully flourishing lives. Through exercising these capacities in the specific context of the intimately loving parent-child relationship, a parent comes to learn more about herself, she comes to develop as a person, and she derives satisfactions that otherwise would be unavailable. The successful exercise of this role contributes to, and its unsuccessful exercise detracts from, the success of her own life as a whole.³³

The other features of the relationship that distinguish it from other intimate relationships also shape the fiduciary role. If children could easily exit the relationship into another that would adequately meet their needs, then that would reduce their parents' level of responsibility. If they were not vulnerable to parental decisions, then fulfilling the fiduciary obligations would demand less of the parent and play less of a role in the development of her character. So, while the nonfiduciary interest in playing a fiduciary role is a key interest, the other features of the relationship are significant for the importance of that interest.

32. Locke says that "parents were, by the Law of Nature, under an obligation to preserve, nourish, and educate the Children they had begotten; [though] not as their own Workmanship, but as the Workmanship of their own Maker, the Almighty to whom they were to be accountable for them" (Locke, *Second Treatise*, par. 56). Contemporary theorists who emphasize the fiduciary interest, despite giving otherwise different accounts of the relationships, include Rob Reich, *Bridging Liberalism and Multiculturalism in American Education* (Chicago: University of Chicago Press, 2002), 148–51; Galston, *Liberal Pluralism*, 101–6; Callan, *Creating Citizens*, chap. 6; Dwyer, *Religious Schools versus Children's Rights*; Brennan and Nogge, "The Moral Status of Children"; David Archard, *Children: Rights and Childhood* (1991; repr., London: Routledge, 2004), and *Children, Family and the State* (Aldershot: Ashgate, 2002).

33. This explains why "success or failure in the task [of parenting], as measured by whatever standards we take to be relevant, is likely to affect profoundly our overall sense of how well or badly our lives have gone" (see Callan, *Creating Citizens*, 142). We're especially grateful to Victor Seidler and Larry Blum for suggesting that we think through the fiduciary aspect of the parental role.

Our suggestion is that no other relationship contains all of these features and that these features contribute to well-being in a quite distinctive way.

The intimacy one can have with one's children is quite different from the intimacy one can have with other adults.³⁴ It makes a contribution to one's flourishing of a different kind and, for many, is not substitutable by relationships of other kinds. The challenge of parenting is something adults have an interest in facing, and it is that interest that grounds fundamental parental rights over their children. The justification is parent-centered, so it is the right kind of justification for the claim that parental rights are fundamental. But it does not disregard the interests of children, and, as will be explained in the next section, a proper interpretation of the justification makes parents' rights both limited and conditional.³⁵

Contrast the justification we have given with Veronique Munoz-Darde's non-parent-centered justification. She imagines a world in which well-run state orphanages would meet children's needs just as well as families do, and in which they, additionally, do a better job than families of implementing fair equality of opportunity. The reason that the well-run orphanages do better with regard to fair equality of opportunity is that

since the state has overall control, it is able to equally guarantee to all children whichever conditions and principles are considered optimum for their upbringing as long as these conditions are compatible with such an overall control. It could be imagined as a generalised boarding school, with . . . well qualified teachers able to devote individualised attention to children. These teachers could take pride in the achievement of their pupils, but would probably not have the sort of personal investments that parents generally have. . . . Teachers would also be explicitly bound by a principle of impartiality, or at least fairness, between their pupils.³⁶

34. An account somewhat similar to ours can be found in Colin MacLeod's "Liberal Equality and the Affective Family," in Archard and MacLeod, *The Moral and Political Status of Children*, 212–30.

35. The justification we have offered appeals to a cluster of interests parents have in parenting that cannot be fulfilled outside the role of parenthood. It does not constitute a full moral account of the parenting role, or of the interests people do, in fact, fulfill through parenthood. For many people parenting provides a vital link with, and stake in, the future of the world. But we are not certain that anyone has the kind of interest in such a link or stake that would support a right, and, given the variety of nonparental activities, roles, and relationships that can contribute to the fulfillment of that interest (teaching, friendship with and mentoring of children and adults younger than oneself, architecture, horticulture, creative endeavor, political activity, etc.), we are doubtful that this interest will support any specifically parental right.

36. Munoz-Darde, "Is the Family to Be Abolished, Then?" 45.

Munoz-Darde's case for the family, despite the greater fairness of the well-run orphanage, is that "the diversity of families makes it possible for the worth of different ways of life to be available as options, and hence creates the conditions necessary for pluralism."³⁷ In her view, the state would inevitably use orphanages to foster uniformity. Our answer is different. Even if a state successfully used orphanages to foster diversity and fulfill children's needs excellently, there would be a serious loss of value and flourishing. Many adults would be unable to engage in activities and relationships that make an ineliminable and great contribution to their ability to flourish. They could not get access to the full package of these activities and relationships by becoming "teachers" at the orphanages, because, in the role of teacher, they could not enjoy the relevant kind of intimacy with, or exercise the relevant kind of legitimate partiality with respect to, a small number of particular children.³⁸ Such a society would be unacceptably diminished even if children were well "reared."³⁹

Schoeman's argument was an attempt to show that children should not be redistributed to the parents who would best parent them, as the child-centered account would allow. The redistribution scenario has two features. The first is that children are routinely redistributed away from their biological parents (except in those cases in which they happen to be born to the adults who will parent them best). The second is that some adults who would be adequately good parents would be left childless, because the supply of children is exhausted by demand from people who will be better parents. We claim that Schoeman's argument fails to address both problems, but we should emphasize that our own argument succeeds only in addressing the second. We have shown why no one who will do an adequately good job of raising a child should be prevented from being a parent. But we have not shown that the child they should be allowed to raise should be their own biological child. This is not because we believe that there is no weighty interest in raising one's own biological child but because we do not have an argument establishing that there is such an interest. In this, we are not alone. Such an interest is frequently asserted, but we are not aware of any convincing

37. *Ibid.*, 49.

38. We explore the extent of legitimate parental partiality and its connection to our justification of parents' rights in "Legitimate Parental Partiality" (unpublished manuscript, Department of Philosophy, University of Wisconsin–Madison).

39. Although the emphasis in this article is on the parent-centered case for parents' rights, we regard the child-centered case for many such rights as entirely plausible. It is thus worth pointing out that, since no adult could have a parental relationship with a child in the orphanage, no child can be on the other end of such a relationship, and we doubt the plausibility of the hypothetical that children will have their interests well met.

arguments for it.⁴⁰ Furthermore, the interest we have described can, at least for many, be realized in a relationship with a child who is not biologically related to one. So, absent an argument that the interest in having a biological connection to the child one raises is very powerful indeed, we do not claim that the interest in being a parent impugns redistribution at birth. What we do claim is that it impugns redistribution away from people who would be adequately good parents (though not as good as others).⁴¹

Consider a natural objection to the idea that parents' rights are fundamental. Rights claims are very strong claims. One can have an interest in something that does not support one's having a right to it. James Dwyer objects to the account of parental rights that grounds them in very intense desires to have and raise children because, as he points out, the intensity of a desire never, in itself, justifies a right. The desires for "marriage to a particular person, great wealth, political office," for example, however intense, do not plausibly ground rights to the objects of those desires.⁴²

But neither Schoeman's nor our account grounds parents' rights in mere desires, however intense.⁴³ In order to ground a rights claim we have to show that the object of the right fulfills a very weighty interest: that, for example, it makes a very important contribution to their well-being or flourishing. Can this argument be made?

The above account of the distinctive value of the relationship between parents and children helps to provide the argument. Relationships of the specified kind make a distinctive and important contribution to the flourishing of the adults involved. Now, two caveats are necessary. First, it is obviously not the case (for the vast majority of adults) that it is impossible for them to flourish at all without relationships of this

40. Among those who assert the interest, see Mary Warnock, *Making Babies: Is There a Right to Have Children?* (Oxford: Oxford University Press: 2002), 40; Allen Buchanan, Dan W. Brock, Norman Daniels, and Daniel Wikler, *From Chance to Choice: Genetics and Justice* (Cambridge: Cambridge University Press, 2000), 200. For an argument against there being such an interest, see Neil Levy and Mianna Lotz, "Reproductive Cloning and a (Kind of) Genetic Fallacy," *Bioethics* 19 (2005): 232–50.

41. To be clear, we are confident that we could provide many arguments for maintaining the general practice of presuming that parents should raise their own biological children. Our point here is simply that the arguments we have in mind are not parent centered.

42. Dwyer, *Religious Schools versus Children's Rights*, 91.

43. The language used to ground parental rights sometimes suggests a desire interpretation; see, e.g., James Rachels: "A loving relationship with one's children is, for many parents, a source of such happiness that they would sacrifice almost anything else to preserve it" (*Can Ethics Provide Answers?* 223). In context, however, it is clear that Rachels's justification is appealing to the relationship itself as a distinctive source of flourishing, rather than the desire for the relationship.

kind. People do indeed go to great lengths in order to have and raise children, but some cannot, and few (if any) of them regard their lives as worthless. Nevertheless, many regard themselves as having missed out on an experience that would have been necessary for them to have counted their life as fully flourishing. Second, a significant proportion of people have no desire to have and raise children, and for many of them the absence of this desire is not an epistemic failing but a response to the fact that, indeed, having and raising children is not essential for their flourishing, and perhaps would contribute nothing to it. So the claim that the relevant “relationship goods” make a powerful contribution to the flourishing of the rights holder does not commit us to the claim that those goods are good for everybody. In this respect the contribution of this kind of relationship is like the contribution of a romantic sexual relationship. Many, if not most, people are such that they could not flourish fully without it: it contributes something to their flourishing that nothing else could contribute. But there are two other classes of people: those who, although they might really enjoy parenting, could indeed flourish fully without it and those whose lives would actually be diminished by being a parent. Noting this does not contradict the general claim about the significance of the relationship.

It might be objected, further, that many parents seem to get along perfectly well with minimal relationships with their children. Some parents abandon their children and have little contact. Indeed, even in the nuclear family that emerged after industrialization, fathers have often had very limited time and intimacy with their children. These observations, however, do not show that people can get along well without relationships with their children, for we can ask whether those parents really have enjoyed fully flourishing lives. Not only have they, in many cases, failed to deliver on their obligations to their children, but, on our account, their own lives have been impoverished by their absence from their children’s lives.⁴⁴ Our most urgent moral concern is, of course, with their children, but that should not obscure our sense that the parents’ lives too have been diminished.

Another objection to our account might go as follows. We have said

44. For a startling real-life account of this phenomenon, see Martin Amis, *Experience* (London: Vintage, 2001). We are grateful to Donald Hubin for pointing us to a considerable amount of empirical evidence on the damage to psychological well-being suffered by parents who do not enjoy full relationships with their children, including Rosalind C. Barnett, Nancy Marshall, and Joseph Pleck, “Men’s Multiple Roles and Their Relationship to Men’s Psychological Distress,” *Journal of Marriage and the Family* 54 (1992): 358–67; Robert E. Fay, “The Disenfranchised Father,” *Advanced Pediatrics* 36 (1989): 407–30; Kirby Deater-Deckard, Sandra Scarr, Kathleen McCartney, and Marlene Eisenberg, “Paternal Separation Anxiety: Relationships with Parenting Stress, Child-Rearing Attitudes, and Maternal Anxieties,” *Psychological Science* 5 (1994): 341–46.

that the parent-child relationship has certain features and that being involved in this sort of relationship as a parent makes a crucial contribution to the flourishing of the adult. But some parent-child relationships lack some of these features, and some other relationships contain many of them. So, for example, the parent of a child with severe cognitive impairments might enjoy the intimacy and the joy in seeing the world reflected through her child's eyes, but her fiduciary obligations do not include preparing her child to become an autonomous adult. Pet owners (especially, we suspect, dog owners) take on fiduciary obligations and experience pride in the achievements of their pets; so do many carers for adults with severe cognitive impairments. So not only does our sketch of the relationship at stake fail to capture every parent-child relationship, but the contrast between it and other caring relationships is not as stark as we seem to suggest.⁴⁵

We accept the truth of this observation. Our paradigm of the parent-child relationship is supposed to describe something that many adults have a very strong interest in participating in. Other relationships that resemble it to a greater or lesser degree will yield some of the same benefits, but not all; similarly, some of those other relationships will yield other benefits for some of the carers that are not yielded by the paradigm parent-child relationship.⁴⁶ Our claim is only that there is something distinctive about this kind of relationship and that for many people nothing will fully substitute.

A related challenge, and the last we will consider, would accuse us of acquiescence in, and perhaps even glorification of, the nuclear family. That conception of the family is subject to much criticism, not only as an accurate descriptive model of much family life today but in normative terms also. What about the interest in caring relationships—relationships that involve at least some of the elements that are central to our account of parental interests—of grandparents, uncles and aunts, and neighbors or family friends? What about children's interests in intimate relationships with people other than their parents?⁴⁷

Here, too, we acknowledge that there is much more to be said. The

45. We're grateful to Jaime Ahlberg for this observation and for help in thinking about what is at stake.

46. Think of Eva Feder Kittay's account of her relationship with her severely cognitively disabled daughter, which is clearly a source of flourishing for Kittay in many of the ways that the paradigm relationship we have outlined would be, but also in other ways that our account does not try to capture. See Eva Feder Kittay, *Love's Labour* (London: Routledge 1999), chap. 6.

47. See Claudia Card, "Against Marriage and Motherhood," *Hypatia* 11 (1996): 1–23; Martha Minow, "All in the Family and In All Families," in *Sex, Preference and the Family*, ed. David Estlund and Martha Nussbaum (New York: Oxford University Press, 1997), 249–76. We are grateful to Sally Haslanger for discussion on this issue.

fact that our account gives central place to parents' interest in having fiduciary responsibility for their children makes it difficult to work out the implications of giving other people any kind of direct (rather than delegated by the parent) authoritative role in the upbringing of children. Our argument has been that adults do have an interest in enjoying a particular kind of relationship with "their" children and that that relationship involves not only the enjoyment of intimacy with but also the exercise of certain kinds of authority over those children. We believe that the interest in question is sufficiently important that not only the state but also other members of the community should facilitate, and not interfere with, that relationship. But the account of the content of parents' rights we have given in this section leaves open both that other adults might have a claim to having continuing and close relationships with children and that children might have a claim to continuing and close relationships with adults other than their parents. It also leaves open the possibility that the fiduciary responsibility might be enjoyed by a single parent or shared between more than two.

VII. WHAT RIGHTS DO PARENTS HAVE OVER CHILDREN?

The account offered so far supports the claim that the right to raise children is fundamental. But establishing the fundamental status of this right does little to establish its content. That content matters partly because it is normally assumed that parental rights act as a constraint on liberalism's redistributive ambitions. So, for example, Rawls is explicit that even though the family frustrates the implementation of fair equality of opportunity, it should not be abolished; he treats the family, in effect, as covered by the Liberty Principle.⁴⁸ In a recent paper arguing a nonneutral case for egalitarian redistribution, Richard Miller posits "an appropriate valuing of parental nurturance" that "entails respect for the privacy of home-life and enduring family ties which ensure the transmission of skills and attitudes within families even when family differences reflect past differences in success and tend to create differences in life prospects."⁴⁹ Although we have not argued for giving family life such importance, we think that our case for parents' rights fits well with giving them priority over certain other principles, such as Rawls's fair equality of opportunity. But until we know the precise content of parents' rights, or of the "appropriate valuing of parental nurturance," we do not know how much, or what kind, of a limit it places on per-

48. Rawls, *A Theory of Justice*, 511 (447–48 in rev. ed. [Cambridge, MA: Harvard University Press, 1999]).

49. Richard Miller, "Too Much Inequality," *Social Philosophy and Policy* 19 (2002): 275–313, 284.

missible redistribution. Our comments in this section provide the beginnings of an answer to this question.⁵⁰

As we have said, it is sometimes assumed that if the right is fundamental it is also extensive. But, though the interest in the relationship supports the conclusion that parents should be allowed to raise their children, it does not establish that there are no limits on how they should raise them. The fundamental right to control one's own sexual behavior gives one discretion over whom to choose as a sexual partner, but the right to raise one's child yields no discretion whatsoever over whom to choose as the child's sexual partner. The right to suicide appears to follow from the right to self-governance, but clearly the right to infanticide does not follow from the right to raise a child. Suppose a drug that would produce firm and unshakable belief in the divine right of kings were available. The right to self-governance might give one the right to administer that drug to oneself, but it would not justify giving it to one's children.

The sketch of the distinctive value of the parent-child relationship supporting the claim that parental rights are fundamental also helps us to establish more precisely the content of parental rights. Insofar as the purpose of parental rights is to protect the parental interest in having and maintaining a relationship of that kind, parental rights are justified only insofar as they are required for protecting that relationship.

What parents fundamentally have a right to is an intimate relationship of a certain kind with their children. We suggest that this right unpacks into a series of associational rights, because these are what is required to protect that relationship. As Rob Reich explains, "Raising a child is never merely a service rendered to another person but is the collective sharing of a life."⁵¹ This has implications for the character of the permissions that parents must have to share aspects of their lives with their children. Parents have the right to determine whether the child will attend a church, a mosque, or neither; they have the right to live with the child and spend a substantial part of the day with her. They have the right to share their enthusiasms with their children, including, for example, their enthusiasms regarding their own particular cultural heritage. These rights are not connected to or derived from their independent rights to freedom of religion, association, or expression, or to their expressive interests more generally, but directly to the right to a relationship of a certain kind. Furthermore, as long as they are ensuring that the child's interests are being well-enough served, parents are not under an obligation to be considering the child's best interests as they exercise these rights.

50. For a fuller answer, see Brighouse and Swift, "Legitimate Parental Partiality."

51. Reich, *Bridging Liberalism and Multiculturalism in American Education*, 149.

Our view thus contrasts with those that give great weight to the parental interest in the reproduction of her values or conception of the good. Charles Fried's claim, quoted earlier, that one has the right to "form one's child's values, one's child's life plan" suggests this, as does William Galston's claim that "the ability of parents to raise their children in a manner consistent with their deepest commitments is an essential element of expressive liberty."⁵² Our account has not appealed to this interest. It does not deny that parents have an interest in forming their children's values or life plan, but it subordinates that interest to the child's interests and the parent's interests in acting as a fiduciary for, and enjoying an intimate relationship with, the child. The kind of proximity that parents must have as a consequence of granting them parental rights will give them, in consequence, some of the powers that Galston and Fried seek to ensure. But they are charged with using these powers to protect their child's interests in the first instance, including the interest in developing the capacity to form one's own values and life plan. Furthermore, our account is indifferent as to whether parents use their power to promote their own conception of the good (or something consistent with it) in the child or some other, possibly conflicting, conception of the good. It does not privilege the parents' values in the ways that Fried's and Galston's accounts do. It is thus consistent with giving priority to the child's interest in autonomy over the impulse to tolerate parental behavior which conflicts with the child's prospective autonomy.

Associational rights contrast with control rights. Parents must indeed be given license to control certain aspects of their children's lives for the sake of the children's interests, and their fundamental associational rights will involve granting them some degree of control over their children. But if children's interests in general are best served by a division of authority between parents and some other agency, then that division is preferable to giving parents exclusive authority, as long as this division does not infringe the fundamental rights of parents to intimate relations with their children. So if parents, such as those in the Tennessee case of *Mozert v. Hawkins*, have the right to withdraw their children from a civic educational curriculum that conflicts with their religious beliefs, this is not a fundamental right, but one that must be justified by its benefit to those children or to third parties.⁵³ Similarly, if the parents in the case of *Wisconsin v. Yoder* have the right to deprive their children of formal

52. Galston, *Liberal Pluralism*, 102.

53. Brighouse makes an argument for moderate parental deference in non-parent-centered terms in *On Education* (London: Routledge, 2006), chap. 5, and in "Religious Belief, Religious Schooling, and the Demands of Reciprocity," in *Deliberative Democracy: Theory and Practice*, ed. David Kahane and Daniel Weinstock (Vancouver: University of British Columbia Press, forthcoming).

education over age fourteen, that is because it is better for those children that the parents have this right than not.⁵⁴ Such rights might be justified in our terms, but they would not be fundamental.

Of course, associational rights involve control rights of a sort, especially when the children involved are very young, so the distinction between associational and control rights is not very clean. But the control rights involved in associational rights are concerned with the moment, not with the future. The distinction is also unclear because parents who exercise their immediate control rights can use them to exert control over the shape of their children's future development—it is impossible to allow people to take their children to church without allowing them to use that right to try to indoctrinate their children in their faith. But the latter power is something they have no fundamental right to, even though, given the importance of unmonitored intimacy, there is no practicable way of depriving them of it without depriving them of something they do have a right to.

For reasons that go beyond the scope of this article, we side with liberals who assert that children have a fundamental interest in prospective autonomy.⁵⁵ Parents may not legitimately indoctrinate their children, but they do have a legitimate interest in being able deliberately to influence their children's values and beliefs insofar as they can do so without compromising the child's prospective autonomy. This follows partly from their duty to foster the moral development of their children. But they also have an interest in a continuing relationship, which interest depends on at least some shared interests and values. It is hard for us to imagine that two people can maintain intimacy without having some distinctive enthusiasms and interests in common. These shared enthusiasms provide for the interactions which to a considerable extent constitute the intimacy of the relationship and allow for the relationship to be pursued in a way that is not constantly self-conscious. After the child leaves home, as many do, shared interests provide much of the content for the interactions between the participants in the relationship. Of course, there is no reason why, as children grow up and start to develop interests and enthusiasms of their own, it should be parents rather than children who continue to determine the content of, or agenda for, familial interactions. That is another way in which our ac-

54. For details of *Mozert v. Hawkins*, see Stephen Bates, *Battleground: One Mother's Crusade, the Religious Right, and the Struggle for Control of Our Classroom* (New York: Poseidon/Simon & Schuster, 1993); for details of *Wisconsin v. Yoder*, see *Wisconsin v. Yoder* 406 U.S. 205 (1972). For useful discussions, see Amy Gutmann, "Civic Education and Social Diversity," *Ethics* 105 (1995): 557–79; Galston, "Two Concepts of Liberalism."

55. For some of those reasons, see Brighouse, "Civic Education and Liberal Legitimacy"; and Matthew Clayton, *Justice and Legitimacy in Upbringing* (Oxford: Oxford University Press, 2006), chap. 3.

count does not privilege parents' values (here, as contrasted with the children's). But for the earlier years, as the child is only gradually forming its own ideas about what is and is not interesting or important in life, our account renders it permissible for parents deliberately to present children with their views on such matters.

The bar on indoctrination extends to attempting to force their child into the family business or the family career (army, law), or manipulating an exclusive enthusiasm for cricket or folk music. But it does not bar deliberately ensuring that the child is exposed (albeit not exclusively) to the parents' values and enthusiasms. (That said, a good parent should be able to sustain a successful relationship without any particular shared interest or values. On our view, the parent who cuts off a child for marrying out of the faith, for refraining from joining the military, for entering a religious order, or for apostasy fails as a parent.) So while there is no right to "form one's children's values," and certainly none that is the corollary of the right to do so for oneself, there is a right to have distinctive influence over the formation of those values, if one that is limited by one's fiduciary obligations to the children, including the obligation to safeguard their prospective autonomy.

We have said both that parents' rights are limited and that they are conditional on parents' protecting certain of the children's interests. Failure to protect those interests amounts to a forfeiture of the right, in the same way that failure to obey just laws implies forfeiting one's right to freedom of association. All accounts of parental rights, in order to be plausible, have to make them conditional on parents' meeting certain of their children's interests adequately. It is standard to include an "abuse and neglect" clause as a condition on parents' rights attributions. We believe that this sets the bar too low, but to explain why would take another paper.⁵⁶ We want to make two points here. The first is simply that disagreements about where to set the bar are disagreements about the weight children's interests have relative to parental interests, not disagreements about whether parents' interests count fundamentally. The second is that the higher the bar is set, the more plausible will tend to be the case for leaving the children in the custody and care of the parent, even when he is currently failing to meet that threshold. Even modern welfare states have been notoriously bad at providing superior child-rearing arrangements for children who are in abusive and neglectful situations. But from the mere fact that there is no superior alternative (in child-centered terms) for the child, it does not follow that parents retain fundamental rights. They enjoy only the privilege that is justified by appeal to the state's failure to provide a better alternative. This is different from the case of the parent who, having

56. That other paper is Brighouse, "What Rights (If Any) Do Children Have?" 31–52.

succeeded in meeting the conditions for parents' rights, would be entitled to exercise those rights even if the state could indeed provide a superior arrangement for the child.

VIII. PARENTING, POLICY, AND PERFECTIONISM

Suppose that our argument to this point is sound. Two questions naturally arise. First, what are the policy implications? We have an argument against the forcible redistribution of children from adequately good parents to others (or to state institutions) that might do better by them, but does our account of the parental interest in the parent-child relationship yield any other guidance for public policy? Second, to what extent do such policies as are justified by appeal to the parental interest we have outlined count as "perfectionist"? We have made several claims about aspects of the parenting experience that contribute distinctively to the flourishing of the parent, in a way that might seem to violate the (alleged) liberal commitment to the view that the state should eschew actions based on controversial claims of that kind. To do justice to either of these questions would require another paper, but it may be helpful at least to set out some of the issues that they raise.

First, it is important to be clear that many policies that would serve the parental interest in the relationship goods we identify can be justified without appeal to that interest. They can be justified by appealing, less controversially, to the interests of children (and, to some extent, of third parties). We believe, for example, that poverty is a major barrier to adults' capacity to participate in the relationships we have described. The conscientious parent, living in poverty, doing her best to provide her child with a decent start in life, may find herself working longer hours, or trying to hold down two or more jobs, in a way that makes it very difficult for her to enjoy an intimate relationship with them.⁵⁷ We believe, also, that even many affluent parents in wealthy societies face significant barriers to enjoying relationships of the kind we have described. Professional and nonprofessional jobs, especially in the United

57. A phenomenon that looks particularly tragic in the light of our account is that of impoverished mothers who relinquish their day-to-day relationships with their children in order to earn money for them by taking care of other people's children. This is a case where fulfilling one's obligations to one's children requires, or appears to require, that one refrain from enjoying the intimate relationship with them (and providing that relationship for them). The relationship with the children one cares for instead is not an adequate substitute, on our account, because a nanny is vulnerable to other people's authority over the relationship. The terms of the relationship are set by a third party—the parent—and both parties are subject to monitoring and interference, and to sudden and arbitrary termination, by the parent. See the essays collected in Barbara Ehrenreich and Arlie Russell Hochschild, *Global Woman: Nannies, Maids and Sex Workers in the New Economy* (New York: Holt, 2003), especially the first three chapters.

States, frequently lack the kind of employment protection that enables parents to negotiate their hours of work to fit with the demands of parenting, and jobs are often structured in such a way that wholehearted involvement in them is strongly in tension with wholehearted involvement in family life. Policies to combat poverty and to help even affluent parents achieve a better work-life balance do, on our account, serve the interests of parents, but of course they serve children's interests too. Children's interests in growing up well parented (and other people's interest in their growing up that way) may be quite sufficient—and less “perfectionist”—justifications of many of the policies that we would advocate. In that sense, we can be thought of as pointing out the additional benefits that would accrue to parents from policies that might be justified in more straightforward terms.

We should be clear on the extent to which parents' and children's interests are intertwined. On our account, the parental interest is in large part an interest in acting as the fiduciary for the child. We don't believe that the parent has a duty to promote the child's best interests—there is some room for the parent to pursue her own interest even where that may not be best for the child—but much of the value of parenting comes precisely from being able to look after children's interests well, being there to give them what they need to develop into the kind of people it is good for them to become. Policies aimed at tackling those aspects of poverty most damaging to a flourishing parent-child relationship, or at enabling even affluent parents to achieve a better work-life balance, help parents in large part by helping them do what parents should be able to do for their children. If it is good for the parent to be home from work in time to read bedtime stories to her children, that is in large part (though not entirely) because it is good for children to have bedtime stories read to them by the parent. We contribute to parents' flourishing indirectly, as it were, by policies justified primarily on child-centered, and less controversial, grounds.

It remains possible, of course, that children's interests will not justify all the policies that our parent-centered account would lead us to endorse. The parental interest in the relationship is not exhausted by its fiduciary aspect, and we could imagine, perhaps, that children would grow up well enough with a parenting relationship that was thinner or weaker than that which would be valuable for parents. This leads us to our second point. Insofar as policy prescriptions did appeal to claims about parents' interests, they might be conceived and presented as correcting or compensating for biases that make it unduly difficult, given current incentive structures, for adults to experience the kind of relationships that we have identified as distinctively valuable. Of course it is a complicated question how we should conceive the baseline against which to assess any claim about bias, and one would need to do a good

deal of work to show that, say, existing arrangements were biased against parenting in a way that would justify profamily policies as consistent with an egalitarian or neutralist conception of distributive justice.⁵⁸ Still, especially where fertility rates are falling, it is important to keep in mind the possibility that we live in societies that have tilted the balance against parenthood. Most analyses, of course, think about falling fertility rates as an economic problem, and in what we have called public good terms. Our approach suggests a different kind of worry. People whose lives would go better were they to become parents may be missing out. Insofar as their decision to remain childless reflected our having made the costs of parenting unduly high, efforts to correct the imbalance could be justified without any appeal to perfectionist considerations.

Of course, one might want to go further, advocating proparenting policies on avowedly nonneutral grounds that appealed directly to the value, for parents, of parenting relationships. We do not mean to rule out such arguments. We simply mean to point out that the way in which proparenting policies can be justified on child-centered grounds, and, more speculatively, the possibility of conceiving such policies as corrections for existing biases against the enjoyment, on the part of parents, of valuable parent-child relationships, may go a long way toward justifying policies that would serve the interests that we have identified in this article.

58. For examples of the kind of work we have in mind, see Paula Casal and Andrew Williams, "Equality of Resources and Procreative Justice," in *Dworkin and His Critics*, ed. Justine Burley (Oxford: Blackwell, 2004), 150–69; Clayton, *Justice and Legitimacy in Upbringing*, 61–75. Because these contributions deal with the issue at the level of ideal theory, their claims would need to be combined with complex empirical assessments to yield concrete policy implications here and now.