Political Liberalism, Justice, and Children

A thesis submitted to the University of Manchester for the degree of Doctor of Philosophy in the Faculty of Humanities.

2015

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**List of Abbreviations**

This list of abbreviations does not include the abbreviations of John Rawls’s works listed on the next page.

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>DP</td>
<td>Difference Principle</td>
</tr>
<tr>
<td>FEO</td>
<td>Fair Equality of Opportunity</td>
</tr>
<tr>
<td>ID</td>
<td>Initial Distribution (introduced in Chapter 7)</td>
</tr>
<tr>
<td>LP</td>
<td>Liberty Principle</td>
</tr>
<tr>
<td>OIWPI</td>
<td>Opportunities, Income, Wealth, Power, Influence</td>
</tr>
<tr>
<td>OP</td>
<td>Original Position</td>
</tr>
<tr>
<td>SBSR</td>
<td>Social Bases of Self-Respect</td>
</tr>
<tr>
<td>SBSA</td>
<td>Social Bases of Self-Authorization (introduced in Chapter 3)</td>
</tr>
<tr>
<td>WOS</td>
<td>Well-Ordered Society</td>
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A Note on Referencing

For reader convenience, the following works by John Rawls are referenced, and abbreviated, in text, according to the following:


Abstract

The goal of the thesis is to articulate and defend a political liberal conception of justice that provides plausible and determinate principles for the formulation and regulation of the institutions associated with children and their upbringing. It thereby offers a reply to those that are sceptical of the prospects for a compelling political liberal conception of justice that can be applied to children’s upbringings. I begin by expounding an understanding of the political liberal approach that offers an immediate reply to a set of those objections that rest on mistaken understandings of the constraints political liberal approaches put on the derivation of principles of justice for children. The mistake is the failure to recognise that political liberalism is based on a substantive ideal of the citizen and of society, an ideal that is the basis for demanding certain outcomes and procedures of children’s upbringings, regardless of what parents or certain cultural or religious groups think about those demands. I then detail a political liberal conception of justice based on this substantive ideal: Rawls’s Justice as Fairness. I articulate and defend some interpretative and substantive differences from standard understandings of the general conception. I defend a political conception of autonomy as self-authorization utilizing recent work on conceptions of relational autonomy. I also argue that the principle of fair equality of opportunity ought to be jettisoned from the two principles of Justice as Fairness and replaced with a principle that secures certain relational conditions supportive of political autonomy as I expound it. I then turn to applying that conception to the specific issues raised by children’s upbringings. I show that the conception’s application to children’s upbringings elicits plausible, coherent, and determinate conclusions with respect to the key issues raised by the upbringing of children. I show that the conception elicits plausible and coherent understandings of the interests that ought to be furthered on children’s behalf, of how children’s development over time alters how they ought to be treated, and what makes a child a child and then an adult. I address three key issues to elucidate the conception: the need for children to be brought up to be autonomous, the need for children to have the opportunity to experience the intrinsic goods of childhood, and the need for children to have an equal and socially inclusive education. I show that my conception elicits plausible and coherent outcomes with respect to all three issues, and demonstrate this through comparisons to other liberal conceptions of upbringing. I then offer an account of the distribution of child-rearing rights and obligations. I reject the popular set of conceptions of child-rearing obligations that connect responsibility for the child’s existence with responsibility for the costs of upbringings. I deny these conceptions offer a plausible account of responsibility and its relationship to the distribution of child-rearing obligations. I offer an alternative account based on the notion that the distribution of child-rearing rights and obligations ought to be arranged to the greatest benefit of the least-advantaged, where this is consistent with the prior principles of Justice as Fairness. This elicits institutional schemes that plausibly and coherently fulfil the demands of children’s upbringings and satisfies the reasonable claims of adults that have interests in acquiring (and not acquiring) child-rearing rights and obligations.
Declaration

The author declares that no portion of the work referred to in the thesis has been submitted in support of an application for another degree or qualification of this or any other university or other institute of learning.
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1 INTRODUCTION

The purposes of this introduction are to set out the goal of the thesis, to explain why achieving that goal is worthwhile, to detail how I will achieve that goal, and to explain how each element of the thesis works towards achieving that goal. I will set out the goal and its merit in 1.1; provide an account of the framework I will deploy to meet that goal in 1.2; and detail the structure of the thesis in 1.3.

1.1 THE GOAL OF THE THESIS

The goal of the thesis is to articulate and defend a political liberal conception of justice that provides plausible and determinate principles for the formulation and regulation of the institutions associated with children and their upbringing. Although I do not defend the notion in the thesis, I think that political liberalism offers the most compelling approach to the purpose and practice of liberal political philosophy. However, there is reason to doubt this unless a compelling political liberal conception of justice with respect to children’s upbringings can be articulated and defended. Therefore, achieving this goal would offer significant support to the general project of political liberalism by showing how an account of a political liberal conception of justice can deal satisfactorily with the specific issues raised by the upbringing of children. In this section, I will begin in 1.1.1 by explaining the problem that liberal theories face with respect to children. In 1.1.2 I will explain why this has encouraged a rejection of political liberalism. In 1.1.3 I will set out the goal of the thesis in detail.

1.1.1 Liberalism and Children

Liberals are committed to a conception “of respect for the capacities and the agency of individual men and women, and that these commitments generate a requirement that all aspects of the social should either be made acceptable or be capable of being made acceptable to every last individual”.¹ Liberal

institutions are characterized by the freedom they offer to individuals to live their lives as they wish, consistent with the freedom of other individuals to do the same. This freedom permits and generates a plurality of views on what the good life is and what is of intrinsic value. This plurality of views on the good life conditions how the ‘social’ can be made acceptable, or be capable of being made acceptable, to every last individual. Liberal theories of justice must offer an account of how liberal institutions and liberal ideals can be justified, on the condition that any justification offered must be acceptable or capable of being made acceptable to the plurality of comprehensive doctrines of the good that are engendered and permitted in liberal societies. Children present a particular challenge in this regard:

“On the one hand, the family is among the most significant arenas in which people pursue their own conceptions of the good and transmit them to the next generation. This fact suggests that a liberal society should give people considerable latitude to form families as they choose. On the other hand, the family is one of the most nonvoluntary and pervasively influential of social institutions and one of the most notorious homes of sex hierarchy, denial of equal opportunity, and also sex-based violence and humiliation. These facts suggest that a society committed to equal justice for all citizens, and to securing the social bases of liberty, opportunity, and self-respect must constrain the family in the name of justice.”

This tension between permitting people to bring up children in ways congruent with their particular conceptions of the good and ensuring that children receive an intuitively acceptable upbringing consistent with their status as equals is the defining problem of liberal theory and children.

One response to the tension is to affirm the notion that “properly understood, liberalism is about the protection of diversity”. Protecting diversity seriously would go so far as to protect the right of religious and/or cultural groups “to be left alone even to the point of allowing children to die preventable deaths”

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or suffer significant harm. For example, Christian Scientists and Jehovah’s Witnesses “would not submit their children to be given blood transfusions; some indigenous peoples practice ritual scarring, and some cultural groups female genital mutilation” and some “infanticide”. A liberal theory that prioritises tolerance of existing conceptions of the good and group rights—in order for liberal institutions to be acceptable to ‘every last individual’—will sanction upbringings that may be severely detrimental to the welfare of children born into those groups, severely detrimental to equality of opportunity and egalitarian relationships more generally, and severely detrimental to the prospects for a stable liberal society if children do not come to acquire virtues such as tolerance and mutual respect. An alternative response focusses on ensuring that children are protected from the autonomy-undermining and/or good-life-undermining potential of groups’ desires to control the upbringing of what they would call ‘their’ children, even at the cost of the ways of life of certain religious and cultural groups. Only in this way are children treated as equals; it would be a violation of the liberal tenet of the freedom and equality of persons if children did not have the prospects for a good life or, at least, equal prospects for a good life. It is not their fault if they were born into cultural group A rather than cultural group B; why should children’s prospects for a good life differ because of that contingency?

Uncovering some middle ground between these two alternatives is difficult to achieve. Barry argues that if one seeks to temper the first—tolerationist—response by, say, drawing “the line at letting parents kill their children with impunity”, there does not appear to be any reason to stop there: “Why not then go further, and prevent them from inflicting horrendous physical injuries on them?... There is only one stopping point that makes any sense: the one that says the interests of children should, as far as possible, be protected by the state from abuse by parents”. However, to “say that the interests of the child

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5 Kukathas, The Liberal Archipelago, 145.
should be protected by the state assumes that it is in a position to know what those interests are when members of society do not agree”.

If the interests of children should ‘as far as possible’ be protected by the state then this requires “a very full conception of what are a person’s interests”, a conception that would be the subject of disagreement not only between different cultural and religious groups, but between those that would affirm the position that the state should protect children’s interests against the practices of those groups.

All this brings “us to stand-off which cannot be resolved”.

“The tolerationist view seems to give groups (and so, in some cases, parents) carte blanche to do as they wish in the case of children. The [other] view seems to give the state carte blanche to intervene, to require children to be raised as it sees fit, and to remove children from their parents and communities”.

Any middle ground is an illusion and the two opposing responses at the extremes are implausibly illiberal albeit in different ways.

The difficulties that this tension raises may be one reason why “[m]ost liberal theories (Mill being the honourable exception) have simply neglected [the problem of justice in the family], or have treated the family as a ‘private’ sphere, or as having a ‘quasi-natural status’, with which political justice should not meddle”.

Archard and Macleod note that a disturbing number of the leading figures of contemporary political philosophy—they list John Rawls, Robert Nozick, Ronald Dworkin, David Gauthier, and Michael Walzer, as examples—offer “no sustained discussion of how the moral and political status of children should be understood or what the implications of considering children directly might have for the shape of a defensible theory”. However, such an approach must be rejected if liberals are to take seriously the equality of children as persons and the need for a plausible and determinate conception of justice. In more recent times, this notion has been taken on board and many

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7 Kukathas, The Liberal Archipelago, 145.
8 Ibid., 146.
9 Ibid., 147.
10 Ibid.
11 Nussbaum, “Rawls and Feminism,” 500.
have begun to offer liberal justifications for the content and distribution of child-rearing rights and duties.\textsuperscript{13}

There remains, however, a prominent gap: a defence of a political liberal conception of justice that addresses the moral and political status of children and offers plausible and determinate principles regulating the specific issues raised by children’s upbringings. There is one notable exception: the account that Matthew Clayton presents in his book ‘Justice and Legitimacy in Upbringing’.\textsuperscript{14} However, after explaining the particular challenges that face political liberals with respect to children’s upbringings in 1.1.2, I will—in 1.1.3—explain the reasons why Clayton’s work does not suffice to fill the gap.

1.1.2 Political Liberalism and Children

Political liberalism is characterised as a response to the plurality of views that are engendered in liberal societies. If liberals are committed to offering theories of the regulation of political and social institutions that are acceptable—or that can be made acceptable—to groups who hold a plurality of views, then political and social institutions cannot be justified on the basis of “some particular ideal of what constitutes a valuable or worthwhile human life, or other metaphysical beliefs”.\textsuperscript{15} Political liberalism entails a rejection of comprehensive liberalism. Comprehensive liberalism bases the justification of liberal institutions on the intrinsic value of living an autonomous life. For comprehensive liberals, the foundation for the tenets of freedom and equality is the value of living an autonomous life. Liberal institutions are justified because they protect and/or promote this value and are acceptable to all because they are justified on the basis of a true claim: autonomous lives are valuable lives. For political liberals, such an approach fails properly to address the plurality of views about what makes a life valuable and that are engendered in liberal societies; it fails to offer an acceptable justification for the institutions

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\textsuperscript{14} Clayton, *Justice and Legitimacy in Upbringing*.

to which people are subject. In liberal societies, views will be permitted and/or engendered that deny the value of living an autonomous life. Such a denial may be elicited because of the burdens of judgment, a set of “obstacles to human judgment under free conditions” that results in disagreement between reasonable people sincerely and rationally considering ethical, religious, cultural, and philosophical questions.\textsuperscript{16} Liberal theories are incoherent if they base the justification of liberal institutions on the basis of values that people can reasonably disagree about. Liberal societies would be just like the societies they fundamentally oppose: societies that use coercive state mechanisms to force a particular ideology or value system onto those who reasonably reject it. Political liberalism offers a different approach: a justification for liberal institutions that all reasonable people can accept. To do this, political liberal theories of justice do not appeal to the particular value of living an autonomous life; such a value would not gain the acceptance of all reasonable people. Instead, political liberal theories of justice justify liberal institutions on the basis of values that all reasonable people affirm: freedom, equality, fairness, and the empirical truth of the burdens of judgement.

The political liberal approach has to face the tension described in 1.1.1 and many have considered this a challenge that illuminates the failure of the approach more generally. The charge is that political liberal approaches are faced with a dilemma. If political liberals encroach on the setup of families in order to promote just outcomes both for children, and generally in the promotion of gender and race equality for example, then political liberalism “seems unable to be as widely tolerant of different religious [and cultural] conceptions of the good” as those invested in the project, such as Rawls, “would like it to be”.\textsuperscript{17} On this view, political liberalism is a reaction to the diversity of comprehensive conceptions of the good found in liberal societies and its project is to advance a justification for liberal principles acceptable to a set of reasonable conceptions of the good. If the set of ‘reasonable’ conceptions of the good is too small—and critics such as Okin would indeed

\textsuperscript{16} Ibid., 37.
\textsuperscript{17} Susan Moller Okin, “Political Liberalism, Justice, and Gender,” \textit{Ethics} 105, no. 1 (October 1, 1994): 32.
level this charge—then political liberalism fails to address the initial problem of a justification of liberal principles in the face of the diversity of religious and cultural views in liberal societies. However, if the set of ‘reasonable’ conceptions of the good is extended to include the majority of comprehensive views (excluding, perhaps, only those that are not obviously mad or evil, for example) then a political liberal conception of justice will fail to treat all members of society as ‘free and equal citizens’ because of the toleration of ways of life that undermine that. Either way, the project fails. Timothy Fowler also alludes to the same dilemma but argues that political liberalism is in fact pierced by one of the two horns of the dilemma. He argues that the project of political liberalism is defined by the principle that “the liberal state must explicitly avoid taking a side amongst the various competing doctrines found in society.”\(^\text{18}\) Political liberals are committed to setting “the boundaries of the reasonable as wide as possible” and as such can only mandate very limited requirements of a child’s upbringing that result in “unpalatable consequences when we consider its implications for members of the next generation”.\(^\text{19}\) Eamonn Callan argues that political liberalism is in fact pierced by the other horn. Callan argues that the difference between a political and comprehensive liberal conception of upbringing is “bogus”; the partition ‘collapses’: the “journey from comprehensive to political liberalism turns out to be a matter of running very hard to find oneself in more or less the same place”.\(^\text{20}\) This is because the requirements of a child’s upbringing according to a political liberal conception will be “conceptually inseparable” from the requirements of a comprehensive liberal conception that would regulate upbringing to promote the value of the autonomous life.\(^\text{21}\) As a result, “the likely cultural consequences of [a political liberal education] will still seem like a catastrophe to many people. The education they want for their children is one that


\(^{19}\) Ibid., 368.

\(^{20}\) Callan, \textit{Creating Citizens}, 40.

\(^{21}\) Ibid.
perpetuates a way of life in the particular form they cherish. The fact that reasonableness might cohere with some altered form will not placate them.”

Not only are political liberals forced into this critically damaging dilemma, critics such as Callan and Fowler believe that in any case political liberal constraints mean that one cannot utilise the necessary moral foundations for a plausible conception of justice for children. This is because in order to mandate intuitively acceptable upbringings, theories must appeal to comprehensive notions of value and the promotion of those values. Callan, and Harry Brighouse, among others, argue that we must appeal to a comprehensive ideal of autonomy; Colin Macleod argues that we must appeal to the value of the intrinsic goods of childhood—those that emerge “from various forms of creative stimulation of distinctive human faculties”—in order to secure for children prospects for a valuable childhood as well as a valuable adulthood. While political liberalism might look plausible as a framework regulating the social and political interactions of adults with already formed conceptions of the good, it is ill-suited to providing a framework determining what children ought to become and what children ought to experience as a child.

1.1.3 Solving the Problem

I will argue that these criticisms largely rest on incorrect readings of the political liberal project as well as incorrect readings of what a political liberal conception of justice for children would look like. The goal of the thesis is to offer a precise account of political liberalism and its foundations, and to carefully build a coherent conception of justice upon those foundations that offers plausible and determinate principles of justice that regulate the specific issues raised by children’s upbringings. The conception of justice will be coherent if the conception is consistent with the political liberal foundations I initially

22 Ibid., 39.
set out and if the principles I expound are consistent with each other. The principles I expound will be *plausible* if they elicit outcomes that cohere with each other and with considered convictions on particular cases. The principles will be *determinate* if they can offer clear guidance for the formulation of institutions and laws to do with the specific issues raised by the upbringing of children in particular societies. Determinacy does not require concrete policy implications on my view. This is because complex empirical assessments—such as sociological and economic assessments—are required for concrete policy implications. Determinacy is satisfied if a principle or principles can be identified as pertinent for guiding the just formulation of institutional design and policy.

Rawls’s Justice as Fairness is a compelling conception of justice that is also politically liberal, as I will show. My plan is to demonstrate how Justice as Fairness can be successfully applied to children’s upbringings in a way that is coherent, plausible, and determinate. I clarify how it is a genuine political liberal conception and elucidate certain elements of its construction and its principles in order to set up its clear and precise application to children’s upbringings. If it can be shown that Justice as Fairness can address the important and neglected questions regarding children’s upbringings, offer plausible answers to those questions, demonstrate its overall coherence with other elements of the conception of justice, and remain true to political liberal foundations and constraints, then the critics will be answered and the goal of the thesis achieved.

While the goal of the thesis is primarily a reply to critics of the political liberal project as it applies to children’s upbringings, it is also ostensibly a response to those who have already attempted to provide a distinctively political liberal conception of justice that applies to children’s upbringings. Matthew Clayton’s work is an exception to the general scepticism regarding the prospects of a political liberal conception of justice for children, and to the paucity of plausible conceptions. Clayton advances a strong account of political liberal foundations and an accompanying conception of justice for children. Although my approach is sympathetic to Clayton’s, my account differs from his in
important ways that make it more compelling. First, my understanding of political liberalism differs from his and this contributes significantly to the divergent conceptions of justice we offer. Clayton argues that political liberal conceptions of justice rest “on certain controversial claims concerning the value of an autonomous life” and that the “dimensions of autonomy are compatible with a further appeal to ethical value”. Political liberalism constrains this appeal in order for liberal institutions to be acceptable to all reasonable conceptions of the good (those that affirm the ideal that political institutions must be acceptable to all and affirm the norm of reciprocity, roughly speaking). I do not take this approach. I offer an independent and distinctive account of political autonomy—derived from the political conception of the person—that determines what liberal institutions protect and promote. This is the basis of Justice as Fairness and its application to children’s upbringings. There is nothing external to this conception of autonomy that constrains its application in the cause of acceptability. Second, the conceptions of the content and distribution of child-rearing rights and obligations that we both offer are significantly different both in approach and result. For example, Clayton offers a distinctive account of child-rearing rights based on a political liberal interpretation of a Dworkinian insurance scheme. Clayton’s account suffers in that it does not explain—on its own admission—how people come to have “the primary responsibility for the upbringing of the child” in the first place; it only assesses the nature of the rights those predetermined people have regarding the child they have been assigned. I think answering the question that Clayton puts aside is essential to understanding the just content and distribution of those rights. I offer an account of the distribution of child-rearing rights and child-rearing obligations that answers the key questions Clayton does not address and presents a coherent account of their relationship to each other and to the conception of justice as a whole. Third, I disagree with Clayton’s most distinctive proposal for political liberal upbringings: that children’s autonomy prevents their enrolment into comprehensive doctrines

26 Clayton, Justice and Legitimacy in Upbringing, 27.
28 Clayton, Justice and Legitimacy in Upbringing, 51.
and practices. I will argue that his argument fails because it either (a) relies on an implausible account of justice as what people consent to (or would retrospectively consent to) or (b) fails to explain why children’s rights are violated by comprehensive enrolment. My own view establishes the principle that grounds Clayton’s argument—the social ideal of independence—more coherently and plausibly, and explains why such a requirement does not exist. Clayton’s work is not the main target of the thesis. I think, like Clayton, that political liberalism is right and that a compelling account of political liberal justice for children is available. Therefore, the target is not Clayton but those who deny that political liberalism can support a plausible conception of justice that can be plausibly applied to children’s upbringings. By offering a compelling account of political liberal justice for children I meet the challenge pressed by those sceptics. In this way it also supports political liberalism more generally: if political liberalism can support a plausible and determinate conception of justice for children, there is more reason to think political liberalism is a worthwhile approach to liberal political philosophy.

1.2 **How the Goal Will Be Achieved**

The goal of the thesis is to articulate and defend a political liberal conception of justice that provides plausible and determinate principles for the formulation and regulation of the institutions associated with children and their upbringing. This goal is motivated by a need to reply to those sceptical of the prospects of such an enterprise. Their scepticism is expressed in a denial that political liberal foundations can ground determinate and plausible principles, and/or that the principles that political liberal conceptions do elicit are indeterminate or implausible. To meet the challenge their scepticism presents, the following must be expounded and defended:

- An account of political liberal foundations and the political liberal approach to political philosophy.
- A conception of justice based on those foundations.
- A demonstration that principles of justice can be elicited from that conception that offer plausible and determinate answers to questions arising from the specific issues raised by children’s upbringings, and
that those answers are coherent with the other elements of the conception and the political liberal foundations.

- A demonstration that those principles elicit plausible institutional demands.

I therefore begin in Chapter 2 by offering an account of the political liberal approach and of political liberal foundations. In doing so I offer an immediate reply to sceptics who at least partially base their scepticism on mistaken interpretations of the political liberal project. This reply will not be complete unless I can demonstrate that a conception of justice can be built on those foundations that offer plausible and determinate answers to the important questions raised by the upbringing of children and demonstrate their coherence with each other, as well as with the conception of justice more generally. Rawls's Justice as Fairness—or more specifically, the ideals and ideas that are foundational to Rawls’s Justice as Fairness—provides the basis for the conception of justice I expound. This has a key advantage: it significantly adds to the web of coherence if I can show that Rawls's general conception of justice provides a compelling account of the justice of children’s upbringings. If the conception I present coheres with what we must do for adults more generally, and is also derived from the firmly political liberal and independently compelling constructions that Rawls has set out (such as the original position and the idea of the well-ordered society), then this adds to its overall plausibility and coherence. 29

In Chapters 3 and 4, I expound my interpretation of Justice as Fairness and make two significant contributions to the conception. In Chapter 3, I argue for a political conception of autonomy that offers a stronger conception than the one Rawls alludes to. In Chapter 4, I argue that the principle of fair equality of opportunity ought to be jettisoned and replaced in order to rebut some objections levelled at the second principle of justice and the priority ordering of the principles more generally. This latter proposal is a significant departure from the standard formulation of the principles of Justice as Fairness but I suggest that it promotes the coherence of the conception overall.

29 Note that this is not to say that I think what Rawls does say about children and the family has any particular merit.
After detailing the general conception of justice in Chapters 3 and 4, I turn in Chapters 5 and 6 to applying that conception of justice to the specific issues raised by the upbringing of children. This includes determining what makes a child a child; what traits and capacities they ought to acquire; what ought to condition the interests, talents, desires, and goals, they come to have; how their interests ought to be promoted during childhood; and how their interests ought to be ascertained. However, the institutions that meet these demands are conditioned by the application of the principles of justice to adult citizens; this may affect the distribution of the obligations attached to realizing justice for children. In Chapters 7 and 8, I complete the conception by addressing how we determine how we ought to fulfil the demands of justice for children in institutions and who ought to fulfil the institutional roles. I offer a principled balance of the various claims that go into determining the institutional setups and demonstrate the conception’s overall coherence.

I will note at this stage that I do not make detailed institutional recommendations. To achieve the goal of the thesis, I must present a coherent and complete account of the principles that ought to determine institutional setups. Detailed institutional recommendations require assessments of psychology, sociology, pedagogy, economics, and other empirical concerns that go beyond the scope of the thesis. However, I do need to, and will, demonstrate that the principles are likely to elicit plausible institutional demands.

1.3 THE STRUCTURE OF THE THESIS

I will now provide a detailed account of the structure of the thesis. I will conclude this section and chapter by offering a summary of what I will be able to conclude in Chapter 9.

In Chapter 2—‘Political Liberal Foundations’—I provide an account of the purpose and practice of political liberalism and assuage three general worries regarding the prospects for political liberal conceptions of justice for children. First, that political liberal conceptions of justice are based on moral foundations that are unsuitable for determining what we ought to do for
children. This is because they are foundations appropriate only to assessing the regulation of relationships between adult citizens with already formed conceptions of the good. Second, that political liberal conceptions of justice cannot be based on ideals, or prescribe principles, that would elicit disagreement from reasonable comprehensive doctrines. Since any intuitively plausible political liberal conception of justice for children will elicit such disagreement, political liberalism is incoherent. Third, that political liberal conceptions of justice are necessarily anti-perfectionist and, as such, cannot prescribe principles that mandate the promotion of ideals regarding how one lives one’s life. Since any intuitively plausible account of justice for children will promote certain ways of living over others, political liberal conceptions of justice cannot apply to children. I demonstrate that all three worries rest on the notion that political liberalism is a response to the plurality of views about the good life and ultimate value that exist in real-world contemporary liberal democracies; political liberalism is an attempt to justify liberal conceptions of justice in the face of the empirical fact of pluralism in liberal societies. This is mistaken. Political liberalism is a solution to a problem internal to liberal theories of justice: the problem of stability. The problem of stability is as follows. An ideal liberal society is one in which everyone accepts and knows that others accept the same liberal conception of justice, and that political and social institutions generally satisfy and are generally known to satisfy these principles. In order to demonstrate that this ideal is conceptually achievable, it must be shown that the holders of the plurality of comprehensive doctrines that a liberal conception of justice engenders in such a society will affirm that conception of justice and support the political and social institutions regulated by that conception (at least when they have assurance that others are likely to do so too). On this—correct—interpretation of political liberalism, the three worries do not arise.

In Chapter 3—‘The Ideal of the Citizen’—I expound the political conception of the person that is a central moral foundation of Justice as Fairness. In doing so I establish a key foundation for the conception of justice advanced later in the thesis. I also provide an initial response to the following objection: Justice as Fairness does not apply to children because it does not and/or cannot offer
a suitable account of children’s interests and how they ought to be balanced with the interests of adults; since Rawls assumes that citizens are normal and fully cooperating members of society, this renders his theory unable to account for those members of society—including children—that cannot be conceived as such and have different needs and requirements. In reply I expound the political conception of the autonomous person that represents necessary and sufficient conditions for people to meet and that are collectively regarded as citizens’ highest-order interest. This conception reflects the ideal of the citizen and the ideal of society. Once these necessary and sufficient conditions have been met, the interests of the citizen are conceived through the idea of goodness as rationality: more resources and opportunities provide a greater chance to realise one’s autonomously formed conception of the good. This conception of the person and their higher-order interests offers clear and plausible guidance for what children are owed as a matter of justice.

In Chapter 4—‘The Principles of Justice as Fairness’—I explain how the political conception of autonomy, and the conception of citizens’ interests detailed in the previous chapter, explains the choice of the two principles of Justice as Fairness in the original position, their content, and their priority ordering. This has two purposes. First, it completes the exposition of the conception of justice that I will apply to children’s upbringings in the following chapters. Second, by showing how the principles of Justice as Fairness are derived from my expositions of the political conception of autonomy and citizens’ higher-order interests, it adds to the overall coherence and plausibility of those conceptions. I also detail how the political conception of autonomy I advance can defend the priority ordering of the principles of Justice as Fairness against objections, but only if the second principle of justice is reformulated. This reformulation involves retaining the difference principle as it is ordinarily interpreted and jettisoning the principle of fair equality of opportunity. The principle ought to be replaced by a principle—with the same priority ordering—that ensures the equal and adequate provision of the relational conditions necessary for citizens’ autonomy, conditions that may be undermined in the face of inegalitarian distributions of resources mandated by the difference principle.
In Chapter 5—‘Applying Justice as Fairness to Children’—I show how this general conception of justice applies to children and elicits certain demands of children’s upbringings. I expound the general approach for applying the principles of Justice as Fairness to particular issues that are abstracted away from in the initial stage of the original position: the four-stage sequence. I show how the four-stage sequence is to be used to apply the principles of justice to childhood and upbringing. Of particular note is that the principle of paternalism ensures children’s interests are furthered on the basis of their status as citizens over a complete life. Analysis of the stages also reveals that children are to be given equal status and consideration in the formulation and regulation of institutions and laws. I detail the principle of paternalism and conceive of its application to children. I offer a new formulation of the principle based on the political conception of autonomy expounded in Chapter 3 and show how this principle is to be applied to children. I argue that the principle mandates an ‘at-birth’ contracting of children into an institutional setup that furthers their higher-order interests as citizens considered over a complete life. This notion of the at-birth contract is the basis for the formulation and regulation of institutions and laws with respect to the demands of children’s upbringings. I also show how the principle (and the at-birth contract) deals with the developing capacities and interests of children as they grow up, and how adulthood is to be identified and conceived.

In Chapter 6—‘Elucidating Justice as Fairness for Children’—I elucidate and defend this account and show how it offers plausible, coherent, and determinate guidance with respect to three key debates. First, I compare the account to other liberal accounts of upbringing that argue that we should bring children up to be autonomous in a different form to how I detail. Specifically, I expound and critique the important elements of Harry Brighouse, Eamonn Callan, and Matthew Clayton’s arguments for upbringings for autonomy. I demonstrate the relative and absolute coherence and plausibility of my account. Second, I consider the objection that my conception is implausible because it ignores the intrinsic goods of childhood that ought to be a concern of justice for children. I accept that the conception fails to give such goods foundational significance but assuage the worry by pointing out that it does not
lead to significantly counter-intuitive outcomes: my conception remains plausible. Third, I consider the role of a state education in satisfying the demands of children’s upbringings. By jettisoning the principle of fair equality of opportunity from Justice as Fairness, a concern may be raised that this permits children to have radically unequal educational opportunities. I argue that the conception mandates a compulsory, socially inclusive, education system, in order to engender egalitarian relationships and discourage the development of oppressive structures and norms. My conception therefore supports the plausible notion of an equal and inclusive education system.

In the final chapters (7 and 8) I turn to addressing the distribution of specific child-rearing rights and obligations. If my conception could not offer plausible and coherent assessments of how particular adults acquire particular rights and obligations over particular children, and an account of how institutions fulfil the demands of children’s upbringings alongside other claims of justice, then the conception would be indeterminate and implausible. These final two chapters address this and together offer an account that is plausible, coherent and determinate.

In Chapter 7—‘Procreative Responsibility’—I address the issue of procreative responsibility and duty, and attack the many conceptions of child-rearing obligations that argue that those responsible for the existence of the child bear the child-rearing obligations associated with the child’s existence. I present a conception of citizens’ procreative duties that is plausible and based on a coherent conception of responsibility that is consistent with Justice as Fairness. I then show that procreation does not—in itself—justify the acquisition of child-rearing obligations. Such conceptions are incoherent and rely on an implausible conception of responsibility. I offer a general account of the difference between the conception of responsibility consistent with Justice as Fairness and the conception of responsibility relied on by those attaching acts of procreation to the distribution of child-rearing obligations and explain why the former is preferable.

In Chapter 8—‘Child-Rearing Institutions’—I present a positive account of the distribution of child-rearing rights and obligations. I distinguish a set of
relevant and pertinent reasons for the distribution. These are reasons that follow from the principles of justice expounded in Chapter 4: the implementation of the liberty principle, and arranging institutions to the greatest benefit of the least-advantaged subject to the condition that inequalities do not undermine certain relational conditions supportive of political autonomy. As such, institutions must be arranged to satisfy the demands of children’s upbringings (as expounded in Chapters 5 and 6), do not force anyone to undertake child-rearing roles, secure equal opportunity for child-rearing roles, and utilize an incentive structure alongside efficiency of implementation in order to ensure institutional aims—including the institutional demands of child-rearing—are satisfied as efficiently as possible (so that they are arranged to the greatest benefit of the least-advantaged). I note that the resulting distribution may be—on principle, if not in fact—incompatible with many cultural and religious practices that we find generally acceptable. I consider reasons to alter the proposed initial distribution in light of this concern. I affirm two deviations from the initial distribution that better satisfy the principles of Justice as Fairness. First, that gestational mothers ought to be able to continue intimate relationships they begin during pregnancy and that institutions ought to accommodate that. Second, that cultural and religious practices ought to be accommodated in the distribution if it can be shown that they are an unforeseeable result of the reasonable development of the underlying conceptions of the good, and that the accommodation is supportive of the relational conditions required for political autonomy.

1.3.1 Anticipating the Conclusion

In Chapter 9 I will conclude that those sceptical of the prospects for a political liberal conception of justice are wrong to be sceptical. Through the articulation and defence of a political liberal conception of justice that provides determinate and plausible principles for the formulation and regulation of the institutions associated with children and their upbringing, I meet the challenges that those sceptics feel are insurmountable. As such, I achieve the goal of the
thesis. I will have achieved the goal because the conception of justice I advance does the following:

- Presents a compelling account of the political liberal approach and of the foundations upon which a political liberal conception of justice ought to be built upon.

- Presents a coherent conception of justice based on those foundations that offers plausible and determinate answers to the specific questions raised by the upbringing of children.

In achieving the goal, I offer significant support for political liberal approaches more generally. However, more importantly, I offer an independently attractive basis for the analysis and formulation of institutions that concern children’s upbringings. This is because political liberalism is a persuasive approach to the purpose and nature of liberal political philosophy and conceptions built upon that approach are in that way attractive.
2 POLITICAL LIBERAL FOUNDATIONS

2.1 INTRODUCTION

One purpose of this chapter is to provide the political liberal framework upon which to build the conception of justice I advance in the following chapters. The other purpose is to demonstrate that political liberal conceptions of justice are not subject to the following general worries regarding their applicability to the specific issues raised by the upbringing of children. First, that political liberal conceptions of justice are based on moral foundations that are unsuitable for determining what we ought to do for children. This is because they are foundations appropriate only to assessing the regulation of relationships between adult citizens with already formed conceptions of the good. Second, that political liberal conceptions of justice cannot be based on ideals, or prescribe principles, that would elicit disagreement from reasonable comprehensive doctrines. Since any plausible political liberal conception of justice for children will elicit such disagreement, political liberalism is incoherent. Third, that political liberal conceptions of justice are necessarily anti-perfectionist and, as such, cannot prescribe principles that mandate the promotion of ideals regarding how one lives one’s life. Since any intuitively plausible account of justice for children will promote certain ways of living over others, political liberal conceptions of justice cannot apply to children.

In 2.2 I expound an account of Rawls’s ‘political turn’, that is, the move from presenting Justice as Fairness as a comprehensive philosophical doctrine to a political doctrine in light of the pluralism of comprehensive doctrines that exist in liberal societies. I show that political liberalism offers a solution to a problem internal to liberal theories of justice: the problem of stability. The problem of stability is as follows. An ideal liberal society is one in which everyone accepts and knows that others accept the same liberal conception of justice, and that political and social institutions generally satisfy, and are generally known to satisfy, these principles. In order to demonstrate that this ideal is conceptually achievable, it must be shown that the plurality of comprehensive doctrines that a liberal conception of justice engenders in such
a society will affirm that conception of justice, and support the political and social institutions regulated by that conception (at least when they have assurance that others are likely to do so too).

This understanding of political liberalism is not shared by those who press the three general worries. On their view, political liberalism is a response to the plurality of views about the good life and ultimate value that exist in real-world contemporary liberal democracies; political liberalism is an attempt to justify liberal conceptions of justice in the face of the empirical fact of pluralism in liberal societies. This view is mistaken. In 2.3 I show how this mistaken view leads to the three worries and that given the correct understanding of political liberalism the three worries can be assuaged. Against the first worry I argue that political liberal conceptions of justice are based on an ideal of the citizen that can be the basis for assessing the status of children and their particular interests; such an ideal is not only applicable to the assessment of relationships between adult citizens. Against the second worry I argue that the existence of real-world comprehensive doctrines that would shun the application of the ideal to children, and indeed any real-world disagreement with political liberal foundations or conceptions, is largely irrelevant to the political liberal project. Against the third worry, I argue that political liberal conceptions of justice are not necessarily anti-perfectionist. Although there are good reasons to think that political liberal conceptions of justice will be largely anti-perfectionist, these reasons do not apply to children’s upbringings. By assuaging these three worries on the basis of the conception of the political liberal approach expounded in 2.2, I provide an account of the political liberal foundations that must be adhered to in the following chapters, in order for the conception of justice I construct to be coherent.

30 An important omission in this section—Matthew Clayton’s argument that children’s right to independence forbids perfectionist upbringings—will be discussed in 6.3. I do not address it here since this argument is not premised on the general worry being addressed, that is, that political liberal conceptions of justice are necessarily anti-perfectionist because perfectionist policies promote particular ways of life over others and, as such, would elicit disagreement from some comprehensive doctrines.


2.2 Rawls’s Political Turn

In this section, I provide an account of Rawls’s move from presenting Justice as Fairness as a comprehensive philosophical doctrine to a political doctrine. In 2.2.1 I introduce the idea of a well-ordered society that is the focus of Rawls’s political turn. A well-ordered society is a society in which everyone accepts and knows that others accept the same conception of justice, and that political and social institutions generally satisfy, and are generally known to satisfy, these principles. I explain why it is a feature of Rawls’s political philosophy. In 2.2.2 I detail the problem of stability, that is, the problem of explaining how a well-ordered liberal society could be established and sustain itself over time given the fact of reasonable pluralism. I also show why the solution Rawls offered in TJ failed. In 2.2.3 I explain the move to political liberalism as a new solution to the problem of stability. In 2.2.4 I conclude by establishing that political liberalism is an ideal-based view, that is, it is based on an ideal of society and of the citizen, and that the aim of Rawls’s political philosophy is to deepen our understanding of these ideals, expound what they imply for liberal politics, and to show that aiming for a society based on these ideals is a worthwhile and valuable enterprise.

2.2.1 A Well-Ordered Society

Rawls’s idea of a well-ordered society derives from the four roles of political philosophy that he highlights. The roles are as follows. First, political philosophy has a “practical role arising from divisive political conflict and the need to settle the problem of order” (JaF 1). Rawls notes the “deep and sharp conflict” that forms part of the history of any society and that leads to the need to “see whether, despite appearances, some underlying basis of philosophical and moral agreement can be found” (JaF 1; 2). Second, political philosophy plays an orientation role in “educating citizens to certain ideal conceptions of person and political society”, furthering and entrenching the shared ideals it expresses (LHPP 7). This is closely connected with the practical role: by showing how the practical problems of deep disputes can be solved through reason and reflection on shared ideals, those shared ideals will become more entrenched and regulative of people’s behaviour. Deep pluralism in society will
become less destructive of order and even contribute positively to relationships between persons and associations in political and civil society. This touches on the third and fourth roles: reconciliation and political philosophy as “realistically utopian” (JaF 4). These roles consist in demonstrating that the ideals upon which society rests are rational and coherent when expounded and that striving for a society that realises those ideals is not futile; we need not be frustrated and pessimistic about the prospects for realising the ideals. The point of stressing political philosophy as realistically utopian is to recognise that the “fact of reasonable pluralism limits what is practically possible under the conditions of our social world” (JaF 4). For reconciliation we need to show why the inevitability of reasonable pluralism in liberal societies is not something “we should lament” (JaF 5).

The roles of political philosophy come together in the idea of a ‘well-ordered society’:

“[A] society is well-ordered when it is not only designed to advance the good of its members, but when it is also effectively regulated by a public conception of justice. That is, it is a society in which (1) everyone accepts and knows that others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles. In this case while men may put forward excessive demands on one another, they nevertheless acknowledge a common point of view from which their claims may be adjudicated.” (PL 4-5)

The well-ordered society is a “very considerable idealization” (JaF 9) but it is an idea that reflects the roles of political philosophy as described above. A well-ordered society is a realistic utopia that addresses practical problems of political association on moral foundations that everyone accepts as the correct basis for the regulation of their political association. A central purpose of political philosophy, then, is to explain how a well-ordered society could come about, and how it could sustain itself over time, without resort to a Hobbesian sovereign or dominant ideology that oppresses divergent ideas or beliefs.

The problem Rawls sees in his earlier presentation of Justice as Fairness is that his account of how a well-ordered society could come about and sustain itself over time was faulty. But the fault he identified is often misunderstood. The
fault was not that the justification for Justice as Fairness rested on ideals that would not be accepted by some real-world comprehensive doctrines that are found in contemporary liberal societies. Neither is the fault that his account of a well-ordered society rested on ideals that would not be accepted by some real-world comprehensive doctrines. The fault was that he failed to explain how those who would affirm those ideals in a well-ordered society would also affirm those ideals as regulative of their actions within political and social institutions: the problem of stability. Rawls did not fully appreciate the difficulty of demonstrating this necessary element of a well-ordered society. In order to recast this demonstration in PL, he also had to recast the ideals upon which Justice as Fairness is based. But as I will discuss in 2.2.4 the substance of those ideals did not change, and did not need to change. Political liberal conceptions of justice remain based on substantive ideals of the person and of society and, as such, are not subject to the three general worries noted in 2.1.

2.2.2 The Problem of Stability

I now turn to detailing the problem of stability and why Rawls’s solution to that problem in TJ was unsatisfactory, prompting the move to political liberalism. I begin by explaining the problem of stability, expound Rawls’s solution to the problem given in TJ, and finally explain why that solution was unsatisfactory. I largely follow Paul Weithman’s superb account detailed in his book *Why Political Liberalism?*31

2.2.2.1 The Problem of Stability

The first element of demonstrating the possibility of a well-ordered society is demonstrating that in such a society people will *acquire* a sense of justice. This is a moral power we have in virtue of our ability to reason, and our natural inclinations and dispositions. It is the capacity to understand, apply, and act from, principles of justice that can be demonstrated to us as coherent, fair, and in our interest, and to desire to do so for its own sake. We have a natural inclination to engage in relationships of reciprocity, that is, to respond in kind to benefits we receive. This inclination “is not the altruistic (the impartial

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acting solely for the interests of others) nor is it the concern for self (and moved by ends and affections alone)”, it is that we “all stand ready to propose fair terms that others may reasonably be expected to accept, so that all may benefit and improve on what everyone can do on their own... [A society based on reciprocity] is neither a society of saints nor a society of the self-centered” (PL 54). Institutions that establish and maintain relationships of reciprocity will develop and realise our natural inclination to affirm and support such relationships and thereby the institutions. That a sense of justice would be acquired in a well-ordered society was demonstrated in TJ and this account never changed. However, the acquisition of a sense of justice is not enough for a well-ordered society to be established and to sustain itself over time and therefore is not enough to solve the problem of stability. This is because stability requires that the sense of justice will be regulative of everyone’s actions, that is, that people will establish a commitment to leading a just life in almost all cases. Not only this, but it must be shown that the fact that everyone’s sense of justice will be regulative of their actions will be publically demonstrated to be the case. So “stability involves two questions” (PL 141):

1) Will members of the well-ordered society (WOS) normally acquire a sense of justice?

2) Will members of the WOS judge that maintaining and acting from their sense of justice in almost all cases is an essential part of their conception of good regardless of the specifics of that conception?

The reason why a sense of justice alone may not establish an affirmative answer to the second question is because “if members of the WOS think they have something to gain by ‘free-riding’ on the justice of others, they will be tempted to defect from that agreement. In that case, the stability of justice as fairness will be threatened by ‘the hazards of the generalized prisoner’s dilemma’ (TJ 505)”.

This threat comes from two directions. First, for reciprocity to be engendered then there must be sufficient reason to think

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32 As Rawls himself says in JaF 196, nt 17. Also see Ibid., 293.
33 Ibid., 234.
almost everyone will do their bit,\textsuperscript{34} I need to have assurance that others will act from their sense of justice, in order for me to act upon my sense of justice. This is the reason why almost everyone’s acting from their sense of justice must be publically known to be the case. Second, if I do have this assurance, then I have an incentive to free-ride. I may still receive the benefits of cooperation—the WOS might still be stable—but I have the added benefit of furthering my other ends. We all have other commitments, that is, a conception of the good life that we wish to pursue. The pursuit of our various rational ends may conflict with acting from our sense of justice in some cases. It therefore must be shown that acting from our sense of justice will usually outweigh the other values and desires we may have and that we—as members of a WOS—will resist deciding case-by-case whether to be just and instead judge that acting from our sense of justice will be the highest-order regulative desire in our rational plans.

\subsection*{2.2.2.2 Solving the Problem of Stability in TJ}

In TJ, Rawls attempts to demonstrate the following congruence conclusion:\textsuperscript{35}

\begin{itemize}
\item $C_c$: Each member of the WOS judges, from the viewpoint of full deliberative rationality, that her balance of reasons tilts in favour of maintaining her desire to act from the principles of justice as a highest-order regulative desire in her rational plans.
\end{itemize}

He does so by attempting to establish the following and showing it would be regulative of their plans:\textsuperscript{36}

\begin{itemize}
\item $C_i$: All members of a WOS want to live up to the ideals of personal conduct, friendship, and associations included in Justice as Fairness.
\end{itemize}

Rawls appeals, in TJ, to what Weithman calls the \textit{Argument from Love and Justice}. Members of the WOS realise certain elements of their nature by treating their sense of justice as supremely regulative of their plans and projects, that is, as

\textsuperscript{34} ‘Almost everyone’, rather than the more demanding ‘everyone’, is consistent with standard readings of the generalized prisoners dilemma because the required assurance can flow from the belief that a sufficiently large proportion of the population will ‘do their bit’ even if a small minority will not. Thank you to Alan Hamlin for highlighting this point to me.

\textsuperscript{35} Weithman, \textit{Why Political Liberalism?}, 62.

\textsuperscript{36} $C_1$ to $C_3$ are all derived from Weithman’s notations in Weithman, \textit{Why Political Liberalism?}. 
the highest-order ideal regulating the formation, revision, and pursuit of their conception of the good. Specifically, they are able to “satisfy their natural desire for psychological integrity, for friendship, and for participation in associations that draw forth their own and others’ talents.”\(^{37}\) This is supported by the Aristotelian Principle: expressing our nature in this way “is a leading human good” (TJ 374). Rawls also appeals, in TJ, to our “desire to express our nature as moral persons... the desire to express our nature as free and equal rational beings can be fulfilled only by acting on principles of right and justice as having first priority” (TJ 503). This is the *Kantian Congruence Argument*. It attempts to establish this variation of $C_1$: $C_2$.

$C_2$: All members of a WOS want to live up to the ideal of full autonomy.

This ideal is an ideal of the Kantian self: to be a certain kind of person, that is, a being whose life and powers of practical reasoning are unified in various ways.\(^{38}\) In order to realize our Kantian self we must regulate our lives by principles chosen in the original position (OP) because “the OP is a choice situation in which our nature is the decisive determining element”.\(^{39}\)

**2.2.2.3 The Failure of TJ’s Solution**

The problem with the arguments from $C_1$ and $C_2$—and ultimately with the argument for $C_c$—is neatly summarised by Weithman:

> “the reasons and arguments members of the WOS have for maintaining their sense of justice as part of their good all depend on their thinking of themselves and others as in various ways free, and in valuing activity—their own activity and that of others—as free in those ways. But people who think of themselves as free to follow practical reason where it leads may not converge on the same conception of themselves, and may not all value the relevant kinds of freedom that some of the congruence arguments require.”\(^{40}\)

Pluralism does not undermine the development or acquisition of a sense of justice in a WOS but it does undermine the arguments for there being *decisive*

\(^{37}\) Ibid., 182.
\(^{38}\) Ibid., 256.
\(^{39}\) Ibid.
\(^{40}\) Ibid., 249.
reasons to be just. People will not converge on a “partially comprehensive doctrine on the basis of which they would affirm that maintaining their desire to treat the principles as supremely regulative belongs to their good”. Not everyone would accept that “when men are secure in the enjoyment of their own powers, they are disposed to enjoy the perfections of others, especially when their several excellences have an agreed place in a form of life the aims of which all accept” (TJ 459) – C₁ – and nor would they necessarily accept the ethical ideal or conception of Kantian freedom that motivates treating the outcomes of the OP as supremely regulative of one’s plans of life – C₂. They may endorse a conception of their nature that is incompatible with that conception of the self. The upshot is that even given the assumption that a sense of justice will be developed in a WOS, the problem of stability is not solved. Rawls failed to provide a satisfactory answer to the second question of stability:

2) Will members of the WOS judge that maintaining and acting from their sense of justice in almost all cases is an essential part of their conception of good regardless of the specifics of that conception?

2.2.3 Moving to Political Liberalism

The move to political liberalism, then, is motivated by the need “to resolve a serious problem internal to justice as fairness, namely... the fact that the account of stability [in TJ] is not consistent with the view as a whole” (PL xv-xvi). C₁ and C₂ rest on comprehensive ethical ideals but the pluralism that the principles of Justice as Fairness engender may not lead to convergence on C₁ or C₂. Rawls has to confront a different question:

“If some members of the WOS do not have the ideal-dependent desires implied by [C₁ or C₂], is it rational for them to maintain their sense of justice on the basis of the various conceptions of the good they do hold?”

In PL, Rawls does not provide a set of arguments showing how “practical reason is to be unified or wholeness of heart is to be achieved. Rather, how

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41 Ibid., 260.
42 Ibid., 271.
citizens unify their conceptions of the good and their sense of justice is left up to them”.

Instead, Rawls attempts to show that there will be an overlapping consensus of reasonable comprehensive doctrines (where reasonable refers to doctrines that acquire a sense of justice) on ideals specific to political and social institutions: the ideal of society as a fair system of cooperation over time and between generations, and the accompanying ideal of the political conception of the person as a free and equal citizen. Instead of attempting to show an unlikely convergence on an ideal of personal conduct, Rawls attempts to highlight and demonstrate a consensus on the ideals of C3:

\[ C_3: \text{All members of a WOS want to live up to the political ideals of conduct, friendship, and society included in Justice as Fairness.} \]

What is important here is the new restriction of scope. The ideals now refer to what is valuable about political and social institutions specifically—and one’s actions within those institutions—rather than what is valuable about one’s personal conduct or one’s life in general. Members of a WOS recognise that such ideals ought to be regulative of basic political and social institutions: citizens ought to be conceived as free and equal in the way detailed by the conception of the person in the OP, and the relevant interests and claims on political and social institutions conceived on the basis of the needs of citizens conceived as such.

### 2.2.3.1 The New Solution

Recall that the Rawls of TJ wished to establish Cc in order to solve the problem of stability:

\[ C_c: \text{Each member of the WOS judges, from the viewpoint of full deliberative rationality, that her balance of reasons tilts in favour of maintaining her desire to act from the principles of justice as a highest-order regulative desire in her rational plans.} \]

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43 Ibid., 304. This interpretation of Rawls is supported by Rawls’s comment in Commonweal’s interview with him: “Citizens can have their own grounding in their comprehensive doctrines, whatever they happen to be. I make a point in Political Liberalism of not really discussing anything, as far as I can help it, that will put me at odds with any theologian, or any philosopher.” Bernard Prusak and John Rawls, “Commonweal Interview with John Rawls,” in John Rawls: Collected Papers, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 2001), 621–622.
C₃ could not be established because in a WOS there would not be convergence on ideals (C₁ and C₂) necessary to support the conclusion. C₃ would also not support C₄ directly since the ideals it refers to are restricted in scope. They refer solely to ideals of political and social institutions and say nothing about how those ideals are included within, or whether and how they regulate, their rational plans of life more generally. In political liberalism, people figure that out for themselves within their own comprehensive conception of the good. However, the problem of stability does not change. It still has to be shown that the balance of reasons for each member of a WOS tilts in favour of acting justly, at least when others act justly and there is assurance that almost everyone will respond to just acts by acting justly themselves. The question is: how can this be demonstrated without a congruence conclusion supported by a highest-order regulative desire of one’s rational plans?

Weithman describes the argument succinctly. First, Rawls has to demonstrate that there will be an overlapping consensus on C₃, that is, that:

(a) Each comprehensive doctrine in a WOS is “either congruent with, or supportive of, or else not in conflict with” the political ideals referred to by C₃ and the values of realising them.⁴⁴

Second, that if (a) is true, then:

(b) Each member of the WOS judges, from within her comprehensive view, that the political ideals referred to by C₃ and the values of realising them “normally outweigh whatever values are likely to conflict with them” (PL 156), at least when others reach the same judgement.

Third, that there is a solution to the mutual assurance problem, in this new context. If these three elements can be established, then Rawls can arrive at the following conclusion, solving the problem of stability:

C₃ₚₗ: Each member of the WOS judges, from the viewpoint of full deliberative rationality, that her balance of reasons tilts in favour of maintaining her desire to live up to the values and ideals of Justice as Fairness.

The argument can be split up into these three elements. I follow Weithman by beginning by demonstrating the move from (a) to (b), followed by demonstrating there will be an overlapping consensus on (a), and then explaining the solution to the mutual assurance problem.

2.2.3.2 From (a) to (b)

Even if we assume comprehensive doctrines do affirm the political ideals referred to by C₃, how can people be assured that those ideals will be regulative of others’ conduct in all relevant cases (at least when they have assurance that others will reach the same judgement)? The key to understanding the move is to look carefully at the difference between ‘congruent with’, ‘supportive of’, and ‘else not in conflict with’, referred to in (a). In TJ, Rawls demonstrated congruence from a Kantian comprehensive view. But in PL, he wants to demonstrate that other comprehensive views are either ‘supportive of’ or ‘else not in conflict with’ and that this is enough to demonstrate that those views will be regulated by their sense of justice and adherence to the ideals of C₃ in the relevant cases.

Rawls considers the following comprehensive doctrines: value pluralism, Kantianism, utilitarianism, and a religious view that includes a doctrine of free faith. Value pluralists think that “each domain of value has... its own free-standing account” (PL 170). The account that value pluralists hold for the political domain are the political values of C₃. They will then not be in conflict with the values that hold in other domains. Weithman believes that Rawls believes most members of the WOS are “really value pluralists of some kind”. Most people’s doctrines are not “fully general and comprehensive” because the religious and ethical components of people’s doctrines do not have “any particular connection, one way or the other” with the political ideals (PL 160). As Weithman pithily states: “When it comes to politics, they just accept the political conception as the right account”. That this view is plausible is buttressed when one thinks about how the WOS generates its own support over time; I will return to this when I turn to the question of whether there will

46 Ibid.
be an overlapping consensus. Rawls believes utilitarians and the religions with a doctrine of free faith will be supportive of the political ideals of C₃. The best way for those views to live up to the ideals of their comprehensive views is to support a conception of justice based on the ideals of C₃. They will find their own comprehensive reasons to act upon the political ideals as their highest-order regulative value.

It would be implausible to think that the comprehensive views Rawls considers would recognise the values of C₁ or C₂ as regulative of their projects and plans (apart from Kantians). However, Rawls’s new argument does not require congruence with comprehensive views, only that with respect to political and social institutions, comprehensive views will be—if not congruent with—at least supportive of, or not in conflict with, the values of C₃.

### 2.2.3.3 Would there be an overlapping consensus?

This is a more pressing question. Why think that conceptions of the good will be congruent with, supportive of, or not in conflict with, C₃, in the way described? Remember, the supposition is not only that conceptions of the good will affirm C₃, but that they will see those ideals as regulative in political contexts, that is, in the context of acting within political and social institutions. This might seem implausible when one considers religious doctrines in particular but may be true of act utilitarians and many other comprehensive views. Withman considers a citizen Jan. Suppose her religion teaches that her religion is the only good life and that the way people will come to accept that is through making the promotion of that religion the central task of political and social institutions. For an overlapping consensus, Jan’s religion must hold that the political ideals of C₃ normally outweigh the goods and values of her religion in the political realm. But this seems unlikely if not impossible. Consider: the conclusion Jan must reach for an overlapping consensus when there is a constitutional or legislative question is that the balance of reasons tilts towards religious neutrality rather than towards the goods her religion identifies. How could Jan reach that conclusion from within her own comprehensive view?
Weithman identifies two answers. First, comprehensive views can and do change over time. Rawls assumes that members of a WOS are naturally drawn to relations of reciprocity and fairness—this is part of their moral sensibility—and the development and exercise of those moral inclinations are encouraged by being a part of a WOS, that is, the just institutions to which they are subject:

“This amenability to change means that even doctrines that are historically anti-liberal can develop under the lived experience of liberal institutions, so that they can join an overlapping consensus on a liberal political conception of justice.”

Rawls is attempting to demonstrate the stability of Justice as Fairness over time and is working towards a realistic utopia. What matters is whether Jan’s doctrine—over time—is likely to evolve to accept that the political values of C₃ ought to be accommodated within the tradition and that this accommodation outweighs the goods of that religion. As in TJ, the idea is that the publicity and institutionalization of the political values will generate its own support over time. Once a political conception is instituted, and its justification publically known and known to be publically known, its principles are “embodied in political and social institutions and in public traditions of their interpretation... citizens are made aware of and educated to this conception. They are presented with a way of regarding themselves...” (PL 71). The public institutionalization of a political conception will “realize a social world within which the ideal of citizenship can be learned and may elicit an effective desire to be that kind of person” (PL 71).

The second answer involves an appeal to the liberal principle of legitimacy:

“Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason.” (PL 137)

People with a sense of justice are assumed to affirm this principle. The principle is expressed in the constitution and constrains the exercise of legislative power and interpretive authority. The point is this: Jan can accept

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47 Ibid., 310.
that the liberal principle of legitimacy must constrain the use of political power while also accepting the teachings of her religion; this sense of legitimacy is part of the sense of justice that we assume she has and that everyone develops in a WOS. There will, therefore, not be the tension in practical reasoning that was initially feared. This is because “it allows Jan’s religion to attach sufficient weight” to C₃—enough to normally outweigh the other values in the political realm—without denying the truth of the religious teachings.⁴⁸ Of course, Weithman points out, in the real world we can expect people like Jan to “still experience a sense of tension or loss” because of the good that could come about from violating the principle of legitimacy.⁴⁹ But the idea is that it works in combination with the first answer to the question: “their experience of living in a pluralistic society, and abiding by the liberal principle of legitimacy, may make them aware of great social goods that are available only when the principle is widely honoured. Their churches may flourish, people of their faith are trusted and recognised as full and equal participants in their societies, and all people are left free to search for God—or not—in their own ways.”⁵⁰

2.2.3.4 How does Rawls solve the problem of mutual assurance in this new context?

The final issue is solving the problem of mutual assurance in this new context. The problem of mutual assurance is of particular concern given the new solution to the problem of stability. Rawls needs to show not only that in a WOS an overlapping consensus would obtain, but that it would be publically known to obtain. But in the new context comprehensive doctrines may just be ‘supportive of’, or at least ‘not in conflict with’, the ideals of C₃ and they will affirm their own reasons for that, not public reasons that members of a WOS more generally would affirm, apprehend, or even access. The mutual recognition of the congruence of the good with the ideals supporting Justice as Fairness within every person’s practical reasoning cannot play the role it did in TJ. For example, take a comprehensive conception of the good that will—on assumption—regulate their political conduct by the ideals of Justice as

⁴⁸ Ibid., 317.
⁴⁹ Ibid.
⁵⁰ Ibid., 318.
Fairness. Even if that is established, they may “reason and speak about justice quite differently than their fellow citizens do... they [may] explain their support... by talking about a common good, mutual love, conditions of life in community, and the right to search for God freely”.  

It becomes unlikely that other citizens will be assured that in almost all cases, there will not be defections from the working political conception of justice. We do not have mutual assurance.

In order to establish mutual assurance in PL, Rawls introduces the idea of public reason. The idea of public reason is as follows. In a WOS there will be a public conception of justice that provides a “common point of view” (TJ 4) that “furnishes values and principles on the basis of which questions of basic justice are to be settled, and rules of reasoning for moving from those values and principles to a settlement”.  

By reasoning from the common point of view in the context of acting within political and social institutions, and making political decisions public and deliberative (IOPRR 139), then we can be assured of almost everyone else’s commitment to the political ideals. Mutual assurance is therefore tied closely to what Rawls calls the three essential elements of deliberative democracy:

1) An idea of public reason (a common point of view)

2) A framework of constitutional democratic institutions that specifies the setting for deliberative legislative bodies.

3) The knowledge and desire on the part of citizens generally to follow public reason and to realise its ideal in their political and social context.

It also requires:

4) Widespread education in the basic aspects of constitutional democratic government for all citizens; a public informed about pressing problems.

Essentially, Rawls is prescribing the institutionalization of the publicity of an overlapping consensus. To this end, he began with an exclusive view of public reason: citizens should never introduce comprehensive reasons into political

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51 Ibid., 326.
52 Ibid., 327.
debates. He then relaxed this to the inclusive view. Why? Because if, say, religious groups were restricted to appealing to only political values in debates that clearly concern something fundamental to their comprehensive view—for example, appealing to religious liberty in debates about funding faith schools—it is likely that people will think “they are using political values as a cover” for what they really think, or doubt that they really believe in the separation of church and state (PL 248). Mutual assurance requires sincerity from citizens engaging in public debates. The exclusive view cannot accommodate that. The inclusive view would require, in this case, a correction to this state of affairs:

It would require “the leaders of the opposing groups to present in the public forum how their comprehensive doctrines do indeed affirm those values [of a political conception of justice]... their doing so may help to show that the overlapping consensus is not a mere modus vivendi. This knowledge strengthens mutual trust and public confidence; it can be a vital part of the sociological basis encouraging citizens to honour the ideal of public reason.” (PL 249)

But Rawls came to believe that even this was too restrictive. In IOPRR he moves to a wide view of public reason. According to the wide view, citizens are permitted to appeal to their comprehensive views in political discussion “provided that in due course proper political reasons—and not reasons given solely by comprehensive doctrines—are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support” (IOPRR 152). The reason to permit appeal to comprehensive views is to encourage sincerity and trust. The wide view “recognises that the roots of democratic citizens’ allegiance to their political conceptions lie in their respective comprehensive doctrines, both religious and non-religious” (IOPRR 153). Citizens’ allegiance to the ideal of public reason is strengthened in two ways. First, by permitting firmly held comprehensive beliefs into the discussion (subject to the proviso), citizens are more likely to affirm that ideal. Second, by encouraging sincere expressions of belief and reasoning in public debate, citizens are more likely to be assured of doctrines’ long-term commitment to the political conception of justice, solving the mutual assurance problem.

53 Ibid., 329.
Doctrines that affirm the ideal of public reason and the political conception of justice are able to act as a “vital social basis” giving them “enduring strength and vigor” (IOPRR 153). As Rawls makes clear, the wide view of public reason “does not change the nature and content of justification” - this is still based on the content of a political conception of justice (IOPRR 153). But it is a question of how one’s views are able to be expressed in the public arena and the wide view supports mutual assurance better than the inclusive or exclusive views.

2.2.4 Political Liberalism: An Ideal-Based View

In this subsection I provide a summary of the political liberal approach as an ideal-based view. I have so far described political liberalism as offering a solution to the problem of stability that was initially raised by Rawls in TJ, but that was insufficiently dealt with in TJ. The solution is to show that in a WOS, there will be an overlapping consensus of comprehensive doctrines that are congruent with, supportive of, or at least not in conflict with, the ideals and values of Justice as Fairness. An overlapping consensus is likely because over time and between generations, people will be educated to appreciate and affirm the working political conception of justice and the values that underpin it such as the ideal conception of the person as a free and equal citizen, and this will be supported by the development of people’s ingrained sense of justice. Furthermore, the liberal principle of legitimacy will be affirmed even in particular cases where comprehensive views are in tension with the working political conception of justice. The problem of mutual assurance is solved by the introduction of the idea of public reason: the institutionalization of the publicity of people’s support of the working political conception of justice and of the values and ideals that underpin it.

On this account of Rawls’s political turn, political liberalism remains an ideal-based view. It is based on ideals of society and of the person: what society can and ought to look like, what it can and ought to do for us, and how it can and ought to shape who we become. It is an ideal of living a life subject to institutions that develop and realise our inherent abilities to form, revise, and pursue a conception of the good, and to develop and realise our sense of
justice. That this is the case can be derived from the roles of political philosophy as he sees them: he is trying to reconcile and orientate us to what we already believe about the good of liberal democratic institutions in order that we can more effectively approach the practical problems of how we all live together. He says:

“justice as fairness tries to uncover the fundamental ideas (latent in common sense) of freedom and equality, of ideal social cooperation, and of the person, by formulating what I call ‘model-conceptions’... the two basic model-conceptions of justice as fairness are those of a well-ordered society and of a moral person.”

Rawls changes from ‘moral person’ in TJ to ‘political conception of the person’ in PL. But the point remains: the political conception of the person and the well-ordered society are ideals that are begun with. They “depict certain general features of what a society would look like if its members publicly viewed themselves and their social ties with one another in a certain way”. These general features are that society is and ought to be a fair system of cooperation, over time and between generations, between citizens conceived as free and equal and as fully cooperating members of society over a complete life (PL 14). The original position is used to mediate the ideal of the conception of the person to the principles of justice that can regulate a well-ordered society over time. A political conception of justice, then, articulates these ideal or model conceptions into determinate principles that can effectively regulate the basic political, economic, and social institutions that are its subject. A political conception of justice is not a modus vivendi and it is not a compromise in the face of disagreement. It is the exposition of an ideal. A coherently expounded political conception of justice will demonstrate how the goods and values that are intrinsic to the ideal are best realized.

Now, this is not to say that “it is important or valuable to live free or fully autonomous lives” or “that we are required to conduct ourselves as fully autonomous citizens”. The point is that his theory is addressed to those who

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55 Ibid., 308.
56 Weithman, Why Political Liberalism?, 358.
are assumed to affirm the ideal of citizenship and liberal society so expressed. We have interests in living in such a society because we recognise its value as expressed in the history and culture of the liberal society we are situated in. We acquire positive considered judgements on the justice of particular freedoms and distributions as they tend towards freedom and equality – they form part of our reflective equilibrium, which is strengthened by the fact that Rawls can show that those considered judgements, and the fundamental ideas on which they rest, can be made coherent in a complete conception of justice that can effectively regulate political and social institutions, and can be stable over time. Rawls is interested in giving “the kinds of reasons that can be given to support [a liberal democratic regime] on the assumption that it is something we already wish to support”. He is interested in showing how “the thought and practice of democratic societies are not necessarily incoherent... Democratic legitimacy under conditions of reasonable pluralism is not incoherent” and that “we need not treat reasonable pluralism with hostility, as a potential threat to the political values we cherish”.

2.3 The Three Worries

In this section I assuage the three general worries described in 2.1. These are:

(1) Political liberal conceptions of justice are based on moral foundations that are unsuitable for determining what we ought to do for children because they only apply to the assessment of relationships between adult citizens.

(2) Political liberal conceptions of justice cannot be based on ideals, or prescribe principles, that would elicit disagreement from reasonable comprehensive doctrines.

(3) Political liberal conceptions of justice are necessarily anti-perfectionist and, as such, cannot prescribe principles that mandate the promotion of ideals regarding how one lives one’s life.

I will show that these three general worries do not apply to Rawls’s political liberalism, as I have expounded it above. The basic point will be the same

58 Ibid., 383.; 384. Also see Prusak and Rawls, “Commonweal Interview with John Rawls,” 622. in which Rawls agrees that what he’s trying to do “is bring together the practice of constitutional democracy and present it in a way that’s compelling.”
regarding all three general worries. Rawls’s theory is based on substantive ideals. It does not matter that there are real-world comprehensive doctrines that would shun either the ideals or the implications of institutions based on these ideals. Whatever is true about some other political anti-perfectionist theories, Rawls’s theory can ‘take sides’; it can give us answers to what we must do for children that are not unduly held back by commitments to tolerance or neutrality.

2.3.1 Children and the Political Ideals

The first worry to address is as follows. Political liberalism utilizes a conception of citizens that is formulated to elicit an agreement between adult citizens, with already formed conceptions of the good, on how they ought to view each other in order to reflect their mutual desire to live their lives as they see fit. The conception of the citizen as free and equal is appropriate as a basis of such an agreement because the conception reflects an equal claim to the free pursuit of the good life as one sees fit. However, such a conception is not formulated with children in mind and is inapplicable to questions concerning how they ought to be brought up. Children are not ‘free and equal’ citizens and they are not to be treated or respected as such, whatever that would mean. In response, I argue that the conception of the citizen does, and is supposed to, apply to children. However, this will encourage the second worry that I address in the next subsection: such a conception of the citizen could not play the role it needs to play in political liberalism, that is, to elicit agreement between comprehensive conceptions of the good in liberal societies. A full reply to this first worry will require a suitable reply to the second. In this subsection, I only make the claim that the conception of the citizen does apply to children.

As I have already noted, Rawls’s theory is based on a conception of the ideal of society and an ideal of the citizen. The conception of the ideal of the citizen represents how we ought to be conceived for the purposes of the regulating political and social institutions. It is a conception that frames what people ought to be and the circumstances in which people ought to become the people they become, and, in turn, what society ought to provide in order for that to be realized:
“It is this political conception of persons, with its account of their moral powers and higher-order interests [developing and exercising those moral powers and furthering a determinate conception of the good], together with the framework of goodness as rationality [that is, that their plan of life is rational and pursued by rational means] and the basic facts of social life and the conditions of human growth and nature, that provides the requisite background for specifying citizens’ needs and requirements.” (PL 178)

The ideal of liberal society is one that establishes and maintains the conditions under which we can all develop, realize, and exercise our capacities for the two moral powers. Such a society is a society of free and equal citizens. In such a society we can say:

“in virtue of their two moral powers (a capacity for a sense of justice and for a conception of the good) and the powers of reason (of judgement, thought, and inference connected with these powers), persons are free. Their having these powers to the requisite minimum degree to be fully cooperating members of society makes persons equal.” (PL 19)

The ideal of society is realised if people can be recognized as citizens conforming to this ideal and have their claims recognized on the basis of that ideal:

“we say... that not only are citizens normal and fully cooperating members of society, but further they want to be, and to be recognised as, such members... we are saying that they want to realize in their person, and have it recognized that they realize, that ideal of citizens” (PL 84)

Children are no exception. Children must be brought up so that they realize this ideal and it is consistent with political liberalism for a society to ensure that they do and enact the kind of measures that will be necessary. Society is viewed “as a more or less complete and self-sufficient scheme of cooperation, making room within itself for all the necessities and activities of life, from birth until death” (PL 18). As such:

“Think, then, of the principles of justice as designed to form the social world in which our character and our conception of ourselves as persons, as well as our comprehensive views and their conceptions of the good, are first acquired, and in which our moral powers must be realized, if they are to be realized at all. These principles must... enable us to become free and equal citizens in
Rawls himself is not hesitant to prescribe principles which are sensibly read as principles directing what children must become given the overarching aim of enabling a condition of free and equal citizenship for all:

“Someone who has not developed and cannot exercise the moral powers to the minimum requisite degree cannot be a normal and fully cooperating member of society over a complete life. It follows that as citizens’ representatives the parties [in the OP] adopt principles that guarantee conditions securing for those powers their adequate development” (PL 74).

It is the mere “potentiality which brings the claims of justice into play”; “a being that has this capacity [for the two moral powers], whether or not it is yet developed, is to receive the full protection of the principles of justice” (TJ 442; 445). Rawls directly defends “the equality of children as future citizens”; he is concerned with securing “the equal basic liberties and opportunities of... children as future citizens” (IOPRR 163). The reason that mere potential is sufficient is because there is value in the kind of goods that a liberal political society can create and maintain, that is, the conditions for people to reach the ideal of the citizen and being part of an ideal liberal society. What we owe children can be ascertained by working out what is required in childhood for those persons to realize the ideal of the free and equal citizen over a complete life.

The rest of this thesis will expound this idea. However, it is sufficient at this stage to merely indicate the intention and plausibility of such an idea: the ideal of the citizen can and does apply to children. Those who press the worry that it does not will respond to this notion as follows: if the ideal of the citizen applies to children, then it fails to be an appropriate ideal. This is because such an ideal could not be a basis for an overlapping consensus of comprehensive doctrines, whereas the ideal—if it applied only to adult citizens—could be such as basis. In 2.3.2 I address the notion that such disagreement is relevant to the formulation of the ideal.
2.3.2 Disagreement

In this subsection I address the following worry. Political liberal conceptions of justice cannot be based on ideals, or prescribe principles, that would elicit disagreement from reasonable comprehensive doctrines. Since any plausible political liberal conception of justice for children will elicit such disagreement, political liberalism is incoherent. In response, it should be clear from the exposition in 2.2 that this worry is grounded in a misunderstanding of the political liberal project. This misunderstanding is neatly expounded by Jonathan Quong who distinguishes between internal and external conceptions of political liberalism.

On the external conception, political liberalism is a response to the fact of reasonable pluralism in current liberal democracies and attempts to show that conceptions of justice are acceptable to a specified subset of actual citizens in those societies. The worry regarding disagreement focuses on the fact that policies and institutions to do with children’s upbringings are either going to result in illiberal upbringings that real-world cultural and religious groups will affirm, or liberal upbringings that they will not. The response that the cultural and religious groups are unreasonable is to admit that the pluralism liberal societies engenders is not taken seriously by political liberalism: it collapses into comprehensive liberalism. These cultural and religious groups only wish to be given the space to bring up ‘their’ children as they wish; they ask nothing of other (adult) citizens in that regard and they will respect other ways of life as they are asking others to do for them. They are, on any sensible and non-question-begging understanding of the term, reasonable people. The political liberal ‘middle ground’ between comprehensive liberalism and the tolerationist states proposed by Galston and Kukathas is untenable (see 1.1.1).

However, this is just not what political liberalism is. On the internal conception, as we have seen, political liberalism is a response to a fact about liberal theory, not a fact about real-world liberal societies, and shows that conceptions of justice could be endorsed by citizens in a well-ordered liberal society.

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50 Quong, *Liberalism without Perfection*, 145.
Reasonable citizens, then, are those that would exist in a WOS. 2.2 has expounded the reasoning for such an approach. There may be those in real-world liberal democracies who would deny the political ideals of C; or deny the liberal principle of legitimacy. However, for those in the real world who refuse these notions Rawls has this to say: “Political Liberalism does not engage those who think this way.” (IOPRR 132; emphasis mine) To disagree with this point is to disagree with the very purpose of political philosophy as Rawls (and I) understand it. It should be clear that the worry regarding real-world disagreement is assuaged if one endorses the conception of political liberalism that I have expounded in 2.2.

2.3.3 Perfectionism

In this subsection I assuage the worry that since political liberal conceptions of justice are necessarily anti-perfectionist, political liberal conceptions cannot prescribe plausible principles of justice for children because any such principles will be perfectionist, that is, will promote or discourage certain ways of life on the basis of their intrinsic value. I do so by demonstrating that the general presumption against anti-perfectionism only applies with respect to adults, and not children, in the ideal society. There is no general presumption against perfectionist principles for children. I will argue that whatever is wrong about perfectionism can be reduced to the idea that it is inconsistent with the ideal of the citizen for the state to act paternalistically towards adult citizens in its institutions. However, since the wrong of paternalism does not apply to children, then a political liberal state can be perfectionist with respect to

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60 Timothy Michael Fowler, “Perfectionism for Children, Anti-Perfectionism for Adults,” Canadian Journal of Philosophy 44, no. 3–4 (July 4, 2014): 305–23. has made a similar point although our understandings of the perfectionist/anti-perfectionist debate and the political/comprehensive debate do not overlap and as such we elicit very different conclusions regarding children’s upbringings.

61 The conception of justice for children I will advance could in fact be regarded as anti-perfectionist. This is because the proposals are based on the promotion of a political conception of autonomy that is not grounded in a notion of intrinsic or inherent value. However, I do not demonstrate either point, that is, that the political conception of autonomy does not make any appeal to notions of intrinsic or inherent value, or that all the proposals are limited to the promotion of political autonomy. It is sufficient to demonstrate in this subsection that to do either would be permissible anyway.
children but only on political grounds, that is, on grounds consistent with the ideal of the citizen that is the basis for the theory as a whole.

The distinction between political and comprehensive liberalism is often conflated with the distinction between anti-perfectionist and perfectionist liberalism. The question that can be asked to distinguish perfectionist theories from anti-perfectionist theories is: is it permissible for a liberal state to promote or discourage some activities, ideals, or ways of life on grounds relating to their inherent value, or on the basis of other metaphysical claims? Perfectionist liberals answer ‘yes’ to this question; anti-perfectionist liberals answer ‘no’ to this question. This distinction concerns what it is legitimate for liberal institutions to do for/to people, rather than what the ultimate justification is for those institutions. Anti-perfectionists argue that it is inconsistent with the freedom and equality of persons for the state to act to promote or discourage ways of life that are otherwise consistent with supporting liberal institutions for the right reasons. Perfectionists argue that the state can promote or discourage ways of living on the basis of their inherent or intrinsic value in at least some situations – it is not necessarily inconsistent with the freedom and equality of persons or with the deep pluralism that is inherent to liberal societies.

Rawls discusses perfectionism in relation to the choice the parties make in the original position. He considers whether they would choose a principle of perfection. He argues they would not:

“[The parties] do not have an agreed criterion of perfection that can be used as a principle for choosing between institutions. To acknowledge any such standard would be, in effect, to accept a principle that might lead to a lesser religious or other liberty, if not to a loss of freedom altogether to advance many of one’s spiritual ends... They cannot risk their freedom by authorizing a standard of value to define what is to be maximized by a teleological principle of justice.” (TJ 288)

62 Quong, Liberalism without Perfection, 15.
63 Ibid.
But what is more interesting is the fact that Rawls equates his principles of justice with perfectionist principles in respect to the fact that they are both *ideal-regarding* principles:

> “the principles of justice as well as the principle of perfection...
> are ideal-regarding principles. They do not abstract from the
> aims of desires and hold that satisfactions are of equal value
> when they are equally intense and pleasurable... *a certain ideal is
> embedded in the principles of justice, and the fulfilment of desires*
> *incompatible with these principles has no value at all.*” (TJ 287;
> emphasis mine)

The ideal is based on an ideal of society and an ideal of the person and this does not, as Rawls notes, invoke “a prior standard of human excellence” (TJ 287). It does, however, invoke an ideal of the political and social conditions under which people ought to form, revise, and pursue their conception of the good. Rawls says “we are to encourage certain traits of character, especially a sense of justice” (TJ 287). Who we become depends on the political and social institutions to which we are subject:

> “the social system shapes the wants and aspirations that its
> citizens come to have. It determines in part the sort of persons
> they want to be as well as the sort of persons they are” (TJ 229)

And who we become ought to be formed through what we see as an ideal: a free and equal citizen able to realize and develop the two moral powers. “The publicity of its conceptions and ideals of the person or of the citizen encourages citizens of the WOS to think of themselves in that way, or to aspire to be that kind of person.”64 In this way, “the principles of justice define a partial ideal of the person which social and economic arrangements must respect” (TJ 231). The point is that a political conception of justice *does* “presuppose a theory of the good, but within wide limits this does not prejudice the choice of the sort of persons that men want to be” (TJ 230). It is a shared theory of the good of *political and social institutions* and the good of the circumstances they can engender in which we become the people we become. So “this view shares with perfectionism the feature of setting up an ideal of the person that constrains the pursuit of existing desires” (TJ 231).

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The wrong of perfectionism comes when people have developed in a way that means they ought to be considered free and equal citizens, responsible for their ends, exercising their two moral powers, and there are paternalistic acts by the state that attempt to promote some ends over others. This is a wrong because, as Quong points out, it is inconsistent with the conception of the citizen as free and equal:

“paternalism involves one person or group denying that another person or group has the necessary capacity, in a given context, to exercise the second of the two moral powers: the capacity to plan, revise, and rationally pursue their own conception of the good. To treat someone paternalistically is thus (at least temporarily) to treat that person as if he or she lacks the second moral power. This means there is always a strong moral reason not to treat a sane adult paternalistically, and this is why paternalism is prima facie wrong.”

There is nothing in this argument that suggests that there is anything wrong with paternalistic acts towards children. Indeed, what is wrong with paternalism is usually informally expressed as the fact that it ‘treats people like children’ when they are not children. But treating children like they are children is not wrong. If the charge of paternalism is what makes perfectionism wrong in a political liberal conception of justice, then it appears there is no reason to not prescribe perfectionist principles for children as long as they are consistent with other requirements of political liberal conceptions of justice.

2.4 CONCLUSION

One goal of this chapter was to expound the political liberal approach that is the framework for the conception of justice I advance in the following chapters. The other goal was to assuage three general worries regarding the prospects for a compelling and coherent politically liberal conception of justice that can address the specific issues raised by the upbringing of children. In 2.2 I expounded an understanding of Rawls’s political turn, that is, the move from presenting Justice as Fairness as a comprehensive conception of justice to a political conception. I argued that Rawls’s political turn involved a new and

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65 Quong, Liberalism without Perfection, 101.
improved solution to the problem of stability. The problem of stability is the problem of explaining how a well-ordered liberal society could be established and sustain itself over time given the fact of reasonable pluralism. This is a problem internal to liberal theory and is not a response to the fact of real world disagreement about the good life and what is of ultimate value.

In 2.3 I dismissed three worries regarding the prospects for a political liberal conception of justice that can address the specific issues raised by the upbringing of children. I showed that those worries rest on a mistaken understanding of the political liberal approach. As I demonstrated in 2.2.4, political liberalism is an ideal-based view; it is based on an ideal of society and an ideal of the citizen. In 2.3.1 I showed that this ideal can be applied to children and their upbringings. In 2.3.2 I showed that real-world disagreement about principles resulting from the ideal, or disagreement about the ideal itself, is not damaging to the political liberal project. In 2.3.3 I argued that the ideal permits perfectionist policies with respect to children, although the perfectionism must appeal solely to the ideal of the citizen and its accompanying interests.

I have now detailed the nature of political liberal constraints and how they affect the construction of a political conception of justice. Political liberal conceptions of justice must be based on an ideal of society and an ideal of the citizen, and must not be based on particular ideals of the good life or what is of ultimate value. In the next chapter I will detail these ideals—based on the understanding of political liberalism expounded in this chapter—before constructing a conception of justice based on those ideals in the following chapters.
3 The Ideal of the Citizen

3.1 Introduction

The purpose of this chapter is to detail the ideal of the citizen—the political conception of the person—that is the basis of Justice as Fairness. In doing so I build more foundations for the conception of justice advanced later in the thesis. This is the primary aim. However, this chapter also serves as an initial response to the following objection: Justice as Fairness does not apply to children because it does not and/or cannot offer a suitable account of children's interests and how they ought to be balanced with the interests of adults; since Rawls assumes that citizens are normal and fully cooperating members of society, this renders his theory unable to account for those members of society—including children—that cannot be conceived as such and have different needs and requirements.

In 3.2 I expound the political conception of autonomy. This conception reflects the ideal of the citizen and the ideal of society in that it is a relational ideal: it is a conception that is fundamentally based on “the social and interpersonal dynamics that shape agency, desires, and choices”.

66 More specifically, I argue that the conception is based on authentic self-authorization: a conception of the conditions under which citizens can hold each other responsible for their ends and their actions. In 3.3 I expound the necessary and sufficient conditions for people to meet in order to be politically autonomous on this conception and argue that meeting these collectively represent citizens’ highest-order interest. This will illuminate the distinctive content and the distinctive political, not ethical, basis of the conception of autonomy. In 3.4 I show how this aligns with the theory of primary social goods and Rawls’s own reply to criticisms regarding the inflexibility of primary social goods with respect to addressing differing capacities between persons to utilise those goods to advance one’s ends. This reply shows that the objection to Rawls’s theory does not hold: the theory of primary social goods and the idea of a

sufficient capability set for autonomy can offer clear and plausible guidance for children’s upbringings.

3.2 Political Autonomy as Self-Authorization

In this section, I detail the political conception of autonomy. I will begin in 3.2.1 by introducing the basic idea and how it relates to the ideal of the free and equal citizen. In 3.2.2 I will expound how a political conception of autonomy is not based on an identity-based conception of autonomy where one is autonomous if one acts on the basis of who one is or who one stands for, specified in some form. In 3.2.3 I will articulate and defend a conception of autonomy based instead on self-authorization and illuminate its distinctive political, not ethical, basis.

3.2.1 The Ideal of the Citizen and Political Autonomy

In 2.3.1 I introduced the canonical definition of the political conception of the person:

“in virtue of their two moral powers (a capacity for a sense of justice and for a conception of the good) and the powers of reason (of judgment, thought, and inference connected with these powers), persons are free. Their having these powers to the requisite minimum degree to be fully cooperating members of society makes persons equal” (PL 19)

The ideal of free and equal citizenship is a relational ideal, that is, it is an ideal of how we interact with one another in political and social institutions. The ideal is that the terms under which we interact are publically known and mutually acceptable. If those terms are met, then each citizen can hold herself as responsible for her actions and hold every other citizen responsible for their actions; in a free and equal society everyone takes ownership of what they do. The ideal of the citizen is met when citizens “conceive of themselves and of one another as having the moral power to have a conception of the good” (PL 30), when they “regard themselves as self-authenticating sources of valid claims” (PL 32), and when “they are viewed as capable of taking responsibility for their ends and this affects how their various claims are assessed” (PL 33).
I argue that this ideal is best understood as an ideal of the self-authorizing person. This is a person who can properly apprehend the reasons for the political and social institutions that shape who citizens are and who citizens become, and can affirm the political and social institutions on the basis of those reasons. It is a person who, because of those conditions, can and does take ownership of their actions in the context of the political and social institutions in which those actions will be judged. This ideal is the political conception of autonomy: citizens are fully autonomous when “citizens think of themselves as free in three respects:”

“first, as having the moral power to form, to revise, and rationally to pursue a conception of the good; second, as being self-authenticating sources of valid claims; and third, as capable of taking responsibility for their ends” (PL 72).

For full, political (and not ethical and comprehensive), autonomy citizens must (authentically) affirm the political and social institutions that condition, constrain, and judge their actions, and are able to—within the constraints of those institutions—enjoy the liberties that they afford in order to pursue their conception of the good. It is political and not ethical (and therefore not comprehensive) because the conception does not “apply to the whole of life, both social and individual” (PL 78). The political conception of autonomy does not make autonomy conditional on elements of the formation, revision, and pursuit of one’s conception of the good that are not related to the apprehension and affirmation of the political and social institutions under which the formation, revision, and pursuit of one’s conception of the good is undertaken.

3.2.2 From Identity to Self-Authorization

To demonstrate how this understanding offers a fundamentally different basis for conceiving of a conception of autonomy, I will expound Paul Benson’s distinction between identity-based theories and his own self-authorization theory. I will argue that the political conception of autonomy is based on self-authorization, and not identity.
Identity-based theories are those that recognise autonomous actions as those that reflect, or flow directly from, who one is or who one stands for. Actions are genuinely my own when “they are appropriately related to my identity as a caring, reflectively willing creature”. Benson distinguishes four different identity-based theories. Identification theories require the motives that lead people to act to be reflectively endorsed at a ‘higher-level’ for those acts to be autonomous. One must identify with the motive that leads one to act. I do not act autonomously if on reflection I would reject the motive that lead me to act. For example, I do not act autonomously if I smoke a cigarette due to an addiction that I reflectively wish not to have. Theories of evaluative self-discourse state that acts are autonomous when they flow from one’s values and ends as systematic evaluative commitments. This can be expressed through the actions themselves if and when they are disclosing embraced systems of values and ends. Whole-self theories state that acts are autonomous “just when those acts are produced by beliefs and desires that are well integrated within agents’ whole personalities, where integration is a function of the psychological depth of these states”. Reflective non-alienation theories suggest that identification and evaluative self-disclosure theories are too strong because it is possible to act autonomously without reflection on motives and without expressing embedded value judgements. Whole-self theories are, however, too weak because “they ignore the historical development of well-integrated motives, which could include autonomy-undermining manipulation”. Reflective non-alienation accounts instead maintain acts are autonomous when people “act on motives whose processes of development they would not resist, upon reflection, where such reflection would satisfy certain constraints of competence, minimal rationality, and the like”. Persons act autonomously when they would not disown the motives that led to the action, after suitable reflection on the developmental history of those motives.

68 Ibid.
69 Ibid., 104.
70 Ibid.
Benson notes a number of problems with these theories. On one hand, these theories “fail to supply sufficient conditions for autonomy”.\(^71\) This is because the identification, evaluation, psychological integration and/or hypothetical reflective scrutiny can “come about through histories of brainwashing, trauma, pervasive social control, psychosis, and so on that intuitively undermine autonomy”.\(^72\) On the other hand, these identity theories are too strong. Trivial acts—for example, picking one’s nose and playing with one’s hair—ought to be considered as autonomous even if such acts would not withstand the tests the identity theories put forward. Such acts are acts we can hold citizens responsible for and as such should not be tagged as politically heteronomous. Identity-theories also “presume various ideals of integrated practical identity”,\(^73\) but people can be autonomous and “ambivalent authentically, for their internal practical divisions are firmly fixed in their mature, reflective self-understandings”.\(^74\) Consider Benson’s example of Maria Lugones. She is a Latina and a lesbian. However, she cannot adopt a coherent identity. Her commitments to both struggling against racism as a Latina, and to participating in lesbian communities, cannot be “integrated satisfactorily with the other in present social circumstances”.\(^75\) Because of her reflectiveness and integrity she has “no alternative but to maintain a divided identity” but “can nonetheless act reasonably and own what she does”.\(^76\) Identification theories reject that her acts are autonomous because she cannot be wholehearted or satisfied with her reflective commitments; self-disclosure theories suppose that without a coherent evaluative standpoint there is no self to express in actions; whole-self theories would deny her acts are autonomous because “well-integrated motives cannot be opposed to other psychologically deep beliefs and desires”; and reflective non-alienation theories require “no manifest conflicts of desires or beliefs which significantly affect [their] behaviour”.\(^77\) The example reveals the nature of identity theories: they are laden with ideals of practical identity that

\(^{71}\) Ibid. emphasis mine.
\(^{72}\) Ibid.
\(^{73}\) Ibid., 105.
\(^{74}\) Ibid.
\(^{75}\) Ibid.
\(^{76}\) Ibid.; ibid., 106.
are of no consequence to a judgment on whether one can be held responsible for one’s ends. It is clear that Lugones’ acts ought to be considered as politically autonomous; only a comprehensive judgement on what it is to live a valuable life could and/or would make a negative judgement regarding the autonomy of Lugones.

The right conception of political autonomy will recognise Lugones and the nose-picker as acting autonomously, but will recognise that actions that are the result of brainwashing, psychosis, trauma, and pervasive social control are not autonomous; they are not free in the political and social sense that is required to be reflected in the conception of autonomy. Recall Rawls’s ideal of free citizens:

Citizens reach the ideal of the citizen when “they conceive of themselves and of one another as having the moral power to have a conception of the good” (PL 30), when they “regard themselves as self-authenticating sources of valid claims” (PL 32), and when “they are viewed as capable of taking responsibility for their ends and this affects how their various claims are assessed” (PL 33).

A political conception of when we can say one another’s acts are autonomous begins with recognising that such a conception is a socially embedded idea. To act autonomously is to be a self-authenticating source of valid claims; to have the moral authority to take ownership of one’s actions in a society; “to stand in a certain position with respect to others’ potential expectations for one’s conduct”; “to stand by [one’s] acts in the face of potential normative expectations”; and to be “properly positioned to give voice to [one’s] reasons for acting... should others call for their reasons”. This can be the case even in cases of trivial action or authentic ambivalence, or in many other cases in which more comprehensive conceptions of what it means to live one’s life autonomously would deny the autonomy of the act. On a political conception, one acts autonomously even if one is not proficient at constructing reasons for their action, absent critical reflection on the motives that lead to the action, and regardless of whether it flowed from a coherent value system or suchlike. These conditions may be things that give the acts more value—that make one’s

life go well—but they are inappropriate conditions of a conception of autonomy for a political conception of justice.

### 3.2.3 Political Autonomy as Self-Authorization

The notions of self-authenticating sources of valid claims, and being viewed as capable of taking responsibility for our ends—derived from the ideal of the citizen—are notions of accountability:

> “as social agents we are subject to others’ demands that we account for our decisions, explain the reasons for them, and take responsibility for those decisions. To be self-authorizing, a person must not only be capable of understanding and responding to this social demand but must also regard herself as a valid source of self-authorizing claims.”

Consider someone who “on the basis of race, has systematically been treated as socially invisible, as lacking the dignity of a person and eligibility to participate in distinctively person forms of relationships, such as citizenship, friendship, or familial love... she might come to internalise her social invisibility. She might regard herself as unfit for the kinds of relationship for which only persons are eligible”.

In order to be accountable in the way described, and realize the ideal of the citizen, there are objective and subjective conditions. The subjective condition is that the person herself must regard herself as a valid source of self-authorizing claims. The objective condition is that the attitudes that sustain that regard are, or have been, engendered in an appropriate way, that is, the attitudes are authentic, in some appropriate form. These conditions together form the conception of political autonomy as self-authorization that, in turn, realizes the ideal of the citizen.

What are the subjective attitudes necessary for self-authorization? Anderson and Honneth distinguish three: self-respect, self-trust, and self-esteem. Self-respect involves regarding oneself as a moral equal: a free and equal citizen. Central to

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such self-respect is identifying oneself as a competent and capable deliberator and decision maker: I have self-respect if I believe I have the “authority to raise and defend claims as a person with equal standing”. Self-respect is undermined by subordination, marginalisation, and exclusion because one is told “in effect, that they are not competent to shape decisions”. Self-trust involves having “an opening and trusting relationship to his or her own feelings, desires, impulses, emotions, and so on”; it is to do with “the affectively mediated perceptual capacities by which what is subjectively felt becomes material for deliberation in the first place” as opposed to self-respect which is to do with processing that material in deliberations about what to do. Anderson and Honneth’s example of a breach of self-trust would be the suspicion and distrust of one’s desires that may result from a trauma such as rape. Self-esteem involves seeing “one’s life, one’s commitments, and one’s attitudes as meaningful, worthwhile, and valuable”. Self-esteem is threatened by “patterns of humiliation and denigration”. One requires a socio-cultural environment that is, at least, not hostile to considering what one does as meaningful. Anderson and Honneth stress the influence of the semantic and symbolic field in which reflecting on one’s activities occurs. For example, “the very possibility of being ‘openly lesbian’ or ‘a stay-at-home dad’ is framed by a whole constellation of evaluatively loaded ways of talking… if, for, example, ‘stay-at-home dad’ is taken to be a euphemism for ‘unemployed’… then it becomes hard to view it as worthwhile”. These self-evaluative attitudes, then, depend on social recognition:

“they are vulnerable to others’ failures, or refusals, to grant the person appropriate recognition in a range of different spheres: for example, in her interpersonal relations; at work and in the institutions of civil society; and as a citizen. Such failures of recognition are quite typical in social relations involving domination or inequalities of power, authority, or social and

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82 Ibid., 132.
83 Ibid.
84 Ibid., 133.
87 Ibid., 136.
economic status, especially when these are inflected by gender, race, ethnicity, or disability.\textsuperscript{88}

As Mackenzie, and Anderson and Honneth, both point out, it is “psychologically possible” to retain or even develop appropriate self-evaluating attitudes in the face of a socio-cultural environment that is hostile to that retention and development.\textsuperscript{89} However, a conception of justice based on supporting conditions for autonomy ought to respond to unequal or significantly burdensome costs to developing and retaining those attitudes.

\textit{Objective} conditions are necessary for self-authorization because it is necessary that we “properly treat ourselves as fit and worthy to possess such authority”.\textsuperscript{90} Citizens would not be able to hold each other responsible for their ends and their actions if the self-authorization of some was inauthentic. We must ask: “what kinds of revelation about the circumstances under which our attitudes were formed would, upon rational consideration, typically undermine our sense of our competence and worthiness as answerers?”\textsuperscript{91} Histories of brainwashing, trauma, pervasive social control, and psychosis, that were mentioned earlier, are paradigmatic examples of such revelations. But what exactly is it about them that makes self-authorization potentially inauthentic? Benson proposes that agents require the external and internal capacities to detect and appreciate—to apprehend—the reasons they have to act, and the normative framework within which their actions are assessed and judged. Only if these conditions are met can agents authentically self-authorize and be considered answerable for their actions. First, agents’ attitudes toward their own capabilities and worthiness to function as answerers must be formed in a suitably rational way. This does not imply critical reflection on one’s values, or on actions themselves, but it requires that one have the internal capacities to detect and appreciate the reasons one has to act in various ways. This is what we ought to understand by having developed the second moral power (the capacity to form, revise, and pursue a conception of the good). Second, agents’ attitudes must be formed absent processes that circumvent their capacities for

\textsuperscript{88} Mackenzie, “Three Dimensions,” 37.
\textsuperscript{89} Anderson and Honneth, “Autonomy, Vulnerability, Recognition, and Justice,” 131.
\textsuperscript{90} Benson, “Taking Ownership,” 117. emphasis in original
\textsuperscript{91} Ibid., 118.
rational consideration as in, for example, cases of forcible mind control, the existence of oppressive social norms, physical distress, and/or a lack of self-respect, self-trust, or self-esteem. This is an important condition of self-authorization because of the possibility of the internalization of oppressive norms and the adaptation of one’s preferences and ends to those norms, distorting agents’ capacity to authentically answer for their actions because they have been conditioned to misapprehend the normative framework within which they act. Third, agents must not be rendered incapable—through obfuscation or straightforward denial—of acquiring otherwise socially available information that would be practically germane to their decisions. This would, again, distort the capacity to apprehend the normative framework the agent faces. To summarize the conception, for political autonomy:

1. Agents must authorize and answer for their own actions.
2. Agents’ attitudes toward their own capabilities and worthiness to function as answerers must be formed in a suitably rational way; one must have the internal capacities to detect and appreciate the reasons one has to act.
3. Agents’ attitudes must be formed absent processes that circumvent their capacities for rational consideration as in, for example, cases of forcible mind control, the existence of oppressive social norms or structures, physical distress, and/or a lack of self-respect, self-trust, or self-esteem.
4. Agents must not be rendered incapable of acquiring otherwise socially available information that would be practically germane to their decisions.

All of these conditions are compatible with acting on false beliefs, acting contrary to reason, without reason (as in acting trivially), or curtailing rational reflection on one’s motives. This is primarily because the conditions are relational conditions—they are to do with how we are able to (and how we ought to) relate to one another—rather than ideals of, and prescriptions for, living one’s life on the basis of values that are genuinely one’s own, that “has a shape that reflects her convictions” or is “one in which the individual concerned identifies with, or endorses, the ideals or goals that guide her conduct”.92 The conditions are compatible with differences in rational

92 Clayton, Justice and Legitimacy in Upbringing, 11.
judgement resulting from what Rawls calls the burdens of judgement (PL 56-57):

- Conflicting and complex, empirical and scientific evidence which is hard to assess and evaluate.
- Disagreements on the appropriate weight given to the considerations we agree are relevant.
- The vagueness of concepts, and the associated problem of concepts being subject to hard cases in which we must rely on indeterminate judgement and interpretation.
- The varying life experiences which shapes how we assess evidence and weigh values.
- Different kinds of normative considerations of different force on both sides of the issue which makes it difficult to make an overall assessment.

If citizens are in receipt of the capabilities and political and social circumstances that provide them with adequate normative competence, and the social bases for the self-regarding attitudes required for self-authorization, then they are in receipt of what citizens owe each other as free and equal citizens. Political autonomy concerns the interpersonal and social conditions within which people conduct their practical reasoning and call on each other to be answerable for their actions.

### 3.3 Sufficiency in the Dimensions

Catriona Mackenzie argues that the concept of autonomy has three dimensions to which any particular conception of autonomy appeals: self-determination, self-governance, and self-authorization.\(^{93}\) These dimensions are conceptually distinct but causally interdependent. All conceptions of autonomy include aspects of each dimension and the political conception I advance is no different. In this section I will show how the political conception of autonomy advanced in 3.2 implies necessary and sufficient conditions in the three separate dimensions of autonomy. This will elucidate the conception and what

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\(^{93}\) Mackenzie, “Three Dimensions.”
is required of societies in order to realize citizens’ political autonomy and thereby the ideal of the citizen and of society.

3.3.1 Self-Authorization

*Self-Authorization*, as I have discussed, “involves regarding oneself as having the normative authority to be self-determining and self-governing… regarding oneself as authorized to exercise practical control over one’s life, to determine one’s own reasons for action, and to define one’s values and identity-shaping practical commitments.”94 This dimension involves three conditions: accountability, self-evaluative attitudes, and social recognition. Accountability involves the agent regarding “herself as the kind of agent who can be held accountable and answerable to others for her reasons”; self-evaluative attitudes involve the person standing in relations of self-respect, self-trust, and self-esteem; and social recognition involves the person being “regarded by others as having the social standing of an autonomous agent” in order to realise both accountability and the self-evaluative attitudes.95

Self-authorization is the basis for the necessary and sufficient conditions in the other dimensions. The highest-order importance of self-authorization reflects the highest-order importance that liberal societies give to abolishing oppression. As Anderson has stressed, the point of equality (and free and equal citizenship) is “to end oppression, which by definition is socially imposed” and “to create a community in which people stand in relations of equality” to each other.96 The ideal of free and equal citizenship that Rawls suggests is implicit in the public culture of liberal societies, is the ideal of citizens being free of oppressive circumstances that render them inferior and of a lower intrinsic status; as subhuman or as part-human. Slavery, the denial of the vote to women, poverty, class-based discrimination—the hallmarks of an unequal and unfree, illiberal, society—are a result of oppressive structures that render citizens unable to consider one another as responsible for their ends. Therefore, an assessment of what constitutes oppression, where this is understood as rendering situations in

94 Ibid., 35.
95 Ibid.
which people cannot, will not, or struggle to self-authorize since they do not have the required self-regarding attitudes and/or when people could not recognise other citizens’ self-authorization as authentic, is well advised in order to understand the necessary and sufficient conditions for autonomy.

Oppression has many ‘faces’ but Marilyn Frye offers a succinct definition: “a system of interrelated barriers and forces which reduce, immobilize and mold people who belong to a certain group, and effect their subordination to another group”. 97 Oppression threatens accountability and the acquisition of the self-regarding attitudes because it makes “it much harder”, if not impossible, “to think of oneself as worthwhile. The resulting feelings of shame and worthlessness threaten one’s sense that there is point to one’s undertakings”. 98 Walzer offers an example of how this directly relates to our status as free and equal:

“When a garbage-man feels stigmatized by the work he does… the stigma shows in his eyes. He enters ‘into collusion with us to avoid contaminating us with his lowly self.’ He looks away; and we do too. ‘Our eyes do not meet. He becomes a non-person’.” 99

It also threatens the authentic acquisition of those attitudes because oppressed people may come to “internalize” messages of inferiority “as when, for instance, women are regarded by others and come to regard themselves as childlike, as cheap labor, or as objects for the gaze and sexual pleasure of others”. 100

Other oppressive structures are distinguished into a number of different concepts. Here are a few that are commonly distinguished: exploitation, domination, marginalization, powerlessness or status hierarchy, and cultural imperialism. I do not go into detail here; I aim only to offer a flavour of the kind of oppressive structures that can be identified as undermining of the

98 Anderson and Honneth, “Autonomy, Vulnerability, Recognition, and Justice,” 131.
100 Veltman and Piper, “Introduction,” 3.
political and social conditions required for authentic self-authorization.

*Exploitation* is an economic oppressive structure and can be defined roughly as the following:

“A exploits B if and only if A and B are embedded in a systematic relationship in which (a) A instrumentalizes (b) B’s vulnerability (c) to extract a net benefit from B.”

This ‘vulnerability’ is a power relation. The power relation between A and B itself need not be exploitative but it is if it is instrumentalized by A to extract benefits from B. However, one way to combat exploitation is to prevent or mitigate vulnerabilities, as well as offering structures that prevent vulnerabilities from being exploited. *Domination*—“subordination offensive to equality of status… disrespectful (that is, degrading, or demeaning, or humiliating) power-overing”—is another oppressive structural relationship. Vrousalis defines it as follows:

A dominates B if A and B are embedded in a systematic relationship in which A takes advantage of his power over B, or the power of a coalition of agents A belongs to, in a way that is disrespectful to B.

A specific notion of disrespect is difficult. Vrousalis offers the following illuminative definition:

A’s actions or relationship to B respects B if and only if it expresses a rational attitude R vis-à-vis B, and R is dialogically endorsable.

R is dialogically endorsable if and only if the considerations giving rise to R can be advanced as putative justifications for action in the context of embarrassment-free dialogue among interested parties.

“Embarrassment-freeness” obtains when people have no reason to feel shame or guilt for putting or allowing a particular form of justification for some putative act on the table of discourse.

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102 Ibid., 139.
103 Ibid.
To comprehend whether an act by A, or A’s relationship to B, is respectful of B, the justification for the act/relationship must be expressed by A as if in first-person dialogue with B.\textsuperscript{104} Such a test will uncover their implicit relationship “independently of their actual interactions” and uncover whether it is consistent with equality of status.\textsuperscript{105} Standard examples of dominant relationships that would be uncovered are that of “slave and slaveowner, serf and lord” and “wife and husband in the patriarchal family”.\textsuperscript{106}

Marginalisation involves groups being “expelled from useful participation in social life” and thus being subject not only to potential material deprivation, but humiliating and denigrating structures that undermine accountability and the self-regarding attitudes.\textsuperscript{107} Iris Marion Young highlights the plight of native and African-Americans in the USA in terms of their employment and educational opportunities. But there are other dependent groups such as the elderly, the young, the pregnant or those recovering from child-birth, and the disabled, who are subject to marginalization. For example, in the USA and the UK today:

> “Because they depend on bureaucratic institutions for support or services, the old, the poor, and the mentally and physically disabled are subject to patronizing, punitive, demeaning, and arbitrary treatment by the policies and people associated with welfare bureaucracies”\textsuperscript{108}

Furthermore, even “if marginals were provided a comfortable material life within institutions that respected their freedom and dignity, injustices of marginality would remain in the form of uselessness, boredom, and lack of self-respect”.\textsuperscript{109} This is because the structures of recognition “take place in contexts of organized social cooperation”; USA and UK citizens, the argument goes, are valued only to the extent they identifiably create wealth, at the expense of those who do not or cannot.

\textsuperscript{104} A similar idea can be found in Cohen’s ‘interpersonal test’: Gerald Allen Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), 41–62.
\textsuperscript{105} Vrousalis, “Exploitation, Vulnerability, and Social Domination,” 140.
\textsuperscript{106} Ibid.
\textsuperscript{108} Ibid., 54.
\textsuperscript{109} Ibid., 55.
Powerlessness is what Anderson calls status hierarchy. It involves there being certain groups in society that lack the authority, status, and a sense of self that is engendered in other groups, because of their position in the cooperative institutions of society:

“The powerless have little or no work autonomy, exercise little creativity or judgment in their work, have no technical expertise or authority, express themselves awkwardly, especially in public or bureaucratic settings, and do not command respect.”

This social stratification is often perpetuated over time through segregation and stereotyping (as opposed to just straightforward discriminatory acts).

Cultural Imperialism “involves the universalization of a dominant group’s experience and culture, and its establishment as the norm” often through “exclusive or primary access to… the means of interpretation and communication in a society”. Paradigmatically, these means are the media and political discourse generally. These means are pervasive, influential, and are imbued with a sense of intellectual and cultural authority. Where these means are dominated by particular standpoints or positions—for example, male, heterosexual, materialist, capitalist, home-owning, professional, classically educated—then these standpoints or positions “become the normal, or the universal, and thereby the unremarkable”. As a consequence, the differences that some groups exhibit are constructed as “lack and negation”; they “undergo a paradoxical oppression, in that they are both marked out by stereotypes and at the same time rendered invisible”. Those that conform to the dominant cultural norms can be individuals. Women, however, are ‘good with children’; gay people are ‘promiscuous’; those without a secure, well-paid, and worthwhile profession are ‘lazy’ or ‘scroungers’; those without a home are the same; environmentalists or vegetarians are weird or hypocrites; those who do not make-up or lift weights or dress according to fashion are also weird and

110 Ibid., 56–57.
113 Ibid.
114 Ibid.
to be shunned in civil society; and those who do not understand the historical references of the classically educated are intellectually inferior, if not just stupid. Muslims are either dangerous extremists or utterly misguided and ignorant of the purported dangers of their own faith; Christians are, however, are a trusted moral compass for society. Those in the deviant groups cannot be individuals: they are assessed and defined by their attachment to a group that is deviant from the dominant culture. In this environment, self-authorization, let alone authentic self-authorization, is very difficult to realize.

To be sure, this is not an exhaustive or full description of the various relevant forms of structural oppression in any way; its aim is only to give a flavour of the kind of structures in society that prevent authentic self-authorization, and that are such that their destruction is of highest-order priority in pursuit of the ideal of society and citizenship. The political conception of autonomy as self-authorization reflects the notion that breaking down oppressive structures is the highest-order aim of liberal society.

3.3.2 Self-Governance

*Self-governance* refers to attributes and skills that affect one’s ability to make choices that are in the relevant sense ‘one’s own’. Whereas self-authorization refers to a relationship between people with respect to one’s actions, and whereas self-determination refers to a relationship between one’s goals and one’s ability to attain them, self-governance refers to a relationship between one’s goals and one’s practical identity. One is self-governing if one’s goals and their pursuit “express, or cohere with” one’s practical identity. There are competency conditions and authenticity conditions. Competency conditions concern elements such as cognitive skills, critical reflection skills, self-control, self-knowledge, strength of will, and absence of compulsions, phobias, addictions, and the like. They could also include attributes such as ‘being able to use the senses’, to imagine, to have attachments to people, to be empathetic and so on. Authenticity conditions are related but concern the nature of one’s “motivational structure—that is, what it means for a choice, value,
commitment, or reason to be one’s own”. A simple authenticity condition may be that one’s lower-level desires must be congruent with one’s higher-order reflections, that is, one must desire to have that desire, and so on. Authenticity conditions may be historical or procedural rather than structural: they may require that the history of how one has acquired one’s values and desires meet certain conditions such as that one would not be alienated from one’s values given knowledge and self-reflection on the history of how one acquired those values.

Many conceptions of autonomy are based on self-governance and in ideals of authentic and competent decision-making. However, as I have expounded in 3.2.2, such identity-based theories are not an appropriate basis for a political conception of autonomy. Self-governance is an ideal of living; self-authorization is an ideal of how we live together. If there are necessary and sufficient conditions for self-governance on the political conception, they are derived from what is necessary and sufficient for self-authorization. I argued, following Benson, that the following is necessary and sufficient for political autonomy more generally:

1. Agents must authorize and answer for their own actions.
2. Agents’ attitudes toward their own capabilities and worthiness to function as answerers must be formed in a suitably rational way; one must have the internal capacities to detect and appreciate the reasons one has to act.
3. Agents’ attitudes must be formed absent processes that circumvent their capacities for rational consideration as in, for example, cases of forcible mind control, the existence of oppressive social norms, physical distress, and/or a lack of self-respect, self-trust, or self-esteem.
4. Agents must not be rendered incapable of acquiring otherwise socially available information that would be practically germane to their decisions.

This implies that a necessary and sufficient condition for autonomy is what Rawls calls the “moral psychology” (PL 86-88) that supports the ideal of the

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citizen: the development of a sense of justice, that is, the development of the capacities to understand what it means to answer for one’s actions, what that entails, and to be willing to do so (to ‘exercise’ the sense of justice). These conditions entail that one has “the intellectual powers of judgment, thought, and inference” necessary for “the exercise of the moral powers” (PL 81): to detect and appreciate the reasons one has to act, in the particular political and social context one finds oneself in. Citizens also require the intellectual and emotional agility to recognise and avoid oppressive structures or circumstances, and to develop the confidence to engage in political and social contexts with the self-trust and self-esteem that those contexts genuinely afford them. The necessary and sufficient conditions for self-governance are derived from the requirements of authentic self-authorization; there is no appeal to a conception of authenticity or competency external to what is required for authentic self-authorization.

3.3.3 Self-Determination

Self-determination refers to the ability to make choices about “what to value, who to be, and what to do”. The basic liberties in Justice as Fairness, for example, protects elements of self-determination such as freedom of thought, freedom of speech, freedom of association, the fair value of the political liberties, and so on. However, self-determination is not restricted to conceptions of negative liberty, where this is understood roughly as freedom as non-interference. On the contrary, self-determination refers primarily to opportunity defined as “a chance of a specified agent or class of agents, X, to choose to attain a specified goal or set of goals, Y, without the hindrance of a specified obstacle or set of obstacles, Z”. The basic liberties, income, wealth, power and influence all remove formal conditions that hinder the attainment of a wide variety of goals. An agent’s capacities—their internal ‘hindrances’—such as the limits of one’s physical powers, and one’s mental, emotional, and intellectual makeup, also affect opportunity and self-determination.

The basis for understanding the necessary and sufficient conditions in this dimension is, again, to ascertain what is necessary and sufficient for self-authorization. First, sufficient material capabilities are necessary to enable citizens “to avoid or escape entanglement in oppressive social relationships”.\footnote{Anderson, “What Is the Point of Equality?,” 316.} Poverty, or significant inequalities, render people susceptible to exploitative or dominant relationships. Drastic inequalities in resources can (and do) render political discourse and media power being dominated by certain sectors of society that promote their interests and world views, at the expense of others; this leads to cultural imperialism and status hierarchy. Ensuring the fair value of the political liberties, as Rawls’s Justice as Fairness mandates, is one way to avoid such an outcome. As a participant in cooperative production we ought to be guaranteed access to the means of production, access to education, freedom of occupational choice, the right to make contracts and enter into cooperative arrangements with others, the right to the fair value of one’s labour, and recognition of one’s productive contribution.\footnote{Ibid., 318.} These opportunities promote egalitarian relationships and prevent the formation of oppressive structures.

I must be careful here to make clear the distinction between a conception of self-determination that highlights a \textit{sufficient} set of material capabilities as sufficient for autonomy, and the primary social goods as a set of all purpose means for advancing an autonomously formed conception of the good, that is, the distinction Rawls makes between the material capabilities required for “the adequate development and full exercise of their two moral powers and a fair share of the all-purpose means essential for advancing their determinate (permissible) conceptions of the good” (PL 187). The highest-order interest that the parties have is establishing the ideal of the citizen, that is, establishing their political autonomy. Once this interest is realised—and only once this interest is realised—a second higher-order interest becomes regulative: the
interest in protecting and advancing “some determinate (but unspecified) conceptions of the good over a complete life” (PL 74): 121

“persons in the original position are moved by a certain hierarchy of interests. They must first secure their highest-order interest and fundamental aims… the acquisition of means that enable them to advance their other desires and ends has a subordinate place” (TJ 476)

As I shall come to in Chapter 4, the principles of justice include threshold conditions for the distribution of all the goods that are necessary and sufficient for self-determination, in order for the lexical priority of the principles to ‘kick in’. Basic liberties are of little consequence for one’s self-determination, unless one has sufficient income and wealth to make use of them, for example; the priority of the liberty principle over the second principle is active only when it can be assumed that one has a sufficient amount of goods distributed by the lexically inferior principles. Realizing the highest-order interest in autonomy “may necessitate certain social conditions and degree of fulfilment of needs and material wants” (TJ 476). However, once this sufficient level is reached, the priority of liberty comes into effect; “the acquisition of means that enable them to advance their other desires and ends has a subordinate place.” (TJ 476)

The sufficient level of ‘social conditions and fulfilment of needs and material wants’ is ascertained by what is required for autonomy.

### 3.4 The Flexibility of the Primary Social Goods

The principles of Justice as Fairness, as I will detail in the following chapter, are arranged in order to secure citizens’ political autonomy as their highest-order interest and mandate the abolition of oppression as the highest-order requirement of society’s institutions. It may be unclear then how Rawls’s theory of the primary social goods fits into this conception of citizens’ highest-order interest as based on securing the necessary and sufficient conditions of

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121 Rawls actually calls this the third, the first two being the development and exercise of each separate moral power. I think this is confusing because the moral powers are on a par—they are of equal importance—and are elements of the same interest: political autonomy. The third higher-order interest is actually the second: it is a lower-order interest than the first two and is an interest distinct from establishing and maintaining autonomy.
political autonomy. In this section I show how the political conception of autonomy provides “the requisite background for specifying citizens’ needs and requirements” which, in turn, forms the “idea of rational advantage” that is the basis for the interpersonal comparisons made by the parties in the original position: the primary social goods (PL 178; 180). There is also an inbuilt conception of sufficient capabilities (capabilities that are realized by particular arrangements of specific primary social goods) that represents the highest-order interest of citizens. The description of Rawls’s use of normal, fully cooperating citizens as an unjustified assumption is mistaken. It is, in fact, a justified conception of the highest-order interest of all citizens in reaching a capability level necessary for autonomy and points to how Justice as Fairness can deal with the particular needs and circumstances of children.

After completing that task in 3.4.1 I turn in 3.4.2 to showing that my conception of the basis of the primary social goods explains the importance Rawls attributes to the good of the social bases of self-respect. I also argue that the social bases of self-respect should be understood as the social bases of self-authorization, in order to reflect the breadth of authentic self-regarding attitudes identified as necessary for autonomy.

3.4.1 The Flexibility of the Primary Social Goods

The idea of goodness as rationality provides the framework upon which substantive ideas of the good are conceived. The idea is that we suppose that ideal citizens have a “rational plan of life in the light of which they schedule their more important endeavours and allocate their various resources (including those of mind, body, time and energy) so as to pursue their conceptions of good over a complete life, if not in the most rational, then at least in a sensible (or satisfactory), way” (PL 177). Ideal citizens are assumed “to take into account their reasonable expectations concerning their needs and requirements in their future circumstances in all stages of life” (PL 177). The thought is that whatever conception of the good citizens develop, it is part of that conception of the good that it will be pursued rationally, that is, that rational means, to whatever ends, are intrinsic to that conception; “citizens may reasonably be expected to acknowledge... human life and fulfilment of
basic human needs and purposes as in general good, and endorse rationality as a basic principle of political and social organization” (PL 177). There are, then, three ideas that point to a “partial similarity in the structure of citizens’ permissible conceptions of the good” (PL 180) and from these ideas it is possible to derive a list of goods that are “publically accepted as advantageous, and thus counted as improving the circumstances of citizens for the purposes of political justice” (PL 179). The three ideas are:

1. Goodness as Rationality

2. The Higher-Order Interests of the Ideal Citizen (PL 106)
   a. Developing and exercising the two moral powers (the Highest-Order Interest)
   b. Securing conditions under which one can further one's determinate conception of the good

3. The basic facts of social life and the conditions of human growth and nature

The goods are identified by identifying objective needs of the ideal citizen, that is, on the basis of the three ideas mentioned above. The goods Rawls identifies are:122

- Basic rights and liberties
- Freedom of movement and free choice of occupation against a background of diverse opportunities, which opportunities allow the pursuit of a variety of ends and give effect to decisions to revise and alter them
- Powers and prerogatives of offices and positions of authority and responsibility in the political and economic institutions of the basic structure
- Income and wealth; the all-purpose means for achieving directly or indirectly a wide range of ends
- The social bases of self-respect, understood as those aspects of basic institutions normally essential, if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence.

Rawls later concurs with the suggested additions of:

- Leisure time

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122 See PL 180; JAF 58-59; TJ 54-55
- Certain mental states such as freedom from physical pain. There are two further, related, goods: the good of the political virtues, and the good of the well-ordered society. The good of the well-ordered society refers to the good of living in a society in which citizens’ two moral powers can be developed, realized, and exercised, and in which their fundamental needs can be secured. Another, related, good is that “establishing and successfully conducting reasonably just democratic institutions over a long period of time... is a great social good and appreciated as such” (PL 204). These are uniquely social goods: they are “realised through citizens’ joint activity in mutual dependence on the appropriate action being taken by others” (PL 204). The good of the political virtues is derived from the requirement to establish the good of the well-ordered society. This involves more than just the development of the sense of justice. It requires the affirmation of the “superiority of certain forms of moral character” and the encouragement of “certain moral virtues” such as “civility and tolerance, of reasonableness and the sense of fairness” (PL 194). It also demands people acquire “the capacity to understand the public culture and to participate in its institutions” (PL 200).

A central challenge to the theory of primary social goods is that the primary social goods are not a useful metric for determining what citizens require given the special circumstances of childhood, disability, pregnancy, and so on; Rawls does not take into enough consideration “the many significant variations among persons in their capacities—moral, intellectual, and physical—and in their determinate conceptions of the good, as well as in their preferences and tastes” that mean it is unfair “to secure everyone the same index of primary goods to cover their needs as citizens and let matters go at that” (PL 182; 182-183). Amartya Sen in particular has stressed the need to recognise the differences in people’s “ability to use primary goods to attain their ends” (PL 183). Consider: those who have been born with, or with propensities to, illness, disability, or child-bearing, or those born with expensive tastes or...

preferences, are unequal in their ability to use primary goods to achieve their ends. Furthermore, some—children and adults with some severe disabilities—are unable to use primary goods to achieve their ends effectively at all. This is the capabilities critique of primary social goods. But Rawls agrees “with Sen that basic capabilities are of first importance and that the use of primary goods is always to be assessed in the light of assumptions about those capabilities” (PL 183):

“the account of primary goods does take into account, and does not abstract from, basic capabilities: namely, the capabilities of citizens as free and equal persons in virtue of their two moral powers. It is these powers that enable them to be normal and fully cooperating members of society over a complete life and to maintain their status as free and equal citizens” (JaF 169)

To demonstrate what he means, Rawls considers four sources of variations in capacities that can affect citizens’ capabilities (PL 184). They are:

a) Variations in moral and intellectual capacities and skills
b) Variations in physical capacities, including the effects of illness and accident on natural abilities
c) Variations in citizens’ conception of the good
d) Variations in tastes and preferences

Rawls asks whether these variations place “people above or below the line: that is, whether it leaves them with more or less than the minimum essential capacities required to be a normal cooperating member of society” (PL 183). For example, in cases (b) and (d) Rawls suggests there can be variations below the line in adulthood as a result of illness and accident which are “incapacitating and render someone unable to cooperate normally in society” (PL 185). In these cases we must “restore people by health care so that once again they are fully cooperating members of society” (PL 184). There is a standard—the ‘line’—that defines the capabilities that citizens must hold; as Scheffler puts it, “the aim of enabling people to be fully cooperating members of society provides an independent standard for judging which disadvantages
should be compensated”. Above the line, people are responsible for their ends because it is assumed the conditions for political autonomy are in place. Once this is in place—citizens hold the relevant capabilities such that they hold each other responsible for their ends—“variations in preferences and tastes are seen as our own responsibility”; “we do not view [ideal] citizens as passive carriers of desires” as “by virtue of their moral powers citizens have some part in forming and cultivating their final ends” (PL 185; 186).

As noted in 3.3.3, the idea of primary social goods includes a conception of the goods (and of the person) sufficient for political autonomy, as well as being the basis for assessing advantage beyond that sufficient level. This coheres with the set of sufficient capabilities I argued is derived from the political conception of autonomy as authentic self-authorization. These capabilities specify what must be secured for people as a matter of lexical priority. Securing those capabilities for children—allowing citizens to then utilise primary social goods towards whatever (reasonable) ends they form in their life—provides an illustration of what the principles of justice will require of children’s upbringings.

3.4.2 The Social Bases of Self-Authorization

In this subsection, I will address the following worry: even if I am right to think that the theory of primary social goods includes a conception of the goods (and of the person) sufficient for political autonomy, how exactly are the primary social goods—as stated above—reflective of the necessary and sufficient requirements of autonomy in the three dimensions? If one focuses on the primary goods of liberty, opportunity, income, and wealth, one might wonder how the primary goods reflect the complexity of the notions of accountability, authentic self-regarding attitudes, and authentic self-authorization more generally, and how political and social institutions can undermine their establishment and promotion through permitting or even supporting oppressive structures.

I will show that the social bases of self-respect (SBSR) is indeed what Rawls calls “perhaps the most important primary good” (TJ 386) precisely because it is the good that demands establishing and promoting the social bases of self-authorization and therefore the social bases of autonomy, even if Rawls did not quite express it that way. It is the most important primary good because it is the foundation for the other dimensions of autonomy, including the self-determination dimension that is constituted most obviously by the other primary social goods. The purpose of this subsection is to show how the SBSR as Rawls conceives it coheres with autonomy as authentic self-authorization and the idea of accountability and authentic self-regarding attitudes as necessary for autonomy in this regard. I will also argue that the SBSR should be termed the social bases of self-authorization to reflect properly the full extent of the self-regarding attitudes that are the basis of self-authorization.

3.4.2.1 Self-Respect in Rawls

Stephen Massey asks whether self-respect is a moral or psychological concept, a question he subsequently restates as whether self-respect is a subjective (psychological) or an objective (moral) notion. On the subjective account there are three criteria of self-respect: identification with projects, activities, and a status that one regards is of value; the desire to act in a manner congruent with that identification; and confidence in one’s continued ability to act in a manner congruent with that identification. With respect to all four it is the self-appraisal that is necessary and sufficient: it is not necessary that one’s beliefs, attitudes or actions meet any “independent standards of worthiness or appropriateness”. On the objective account, one’s attitudes and actions must satisfy some independent standards: only if certain objective circumstances obtain (including features of a person’s own capacities and emotional makeup) does a person have self-respect, regardless of whether or not that person values those circumstances or feels that those circumstances are necessary to a valuable life. Massey references a common objective account: “whatever

126 Ibid., 249.
127 Ibid.
favourable attitudes toward himself a person may have, he does not have self-respect if he fails to recognise or properly value his equal basic rights”. The objective conditions are necessary for self-respect on objective accounts, but may not be sufficient because a subjective component may also be necessary. I think that Rawls appeals to both subjective and objective self-respect, and that subjective self-respect maps onto what I have called the need for self-authorization, and objective self-respect maps onto the objective constraints that ensure that such self-authorization is authentic.

The subjective aspect of Rawls’s conception of self-respect can be found in the following passage from TJ (386):

“We may define self-respect as having two aspects... [First] it includes a persons’ sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out... [Second], self-respect implies a confidence in one’s ability, so as it is within one’s power, to fulfil one’s intentions... When we feel that our plans are of little value, we cannot pursue them with pleasure or take delight in their execution. Nor plagued by failure and self-doubt can we continue in our endeavours... [Without self-respect] nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them. All desire and activity becomes empty and vain, and we sink into apathy and cynicism”

As I understand the subjective aspect of Rawls’s account, one’s self-respect comes from one’s appraisal of one’s conception of the good and one’s appraisal of one’s ability to form, revise, and pursue a conception of the good. Such appraisals concern one’s perception of the circumstances—both internal (capacities, skills, emotional makeup) and external (what one has, what others have, what befalls one, why one has become who one is, the normative framework in which one is judged and assessed)—under which one has formed, revised, and pursued a conception of the good, and under which one will presently, and in the future, form, revise and pursue a conception of the good. If the circumstances fulfil certain criteria then one can be confident that such activity is not compromised to the extent that it undermines the value of that activity. This account is subjective in that it is one’s perception that matters.

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128 Ibid., 251.
The objective aspect of self-respect in Rawls is more difficult to grasp. An initial understanding can be grasped by recognising that political and social institutions affect “its members and determines in large part the kind of persons they want to be as well as the kind of person they are... not only our final ends and hopes for ourselves but also our realised abilities and talents, reflect, to a large degree, our personal history, opportunities, and social positions” (PL 269; 270). Parties in the original position are aware of this. It is plausible to think that they may be interested in the authenticity of their appraisals and perception, that is, they may desire their subjective self-respect to be—in addition—objective self-respect. Much of Rawls’s writings on objective self-respect appear in arguments for the best way to secure subjective self-respect, that is, to secure subjective self-respect for actual citizens it is advisable to establish the social bases of objective self-respect:

“a social system acknowledging the stronger variant of the Kantian idea, that is, the idea of always treating persons solely as ends and never in any way as means, is bound to underwrite a more secure foundation for men’s sense of their own worth, a firm confidence that what they do and plan to do is worth doing.”

There is, however, a clear working difference between objective and subjective self-respect in his writings. At one point, for example, Rawls says self-respect mirrors our sense of our own worth, implying that ‘real’ self-respect is of the objective kind:

“For our self-respect, which mirrors our sense of our own worth, depends in part upon the respect shown to us by others; no-one can long possess an assurance of his own value in the face of the enduring contempt or even the indifference of others... [Justice as Fairness] makes visible in its institutions the respect that its citizens have for one another as moral persons”

Self-respect is about being respected as an equal, an end in oneself – objective self-respect. This gets mirrored in our sense of our own worth – subjective self-respect.


130 Ibid.
An example from Massey will help to clarify this notion. Consider ‘Uncle Tom’. Uncle Tom is a black person who “accepts benefits such as basic decent treatment by others, which are his by right, as if they were a favour. His overly deferential and respectful behaviour towards whites displays his conviction that he does not have the same moral rights as they do”.\(^\text{131}\) He does, however, meet the criteria of the subjective aspect: he is “an honest and trustworthy man, deeply concerned for the welfare and happiness of his family, friends, and others in his community. He may not regard his values and the fulfilment of his desire as having an importance equal to his master’s, but he thinks that they have some importance and respects himself for meeting what he regards as his obligations”.\(^\text{132}\) An objective reading of self-respect explains the intuition that Uncle Tom lacks self-respect. He lacks self-respect because he holds an “incorrect” view about “what is worthy” of him and he “acts in ways that are unworthy”.\(^\text{133}\) Although he thinks he has self-respect, he does not as his attitudes and actions do not satisfy the objective standards under which such an appraisal is a valid one. This maps onto the failure to secure the objective constraints on one’s self-authorization, that is, the conditions that make self-authorization authentic.

### 3.4.2.2 The Social Bases of Self-Authorization

The social bases of self-respect, then, are the conditions for both objective self-respect and for subjective self-respect to obtain. This maps onto the idea that self-authorization is an inherently subjective phenomenon, and yet self-authorization must satisfy certain objective conditions for it to be authentic. The objective SBSR that Rawls considers are not merely the best psychological or sociological means to subjective self-respect—to self-authorization—but include objective conditions that ensure that one’s self-authorization is authentic. Rawls stresses that “we assess our prospects in life according to our place in society and we form our ends and purposes in the light of the means and opportunities we can realistically expect” (JaF 56); “A theory of justice must take into account how the aims and aspirations of people are formed”

\(^{131}\) Massey, “Is Self-Respect a Moral or a Psychological Concept?,” 252.
\(^{132}\) Ibid.
\(^{133}\) Ibid., 253.
If the structure of society is such that we are unable to properly apprehend the reasons we have to act, a positive appraisal of our circumstances is of little value and does not reflect the highest-order interest of the ideal citizen.

This conception of the SBSR explains the priority ordering of the principles (as I explain in Chapter 4) and the importance Rawls attaches to the SBSR as a primary good. The SBSR are intrinsic to whether or not people are autonomous; no other primary social good is intrinsic to that. The distribution of those other goods must be understood primarily through how they contribute to establishing the SBSR and thereby citizens’ political autonomy. Rawls, I think judging from his comments on the SBSR, thought the same.

There is, however, an alteration that must be made. Self-respect is too narrow a concept to cover the notions of accountability and the entirety of the self-regarding attitudes required for self-authorization. I think that the spirit and thrust of Rawls’s conception of self-respect includes elements that ought to be distinguished from self-respect such as self-esteem and self-worth (see 3.3.1). Therefore, the SBSR ought to be amended to be the social bases of self-authorization (SBSA). The difference may well be semantic, rather than substantive, but it is a change worth making and worth illustrating, in order to make clear the notion of autonomy as self-authorization that underpins the good.

3.5 CONCLUSION

The primary aim of this chapter was to detail the ideal of the citizen that is the basis of Justice as Fairness—the political conception of the person—and thereby secure the foundations for the conception of justice advanced in the following chapters. In 3.2 I expounded the political conception of autonomy that is derived from the ideal of the citizen and that is the basis for conceiving of the interests of citizens. I argued that political autonomy ought to be conceived as autonomy as authentic self-authorization. The politically autonomous person is a person who can properly apprehend the reasons for the political and social institutions that shape who we are and who we become,
and can affirm the political and social institutions on the basis of those reasons. It is a person who, because of those conditions, can and does take ownership of their actions in the context of the political and social institutions in which those actions will be judged. In 3.3 I expounded the highest-order interests of the ideal citizen as establishing and maintaining sufficiency in the three dimensions of autonomy, where the sufficiency level is understood through the conception of autonomy as authentic self-authorization.

This chapter also provided an initial response to the objection that since Rawls assumes that citizens are normal and fully cooperating members of society, this renders his theory unable to account for those members of society—including children—that cannot be conceived as such and have different needs and requirements. This objection was shown to be mistaken. The ‘normal and fully cooperating’ citizen is a substantive notion of the sufficient capability set required for political autonomy. Establishing and maintaining this capability set—through the distribution of the primary social goods—is the highest-order interest of citizens. I also anticipated and assuaged the worry that the theory of primary social goods is insufficient to cover the kind of institutional demands—such as the abolition of oppressive structures and norms—that must be met in order for citizens to authentically self-authorize. I showed that Rawls in fact conceives of the social basis of self-respect in a form that reflects the importance and breadth of the institutional demands of authentic self-authorization. However, I argued that the good would be better termed as the social bases of self-authorization, rather than the social bases of self-respect, in order to cover the breadth of self-regarding attitudes required for self-authorization.

I have now completed building the foundations for the political liberal conception of justice I will apply to the specific issues raised by children’s upbringings. In the next chapter, I will expound the principles of the general conception of Justice as Fairness and offer some alterations to those principles in light of the arguments presented in this chapter. After expounding the general conception, I will be able to turn in Chapter 5 to addressing the specific issues raised by the upbringing of children.
4 The Principles of Justice as Fairness

4.1 Introduction

In this chapter, I explain how the political conception of autonomy and the primary social goods explain the choice of the two principles of Justice as Fairness in the original position, with respect to both their content and their priority ordering. This has two purposes. First, it completes the exposition of the conception of Justice as Fairness that I will apply to the issues raised by children’s upbringings in the following chapters. Second, by showing how the principles of Justice as Fairness are derived from the expositions of the political conception of autonomy and the primary social goods in the previous chapter, it adds to the coherence and plausibility of those conceptions. I will also draw the following more substantive conclusion regarding the principles of Justice as Fairness: the principle of fair equality of opportunity (FEO) ought to be jettisoned in favour of a principle of equal and adequate provision of the social bases of self-authorization (SBSA). I argue that the only arguments that can sustain the lexical priority of FEO over the difference principle (DP) are based on its contribution to securing citizens’ autonomy. However, securing FEO does not do that. I argue that the lexically prior interest in securing autonomy does, however, justify the following rider on the difference principle: that inequalities of income, wealth, power, influence, and opportunity, must not undermine the equal and adequate provision of the social bases of self-authorization. This will include a measure of equal opportunity in its institutional mandates.

I begin in 4.2 by following Robert Taylor in justifying the content and priority of the liberty principle (LP), and the content and priority of FEO, by appeal to an underlying commitment to guaranteeing the conditions for autonomy. As Taylor argues, only citizens’ highest-order interest in autonomy can justify the

lexical priority of securing certain distributions of certain goods over others. However, in 4.3, I argue that FEO does not secure either necessary or sufficient conditions for autonomy. It does not secure necessary conditions because it is not necessary for political autonomy that those with the same levels of native talent and ambition have the same prospects for success. It does not secure sufficient conditions because inequalities mandated by the DP may engender political and social institutions that leave people vulnerable to heteronomous relationships and such vulnerability would not be assuaged by securing FEO. I argue that FEO should be replaced with a principle securing the equal and adequate provision of the social bases of self-authorization that may otherwise be undermined by inequalities of income, wealth, power, influence, and opportunity that are mandated by the DP.

4.2 JUSTIFYING LEXICAL PRIORITIES

In this section, I will begin in 4.2.1 by expounding Taylor’s explanation of the reasoning for the lexical priority ordering of the principles. This can be outlined as follows. Lexical priority can only be explained with reference to the lexical priority of the interests the respective principles serve. Citizens have a highest-order interest in securing their autonomy. As such, Taylor argues that the priority of the LP over the second principle of justice can be explained by appeal to the fact that securing basic liberties is necessary to autonomy, whereas interests in securing opportunities, income, wealth, power, and influence, above a sufficient level, is not. In 4.2.2 I explain how this argument can be framed from the perspective of the political conception of autonomy expounded in the previous chapter.

4.2.1 The Priority of Liberty

In this subsection, I expound Taylor’s argument for the priority ordering with specific reference to the priority of the LP. The principles of Justice as Fairness are as follows:

(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all (the liberty principle); and
(b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity (fair equality of opportunity) and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle). (JaF 42-43)

Taylor identifies three arguments Rawls uses to justify the lexical priority of the LP over the second principle of justice: the self-respect argument, the equal liberty of conscience argument, and the hierarchy of interests argument. The self-respect and equal liberty of conscience arguments, Taylor shows, are susceptible to what he calls the inference-fallacy objection. The inference fallacy is the belief “that the lexical priority of the basic liberties can be inferred from the high priority of the interests they serve”.135 The basic point is that showing that the social bases of self-respect, and equal liberty of conscience, are of high, or even of central, importance to our lives, does not justify the lexical priority of the principle that establishes and protects those interests. This is because it must be shown that the interests that are protected are such that they “cannot be traded off for any other interest, no matter how high the rate of exchange”, which is what lexical priority implies.136 With respect to the self-respect argument, Taylor asks: “Why, for example, would very small restrictions on the basic liberties threaten the social basis of self-respect, so long as they were applied equally to all citizens?”137

Similarly, showing that equal liberty of conscience is of “vital importance” is “insufficient… to establish the lexical priority of the liberty that supports it: one might ‘highly value’ this interest yet still endorse small sacrifices of equal liberty of conscience if such sacrifices were necessary to advance other highly valued interests”.138 The inference-fallacy objection is also levelled against the priority of FEO over the DP. The lexical priority of FEO has “real bite: the least advantaged cannot trade off their fair opportunities to achieve office and position for the sake of greater monetary benefits”.139 Even more obviously than the lexical priority of the LP, this appears much too strong. Taylor notes the criticisms of

136 Ibid., 251., emphasis mine
137 Ibid., 250.
138 Ibid., 252.
Alexander and Arneson who, respectively, believe its priority “makes a fetish of our status as producers”, and fetishizes the value of “opportunities for job satisfaction, educational achievement, and responsibility fulfilment”. Clayton also argues that the appeal to the value of self-realization—“the experience of the realisation of self which comes from a skilful and devoted exercise of social duties” (TJ 73)—must be a comprehensive appeal in that such a judgment involves evaluating its role, relative to other values, in measuring human well-being. Arneson provides a neat summary of the problem:

“In Within Rawls’ theory, which eschews any social evaluation of people’s conceptions of the good, there does not seem to be a basis for affirming that the goods of job satisfaction and meaningful work trump the goods that money and other resources distributed by the [Difference Principle] can obtain. From the different perspectives afforded by different and conflicting conceptions of the good, individuals will differ on this question… For some, work satisfaction and entrusted responsibility fulfilment may loom very large; for other individuals, quite other goods are crucial.”

In response, Taylor presents a different argument that supports both the lexical priority of the LP over the second principle, and the lexical priority of FEO over the DP within the second principle, which can avoid these objections. He calls this the *hierarchy of interests argument* and is spelled out neatly in a passage that Taylor quotes from Rawls:

“Very roughly the parties [in the Original Position] regard themselves as having a highest-order interest in how all their other interests, including even their fundamental ones, are shaped and regulated by social institutions. They do not think of themselves as inevitably bound to, or as identical with, the pursuit of any particular complex of fundamental interests that they may have at any given time, although they want the right to advance such interests. . . . Rather, free persons conceive themselves as beings who can revise and alter their final ends and who give first priority to preserving their liberty in these matters. Hence, they not only have final ends that they are in principle free to pursue or to

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140 Ibid.
reject, but their original allegiance and continued devotion to these ends are to be formed and affirmed under conditions that are free.” (TJ 131-132, emphasis in Taylor)

The parties in the OP are moved by their highest-order interest in preserving their rationality and the conditions of its exercise. It is a highest-order interest because it is necessary for autonomy: “we cannot sacrifice this interest without sacrificing autonomy, without stooping to the level of creatures that live by natural impulse rather than by a plan of life”.

If the parties were to sacrifice their liberty for the sake of other goods they would be “failing to express their nature as autonomous beings”, that is, their conception of themselves as having the moral power to form, revise, and rationally pursue a conception of the good, as self-authenticating sources of valid claims, and as capable of taking responsibility for their ends (PL 30-33).

The liberty principle guarantees the conditions for, in Taylor’s words, the autonomous formation and revision of life plans. The second principle of justice fairly distributes the resources for the successful advancement of life plans. Since only the former is necessary for autonomy, parties will protect those conditions with lexical priority. Of course, autonomy can be sacrificed without sufficient opportunity, income, and wealth too. Consider: there is a level of wealth that is required for the meaningful exercise of one’s rational powers given the formal freedoms the LP protects. If I am too undernourished, cold, overworked, ignorant, and so on, I cannot exercise my powers of reason “to engage in meaningful formation of life plans”. Rawls’s assumption is that the liberal democratic societies he’s engaged with have reached such a stage of economic advancement and, as such, meet the threshold criteria for the lexical priority of the LP to kick in. If parties are aware that they will have sufficient other primary goods, they will protect the basic liberties with lexical priority; in this way they will be looking after their highest-order interest in autonomy.

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144 Ibid., 260.
145 Ibid., 261.
146 Ibid., 263.
4.2.2 Political Autonomy and Lexical Priority

Taylor’s argument relies on a Kantian conception of autonomy which is, on his understanding, the notion that autonomy consists of “freedom from the determination of our choices by ‘natural contingencies and social accident’”. Autonomy is rationality: “[far] from blindly serving what Plato called the ‘manifold beast’ of desire, rationality schedules, prioritizes, tempers, and prunes desires as well as organising them into a coherent plan of life”. Exercising rationality in our endeavours “demonstrates that we are more than simply the resultant vectors of genetic, familial, and social forces”. However, this reflects an ideal of living, rather than an ideal of free and equal citizenship and is inappropriate for a political conception of justice, as Taylor also recognizes. However, I will show that the political conception of autonomy I detailed in Chapter 3 can do the same argumentative work in justifying the priority ordering of the principles.

In 3.3 I detailed the necessary and sufficient conditions for autonomy in three dimensions: self-determination, self-governance, and self-authorization. I argued that the necessary and sufficient elements in each dimension are determined by the requirements of authentic self-authorization. Recall the conditions for authentic self-authorization:

1. Agents must authorize and answer for their own actions.
2. Agents’ attitudes toward their own capabilities and worthiness to function as answerers must be formed in a suitably rational way; one must have the internal capacities to detect and appreciate the reasons one has to act.
3. Agents’ attitudes must be formed absent processes that circumvent their capacities for rational consideration as in, for example, cases of forcible mind control, the existence of oppressive social norms or structures, physical distress, and/or a lack of self-respect, self-trust, or self-esteem.
4. Agents must not be rendered incapable of acquiring otherwise socially available information that would be practically germane to their decisions.

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147 Ibid., 265. For the discussion in Rawls that Taylor quotes from, see TJ 224-227
149 Ibid.
Like Taylor, I argue that the principles, and their priority ordering, reflect citizens’ highest-order interest in establishing the conditions for autonomy. The equal basic liberties protect the conditions required for people to authorize and answer for their own actions, and to authentically assess their worthiness as answerers, as I discussed in more detail in 3.2 and 3.3. Therefore, parties in the original position will protect these conditions with the highest-order priority that reflects the highest-order interest that is being protected. There is a threshold condition just like Taylor’s. Taylor’s is a sufficient set of resources to rationally form and revise a conception of the good. The political conception of autonomy demands a sufficient set of resources to be able to answer for one’s actions and to resist oppressive relationships (3.3.3). The parties, aware of sufficiency in the realm of opportunity, income, wealth, power, and influence (OIWPI), will protect the basic liberties with lexical priority over greater gains in those other realms. To sacrifice basic liberties is to sacrifice the very basis of citizens’ status as responsible for their ends, that is, as equals that can answer for their actions. Sacrificing gains in OIWPI does not sacrifice this.

4.3 Jettisoning Fair Equality of Opportunity

The difficulty of the autonomy-based argument for the lexical priority ordering of the principles of justice is found not in justifying the priority of the LP over the second principle, but in justifying the priority of FEO over the DP. In 4.3.1, I argue that FEO does not secure either necessary or sufficient conditions for autonomy and should therefore be jettisoned from the principles of justice. It is not necessary for political autonomy that those with the same levels of native talent and ambition have the same prospects for success. It is also not sufficient because inequalities mandated by the DP may engender political and social institutions that leave people vulnerable to heteronomous relationships and such vulnerability would not be assuaged by securing FEO. In 4.3.2, I argue that FEO should be replaced by a principle that ensures inequalities mandated by the DP do not undermine the equal and adequate provision of the social bases of self-authorization. This acts as a rider on the DP to prevent inequalities resulting in citizens’ heteronomy.
4.3.1 Self-Realization and the Priority of FEO

Taylor’s argument for FEO and its priority is structurally the same as the argument for the LP and its priority. Taylor distinguishes two interests that are supported by the second principle. One is the interest in consumption, that is, roughly, the interest in having income and wealth in order to use things to satisfy desires and ends. The other is the interest in self-realization, that is, the interest in the “skilful and devoted exercise of social duties” (TJ 73). Taylor argues that if the interest in self-realization could be shown to be “so important as to be lexically prior to the consumption interest” then this could establish grounds for the lexical priority of FEO over the DP. However, like with the argument for the priority of the LP over the second principle, the interest in self-realization cannot be shown to be merely ‘a lot more’ important than the interest in consumption. It must be shown that it protects lexically more important—higher-order—interests, otherwise it will be subject to the inference-fallacy objection. First note that—mirroring the threshold condition for the priority of the LP—the lexical priority of FEO only ‘kicks in’ given a sufficient amount of income and wealth: opportunities, like liberties, are meaningless without being able to feed oneself and so on. So it must be shown that given a sufficient amount of income and wealth, FEO is infinitely more important that any increase in income and wealth above the sufficient amount. Like the argument for the priority of the LP over the second principle, the argument for the lexical priority of the self-realization interest relies on showing that it is—unlike increasing consumptive capacity beyond a sufficient level—a constituent element of our autonomy. So what is the interest in self-realization, how does FEO support it, and in what way is it a constituent element of autonomy?

Central to the interest is the truth of the Aristotelian Principle: “other things equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and this enjoyment increases the more the capacity is realized, or the greater the complexity” (TJ 374). It is a ‘tendency’ that is so strong that “in the design of social institutions a large place has to be made for

150 Clayton, in “Rawls and Natural Aristocracy.”, also recognises that this approach could work to justify its content and lexical priority, although he is sceptical about the potential for its success, particularly given a political liberal framework.
it, for otherwise human beings will find their culture and form of life dull and empty. Their vitality and zest will fail as their life becomes a tiresome routine” (TJ 377). Social institutions offer offices and positions that can provide “valuable and… unique opportunities for the exercise and improvement of our abilities”.151 And it is FEO that creates and protects “institutional space for the use of our skills and guaranteeing resources (including educational ones, in particular) to make their utilization effective”.152 Consumption “cannot substitute for self-realization” with respect to how our lives go: increasing consumption, beyond sufficiency, will still result in a life that is ‘dull and empty’ or a ‘tiresome routine’ without the realization and exercise of our talents and skills.153 The principle of FEO is:

“assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed.” (TJ 63)

FEO protects prospects for self-realization by protecting equal prospects for self-realization for everyone ‘similarly motivated and endowed’. I’ll return to this formulation in a moment. First, I need to address the question of whether and how self-realization is a facet of autonomy. Taylor argues that to live an autonomous life, there not only needs to be the scope for the free exercise of our powers of reason and a sufficient amount of wealth to pursue our conception of the good; we need the internal resources required to form, revise, and pursue our conception of the good: we need skills, drive, and self-discipline. We are naturally subject to “refractory animal impulses” such as akrasia, myopia, and extreme risk-aversion, which “can act as barriers to the development of internal resources”.154 Therefore, parties in the original position, motivated primarily by guaranteeing the conditions for their autonomy, will guarantee their self-realization (or the prospects for self-

152 Ibid.
153 Ibid.
154 Ibid., 344.
realization), with lexical priority, over increasing shares of income and wealth above a sufficient level for autonomy, in order to protect the development and realization of the internal resources necessary for the rational formation, revision, and pursuit of a conception of the good.

There are three problems that arise here. First, Taylor believes that the main advantage of his approach is that the self-realization defence of the priority of FEO “serves as a constituent element of a unified, autonomy-based defence” of the priority ordering in Justice as Fairness. However, if self-realization is just another constituent element of autonomy, it does not follow that it is of lower priority than liberty but of greater priority than consumption; it surely follows that self-realization is as important as liberty. If this is true, then surely lesser liberties can be sacrificed for great gains in the prospects for self-realization since they are both constituent elements of autonomy. This line of thought could be followed but it only illuminates a second, more troublesome problem: the justification may avoid a straightforwardly comprehensive account of ranking interests according to contribution to well-being, but self-realization is not a constituent element of the political conception of autonomy. Self-realization protects and promotes the development of skills, drive, and self-discipline required in order to resist the natural impulses of akrasia, myopia, and risk-aversion, that corrupt our ability to rationally form, revise, and pursue a conception of the good. This reflects an ideal of living. Those skills, and resisting those natural impulses, are not essential to political autonomy even if they are means to living well. Third, Taylor does not discuss how FEO ought to be formulated in light of his interpretation. The standard formulation will not do if it is to cohere with Taylor’s argument. Consider: the standard formulation mandates equal chances for advantaged opportunities for those with equal native talents and equal ambition. However, this is entirely consistent with zero self-realization for people at one level of native talent, and greater self-realization for people at other levels of native talent, especially if, plausibly, education spending responds to what would improve the long-term expectations of the least-advantaged, measured in terms of income and wealth.

155 Ibid., 346. The other priority is the priority of the right over the good.
as Rawls suggests (TJ 86-87). Taylor’s argument is more plausible if we utilize the formulation of FEO that Rawls sometimes suggests: that inequalities of opportunity are justified only if they enhance the opportunities of those with the lesser opportunity (TJ 265-266). On this view, opportunities are viewed not as a given set to be distributed (equally or fairly) but as things that institutions can increase or promote. If opportunities are like this, then equal prospects for the similarly endowed appears not to best further citizens’ interests in self-realization; citizens’ would prefer unequal prospects, if they increased prospects for self-realization for the least-advantaged. Again, the line of argument could be followed, but it is worth noting that it does not cohere with the intuitive pull of the principle: *equal opportunity does not intuitively suggest unequal opportunity to the greatest benefit of the least-advantaged*. There is something about *equality* in the realm of opportunity that is supposed to be reflected in the principle. In the next subsection, I will explain why and what this is.

### 4.3.2 A New Second Principle

In this subsection, I offer a new reading of the second principle of justice that explains the underlying motivation of the FEO principle without its accompanying problems. I begin by briefly explaining the reasoning for the DP. I then argue that the DP is a rational choice for the parties only if they can be assured of the equal and adequate provision of the social bases of self-authorization (SBSA). However, if the DP permits inequalities then the equal and adequate provision of the SBSA is under threat: those inequalities create vulnerabilities to political heteronomy. As such, there is a need for a rider on the DP: an assurance of the equal and adequate provision of the SBSA.

The priority of the liberty principle protects the rational *formation* and *revision* of a conception of the good. Once this is secured then parties are concerned with the *advancement* of their conception of the good - a higher-order interest secondary to the highest-order interest in autonomy. For the advancement of a conception of the good, citizens are assumed to want more opportunities, income, wealth, power and influence (OIWPI)—the conception of rational advantage—on condition that the elements necessary for their political
autonomy are secured. Therefore, they will (given sufficiency in OIWPI) never exchange lesser basic liberties for a greater share of OIWPI. Furthermore, they will require that the distribution of OIWPI also be such that it does not undermine their political autonomy.

Consider the following principle: the distribution of OIWPI is to be arranged such that inequalities of those goods are to the benefit of the least-advantaged, measured on the same scale; “existing inequalities are to fulfil the condition of benefitting others as well as ourselves” (JaF 64). The advantage of such a principle is that it publically expresses the ideal of reciprocity, that is, a fair undertaking between citizens that publically expresses mutual respect and dignity, and is therefore suitable in offering a social basis of self-authorization in the realm of the distribution of the means to advance one’s conception of the good. The question is then: what need is there for an additional principle? If OIWPI—their content and their allocation—are arranged so that inequalities between citizens are to the benefit of the least-advantaged in same dimensions, what complaint could there be? My view is this: The principle does not address background injustices that could arise even if the inequalities were to be arranged to be to the benefit of the least-advantaged in the same metric, and that the distribution of the goods in that metric were expressed such that it offered a social basis of self-authorization. How so? Because the social bases of self-authorization are at risk just because there are inequalities. Inequalities of OIWPI present the risk of heteronomous—oppressive—relationships developing ‘in the background’.

A very simple way to see this is to imagine that there was no condition for even formal equality of opportunity. It may be efficient to permit some advantaged societal or economic roles to be ‘open’ only to a select group. However, even though this might increase citizens’ overall set of opportunities (imagine this practice opened up a range of jobs that would otherwise be unavailable), and increase citizens’ overall share of OIWPI, and thereby further citizens’ advancement of their conceptions of the good, the practice is likely to engender, if not inherently constitute, oppressive structures and norms: citizens are being debarred from opportunities because they are or are not members of
a particular group. Inequalities of OIWPI offer prospects for dominant relationships, for class segregation and stereotyping, for dominant power-overing, and so on (see 3.3.1). Note further that such results are not assumed to be a result of deliberately unjust actions by individuals in the system; such actions would not occur in the ideal society. What is being alluded to is what Rawls calls the tendency “for background justice to be eroded even when individuals act fairly: the overall result of separate and independent transactions is away from and not toward background justice… in this case the invisible hand guides things in the wrong direction” (PL 267):

“In this extended structural sense oppression refers to the vast and deep injustices some groups suffer as a consequence of often unconscious assumptions and reactions of well-meaning people in ordinary interactions, media and cultural stereotypes, and structural features of bureaucratic hierarchies and market mechanisms—in short the normal processes of everyday life. We cannot eliminate this structural oppression by getting rid of the rulers or making some new laws, because oppressions are systematically reproduced in major economic, political, and cultural institutions. The systemic character of oppression implies that an oppressed group need not have a correlate oppressing group… The conscious actions of many individuals daily contribute to maintaining and reproducing oppression, but those people are usually simply doing their jobs or living their lives, and do not understand themselves as agents of oppression.”

The point is that inequalities—even when arranged to the benefit of the least-advantaged in the same metric—permit these oppressive structures to arise. So, one may ask, why wouldn’t the parties choose equality in that metric? Because there is a better choice for them: inequality in OIWPI on condition of absolute advantage for the advancement of the conceptions of the good of the least-advantaged and the equal and adequate provision of the SBSA. This is a principle that furthers the advancement of their conception of the good on condition that the SBSA, and therefore their highest-order interest in political autonomy, is protected with equal and adequate concern. The principle then acts as a rider on the difference principle, mandating that inequalities are permissible only if the SBSA are equally and adequately secured for all; the

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156 Young, Justice and the Politics of Difference, 41.
SBSA are necessary for autonomy whereas greater advancement for conceptions of the good is not. This explains both its lexical priority over the DP and its inferiority below the LP. It explains its inferiority below the LP because it is only necessary if there are inequalities otherwise mandated by the second principle; there can be no conflict between LP and this principle. The DP cannot permit inequalities that the principle cannot condition without undermining the LP. As such, it does a better job of explaining its role in Justice as Fairness than arguments based on self-realization. It also identifies the reason why we ought to treat natural causes and social causes of inequality differently. Only social causes (and natural causes with social implications) of inequality make us vulnerable to failing to express authentic self-authorization.

The question that remains open is the exact specification of the principle. I suggest the principle ought to be specified as follows:

**Basic Formulation:** Inequalities of OIWPI must be consistent with the equal and adequate provision of the social bases of self-authorization.

The notion is simple. Inequalities of OIWPI can be arranged to the benefit of the least-advantaged on condition that they are consistent with the equal and adequate provision of the social bases of self-authorization (SBSA). As such, there is great flexibility in the social and economic system of cooperation with respect to how the goal is achieved. First, there is no fetish about equality of opportunity: if, in some cases, inequality of opportunity is overall advantageous for the least-advantaged and yet consistent with the equal and adequate provision of the SBSA, then this is permissible. In many cases, of course, it is clearly not consistent with the SBSA (even if it somehow manages to be overall advantageous in the metric of OIWPI). Access to advantaged positions is often a (very public) site of class divides, of gender divides, of race divides, and of ‘who you know’ rather than ‘what you know’ allocations of status and wealth. But this new formulation does not demand aiming for perfect marriages of native talent and ambition to access to advantaged roles and positions. Why? Because many obstacles in the way of FEO aren’t detrimental of the SBSA. For example, whether or not my parents read me bedtime stories, or discussed politics at the dinner table, may have affected my prospects to be a politician or
a banker, but it is not clear how this could reasonably be seen as a failure to provide a social base for self-respect or self-worth. However, if the ruling classes are largely made up of people who had rich parents and went to a small cluster of private schools and universities, then one can reasonably claim that there is a public expression of group divides, of class distinction, and consequently of lesser worth. It does not appear to me necessary for the SBSA that a state orphanage is instituted, even if it does best at securing FEO as Rawls describes it.\textsuperscript{157} Furthermore, the flexibility in the principle is such that it may be more efficient overall to not demand perfect equality of opportunity, but to educate people in such a way that particular positions in society do not come attached with the status and influence that we ordinarily imagine them to, if they are monetarily rewarding, and if other factors of society lend those in those positions of status and influence to act (unintentionally) in oppressive ways.

There are also many cases of structural oppression that may result from inequalities of OIWPI that would not be addressed by FEO, however formulated. To take just one example: if FEO is formulated along the lines of ensuring equal chances for those equally endowed, then it fails to address the potential for the oppression of those not well endowed or indeed those that had an equal chance, did not take up the opportunity for whatever reason, and ended up relatively less well-off in terms of IWPI. FEO does not inherently prevent status hierarchies, cultural imperialism, or relationships of exploitation or domination. Opportunity, although doubtlessly a concept that assists in identifying oppressive structures, or structures that have the potential to oppress, does not reflect the extent of oppressive structures and norms. These can arise when opportunity is equal and extensive: people may not, or cannot, take up opportunities; however, this ought not to permit structures that have the potential to oppress in the variety of forms discussed in 3.3.1.

\textsuperscript{157} Munoz-Dardé provides an illuminating discussion of Rawls’s brief mention of the possibility that instituting FEO may require abolishing the family in favour of a state orphanage: Véronique Munoz-Dardé, “Is the Family to Be Abolished Then?,” Proceedings of the Aristotelian Society, New Series, 99 (January 1, 1999): 37–56.
4.4 Conclusion

The purpose of this chapter was to expound the principles of Justice as Fairness, that is, the general conception of justice that will be applied to the specific issues raised by the upbringing of children in the following chapters. I defended the priority ordering of the principles by appeal to the political conception of autonomy detailed in the previous chapter. In 4.3 I argued that the principle of FEO should be jettisoned and should be replaced by a principle of equal and adequate provision of the social bases of self-authorization. Call this the SBSA principle. I argued that this principle is necessary as a rider on the DP to ensure that the inequalities that the DP mandates do not engender oppressive structures and norms. The principle of FEO in its standard formulation offers neither sufficient nor necessary conditions for political autonomy. The principles now look like this:

(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all (the liberty principle); and

(b) Social and economic inequalities are to satisfy two conditions: first, they must be consistent with the equal and adequate provision of the social bases of self-authorization (the SBSA principle); and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle). (JaF 42-43, with my alteration)

This completes the groundwork required for the application of Justice as Fairness to the specific issues raised by the upbringing of children. In Chapter 2, I detailed the distinctly political liberal framework. In Chapter 3, I detailed the ideals that are the foundations of Justice as Fairness and expounded the political conception of autonomy, based on those ideals, that is central to its construction and substance. Having shown how the political conception of autonomy coheres with the two principles and their priority ordering, I can now apply this general conception of justice to the specific issues raised by children’s upbringings.
5 APPLYING JUSTICE AS FAIRNESS TO CHILDREN

5.1 INTRODUCTION

In the rest of the thesis, I demonstrate how the principles of Justice as Fairness can and ought to be applied to the specific issues raised by the upbringing of children. In this chapter and the next chapter (5 and 6), I focus specifically on the demands of children’s upbringings, taken apart from the distribution and content of the rights and obligations particular adults may have regarding particular children. In the final two chapters (7 and 8), I show how these demands are to be fulfilled in a distribution of child-rearing rights and obligations, and consider whether and how adults’ interests in child-rearing affect that distribution. This is required because if my conception could not offer plausible and coherent assessments of how particular adults acquire particular child-rearing rights and obligations over particular children, and an account of how institutions fulfil the demands of children’s upbringings alongside other claims of justice, then the conception would be indeterminate and implausible. These final two chapters address this and together offer an account that is plausible, coherent and determinate. In this chapter, I explain how the principles of Justice as Fairness prescribe institutional demands of children’s upbringings. The following chapter then serves to elucidate the content of these demands and further demonstrate the plausibility and coherence of the conception.

The structure of this chapter is as follows. In 5.2 I expound the general approach for applying the principles of Justice as Fairness to particular issues that are abstracted away from in the initial stage of the original position: the four-stage sequence. I show how the four-stage sequence is to be used to apply the principles of justice to childhood and upbringing. Of particular note is that the principle of paternalism ensures children’s interests are furthered on the basis of their status as citizens over a complete life. Analysis of the stages also reveals that children are to be given equal status and consideration in the formulation and regulation of institutions and laws. In 5.3 I analyse the
principle of paternalism and conceive of its application to children. I offer a new formulation of the principle based on the political conception of autonomy expounded in Chapter 3 and show how this principle is to be applied to children. I argue that the principle mandates an ‘at-birth’ contracting of children into an institutional setup that furthers their higher-order interests as citizens considered over a complete life. This notion of the at-birth contract is the basis for the formulation and regulation of institutions and laws with respect to the demands of children’s upbringings. I also show how the principle (and the at-birth contract) deals with the developing capacities and interests of children as they grow into adults, and how adulthood is to be identified and conceived.

5.2 The Four-Stage Sequence

In this section, I show how the principles of Justice as Fairness can be applied to children. This will assuage the worry—expounded in 5.2.1—that the principles do not reflect the particular circumstances of childhood or children’s equality as persons. I argue that the worry ignores two elements of Justice as Fairness that are sufficient for the application of the principles to children: the principle of paternalism and the four-stage sequence. The principles of Justice as Fairness can and do elicit demands of children’s upbringings, as I then detail in 5.2.2. I argue that in the first stage of the original position, the parties choose a principle of paternalism that identifies children as lacking the moral powers required to act on and for their higher-order interests. As such, the principles of justice mandate that others act for children in pursuit of those interests. I then argue that subsequent stages (that is, stages two and three) of the original position mandate that children be accorded the status of equal citizens as a matter of constitutional protection and this in turn requires that legislation be constructed with children’s claims given equal consideration as individual citizens.

138 This is not the worry, assuaged in 2.3.1, that political liberal conceptions of justice—however they are constituted—do not or cannot apply to children. It is also not the worry, assuaged in 3.4, that the metric of primary social goods does not or cannot apply to children. It is the specific worry—expounded in 5.2.1—that the principles do not reflect children’s circumstances or their equality as persons.
5.2.1 The Worry

The two principles of justice, as I detailed them in the previous chapter, now look like this:

(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all (the liberty principle); and

(b) Social and economic inequalities are to satisfy two conditions: first, they must be consistent with the equal and adequate provision of the social bases of self-authorization (the SBSA principle); and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle). (JaF 42-43, with my alteration)

Tim Mulgan argues that the two principles cannot account for what we owe to children, and that any attempt to add to the two principles would raise other serious difficulties. Specifically, he argues that the conception must include a development principle that is lexically prior to the liberty principle. The detail of this argument is as follows. Parties in the original position make their choice of principles on the basis of their higher-order interests in the development and exercise of their two moral powers. Parties know ‘the basic facts of social life and the conditions of human nature’ including the following facts:

“each human life begins with a childhood; that no child is born with realized moral powers, or spontaneously develops such powers; that whether any given child does develop those powers depends upon the quality of the social conditions of early childhood; that many actual and possible social arrangements provide inadequate social conditions of early childhood... and, finally, that these inadequate conditions ensure, or make it highly likely, that those children never develop the moral powers to any significant degree”.

Therefore, the parties have “good reason to select principles of justice that ensure their society has few such children, if any”. The parties would choose the following principle:

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160 Ibid., 45.
161 Ibid.
The Development Principle: Each person has an equal claim to a fully adequate scheme of equal conditions of early care, which is compatible with a similar scheme of such conditions for all.\textsuperscript{162} This principle would be lexically prior to the liberty principle. This is because the liberty principle “is pointless unless the persons to whom it applies already have minimally developed moral powers... Given Rawls’s maximin orientation, we should aim to prevent \emph{any} children from failing to develop their moral powers.”\textsuperscript{163} Mulgan should be read as asking a searching question of Rawls’s theory: if developing and exercising the moral powers is the basis for assessing the principles, and people are considered as citizens over a complete life, how can the principles ignore the very serious need for institutions that deal with the essential development of the moral powers in childhood? Mulgan’s worry is supported by the account I gave (following Taylor) in 4.2 regarding the connection between the liberty principle and conditions for the exercise of the powers of reason in the formation of a conception of the good. If the liberty principle is there to provide conditions for the exercise of one’s powers of reason, then surely the development principle is necessary to ensure the powers of reason exist in citizens in the first place.

Mulgan makes the mistake of confining his argument to the ‘ideal’ principles of Justice as Fairness in their standard and simplified formulation. However, the conception of Justice as Fairness (and the original position more specifically) has to be understood through a four-stage sequence that is used to apply the ‘ideal’ principles to particular societies. As such, he ignores a fundamental principle that, while not expressed in the ‘ideal’ principles of Justice as Fairness, does exist: the principle of paternalism. This principle suffices to ensure that children develop their moral powers with the priority attached to the liberty principle. He also ignores other elements of the four-stage sequence essential to understanding how children are to be included within Justice as Fairness: their constitutional status as equal citizens and their consideration as equals in the formulation and regulation of institutions and laws. In 5.2.2, I will show that an appreciation of these elements of Justice as Fairness renders

\footnotesize{\textsuperscript{162} Ibid.}
\footnotesize{\textsuperscript{163} Ibid., 45–46.}
Mulgan’s objection impotent, and along the way demonstrate how to apply the conception to children’s upbringings.

5.2.2 The Four-Stage Sequence

The four stage sequence of the original position is “the framework for deliberating about and applying principles of justice... a kind of hypothetical inquiry” to judge and assess the justice of constitutions, laws, and judicial decisions.\footnote{Samuel Freeman, Rawls (London: Routledge, 2007), 202–203.} The reason such a framework is required is because the principles of justice chosen by the parties in the first stage are inevitably going to be vague, ambiguous, and indeterminate, because they are applied in institutions and by the actions of individuals in varying societies, cases, and circumstances. The basic idea is that as the parties move through the stages enough extra information is available to the parties in order for them to competently make just decisions but are only given what is necessary to make those decisions, that is, what is required for the principles to be applied “intelligently to the kind of question of justice at hand” (TJ 176). Any “knowledge that is likely to give rise to bias and distortion and to set men against one other is ruled out” (TJ 176). I will now explain each stage and demonstrate how children are included at each stage.

5.2.2.1 #1: The Initial Choice

The first stage of the original position is the initial choice of the two principles of justice. In this stage parties represent citizens conceived over a complete life. The parties begin by making the simplifying assumption that their representatives “are rational and able to manage their own affairs” (TJ 218). I understand this to mean that they have the competencies sufficient for self-governance (see 3.2.2). The parties choose an ‘ideal’ conception: the two principles of justice. They will also choose to supplement the two principles with a principle of paternalism:

“[the parties] will want to insure themselves against the possibility that their powers are undeveloped and they cannot rationally advance their interests, as in the case of children… the parties adopt principles stipulating when others are
authorized to act in their behalf and to override their present wishes if necessary” (TJ 218)

It is not obvious from Rawls’s writings exactly what status this principle has, that is, where it fits into the priority ordering. However, it is best read as a supplement to the liberty principle and, as such, has priority over the second principle of justice. This is because the purpose of the liberty principle is to protect the conditions for the autonomous exercise of our powers of reason in the formation of a conception of the good. The principle of paternalism ensures that when citizens are incapable of using their own powers of reason others will exercise powers of reason for their ends on their behalf until they develop or recover those powers. The development or recovery of those powers is, in most cases, the highest-order interest that guides the paternalistic provisions.

5.2.2.2 #2: The Constitutional Stage

In the second stage, parties choose the “most effective just constitution, the constitution that satisfies the principles of justice and is best calculated to lead to just and effective legislation” (TJ 173). At this stage, parties “in addition to an understanding of the principles of social theory, they now know the relevant general facts about their society” (TJ 172). The constitution puts “into place constitutional rights and procedures that specify and protect the equal basic liberties”.165 The purpose of this is to ensure a just political process, to enact a scheme of procedural arrangements such that the decision procedure that determines laws and policies and individual behaviour are “best calculated to lead to just and effective” outcomes (TJ 173). Such decisions are “commonly subject to reasonable differences of opinion”; the constitution protects the expression of such reasonable differences subject to the absolute protection of the basic liberties which make the decisions just (within an appropriate range). In this respect, “the constitution establishes a secure common status of equal citizenship and realises political justice” (TJ 175).

At the constitutional stage, the liberty principle and its supplement—the principle of paternalism—is constitutionally protected. At this stage it is also

165 Ibid., 205.
determined who is a citizen. Given Rawls’s premises—that society is a closed society that continues over time and between generations—any just constitution will recognise children born within that particular society to be considered as citizens and “to receive the full protection of the principles of justice” (TJ 445). This is an important step because it ensures that children are given equal concern when, in the next stage, decisions concerning the social and economic institutions of society are made. Their needs as a citizen will be considered equally as a matter of constitutional protection.

5.2.2.3 #3 and #4: The Legislative Stage and the Individual Stage

The third stage concerns the legislature: the institutions, laws, and policies of society. At this stage, the “second principle comes into play” and “the full range of general economic and social facts is brought to bear” including the particulars of childhood and the lack of capacity inherent to it (TJ 175). The deliberations are constrained by the constitution and thereby enact the lexical priority of the liberty principle, and the principle of paternalism, over the second principle.

In the third stage, the constitutional fact that children are to be considered as equal citizens constrains the deliberations regarding institutional design; distributions are considered with citizens’ childhood, as well as adulthood, in mind. Provisions for the requirements of the principle of paternalism will be made. Allocations of primary social goods are considered as expectations over a complete life and this will include the potential costs of the paternalistic provisions required in childhood. In this stage, the parties have knowledge of those costs (and the variation in cost between individuals and the probability of those variations) and of the general level of economic development. The parties do not know the costs that their particular representative may incur with respect to their paternalistic provision and developmental requirements. However, since the development of the moral powers is fundamental to the interests of all citizens, the parties will arrange institutions to secure a very high level of insurance regarding the development (and recovery) of the moral powers. There is, then, no need for an additional principle to ensure that one’s powers of reason are sufficiently developed in order to take advantage of the
liberties protected by the first principle. The principle of paternalism—protected by constitution—ensures that when citizens are incapable of using their powers of reason for their own ends, yet have the potential to develop those powers of reason, their share of primary social goods will be directed towards the development of those powers since this is in their highest-order interest.

The last stage concerns the “application of rules to particular cases by judges and administrators, and the following of rules by citizens generally” (TJ 175). This final stage need not concern us here. I can instead conclude that I have shown that applying principles in the previous three stages of the four-stage sequence addresses the worry that the principles either ignore the particular circumstances of childhood, or do not treat children as equals.

5.3 PATERNALISM AND GROWING UP

In this section, I detail the principle of paternalism and its application to children. This section is the statement of how Justice as Fairness applies to children. In 5.3.1 I detail the principle of paternalism and suggest a reformulation in light of the political conception of autonomy I have advanced. I argue that both the prompt and guide for paternalistic provisions is based on citizens’ highest-order interest in establishing and maintaining political autonomy. In 5.3.2 I expound how this principle is applied to children in the formulation and regulation of institutions and laws. I propose that the right paternalistic provision for children is to contract them into an institutional setup that will further their highest-order interest in establishing

166 I am not the first to attempt the application of Justice as Fairness’s principle of paternalism to children’s upbringings: see, for example, Amy Gutmann, “Children, Paternalism, and Education: A Liberal Argument,” *Philosophy & Public Affairs* 9, no. 4 (July 1, 1980): 338–58. Gutmann conceptualises the application within the framework of parental rights and obligations. Although I do not directly argue this, I think that discussions of the demands of children’s upbringings can be confused if they begin with the assumption that there are such things as parents and that they have rights over children and that they are primarily responsible for children’s upbringings. I deliberately ignore discussion of parents initially in order to assess properly and clearly the demands of children’s upbringings. The distinctiveness of this approach is partially why I think it turns out to be more compelling and coherent than alternatives. This will ‘come out in the wash’ as it were, that is, it will be demonstrated by the plausibility and coherence of the demands of children’s upbringings I set out and how I conceptualize the interests of prospective child-rearers in an account of the just distribution of child-rearing rights and obligations.
and maintaining their political autonomy and advance their other higher-order interest in utilising their fair share of primary social goods to further other identified interests and ends. In 5.3.3 I address how those institutions and laws address the question of what makes a child a child and how this affects (a) what the principle of paternalism requires as a child moves towards adulthood and forms what could be conceived as the person’s own rational, even settled, interests, and (b) when ‘children’ ought to be given rights to look after their own interests, and to incur duties associated with full citizenship, that is, when they become an adult.

5.3.1 The Principle of Paternalism

In this subsection I expound the principle of paternalism without reference to children specifically, and argue that it ought to be formulated differently to Rawls’s own proposal. Rawls’s principle of paternalism is a supplement to the liberty principle that ensures that when we are incapable of using our powers of reason to form, revise, and pursue a conception of the good, other parties will use those powers in our stead, for our ends:

“[parties in the original position] will want to insure themselves against the possibility that their powers are undeveloped and they cannot rationally advance their interests, as in the case of children; or that through some misfortune or accident they are unable to make decisions for their good, as in the case of those seriously injured or mentally disturbed… the principles of paternalism are those that the parties would acknowledge in the original position to protect themselves against the weakness and infirmities of their reason and will in society” (TJ 218; 219).

The prompt for paternalistic provision is ‘weakness’ or ‘infirmity’ of reason or will, or a straightforward lack of the powers of reason. What guides paternalistic provision? Rawls says:

“paternalistic decisions are to be guided by the individual’s own preferences and interests insofar as they are not irrational, or failing a knowledge of these, by the theory of primary goods. As we know less and less about a person, we act for him as we would act for ourselves from the standpoint of the original position.” (TJ 219).

A significant load rests on what is understood by the individual’s ‘own preferences and interests’. Does this mean the individual’s expressed (rational)
preferences and interests? Does it include interests that the individual has not expressed but that it is established it would be rational for him to have? The clarification offered by Rawls (not directly) is this:

“We must be able to argue that with the development or the recovery of his rational powers the individual in question will accept our decision on his behalf and agree with us that we did the best thing for him” (TJ 219)

Consider this example: Dave believes in the story of creation and believes evolution is an atheist conspiracy. In spite of all available evidence, he steadfastly refuses to accept that evolutionary theory is the most rational theory to believe given what is known about the world. Dave has an accident and goes into a temporary coma. A doctor appears and says: ‘we can get him out of the coma but we can also make him accept the case for evolution by making him listen to the evidence repeatedly over and over again while in the coma – a kind of hypnosis.’ This we can establish to be in Dave’s rational interest. Would it elicit Dave’s retrospective consent? Dave may well—because he would, by hypothesis, recognise the truth of evolution—be delighted that he now sees truth where he once erroneously could not see truth. However, once Dave knows it is a result of hypnosis he may well not agree that it is what should have happened; even though the truth of evolution is now clear to him, he may object to the process or against the fact that this new belief is incompatible with other aspects of his belief system.167

I submit that ‘rationality’ is not helpful in interpreting the substantive thrust of the principle. I argue that it is the political conception of autonomy that ought to be the basis for paternalistic provisions; that is, it is the basis for determining both the guide for paternalistic provision—the content of the provisions—and the prompt for paternalistic provision, that is, when paternalistic provision ought to be deemed as required. Here’s why. Citizens affirm political autonomy as their highest-order interest regulating their plans

167 This case has a similar structure to those used by Clayton in Matthew Clayton, “Debate: The Case against the Comprehensive Enrolment of Children,” Journal of Political Philosophy 20, no. 3 (September 1, 2012): 353–64. in an argument defending the view that comprehensive enrolment of children by adults is forbidden in a political liberal conception of justice. I will discuss this view in 6.3.
and projects. The principle of paternalism is required because even in the ideal well-ordered society, there could be situations in which citizens cannot act on the basis of that highest-order interest. As such, parties in the original position will agree on a kind of mutual assurance pact: if I cannot act on the basis of my highest-order interest, you will act for me, in my stead, on the basis of that interest. Therefore, the prompt for paternalistic provision is when citizens cannot act on the basis of their highest-order interest in establishing and maintaining their political autonomy; and the guide for those provisions is, as a first priority, establishing or maintaining their political autonomy and, as a second priority, advancing their other higher-order interests. Here again are the conditions for political autonomy, established in Chapter 3:

1. Agents must authorize and answer for their own actions.
2. Agents’ attitudes toward their own capabilities and worthiness to function as answerers must be formed in a suitably rational way; one must have the internal capacities to detect and appreciate the reasons one has to act.
3. Agents’ attitudes must be formed absent processes that circumvent their capacities for rational consideration as in, for example, cases of forcible mind control, the existence of oppressive social norms, physical distress, and/or a lack of self-respect, self-trust, or self-esteem.
4. Agents must not be rendered incapable of acquiring otherwise socially available information that would be practically germane to their decisions.

Consideration of these elements highlight the following important points. First, they rule out paternalistic provisions invoked due to irrationality generally. This is because the political conception of autonomy does not make autonomy conditional on elements of the formation, revision, and pursuit of one’s conception of the good that are not related to the apprehension and affirmation of the political and social institutions under which that formation, revision, and pursuit is undertaken. The basis of paternalistic provision in Dave’s case is solely his inability to act autonomously in the political sense and the guide to that provision is his highest-order interest in regaining and maintaining his political autonomy. This is not helped by changing his views on evolution. What matters for political autonomy is whether Dave can answer for his actions and this is not dependent on the rationality of his views on
evolution. In fact, the proposed interference leaves Dave vulnerable to self-trust and self-esteem issues: can he trust his own ideas if what he believes has been subject to hypnosis, even if he recognizes his new belief as rational and would retrospectively consent to the hypnosis? Furthermore, other citizens may not feel Dave worthy to answer for his own actions because he is merely a product of hypnosis. This, in turn, may undermine Dave’s own belief regarding his status and his ability to authentically self-authorize his actions.

Second, they establish clear guidelines on the interests that should be furthered in one’s stead: political autonomy and higher-order interests derived from a conception of the good formed and pursued on that basis. Dave’s political autonomy consists in both re-establishing his self-governing powers and maintaining/furthering his politically autonomous conception of the good: there is no provision for altering his politically autonomously held beliefs, however irrational or detrimental or harmful. Note, the principle also allows for politically autonomous citizens to express, say, a desire to end one’s life if one was to become ill and in a coma, and for that to be the basis of paternalistic provisions. The principle does not demand re-establishing self-governing powers if one has previously expressed a desire not to do that in cases of illness and incapacity since this would render the continued living as politically heteronomous.

To conclude, it will be helpful to fully specify the principle before turning, in the next subsection, to how it applies to children:

When a citizen cannot act on the basis of their highest-order interest in establishing and maintaining their political autonomy, other citizens must act in their stead on the basis of two lexically ordered interests:

(i) The highest-order interest in establishing and maintaining their political autonomy
(ii) The other higher-order interest in advancing a determinate autonomous conception of the good.
5.3.2 Applying the Principle to Children

How does this principle apply to children? In this subsection, I will set out how the principle regulates institutions and laws in ways that relate to children, that is, how the principle regulates the deliberations the parties make in the third-stage of the original position regarding children. The basic application appears straightforward: children cannot act on the basis of their highest-order interest and so others must act for children in their stead, on the basis of citizens’ two lexically ordered higher-order interests. Institutions must be arranged to implement this. It is, of course, more complicated than that. One set of complicating factors is that as children develop, their identities, values, and interests also develop, and such things are relevant to guiding paternalistic provisions and, indeed, whether paternalistic provisions ought to even be in force. This will be dealt with in 5.3.3. In this subsection I put aside those factors and deal with the basic framework of institutionalizing the principle to children. I expound the notion of an initial paternalistic act at-birth that contracts the child into an institutional setup that furthers her higher-order interests considered over a complete life.

There are two key elements to the institutionalization of the principle to children. First, the right institutional setup will consider children’s interests to be the higher-order interests citizens have over a complete life and those interests will be given equal consideration in institutional arrangements. Second, the principle of paternalism mandates institutions that ensure others further children’s higher-order interests, on a case-to-case basis, in their stead. However, these two elements appear contradictory. An institutional setup that is in the child’s interests over a complete life, may not be an institutional setup that furthers children’s higher-order interests on a case-to-case basis, even though such a state of affairs, in theory, in their interests overall. However, the contradiction can be avoided through a hypothetical paternalistic act at-birth (that is, the first case requiring paternalistic provision) that contracts the child into an institutional arrangement that leaves scope for their interests not to be
furthered in every particular case during their childhood, in order to better further their higher-order interests considered over a complete life.\textsuperscript{168}

Consider the two, lexically ordered, interests that children have, as derived from the higher-order interests of citizens over a complete life:

1) Establishing and maintaining their political autonomy.

2) Protecting and furthering their share of primary social goods in order to advance their autonomous conception of the good, whatever it ends up being.

The paternalistic provisions require determining how much of the child’s expectations of primary social goods over a complete life ought to be outlaid in their childhood. A key question for paternalistic provision is how much of the child’s share ought to be outlaid during the period of childhood, in pursuit of their higher-order interests. It is not possible to know how much any particular child would value increased spending on its upbringing over saving for the later years. However, the spending would not be unlimited and neither would it be minimal. First, it is in citizens’ interests to outlay part of their share on furthering their highest-order interest in establishing and maintaining their political autonomy. As I suggested in 5.3.1, it can be assumed that citizens would not place much of a gamble on their political autonomy and, as such, would outlay a substantial portion of her primary goods on securing the development of their political autonomy. However, note that citizens will have to place some gamble on this development since in order for political autonomy to be maintained later on their life, they will need to save some of their share of primary goods for that period of time. Second, children—as citizens over a complete life—also have a working interest in increased shares of primary social goods and so would be interested in attaining knowledge about the extent of their talents and to develop them, at least until they acquire interests that trump that and that ought to be furthered instead. Therefore, children will be interested in a sufficiently comprehensive education to attain that knowledge. They will also desire to utilise their share of primary goods in

\textsuperscript{168} Note that this can be understood hypothetically, of course. If the institutions to which children were subject in society are such that they would hypothetically contract themselves into, if they could, then that satisfies the principle of paternalism.
furthering and developing talents associated with what can be ascertained as likely to be their interests going forward. Therefore, the person will be interested in spending some of their share of primary social goods to that end. However, there is, again, a trade-off between spending now and enjoying later. It would not be in the person’s interests to utilise such an amount of their share on a comprehensive education or specific education, if that left her so little that she could not pursue higher-order interests later in her life. A reasonable balance would probably favour early stages quite heavily; it is, however, open to a measure of reasonable disagreement.

The point is that children are interested in furthering their higher-order interests, but not at the expense of being unable to further those interests as adults. They have limited resources over a complete life. Therefore, the best institutional arrangement for children to be contracted into will be one that furthers their interests in an efficient way, not to demand their interests be furthered on a case-to-case basis. The institutional setup the child ought to be contracted into will develop their political autonomy, and further their interest in advancing a conception of the good, but in a way that saves primary social goods for the future maintenance of their political autonomy and the future advancement of their conception of the good as an adult.

Since children have an interest in saving for later years, it is in children’s interests to reduce resource spending on their upbringing to some efficient level. What is the upshot for the institutional setup they ought to be contracted into? If the institutional setup required acting for children’s interests on a case-to-case basis, this would require both more labour and more incentives for people to undertake such demanding labour than other potential alternatives. It is in the child’s interests instead to be contracted into an institutional setup that ‘gets the job done’ but does not involve the inefficient use of others’ labour and also offers attractive child-rearing roles that require less incentives of people to undertake. This can be done through, for example, offering attractive sets of child-rearing rights attached to some roles, that offer a measure of control over the child’s upbringing (where this is consistent with meeting the obligations the institutional role demands). What would also be established is a
hypothetical notion of ‘spare time’ in the institutional setup, for people to act
towards a child in a neutral or even negative way with respect to their higher-
order interests, if it is—overall—consistent with the efficient furthering of the
child’s ends during that period of her life. Finally, it supports the
institutionalization of state-run educational or child-care establishments that
can take advantage of economies of scale in order to offer the child a cheaper
means to further their interests during their childhood. These three things I
mention specifically because they support the plausible notion that the
traditional family, alongside a mandatory state education, is an institutional
setup that is—in most cases—in children’s interests. I will discuss this in more
detail in Chapter 8, but the traditional family is an attractive role that requires
few incentives for people to undertake, and alongside a state education system
that fulfils some requirements of children’s upbringings, furthers children’s
interests—including the development of their political autonomy—in an
efficient way.

5.3.3 From Childhood to Adulthood

I have used the terms of ‘children’ and ‘child’ without definition so far because
the intuitive notion of children’s intellectual, emotional, and moral incapacity
has been sufficient to motivate the discussion up until this point. However,
there are, of course, important changes in children’s capacities and identity that
are relevant for the application of the principle of paternalism. In this
subsection I will provide a brief account of how the principle of paternalism
developed thus far incorporates these changes. There are three relevant
questions to ask of a person’s development that may affect the application of
the principle:

169 Another issue is whether the child can be gifted primary social goods for their ends by
others. I am thinking, of course, of care givers or biological relations that may well offer child-
rearing or educational services for free, or pay others for those services. This is, on my view,
permissible unless it could be shown that such a practice undermined the structural conditions
for the equal and adequate provision of the social bases of self-authorization. I contend that
such things as reading bedtime stories to children are probably permissible; the practice of
private schooling and perhaps private tutoring is probably impermissible. Exactly what kind of
practices undermine, and do not, undermine the provision of the social bases of self-
authorization requires the kind of in-depth sociological analysis that is not the aim of thesis.
However, the principle that applies in these cases ought to be clear and will become even
clearer once I have established the nature of care-giving in Chapters 7 and 8.
1. How far is he able to act in his interest?
2. Does he have any personal interests that ought to be furthered?
3. Can he self-authorize his actions?

Different answers to (1) and (2) affect the application of the principle in ways I will detail, but does not affect whether or not the principle is to be applied, that is, whether the person is subject to paternalistic provision. Only an answer to (3) affects whether or not the principle is to be applied, as I will show.

The first question addresses the capacity he has to act in his own interest. This capacity should not be understood on an act-to-act basis. Paternalistic provisions ought to be understood as an overarching control of what he does and this can include the choice to not interfere with his actions, if it was determined that to not interfere would be in his interests overall. As the child develops, letting him make his own mistakes, follow his own interests, and so on, may actively assist that development. Of course, the child can often just get it right himself and so it is in his interest to let him act for himself. On occasion, a kind of limited interference may be appropriate: for example, allowing the child (even a young child) to choose between piano and soccer as a hobby, but, once chosen, being made to go to the lessons/practice. Providing institutions with the scope to be flexible in their paternalistic provision in order to further the child’s higher-order interests will be a requirement of any child’s at-birth contract.

The second question addresses the nature and status of his interests. The principle of paternalism mandates that the highest-order interest in establishing and maintaining political autonomy takes priority. The principle then mandates advancing the person’s autonomous conception of the good as a second priority. Children do not have autonomously formed conceptions of the good. Rawls’s suggestion is that without that information, the principle mandates that the primary social goods—the all-purpose means to advance a variety of conceptions of the good—ought to be the basis for paternalistic provision. This is right: the reasoning is analogous to the classic understanding of the reasoning by the parties in the original position under the veil of ignorance; since the parties don’t know the specifics of their own conception of the good
(like we do not know the specifics of the child’s) the parties advance their conception of the good through protecting or increasing their share of primary social goods. As the child develops, he will gradually develop and express personal, unique, perhaps even settled and rational, interests that ought to be the basis for paternalistic provision. Which, if any, of these kind of interests ought to be a basis for paternalistic provision? Norvin Richards expounds a helpful example regarding the true story of Jessica Dubroff.170 Jessica was just seven years old when she died during an attempt to become the youngest person ever to fly an aeroplane solo across the USA. After going a ‘considerable distance’, the plane crashed in a storm. Richards makes note of what her mother said after the incident: “I’d have her do it again in a second. You have no idea what this meant to Jess”.171 The intuition that many would have here is that someone ought to have forcibly prevented Jess from undertaking the trip. The strength of Jessica’s desire would be largely irrelevant. There is something about how Jess formed her desire that meant it was not worthy of her being given the liberty to pursue, or being assisted in pursuing. If we imagine a woman – Jen – who was thirty and desired to undertake such a trip, one might think the attempt to be just as foolish but one might also think that under ordinary circumstances, Jen is responsible for her ends and ought to be free to pursue them. Not so of Jessica. What marks the difference? Richards argues that the difference is that Jess’s actions were not personally autonomous, whereas we assume that Jen’s were:

“...the actions of children are not always cases of ‘being a person of one’s own’, ‘putting one’s own personality and character into action’, and ‘making one’s own way through the world’”.172 Richards notes that of course children do have “personalities” and “character”.173 The point is that the “early traits of character and personality are to a considerable extent” the doing of their parents; children do not “set out” to be any particular kind of person.174 The conclusion that Richards draws

171 Ibid., 125.
172 Ibid., 127.
173 Ibid.
174 Ibid., 129; ibid., 128.
about Jessica is that it is highly unlikely that her traits are her own at that point in
her life. From the perspective of political autonomy I have outlined, what is
particular about Jess’s traits is that at that age there is no way she could
properly apprehend the reasons she has to act and this is in part because she is
unable to comprehend that her reasons to act may be significantly affected by
her as-yet rather narrow and uninformed view of the world, her inability to
appreciate that her character and personality is considerably an extension of
the few experiences she has encountered in her life so far, as well as a lack of
development of capacities to apprehend those experiences. Note that our
response to Jessica is significantly different from our response to an adult who
makes poor, short-term, impulsive, even self-destructive decisions. That adult
can make such decisions while also having the internal capacities and external
circumstances to properly apprehend the reasons she has to act. She can
answer for his actions. A seven year old child cannot.

However, ignoring children’s preferences and interests entirely can be
detrimental to the goal of establishing self-trust and self-respect, and may be
detrimental to their overall interest in living a politically autonomous life, if we
think that they may continue to hold on to those preferences or interests as an
adult, or even merely contribute to the development of further or different
interests as a result. The point at which a person becomes an ‘answerer’—an
autonomous actor that ought not to be subject to paternalistic actions—and
the point at which a person develops interests that ought to be the basis for
paternalistic actions, may not be the same. A seventeen year old Jess may still
not be a legitimate answerer for her actions but it is clear the interests of a
seventeen year old can be such that they ought to be the basis of paternalistic
provisions. Imagine, for example, that an intelligent sixteen year old expresses
a desire to go to university in order to become a doctor. This should form a
basis for the paternalistic provisions. Perhaps this would involve making her
do her homework and making her fill out an application for a part-time job at a
local pharmacy. The point at which a person becomes an ‘answerer’ and the
point at which a person ought to be allowed to make some decisions for
herself, again, may not be the same. A seventeen year old Jess may still not be a
legitimate answerer for her actions but she should be allowed to decide who her
friends are, to be allowed into civil society without parental control, and to be responsible for certain actions and their consequences. Much of this is what enables a person to become an answerer in the first place: self-authorization must be taught and gradually encouraged.

The difficult cases are people in late childhood that could have developed sufficiently such that they could be willing to answer for their own actions and understand what that entails, and also have the internal capacities to detect and appreciate the reasons they have to act. They could, therefore, be considered as politically autonomous and thus ought not to be subject to paternalistic provisions. There are two available responses to this. First, children, even in late childhood, are necessarily lacking the experience and experiences—the subject of the use of the moral powers—that enable the attitudes that they develop to be considered suitably informed and suitably independent. Robert Noggle argues that children’s “concerns, goals, and preferences are in flux” as they become subject to the vast amounts of socially available information as they develop their moral powers and they “have not had enough experience with their own growth to realise how radical—and how inevitable—the coming changes will be.” Their apprehension of the reasons they have to act is undermined by the peculiarities of ‘growing up’, that is, by experiencing the fuller development of the moral powers and beginning to answer for one’s actions, and in forming one’s conception of the good under torrents of new information that do and will affect the reasons one has to act. So it is not simply the child’s inferiority as a decision-maker or rational actor that renders them subject to paternalistic provision. If it was, it may be a requirement of the principle to ascribe such a status to adults in a well-ordered society, at least with respect to some of their decisions. Some children are capable of making rational and even good decisions. But to properly answer for their actions, further conditions must be fulfilled. Children—even those in later childhood—do not fulfil those conditions whereas—as a definitional truism—in a well-ordered society, all adults do. To develop the rational capacities, to be aware of

and appreciate the extent of the reasons to act that are out there, to understand what it means to be an answerer for one’s conduct in the particular society one is within, to develop a sense of self-respect, self-trust, self-esteem, and a sense of responsibility and accountability such that answering for one’s conduct is appropriately motivated, one must be educated and developed. Until then, others must answer for the child. The second response is that the right paternalistic act at-birth is to contract the child into a kind of stewardship agreement that prevents the child’s extraction from paternalistic provisions in late childhood when it may be ascertained that the child could act politically autonomously. This would be in the child’s interest only if it can be argued that it would be better for the long-term maintenance of the child’s political autonomy to be subject to paternalistic provisions to that end, even if the child could act autonomously in the short term.

In conclusion, the principle of paternalism offers a plausible and coherent account of the difference between a child and an adult based on the political conception of autonomy. It also offers a plausible and coherent account of how the gradual development of children into adults ought to affect paternalistic provisions.

5.4 Conclusion

The aim of this chapter was to demonstrate how the principles of Justice as Fairness are to be applied to the assessment of the demands of children’s upbringings. I showed that the four-stage sequence of the original position elicits a relevant principle for children—the principle of paternalism that ensures others act for children’s interests—and elicits the constitutional demand that children be given equal status as citizens, and are therefore given equal consideration in the formulation and regulation of institutions and laws. I expounded the implications of the principle of paternalism. I argued that institutionalizing the principle of paternalism requires a hypothetical at-birth contracting of children into institutions that further their higher-order interests over a complete life. I also showed how the principle deals with children’s
developing capacities and interests as they grow up, and how the principle can conceive of the difference between childhood and adulthood.

I submit that the conception detailed in this chapter is plausible and coherent. However, I must further demonstrate that with respect to the key issues regarding the demands of children’s upbringings, plausible and determinate outcomes are elicited. This elucidation of the conception is the subject of the next chapter.
6 ELUCIDATING JUSTICE AS FAIRNESS FOR CHILDREN

6.1 INTRODUCTION

The purpose of this chapter is to elucidate the demands of children’s upbringing according to the conception expounded in the previous chapter. I do so in order to further demonstrate the plausibility, coherence, and determinacy of the conception. I pick out some key issues concerning the demands of children’s upbringings: the need for children to be brought up to be autonomous, the need for children to have the opportunity to experience the intrinsic goods of childhood, and the need for children to have an equal and socially inclusive education. These issues are the most contested in the literature and also offer the best means to elucidating the plausibility, coherence, and determinacy, of my conception.

In 6.2 I compare and contrast my conception with other liberal conceptions of justice for children that argue children must be brought up to be autonomous in some regard. I do so in order to rebut two objections: first, that my conception pays insufficient attention to the requirement to bring children up autonomously and is therefore implausible; second, and from the other direction, that my conception relies on a comprehensive ideal of autonomy and is therefore incompatible with political liberalism and is therefore incoherent. In 6.3 I consider Matthew Clayton’s argument that comprehensive enrolment of children by adults is forbidden in a political liberal conception of justice for children. I show how this is not a requirement of my conception, and also that Clayton’s argument fails because he either has to rely on an implausible conception of justice as what individuals consent to, or fails to offer a sufficient explanation of why comprehensively enrolling children violates their rights. My conception remains coherent, and is also relatively more plausible than Clayton’s. In 6.4 I consider an objection that has been made to liberal theories of justice with regard to their application to children and may also apply to my view. This is the objection that such theories ignore the intrinsic goods of childhood that ought to be a concern of justice for children, and are
therefore implausible. I accept that the conception fails to give such goods foundational significance but assuage the worry by pointing out that it does not lead to significantly counter-intuitive outcomes: my conception remains plausible. In 6.5 I consider the role of state education in satisfying the demands of children’s upbringings. By jettisoning FEO in Chapter 4, a concern may be raised that this permits children to have radically unequal educational opportunities. In response I show that my alternative SBSA principle mandates a compulsory, socially inclusive, education system, in order to engender egalitarian relationships and discourage the development of oppressive structures and norms. My conception therefore supports the plausible notion of an equal and inclusive education system.

6.2 The Value of Autonomy

In this section I rebut two potential objections to the conception expounded in Chapter 5: first, that my conception pays insufficient attention to the requirement to bring children up autonomously and is therefore implausible; second, and from the other direction, that my conception betrays political liberal foundations and is therefore incoherent. In 6.2.1 I present Harry Brighouse’s liberal conception of justice for children based on securing an autonomy-facilitating upbringing. Eamonn Callan argues that this conception is flawed on two grounds. First, that Brighouse cannot plausibly resist the notion that autonomy should not just be facilitated but ought to be promoted; children ought to develop an autonomous character and not just acquire the skills of autonomy. Second, that Brighouse fails to appreciate the importance of autonomous adherence to ends and values, where that can be contrasted with Brighouse’s focus on the importance of autonomous revision to ends and values. A compelling account of liberal upbringings must be comprehensive and fully perfectionist, contrary to Brighouse’s claims. In 6.2.2 I argue Callan’s critique is a compelling one but that my own conception is not subject to the same critique: my conception permits autonomy-promotion and is able to recognise that autonomous adherence to ends and values is a constituent element of such autonomy-promotion. It is therefore intuitively sound. Furthermore, I maintain that my conception does not betray political liberal
foundations. In the face of potential objections from both Brighouse and Callan, I simply assert that at no point does my argument deviate from the political liberal foundations I have expounded in the previous chapters.

6.2.1 Autonomy-Facilitation

Some liberals argue that autonomous lives are the only valuable lives and that it is our duty to promote such valuable lives. The upshot for children’s upbringings is clear: we ought to promote their living an autonomous life. Harry Brighouse offers an interesting alternative. He presents a conception that he argues is neutral (in the right way) between comprehensive conceptions of the good, and yet forbids upbringings that would be objectionable to liberals concerned about children’s autonomy. I expound and support Eamonn Callan’s critique of Brighouse: (i) that there would remain, on Brighouse’s account, upbringings that would be objectionable, and (ii) that Brighouse does not offer a good reason to reject comprehensive and perfectionist conceptions that would render those upbringings objectionable. Therefore, a compelling liberal upbringing is comprehensive and perfectionist.

Brighouse’s argument for what we owe to children is grounded in a simple and persuasive claim:

(1) Justice requires “that each individual have significant opportunities to live a life which is good for them”.

Brighouse then details what it would mean to have such ‘significant opportunities’:

(2) To have such ‘significant opportunities’ is:

(a) to be in receipt of the resources and liberties required for people to live well by their own judgement.

(b) to have some sense of what constitutes living well.

A child’s upbringing will have a significant effect on (b), that is, whether they have a sense of what constitutes living well. What would it mean to have such a sense? Brighouse proposes that it means being able to recognise or apprehend what a good life is and how to go about living one. Brighouse notes that what

this would mean is not consistent across societies; the conclusion of Brighouse’s argument is relative to the conditions of contemporary liberal societies:

(3) To have a sense of what constitutes living well—in modern conditions in contemporary liberal societies—is to be in possession of certain ‘reliable aids to uncovering how to live well’: “the basic methods of rational evaluation” or “autonomy-related skills”

To provide people with significant opportunities to live well is to equip them with the skills to live their lives under the following conditions:177

i. Absence of coercion.

ii. Absence of deliberate manipulation via false information regarding options.

iii. Absence of subconscious preference adaptation in what appear to be (but are not really) unchangeable circumstances

iv. Absence of conscious and deliberate preference adaptation to unjust circumstances.

People must acquire autonomy-related skills—such as critical reasoning skills—required to establish and maintain their autonomy: “the capacities involved in critical reflection help us” to “avoid or overcome many instances of non-autonomy... We can be taught methods for evaluating the truth and falsehood, or relative probability, of various claims about the world”.178 For example, we can be taught:179

i. “the difference between anecdotal and statistical evidences and the differences in reliability with respect to the truth...”

ii. “the developed ability to investigate truth claims with somewhat reliable tools, on our own”

iii. “that adaptive and accommodationist preference-formation are features of human behaviour, and people, to some extent, can avoid these by ‘stepping back’ from their commitments and reflect on how they were formed”

iv. the developed ability to reflect critically (to the appropriate degree) on commitments generated by non-autonomous

177 Ibid., 66.
178 Ibid.
179 Ibid., 66–67.
processes in order to either reject them or affirm them as autonomously held beliefs or preferences.

Without these skills “we are easily lost in the moral and economic complexity of modernity”.\textsuperscript{180} An appropriate upbringing is a necessary element of acquiring the autonomy-skills and the development of those skills in children is a requirement of justice.

At this point, a subtle distinction must be noted. Brighouse is not saying that \textit{living one’s life autonomously} is the equivalent to being equipped with the ‘reliable aids’. He is instead saying that the ‘reliable aids’ are the skills that make it possible to live one’s life autonomously, if one should wish. This is important because it allows him to make the claim that his account does not rely on any controversial moral claims, only a true epistemological claim: “that rational evaluation is more reliable than other methods for discovering the good”.\textsuperscript{181} The kind of neutrality that Brighouse is claiming permits justificatory appeal to such empirical claims, but must avoid appeal to controversial moral claims, specifically:

- The presumption of the falsehood of the moral commitments of some reasonable citizens.
- The elevation of the ideal of the autonomous life to something everyone must strive for.

Brighouse makes the point that his argument “says nothing about the ends to which we should direct our lives”.\textsuperscript{182} The argument does not appeal to a premise or claim that good ways of life are impossible without being in receipt of autonomy-related skills: “inspired guesses, trusting the reliable communication of another, and manipulation by reliable others can help us to find out how to live well”.\textsuperscript{183} The claim is that being in receipt of autonomy-related skills is just the most effective means to a sense of what constitutes living well since heteronomy makes it less likely that one is able to uncover the good. The provision of such skills to children is therefore part of what it

\textsuperscript{180} Ibid., 69.
\textsuperscript{181} Ibid., 103.
\textsuperscript{183} Brighouse, \textit{School Choice and Social Justice}, 69.
means to provide people with ‘significant opportunities’ to live well, that is, the fundamental requirement of justice (1).

### 6.2.1.1 Autonomy-Promotion, not Facilitation

I will now expound two critiques of Brighouse’s conception made by Eamonn Callan. The first is that autonomy ought to be understood as an element of one’s character and cannot be coherently understood as a set of skills—a tool set—that one may or may not use. Autonomy cannot be ‘facilitated’; it must be *promoted*. Furthermore, Brighouse offers no good reason why his own conception ought to resist this conclusion.

Callan asks us to consider a typical example of a child who is taught to believe that she must be a housewife when she grows up. He argues that if her “emotional inhibitions are effectively cultivated to protect the amalgam of belief and desire from future critical assessment, then knowledge of alternative careers and the skills to pursue them acquired later will do nothing to shake her sense of domestic destiny”.  

Callan is surely right to note that “[in]nautonomous belief and preference formation often, perhaps characteristically, works not merely by blocking the acquisition of knowledge or skill. Instead, affect and desire are shaped so that even if the knowledge and skill is later acquired, these will not be used to correct the results of the original process”. Imbuing the *skills* of autonomy, “to those who are already thoroughly close minded or predisposed to disregard their own interests does nothing to undo the processes of belief and preference formation” that build a character that resists the utilisation of those skills:

> “the power of the emotions and desires those social pressures repugnant to autonomy will evoke cannot be opposed by a motivationally inert capacity. What is needed rather is a certain character such that the pressures pitted against autonomy can be effectively resisted”.

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185 Ibid.
186 Ibid., 147.
If we are to truly imbue children with a ‘sense of what constitutes living well’, these skills alone are insufficient. Autonomy is “an amalgam of capacity, desire, and emotional susceptibility, it is a constituent of character”.\textsuperscript{188} It is a \textit{virtue}.

Brighouse claims that the principled requirements of an upbringing that ensures children acquire autonomy-related skills are “purportedly ‘character-neutral’, in that they seek to provide certain skills without aiming to inculcate the inclination to use them”,\textsuperscript{189} “although the skills of autonomy are taught, children are not encouraged by the state to live autonomous lives”.\textsuperscript{190} The requirements of such an upbringing do not set out to influence the choices that children make even if, by unintended (but foreseen) consequence, they do. It may be “hard to distinguish autonomy-facilitating from autonomy-promoting education in practice” but “it does not impugn the very real differences in the justificatory strategies”.\textsuperscript{191} Such an education provides children with the skills to “\textit{enable} them to live autonomously should they wish to do so, rather as we aim to enable them to criticize poetry, do algebra, and so on, without trying to ensure that they do so”\textsuperscript{192} and does not directly cultivate within them a character inclined to choose autonomous ways of living: “autonomy must be facilitated, not necessarily promoted”.\textsuperscript{193}

However, Brighouse’s own argument begins with the premise that autonomy is the best means to a good life (if not a good life in itself) and therefore children are owed those means as part of the requirements of justice to provide everyone with the opportunity to live a good life: his argument is based on “providing prospective citizens with the substantive means to select pursuit of a better, rather than worse, conception of the good”.\textsuperscript{194} Imbuing the character to utilise autonomy-related skills in appropriate situations is therefore not only consistent with his argument, it is \textit{required}. If children are owed the opportunity for a good life, and to (genuinely) have such an opportunity requires a

\textsuperscript{188} Ibid.
\textsuperscript{189} Brighouse, \textit{School Choice and Social Justice}, 81.
\textsuperscript{190} Ibid., 94.
\textsuperscript{191} Ibid., 81.
\textsuperscript{193} Ibid., 734.
\textsuperscript{194} Brighouse, \textit{School Choice and Social Justice}, 71.
particular character, then developing that character ought to be a requirement of his conception. Brighouse’s conception must either forgo the particular kind of neutrality it aims for, or it leaves children susceptible to upbringings that do not, contrary to the argument presented, provide children with a sense of what constitutes living well.

6.2.1.2 Autonomous-Adherence, not just Autonomous-Revision.

The second critique Callan makes is that Brighouse mistakenly “emphasizes the value of autonomous revision to conceptions of the good without registering the symmetrical value of autonomous adherence”;¹⁹⁵ part of the value of autonomy lies in the value of autonomous adherence to a conception of the good, and the resistance of pulls towards inappropriate revision.

Callan asks us to consider an altered history of the life of Nicholas Wolterstorff, a philosopher at Yale University. From an early age he was ingrained into the culture and practices of the Christian church. The rituals and exposure to the beautiful church “sank their roots so deep into consciousness that nothing thereafter, short of senility, could remove them”.¹⁹⁶ However, the development of a keen intellect exposed to the diverse world-views of Western civilization as well as fundamental philosophical questions of politics and religion, was also a significant aspect of his upbringing. He went on to study at Calvin College where there was further exposure to views and arguments whose acceptance would take him away from his faith. He left Calvin College with “a more intellectually well-armoured version of the hermeneutic he brought to it” but also gained an appreciation that engaging in philosophical analysis of one’s faith is to allow the tenets of philosophical reflection “to shape you, in ways that might discomfit the self as it was before philosophy”.¹⁹⁷

In a retelling of Wolterstorff’s history, Callan describes the following chain of events. He moves on to graduate training at Harvard University. Here, he is unable to meet the philosophical challenges to his faith: the arguments are “overwhelmingly powerful, and he is too intellectually scrupulous to pretend

¹⁹⁶ Ibid., 128.
¹⁹⁷ Ibid., 129.
that this does not matter”. However, when he sets aside the philosophical worries, “he finds that his world is just as it had always been”. Prayer, reading scripture, attending and performing ritual, all engender solace and security in the truth and value of his faith. Instead of remaining in the swamp of internal dissonance he gives up the philosophical reflection, gives up philosophy, and becomes an accountant.

Callan considers that liberals may be inclined to charge Wolterstorff with heteronomy and condemn the upbringing. They might say:

“he was unable to revise his conception of the good when compelling reasons warranted revision. The self proved to be irrevocably moulded by the Christian hermeneutic that was so forcefully instilled from early childhood. Indeed, nothing else could be rationally expected, given that his intellectual development was so narrowly contained by religious orthodoxy”.

The contingencies of the particular tradition he was born into are ruling his life. The upbringing is at fault. More should have been done to ensure that he did not acquire attachments to ends that would make it “psychologically impossible or at best very painful” to abandon them in the face of their intellectual untenability. But this line of attack, Callan notes, is too quick. The example stresses that he is “someone who directly confronts the reasons of philosophy as considerations that rightly belong inside the field of critical self-reflection”. The thrust of the charge of heteronomy is more nuanced. This is because despite the critical reflection on his beliefs, those very beliefs may be “nothing more than the upshot of causal processes that operate at the back of deliberation, driven by fears of authority, or anxieties about exclusion from a safe world where he need not think or feel for himself”. And note that the worry falls not on the truth of this claim, but on the very plausible notion that the “upbringing he underwent creates unacceptably high risks of

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198 Ibid.
199 Ibid.
200 Ibid., 130.
201 Ibid.
202 Ibid., 132.
203 Ibid.
precipitating the species of heteronomy just described”. Callan accepts these risks exist and that to “continue to embrace a conception of the good merely because one has internalised norms that were imposed by authority during childhood is to be rendered the servile instrument of the will of others”. And it is the “need to protect children from the vice of servility” that motivates the liberal case: a childhood that resists enrolment into comprehensive doctrines, exposes one to a large number of rival conceptions of the good, and does so without biasing one towards one set of beliefs or another; anything that would marr one’s ability to revise one’s conception of the good in the face of good reasons in adulthood is unjust.

However, Callan points out that the ‘open alternative’ upbringing that this analysis seems to support incurs another risk: not the risk of being unable to revise a conception of the good but the risk of being unable rationally to adhere to a conception of the good:

“Coming adequately to appreciate many things that make our lives good requires a certain steady resistance to distraction and a constancy that do not come easily as we grow to maturity”.

The worry for Callan is that an upbringing that involves exposure to diversity, encouraging independent thought, critical analysis of all pursuits and projects, usually results in a ‘consumer hermeneutic’, susceptibility to manipulative advertising and mass entertainment, and a cavalier attitude with regards to significant religious, ethical and aesthetic moments: what he calls polymorphous nihilism. The upshot for Callan is that Wolterstorff’s upbringing, while posing risks to servility, provides insurance against another heteronomous condition:

“Being unable or disinclined to adhere to the good we seek in the face of distraction or episodic doubt and temptation may damage our lives as much as an inability or disinclination to revise one’s conception when that is called for. A reasonable claim is that coming to understand a rich and complex conception of the good, and learning autonomously to cleave to it, is much harder when a child’s formative environment

Ibid.
Ibid., 133.
Ibid.
Ibid., 134.
does little to block a nomadic drift from one gleaming possibility to another. And arresting that drift may often involve the exertion of non-rational influences... shielding children from experiences one believes would confuse or corrupt them, engaging them in activities whose presuppositions they do not yet grasp, instilling beliefs whose grounds remain for some time unexamined.”  

For Callan, the “development of autonomy” is in fact about “finding a mean between contrary vices, with servility threatening it on one side and the disintegration of all ethical perspective on the other”.

The upshot for Brighouse’s conception is that what is required to have a sense of living well in modern conditions in contemporary liberal democracies involves promoting autonomous adherence to conceptions of the good as well as autonomous revision of conceptions of the good where appropriate. Autonomy is a virtue—a mean between two extremes—and as such cannot be coherently understood as a tool-set that one can choose whether or not to use. As such, Brighouse is (again) unable to consistently adhere to the neutrality his conception purports to adhere to:

- It does not presume the falsehood of the moral commitments of citizens.
- It does not elevate the ideal of the autonomous life to something everyone must strive for.

There is no morally uncontroversial set of skills and character traits that refrains from presuming the falsehood of the moral commitments of some reasonable citizens and yet supports children acquiring a sense of what constitutes living well, giving them the opportunity for a good life; an appeal to autonomy is an appeal to a substantive and fully comprehensive ideal of what a good life consists of and involves the elevation of the ideal of the autonomous life to something everyone must strive for.

### 6.2.2 Autonomy-Promotion and Autonomous-Adherence

Callan’s critique of Brighouse is compelling. However, in this subsection I show that my own conception is not subject to the same critique. First, my

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208 Ibid.

209 Ibid., 137.
conception requires autonomy-promotion and is able to recognise that autonomous adherence to ends and values is a constituent element of autonomy-promotion. It is therefore intuitively plausible. Second, I maintain that my conception does not betray political liberal foundations. In the face of potential objections from both Brighouse and Callan, I simply assert that at no point does my argument deviate from the political liberal foundations I have expounded.

Developing an appropriate character in children is a requirement of my own conception. Recall that political autonomy requires the following:

1. Agents must authorize and answer for their own actions.

2. Agents’ attitudes toward their own capabilities and worthiness to function as answerers must be formed in a suitably rational way; one must have the internal capacities to detect and appreciate the reasons one has to act.

3. Agents’ attitudes must be formed absent processes that circumvent their capacities for rational consideration as in, for example, cases of forcible mind control, the existence of oppressive social norms, physical distress, and/or a lack of self-respect, self-trust, or self-esteem.

4. Agents must not be rendered incapable of acquiring otherwise socially available information that would be practically germane to their decisions.

It is clear that this is consistent with developing a particular sort of character within children. There is also nothing that requires resisting this in order to satisfy the political liberal constraints I have set out. The political conception of autonomy that is being promoted is based on ensuring lives are lived consistent with the ideal of the citizen and not directly on what makes lives go better or worse.

Furthermore, there is also nothing in my conception that makes any sort of claim about the value of autonomous revision or autonomous adherence. However, my conception also recognises the intuitively objectionable upbringings that may be risked by prioritising one over the other or ignoring either: first, that one ends up adhering to conceptions of the good just because one was brought up that way; second, that one ends up living a life of polymorphous nihilism because of an upbringing that refrains from making or
allowing children to affirm certain ends in order to lessen the first risk. From
the perspective of my conception, the question is not ‘what upbringings are
risks to children having the opportunity to live good lives’ but ‘what
upbringings are risks to children living lives inconsistent with the ideal of the
citizen?’ An upbringing that risks the political conception of autonomy that I
advanced—a conception of what makes people responsible for their ends, not
a conception of what makes people’s lives go better or worse—is ruled out. My
conception demands that children be brought up with the skills and character to
satisfy the four conditions of autonomy that Brighouse advances:

i. Absence of coercion.
ii. Absence of deliberate manipulation via false information regarding
options.
iii. Absence of subconscious preference adaptation in what appear to be
(but are not really) unchangeable circumstances
iv. Absence of conscious and deliberate preference adaptation to unjust
circumstances.

My conception also requires, for example:

v. Knowledge and understanding of the political, social, and psychological
theory required to recognise and appreciate how political and social
norms may affect one’s practical reasoning.
vi. The confidence, knowledge, and skills to engage in political and social
affairs such that one is able properly to answer for one’s actions.

Wolterstorff’s upbringing does not appear to be a risk on these grounds
because, roughly, he was able properly to apprehend the reasons that applied
to him. His upbringing did not preclude him from developing the capacities
and the character properly to recognise and assess the reasons to act, to resist
oppression and manipulation, and so on. The fact of choosing to embrace his
religion is not a concern; he is leading a life that is politically autonomous and
he had an upbringing that took reasonable steps to secure that outcome.

The kind of upbringings that may lead to a ‘polymorphous nihilism’ that Callan
worries about are more problematic. Callan worries about the potential for
susceptibility to manipulative advertising and mass entertainment, and the
development of a cavalier attitude with regards to significant religious, ethical,
and aesthetic moments. On my conception, children ought to be brought up to be able to recognise and assess the substantive reasons they have to act.\textsuperscript{210} Therefore, they should be taught about how advertising can manipulate one’s reasoning and desires and be taught the skills to avoid being subject to the kind of irrationality it aims to produce in consumers. They should also be able to recognise and assess religious, ethical, and aesthetic values and cultures. This is not because it will assist children in their quest for a good life, but because it is necessary for children to be able to properly answer for their actions.

The relevant point is that my conception avoids having to make strongly comprehensive judgements on the value and nature of autonomy because it does not appeal to what gives children the opportunity to live \textit{good} lives; it appeals to what is required for children to live lives consistent with the ideal of the citizen. However, my conception does protect children against upbringings that leave them susceptible to the kind of servility to the ends of others that Brighouse and other liberals worry about: coercion, manipulation, oppression, deception, and so on, that would undermine their status as equal citizens.

### 6.3 Comprehensive Enrolment

In this section I will consider Matthew Clayton’s argument that respect for children’s autonomy requires refraining from deliberately setting children’s ends, for example, when parents seek “to ensure that their children grow up in, and learn the teachings, practices, and virtues of, their particular religious community”.\textsuperscript{211} Imparting “particular convictions” to a child or “enrolling her into particular associations or practices”—what Clayton calls \textit{comprehensive enrolment}—is impermissible.\textsuperscript{212}

In the situation of the hypothetical at-birth contract, would the contract permit or forbid comprehensive enrolment? In 6.3.1 I argue that comprehensive enrolment is permissible on my view because it does not necessarily undermine the prospects for children to establish and maintain political autonomy. In

\begin{footnotesize}
\textsuperscript{210} Not because of the effect on well-being, but because of the effect they have on their ability to authentically self-authorize.
\textsuperscript{211} Clayton, \textit{Justice and Legitimacy in Upbringing}, 87.
\textsuperscript{212} Clayton, “Case against Comprehensive Enrolment,” 353.
\end{footnotesize}
6.3.2 I argue that Clayton’s argument either (a) relies on an implausible account of justice as what people consent to (or would retrospectively consent to) or (b) fails to explain why children’s rights are violated by comprehensive enrolment. It therefore fails on its own terms.

6.3.1 My View

Callan’s example of Wolterstorff’s upbringing is an example of an upbringing involving comprehensive enrolment. I argued that such an upbringing was permissible. In this subsection, I detail why comprehensive enrolment is permissible on my view. In 5.3 I argued that the paternalistic provisions will involve the child being contracted into an institutional setup that combines two concerns:

1) Establishing and maintaining their political autonomy.
2) Protecting and furthering their share of primary social goods in order to advance their autonomous conception of the good, whatever it ends up being.

There may be reasons to think comprehensive enrolment is an activity that is so detrimental to the prospects for a child’s political autonomy that it would be forbidden. One reason may be that it is costly for people to revise goals that are set to the extent that comprehensive enrolment entails, and this cost is an injustice. Therefore, children ought not to be comprehensively enrolled. This is Clayton’s ‘instrumental’ argument. 213 This argument applies to conceptions of autonomy that are based on the value of being able to revise one’s conception of the good. However, as I have established, this is not a value that grounds political autonomy. The argument could apply to the requirements of political autonomy, if it could be shown that comprehensive enrolment makes it more costly to establish and maintain the conditions of political autonomy. Certain forms of comprehensive enrolment can easily extend into brainwashing, resentment, and self-doubt. It is also doubtful that people could (easily) acquire the authentic self-regarding attitudes if they were used merely as a means to others’ ends during their upbringing and formed attachments as a result of that. However, most cases of comprehensive enrolment are not like that. They

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213 Clayton, Justice and Legitimacy in Upbringing, 106.
are genuine attempts of people to form relationships with children and to better their lives. If this is coupled with a comprehensive education, an upbringing that encourages children to answer for their own actions and to understand what that entails, the development of an appreciation of how one’s upbringing has a formative effect on one’s desires and ends, then it does not seem like comprehensive enrolment necessarily undermines the prospects for political autonomy. Indeed, as discussed in 6.2 there are reasons to think an upbringing that involves comprehensive enrolment can support the development of self-trust and self-esteem by providing a source of identity and structure to one’s life. Therefore, I do not think comprehensive enrolment necessarily undermines political autonomy and is therefore permissible.

Another element that may tip the balance is to recall that the second higher-order interest (2) leads to the following thought. Although generally scope ought to be given to the child’s interests in developing the capacities for political autonomy, and furthering the child’s expressed interests as a means of maintaining their political autonomy in the future and furthering their conception of the good in the future, there is also scope to not do that precisely because it is in the child’s interests overall to reduce resource spending on their upbringing to some necessary amount and to present attractive child-rearing roles that increases the total stock of primary social goods. The right institutional setup may permit comprehensive enrolment, as part of offering attractive institutional roles, and providing a cheap upbringing that gets the job done (that is, is efficient).

6.3.2 The Argument from Independence

In this subsection, I establish that Clayton’s argument against comprehensive enrolment fails. This is because Clayton’s argument either (a) relies on an implausible account of justice as what people consent to (or would retrospectively consent to) or (b) fails to explain why children’s rights are violated by comprehensive enrolment.

Clayton’s argument is that a person’s independence—a constituent element of autonomy—is “violated when others determine the ends she pursues or serves,
period”,\textsuperscript{214} when “others force her to pursue a particular goal or manipulate her into wanting to pursue it, they treat her as a vehicle for the realisation of their ambitions.”\textsuperscript{215} In order to ensure the social ideal of independence is not violated, it is necessary to treat “her in ways that elicit her consent. To do otherwise would be to treat the person as a mere means, as an individual whose goals and activities are chosen by others who are more powerful”.\textsuperscript{216} Independence can only be secured and maintained when people are treated in ways that they consent to. My consent ensures that your treatment of me is representative of, or consistent with, my ends and not just your ends. Treatment of those that cannot consent (such as those in a coma, are unconscious, or are children) should be conducted on the basis that one can reasonably be assured the treatment would likely elicit their retrospective consent. Children must therefore “be treated in accordance with norms that will command their retrospective consent or at least will not retrospectively be rejected”.\textsuperscript{217} In doing so, their independence, and thereby their autonomy, is not violated or undermined. With respect to comprehensive enrolment, since children will be (by hypothesis) brought up to “decide for themselves which comprehensive goals are worthy of pursuit”,\textsuperscript{218} and are subject to the burdens of judgement, it is not possible to know whether enrolment will elicit the child’s retrospective consent. Therefore, comprehensive enrolment is impermissible.

The success of the argument depends on an argument that connects the social ideal of independence to the necessity of consent. However, I argue that the following is true:

- It is neither necessary nor sufficient for the social ideal of independence that people always be treated in ways they consent to or would retrospectively consent to.

In order to support the social ideal of independence, there must be just background conditions “against which the actions of individuals and

\textsuperscript{214} Clayton, “Case against Comprehensive Enrolment,” 361.
\textsuperscript{215} Ibid., 360.
\textsuperscript{216} Clayton, \textit{Justice and Legitimacy in Upbringing}, 104.
\textsuperscript{217} Clayton, “Case against Comprehensive Enrolment,” 355.
\textsuperscript{218} Ibid.
associations take place” in order to regulate and adjust the background conditions under which free actions (consensual actions) take place (PL 266). Rawls notes that “the accumulated results of many separate and ostensibly fair agreements, together with social trends and historical contingencies, are likely in the course of time to alter citizens’ relationships and opportunities so that the conditions for free and fair agreements no longer hold” (PL 266); those conditions may be undermined “even though no one acts unfairly when their conduct is judged by rules that apply to transactions within the appropriately circumscribed local situation” (PL 267). Consent is not sufficient for justice. It is not necessary either. A simple way of appreciating this is to recognise that one’s consent is irrelevant when enforcing claims of justice, both those that support the just background institutions, as well as the demands of interpersonal justice, that support the social ideal of independence. This is not to say consent is irrelevant or unimportant to just interactions. When there are just background conditions including a just distribution of rights and duties, then consent offers a way in which some rights transfers or waivers can be made consistent with those just background conditions and further the ends of all consenting parties. However, consent does not override the maintenance of just background conditions and people can be forced to do what justice requires, precisely because it supports the social ideal of independence that is institutionalized in the background conditions. The social ideal is prior to consent. Therefore, in order to ask what supports or protects the social ideal of independence, it is not sufficient or necessary to consider what people consent to or what people would retrospectively consent to.

If consent is neither necessary nor sufficient for justice, then Clayton’s argument begins to unravel. The notion of a retrospective consent requirement for the treatment of children gets its motivation from the idea that for one’s rights to be waived or transferred, one must give one’s informed and free consent. When one is incapable of waiving or transferring one’s rights, and there is a prospective rights violation, then the rights violator must be able to show that she would elicit one’s retrospective consent. This is the idea behind Clayton’s examples that aim to convince the reader of an analogy between what is impermissible to do to children and what it is impermissible to do to
adults under temporary incapacity. Consider his *Skin Graft plus Nose Job* example.219

Betty, who is an unknown visitor, is rendered unconscious by an accident and is having a skin graft to restore the damaged skin on her face. The doctor also sees that Betty’s nose might be a more attractive shape and so fixes that as well.

Clayton argues that it seems permissible for the doctor to perform the skin graft, but not the nose job. This is because we can be almost certain that Betty would consent to the skin graft, but we cannot be confident that she would consent to the nose job. This example—like all of Clayton’s examples—involve a prospective (and egregious) rights violation: one’s right to bodily integrity. Strong rights require consent to be waived or transferred and it is that which is doing the intuitive work in the examples, not the mere fact that some act is affecting an individual without their consent. But it seems like in cases in which a person’s rights are not violated, but are still being affected by some action, consent or retrospective consent is not obviously a constraining principle. For example, I may not consent to a certain tax regime, but since justice demands I pay my taxes, I can be forced to pay my taxes, regardless of my wishes. I do not have a right to not be taxed. But it need not be a matter of justice. There are numerous acts which affect my ends: whether I get a particular job, whether I get picked for the soccer team, whether someone I like agrees to go on a date with me, and so on. My consent, or retrospective consent, is utterly irrelevant to the decisions made since I have no right to get a particular job, get picked, and so on. However, in the *Skin Graft plus Nose Job* case, there is a rights violation: one’s right to bodily integrity. In cases where rights would not be violated, then it seems entirely permissible to make decisions that affect one’s ends. The cases involving children’s comprehensive enrolment are disanalogous because there is no prima facie rights violation; that is what Clayton is attempting to set out to prove. The point is that what Clayton has shown is only that we ought to be confident of eliciting a child’s retrospective consent when we would otherwise violate their rights. However, Clayton wishes to use consent to demonstrate what the rights are, that is, what the parents’

219 Ibid., 357.
rights and children’s rights are, in this particular case. But as I have established, consent is neither necessary nor sufficient for justice and so the appeal to consent is insufficient to establish children do have a right in this case. If Clayton is saying that when a person’s right would otherwise be violated, we can proceed without violating that right if they would agree to waive it, then we need to know whether children do have rights against this kind of treatment, such that the conditional principle applies. There is, however, no apparent argument to this effect.

Clayton could appeal to the fact that there is a rights violation involved in comprehensive enrolment: the right to independence. Independence is not just a ‘social ideal’ that can be instituted in various ways, but it is a distinctive and determinate right. However, it is clear that it is not. On a loose interpretation of the right, the right is too strong. If the right is just that others should not act in ways that narrow one’s choice of ends, or alter the pay-offs such that it pushes one to choose certain ends rather than others, then too much is rendered impermissible, to the point of incoherence. Any system of cooperation will involve an institutional setup that involves some measure of end-setting because it will forbid some actions and promote others, and the actions of others will determine how costly it is to engage in certain pursuits, and so on. An easy way of thinking about this is that of a relationship. I want you to be my partner and be with me on social occasions and so on. However, you do not. It appears, then, that there is significant incompossibility: whatever happens, one of us will have our right to independence violated. Obviously, on any sensible understanding of just distributions of rights, we cannot each have a right to the other’s according with the ends I have. However, on the more plausible, tighter interpretation of the right to independence, it appears it is redundant. This is because the question becomes not just ‘what narrows one’s ends’ but what unjustly affects the ends one pursues or serves. And the ‘right to independence’ cannot tell us that – there is no independent conception of what would count as unjust effect on ends, or, there might be such a conception, but it wouldn’t be one of independence. An argument external to the right to independence provides an answer to the case: you have the right to not be my partner and I do not have the right to force you to be my partner. And it is
only at that point that your consent becomes important to whether or not I can be your partner (and what that usually entails).

In conclusion, once the social ideal of independence is disconnected from the notion of consent, then an argument that demonstrates the social ideal of independence would be supported more fully in cases where there would not be consent or that we cannot be assured there would be retrospective consent, will succeed. This is the argument I provide in 6.3.1.

### 6.4 **Intrinsic Goods of Childhood**

In this section, I explain and reject another potential objection to my view: that it ignores intrinsic goods of childhood that ought to be promoted as a matter of justice. By not giving the intrinsic goods of childhood foundational significance, this renders the conception of justice intuitively implausible and ought to be rejected on those grounds. I reject this objection by denying that my view has such intuitively implausible implications.

Colin Macleod presents a critique of primary goods and capability-based conceptions of justice that are largely Rawlsian in foundation. His basic point is that there are intrinsic goods—goods that emerge “from various forms of creative stimulation of distinctive human faculties”—that can only be secured in childhood, matter from the point of view of justice, but that “are not integral to the successful development of the moral powers of autonomy”.

Rawlsian constructions fail to recognise these justice-salient features of different childhoods, and this is intuitively problematic. In response, Rawlsians ought to accept “some variety of perfectionism” that can recognise inequalities in the promotion of intrinsic goods between upbringings as unjust.

Macleod’s case appeals to the following intuitions: children ought to be exposed to a “wide range of stimulating aesthetic, athletic, and just plain fun activities” and it is unjust that some children are exposed to those activities and others are not. Children “with very austere and dreary childhoods” can

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221 Macleod, “Primary Goods, Capabilities, and Children,” 188.
222 Ibid.
achieve and maintain political autonomy, and such childhoods may also further their interests in primary social goods, but Macleod’s point is that such an empty childhood should be tagged as unjust when compared to childhoods that are rich with valuable experiences.\textsuperscript{223}

It is important to recognise that things such as happiness, play, exposure to different ways of life, and the opportunity to pursue the different interests one may develop in middle to late childhood, are all very probable (if not certain) empirical requirements of a just development on my view. For example, political autonomy requires developing self-trust. This requires an appropriate relationship with one’s emotions and forbids upbringings that are unhappy, absent of play, creativity, and friendship, and so on, because they present very significant risks with regard to the end of establishing and maintaining political autonomy. Also, when children acquire interests that ought to be the basis for paternalistic provision (see 5.3), being able to pursue those things will be a central basis for their happiness, and justice demands their promotion (because that is in their interest, not because of their well-being). Furthermore, the kind of things that gives Macleod intuitive worries are intuitive worries because they’re the kind of things that children express interests in and therefore it feels unjust to deny them those things. However, if they are in the child’s interests, my view will likely ensure their promotion regardless through the requirements of the principle of paternalism.

It is, however, true that my conception does not give children’s happiness or well-being foundational significance. I accept that the conception does not give foundational significance to the intrinsic goods of childhood; this is necessary in order for the conception to be coherent with political liberal foundations. However, I have assuaged the intuitive worry and this objection does not render the conception implausible.

\textsuperscript{223} Ibid., 182.
6.5 **STATE EDUCATION**

In this section I argue that in order to establish and maintain a well-ordered society—which in turn requires establishing and supporting citizens’ political autonomy—there needs to be a mandatory, socially inclusive, education system, in order to engender egalitarian relationships and discourage the development of oppressive structures and norms. In doing so, I assuage the worry that in jettisoning FEO from Justice as Fairness, my conception would permit the kind of unequal and segregated education system that is intuitively objectionable to liberals. My conception offers a plausible outcome with respect to state education. In 6.5.1 I set out the virtues that children need to acquire in order to establish and maintain a well-ordered society. In 6.5.2 I explain why this requires a mandatory and socially inclusive education system.

6.5.1 **Political Virtues**

Children must be brought up so that they are able to recognise and appreciate the ideal of society, the ideal of the citizen, and how they are to fulfil their duty to establish and maintain those ideals, at least when to do so would be at little cost to themselves. This is the natural duty of justice:

> “This duty requires us to support and to comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves” (TJ 99).

The four conditions of political autonomy indicate the political virtues required for the establishment and entrenchment of the well-ordered society because they identify what is required of oneself and others in order for the ideals to be realized. In order to answer for their own actions, citizens must be aware of what that entails and to appreciate the good of establishing that ideal in themselves and other citizens. This requires an appreciation of the circumstances that have to exist for themselves and others to authentically answer for their actions. Those circumstances involve establishing an environment for citizens to develop and exercise their moral powers in detecting and appreciating the reasons they have to act, an environment that is absent processes such as oppressive structures and norms that circumvent the development and utilization of those powers, and an awareness of the political
and social circumstances in which their actions are assessed. Children require an education that develops their rational and moral capacities, exposes them to the cultural milieu of their society, teaches them about the extant political mechanisms and how they support the well-ordered society, and how they can and ought to do their part in those mechanisms and in society generally. Children must acquire the virtues of “civility and tolerance, of reasonableness and the sense of fairness” and acquire “the capacity to understand the public culture and to participate in its institutions” (PL 194; 200).

It is worth highlighting one relatively demanding element of their upbringing: to be brought up to engender and support egalitarian relationships that suppress oppressive structures and norms. Christian Schemmel notes that establishing justice in society requires procedural, distributive, and socio-psychological strategies. Procedural elements involve, for example, just legal proceedings and the right to democratic participation. Distributive elements are required to ensure basic liberties are not merely formal, that is, they give citizens the real freedom to control their working and social lives (the liberties have real worth). But Schemmel makes the important point that the procedural and distributive elements cannot be sufficient if:

“they are not supported by a general disposition on the part of individuals to exercise power over each other, where they have the opportunity to do so, with the self-restraint and attention to others’ possible claims and interests that non-domination demands; in short, with an attitude of respect, and also of proper self-respect – an awareness of one’s standing as an equal, expressed, inter alia, in a disposition not to put up with domination”.

The ideal of society will not be realised unless we can identify “egalitarian, non-dominatory ideal-types for specific social forms and norms that structure everyday life in a given society, such as workplace relations, and social norms governing the interaction between groups and types of people (men and women, heterosexuals and homosexuals, ethnic minorities and the majority, ethnic minorities against themselves, and so on)”. People need the

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224 Christian Schemmel, “Justice and Egalitarian Relations (Working Title)” In Progress.
225 Ibid.
appropriate *dispositions* to engender non-domination in practices in which they have power, and to resist and combat domination in practices in which they are vulnerable. Schemmel uses family life as a ‘salient case’ here: “what kind of person are you likely to become, and how will you relate to others, if you are, for example, the son of a sexist couple?” As I have noted in Chapter 3, authentic self-authorization requires something of how other people treat us: our “sense of our own value, as well as our self-confidence, depends on the respect and mutuality shown us by others” (PL 319); “self-respect is secured by the public affirmation of the status of equal citizenship for all” (TJ 478). So children not only must be brought up to understand and respect the law (insofar as it is just), and to promote justice in their political activity (traditionally understood, that is, in voting and in deliberative activity, and so on), but to actively promote justice in interpersonal or associational activities. Children must be imbued with attitudes that not only do not contribute to unjust social norms, but that actively contribute to their downfall and replacement. Children ought to be made aware of existing unjust norms (and how to spot them) and to be encouraged to promote just egalitarian norms that help establish the ideal of the citizen in others.

Consider this example: the recent decision by the Royal and Ancient Golf Club to renge its male-only membership criteria. Previously, it was made very clear that golf clubs had the right to have any membership criteria they like as they were associational hobby groups, not basic institutions of society. However, pressure grew to alter their criteria because it was thought that it contributed to sexism in sport more generally, and consequently to sexism in society more generally. This sort of sexism can result in oppression, domination, and a lack of self-respect. It was presumably not unjust for the member clubs to have male-only criteria for membership: associations should be permitted to associate as they wish within extremes. However, the increasing numbers of people who are able to recognise the sexist norm and its

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226 Ibid.
effects, and are willing and able to do something about it, has resulted in the sexist norm—that indirectly results in injustice—being gradually eroded. Children should be brought up in ways that lead them to contribute to these norms disappearing, and to contribute to new egalitarian norms becoming entrenched.

6.5.2 State Education

There are many good reasons for instituting a mandatory, socially inclusive, state education system: it may be an efficient way to contribute to furthering children’s highest-order interests and/or to check that their interests are being furthered. It may also be an efficient way to ensure children are taught about political society, political mechanisms, and how to identify oppressive structures and how to break them down and prevent their development. However, in this subsection I focus on an intrinsic reason for a mandatory and socially inclusive education system. One reason that is often given for such a system is the institutionalization of the principle of fair equality of opportunity: if everyone has (roughly) the same education, then this goes some way to ensuring that the development of people’s talents is not affected by contingencies of birth such as social class. However, I jettisoned that principle in Chapter 4. Instead, I argue—following Elizabeth Anderson—that a mandatory and socially inclusive education system is required in order to ensure that positions of power and influence are taken up by a mix of groups, to ensure that those in positions of power and influence do not develop cognitive biases that may encourage the development of oppressive norms or structures, and to otherwise foster norms of equal respect and concern that help ensure oppressive structures do not arise. Only a mandatory and socially inclusive state education can fulfil this task.

Anderson, in her paper ‘Fair Opportunity in Education: A Democratic Equality Perspective’, reframes the discussion about education by shifting the focus from the good education “is supposed to do for the individuals who have it to the good the more educated are supposed to do for everyone else”.

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Anderson’s move picks up on that key Rawlsian insight: “our self-respect normally depends on the respect of others... Self-respect is reciprocally self-supporting” (TJ 155; 156). Citizens need the attitudes and skills that will lead them to respect and view others as equals, to embody the ideal of reciprocity and fairness in their interactions, to recognize that each citizen’s contribution to the system of cooperation is to be equally valued and appreciated, and to help ensure their contribution redounds to the benefit of the least-advantaged. As Anderson recognises, this responsibility falls in particular on the ‘elite’: “those who occupy positions of responsibility and leadership in society: managers, consultants, professionals, politicians, policy makers”, or in the terms of Justice as Fairness, those that hold positions of power and influence in the unequal distribution of OIWPI mandated by the difference principle. A properly constituted elite requires “responsiveness to and effective service of the interests of people from all sectors of society”; “elites must be so constituted that they will effectively serve all sectors of society, not just themselves”. Only then will society engender circumstances in which we each find “our person and deeds appreciated and confirmed by others who are likewise esteemed and their association enjoyed” (TJ 386) and thereby secure the social bases of self-authorization.

Anderson identifies four requirements of the elite’s character: (i) awareness of the interests and problems of people from all sectors (ii) a disposition to serve those interests (iii) technical knowledge of how to advance these interests and (iv) competence in respectful interaction with people from all sectors. The elite, then, must “be drawn from all sectors of society” and these “diverse members must be educated together, so they can develop competence in respectful intergroup interaction”. These requirements prompt the need for an education system that educates social groups together, that prepares and educates students from all groups to be able to join the elite, and that actively engenders attitudes of equal respect and reciprocity. Anderson describes the

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229 Ibid.
230 Ibid.
231 Ibid.
232 Ibid., 597.
situation that endures without such an education system. This situation is one that continues and entrenches norms of segregation and stereotyping that undermine the social bases of self-authorization. Segregation results from social stratification along group lines including: class, gender, race, ethnicity or nationality, immigrant status, tribe, age, religion, caste, marital and parental status, sexual orientation, family membership, language/dialect/accent, and disability. This transmits disadvantage directly and is a direct result of segregated education systems. Social segregation limits the circulation of social and cultural capital. This may govern access to opportunities through, for example, “networks of associates by which knowledge of and access to opportunities is transmitted” and “knowledge of and facility in the often informal or little-publicised norms, conventions, and codes of conduct that govern access to advantages” (for example, rules of etiquette, polishing CVs, dress, fluency in the small talk advantageous in a particular realm). Segregation also “deprives the more advantaged of knowledge... they are liable to be relatively ignorant of the problems the [disadvantaged] face in their lives”. If those who acquire positions of power and influence are drawn from one or a few of the segregated groups, they “lack awareness of and responsiveness to the problems and interests” of the other groups. A segregated education system also encourages stereotypes. Stereotypes are “crude, typically unconsciously held heuristics that enable people to economise on information processing and react quickly to situations involving the object”. Stereotypes “exaggerate the homogeneity of members of a particular class [this can be extrapolated to ‘group’] and to exaggerate the differences... They also bias causal explanations of the behaviour of members of the class [group]”. Stereotyping in the elite will undermine the social bases of self-authorization, as discussed in 3.3.1.

233 Ibid., 569–570.
234 Ibid., 601; ibid., 602.
236 Ibid.
237 Ibid., 604.
238 Ibid., 604–605.
The education system must ensure children acquire the political virtues detailed in 6.5.1 and, in particular, secure an elite equipped to hold positions of power and influence without encouraging the development of oppressive norms and structures, and to use their power and influence to the greatest benefit of the least advantaged. To prevent segregation and stereotyping, this requires a compulsory and socially integrated education system. The ideal of this education is reflected in what Rawls says of its demands:

Children’s education should “encourage the political virtues so that they want to honor the fair terms of social cooperation in their relations with the rest of society... in such essential things as their acquiring the capacity to understand the public culture and to participate in its institutions... and in their developing the political virtues” (JaF 156; 157)

The education system that is demanded is one of integration, inclusivity, and the preparation of an elite qualified for the task. Such an education system will also resist vast inequalities between children’s access to different educational opportunities in the sense of developing talents and skills; the inequalities that are objectionable are those which undermine a person’s own feeling of equality of status and the acquisition of a character that contributes to the securing of the social bases of self-authorization in others. This education system is an intrinsic element of the SBSA principle and demonstrates how the principle works as a rider on the inequalities mandated by the difference principle. The necessity of this education system also assuages any worry that one may have regarding the institutional consequences of jettisoning fair equality of opportunity. This section has offered an alternative yet strong intrinsic reason for the kind of education system liberal egalitarians usually justify through an appeal to fair equality of opportunity.

6.6 CONCLUSION

The aim of this chapter was to further demonstrate that the principles of Justice as Fairness offer coherent, determinate, and intuitively plausible, demands of children’s upbringings. I achieved this aim in following way. On the basis of the principle of paternalism and its implications expounded in Chapter 5, I elucidated the resulting demands of children’s upbringings with
respect to the following key issues. In 6.2 and 6.3 I considered, in more detail, how my conception differs from other liberal conceptions of upbringing with respect to children’s autonomy. In 6.2 I rebutted two potential objections to my conception: first, that my conception pays insufficient attention to the requirement to bring children up autonomously; second, and from the other direction, that my conception betrays political liberal foundations. I did so through a comparison with Harry Brighouse’s and Eamonn Callan’s conceptions. In 6.3 I addressed Matthew Clayton’s proposal that political liberal constraints forbid the comprehensive enrolment of children. I showed that my view does not entail this. I also argued that Clayton’s argument either (a) relies on an implausible account of justice as what people consent to (or would retrospectively consent to) or (b) fails to explain why children’s rights are violated by comprehensive enrolment. My own view establishes the principle that grounds Clayton’s argument—the social ideal of independence—more coherently and plausibly. In 6.4 I offered a reply in anticipation of an objection to my view that it does not give foundational significance to the intrinsic goods of childhood and therefore will result in inequalities or insufficiency in children’s upbringing in this regard. The reply I offered was that my view does not result in unintuitive outcomes in this regard since the requirements of an upbringing for political autonomy and the furthering of their other higher-order interests will prevent unintuitive results in that regard. In 6.5 I argued that my conception mandates a compulsory and socially inclusive education system in order to ensure that children contribute to the downfall and prevention of oppressive structures and norms, and to the establishment of egalitarian relationships more generally. This coheres with the convictions of liberals regarding the need for an equal and socially inclusive education system.

This chapter, along with Chapter 5, has expounded the demands of children’s upbringing. However, I have not yet dealt with all the specific issues raised by the upbringing of children. This is because I have not considered how particular adults acquire specific child-rearing rights and obligations with respect to particular children, and nor have I considered all the relevant claims that may affect such a distribution. This is the purpose of the following, final,
two chapters. In Chapter 7, I consider if and how procreative responsibility affects the distribution of child-rearing rights and obligations; in Chapter 8, I offer a complete conception of the distribution of child-rearing rights and obligations in light of the conclusions in Chapter 7, and the demands of children’s upbringing expounded in this chapter and the previous chapter.
7 PROCREATIVE RESPONSIBILITY

7.1 INTRODUCTION

The purpose of these final two chapters is to articulate and defend an account of the distribution of child-rearing rights and obligations that is derived from the principles of Justice as Fairness. If my conception could not offer plausible and coherent assessments of how particular adults acquire particular rights and obligations over particular children, and an account of how institutions fulfil the demands of children’s upbringings alongside other claims of justice, then the conception would be indeterminate and implausible. These final two chapters address this and together offer an account that is plausible, coherent and determinate.

In the next chapter, I detail this account. The purpose of this chapter is to reject the many conceptions of child-rearing obligations that directly link procreative acts to the distribution of child-rearing rights and obligations. Such accounts propose that the source of child-rearing obligations is the existence of the child, an existence that certain agents may be held responsible for. Those same agents should bear those obligations. The aim of such accounts is to ensure the distribution of child-rearing obligations is responsibility sensitive. I argue that these views are mistaken. This is because the accounts fail to appreciate that responsibility is best understood as an institutional, contextual construct that conditions how people relate to one another with respect to consequences, and not as a pre-institutional notion of a relationship between a person and the consequence: “nonrelational facts about a person’s agency and the circumstances in which she acts will never settle the questions of responsibility as accountability”.239 In this chapter I address two questions in order to show that these views fail, and to support my alternative conception presented in the following chapter:

- What are citizens’ procreative duties?

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How are they linked to the distribution of child-rearing rights and obligations?

In 7.2 I offer my own account of citizens’ procreative duties that is coherent with Justice as Fairness and the specific account of the distribution of child-rearing rights and obligations I offer in the next chapter. This account does not link procreative responsibility to the acquisition of child-rearing obligations or child-rearing rights. It also elicits plausible outcomes; procreative duties are best understood as being determined by what is to the greatest benefit of the least-advantaged, in a particular institutional context. A level of procreation is necessary for the ordered reproduction of society and there may also be an optimal level that is to the greatest benefit of the least advantaged. However, levels of procreation above a certain level may result in increased demands on natural resources such as land/space, fuel, food, and so on, that is to the long-term detriment of the least-advantaged and may even threaten the sustainability and/or stability of society over time. Also, levels of procreation below a certain level may fail to adequately replace the labour force over time and again be to the detriment of the least-advantaged or threaten the sustainability and/or stability of society. Institutions should be arranged to prevent this as far as possible given a basic liberty to engage in sexual relationships. Procreative duties exist in support of those institutional aims. Understanding procreative duties in this way offers an intuitively plausible position on responsibility, as well as offering an independently plausible account of citizens’ procreative duties.

In 7.3 I demonstrate that accounts of the content and distribution of child-rearing obligations that solely appeal to the nonrelational and context-free facts of procreation, are inevitably implausible. This is because they abstract away from relational and institutional requirements and norms that are required for the just distribution of child-rearing obligations to be accurately ascertained. I argue that they necessarily fail to offer a compelling account of either what we ought to be held responsible for, or how child-rearing obligations ought to be

\[\text{240 There may be other procreative duties regarding the kind of child that will be, is likely to be, could be, or will not be, created. I do not discuss these here. I focus solely on the duties regarding the level of procreation as it affects population.}\]
distributed. In 7.4 I offer a more detailed account of the fundamental reason behind the failure of these accounts: responsibility ought to be understood as a relation between persons with respect to consequences, not as a relation between a person and the consequence, and therefore institutional context is integral to understanding the concept. In the next chapter, I will present a conception of the distribution of child-rearing rights and obligations following this conception of responsibility.

7.2 PROCREATION IN AN INSTITUTIONAL CONTEXT

In this section I show that procreative duties are best understood within particular institutional contexts and ought to be arranged to the greatest benefit of the least advantaged. I do so in order to demonstrate that the best understanding of procreative duties does not connect one’s procreative acts to the content and acquisition of child-rearing obligations.

Procreation and child-rearing is “socially necessary labour”; “the idea of a future time when [political society’s] affairs are to be wound up and society disbanded is foreign to our conception of society” and so institutions must “establish the orderly production and reproduction of society and of its culture from one generation to the next” (JaF 162). Society requires a continual supply of additional labour to replace and support those who become old, infirm, or dead. Procreation and child-rearing is “socially necessary labour”; “the idea of a future time when [political society’s] affairs are to be wound up and society disbanded is foreign to our conception of society” and so institutions must “establish the orderly production and reproduction of society and of its culture from one generation to the next” (JaF 162). Society requires a continual supply of additional labour to replace and support those who become old, infirm, or dead.241 We can also imagine that young people bring clean slates and fresh perspectives while enjoying the benefits of previous generations’ experiences and wisdom, and offer additional contributions to the economic and political progression of society where this is understood both in terms of primary social goods and in terms of the gradual entrenchment of the well-ordered society. While the difference principle does not “require continual economic growth over generations” (JaF 63) it does require that the rate of procreation lies within acceptable bounds: neither too high nor too low. A too low rate fails to replace necessary labour and fails to sustain the existence of society’s institutions over time; a very high level of procreation also threatens the

existence of society since there may not be enough resources around to satisfy the principles of justice effectively and ensure society’s long-term stability.

There are also levels of procreation that are suboptimal, if not damaging to the orderly reproduction of society. For example, a high level of procreation may not threaten the existence of society, but increased pressures on natural resources will cause the least-advantaged in society to be worse off over time.

In order to sustain an acceptable level of procreation, there are numerous institutional policies that could be enacted. The most appropriate will depend on the circumstances of the society and on other institutional ends that can be promoted with policies that affect procreation, including the distribution of child-rearing rights and obligations. On reasonable assumptions, a steady state population requires women in the population to give birth to two children over their lifetime on average. But since there will be a significant number of women who, for perfectly legitimate reasons, have fewer than two children (including no children), the aim of steady state population will require some women to have more than two children. How, then, are individuals to be expected to act as the overall aim of steady state population requires? What are their procreative duties? Since the overall aim does not provide direct action-guiding advice at the individual level, there is inevitably a form of collective-action problem in ensuring responses from individuals that aggregate in such a way as to achieve the overall aim.242

There are three, mutually compatible, approaches to ensuring that the steady state population target is met (at least approximately).243 The first is simply to ensure that everyone has full information about the circumstances, that is, knowledge of the nature of the overall aim, the costs and benefits at the societal level of different levels of procreation, and their impact on the least-advantaged. Individuals have a duty to take all of this information into account and weigh it appropriately in making their private decisions. This strategy

\[\text{242 The situation is not significantly changed if we move to situations in which the overall aim is to reduce (or increase) the population somewhat; the average number of children per woman decrease (or increases) somewhat but this makes no major difference to the basic problem.}\]

\[\text{243 Thank you to Alan Hamlin for significant assistance in conceiving of these possible approaches.}\]
amounts to trusting that individuals’ fully informed and well-motivated decisions will yield an outcome in the acceptable range. To the extent that the outcome falls outside the relevant range one would expect that information of this failure would feed back into individual decision making to correct the outcome over time. The second approach is to provide institutional and policy-based incentives that offer private benefits for complying with the overall social aim. Such incentives might take a variety of forms: taxing (or subsidising) contraception to encourage (or discourage) procreation would be one example. Another would be to offer (or refuse) child-rearing roles to those who procreate. The strategy here amounts to translating the overall social costs and benefits of procreation into costs and benefits as they face individuals so that individual decision-making internalises the full social costs without just relying on individuals being appropriately motivated by considerations of duty. At the most mechanical level these incentives can be thought of as either taxing or subsidising procreation itself. The third approach involves straightforwardly preventing procreation, as long as this is consistent with sexual liberty. This may involve refusing IVF treatment and surrogacy. This limits procreative options without denying sexual freedom.

Under the first approach, individuals are responsible for taking the facts about the social costs and benefits into account and weighing them appropriately against private costs and benefits in making procreative decisions. Their responsibility is to deliberate appropriately and be appropriately motivated. Such appropriate deliberation may result in any number of children for a given woman. Under the second strategy, individuals are still responsible for their decision-making, but the task is now simplified by institutional devices that effectively translate the social costs and benefits into private costs and benefits. Again decision-making can result in any number of children for a given woman, but the system can adjust the incentives if the overall outcome exceeds or falls short of the target outcome. Individuals are also responsible for

244 Also note that the incentive schemes that society enacts cost money and therefore requires utilising the coercive power of the state to these ends. Procreative duties can therefore be identified as part of the general duty people have to pay their taxes to fund society’s institutions.

245 Or a trans-male.
indirectly supporting the institutions charged with implementing the incentive structures and have duties in that regard (for example, by paying their taxes). Under the third strategy, individuals are responsible for straightforwardly obeying the law, that is, directly supporting the institutions charged with controlling procreative levels.

This approach to procreation is responsibility sensitive in the following ways. First, if one does one’s duty, one is not punished or liable to bear child-rearing obligations, and one retains child-rearing opportunities. Second, if one does not do one’s duty, one does not acquire any additional child-rearing opportunity, and is liable to bear costs appropriate to the duty neglected. In the case where it may be very difficult to identify what one’s duty is (the first strategy), no-one is liable for child-rearing obligations as result of failing to fulfil the duty but also no-one acquires additional opportunities either. The important points are that, first, no-one acquires additional opportunities in virtue of negligence or recklessness, or just because they so happened to be lucky enough to procreate (unless the incentive structure recommended such a policy). Second, what is owed to particular children is not determined by the contingencies of their creation. Third, procreation that is costly to society is treated as such, that is, as a failure to do one’s duty to those within the system of cooperation, and the costs of failure are assessed in relation to those within that system.

I contend that this institutional account of procreative duties—based on the principle that they ought to be arranged in a way that is to the greatest benefit of the least-advantaged—is responsibility sensitive, and is also a plausible account of procreative duties. This account demonstrates that procreative duties are understood effectively when responsibility is conceived as an interpersonal concept within an institutional context.

### 7.3 Pre-Institutional Accounts of Child-Rearing Obligations

In 7.2 I provided a plausible interpretation of procreative responsibility and how procreative duties may be institutionalized. This view is in direct
opposition to those who argue that the assessment of procreative responsibility determines the distribution and content of child-rearing obligations. In this section I argue that these alternative views fail to elicit coherent outcomes or a plausible account of procreative responsibility and procreative duty.

These accounts combine answers to two questions in order to determine the distribution and content of child-rearing obligations:

1) Has one voluntarily assumed responsibility for child-rearing obligations?
2) Can one be held responsible for the child’s existence?

The debate in the literature is focused on what combination and interpretation of (1) and (2) make up the right conception. Specifically, no author doubts that (1) is (or could be) a source of child-rearing obligations. However, the disagreement lies with respect to what conception of responsibility for the child’s existence is an additional source of child-rearing obligations. These accounts appeal to the following attractive thought:

“[Those responsible for the child’s existence] bring it about that there is a weak, dependent, and vulnerable human being who will suffer harms, and most probably die, in the absence of the care and protection that only adults can provide. The care and protection ought to be provided by those who are responsible for the child’s state”\textsuperscript{246}

Such accounts aim to be responsibility sensitive in two regards:

1) Those responsible for the procreation should bear the burdens of the procreation.
2) Those not responsible for the procreation should not have to bear burdens as a result of the procreation.

These accounts superficially appear to satisfy the simple liberal egalitarian concern that people should not be burdened by the projects and plans of others, and people should bear the burdens of their own projects and plans: responsibility sensitivity. These accounts present a conception of \textit{attributive}

responsibility—an account of when we can say an agent is responsible for some outcome in the world—that then maps on to substantive responsibility for that outcome: the burdens or benefits that accrue from that outcome. The ‘outcome’ is assessed in the abstract, that is, absent institutional contexts that may alter the payoffs of the outcome. The existence of a child is a case of corrective justice between an injured party—the child—and the person(s) responsible for the injury, that is, those responsible for its existence. Being attributively responsible for a child’s existence disturbs a previously just state of affairs (we assume) by creating harm/potential harm or neglect. In order to return to (or maintain) the just state of affairs, those responsible must ‘correct’ the state of affairs by performing acts that prevent the harm or neglect. These are the child-rearing obligations.

Child-rearing obligations are then pre-institutional on these accounts: their content and acquisition does not depend on the institutional circumstances or background. This view is mistaken. I articulate two objections to these accounts that are insurmountable. The first (7.3.1) is that they cannot provide a coherent account of attributive responsibility that offers intuitive outcomes regarding substantive responsibility for child-rearing obligations. The second (7.3.2) is that there is an ‘explanatory gap’ between the kind of obligations that they could explain, and the obligations that we ordinarily think attach to children. In 7.4 I summarize why my account of procreative responsibility is more responsibility sensitive and generally more plausible than the accounts rejected in this section.

7.3.1 Objection #1: Who’s Responsible?

The first objection against these accounts is that there is no coherent conception of attributive responsibility that can meet the aims of the pre-institutional accounts. Their aims are:

1) To make those responsible for the procreation bear the burdens of the procreation.

247 For the distinctions between types of responsibility see, for example, Peter Vallentyne, “Brute Luck and Responsibility,” *Politics, Philosophy & Economics* 7, no. 1 (February 1, 2008): 57–80.
2) To ensure those not responsible for the procreation do not bear burdens as a result of the procreation.

A conception of attributive responsibility will be coherent if it identifies a non-ad-hoc source of what makes people responsible for some outcome. However, I will demonstrate that the non-ad-hoc conceptions of attributive responsibility will fail to offer intuitive results and meet their aims, and the conceptions that do offer intuitive results do so only in an ad-hoc way.

7.3.1.1 Causal Accounts

Consider this case:

*Alex and Bridie – The Reckless Hedonists*

Alex and Bridie meet each other in a pub and very much enjoy each other’s company. They both have rather hedonistic personalities and decide to go back to Bridie’s house for unprotected sex. They both dismiss the possibility of conception: it is not that likely that Bridie will become pregnant. However, Bridie does become pregnant and has a child nine months later.

Causal theorists argue that in this case, and in cases like it, Alex and Bridie ought to be burdened with child-rearing obligations in this situation. Causal theorists argue that despite the fact neither Alex nor Bridie had any intention to have a child at the point of conception, they caused that child to exist and are therefore responsible for that child’s existence. Since they are responsible for the child’s existence they are also responsible for the existence of the associated costs: they are attributively responsible for the child and therefore substantively responsible for bearing the burdens that have arisen due to the child’s creation.

One of the purported appealing features of causal conceptions is that they explain why even those who do not intend to have a child, may well ought to bear costs. The child should not have to bear the costs and neither should a bystander who had nothing to do with the outcome that prompts the existence of the costs. Another appealing feature of causal accounts is that it appears to offer a level of parity between males and females regarding their responsibility for procreative acts. Causal theorists can explain why both Bridie and Alex bear child-rearing costs even if Alex flees the scene after conception.
The appealing features of causal conceptions are undermined by more difficult cases. The first objection is that of ‘too many causes’. Consider the case of Susan and Bill:

_Susan and Bill (a) – The Pushy Grandparents_

Susan and Bill were quite happy to lead their life without children. They enjoyed free evenings and a lot of disposable income that they disposed of on a wide variety of shared activities that they both loved doing together. However, both Susan and Bill have very traditional parents who believe that a life is not complete without the joys of bringing up children. Their parents also very much wanted grandchildren and for their genetic line to continue. They repeatedly told Susan and Bill this and all four of their parents threatened to disown and disinherit them if grandchildren were not forthcoming – they were ‘letting them down’, they would say. Susan and Bill then decided that it wasn’t worth the effort arguing and letting their parents down. On balance, they decided it was worth having a child and they attempted to do so. Susan became pregnant and has the child nine months later.

In this case, the intuition supporting the case in Alex and Bridie would also support distributing child-rearing costs to Susan and Bill. However, it is clear that their grandparents also played a significant causal role in the child’s existence; why are they not also attributively responsible and therefore substantively responsible? On the causal account, their grandparents ought to bear child-rearing costs. It is unclear how causal conceptions can distinguish between the many causes of a child’s existence and still achieve intuitive and plausible accounts of attributive and substantive responsibility. A related problem is blameless causes. Consider the case of Marcia:

_Marcia – The Rape Victim_

“Marcia becomes pregnant as a result of rape and is imprisoned by her rapist for nine months until she gives birth. Immediately after the birth, the rapist abandons both mother and child, leaving them to fend for themselves”248

Marcia plays a causal role in the child’s existence; however, it is highly counter-intuitive to think that Marcia is attributively responsible for the child’s existence let alone to think she is also responsible for bearing child-rearing

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costs just in virtue of her causal role. These two considerations spark the following question of causal theorists: how can causal accounts limit the set of attributively responsible agents to what is plausible in a non-ad-hoc way?

7.3.1.1 Identifying causes

Jeffrey Blustein argues that picking out the right conception of causation defends the causal theorist against the ‘too many causes’ objection. He considers two conceptions of causation: ‘but-for’ and ‘NESS’. But-for holds that some condition A is a cause of B if without A, B would not have occurred. NESS conceptions hold that some A is a cause of B if A was a necessary part of a set of sufficient conditions of B occurring. The “‘but-for’ test interprets physical events in terms of necessity, whereas the NESS test interprets them essentially in terms of sufficiency”.249 Consider: A and B shoot at a person C and A’s bullet hits C first, killing him instantly, just before B’s bullet hits C, which would have killed C if not for A’s bullet’s hitting first. On the ‘but-for’ account, neither are causes. This is because it isn’t true of A or B’s bullet that ‘but for that bullet’ C would have died. On the NESS account, both are causes, because both bullets are necessary parts of different sets of sufficient conditions for C’s death.250

In the case of Susan and Bill, ‘but-for’ identifies Susan, Bill, and their grandparents as causes. But-for their actions, the child would not exist. There are large numbers of causes in fact. But-for the parents of the grandparents, the child would not exist, a chain which goes back indefinitely. Blustein recognises this problem:

“[but-for] identifies any background or circumstantial factor without which an event would not have occurred as a cause of that event, and if parental responsibilities were incurred by anyone who was a cause of the child’s existing in this sense, there would be tremendous proliferation in the number of persons who could be considered the child’s parents”251

250 In this way, NESS solves a problem with the but-for conception in the two-shooter example. In such a case, it is assumed that both shooters should be tagged as attributively responsible for the death of C. Only NESS elicits that conclusion.
251 Blustein, “Procreation and Parental Responsibility,” 82.
Blustein’s response is to support the view that he claims is “stricter” than but-for: NESS. However, NESS is not stricter than but-for and does not avoid the proliferation he worries about. As we saw in the two-shooter case, NESS is more inclusive. Imagine, for example, that pressure from only one set of parents would have been sufficient for Susan and Bill to decide to procreate. NESS would identify both as causes whereas but-for would eliminate both sets of parents as causes.

7.3.1.1.2 Identifying the causes that ought to be treated as the causes

That but-for and NESS both give an “indefinitely large set of necessary conditions” (but-for) or an “indefinite number of sets of sufficient conditions” (NESS) is not really in question. Causal conceptions of child-rearing obligations take their lead from the use of causation in legal contexts by identifying—among the set of actions that satisfy the NESS or but-for conditions—those actions, or that act, that ought to be treated as the cause for the purposes of attributing responsibility for the outcome.

The basic idea here is that causal responsibility requires more than simply being part of the set of conditions that caused the outcome. For example, burning down a building requires an oxygen supply, flammable material, and perhaps a favourable wind. The match that started the fire had to be dry, had to be made of flammable material, required oxygen, and a favourable wind. But while all these conditions are causes, some of which existed as a result of human action, a causal account may identify the act of striking the match and throwing it into the building as the cause that ought to be treated as the cause of the fire. On what grounds can causal theorists pick out particular causes as the causes that ought to be treated as the cause for the purposes of attributing responsibility?

One approach is to make an empirical judgment regarding the magnitude of particular causal factors. One way of thinking about this is to imagine the ‘ordinary’ sequence of events in the relevant context and then identify the cause of some outcome as the intervening cause that changed the ordinary sequence into an extraordinary one. The ordinary course of events in the fire

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252 Ibid., 83.
253 Cane, Responsibility in Law and Morality, 128.
case is for there to be no fire and the materials to just sit there day after day. The extraordinary event was the throwing of a lit match into the building that disrupted the ordinary sequence. However, this does not really help us in a number of cases. For example, consider this addition to the Susan and Bill case:

Susan and Bill (b) – The Problematic Childbirth

Towards the end of her pregnancy, Susan developed some medical problems. She was rushed to hospital three weeks before her due date by two expert and particularly quick thinking paramedics. Other paramedics would not have been sufficiently quick thinking. Their speed and judgment was crucial to saving Susan’s, and the child’s, life. On arrival, Susan was assisted by a number of staff, not least the single neonatal intensive care consultant on duty who immediately saw the need to perform a particular type of operation. A surgeon performed the procedure and saved the child and Susan.

The extraordinary events here include the actions of the paramedics, the actions of the consultant, and the actions of the surgeon; the ordinary course of events would result in a child not existing. Even if one takes Susan and Bill’s decision to conceive as ‘extraordinary’, as opposed to the grandparents’ attempts to persuade Susan and Bill to take that decision, it seems like, at least, the actions of the medical staff must also be considered as extraordinary. However, we do not consider them attributively, let alone substantively, responsible for the child.

An objection here could point to the fact that the medical staff were presumably already under obligations to perform those life-creating actions and therefore their intervention in the ordinary course of events ought to be considered ‘ordinary’, a given background circumstance, within which others (like Susan and Bill) may make extraordinary interventions. The problem with this response is that the grounds of the approach is to determine pre-institutional reasons for allocating child-rearing obligations and the objection relies on insisting on an institutional background that preserves the uniqueness of biological parents’ intervention as the cause that ought to be treated as the cause. It is therefore not causation that is justifying the allocation of child-rearing obligations, but rather particular acts in particular institutional settings.
And the theory of *causation* is not doing the work in establishing which acts, in which institutional settings, matter for the allocation of child-rearing obligations.

Blustein’s response to these objections is largely to bite the bullet: all the causal acts in the creation of a child are sources of liability to the acquisition of child-rearing obligations. This would mean that Marcia, the rape victim, would be liable for child-rearing obligations in virtue of her causal role. Although perhaps coherent, the unintuitive and grossly unfair outcomes render this approach unsatisfactory. Indeed, Blustein accepts that the result in Marcia’s case is “counterintuitive”. Blustein never brings up the example again in the paper so it is unclear why this example shows we ought to prefer his account over that of his opponent: an intentionalist account that would deny Marcia’s responsibility because of her lack of consent or control. I will return to this in a moment, but let me first introduce Blustein’s final example:

*Anthony and Joan – The Failed Contraception*

Anthony and Joan have sex. They agree that they do not want to have a child and they both use contraceptives, she a spermicidal gel, he a condom. After, they separate. Despite their reasonable care to avoid conception, Joan becomes pregnant, and since she cannot bring herself to have an abortion or to give up the child to adoption, she decides to have and raise the child. She struggles with the costs and reluctantly contacts Anthony. ‘You’re the father’, she tells him, ‘you ought to contribute’.

Anthony did not intend to procreate (even if we think Joan did) but he did have a causal role. Blustein says “the child will be harmed if it is not protected, and by participating in the creation of such a being… Anthony incurs at least a prima facie obligation to prevent harm from coming to it…” To defend this

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254 It may appear odd that Blustein—and causal theorists generally—would countenance such conclusions. The reason I expect they do is because of the conclusions they desire to elicit regarding *parenting* (the distribution of child-rearing rights). If the assessment of child-rearing obligations can elicit, say, Marcia as bearing the burdens of the child’s existence it also prompts a prima facie reason for her to be the child’s parent, if she should wish, which is intuitive.


256 Ibid. 83

conclusion, Blustein appeals to an example first introduced by Bernard Williams: 258

“Suppose you accidentally hit a pedestrian with your car, even though you are driving alert, sober, within the speed limit, and in a well-maintained automobile. You have not chosen to injure the pedestrian (in any reasonable sense of the term) and are not blameworthy for doing so. It was, from your point of view, simply a case of bad luck.” 259

Blustein suggests (with Williams) that if you were the driver you would feel differently (or ought to feel differently) to an equally blameless bystander; there is something special about the driver’s relationship to the outcome:

“What is special is that he caused harm… Ascription of responsibility is not only appropriate to the extent that the person in question is to blame. Causing something bad to happen is also relevant, even when this is unintentional and not the result of some failure to exercise due care.” 260

However, note that it is also true in this case that the pedestrian caused the harm too. 261 The pedestrian’s presence is also a but-for/NESS condition. Imagine that instead of hitting the pedestrian, the driver swerved out of the way and crashed into a pole. Is the pedestrian’s presence sufficient to incur prima facie obligations to rectify the harm done to the driver (assuming that if there was no pedestrian, the crash would not have occurred)? Any intuitively plausible reply cannot appeal to causation alone: I assume that intuition does not lead one to think that the pedestrian’s presence is sufficient for her to incur prima facie obligations. The careful driver example does not then offer reasons to accept Blustein’s causal account. Indeed, Blustein gives the game away in the conclusion to that section:

“[Anthony] had some control over becoming a parent, some choice whether to engage in risky activity, and some power to diminish the risk by being more careful than he might otherwise have been” 262

260 Ibid.
261 As Liam Shields pointed out to me, it is also true that rape victims also often feel like they caused the harm to them.
This reply supports a view denying what the careful driver example is supposed to show. It is, apparently, choice, engaging in risky activity, and failure to diminish risk that is doing the explanatory work in Anthony’s case, not merely the empirical truth of his causal role. And if it is not merely the empirical truth of causation that assigns substantive responsibility for compensating or rectifying harm, why not prefer a conception of attributive responsibility that more plausibly involves an analysis of an agent’s control and risk, perhaps one that denies Marcia’s responsibility at the very least?

7.3.1.2 Intentional Accounts

The problems with causal theories lead some authors to hold intention as the relevant conception of attributive responsibility. These accounts attempt to give more of a role for agency in the conception of attributive responsibility. Once accounts deny mere causation as necessary and sufficient, they are immediately open to two objections. First, if the child’s existence is caused, and yet not intended, that leaves the child open to bearing the burdens of its existence. Second, if the child’s existence is caused, and yet not intended, then reckless and negligent procreators are not subject to distributive burdens.

Consider Alex and Bridie. In this case, neither Alex nor Bridie intended to create a child with their actions, let alone bear child-rearing obligations. The consequence is that on the intentionalist conception child-rearing obligations do not exist since no-one can be tagged as substantively responsible for the outcome. As such, it appears that the child has to bear the burdens of its existence. This is implausible. One possible reply is that the child will not—as a result—die or suffer: others are under a natural duty to prevent this. However, this reply does not succeed. First, the very fact that an appeal to duties outside of the conception has to be made in order to prevent drastically unintuitive outcomes illuminates the fact that the conception itself is failing to offer plausible results. Second, even if we were to accept the bootstrapping of natural duties in order to prevent the child bearing-burdens, the conception will therefore fail to ensure that those not responsible for the existence of the child are not burdened by it. The natural duties will have to be fulfilled by someone or some people who are, by definition, not attributively responsible.
However, this is precisely the result the conception is aiming to avoid since it would leave people worse off through no fault or choice of their own.

Joseph Millum attempts to offer a way out. He argues that child-rearing obligations can be “taken on by individuals through acts whose meaning is determined by social convention” and it is the “artificiality of social conventions” that “explains why the extent of parental responsibilities need not be proportional to the risks taken in sex” or why we may permit “certain inequalities between the sexes with regard to how parental responsibilities are undertaken”. However, for those acts to be morally transformative, they must be suitably voluntary. Millum calls these the responsibility conditions:

P’s action A constitutes taking on responsibility R if and only if:
1) P knows (or should know) that she is performing A
2) P is not unduly pressured to A
3) A is intentional under some description;
4) In P’s moral community, A is understood to constitute taking on R; and
5) P knew (or should have known) that (4)

Millum’s account relies on bracketing off the justice of the conventions of which (suitably voluntary) acts constitute taking on responsibilities; Millum calls this question “ultimately empirical”. The problem with this is clear: why insist on such a demanding conception of what counts as a voluntary act, and yet distance the account from analysing the justice of the conventions to which it is attached? This approach does not solve any of the problems identified; it only pushes them out of view.

264 Ibid., 79.
265 Ibid., 80.
266 Ibid., 83.
7.3.1.3 Austin’s ‘Primary and Proximate’ Account

Michael Austin attempts to provide a conception that purports to be causal but attempts to avoid the objections levelled at both causal and intentionalist accounts. This is his thesis:

Austin’s Causal Thesis: “If a moral agent causes, in the relevant way, the existence of a child, then that moral agent has special prima facie moral obligations to that child.”

There are two aspects to the thesis that narrow the scope of those attributively responsible for the existence of a child. First, that the causal role must be relevant, where this turns out to mean a primary and proximate causal role. Second, the causal act must have been undertaken by an agent with sufficient moral and intellectual capacities, and with reasonable foresight of the risk of a child existing as a result of a set of conditions of which that act was part. These narrow the scope of those attributively responsible by demanding more of a person’s agency in the existence of a child. However, I will show that this conception only offers intuitive outcomes in an ad-hoc way and assumes a certain institutional context. It is, therefore, not causation that is doing any explanatory work in the conception and is beholden to institutional norms that are, presumably, part of the overall justification for the distribution of child-rearing obligations.

Let me begin by introducing Austin’s exploratory case, one that is similar to Blustein’s ‘Anthony and Joan’ example both in content and in motivation. He wants to show that it is not necessary that one have consented or volunteered to take on child-rearing obligations in order to acquire them; it is sufficient that one cause the existence of the child.

Archie and Edith – Unintending Procreators

Archie and Edith have consensual sex. Neither intends to procreate and both use birth control. Archie and Edith agree that should pregnancy occur, she will undergo an abortion. However, Edith becomes pregnant and decides to carry the pregnancy to term. She gives birth to a child: Gloria.

Austin asks us to recognise the analogy between this case and three cases, two of which are relevant to the discussion here:

a) The Driving Accident – “drivers have special obligations to their accident victims, even if they do not consent to undertake those obligations”\(^{268}\)

b) Baseball and the Window – “when I hit a baseball and it breaks my neighbor’s window, I still have a responsibility to repair the window even if I took extreme care to hit the baseball in a different direction”\(^ {269}\)

The analogy is that in cases (a) and (b) there is no voluntary undertaking of obligations, but they are cases in which ‘common sense’ morality tells us obligations are acquired, and furthermore they are acquired because the two conditions of the causal thesis are met: those that acquire obligations do so because of their primary causal role in some outcome in need of repair, and their moral agency (the outcome was a reasonably foreseeable causal consequence of their act).

Since I have already looked at the driving example, I will concentrate on the baseball and the window. Let me add some detail to the example that Austin does not offer. This baseball field has been situated on this piece of public land for many years. My neighbour then decides to use a distant part of the outfield to build a greenhouse. He doesn’t claim to own the land; only to use it (legally) to keep his greenhouse on. I then hit a monster shot (by accident) going an unprecedented 500 feet, straight through the greenhouse, breaking his window.

Do I have a responsibility to repair the greenhouse? I assume that intuition says that I do not in this case, or that there is shared responsibility for the cost. What has changed? Austin could begin by saying that the neighbour is now undertaking a reasonably foreseeable risk of his window being smashed, whereas before he was not. However, on this interpretation of reasonably foreseeable risk, having a window in a house is taking a reasonably foreseeable risk of it being smashed just in virtue of it being there, and it potentially being around baseball activity. What reason do we have for focussing on the risk the baseball player takes over the risk the neighbour takes by having a window or a

\(^{268}\) Ibid., 42.
\(^{269}\) Ibid.
greenhouse? Note that my addition to the example makes it still extremely unlikely (perhaps even more unlikely) that one would get a baseball through the window.

Austin could then turn to his notion of primary and proximate cause. The primary cause refers to the notion that a cause is, relative to others, more significant, important, or essential, in empirical terms, than other causes. The idea of a proximate cause in this context is problematic. This notion is general: it merely refers to what is in question, that is, which causal role (if any) results in liability for compensation or rectification. Some specific conditions for proximate cause may be, first, that there was some failure to meet an extant obligation. For example, if I illegally owned a gun that accidently fired and killed someone, my gun possession may be a proximate cause in that case (and would not be if it was not illegal to own a gun). Second, that there was not some extant obligation that one was fulfilling that became part of the causal chain. For example, in the Susan and Bill case, the doctors and nurses have an obligation to save the lives of babies and adults that enter the hospital and therefore may be ruled out as a proximate cause. However, Austin does not state that these are his own conditions and does not give us any important ones of his own except that coerced acts cannot be proximate causes (ensuring Marcia is not a proximate cause on his conception).

What Austin is left with is the employment of “an intuitive and commonsense notion of causation as well as commonsense morality”\(^\text{270}\). This is unsatisfactory. By appealing to common sense, of course we would recognise who ought to be considered the primary and proximate cause in cases (a) and (b), and in cases of coercion like Marcia’s. However, the intuitive force of the careful driver and the initial baseball and the window example come from a prior understanding of their context and an understanding and imagining of the extant distribution of property rights and the fair general assignment of risk and opportunity in society. It is not what is playing a more primary causal role that is doing any work in these examples, and even more obviously in the tough examples such as Susan and Bill, Anthony and Joan, and Austin’s own

\(^{270}\) Ibid., 29.
Archie and Edith example. In Susan and Bill, the problems mount: the grandparents were arguably playing a more primary causal role than Susan and Bill, but ‘common sense’ pushes in another direction. Indeed, Austin states explicitly that grandparents are ruled out:

“I do not intend to give a detailed analysis of the concept of causation. It is sufficient for my purposes to employ a common-sense notion of causation which takes genetic (and perhaps gestational) parents to be the primary and proximate causes of the existence of their children and rules out those individuals who make important causal contributions to a child’s existence, such as health care professionals… The notion of causation employed here also rules out grandparents and other genetic ancestors”.

It is to beg the question by simply choosing the conception of ‘who ought to be treated as a cause’ that just happens to fit who we pre-reflectively think are substantively responsible; it is a failure to systematically organise our considered convictions in a principled way. Millum recognises this very problem:

“such a notion [a common sense notion] will identify exactly those individuals whom we pre-reflectively think are the parents, but it then does no explanatory work at all – we are still left wondering why being one of these causes, rather than another type of cause, makes a difference to someone’s duties”.

The response of David Archard is to dismiss the worries raised above. He is satisfied that a “full elaboration and defence of a general theory of causation and liability”—whatever that might be—would suffice although he insists that neither “degree of causal influence” or establishing the “essential” or “primary and proximate” cause can be the basis for the success of such a theory.

However, it is clear that given the stark objections regarding the assessment of who’s responsible on the causal account, there is the need for a general theory of some kind in order to be convinced of the causal approach.

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271 Ibid., 39.
7.3.2 Objection #2: The Explanatory Gap

The second objection to accounts that connect substantive responsibility for child-rearing obligations to attributive responsibility for the existence of the child is that even if a plausible conception of attributive responsibility could be conceived, there is no good explanation for how that justifies the acquisition of child-rearing obligations or child-rearing rights.

To see this explanatory gap, it is worth restating the fundamental argument of these conceptions. Child-rearing obligations arise as a case of corrective justice. By creating a child, one creates harm or the potential for harm and therefore one is under an obligation to rectify that (potential) harm or compensate for the (potential) harm; the obligation is to make the victim of the harm ‘whole again’. How is this harm construed? Austin construes it as the needs that are simultaneously created when one creates a child. Austin presents his view as a reply to the objection that a child (Gloria) is no worse off than if she was not created. Austin argues that such a reply is “counterintuitive in both commonsense and family morality”.

However, his argument relies on a mislocating of the source of the obligations. For Archie to be in receipt of child-rearing obligations, it “is important that Archie is uniquely situated to satisfy her emotional interests in the context of a parent-child relationship”, that is, that he is the biological father. It is important to his argument because only if Archie is uniquely situated is it possible to identify a criterion of ‘worse-off than would otherwise have been’ that can be directly attributed to him, rather than people more generally. He does not appear to think there is an argument that can identify a ‘worse-off’ criterion that involves comparing a state of non-existence to existence, presumably due to the non-identity problem. He instead relies on a worse-off criterion where there is ‘existence and Archie does or does not fulfil the obligations unique to him’. However, this argument does not locate the source of child-rearing obligations in causing existence. Austin cannot lend himself to the perplexing footnote that states that his argument “does not apply to the financial obligations Archie incurs”

274 Austin, Conceptions of Parenthood, 45.
275 Ibid.
and assert that “Archie incurs this parental obligation because of his causal role” regardless of “whether or not others are better situated to provide financially for Gloria”. 276

Even if the challenge of comparing existence to non-existence in terms of ‘harm’ or ‘worse-off’ could be met, Elizabeth Brake notes that there “is still an argumentative gap” because the rectificatory or compensatory elements of comparing existence to non-existence will at most require establishing the prospects for a minimally decent life and self-sufficiency. However, to borrow Austin’s appeal, ‘commonsense morality’ tells us that children are owed a lot more than that: contemporary “parental obligations are extraordinarily weighty in duration and scope”; “there is an explanatory gap between compensatory obligations entailed by moral responsibility for a child’s existence, or ‘procreative costs’”; and the extent of child-rearing obligations that we would intuitively think exist on any reasonable conception of just upbringings. 277 If the source of child-rearing obligations are corrective, then justice cannot demand that children receive an appropriate upbringing and will permit radically unequal upbringings between different children.

7.4 The Failure of Pre-Institutional Accounts

The appeal of the pre-institutional accounts discussed in the previous section is supposed to lie in their responsibility sensitivity. That is, they are to support the notions that:

1) Those responsible for the procreation should bear the burdens of the procreation.

2) Those not responsible for the procreation should not have to bear burdens as a result of the procreation.

The aim is laudable. However, my own account satisfies these concerns more plausibly and coherently. The essential point is that, as Brake notes,

276 Ibid. ft 15.
procreation is “conceptually distinct” from bearing child-rearing obligations.278 Once we accept that notion, then the goal of responsibility sensitivity is a lot easier to attain. First, by detaching procreation from child-rearing, it is possible to assign an independent conception of what children are owed, independent of the circumstances that led to their existence, for which they were entirely not responsible. Second, once procreative acts can be judged independently of child-rearing, it is possible that one’s substantive responsibility for procreative influence can differ depending on institutional context. For example, doctors and paramedics can get the appropriate benefits of their procreative acts as doctors and paramedics, rather than being potentially liable for child-rearing obligations. Also, it is possible to recognise that procreative acts can be beneficial to society, as well as burdensome. The accounts discussed can only recognise child-rearing as burdensome since they can only recognise the consequences as invoking a need to rectify the (potential) harm done to the child. Their central appeal is to ensure that those not responsible for the procreation do not get burdened but if procreation is a net positive for society, it would actually go against the purported appeal because the procreators would be subject to the child-rearing obligations, and not receive the benefits that would accrue from the procreation. The only way for the accounts to avoid this latter objection is to permit institutional context to determine benefits and burdens that accrue from particular acts.

The pre-institutional accounts view the problem of child-rearing obligations through the lens of what Arthur Ripstein calls an agency-conception of responsibility: “agency-conceptions suppose that the way in which a deed or consequence is attributed to the agency of its author, that is, ‘responsibility as attributability’ provides the basis for the moral interest we take in the responsibility of others, that is ‘responsibility as moral accountability’.”279 This view is mistaken. When we address the problem of child-rearing obligations, we are not primarily concerned with who is responsible for the child’s existence, or what that entails. First, the content of child-rearing obligations has nothing to do with whether or not some person is responsible for the child’s

existence; the content of what is owed to children does not depend on what anybody does or who does it. The differing circumstances of children’s births changes nothing about the duties of justice we owe to each of them as equal individuals. Second, the distribution of child-rearing obligations concerns us because their distribution ought to respond to a fair distribution of the opportunities and risks that society may present us with. A fair distribution will not solely respond to agent-responsibility for the child’s existence in determining who takes on the costs when they are not otherwise voluntarily assumed. It will respond to people’s procreative duties, but it will also respond to other elements of the system of cooperation. Does our society need more or less children? What duties do we want medical staff to be under when faced with a troublesome pregnancy? How far do we control, regulate, or assess sexual relationships? What rights should pregnant women have regarding their foetus? Should child-rearing opportunities depend on one’s procreative luck, negligence, or ability? Who should bear the burdens of a child that unforeseeably is born with special needs? The fair distribution of risk and opportunity will mean that “we take an interest in some of the consequences of choice, but not others, even when an agent’s capacities are engaged in the same way in bringing them about.”

How people act—whether it be recklessly or carefully, informed or ignorant—and the consequences of those actions—whether they were reasonably foreseeable, certain to happen, or a fluke—may all matter to distributions. But whether they do, and to what extent they do, depends on answers to questions concerning the general scope of distributions of risk and opportunity. Accounts that attempt to explain our intuitions on child-rearing obligations solely through an analysis of who can be attributed with responsibility for a child’s existence miss the critical elements that explain why attributability matters, and why it is conceived differently in different cases. Conceptions relying on attaching attributive responsibility to substantive responsibility, at best, see their problem as one of proportionality, that is, ensuring that the extent of risk that one takes accords with the kind of costs one may acquire. They do, in fact, attempt to

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280 Ibid., 362.
provide the *fair* balance between liberty and security. But because they rely solely on attributive responsibility for the child’s existence as a means for explaining cases, they cannot explain why our intuitions on proportionality change. They miss the fact that “one can be responsible for different things depending on what is normatively at stake”.281

The alternative is to focus on a conception of responsibility as a relationship between people with respect to consequences where “the relevant concept of responsibility only arises in the context of a certain understanding of interaction, and that understanding will provide a range or set over the consequences for which a person will be responsible”.282 I showed in 7.2 how such an understanding can elicit a plausible account of citizens’ procreative duties and procreative responsibility. In the next chapter I will show how this understanding can elicit a plausible account of the distribution of child-rearing rights and obligations. The pre-institutional alternative—where responsibility is understood as a relationship between a person and the consequence—is bound to fail.

7.5 **CONCLUSION**

The aim of this chapter was to offer a plausible account of citizens’ procreative responsibility and to reject the accounts that understand the content and distribution of child-rearing obligations as determined by an assessment of those individuals attributively responsible for the child’s existence. In 7.2 I offered an account of citizens’ procreative responsibility that relied on an assessment of what citizens’ owe each other within a fair system of cooperation. I demonstrated that the institutional context was essential in order to elicit sensible and responsibility sensitive conclusions regarding citizens’ procreative duties. Having expounded the alternative, I demonstrated in 7.3 that the pre-institutional accounts are either ad-hoc or implausible. Because responsibility cannot be understood pre-institutionally—or as a relationship between a person and an outcome—attempts to elucidate an

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account of how such a relationship explains the distribution of child-rearing obligations were ad-hoc (in the case of Austin) in the sense that one has to betray the premises of their own position in order to elicit sensible conclusions. If they were not ad-hoc, they were implausible, as in the case of Blustein. In 7.4 I offered a general reason why these accounts fail. We ought to reject the premise of those accounts outright and prefer accounts—like that elucidated in 7.2—that understand responsibility as an institutional, relational concept. This conception of responsibility will be in the background of the account of the distribution of child-rearing rights and obligations I expound in the next chapter.
8 CHILD-REARING INSTITUTIONS

8.1 INTRODUCTION

The aim of this chapter is to provide an account of the just distribution of child-rearing rights and obligations. In providing this account, I complete the task of showing that my conception is coherent, plausible, and determinate when applied to the important issues raised by the upbringing of children. I argue that a just distribution is an institutional arrangement that is to the greatest benefit of the least-advantaged and fulfils the other requirements of justice: those derived from the liberty principle and the SBSA principle. I offer a conception of the pertinent reasons that factor into such an arrangement, and reject some other reasons that have been argued for in the literature and/or are often working reasons in contemporary liberal democracies.

In 8.2 I propose an initial distribution (ID) that acts as a basis for the assessment of other, more controversial, elements that may factor into a just distribution. ID is constituted as follows. ID satisfies the demands of children’s upbringings through an institutional setup that children would hypothetically be contracted into at-birth (see 5.3). ID understands child-rearing roles, and the opportunity for acquiring those roles, as roles within that institutional setup. Those roles are to be understood just like any other role within the political, social, and economic institutions of society. The kind of roles (that is, the rights and obligations attached to those roles) that will be instituted is dependent on how society can efficiently satisfy the demands of children’s upbringings alongside other institutional demands. In this way, institutions accord with the difference principle: they would be arranged to the benefit of the least-advantaged measured in terms of holdings of OIWPI. The distribution of the roles that result will satisfy the liberty principle—so no-one can be forced to undertake child-rearing roles—and the SBSA principle, which will be supported best, I suggest initially, by offering roles to the most qualified candidate or through an equal chance for those equally qualified. To illustrate all these factors of ID and what they would recommend, I compare the
institution of a state orphanage to the institution of traditional families alongside a mandatory state education and other state controls.

In the rest of the chapter I consider cases for other elements that ought to affect the institutional setup. Of particular interest are a variety of reasons that appeal in some form to adults’ interests in bringing up children. It is absolutely central to the plans and projects of many cultural and religious groups that they, for example, bring up particular children (such as their biological offspring) within particular settings (such as small family units) for particular ends (so that they affirm particular comprehensive doctrines or elements of those doctrines, for example). In 8.3 I describe how ID may jar with our intuitions, and current practice, in this regard. I argue that while this is not necessarily a reason to deviate from ID, it is a reason to assess the arguments that could be mounted to deviate from ID in order to accord with common practices. In the sections that follow, I will consider a range of arguments that could be mounted to defend intuitively acceptable current practices that appear not to feature in ID. I focus solely on those arguments that have a political liberal basis; I do not interrogate arguments grounded in claims of the intrinsic value of parenting, for example. In 8.4 I consider views that appeal to the reasonableness of the projects and plans of prospective child-rearers. The argument is that one has a right to begin and continue child-rearing projects and that this is what biological parents do, for example. Therefore, institutional space must be accorded to those people in order to continue their project. I argue that this argument fails because there can be no independent assessment of what constitutes a reasonable project, outside of what a just institutional setup demands or permits. In 8.5 I consider views that appeal to the purported uncontroversial value of beginning and/or maintaining intimate relationships with (dependent) others. I argue that while institutions must protect intimate relationships in some form, this does not extend to protecting them in the particular forms that the religious and cultural groups demand. I argue that only the child’s gestational mother has a permission to begin an intimate relationship with her child that institutions ought to protect the continuation of. In 8.6 I offer my own proposal for a deviation from ID. I propose that sincere and genuine identity claims that ask for certain institutional setups in
order to sustain the SBSA for the members of the relevant culture or religion can be accommodated given the following conditions. First, it must be shown that—in the ideal well-ordered society—the cultural requirement is an unforeseeable consequence of reasonable and rational deliberations over time. Second, accommodating the practice cannot undermine the demands of children’s upbringings because the principle of paternalism is a lexically prior principle.

8.2 **The Initial Distribution**

In this section I describe, and argue for, the following pertinent reasons that factor in to the just distribution of child-rearing rights and obligations. Together these will constitute the ID. In 8.2.1 I describe how the distribution ought to respond to the requirements of children’s upbringings detailed in Chapter 5. In 8.2.2 I argue that child-rearing should be treated as socially necessary labour. In this way, it is subject to the same principles as other forms of labour in the scheme of cooperation. I argue that this means that no-one should be *forced* to undertake child-rearing roles and that child-rearing roles must be awarded on a basis of an equal chance for willing equally qualified candidates or awarded to the most qualified willing candidate. In 8.2.3 I argue that the institutions ought to respond—as the last priority—to an incentive structure and efficient satisfaction of the demands of children’s upbringings that works to benefit the least-advantaged in terms of OIWPI. In 8.2.4 I note that the institutions ought not to only respond to the demands of children’s upbringings but other institutional aims such as combating race or gender discrimination in aid of securing the SBSA.

8.2.1 **Justice for Children**

In this subsection, I briefly recap the relevant conclusions from Chapter 5. The distribution of child-rearing rights and obligations must respond to the principle of paternalism as the first priority. This principle, I argued, is a supplement to the liberty principle and therefore is instituted with the same priority as the other basic liberties. As such, children have constitutional guarantees that their interests will be advanced. This does not mean that the
advancement of their interests have lexical priority over the interests of adults, only that it is guaranteed that society—through its institutions—will act in their stead and for their ends. I argued in Chapter 5 that this supports a distribution of child-rearing rights and obligations that, when fulfilled, will further children’s highest-order interest in establishing and maintaining their political autonomy, and as a second priority, further children’s higher-order interest in advancing a determinate conception of the good. I also argued that the cost of their upbringing is assessed as part of their own expectations of primary social goods. As such, citizens have an interest in ensuring that their child-rearing is not so expensive such that it would leave them little to pursue their conception of the good in the future. The conclusion of this argument was that the right paternalistic provision for each individual child is to be contracted in to a set of institutions that further their higher-order interests over their complete life.

8.2.2 Labour and Equal Opportunity

The institutions that are set up will include individual roles within those institutions that must be fulfilled in order for the demands of children’s upbringings to be met. These are to be understood like any other role in the institutions of society; child-rearing roles are subject to the same concerns as other forms of labour in the scheme of cooperation. The regulation of social cooperation concerns the specification of the division of labour, the assignment of roles, and the schedules of wages and salaries. The difference principle mandates that social cooperation be arranged to the greatest benefit of the expectations of the least-advantaged. The roles that exist, the obligations and rights that are attached to those roles, and the compensation one gets for undertaking those roles, is determined by the difference principle subject to two conditions. First, no-one should be forced to undertake child-rearing roles because of the fundamental right to freedom of occupation mandated by the liberty principle. Second, institutions are subject to the equal and adequate provision of the SBSA and so the award of child-rearing roles must, as a second priority, be constrained by this. In order to institute the SBSA principle, there should be a general presumption in favour of equal opportunity in the distribution of positions and roles in the system of cooperation, unless it can
be shown that unequal opportunity would be consistent with the SBSA and to the benefit of the least-advantaged. The default position should be that child-rearing roles go to the most qualified candidate or an equal chance given to equally strong candidates.

8.2.3 Incentives and Efficiency

As the last priority, the institutions ought to respond to an incentive structure and efficient satisfaction of the demands of children’s upbringings that overall works to benefit the least-advantaged in terms of OIWPI. Institutions respond to these requirements by instituting roles with distinct tasks and labour hour requirements, with distinct sets of obligations and distinct sets of rights, that together fulfil the demands efficiently. As part of that drive for efficiency, institutions can take into account the varying levels of compensation that will be required for undertaking certain roles. Institutions can fulfil the demands more cheaply if they can do so through roles that require less compensation of people’s labour. In aid of this, not only will the rights assigned to particular roles be rights that provide the space and control for the obligations to be fulfilled, but may also offer greater control or claim rights over a child’s upbringing in order to make the roles more attractive and therefore require less monetary or time incentive to attract qualified applicants.

For example, a mandatory state education system can efficiently provide both the provision and monitoring of talent development, and the development of political virtues.\textsuperscript{283} It can take advantage of economies of scale and reduce the labour hours required to perform those upbringing tasks. This is one way institutions could be efficient. However, for general care—outside of the specialised education and relational development—the traditional family setting may be efficient since the incentives required for people to undertake that labour will be minimal, the qualifications required to undertake the role are also minimal, and the labour hours are also minimal.\textsuperscript{284} If the incentive matrix is

\textsuperscript{283} Of course, I argue in 6.5 that there is an intrinsic reason for a mandatory state education system. However, this does not affect the point made here.

\textsuperscript{284} Although someone providing general care overnight, pre-school, and post-school, presumably has to be there all those hours, we are not bound to map those hours onto ‘labour time’. The labour hours required to provide the general care are a lot fewer than the number of
such that people do not need much, if any, compensation for performing some child-rearing tasks—when those tasks are within attractively defined roles with significant control rights over the child, say—then institutions regulated according to the difference principle will take this into account.

These give us reason to think that the traditional family setup is more just than a ‘state orphanage’ just because it is more efficient overall. Consider:

*Traditional Family:* Individuals are assigned roles that require offering the individualized love, care, and attention to children that is necessary for their physical, intellectual, emotional, and moral development. The rights accorded by the roles offer immunities against other individuals’ attempting to provide that care on the basis that without such immunities, the provision of that care, and attached benefits, will be undermined. In certain respects, for example in education and health, other, more qualified individuals - or the state and its officials - may have the claim rights to make decisions in those respects and also hold the relevant immunities. Rights-holders will be liable to their rights being taken away if it so happens that their holding the rights will not offer reasonable assurance of the child-rearing obligations being fulfilled. However, except for these conditions, the child-rearing rights are fully extensive regarding the control over what the child does and is exposed to, until adulthood.

*State Orphanage:* “A generalised boarding school, with a comfortable material environment, and well-qualified teachers, able to devote individualised attention to children.” 285 Child-rearing rights are held by the state and by its officials.

The higher-order interests of children would—I expect—be better served by the traditional family even if the state orphanage was as likely, if not more likely, to satisfy the developmental requirements of children’s upbringings. Let us assume the state orphanage does equally well as the traditional family in this regard. On one hand, the state orphanage offers, like a mandatory state education on a larger scale, great economies of scale. On the other hand, the traditional family, along with a mandatory education, offers roles that many will do for the minimum wage, at least with respect to particular children.

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285 Munoz-Dardé, “Is the Family to Be Abolished Then?,” 45.
Efficiency concerns alone may justify an institutional setup that involves the traditional family in some regard.

### 8.2.4 Promoting the SBSA

The final element of ID is that it does not only respond to fulfilling the demands of children’s upbringings, but other institutional demands such as combating race or gender discrimination in aid of securing the SBSA. The efficient fulfilment or promotion of all institutional demands and ends determine the just institutional setup, not the fulfilment of child-rearing ends assessed independently.

Many of these other demands are tenuously related. For example, the choice between the state orphanage and the traditional family may be affected by the need to secure labour for other institutional tasks, even if it is just ordinary positions in the economic structure. More interestingly, Anca Gheaus notes that the “legacy of racial discrimination seems very difficult to undo, despite decades of affirmative action and positive discrimination”. An effective institutional measure could be that given “the way in which social, economic and cultural advantages are reproduced within families, shuffling all babies born in the US [for example] between all the new parents at birth would advance social justice by undermining the connection between advantage and race”. Gheaus goes on to note that some issues of gender discrimination could also be tackled by such baby shuffling. This highlights that the promotion of the SBSA, as well as developing children so that they are autonomous and so on, determines the just institutional setup. Within ID, it even perhaps supports the institution of the state orphanage over the traditional family and a refusal to incentivize procreators with the prospects for child-rearing rights over a particular child. This line of argument would follow the kind of argument presented in 6.5: by bringing up children together, it is more possible to eliminate the segregation and stereotyping that leads to oppressive norms and structures.

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287 Ibid.
8.3 CURRENT PRACTICES AND INTUITION

I do not make any firm conclusion on exactly what ID is or would look like. To determine this, a study of sociology, economics, and the psychology of children’s development, among other things, would be required; this is outside the scope of the thesis. However, it should now be apparent how ID may clash with intuitions and current practice, at least on principle, if not in practice (although it is not certain that would be the conclusion anyway). I will first describe some ways in which ID clashes with intuitions and current practice and then assess the relevance of this for the success of the conception of the distribution of child-rearing rights and obligations that I am presenting.

ID may clash with current practice and intuition in two sorts of ways. First, the content of the institutional child-rearing roles may not cohere with common religious and cultural requirements. The role of traditional family parenting may not be the most appropriate institutional setup, or it will, at least, be constructed in ways antithetical to the ends of many religious and cultural groups. The ID may demand the state control large parts of a child’s upbringing, even if ID would not recommend a state orphanage (and, of course, in principle does not rule it out). It may also rule out certain types of upbringings such as those that result in acquiring comprehensive doctrines unhelpful to the acquisition of political virtues. A concern that already exists in liberal societies is the desire of traditional family units to have child-rearing rights that state institutions often do not grant. The literature is full of examples of the demands of compulsory education—or elements of that compulsory education—competing with the demands of the religious and cultural demands of the parents.288 Religious and cultural demands also compete with compulsory social service inspections, and doctor privilege over health issues. The point is that the only consideration that ID gives to the desires of cultural and religious groups is that it may be more efficient (and therefore to the benefit of the least-advantaged in terms of OIWPI) to offer

child-rearing roles that are attractive enough to require little compensation for people to undertake. These roles are often attractive enough for efficient institutions anyway, even when combined with compulsory education and so on. However, given the priority to satisfying the demands of children's upbringings, ID will always come down on the side of the state’s institutional demands in the examples noted, if not prescribe an institutional setup that looks more like the state orphanage.

Second, assume that the traditional family plus a mandatory state education is the most efficient institutional setup. This assumption is not too far-fetched. The traditional family offers a most attractive role and requires little compensation for the labour certain people are willing to offer. Taking care of education in the school system is, again, more efficient than leaving everything to the family but does not require the state to keep control of children when they do not require directed learning (such as when they’re sleeping, eating, or playing). Even if this conception of institutional roles—acceptable to most cultural and religious groups I assume—is the most efficient, the allocation of the family roles may not be acceptable. This is because there is no guarantee that particular children will be allocated to the adult(s) that cultural and religious norms would dictate. Usually this consists of allocating children to their biological parents. However, both equal opportunity and supporting other norms that in turn support the SBSA (as Gheaus notes) may militate against such an allocation.

It may be thought that biological parents are the best candidates, if they are interested in undertaking the role, and so intuitive results will ordinarily occur. The thought is that “[b]iology disposes them to love their offspring, and to make sacrifices on their behalf”, an attribute that those unrelated do not have. Regardless of the general truth of this, it is “clear that natural parents need not be good parents” and furthermore that “[a]doptive and foster parents can be, and frequently are, lovingly devoted to the children they care for”. It isn’t clear that in many cases the biological parents would even be the safer bet.

290 Ibid.
Imagine that potential adopters have been successful parents before and that it would be the biological parents’ first child. It seems like in such a case the potential adopters have a better CV as it were.

8.3.1 The Status of Intuitions

Does it matter that a conception fails to cohere with current practices or cultural and religious norms? While it is not a reason in itself to reject a conception, it does provide a reason to look closer for possible arguments that could be levelled in support of a distribution that does cohere with those practices, at least when we find them generally acceptable. When the conception elicits results that clash with firmly held convictions then that disturbs reflective equilibrium. The decision is then whether the convictions ought to adjust—that is, our intuitions on particular cases must adjust—or whether the construction of the conception is faulty.

Justifying a right to rear one’s biological child and/or a right to rear in largely traditional private family settings with significant control over the child’s upbringing has been the aim of many authors. This is also an implicit aim of authors that have attempted to defend the right of cultural or religious groups to remove children from certain forms of education, or to defend the right of the existence and allocation of certain child-rearing roles that involve them having the right to determine the nature of a child’s upbringing to a significant extent.

In the rest of this chapter I look only at the most promising political liberal justifications: those that do not appeal to controversial value judgements. The difficulty is that many of the justifications in the literature do lie in value judgements concerning the value of rearing children or the value of rearing particular children in particular ways. These accounts explain why child-rearing in particular ways is ‘fundamental’ or ‘crucial’ to “living fully flourishing lives” and why its value cannot be found in other sorts of projects or relationships. These are not my concern. I consider three sorts of appeals that are more

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291 Harry Brighouse and Adam Swift, “Parents' Rights and the Value of the Family,” *Ethics* 117, no. 1 (October 1, 2006): 80–108. 95
promising as justifications available to political liberals. In 8.4 I consider arguments that appeal to the reasonable projects and plans that may begin and ought to be permitted to continue regarding a particular child. They do not appeal to the value of the content of those projects and plans, only that reasonable projects and plans generally ought to be permitted to begin and continue. In 8.5 I consider arguments that appeal to the value of intimate relationships, in some form. Such relationships are a purported source of an uncontroversial value that ought to be protected by liberal institutions. In 8.6 I offer my own argument that appeals to the need to accept and institutionalize certain sincere and genuine identity claims of cultural and religious groups, in order to satisfy the SBSA principle.

8.4 PROJECTS AND PLANS

In this section I will take on a set of arguments that attempt to defend some common cultural and religious norms by appeal to the status of the projects and plans of those responsible for the creation of the child. In 8.4.1 I address Richards’ ‘Liberty-Right’ conception that defends the right of biological parents to continue child-rearing projects they begun by creating the child. In 8.4.2 I address arguments that propose that the labour the child-bearer undergoes during pregnancy warrants assignment of child-rearing rights to the child-bearer. I reject both accounts.

8.4.1 Richards’ Liberty-Right Conception

Richards begins by considering the “right to act as we choose if our actions are suitably innocent with regard to others”. This right means two things for Richards. The first is that we are free to act in the first place, if we do not violate anyone’s rights in that act. The second is that we have a right to continue those actions if they do not do anyone any harm once they are under way. The second is of most interest here. This is because Richards argues that this second formulation of the right ought to extend to continuing roles and projects, that is:

“once someone who is free to begin a project or to play a role has done so, that person has a right to carry on with it, if it does others no harm”

The upshot for child-rearing rights is that they “come out as rights to continue to play such a role [that is, a particular child-rearing role] in its various aspects”. The basic idea, then, is that since (except in some cases such as conception as a result of rape) no rights are violated by creating a child, biological parents have a right to continue raising the child “in the way of their choosing, limited only by their obligation to neither abuse the child nor neglect her”. Richards’ conception gives theoretical weight specifically to the idea that there is something unjust about the way the reasonable pursuit of the projects of biological parents is being undermined in ID; it appeals to reasons compatible with political liberal constraints. It is worth, therefore, exploring Richards’ conception in depth.

I must begin by detailing the argument more precisely.

Principle: we have a right to act as we choose if our actions are suitably innocent with regard to others.

(1) We have a right to begin projects if we do not violate anyone’s rights in beginning that project.

(2) We have a right to continue projects we have underway if we do not violate anyone’s rights by continuing that project.

Richards wants to use this right to defend the rights of biological parents in particular. He would add to (1) and (2) that if:

(3) We do not violate anyone’s rights in conceiving a child

(4) We do not violate anyone’s rights through the child-rearing project

Then:

(5) We have a right to continue that project.

293 Ibid.
294 Ibid.
295 Ibid.
What must also be true is:

(A) We begin a child-rearing project by conceiving a child

The attraction of the theory lies in the persuasiveness of 1-2. But the key moves involve what is assumed by 3, 4 and A. In particular, without A, the argument is insufficient: it fails to establish the project that ought to be allowed to continue. The key questions are:

- When might we violate anyone’s rights in conceiving a child? (3)
- When might we violate anyone’s rights by carrying out a child-rearing project? (4)
- How do we ascertain when a child-rearing project begins? (A)
- How do we ascertain what a child-rearing project consists of? (A)

I will begin with the first two questions. Richards’ believes:

*Principle*: our actions are suitably innocent if they do not harm others.

$$\Rightarrow$$ (6) We have a right not to be harmed.

So we violate rights in beginning and/or continuing the child-rearing project if we harm others. We ought to be wary of such a general term as Richards himself recognises:

“'Harm' has proven difficult to define. Indeed, on some definitions of harm virtually everything we do causes harm… to anyone who believes in the right [(1) and (2)], this means either that harm must be defined differently or that the line must be drawn not in terms of actions that harm and actions that are harmless, but in some other terms”.

Richards does “not attempt to solve the problem”. This is because it turns out that child-rearing (parenting) is an “easy case”. Why is it an easy case? Richards’ conception rests on a reading of our intuitions and it turns out that the candidates for ‘harm’ are easily placed as either relevant ‘harms’ or the kind of impact on others that fail to be the kind of ‘harm’ that can trump the liberty right to continue the project. Richards considers the following candidates:

i. Imperfect parenting
ii. The availability of better parents for the child

296 Ibid., 23.
297 Ibid.
298 Ibid.
iii. The disapproval of the upbringing by a third person  
iv. The unavailability of the child for the child-rearing project of a third person  

(i) and (ii) concern harm to the child; (iii) and (iv) concern harm to third parties. Richards believes that none of these are “harms we can take seriously if we value liberty, however liberty is to be understood”.299 What harms ought we to take seriously? Only those that cause “damage” to the child, that is, that which “simply tracks what we have in mind when we say that parental rights don’t permit us to abuse or neglect our children”.300

The problem with Richards’ conception ought to be clear: we should not simply accept the stipulation regarding what harm is, even if one buys the intuitive case Richards presents: it begs the question. The claims of the child and third parties are—we can imagine—genuine claims regarding the success of their projects and plans. With respect to the child, why does only abuse and neglect tip the balance when different upbringings can seriously affect the child’s prospects for a good life in a number of ways that do not amount to ‘abuse’ and ‘neglect’, may not promote other justice tasks like tackling racist discrimination, and may not be efficient overall? Why do the projects and plans of the enthusiastic and conscientious potential adopters not trump the relatively indifferent and apathetic conceiver? Richards does not provide the necessary answers to these questions.

Let us now look at what Richards deems a child-rearing project to be, that is, what package(s) of rights and obligations define the ‘project’ or ‘role’, and what counts as beginning the project (A). Richards’ answer is that it varies “from culture to culture, since to serve as a child’s parent is not the same thing everywhere”.301 To ‘play the role’ in the USA is to:

“be the ones who see to it that this child’s physical and emotional needs are met; who decide where the child is to live and how he or she is to be disciplined; who define and look after the child’s moral and religious education; who determine what education in factual matters in skills the child is to have,

299 Ibid., 24.  
300 Ibid.  
301 Ibid., 25.
beyond a certain minimum; and who raise the child to become someone who functions acceptably as an adult" 302

What about cultures that differ?

“In those cultures, those who create or adopt a child have not taken a first step in the same project, since their culture does not expect the same things of them, or accord them the same privileges. Since they have not begun the same course of action, what they have a right to do next as part of that course of action is not the same” 303

The problem again is more stipulation. The problem that provokes investigation into the source and content of child-rearing rights is exactly when the projects and plans of individuals (including those of the child itself) compete with respect to the opportunities and risks presented by a particular child. Why should the prevailing culture provide the answers when there are competing claims? What projects are, how they are begun, and what constitutes a relevant harm, are contingent on cultural and religious norms – they are constituted by what people believe. Furthermore, they are also contingent on the institutions that are already in place. Richards’ description of what the parenting role is in the USA is primarily an institutional one, that is, one constructed and defined by the state’s laws. The role that culture plays in Richards’ conception is therefore circular. While Richards may be able to provide some independent justification for what ‘harm’ is to the child, there is no justification except the contingencies of the status quo for what counts as violating the rights of interested third parties in a particular child’s upbringing.

8.4.2 Child-Bearing Labour

Anca Gheaus alludes to an alternative proposition. She offers two reasons to think that pregnancy offers a justification for birth parents to have a right to ‘keep’ their birth babies:

“First, pregnancies involve a variety of costs—physical, psychological, social and financial. Most of these costs can only be shouldered by pregnant women and, to some extent, their supportive partner. Second, during pregnancy many—perhaps

302 Ibid.
303 Ibid.
most—expectant parents form a poignantly embodied, but also emotional, intimate relationship with their fetus.”

I will deal with the second in 8.5. For now, I will concentrate on whether the work that is done by the birth parent justifies allocating particular child-rearing roles to her. As noted in the previous chapter, the compensation for performing this ‘child-creation role’, that is, a role in producing the socially necessary or optimal number of children, can be conceived as detached from performing child-rearing roles. However, it may be that an efficient means to compensate child-creating is to offer child-creators first refusal of child-rearing roles they are adequately qualified to undertake; it therefore provides another empirical reason—if not a principled reason—to think ID would elicit results that accord with common practice. Further support for this claim is given by Gheaus who notes that “the costs of pregnancy would actually be higher if bearing parents would not know whether they will be allowed to keep their birth baby.” To put this another way, the compensation required for people to undertake child-creation would have to increase relative to a situation in which child-creators were offered first refusal over child-rearing roles attached to the child.

However, as discussed in Chapter 7, in most cases procreative trends require the disincentivization of child-creating, and it is likely that offering child-rearing roles to child-creators will result in a tendency towards overpopulation. Furthermore, the influence that the efficient compensation of child-bearers will have on ID is likely to be minimal. The efficiency of the institutional setup, and the demands on that setup, are such that the compensation of child-bearers would have little to no effect on the setup. Not only will the empirical effect be minimal, but there is no direct principled effect on the distribution as a result of this argument.

8.5 INTIMATE RELATIONSHIPS

In this section I address a larger set of arguments that attempt to justify common cultural and religious practices in the form of a fundamental interest

304 Gheaus, “The Right to Parent One’s Biological Baby,” 446.
305 Ibid., 448.
in beginning and/or maintaining intimate relationships. In 8.5.1 I look at the variety of specific kinds of intimate relationships that have been appealed to and reject those incompatible with political liberal constraints. I argue that while institutions must protect intimate relationships in some form, this does not extend to protecting them in the particular forms that the religious and cultural groups demand. In 8.5.2 I present an argument from Anca Gheaus that is more promising. She argues that pregnant women are in a unique position to begin intimate relationships and ought to be able to continue those relationships. I show that this argument is largely successful and provides a reason to depart from ID and offer child-rearing roles to the birth mother that allows her to continue intimate relationships that have begun with the child.

8.5.1 Protecting Intimate Relationships

The kind of arguments utilising intimate relationships that I am interested in are those that can defend the following particular institutional arrangements. First, the institution of the traditional family setting that offers individuals control and privacy regarding a particular child’s upbringing: call this ‘parenting’. Second, within such an institution, biological parents having at least the first option to be the ‘parents’ in the institution of the traditional family. I will argue that no appeal to the protection of intimate relationships can defend those arrangements.

The standard bearers for the appeal to intimate relationships are the papers written by Harry Brighouse and Adam Swift. They argue that the relationships that can be engendered in parental roles are unique in virtue of the non-reciprocal power relations, the lack of exit the child has, the spontaneous and unconditional love the child has for the child-rearer, and the particular responsibilities that the child-rearer has regarding the child’s upbringing.306 It is a special form of relationship and requires special protection. If it was the kind of relationship that could be engendered in other, non-parental roles, for

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example with other adults, then there would be no reason for institutions to offer adults parental roles. However, they argue:

“The intimacy one can have with one’s children is quite different from the intimacy one can have with other adults. 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.” 307

The problem with this appeal is that it involves appeal to controversial value judgments; specifically, the ‘flourishing’ that is purportedly to be uniquely engendered in particular parent/child relationships. 308 This problem is also found in Austin’s appeal to the “significant and unique avenue” child-rearing rights provide for “intimacy, love, and having a positive impact on the lives of others” that are in turn essential to meeting our fundamental interests in “psychological well-being, intimate relationships, and the freedom to pursue that which brings satisfaction and meaning to life”. 309

Matthew Clayton offers a conception of the interest in parenting that is compatible with political liberal constraints:

“We can state the interest in terms that abstract from the diverse conceptions of family life that are affirmed, such that even those without the desire to become a parent should recognise its validity within arguments concerning justice. For the interest in parenting is a particular instantiation of the interest each of us has in maintaining an intimate relationship with particular dependent others. That abstractly described interest is recognised by those who care for the dependent elderly, the infirm, or pet animals” 310

However, this interest does not suffice to support the institutional arrangements of traditional family parenting. First, the interest in maintaining intimate relationships with dependent others does not support an institutional arrangement that provides space to begin intimate relationships with dependent others of one’s choosing. Second, even if—as is plausible—instiutions ought

308 There are also doubts whether it is indeed unique to parenting. See Anca Gheaus, “Is the Family Uniquely Valuable?,” Ethics and Social Welfare 6, no. 2 (2012): 120–31.
309 Austin, Conceptions of Parenthood, 82; ibid., 84.
310 Clayton, Justice and Legitimacy in Upbringing, 60.
to provide space to begin intimate relationships with dependant others generally, this does not mean they ought to provide the space in the particular ways that they desire. The institutional setup could offer space to begin many sorts of dependent relationships; for example, with pets, the elderly, or the infirm. Third, it in no way supports the assignment of particular adults to particular children in intimate child-rearing roles; the space to begin and maintain intimate relationships with dependent others is not (further) satisfied by such an institution.\(^{311}\)

I suspect that the failures identified with Clayton’s account is the reason that Brighouse and Swift continue to appeal to more specific interests derived from the value of parenting in particular. This is needed to motivate an institution that accords with the common cultural and religious practices. However, political liberals cannot appeal to the kind of account that could justify such institutions.

8.5.2 Gestation and the Right to Bodily Integrity

There is, however, an argument available to show that the gestational mother of the child has a unique right to begin an intimate relationship with a child and, as such, institutions ought to provide institutional space for that relationship to continue. Gheaus analyses the phenomenology of pregnancy and concludes the following regarding the relationship that may begin in pregnancy:

“Through their bodily connection with the baby and their various psychological investments, expecting parents normally build a relationship with their future baby, which is sometimes highly emotional and already quite developed at birth. Bearing parents and their newborns already share a common history including numerous embodied common experiences (‘you kicked me on the 1st of March’, ‘you made me worry’, ‘you made me so happy’). The fact that the body plays such a central part in pregnancy makes pregnancy a uniquely privileged context for developing a bond that is both physical and imaginative with the future child.”\(^{312}\)

\(^{311}\) Gheaus, “The Right to Parent One’s Biological Baby,” 438.
\(^{312}\) Ibid., 449.
The fact that this is a comprehensive understanding of the kind of relationship that begins renders an argument solely based on the value of this relationship, and what exactly it would mean to continue that relationship, unavailable to a political liberal. However, the pregnant woman is in a unique position. I suggest that the right to bodily integrity permits pregnant women to form an intimate relationship with their child and therefore institutions ought to provide space for that relationship to continue.

The fundamental right to bodily integrity is a right to decide what shall happen in and to one’s body.\textsuperscript{313} The idea is that a person’s body cannot be used as a means for other people’s ends unless that person has consented or contracted to such use. Thomson argues this entails a right to abortion but more specifically it entails the right to be in control of projects connected with that child until the pregnancy is over. Without such a right, then a pregnant woman is liable to being used as a mere means regardless of whether or not she aborted the child. The right to bodily integrity allows the pregnant woman to begin an intimate relationship with the child, a right that no other person has.\textsuperscript{314}

However, the general right to begin and continue intimate relationships is not unqualified and neither is the right to bodily integrity. With respect to the right to bodily integrity, note that this right only protects others from using you as a means. It does not give you permission to use anyone else as a means. The right is satisfied by ensuring no-one can make a claim to use you as part of their projects and plans, but it does not give you the right to use your body as you wish. My right stops you from punching me in the face; it does not give me the right to punch you in the face. Similarly, my right prevents you from using my body for your ends, it does not give me the right to use the child within me to my ends without condition. It \textit{does} give me the liberty-right to begin a

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\textsuperscript{314} The right also entails that the mother can permit other intimate relationships to begin with the child during the pregnancy, if that were possible. However, I doubt that it is. This is because a relationship—even if dependent—is a two-way street. And while it is plausible to think a child may begin an intimate relationship with its mother in the womb (although there may even be doubts about that), it is not clear how a relationship could begin with anyone else during pregnancy.
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relationship concerning that child (a right that you do not have), but I do not have a right to begin a relationship that continues at the cost to others’ basic liberties, including children’s right to paternalistic provision.

All this means that the institutional setup must afford the space for mother-child relationships to continue, if they are begun. It does not mean that the mother can determine exactly how that relationship is to continue. Institutions must just give the mother the time and privacy required for such a relationship to continue until the child can determine for itself whether it wants the relationship to go on. However, this is compatible with institutions satisfying a number of other institutional aims including efficiency. In particular, it does not justify anything like the kind of almost unlimited control rights that some cultural groups would expect. Continuing the intimate relationship is compatible with significant state control over the child’s upbringing, even if it does decisively suggest that the traditional family setting ought to be preferred to the state orphanage, in such cases.

8.6 IDENTITY CLAIMS

In this section, I consider that ID, and the deviation from it argued for in 8.5.2, may still result in certain cultural and religious groups being significantly negatively affected by elements of the distribution. In particular, the effect is such that people will find it exceptionally difficult to reconcile their cultural and religious values with the institutional norms that may require shedding significant elements of their cultural and religious practices.

I argue that the SBSA principle requires accommodating sincere and genuine identity claims to a distribution of child-rearing rights and obligations that accords with the cultural and religious practices, as long as it does not undermine the satisfaction of the demands of children’s upbringings. Since the SBSA principle is lexically prior to the difference principle, such claims ought to be accommodated at the expense of efficiency. It must also be shown that accommodating the identity claims supports the SBSA better than retaining equal opportunity for child-rearing roles in ID. Furthermore, the relevant features of the identity that the claim is based on must be shown to be largely
inescapable even at ideal level – otherwise, the cultures/religions ought to have shed such prima facie unjust features of their identity. The argument I present will utilise arguments that justify cultural exemptions from generally applicable laws. In particular I will draw from Jonathan Quong’s argument on the permissibility of identity claims in public deliberation.

8.6.1 What are Identity Claims?

To begin I want to establish that the type of claims I am imagining are claims that can be made given political liberal constraints and are the type of claims parties in the OP would permit to be made in this particular institutional decision. Quong discusses whether, and under what circumstances, identity claims—claims based on what is culturally and religiously of fundamental importance to one’s conception of the good—can be legitimately considered when deliberating legislation under political liberal constraints.315

The first element to establish and elucidate is the notion that a social basis of self-authorization is to have one’s identity respected. To have one’s identity respected is linked to the “notion of authenticity, the demand for recognition, the idea of difference, and the principle of equal dignity”.316 Waldron argues that authenticity requires that a person lives in a way that is “true to himself” and requires recognition of others: being “sensitive” to that “quest for authenticity” requires that you respect me “as the authentic self I think I am and am striving to be”.317 This involves appreciating the idea of difference: there “may be a difference between what it is for me to respect you and what it is for you to respect me. Accordingly different people may have different rights; we are not entitled to assume that one size fits all”.318 Alongside the idea of difference there is the principle of equal dignity: “everyone’s identity is entitled to the same respect: there should be no second-class citizens”.319

317 Ibid.
318 Ibid.
319 Ibid.
also plausible to think that developing and acquiring self-regarding attitudes supportive of self-authorization requires supportive cultures that one can identify as part of and act within (see 6.2). They in turn must be supported. As such identity claims are considered as very serious claims: identity claims are “presented as essentially non-negotiable” and “often put forward explicitly as versions or instances of rights”.320

“'I can give up many things for the social good, but I will not give up my identity. I should not be required to sacrifice who I am for the sake of the benefit to others’”321

Their seriousness results from the fact that they are—if genuine—fundamental to one’s capacity to self-authorize.

However, a necessary premise must feature at this stage and this constitutes the second element of permissible identity claims. It must be established that even in the ideal society, cultural and religious norms that may run against the institutionalization of the principles of justice could still exist. I find this claim plausible. Given the burdens of judgment, there is no guarantee that the development of cultural norms will always tend towards full compatibility with the institutionalization of the principles of justice, even if people acquire a sense of justice as regulative of their conceptions of the good. Such cultural needs may be an unforeseeable consequence of reasonable and rational deliberations over time. I therefore conclude this subsection by establishing that identity claims can be genuine requirements of the social bases of self-authorization. This leaves open their status as public reasons, discussed in the next subsection, and how such claims may affect institutional setups, discussed in the final subsection.

### 8.6.2 Identity Claims as Public Reasons

Quong considers two arguments suggesting that identity claims cannot reasonably be made in public deliberations, and that can be understood here as claims that are inconsistent with political liberal constraints. First, that identity

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320 Ibid., 158.
321 Ibid.
claims are not (or cannot be) public (political liberal) reasons: they are just “camouflaged versions of self-interest”. Second, that identity claims may result in compossibility problems: we cannot respect the identity of all those who make identity claims - allowing identity claims to be made will inevitably result in inconclusiveness.

The first objection is that identity claims are not fundamental interests that are widely shared and therefore cannot provide public reasons for institutions and policies. This is the argument in brief. Identity claims run something like this:

“'We must be allowed to practice X because it’s integral to our culture and thus, to our identity’”

However, the logic ‘I do X because it’s part of my identity’ is never “a real reason for doing anything” – there is always some rationale for it. For example, the reasons that Christians celebrate Easter is not because it is part of their identity, it is because it commemorates a special date for them. The objection is that identity claims are in fact inauthentic because to “follow a cultural norm because ‘it’s important to my identity’ is to ‘show a vain and self-preoccupied contempt for the norm itself – by gutting it of its reasons, and replacing them as reasons with my own need to keep the faith’”. So identity claims are not fundamental interests; cultural interests must be defended and explained in terms of their actual rationales as to do otherwise is to “distort reasoning that is otherwise accessible and open to evaluation”. However, the comprehensive values of, say, the value of respecting Christ’s resurrection, are not publicly accessible. There’s no way to “sensibly evaluate someone’s reasons for observing a given cultural norm in any detailed way without getting tangled up in values and forms of reasoning that are beyond the scope of public reason”. This is not true of evaluating identity claims made as identity

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322 Quong, “Identity Claims,” 308.
323 Ibid.
324 Ibid., 311.
325 Ibid.
327 Quong, “Identity Claims,” 312.
328 Ibid.
claims—that is, in the bare appeal to the importance of the cultural practice to their identity—because it is a publicly accessible reason that one’s identity is fundamental to self-authorization.

This prompts the worry that we cannot judge which identity claims are genuine without “engaging the comprehensive reasoning which motivates the cultural practice in question”.329 But this is not right, as Quong explains:

“Determining how central or peripheral a practice is to a culture does not involve any evaluation of the culture, nor does it require us to accept or reject any of the culture’s comprehensive reasons or values. Just as an anthropologist can describe the structure of other cultures without accepting or evaluating the culture as a whole, so too can participants in deliberation make sensible decisions regarding the centrality of a practice to a culture without needing to accept or reject any of its comprehensive reasoning.”330

Consider the sort of identity claims that might be made regarding child-rearing institutions. One typical example might be that it is fundamental to (some) people’s identity that they are able to rear their own biological offspring. In the UK and the USA, this is primarily a cultural norm that has derived from religious norms and, indeed, for many it is still a central tenet of their religious practices. We can establish a difference between those who are merely interested or have a preference for a particular child (perhaps because it is any child, or perhaps because of the prospective genetics (like a baby born to two geniuses)), and a couple who we can imagine see bringing up their own biological offspring as central to their cultural and religious practices. Quong is right to say that “we have to draw a line somewhere to help define the concept of an identity. The act of drawing the line does not violate the principle of neutrality so long as the reasons grounding the definition don’t appeal to comprehensive views or values”.331 The question to ask is how central the practice is to the culture or religion and this does not require judging the worth of conceptions of the good. It is also necessary to assess whether it is true that people within that culture or religion require such a practice to be permissible

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329 Ibid., 314.
330 Ibid., 314–315.
331 Ibid., 323.
in order for them to maintain the necessary self-regarding attitudes for self-authorization.

Of course, it will be very difficult to establish these things in practice. It is also difficult to assess whether the cultural and religious practice is a reasonable result of the sincere development of the culture/religion in a well-ordered society. However, the necessary assessments can be made on principle and as such, on principle, such identity claims can exist and can feature in a political liberal distribution.

8.6.3 The Status of Identity Claims

Given it is possible to establish genuine identity claims, what status do we give them in relation to other claims? If granting identity claims is required for authentic self-authorization, then can identity claims be granted even in cases where they undermine the political autonomy of others?

First, note that some identity claims will be incompatible with the provision of political autonomy for all, most obviously with respect to the provision of political autonomy of the children they wish to begin a project with. Such claims may involve removing the child from public education, or bringing the child up in ways that will result in their being prejudiced or intolerant, or bringing the child up in ways that undermine the child’s political autonomy through brainwashing and so on. Such demands on the distribution and content of child-rearing roles are straightforwardly unreasonable because they involve violating a highest priority principle—the principle of paternalism that applies to children—and violating the political autonomy of others. Such identity claims are to be straightforwardly rejected. Regardless, in the well-ordered society, the development of religions and cultures over time involve the entrenching of the affirmation and understanding of the ideal of the citizen. In the well-ordered society, conceptions of the good will not affirm undermining the basic rights of others, where those rights are understood as necessary to the support of the ideal of the citizen in others. However, cultures and religions could develop in ways that may require institutional arrangements to depart from the most efficient institutional setup and from equal
opportunity. How are identity claims to be balanced against these other demands?

First, identity claims require unequal opportunity. Therefore, it appears that they undermine the SBSA for others, in favour of the SBSA for some. This is inconsistent with offering equal and adequate provision of the SBSA. However, equal provision does not require equal types of provision. The principle requires that adequate provision be secured for everyone equally, not that the provision for adequacy be of equal type between individuals. For one person, the SBSA may be adequately provided through some reasonable opportunity set and the general egalitarian environment supported by the prevention of self-respect undermining inequality of opportunity such as class-based or wealth-based favour and privilege. For another person, the SBSA may require an identity claim to be granted in addition. The first person has no basis for a complaint of unequal treatment; each citizen has an interest in everyone’s provision of SBSA as it in turn supports their own authentic self-authorization. In the particular case of granting child-rearing identity claims, a legitimate concern may be that if everyone gets their identity claims granted, there may be significantly less opportunity for child-rearing for those that cannot procreate. This may well undermine the SBSA. In such a case, it may be that the best way to support the SBSA is to help those that cannot procreate to procreate or to adopt, and so on. All this is, in fact, close to common practice.

Second, identity claims, even when sincere and genuine, ask for an inefficient institutional setup. Therefore, they ask people to respect others’ identity at their own cost. However, I submit that there’s a difference between asking society to accommodate identity claims in whatever form that is most preferable to the culture, and proposing the most extensive accommodations to institutional efficiency that is consistent with the central elements of the identity claim. Identity claims become unreasonable if they do not offer such accommodations, or present significant increase of risk or decrease of opportunity for others. They are also unreasonable if their development is not being guided by the cultural or religious groups’ (collective) sense of justice over time. However, if identity claims are not unreasonable in these regards,
then they ought to be accommodated in institutional setups. Therefore, this provides a reason to deviate from ID and offer biological children to their biological parents, in traditional family settings.

8.7 CONCLUSION

The aim of this chapter was to provide an account of the just distribution of child-rearing rights and obligations. This was necessary in order to demonstrate that my conception can address the key issues that are raised by the upbringing of children in a plausible and coherent way. If my conception could not offer plausible and coherent assessments of how particular adults acquire particular rights and obligations over particular children, and how institutions fulfil the demands of children’s upbringings alongside other claims of justice, then the conception would be indeterminate and implausible.

In 8.2 I expounded ID: an initial account of the institutions that distribute child-rearing rights and obligations in a way that satisfies the principles of justice. In 8.3 I argued that ID may clash with current practices that we find reasonable, in principle at least, if not in fact. This was a reason to look for political liberal arguments to deviate from ID to accord with current practices. In 8.4 I rejected accounts that defend some common cultural and religious norms by appeal to the reasonableness of the projects and plans of those that procreate. In 8.5 I argued that the institutional setup must afford the space for mother-child relationships to continue, if they are begun. Institutions must give the mother the time and privacy required for such a relationship to continue until the child can determine for itself whether it wants the relationship to go on. However, this is compatible with institutions satisfying a number of other institutional aims including efficiency. Mothers’ rights to continue an intimate relationship with a child does not extend to continuing it in exactly the way she desires. Continuing the intimate relationship is compatible with significant state control over the child’s upbringing. In 8.6 I argued that the SBSA principle requires accommodating sincere and genuine identity claims to a distribution of child-rearing rights and obligations that accords with the cultural and religious practices, as long as it does not undermine the satisfaction of the
demands of children’s upbringings. Since the SBSA principle is lexically prior to the difference principle, such claims ought to be accommodated at the expense of efficiency. I also showed that accommodating the identity claims supports the SBSA better than retaining equal opportunity for child-rearing roles. The arguments in 8.5 and 8.6 offered reasons to deviate from ID in order to better fulfil the principles of Justice as Fairness.

To conclude, the just distribution of child-rearing rights and obligations is an institutional setup that:

- Is arranged to the greatest benefit of the least-advantaged measured in terms of OIWPI and satisfies the following conditions:
  - Satisfies the demands of children’s upbringings.
  - Does not force anyone to undertake child-rearing roles.
  - Protects the continuation of intimate relationships begun by the gestational mother, with the child, during pregnancy.
  - Satisfies the SBSA principle by:
    - Offering equality of opportunity to undertake child-rearing roles.
    - Trumping equality of opportunity and efficiency in favour of the satisfaction of genuine identity claims.

I submit that this is a plausible and determinate account of the just distribution of child-rearing rights and obligations. It is also coherent with all the other demands of justice that have been set out in the thesis so far. This offers significant support to the account expounded in this chapter, to the other accounts that have been expounded in the thesis, and to the conception as a whole.
9 Conclusion

The purpose of this concluding chapter is to show that I achieved the goals set out in the introduction (9.1), and to consider—in light of the arguments presented in the thesis—whether the goal was worth achieving (9.2).

9.1 Achieving the Goal

The goal of the thesis was to articulate and defend a political liberal conception of justice that provides plausible and determinate principles for the formulation and regulation of the institutions associated with children and their upbringing. Achieving the goal offers significant support to the general project of political liberalism by showing how a political liberal conception of justice can deal satisfactorily with the specific issues raised by the upbringing of children. In order to achieve the goal, the conception of justice had to be coherent, plausible, and determinate. The conception of justice is *coherent* if the conception is consistent with political liberal foundations and if the accounts expounded on the basis of the conception to deal with the specific issues raised by the upbringing of children are consistent with the underlying conception.

The conception is *plausible* if it elicits accounts that cohere with each other and with considered convictions on particular cases. The conception is *determinate* if the accounts derived offer clear guidance for the formulation of particular institutions and laws to do with the specific issues raised by the upbringing of children in particular societies. This does not require concrete policy implications but does require that a principle or principles can be identified as pertinent for guiding the just formulation of institutional design and policy in the key issues raised by children’s upbringings. My plan was to demonstrate how Justice as Fairness can be successfully applied to children’s upbringings in a way that is coherent, plausible, and determinate. I aimed to make it very clear how it is a genuine political liberal conception and how it can address the important and neglected questions regarding children’s upbringings plausibly and coherently. I will now explain how this plan was carried out successfully.

In Chapter 2, I expounded the political liberal approach. I argued that Rawls’s political turn involved a new and improved solution to the problem of stability.
The problem of stability is the problem of explaining how a well-ordered liberal society could be established and sustain itself over time given the fact of reasonable pluralism. This is a problem internal to liberal theory and is not a response to the fact of real world disagreement about the good life and what is of ultimate value. In light of this interpretation of the political liberal approach I showed that the worries regarding the prospects for a political liberal conception of justice that can address the specific issues raised by the upbringing of children are unfounded; those worries rest on a mistaken understanding of the political liberal approach. Political liberalism is an ideal-based view; it is based on an ideal of society and an ideal of the citizen that can be applied to children and their upbringings. Real-world disagreement about the principles that result from the ideal, or disagreement about the ideal itself, is not damaging to the political liberal project. Furthermore, the ideal permits perfectionist policies with respect to children, although the perfectionism must appeal solely to the ideal of the citizen and the accompanying interests. This chapter formed the basis for building a political liberal conception of justice.

In Chapter 3, I detailed the ideal of the citizen that is the basis of Justice as Fairness, the political liberal conception of justice I formulate and expound in the thesis. I detailed the political conception of autonomy that is derived from the ideal of the citizen and that is the basis for conceiving of the interests of citizens, including children. I argued that political autonomy ought to be conceived as autonomy as authentic self-authorization. The politically autonomous person is a person who can properly apprehend the reasons for the political and social institutions that shape who we are and who we become, and can affirm the political and social institutions on the basis of those reasons. It is a person who, because of those conditions, can and does take ownership of their actions in the context of the political and social institutions in which those actions will be judged. This is a political, not ethical ideal. I expounded the highest-order interest of the ideal citizen as establishing and maintaining sufficiency in the three dimensions of autonomy, where the sufficiency level is understood through the conception of autonomy as authentic self-authorization. I also anticipated and assuaged the worry that the theory of primary social goods is insufficient to cover the kind of institutional demands
that must be met in order for citizens to authentically self-authorize. In this chapter I demonstrated that political liberal conceptions of justice have the substantive material to ascertain the demands of children’s upbringings, and therefore have the potential to offer plausible and determinate outcomes for children.

In Chapter 4, I expounded the principles of Justice as Fairness. I defended the priority ordering of the principles by appeal to the political conception of autonomy detailed in the previous chapter. I argued that the principle of fair equality of opportunity should be jettisoned and should be replaced by a principle of equal and adequate provision of the social bases of self-authorization. I argued that this principle is necessary as a rider on the difference principle to ensure that the inequalities that the difference principle mandates do not engender oppressive structures and norms. The interpretation of Justice as Fairness derived in Chapters 3 and 4 offers a significant contribution to Rawlsian theory generally, although the most important contribution it makes to the thesis is to establish a coherent and plausible general conception of justice that can be applied to children’s upbringings.

I was then able to turn to applying the conception to the specific issues raised by the upbringing of children. In Chapters 5 and 6 I demonstrated that the principles of Justice as Fairness offer coherent, determinate, and intuitively plausible, demands of children’s upbringings. In Chapter 5, I expounded the procedure by which the principles of Justice as Fairness can be applied to children. I argued that the four-stage sequence of the original position establishes the equal citizenship of children (and thereby their equal concern) and also a principle of paternalism that ensures that others act for children’s higher-order interests. This is a plausible general demand. I then demonstrated how this ought to be institutionalized. I argued that the principle of paternalism invokes a hypothetical at-birth contracting of children into institutions that further their higher-order interests over a complete life. Again, this is a plausible demand. I also showed that the application of the principle results in plausible and determinate conclusions on the nature of childhood and adulthood, and how the demands of children’s upbringings change as they
develop and grow up. In Chapter 6, I elucidated these general demands by considering potential objections and demonstrating the plausible and determinate conclusions they elicit in some key issues concerning the upbringing of children, in comparison to other liberal conceptions. In particular, I addressed the need for children to be brought up to be autonomous, the need for children to have the opportunity to experience intrinsic goods of childhood, and the need for children to have an equal and socially inclusive education. I showed that my conception elicits plausible and coherent outcomes with respect to all three issues.

Detailing the demands of children's upbringings was not sufficient to establish the conclusion that my conception is coherent, plausible and determinate. For I had not yet considered a key issue raised by the upbringing of children: the distribution and content of specific child-rearing rights and obligations attached to particular adults regarding particular children. If my conception could not offer plausible and coherent assessments of how particular adults acquire particular rights and obligations over particular children, and an account of how institutions fulfil the demands of children’s upbringings alongside other claims of justice, then the conception would be indeterminate and implausible. Chapters 7 and 8 offered an account of how the conception can address this issue in a plausible, coherent, and determinate way.

In Chapter 7, I presented a plausible and coherent account of procreative duties and responsibility derived from the principles of Justice as Fairness. This was then combined with a thorough analysis and rejection of what I called 'pre-institutional accounts' of the distribution of child-rearing obligations that attach child-rearing obligations to attributive responsibility for the existence of particular children. These accounts are the most prevalent in the literature. However, I showed that these accounts fail to elicit responsibility sensitive outcomes and are internally incoherent. Having detached the distribution of child-rearing obligations from one’s procreative acts, I presented my own view on the distribution of child-rearing rights and obligations in Chapter 8. I proposed a distribution that fulfils the principles of justice: one that satisfies the demands of children’s upbringings as I detailed it in Chapters 5 and 6;
satisfies a requirement of the liberty principle that no-one can be forced to undertake labour they do not wish to undertake; ensures that opportunities to undertake labour roles must be arranged in a way that does not undermine the social bases of self-authorization; and is otherwise arranged to the greatest benefit of the least-advantaged. I argued that there were only two other relevant factors that may offer a reason to deviate from such a distribution: the right of the gestational mother to begin and then continue an intimate relationship with her child; and sincere and genuine identity claims of cultural groups that would struggle to self-authorize unless distributive accommodations were made with respect to child-rearing. I argued that these offered reasons to deviate from the initial distribution, if they satisfied the lexically prior demands of children’s upbringings. This distribution offers a coherent, plausible, and determinate, account of the distribution of child-rearing rights and obligations.

In fulfilling the plan as I set out, the thesis meets the goal it set. I have presented a coherent political liberal conception of justice that addresses the key issues raised by children’s upbringings in a plausible and determinate way.

9.2 WHY IT WAS A GOAL WORTH ACHIEVING

In the Introduction, I said the goal of the thesis was worth achieving because there was reason to doubt the plausibility, coherence, and determinacy of the political liberal approach unless a compelling political liberal conception of justice with respect to children’s upbringings could be articulated and defended. Therefore, in achieving this goal I have offered significant support to the general project of political liberalism, as well as offering an independently attractive account of the demands of children’s upbringings and the distribution of child-rearing rights and obligations, in part because it a political liberal account and in part because it is independently plausible and determinate. In particular, by demonstrating how ‘all the parts fit together’—from the political liberal foundations, through a general conception of justice based on ideals of society and the citizen, through the demands of children’s upbringings, and through the claims of adults with respect to children’s
upbringings—the web of coherence is very strong and, as such, I offer reasons to affirm the conception of Justice as Fairness I propose, and the interpretation of political liberalism I propose, as well as reasons to affirm the particular accounts of the justice of the key issues raised by the upbringing of children.

Along the way, the attempt to include concerns of children’s upbringings into a political liberal conception of justice has elicited some other significant contributions to political liberal conceptions more generally. In particular, the account of political autonomy offered in Chapter 3 is a unique, plausible, and coherent conception that—I have shown—elicits equally plausible interpretations of Justice as Fairness. Also, the jettisoning of fair equality of opportunity and its replacement with the SBSA principle offers a unique and plausible alteration to the standard formulation and presentation of Justice as Fairness.

To conclude the thesis I want to address what I think will be a lingering concern for some: the constraints placed on children’s upbringings by a political liberal conception of justice are so demanding and antithetical to many cultural and religious conceptions of the good that we ought to reject political liberalism. Political liberalism fails to meet its purported aim of offering an “underlying basis of philosophical and moral agreement” (JaF 1). The reason that political liberalism was required was not to merely address internal incoherence in liberal theory but to offer a conception of justice for the real world that features a plurality of views on the good life. All my conception shows is either how futile the aim of philosophical and moral agreement is, or how irrelevant or impotent the political liberal approach is: what we need is a diversity state:

“the ‘Diversity State’—that is, in public principles, institutions, and practices that afford maximum feasible space for the enactment of individual and group differences, constrained only by the requirements of liberal social unity”332

It may appear strange that in both the Introduction and Conclusion to this thesis that I focus on views that I do not (directly) address: those affirming the

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‘Diversity State’ as Galston terms it, or are ‘tolerationists’, as Kukathas terms it. The reason I focus on these views is that they reveal that it is in the case of children’s upbringings that liberals must make a choice. Do they desire a society of free and equal citizens that “supports the mutual respect and self-respect of its members, encourages freedom of interpersonal exchange, and places no special obstacles in the way of self-understanding or truthful relations among people”?\footnote{Samuel Scheffler, “Choice, Circumstance, and the Value of Equality,” \textit{Politics, Philosophy \\& Economics} 4, no. 1 (February 1, 2005): 19.} Do they desire an absence of rigid hierarchical distinctions that “exert a stifling effect on human freedom and inhibit the possibilities of human exchange”; and an absence of privilege and deference that “spill over into personal relationships of all kinds” and “distort people’s attitudes towards themselves undermining the self-respect of some and encouraging an insidious sense of superiority in others”?\footnote{Ibid.} I find this to be an attractive ideal of what liberal society is and what it is for. I do not find a society attractive that thinks it is “no business of the state to save children from their parents” in particular cultural or religious groups.\footnote{Barry, \textit{Culture and Equality}, 142.} As Barry says, public “tolerance is a formula for creating a lot of private hells”.\footnote{Ibid., 143.} As Kukathas accepts, “under a regime of toleration some associations will condone or uphold practices which are harmful to children” and may include ritual scarring, preventable death, forced marriage, genital mutilation, female oppression, and beatings.\footnote{Kukathas, \textit{The Liberal Archipelago}, 147.} Like Barry, I do not believe this to be any form of liberalism at all, let alone an attractive one. However, throughout the thesis I have not appealed to anything except an ideal of the citizen that I believe represents what liberals must appeal to, and represents the limit of what liberals ought to appeal to. This is an ideal of a person that we can hold responsible for their ends and that can live alongside us as free and equal. I have shown that this is a distinctly political liberal ideal and not a comprehensive ideal. In developing the conception of justice on the basis of that ideal, it is, however, true that demanding institutions appear to be required and that instigating institutional reform on the basis of the principles elicited.

\footnote{333 Samuel Scheffler, “Choice, Circumstance, and the Value of Equality,” \textit{Politics, Philosophy \\& Economics} 4, no. 1 (February 1, 2005): 19.} \footnote{334 Ibid.} \footnote{335 Barry, \textit{Culture and Equality}, 142.} \footnote{336 Ibid., 143.} \footnote{337 Kukathas, \textit{The Liberal Archipelago}, 147.}
may well prompt significant disagreement from many groups in contemporary liberal societies. But it is in the case of children that liberal theories have to put their heads above the parapet and ensure children’s interests are protected and furthered. I have offered the grounds for doing just that.
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